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Milan, Italy
June 23, 2011

**Restitution Experience Since
The Washington Conference (1998)**

AN OVERVIEW

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In Italy there is a widely diffused and truly popular conviction that a work of art is not merely an object with monetary value, which can be exchanged, but a unique document of man's creativity for which no substitute can be found, a page in human history inherent in the history of the whole civilization that has created it.

***And yet the passion for preserving these riches, which had been collected, loved, and studied --- riches of a conscious and active human dignity --- was of no avail
Guido Gonella (1950)***

1. **MAJOR ACHIEVEMENT:**

After 50 years in which little attention was given to the issue and Holocaust loot was frequently sold, bought, collected and displayed, the "art world" has become acutely aware of national policy as well as the moral and legal aspects of the problem. Many museums and governments now accept the right of Holocaust victims and their heirs to obtain restitution.

The Washington Principles¹ called for provenance research of national collections, an effort to locate the Holocaust victims from whom works of art were expropriated and a just and fair resolution of claims made by victims and their heirs for the restitution of their property. The Principles were reaffirmed a decade later by 46 nations with the Terezin Declaration (2009) which emphasized that restitution claims should be decided on the merits and not on technical grounds (e.g., the mere passage of time). While not binding on these countries (as would be a treaty or convention), the clear intention of the Declaration was that national laws and practices should be adjusted to allow fulfillment of the purposes of the Washington Principles.

¹ A policy statement made by 44 nations at a conference in Washington, D.C. convened at the instance of the U.S. Department of State.

The Washington Principles and Terezin Declaration are annexed to this paper as Appendix A.

A. Western Nations: There has been broad recognition of the problem. The major international auction houses and many legitimate art dealers refuse to sell Holocaust loot. Governments, museums, auction houses and others have developed databases and techniques for provenance research. There are many notable instances of resolution of restitution claims and some governments have intervened and enacted legislation (e.g., Austria) or issued decrees and/or made agreements (e.g., U.K., Germany, the Netherlands and France) or have brought their influence to bear creating commissions to resolve claims for restitution based on moral as well as legal principles. The effort to promote restitution of looted works of art to Holocaust heirs may have inspired efforts by governments to bring about the return of art looted during recent armed conflicts. It has certainly interfered with traffic in cultural works that were looted during World War II and it has encouraged the development of emerging principles of international and national law which recognize that theft of cultural objects in the course of "ethnic cleansing", i.e., genocide, is both a war crime and a crime against humanity.

B. Central and Eastern Europe: Except for Germany and Austria, there is substantially less interest in this area in the principle of restitution and *de facto* acceptance, or even a general willingness to require, that Holocaust loot remain in state collections. In some instances (e.g., Hungary) there is outright governmental obstruction of restitution claims despite a governmental "commitment" to the Washington Principles and the Terezin Declaration, or the enactment of a law purporting to allow such claims (e.g., Russia). There appears to be public indifference or even hostility to the "right" of Holocaust victims and their heirs to reclaim their cultural property (e.g., Russia, Poland, the Czech Republic and Hungary). Most art dealers in these countries (not to mention Switzerland) are openly hostile to both the concept of, and claims for, restitution of Holocaust looted art.

2. WASHINGTON PRINCIPLES:

In late 1998, 44 nations adopted a policy statement on the subject of restitution of Holocaust loot. Experience to date provides ample evidence that the Washington Principles are honored in some nations but that they have little or no vitality in others.

A. General Acceptance and Support by Government Action or
General Availability of Judicial Remedies Under National Law or Practice:

Germany, the Netherlands, Austria, France and U.S.A.

Germany - In the 12 years since the adoption of the Washington Principles there has been increasing transparency and numerous instances of assistance to restitution claimants by governments at the Federal and at some Laender (State) levels with regard to looted art in the possession of public museums. The Federal government, the Laender and national associations of local authorities issued a Common Declaration to implement the Washington Principles. The Declaration requires that time periods in which claims may be made against public bodies and their museums are to be disregarded with the result that museums have restituted Holocaust looted art even though compensation awards had been paid to victims earlier (although such awards are taken into account). When public museums retribute works of art, "forced sales" or sales made by Holocaust victims under duress also have been disregarded although presumably they are valid under generally applicable law. There is increased emphasis on, and funding of, provenance research by the Federal government. Some institutions, notably the Prussian Cultural Heritage Foundation, the Bavarian State Museums as

well as the Dresden Collections, have been more cooperative than others (e.g., the cities of Munich and Dusseldorf), and Bavaria has eliminated a state constitutional requirement that museums reimburse the state for the value of artworks which are restituted. German auction houses, such as Kunsthaus Lempertz and Hauswedell & Nolte continue their longstanding practice of selling Holocaust looted art despite protests.

The Netherlands - The issue was revisited after one-half century in which claims by Holocaust victims were generally discouraged or denied. An independent committee authorized by the government now examines state collections and claims carefully and applies ethical and moral concepts expansively when making recommendations about how the Dutch Government should respond to claims. The recommendations have always been followed by the State Secretary for the Ministry of Education, Culture and Science, whose decisions are then legally binding. The committee applies the forced-sale concept of Article 59 of U.S. Military Law (that had been applicable to Germany and Austria after World War II) in a liberal fashion to transfers that had been made by Jews in (1) the Netherlands beginning on May 10, 1940, (2) in Germany from 1933 onwards, and (3) in Austria from 1938 onwards. The government has returned a great many valuable works of art. Overall, the current effort has been intelligent and effective.

Austria - After a poor initial effort, the refusal to return five Gustav Klimt paintings on patently false grounds which led to a decision by the U.S. Supreme Court that allowed lawsuits to be brought in the United States against sovereign nations and their museums for restitution of works of art expropriated in violation of international law during the Nazi era, Austria now affirmatively supports efforts to effect restitution of Holocaust looted art. A governmental commission is examining all state-owned art collections and, even when claims have not been made, returns looted art that it discovers to Holocaust victims and their heirs. There is pressure to extend the reach of the Austrian restitution law (which already has resulted in the return of a great many works of art to Holocaust victims and their heirs or the Austrian Jewish Community) to private foundations, notably the Leopold Museum, which are not covered by the existing restitution law, but to no avail, despite the essential governance and financial support of that Museum by the Austrian government. Indeed, the continued refusal by the Leopold Museum to retribute looted artworks in its possession remains a serious blot on the apparent Austrian government interest in supporting the restitution of looted artworks.

France - Although access to public archives is blocked, historical research made available by government-sponsored commissions suggests that remaining state holdings of Holocaust looted art may have been disclosed. Mediation of restitution claims by a government-created panel has resulted in the payment of compensation to Holocaust claimants but few artworks have been returned. Judicial remedies are limited although there appears to be no time limitation that would prevent restitution claims.

U.S.A. - There have been widespread expressions of support for the Washington Principles by museum and the museum director associations and numerous Federal and state officials and authorities. Numerous works of art have been returned, but often only after protracted litigation. Some major museums and institutions are reluctant to allow third-party (court) review on the merits once they decide that such claims are unfounded, choosing instead to move to dismiss the claims in court on such technical grounds as the statute of limitations. Claims have been made against some private (non-museum) collectors and museums and some of these have been opposed. There are no national or state restitution laws but the Federal and state courts apply common law concepts of conversion and replevin to order restitution where warranted. There is widespread media interest in disputes over Holocaust looted art. Because most art museums are private (i.e., not government owned or operated)

and, unlike some governments that are willing to submit claims to impartial resolution, no commission has been set up to advise them how to resolve claims (as, for example, in the U.K.). The availability of contingent fee arrangements with lawyers for legal representation of claimants and the absence of any doctrine of prescription in all but one state makes recourse to judicial remedies more available than it is in most European countries although the need to pay substantial legal fees often compels successful claimants to sell art that is recovered. But it is important to note that legal defenses based on statutes of limitation or laches, which allows a court to consider passage of time, unwarranted delay and prejudice to the ability of a possessor to defend a claim, repeatedly have been used to defeat independent judicial review of restitution claims.

B. Qualified Acceptance and Support by Government Action or Limited Availability of Judicial Remedies Under National Law or Practice:

U.K., Switzerland, the Czech Republic, Sweden and Poland

U.K. - Although there are laws which would prevent de-accession of art by some public institutions, recent legislation allows affected national museums to restitute Holocaust looted art where this is recommended by the U.K.'s Spoliation Advisory Panel and the U.K.'s Secretary of State agrees. The Spoliation Advisory Panel was established by the U.K. Minister of Culture in 2000 to consider claims for the return of cultural objects lost during the Nazi era and to advise museums and claimants on what might be an appropriate resolution of such claims. The Panel has recommended the return of objects in some cases and the payment of an *ex gratia* sum to the claimant in others. In general, the British legal system deters even valid claims because of claimants' potential liability not only for legal fees in very expensive litigation but also the adversary's legal fees if the adversary prevails. The High Court has said that application of the 30-year German statute of limitations to a claim made in the U.K. for looting that occurred in Germany was against U.K. public policy. Nevertheless, there does not appear to have been any lawsuits in U.K. courts against museums brought by claimants of Holocaust looted art.

Switzerland - This country was an obvious destination for Holocaust looted art during and after World War II. In 1999 the Federal Culture Office created a Contact Bureau for Looted Art to help Holocaust victims and their heirs to negotiate with museums, foundations, cantons and cities where, it is believed, much looted art can be found. The Bergier Commission, set up to investigate asset dealings in Switzerland during World War II, did not make full use of its legal access to private or public archives and little in-depth research occurred then or since in most museums. There is no specific law or agreement among the national and state (Canton) governments on the subject of Holocaust looted art (as in Germany). There is no law authorizing or funding research and encouraging the return of Holocaust loot (as in Austria). Swiss art galleries have repeatedly bought and sold looted art since the 1930's when Nazi Germany consigned confiscated artworks to them for sale. Swiss laws regarding good faith purchasers and prescriptive acquisition (only five years with respect to claims for Holocaust loot) make judicial recourse of little comfort to claimants.

Czech Republic - There have been some returns of Holocaust loot pursuant to statute and the government has returned some looted archives. Although the government authorized the return of Holocaust looted art by the Jewish Museum in Prague, an export permit was refused because the art was deemed a national "Cultural Treasure" as to which the government had a right of prior purchase. Restitution to non-Czech citizens and persons living abroad is refused even though such persons fled the country in order to save their lives.

Sweden - A national museum very reluctantly restituted a painting after long negotiations and the sale of the painting to an investor produced by the claimant who agreed to lend it back to the museum for an extended period. The absence of a more open-handed policy on restitution may be the result of legal considerations and customary independence of Swedish museums from government control. There appears to be little public awareness or recollection of either Sweden's record of assistance to the Nazi-Germany war effort at a time when it claimed to be a neutral country or the disposal of looted property by the Nazis in Sweden.

Poland - In general, the Polish government and public fail to distinguish between looting by the Nazis (a war crime and crime against humanity) and the nationalization of private property in Poland by the Communists. Anti-Semitic and xenophobic attitudes of the public also appear to deter government acceptance of claims by foreigners (e.g., persecuted Jews who fled Poland) although there has been general acceptance of the concept of restitution of communal real estate in Poland to religious groups, including the Jewish community. Very recently restitution was made by a major museum of one painting, but this case was fact-specific and it does not necessarily evidence any general policy of restitution.

C. **De Facto Hostility** to, or an Apparent Disregard of, Washington Principles and the Terezin Declaration:

Hungary, Russia, Slovakia, Spain and Italy

Hungary - This country refuses to deal with claims by Holocaust victims for the return of a considerable number of involuntary "deposits" of Holocaust art made by Jews under a special law enacted in 1943 and/or taken into custody in wartime which are still in the custody of its museums. Despite widespread press coverage of significant claims made by Hungarian citizens living abroad, no claim by a Holocaust victim has been allowed. The government manipulates the media by making false assertions of a legal "right" to keep Holocaust loot (e.g., it claims to have settled such claims in 1973 pursuant to a Hungary-U.S. Settlement of Claims Agreement and the supposedly "illegal" removal of art by emigrating families of Jewish origin) and asserts a right to keep art looted from Holocaust victims who failed/were unable to reclaim their property during the Communist-era. There appears to be a widespread acceptance of the government's efforts to avoid restitution claims, particularly those made by "foreigners" (i.e., Jews). Both individual and class actions against Hungary are pending in U.S. courts.

Russia - A 1998/2000 law effectively nationalized looted cultural works that were taken to the Soviet Union by the Red Army. While the law appears to allow claims by some Nazi-occupied countries on behalf of victims of racial and religious persecution and charitable and religious organizations, payment of the full value of anything returned is required so that a "sale" rather than restitution is contemplated. There are no administrative procedures for claims and there are no effective judicial remedies. The Ministry of Culture refuses either to negotiate or to settle claims and insists that any restitution requires special legislation. There is outspoken opposition to restitution by prominent museum officials and the current Minister of Culture, reflecting nationalist attitudes of both the political far left and far right. No restitution of Holocaust loot has been made to individual victims of racial or religious persecution in more than a decade since the enactment of the law. The application of a 5-year prescriptive period for acquisition of personal property, by itself, makes private remedies effectively unavailable. The Minister of Culture has said publicly that there will be no restitution by the government although there have been instances of largely symbolic diplomatic transfers to several sovereign states (e.g., Germany---stained glass windows of a Frankfurt church; Hungary --- rare books to

the Sarospatak Library; books to the University of Amsterdam; and archives to several sovereign states). Russian insistence on the adoption of anti-seizure statutes in other countries as a condition of loans of its artworks is meant to add insult to injury as (1) there is no evidence of any Russian intention to lend Holocaust looted art, and (2) such loans would be exempt from seizure either because of sovereign immunity or by reason of special anti-seizure statutes. A claim against Russia that was made in the U.S. District Court (Chabad) resulted in a court order requiring Russia to make restitution of a library and archives after Russia refused to participate in further court proceedings and suspended art loans to U.S. museums. In response, important loans that were to be made by U.S. museums to Russia were cancelled.

Slovakia - A notable instance of restitution of Holocaust loot was effected upon the payment of significant ransom to the underworld figures who tried to sell it in London through a major auction firm. There was no assistance by the Slovakian government: to the contrary, there was ample evidence of official complicity in the demand for ransom money.

Spain - This country is notable for its outright refusal to discuss or entertain claims for Holocaust looted art in its possession, a political decision that reflects widespread anti-semitism in a country that in many ways assisted Nazi-Germany during World War II and also may reflect a fear of demands for the return of artworks looted during the Spanish Civil War. Currently, there is a restitution claim pending in the U.S. Courts that, despite Spanish government appeals, has not been dismissed.

Italy - The Italian situation requires a more extensive explanation, as follows:

Serious trouble for Italian Jews began to surface in the Italian Government as far back as the spring of 1936, with the adoption by Italy and Germany of a secret Italo-German Police Agreement -- pursuant to which the Gestapo was given the power to compel Italian police authorities to interrogate, arrest and expel any German Jewish refugee.² By the fall of 1936 and into 1937, the situation for Jews in Italy worsened. On November 1, 1936, Benito Mussolini publicly announced the ratification of the Rome-Berlin Axis, and this was followed in 1937 by a number of anti-Jewish measures. In May 1938, Hitler made an official visit to Italy, and this led to the temporary imprisonment of approximately 500 foreigners residing in Italy, at least two-thirds of whom were Jewish. Shortly thereafter, a legal definition of what constituted a "Jew" was considered and discriminatory legislation was drafted. On September 7, 1938, Italy's growing anti-Semitism culminated in the introduction of the country's first anti-Semitic racial laws, which forbade all "alien Jews" from residing in Italy. Jews who arrived in Italy after January 1, 1919 had to leave Italy within six months (i.e., by March 12, 1939) or face expulsion. At that point in 1938, "among the European states...Italy's anti-Jewish measures were the most draconian, after Germany's," and, at times, it promulgated provisions which were "even harsher than the corresponding measures enacted" in Germany.³

These Fascist laws dating from 1938 caused or were used to justify local "unofficial" and later "official" looting and, before the Armistice, involuntary sales of Jewish-owned cultural property. Measures were taken by the Italian government to impede or prevent the export by hard-pressed Jews of their own cultural property. In late 1943 the Italian Social Republic authorized and thereby provided "cover" for the confiscation of all property (including artworks) belonging to

² Klaus Voigt, *Il rifugio precario – Gli esuli in Italia dal 1933 al 1945* 112-113 (La Nuova Italia, ed. 1993) (1989).

³ Michele Sarfatti, *The Jews in Mussolini's Italy, From Equality to Persecution* 124-125 (John Tedeschi & Anne C. Tedeschi trans., The University of Wisconsin Press 2006).

Jews who resided in cities in the center and north of Italy within the jurisdiction of the Republic. Simultaneously, the S.S. looted whatever art that it could find, particularly in the German administered territories. Throughout the War, Italian art dealers are believed to have dealt in Holocaust looted art which they had obtained in or from Axis and Axis-occupied countries and art markets in such places as Vienna, Berlin, Paris and Amsterdam. While confiscated property was returned to numerous surviving Italian Jews who still resided in Italy after the War, there is reason to believe that an unknown number of looted artworks were not identified or returned, that they remain missing to this day and that some of this art probably can be found in Italian museums, institutions and private collections. Although the Interministerial Commission for Works of Art (estab. 1995)⁴ advised the Anselmi Commission (estab. 1998)⁵ immediately after the Washington Conference that “no works of art belonging to Jews appear to be housed in Italian museums or institutions”, apparently in complete reliance on (1) a much earlier and very limited work of the post-World War II Italian Mission for Restitution (primarily interested in the recovery of art looted by the Nazis from Italian museums) as well as the personal knowledge of Rodolfo Siviero, its director, and (2) then available archival sources, this proved not to be accurate. For example, the Anselmi Commission eventually noted in its final report that two paintings⁶ (which were well documented as Holocaust loot) were in the Pinacoteca di Brera in Milan⁷ which had assured the Interministerial Commission earlier that it had not acquired “works of art belonging to Jews.”

Moreover, there is no evidence that any research had been undertaken or revealed by anyone with respect to artworks that had changed hands during the Nazi-era and that had doubtful or unexplained provenance.⁸ Neither the Ministry of Cultural Heritage and Activities nor the

⁴ The Commission was created by the Italian Ministry of Foreign Affairs and the Ministry for Cultural Heritage and Activities.

⁵ Commission with the task of reconstructing the actions undertaken by public and private bodies in Italy with the aim to acquire the property of Jewish citizens. Its president was Tina Anselmi.

⁶ The paintings are: Girolamo Romanino, *Cristo Portacroce*, bequeathed by a Milanese collector in 1998 who probably owned it since 1941 (when it had been acquired at a forced sale of Jewish property in Paris) and Vincenzo Civerchio, *Madonna col Bambino*, acquired in 1978 by a Milanese antiques dealer who may have acquired it in 1974 from a French art dealer who acquired it (directly or indirectly) at the forced sale.

⁷ The report which, as noted above, was based on information in the possession of the Anselmi Commission, or about which it was advised, and not upon any independent research and actual examination of Italian museum collections (or any disclosure by museums of any research into artworks which they had acquired after 1938 with unclear or doubtful provenance), assumed that Fascist authorities had recorded all looting of assets of Jewish families (which defies belief) and that all looted assets had been returned after the War (which was clearly untrue). This allowed it to “ascertain with almost complete certainty that ... Italian museums do not possess works of art seized or confiscated from their Jewish owners during the period of racial law” (adding, strangely, that “the same may not be said of some American and Australian museums.”) Note that this statement also ignores Fascist and S.S. looting in the annexed Prealpine Operations Zone and Adriatic Coast Operations Zone (for which there are no records) and, of course, looting by Axis powers in other countries of the property of Italian Jews.

⁸ “The Commissione Anselmi did not carry out a detailed research in state and private museum[s] in order to verify the presence of works of art taken from Jews,” having been assured by the Interministerial Commission for Works of Art that “no such instance [of the presence of the art taken from Jews] is documented in its records.” The Commission “was entrusted with a historical inquiry, not with the restitution of or the compensation for that property.” Michele Sarfatti, *The Work And The Findings Of The ‘Commissione Anselmi’ on Italian Jewish Assets, 1998-2001* (Yad Vasham, 2002-2003)”.

government made any effort to enact legislation that might permit a just and fair resolution of the claim against the Pinacoteca di Brera. This was despite the fact that the claim (made on behalf of the original owners by both the Commission for Art Recovery and the Commission for Looted Art in Europe) was supported by a French Court of Appeals decision that declared a 1941 forced sale void, as well as the Italian government's own commitment to the Washington Principles.⁹

At present there appears to be little public recollection in Italy of the plunder of Jewish cultural property. Unlike the media elsewhere, e.g., the Netherlands, the Italian media does not appear to have carried on a critical campaign against the current government and its lack of interest in the subject of Holocaust loot restitution since the report of the Anselmi Commission in 2001. In summary, the commitment made by Italy at the Washington Conference to locate and restitute Holocaust looted art has not yet resulted in serious research or any restitution of such art. Any claim that might have been made against museums despite the absence of provenance research by the museums either has been ignored¹⁰ or refused although, recently, at least one criminal prosecution for an attempt by an individual to sell Holocaust looted art has occurred. No legislation has been enacted in Italy that would either require or fund provenance research by museums or that would authorize government-owned or sponsored museums to waive technical defenses (as, for example, in the U.K., the Netherlands, France, Germany and Austria) or otherwise to return looted works of art to identified Holocaust victims.¹¹ No administrative apparatus has been fashioned to resolve restitution claims against state collections. The Italian Cultural Heritage Administration, the Regional Administrative Tribunal and a public prosecutor have revoked restitution and refused an export license for recovered Holocaust looted art despite Article 78(1) of the 1947 Treaty of Peace with the Allies in which Italy agreed to return looted property and the fact that the American Jew who owned the artwork had fled the country.

3. **GENERAL PROBLEMS AND ISSUES:**

A. European Union and national laws which permit governments to restrict exports of art create yet another hurdle for claimants of Holocaust looted art. While some form of export control might be justified while restitution claims are pending, there is no justification for refusing export permission to Holocaust victims who fled for their lives and established themselves in other countries after the War and who have been awarded restitution.

B. Governmental intervention and remedial statutes apply only to governmental institutions (e.g., Germany, Switzerland and Austria) with the result that "private" and municipal museums (even those supported and controlled by the national government, as

⁹ Based on this court decision, the Louvre had returned five paintings and museums in Germany and the U.S., together, returned six others. Of all paintings involved in the forced sale in Paris in 1941, it is only the Pinacoteca di Brera and the Italian government that have refused restitution.

¹⁰ For example, the Galleria Nazionale dell'Arte Moderna in Milan that allegedly misrepresents the acquisition date of a painting by Edouard Manet ("M. Arnaud 'a Cheval'") sold by Max Lieberman's widow in 1936 in what is presumed to be a sale under duress or a forced sale.

¹¹ The article by Michele Sarfatti (footnote 3) pointed out that a law passed in 1997 "deals only with property whose 'Jewish' provenance is known. Consequently, it does not concern property that was confiscated or robbed from Jews, but is now no longer identified as 'Jewish property'."

in Spain and Austria) have declined to comply with the Washington Principles and the Terezin Declaration.

C. In general there is an absence of claims procedures and, in Eastern Europe, no independent and dispassionate judiciary to review restitution claims made in courts. Ex-Communist judges show little interest in claims for restitution of any private property no less cultural treasures held in national museums and that are claimed by Jews living abroad.

D. Some governments deliberately delay, obstruct and make inconsistent determinations on claims for restitution, in general, and Holocaust looted art in particular (e.g., Poland, Russia, the Czech Republic and Hungary).

E. When claims have been made some courts (e.g., Russia) have imposed impossible standards of proof on claimants.

F. Political considerations often appear to impede just and fair resolution of claims for Holocaust looted art (e.g., Russia, Poland, Hungary and Spain).

G. Privacy laws have prevented or limited access to archives, making provenance research difficult or even impossible.

H. There are instances of outright refusal by governments to even discuss, no less entertain restitution claims (e.g., Spain and Russia).

I. Hostility by art museum curators to restitution claims compounds the problem for those who would seek the return of their cultural property. In the U.S. and the U.K., however, museum personnel face theoretical personal liability for improper refusal to return Holocaust looted art.

J. The very process of restitution of looted art is itself difficult and expensive (lawyers, historical and provenance research and investigation).

K. There may be family disputes (e.g., disagreements among heirs) that impede claims or prevent claims.

L. There often is uncertainty as to which country's laws should be applied by courts. The choice of law often affects the availability of defenses when attempts are made to obtain restitution, such as statutes of limitation or even lack of jurisdiction of the courts. The "choice" of law should not depend on where thieves who transported stolen property took it abroad.

M. Restricted access by claimants to the courts and protections which are generally afforded in Europe to bona fide purchasers tend to defeat claims.

N. Transfers of title effected by the legal doctrine of prescription and statutes of limitations (sometimes applied even in cases involving bad faith possession), tend to defeat claims.

O. There is little assistance available to claimants either from governmental agencies or non-governmental organizations although Germany increasingly funds provenance research by museums and the Netherlands, the Czech Republic (which does not make its

findings public) and Austria conduct independent research on restitution claims. This means that claimants for less valuable art, in particular, are unlikely to pursue legal remedies because of the expense involved and an inability to engage lawyers and researchers on a contingent fee basis even where that is allowed. Mediation works when museums are compelled or are under pressure to participate (as in the U.K.) and arbitration has been used when a government seeks to avoid continuing litigation (as in Austria).

P. An authoritative and comprehensive registry of Holocaust looted art does not exist. The privately operated Art Loss Register in London has limitations that often make it irrelevant or of limited use to Holocaust victims.

Q. The commercial art trade wants to put an end to restitution claims and often museum personnel are ignorant of legal issues, oblivious to moral issues, and try to keep possession of art in their inventory even when they know or have good reason to believe that it is stolen property.

R. Italy and some other sovereign states (e.g., Russia, Poland and Hungary) appear to be willing to ignore or impede restitution claims for Holocaust art despite the fact that these states avidly pursue the restitution of their own national treasures which had been looted during (or even before) World War II.

4. **THE FUTURE:**

Nevertheless, I do anticipate future accomplishments in this area. For example, in the U.S., there is some support for an alternative dispute resolution procedure (mediation or arbitration). Literature supporting restitution appears regularly in Europe and the United States. And we expect that a significant number of restitution claims will be satisfactorily resolved in various countries even though the passage of time will, by itself, reduce the likelihood that claims will be made by Holocaust victims or their heirs.

There is much work to do in order to achieve elemental justice and uphold the rule of law.

APPENDIX A

Washington Conference Principles on Nazi-Confiscated Art

On 3 December 1998 the 44 governments participating in the Washington Conference on Holocaust-Era Assets endorsed the following principles for dealing with Nazi-looted art:

Released in connection with the Washington Conference on Holocaust-Era Assets, Washington, DC, December 3, 1998.

In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws.

1. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.
2. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.
3. Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.
4. In establishing that a work of art had been confiscated by the Nazis and

not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.

5. Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.

6. Efforts should be made to establish a central registry of such information.

7. Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.

8. If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.

9. If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, can not be identified, steps should be taken expeditiously to achieve a just and fair solution.

10. Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.

11. Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.

Terezin Declaration

Upon the invitation of the Prime Minister of the Czech Republic we the representatives of 46 states listed below met this day, June 30, 2009 in Terezin, where thousands of European Jews and other victims of Nazi persecution died or were sent to death camps during World War II. We participated in the Prague Holocaust Era Assets Conference organized by the Czech Republic and its partners in Prague and Terezin from 26-30 June 2009, discussed together with experts and non-governmental organization (NGO) representatives important issues such as Welfare of Holocaust (Shoah) Survivors and other Victims of Nazi Persecution, Immovable Property, Jewish Cemeteries and Burial Sites, Nazi-Confiscated and Looted Art, Judaica and Jewish Cultural Property, Archival Materials, and Education, Remembrance, Research and Memorial Sites. We join affirming in this:

Terezin Declaration on Holocaust Era Assets and Related Issues

- Aware that Holocaust (Shoah) survivors and other victims of Nazi persecution have reached an advanced age and that it is imperative to respect their personal dignity and to deal with their social welfare needs, as an issue of utmost urgency,
- Having in mind the need to enshrine for the benefit of future generations and to remember forever the unique history and the legacy of the Holocaust (Shoah), which exterminated three fourths of European Jewry, including its premeditated nature as well as other Nazi crimes,
- Noting the tangible achievements of the 1997 London Nazi Gold Conference, and the 1998 Washington Conference on Holocaust-Era Assets, which addressed central issues relating to restitution and successfully set the stage for the significant advances of the next decade, as well as noting the January 2000 Stockholm Declaration, the October 2000 Vilnius Conference on Holocaust Era Looted Cultural Assets,
- Recognizing that despite those achievements there remain substantial issues to be addressed, because only a part of the confiscated property has been recovered or compensated,

- Taking note of the deliberations of the Working Groups and the Special Session on Social Welfare of Holocaust Survivors and their points of view and opinions which surveyed and addressed issues relating to the Social Welfare of Holocaust Survivors and other Victims of Nazi Persecution, Immovable Property, Nazi Confiscated Art, Judaica and Jewish Cultural Property, Holocaust Education, Remembrance and Research, which can be found on the weblink for the Prague Conference and will be published in the Conference Proceedings,
- Keeping in mind the legally non-binding nature of this Declaration and moral responsibilities thereof, and without prejudice to applicable international law and obligations,

1. Recognizing that Holocaust (Shoah) survivors and other victims of the Nazi regime and its collaborators suffered unprecedented physical and emotional trauma during their ordeal, the Participating States take note of the special social and medical needs of all survivors and strongly support both public and private efforts in their respective states to enable them to live in dignity with the necessary basic care that it implies.

2. Noting the importance of restituting communal and individual immovable property that belonged to the victims of the Holocaust (Shoah) and other victims of Nazi persecution, the Participating States urge that every effort be made to rectify the consequences of wrongful property seizures, such as confiscations, forced sales and sales under duress of property, which were part of the persecution of these innocent people and groups, the vast majority of whom died heirless.

3. Recognizing the progress that has been made in research, identification, and restitution of cultural property by governmental and non-governmental institutions in some states since the 1998 Washington Conference on Holocaust-Era Assets and the endorsement of the Washington Conference Principles on Nazi-Confiscated Art, the Participating States affirm an urgent need to strengthen and sustain these efforts in order to ensure just and fair solutions regarding cultural property, including Judaica that was looted or displaced during or as a result of the Holocaust (Shoah).

4. Taking into account the essential role of national governments, the Holocaust (Shoah) survivors' organizations, and other specialized NGOs, the Participating States call for a coherent and more effective approach by

States and the international community to ensure the fullest possible, relevant archival access with due respect to national legislation. We also encourage States and the international community to establish and support research and education programs about the Holocaust (Shoah) and other Nazi crimes, ceremonies of remembrance and commemoration, and the preservation of memorials in former concentration camps, cemeteries and mass graves, as well as of other sites of memory.

5. Recognizing the rise of Anti-Semitism and Holocaust (Shoah) denial, the Participating States call on the international community to be stronger in monitoring and responding to such incidents and to develop measures to combat anti-Semitism.

The Welfare of Holocaust (Shoah) Survivors and other Victims of Nazi Persecution

Recognizing that Holocaust (Shoah) survivors and other victims of Nazi persecution, including those who experienced the horrors of the Holocaust (Shoah) as small and helpless children, suffered unprecedented physical and emotional trauma during their ordeal.

Mindful that scientific studies document that these experiences frequently result in heightened damage to health, particularly in old age, we place great priority on dealing with their social welfare needs in their lifetimes. It is unacceptable that those who suffered so greatly during the earlier part of their lives should live under impoverished circumstances at the end.

1. We take note of the fact that Holocaust (Shoah) survivors and other victims of Nazi persecution have today reached an advanced age and that they have special medical and health needs, and we therefore support, as a high priority, efforts to address in their respective states the social welfare needs of the most vulnerable elderly victims of Nazi persecution – such as hunger relief, medicine and homecare as required, as well as measures that will encourage intergenerational contact and allow them to overcome their social isolation. These steps will enable them to live in dignity in the years to come. We strongly encourage cooperation on these issues.
2. We further take note that several states have used a variety of creative mechanisms to provide assistance to needy Holocaust (Shoah) survivors and other victims of Nazi persecution, including special pensions; social security benefits to non-residents; special funds; and the use of assets from

heirless property. We encourage states to consider these and other alternative national actions, and we further encourage them to find ways to address survivors' needs.

Immovable (Real) Property

Noting that the protection of property rights is an essential component of a democratic society and the rule of law,

Acknowledging the immeasurable damage sustained by individuals and Jewish communities as a result of wrongful property seizures during the Holocaust (Shoah),

Recognizing the importance of restituting or compensating Holocaust-related confiscations made during the Holocaust era between 1933-45 and as its immediate consequence,

Noting the importance of recovering communal and religious immovable property in reviving and enhancing Jewish life, ensuring its future, assisting the welfare needs of Holocaust (Shoah) survivors, and fostering the preservation of Jewish cultural heritage,

1. We urge, where it has not yet been effectively achieved, to make every effort to provide for the restitution of former Jewish communal and religious property by either in rem restitution or compensation, as may be appropriate; and

2. We consider it important, where it has not yet been effectively achieved, to address the private property claims of Holocaust (Shoah) victims concerning immovable (real) property of former owners, heirs or successors, by either in rem restitution or compensation, as may be appropriate, in a fair, comprehensive and nondiscriminatory manner consistent with relevant national law and regulations, as well as international agreements. The process of such restitution or compensation should be expeditious, simple, accessible, transparent, and neither burdensome nor costly to the individual claimant; and we note other positive legislation in this area.

3. We note that in some states heirless property could serve as a basis for addressing the material necessities of needy Holocaust (Shoah) survivors

and to ensure ongoing education about the Holocaust (Shoah), its causes and consequences.

4. We recommend, where it has not been done, that states participating in the Prague Conference consider implementing national programs to address immovable (real) property confiscated by Nazis, Fascists and their collaborators. If and when established by the Czech Government, the European Shoah Legacy Institute in Terezin shall facilitate an intergovernmental effort to develop non-binding guidelines and best practices for restitution and compensation of wrongfully seized immovable property to be issued by the one-year anniversary of the Prague Conference, and no later than June 30, 2010, with due regard for relevant national laws and regulations as well as international agreements, and noting other positive legislation in this area.

Jewish Cemeteries and Burial Sites

Recognizing that the mass destruction perpetrated during the Holocaust (Shoah) put an end to centuries of Jewish life and included the extermination of thousands of Jewish communities in much of Europe, leaving the graves and cemeteries of generations of Jewish families and communities unattended, and

Aware that the genocide of the Jewish people left the human remains of hundreds of thousands of murdered Jewish victims in unmarked mass graves scattered throughout Central and Eastern Europe,

We urge governmental authorities and municipalities as well as civil society and competent institutions to ensure that these mass graves are identified and protected and that the Jewish cemeteries are demarcated, preserved and kept free from desecration, and where appropriate under national legislation could consider declaring these as national monuments.

Nazi-Confiscated and Looted Art

Recognizing that art and cultural property of victims of the Holocaust (Shoah) and other victims of Nazi persecution was confiscated, sequestered and spoliated, by the Nazis, the Fascists and their

collaborators 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 between 1933-45 and as an immediate consequence, and

Recalling the Washington Conference Principles on Nazi-Confiscated Art as endorsed at the Washington Conference of 1998, which enumerated a set of voluntary commitments for governments that were based upon the moral principle that art and cultural property confiscated by the Nazis from Holocaust (Shoah) victims should be returned to them or their heirs, in a manner consistent with national laws and regulations as well as international obligations, in order to achieve just and fair solutions,

1. We reaffirm our support of the Washington Conference Principles on Nazi-Confiscated Art and we encourage all parties including public and private institutions and individuals to apply them as well,

2. In particular, recognizing that restitution cannot be accomplished without knowledge of potentially looted art and cultural property, we stress the importance for all stakeholders to continue and support intensified systematic provenance research, with due regard to legislation, in both public and private archives, and where relevant to make the results of this research, including ongoing updates, available via the internet, with due regard to privacy rules and regulations. Where it has not already been done, we also recommend the establishment of mechanisms to assist claimants and others in their efforts,

3. Keeping in mind the Washington Conference Principles on Nazi-Confiscated Art, and considering the experience acquired since the Washington Conference, we urge all stakeholders to ensure that their legal systems or alternative processes, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties. Governments should consider all relevant issues when applying various legal provisions that may impede the restitution of art and cultural property, in order to achieve just and fair solutions, as well as alternative dispute resolution, where appropriate under law.

Judaica and Jewish Cultural Property

Recognizing that the Holocaust (Shoah) also resulted in the wholesale looting of Judaica and Jewish cultural property including sacred scrolls, synagogue and ceremonial objects as well as the libraries, manuscripts, archives and records of Jewish communities, and

Aware that the murder of six million Jews, including entire communities, during the Holocaust (Shoah) meant that much of this historical patrimony could not be reclaimed after World War II, and

Recognizing the urgent need to identify ways to achieve a just and fair solution to the issue of Judaica and Jewish cultural property, where original owners, or heirs of former original Jewish owners, individuals or legal persons cannot be identified, while acknowledging there is no universal model,

1. We encourage and support efforts to identify and catalogue these items which may be found in archives, libraries, museums and other government and non-government repositories, to return them to their original rightful owners and other appropriate individuals or institutions according to national law, and to consider a voluntary international registration of Torah scrolls and other Judaica objects where appropriate, and

2. We encourage measures that will ensure their protection, will make appropriate materials available to scholars, and where appropriate and possible in terms of conservation, will restore sacred scrolls and ceremonial objects currently in government hands to synagogue use, where needed, and will facilitate the circulation and display of such Judaica internationally by adequate and agreed upon solutions.

Archival Materials

Whereas access to archival documents for both claimants and scholars is an essential element for resolving questions of the ownership of Holocaust-era assets and for advancing education and research on the Holocaust (Shoah) and other Nazi crimes,

Acknowledging in particular that more and more archives have become accessible to researchers and the general public, as witnessed by the

Agreement reached on the archives of the International Tracing Service (ITS) in Bad Arolsen, Germany,

Welcoming the return of archives to the states from whose territory they were removed during or as an immediate consequence of the Holocaust (Shoah),

We encourage governments and other bodies that maintain or oversee relevant archives to make them available to the fullest extent possible to the public and researchers in accordance with the guidelines of the International Council on Archives, with due regard to national legislation, including provisions on privacy and data protection, while also taking into account the special circumstances created by the Holocaust era and the needs of the survivors and their families, especially in cases concerning documents that have their origin in Nazi rules and laws.

Education, Remembrance, Research and Memorial Sites

Acknowledging the importance of education and remembrance about the Holocaust (Shoah) and other Nazi crimes as an eternal lesson for all humanity,

Recognizing the preeminence of the Stockholm Declaration on Holocaust Education, Remembrance and Research of January 2000,

Recognizing that the Universal Declaration of Human Rights was drafted in significant part in the realization of the horrors that took place during the Holocaust, and further recognizing the U.N. Convention on the Prevention and Punishment of the Crime of Genocide,

Recalling the action of the United Nations and of other international and national bodies in establishing an annual day of Holocaust remembrance, Saluting the work of the Task Force for International Cooperation on Holocaust Education, Remembrance and Research (ITF) as it marks its tenth anniversary, and encouraging the States participating in the Prague Conference to cooperate closely with the Task Force, and

Repudiating any denial of the Holocaust (Shoah) and combating its trivialization or diminishment, while encouraging public opinion leaders to stand up against such denial, trivialization or diminishment,

1. We strongly encourage all states to support or establish regular, annual ceremonies of remembrance and commemoration, and to preserve memorials and other sites of memory and martyrdom. We consider it important to include all individuals and all nations who were victims of the Nazi regime in a worthy commemoration of their respective fates,

2. We encourage all states as a matter of priority to include education about the Holocaust (Shoah) and other Nazi crimes in the curriculum of their public education systems and to provide funding for the training of teachers and the development or procurement of the resources and materials required for such education.

3. Believing strongly that international human rights law reflects important lessons from history, and that the understanding of human rights is essential for confronting and preventing all forms of racial, religious or ethnic discrimination, including Anti-Semitism, and Anti-Romani sentiment, today we are committed to including human rights education into the curricula of our educational systems. States may wish to consider using a variety of additional means to support such education, including heirless property where appropriate.

4. As the era is approaching when eye witnesses of the Holocaust (Shoah) will no longer be with us and when the sites of former Nazi concentration and extermination camps, will be the most important and undeniable evidence of the tragedy of the Holocaust (Shoah), the significance and integrity of these sites including all their movable and immovable remnants, will constitute a fundamental value regarding all the actions concerning these sites, and will become especially important for our civilization including, in particular, the education of future generations. We, therefore, appeal for broad support of all conservation efforts in order to save those remnants as the testimony of the crimes committed there to the memory and warning for the generations to come and where appropriate to consider declaring these as national monuments under national legislation.

Future Action

Further to these ends we welcome and are grateful for the Czech Government's initiative to establish the European Shoah Legacy Institute in Terezin (Terezin Institute) to follow up on the work of the Prague

Conference and the Terezin Declaration. The Institute will serve as a voluntary forum for countries, organisations representing Holocaust (Shoah) survivors and other Nazi victims, and NGOs to note and promote developments in the areas covered by the Conference and this Declaration, and to develop and share best practices and guidelines in these areas and as indicated in paragraph four of Immovable (Real) Property. It will operate within the network of other national, European and international institutions, ensuring that duplicative efforts are avoided, for example, duplication of the activities of the Task Force for International Cooperation on Holocaust Education, Remembrance and Research (ITF).

Following the conference proceedings and the Terezin Declaration, the European Commission and the Czech Presidency have noted the importance of the Institute as one of the instruments in the fight against racism, xenophobia and anti-Semitism in Europe and the rest of the world, and have called for other countries and institutions to support and cooperate with this Institute.

To facilitate the dissemination of information, the Institute will publish regular reports on activities related to the Terezin Declaration. The Institute will develop websites to facilitate sharing of information, particularly in the fields of art provenance, immovable property, social welfare needs of survivors, Judaica, and Holocaust education. As a useful service for all users, the Institute will maintain and post lists of websites that Participating States, organizations representing Holocaust (Shoah) survivors and other Nazi victims and NGOs sponsor as well as a website of websites on Holocaust issues.

We also urge the States participating in the Prague Conference to promote and disseminate the principles in the Terezin Declaration, and encourage those states that are members of agencies, organizations and other entities which address educational, cultural and social issues around the world, to help disseminate information about resolutions and principles dealing with the areas covered by the Terezin Declaration.

A more complete description of the Czech Government's concept for the Terezin Institute and the Joint Declaration of the European Commission and the Czech EU Presidency can be found on the website for the Prague conference and will be published in the conference proceedings.

List of States

1. Albania
2. Argentina
3. Australia
4. Austria
5. Belarus
6. Belgium
7. Bosnia and Herzegovina
8. Brazil
9. Bulgaria
10. Canada
11. Croatia
12. Cyprus
13. Czech Republic
14. Denmark
15. Estonia
16. Finland
17. France
18. FYROM
19. Germany
20. Greece
21. Hungary
22. Ireland
23. Israel
24. Italy
25. Latvia
26. Lithuania
27. Luxembourg
28. Malta
29. Moldova
30. Montenegro
31. The Netherlands
32. Norway
33. Poland
34. Portugal
35. Romania
36. Russia
37. Slovakia

38. Slovenia
 39. Spain
 40. Sweden
 41. Switzerland
 42. Turkey
 43. Ukraine
 44. United Kingdom
 45. United States
 46. Uruguay
- The Holy See (observer)
Serbia (observer)
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