

Nazi-Confiscated Art Issues

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Art Looting during the Third Reich: An Overview with Recommendations for Further Research

Plenary Session on Nazi-Confiscated Art Issues

It is an honor to be here to speak to you today. In many respects it is the highpoint of the over fifteen years I have spent working on this issue of artworks looted by the Nazis. This is a vast topic, too much for any one book, or even any one person to cover. Put simply, the Nazis plundered so many objects over such a large geographical area that it requires a collaborative effort to reconstruct this history. The project of determining what was plundered and what subsequently happened to these objects must be a team effort. And in fact, this is the way the work has proceeded. Many scholars have added pieces to the puzzle, and we are just now starting to assemble a complete picture. In my work I have focused on the Nazi plundering agencies¹; Lynn Nicholas and Michael Kurtz have worked on the restitution process²; Hector Feliciano concentrated on specific collections in Western Europe which were

¹ Jonathan Petropoulos, *Art as Politics in the Third Reich* (Chapel Hill: The University of North Carolina Press). Also, *The Faustian Bargain: The Art World in Nazi Germany* (New York/Oxford: Oxford University Press, forthcoming, 1999).

² Lynn Nicholas, *The Rape of Europa: The Fate of Europe's Treasures in the Third Reich and the Second World War* (New York: Alfred Knopf, 1994); and Michael Kurtz, *Nazi Contraband: American Policy on the Return of European Cultural Treasures* (New York: Garland, 1985).

plundered³; Thomas Buomberger has been examining the Swiss connection to this history⁴; Wolfgang Eichwede and his team in Bremen have explored looting on the Eastern Front⁵; Konstantin Akinsha, Gregori Kozlov, and Sylvia Hochfield unearthed the history of the Soviet Red Army trophy brigades⁶; Willi Korte and Bill Honan showed that the American G.I.s also stole works during and after the war⁷; and one could go on and on (my apologies to those left off this brief list).⁸ Certain events, notably the symposium "The Spoils of War" which was held in New York in 1995 have facilitated this cooperation, and I am pleased to say that there has generally been conscientious teamwork within the

³ Hector Feliciano, *The Lost Museum: The Nazi Conspiracy to Steal the World's Greatest Works of Art* (New York: Basic Books, 1997).

⁴ Thomas Buomberger, *Raubkunst -- Kunstraub: Die Schweiz und der Handel mit gestohlene Kulturgüter zur Zeit des Zweiten Weltkrieges* (Zürich: Orell Füssli, 1998).

⁵ See Wolfgang Eichwede and Ulrike Hartung, eds., "Betr.: Sicherstellung": NS-Kunstraub in der Sowjetunion (Hamburg: Edition Temmen, 1998); and Ulrike Hartung, *Raubzüge in der Sowjetunion. Das Sonderkommando Künsberg 1941-1943* (Bremen: Edition Temmen, 1997).

⁶ Konstantin Akinsha and Gregori Kozlov with Sylvia Hochfield, *Beautiful Loot: The Soviet Plunder of Europe's Art Treasures* (New York: Random House, 1995).

⁷ William Honan, *Treasure Hunt: A New York Reporter Tracks the Quedlinburg Hoard* (New York: Delta, 1997). Also on this theme, see Kenneth Alford, *The Spoils of World War II: The American Military's Role in the Stealing of Europe's Treasures* (New York: Birch Lane, 1994).

⁸ Other especially important studies include: Willem de Vries, *Einsatzstab Reichsleiter Rosenberg, Sonderstab Musik: The Confiscation of Music in the Occupied Countries of Western Europe during World War II* (Ann Arbor: The University of Michigan Press, 1997); Wolfgang Eichwede and Ulrike Hartung, eds., "Betr. Sicherstellung": NS-Kunstraub in der Sowjetunion (Bremen: Edition Temmen, 1998); Mathias Frehner, ed., *Das Geschäft mit der Raubkunst. Fakten, Thesen, Hintergründe* (Zurich: Neue Zürcher Zeitung, 1998); Günther Haase, *Kunstraub und Kunstschutz: Eine Dokumentation* (Hildesheim: Georg Olms, 1991); Ulrike Hartung, *Raubzüge in der Sowjetunion. Das Sonderkommando Künsberg, 1941-1943* (Bremen: Edition Temmen, 1997); Ernst Kubin, *Sonderauftrag Linz: Die Kunstsammlung Adolf Hitler. Eine Thriller der Kulturgeschichte* (Vienna: Orac, 1989); Jakob Kurz, *Kunstraub in Europa, 1938-1945* (Hamburg: Facta Oblita, 1989); Peter Manasse, *Verschleppte Archive und Bibliotheken. Die Tätigkeiten des Einsatzstab Rosenberg Zweiten Weltkrieges* (St. Ingbert: Röhrig Universitätsverlag, 1997); Matila Simon, *The Battle of the Louvre: The Struggle to Save French Art in World War II* (New York: Hawthorn, 1971).

scholarly community.⁹ I make a plea today to broaden this circle of cooperation so as to also include museum administrators and curators, gallery owners, and government officials. If we are to continue to make progress in writing this history and effecting a just restitution of the displaced artworks, it must be a collaborative venture among individuals in all of these spheres.

I have been asked to speak on the National Socialists' actions with respect to artworks – an immense topic that is impossible to cover in ten minutes. But I would start with the following observation: the Nazis used art instrumentally as a part of their larger political and ideological project. Their policies with respect to art are inextricably linked to efforts to seize power within Germany, to conquer the European continent, and to execute their genocidal program. From the beginning, Hitler and the other Nazi Party leaders realized that artistic issues could be used to attract supporters. The Party Program of 1920 contained provisions about art (namely, that modern art should be viewed as "degenerate" and alien to the German people). By 1930, the Nazi leaders had learned to utilize artistic issues as a means of attacking political enemies. In Thuringia, where a Nazi had been appointed Minister of Education (Kultusminister), the target was the left, whom they associated with modernism – and indeed, they effectively forced the relocation of the Bauhaus from Dessau to Berlin. By the mid-1930s, the Nazi leaders were using art policies in their war against the Jews: the traveling Degenerate Art Exhibition, which opened in 1937, contained caustic anti-Semitic messages, and the expropriation of Jewish collections, which became more common around the same time, represented an important escalation of this war. Both developments were, as many have noted, part of the process of dehumanizing the Jews undertaken by the Nazis. Finally, the Nazis' project of seizing artworks from foreign lands that they viewed as Germanic was an expression of their geopolitical goals: the "Poland is really Germany" school of thought, which sought to seize objects deemed German and eradicate indigenous Polish culture, is but one example. In short, the Nazis' cultural policies – and specifically their efforts to loot artworks – were inextricably bound with the war and Holocaust, and this gives the project

⁹ Elizabeth Simpson, ed., *The Spoils of War: World War II and Its Aftermath: The Loss, Reappearance, and Recovery of Cultural Property* (New York: Harry Abrams, 1997).

of restitution special urgency. One Polish scholar has made this linkage as he recently called for "material restitution and moral indemnity."¹⁰

I think it helpful to outline the different categories of Nazi plunder here at the outset; in part to gain a sense of the cultural objects that were displaced, but also to communicate with more specificity how the looting fit into the Nazis' ideological agenda. The first seizures involved modern art – works labeled "degenerate" – from state collections. This began by order of both Propaganda Minister Joseph Goebbels and Adolf Hitler in 1937 and resulted in the removal of over 17,000 works from German museums (though certain objects actually belonged to private individuals and were seized with no legal basis).¹¹ While we do not know the fate of all these works – many were sent abroad and some were burned in Berlin – it is important to note that there have thus far been no claims on these works. The Nazis passed a law, dated May 31st 1938, which legalized the sale of artworks purged from state collections. German officials in the postwar period have recognized this law – or at least not filed claims or sought restitution. I have heard that some German museum directors and curators do not agree with this policy and would like to see their institutions pursue certain artworks that had been purged by the Nazis. But to repeat, there have been no claims made on these works and the task until now has been simply to ascertain the fate of these works (the first comprehensive list of the 17,000 purged pieces surfaced only last year in London).

The second category concerns artworks taken from German and Austrian Jews. Very often artworks were seized as part of Nazi Aryanization measures: the taking over of Jewish-owned businesses, including art galleries. This happened first in Germany on a limited scale, and then was "perfected" in Vienna by Adolf Eichmann and his cohorts who oversaw a "one stop" emigration office. This is part of what scholars have termed the "Viennese model." These works, if found, should be restituted to former owners or their heirs.

The third category is the property belonging to Jews outside the Reich. This includes, in order of seizure, the property of Jews in Poland, France, the Benelux countries, Greece, and subsequently the rest of Eastern Europe. The Nazis established a network of agencies to carry

¹⁰ Jan Pruszyński, "Poland: The War Losses, Cultural Heritage, and Cultural Legitimacy," in Simpson, ed., *The Spoils of War*, 52.

¹¹ See the case of private property in the custody of the Berlin National Gallery discussed by Anja Heuss, "Das Schicksal der jüdischen Kunstsammlung von Ismar Littmann," in *Neue Zürcher Zeitung* 188 (17 August 1998), 23.

out these operations: from Heinrich Himmler and Reinhard Heydrich's SS and security agencies (as well as their ancestral research organization, the Ahnenerbe) to Alfred Rosenberg's Special Staff (the Einsatzstab Reichsleiter Rosenberg or ERR) to Kajetan Mühlmann's commandos in Poland and his office in the Netherlands. Works from this category, of course, should be restituted.

Category four concerns artworks that belonged to non-Jews living outside Germany. The majority of these cases occurred in Eastern Europe: in Poland, the Protectorate of Bohemia and Moravia, Hungary, and the former Soviet Union. Very often the victims were aristocrats, such as the Czartoryskis and the Lanckoronkis. This was part of the Germanification program in Eastern Europe, although greed was also a significant factor.¹²

Category five is the property belonging to religious organizations. This would include synagogues (much of the Judaica was sent to Prague in preparation for the museum to document a deceased Jewish culture).¹³ Catholic churches in Eastern Europe and Free Masons' temples in all the occupied lands also fell victim to the Nazis' plundering commandos.

Category six is the property of the state. The Nazis refrained from the wholesale expropriation of state collections in Western Europe, and most of the state property that was seized came from the East. The Soviets did not undertake evacuations as quickly as they might have – such behavior was at times viewed as defeatist thinking – and they lost many artworks as a result.

These are the six main categories, but they do not necessarily cover all the losses incurred. For example, families that were implicated in the July 20th, 1944 plot to assassinate Hitler also had artworks confiscated (although the amount of property is much smaller than with the categories noted above). Beyond the issue of categories, the question remains, how many works did the Nazis plunder? Obviously, this depends on how one counts cultural objects. Does one calculate every coin in a collection? What does one do with books, rugs, church bells,

¹² See Jonathan Petropoulos, "People Turned to Ashes, Their Property Did Not": Plundering and the Pursuit of Profit during the Holocaust," in Geoffrey Giles and Eberhard Jäckel, eds., *The Genesis of Nazi Policy* (Cambridge/New York: Cambridge University Press, forthcoming 1999).

¹³ A good treatment of plundered Judaica can be found in David Altshuler, ed., *The Precious Legacy: Judaic Treasures from the Czechoslovak State Collections* (Washington, DC: National Gallery of Art, 1983).

furniture, and other types of cultural property? Added to this problem, there has been a tendency for individuals – in particular government officials – to estimate numbers without adequate documentation. Because of the lack of consensus on how to count cultural objects, the estimates vary greatly. Even with respect to the restitution of objects by the U.S.A. through their Central Collecting Points, the number of returned objects ranges from 250,000 to several million.¹⁴ In terms of paintings, sculptures, and objets d'art – that is, the fine art which serves as one of the focal points of this conference – my own estimate is that the Nazis looted approximately one hundred and fifty thousand art objects in Western Europe and about a half million works in Eastern Europe. But I would underscore the imprecise and even speculative nature of these estimates.

There is a similar lack of precision with respect to the number of artworks still considered missing. Again, all sorts of numbers are thrown about: one scholar claims that in France alone, "many tens of thousands of works stolen are missing today."¹⁵ But when one puts together lists of specific objects, the numbers shrink considerably.¹⁶ There is still much research to be done.

I would like to talk very briefly about how one does research into the Nazis' looting – and how one tries to ascertain what is still missing. This is a topic that will be taken up in greater detail in Friday's symposium at the National Archives, but the methods may be outlined here. The most important source of information is the national archives of the combatant nations – including the U.S.A. Here can be found copies of the Art Looting Investigation Unit reports, the foundation for all research into displaced cultural property during World War II. Important as they are, however, these reports contain mistakes (errors that tend to be passed along by scholars). Furthermore, these reports, which were written right after the war, do not specify the current location of the artworks involved. Provincial archives often contain useful

¹⁴ For the figure of 250,000, see Haase, *Kunstraub und Kunstschutz*, 243. For the figure of millions, see Lynn Nicholas, "World War II and the Displacement of Art and Cultural Property," in Simpson, ed., *The Spoils of War*, 43.

¹⁵ Feliciano, *The Lost Museum*, 4.

¹⁶ The Belgian authorities claim 3,273 documented cultural objects to still be missing, and this includes furniture. But furniture comprises only 5 percent of this list; clearly this number should be much higher and this is a reflection of the lack of precise information about such objects, Jacques Lust, *The Spoils of War Removed From Belgium During World War II*, in Elizabeth Simpson, ed., *The Spoils of War*, 62.

information – especially about the Aryanization of collections. However, they are often closed to researchers (the French records have been notoriously difficult to access), and again, they rarely reveal the present disposition of the works. Museum archives constitute another resource – one, I would add, that is largely untapped. To date, relatively little of the information contained in museum archives has been incorporated into the literature on looted art. And this information, in contrast to that in historical archives, often has direct bearing on the current disposition of the artworks. Museum archivists are not always fully aware of what is in these records.¹⁷ I also understand that many museums do not give access to the files in their individual curatorial departments: it is these "deep files" which contain information about dealers, prices, tax deductions, lawsuits, and so forth. In addition, there are the records of commercial galleries. Again, these files have been largely neglected. Yes, there are certain firms that have cooperated with researchers. The Rosenbergs in New York, for example, have allowed Lynn Nicholas, Hector Feliciano, and me to work with their papers. But the Rosenbergs are fairly exceptional (and they are also victims trying to regain lost works).¹⁸ Finally, there are the records of private individuals. In this category I would place collectors, but also witnesses and perpetrators. The latter – for example, individuals who catalogued plunder for the ERR in the Jeu de Paume – have actually assisted a number of scholars. But the participants in the looting program are dying off and the window of opportunity is closing quickly.

In terms of research, I urge a more systematic effort to utilize the records in these latter categories, and in particular, those in museums and galleries. These are where we will find the documents that will permit us to determine the current location of artworks. It is therefore essential that researchers and the individuals who oversee these records develop a

¹⁷ See Jonathan Petropoulos, "Exposing Deep Files," in ARTnews (January 1999), 143-44.

¹⁸ Note that a few other galleries have also been willing to cooperate with researchers: the Galerie Fischer in Lucerne has generally made its files available to researchers, as has the Kornfeld Gallery in New York. See Buomberger, *Raubkunst*, 18.

cooperative relationship. As most scholars who have worked in archives know, a helpful archivist can be a godsend. And I have found that many, indeed most, archivists really do want to help. This must be a team effort, and the connection of this history to the Holocaust renders it a moral imperative: we must all try to do the right thing.

As a practical suggestion, it would be extremely useful to establish some mechanism by which researchers can become more aware of the archival resources. What is needed is a central office or agency that could collect a list of museums, galleries, and individuals who are prepared to open their records. If they could also create finding aids and send them to this office, that would help. There are various possibilities for a central office: it could be at the U.S. Holocaust Memorial Museum's Center for Advanced Holocaust Studies (something of a complement to the database of survivor testimony that has been created). Or, it could be in a new office which has just been formed called the Council of Art Restitution and Research Organizations (CARRO for short). This is a board comprised of representatives of the various organizations working on the subject of cultural property displaced as a result of World War II: the Holocaust Art Restitution Project (or HARP), the Commission for Art Recovery of the World Jewish Congress, a new organization called The Project for the Documentation of Wartime Cultural Losses (of which I am a member), and so forth. CARRO might be the right place for a central register of institutions and individuals prepared to help. The point is that we must do what we can to facilitate teamwork and share information. We are now at a special juncture in history – after the Cold War but with survivors still among us – and we must make a concerted effort to learn as much as we can about this history and effect a just restitution of this displaced cultural property.

I would note in closing that this project of ascertaining precisely what was plundered by the Nazis is just one of the three major tasks that are necessary to bring closure to this history. Additionally, we need more comprehensive international agreements to facilitate the repatriation of artworks, and we need a more precise and consistent legal framework in order to settle the claims. Only through a combination of research, diplomacy, and legal reform can the issue of displaced cultural property be resolved.

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Plenary Session on Nazi-Confiscated Art Issues

The events of World War II led to the greatest displacement of works of art in history. By early 1943 art specialists in the Allied nations were quite aware of the Nazi confiscations and purchases of art objects and their governments had declared all such activity illegal. They realized also that these objects, as well as the national collections of all the belligerents, most of which had been removed from their normal locations, would be in great danger in the planned invasions of Europe. It was only with considerable difficulty that military commanders were persuaded to attach a small group of art officers to their staffs. The primary duty of these officers was to prevent damage to historic monuments and to salvage and secure movable works of art. While the protection of buildings and monuments in the battle zones was often impossible, the salvage of movable works, which they accomplished in the chaos of war-torn Western Europe, was nothing short of miraculous.

In the Western countries responsibility for movable works of art was returned to the local authorities as soon as those areas were liberated from German control. But the situation within the borders of the Third Reich was quite different. For here the arts officers were required to deal not only with the German national collections, but with the vast quantities of cultural objects confiscated within Germany and brought from other countries. The objects were found in thousands of hiding places and refuges. Under the most arduous conditions they were secured and gradually taken to Collecting Points set up by each Allied Command within its own Zone of occupation. Despite endless international meetings, no coordinated Allied policy was ever developed to deal with these objects. The restitution policies of the Western Allies and of the USSR were, therefore, very different.

The Western Occupation authorities did not wish to handle individual claims, and it became Western policy to return an object to the country from which it had been removed. Books, paintings, furniture and every other kind of object, by the thousands, were sorted and returned to both East and West. There were a few notable exceptions to

this rule (such as the Lubomirski drawings from Lvov) which affected items taken from Eastern European nations. In the Western nations the works were turned over to recuperation commissions which then dealt with individual claims. Soviet Trophy Commission officers, on the other hand, were instructed to take valuable works of art, regardless of ownership, back to the USSR. In the fifties the Soviet Union returned large quantities of art to state collections in Eastern Europe, but, as a form of reparation for the immense damage done to their cultural heritage by the Nazis, the nations of the former USSR still retain a considerable number of objects from both public and private collections in the West, including some confiscated by Nazi agencies from Jewish owners.

In the years immediately following World War II the recuperation commissions of the Western nations, staffed by a group of extremely dedicated officials, and the agencies which superceded them, returned tens of thousands of works to individual claimants. Heirless works, mainly from Jewish communal holdings, were given over to Jewish successor organizations for worldwide distribution. And in the mid-sixties the West German government compensated many claimants for a percentage of their unrecovered art losses.

But, after a time, the art restitution process, like so many other World War II issues, though never officially terminated in countries such as France, lost ground to the pressures of the Cold War and the desire to return to life as usual. After the great bulk of objects had been returned, and as the number of claims declined, both interest and funding diminished, leaving a quantity of works in the hands of European government agencies and museums where many still remain. These works come from many sources, not always Holocaust related: some are objects that were not returned to the previous owner because they had been sold willingly to the Nazis. Other items were abandoned by collaborationist dealers and may or may not have been confiscated. A great many, of course, are works confiscated from Jewish collections both known and unknown. Why certain works from known collections, sometimes very prominent ones, were not claimed or returned is difficult to understand. Indeed, from today's perspective, a number of the adjudications made by the recuperation commissions after the war seem overly legalistic and unfair, and efforts are underway in several countries to review them and to revive the entire restitution process. I am sure that you will hear more about this activity from the individual delegations.

But not all displaced art was recovered by the allied agencies. Items which were fed into the art trade, stolen by Nazi operatives from

their own agencies, or looted by soldiers and civilians of every nation, went underground and have been dispersed all over the world. This unrecovered art is the most difficult category to deal with, for we do not know where or exactly what it is until it suddenly appears in a museum or on the market and is recognized.

There is, at the present time, still no easy way for the layman to check the status of a work about which he has suspicions. The inventories and files relating to claims and confiscations compiled at the end of the war had for the most part been relegated to storage and were in disorder. A tremendous amount of work has been done in the last five years to reconstitute and re-examine these files and a number of catalogs of missing works have already been published. But much more consolidation of records is necessary, and the remaining sealed archives must be opened. The usefulness of internationally linked databases using all these records is obvious, ` These databases should not only include what is known to be missing a listing of works that have been returned could eliminate weeks of expensive research and prevent false accusations. The present agreements of museums and dealer's associations to vet their holdings would be greatly expedited by more precise tools of inquiry.

The recovery of art assets is really a dual problem: some claims concern only governments and others concern individuals. Governments can negotiate via diplomatic channels, but the greatest problem facing the individual claimant is the method to be used for recovery. By now works can be anywhere in the world and the laws of different jurisdictions are not uniform. The gathering of documentation in different countries, often by very expensive lawyers with no particular knowledge of the milieu in which the confiscation or sale occurred, can take years. Detailed documentation *is* necessary, however, because although works of art are individual, identifiable objects, there are many of them and they are easily confused. It is, therefore, usually necessary to determine if the claimant was the real owner, if the parties are talking about the same object, or, for example, `whether or not the work was restituted long ago and then resold.

There is no question that any work that can be shown beyond a reasonable doubt to have been confiscated, stolen, or sold unwillingly should be returned to its former owners or their heirs. Ideally the determination of the validity of a claim should be made by an international panel of experts. But this, I feel, is not enough, for, realistically, some 50 years after the fact, some thought should be given to the present holder of the work, who may not have anything to do with

the original confiscator or receiver of stolen goods. By now, proving absolutely that something was or was not a good faith acquisition is extremely difficult. Here I believe that government intervention is necessary in order to limit the bitter and expensive litigation, which seems to accompany even the most valid claim. A government might, for instance, give some sort of tax relief to someone who willingly returns an object belonging to a valid claimant.

Above all, I believe we must not forget the human and historical context in which Second World War losses occurred. Nor should we ignore the great efforts of restitution which were made at the end of the war. That work was not finished, and now it is up to us to complete the task and correct any injustices, and to do so in an equitable and civilized manner.

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Restitution of Works of Art in Austria: State of the Provenance Research November 1998

Plenary Session on Nazi-Confiscated Art Issues

After 1945, the Republic of Austria passed in the years 1946-1949 a total of seven restitution laws, two laws for the settlement of claims regarding art and cultural heritage (1969 and 1986) and the amendment passed in 1995 for the so-called "Mauerbach Sale", an auction of Nazi-confiscated works of art, to benefit Holocaust victims, 1996.

By January 1, 1949 over 13.000 art objects had been returned to their rightful owners or their legitimate heirs of the over 18.500 items which had been seized during the Nazi era or which had been voluntarily given up to air-raid shelters. Restitution of the remaining objects was spread out over the subsequent years to 1996.

The archives of the Federal Office for Monuments Preservation (*Bundesdenkmalamt*) alone contain around 120.000 documents designated as "Restitution Materials" (decrees, various departmental and institutional files, lists, correspondence, etc.). This figure does not include further documentation in museums and collections as well as in various ministries.

At the beginning of 1998 Federal Minister Elisabeth Gehrer established a "Commission for Provenance Research" which was charged with working through the historical material on the theme of looted art at the *Bundesdenkmalamt* and in State Museums and Collections. The goal of this very extensive historic survey was to shed some light on the events of the looting during the period 1938-1945 and

to establish which dubious acquisitions may have been made by public collections during that time. Furthermore, the restitution procedures of the immediate post-war period are to be examined; from today's point of view, there are known accessions by museums and collections as a result of the Export Ban which, by today's standards are no longer supportable.

In the early 1990's the Bundesdenkmalamt had already begun systematic cataloguing and archiving- organizing the restitution material in its keeping. Since 1998, these holdings are being researched individually from a chronological and a subject view. There are three main categories:

Salvage materials, part of the extensive system of air-raid shelters; from 1943, valuable art and cultural heritage – both seized and voluntarily given up for protection – stored in some 200 Viennese and Lower Austrian castles, monasteries, churches and parish-houses until after 1945.

General material concerning the security, seizure, and distribution of largely Jewish and monastery collections by the Nazis as well as their restitution after 1945.

Documentary material (ca. 1.000 documents) with information and data pertaining to persons connected with works of art and art collections.

All these materials are presently being archivally organized, foliated, re-housed and indexed so that a user is able to obtain primary resource material in a concise and focussed manner (synopses, indexes, information on size/extent of holdings, index of names, index by medium, etc.).

Parallel to the research and organization of looted art and restitution documentation at the Bundesdenkmalamt (Austrian Federal Office for the Care of Monuments), the archives of the following State Museums and Collections are also being searched: Kunsthistorisches Museum (Museum of Fine Arts), Graphische Sammlung Albertina (Albertina Collection of Graphic Arts), Österreichische Galerie, Österreichisches Museum für Angewandte Kunst (Austrian Museum of Applied Arts), Österreichische Nationalbibliothek (Austrian National Library), Naturhistorisches Museum (Museum of Natural History), Museum für Völkerkunde (Museum of Ethnography), Österreichisches Theatermuseum (Austrian Theatre Museum), Technisches Museum für Industrie und Gewerbe (Technical Museum), Museum des 20. Jahrhunderts (Museum of 20th-Century Art), Heeresgeschichtliches Museum (Military Museum), Bundesmobiliendepot (State Furniture

Collection); Pathologisch-Anatomisches Bundesmuseum (Anatomical Museum).

The results of the provenance research in the Bundesdenkmalamt as well as in the museums and collections will enable a better view of the events during 1938 and 1945 and subsequent post-war period, and are primarily geared at gleaning information about questionable acquisitions. These facts will provide the basis and historic evidence for the legislation governing the “Restitution of Works of Art from Austrian State Museums and Collections” and its implementation.

Passed by Parliament on November 5, 1998, this federal law creates the legal basis for the restitution of artistic and cultural artifacts to the original owners or their legitimate heirs *mortis causa* according to the following criteria: artistic and cultural artifacts which were kept as a result of applications for export permits and were accessioned by state museums and collections as “gifts” or “endowment”. All those art objects falling into this category were already subjects of restitution claims, were indeed returned to their owners and are consequently well documented. In return for the issue of an export permit under the laws prohibiting artwork exports, potential exporters agreed to “donate” several of the items to Austrian museums and collections. From today’s point of view and because of the fact, that in both the laws (1986 and 1995) governing the clarification of artistic and cultural artifacts the application of the directives of the law prohibiting exports were specifically excluded, the practices of the past are indefensible.

Artistic and cultural artifacts which, although they became state property legitimately had nonetheless been the subject of legal proceedings in the terms of the so-called Nullification Law (*Nichtigkeitsgesetz*) of 1946 (nullification of legal proceedings and other actions that occurred during the German occupation of Austria) which itself is thus void. This includes questionable purchases during the 1938-1945 period, as well as acquisitions after the war: e.g. in the post-war period museum directors purchased works of art in good faith in the art market from authorized dealers, whereby only later were doubts raised about the integrity of the provenance. Cases such as this have come to light in the course of the provenance research.

Artistic and cultural artifacts which, despite all efforts involved in their restitution couldn’t be returned to their original owners or their legitimate heirs and were thus transferred to state ownership as unclaimed property. Also such indications came to light in the course of our provenance research.

In all these cases the new law will rescind the export ban.

To execute this law an advisory panel has been established at the Federal Ministry for Education and Cultural Affairs which will advise the Minister authorized to transfer the items upon identifying those persons legally qualified to receive the works of art.

In the cases where no original owners or their legitimate heirs *mortis causa* can be ascertained for art objects, then these objects will be transferred to the “National Fund of the Republic of Austria for the Victims of Nazi Terror” for beneficial disposal.

As well as the professional staff of the *Bundesdenkmalamt* and the mentioned Museums and Collections who have already been entrusted with this work, free-lance researchers have also been taken as the Federal Ministry for Education and Cultural Affairs has made special positions available in order to accelerate progress.

By November, 1998 about one third (ca. 40.000 documents) of the restitution material in the *Bundesdenkmalamt's* archives) have been reviewed. Progress in the above-mentioned museums and collections varies; in those collections e.g. the Kunsthistorisches Museum, where provenance has been researched for a number of years, the documentation (containing 500 pages) has already been completed in 1998. Other institutions will take longer to complete the project.

The brief to research provenance in the form described above applies only to the state museums and collections. Nonetheless, the Provincial museums (Historisches Museum der Stadt Wien, Landesmuseum Joanneum in Graz, Tiroler Landesmuseum Ferdinaneum in Innsbruck, Residenzgalerie Salzburg, Oberösterreichisches Landesmuseum in Linz etc.) have joined the research project and have similarly begun to organize and search their archives from this perspective.

The first results of the Commission's work deal with artistic and cultural property which had been previously held back from restitution claim cases by the export prohibition law, and which thus came into the possession of Austrian state museums and collections.

This is the actual situation of provenance research in Austria. The next steps to execute the mentioned legislation governing the “Restitution of Works of Art from Austrian State Museums and Collections” will start within the next month.

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*Statement translated from the original Russian by the
U.S. Department of State Office of Language Services, Translating Division*

Plenary Session on Nazi-Confiscated Art Issues

First of all, allow me, on behalf of the Russian Delegation, to express our profound support for the goals and objectives of the Washington Conference. We must not forget that among the more than 20 million Soviet citizens who perished during the last war there were more than two million Jewish victims of the Holocaust.

As we understand it, one of the main objectives of this conference is to develop international cooperation among all interested states in searching for and identifying cultural assets that the Nazis confiscated from their victims during the years of the Holocaust. As we see it, this objective involves Russia, as the successor to the Soviet Union, in the following way: by decision of the allies in the anti-Hitlerite coalition, the Soviet High Command was the supreme authority in the Soviet Zone of occupation and was thus responsible for restitution of allied property, including property belonging to victims of the Holocaust, from all of occupied East Germany.

The difficult foreign policy situation of the post-war period, which culminated in the "cold war", as well as the atmosphere of secrecy that surrounded and still surrounds the repositories of Russian museums where so-called "trophy art" is kept, gave rise to the following assumption: German cultural assets removed to the territory of the Soviet Union after World War II as compensation for the enormous cultural losses suffered as a result of the German occupation might also include cultural assets confiscated by the Nazis from victims of the Holocaust.

Before turning to an analysis of this assumption, I feel I should remind you of the mechanism employed by the Nazis for depriving Holocaust victims of their property. As you are well aware, this

mechanism varied depending on the country of occupation. In France, for example, cultural assets confiscated from Jews became the property of the French State. The Nazis insisted on “open” public auctions and formally acknowledged that the French authorities had precedence in selecting artworks for French museums; this was the case with part of the confiscated Schloss collection, which was selected for the Louvre. In Austria artworks confiscated from Jews were simply distributed among the future Führermuseum in Linz and various Austrian museums. Ostmark, as Austria was then called, was considered to be 100 percent Aryan, and there were no complaints.

The cultural assets of Holocaust victims in Poland or the Soviet Union became the property of the German state. For us such concepts as “forced sale” and “ostensibly voluntary transaction” are purely abstract ideas. There were no sales – forced or otherwise. There was only flagrant robbery accompanied by the physical annihilation of the victims.

After the confiscation of Jewish property in France, Belgium and the Netherlands, generally carried out by special units of the ERR – the “Einsatzkommando [rect: Einsatzstab] Reichsleiter Rosenberg” – the very best artworks were selected by special agents for the future Hitler museum in Linz. The special agents whose job was to satisfy the art demands of other Nazi leaders, primarily Hermann Goering, were equally active. These Nazi agents, especially the former director of the Dresden Gallery, Hans Posse, did their jobs very professionally. Artworks selected for the Führermuseum in Linz were shipped to specially equipped collection points, located mainly in the Austrian Alps. These collection points were discovered by special units of the U.S. Army. Everything that either disappeared or was not found in the American Zone should be sought in the West. It is unlikely that these works could have found their way to the East.

Everything that was not looted by Hitler’s special agents in the occupied countries of Western Europe was sold at auction. This applied mainly to good, but not museum-quality, works, worthy of private collections. At the auctions Germans readily purchased these items, taking advantage of the artificially high exchange rate of the German mark in relation to the other currencies of occupied Western Europe. Given the wartime situation, some of the assets in this category could, theoretically, have found their way to the eastern part of Germany.

As I have already noted, in the occupied areas of the Soviet Union the Nazis simply looted their victims before sending them to the gas chambers. In this connection, one should bear in mind that in western Ukraine, for example, some wealthy Jews owned quite valuable

art collections that contained works of good, though not museum, quality. Of course, these were not on a par with the collections of Rothschild, Schloss, Mannheimer, Bondy, and others, and were thus of no particular interest to Hitler and Goering's special agents. These were plundered by the lowest level Nazis and all these works vanished in the direction of the West. Representatives of the Extraordinary State Commission were never able to determine exactly what was in the private collections looted by the Nazis and, accordingly, to identify even a part of them in the Soviet Zone of occupied Germany.

It is necessary to bear in mind one other circumstance. By the end of the war the cultural assets confiscated by the Nazis from their victims in the East were literally burning a hole in the pockets of those who had possession of them. They could have become material evidence of their current owners' complicity in Nazi crimes in the East. It is not surprising that these individuals tried to get rid of them at any cost. There is no doubt that these artworks ultimately found their way to the West. The facts uncovered to date confirm this.

As an example of how the Soviet Union fulfilled its obligations to its allies in returning allied property, in general, that was found in the Soviet zone, and the property of Holocaust victims in particular, allow me to cite some data from the summary report on the activities of the Restitution Office of the Reparations, Deliveries, and Restitution Directorate of the Soviet Military Administration in Germany (SMAG) for 1946. Specifically, the report states the following:

- SMAG activities in searching for and identifying property in the Soviet Zone, including cultural assets looted by the Germans in the territory of the Soviet Union and allied countries, were carried out in conformity with the laws and directives of the Allied Control Council, and with SMAG orders and directives;
- the Office's activities in this area were closely coordinated with the Committee on Restitution Procedures of the Allied Control Council;
- for the reporting period the Restitution Office received 869 restitution requests to search for and determine the ownership of property subject to restitution from the Soviet Zone of occupied Germany from the following allied states: France, Poland, Czechoslovakia, Yugoslavia, the Netherlands, Norway, Belgium, and Denmark;

- 87,131 items of equipment and property subject to restitution were identified in the Soviet Zone in 1946; these included 33,552 cultural artifacts (this figure includes books);
- of the above amount of allied property that was identified, 40,584 items belonged to the Soviet Union;
- it was established that the rest of the property (46,597 items) belonged to the following allied countries: Poland (38,892), Czechoslovakia (5,123), the Netherlands (955), France (761), Belgium (101), Norway (23), Yugoslavia (14), Denmark (1);
- it proved impossible to determine whether the remaining 677 items of equipment and other property belonged to the state or to some other party;
- in accordance with the Quadripartite Procedures for Restitution, adopted by the Allied Control Council, all the equipment and property that had been identified was turned over to the appropriate allied countries.

The report lists the most important items of equipment and other property that were returned to the allied countries. This list is far from complete, but I would like to point out that the list of restored property greatly exceeds the list of restitution claims received by the Soviet Military Administration from the Allies.

This list also refers to cultural assets that were returned to victims of the Holocaust. A large organ from a Prague synagogue was returned to Czechoslovakia. In addition to the well-known Armistice monument from Compiègne, the collections of paintings that had belonged to French citizens Léonard Lévy, Paul Denique, and Pierre Maurice [names transliterated from Russian] were returned.

In searching for and identifying cultural assets that belonged to the allies and their citizens, the Soviet Military Administration in Germany could proceed only on the basis of restitution claims submitted by the interested countries and backed up by documentation. In the case of state property this was relatively simple. It was much more difficult in the case of property belonging to Holocaust victims. Nevertheless, I can solemnly state that Russian archives do not contain any information or documents which would indicate that the Soviet Military Administration knowingly or intentionally kept property that belonged to Holocaust victims, including cultural assets, when it was aware of the origin of these items.

Because of the complex and confused circumstances surrounding the post-war fate of cultural assets confiscated by the Nazis from victims of the Holocaust, which subsequently ended up in the hands of other physical and juridical persons, including the museums of some Western and Eastern countries, it is extremely urgent that we establish, through joint efforts, an international database that would be accessible to all interested private citizens and organizations: above all, Holocaust victims and their direct heirs and legal successors. Russia is fully prepared to take part in establishing this database and, for that purpose, to provide relevant documents from Russian archives.

Recently a great deal has been said about the new Russian law on cultural assets that were removed and are currently located in the repositories of Russian museums. The law does in fact establish Russia's right of ownership in cultural assets that were taken to Russia as compensation for its enormous cultural losses. But I can assure you that in Russia there is no law which would stand in the way of just and legitimate restitution of cultural assets confiscated by the Nazis if convincing evidence that they belong to Holocaust victims is provided.

Ambassador Ronald S. Lauder

CHAIRMAN OF THE BOARD, MUSEUM OF MODERN ART
UNITED STATES

Plenary Session on Nazi-Confiscated Art Issues

When I was asked to be Chairman of the Commission for Art Recovery for the World Jewish Congress, I knew it would be a difficult task, but nothing prepared me for what lay ahead.

As you have just heard, although a great deal of art was found in salt mines, warehouses, trucks and trains, and many pieces were returned to the countries from which they were stolen – approximately 50% - 110,000 pieces of art worth between ten and thirty billion dollars today are still missing.

It is my belief, because of these large numbers, that every institution, art museum and private collection has some of these missing works.

I question how many great institutions have held works of art for 50 years, knowing that what they have held didn't belong to them, but to Jewish families. It is only now that they are being forced to take some action, action that they should have taken many, many years ago. How many homes have works of art hanging on their walls from Jewish families?

In France, after the war, many works were returned to prominent Jewish families. However, 15,000 works of art remained unclaimed, from which the French government allowed the museums in France to select the 2,000 best works, and the remaining 13,000 were auctioned off. Where is the record of these sales? Who benefited? These 2,000 works that remained in French museums have a special number.

France stopped trying to find owners after 1959. It was only in 1997, after being reminded by Hector Feliciano, that an exhibition was held, and a list was published of these 2,000 works. It is time for the provisional and temporary custody of the French museums to end. These works should be returned to the families who owned them, and where no families can be found, an auction should be held and the Jewish Communities of France should benefit.

The Austrian government took a giant step forward when it decided to hold an auction in 1996 of the works stored since the war at

Mauerbach. Today there is a complete search being done by the government of Austria itself of the holdings of all its federal museums. Research is being done to find the owners of the paintings that were taken between 1938 and 1945.

The Netherlands also has works for which no owners were found: they were placed in the care of the Netherlands Art Foundation. Although they knew that there were objects in the museums that were stolen from Jewish families, it was only after other countries started to do their research that the Netherlands decided to look for pre-war owners. They now have identified 3,900 works of art, and the government estimates it will take three years to complete the research project. It can be done in 6 months. An auction should be held.

Germany also received art that it knew came from Jewish families. Did they try to find the owners or their heirs? No. They simply set up a trust: the Gemälde Treuhand Verwaltung and distributed it among museums.

In the Czech Republic, the museum in Brno acknowledges that it has art once in the collection of the late Arthur Feldmann, whose grandson, Uri Peled, now lives in Israel. Mr. Peled maintains, correctly, that his family's collection of old master prints and drawings was looted by the Nazis. These works were subsequently nationalized by Czechoslovakia and the Slovakian Museum. They have refused to return the Feldmann works in their possession.

In Hungary, a portion of the collection of the Hatvany family is now in the Museum of Fine Arts in Budapest. The Hatvany heirs are getting nowhere in their efforts. Sixty years later!

A great portion of the art that was not deemed appropriate for German museums or for the new museum that was being created in Linz, was sold through dealers to Switzerland. Douglas Cooper, the British investigator, reported in 1945 that Switzerland had been the prime destination. He identified quite a number of private collectors and sixteen dealers in Switzerland who trafficked in Nazi-looted art. Chief among these was Theodore Fischer, auctioneer and dealer, and Emil Bührle, industrialist and collector. Paul Rosenberg, the eminent French Jewish art dealer whose collection had been looted from a bank vault in Libourne, traced thirteen of his pictures to Bührle. (He had to bring a court case to strike a deal, in which Bührle bought from Paul Rosenberg the stolen Rosenberg pictures Bührle had already bought.)

Since Switzerland was neutral, the Allies could not monitor trade there. No one knows how many looted works were sent to Switzerland. Switzerland's recent investigation into the past of the art owned by the

Swiss Confederation is a step in the right direction. But it doesn't even touch on the holdings of the majority of Swiss museums, private foundations or private collections.

No one knows how many "hot" works are in Swiss bank vaults or free ports – even today.

No one knows how many works went through neutral Switzerland to Spain, Portugal, Argentina, Brazil, Venezuela, and from there to the United States and other collecting countries.

In the United States, there are many works of art that have come here right after the war and into the 1950's and 1960's through a second or third party.

The United States is perhaps the most active country in finding works of art through its Association of Art Museum Directors, ("AAMD"). They met this past June and worked out guidelines for a complete and thorough investigation of the provenance of all art for all their museums, to determine if any of their works of art could have been looted works from the Nazi era.

Perhaps the most important job my Commission is doing is working on a database, so that we can cross-reference all works of art looted during the Nazi era. And we will have as close as possible a complete list.

This summer we did an experiment. We began to see what we could uncover by going through catalogues: catalogues of permanent collections and special exhibitions. My staff went to over 225 books of museum collections and catalogues and found more than 1,700 works that could be war loot. It is clearly much more widespread than museum directors had thought.

We have a list of Nazi collaborators. Any work with those names in the ownership history could be unrecovered Nazi loot. We are comparing this art with claims from families, and we'll let them know if there is a match.

We invite you to send us the information, and we would welcome your cooperation. But if you do not want to work with us in this way, we will review all your publications anyway and find the works with dubious provenance.

In the fifty years since the end of the war, the art world forgot, maybe it chose to forget, the Nazi depredations – but we will not. Some of the most notorious names appear in scholarly catalogues. Goering's name is there! The Linz Museum is there! In some German museum catalogues, the provenance states that the art was "taken from the possession of Jews between 1933 and 1945!" I hope that this is an

honest way of serving notice to possible claimants, and I have been told that the museum will soon contact the Commission. Perhaps we can work together to find the heirs to these paintings.

Some of the names of the most famous looted collections appear in published provenances. Were all these works of art restituted and legitimately re-sold? Of course not. There is either a collective amnesia or a brazen openness in including these names in the published provenances. But there they are. And they will go into the Commission's database to be matched against art claimed by looted families.

It is time for museums to set the same standard for ownership that they expect of themselves for authenticity. Is the art genuine? Is the art genuinely theirs?

Together, in the next few years, we must find out. We must set the record straight, and put art back in the hands of the families from whom it was stolen, simply because they were Jewish. For many members of this generation, art is the only connection they have to members of their family who perished in the Holocaust.

These works of art that were looted are the last "prisoners of war." We do not want to wait. We will find these works of art – now.

Mr. Earl A. Powell, III

DIRECTOR, NATIONAL GALLERY OF ART
UNITED STATES

Plenary Session on Nazi-Confiscated Art Issues

I would like to thank you for this opportunity to speak today to discuss the important subject of restitution of works of art seized during the Third Reich. We join our museum colleagues in expressing our profound concern for the victims whose artistic treasures were pillaged during the holocaust. The National Gallery has been involved since the end of World War II with the international effort to recover the looted works. On June 23, 1943, President Roosevelt established the Roberts Commission to promote the preservation of cultural properties and to protect Europe's treasures in war-ravaged areas. An independent presidential commission, it was headquartered at the National Gallery and several Gallery officials as well as those from the Metropolitan Museum of Art and other institutions served on this Commission. The Commission promoted the establishment of the Monuments, Fine Arts and Archives (MFAA) section of the U.S. Army in post-war Germany which, among other things, established "collecting points" where art objects retrieved from the Nazis could be inventoried and protected before their restitution.

Certain records of these and other restitution activities are available for research at the National Gallery Archives. Copies of the glass slides and gelatin negatives of the roughly 60,000 works of art in one of the Army collecting points, called the "Munich Collecting Point," are available for research in our Photo Archives. As a matter of interest, the historian and author, Lynn Nicholas, spent much time in our archives while researching her book, The Rape of Europa: The Fate of Europe's Treasures in the Third Reich and the Second World War. The last several years have brought forth an extraordinary amount of new scholarship regarding the fate of many cultural treasures during and after this terrible period. But more is needed and we are hopeful that new revelations will shed further—and much needed—scholarly light on this subject.

The National Gallery follows the practice of American art museums of publishing annually a list of all acquisitions. In addition, the Gallery has undertaken an extensive project, which began over a decade ago and which will take years to complete, of the publication of a projected thirty-volume detailed systematic catalogue of its entire collection. Each volume, written by Gallery curators or other scholars, is devoted to a particular school of painting, sculpture or decorative arts area with comprehensive, scholarly essays on each work articulating the history, style, content, and context with technical notes and artist biographies, summarizing and expanding upon the literature in the field. Ten of these volumes have been published, three more will come out in 1998, and the other volumes are in progress. Additionally, research on works of art in the Gallery's collection is often available in special exhibition catalogues. As all of this new scholarly research is published, the details regarding the history of ownership, or provenance, are added to our curatorial records which are open to researchers. In an effort to make as much information as possible available to the public around the world, the National Gallery launched its World Wide Web Site a year ago. A cornerstone of the site is the collection section, which contains detailed provenance information on thousands of works of art in the National Gallery collection.

It is a time consuming, expensive kind of research. We are currently looking into a claim involving a work that was restituted by the allied military government after the war. In this case the claim involves legitimacy of ownership. The work in question is one of more than 20 drawings by Durer from the Lubomirski Collection which were returned in the 1940s to a lineal descendant of the family which originally owned them. This gentleman subsequently sold the drawings to several purchasers in good faith. These works are now held in many public and private collections in this country and abroad. The complexity of the case, which involves rightful ownership, dates back to 1823 and involves conflicting claims from more than one institution, and shifting national boundaries. This is the only claim received to date by the National Gallery. We are pressing on in our efforts to complete as thoroughly as possible the necessary provenance research. It is a complicated and time consuming task, which we trust will result in due course in a just resolution of the claim. Should any other claim arise we will treat it with the same commitment to establish the facts and achieve a resolution. The National Gallery, along with other museum directors, participated in the Association of Art Museum Directors' Task Force dedicated to finding solutions to these complex problems. We welcome the

opportunity to join with our colleagues in the museum community to explore ways of continuing restitution as new information becomes available.

Dr. Wojciech Kowalski

PROFESSOR, FACULTY OF LAW, UNIVERSITY OF SILESIA
POLAND

Restitution Policy of the Polish Government Post-war to Present

Break-out Session on Nazi-Confiscated Art Issues: Government Restitution Policies, Postwar to Present

Polish cultural heritage suffered severe losses in the course of the 19th and early 20th centuries; thus, when the restitution policy was framed after World War Two, Poland, unlike many other states, could fall back on its previous ‘wide’ experience in this field. The only difference between World War Two and the former global war, or, other historical perturbations was the range of damage to cultural property and degree to which the plunder was organized,¹ surpassing all previously suffered

¹ Cultural looting was carried out on the formal basis of special Nazi decrees issued for occupied Poland and later for other countries in occupied Europe. See, for example, full text of such “laws” issued for occupied Poland, W. Kowalski: *Art Treasures and War. A Study on the Restitution of Looted Cultural Property Pursuant Public International Law*. Leicester 1998, annex 1 and 2, p. 91-92. For other countries see: R. Lemkin: *Axis Rule in Occupied Europe*. Washington 1944. As an illustration of the character of these “laws” referring to private property only two paragraphs of one of them only can be given. Regulation concerning confiscation of the works of art in the German-occupied Poland dated 16 December 1939:

“Para 1: Public possession of the works of art in the German-occupied Poland is hereby confiscated for the sake of public benefit and use (...).

Para 2: The term of public possession of the works of art, (...) refers to: 1. Private collections of the works of art, which are subject to registration and security procedures undertaken by the appointed commissioner to protect their cultural and historical value, 2. The works of art in the exclusive possession of

losses.² The fate of Jewish assets could be given as the best example here.

For these reasons, the first attempts to formulate the concept of liquidating the effects that the War had on Polish culture were initiated right from the start - two months after the War broke out. It is at that time that the first conspiracy group was organized to register the damage inflicted upon culture and the losses resulting from the Nazi invasion of Poland in September 1939. Soon the group, called the Department of the Liquidation of the Effects of War, became an official agency of the Polish Government in Exile in London, which operated in conspiracy in the Nazi-occupied Poland. Also, in the structure of the Government in Exile itself, Bureau of Revendication of Cultural Losses was established, which, irrespective of considerable obstacles, remained in touch with the above mentioned Department which operated in Poland. The data on the losses and on the occupant's policy³ that was thus obtained made it possible for the Bureau of Revendication of Cultural Losses to initiate the actions to be undertaken by the Allied agencies, for example, by the Conference of the Allied Ministers of Education which worked in London since 1942 until 1945.

In view of the above, it should be noticed that the Polish restitution policy began to emerge very early and was mainly focused on

the Church, except for the property needed for everyday liturgy." W. Kowalski, *op. cit.*, p. 91.

Introduction of such "laws" constituted, without any question, severe breach of International Law of War. See, for example: I. Brownlie: *International Law and the Use of Force by States*. Oxford 1963, A. McNair, A. Watts: *Legal Effects of War*. Cambridge 1966. I. Brownlie: *Principles of Public International Law*. Oxford 1979.

² On the scale of damage and losses see, for example: G. Mihan: *Looted Treasure: Germany's Raid on Art*. London 1944, *Tentative List of Jewish Cultural Treasures in Axis-Occupied Countries*. Jewish Social Studies 1946, Vol. 8, no 1. Supplement, W. Tomkiewicz: *Catalogue of Paintings Removed from Poland by the German Occupation Authorities During the Years 1939-1945*. Vol. 1. *Foreign Paintings*. Warsaw 1950, Vol. 2. *Polish Paintings*. Warsaw 1953. B. Bie kowska: *Losses of Polish Libraries During World War II*. Warsaw 1994. L. H. Nicholas: *The Rape of Europe. The Fate of Europe's Treasures in the Third Reich and the Second World War*. New York 1994.

³ On the basis of the information on losses received this way, Charles Estreicher, head of the Bureau, was able to produce and publish their first account before the end of war. See: Ch. Estreicher (ed.): *Cultural Losses of Poland, Index of Polish Losses During the German Occupation 1939-1943*. London 1944.

two agencies: the one operating in the Nazi-occupied Poland- that is to say, directly at the scene of the crime, and the other one in London, which, at that time, was an important co-operation center for the Allies. I emphasize these facts, as they had a fundamental impact on the approach of the two agencies towards the principles upon which they framed their respective restitution policies.⁴

The circles operating in secret in Poland favored the postulate of reparations. Being everyday witness to the range of the inflicted damage⁵ and the methods that the occupational administration and several Nazi agencies specialized in looting⁶ employed, home-based organizations could not possibly imagine any other alternative way of indemnity. As cultural property was damaged and removed from Poland with no trace of documentation, and such activities were organized on massive scale, effective restitution seemed irrelevant or practically impossible. Moreover, in the process of organized removal of cultural property from Poland, the Nazis were interested to keep only the most valuable works of art, allocating the majority of plundered cultural objects to sale through special agencies, such as Haupttreuhandstelle Ost, HTO (Central Trustees Office, East).⁷ In view of this, the circles involved in the issue

⁴ The process of formulating these policies and arguments raised during relevant discussions, see: W. Kowalski: *Liquidation of the Effects of World War II in the Area of Culture*. Warsaw 1994, see in particular chapter I entitled: *Concept of the Redress of Losses in the Field of Culture put forth by Polish Centres before the end of War*, p. 15 et seq.

⁵ The first full report of the Nazi's cultural policy in occupied Poland based on their evidence was published in London in 1945. See: *The Nazi-Kultur in Poland by Several Authors of Necessity Temporarily Anonymous (Written in Warsaw Under the German Occupation)* London , HMSO, 1945.

⁶ Today we would rather say - specialized in cultural cleansing. These agencies included, among other organizations, SS art branch called Ahnenerbe (Ancestral Heritage) and Einsatzstab Reichsleiter Rosenberg (ERR). Rosenberg was formally instructed by Hitler to "transport to Germany cultural goods which appear valuable to him and to safeguard them there". NA, RG 260/411, Keitel to CIC France, September 17, 1940. L. H. Nicholas: *The Rape...*, p. 125. For more information on the activity of SS Ahnenerbe, see: H. Lehmann-Haupt: "Cultural Looting of the Ahnenerbe". Office of Military Government for Germany (US), Berlin, March 1, 1948, no. 183. On the role of both these agencies see several remarks and facts given by L. H. Nicholas: *The Rape.....*

⁷ To illustrate the scope and scale of the HTO activity, it is enough to quote a fragment of one of its executive orders:

of reparation considered different options of the same, practically impossible solution. Was there and is there any way to compensate the loss of as unique objects as only the works of art can be?

For example, while considering what kind of indemnity could be claimed for the destruction of the Royal Castle in Warsaw, deliberations were made how many paintings could have been bought by a Polish king in the 18th century with the money that had been used for extension works on this castle. Several sources could even name which paintings could have been bought, basing their estimations on the actual works, which had been purchased at that time by a Prussian king. Furthermore, because the paintings in question were still kept in Berlin, it was argued that they should be claimed as compensation for the damaged Royal Castle.⁸ Under such circumstances, the only realistic solution of repairing the inflicted damage seemed to be the reparations 'payable' in cultural property.

Unlike the organizations operating in Poland, the Polish Government in Exile in London had a different view on liquidating the effects of the War. On the one hand, it was difficult for them to fully understand the extent of damage and plunder, as they had not witnessed it in their own eyes. Living in the times of the omnipresence of mass

"I. In order to fortify Germanism and the defense of the Reich, confiscation is ordered (...) of all objects mentioned in point II of this order on confiscation, found in the territories which have (...) become a component part of the Reich, as well as those found in the Governmentship General (occupied central part of Poland, add. W. K.) providing that these objects do not belong to the Reichsdeutsch or the Volksdeutsch (two kinds of German citizenship, add. W. K.), or that the Reichsdeutsch and Volksdeutsch do not own more than 75% of the rights to the property. Most particularly, subject to confiscation are all objects mentioned in point II found in archives, museums, public collections, and in Polish or Jewish possession, but whose security and appropriate treatment lies in German interest.

II. 1. Objects of historical and prehistoric provenience, records, books, documents important for research on the history of civilization and public life, and those particularly relevant to the question of German contribution to the historic, cultural and economic development of the country as well as documents of importance to current history. 2. Objects of artistic, cultural and historic value, such as paintings, sculptures, furniture, rugs, crystal pieces, books, etc. 3. Objects of interior decorations and objects of precious metals". Document of December 15, 1939. Further quotations: W. Kowalski: Liquidation..p. 20.

⁸ For more detailed description of these discussions see: W. Kowalski: Liquidation... p. 28-29.

media, one must remember that people acting in conspiracy under the Nazi occupation could not possibly take photographs or make films. However, on the other hand, any reparation proposals put forward before the Allied bodies had to be realistic. Neither the political practice of the states concerned, nor the international law recognized, at that time, reparations in the form of cultural property. The only precedent in this matter was made in Art. 247 of the Versailles Treaty, under which such reparations were stipulated in favor of Belgium only and in purely symbolic form.⁹ Although some far-reaching reparation proposals were every now and then presented in England or the USA, including, for example, a postulate to seize the German collections and divide them among the injured states, these were only public opinion¹⁰ or private bodies' postulates.¹¹ The respective governments were much more moderate in their views. Due to political reasons, obvious reparation claims tended to be limited and intermediate solutions were looked for instead.

⁹ Art. 247 of the Versailles Treaty, as well as the whole issue of cultural reparations after the World War I is discussed in detail in W. Kowalski: *Art Treasures*p. 33 et seq. See also detailed report on the negotiations which led to the formulation of art. 247 in: P. Burnett: *Reparation at the Paris Peace Conference from the Standpoint of the American Delegation*. New York 1940.

¹⁰ Rather radical stand of the British opinion was, for example, expressed in "The Daily Telegraph" of March 16, 1943. A. E. Russel wrote that: ".increasing attention is rightly being paid to the unparalleled looting committed by the Germans in the occupied countries of Europe; looting not only of war materials, live stock and food, but of major works of art and uncountable humbler of treasures...Whereby the galleries of German cities contain large and well catalogued collections of works of art and craftsmanship of all kinds and of all countries, and of immense value. I suggest that at the end of the war an International Restitution Committee should take possession of all such collections with the view of distributing their contents between the various ravaged nations. The confiscation should be sweeping, so that empty museums and galleries would be a permanent reminder to the Germans that war does not pay and a contemptuous rejection of their impudent claim to be the guardians of Europe's culture."

¹¹ In the USA one of such opinions was formulated by the Study Group of the Council of Foreign Relations. They found proper, that "In default of restoration of property which is of exceptional historical, artistic, or cultural value, the Axis nations must substitute equivalent property of their own". A Memorandum on the Restitution or Indemnification of Property Seized, Damaged, or Destroyed During World War II. In: Council of Foreign Relations. *The Postwar Settlement of Property Rights*. New York 1945.

As Poland and Germany had been in close neighborhood for ages and the cultures of the two nations intermingled in the course of the centuries, one solution was self-evident. If the reparations could be paid to Poland neither in German cultural property, which anyway was not welcome in our country at that time, nor in world famous masterpieces, which was politically unrealistic, the advanced claims would have to concern the Polish cultural heritage which had been kept, in quite a few cases, in German museums for several centuries. Following such reasoning, actual attempts were made to prepare the claims for such form of reparations, registered in the files of the Department of the Liquidation of the effects of War operating in conspiracy. For example, it was expected that numerous military accessories of Polish origin would be handed over to Poland, as well as portraits of Polish historical persons and some collections which had been purchased in Poland.

Another way of making good considered as feasible was in kind restitution. On the basis of the exemplary in-kind restitution stipulated in the Versailles Treaty, the proposal involved the compensation of irretrievably lost cultural property by the works of art of equivalent importance.

As a result of such reasoning, final drafts of some clauses of the peace treaty were formulated by the Ministry in the Polish Government in Exile, which was responsible for the preparation of the Polish proposals for a peace conference. The drafts are the best representation of the restitution concept adopted as an official standpoint the Polish Party before 1945.

This gave priority to absolute restitution. Considering the circumstances of the plunder, which was often made for the private benefit of German soldiers or civil occupational authorities, the draft of the peace treaty obligated the German Party to hand over all the Nazi documentation concerning cultural property, including the registers and inventories kept in German museums, etc.¹² In-kind restitution was

¹² Art. 3 of this Draft stated that since there were: "very many instances of robbery of property by the German military and German officials who took advantage of their position as the occupant for their own private use and due to the resultant difficulty in finding these objects in Germany for they were not included in any collections or government warehouses, German was under obligation to order a compulsory registration in order to return the works of art, historic objects of the art and crafts industry, historic mementos, cult objects, books, documents, etc, seized in Poland by the said persons." W. Kowalski: Liquidation...p. 40.

considered as the next priority. This solution involved handing over the works of art of equivalent value or importance, to compensate for irretrievably lost cultural property, or, to rebuild historically important works of architecture.¹³ The most comprehensive provision of the draft was devoted to reparations of cultural heritage. The adopted principle stipulated the supremacy of cultural reparations over any other reparations, which was highlighted by a separation of the cultural reparation postulates from the chapter devoted to reparations in general.¹⁴ The postulate was supported with a list of claimed works of art, at the top of which the cultural property of Polish origin was placed, and next, different objects kept mainly in Berlin or Dresden museums successively.¹⁵ I would also like to recall yet another interesting postulate that, although proposed by one of the experts, had never been included in the draft. It was a plan to create an international museum of the plundered works of art, consisting of those object that had been found but could not be returned to their rightful owners, as it was impossible to determine who the owners were. According to the plan, this, so-called, "Common Exchange Museum" was not supposed to have a permanent base; instead, the idea was to transfer the museum collection from town to town among the injured countries every few years. The crucial reasoning behind this concept was a kind of "indirect" return of the cultural heritage looted from a nation which had, quite probably, been deprived of the objects

¹³ The relevant provision of the Draft was formulated as follows: "Germany has bound itself to restore historic secular and church buildings as well as monuments that had been destroyed by military operations and due to the special orders issued upon their cessation (torn down, remodeled, etc.). Art. 4. W. Kowalski: Liquidation...p. 41

¹⁴ This idea is reflected by the art. 1 of the Draft which reads: „Reparations and requital for losses in the field of culture (...) for a clearly distinct area of obligation and have priority over and above all other categories of imposed obligations". W. Kowalski: Liquidation...p. 41.

¹⁵ Art. 5 of the Draft provided in this respect: "For the deliberate destruction and damage, and for the loss of cultural property in the area of museum art collections and artistic furnishings of the destroyed buildings, Germany is obliged by the provisions regarding reparations and requital to deliver works of art and objects of the arts and crafts industry in the number and type specified in the enclosed Annex, in that the ill will of the Germans as well as the enormous value of this property for the Polish nation is taken into consideration". W. Kowalski: Liquidation... p. 41. See also detailed description of the Annex, p. 42-43.

After the war operations stopped in 1945, the Soviet-dependent government took power in Poland but, in general, this had no influence on the restitution concept formulated before the War was over. Obviously, for political reasons, it was addressed to Germany only, although even then it was difficult to conceal the massive removal of cultural property by the Red Army from the formerly German lands which were already granted to Poland, not to mention the tragic fate experienced by the cultural heritage left in the former Polish eastern territories taken over USSR. The above mentioned restitution principles were adopted by the Ministry of Culture and Arts and had to be presented to the Allies by the Ministry of Foreign Affairs as Poland's official proposal.

The basic postulate was still absolute restitution of the objects that could be identified. This postulate was the only one that was ever executed in practice but only to limited extent. Its fulfillment was largely possible thanks to the American military administration of the relevant Occupation Zone in Germany, where most of the Polish cultural property of great value was found, having been removed by the Nazis from Cracow, Warsaw, etc. Due to good co-operation in this field, 34 362 cultural objects were returned to Poland in 1945 and 1946. As far as the second postulate of in-kind restitution was concerned, initially, there was also a chance to achieve it thanks to the attitude of the American government, which at least up to the year 1947, was the only one that supported such form of restitution. Thus, the principle of in-kind restitution was introduced to the Definition of Restitution adopted by the Control Council for Germany in 1947 as its official legal standpoint to give grounds for the in-kind restitution proceedings in all the four occupation zones. According to point 3 of this document, "As to goods of unique character, restitution of which is impossible, a special instruction will fix the categories of goods which will be subject to replacement, the nature of these replacements and the conditions under which such goods could be replaced by equivalent objects." On the basis of this indication, the Polish government approached the American military authorities with a list of 64 paintings to be granted to Poland as compensation for the paintings removed from our country by the Nazis. However, 1947 was the year of the beginning of the Cold War, which put an end to the chance of executing the provisions made previously by the Allies. The reparation proposals turned to be entirely unacceptable in practice for purely political reasons.

At that time, the Polish Ministry of Culture and Arts had already some preliminary data on the war losses,¹⁶ and prepared comprehensive general postulates of reparations and restitution claims from Germany. Apart from the facilities to the damaged theatres, operas, libraries and other cultural institutions, the claims comprised lists of works of art grouped in different categories, including, for example: paintings of various schools, old furniture, ceramics, tapestry, etc.¹⁷ The lists were made in view of the objects to be found in the Dresden Gallery, which, at that time was kept in the Soviet territory. The Polish Ministry of Culture and Arts assumed that if Poland was to receive 15 % of the reparations due to the USSR under the Berlin Treaty provisions, the same portion of the Dresden Gallery collection could be claimed as well. Finally, this postulate, just as the whole concept of reparations, were never officially presented. Apart from some obvious political obstacles, the Polish authorities at that time paid much more attention to economic reparations, with particular focus on the industrial ones.

Following the ensuing unfavorable political climate, restitution proposals were gradually limited, until, in principle, they became a historical issue. As a result of these developments, in the early 1950s the Bureau of Revindication and Reparations in the Ministry of Culture and Arts was closed. Thus, the inventory of the War losses was discontinued, stopping at the figure of 516 000 cultural objects including those that had been completely damaged. The last attempt at restitution measures undertaken at that time was the 1953 proposal made by the Polish Party to exchange 117 German works of art for the 18th century architectural designs of Warsaw buildings which were required to rebuild the city so much damaged in World War Two. Irrespective of definite agreements

¹⁶ For more details on the methods used in collecting information about the losses and their assessment, see: W. Kowalski: *Liquidation*.p. 67 et seq. According to official report presented by Ambassador Wierbowski at the meeting of the Deputy Ministers of Foreign Affairs in London in 1947, Poland lost 43 % of the cultural property owned in 1939. For example, the National Museum in Warsaw lost 100% of ancient art, 78% of Polish paintings, 58% of foreign paintings, and 75% of the applied art.

¹⁷ For example, the lists include the following entries: from the Kaiser Friedrich-Museum in Berlin: 45 paintings of the 14th and 15th century Italian school, 62 paintings of the 16th to 18th century Italian school, 10 paintings of the 17th century Spanish school, from the Neues Museum in Berlin: 3 Egyptian granite sarcophagi, 10 Egyptian stone sarcophagi, 15 alabaster Egyptian vases, 10 Roman busts, 100 Greek vases, etc, etc. For further entries see: W. Kowalski: *Liquidation*...p. 82-83.

made between Poland and East Germany on the diplomatic level, the exchange had a unilateral character only - the German Party accepted the paintings with proper solemnity but never gave the promised designs.

Due to the political changes initiated in Poland in the late 1980s the problem of the liquidation of the effects of the Second World War has revived as an issue of diplomatic negotiations. In the case of Poland that means reopening of 'old' matters still to be settled with Germany and we may say, 'new' matters related to Russia and other states in the East of Europe, with which this dialogue could be entered into only nowadays. In 1991 probably the last attempt was made to list the losses suffered by Polish culture in World War Two. Up to the day on which I am making this speech, the inventory has recorded 52 038 items altogether. This figure includes single works of art and whole collections. In terms of categories it covers, for example: 4600 paintings by Polish masters, 3 730 paintings by foreign masters, 2363 pieces of sculpture, 3 250 gold-work objects, etc.

Irrespective of the future figure by which the present statistics will be increased, it has always been evident that this task is impossible to achieve as a whole. The documentation concerning cultural property damaged or removed by the Nazis from Poland is incomplete as a result of the methods by means of which the plunder and damage were made. Therefore, if it is impossible to calculate the losses, how can they be directly repaired?

Under such circumstances, what restitution policy should my government adopt?

Because of the main focus of our conference, my remarks will cover only the relations with Germany. For obvious reasons, I cannot answer this question in full detail, but generally it would be my suggestion to adopt the following principles.

On the one hand, the losses are still remembered in Poland and they are still easily and clearly visible in many places and many cultural institutions, so their character is not purely historical.

On the other hand, the restitution policy should also be determined by the present and future political relations between Poland and Germany, totally different from the political climate of the times when the above discussed rigid restitution and reparations concepts were formulated. Our present relations have been designated by 'the treaty on

good neighborhood policy and friendly co-operation'¹⁸ signed several years ago between the two countries and I am convinced that the suggestive wording of this title is not only formal. In my opinion, the issue of the lost cultural heritage seems to be the last unresolved problem concerning the effects of the War. However, the way in which this issue is to be settled should by no means disturb our good relations; conversely, it should show that our two countries are capable of settling even the most difficult disputes so the good relations between us are permanent and long-lasting.

What will probably remain out of the old restitution concepts is the expectation to receive back all the cultural property that was subject of unlawful removal and can be restituted now. As far as other aspects of the policy of liquidating the war effects is concerned, it should be based on the general principles laid down in the above-mentioned treaty. First and foremost, Art. 28¹⁹ stipulates that Poland and Germany will co-

¹⁸ Treaty between the Republic of Poland and the Federal Republic of Germany on good neighborhood policy and friendly cooperation signed in Bonn on June 17, 1991.

¹⁹ Art. 28 reads as follows:

- “1. The contracting Parties will co-operate in the field of the preservation and protection of European cultural heritage. They will protect monuments.
2. The contracting Parties will assure particular care for located on their respective territories places and cultural properties, which are the evidence of historical events and of cultural and scientific traditions and achievements of other Party, and will assure full access to them or will take steps to assure such

operate in the field of the protection of European cultural heritage. It also includes the obligation of both parties to protect the objects of Polish heritage that have been preserved Germany, as well as German heritage located in Poland. As section 2 of the said Article emphasizes, these efforts should be undertaken ‘in the spirit of concord and reconciliation’, which, if really accepted by the two Parties, shall definitely facilitate the settlement of even the most difficult issues connected with cultural property and archival material.

access in case it is not in the State’s competence. Above mentioned places and cultural properties are under legal protection of both Parties. Contracting Parties will undertake initiatives in this respect in the spirit of concord and reconciliation.

3. The contracting Parties will strive to resolve in the same spirit the problems related to the cultural goods and archives starting with individual cases”.

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From ‘Legacy of Shame’ to New Debates over Nazi Looted Art

Break-out Session on Nazi-Confiscated Art Issues: Government
Restitution Policies, Postwar to Present

1) INTERNATIONAL DEBATES 1984/1985

A few years before the Waldheim-Debate – in 1984 – Andrew Decker criticized the “Austrian Style” of restitution of art work stolen by the National Socialists after 1938, and he primarily focused on items stored in a monastery outside Vienna (Mauerbach), which had been turned over by the US authorities in Germany after they passed on the supervision over the Central Art Collecting Point in Munich to the Germans in 1951.¹ These remaining 8,500 pictures, drawings and books have still not been restituted partly due to the rather unprofessional and reluctant handling by low level Austrian authorities to trace down the owners (e.g., limiting the publishing of the list in the Austrian government newspaper “Wiener Zeitung” in 1969, which is barely read outside Austrian government circles) and the unwillingness of politicians to solve the issue by passing a law in the parliament until July 1995 (in

¹ Andrew Decker, “A Legacy of Shame,” *ARTnews* 83 (December 1984): 55-75; see also Andrew Decker, “How Things Work in Austria: Stolen Works of Art,” *ARTnews* 92 (Summer 1993): 198-200. and Herbert Haupt, *Das Kunsthistorische Museum. Die Geschichte des Hauses am Ring. Hundert Jahre im Spiegel der Ereignisse* (Wien: 1991). More precisely Josephine Leistra, “The Mauerbach Case,” *Spoils of War*, 3 (December 1996): 22-27.

1969 the Austrian parliament only agreed to enlarge the acceptance of claims until the end of 1972).²

On Christmas Eve 1997, however, the international media began to respond to a new debate. This time it focused on specific individual Nazi era art claims by two families concerning two paintings from the Austrian expressionist Schiele. The paintings were on display in the Museum of Modern Art in New York on loan from the private (state subsidized) Leopold Foundation.³ On January 7, 1998, the Manhattan District Attorney confiscated the two paintings (“Portrait of Wally” and “Dead City”) starting a criminal investigation into the ownership of the paintings and providing evidence for a possible trial before a grand jury.⁴

It should be noted that this incident was not only a side show of the “Swiss Nazi Gold Bank” discussion but became part of a much broader debate in the US dealing with the sometimes dubious ownership of alleged Nazi loot on display in several museums in the US and Canada - paintings claimed by heirs of Holocaust victims.⁵ Before the “Austrian incident” the “Holocaust Art Restitution Project” was established in Washington, D.C. and the World Jewish Congress established a “Commission for Art Recovery.” This commission is chaired by former US Ambassador to Austria, Ronald Lauder, who also happens to be the chairman of the MOMA.

In order to place the various events into a broader perspective I shall try to analyze some of the historical reasons for the most recent discussions. These discussions culminated in an international media debate and a new – much more concerned – political debate in Austria with an unexpected outcome. I cannot go into more details, why it took nearly 10 years to solve the issue, although on the level of the key decision makers like then Chancellor Fred Sinowatz and Minister of Finance Franz Vranitzky, who in 1986 became Chancellor, the option of an auction in favor of the Jewish community in Vienna and Jewish organizations has been already agreed upon. The original idea along these lines have been proposed in early 1980 by then Chancellor Bruno

² Paul Grosz, “Introduction,” in Christie’s, The Mauerbach Benefit Sale, Vienna, October 29-30, 1996, Auction 5638.

³ *New York Times*, 24 December 1997.

⁴ *New York Times*, 8 January 1998.

⁵ *Boston Globe*, 24 July 1997.

Kreisky and Minister of Science and Research Hertha Firnberg.⁶ In the following article I shall try to analyze briefly some of the 1945 ff. roots of these public debates of the 1980s and early 1990s.

2) NATIONAL RESTITUTION FIRST - US ART RESTITUTION POLICIES AFTER 1945

One of the central problems of postwar art restitution certainly is the policy question of how to administer the return of stolen art in Austria. On May 8, 1945, US troops took over authority over the greatest collection of Nazi loot in Austria in the Alt Aussee salt mine (and other repositories nearby like the Lauffen mine in Bad Ischl) which contained works of art (7,000 paintings and drawings, and approximately 3,000 other items)⁷ – stolen and sometimes bought from all Nazi occupied Europe to become part of the “Führermuseum” in Linz – a project close to the heart of Hitler himself.⁸ Austrian resistance fighters and Austrian museum experts had already taken care of the art treasures and prevented the destruction by National Socialist and SS hard-liners.⁹

A considerable portion of the Alt Aussee loot was of “Austrian” origin – some 700 paintings belonging to the Rothschild family and 500 paintings belonging to other Jewish families. Although the Rothschilds and the other collectors and/or their heirs had been brutally forced out of Austria by 1938 by the Nazi regime thereby taking their art treasures,

⁶ Bruno Aigner, Information für Heinz Fischer, 20 June 1985 and Sinowatz to Vranitzky, 4 July 1985, Bruno Kreisky Archives Foundation, Vienna, Franz Vranitzky Archives, Mag. Krammer, Box Mauerbach.

⁷ United States Allied Commission Austria, *The Rehabilitation of Austria, 1945-1947*, Vol. III, Vienna (no publisher and no date, app. 1950) 67. (more details concerning the legal and political aspects of preserving art 1918-1945 in: Eva Frodl-Kraft, *Gefährdetes Erbe. Österreichs Denkmalschutz und Denkmalpflege 1918-1945 im Prisma der Zeitgeschichte*, Wien, 1997).

⁸ Charles de Jaeger, *The Linz File. Hitler's Plunder of Europe's Art (Exeter: Webb and Bower, 1981)*, 19 and with more sophisticated analysis and academic research by Jonathan Petropoulos, *Art as Politics in the Third Reich* (Chapel Hill: The University of North Carolina Press, 1996). See also Lynn H. Nicholas, *The Rape of Europe. The Fate of Europe's Treasures in the Third Reich and the Second World War* (New York: Knopf, 1994), 346-350.

⁹ Katharina Hammer, *Glanz im Dunkel. Die Bergung von Kunstschatzen im Salzkammergut am Ende des 2. Weltkrieges* (Wien: Bundesverlag, 1986), 119-166.

these properties still were considered Austrian property and therefore turned over to the Austrian government and subordinate administrative institutions to carry out the restitution (e.g., Finanzlandesdirektionen, in charge of the legal matters, and the Bundesdenkmalamt acting as the overall art custodian). Due to criminal activities of individual art experts (many of them active in the white-washing and expropriation machinery of the Nazi regime) the Provisional government under State Chancellor Karl Renner decided as early as 22 August 1945 to establish a “Vermögenssicherungsamt” under the control of the Ministry of the Interior.¹⁰ According to experts art objects worth 200,000.000 “Reichsmark” have “changed” owners during April and August 1945.

3) THE “RANSOM” CASES OF THE ROTHSCHILDS’ AND

After the so-called “Anschluß” of Austria in 1938 “Reichsdeutsche” officials especially - both from the Gestapo and the cultural administration (including Austrian museum experts) confiscated a large number of art collections from Jewish owners (among them well known collections like the collections of Alfons Rothschild, Louis Rothschild, Rudolf Gutmann, Oskar Pick, T. Goldmann, Felix Haas, etc.), which were stored in the “Zentraldepot” in the Vienna Hofburg and were reserved for the “Führermuseum” in Linz. In 1941 this depot was transferred to Kremsmünster and parts of the local deposit in Hohenfurth were moved to Alt Aussee in February 1944.

When the Austrian Bundesdenkmalamt was authorized by US authorities and the Allied Commission to take over the individual restitution responsibilities the prewar legal framework again began to influence the transfers. Since 1918 a special Export Control Law (“Ausfuhrverbotsgesetz”), amended in 1923, enabled the Bundesdenkmalamt to decide which art treasures were allowed to leave the country, ignoring the nationality of the owners. This meant, however, that after 1945 – despite the fact that Jewish owners with Austrian

¹⁰ Staatsratsprotokoll, 22 August 1945, Archiv der Republik, Wien, Sammlung Staats- und Ministerratsprotokolle post 1945; the author owes this reference to Dr. Theodor Venus, Vienna. More details concerning the legal and political aspects of preserving art 1918-1945 in: Eva Frodl-Kraft, *Gefährdetes Erbe. Österreichs Denkmalschutz und Denkmalpflege 1918-1945 im Prisma der Zeitgeschichte*, Wien 1997.

nationality who had been persecuted and many of them killed in the Shoah (nearly one third of the Jewish Segment of Austrian society) have lost their citizenship automatically (!) – suddenly the traditional Austrian legal order began to overrule the National Socialist atrocities and individual pains and material losses as if nothing has happened. These treasures again were considered “Austrian” and an integrate part of the Austrian cultural heritage. In the pragmatic restitution procedure this meant that the original owners had first to prove their ownership – which under the circumstances of exile, imprisonment and the Second World War was very difficult to fulfill.

In the case of large collections like the collections of the Rothschilds this was a relatively easy task, since the “curators” have even produced a printed catalogue in 1939 (classified top secret and printed in a very limited number). It became difficult when the “legal owners” wanted to export their property because only a very few wanted to return at this stage (as most of the Austrian authorities and many Austrians were eager to keep the surviving Austrian Jews out of the country). In a “Restitution Compromise” (Rückstellungsvergleich) the lawyer of Clarice de Rothschild for example agreed that from 16 art objects, held by the Ferdinandeum in Innsbruck 14 will be restituted (including an export license), 2 will be turned over by Ms. Rothschild (1 to the Albertina and 1 to the Ferdinandeum).¹¹ The same procedure was used when dealing with old music instruments of the Rothschild collections although here most of the instruments stayed with the Kunsthistorisches Museum as a permanent loan.¹²

4) ‘OTHER’ RESTITUTIONS OF ART OBJECTS AND EXPORT CONTROL

Another case illustrating the rather shabby habit of restitution after 1945 in the field of arts is the equestrian painting of Bellini from the Sarah Lederer Collection. Ernst Lederer, a well known art historian, has been “dazu bewogen” (induced) to “donate” this valuable painting to the Republic of Austria in return for an export license for a fragment of the large Lederer collection which was destroyed at the end of the war by SS

¹¹ GZ 29.036/47, Archiv der Republik, Wien, Bundesministerium für Unterricht, Box 99.

¹² GZ 29.102/47, Archiv der Republik, Wien, Bundesministerium für Unterricht, Box 165.

troops at Schloß Immendorf (including famous paintings by Klimt and Schiele) or like the textiles and drawings disappeared during 1938-1940.¹³ In such a case Austrian courts would refuse to accept any claims for compensation. The famous Klimt Fries in the Lederer collection was, however, not included in the export license, and it took until the 1970s when Chancellor Bruno Kreisky himself started negotiations for the Republic of Austria to buy the Klimt Fries from Lederer.¹⁴ When Erich Lederer had tried to get back the Bellini painting in the 1950s the Austrian Ministry for Education refused, although a confidential internal evaluation of the Ministry opposed to the use of the Export Control Law for such deals ("Vorgang immerhin im Ausfuhrverbotsgesetz nicht gedeckt"). The Minister, Heinrich Drimmel, himself decided not to restitute, but at least admitted that the Export Control law should be changed.

This rather strange – and from my point of view both immoral and illegal procedure – has been developed before 1938 and accepted by the collectors (e.g., in the case of the Rothschilds), but after the Holocaust, exile and emigration and the Second World War restitution issues should not be effected by such “deals” since the State of Austria has lost the right to decide about the fate of properties of the Jewish minority so brutally persecuted both by fellow citizens and German Nazis and even after 1945 were deprived of their citizenship (they had to apply again for Austrian citizenship and needed a permanent residence in Austria, a procedure which however has been changed in the recent years as one of the positive consequences of the Waldheim debate).

It would be a falsification to state that the Republic of Austria after 1945 did not restitute property to former citizens in exile, but by doing so used a rather complicated legal procedure, executed sometimes by a highly passive or even resenting bureaucracy.¹⁵ The main reason, however, why restitution issues and “Jewish claims” (concerning heirless property, advocated by Jewish organizations) became such sensitive issues both within the Austrian political debate and in the concrete

¹³ Erich Lederer, Archiv der Republik, Wien, Bundesministerium für Unterricht, Sammelmappen, K 131.

¹⁴ Bruno Kreisky, *Der Mensch im Mittelpunkt. Der Memoiren dritter Teil*, ed. Oliver Rathkolb, Johannes Kunz und Margit Schmidt (Wien: Kremayr & Scheriau, 1996), 44f.

¹⁵ Compare for more details on this issue Brigitte Bailer, *Wiedergutmachung - kein Thema. Österreich und die Opfer des Nationalsozialismus* (Wien: Löcker), 1993.

handling of individual cases can be traced down in the political perceptions of some of the “fathers” of the Second Republic like the Chancellor Karl Renner, who in his first political memorandum in April 1945 pleaded for restitution of the Jewish property (“Rückgabe des geraubten Judengutes”¹⁶) not in favor of the individuals, but in favor of a restitution fund, which would distribute shares to the individuals in order to hinder a massive return of the exiles (“um ein massenhaftes, plötzliche Zurückfluten der Vertriebenen zu verhindern”). The legal Department of the Austrian Foreign Office refused to accept a legal obligation with regard to Jewish claims since the Austrian state was not considered being the legal successor of the Nazi regime; only due to “political reasons” restitution should be granted under the presumption that National Socialist Germany alone was considered responsible for the Holocaust and World War II and seen as “the” perpetrator.

“Aryanized” property was secured as early as May 1945, but it took until 1946 and the following 6 restitution laws to provide the legal framework for this ambivalent approach of “restitution” due to political reasons. The state of Austria until very recently considered herself a victim of National Socialism and Germany, a myth which began to erode during the Waldheim debate in 1986 and was buried at least officially by Chancellor Franz Vranitzky in 1993.

To come back to the return of stolen art, it is correct to say that the large and famous collections have been restituted to their owners if they were found in 1945 in one of the repositories. The right to export could be “organized” as shown above, although in some cases in the first months after the end of the war and before Austrian bureaucracy took over restitution responsibilities, direct restitution was executed. A good example is the Gutmann collection: Rudolf Gutmann, a Canadian citizen, identified his property in 1946 in Alt Aussee and his Austrian lawyer needed only an export permission from the Ministry of Finance, which was granted.

¹⁶ Österreichisches Institut für Zeitgeschichte, Archiv - Nachlaß Karl Renner, NL 1-3, Do 721, Mappe 9.

5) THE PROBLEM OF LOST ART

5a) The “Eastern” Problem

But even in the case of Gutmann he ran into trouble when he tried to seek restitution of 41 Rembrandt engravings which were transferred to Germany by one of Hitler’s art experts, Posse, and in 1945 were confiscated by the Red Army. Official applications were not successful, so then he tried to bribe Eastern German officials with \$20,000 since the engravings have shown up in the Soviet Zone of Occupation in Germany. It could not yet be clarified whether he was successful – in 1957 they were still missing – but his problem is a typical one in the postwar era. Thousands of art objects were at first confiscated in Austria and then transferred to “Reichsdeutschland,” both for party functionaries and private individuals.

There does exist a list of losses concerning private (mostly Jewish) collections dated 1957 and Austrian museums and monasteries¹⁷

¹⁷ List of public property

Kunsthistorisches Museum, Wien

Graphische Sammlung Albertina, Wien

Historisches Museum der Stadt Wien

Stadt Salzburg

Mozarteum Salzburg

Österreichische Bergbaumuseen

Österreichisches Apothekermuseum, Wien

Zisterzienser Stift Heiligenkreuz, NÖ

List of private (mostly, but not exclusively) Jewish property

Nachlaß Rudolf von Alt

Dr. Biermann

Carl Blaas

Dr. Josef und Gusti Blauhorn

Ferdinand Bloch-Bauer

Oscar Bondy

Margarete Buchstab

Karoline Czezowiczka

Ernst Duschinsky

Hortense Eissler

Valerie Eissler

David Goldmann

Dr. Philipp von Gomperz

Rudolf Gutmann

since bureaucracy kept track of those cultural treasures which were borrowed for decoration in National Socialist offices or in private residences of party leaders like “Karinhall” of Hermann Göring (only few could traced down like two of these tapestries from Karinhall in

Dr. Otto Habsburg-Lothringen
 Dr. Felix Haas
 Henriette Hainisch
 Bruno Jellinek
 Karpeles-Schenker
 Stephan Kerlin
 Dr. Norbert u. S. Klinger
 Nettie Königstein
 Dr. Felix Kornfeld
 Moriz von Kuffner
 Henriette Lainzer
 Graf Anton Lanckoronski
 Prinz Eduard Liechtenstein
 Margit Löffler
 Leidinger (Hanna Rhode)
 Fritz Mandl
 Franz Matsch
 Egger Möllwald
 Berta Morelli
 Benno Moser
 Kunsthandlung Nehammer-Prinz
 (Kunsthändler Oskar Hamel)
 Kunsthandlung Plobner
 Albert Pollak
 Ernst Pollak
 Frau Reichel
 Alphons Rothschild
 Louis Rothschild
 Schiff-Suvero
 Arthur Spitzer
 Dr. Alfons Thorsch
 Hedwig und Viktor Wimpfen
 Georg A. Wolf
 Kunsthandlung Wolfrum
 Paul und Andy Zsolnay
 Ing. Herbert Zucker-Hale

Poland, which were restituted to the Kunsthistorisches Museum in 1976)¹⁸.

5b) The whitewashing problem

Not only the Cold War hindered the search for stolen art post 1945, but so did the fact that some Nazi party functionaries have been able to hide their – mostly – stolen art treasures (most of them did not show up in the postwar era). An illustrative case is Baldur von Schirach, the former Hitler Youth leader and later Reichsleiter and Gauleiter in Vienna. In 1942 he had bought from the Vugesta (Verwaltungsstelle für Umzugsgüter jüdischer Emigranten), an agency of the Gestapo, confiscated Jewish property to the value of Reichsmark 42,092¹⁹ (obviously partly through the Dorotheum, the state owned Austrian auction house, which was heavily used for “whitewashing” and selling machinery for looted art objects which were not under “Führervorbehalt,” being reserved for Adolf Hitler). Among other objects he “bought” was a Lucas Cranach, Madonna with Child, from the confiscated Gomperz collection – which is still missing. Was it taken by Schirach, who in 1948 declared that he did not know about the original owner, or was it stolen in 1945 from the Schirach Villa in Vienna – either by Austrians or by Russian soldiers or confiscated by the Red Army, or did he sell it through his family to a collector/art dealer overseas?

This “selling” constitutes one of the major problems for the location of stolen art post 1945 on an individual basis, since the Monuments, Fine Arts and Archives Section of the US occupation forces both in Germany and Austria concentrated on the large collections which were deposited in several salt mines and castles throughout Austria to be protected against air-raids. By May 1948 nearly 2.5 million objects,

¹⁸ Gerhard Sailer, “Austria,” *Spoils of War*, International Newsletter, .3 (December 1996), 35; again published in Elisabeth Simpson, ed. “The Spoils of War. World War II and Its Aftermath: The Loss, Reappearance and Recovery of Cultural Property” (New York: Harry N. Abrams, 1997), 88-91. In a rather strange analysis Gerhard Sailer omits the theft of Jewish-owned artworks so that the editors had to refer to this immoral and shameful chapter of recent cultural history in a separate editorial remark.

¹⁹ Bernard B. Traper, Transcript of interrogation, National Archives, Record Group 260, ACA Austria, Box 365 Folder: R&R 51.

including 468,000 paintings, drawings and sculptures had been restituted by US authorities in Germany.²⁰ The Alt Aussee art works have been secured and partly transferred to Munich and as far as Austrian property was concerned mostly brought to Vienna under the custody of the Bundesdenkmalamt. As referred to above US authorities did not deal with individual restitution cases. According to the Bundesdenkmalamt 10,000 works from different repositories have been restituted under the title of “Jewish property.”²¹

6) HEIRLESS PROPERTY

As documented on the basis of individual cases in the 1984 article by Andrew Decker the real long range political problem in the Austrian restitution story was the fact that in 1969 8,422 objects in Austrian care were still not restituted, and the deadline for the claims was extended to December 31, 1970 after public intervention by Simon Wiesenthal - but still was limited and due to rather poor public relation only 71 objects could be returned.

No active policy has been worked out to trace down at least the names of the owners of this “heirless property,” although Sophie Lillie, one of the young experts consulted for the Christie’s auction in 1996 clearly recognized the possibility to read “the inscriptions on the back of the canvases and frames. ‘Aryanization’ numbers, inventory numbers from secret Nazi depots and/or gallery labels chronicle a kind of unconscious history of Mauerbach, revealing or concealing in codified form the stations of theft ...”²² I, however, do not agree with Hector Feliciano, that all, or most, owners and/or their heirs could have been traced down even in 1996 by active research.²³ The chances to identify the original owners would have been relatively high – especially by using the original lists gathered by US officials and experts after 1945 and material stored in German and Austrian archives. At the same time it is obvious that a large segment of these art objects did belong to people who did not survive the Holocaust.

²⁰ John Dornberg, “The Mounting Embarrassment of Germany’s Nazi *ARTnews* 87 (September 1988), 138.

²¹ Hammer, *Glanz*, 258.

²² Unpublished research proposal by Sophie Lillie, September 1996.

²³ Hector Feliciano, *Spoils of War* 3 (December 1996), 25f

The auction in 1996 was a financial success – due to well prepared sponsoring activities by the US Jewish Community on the first day – and a wise political decision, turning over the ownership of the Mauerbach collection to the Jewish Community of Vienna. The sale brought a total of ATS 155,166,810 and the net profit will go to people who suffered under National Socialism and/or their descendants in need of material assistance.

The handling of the Mauerbach case by Austrian bureaucrats and some politicians since the 1960s, however, reveals a strange mixture of ignorance and stubbornness to admit the Nazi policies and brutal Austrian collaboration on all levels and the postwar problems of restitution. Symbolic for this policy was the tendency to close Mauerbach like a fortress to the public, which in return increased the fantasy of American journalists and led to conflicts with the French Embassy by refusing French curators (e.g., Pierre Rosenberg, now director of the Louvre) in 1973 to see the Mauerbach collection when trying to locate lost French art objects. In 1987 at least 17 paintings were shown to members of a French claim commission, the rest kept closed by the Ministry of Finance.²⁴

On the one hand Austrian politicians especially – already decades before the Waldheim debate – have feared a public debate about Austrians taking part in the Nazi machinery of the Holocaust, which means primarily that they feared negative press reports in the United States (overestimating the political interest in Jewish issues in the US in the 1960s, but obviously influenced by perceptions which came close to the “Jüdische Weltverschwörung” (“Jewish Conspiracy against the World”) and the influence of Jewish journalists on the “Eastcoast,” propagated by the Nazis. At the same time they feared an Austrian debate about Jewish property which would again reveal an even stronger Austrian contribution to the execution of the National Socialist persecutions and, on the side of the former members of the NSDAP, would lead to opposition to one of the two leading parties. Frankly put, politicians of the Great Coalition after 1945 (up to the early sixties) always tried to postpone the settlement of the Jewish claims and if they were not hard pressed by the Allies, especially the US, would even have postponed the restitution procedures. Highly sensitive issues like the return of rented (not owned) apartments, pensions, bank accounts, etc., were always excluded due to opposition from the voters. It should be noted here, that the Department of State, too, did not press the Austrians

²⁴ Hector Feliciano, *Spoils of War* 3 (December 1996), 25f.

hard on the “Jewish Claims issue” (compared with claims of US oil firms), although the settlement of these claims was part of the Austrian State Treaty. The State Department even took over the negotiation initiative from the Jewish organizations in 1958/59 and settled the claims on a rather low financial level.²⁵

This explains why since the 1960s this issue of “heirless property,” too, did not move – no one wanted really to stir up the issue, because no one wanted a political debate which then would result in the unmasking of the myth of the Austrian victimization under National Socialism (although on an individual basis many non-Jewish Austrians, too have suffered under the Hitler regime or have been killed). In the field of the “stolen art” this certainly reveals the collaboration of art dealers, auction houses, museum experts and curators in the mostly organized plunder of art collections of their Jewish fellow citizens, as well as the fact that many fellow citizens – many of them not members of the NSDAP – stole art objects from Austrian Jews, and tried to hide the truth after 1945. Still today there is a tendency in self descriptions of museums and the Bundesdenkmalamt to hide the truth or to smoothen this brutal chapter of Austrian cultural history and again present the Germans as the overall Nazi perpetrators. Fortunately, the political debate has moved forward.

As an appendix, however, it must be noted that the “human factor” should be more important when analyzing the spoils of the war and talking about restitution. Still the value of forced labor and the human factor should be of much higher importance both in analytical and legal debates. Still the “thieves” are more guilty than the “middle men” who sold or bought stolen art. On the other hand the historical debate moved on also dealing with the post-1945 history of the Nazi war loots. Art objects are an important component of national memories and images. Therefore historical reflections concerning the cultural heritage of museum and private owners ought to be part of an open-minded democratic memory.

This new trend in 1998, certainly a positive result of the Waldheim-Debate and the increasing knowledge about the atrocities of the Nazi regime and the Austrian collaborators, is best exemplified by the debate following the seizure of the two Schiele paintings in the MOMA in January 1998. At first the public and political debate in Austria concentrated on the ownership of the two paintings – at least in

²⁵ Oliver Rathkolb, *Washington ruft Wien. US Großmachtspolitik und Österreich, 1953-1963* (Wien: Böhlau, 1997), 212-232.

the case of the “Wally-Portrait.” This issue was cleared in favor of correct transactions leading up to Leopold.²⁶

On January 14, 1998, the Austrian Minister of Education, Elisabeth Gehrler, asked for a comprehensive examination of all transactions in Austrians museums during 1938-1945, but it took until the end of February that the internal commission was set up. Since then the debate has shifted from the 2 Schiele cases to the broader debate about immoral treatment received by major collectors like the Rothschilds and their heirs post-1945 (unearthed by the author of this article and made public in an article in “Der Standard,” January 14, 1998). But it took another month (until a series in the same newspaper appeared on looted art from the Nazi period) that this fact really became an issue. Reluctantly even the director of the Kunsthistorisches Museum, Winfried Seipel, now pleaded for the return of plundered art work.²⁷ In the 1960s, however, an inter-ministerial committee turned down requests of the widow of Louis Rothschild, Hildegard Countess Auersperg, who tried to regain the 4 valuable oil paintings from her late husband’s collection.²⁸ And still in 1974 Austrian bureaucracy turned down efforts to solve this problem of immoral trade-offs.

There are still many smoking guns in Austria’s Nazi past, but obviously a new generation of journalists, academics and politicians are prepared to face this past and unearth the truth – even if this hurts not only the national memory, but also means concrete efforts for restitution of material losses. The new political trend in Austria – certainly a positive result of the Waldheim-Debate and the growing broader knowledge about the atrocities of the Nazi regime and the Austrian collaborators - is best exemplified by the debate following the seizure of the two Schiele paintings in the MOMA in January 1998. In the first weeks the public and political debate in Austria concentrated on the ownership of the two paintings.

In a broader context the Austrian Minister of Education, Elisabeth Gehrler, asked for an overall examination of all deals in Austrians museums during 1938-1945 on January 14, 1998. In the meantime the debate has shifted from the 2 Schiele cases to the broader debate about immoral deals with the major collectors like the Rothschilds and their heirs post 1945, a fact by the way unearthed by the author of this article and made public in an article in “Der Standard”, 14 January

²⁶ News 4/98, 140.

²⁷ Boston Globe, 5 March 1998.

²⁸ Archiv des Bundesdenkmalamtes, Wien, Karton 52.

1998: Large collections were restituted to the owners but under the then existing "Export Prohibition Law" they were forced to trade in selected art objects (chosen by the state museum officials and worth in some cases 10% of the whole collection) in order to obtain an export license.

But it took another month in 1998 (until a series in the same newspaper appeared on looted art from the Nazi period) that this fact really became an issue and even the director of the Kunsthistorisches museum, Winfried Seipel now, pleaded for the return of these immoral trade offs.²⁹ In the 1960s, however, an inter-ministerial committee turned down requests of the widow of Louis Rothschild, Hildegard Countess Auersperg, who tried to regain the 4 valuable oil paintings from her late husband's collection. And still in 1974 Austrian bureaucracy blocked efforts to solve this problem of immoral trade-off.

Still enough smoking guns are buried in Austria's Nazi past, but obviously a new generation of journalists, academics and politicians are prepared to face this past and unearth the truth - even if this hurts not only the national memory, but also means concrete efforts for restitution of material losses. On November 5, 1998 the National Council of the Austrian Parliament unanimously passed a law to reconstitute looted art from the Nazi period (including the immoral trade off since the export prohibition law has been amended not to include these objects previously). Since this law is limited to State owned collections provincial and municipal authorities have established research commissions to screen their collections after Nazi looted art (e.g. the Historical Museum of Vienna or the museums of the City and of the Province of Upper Austria in Linz, etc.).

²⁹ For the "Kunsthistorische Museum" see the unpublished report by Herbert Haupt in cooperation with Lydia Göbl, *Die Veränderungen im Inventarbestand des Kunsthistorischen Museums während der Nazizeit und in den Jahren bis zum Staatsvertrag 1955 ("Widmungen")*, Wien June 1998. This report is the first one of a series from the "National Museums" and seems to be intended to be published. Dr. Haupt takes a very different position on postwar restitution issues than outlined in his previous book "Das Kunsthistorische Museum." *Die Geschichte des Hauses am Ring. Hundert Jahre im Spiegel Historischer Ereignisse*, Wien 1991. Other forthcoming publications are a series of articles on the Nazi art loot in Austria from a research conference before the Mauerbach sale, edited by Theodor Brückler (Böhlau Verlag, Vienna, Spring 1999) and an enlarged version of the articles by Hubertus Czernin (in cooperation with Gabriele Anderl and Thomas Trenkler) for "The Standard," which will appear in the Molden Verlag in Vienna (January 1999).

THE PROBLEM OF “LOST LOOTED ART” RECONSIDERED:

Therefore it seems now important to focus on those art objects which never have been located by the Allied authorities immediately after the end of the war and which have only been partly destroyed. In order to document this future research focus which needs stronger international networking and cooperation of European (Eastern Central European and Western European) and American, Canadian museums, art dealers and collectors as well as a functioning internet data base, I shall present two concrete cases: One bases on the research of Oliver Kühschelm who traced down three art objects which had belonged to the collection of Philipp Gomperz in the Moravian Gallery in Brno, Czech Republic, which had been confiscated in 1942 (only 30 of the 85 art objects looted by the German Reich have been restituted after 1945). Another painting from the Gomperz collection, a Luca Cranach with Child, was „bought“ by the Vienna Reichsleiter Baldur von Schirach and sold by a New Yorker art dealer after 1952, who refused to identify the buyer of the stolen object. My own research on the Lederer Collection unearthed concrete evidence that 44 etchings by Rembrandt have been looted in 1938 and only 3 could be returned after 1945. 41 have been taken by Hitler’s special commissioner for the "Führer Museum" in Linz to the Dresdner Gallery in 1941, and seemed to have still existed in the first postwar years. An extensive research by the director of the gallery, Dr. Wolfgang Holler in November 1998 did not unearth more information on the whereabouts of these Rembrandt etchings, but they could have been transported to the Soviet Union and were not part of the returned art works after 1957.

The Cold War hindered a European wide research effort concerning looted art by the Nazi regime, a fact which can be documented in numerous cases. Therefore it seems to be of utmost importance to include Eastern Central European and if possible Russian national and provincial/municipal collections into a database approach of “lost looted art.” In order to start with this approach concerning “art objects“ looted on the territory of Austria during 1938 and 1945 (including partly the immediate postwar loot) I placed a 60 page list of more than one thousand missing art objects (both from public, but primarily private ownership) into the world wide web (<http://members.vienna.at/kreisky/naziartloot/>). This list has been collected by the Bundesdenkmalamt and the Ministry of Education in 1957 – which means that maybe a few of these objects have been restituted in the meantime, but the overall percentage is still missing.

This presentation is based on a paper presented at the German Studies Association Conference (September 26, 1997), Washington, D.C., with the panel “Kunstraub and Memory” and rewritten for this Holocaust era conference.

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Britain and the Restitution of Art Looted from Occupied Countries during the Second World War

Break-out Session on Nazi-Confiscated Art Issues: Government Restitution Policies

Although the course of the war meant Britain's art treasures escaped the plundering inflicted on the collections of occupied Europe, the UK played a significant role in shaping the wartime Allied response to the art losses suffered by her European Allies and in attempts to make good those losses after the defeat of Germany in May 1945. Almost from the moment in 1942 when officials and others in London began to consider how to respond to news about the fate of works of art in territories occupied by Germany, the governing assumption was that a relatively simple process of returning identifiable property subject to an act of dispossession by the enemy would follow the liberation of the occupied countries and the defeat of Germany. Implementing such a restitution policy, however, was not a simple matter.

Those developing restitution policy generally regarded works of art in theory as a distinct category, thanks to their unique and easily identifiable character and the intangible values attached to them, but their restitution could not in practice proceed in isolation. Tempting though it was to deal with works of art in advance of resolving a myriad of contentious claims from newly-liberated countries for essential and scarce items like railway locomotives and factory equipment, progress, or lack of it, on the wider problems of restitution and reparations in the end determined the success of efforts to restore looted art to its original

owners or their heirs. It took the 4 Occupying Powers in Germany until 1946 to reach agreement on a definition of restitution, and then to agree on how to interpret this definition. Only then was it settled precisely what kind of property was eligible for restitution, how restitution would relate to reparation, what procedure to follow to process claims and what to do if a particular item was not available for restitution. Restitution of some of the most easily identifiable examples of the looted art found in the British Zone of Germany had gone ahead on a provisional basis in advance of these agreements being reached in the Allied Control Council (ACC) but a proper legal and administrative process existed only after they had been concluded.

The Allies' basic intention to do something in response to Germany's exploitation of Occupied Europe had first been expressed formally in the *Inter-Allied Declaration against Acts of Dispossession Committed in Territories under Enemy Occupation or Control* issued by Britain and 16 other governments of the United Nations on 5 January 1943. Britain had been prompted to instigate discussions during 1942 on such a Declaration with her Allies by a growing awareness of the scale on which Germany was conducting a systematic looting of the Continent's material and cultural assets and the accompanying realization that the easy disposal of many of these assets in neutral countries was aiding her war effort. In their Declaration the signatories stated their determination to "combat and defeat the plundering by the enemy Powers of the territories which have been overrun or brought under enemy control" and reserved their rights "to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the Governments with which they are at war". The Declaration was silent on *how* the Allies might "combat and defeat" the plundering of Occupied Europe and at that stage of the war there was in fact very little that could be done to enforce it. Foreign Office officials recognized that effective action could only follow victory over Germany, but those taking and disposing of looted art had been placed on notice that the Allies intended to counter their efforts.

For the remainder of 1943 little could be done in London except continue to collect information about art losses and begin preparations for when the Allies were in a position to take physical control of Germany's plunder. On the military side this saw the creation by the Civil Affairs Directorate of the War Office of Monuments, Fine Arts and Archives (MFA & A) branches to be attached to the Headquarters of

each the Allied Armies. These were intended primarily to accompany advancing troops and direct efforts towards avoiding damage to cultural objects in the battlezone and take looted art left behind by retreating enemy forces into protective custody. British policy planning began in earnest following the establishment of the Macmillan Committee in the spring of 1944 in the run up to the invasion of Normandy. This was an independent non-governmental body of art experts appointed at the direction of the Prime Minister which met under the chairmanship of Lord Macmillan, a distinguished QC and a Trustee of the British Museum. The Committee, whose formal title was the British Committee on the Preservation and Restitution of Works of Art, Archives and other Material in Enemy Hands, met 11 times between May 1944 and April 1946 (all but 3 of its meetings were held before the end of 1944). It was directed: “to be at the service of His Majesty’s Government in connection with the post-war restitution of monuments, works of art, and archives misappropriated by enemy governments or individuals in the course of the war”; to co-operate with the Roberts Commission (which had been set up with a similar brief in the USA) and other sources of relevant information and expertise and “to investigate and consider the technical problems (other than legal) of restitution.” Despite this focus on restitution in its terms of reference, at its outset the Committee was preoccupied with preparations to preserve and protect artworks, monuments, churches etc likely to be at risk during the imminent fighting in Northern France.

Not until the summer of 1944 did it turn its attention to the development of the outlines of a restitution policy for looted art. The Committee submitted a number of informal papers to the Prime Minister and Foreign Secretary on, for example, the need for an international body to oversee the claims process, undertake searches for lost works and act as a central clearing-house of information. The Committee’s thinking did not always chime with that of Whitehall- Anthony Eden told the Committee that it would impossible for any international body that was set up to act independently of the military or civilian authorities in occupied Germany. A rather plaintive request from Lord Macmillan to Eden in September 1944 for “some guidance from you as to the direction which [the Committee’s] further work should take so as best to fulfil the purpose of their appointment” hints at the rather marginal impact of the Committee’s work and its decline into semi-obscurity in 1945.

By the spring of that year, when the Rhine was about to be crossed by the Allied Armies advancing from the West and the Russians were within reach of Berlin in the East, a significant amount was known

in London about *how* the Germans had stripped many of Western Europe's art collections. This knowledge principally concerned the organizations and some of the individuals responsible for the looting and was derived from the information gathered by the network operated by Britain's Ministry of Economic Warfare to support the economic blockade of Germany, supplemented by information acquired in the liberated territories. Contrasting examples of what was available are the individual reports based on intelligence sources about the activities of the notorious Alios Miedel, art agent for Goering, who arrived in Spain in the autumn of 1944 with 2 large American cars and a large number of paintings from Holland, including works by Rubens and Van Dyck and a short paper summarizing German efforts to loot art prepared for the information of the British Legation in Berne in February 1945 in advance of the first visit by a member of the MFA & A branch to Switzerland to trace looted art.

Although this knowledge of *how* the Germans had looted art often included information about what had been taken from particular, usually high-profile, collections, the MFA & A branches fanning out across a defeated Germany naturally did not know *what* looted art they would find in the devastated country or whether it would have survived the fighting and the bombing, whether it had been hidden in Germany, dispersed amongst German cultural institutions, passed into private hands or sold in neutral countries. It was only when they were in possession of the country and able to divert attention from the immediate task of preserving vulnerable sites from further damage to discovering caches of looted art and relevant archives that the first decisions were made on how to deal with the looted art in Allied hands.

The War Office issued an interim directive to the Deputy Commander-in-Chief of the British Zone of Germany, General Robertson, on 14 August. This set out interim measures for the restitution of identifiable works of art which had been subject to an act of dispossession by the enemy and had been located in the territory from which they were subsequently removed at the date of the German invasion of that territory. The directive was confined to works of art whose "identification is *prima facie* obvious and whose ownership is a matter of common knowledge" and to those works known by the staff of the British Element of the Control Commission to be in the British Zone. Inquiries about other works were only to be pursued where circumstances permitted and information about art covered by the directive was to be passed direct to the national government concerned. The directive had been inspired by Lt-Colonel Sir Leonard Wooley (head

of the MFA & A branch) in June in response to the public announcement by SHAEF shortly after the conclusion of hostilities that the bulk, perhaps 90%, of the art looted by Germany in Western Europe had been recovered, in the 586 art deposits found by Allied forces. The FO endorsed Wooley's initiative, noting "It is fantastic that we should not be able to hand looted works of art back to their owners, when their origin is known to all the world" and accepted the risk that going ahead with this kind of interim arrangement for art would expose the Control Commission to unwelcome pressure to agree to similar arrangements for all looted property.

Despite this kind of support, and the effort that went into framing the procedure set out in the directive in as simple a fashion as possible, almost no works of art had been restituted from the British Zone by the end of the year. Part of the explanation for this can be found in the two problems that were raised by the Control Commission shortly after receipt of the separate War Office telegrams containing the directives on interim measures for the restitution of looted art and other property. The first problem was that the War Office directive placed responsibility for handling claims on a Restitution, Deliveries and Reparation Division of the Control Commission which did not yet exist. The second, and more fundamental, problem was raised by the Control Commission's request for a definition of "an act of dispossession . . . i.e. to what extent is payment made by Germans in money or in kind for removed goods to be taken into consideration in deciding whether property is loot."

The War Office answered this on 18 September by saying goods should be included in the interim restitution directive irrespective of whether they were paid for by the Germans. The Control Commission appears, however, to have hesitated at the implications of following such a sweeping directive. In a letter to HS Gregory of the Trading with the Enemy Department of 27 November on the subject of works of art purchased by Germany during the war, Wooley agreed that "to regard all sales to Germans by citizens of the occupied countries as having been made under duress would widen the issues unduly and establish a very dangerous precedent." He considered that "there are only about a dozen objects in the whole British Zone which are really loot coming under the definition given in SUGRA 18, but there are a very great numbers of objects [elsewhere he referred to many "thousands of second-grade" Dutch paintings in the British Zone] which do come under that definition but were purchased and not directly looted." A great deal of pressure was being placed on the UK by the newly-liberated countries of Western Europe on the subject of restitution in general and "purchased and not

directly looted” art was a prominent grievance cited by the Netherlands and France when making their case in London. On 4 December Coulson described restitution in a letter to Sir William Strang (Political Adviser to the Commander-in-Chief of the British Zone) as a “burning political question” and said he was “very much afraid that things are boiling up

It was this political background that prompted officials in the British Zone to ignore the continuing lack of a 4 Power agreement on a definition of restitution, ease the practical and administrative difficulties that had been hindering any implementation of SUGRA 18 and proceed with the return to the Netherlands in early 1946 of a substantial quantity of looted but purchased art and looted church bells. January 1946 also saw the Allied Control Council reach agreement on a definition of restitution.

The Control Council had been split primarily by differences between the French and Soviet Delegations, who had sharply differing views on the share of German resources that should be devoted to restitution as opposed to reparation. The French were much less interested than the Russians in reparation and sought to broaden the spread of restitution by arguing for the return of all property removed to Germany. Conversely, the Russians argued that only goods removed *by force* should be eligible for restitution, for the less that was restituted the more that was available for reparation. The chief British and American concern was to see that whatever was recovered from Germany did not so weaken her that she would become a burden to them; in practice this meant they leaned more to the Russian than the French point of view. This came out particularly clearly in their desire to restrict the extent to which goods could be replaced by German equivalents if restitution of the original was impossible. The definition agreed by the Allied Control Council on 21 January conceded little to the French position. After reaffirming that the question of restitution to Allied countries “must be examined, in all cases, in light of the declaration of 5 January 1943” the text stated that restitution “will be limited in the first instance to identifiable goods . . . taken by the enemy by force. . . Also falling under [this] measure of restitution are identifiable goods produced during the period of occupation and which have been obtained by force.” However, all other property removed by the enemy was eligible for restitution only to the extent consistent with reparations. The definition went on provide for replacement of “goods of a unique character” subject to certain unspecified special instructions and conditions and concluded by noting

that contact on all restitution questions would be with the government of the country where the objects were looted.

This agreement enabled the restitution of property taken from occupied countries and found in Germany to proceed on a legal basis. After its conclusion the Control Commission authorities in the British Zone were able to move rapidly to return, especially to the governments of the Netherlands, Belgium and France, the vast mass of the works of art which the Control Commission had taken custody of. It was the responsibility of the government of the country from which the art had been taken to allocate returned art to individuals and determine to what extent an individual claiming restitution had in fact collaborated in selling a work to the occupying power.

More problematic than the art which had come into the custody of the Commission authorities was art in private German hands. Steps were taken to compel individuals to reveal details of property they had acquired from occupied countries during the war and to enforce the ban on the sale, transfer and export of such property. Searches were carried out for particular items alleged to have been looted. Special provision was made to enable claimant countries to send teams of investigating officers into the Zone, something which the Dutch had pressed for in view of the enormous amount of art removed by purchase from the Netherlands and their well-founded suspicion that a substantial proportion of it was in private hands in the British Zone. Tracing such art and returning it to its original owners was a task of a different magnitude to the process of returning the collections which had come under British control in the immediate aftermath of Germany's collapse. In comparison returning the works of art gathered in the main British Collecting Point at Celle was relatively straightforward once the legal framework had been agreed given the easily identifiable nature of much of this art and the discovery of many of the records which the Germans had kept of their looting.

A second category of art whose restitution remained difficult even after the ACC had settled on a definition in January 1946 was of course art which had been transferred to the neutral countries during the war. Though the Allies had, in a declaration of 5 June 1945 assumed supreme authority in Germany and claimed the right to exercise control over German assets abroad in the Communiqué of the Potsdam Conference issued on 2 August 1945, such authority was extremely difficult to apply in practice. The Allies had limited leverage over the neutrals and attempts to apply the claimed right to dispose of looted assets deposited in their countries were fiercely resisted.

Substantial information was available in London as the war drew to an end to suggest that Switzerland had been prominent amongst those neutrals receiving art looted by the Germans. Accordingly, Squadron Leader Cooper, of the MFA and A Branch, was dispatched there in February 1945 to investigate this trade. His reports of this visit, and a second, longer, one he made in the autumn of that year, give a vivid account of the involvement of a number of Swiss dealers in efforts by several individual Germans, most notably Goering, to build up collections of looted art.

In his first report, Cooper detailed his efforts to identify some of the looted art which had reached Switzerland and through what channels and set in train further investigations to be carried out by the Legation. He noted that it appeared that very few people were involved in the traffic in looted art in Switzerland and that he had not discovered anything linking Swiss museums or the more important collectors to looted art. Although he had spoken to most of those involved in the trafficking, and amassed considerable evidence about which works had passed through their hands, he was unsure what had happened to looted art once it reached Switzerland and considered there was no limit to the quantity of works of art which may be deposited by, or was being held for, those who involved themselves in handling the loot. By the time he completed his second report he was able to give a more authoritative account of art looted from Allied nationals and discovered in Switzerland. In his description of the negotiations Allied officials had held with the Swiss (in which he had taken part) to secure the right for the owners of looted assets to try to recover their property from Switzerland, Cooper revealed the practical and legal obstacles to be surmounted in any attempt at restitution of art from Switzerland.

The story of British policy towards restitution of looted art mirrors that of restitution in general. At the war's end restitution was one of the most pressing problems confronting both the governments of the newly-liberated countries which had suffered so terribly and the Occupying Powers in Germany. But these governments had other equally pressing problems- securing reparations for some of their material losses, demobilization, the needs of millions of displaced persons, how to feed, house and pacify a devastated Germany for example. Many of these problems demanded solutions which conflicted in some way with an ideal restitution policy. In the circumstances of 1945 and 1946, restitution of looted art from the British Zone of Germany was an immense, intractable, task. The task was not completed down to the last painting, some individuals were certainly left with cause for grievance,

but intensive effort had resulted in much effective restitution of art to governments of the countries from which it had been taken. The Western Allies' recognition that they had not been able to complete the task of restitution meant that the Bonn Conventions (signed in 1952 and effective from 1955) which terminated the Occupation regime in western Germany included provision for the Federal Republic to establish an Agency to handle outstanding matters relating to the restitution of cultural property.

Mr. Nikolai Gubenko

DEPUTY CHAIRMAN, COMMITTEE ON CULTURE, STATE DUMA
RUSSIA

Break-out Session on Nazi-Confiscated Art Issues: Government Restitution Policies: Postwar to Present

Ladies and gentlemen,

Each one of us, who participates in this conference, bears a great responsibility because it touches interests of two sides: of victims and their executioners, the good and evil. We cannot permit any ambiguity, any streamlining.

The organizers of the conference asked me to clarify certain details of the Law "On cultural Treasures Transferred to the Union of Soviet Socialist Republics as a result of the World War II and Located on the Territory of the Russian Federation" adopted by the Russian parliament. During the procedure of drafting the law (and it took three years), the Law was attacked by mass-media, government officials and public figures of Germany. I cannot, but admire the unanimity with which certain European countries supported Germany in its negative reaction to the Law.

This reminds me the unanimity of certain countries on the eve of the World War II. It is known, that one of the main objectives of this war, criminal from the point of view of the international law, was the genocide against the Slavic, as well as Jewish races. "One of the main assignments, said Hitler, is to halt the growth of the Slavic race. I have the right to dispose of millions from the sub-race, who are multiplying like worms." Fieldmarshal Reichenau, in an order to the Nazi army wrote: "The principal objective of the campaign against the Jewish-Bolshevik system is the outright destruction of its power and influence of European culture. No historic or art treasures of the East have any significance." "An outrage and tyranny will be on extremely fitting form of government for the people of the USSR," - seconded him Reichsleiter Rosenberg, the one who headed the Department, which robbed our museums, libraries and churches. The "Ost" plan emphasized: "The matter not only deals with the destruction of government. More important, is the destruction of Russians as nation."

27 million killed, of them - 2 million Jewish compatriots; 1710 (Seventeen hundred and ten) fully or partly destroyed cities, 70000 (seventy thousand) villages, 1670 (sixteen hundred and seventy) ruined churches and mosques, 532 synagogues, 237 chapels, 427 destroyed or looted museums, nearly 200 (two hundred) million destroyed and stolen books, more than 600,000 (six hundred thousand) lost cultural works. This is the amount of the USSR's losses in the World War II. At the Nuremberg Process the Soviet Union offered 39 volumes of documentary evidence of the destruction and looting of its cultural property. What other country could provide such evidence?!

And in the context of the problem we envisage here, a discriminative approach towards peoples of the USSR-victims of the Nazis is not permissible, because the Soviet Union suffered the most.

Russia has a normal right to compensation. But because the mass media is attacking our international rights with regards to our Law I would like to present to you the arguments of Parliament of the Russian Federation.

Fascist Germany and its partners in crime can console themselves in the hope that the international rights lag behind the moral principles of humanity; that the criminal actions which took place 53 years ago will no longer be considered criminal from the legal point of view. I reject this assumption.

The law is based on the international legal principles and other acts, specified in article 2 of the Law. Among the conference materials is the English translation made by US experts.

All these international legal acts are maintained for all aspects on transferred cultural treasures, retain their validity for property relations developed in response to these documents. The property rights of Russia including the right to transferred cultural values acquired as compensation for caused damaged emerge just from these documents.

The grounds for this statement are in the peace treaties with former enemy states signed in 1947. For instance, the Paragraph one (1) of Clause 79 (seventy nine) of the peace treaty with Italy that is identical in relevant aspects to similar treaties with Bulgaria, Hungary and Romania states: "Every Allied power shall possess the right to take, retain, abolish or initiate any other action in respect of property, rights and interests in a whole that for a day of entry into force of the present treaty shall be located at its territory and belong to Italy or Italian citizens, and also use this property or its gain for the purposes this power considers as desirable."

It follows that the instruction of the Allied powers concerning property of former enemy states and their citizens found at their territory was the term of the peace treaty. This standard does not contain any exception concerning cultural values.

The fact of refusal of former enemy states of any claims towards Allied powers confirms this conclusion.

For example, item 1 of article 76 of the Peace Agreement with Italy, identical to the corresponding articles of the Peace Agreements with Bulgaria, Hungary and Finland, states (I quote): "On behalf of the Italian Government and the Italian citizens, Italy gives up all claims of all natures to the Allied and United Powers, which were associated directly with the war afforded by measures taken in the result of the War in Europe after the first September 1939."

I can remind you of one more document adopted by the Control Council in April 1947. The document "Quadrilateral Procedure of Restitution," stipulated: "If the restitution of the object itself is impossible, the right of the exacting side to restitution is satisfied by compensation from German property with articles equivalent value." It is clearly obvious, that in these cases the substituted object became the property of the exacting side. The same condition was applied to the Peace Agreement signed in 1947 with the axis countries.

Item 9 of article 75 of the Peace Agreement with Italy (as well as the Peace Agreements with Bulgaria and other satellite countries) envisages: "If in individual cases, it is impossible for Italy to restitute cultural objects - taken by the Italian army from the territory of a United Nation - which have artistic, historical and archaeological value, then Italy must compensate that United Nation with similar objects with approximately equivalent values."

Therefore, according to the abovementioned acts, the Soviet Union had the right to confiscate and own the cultural treasures of former hostile states.

At the same time the former hostile countries confirmed their denial of claims of all nature, including those dealing with assets, to the Allied Powers and the United Nations.

One of the opponents of the Law Mr. Kurt Zir from the Zurich University ironically noted, that "Russia discovered new sources of international public law." It is not astonishing, that Russia "discovered" the documents of the Control Council in Germany and the Peace Agreement of 1947, signed by the governments of many countries, but it is really astonishing, that these acts are still ignored by many opponents of the Russian Law, who in their critical remarks first of all cite the

declarations, conventions of UNESCO and other acts of international law of the 50's - 70's being fully aware that no legal document is retroactive.

Furthermore, you know that not every Allied Power and states of the anti-Hitler coalition had rights for restitution. In the resolutions of the Control Council from the 17th of April 1946 it was clearly indicated: "The right for restitution is granted only to the states, which were completely or partially occupied." For example, the United States of America has no right to claim any restitution, because its territory was not occupied. Much less Germany has no right to claim restitution, because it carries the biggest responsibility for waging the cruelest war in the history of mankind.

The discussion about the legitimate nature of the acts of the Control Council possessing absolute legal and executive power at the territory of Germany can be considered groundless. Their competence and efficiency were confirmed in the Joint Declaration by the governments of the German Democratic Republic and Federal Republic of Germany, addressed on the 12th of September 1990 to the ministers of international affairs of the USSR, Great Britain, USA and France. This Declaration states: "The measures on withdrawal of assets, adopted on the basis of the rights and supremacy of the occupational authorities (in 1945-1949) are irreversible. The German government, considering the historic development, takes this into evidence and will not publish the regulatory acts, which may contradict the above cited part of the Joint Declaration."

For lack of time, I will briefly touch upon some principles of the Law, in order to fulfill the recommendations of our conference. Although, when put into practice, these recommendations do not possess any measures of enforcement. The process of restitution of the cultural treasures is, to a greater extent, a problem of bilateral relations, where the main source of jurisdiction and the only act to become law is the treaty, the agreement between the countries.

Article 8 of the Law clearly defined the transferred cultural values, which is not included in the definition of the property of the Russian State and can be conveyed to the other countries and individuals.

Firstly, these are cultural values, with regard to which the interested state will provide evidence that it demanded its restitution before expiration of the terms, determined by the Peace Agreements with Bulgaria, Hungary, Italy, Romania, Finland. The council of ministers of the USSR determined the term in the Soviet zone of occupation in Germany - the 1st of February 1950.

Second, cultural values, which belonged to religious organizations and private charity organizations, which did not serve the interests of Nazism.

Third, cultural treasures, which belonged to the individuals, deprived of these assets because of their active fight with Nazism. In this includes those who were involved in national defense from occupation and those who were taken for their race, religion and national origin.

In accordance with recommendations of the Council of Europe, cultural treasures, representing family relics, may be given to the representatives of the families, that owned them.

Taking into account the legal character of the retrieval of cultural treasures in 1945-1949, which took place only at the government level of the interested countries, the law maintains the established rules. The law states: "Claims on transferred cultural treasures... can be made by the government of the state, who makes a claim of these treasures, strictly to the government of the Russian Federation; claims of individuals and legal entities, municipal organs, social and other organizations and corporations will not be accepted."

And finally, the German side consistently proclaims that they have none of our treasures on their territory. Nevertheless, in 1990 the weekly magazine "Zeit" wrote: "The Russians were robbed twice, first by fascist Germany and then by their allies. 80% fell to Americans. The English, French and Russians were satisfied with 20%." The relations between USA and Russia are too delicate now that I would not like to elaborate on this subject for the lack of time. I admit that "Zeit" has dispersed this information with the purpose that search of Russian values shall be directed on the wrong track.

It is hard to imagine that Germans did not know the location of the transferred Russian cultural treasures or even the direction they traveled with respect to its territory.

I won't be amazed, if cultural treasures of the victims of the Holocaust are hidden in the same "coves," as the cultural treasures removed from the Soviet Union.

In June of 1945 the prominent representatives of scientific and cultural communities of our country - actor Mihoels, writers Bergemson, Sutskov, the academicians Obnorskii, Lebedev, Shishmarev, professors Greenberg and Feter - turned to Stalin with the following letter: "Dear Joseph Vissarionovich! The Germans have destroyed all the Jewish book depositories on all territories, which they temporarily occupied. They carried away manuscripts that were centuries old, antiquity works, and rare books of great value. The basis for further study of Jewish culture in

the USSR is seriously damaged. We believe that in conjunction with the decisions of the Crimean Conference that ordered the Germans to compensate by nature all the distraction they inflicted. Germany firstly should be obliged to return to the USSR all that was stolen and taken to Germany; Secondly, to remove the monuments of Hebrew culture stored in book archives of Berlin, Munich, Frankfurt, and Leipzig and transferred them to the corresponding libraries and museums of the USSR.”

Hundreds of thousands of similar letters came from the Ukrainians, Russians, Tartars and representatives of hundreds of other nationalities which were victims of Hitler's genocide.

One year ago, when our Law was not yet adopted, Russian mass media conducted a research of public opinion. The result was unanimous. 86% supported the Law. And it is natural, because the language of this Law is the language of justice.

Those who perished are gone. In the same Jews there are Russians, French, a lot of other nationalities all together. They are my father, Ukrainian, who went to the front when I was yet in mother's belly. They are my mother, Russian, who has been hanged by Germans in Odessa because she hid Jews, when I was eleven months old. They are dead victims. We must think about today's people. It will be a shame to divide into “ours” and “aliens” those victims who survived. We must unite all efforts aimed at just compensation for every victim of the tragedy regardless of nationality.

Mrs. Charlotte E. van Rappard-Boon

HEAD INSPECTOR, MINISTRY OF EDUCATION, CULTURE AND SCIENCE
THE NETHERLANDS

The Fate of Works of Art in the Netherlands During and After World War II

Break-out Session on Nazi-Confiscated Art Issues: Government
Restitution Policies, Postwar to Present

Just before World War II the once thriving art trade in the Netherlands came to a virtual standstill due to the economic circumstances and the threat of the war. At the start of 1940 most art dealers were in the possession of large stocks of works which had remained unsold for some years. On the other hand, in the Netherlands the possession of works of art in private hands was not restricted to the rich and very rich bourgeoisie but, as was the case in the seventeenth century, many moderately prosperous middle class families possessed one or more good quality paintings, Chinese blue and white ceramics and other precious antiques. Amongst these families was a large number of families of Jewish descent who, thanks to the open Dutch society which had welcomed them in the times when they were persecuted elsewhere, had flourished in the trade and the liberal professions.

These two factors form part of the explanation why the disappearance of works of art from the Netherlands to Nazi Germany - whether by looting, confiscation or sale - took place on such an unprecedented scale.

As happened in France, already during the German occupation Dutch art historians started compiling lists of works of art which they knew to have left the country. Also, already during the war the exiled Dutch Government in London prepared an extensive and complex set of measures with regard to legal restitution. One of these Dutch measures

forbade to sell Dutch assets, including objects of art, to the enemy without prior permission.

As soon as the war ended, efforts to track down works of art in Germany and to return them to their original owners were gathered together in a single service, called the Netherlands Art Property Foundation (SNK). This service cooperated closely with the allied forces in Germany, especially with the Monuments and Fine Arts & Archives Service (MFA&A). On the basis of detailed lists made up from forms in which missing works of art were reported, the Allies tried to find as many works of art as possible. These forms were based in requests by private persons and on information compiled by the Foundation itself from the administration of objects confiscated by the Germans, on transport lists of works looted by the Germans or by firms which collaborated with them and on records of sales by auction houses and art dealers. These efforts were often severely hampered - as ours are still today - due to the fact that only well-known works of art were known in detailed descriptions detailed enough to recognize them easily or were even photographed.

Identification of a work of art listed for example: as "Farmers making merry at a tavern by the workshop of van Ostade" without any measurements of further description, is an extremely fortuitous business. Hundreds of paintings must exist answering to this kind of caption. Thus mistakes in identification of objects were made and not always corrected afterwards. Also, works of art that were nearly impossible to identify, mostly decorative art, were shipped back to the country that seemed the most likely to be their country of origin. In this way most Delft blue-and-white tiles were sent to Holland though they might as well have come for example from a French collection.

All the same, seeing how people in the office of the Art Foundation worked in those years, when Holland was recovering from its great war losses and money and means to run an adequate administration were scarce, one is filled with admiration. Without a computer, but using an endless amount of paper files and lists ordered according the artist names, original owners, art dealers or auction houses they reconstructed the provenance of many works of art.

The Foundation recovered many thousands of objects of art and returned them to their rightful owners, and also organized "viewing days" for people to identify their property. Many objects which were recovered, were works that had been sold during the occupation by the art trade violating Dutch law. These objects became in principle the property of the Dutch State. Objects for which the owner could not be found or for

which claims could not be recognized because of lack of proof came under the custodianship of the State. What remained, after restitutions to the owners and after sale of part of the objects, was registered in the 1950's and forms the so called NK-collection of the Dutch State. Details about the work of the Netherlands Art Property Foundation can be found in the introduction of the report *Origins Unknown*.

This report, which is available here today, was published by the Dutch Government in April 1998. It also describes the methods of investigation which we use today. Recently questions concerning these remaining works of art have been asked. Might not modern methods of research, use of database and vast modern documentation systems such as that of Netherlands Institute for Art History enable us to find more information about original owners than was previously possible? The pilot study was done for a hundred works of art, both paintings and decorative art. Because sufficient new details concerning the provenance of these objects were found, the Dutch government decided to extend the study to comprise all objects of the NK-collection which were recuperated after the war. Of course, after all these years much of the documentation which might have helped is lost or destroyed, but by gathering circumstantial evidence from catalogues of pre-war exhibitions, of private collections, of art dealers administrations, of insurance lists, etc. links might be found which were lost before.

Because a work of art can mean an extremely personal tie with the past and can have great emotional value for a family, the Dutch government plans to proceed on a case by case basis regarding the restitution of works of art of the NK-collection. It is still possible for a private person to file a claim on an object in the NK-collection, provided it regards a work of art which has not been previously claimed and of which sufficient proof of the original ownership can be found. Also earlier claims which were not accepted before can be filed again if substantial new facts have come to light. This year two paintings have already proved to belong the Jewish families that did not file claims after the War. These paintings are being returned to their rightful owners.

The works of art of which no new facts concerning their provenance are found during the investigation, will stay available in the future if new facts come to light.

Works of art in the possession of private owners who are in good faith, are in principle protected by Dutch Civil Law. However, in these cases possible claimants and present owners can apply to the Netherlands Institute for Art History and our office, for more information concerning provenance and possible postwar claims. Possible solutions for these

cases could include arbitration and a decision by common consent along the lines similar to the American Museums Association.

In the same way as the State Government is researching its collections, the Dutch museums under the aegis of the Dutch Museum Association are researching the acquisitions made during the war and in the after-war years, to investigate whether they acquired objects which were looted or confiscated by the enemy from Jewish owners. The museums are conducting their own research aided by the Inspectorate for Cultural Heritage which checks the museum data and adds facts which it has found during its own research.

If there is any evidence that objects were Nazi confiscated Jewish property, it is expected that the governing bodies of the Museums, will make every effort to ensure that they are returned to their original owners or their heirs.

With regard to the timetable of the state and museums investigation, the museum investigation will be finished and published next year. The State investigation will be finished in three years time and its interim-results will be published during those years in regular reports.

Further details about the investigations and about restitution of art objects can be found in several leaflets which we brought with us.

We hope these investigations solve most outstanding questions about the provenance of art objects, though truth commands us to say that some of these will probably never be answered.

Colonel Seymour J. Pomrenze

FIRST DIRECTOR, OFFENBACH ARCHIVAL DEPOT
UNITED STATES

Personal Reminiscences of the Offenbach Archival Depot, 1946-49: Fulfilling International and Moral Obligations

Break-out Session on Nazi-Confiscated Art Issues: Identification of
Art, Archives and Databases

INTRODUCTION

In late February 1946, my colleague First Lieutenant Leslie I. Poste, a Library and Archives specialist, drove me through a blinding snowstorm to Offenbach. En route, Lt. Poste briefed me on the Offenbach Collection Point's origins, his role in selecting a building within the I.G. Farben complex on the Main River, and his concern that restitution operations be expedited in accordance with military regulations. Since its establishment in July 1945, the operation had yet to reconstitute any materials.

Lt. Poste also reviewed the operations of Hitler's Einsatzstab Reichsleiter Rosenberg (ERR) and its educational branch the Institut zur Erforschung der Judenfrage (Institute to Research the Jewish Question). The ERR, backed by German military forces, had traced Jewish, Masonic, Socialist, and other anti-Nazi cultural objects throughout Germany and Nazi-occupied Europe and had deposited them in many places, especially in Frankfurt am Main in the Rothschild Library, Hungen and Hirzenhain in Hesse, and all over Bavaria. The ERR targets ranged from occupied Ukraine to the French-Spanish border and from Greece to the British Isle of Man. The ERR even raided Italy, an axis power. After Kristallnacht, the ERR collected items to save and use them for Nazism.

Lt. Poste also described the U.S. combat and occupation operations to protect and restitute the looted collections. He and other Museums Fine Arts and Archives personnel felt the collections at the Rothschild Library and other places should be moved to a single large, secure facility. The I.G. Farben building at Offenbach was their site of choice.

FIRST IMPRESSIONS OF OFFENBACH

My first impressions of the Offenbach Collecting Point were overwhelming and amazing at once. As I stood before a seemingly endless sea of crates and books, I thought what a horrible mess! What could I do with all these materials? How could I carry out my assignment successfully? Beyond the mess, however, was an even larger mission. Indeed, the only action possible was to return the items to their owners as quickly as possible.

The Offenbach Collecting Point was housed in well-guarded five-story concrete building suitable for use as a warehouse following repairs. Inside, however, there were only six or seven Germans, headed by an U.S. civilian with displaced person status, who did very little. Many crates, packages, stacks, and loose piles covered several floors. Clearly, the operation was not being run effectively. My mission was to revive this organization in order to accomplish my mission successfully. Hence I launched the following actions.

THE OFFENBACH ARCHIVAL DEPOT

The Offenbach Archival Depot was officially established under military directive, in conjunction with Monuments, Fine Arts and Archives Wiesbaden, on March 2, 1946. As Director of the Offenbach Archival Depot (OAD), I received extensive authority and broad mission responsibilities within Greater Hesse. The operation's new designation indicated my function as archivist. Archival principles, such as restoration of the original order, were crucial at this stage. As part of the directive, an organization chart served as a blueprint for action by three branch chiefs responsible for administrative, operations, and liaisons, respectively.

The OAD needed many hardworking personnel, and requested about 50 people a week throughout March 1946 from the local German employment office. By March 28, the OAD had nearly 180 employees. Good working conditions were essential. Heat, light, clean floors, repaired windows, and heavy-duty shelves were provided. U.S. sources requisitioned and supplied enough coal and gasoline. And the large OAD maintenance staff - about 30 - did an excellent job of ensuring a pleasant working environment in the depot.

The I.G. Farben complex had security staff on site, as did the OAD. Together, security watched employees for theft items, particularly small books that were easy to hide. Some thefts did occur - some were detected, others were not. Spot checks of OAD employees were also conducted. Some staff members were even strip-searched. Moreover, internal telephones on each floor were activated through an OAD switchboard.

SORTING, IDENTIFYING, PRESERVING

The OAD received tons of materials from Frankfurt, Hirzenhain, Hungen, and many other German locations. By March 25, 1946, the OAD had processed - received and/or shipped - over 1.8 million items contained in 2,351 crates, stacks, packages, and piles.

Crates, stacks, packages, and piles bearing some indication of the country of origin were spot checked and set aside pending restitution claims. Following some classification by country and by language, the semi-identifiable piles awaited further processing. The unidentifiable books and other materials were left alone until an opportunity arose for careful study by competent persons - professionals like Professor Pinson, Chaplain Isaiah Rackovsky, Rabbi Maurice Liber, Dr. Gershom Scholem, Lucy Dawidowicz, and knowledgeable displaced person volunteers. Much thought was given to improving and expediting the identification process. My successor, Captain Isaac Bencowitz, who began to intern at Offenbach in April 1946, designed a somewhat unique system, which I called the "Bencowitz sorting system," identifying books from ex libris bookplates or stamps found inside book jackets.

Many books and documents required care and preservation as a result of mishandling, damage during transit, water, mold, and neglect. The OAD did not possess any equipment or materials for care and preservation. Luckily, I learned that one of the employees - a former monk - had worked with documents at a religious order. I assigned him

to devise homemade care and preservation techniques. One method he used for drying wet books and documents involved hanging them from clothespins and applying extra heat. The technique worked very well.

RESTITUTION

What did the OAD accomplish? As of August 1947 some 2,000,000 books and other identifiable materials had been restituted and distributed. I am proud - at this late state - to relate to you that the United States restituted well over 93 percent of the Nazi-looted materials. Five countries -Germany (Berlin), the Netherlands, France, the USSR, and Italy received the following quantities of materials: Germany (Berlin), 700,000; The Netherlands, 329,000; France, 328,000; the USSR, 232,000; and Italy, 225,000.

In addition to items restituted to governments, the YIVO Institute for Jewish Research with worldwide headquarters in New York received 92,000 items. Under direction of the U.S. State Department, I supervised the return of these materials to the United States in June 1947. The American Jewish Joint Distribution Committee distributed, on loan, of 24,000 books to the Displaced Persons; and the Library of Congress Mission received some 20,000 books. German institutions other than the Preussisches Staatsbibliothek received 50,000 items; Poland 25,000; and Belgium, Czechoslovakia, United Kingdom, Greece, Hungary, and Yugoslavia each received less than 10,000 items.

OAD HISTORY

Both Isaac Bencowitz and I understood Offenbach's importance and the need for an historical record of its activities. We wrote detailed, factual monthly reports. We prepared pictorial albums - I did the first one, and Bencowitz did three others. We saved correspondence relating to OAD operations, including liaison relationships. These items are on deposit in over 20 archival boxes in the U.S. National Archives in Washington, D.C. as well as deposited with Yad Vashem in Israel.

Bencowitz also recorded his experiences in his diary, from which I share an eloquent entry describing the signification of Offenbach's history:

I would walk into the loose document room to take a look at the things there and find it impossible to tear myself away from the fascinating piles of letters, folders, and little personal bundles. Not that what you held in your hand was so engrossing, but rather what the next intriguing item might be. Or, in the sorting room, I would come upon a box of books which the sorters had brought together, like scattered sheep into one fold - books from a library which once had been in some distant town in Poland, or an extinct Yeshiva. There was something sad and mournful about these volumes ... as if they were whispering a tale of yearning and hope since obliterated... I would find myself straightening out these books and arranging them in the boxes with a personal sense of tenderness as if they had belonged to someone dear to me, someone recently deceased

AFTER OFFENBACH

I returned to Offenbach in 1947 on assignment for the Library of Congress Mission to arrange the transfer to New York of the vast YIVO archives. Later, I briefly participated in restituting the Collegio Rabbinico de Firenze's historic library, including the incunabula, to Italy. I have remained involved in restitution efforts throughout most of my military service, primarily as the U.S. Department of Defense Representative to the U.S. Interagency Committee on Captured ("Seized") Records and other restitution-related assignments. I worked with German representatives of Konrad Adenauer to return German military records. I also participated briefly in the transfer of the U.S. Army Berlin Documents Center to the State Department, which have been turned over to the German government.

In retrospect, Offenbach proved to be a most unusual and challenging assignment - a high point in my 35 years of military and civilian service. Offenbach was a very unusual part of what I call the "cultural Holocaust." Participating at Offenbach on the greatest book restitution in history now seems truly providential. I share Lt. Poste's sentiments that,

Facts and figures on the Offenbach Archival Depot fail to reveal the intensely moving story of this phase of

restitution activity. Through the depot passed the remnants of age-old cultures, and particularly of a culture which survived despite the vicissitudes of interminable persecutions and periodic massacres. These books and objects were what was left of the hundreds of Jewish institutions of learning, of Jewish communities, wiped out by the Holocaust. Few can fathom the depth of the Jewish tragedy of which remnants stood as a sad memorial.

CONCLUSION AND OUTLOOK

In closing, I am inspired by actions of the international community to convene at the Washington Conference on Holocaust-Era Assets to resolve lingering issues of restitution and archival access. To this end, I support and encourage efforts to identify items improperly restituted, and to negotiate with rightful owners for redistribution of such materials. In addition, I recommend governments and institutions -examine and report the fate of restituted materials as well as prepare inventories and provide access to archival materials restituted vis-à-vis Offenbach.

It is at this exciting moment in history, that silent archives where facts have gathered dust and awaited the avenging moment of their revelation may at long last find voice.

Dr. Constance Lowenthal

DIRECTOR, COMMISSION FOR ART RECOVERY,
WORLD JEWISH CONGRESS
WORLD JEWISH RESTITUTION ORGANIZATION
UNITED STATES

Break-out Session on Nazi-Confiscated Art Issues: Identification of Art, Archives and Databases

The Commission for Art Recovery was formed to reunite pre-war owners (or their heirs) with art that was looted from them by the Nazis and their collaborators. It will also locate and recover heirless art for the benefit of Jewish communities.

The formation of the Commission was announced at a meeting of the World Jewish Restitution Organization in September 1997. It operates through the World Jewish Congress - American Section. Ronald S. Lauder is the Chairman.

I began as director in mid-January 1998. The Commission has a staff of five. Menachem Rosensaft serves as Special Counsel.

The problem we seek to address is familiar to everyone attending this conference. Much has been written about, and our speakers in the plenary session have already described, Nazi art confiscations from private collections and from Jewish art dealers' inventories.

Nazi art thefts were a violation of international law at the time they took place, even though the Third Reich enacted laws to give the appearance of legality to some transactions. Knowledge of this led to the Allies' Declaration of London, which suggested that nullifying forced sales would be important. Taking spoils violated Article 56 of the 1907 Hague Convention, to which Germany was party. Nazi confiscations of cultural property were crimes at the Nuremberg Trials.

In addition, these thefts were inextricably linked to genocide. Often the looting immediately preceded the escape of the victims, or for the less fortunate, their deportation and extermination.

Some plunder was official, and some was the result of aggressive collecting by high level Nazi officials like von Ribbentrop and Hermann Goering. During the German occupation of France, Goering regularly visited the Jeu de Paume, the little museum on the Place de la Concorde. New shipments of art seized from Jews arrived every day.

During his frequent visits, Goering made his choices, and his initials were stamped in the margin of the inventories of seized Jewish collections next to those items that he wanted.

The western Allies were well aware of the looting and investigated it after the war. It is well known that the Allies found vast stores of art in caves and mines. Some belonged to Germany's museums, but much of it was confiscated art destined for Hitler's planned museum in Linz. They also found traincars near Berchtesgaden filled with art amassed by Goering.

Some art that the Nazis looted from Jews was found, at the end of the war, in the Soviet sector. This was not returned; Soviet policy determined that Red Army Trophy Brigades would remove it to the former Soviet Union. Collections of Hungarian Jews, for example those of the Hatvany and Herzog families, are today in Russia, looted first by the Nazis and later taken by the Soviets.

The western Allies returned, and could only return, what was found on German territory after the war. Art confiscated from German, French, and Belgian Jews that had already been absorbed by the art market, through Jew auctions and wartime trades, was untouched by these efforts.

The first step in re-uniting Jewish confiscation victims with their art is to identify it. This is called for in the Principles circulated by Under Secretary Eizenstat's office. The Commission for Art Recovery has designed a computer database to assist in ways that were not possible until now. The New York State Banking Department Holocaust Claims Processing Office is using the same software, and the two organizations are sharing all information.

The simple concept of the database is a matching of "Lost and Found" art that is executed in a very sophisticated way. The Commission's database will match claimed works of art with published works whose whereabouts are usually known and whose provenances give reason to believe that they might have been looted. The software developed for the Commission by Gallery Systems, Inc. is unique in this ability.

We are soliciting information from claimants on the art they lost. Often their descriptive information is insufficient to identify it. Of course, people who fled the Nazis were unlikely to have carried detailed inventories of their collections with them. One claimant's Austrian mother made her inventory from memory in the London Underground during the Blitz.

The Commission developed its claim form with the help of colleagues at the Art Loss Register and the New York State Banking Department Holocaust Claims Processing Office. Claimants may contact the Commission's office or download claim forms from our website (www.wjc-artrecovery.org).

We also ask for accurate information about the various names, residences, and dates of birth of the victims.

To help improve the quality of information for claimants, we will cross-index claimant family names with those in Nazi looting records and with names of homeowners insurance policyholders whose policies had art schedules. If the names match, we will then obtain copies of the Nazi inventories or the insurance art schedules and fill in the descriptive information. Even if a grandchild-claimant is unaware that his family had insurance, we may be able to get a list of art and antiques from an old insurance policy. These are fairly detailed inventories that can supplement claimants' recollections and strengthen a case.

Our criteria for describing art are compatible with museum standards and the Getty Information Institute's "Object ID", which is used by many types of organizations that need to identify art, including: law enforcement agencies, insurers, etc. Our database will also use two authority vocabularies developed by the Getty Information Institute for geographic names (Thesaurus of Geographic Names - TGN) and for artists' names (Union List of Artists' Names - ULAN). These computer aids make it possible to find the works of an artist even though his name may have many variants, i.e. Michelangelo Merisi is known in Italian and in English as Caravaggio, in French as le Caravage. Jan Brueghel (or Bruegel) the Younger was also known as "Velvet" Brueghel. Likewise, place names vary in languages and time, but our computer will recognize that Lemberg is Lvov is Lviv.

We are now officially accepting claims, but even before a public announcement, the Commission received correspondence and telephone calls from 55 families whose losses occurred in eight countries: Austria, Czechoslovakia, France, Germany, Italy, The Netherlands, Poland, and Yugoslavia. We have met with relatives of Alphonse Kann, Jacques Goudstikker, Jacques Helft, and Georges Wildenstein.

To develop our catalog list of Found art, we drew up a list of the names of looted families and art agents and middlemen mentioned in the reports of the Office of Strategic Services investigators and in "The Rape of Europa" by Lynn Nicholas and "The Lost Museum" by Hector Feliciano.

Since many looted works of art were sold and entered the art market before the war was over, we guessed that some portion of the highest quality works would be published. Our staff went to the library and looked for provenances that included the names on our list or were simply blank for the critical years. These are works that could be matched with art sought by our claimants. We began with catalogues of permanent collections and exhibitions assembled from museums and private collections. Our research team will go on to catalogues raisonnées (the scholarly publications that include all the works of a particular artist), and other exhibition catalogues.

In just four months, after consulting about 220 books, we found over 1,700 possible matches. The scholars who prepared these catalogues have included such names as Goering, the Fuhrer Museum in Linz, Hans Wendland, apparently without self-consciousness. The Commission's findings reveal that these works are more numerous than previously assumed. When museums said they thought the problem was small, they were sincere. I believe that most current possessors have no idea of the art's tainted past. I believe that many of the scholars who included names of once notorious dealers in published provenances simply didn't recognize the names as having a connection with Nazi art looting.

The Commission's customized software will compare works of art with works of art and report possible matches to us, based on the number of category characteristics they share, categories like artist's name, subject, medium, approximate size. Even if the art matches on all criteria, this only means that further research is necessary. It may be a looted work of art that was never returned or it might be a recovered object which was sold legitimately by the pre-War owners.

The working database will neither be on the Internet nor "published." We are happy to share claimed art information with other restitution organizations and with the art market. We would welcome the opportunity to add other lists of claimed art to ours. We also welcome lists from museums of works whose provenance has gaps during the critical years, or has names of persons involved in the trade of Nazi-looted art.

The Commission has an agreement with the Art Loss Register to share information about the art claimed so that those works of art will be checked against the upcoming auction sales at the major houses (the Art Loss Register checks about 400,000 auction lots annually). This was arranged early on, so we designed our database for ease of electronic information transfer. We are open to discussions about sharing

information with other organizations. As I mentioned, the New York State Banking Department Holocaust Claims Processing Office has chosen to use the Commission's database.

I have held talks with people in the art world (museums, dealers, auction houses), with law enforcement agencies, government officials, and art restitution groups. I believe this is essential. The solution to this problem requires cooperation across the board internationally, in the public and private sector, in the art trade and insurance industry.

An Advisory Committee for the database is in formation. Its members include Jane Kallir, President of Galerie St. Etienne and an expert on Egon Schiele; Robert Bergman, Director of the Cleveland Museum of Art; Charles Moffett, Sotheby's Vice President for Impressionist & Modern Paintings and a former curator and museum director.

In the coming months I expect to work with scholars of international law and others to study and develop Principles of Return to guide the Commission's work. The Principles put forward for adoption by this conference do not apply readily to looted art held by private individuals. Yet, I believe that most works of art that we will find will be in the hands of good faith purchasers who, under European legal systems, acquire good title. Many of the looted works have changed hands several or many times since 1945, and many of the buyers would be considered good faith purchasers under law. I am well aware of the difference between European law and that in the United States, Canada, and the United Kingdom. Here a thief cannot pass good title, but time limits may curtail a victim's rights. In Europe, a good faith purchase confers good title.

Some heirless works may be found in museums. We need to develop policy on heirless art (a) when there is one work of art in a private or public collection, and (b) when countries have not returned art to pre-war owners and a large number of works is under a single, national administration.

In spite of the complexities that surround this problem which we have inherited, I am hopeful that new research, new identification techniques, and a new will shall resolve it – a will demonstrated by this Conference. Our joint efforts can help to correct the inequities we have tolerated for too long.

Mr. Ronald S. Tauber

CHAIRMAN, THE ART LOSS REGISTER, INC.
UNITED STATES

Restitution of Looted Art: A Practical Approach

Break-out Session on Nazi-Confiscated Art Issues: Identification of Art, Archives and Databases

This Conference on Holocaust era assets has the opportunity not only to formulate general principles, but also to encourage practical steps to help reconstitute looted art to rightful owners. I am the Chairman of the Art Loss Register Inc. which represents the world's largest private database of stolen art. The company was formed principally by the art and insurance industries in order to help identify and recover stolen art, to deter the trade in stolen art and to provide a central checkpoint to prospective purchasers and lenders. The database now comprises more than 100,000 items reported to have been stolen worldwide, and each year the Art Loss Register examines 400,000 auction lots to uncover stolen or looted items. Auction houses participating in this screening program include Sotheby's, Christie's, Phillips, Bonhams, Dorotheum (Vienna), Lempertz (Cologne), Bukowskis (Stockholm), Villa Grisebach (Berlin), and Finarte (Milan).

The majority of items on our database consists of contemporary thefts. Earlier this year, however, with the financial support of certain of our shareholders, principally Sotheby's and Aon Corporation, we began the expansion of our activity relating to Holocaust era assets. Based on our extensive experience in helping to recover stolen and missing art, we are convinced that a practical approach will result in identification and recovery of looted art. In general, the practical approach relies on two steps. First, to the fullest extent possible, all items of looted art should be entered on a database open to all organizations working in this area. Second, items on the database should be continuously checked against art entering the commercial market at the point of sale.

There is at present no single international listing of looted art and many of the existing publications, produced mainly just after the war, are now inevitably out of date. Our aim, working with others, is to create as complete a database as possible of works of art looted by the Nazis, Soviets, or others from public or private collections, preferably, though not exclusively, with claims attached. The Art Loss Register has carefully built bridges to the World Jewish Congress Commission for Art Recovery, the New York State Holocaust Claims Processing Office and the Holocaust Art Restitution Project. Our efforts represent an unusual level of cooperation between the private sector, government and philanthropic agencies. We are exchanging data and have succeeded in creating a unified Wartime Losses Claims Form.

Claims are accepted where there is a reasonable chance of identifying the item and the claim is judged to be authentic. Additional validation of claims would be required at the point of identification. During the past year, 560 Holocaust looted artworks have been reported to the Art Loss Register to add to the approximately 4,000 missing artworks from museum collections from Belgium, France, Germany, Hungary, Italy and Poland. All registrations of looted art from private individuals are free of charge, and the ALR will not charge its customary recovery fee when it is able to identify an individual's looted artwork in an auction house catalog or elsewhere.

The diversity of the art reported to us during the past year is striking. We registered on our database a portrait by Paul Gauguin of his son, Emile. This painting was seized by the Nazis from the collection of Jakob Goldschmidt in the early 1930's. The painting was sold at the Hans Lange auction house in September 1941 with other works confiscated from Jewish collections to raise money for the Hitler Jugend. We have also registered Impressionist pictures from the Paul Rosenberg collection; a Marieschi painting looted by the Gestapo in Vienna in 1940; a series of five hunting tapestries seized from the Berlin Oppenheimer collection on the orders of Hermann Goering; a collection of Dutch Old Masters apparently seized by Allied troops in Austria in 1945; and other paintings seized as war loot by the Red Army.

The first pillar of the practical approach, then, is the creation of a comprehensive database. The second pillar is the continuous examination of the commercial art market. Our staff of twenty examines auction house catalogs from around the world, responds to dealer, customs and police inquiries and is identifying the location of a stolen item nearly every day. Since our formation in 1991, we have recovered in excess of \$75 million in value. To illustrate the effectiveness of our

process, during just the past eighteen months we identified a Manet, a Monet, two Picassos, a Giacometti, and a de Kooning among many other items of lesser value; some of these pictures were reported stolen more than twenty years ago. In our view, as the database of looted art grows, we will be able to make significant matches in the commercial marketplace. Please understand that the auction houses are totally supportive of our efforts. They are not concerned that we will cause the withdrawal of some lots from sale. Quite the contrary, their business requirement is that a comprehensive data base be built as quickly as possible so that they can be assured that they do not offer looted art for sale in their salerooms.

As I have said, The Art Loss Register is committed to providing a pragmatic response to the task of identifying and, where possible, returning looted art to its rightful owners. We recommend that this Conference urge the adoption of the following practical guidelines with respect to the purchase, sale and ownership of works of art:

First, commercial sellers – galleries and auctioneers – should undertake due diligence, prior to sale, to determine the rightful provenance of a work of art through consultation with relevant databases and appropriate experts on art looting. The screening by the ALR each year of approximately 400,000 auction lots against the database of claims is a key part of this process. Increasingly, galleries are also using our service. The ALR is underpinning the screening program by providing the auction houses with a research effort that highlights pieces in catalogs whose provenance suggests that the item may have been looted and might therefore be problematic.

Second unless it is clear that the seller has already done so, a potential purchaser of art should consult the databases and appropriate experts to determine the rightful provenance of the item in question.

The third recommendation concerns works of art held by public and quasi-public institutions. The ALR is helping the museum community conduct due diligence with respect to the acquisition and display of works of art. In the United States, approximately twenty museums – including the Chicago Art Institute, the Metropolitan Museum of Art, the Museum of Modern Art, the Boston Museum of Fine Arts, the National Gallery of Art in Washington, the Indianapolis Art Museum and the Cleveland Museum of Art – are checking acquisitions, donations or existing exhibits against the ALR database. Many museums are already searching their holdings to determine whether any of the works may constitute looted art. We recommend that every museum and public institution be urged to conduct a rigorous self-examination of its

holdings in line with the statement adopted by the American Association of Museum Directors in Worcester this past June. These institutions should then create an inventory of "problem" pictures where the provenance is unclear or has problematic gaps. The creation of such an inventory of "problem" pictures, stored alongside the register of losses, would allow researchers and others to focus on potentially looted works.

This Conference serves an important purpose. Nothing that we do today can compensate for the catastrophes imposed by the Nazis on the Jewish people and so many others during the Holocaust era. We must do what we can, however. And we can and must see to it that all practical steps are taken to return stolen property to its rightful owners.

Ronald S. Tauber is the Chairman of The Art Loss Register, Inc. He is a former partner of the investment banking firm of Goldman, Sachs & Co. and a former partner of Strock & Strock & Lavan, a New York law firm.

Gilbert S. Edelson

ADMINISTRATIVE VICE PRESIDENT AND COUNSEL,
ART DEALERS ASSOCIATION OF AMERICA
UNITED STATES

Break-out Session on Nazi-Confiscated Art Issues: Identification of Art, Archives and Databases

I speak today as a representative of the Art Dealers Association of America which is known as ADAA. ADAA is a non-profit association of America's leading dealers in works of fine art, that is painting, sculpture and works on paper from the early Renaissance to the present.

ADAA's members are sensitive to the issues involved in Nazi-looted art. Many art dealers and their families, including past and present ADAA members, were victims of Nazi persecution. Their inventory and their private collections were looted. Some perished, some were imprisoned in concentration camps, some came to the United States where they have made important contributions to the cultural life of this nation.

We don't know precisely how many works were looted by the Nazis. We don't know precisely how many looted works were returned to their rightful owners. We don't know how many looted works were not returned, or where they are now. We will never have complete answers to these questions, but we must do everything in our power to assemble the information. We can speculate and debate, but it is more important that we act, that we get on with the work to be done in this country. What is that work? I suggest the following:

First, we must stop all traffic in unrestituted Nazi-looted art.

Second, we must seek to identify works which are subject to claims, and their owners.

Third, we must seek to resolve claims fairly and expeditiously.

First, as I have said, all traffic in unrestituted art must be ended. To that effect ADAA has pledged that its members will not knowingly sell such works.

ADAA members will continue to research the history of the works of art which they offer. That research will be professionally conducted by individuals uniquely qualified to do so by virtue of their

specialized knowledge and experience. ADAA members know that research into a provenance is not a title search and that there are frequently gaps in a work's provenance for perfectly legitimate reasons. They are also aware of the fact that because certain dealers' or collectors' names appear in a provenance does not necessarily mean that the work was looted and not restituted. I should note at this point, as a slight digression, that ADAA members will continue to assist museums which make inquiries about the provenance of works in their collections.

Our second task is the identification of unrestituted works and their owners. Many months ago, in testimony at the hearings so ably conducted by Congressman Leach, we said that the single most effective tool which dealers, collectors and museums could utilize in determining whether a given work of art has been stolen is a reliable, central source of information about its identity and the identity of any claimants to the work. We urged the creation of a central database containing that information.

We understand that such a database is now being created and will be maintained by the World Jewish Congress' Commission on Art Recovery under the effective leadership of Connie Lowenthal. ADAA will, of course, fully cooperate with this enterprise. One of our members, Jane Kallir, has been invited to join the advisory committee. She and other ADAA members will make their expertise in works of art and their experience in the field of stolen art available to the World Jewish Congress. We urge all other interested parties to do likewise in the hope that the database will be as complete as possible and fully operational at an early date. ADAA members will, of course, avail themselves of this important facility. They will also be consulting the Art Loss Register which is taking a very active and commendable role in the maintenance of a database of stolen works of art, now including Nazi-looted art.

I note that the FBI has placed information about stolen works of art on the Internet, where it is widely and freely available. I hope that the database on Nazi-looted art will also be on the Internet.

We believe that the first priority of a database ought to be the assembly and dissemination of claims by victims or their families of specific, identified works. We also believe it important that any claimed work be identified as precisely as possible.

Our next task is the resolution of claims. In the United States, our experience in the resolution of claims of ownership has thus far been limited. In the past 40 years, there have been only four or five court cases of which I am aware which involve Nazi-looted art.

Even on the basis of our limited experience, however, we know that a case involving Nazi-looted art can involve difficult and complex issues of law and fact. In such a case, a purchaser in good faith may be sued by the original owner, from whom the work was stolen. One of two innocent parties will be hurt.

American law favors the original owner. Under our jurisprudence good title to a stolen work does not pass. The European legal system, however, favors the good faith purchaser. Even in the United States the law varies from state to state on such issues as the applicable statute of limitations.

Likewise, any case involving Nazi-looted art may present difficult factual problems. After all, the claimed work was looted more than 50 years ago. Identification of the work may involve special problems. Witnesses may be gone; memories may be bad.

Any lawsuit is therefore likely to be lengthy and expensive. The costs could exceed the value of the work. And there is something else which serves to make such a case longer and more expensive — passion. I know of no lawsuit which engenders more passion, this side of the bedroom, than an action involving a work of art, especially one involving possession of the work.

We therefore urge the parties to any claim involving Nazi-looted art to consider mechanisms which exist for resolving claims without the necessity of litigation, such as mediation, arbitration and alternative dispute resolution. There have been suggestions that such cases be resolved by a commission or committee of experts. I would not agree. It must be kept in mind that each case is fact specific, and that it will therefore be decided on the basis of its unique facts. Each case will therefore require different expertise, which may be beyond the competence of a single committee. There are no “art experts”; there are only experts in specific and limited fields. Moreover, to the extent possible, the parties should be able to choose their own mediator, arbitrator or such other aide in the non-judicial resolution of a claim.

ADAA and its members are prepared to make their expertise available at no cost to parties who attempt to settle claims without litigation. Resolving such disputes promptly, fairly and inexpensively is in the base interest not only of the parties involved but of the entire art community.

Dr. Konstantin Akinsha

RESEARCH DIRECTOR,
PROJECT OF DOCUMENTATION OF WARTIME CULTURAL LOSSES
UNITED STATES

Break-out Session on Nazi-Confiscated Art Issues: Identification of Art, Archives and Databases

The establishment of different databases, collecting information about art works looted during WWII, is now a popular topic within the circle of scholars and representatives of organizations and groups involved in the search for the 'disappeared' cultural property of the victims of the holocaust. There are many plans and ideas to create a "total" database, which will include all possible claims and information about nearly every artwork looted during the war. Unfortunately such an undertaking doesn't appear very realistic. When we are addressing the problem of the cultural property lost during the war, we are talking about hundreds of thousands of paintings and objets d'art. It is difficult to believe that tomorrow some organization will be ready to collect such a quantity of information from archives throughout Europe and put it into computer format.

Much more productive are the efforts of some European countries (for example Austria) to post Internet lists of claims collected by the governments in the first post-war years. However, not all European governments are ready to make such information public. They have a good reason. In many countries (for example the Netherlands, Belgium, France, Austria) a portion of the art works returned by the Allies after the end of the war was sold through government organized auctions. The ground for such sales was that the "owners" of the pieces were never found. However in many cases provenance of the works of art proposed for sale was not carefully checked.

Today the traditional argument against putting information about post-war claims in the public domain is that such a step could violate the privacy of claimants. It seems, however that the real reason behind the secrecy is different: to avoid scandals that could start if some art works, sold by the governments after the war, will be recognized and claimed by their real owners. The majority of recently established databases are of a practical, workaday nature. Their task is to collect information about

claims and to provide detailed descriptions of the disappeared art works. However, not only "practical" databases could be of help in the research and understanding of the Nazi looting of Europe. No less important is historic research, which could have both a practical and academic value. Unfortunately, the Nazi looting of European culture is a part of the history of the 20th century, as it is a part of art history and the history of taste. Without detailed research of this dark chapter of our past, we will never understand it in its complexity.

I represent the Project of Documentation of Wartime Cultural Losses, an academic organization, the task of which is to research and to put in the public domain information about the confiscation and removal of cultural property during the war. We recently opened our web site, which you can find at the address: *doc.proj@loyola.edu*. The first project put by us on the web is dedicated to the looting of the Jewish collections of France. It includes reproductions of some documents of the notorious Arbeitsgruppe Louvre of the Einsatzstab Reichsleiter Rosenberg, responsible for confiscation of the Jewish art treasures in occupied France. In addition to lists of confiscated paintings selected for the Hitler museum in Linz and the private collection of Field marshal Herman Goering, we put on our web site photographs of exhibitions of looted art organized by the Nazis in Jeu de Paume, then the collecting point of the stolen masterpieces. These photos, proudly produced for the ERR files, were never published before. Using albums of photographs of thousands of paintings and objets d'art confiscated in France, which were presented by Alfred Rosenberg to Adolf Hitler, we succeeded to recognize art works put on display in the Jeu de Paume. You can see a virtual reconstruction of the notorious Nazi exhibitions of stolen art on our web site. By clicking on artworks displayed in the halls of Jeu de Paume, you will receive enlarged photos of them and information from which collection they were confiscated. At the moment we are researching the routes of the Nazi traffic of art works to Spain and South America at the end of WWII. Soon the results of this research will become available on our web site.

The Documentation Project is beginning research of the history and collections of the Hitler Museum in Linz. We hope to compose a complete catalogue of the most important Nazi collection of looted art in wartime Europe. We believe that if such information were available to the public it could be not only benefit historians and art historians but could prevent unpleasant scandals connected with the appearance of art works with Fuhrer museum inventory numbers on the international art

market. For complete research of the looting of cultural property during WWII Russian archives are extremely valuable.

I was surprised today by the statement of Mr. Kulishov, a representative of the Russian delegation, that Russian archives are open to researchers. It is not true. They are even more closed than in the beginning of the 90s. Mr. Kulishov quoted in his speech some documents from the Archive of the Soviet Military Administration of Germany – until this day independent researchers had no chance to cross its threshold. The notorious "Osobi" (Special) Archive – the collection of documents confiscated by the Red Army in the occupied European countries – remains closed to historians. Access to such museum archives as the archive of the Hermitage or the archive of the Pushkin Museum is strictly limited. Mr. Kulishov said that he has no information about Jewish cultural property kept in Russian special depositories. I want to give just a few examples - unique paintings from the collections of Hatvany and Herzog, Jewish families from Budapest, confiscated by the infamous Eichmann are today in the Pushkin Museum. The paintings, which include masterpieces of Goya, El Greco, Manet and Degas, were found by the Red Army in a little town Regensburg near Berlin and transported to Russia. Until this day a collection of the Torah scrolls confiscated by the Nazis in Hungary is collecting dust in the library of Nizhni Novgorod. In Moscow archives such as the archive of the Rotschild family, confiscated by the Gestapo in Vienna, and the archive of David Herzog, a professor of the Würzburg University and a member of the Rabbinate of Würzburg, whose house was burned out by the Nazis, are kept in the "Osobi" archive. It is possible to multiply such examples.

Today Russian representatives told us that according to the law on "cultural property removed to the territory of the Russian Federation in a result of WWII" adopted by the Duma, but not signed by president Yeltsin, Jews whose property was confiscated by the Nazis and than removed to the USSR can claim it back. But it is difficult to claim something if you don't know where it is. In the mid 50s, when the Soviet government was preparing to return the collections of the Dresden Gallery and other East German museums, the content of the Soviet secret depositories of art works confiscated in the occupied countries of Europe was checked. It was discovered that more than 1000 paintings stored in the vaults of the Hermitage and the Pushkin Museum had no provenance. Soviet experts had no idea about provenance of thousands of works on paper, sculptures, tapestries, and objects of furniture. It is possible to guess that some of them belonged to obscure and not well documented

German private collections. But a possibility that these "ownerless" art pieces, found on the territories of the Third Reich after the end of the war, once belonged to the European Jews is very high.

If Russian officials really want to return property to Holocaust victims and their survivors, they have to give an international art experts the opportunity to see and research these artworks of "unknown origin" that are now stored in different museum depositories. In his speech Mr. Kulishov mentioned that the Russian Federation will be happy to participate international efforts on the establishment of databases, which could help to trace art pieces disappeared during the war. Russia has a good chance to help the research of the Nazi confiscation of art. In the end of the war many important Nazi archives, which could now shed new light on the looting of the European culture, were confiscated by the Soviet forces and transported to Moscow. Among such collections are documentation of Sonderauftrag Linz (the organization responsible for collecting art works for the Hitler museum) which includes personal diaries of Hans Posse, the first curator of the Fuhrer collection. Important documents of ERR, the archive of SS and other valuable sources are still hidden in Russian archives. The open access to this documentation could be of great help for the researchers working to create databases of looted art.

Mr. Ori Z. Soltes

FORMER DIRECTOR, KLUTZNICK NATIONAL JEWISH MUSEUM
UNITED STATES

Spoliated and Restitutable Art and Their Databases

Break-out Session on Nazi-Confiscated Art Issues: Identification of Art, Archives and Databases

The following talking points note what I and my colleagues believe are the key issues that require consideration if an equitable resolution of this complex problem, both with respect to individual claimants and with respect to human history, is to take place. These points attempt to take into consideration the rights of claimants, which rights seem elsewhere to be missing in a conference which has as its most notable lack the presence (which is to say the *absence*) of claimant representatives – and has offered certain pre-digested conclusions from its outset, from the alleged number of objects stolen from Jews to conclusions about “what claimants should want and get” in lieu of their works of art.

1. No single database can ever be infallibly complete on this subject, due to the vastness and far-flung nature of the material, the lapse of time between the Nazi era and our own and the vagaries of human memory and human record-keeping. Certainly a registry such as that which currently exists, the Art Loss Register, has proven itself flawed with respect to stolen works both within and outside the Holocaust context – this I note not as a criticism, for the percentage rate of success for ALR is very high, but as a statement of historical fact and as a reminder that no one entity can accomplish it all.

2. Nonetheless, a database as a *beginning* point, not as an *endpoint*, is extremely desirable: the longer we wait to begin *doing* something, the more mired the issues become in impossibilities. The first

priority, to quote my colleague in the *Holocaust Art Restitution Project*, Marc Masurovsky, is “to create a list of Holocaust art losses on all unsettled Holocaust art claims arising from the Second World War which were filed with the American occupation military government of Germany and Austria between 1945 and 1951.” Most such data are contained, in fact, in one record group at the National Archives, here in College Park, MD, and HARP has already done some of the leg work.

3. The next crucial series of phases would include the consolidation of this list with the claims currently being processed through various agencies, such as the Commission on Art Recovery, (whose chairman, Ron Lauder, reiterated CAR’s commitment to championing the cause of claimants, yesterday), the Art Loss Registry (which has, as its Holocaust claims Director, Sarah Jackson, mentioned yesterday, begun to process such claims *gratis*), and the Holocaust Claims Processing Office (which has received scores of inquiries over the past several months). It would also include – and this is obviously of equal significance – the cooperation of all such countries, including the United States, who would order the complete declassification of all archival documents, civil and military, which have to do with Holocaust art thefts and their recovery after war’s end. This the French have begun to do at last, and this the Russians – specifically, Valeriy Kulishov, of the Ministry of Culture – vowed, in yesterday’s afternoon plenary session, to do. Presumably that sincere gesture can and will be echoed by similar acts of willingness to be accessible, on the part of other countries with archives that would help further to clarify the relationship between claimants and that which they would claim.

4. Each country would, then, ultimately, produce a registry of restitutable items located in their public holdings. For example, if, as is by now common knowledge, the French possess some 2,000 such works, these would be publicized in order to encourage claimants to come forth. In any case, the consolidation of all of these national and institutional registries would – and could, for the technology to do so is there – be consolidated, matching up unresolved claims with items still held in public institutions.

5. The residual would constitute the core of heirless cultural property. But the effort, if it is to be pro-active and not essentially passive, would go and could go further. All heirless property – property with no recognized claimant assigned to it – would be set aside and an effort made to locate claimants. This would require a substantial outreach campaign – but the precedent of the use of print, electronic and on-line media to facilitate such a massive search, is there, having already had a

“dry run” in the search for claimants with regard to Swiss bank accounts. Such a project could be managed jointly by organizations that are already in place to accomplish the various aspects of such an enterprise. Financing for this could be half public and half private. Some funds, for example, could come from the Holocaust Victims Redress Act of 1998, sponsored by Congressman Leach. Half could come from funds raised by the Jewish community, most of whose major organizations have claimed serious interest in this matter. The total of \$10 million is not beyond reach, and would support a process that will take 5 to 7 years to complete.

6. But for this to succeed, the kind of cooperation and sincere dedication that was evident 53 years ago in the efforts of the Art Restitution Commissions will have to resurface. Congressional legislation on a bi-partisan basis would have to support it. Museums, auctions houses, dealers and collectors must actively support the creation and distribution of the above-described international registry, look into their collections and their souls and continue to champion multi-sourced due diligence as we move between past and future. Practically, this means discontinuing the campaign on the part of some members of the art world to alter New York State legislation and undercut the rights of Holocaust claimants; to gut current law and oversimplify the issue of restitution by referring its questions to a simple and single database. It means cooperation on the part of such groups, rather than seeking to reduce the rights of claimants either to a time-specific window in which to lodge a claim or to a process of adjudication that denies them the right ever to reclaim their works of art. (Indeed that same attempt at problem-reduction also proposes to respond to any and all claims by means of a penny for dollar cash settlement. This banalizes the issue and equates works of art *qua* family heirlooms with old shoes and used tires). It means not hiding the demand for due diligence behind the false claim that the art market will revert to economic chaos if the pursuit of claims is ongoing and if multi-sourced due diligence in purchasing, auctioning, gifting or lending of works of art is demanded. This assertion is false for the obvious reason that, if art were *not* big business, and if art movement did *not* continue *even* while people were being destroyed by the *millions* half a century ago, the problem which we are addressing would not exist, and thus there is no reason to suppose that multi-sourced due diligence will significantly disturb, much less destroy the flow of art.

7. Where the matter of difficulties to resolve issues of restitution are concerned we applaud the notion of a group to arbitrate claims and keep the struggle out of the law courts. The question is who should serve

on such an important team, so that it be balanced and fair. I would suggest that it might include not only two art historians, two lawyers and two museum professionals, two claimant representatives, two Holocaust researchers, as well as one or perhaps two individual(s) from congress, but also a journalist – someone like a Morley Safer – who is committed to yielding just conclusions in such matters but with clearly no partisan ax to grind. Moreover, the goal of such a team should be to consider the claimant's desire as to *how*, if a claim is validated, it should be resolved, and not simply the penny for dollar restitution that has been proposed and ignores the *human*, as opposed to art market reality of claimants' claims. This means *not* assuming, as a point of departure, that claimants will be happy to settle for cash rather than art, which is insulting to them and unsubstantiated. This can surely be an *option*, but neither the *only* option nor the desired *goal*. Moreover, the notion that has been put forth, that such cashification (my own word; forgive the neologism) of claims could be funded by redirecting the Holocaust Victims Redress Act Funds in *that* direction is inherently fallacious since, if the moneys intended for research – precisely to help *answer* complicated provenance questions – are eliminated, then the ability of the team to make its determinations will be severely undercut, and with that ability, its very *raison d'être* demolished.

8. Such a team would have as a goal the assertion of claimant rights even as it would not assume that a claim was automatically valid, but would seek, bolstered by the expertise of its members, to determine that validity. Moreover, two different further categories of difficulties would confront it. One sort is where the holder of a work of art is a private collector; the other is where the holder is a public institution – be it a museum or a government. In both cases, some compensation to a good-faith purchaser might be necessary. In the first instance, compensation might come in the form of government intervention: offering a tax-break, for example, to the purchaser required to give up his/her work of art, could be a solution. In the latter instance, the team could further help broker an agreement between claimant and museum that would permit the museum to cede title to the claimant, but allow the work of art in question to remain, on long-term loan, in the hands and on the walls of the institution in question – thus no museum would be threatened by the sudden loss of massive parts of its collections – where it would hang side-by-side with heirless works. Similarly, all such works would have text panels explaining the painful history of ownership with has left a hole in their provenance, and educating the public about a subject which is an integral part of human history – and about which

there is at present virtually no education inside or outside of museums (a serious contradiction of the educational mission of museums, it seems to me). Such works would hang side-by-side with the wonderful array of works of art lucky enough to have had no part in this grim chapter of art history.

9. At issue, then, is both the resolving of claimant matters that have emerged out of the past, together with the restrengthening of our resolve to connect yet unidentified claimants with their objects; and maintaining our resolve with regard to multi-sourced due diligence matters in the future. We have a historic opportunity to restore, even after so many decades, some of what was forcibly taken half a century ago as part of an extraordinary outburst of genocidal fervor, and more fundamentally, to begin writing the last chapter of Holocaust history and give it a reasonably happy ending. And we have the opportunity to assure that the *failure* of due diligence over the past half century, which has yielded problematic claims questions today, will be replaced by an unequivocal willingness – mirroring that exhibited by our nation in 1946, and eventually and unaccountably abandoned over the years which followed – to do the morally responsible thing. I hope that we have the courage and conviction to write that last chapter with justice and humility, as we face simultaneously back on the past and toward the future.

Thank you for your attention.

Mr. Philippe De Montebello

DIRECTOR, METROPOLITAN MUSEUM OF ART,
U.S. ASSOCIATION OF ART MUSEUM DIRECTORS TASK FORCE
UNITED STATES

Break-out Session on Nazi-Confiscated Art Issues: Principles to Address Nazi-Confiscated Art

Thank-you, Congressman Leach:

It is a pleasure to appear before you again, as I did last February before the House Banking Committee that you chair, to have yet another opportunity to discuss the guidelines that American art museums have adopted in *principle* – and also set in motion *in practice* –that is, to deal fairly, forthrightly, and comprehensively with the issue of spoliated art from the Nazi/World War II era in Europe.

These guiding principles have now been in effect in the United States for six months. My colleagues here from Europe have had a chance to review the document and they have expressed general agreement with its content. Some have indicated that they, too, will be adopting similar guiding policies, adapted to their own country's situation.

When I testified on Capitol Hill 10 months ago, you may recall, I did so not only as Director of the Metropolitan Museum, but as Chairman of a Task Force of the Association of Art Museum Directors, assigned specifically to devise a comprehensive policy on this issue. I indicated then that our Task Force, composed of nine other art museum directors, would report back within four months with a policy to guide to art museums in North America. And this we did.

On June 4, at the AAMD annual meeting in Worcester, Massachusetts the Task Force report was discussed extensively, fully endorsed, and adopted unanimously. We coalesced around a broad set of principles, guidelines, and recommendations to deal proactively with the issue of works of art confiscated during the Nazi regime and not restituted to their legitimate owners or their heirs.

I will not read the entire report at this time. For whomever wishes it, I have copies of it as well as of the public announcement that accompanied its release last June 4th.

In the 10 minutes allotted me I'll offer a brief summary of the substance of the Task Force guidelines, and provide an update on how one museum at least, the Metropolitan, has moved to put the report's words into action.

Principally, the Task Force Report called on American art museums to begin to conduct a comprehensive review of their collections to ascertain if any works may have been unlawfully confiscated during the Nazi/World War II era, and never subsequently returned.

We agreed that to do so, we would make maximum use of traditional research from scholars, donors, auction houses, dealers, and of course, all of the standard literature, all of whom –or which-- might shed information on provenance hitherto unavailable or unrecorded. And we agreed that we must also take advantage of high-technology databases and computer linkages that are scheduled to be established by various third parties – computerized records that promise wider access to, and more reliable cross-referencing of, previously dispersed data: I cite, for example, plans for such an undertaking by the Commission for Art Recovery, established by the World Jewish Congress.

Such databases promise the possibility of a future in which claimants and art museums alike can use the Internet to gather and compare all available information about the provenance of a work of art - -now all widely dispersed--as well as the existence of any known past or present challenges to ownership. It is in these databases, ultimately, that lies the best hope of dovetailing information and access to hitherto unknown information – not only claims, I hasten to add, but possible postwar restitution or entirely proper subsequent sales.

Our report also, called on art museums to respond promptly to any and all claims by owners or heirs of allegedly confiscated art, and proposed resolving such matters “in an equitable, appropriate, and mutually agreeable manner,” ideally utilizing the avenue of mediation to help resolve claims, most of which, it was acknowledged would be *sui generis*.

Finally the Task Force guidelines recommended seeking as much provenance information as possible in the future before accepting gifts, bequests, and making purchases; and it discouraged borrowing works of art for loan exhibitions that were known to have been illegally confiscated during the Nazi/World War II era and never restituted.

By taking these concrete actions, art museums placed themselves firmly on record as committed to acting swiftly and proactively to conduct the necessary research that will help us learn more about works for which full ownership records have remained stubbornly unavailable –

hidden, for example, in this nation's own previously classified World War II documents, or in the Soviet Union and Eastern Europe.

Therein, incidentally, lies the key to a critical difference that exists between Swiss or Italian bank or insurance companies and the American Art Museum, a difference that is too often blurred. Indeed "omnibus" conferences such as this one --and I do not contest its enormous merits, encourages such blurring: namely, the implied equating of works of art somehow "secreted" in museums with "hidden" financial assets. I think everyone knows that this equation is patently absurd --nor, incidentally, were U.S. museums acquiring art in Europe during the Nazi era-- but rhetoric does get out of hand in this highly emotional arena. Of course, a mountain of books, journals, catalogues, press releases, and similar materials testifies to the contrary, and to museums' propensity for *celebrating* their collections, not *hiding* them.

The fact is, museums proudly announce acquisitions -- the Met has joyously recorded in recent weeks the purchase of works by Jasper Johns and Van Gogh -- and frankly, if my press office had not generated considerable press attention, internationally, someone would now be looking for other work! And of course, museums display new acquisitions prominently in their galleries, indeed all new acquisitions at the Met have a special and highly visible blue sticker on the label. Museums publish their art in widely-read illustrated catalogues, as well as in scholarly journals, and lend them to special exhibitions all over the world. They can be seen on ubiquitous postcards and posters that decorate dormitory rooms at colleges all over the country. We are, to mix a metaphor, an open book...when it comes to new acquisitions *or* the ongoing scholarship and research to which we also subject works of art that have long resided in our collections.

All that said, and I assure you that I offer this reminder of *past* practices strictly as a useful prologue to *future* practices, let me report on our progress in fulfilling the mandate of the Task Force I chaired.

The work is exhaustive. Frankly, it is also exhausting -- of resources, time, and human energy alike. But it proceeds. It will not, however, be done overnight; indeed no amount of money or industry at this point could guarantee the swift completion of the task: too much vital information is still unavailable. In most large museums at least, the systematic examination of indices, acquisition records, and entry cards, some of them written generations ago in now-fading ink, is an inherently slow and painstaking process. But it has begun: The Metropolitan Museum's own curatorial departments --there are 18, entrusted with over 2 million works of art, are reviewing the records of all works of art

acquired since the war and they report regularly to me and to the office of the Secretary and Council's. The Met is in the process of creating an illustrated, computerized collections management system, a project that will permit even greater access to the Museum's works of art. But this effort, too, is far from complete.

We continue to do our research, index card by index card, collection by collection – and I am assured that other museums are doing so as well. Our ability to fill in all the blanks in the provenance is likely to depend, in part, on unpredictable outside factors, such as the publication of further declassified, or previously unknown records, and their eventual, and indispensable ordering by archivists. As a case in point I would note that just a few weeks ago, a secretly compiled report of the OSS listing more than 2,000 people who allegedly handled art looted by the Nazis, was again made public, and again made news. There may be other such reports yet unopened.

I would caution, too, that it will unavoidably take time to construct the kind of databanks necessary to make a much-needed high-tech, cross-referencing archive function usefully. As is well known, no web site is more valuable than the data it contains. And I must point out, hopefully to good effect in this international forum, that the cooperation of European art museums, and of course, of their governments, in this data-building effort will be crucial to the success of any future data base.

I have probably exceeded my allotted time, Mr. Chairman. But to summarize: the AAMD has adopted a policy; American museums are committed to a comprehensive review of their provenance records, and many have undertaken them; we await eagerly the day when computerized data bases will provide easily accessed information on claims and restitution; we believe that many of our colleagues in Europe support this approach and are prepared to follow it themselves, a vital step toward crucial cooperative research; and we hope that whatever classified material remains shrouded in secrecy, here and abroad, can finally see the light of day to further illuminate our efforts.

Ladies and gentlemen, we believe in no principles more than those of fair title and public access to works of art. They have guided our policies of collecting and exhibiting art for generations. We are committed to re-examining our own records to ensure that neither goal is overlooked in the promotion of the other. And we welcome the notion that such an effort should be, as it now appears to be, a truly global one.

On the issue of the spoliation of art in the World War II/Nazi era, the genie is, at last, out of the bottle, and no resistance, apathy, or silence can ever fit it back inside again. We trust that all those who would right

so hideous a wrong will work to insure that information is sought, disseminated, and shared, legitimate claims addressed, and that great art, untainted by lingering doubts on its ownership, will remain available to the widest possible audiences.

Thank you.

Mrs. Françoise Cachin

DIRECTOR, THE MUSEUMS OF FRANCE
FRANCE

Issues of Unclear Provenance and Principles to Address Nazi-Confiscated Art

Break-out Session on Nazi-Confiscated Art Issues: Principles to
Address Nazi-Confiscated Art

Ladies and Gentlemen:

Because this session is dedicated to the provenance of artwork, the difficulties we are faced with, and the experience already acquired in this area, Mr. Amigues, the Director of Archives and Records at the Foreign Ministry, and myself have decided to present the work of each of our agencies conjointly, since the Foreign Affairs and the Museums have continually collaborated in this area, the Quai d'Orsay being in charge of investigating restitution request cases, and the State-owned museums being the custodians of the MNR artwork as well as the experts in history and art.

In introduction, I simply want to recall the role played by the Management of the Museums of France as early as during the war in protecting the French private heritage. This approach has facilitated later searches and restitution: the handling of private collections, particularly Jewish-owned, as part of State-owned collections when evacuated early in the conflict, the fictitious recording of threatened private collections in the inventory of public collections as a measure of protection, Rose Valland's courageous deeds in the Galerie du Jeu de Paume which had become a sorting center for the collections looted by the ERR, the involvement Jacques Jaujard, who was director of the State-owned Museums, in this resistance and subsequently in the creation of the Commission for Art Retrieval, as well the involvement of the curators of the Louvre in the searches made for restitution and in setting-up a

directory of Despoiled Assets, are some of the widely recognized historical facts.

What may not be as widely known, but is important to recall so as to understand the present situation, is the fact that the artwork referred to as "MNR" was put under the custody of the Museums of France, in accordance with the Decree of September 30, 1949. These paintings, totaling 2,058 pieces, have not been claimed. They could not be returned since their origin was unknown. The 1949 Decree called for these paintings to be exhibited: this was accomplished between 1950 and 1954 at the Chateau of Compiègne to allow potential owners to come forward and claim the artwork.

That same Decree also called for these paintings to be registered on temporary inventories, separate from state-owned collections: this was done in each department of the public museums involved (paintings, sculptures, drawings, objets d'art, etc.).

However, one of the provisions of the 1949 Decree was not fulfilled: the setting, through legislation, of a deadline for claiming this artwork. Since this deadline was never established, the Museums of France have always kept the MNRs available for possible claimants, a deed recently recognized in a dual appraisal of both our Chancery and our State Council. Thanks to the research made by former members of the Artistic Retrieval Commission, particularly by Rose Valland, about thirty additional paintings were recovered in the 1950's in addition to the 45,400 paintings retrieved after the war. After the Compiègne exhibition, and because all the paintings could not be permanently exhibited, the MNRs were distributed among State-owned museums and stored in provincial museums and government property. Even though part of this artwork is stored in custodial museums, the MNRs remain listed in state-owned collections catalogs, particularly those of the Louvre and the museum of Orsay, and also in the catalogs of temporary exhibitions of MNR artwork.

However, in the past several years, we have entered a new phase in the way we perceive the tragic events of World War II. I believe that this is because the generation of victims and witnesses of atrocities from that period has led way to new generations for whom duty of justice and memory prevail. This is also related to specific events, such as the fall of the Berlin Wall which brought back the despoiling issue back to the table, again revealing to us, among other things, that a considerable amount of artwork had nearly been ignored right until then.

Historians, such as Mrs. Lynn Nicholas, whose very enlightening speech you heard yesterday and whose book was translated into French

in 1995, journalists, such as Eric Conan and Yves Stavrîdès, who were the first ones in France to expose the subject of looted art in the weekly "L'Express," or even Hector Feliciano, in his book *Le Musée Disparu* ("The Missing Museum") helped draw the attention of the public power's opinion on these issues.

The Management of the Museums of France itself very soon became eager to inform the public and answer questions. It is in this intent that, in November 1996, it held an international colloquium titled "Looting and restitution. The fate of the artwork that was removed from France during World War II." About fifteen experts as well as French and foreign witnesses came to speak about the events that took place during the Occupation and in the post-war period, and the current dealing with the issue of despoiled artwork in France and other countries. At the same time, we set up a database on the Internet, on the server of the French Ministry of Culture, listing the complete catalog of MNR artwork along with pictures.

With the help of the research we have been conducting to find a "pedigree" for each of these pieces of art, a research that I will soon share with you, this catalog has been continually updated since then.

Finally, in the spring of 1997, we held an exhibition of MNR artwork at the Louvre, the Center Georges Pompidou, the Orsay museum, the Sèvres museum, the castle of Versailles, and in about one hundred other provincial museums. Many MNRs are already on permanent display at these museums, but we also wanted to boost viewing. Over the next few months, millions of inquiries were made into our database, and during the exhibition, we received a large number of calls from Jewish and non-Jewish families who had lost artworks during the war. Unfortunately, less than ten of these claims pertained to MNR artwork. Since then however, five MNR pieces were returned to their legitimate owners: paintings from Foujita, Gleizes, Picabia and Utrillo, and a drawing from Granet. However, I think it is important to underline that four of these art pieces were not claimed by the families after the war.

As I indicated earlier, we have begun a large scale investigation on the history of each of these MNR art pieces. Since 1997, this investigation has benefited from the support of a Commission created on the initiative of the Prime Minister in order to investigate the despoiling of Jewish assets in France. This Commission is chaired by Mr. Jean Mattéoli. About ten researchers thus undertook the task of systematically analyzing publications, particularly descriptive catalogs and mostly

archives. In fact, we are also researching additional resources provided by:

- the Art Retrieval Commission archives in Paris;
- the Office of Private Assets archives in Paris;
- the collecting points archives kept here in Washington at the National Archives,
- the German intelligence archives, particularly the Einsatzstab Reichsleiter Rosenberg (EER) that are available for consultation in Koblenz.

Also, we will soon begin researching archives kept in Berlin, as well as, I hope, a number of private records collections.

However, this work is facing obvious difficulties, from which I will list at least three:

- First of all, 2000 pieces are being researched. Their origin could not immediately be established after the war by the Art Retrieval Commission experts, such as Rose Valland and Carl Dreyfus, although they had direct knowledge of their contemporaries' collections and the tribulations undergone by them.
- Many of the often substandard quality paintings could not be traced back. Even the iconography, such as landscapes or unidentifiable portraits, was of little help.
- Research conducted on the 1,000 pieces other than paintings, such as sculptures, antic objects, furniture, tapestries, ceramics, is even more complex because these objects are particularly difficult to identify due to descriptions such as: "cup made of Sèvres porcelain," "Chest," "wing chair," etc.

The detailed results of these searches, which have nonetheless progressed significantly, will be included in a report currently being prepared by the Commission chaired by Mr. Jean Mattéoli. I can however give you today an initial overview of the conclusions that we reached.

Apart from a certain number of very clear-cut cases, which do not cast any doubt about their itinerary during the war, numerous questions remain about the history of many MNRs. For example, the origin of most of the 38 MNR exposed at the National Art Museum/Center Georges Pompidou remains unknown in spite of lengthy research conducted by this museum's curatorship. As for 980 older paintings that were studied by a team from the Louvre, the research indicates that most were bought from art dealers, at public sales at the

Drouot Hotel, or directly from French individuals by German museums such as those of Essen, Wuppertal, Dusseldorf, Vienna, and the museum that Hitler had planned to put in Linz, etc., dealers, brokers, dignitaries and Reich officials, without it being possible to determine the conditions that this artwork was sold under. It is likely, even certain, that others were despoiled or looted, but for now, the owners' identity remains unknown.

CONCLUSION

It is our intention that, regardless of what happened, the results of this research, which will be led to a completion in spite of difficulties, be made available to the public to the largest extent possible. Hence, I can announce to you that, in addition to the database made available on the Internet over the past two years, and which is regularly updated, we plan to release of a series of publications over the upcoming years: as early as next year, a catalog of MNR paintings will be released, including over 1000 pieces, and, another one containing other objets categories will appear in 2000. The purpose of these researches and publications is to ease recovery and restitution. In this regard, all the MNR artwork, proven to have been despoiled and the provenance of which will have been established, will evidently be returned to their legitimate owners. For those whose origin is uncertain or questionable, it is the duty of the Mattéoli Commission to make proposals about their fate to the French government. The government will then make the appropriate decisions.

It is my opinion that, as the many requests directed to us during the exhibitions of Spring 1997 demonstrated, we should expect more new developments on the artwork that disappeared before and right after the war than that found and kept in French museums under the name of MNR. In fact, a number of masterpieces from the famous SCHLOSS collection, from instance, reappeared on the market over the last few years. We tend to believe that, if we continue to be watchful, these types of discoveries will increase over the upcoming years. Finally, should I remind that large sets of artwork, even masterpieces, still remain "frozen" in some countries.

I will now let Mr. Louis Amigues speak and describe in much detail the restitution requests currently underway.

Ambassador Louis Amigues

DIRECTOR, ARCHIVES AND RECORDS, MINISTRY OF FOREIGN AFFAIRS
FRANCE

Break-out Session on Nazi-Confiscated Art Issues: Principles to Address Nazi-Confiscated Art

Ladies and Gentlemen,

As Mrs. Cachin just reminded you, the Ministry of Foreign Affairs is in charge of recovering the cultural assets that were despoiled by the Nazis.

Restitution requests should thus be made to the Foreign Ministry. Petitioners should provide supporting evidence of their filiation with the persons that were despoiled, or the bases for their entitlement. Once proof is established, they will receive a complimentary copy of all the documents that apply to them, from the archives of the Ministry of Foreign Affairs.

If necessary, the Ministry of Foreign Affairs can submit a petition to a French-German working group that was established in 1992, for the restoration of cultural assets. Two requirements must be met. First, the petition must be a reopening of a restitution petition already filed before 1956, because the German delegation will only consider petitions filed prior to this date. However, we have not renounced to submit cases that did not meet this requirement. Second, a minimum amount of pertinent information must support the petition.

There are currently around 80 families despoiled during World War II that have sent requests for information or petitions to the Quai d'Orsay.

To handle these matters, the Ministry of Foreign Affairs possesses in its own right two archival collections: one contains about 750 files, most of which came from the Art Retrieval Commission's archives given by the Management of the Museums of France at the end of 1991. The other belongs to the Office of Private Assets and Interests, an organization that was put under the authority of the Foreign Ministry, and which took over the Art Retrieval Commission in 1950.

In accordance with French law, these archives are confidential for a period of 60 years, meaning that they cannot be disclosed, because they contain private information that may affect people's lives. I will add

that, if necessary, it is always possible to have access to other archives collections.

It goes without saying, however it should be reminded, that all this activity occurs in consultation with other ministries and in narrow cooperation with the Museums of France. Among these institutions, and I insist on this point, there is no divergence on the essential. By that, I mean that the despoiled artwork that has been kept since the war or that was recently recovered has the vocation of being returned to those legitimately entitled to a restitution. However, differences of opinion may arise about the assessment that should be made on certain elements of the case.

This is usual, and there are established procedures to reach a decision. However, let me point out that ever since I began working on these cases, I have never encountered this type of situation.

This restitution work is facing several difficulties today. These difficulties essentially pertain to:

- The time elapsed since the occurrence of events makes the research very chancy, even impossible;-The lack of information or the vagueness of the information provided on the assets under petition, for instance, description of the artwork, circumstances of the looting (place, date), the lack of a claim after the war, etc.
- The journey of the artwork: did it travel commercially, and under what conditions? Right after the war, a series of official texts addressed the issue of returning despoiled assets. The issue of trading with the enemy was also addressed, allowing for the artwork bought by the Nazis to be returned. A Commission was put in charge of ruling, on a case by case basis, on the conditions under which the sales had occurred and whether they should be annulled or not.
- The absence of information on the owners of the retrieved artwork;
- The uncertainty of knowing whether a piece of art that belonged to someone before the war was still under this person's possession at the time of despoiling;
- In determining who are the heirs or eligible recipients;
- On the considerations associated with other State legislation on this issue, and the position of other States on this problem. It is not because laws and international agreements exist that a solution to the cases presented will be found.

What conclusions can we draw from our experience?

I have four main conclusions:

The necessity of rigor. It must be applied to both the research work and the decision that will be made, and that largely relies on the results of the research. A restitution can only occur if it is based on elements of proof, not on mere assumptions. A litigation opposing two families is underway, one family is disputing the ownership of artwork that was returned to the other family after the war. This example can only strengthen our resolve.

Observance of the law. Our work is done within the framework of domestic and international laws, from which we cannot depart.

The necessity of cooperation between all parties involved. Up until now, emphasis was put on the responsibility of the public powers. It is evident that this responsibility is real. However, I must underline that private institutions, dealers, auctioneers, and even individuals must equally demonstrate responsibility, even if, up until now, this is something that was not as widely discussed. It is very important to be able to have access to those records. Although this is not something required by the law in France, we are calling for voluntary cooperation.

The acknowledgment that each case is unique. No case is like another. Naturally, there can be some general rules, and I just recalled some of them. However, experience proves that there is no formula that will generally rule favorably on these restitution requests.

If you wish, I am ready to illustrate my words with a few examples.

I thank you for your attention.

Ms. Sharon Page

TATE GALLERY
CHAIR OF WORKING GROUP ON NAZI SPOILATION OF ART,
NATIONAL MUSEUMS AND GALLERIES' DIRECTORS CONFERENCE
UNITED KINGDOM

UK National Museums and Galleries Statement

Break-out Session on Nazi-Confiscated Art Issues: Principles to Address Nazi-Confiscated Art

I am speaking today as a representative of the United Kingdom's National Museum Directors' Conference. I am particularly privileged to be representing some of the UK's major cultural institutions and to be here among so many influential figures in the international cultural world.

I ought to start by telling you something about the Conference, which is a voluntary association of 26 national institutions who receive funding from central government. Its members include 20 museums and 3 national libraries and it is these institutions which I represent today.

In June this year, the Conference set up a working party to develop a statement of principles and consider what we in the UK should do about works of art that may have been confiscated from their owners during the Holocaust and the Second World War. I must stress that no UK national institutions have received any claims from owners dispossessed of works of art during this period. However, following discussions with Chris Smith, the Secretary of State for Culture, Media and Sport, Lord Janner, Chairman of the Holocaust Educational Trust and colleagues in the USA, France and the Netherlands, it was agreed that confiscated art was a subject which deserved serious attention.

As a lawyer in a major art gallery with a keen interest in cultural history, I was delighted to be asked by my director, Nicholas Serota, to chair the working party, which included representatives from the Victoria and Albert Museum, the British Museum, the National Gallery and the

Imperial War Museum. The statement which I am introducing today results from the working party's efforts and has been endorsed by all the directors represented by the Conference.

Before I give you an outline of the key points in our statement, I would like to give those of you who are not familiar with UK national institutions some idea of the diverse size and content of the collections they hold. It might also help if I painted a brief picture of the environment in which these institutions operate, as I believe it is pertinent to the way the principles and actions contained in our statement will be implemented.

To give you two examples – I work at the Tate Gallery in London which holds the national collection of British art and 20th century international art. Our collection currently totals about 60,000 works as well as related archive material. The Victoria and Albert Museum, on the other hand, has collections which illustrate and document the history of art, craft and design. With numbers in the millions rather than thousands, their collections include not just paintings, prints and sculpture, but also ceramics, furniture and costume.

However, although our collections vary enormously in size and scope, we have a number of important characteristics in common. We are all governed by act of parliament or Royal Charter which set out our various aims, objectives and powers, including – and this is particularly important to the topic under review today – our powers to dispose of works in our collections.

Most of our institutions are governed by Boards of Trustees who must act in line with their founding statute or charter as well as their fiduciary duties as trustees. The nature of our aims, objectives and powers reflects the fact that our collections were created and have been largely maintained as a result of significant public funding and are held in trust for the British people. Of particular relevance I believe to our debate today, is the fact that a central objective of the majority of our institutions is to provide access to our collections, to increase public enjoyment and understanding and promote education and scholarship.

Finally, as with many publicly funded cultural institutions, resources are tight. This is particularly significant as many of us are in the midst of major millennium related building projects. The Tate, for example, is in the midst of two capital building projects costing in the region of £160 million, half of which we have to raise through private donations.

This is a complex environment in which the principles and actions I am introducing today will be implemented. But I must

emphasize that the Conference is committed to carrying them through and I hope that by taking part in this conference, I will learn much that will help us in realizing this commitment.

So to the statement itself. Essentially it outlines the broad principles and proposed actions agreed by the Conference. However, more importantly, it also calls for the production of more detailed practical guidance on specific issues such as surveying and researching collections and handling claims.

The next big challenge for my working party is to roll up its sleeves and address these practical issues. Our aim is to produce guidelines which we hope can be used, not just by the major national institutions, but also by the many other museums and galleries throughout the UK.

The statement makes clear from the outset that the Conference deplores the confiscation of works of art which constituted one of the many horrors of the Holocaust and the Second World War. It also emphasizes our commitment to existing UK guidance issued by the Museums Association, which stresses the need for rigorous procedures to ensure that works of art which may have been stolen or illegally exported are not acquired or exhibited.

This statement also makes clear the Conference's commitment to working with other institutions and organizations, both nationally and internationally, in order to increase awareness and understanding of the facts surrounding the fate of works of art during this period.

The Conference, together with the UK government through the Department of Culture, Media and Sport and other cultural agencies, is committed to promoting access to its public collections. In addition to physical access, this includes promoting research and scholarship and providing wide access to collections information.

The statement, therefore, urges a practical approach to reviewing and making accessible information about its collections – including information about provenance. It accepts that the level and scope of that research and publication must take into account the size and nature of the collections concerned and the resources available. However, the statement encourages institutions to develop and publicize their own plans outlining what they hope to achieve.

Information sharing is, of course, key, and one of the major impediments to research into art confiscated during this period is lack of access to information. One practical initiative already underway in a number of institutions is to make collections information available using information technology. The Tate, for example, has set up a web site

with the primary aim of making accessible information about all works in our collection to the widest possible audience. To date, 35,000 works from our collection are on the web site, 8,000 of them illustrated. Use of information technology could easily be broadened to include the results of research in this area and to keep records of claims and inquiries.

A very practical step recommended by the statement is that all institutions should nominate a person as the main point of contact for inquiries on confiscated art and potential claims. This person could also keep a central record of research being undertaken. Most of our institutions have already nominated their own contacts and a list is kept centrally by the Conference's administration. In this way, it is hoped that potential claims can be handled quickly and sensitively.

This statement sets outline steps for checking provenance for new acquisitions and appropriate procedures for loans. We are confident that our institutions already have rigorous procedures in these areas, but I hope that my working party will be able to call on new research and checking procedures so that practical guidance can be developed that focuses in particular on the problem of confiscated art.

Finally, this statement anticipates the development of detailed guidance on how our institutions should handle claims. The challenge for the Conference will be to guide institutions in understanding the complexity of the issues involved on a case by case basis and how to reconcile the interests of individuals with their responsibilities as national public institutions.

Fundamental to the success of these initiatives is the involvement of all those in the art world. I hope that participation in the Conference this week will take us some steps further in our understanding of this most complex of issues.

Prof. Dr. Carla Schulz-Hoffmann

DEPUTY GENERAL DIRECTOR,
BAVARIAN STATE PAINTINGS COLLECTION
GERMANY

Break-out Session on Nazi-Confiscated Art Issues: Principles to Address Nazi-Confiscated Art

Ladies and Gentlemen:

May I express my gratitude to the American Government and the organizers of the Washington Conference to be able to take part in this important and valuable conference. Let me begin with a statement that, even though it should be clear without saying, needs underlining and stressing again and again: Remembrance of what has been done in the name of my country is the first and everlasting basis, has to be the self-evident moral issue with utmost priority, This surely can not remain a theoretical topos favored in privacy. Instead everything possible should be done to at least parallel this with practical work - meaning in my special field as an art historian and deputy general director of the Bavarian States Collections in Munich - meaning in my field with practical work regarding sorrow research on the issues involved, openness to questioning and awareness of the responsibility to put into open light whatever seems to be held doubtful, And to keep in mind that there is no justified "statute of limitation" for an eternal injustice that didn't have any limits.

Working in Munich for one of the major European museum institutions surely has a special meaning in this historical context. In Munich as the capital of the Nazi movement Hitler opened, as you all know, on July 18th 1937 the "House of German Art" and on the following day in the direct neighborhood of this monumental building the so called "degenerate art" exhibition, a show that was not only disastrous for all modern Art in Germany but more so was used as a diabolical alibi and a murderous tool for all the Nazi terror that reaches far beyond words.

And it goes without saying that our institution had the responsibility to work on a first comprehensive reconstruction of this fatal exhibition. In 1987 Peter-Klaus Schuster, now general director of the Bavarian States collections, put together, mainly in a sorrowly

researched catalogue, the history and implications of the "degenerate art show" - a project which raised controversy as well as it initiated a lot of scholarly research on the issue. But this only implies one of the several aspects of "Nazi confiscated art" - an aspect even though that should not be underestimated - as it meant nothing less than the confiscation of free expression of creativeness and thus in the end - of humanity.

After World War II Munich again was the center of another issue linked with Nationalsozialismus - the question of confiscated works of art and their repatriation- The officers of the Monuments, Fine Arts and Archives Services, shortly the "MFA and A," were charged with locating the German repositories of art and archives, protecting them from loss and deterioration as well as returning looted objects. A number of Allied collecting points were established of which the largest was the Central Art Collecting Point in Munich. Craig Hugh Smyth, then a young naval lieutenant (and later director of the Harvard University Center for Italian Renaissance Studies), was given the task of administering this vast and sensitive operation. Round about 700,000 works of art found in Germany and Austria were collected and usually returned to their owners or their heirs. In September 1951, the Collecting Points were closed down and the remaining objects were handed over to the "Treuhänderverwaltung für Kulturgut" (i.e. "Trustee Administration for Cultural Property") that continued the restitution work until its closure in December 1962. But still some 3,000 works remained unidentified and are kept in different museums and museum related institutions till a legitimate owner can be traced.

Regardless of this since some years now a data collecting office is established at the German Government as well as at the Coordination Office of the Federal States for the Return of Cultural Property, now situated in Magdeburg (Saxony-Anhalt) and financed by all 16 states together.

This recently intensified effort to clarify the still doubtful art properties became even more important especially after reunification with regard to the new States, the former "German Democratic Republic." There still is an ongoing research with questionnaires and catalogues of lost art sent to German museums. Even though till now the results for identifying confiscated property mainly had negative results, the efforts will be continued.

One example showing the complicated situation can be seen in an important body of works of art having been on deposit since 1972 in the "Alte Nationalgalerie" of East Berlin and after reunification given to France in 1991 till the real owner is found. The 28 paintings and works

on paper by artists as Delacroix, Courbet, Monet, Gauguin, Renoir etc. since today could not be returned to their legal owners even though an exhibition with venues in Berlin and Paris was made to trace them. The story, as far as it could be clarified, was, that a priest (Solbach) had a soldier in confession who told him that he had been given a suitcase with valuable art works by a German officer in France who wanted to get it back after the war. The soldier, evidently stricken by bad conscience, handed the suitcase over to the priest who gave it to DDR officials in Halle in 1972, wherefrom it went to the East Berlin collections and could be restituted to the French authorities after reunification. Hopefully this unsolved riddle still can be clarified - showing once and again the importance of world-wide data information.

Yesterday Mr. Rusty Powell quoted the necessity for research work including provenance checks in each museum. I would dare saying that this largely has been done in German governmental museums for art works in question till the end of the 19th century including roughly impressionism. 20th century art is surely not as sorrowly covered. In Munich we just finished the catalogue raisonné of the Brücke collection and in a few months, the Klee collection - till now without any now results concerning questionable property, But of course every work of art coming to the collection - regardless if it is an acquisition or a donation - has been and will be checked for any hint to a doubtful provenance.

Thus I widely share the view emphasized in the Statement of Principles and Guidelines developed by the American Association of Art Museum Directors outlined by Philippe de Montebello and discussed as well in the international "Réunion des Musées Nationaux," the international meeting of museum directors. Everything helpful and useful to trace and return art property confiscated by the Nazis should be done keeping in mind that here a "statute of limitations" never can be a justified question. And with regard to this conference one result for me personally is to strengthen our efforts to clarify museum provenances especially for works which came to the collection after 1937 till today and thus to contribute as far as possible to a restitution of works of art confiscated during the Holocaust-Era to their legal owners and heirs.