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20 YEARS WASHINGTON PRINCIPLES: ROADMAP FOR THE FUTURE

REMARKS

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State Minister Grütters, Ambassador Lauder, Deputy Ambassador Quinville, Ambassador Descotes, Minister Nir-Feldkein, Ladies and Gentlemen, I am deeply grateful to State Minister Monika Grütters for initiating and organizing this conference: **20 Years Washington Principles: Roadmap for the Future,** and to her State Secretary Guenter Winands for his excellent work and that of his staff. I may have negotiated with the German government over the past two decades more than any other person, and I can proudly state that your determination to keep alive and to encourage compliance with the Washington Principles on Nazi-Looted Art, for which I was the principal negotiator as Under Secretary of State and Special Representative of the President and Secretary of State on Holocaust Issues, is yet another inspiring example of Germany's commitment to Holocaust justice and memory.

I also want to acknowledge at the outset the stirring and indispensable leadership Ambassador Ronald Lauder has provided over the years, and to recognize his critique regarding the shortcomings of implementing the Washington Principles. His remarks are all the more reason that it is crucial that we use this "Specialist Conference" as a launching pad at the highest political level to implement the Washington Principles fully by all of the 44 countries who agreed to them, particularly those who were most involved either as perpetrators during World War II in looting Jewish artworks and cultural objects or who traded in them after the War. The Holocaust was the most ghastly genocide in human history, the wanton murder of six million Jews and millions of other victims. But it was also the greatest theft in history, not simply for money for the Third Reich, but to wipe out all vestiges of Jewish culture, by stealing their artworks, cultural objects, books, photographs, and musical instruments.

Now more than 70 years after the end of World War II, and 20 years after the Washington Principles were promulgated, this may be our last opportunity to right in some imperfect way one part of the most ghastly crime in human history, before all of its 400,000 Holocaust survivors breathe their last breath. The impetus behind the Washington Principles was never simply an effort to reconstitute expensive masterpieces, although that is what makes the headlines, but to return artworks and cultural property that had special meaning to families, the vast majority of which had far more intrinsic value to them than their modest market value. Like the murder of six million Jews, there was nothing casual about the Nazi looting; their efficiency, brutality, and scale remain unprecedented in human history. Experts estimate that 600,000 paintings were stolen, of which more than 100,000 are still missing seven

decades after the War. When furniture, china, books, coins, and items of decorative arts are included, the numbers swell into the millions.

Since the conclusion of the Washington Conference and adoption of the Washington Principles 20 years ago, reaffirmed by the Vilnius Forum Declaration in 2000 and the Terezin Declaration in 2009, we have made giant strides toward achieving the goals of identifying, publicizing, restituting, and compensating for some of the looted art, cultural objects, and books, and in so doing, providing some small measure of belated justice to some victims of the Holocaust or their heirs. We could not have foreseen how relevant this issue would still be 20 years later.

But we must candidly confront the unfulfilled promises we solemnly made.

Even at the height of the War, the Allies were not oblivious to the widespread theft of art and cultural works. 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 facing the German army willingly agreed to include art curators and experts in their army as “Monuments, Fine Arts, and Archives” officers who risked their lives to preserve Europe’s cultural heritage and that of Jews in the closing months of the war. As they crossed the German border, these “Monuments Men” found a wealth of looted art and cultural objects that they dispatched to collection points to be catalogued and eventually returned to their owners. President Harry Truman ordered the looted art objects to be repatriated by the military as quickly as possible, but locating individual owners in the chaos of the war’s end was impossible. So under Military Order 59, following international legal precedent, the U.S. and British commands returned the art 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. Many of the works that were returned by the Allies after the War were incorporated into the collections of public museums, rather than going back to their owners.

The Washington Conference on Holocaust-Era Assets and the Washington Conference Principles on Nazi-Confiscated Art did not come out of thin air. Fifty years after the end of the War, the wall of silence on Nazi looted art was breached by four scholars I met during my work on art recovery, based upon newly declassified Allied war documents and Central and Eastern European archives open after the end of the Cold War: Jonathan Petropoulos, Lynn Nicholas, Konstantin Akinsha, and Hector Feliciano and an international conference organized in January, 1995, by Professor Elizabeth Simpson of the Bard Graduate Center for the Studies in the Decorative Arts.

But the issue had not come to the attention of governments and the general public. The Clinton Administration, including President Clinton and Secretary of State Madeleine Albright, along with my team at the State Department, headed by J.D. Bindenagel, and I determined to change this.

On the road to the Washington Conference, public attention was further piqued by a U.S. House Banking Committee hearing on assets stolen during the Holocaust, including looted art and cultural property. Congressman James Leach (R-Iowa), chaired the February 1998 hearing, which included a star witness: Philippe de Montebello, the longtime director of the Metropolitan Museum of Art in New York. This was no academic matter for him: de Montebello recalled as a child “keeping one step ahead of the

Gestapo and the Vichy government, with a father who was serving in the Resistance.” Pressed by Leach, he promised the Association of Art Museum Directors (AAMD), to which over 200 American art museums belong, would present guidelines to address looted art.

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. He presented their principles on June 4, 1998: American art museums would immediately begin researching their collections for looted art; publish information in a centralized and publicly accessible database to assist Holocaust victims and their heirs locate their possessions; seek all possible information about the history of the ownership—its “provenance” in the art world—of any work before acquiring it; refuse any works showing evidence of unlawful confiscation during the War years, 1933-1945; seek warranties from sellers of valid title free of potential claims; and, finally, and crucially, resolve by mediation any claims against pieces in a museum’s collection “in an equitable, appropriate, and mutually agreeable manner.”

Twenty years ago, we knew we faced challenges to get 57 delegations, 44 countries, and 13 NGOs to agree on principles they would follow to open archives, fund research into the provenance of long-closed collections, notify potential claimants, and provide processes for a “just and fair solution” for the recovery or compensation of looted artworks and cultural property, recognizing the differing legal systems of the participating nations and that they would act within the context of their own laws. The Washington Conference Principles were not a legally binding international treaty but depended upon the good will and political determination of governments for their implementation.

The Washington Principles were reaffirmed by the **Vilnius Forum Declaration of October 5, 2000 urging** “all governments to undertake every reasonable effort to achieve the restitution of cultural assets looted during the Holocaust era to the original owners or their heirs.” More than ten years after the Washington Principles, 47 countries adopted the **Terezin Declaration in 2009** encouraging “all parties including public and private institutions to apply them as well,” and emphasizing that the Nazi confiscation, sequestration, and spoliation of art and cultural property was accomplished “through various means including theft, coercion and confiscation, and on grounds of relinquishment as well as forced sales and sales under duress during the Holocaust era 1933-1945”.

In making a fair assessment of the success of the Washington Principles, I believe the glass is slightly more than half-full, but that is not satisfactory. It is time for one last push to correct the flaws in implementing the Washington Principles, both in my country, the United States, and in key countries which still have Nazi-looted art in their possession. With the assistance of advanced digital technology, which did not exist at the time of the Washington Conference, there can be no excuse for failing to have the widest distribution of information about Nazi-looted art and cultural property, including books. No museum, state-controlled or private; no art gallery or collector; no auction house; no private owner, should want to hold or deal in Nazi-looted artworks, stripped in the most violent way from their owners during World War II. Every nation that committed to the Washington Principles and the Terezin Declaration should redouble its efforts to identify, publish, and retribute or compensate or find other “just and fair solutions” when an owner or heir has a legitimate claim.

More broadly, good faith implementation of the Washington Principles can help in a more general way beyond Nazi-looted art, by creating a more transparent global art market, with greater assurance that buyers and sellers have the fullest information about the provenance of the art in which they are dealing.

SUCSESSES OF THE WASHINGTON PRINCIPLES

The Washington Principles have changed the way the art world does business

The Met's Philippe de Montebello proclaimed at the final plenary adopting the Washington Principles that "the art world would never be the same." He was correct. Before the Washington Principles, provenance research was limited, the issue of Nazi-looted art largely unrecognized except in the domain of a few scholars, and claims and restitution virtually non-existent. As de Montebello put it to me, business as usual "has changed dramatically; 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."

Provenance Research has proliferated, and Websites are increasingly enabling potential Holocaust survivors or heirs to locate art looted from them or their families as more nations and NGOs do more provenance research and post results on the internet

The crucial, initial step that must be taken to give life to the Washington Principles and hope to those whose artworks were stolen from them or their families is for museums, galleries, and auction houses both to research the provenance of the art they possess or handle, and to post the results in an accessible fashion. In today's digital world, the Internet has become a 21st century way to shine the light on possible Nazi-looted art.

The pathbreaker was Ambassador Ronald Lauder, who established the **Commission for Art Recovery** in 1997, and then used it to monitor and aid in the implementation of the Washington Principles. There are now a proliferation of websites posting details on potentially confiscated Nazi-looted art, imperfect though they are in still not including all the art in the collections of museums that has suspect provenance during the War years : the **Commission for Looted Art in Europe**; the International Portal for Records Related to Nazi-era Cultural Property (**International Research Portal**) hosted by the U.S. National Archives and Records Administration (NARA) with 22 institutions across Europe, Israel, and the U.S. to help families, researchers, and historians, by cataloging and publicizing not only the possible Nazi-looted objects but the archival records that may contain information on looted objects.

I welcome the new initiative of the Commission for Art Recovery and the Jewish Claims Conference to establish the **Jewish Digital Cultural Recovery Project**, to develop a database that, through the use of various public archival sources, provides comprehensive and precise documentation of cultural objects forcibly displaced and plundered during the Nazi-era from the time of their spoliation to the present, and visual, narrative, and educational components to help

disseminate the content of the database to academic and lay audiences. The project will also create a network of governmental and heritage institutions that collect European documents closely cooperating on developing the database, disseminating best practices, and promoting further research on Nazi-looted artworks. The American Alliance of Museums (AIM) has almost 30,000 works from 179 American museums listed on the Nazi-Era Provenance Information Portal (NEPIP), admittedly faulty though it is, and the privately-owned Art Loss Register database of art losses.

In addition, Austria, France, Germany, the Netherlands, and the United Kingdom have websites listing suspect artworks that may have been confiscated by the Nazis. France has focused most of its attention on researching the some 2000 works in their MNR collection (National Museums Recovery), which are works taken from French victims to Nazi Germany and later returned after the War to France. In 2017, for the first time, the French listed all its MNR collection. France has also participated in opening its archives and in the Claims Conference's ERR/Jeu de Paume database, the first integrated looted art database.

Now private German collectors are allowed to seek government assistance to check the provenance of the works in their collection, as long as they uphold the Washington Principles if a work is found to have been looted during the Nazi era. In addition, France is now cooperating with Germany on provenance research projects and recently decided to coordinate its research and claims process.

The Washington Principles Spurred Five European Nations to create panels to resolve claims in non-litigation forums.

Germany in 1999 reaffirmed the Washington Principles in a Joint Declaration between the German Federation, the Länder (Federal States) and the National Associations of Local Authorities, and in a 2001 Joint Declaration adopted non-legally binding Guidelines (Handreichung) for their public institutions and museums. In 2003 Germany created an Advisory Commission (Limbach Commission after its first chair) to review claims to Nazi-looted art. In 15 years, it has advised on 15 cases. There have been reforms to the Advisory Commission up to 2016, when the tenure of members of the Commission was limited, representatives of Jewish institutions were appointed to the Commission, and the Commission was permitted to use outside experts to provide advice to guide its decisions (although only 5 million € were allocated). Shortly before the opening of the Berlin Conference, Monika Grütters announced another welcome, major reform: for the first time the Commission will be able to act upon a claimant's application alone, without the approval of museums funded by the Federal Government, which had previously been able to block claims; "the relevant museum will no longer be able to refuse such action."

Since Monika Grütters became Federal Government Commissioner for Culture and the Media in 2013, there has been a welcome acceleration of action. She has increased the German budget for provenance research from one to nearly seven million Euros. She helped establish the German Lost Art Foundation (DZK) in 2015 that organizes and funds provenance research. The Foundation's definitions of Nazi-confiscated property set a standard for other nations to emulate. They broadly define a cultural asset to include items of historic, artistic or other cultural or identity building significance, including

articles of daily use, recognizing that their origin and fate are more significant than the art historical value of the item. The Foundation has also defined “confiscation through Nazi persecution to include not only theft, but a loss of assets suffered as a “result of forced sale, expropriation, or other means”. They also cover “flight assets”—artworks sold out of necessity during times of economic hardship, without physical coercion, either in Germany or abroad.

Commissioner Grütters also set-up a task force and a provenance research project under the DZK to review the trove of Gurlitt artworks first discovered in 2012 and appointed two experts from outside Germany to the advisory commission. She also initiated the Cultural Property Protection Act and has left the door open for it to include restitution of Nazi-looted art.

The **Austrian** Restitution Advisory Board reviews looted works of art held in the Austrian Federal Museums and makes recommendations to the competent federal minister. Austria has been a model of commitment to restitution. Austria has restituted the most artworks and cultural objects, over 30,000, and while the process is not without some mistakes, their progress is significant.

The **Netherlands** created the Origins Unknown Committee (Ekkart Committee), which led to the Dutch Restitution Committee (the Advisory Committee on the Assessment of Restitution Applications) to review claims against the works of art located in the “Netherlands Art Property or NK-collection”. This consists of art forcibly taken by the Nazis from the Dutch, taken to Germany during the War, and returned thereafter. The Dutch government adopted a liberal and generous restitution policy based on the recommendations of the Ekkart Committee. For example, all sales of works of art by Jewish private persons in the Netherlands from May 10, 1940 onward were to be treated as forced sales, unless there was express evidence to the contrary; the rightful claimants should be given the “benefit of the doubt whenever it is uncertain whether the seller actually enjoyed the proceeds; restitution should occur if the claimant has established title “with a high degree of probability.” The Dutch took an early lead among European countries but there seems to be some backsliding. There are some 3800 looted artworks in the NK Collection which have yet to be returned.

France to its credit, undertook a major internal review last year of its handling of cultural property looted during World War II. Following a searching report in February 2018 by David Zivie, director of the Ministry of Culture to Françoise Nyssen, French Minister of Culture, on impediments to restitution and compensation for Nazi-confiscated artworks and cultural property, the French government announced reforms on July 22, 2018, the commemoration date of the Vél ‘d’Hiv’ roundup of Jews. They announced that the CIVS (Commission for the Compensation of Victims of Spoliation), which has done an admirable job of Holocaust compensation for French Holocaust victims, would be mandated to undertake what they call “the Mission” to address Nazi-looted art claims. I hope the new Minister of Culture will continue with the plan of his predecessor to centralize restitution issues in the Mission, and provide sufficient financial support.

The **United Kingdom** has a well-functioning Spoliation Advisory Panel, but to further improve it, Sir Paul Jenkins was asked to conduct an independent review of the Panel and submitted a report in

2015 with a series of recommendations, many of which have apparently been approved. They have been a leader in digitizing almost all of their art collections in public museums, to their credit.

International Cooperation has Begun to Sprout

Germany has funded the German/American Provenance Research Exchange Program for Museum Professionals (PREP), along with the Smithsonian Institution and other museums to advance World War II-era provenance research in museums, libraries, and research institutions in both countries. And **France and Germany** are beginning to discuss joint programs. Last month, on October 4, 2018, Commissioner Grütters on behalf of the **German Federal government** entered into a Memorandum of Understanding with the **Israeli government** in light of their joint cooperation in researching the Gurlitt Art Trove, the importance of acquainting the Israeli public with the history of Nazi-looted art, and the tragedy of the Shoah, to have it exhibited in Israel in 2019. This sets a standard for the exhibition of heirless art based upon a temporary loan to Israel.

Substantial Restitution or Compensation of Nazi-Looted Art

With all the legitimate frustrations, a very sizable number of Nazi-looted artworks have been restored to their owners, or compensation given in lieu of restitution. Austria has restituted over 30,000 cultural objects to their rightful owners. While German museums are unfortunately not mandated to report their restitutions and financial settlements, the German government in their Joint Declaration with the U.S. government of November 26, 2018, has stated that Germany has returned over 16,000 individual objects (5746 art objects and more than 11,700 books) to Holocaust survivors of their families in the 20 years since the Washington Principles. Perhaps encouraged by this Berlin Conference, the Netherlands Museum Association recently announced that, after years of research, 42 Dutch museums have discovered over 170 artworks in their collection with problematic histories during the Nazi occupation, which may have been looted or sold under duress. It is noteworthy that the Washington Principles have inspired efforts by Germany to explore their art acquired from their colonial possessions, and that in the U.S. claims from the Cuban revolution are surfacing.

The AAMD has reported that as of the time of the Berlin Conference, their member museums have returned or resolved claims to 54 Nazi-looted artworks through negotiation, and another five have been resolved through litigation.

Christie's, the art auction house, has helped resolve some 100 or more claims to art with suspicious World-War II related provenance, given to it for auction or sale since the Washington Principles were promulgated.

SHORTCOMINGS IN IMPLEMENTING THE WASHINGTON PRINCIPLES

We must candidly address the shortcomings in implementing the Washington Principles on Nazi-Confiscated Art.

Several Key Countries Have Largely Ignored the Washington Principles.

First, several key countries have made virtually no effort to comply with the Washington Principles, although they agreed to them. Under the recently enacted 2018 Justice for Uncompensated Survivors Today Act (JUST), the State Department is required to report by October 2019 on the degree to which countries, including the United States, are complying with the Washington Principles.

Hungary is in possession of major works of art that were looted on its territory during World War II, and has not restituted them, although having been repeatedly asked to address this issue. I mentioned Hungary at the 2000 Vilnius Forum as a country which refused to implement the Washington Principles, despite the fact that their wartime government sanctioned the confiscation of artworks and cultural property from their Jewish citizens. Unfortunately, I cannot report any change of attitude by the current Hungarian government. They have refused to return these artworks to their rightful owners. They have refused to take their historic responsibility for the systematic looting of art from their Jewish citizens. They have undertaken some provenance research in their museums and located some looted art that is not owned by the state, but they have never made the results of their research public. Hungary has enacted a decree on the Order of Restitution of Cultural Assets Held in Public Collections Whose Ownership Status is Disputed, but only claimants of non-Jewish origin have received any works back.

Poland was overrun by the Nazis and lost some three million of their non-Jewish citizens, as well as three and half million of their Jewish citizens to the Nazis. Any artworks and cultural property that was confiscated from their Holocaust victims would have been confiscated by the Nazis. But it appears there are artworks confiscated from Jews and other victims in other countries, like the Netherlands, that are now in Poland as a result of the Nazi-looted art trade during the War. The Origins Unknown Agency of the Netherlands has a list of scores of paintings that are thought to be in Poland. It would be useful for joint Dutch-Polish cooperation in provenance research to clarify this situation, but to date the Polish government insists they will only handle Polish artworks that had been taken out of Poland. Their focus has been to repatriate what they lost from their public collections.

Spain also has taken no steps to implement the Washington Principles, and in one dispute involving a Nazi-looted artwork that belonged to an American family, the Spanish government took the position that the Thyssen Museum which possessed it was a private museum not covered by the Washington Principles.

Russia suffered greatly at the hands of the Nazis during the War. The Red Army took substantial artworks from Germany at the end of the War as partial compensation for their grievous losses, but this included some art the Nazis had taken from German Jews. At the conclusion of the Washington Conference, the Russian government representative joined my closing news conference to announce their restitution of one such work in their collection. They also passed a law that distinguished their trophy art from that which belonged to Jews and would be treated according to the Washington Principles. There has been some provenance research started at Russian cultural institutions, and some is recorded on an electronic database of all displaced cultural property and is also published in scientific

publications and shown in exhibits. But there has been no restitution of any Nazi-looted art, nor any process for their identification or handling of claims.

The Italian federal government made some art and cultural property restitution shortly after the end of World War II. They endorsed the Washington Conference Principles and Terezin Declaration. Immediately following the Washington Conference, the Italian government created the Anselmi Commission with cultural experts, scholars and members of the Italian Jewish community, which made recommendations in 2001 on ways to comply with the Washington Principles, although the Commission focused more on Nazi-looted art than on spoliation of Jewish cultural property under Mussolini. But their recommendations have been largely ignored. Unfortunately, there has been no provenance research or listing of possible Nazi-looted art in their public museums by the Italian government, although the European-Union backed TranscultAA Project has been doing good provenance research on Italy. Italy's main interest is in what the Italian government lost. There is a particular problem with various cities and provenances, where much of Italy's art collection is maintained, which have ignored the Washington Conference Principles. Some private Italian art dealers have facilitated settlements of Nazi-looted art claims. Italy has demanded restitution of ancient cultural property looted from their territory. It is hoped they would follow-through in a similar fashion in complying with the Washington Principles.

Unfortunately there are a long list of other countries, in Latin America and in Europe, which participated in the adoption of the Washington Principles, but have done nothing to research the provenance of the collections in their public museums or to reconstitute even a single art work or cultural property.

Insufficient Provenance Research and Insufficient Resources Devoted to it

Most key countries do not devote sufficient funds and human resources to expedite provenance research, and so it proceeds at a snail's pace. **It is critically important that the United States, which was the prime mover in negotiating the Washington Principles, be the exemplar for the rest of the world.** But the U.S. has not done nearly as much as we should. Provenance research of Nazi-looted art by our private museums is constrained by a lack of funds and the absence of a large cadre of trained provenance researchers, but more broadly by the low priority our museums have given to provenance research of Nazi-looted art in their collections, without which the Washington Principles cannot be properly implemented.

Indeed, it is long overdue for the AAMD to do an objective, thorough study of how its member museums have complied with the Washington Principles. We know that museum budgets are tight, but

priority should be given to this important, moral task related to Nazi-looted art. There are standard setters who could be emulated, like the Boston Museum of Fine Arts, which has made provenance research a priority for their budget.

Most museums in Europe have not even started provenance research, and those that have begun are nowhere close to completing their provenance research either, with very few exceptions. In **France**, budgets for archival records appear to be reduced. France's other major problem is having no de-accession law to allow its public museums to remove Nazi-looted artworks from their collections, beyond the more limited MNR collection. Until such a law is enacted, claimants will not be able to be reunited with their families' looted art, and France will lag behind other Western European nations.

Moreover, **France and the Netherlands** face similar problems on provenance research. France has focused most of its effort on their MNR (National Museums Recovery) collection-- works taken from French victims and later returned from Germany for restitution to their rightful owners. The **Netherlands** focus on their Netherlands Art Property (NK collection), which consists of art forcibly taken back to Germany by the Nazis, and later returned to the Dutch after the War. But neither country gives priority to researching the provenance of art in their other public collections and major museums. The effort has been advancing at a snail's pace due to inadequate funding and legal support, and to the fact that provenance research at French museums has not been a priority.

There is a discrepancy as to how a claim is assessed depending on whether it belongs to the NK-collection or to other Dutch public collections, where the process is less transparent.

Neither the Netherlands, nor France should not treat restitution of claims to Nazi-looted art in their national collections any differently from claims to artworks in their NK- or MNR- Collections of Nazi-looted art shipped to Nazi Germany and later returned after the war. If a Nazi-looted artwork is in the collection of a public museum, that museum should not keep the work without the agreement of the claimant.

When part of the Gurlitt collection was given to the museum in Bern, Switzerland, they took the positive step of having the German task force reviewing the bulk of the collection, also review their Gurlitt art to assure it was not Nazi-looted art. However, at the time of the Swiss bank settlement in the 1990s, the banks wanted art to be covered by the overall financial settlement. This did not occur, because it would have been unfair to potential claimants of Nazi-looted art. There has been some provenance research and some restitution by **Switzerland**, but because during the period 1933-1945, many Jews who were fleeing sold their art in Switzerland, it has been insufficient. The biggest contribution Switzerland could make for the Washington Principles, would be to open their private museums and the archives of their art dealers for easy accessibility by provenance researches.

Many **German** federal museums have done significant provenance research and have data on their artworks which have been looted by the Nazis. But there is no federal German government authority that has provided an overview, by asking German federal museums to disclose how much provenance research they have done of their collections, how many are suspected to be Nazi-looted

artworks, and what timetable they have to complete their research of their collections. The Länder could be asked to do the same for their museums.

Several European Art Advisory Panels Have Significant Flaws

Court systems in Europe are rarely practical ways to implement the Washington Principles because of statutes of limitations and adverse possession laws which frequently legitimize the transfer of ownership even of stolen goods. This means only mediation and advisory opinions by panels created by governments are available to give meaning to the Washington Principles. To their credit, Germany, Austria, the Netherlands, the United Kingdom, and France have created such advisory panels and committees. But several problems impede their success.

The Washington Principles call for commissions or other bodies to identify art that was confiscated by the Nazis and to assist in addressing ownership issues to have a “balanced membership”. But some European countries consider this only to mean a variety of their own professionals from different disciplines. Instead, the best practice would be that they should also include international experts and ones that are familiar with the perspectives of both claimants and museums.

France has a commission for looted art recovery, and under their new proposal, CIVS, which has handled Holocaust compensation for French survivors, has been given the responsibility, along with several art experts, to deal with Nazi-looted art claims, and appears to be doing so efficiently. But because France has no de-accession law, CIVS can only provide compensation to claimants, not restitution of the artworks themselves, unless they can determine that the accession into the national register was by a mistake. Moreover, the focus of French efforts is on their MNR collection, not their public museums.

The **Netherlands** panel, which was established in 2003, had an enviable record, recommending the return of hundreds of works of art. But recently, there is significant criticism of their panel, based upon new stricter Dutch policies for returning looted art, in which a decision on restitution is based upon a balance of interests between the interests of national museums against the claims by Jewish Holocaust survivors or their heirs. The panel is instructed to weigh “the significance of the work to public art collections” against the emotional attachment of the claimant, and they even look at the degree of persecution. This balance of interest test is contrary to the Washington Principles. In 2016, under the new policy, all seven claims it considered were rejected by the Panel. I would urge the Dutch restitution panel to follow the practice of the UK Spoliation Panel, which is more consistent with the spirit of the Washington Principles: once theft is established, the emotional connection of the claimant to the artwork or the degree of Nazi persecution should not be balanced against the method of acquisition of the museum or its importance to their collection. Plain and simple, they should not hold Nazi-looted art

which does not belong to them. That is the only way to do justice to the original victim of Nazi persecution.

Despite welcome amendments in 2016 and the further welcome reforms just announced by Monika Grütters to its Rules of Procedure, the **German** Limbach Commission must implement these reforms. In 15 years only 15 cases have been resolved, and their concept of “balanced membership” called for by the Washington Principles precluded any non-German, international participation. There is a Bundestag inquiry into the Limbach Commission’s management of Nazi-looted art claims. We recognize the federal nature of the German government and the sovereign rights of Länder (States) on cultural issues. Just as they have so meaningfully done for decades in negotiating compensation issues for Holocaust survivors for Nazi crimes, perhaps the Federal German Government also could accept responsibility for “just and fair solutions” to Nazi-confiscated art, as called for by the Washington Principles., rather than deferring to the Länder (States) in this unique situation. They were given the looted property by the Federal Government in the first instance. Artworks touched by genocide could be subject to the Federal Government’s determination of their status. Hopefully, the states and museums could then follow the Washington Principles themselves. Of the 16 Länder who were signatories to the Joint Declaration, only a small fraction have implemented a restitution process.

The announcement by Commissioner Grütters of the 16,000 artworks and books returned is admirable. But since the Washington Principles, there has not been a comprehensive review of the amount of provenance research done by German public and private museums, and the amount of provenance research undertaken, and the number of art objects classified as potential looted art is unknown.

We take note of concerns presented to the U.S. government by private parties regarding Germany’s handling of Nazi-looted art: the need for German museums to put their art collections online, along with their respective provenance to provide transparency in their holdings and to enable potential claimants to search for confiscated works; to publicly report on their restitutions and other settlements of claims, and on their progress in using the enhanced public funds that Minister Grütters has obtained from the Federal Government for greater provenance research; the absence of a single institution or point of contact to help claimants with their claims. Moreover, despite Germany’s recognition that the Washington Principles apply to private museums and collections as well as public ones, there has been very few restitutions of Nazi-looted art in the hands of private foundations and individuals. A Holocaust Survivor or heir has no legal means to get their Nazi-looted art back if it is in private hands, and without German auction houses following procedures like Christie’s and Sotheby’s, they are being placed on the art market, denying survivors or their heirs with the opportunity to make claims.

The question of ownership of heirless art has not been addressed and unclaimed Nazi-looted art remains in German museums, which have de facto ownership until a survivor or heirs come forward. The German government s might, for example, reach a mutually agreeable means of handling heirless

art with Jewish organizations and the State of Israel, once provenance research is completed and we have a better understanding of the art included in this category.

The experience of the **United States** underscores the mixed report card in the 20 years since the Washington Conference. The United States has a unique situation. Except for the National Gallery, the major museums in the U.S. are private, not public as in Europe. There is no ministry of culture to sponsor legislation and oversee provenance research, which is the norm in most western European countries. Moreover, there is the sheer magnitude of the task: The UK has about 3000 public museums, and Germany about 6000; the U.S. is home to over 35,000 largely private museums. Fortunately, there is a culture of self-regulation in the U.S. Among the more than 18 million objects held by American museums, those institutions have identified approximately 25,000 works which, though not necessarily stolen by the Nazis, require further research into the ownership during the Nazi era, and have been published on their websites and on centralized databases to assist claimants. Based on this research, between 1998 and 2006, twenty-two works in American museum collections have been identified as having been stolen by the Nazis and not restituted, and either the works have been returned to Holocaust victims or settlements have been reached with heirs.

The Washington Principles were heavily influenced by the U.S.-based Association of Art Museum Directors guidelines. The AAMD has stated that their “commitment to these core values and the success of its members in the identification, recovery and restitution of works seized by the Nazis have ensured that America’s art museums are among the most trusted and respected public institutions in the world.” The Nazi-Era Provenance Internet Portal (NEPIP) database, created by the AAMD and hosted by the American Alliance of Museums was a great innovation, providing information on looted objects or objects with significant gaps in their provenance. There are 179 U.S. museums that have listed over 29,000 covered artworks in the United States that passed through Europe between 1933 to 1945 in a portal that was designed to permit families to examine this database for their looted art, without having to go to each museum individually. But its utility is compromised by what the AAMD itself calls outdated technology and software. It is important for AAMD to create a state-of-the art databased that can be readily accessible and has the information necessary for families to identify potential Nazi-looted art.

But has been particularly disappointing that in the past ten years or so many American museums lost an appreciation for the Washington Principles and began to assert affirmative legal defenses, like the statute of limitations, and even to bring preemptive injunctive motions before claims were filed to defend against restitution claims, rather than have them decided on the merits. The U.S. unfortunately has no commission or panel to resolve disputes on their merits outside of court.

Significantly due to the initiative of Ambassador Ronald Lauder, Congress passed in 2016 the HEAR Act (Holocaust Expropriated Art Recovery Act), which allows claimants to present a claim in court for 6 years after the object has been located and identified and resets the clock for those cases when the object’s location was known but the claim was barred by previously existing statutes of limitation.

Interestingly, the AAMD supported passage. The goal of the HEAR Act was not to jump start an endless line of litigation in U.S. courts, which is expensive and time consuming, but to remove the main obstacle American museum board members use when faced with claims to their collection. The 6-year period should enable both sides to complete comprehensive research privately and jointly and to work out settlements, which could be either restitution or compensation, if that is what the parties choose. As a result of the HEAR Act, more and more museums are settling claims, and I hope this will continue over the next several years. But that does not mean museums will agree to every claim. The amount of evidence submitted on behalf of claimants remains critical to museums, and because there is no independent panel to resolve disputes, claimants will often be forced to go through lengthy and expensive court fights. The museums take the position that the “just and fair solution” called for by the Washington Principles does not mean simply giving contested art back

ROADMAP FOR THE FUTURE

Based upon the experience of the past 20 years by a number of countries under the Washington Principles, permit me to provide what I think are the best practices that should guide our “Roadmap for the Future.”

First, we now appreciate more clearly than 20 years ago, both that we must look beyond artworks alone, and that the looting/confiscation by the Nazis of art and cultural property must be given a wider definition than plain, outright theft. **Germany’s definition sets a standard other countries could emulate.** Many refugees seeking to escape Nazi Germany had to pay exit taxes and find expensive ways to leave and enter another country, and were forced to sell their artworks, cultural property, books and other possessions at bargain basement prices (“forced sales”). Others who were able to take some property out of Germany often had to sell them at far below their market value to sustain a new life for themselves and their families (“flight sales”). So Germany defines a cultural asset to include items of historic, artistic or other cultural or identity building significance. They also define “confiscation through Nazi persecution” to include not only theft or stealing, but a loss of assets suffered as a “result of forced sale, expropriation, and other means,” and also to cover “flight assets,” where artworks and cultural property were sold out of necessity during time of economic hardship, without physical coercion, either in Germany or abroad.

Second, thorough provenance research of public and private collections to identify possible Nazi-looted art is central to implementation of the Washington Principles, but it is demanding, time-consuming, and expensive.

The **Netherlands** serve as a model by expanding their research to include not only art acquired by their museums before or during the war, but also donations that came later and have suspicious gaps in their provenance. Germany likewise has set a standard by allowing private collections to receive government funds to conduct provenance research, if they will follow the Washington Principles if they discover possible Nazi-looted art in their collections. This requires more trained provenance researchers and more funds for museums to undertake time-consuming and costly provenance searches. I urge European governments to create special resources for their public museums to achieve this result.

Almost all **U.S. museums** are private, with the exception of the National Gallery of Art in Washington, but they rely upon donations from donors and the general public. Some percentage of what they raise should be set aside for provenance research. In addition, universities in both the U.S. and Europe should provide multi-disciplinary courses to help train a large number of provenance researchers. Adequate funding for provenance research is essential. Germany to its credit has devoted additional money to help its museums. The AAMD believes that one of its biggest challenges is the absence of qualified researchers. Universities should develop courses in art provenance research to teach the cross-section of law, art research and history, and build up a body of experts.

Austria and Germany have set positive examples of conducting research at all levels, leading to restitution of books and objects of lesser financial value, but of powerful meaning to the families from which they were confiscated. Major museums in Europe and the U.S. have lesser works that are normally kept in storage and not exhibited. Only by provenance research can they see the light of day for potential claimants.

Israel will shortly launch a nationwide program of provenance research for their museums, and will provide public funding to train provenance researchers with international experts in the field.

Third, descriptions of all the collections of public museums should be published on accessible websites, with accompanying provenance results, including not only the name and picture of the painting, but the object-level details on its provenance and previous owners, so they are accessible to potential claimants and art historians. This is not being done as completely as necessary. In the 21st century digital age there is no excuse for not providing the widest publication of databases.

Fourth, certain states should begin to abide by the Washington Principles, including **Hungary** (where the possessions of Jewish victims were plundered during the War, with a pro-Nazi government) **Poland and Spain**, which agreed to the Washington Principles and Terezin Declaration, but have largely ignored them.

Fifth, nations should treat all the public collections the same in diligently researching, identifying, and, where appropriate, restituting or compensating Holocaust survivors or their heirs. Public collections in **France and the Netherlands** should be treated the same as the French MNR and Dutch NK collections; both types of collections should be treated with equal diligence and in compliance with the Washington Principles.

Sixth, all countries, which have Nazi-looted art in their public museums, should pass de-accession laws that will permit them to return any confiscated artworks in their possession to their rightful owners, and, to revise their laws to enable private museums to do the same.

Seventh, the Washington Principles apply to and should be honored by private collections and the private art trade just as much as to public museums, and I call upon them to abide by them. This is especially the case where private collections accept public support for exhibitions and other activities.

We can all gain inspiration by the decision of the **Dutch royal family** which returned a painting by a Dutch master purchased by Queen Juliana from a Dutch art dealer without knowing its tainted history. When the palace's investigation into the thousands of artworks in the collection of the House of Orange found convincing evidence the painting had been the product of a forced sale to a Nazi bank in Amsterdam, they returned it to its rightful owner.

European nations have not successfully addressed Nazi-looted art trade in private collections, which is being recycled through the European art trade. No private collector or private museum should want to keep or traffic in stolen goods, especially Nazi-looted art. Indeed, some are beginning to come forward proactively when they learn of the tainted provenance of their artwork.

Knowingly trafficking in stolen goods may itself be a criminal violation. But the private art trade should self-regulate and encourage settlements between the original owners or their heirs and the current possessor of Nazi-looted art, even if local legislation protects the current possessor from ownership claims because of the passage of time. The positive way in which Germany handled the discovery of the Gurlitt collection is an example: establishing a special commission with international art experts from Israel and the United States to supplement their own members.

The world's two largest auction houses, **Christie's and Sotheby's**, have set a global standard for the private art market. They have full-time professionals and staffs to identify and refuse to sell suspect art consigned to them for sale, and to search for their rightful owners. Christie's has published Guidelines. They have had significant success in working out mutually agreeable solutions between the claimants whose families were victimized by the Nazis and the current possessors, often good faith purchasers. Christie's published Guidelines in 2009 for handling Nazi-era art restitution issues when identified in its assignments and sales. Through this approach, and a more informal but useful one by Sotheby's, a template has been created for successfully resolving Nazi-era issues between private parties. Major auction houses in continental Europe should adopt a similar policy, to cleanse the international art market of tainted goods. In addition, tax incentives could be considered to encourage private collectors to voluntarily come forward and resolve issues around Nazi-confiscated art they may have unknowingly acquired, to make up for the loss they will suffer.

The **Art Dealers Association of America** should encourage all of their members through their Code of Ethics to follow the Washington Principles, which would also ensure that the American private art market has the highest standards of transparency and integrity, and is not tainted by Nazi-looted art.

Switzerland has made a good start in regulating their private art market, but it does not appear to apply to Nazi-looted Art. An article of the Swiss Federal Law on International Transfers of Cultural Property bans dealers and auctioneers from entering into an art transaction if they have any doubt as to the provenance of an object; notes that the burden of proof is partially transferred to the seller; and that the possessors of the artwork cannot rely upon the principle of good faith if they are unable to prove that they paid due attention at the time of acquisition. When establishing whether a work has tainted provenance, Swiss dealers should not take into consideration the protection that the passage of

time may award to current possessors in Europe , but should act under the “fair and just solutions” principle of the Washington Principles and apply this to Nazi-looted art.

The **AAMD** has pursued its own guidelines for its over 240 private museum members in the U.S. Over the years since the Washington Principles, the search for “just and fair solutions” has been conducted with museums, art dealers, and auction houses. Several methods have been used: negotiated settlements; litigation in courts followed by negotiated settlements; conciliation through the use of expert facilitators; mediation; and arbitration with arbitral awards. The new HEAR Act may promote more consensual agreements out of court.

Eighth, nations with public museums should establish a point of contact for claimants to help them with their claims. The **Holocaust Claims Office of the New York Department of Financial Services** is one local example in the United States. If governments fund provenance research for their museums in disputed cases, they should provide funding for claimants as well.

Ninth, there should be no time limit on bringing claims if the complete identification and location of the art is not previously known. Reasonable time limits should be set once the identity and location of the object is actually known. Likewise, there should be no sunset to the operation of the advisory panels which have been established; unless extended, the **UK Spoliation Panel** will soon go out of existence. I have every confidence its tenure will be extended, given its positive record.

Tenth, decisions by the national panels should be posted in the internet, the reasons for their decision stated in detail, and translated into several languages, including English, so that they can serve as useful guideposts for future action.

Eleventh, more engagement by the **European Union** would be very useful, while recognizing that member states retain sovereignty in cultural affairs. In 2014, the European Parliament and European Council passed a Directive (2014/60/EU) on the return of cultural objects unlawfully removed from the territory of a member state. In 2017, at the initiative of the European Parliament, the European Parliamentary Research Service identified a number of weaknesses within the EU legal system, including Nazi-looted art, where there were contradictory recommendations in cases of restitution claims of Nazi-looted art, and insufficient measures to control future transactions in the private market in Nazi-looted art. They helpfully recommend, among other measures, support for provenance research at the European level, and a general prohibition of the sale and acquisition of stolen and illegally exported and imported works of art and cultural goods, all to “create a more certain EU legal system for restitution of claims of works of art and cultural goods looted in armed conflicts and wars.”

In a positive and welcome step, the Committee on Legal Affairs of the European Parliament (2017/2023 INI) in an October, 2018 Draft Report that may be taken up by the full European Parliament

in December, explicitly recognizes the Washington Conference Principles on Nazi-Confiscated Art; notes the legal barrier of families recovering their art, and that no EU legislation explicitly governs restitution claims for works of art and cultural goods looted; states that insufficient attention has been paid at the EU level to the restitution of works of art and cultural goods looted in armed conflicts; calls for the establishment of a responsible and ethical European art market; asks for the creation of a comprehensive listing of all Jewish-owned cultural objects plundered by the Nazis and their allies from the time of spoliation to the present day; urges the European Commission to support a cataloguing system to gather data on looted cultural goods and the status of existing claims; favorably notes the U.S. Holocaust Expropriated Art Recovery Act as an example of dealing with statutes of limitation that creates difficulties for claimants in restitution matters. Importantly, the Commission is called upon to develop common principles on access to public or private archives containing information on property identification and location and tying together existing databases about title to disputed properties, and to identify common principles on how ownership or title are established as well as rules of standards of proof. Last, it calls on Member States of the EU to make all necessary efforts to adopt measures which favor the return of Nazi-looted property, and that the return of artworks looted in the course of crimes against humanity to the rightful claimants is a matter of general interest.

Twelfth, **heirless art**, where the identity of the owner of Nazi-looted art cannot be identified, most likely because the owner was killed in the Holocaust, is directly covered by the “just and fair solution” standard of the Washington Principles, but presents daunting challenges. But with improved databases, more detailed provenance research, and more readily available genealogical information that could not be envisioned 20 years ago, additional efforts should be made to locate heirs. There are creative solutions which can be considered if no heirs are identified: using heirless art as an educational tool about the Holocaust through loans to Israel and other countries for exhibition; their designation when displayed as artworks confiscated from an unknown Jewish family during the Holocaust; and as in **Austria**, as a last resort, their sale, with the proceeds to go to Holocaust survivors.

In any event, the ownership of heirless Nazi-confiscated art confiscated from Jews should not be with the current possessor or incorporated into their permanent collection of museums, so that if a claim is made in the future against the artwork, there will be no question it can be restituted. A solution to this difficult issue should be the product of a dialogue between the governments, their Jewish communities, international Jewish organizations, and the State of Israel.

The Berlin Conference 20 Years Washington Principles: Roadmap for the Future gives us perhaps the last opportunity to get new energy and momentum behind fulfilling the promise of the Washington Principles. We must not turn our backs on Holocaust survivors and the memory of the six million Jews and millions of others who perished. We must not let history’s verdict on us be one of disappointment that we failed to fulfill the commitments we made to the Washington Principles and Terezin Declaration. **We have come so far in the right direction in the past 20 years. Now is the time to rise to the challenge by going the rest of the way. We can do it. We must do it.**