

New approaches of art looting from the 1990s till today

After the final files for compensation for lost works of art were closed in the mid-sixties, the question of the pillage of cultural assets during World War II did not emerge into the public arena until the start of the 1990s. Hitherto, in France as in the rest of western Europe, the general feeling was that, thanks to restitution and compensation, the damage had been repaired. During the course of the years 1970-1980, the impression that prevailed in art circles, which apparently took little interest in the subject, was that a large number of works that had never been found had been destroyed and, as for the rest, the Red Army (the Soviet Union had done nothing to hide this) had taken its "due". During the 1970s, the regular demands by the heirs of the dealer Paul Rosenberg, and the collector Adolphe Schloss, aimed at reclaiming works that appeared regularly on the market, giving the art market the comforting impression that these were the only two cases that had not been completely settled. In its *General Report* published in 2000, the Study Mission on the Spoliation of the Jews of France noted that during this period "the Museums of France did not pursue [the matter] with the determination shown in the years 1945-1950 the issue of the restitution of the 45,000 items, and investigations of the ownership of the 2,000 art works and objects that had been placed in their custody⁶⁶".

1. A changing international context

In the wake of the evidence published by Rose Valland in 1961, looting began to be mentioned here and there ; the exhibition catalogue of *Paris-Paris, 1937-1957*, held at the Centre Georges Pompidou in 1981, made marginal mention of the way in which the Nazis had used the Jeu de Paume ; in 1986, Laurence Bertrand-Dorléac mentioned the subject in passing in his thesis. Then, in 1993, when publishing this academic work, the author designated and described the spoliation as the inaugural and criminal act in which the operation of the art market and Parisian artistic life colluded during the Occupation. Research continued discreetly in the United States. While, since the early 1980s, Lynn Nicholas had been exploring the collection of archives that enabled her to publish the first overview of the issue, in 1994, in 1991 the Los Angeles Museum attracted the attention of the wider public by studying and reconstituting the Nazi exhibition entitled "*Entartete Kunst*" (Degenerate Art) in 1937.

The research methods and sources used by Lynn Nicholas for her book *The Rape of Europa* made this the first approach to the issue by an historian ; she stressed the importance of studying the phenomenon that affected all of the territories that fell under the domination of the Reich, the huge Nazi appetite for works of art and the various solutions examined by the Allies in order to effect restitution. What had begun with historical research was continued when the journalist Hector Feliciano conducted a massive investigation into the matter. *Le Musée disparu : Enquête sur le pillage des œuvres d'art françaises*, which he published in 1995, was aimed at the wider public. Delivering the results of research conducted mainly in the archives in Washington and having collected many memories and testimonies, the book, despite the fact that a few of the investigations were rather slipshod, had the merit of awakening consciences and its stimulating contribution revived the question. Ending with a chapter entitled "Les

revenants", he highlighted the cases of the few works of art placed in the custody of the Musées Nationaux whose restitution, he claimed, was possible.

The success encountered by these two works cannot merely be explained by the period to which they relate. Being published at the same time, they reinforced the need for background information and for more action in the interrupted reparations process; together they were perceived as a move to uncover the truth. They were evidence of a change in the subjects of preoccupation, analysable over a slightly longer period, the developing trend over a period of more than twenty years, in the history of works of art. This cultural purpose was translated into the increasing number of visits to museums and exhibitions which could be considered as a genuine social phenomenon. Here, in institutions that had now been modernised, the public was able to share in the country's heritage. But the purpose had also become a "commercial issue", charged with financial considerations in an active art market of international dimensions, which had experienced a sudden shooting up of prices in recent years. This art heritage remained, however, a "subject for study", expanded henceforward by new research directions that were of particular interest as to the movements of works of art as revealed by the research work into the history of the collections and, more generally, the history of taste.

Over and above the historic research and individual investigations, these issues were taken on board by the countries in question in the general context of the recognition and reparation for damage caused to victims of the Shoah. Several international conferences forced the convergence of viewpoints and the facilitation of action between various countries; two such conferences focused on art objects, to an extent the Washington Conference of 1998, and the subsequent conference held in Vilnius in 2000.

The first international conference, held in London in December, 1997 was concerned with the looting of gold. It resulted in the creation of the Nazi Persecutee Relief Fund ; France contributed the sum of 5 million francs, a sum destined for social and medical aid in the Ukraine, Belarus and Moldavia.

The Washington Conference⁶⁷, held by the U.S. Department of State from 30 November to 3 December, 1998 at the Holocaust Museum in Washington enabled important exchanges of views between the forty-four countries represented and the question of artworks was accorded a very special place. In fact, the American delegation submitted a draft containing eleven principles covering spoliated works of art, taken from a guide produced in June, 1998 by the Association of Art Museum Directors. This first text was the subject of a plenary session and numerous discussions between sessions. The original idea, to define the constraining obligations in the context of an international law, was rejected and a preamble specified that the principles were not to be restrictive (*soft law*) and that each country needed to operate within the boundaries of its own laws.

The principles finally adopted in Washington on 3 December, 1998 can be summarised as follows : all the countries should ensure that their archives are opened and that research is simplified ; cultural assets confiscated by the Nazis must be reported and an effort must be made to hold this information centrally ; the requirement for proof of ownership must take account of the historic circumstances ; when a work is acknowledge to have been looted, a just and fair solution must be found quickly. These principles would mark a decisive phase by introducing a new approach to the questions of the spoliation of works of art, encouraging a resumption in research as to provenance, seeking to facilitate the

introduction of claims by claimants and to accelerate and simplify the restitution procedures.

Two years later, the International Forum on Holocaust-Era Looted Cultural Assets, held in Vilnius under the auspices of the Council of Europe in October, 2000, was entirely devoted to works of art. The final declaration referred to resolution 1205 of the European Parliament and the Washington Principles. It recalled the need to open the archives and seek for just and fair solutions to the demands for restitution.

It encouraged the placing of information on the internet and called for an initiative to create a centralised website under auspices of the Council of Europe. The Forum asked each country to offer a unique access for any matters concerning research into provenance and demands for restitution. Paragraph 4 tackles the question of assets spoliated from Jews the ownership of which cannot be identified. The final formulation which was the subject of extensive discussions, remains fairly cautious. The Forum recognised that there was no universal model that could be proposed on this issue, and that it recognised "the previous Jewish ownership of such cultural assets".

2. The study mission on the spoliation of Jews of France (1997-2001)

It was in this context that research was resumed in France in the mid 1990s. Considerable impetus was gained through the support of the Study Mission on the Spoliation of the Jews of France, created in 1997.

Resumption of the Investigation (1996-1997)

Taking account of the interests and, above all of course, the legitimate questions asked about the possibility of making further restitution - including a report from the Cour des comptes [Audit commission], in 1995, expressing surprise that this was no longer an objective - led the National Museums to understand the need to resume research.

On 17 November, 1996, the Direction des musées de France organised a one-day colloquium in Paris in the large auditorium of the Ecole du Louvre, in conjunction with the directorate of the Archives of the Ministry of Foreign Affairs. The event was entitled "Pillages and restitution : the fate of works removed from France during World War II". Contemporary witnesses such as the conservators, Maurice Sérullaz, Christiane Desroches-Noblecourt and Adeline Cacan de Bissy gave evidence, as did Baron Élie de Rothschild, who mentioned the scope of the restitution made after the war. Two historians, Lynn H. Nicholas and Laurence Bertrand-Dorléac, recalled the salient points that were typical of the period. Louis Amigues, on behalf of the French Ministry of Foreign Affairs, and Monique Bourlet, for the Museums of France, presented the research that had been undertaken since the 1950s. Finally, the international dimension of the questions of spoliation and restitution were handled by Doris Lemmermeier of the *Koordinierung der Länder für die Rückführung von Kulturgütern* [German Länder Coordination Committee for the Return of Cultural Assets], Morio Bondioli Osio, Minister in the Italian Government and chairman of the *Comitato Interdirezionale per le restituzioni* [Interdepartmental Committee for Restitution] and of the *Commissione interministeriale per le opere d'arte* [Interministerial Commission for Works of Art] and Jacques Lust, responsible for cases in the Belgian Ministry of Economic Affairs. Hector Feliciano was also invited to speak about these issues. The speeches made on this

occasion were published in 1997 by Robert Fohr, head of communication at the Directorate des Musées de France.⁶⁸

In April and May, 1997, an exceptional presentation of MNRs, works returned from Germany and placed in the custody of the national museums was organised in the four great national museums - the Louvre, Sèvres, Orsay and Versailles - at the National Museum of Modern Art and in one hundred and twenty museums in the provinces. The presentation was accompanied by a very full press kit which included the full list of the MNRs⁶⁹. The presentation by the Musée National d'Art Moderne was accompanied by a small specific catalogue, published in two versions, one in French and the other in English.

This complete list was published on the basis of information from the MNR database, which was made accessible by the Direction des Musées de France on 13 November, 1996, predating the complete catalogue of MNRs, and which, from January, 1997, included a descriptive notice for each of the 2,000 works in this collection. From November 1996 to early May, 1997, the database was consulted twenty thousand times, high figures for a time when few people had yet begun to use the internet.

The exhibitions held in the spring of 1997 prepared as a result of the resumption of research, the accompanying publications and the launch of internet sites concerning the MNRs had a considerable effect. Examination was begun on several significant restitution cases.

Creation and working methods of the Mission

Researches concerning provenance nevertheless took on greater scope thanks to the assistance provided by the Study Mission on the Spoliation of the Jews of France (1997-2001), created by the Prime Minister. The chairmanship of the Mission was assigned to Jean Mattéoli, a former Resistance fighter and Chairman of the Economic and Social Council. The decree of 25 March, 1997 appointed as members of the Mission Professor Ady Steg (vice-chairman), Jean Favier, François Furet, Jean Kahn, Serge Klarsfeld, Alain Pierret and Annette Wieviorka. The Mission was responsible for investigating how the movable and immovable property of the Jews of France had been seized both by the Occupying force and by the Vichy authorities between 1940 and 1944, and to assess the scope of the spoliation thus operated, as well as finding the property and identifying their legal status.

In the spring of 2000, the Study Mission published the result of the research in ten volumes, including a *General Report*, an anthology of official texts, a guide to the research in the archives and seven sectorial reports, dedicated respectively to financial spoliation, economic aryanisation, looting of apartments, the SACEM and copyright, the property of internees, the looting of art and the MNRs, and finally to spoliation that occurred in the camps in the provinces. These reports were very widely circulated, and all of them were consultable online on the Documentation française website. They were only published in French, since translations would have allowed them to be read by a wider public.

Upon completion of its work, the Mission formulated 19 recommendations. Recommendations 11 and 12 are concerned with the Fondation pour la Mémoire which the Prime Minister decided to create and which subsequently took the name of Fondation

pour la Mémoire de la Shoah [French Memorial Shoah Foundation]. The Mission recommended, in particular, that escheated funds of any kind resulting from the spoliation should be paid by public and private institutions to the Foundation. The donations to the Foundation thus amounted to 393 million euros. Since its creation, the Foundation, whose first chair was Simone Veil, who was succeeded in February, 2007 by David de Rothschild, has supported more than one thousand projects in fields as diverse as history, education, culture and social assistance.

If, from a material point of view, the basic questions posed by the Mattéoli Mission dealt with escheated bank accounts, the financial spoliation, economic and property aryanisation, the fate of art objects during the Occupation constituted a specific field of investigation. This subject was assigned to Alain Pierret, who worked in close collaboration with Michel Laclotte, honorary director of the Louvre. The Mission decided to provide very important assistance to the research launched by the directorate of the Museums of France by making available ten or so young researchers from November 1998 to June, 2000, who worked with the conservators responsible for the casefiles.

The first effect of the extent of the resources thus made available was that the systematic research conducted hitherto only into paintings could now be extended to cover all of the items recovered from Germany through the artistic recuperation - sculptures, drawings, art objects and antiques. The work was divided into type of works. Only an in-depth knowledge of the items studied could actually make it possible to identify them from the lists, files and other documents used, including photographs.

The aim of the research was to establish the provenance of works assigned to the custody of the Musées Nationaux. The method chosen was firstly to proceed to a detailed examination of the items in order to retrieve markings and inscriptions that might provide indications as to the path that the work had travelled. At the same time, the documentation preserved in the museums was used (inventories, files about the works, administrative files, bibliographical resources). Many archive collections were perused thoroughly and cross-matched, the contracted employees of the Mission devoting most of their work to the material preserved in the Archives of the Ministry of Foreign Affairs.

3. A new approach on the MNRs

The resumption of research into the MNRs occurred in a climate typified by polemics. During the Washington Conference of December 1998, the French representatives were very closely questioned about the spoliated works of art preserved in French museums. In France itself, an interview with Hector Feliciano was published in the French daily *Le Monde* in April, 1996, in which he stressed how slow the French museums were to provide answers to the questions they were being asked. The article was provocatively entitled "A thousand paintings in our museums are waiting for their real owners", and was considered to be an attack by professionals of the museums, which provoked an approach to the issue of a nature that was often perceived as defensive.

The research conducted on the 2,000 MNR works, under the auspices of the Mattéoli Mission, were determined by the central objective of the works, namely, a study of the process of spoliation and its extent. The five years that had passed since the Liberation, the greater knowledge acquired and the change in mentality concerning World War II, the

Occupation and Collaboration led to a highlighting of the links between racial discrimination and spoliation, in particular where this concerned works of art. This caused a move away from a policy of reconstruction of the French national heritage in the post-war period, to a demand for commemoration and reparations. The first task was therefore to systematically identify all of the works that had been subject to spoliation and it was in this spirit that the whole issue was examined.

The decisive role played by the German services in the seizure of the assets of the major collectors and gallery owners who were Jewish had been known since 1944. Two decisive factors made it possible to identify them from among the MNRs. These were the markings on the back of the works (labels, the affixing of numbers) and the place where they were discovered (the repositories of the *ERR*). The lists produced by the *ERR* were also cross-matched. The routes taken by this investigation made it possible to identify about 200 items in this case, which were then designated as "objects that had certainly been looted". Subsequent research was designed to seek ways of identifying their owners.

In the case of other works, about a quarter provided no indication of the route they had taken that might make it possible to investigate them. On the other hand, it emerged that most of these works had been the subject of transactions on the Parisian art market during the War.

The large number of items purchased on the Paris market made it essential to find out what was known of their provenance. Investigations conducted in the immediate post-war period showed that some had been bought from individuals, but most had been acquired from dealers, some of whom had maintained extensive business relationships with German clients, and especially with German and Austrian museums. The activities of several dealers were closely studied during interrogations by members of the *ERR* or legal proceedings that resulted in heavy penalties being imposed for the crime of aiding and abetting the enemy or illicitly profiting thereby. What was thus being sought were traces of commercial activity conducted with the Occupier. On the other hand, the concept of a forced sale or a transfer of property performed under duress linked to the racial laws were not among the preoccupations of the period. It was thus possible to go back to the French individual or gallery-owner who had sold to a German museum, individual or intermediary, but the trail stopped there. The efforts made to go back further in the provenance of the works frequently turned out to be fruitless. Many of the dealers' archives had been lost, others were often hard to access, and also of little use. How could a painting be recognised from a list in a stock ledger which contained a note of the type "five abstracts by Picasso"? In any case, there is every reason to believe that sales made at very low prices by sellers who were trying to escape would leave no written records. Those in a position to be able to sell assets due to the persecution they were suffering as a result of the racial laws could no longer dispose freely of their property and the transactions they performed under the pressure of events could only result in records that were of a very unofficial nature.

If the transactions entered into by galleries are difficult to identify, the task is even harder in the case of negotiations between individuals. These operations might only come to light through claims for restitution submitted by the owners to the *Commission de récupération artistique* or through claims made through the courts. Part of the restitution of works of art that had occurred in recent years, in France and elsewhere, had been made through the uncovering of forced sales.

Results of the investigation

The work done resulted in publications that made it possible to circulate the results of the research and enabled the Mission to issue recommendations concerning the art works and objects.

The works of art were the subject of a specific report entitled *Le Pillage de l'art pendant l'Occupation et la situation des 2 000 œuvres confiées aux musées nationaux : Contribution de la direction des musées de France et du Centre Georges Pompidou aux travaux de la Mission d'étude sur la spoliation des Juifs de France* [Pillage of works of art during the Occupation and the situation of the 2,000 works assigned to the national museums. The contribution of the directorate of the Museums of France and of the Centre Georges Pompidou to the work of the Study Mission on the Spoliation of the Jews of France]. While the summary report was being compiled, all of the information collected thanks to the research on historic provenance conducted on each of the MNRs made it possible to produce a detailed history that also indicated the archive sources consulted. This information enabled a progressive enrichment of the MNR database that was consultable online at the Website site of the Ministry of Culture.⁷⁰ Furthermore, the descriptive labels of the paintings (apart from the modern period) were published on paper in 2004. The introduction to the publication describes the research methods used.⁷¹

The deliberations of the Mission produced five recommendations for the General Report concerning works of art and art objects, including :

- Recommendation no. 13 : Works and art objects not looted

The Mission recommends that works and art objects that have been proven not to have been looted should be definitively incorporated in the national collections". To date, and as an interim measure while research continues, these works have not been the subject of incorporation measures.

- Recommendation no. 14 : Works and art objects looted or of uncertain origin

The Mission considers that leaving these items in museums in which they are currently to be fund may make a useful contribution to the pursuit of the dual objective of restitution and education, on condition that the following three actions are systematically undertaken :

- the widest possible circulation, in the museums that are housing works from the spoliation, of the catalogue of looted works ;

- installation immediately beside each of the looted works or those of uncertain origin of a regularly updated notice showing what is known currently about their origins ;

- the setting up in each of the museums of an internet site that is accessible to the public presenting the looted works and those of uncertain origin and permanent projection on a loop of these works".

This recommendation led in 2004 to the publication of a catalogue of MNR paintings, while the online database at the site of the Ministry of Culture was regularly updated. Increased vigilance in the signage for MNR works was requested from the various museums that housed them. It should thus be noted that after a close examination, the Mattéoli Mission has reached the conclusion that it was appropriate that custody and conservation of the MNRs should remain with the museums. The reiteration of this decision had the virtue of affirming the fact that this provisional status was not subject to a statute of limitations and to emphasise the duties and obligations of the museums.

- Recommendation no. 15 : Deposit with the Israel Museum

The Mission recommends that, in order to bear witness to the spoliation, a few significant

works, selected by mutual agreement from the works of the Artistic Recovery, should be exhibited at the Jerusalem art museum, with a notice concerning their origin and the reasons for which they were deposited there".

By mutual agreement, the proposed depositing of works at the museum developed in an exhibition more widely presenting the history of the pillaging of works of art in France and the creation of the MNR collection. In application of recommendations nos. 16 (annual report) and 17 (international cooperation), the directorate of the Musées de France created an annual report covering research conducted on the MNRs, submitted to the government and communicated to the Memorial Foundation for the Shoah and pursued with the Ministry of Foreign Affairs in respect of operations for cooperation and exchanges of information at an international level.

Finally, the Mission made it possible to re-examine the auctioning off of some of the items returned from Germany by judging the procedure in these terms : "It is indisputable that the Estates proceeded to perform premature sales of miscellaneous items the value of which amounted to 96.12 million francs as of 15 June, 1953, a sum estimated at around 100 million francs in September, 1954". This sum, valued at 198 million francs at 2000 values was taken into account in the constitution of the capital donated to the Memorial Foundation for the Shoah.

4. Restitutions since 2000 - case studies

The renewed interest in these issues and the resumption of research made additional restitution possible starting in the late 1990s, in France and in many other countries. The complete list of restitutions of MNR works is listed as an appendix to this catalogue. We have chosen to examine three of them here, and they illustrate the diversity and complexity of situations encountered as well as the various procedures for investigation that might be envisaged.

Resorting to the courts : the Gentili di Giuseppe case

Frédéric Gentili di Giuseppe was an Italian-Jewish businessman who came to France in the 1920s. One year after his death on 20 April, 1940, 150 works from his collection of Italian paintings were dispersed through an auction held by Maître Maurice Rheims at the Hôtel Drouot in April, 1941.

Five works preserved in the MNR collection were included in the 1941 sale : *The Visitation* by Moretto da Brescia, *The Holy Family* by Bernardo Strozzi, *Alexander and Campaspes at the House of Apelles* by Giambattista Tiepolo, *Card-players beside a fireplace* by Alexandre Magnasco, *Portrait of a Woman*, pastel by Rosalba Carriera.

After the auction, the paintings were bought by Germans, the Tiepolo even being included in Goering's collection ; after the War, they were returned to France.

In May, 1997, Frédéric Gentili's heirs demanded restitution of the five paintings ; receiving no favourable response to their demands, they decided to take the matter to court. In a judgement dated 10 July, 1998, the High Court of Paris dismissed the application ; it actually considered that the 1941 auction had been held due to a claim by a debtor on the estate who in March, 1941 had succeeded in having appointed a provisional

executor and the holding of the auction enabled him to recover a major liability on the inheritance. The judgement further stated that the two children of Frédéric Gentili were in contact with the notary and the executor.

The heirs of Gentili di Giuseppe appealed this ruling. On 2 June, 1999, the Paris Court of Appeal overturned the ordinance, deciding to return the five MNR works and ordered the state to pay the sum of 40,000 francs to the petitioners. It based its decision on the fact that the appointment of the executor had been made because the children of Frédéric Gentili had left Paris due to the racial laws and that the sale thus constituted an act of disposal accomplished as the result of the exorbitant measures in common law enacted against the Jews after 16 June, 1940 which had been nullified by the ordinance of 21 April, 1945. This was the first judgement covering MNR works, and has therefore been the subject of numerous commentaries.⁷²

In application of the order of the Court of Appeal, the five works were thus returned to the family. They were valued at a total of US\$ 3.7 million when sold at auction by Christies in New York on 27 January, 2000; the Getty Museum in Los Angeles acquired the Tiepolo (for US\$2.2 million, a record sum for a painting by this artist). France did not seek to buy back the paintings.

As a result of the order, the City of Lyon returned a *Portrait of a Young Sculptor* by Ghislandi, in a decision taken by the Municipal Council on 12 December, 2000.

Foreign museums had also been served with claims for restitution by the heirs concerning paintings that were included in the 1941 auction ; they naturally paid close attention to the judgement of the French courts which constituted case law, but the way they handled each case varied from one country to another.

The Berlin Gemäldegalerie contained a painting by Tiepolo entitled *Rinaldo Taking his Leave of Armida*, purchased in Paris in 1979. In November 1999, the Germans chose to return it to the family without taking the matter through the courts; the Gemäldegalerie subsequently bought back the work at a sale in January 2000 for the sum of US\$1 million. Putting the work on the market thus determined its value.

The position adopted by the three American museums involved in the case, Boston, Princeton and Chicago, was one that is typical of the English-speaking world, that of an amicable settlement ("*purchase and donation agreement*" or "*part purchase/part donation*"). The principle is that the museum pays a sum of money to the family who then donate the work back to the museum. The sums involved in these financial transactions concluded by private treaty have never been made public.

Dialogue with the beneficiaries : the Jaffé case

One of the methods for researching the MNR consists in re-examining the attributions of the paintings. The name of the artist is naturally a key element in the identification. It was in the light of this that the museums resumed research into the attribution of MNR 338, considered in the early 1950s to be a Reynolds, then subsequently to be the work of an eighteenth-century English artist without it being possible to specify which one. It would seem to be very difficult to identify the portrait of a woman - one of the most common iconographies - when the only indication was that the painter was English. Yet, the systematic cross-matching with catalogues raisonnés of artists made it possible to find a

mention of this work in a catalogue dedicated to the work of George Romney by Lord Ronald Sutherland Gower, published in 1904. The description was accompanied by a photograph, so identification was certain. Gower's book also provided another item of valuable information. The painting had belonged in the collection of John Jaffé in the early twentieth century. Research thus focused on the history of the collection and traced a sale of the John Jaffé collection held in Nice on 12 and 13 July, 1943, which included another MNR, *Prince on a Galley*, by David Teniers the Younger. The archives indicated that the sale was that of the estate of Anna Gluge, widow of John Jaffé, who had died on 5 March, 1942, without ascendants nor descendants. They also revealed a vital clue: the sale had been arranged by a provisional executor appointed by the General Commission on Jewish Questions. This proved the spoliation. An examination of the archives in the Ministry of Foreign Affairs showed that the situation had been known to the Commission for Artistic Recovery and that the restitution of several paintings returned from Germany was performed after the war, and especially the *Portrait of Manuel Garcia de la Prada* by Goya.⁷³ The most likely theory is that the link between the Romney and the Teniers and the Jaffé collection could not be established at the time due to the fact that the subject matter was so common - portrait of a woman, seascape - and this was all the more likely since the works dealt with by the Commission were given the shortest descriptions and were not accompanied by photographs.

At the same time, the relatives of Anna Jaffé, some from the English branch others from the French branch of the family, made contact with the directorate of the Archives of the Ministry of Foreign Affairs and with the museums. A first meeting with the French branch occurred in November 2003. On that occasion the family indicated that it thought it had identified among the MNRs a painting by Guardi, *The Grand Canal in Venice*, as coming from the Jaffé collection, and this proved to be true. It was essential to have a fruitful dialogue with the family in order to be able to establish an exact list of the beneficiaries, a task rendered more complex due to the constant changes made to his will by John Jaffé, the bequests involving both relatives and institutions.

The Guardi entitled *Portrait of Mrs de Beresford*, and the Teniers were returned to the beneficiaries in May, 2005. The family continued its researches and made a thorough examination of the catalogue of MNR paintings published in 2004 by the Direction of the Musées de France. It claimed that it had identified an MNR, *Interior of an Inn* by Adrian Van Ostade, with lot no. 139 in the 1943 auction. The poor quality of the illustration in the sales catalogue did not make a decisive identification possible but this theory appeared to be perfectly plausible in view of the subsequent fate of the painting which had been established by the museums ; it was returned in October, 2006. This restitution was made outside of any legal context and without recourse to lawyers. The context undeniably favoured greater freedom of exchange of information between the various parties concerned. This case further illustrates the variety and complexity of the research conducted prior to a decision to make restitution, which frequently requires long investigations. The fact remains, nevertheless, that the delays are always painful for the claimants and should be shortened as far as reasonably possible.

Furthermore, research into the Jaffé collection contributed to the investigation of requests for restitution being made in other countries.

In June, 2006, the Kimbell Art Museum in Fort Worth, Texas, returned a Turner painting entitled *Glaucus and Scylla*, that had been included in the same 1943 auction and which

the museums had acquired in 1966. It was then sold by Christies in New York on 20 April, 2007, and was bought back by the Kimbell for US\$5.7 million.

On 1 October 2007, the Dutch Restitution Commission issued a recommendation to return to the Jaffé heirs a painting from the NK collection (the equivalent of the French MNRs), *Peasant unloading a hay wagon* by Isaac Van Ostade.

Recommendations of the Commission for the Compensation for the Victims of the Spoliations (CIVS)

Created in 1999 on the recommendation of the Study Mission on the Spoliation of the Jews of France⁷⁴, the terms of reference of the Commission for the Compensations of Victims of Spoliations occurring as a result of the anti-Semitic laws enforced during the Occupation (CIVS) is to examine individual claims submitted by the victims or their beneficiaries for the reparation of the damage suffered due to spoliation of their property occurring due to the anti-Semitism during the Occupation, carried out both by the occupier as well as by the Vichy authorities. By its nature and the measures it has taken, the Commission cannot be likened to a jurisdiction, although it is completely independent and composed in part of judges. Its approach is, in practice, much more pragmatical than legalistic. The victims are not subject to the normal requirements of litigators, especially as regards the administration of proof of the damage suffered. Over and above mere formal proof, the Commission takes into account presumption, indications or a strong conviction.

It is responsible for compiling and suggesting measures for appropriate reparation or compensation. It may issue any relevant recommendation, especially as regards compensation.

The basic demands submitted to it refer to compensation for movable property, bank accounts and furniture. At 31 December, 2006, of the 23,391 files recorded, 1.5% mentioned cultural assets. The Commission has the necessary resources to perform extensive research in the files submitted to it. This consists, in the case of property of a certain value declared in the submission, to undertake investigations in the German archives, the directorate of the Archives of the Ministry of Foreign Affairs, the Direction des musées de France and the National Museum of Modern Art (the Centre Georges Pompidou).

If indisputable evidence is not available, the Commission takes into account the fact that a number of sufficient assumptions exist (lifestyle, social, cultural and intellectual milieu, etc.), the good faith of the petitioner, the length of time and consistency with which the claim has been pursued since dispossession and the absence of other claims.

Between 1999 and 2006, 107 files concerning art works have passed through the Commission (often in plenary session). Seventy-one petitioners have benefited from compensation, 61 having received complete compensation and ten in addition to compensation received under the BRüG law (restoring the 50% deducted by the German Federal Republic); the compensation is calculated on the value of the work at the time of the spoliation, updated according to the trend of the general price index. If there are few cases, the amount of compensation is high (Ä 11,600,000). Thirty-four cases were rejected, either because the application was considered to be totally lacking in credibility or because the claimants had previously benefited from compensation under the BRüG

law. The Commission was required to issue a judgement concerning two cases involving four works in the MNR collection.

The first concerned three paintings, two by Joseph Vernet, entitled *Marine [Seascape]* and *Port de mer, la nuit, clair de lune [Sea port, Moonlight]*, and *Bataille contre les Turcs [Battle against the Turks]*, in the style of Courtois, a seventeenth-century French painter. These paintings were acquired on the Paris art market in 1943 although it is not possible to establish who owned them in the late 1930s. A Parisian collector whose property was seized during the Occupation, however, had listed these paintings in a card index; one of them mentions a seascape by Vernet. The indication is interesting but it was impossible to establish formally whether this was the MNR painting, since Joseph Vernet painted a large number of seascapes. The Commission pronounced in favour of the restitution of these three works which were returned to the beneficiaries in 2002.

The second case involved the re-examination of the provenance of a *Head of a Woman* by Pablo Picasso. This work, produced in 1921, had been bought from the Galérie Simon, in the rue d'Astorg, Paris in 1923 by Alphonse Kann, a collector of British origin ; it was almost certainly seized by the German services during the Occupation because it matched no.326 of the *Inventarliste Sammlung Unbekannt*, the *ERR* list of unknown collections. It was found after the War in the stock of the German merchant Gustave Rochlitz, who had obtained it during an exchange performed with the *ERR* on 17 March, 1941.

The spoliation of the Kann collection, which occurred at his home in Saint-Germain-en-Laye between 18 October and 23 November, 1940, is well established, since a list drawn up by the *ERR* in the name of Kann includes 1202 items, and numerous restitutions were performed after the war before Kann's death in 1948, then to the benefit of his heirs. The perplexity aroused by this case is due to the fact that the case had been extremely carefully studied by the *Commission de récupération artistique* and that it appeared to be difficult for a painting as important as this to have escaped its investigations, especially as Georges Salles, director of the national museums between 1945 and 1957, was well aware of this collection. Among the possible hypotheses, it could be imagined that Alphonse Kann, who was known to sometimes sell his paintings, had disposed of the Picasso between 1923 and the war ; yet there was nothing to corroborate this line of enquiry.

In this situation of uncertainty, the solution chosen was to leave it to the wisdom of the Compensation Commission. The CIVS recommended restitution of the Picasso to the Kann beneficiaries, to whom the work was remitted in April, 2003. It relied on the fact that Kann's ownership of the work in 1923 had been established, but that there was not one iota of proof that the item had ever been sold and furthermore, no claim of ownership had ever been issued on the subject of this painting.

Furthermore, on the advice of the Commission, an agreement was entered into by the Prime Minister, after mediation, concerning a painting by Georges Braque, *L'Homme à la Guitare [Man with a Guitar]* which was not an MNR. The work remained in the collections of the National Museum of Modern Art, and the claimant family received compensation.

In all these cases, where it has not been possible to find formal proof of what happened to the works, only the intervention of the Compensation Commission is capable of implementing restitution.

Footnotes

66. Mission d'étude sur la spoliation des Juifs de France [Study Mission on the Spoliation of the Jews of France], *Rapport général*, Paris, 2000, p. 168.
67. Concerning the Washington Conference, see the useful summary by Andrea F. G. Raschèr entitled, "The Washington Conference on Holocaust-Era Assets (November 30 - December 3, 1998)", in the *International Journal of Cultural Property*, vol. 8, no. 1, 1999, pp. 338-343.
68. *Pillages et restitutions, op. cit.*
69. *Présentation des œuvres récupérées après la Seconde Guerre mondiale and confiées à la garde des musées nationaux, dossier de presse*, [Presentation of the works recovered after World War II and placed in the custody of the national museums], *press kit*, April 1997, 383 p.
70. www2.culture.gouv.fr, "database" heading, then choose MNR.
71. Lesné (Claude) and Roquebert (Anne), *Catalogue des peintures MNR*, Paris, Réunion des musées nationaux, 2004, 662 p.
72. See Parisot (Véronique), "Comment on the judgement of 2 June, 1999, Paris, First Chamber, Gentili di Giuseppe v. Musée du Louvre", *International Journal of Cultural Property*, 2001, 2.
73. This painting by Goya was acquired in 1953 by the Des Moines Art Center (USA).
74. Decree no. 99-778 of 10 September, 1999 amended by decree no. 2000-932 of 25 September 2000.