

TESTIMONY ON THE STATUS OF ART RESTITUTION WORLDWIDE

by

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before the

Subcommittee on Domestic and International Monetary Policy, Trade, and Technology
Committee on Financial Services
U.S. House of Representatives

Washington, DC

July 27, 2006

I want to thank the bipartisan leadership of this Committee for holding these hearings, and the Claims Conference/WJRO for championing them. They will bring renewed attention to the restitution of art and cultural property looted by the Nazis during World War II, which, after a burst of activity in the late 1990s, has lost momentum, and threatens to fall off the pages of history, particularly abroad where most nations lack the continued commitment of the American Association of Museums to pursue the issue. At a time when almost all the other Holocaust-related restitution and compensation matters have been or are nearing completion, Holocaust-era art recovery remains a major unresolved challenge. A certain art restitution fatigue seems to have set-in, particularly in many foreign countries. These hearings can help change, and re-energize an incomplete process.

I wish to express particular thanks and gratitude to two individuals who have been particularly helpful to me in providing this testimony: Professor Jonathan Petropoulos, Director of the Gould Center and Associate Director for the Center for the Study of the Holocaust, Genocide, and Human Rights at Claremont McKenna College, and one of the pioneers in identifying the issue of Holocaust-era looted art; Anne Webber, co-chair of the Commission for Looted Art in Europe, based in London, who is one of the world's premier experts in the world-wide effort to identify and retribute looted art to their rightful owners; and Monica Dugot, Director of Restitution for Christie's. I also want to thank Ambassador Edward O'Donnell, who heads the Office of Holocaust Assets at the State Department, and his assistant John Becker, for their continuing interest in justice for victims of the Holocaust, including the recovery of Nazi-era looted art.

I. HOW HOLOCAUST-ERA ART RESTITUTION CAME BACK ON THE WORLD AGENDA

Our work on art restitution was part and parcel with our negotiations over the recovery of bank accounts, property, insurance, and slave and forced labor compensation.

The looting of artworks is as old as war. The Roman plunder of the Temple of Jerusalem in 70 A.D., depicted in the Arch of Titus in Rome, was typical of warfare in the ancient world.¹

But like the Holocaust itself, the efficiency, brutality, and scale of the Nazi art theft was unprecedented in history. Experts have estimated that as many as 600,000 paintings were stolen, of which more than 100,000 are still missing fifty years after the war. When furniture, china, rare books, coins, and items of the decorative arts are included, the numbers swell into the millions. There was nothing casual about this massive plunder of art. It was supervised by the Einsatzstab Reichsleiter Rosenberg (ERR), headed by Alfred Rosenberg, who in his spare time administered the occupied European territories.

One of the Holocaust's greatest ironies is that its most malevolent perpetrators fancied themselves a new cultural elite. Hitler viewed the amassing of art as a necessary project in his creation of an Aryan master race. The cultural centerpiece of his Thousand Year Reich was to be the Führermuseum in Linz, Austria, where he was raised. Throughout the war, first Hans Posse, then Hermann Voss, Hitler's art curators, sent him photographs of the looted works from which some 8,000 pieces were prepared for the Linz collection.

Hermann Göring, Hitler's right-hand man, had an even greater appetite for art and by the end of the war had filled each of his eight spacious residences with works stolen or purchased at prices discounted under duress.

The Soviet prosecutor at Nuremberg accused the German invaders of destroying 427 of the 992 museums that fell into their hands. The Soviets, in their turn, systematically plundered huge amounts of Nazi art and historic German treasures, from masterpieces in museums to more modest works once owned by Jews. Most of this booty remained hidden from the world for half a century. The looting on both sides continues to haunt the art world to this day.

During the war the Allies were not oblivious to what was going on. On January 5, 1943, they issued the London Declaration, calling on neutral nations not to trade in art looted by the Nazis. U.S. Army commanders agreed to include curators and other art historians in the conquering armies as "Monuments, Fine Arts, and Archives" officers. They provided an extraordinary service in preserving Europe's cultural heritage during the final days of the war. As the Allied armies crossed the German border, these "Monuments Men," as they were called, found a wealth

¹ This introduction is excerpted from my book, *Imperfect Justice: Looted Assets, Slave Labor and the Unfinished business of World War II* (Public Affairs, 2003/2004). Mr. Eizenstat was President Jimmy Carter's Chief Domestic Policy Adviser in the White House from 1977-1981. During the Clinton Administration, he was U.S. Ambassador to the European Union (1993-1996), Under Secretary of Commerce (1996-1997), Under Secretary of State (1997-1999), and Deputy Secretary of the Treasury (1999-2000). He was Special Representative of the President and Secretary of State for Holocaust-Era Issues. He is a member of the Advisory Board of Christie's, Honorary President of the Commission for Looted Art in Europe, and Honorary Chairman of the Central Registry of Information on Looted Cultural Property 1933-1945. But the views expressed are my own.

of looted art and cultural objects that they dispatched to collecting points to be cataloged and eventually returned to their owners. President Truman ordered the looted objects to be repatriated by the military as quickly as possible. Following international legal precedent, the U.S. and British commands returned the objects to their countries of origin and relied on each government to trace the owners and ultimately return the stolen property.

This reliance was often misplaced. For example, France collected more than 60,000 stolen objects, and during the four years following the end of the war, 45,000 of these were returned to their owners. But in 1949 the French dissolved the commission that performed this work, and of the remaining 15,000 pieces, 2,000 were placed in French museums, and 13,000 considered to be “heirless” were sold at auction.

The Soviet government refused to allow the Western Allies access to the territory they controlled to provide an account of the enormous seizure of art by the Red Army. The issue soon dropped from sight, as archives needed to trace stolen property were buried in Soviet repositories.

The wall of silence on art was breached mainly by four scholars I met during my work on art recovery:

- Jonathan Petropoulos: His 1990 doctoral dissertation, *Art as Politics in the Third Reich*, was published in 1996.
- Lynn Nicholas wrote the award-winning 1994 book, *The Rape of Europa*, which describes the Nazis’ massive looting of art.
- Konstantin Akinsha, whose 1995 book, *Beautiful Loot: The Soviet Plunder of Europe’s Treasures*, documented the Red Army’s “trophy art” taken from the Germans under the Soviet military administration of Germany and spirited away to the Soviet Union.
- Hector Feliciano, an American journalist based in Paris who documented in his 1997 book, *The Lost Museum: The Nazi Conspiracy to Steal the World’s Greatest Works of Art*, the 2,000 art objects that had been held since the early 1950s by French museums that had made little effort to find their owners.

At about the same time, the World Jewish Congress launched the Commission for Art Recovery in 1998 under the leadership of an experienced professional in tracing stolen art, Constance Lowenthal.

In January 1995, Professor Elizabeth Simpson of the Bard Graduate Center for Studies in the Decorative Arts organized a conference in New York on “The Spoils of War” that for the first time brought together German, American, and Russian experts on looted art.

The books by these four scholars and the Bard conference were important milestones, but the issue had not yet come to the attention of governments and the general public. I used the London Conference on Nazi Gold, in December 1997, for a brief closing seminar on art, initially over the

objections of our host government, the British, who wanted the conference focused strictly on looted Nazi gold.

At London, we needed an expert to introduce the topic. Hector Feliciano was our controversial choice. The French were upset at this selection because of his exposé on their country's looted art. But Feliciano made a powerful appeal for increased access to art archives in France, Russia, and elsewhere in Europe. He accused art dealers on both sides of the Atlantic of neglect or worse in documenting the ownership of the art transferred during the war. His speech marked the first time these points had been publicly made before an international gathering of senior officials. It had its intended effect. Even the French delegation gave a surprisingly candid account of the number of objects seized by the Nazis, sold publicly during the war, and distributed to French museums.

At the end of the London conference, I announced a second conference, to be held in Washington, in which art and cultural property would be the chief focus, and invited the countries represented in London to send official representatives. I had already obtained the approval of Miles Lerman, Chair of the U.S. Holocaust Memorial Museum, for the museum to be the conference's cosponsor.

An utterly unexpected event soon put the question of looted art before the public in a most dramatic way and tested the normally cozy ties among museums and dealers in the international art world. The test case centered on *Portrait of Wally* and *Dead City III*, two paintings by Austrian artist Egon Schiele on loan from Austria's Leopold Foundation to New York's Museum of Modern Art (MOMA) for a special exhibition. Acting on a complaint by two families claiming that the paintings had been stolen from their relatives by the Nazis, Robert Morgenthau, the Manhattan district attorney, subpoenaed the paintings in January 1998.

The New York Court of Appeals refused to uphold Morgenthau's subpoenas. It seemed the paintings were free to be returned to Austria, until the U.S. attorney's office argued that the paintings were subject to forfeiture under the National Stolen Property Act.

The seizure of the Schiele paintings put American museums in a frightening dilemma. This was the first time that a civil claim for a painting seized by the Nazis had turned into a criminal case. Museum directors did not want to turn a blind eye to looted art, but if American prosecutors were ready to intervene in private disputes over ownership, it would become impossible for U.S. museums to borrow art for display from other countries.

Philippe de Montebello, the longtime director of the Metropolitan Museum of Art in New York, was thrust into this unprecedented controversy by the House Banking Committee, chaired by Representative James Leach of Iowa, which held hearings on Holocaust assets in February 1998. Pressed by Chairman Leach, he promised that the Association of Art Museum Directors (AAMD) would present guidelines within four months for addressing the problem of looted artworks.

About 170 American art museums belong to the AAMD. Questions about looted Holocaust-era art had first arisen in the association's semiannual meeting of the previous June, as a reaction to

the Feliciano and Nicholas books and press accounts of several families' claims against American museums accused of unknowingly displaying stolen art. When the issue formally came up on the next meeting's agenda, in January 1998, the Schiele heirs were in full cry, and the Washington conference was less than a year away. The AAMD created a Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945), with de Montebello as chair and the country's most powerful museum directors as members.

June 9, 1998, my State Department team and I convened a day-long roundtable at the Holocaust Museum to reach a consensus among American art experts on goals for the Washington conference, to be held in November. Among the thirty people present were officials of the AAMD, lawyers, art historians who specialize in retrieving lost or looted art, and representatives of the Art Dealers Association. We emerged with the principal objective of internationalizing the guidelines that de Montebello presented to the AAMD on June 4. His task force had recommended that American art museums immediately start researching their collections for looted works; publish information in a centralized and publicly accessible database to assist war victims and their heirs; seek all possible information about the history of the ownership – “provenance” in the art work – of any work before acquiring it; refuse any works showing evidence of unlawful work before acquiring it; refuse any works showing evidence of unlawful confiscation; seek warranties from sellers of valid title free of claims; and finally, resolve by mediation any claims against pieces in a museum's collection “in an equitable, appropriate, and mutually agreeable manner.”

But organizing an international consensus based upon the AAMD principles proved much more difficult. In particular, the Netherlands, Germany, England, and France refused to endorse them, resenting the notion that American principles should be imposed upon their museums. Ambassador J.D. Bindenagel and I proceeded nevertheless to hold an organizing seminar for the Washington conference at the end of June. This was an unusual step. But we felt that the subject of art restitution was so new to most countries that, for the conference to have any chance of success in November, we needed to present what we knew about Nazi-looted art and give the contentious issues sure to arise a preliminary airing. We also wanted to build confidence among the Russians, who feared the conference would turn into an effort to divest them from their trophy art, and among the Germans, who feared it would lead to yet another excuse for more Holocaust reparations.

Earl “Rusty” Powell, director of the National Gallery in Washington, D.C., gave a compelling presentation of the AAMD guidelines. Ronald Lauder, then chair of New York's MOMA and formerly U.S. ambassador to Austria, reported that according to secret U.S. government documents, the Nazis had stolen one-quarter of Europe's total wartime stock of art and that only about half had been returned to their owners or their heirs, with the rest in museums or private collection. Michael Kurtz of the U.S. National Archives cited military archives revealing that a staggering 50 million artworks of all kinds were placed in 1,400 repositories in the U.S. occupation zone of the Germany and ultimately returned to the country of origin.

But it was the Russian delegation, whose attendance was in doubt until the last minute, that we were most anxious to hear. To my great relief the Russians supported the idea of the Washington

conference. But they said restitution was a delicate and complicated matter, lacking either an international or Russian legal basis.

The seminar proved important in raising the long-suppressed issue of looted art, promoting the new AAMD guidelines as a possible basis for international agreement, and engaging the Russians in a discussion. But when Bindenagel went to Europe for follow-up consultations, the Europeans still would not sign onto the AAMD guidelines. So our planning team repackaged them by drafting ten principles that looked new and different but kept the AAMD's essential points, as well as a paper outlining best practices in dealing with art looted by the Nazis. These proposals were distributed to all delegations a few weeks before the conference; they were neither immediately accepted nor summarily rejected.

I believed that if we could persuade one country to take the lead, others might be shamed into taking action. Austria seemed like a good candidate. I had to travel to Vienna to plan the regular summit between the United States and the EU, so I added art restitution to my agenda.

The key was Elizabeth Gehrler, who as minister of education and culture, had jurisdiction over Austria's glorious state museums. She declared that Austria wanted to be "big and generous," but because the art objects belonged to the state, a new law would have to be passed to allow their return to any owners who would be found.

Our State Department team also received an encouraging sign from France in early November, when the Foreign Ministry published a catalog of 333 stolen paintings and posted it on the Internet in an attempt to locate the works' original owners.

On November 30, the opening day of the Washington conference, the Austrian Parliament approved the new art law.

I had asked Representative James Leach to chair the art sessions and to help persuade the delegates to adopt the draft principles. The opening presentations at the conference were made by Jonathan Petropoulos, Konstantin Akinsha, and Lynn Nicholas, who described the Nazi thefts as "the greatest displacement of works of art in history."

At the art session the emotional highlight was a presentation by Colonel Seymour Pomerence, one of the few surviving Monuments Men, who directed the depot at Offenbach in a former warehouse of I.G. Farben (the manufacturer of the gas used in the extermination camps.)

We finally got the response we hoped for as Austria, the Netherlands, Germany, the Czech Republic, Switzerland, Sweden, Greece, and Hungary described the efforts underway to catalog confiscated art in their state museums. The Dutch reported that they had identified four thousand works in their state collections that they now were anxious to return to their rightful owners. The Austrians made a similarly impressive presentation. Thrown on the defensive by the open debate, the Russians described legislation that reaffirmed their right to keep "trophy art" from Germany as compensation for war losses but would permit an eighteen-month claims period for individuals or religious institutions whose art was stolen by the Nazis for racial or political reasons. Valeriy Kulishov, chief of the Office of Restitution in Russia's Ministry of Culture

promised the conference that Russia would support the draft principles and “do all we can to find art pieces and return them to the countries where they were looted.”

Despite intense lobbying by my team and me, including Representative Leach, substantial opposition to adopting the AAMD-based principles remained in France, Germany, Italy, and Switzerland, as Bindenagel found when he polled the delegations beginning at 7:00 a.m. on December 3, the last day of the conference. I tried to negotiate a last-minute compromise with the heads of the French, German and Swiss delegations. The Europeans were especially upset at one of Congressman Leach’s recommendations, that each country should enact national legislation to implement the principles. They worried that the proposed principles would override their judicial processes. In sum, they still did not want the appearance of American principles being imposed upon them.

With the closing session only a few hours away, it was too late to rewrite each principle to suit every country. So, to give the key countries political cover, I made one last attempt and suggested a new introductory paragraph to our principles that would state that the Washington conference recognized that countries with different legal systems could “act within the context of their own laws.” That did it. The European negotiators indicated they could accept this. We could keep the principles intact, but they would not be binding.

What we achieved was important moral authority in five areas. First, the principles called on museums, governments, commercial galleries, and auction houses to cooperate in tracing looted art through more stringent research into the provenance of every item. Second, given the difficulty of producing evidence of ownership, the art community was asked to permit leeway in accepting claims on stolen art during the Hitler era. Third, there would be an international effort to publish information about provenance. Fourth, a system of conflict resolution would be established to prevent art claims from turning into protracted legal battles. Fifth—and least definite—attempts would be made to find a fair solution when owners of looted works could not be found.

Since none of these principles was legally binding, one may legitimately ask whether anything has really changed. What the conference did was provide international attention and legitimacy to the return of looted Nazi art. Once the imprimatur of the forty-four countries including the United States—the world’s largest single art market—was placed on what became known as the Washington Principles, art recovery could no longer be ignored. We effectively internationalized the AAMD principles. “The art world will never be the same,” Philippe de Montebello whispered to me as the conference closed. To the conference itself, he was equally direct: “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.”

The Washington Principles changed the way the art world did business.

In the years since the conference, as de Montebello latter pointed out, “this has changed drastically; the whole psychology has changed. Art dealers, galleries, museums now check the ownership of paintings from Europe to determine if there are gaps from the World War II era

which might indicate the painting had been confiscated. And if so, they are posting the information on Web sites.”

Major American museums now take the AAMD and Washington Principles seriously, spending money and allocating staff to research provenance to detect whether paintings have been looted. In 1999 the International Council of museums called on its members to follow the Washington Principles. Austria has reviewed the collections of all federal museums and returned more than 250 artworks to the Rothschild family and identified more than 2000 others. In December 1999 the German Ministry of Culture issued a statement promising that the German government would exert its influence to return confiscated art to former owners or their heirs. The provenance of museum collections was to be examined, and suspect works posted on the Internet on Germany’s Lost Art Database.

Sweden established a commission to locate art. France was completing research into the provenance of more than 2,000 works returned from Germany after the war. Italy has published a catalog of art treasures lost during the war, including those from the collections of Holocaust victims.

I recommended that President Clinton create an advisory commission on Holocaust assets to study looted assets that made their way to the United State. The commission was chaired by Edgar Bronfman. The art subcommittee, on which I sat, heard the directors of several great museums detail their efforts to identify and return Nazi-looted art. De Montebello reported that after the Washington conference, his museum had found Nazi-era gaps in the ownership records of 393 of its 2,700 European paintings. Although this does not mean that all 393 paintings were looted, it indicates the increased care taken by American museums.

The issue of heirless Nazi-looted art is particularly difficult and one we did not directly address through the Washington Principles. At the Vilnius International Forum on Holocaust-Era Looted Cultural Assets, in Lithuania in October 2000, Colette Avital, Israel’s consul general in New York, insisted that her country was the only legitimate heir of what was once Jewish property.

Who should become the owners of the vast amounts of art that are expected to be identified according to the Washington Principles but for which there are no living heirs—the countries in which the unclaimed art was located, the local Jewish communities, or the state of Israel?

Michel Dufour, the French secretary of culture, refused to accept the French Jewish community as owners and certainly not the Israelis as heir to a painting owned by a French Jew killed in the Holocaust. After a contentious and impassioned all-night session during the Vilnius forum, I persuaded all sides to agree to vague language indicating more study of heirless art was required. Clearly there would be no easy solution that would satisfy everyone.

II. IMPLEMENTATION OF THE WASHINGTON PRINCIPLES IN THE U.S.

UNITED STATES MUSEUMS

With this as history, the key is the implementation of the Washington Principles. Clearly, the United States museums, under the leadership of the American Association of Museums (AAM) and the U.S. National Committee of the International Council of Museums (AAM/ICOM), have taken the Washington Principles seriously. The art restitution situation is far better than during the decade that preceded the revelations of the mid-1990s. Curators and other museum officials now routinely ask questions of benefactors who give works to their institutions; record keeping is far better; research into collections, while uneven among U.S. museums, is proceeding in many; and most museum officials want to do the right thing. About 150 AAM members have posted data on the AAM's Nazi-Era Provenance Information Portal (NEPIP) concerning their collections, about half of the total AAM membership. While this is less than we hope, the good news is that the most important museums – Cleveland, Detroit, Chicago, Boston, L.A. County, the Metropolitan Museum in New York, and the National Gallery—have provided good data. The Museum of Modern Art has provided only partial data, while many museums, particularly the smaller ones, have added little or nothing, citing cost considerations.

The AAM Board of Directors has approved guidelines concerning the unlawful appropriation of art objects during the Nazi era in November 1999 and updated them in April 2001. A working group was formed which offered guidance to assist museums in addressing the problem. Moreover, the AAM and the Association of Art Museum Directors (AAMD) worked the Presidential Advisory Commission on Holocaust Assets in the United States to establish standards for disclosure to aid in the identification and discovery of unlawfully appropriated objects in the custody of American museums, which were incorporated in the Commission's January 2001 report.

The Commission, AAMD and AAM agreed that museums should strive to identify all objects in their collections created before 1946 and acquired after 1932, that underwent a change of ownership between 1932 and 1946, and that were reasonably thought to have been in Europe between those dates; they make currently available provenance information on those objects accessible; and to provide priority to continuing provenance research. If a museum determines that an object in its collection was unlawfully appropriated during the Nazi era without subsequent restitution, the museum should seek to resolve the matter with the claimant in "an equitable, appropriate, and mutually agreeable manner." In addition, museums "may elect to waive certain defenses", although they are not required to do so.

The 2001 Presidential Commission report recommended creation of a searchable central registry. To its great credit, AAM has followed through. It created a task force to develop procedures for posting objects and performing provenance information, identifying 20 categories of information about covered objects that museums should compile and make available. In addition, the task force developed the concept of a Nazi-era Provenance Internet Portal to allow researchers to have easier access to provenance information about covered objects in museum collections. The Portal allows users to search by the artist and nationality of the artist and gain access to information provided by contributing museums, along with links to further information controlled by those museums. This is an important step forward.

There are currently over 18,000 objects from 151 participating museums on the Portal. This is a good start, but is a small percentage of the potential universe of some 140,000 covered objects meeting the AAM definition. Many museums have not submitted the relevant data for the Portal's data base. The AAM committed to developing and manage the Portal for three years, after which it would transfer responsibility to "a more appropriate organization." I do not believe this organization has been identified yet.

But for all the progress, and it is considerable and commendable, many museums are not energetic about researching their collections and many seem to wait for claimants to come to them, rather than be pro-active. Provenance research is costly and museum budgets are tight. Many provenance researchers hired in the last 1990s, when attention was heavily focused on Holocaust art restitution, worked for several years, but did not have their contracts renewed.

The important survey by the Claims Conference and the WJRO indicates that there has been important, but spotty progress by American museums in providing the kind of information that would make the Portal a successful vehicle to identified looted art. Many museums have not responded to the AAM's initiative to list works that have unclear provenance for the years 1932-1946. Congress should press the dilatory museums to get up the standards that many of the leading American museums have already reached, while praising the AAM and those American museums which have followed AAM's lead. Clearly, resources are an issue, particularly for smaller museums. But because of the importance of getting this data base as complete as possible, it should be a higher priority for some American museums than it has been to date. They should emulate the excellent role model set by many U.S. museums.

NEW YORK STATE HOLOCAUST CLAIMS PROCESSING OFFICE

There have been other impressive efforts in the United States. For example, under Governor Pataki's leadership, A New York State Holocaust Claims Processing Office has helped Americans recover a variety of lost assets, including lost and looted art. Their 2005 report indicates that they have accepted 142 art claims from 19 states and 9 foreign countries referencing 25,000 items. The Office has returned 12 works of art.

LITIGATION

Litigation in U.S. courts has been another avenue for art recovery². The U.S. Supreme Court's decision in *Republic of Austria v. Altmann*, involving the possession of six painting by Gustav Klimt seized by the Nazis from Maria Altmann's aunt and uncle's house, was a landmark in opening up U.S. courts to claims against foreign governments which control looted art. This case is being invoked in the case brought by Claude Cassirer of San Diego against the Spanish government and Thyssen-Bornemisza Foundation which operates the Thyssen Museum in Madrid to recover a Pissaro painting in the possession of the Thyssen Museum clearly looted by the Nazis from his grandfather.

² Professor Jonathan Petropolous' insights were valuable here.

More generally, the Altmann case has refocused public attention on art restitution, together with the blockbuster exhibition of the restituted paintings at the Los Angeles County Museum of Art, and then Ronald Lauder's acquisition of the *Golden Adele* for more money than any artwork ever sold. The arbitration panel used to ultimately resolve contending claims of ownership represents a new approach to alternative dispute resolution. And the Austrian government's response to give back one of their cultural treasure was significant and laudable, setting an example for other countries, with far less important works.

There is also the "femme En Blanc" litigation involving a Chicago art collector, Marilyn Alsdorf, who purchased Picasso's painting by that name in New York in 1975, after having been informed by the Art Loss Register that the painting had been stolen by the Nazis. Federal prosecutors are invoking the National Stolen Property Act, the first time the U.S. government has attempted to recover a piece of art on the basis of a notification by the Art Loss Register.

There are many examples of current owners sharing in the disposition of works that prove to have been looted by the Nazis, with the families of the original owners.

In a number of cases, current owners and museums raise technical defenses when confronted with claims for the return of potentially looted artwork, such as the statute of limitations. The AAM Guidelines noted that the "AAM acknowledges that in order to achieve an equitable and appropriate restitution of claims, museums may elect to waive certain available defenses." But museums often assert these defenses. I would urge that the holders of artwork against whom claims are asserted for Holocaust-era art focus on substantive, not technical, issues, and that the AAM encourage this.

U.S. ART DEALERS AND AUCTION HOUSES

Professor Jonathan Petropoulos believes that the art trade is an area with the most activity regarding Holocaust-era cultural property. He has pointed out that in the 1990s museums had their collections scrutinized, but the first decade of the 21st century has seen the center of gravity shift to the private market. Many heirs have inherited objects from the war and then put them on the art market.

Since the Washington conference, the major auction houses, Christie's and Sotheby's, have taken seriously their role in implementing the Washington Principles on Art. Major auction houses publicly distribute catalogues with the paintings and objects they will auction, and their auctions are public. They have an incentive to be certain that the works they auction have no suspect Nazi-era provenance. However, one area of great concern is the handling of art that may have been looted by private art dealers.

As a member of the Advisory Board of Christie's, I am pleased with the actions they have taken. Christie's hired Monica Dugot, a noted expert in the area, who for seven years was the Deputy Director of the New York State Banking Department's Holocaust Claims Processing office, as Director of Restitution, to coordinate Christie's restitution activities globally, she helps to facilitate the sensitive handling of restitution claims and the best solutions for original owners and

good faith purchases. I understand that Sotheby's has done something similar, with the hiring of Lucian Simmons, an experienced researcher.

I know that Christie's believes in the importance of being proactive on Nazi-era art issues, from a moral, commercial and legal standpoint. As intermediaries in the art world, auction houses have a responsibility, which they are assuming, to properly research art works consigned to them and to document their provenance as accurately as possible so purchasers can be confident they are receiving clear title to the work.³

The first step in Christie's process is to make certain that internally there is a very high level of awareness of Holocaust-era art issues and to incorporate this awareness into their daily business and culture. Second, if there is a possible restitution problem with an object consigned to Christie's, they try to identify the problem early, allowing time to resolve problems in an acceptable manner for all parties. They encourage consignors to address issues where they arise. Christie's does not adjudicate the claims but facilitates a dialogue between consignor and claimant and assists the parties in reaching a mutually satisfactory resolution.

Auction houses like Christie's generally sell as agents rather than as principals since they do not own the property they sell. Although they ask their sellers to warrant they have good title and to warrant that the property is free from third party claims, but this is no longer sufficient. Most often, sellers legitimately believe the work in their possession is free and clear of claims. So Christie's carefully researches the provenance of works that they offer for sale.

Third, Christie's complete various steps to ensure that the objects are being offered with as accurate and complete a provenance as possible. They use in-house resources, including their Sensitive Names Database, looking for key gaps in provenance, as well as checking lots against the published lists for art that was looted from individuals and museums in all relevant countries.

The last line of defense is for Christie's to send its catalogues to the Art Loss Register for checking, with other copies to claimant representatives such as the New York State Banking Department's Holocaust Claims Processing Office. The catalogues are distributed worldwide and objects coming up for auction are also available on the Christie's website, giving museums, private individuals, law enforcement, and other groups the opportunity to raise claims.

I am informed by Monica Dugot that once the facts are known about a claim, a solution can generally be found. Cooperation among all the parties is necessary to find solutions to many of the looted art claims that arise.

On the other hand, private art dealers work under no guidelines or best practices. The Art Dealers Association of America has not developed any principles similar to those adopted by the AAM or by the public auction houses. The key is access to information, and, sadly, the private dealers

³ I appreciate the insight of Monica Dugot of Christie's on the role of auction houses.

are not providing this. It is critical that private art dealers in the U.S. and elsewhere be part of the effort to identify and return looted art.

Art dealers point to the problems of client confidentiality. But these same issues pertain to museums and auction houses. This legitimate concern must be balanced against fundamental principles of fairness and justice for victims and their families of one of the greatest crimes in world history.

I urge the Art Dealers Association to issue clear, transparent guidelines for art dealers as to how to handle issues of provenance research before items are sold. These guidelines should also provide for access to records of previous transactions regarding items that may have been looted and appropriate notification where relevant information comes to the attention of the art dealer.

In general, art restitution has not been a focus of the Bush Administration. Legislation to implement the key findings of the Presidential Commission on Holocaust-era Assets and to establish a "memory foundation" to help victims and heirs (as the New York State Office does), has stalled, despite bipartisan sponsorship that would create and fund this institution. And even many museums now feel they have weathered the storm of public opinion and that it is best to let their lawyers handle the cases that come up, rather than conduct pro-active research themselves.

RECOMMENDATIONS

1. Congress should encourage all American museums that belong to the AAM to complete and then regularly update their data-bases for covered objects and to contribute that data to the AAM Portal. The goal should be that within three years all 140,000 covered objects are on the Portal.
2. Congress and the AAM should encourage museums to litigate cases on the merits, and not to rely upon technical defenses, like the statute of limitations. But it is important to recognize that art objects are usually in the hands of good-faith purchasers who bought the object years ago, only to be told they are now holding tainted property. A solution needs to balance the interests of all parties, including those who may have to give up the art object to its original, rightful owner.
3. Congress should encourage the Art Dealers Association of America to promulgate guidelines in line with the Washington Principles and the AAM/AAMD guidelines, and to have their members implement these guidelines.
4. Congress should pass the bipartisan legislation to create a federally funded Memory Foundation to assist U.S. citizens in pursuing Holocaust-era claims, including for art.

III. IMPLEMENTATION OF THE WASHINGTON PRINCIPLES ABROAD

While some American museums still have additional work to implement the Washington Principles, their progress is generally light years ahead of most other countries who were signatories to the Washington Principles.

There has been a real loss of momentum over the past several years, since the last international conference following the Washington conference, the Vilnius Forum on Holocaust Era Looted Culture Assets, held under the auspices of the Council of Europe and the Prime Minister of the Republic of Lithuania, in October 2000.

Today there is only one dedicated expert, representative body working full-time on the art restitution issue, the Commission for Looted Art in Europe (CLAE), and one independent research and monitoring agency, the Central Registry of Information on Looted Cultural property 1933-1945(CRI). The New York State Banking Department's Holocaust Claims Processing Office is the only U.S.-based institution actively engaged in assisting claimants. The Claims Conference/WJRO is activating its work in 2006, following research into looted works of art in the former East Germany in the 1990s.

The vast majority of countries who signed the Washington Principles have not implemented their commitments to identify Nazi looted cultural property and retribute it to its rightful owners, due to a combination of inertia, unwillingness to confront a sensitive issue, and/or reluctance to give up looted property. To summarize a complex situation involving more than 40 countries who were signatories to the Washington Principles in 1998 and the Vilnius Forum Principles in 2000.⁴

--- The vast majority, around 70%, of these nations have done no provenance research at all or only on a limited basis, for example, for a limited time frame, rather than for all acquisitions from 1932 to today for works of art and culture which underwent a change of ownership between 1932 and 1946. In some countries, such as Germany, repeated calls by the government for provenance research have been ignored by many of their museums;

--- Large amounts of looted cultural property remain unidentified;

--- Where countries have published databases of potential Holocaust-era looted art, use can be impeded because research is provided in inaccessible languages and lacks the details which would enable objects to be easily identified.

--- There is no central international, government-supported monitoring agency with a database and repository of information on looted art and cultural objects, except one created by an independent organization, the Central Registry on Information on Looted Cultural Property 1933-1945

--- Of those countries which have carried out provenance research, most do not make efforts to pro-actively locate original owners or heirs, and do not have restitution laws that permit recovery. For example, Britain, Italy, Hungary and Poland do not have restitution laws that permit the return of looted Holocaust-era art and cultural property. Only four countries have national processes for resolving claims, leaving most claimants without transparent claims procedures and at the mercy of courts and the goodwill of individual institutions. In a number of countries, claims are not possible and governments and museums refuse to respond to inquiries;

⁴ I am grateful for the insights of Anne Webber of the Commission for Looted Art in Europe 1933-1945.

--- Time limits exist on claims in some countries, even where research to identify looted property has not been completed or information on what has been identified is not easily accessible.

--- There are no comprehensive standards to govern provenance research, accessibility of web sites and data bases, identification of claimants, or restitution procedures.

--- There has been no formal international governmental meeting on art and cultural property since the 2000 Vilnius Forum. There have been private sector conferences on the issue, largely attended by NGOs, art experts, and academics. A representative of the U.S. State Department attended a 2003 conference in the Czech Republic initiated by a Czech Institute and supported by the Czech Minister of Culture, which examined methods of research and documentation in determining the provenance of artwork, procedures for restitution in different countries, and international cooperation in recovering stolen artifacts, with a follow-up conference in 2005 also attended by a State Department representative focusing on encouraging and facilitating international cooperation in the discovery and return of cultural artifacts. But neither had any significant attendance from government representatives around the world. In 2005, a State Department representative attended a conference in Moscow that examined property disputes and international legal practices regarding cultural artifacts displaced during World War II, in which Russian government officials attended, but, again, it was largely an NGO.⁵

Of the eleven Principles endorsed at the Washington conference in 1998, eight relate specifically to museums and public collections. These Principles call for three stages of action: (1) All public collections were asked to undertake research to identify looted works of works with gaps in their provenance during the wartime period; (2) the research was to be published and made available to the widest international public; (3) institutions in possession of looted art were to deal fairly and justly with claims for restitution.

PROVENANCE RESEARCH

Some countries and museums are to be commended for conducting and publishing admirable research, especially the federal museums in Austria; a number of museums in the Czech Republic, led by the Ministry of Culture; the Canadian and UK museums; and many museums in the United States, as well as a few in Germany. But many countries have not even begun provenance research, others have substantially circumscribed the research, and others are not investigating acquisitions after the early 1950s, even though looted artworks have been in the art market for decades after that.

Based upon research provided by the Central Registry of Information on Looted Cultural Property 1933-1945, I present the following analysis of the situation in a number of countries:

Spanish museums do not conduct any provenance research, notwithstanding a 1997 Royal Decree to establish a historical commission to investigate Spain's economic relationship with the Third Reich, including works of art. Hungary has not undertaken provenance research into its

⁵ I appreciate the views of Ambassador Edward O'Donnell and John Becker of the State Department's Office of Holocaust Assets on these conferences.

public collections; and as a general practice, attempts by claimants to obtain the return of looted objects has been met with opposition and litigation. Italy appointed a historical commission, the Anselmi Commission in 1998. The report recommended that research into art spoliation and restriction should be carried out by an official Italian claims authority. But the Anselmi Commission recommendations have generally not been implemented, and, overall, Italian museums have not conducted any provenance research, nor will they return looted works of art found with them. Argentina has only investigated works exhibited in Buenos Aires and Rosario between 1933-1955; Brazil compiled a list of suspect works acquired only between the 1940s and 1970s for three museums. Belgium, which has generally done a commendable job on property restitution, established the Buysse Commission, with whom I met, which reported to the Belgian government in 2001. All federal museums participated in the study and 331 looted objects were found with unclear provenance. But this covered only the 1940-1950 period and these objects have not been published. Greek museums do not conduct provenance research nor do they have a claims process in place. Portugal's museums do not conduct provenance research nor is there a clear process in place.

But of those countries likely to have the most extensive collections of looted art, special focus is needed.

Switzerland has done as much as any country to come to terms with its ambiguous and mixed role during World War II, not only with a settlement of claims for bank accounts, but with a massive, comprehensive study of the Swiss wartime role and its relationship to looted assets by the Swiss Bergier Commission. However, the 12 Swiss federal museums and collections have undertaken provenance research only for acquisitions between 1933-1945 and only a small fraction of the far more numerous non-federal, public museums have undertaken any research at all. None have published.

While the research into the Swiss federal collections identified three works in the Swiss National Museum, two of which were documented as having been acquired by Swiss dealers at forced sales in Germany, the Swiss report states that these forced sales were not illegal and no further action was taken. But such forced sales would seem to be illegal and there should be an active effort to locate the heirs to these paintings.

In addition, Swiss banks should search their vaults for any paintings they may have of questionable provenance, as the Swiss federal museums have done so well.

The French Matteoli Commission was a model of probity of the role of Vichy France during the War and the gaps in restitution of property after the War. The U.S. and the Allies sent 60,000 looted artworks and cultural objects back to France after World War II, following their capture from the Nazis. France, in turn, to its credit, returned 45,000 to their owners. Some 2000 unclaimed paintings were picked by French Museum Directors and have become part of the French MNR collection. The balance was sold at auction. While France has published materials about its MNR collection, it has not undertaken provenance research into its public collections for works acquired since 1933.

The Czech Republic passed a restitution law in 2000 and established a database of art originally owned by Holocaust victims that is now in public collections in the Czech Republic. Over 3000 works were identified as confiscated in the initial research published in 2001. Research was to be ongoing but none has yet been published, although it is known that there are many other looted works of art which remain to be identified. In addition, the effort at actually restituting paintings is often blocked, forcing claimants to go to court, a course of action which runs counter to the spirit of the restitution law.

Germany is a country with whom I negotiated the slave and forced labor agreements. No country has accepted its wartime responsibilities more fully and faithfully, having paid over \$60 billion in Holocaust reparations since the early 1950s, constantly expanding the eligible population, and reaching a comprehensive 10 billion DM (\$5 billion) agreement in my negotiations. Their recent dedication of a Holocaust monument and museum in the heart of re-united Berlin is testimony to their commitment to justice. I have enormous admiration for Germany.

But German museums have performed and published disappointingly little provenance research. Many German museums seem much more interested in getting back their art looted by the Red Army after the War, than in implementing the Washington Principles. Only about 30 museums of a possible 600-plus have published their research. Some major German museums, whose collections may well contain looted art, have still not carried out, completed or published provenance research. For example, one of Germany's key cultural institutions, the Bavarian State Painting Collections, admits to having acquired up to 7000 works of art between 1933-1945, and appointed a provenance researcher. But funding for the post has been withdrawn, the research has stopped, and there appears to be no desire to complete the work. The director has suggested that people write him if they are looking for a particular work of art and he will indicate if they are in the Collections, a situation the Washington Principles aimed to remedy. In all of Germany, there is only one full-time museum provenance researcher, in Hamburg. Generally, the few German museums which have undertaken provenance research since 1998 and the even fewer who have published it are not investigating all works acquired between 1933 and today.

Another key Germany cultural institution, the Prussian Cultural Heritage Foundation, which administers all 18 Berlin museums, as well as the State Library and Archives, started an ambitious provenance research project in 2002, but this has not yet been published. Recent restitutions from the Foundation's collections show that where research is undertaken, tangible results occur. Indeed, the Germany museums that have undertaken research into Nazi-era acquisitions have identified over 2500 confiscated objects to date, indicating the scale of what might be found if research is undertaken by all of the museums. Almost 20,000 looted books have been identified in just four libraries.

The Federal Ministry of Culture, I believe, sincerely wants to make progress, but the museums simply are not cooperating. In 1999, Germany produced a Declaration from the Federal, State (Laender) and Municipal Authorities committing to identify and return looted cultural property. Because of the failure of so many German museums to cooperate, in 2005, the Federal Commissioner for Cultural Affairs and Media; the Standing Conference of the Ministers of Education and Cultural Affairs of the Laender; the German Association of Cities and Towns; the German Associations of Towns and Municipalities; and the Association of German Counties

issue a unique “Appeal to Search for Cultural Property divested as a result of Nazi persecution in Germany.” But this has yet to have a major impact on German museums.

Russia has perhaps the greatest repository of looted art, resulting from the capture of German art treasures by the Red Army after the War, as partial compensation for the truly horrific suffering the Russian people endured from the Nazis. Some was in German public collections, but some was Jewish-owned art pillaged by the Nazis, and then, in turn, taken by the Soviet Army.

During our Washington conference, Russia was a key participant and signatory to the Washington Principles. They were the only country that participated with me in the closing news conference. They passed a law, signed by President Putin, which sharply separates their “trophy art”, taken as compensation from the Germans, which they will not return, from art taken by the Soviet Union from the Germans, but originally confiscated by the Nazis from Jewish owners, where claims would be permitted. In 2001, the Minister of Culture signed an MOU with Ambassador Ron Lauder, then the chairman of the Commission on Art Recovery, affiliated with the World Jewish Congress and the WJRO, pledging to publish the results of provenance research. Little has been done, no claims process has been established, and the whole project has stalled.

PUBLICATION OF PROVENANCE RESEARCH

Even where research is done, it is of little practical value to potential claimants and to achieving justice for Holocaust victims and their families, if it is not published in accessible form. This was a key Principle from the Washington conference.

Some research abroad has been published by Australia, Austria, Canada, the Czech Republic, France, Germany, Hungary, the Netherlands, Poland, Russia, the UK and the U.S. But there is no single standard. So, for example, images of the objects are included by some but not by others; some are so brief and lacking in detail that it does not permit easy identification. For instance, the State Museum of Baden-Wuürttemberg in Karlsruhe has identified 37 looted objects but the only information provided is “Karlsruhe 1941”. Some research is published in German or Dutch but not translated into English, the common language of commerce and the art trade.

Most of the published research, commendably, is put on the Internet, but with a plethora of sites of varying design, language and search ability.

In Germany, 29 museums, together with four archives and 12 libraries, out of a total of 6000, have listed their research on an official German website, “www.lostart.de”. But since 2003, only nine museums and seven libraries have added materials. Around half of the material on the website provides only minimal provenance information, making identification of possible ownership difficult, especially when the details of their provenance research are only available on that web site in German.

ACCESS TO ARCHIVES AND RECORDS

It is difficult to gain access to the archives of the art trade, handicapping provenance research of museums. The Confederation of International Art Dealers committed themselves at the 2000 Vilnius Forum to provide records on particular works of art, when requested. But this has not been implemented, except in rare instances or where dealer records have been deposited at publicly accessible archives.

It is very difficult to gain access to Holocaust-related state archives. For example, the archives of the post-war restitution agency in Italy are closed, as are the state archives in France and Belgium, on grounds of privacy laws, unless they are requested by representatives of heirs in restitution cases. But at this stage, it is unclear whose privacy the laws are protecting. It is much the same situation that was finally resolved only a few months ago, by the opening of the massive Nazi concentration camp records at Bad Arolsen after decades of effort, due to the effective intervention of the U.S. Holocaust Memorial Museum, and the U.S. government. There, too, the argument was privacy, but those whose privacy was supposedly being protected were dead.

A CENTRAL REGISTRY

The Washington Principles sought to establish a central registry of information. In 2001, a Central Registry of Information on Looted Cultural Property 1933-1945 was established as an independent charitable body under the auspices of the Oxford Center for Hebrew and Jewish Studies affiliated with Oxford University, aiming to provide a single searchable repository of research and information. The Central Registry provides data from over 45 countries including on laws, policies, and archival resources, together with original research, and tries to make accessible the object information currently being produced by various countries to different standards, languages, and levels of accessibility. So far information on over 20,000 objects has been provided to the Central Registry from over a dozen governments and other institutions. But there is no governmentally sanctioned and supported institution, unlike the Holocaust Education Task Force in which over 20 countries participate.

ASSISTANCE TO HEIRS

The Washington Principles encourage pre-war owners and their heirs to come forward and make their claims known. They do so, but many are unaware of the existence of research, how to access it, or the location of their lost works of art.

Too many museums and governments, even those that undertake the research, seem to feel that research and publication of provenance research is sufficient. But the identification and tracing of heirs is critical, so that the information reaches the right owners. Only Austria, notably the municipal institutions in Vienna, actively searches for original owners and heirs.

CLAIMS RESOLUTION

We knew that even with research and publication, claims resolution would be complex. Often, current owners purchased their art in good faith, without knowing they may have been looted six

decades earlier by the Nazis. We devoted three of the Principles (Principles Eight, Ten, and Eleven) to facilitating the resolution of claims.

Only three countries have enacted restitution legislation-- Austria, the Czech Republic and Russia. Austria has returned a number of looted works identified in its federal museums and, to their credit, several Austrian states have also adopted restitution legislation.

In the Czech Republic, despite having identified over 3000 looted works of art, they have only agreed to some five claims.

As for Russia, while it seemed at one point that claimants would be able to claim for and recover art which was being listed on the Russian website, this has not materialized.

Germany has restituted many paintings, but much more would be possible if more provenance research was undertaken.

In the UK, while there has been commendable provenance research and publication, with regular updates, there is no restitution law to permit the return of looted paintings. The British government is unwilling to pass a restitution bill, perhaps because of fears it will lead to calls to return treasures like the Elgin Marbles. But the Nazi-era confiscations were treated as a separate item by the Washington conference, and it is disappointing that HMG, having sponsored the first post-war conference on looted gold, has not shown leadership in permitting restitution. The UK Spoliation panel has agreed to provide compensation to claimants in two cases and recommended restitution in two others, but the absence of legal authority has prevented their return.

In the Netherlands, the government-established panel has received 46 claims applications and thus far made 24 recommendations for restitution involving 450 works of art that have been in the custody of the Dutch government since the late 1940s, when they were returned by the Allies after the War for restitution to rightful owners.

There remain legal impediments, such as the statute of limitations to recovery, notwithstanding the important decision by the Council of Europe in November 1999 (Resolution 1205), which called for the removal of legal impediments to restitutions and for a commitment to return looted property to its rightful owners.

RECOMMENDATIONS

1. The U.S. government should take the lead to convene an international conference in 2007 of the 40-plus nations who signed the Washington Principles in 1998 and who attended the Vilnius Forum in 2000 for a stock taking and assessment on progress in implementing these principles. This could be an action -forcing device to encourage foreign governments to do provenance research; to publish accessible data bases; to proactively work with claimants; and to help develop an international data base, along the lines of the U.S. Portal.

2. The Bush Administration should give special attention to bilateral diplomatic efforts to encourage the Russians to live-up to their obligations by publishing a list of all looted art in Russia, and to implement the claims process for that art taken from the Germans, which, in turn was stolen from Holocaust victims, while respecting their decisions to hold onto “trophy art” pending negotiations with Germany. They may have the greatest treasure trove of Holocaust looted art. There has been no movement recently with little prospect of achieving the return of looted art, except where individuals are willing to pay the Russian government compensation.

3. The nations which endorsed the Washington Principles should create an inter-governmental body to encourage provenance restitution, publication of results in accessible form, the development of clear international standards for websites, outreach to original owners and heirs, avoidance of technical defenses to claims, and, eventually, create a central search engine, like the Portal in the U.S. A central database in a neutral, inter-governmental body, to which all nations, museums, art dealers and auction houses could place provenance research and, in turn, could review before the sale of art, would be the single most effective step to assure the restitution of looted Nazi-era art. Until then, the Central Registry should be officially recognized as the central clearing house for all information.

4. All nations should be urged to undertake and to publish detailed provenance research from 1933 to today for objects in their public collections to a timetable, with resources made available to undertake the work. Publication should be in an internationally accessible form.

5. Museums and other institutions with art and cultural property should be encouraged to be proactive in communicating the results of their research to potential claimants, including committing actively to tracing heirs, wide publication of findings, and regular updates.

6. Archives should be opened to enable restitution. The Confederation of International Art Dealers should provide access to records, as they committed to do at the Vilnius Forum.

7. Transparent and accountable procedures for handling claims fairly and justly should be established.

8. Museums should focus on substantive not technical issues in dealing with claims.

If the U.S. Government does not take the lead here, then we can expect little movement from foreign governments. The spotlight of history must again be shined on them if progress is to be made. Otherwise, only the U.S. and one or two other countries, like Austria, will keep the flame of justice for victims burning. It is time for a new burst of energy to combat art restitution fatigue. These hearings will make a real contribution.

Thank you for the opportunity to submit this testimony.