

The Netherlands: The Return of the Goudstikker Collection

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The Nazi art confiscation program is considered the greatest displacement of art in human history.¹ The value of the plundered art alone exceeded the total value of all artwork that was located in the United States in 1945 -- some \$2.5 billion worth of art, or well over \$20 billion, using today's values.² As the Allies stormed through Europe during the War, they recovered huge numbers of the artworks looted by the Nazis. And after the War, they were left with the enormous task of sorting out millions of pieces of art and other cultural objects.³

It was the policy of the Allies to return artworks to the governments of the countries where they had been looted,⁴ a policy which flowed from the 1943 London Declaration that mandated that acts of Nazi dispossession would be undone.⁵ Numerous artworks were therefore returned to the

¹ Michael J. Bazylar, *Holocaust Justice: The Battle for Restitution in America's Courts* 202 (2003).

² *Id.*

³ *Id.* at 204.

⁴ *Plunder and Restitution: The U.S. and Holocaust Victims' Assets: Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States and Staff Report* (2000) ("Assets were restituted once the country of origin could be identified, and missions sent by other governments helped to identify assets that were subject to restitution."), available at http://www.pcha.gov/PlunderRestitution.html/html/Findings_RestitutionEur.html.

⁵ On January 5, 1943, the Allies, including The Netherlands, issued the "Inter-Allied Declaration Against Acts of Dispossession Committed in Territories under Enemy Occupation or Control", now commonly known as the "London Declaration." The Declaration warned that the Allies reserved "all their rights to declare invalid any transfers of or dealings with, property, rights and

Dutch Government, which bore the responsibility to locate the rightful owners and to reconstitute the property turned over to it by Allied authorities. But in the years immediately following the War, the Dutch Government did not adequately carry out this task. Indeed, in 2001, a Dutch Government committee investigating post-War restitution procedures, known as the Ekkart Committee (or the “Origins Unknown Committee”), determined that “the way in which the Netherlands Art Property Foundation generally dealt with the problems of restitution [was] legalistic, bureaucratic, cold and often even callous.”⁶ As a result, much of the artwork remained in the Dutch Government’s custody and became part of what is now called the “Nederlands Kunstbezit-collectie” (or NK Collection).⁷

On October 2, 1997, the Secretary of State for Education, Culture and Science assigned the Ekkart Committee the task of carrying out a pilot study to determine whether objects in the NK Collection lacked complete provenances and to establish whether existing databases and archives in the Netherlands could be used to supplement those provenances.⁸ At the same time, the Dutch instituted a new restitution policy that would allow victims and their heirs to make claims for property that had been looted,

interests of any description whatsoever . . . whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form even when they purport to be voluntarily effected.”

⁶ Ekkart Committee, *Recommendations for the Restitution of Works of Art*, at 10 (Apr. 2001), available at www.herkomstgezocht.nl/download/aanbevelingen2en-metaanbevbr.doc.

⁷ Origins Unknown, <http://www.herkomstgezocht.nl/eng/index.html> (last visited June 30, 2011).

⁸ *Id.*

but was still in the Dutch Government's custody. Nonetheless, as you will hear in more detail in a moment, this restitution regime did not provide claimants with an opportunity to achieve what the Washington Principles would soon thereafter call for: "a just and fair solution."⁹

It was not until 2002 that the Dutch Government adopted new restitution guidelines recommended by the Ekkart Committee that were more in line with the Washington Principles.¹⁰ These recommendations were generally more favorable to claimants than the previous restitution regime and included a presumption that sales of artworks by Jews following the Nazi invasion in May 1940 were forced sales, as well as broad instructions that, when doubts arose, they should be resolved in favor of claimants.¹¹ The new restitution guidelines called for the creation of what would come to be the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (more commonly called the "Restitutions Committee"), which was charged with the responsibility for investigating claims to looted artworks and making recommendations to the Ministry of Education, Culture and

⁹ *Washington Conference Principles on Nazi-Confiscated Art* (Dec. 3, 1998), available at http://www.state.gov/www/regions/eur/981203_heac_art_princ.html.

¹⁰ Ekkart Committee, *Recommendations for the Restitution of Works of Art* (Apr. 2001), available at www.herkomstgezocht.nl/download/aanbevelingen2en-metaanbevbr.doc; see also Ministry of Health, Welfare and Port, the Netherlands Department of Victims and Remembrance WWII, *World War II and its Aftermath in the Netherlands*, at 21 (June 2009) ("the Dutch government created a framework for a liberalised restitution policy. . . [that] takes a just and fair approach to issues of title and the burden of proof").

¹¹ Ekkart Committee, *Recommendations for the Restitution of Works of Art*, at 12 (Apr. 2001), available at www.herkomstgezocht.nl/download/aanbevelingen2en-metaanbevbr.doc.

Science on how those claims should be resolved.¹² The 2002 guidelines were limited to claims for artworks sold by private collectors.¹³ In 2004, the Ekkart Committee made recommendations for handling claims by art dealers. These were based on the 2002 guidelines, but were qualified to make them applicable to businesses whose function was to sell artworks, and they focused on the issue of when sales by art dealers would be considered involuntary.¹⁴

This brings us to the tale of the Goudstikker restitution, which is really a microcosm of the post-Washington Conference restitution world.¹⁵ Before World War II, Jacques Goudstikker, a Dutch Jew, was one of the foremost art dealers in Europe. He amassed an extraordinary collection containing approximately 1,400 works, which included many important Dutch and Flemish Old Master paintings, such as Jan Mostaert's "Landscape with an Episode from the Conquest of America", Jan Steen's "The Sacrifice of Iphigenia", and "Pilate Washing His Hands 'In Innocence'" from the workshop of Peter Paul Rubens, and also a remarkable group of Italian paintings, among them Giotto's "St. Francis" from the Peruzzi

¹² Origins Unknown, <http://www.herkomstgezocht.nl/eng/index.html> (last visited June 30, 2011); see also Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War, http://www.restitutiecommissie.nl/en/over_de_restitutiecommissie.html (last visited July 1, 2011).

¹³ Ekkart Committee, *Recommendations for the Restitution of Works of Art* (Apr. 2001), available at www.herkomstgezocht.nl/download/aanbevelingen2en-metaanbevbr.doc.

¹⁴ Ekkart Committee, *Recommendations for the Restitution of Artworks of Art Dealers* (Jan. 28 2003), available at <http://www.herkomstgezocht.nl/download/aanbevelingen%20kunsthandel%20ENG.doc>.

¹⁵ See generally Pieter den Hollander, *De Zaak Goudstikker* (The Goudstikker Affair) (1998).

Altarpiece, Pasqualino Veneziano's "Madonna and Child" and Titian's "Boy with Dogs in a Landscape".¹⁶ Jacques was not just an art dealer, but also a tastemaker and innovator. He had considerable influence on collectors of his day, including Baron Hans Heinrich Thyssen-Bornemisza and the Dutch collectors Daniel G. van Beuningen and J. W. Edwin vom Rath, whose collection of Italian paintings was the largest ever to be bequeathed to the Rijksmuseum.¹⁷ Jacques was also known for mounting museum-quality exhibitions that even museums would not dare to consider -- including what is still the only monographic exhibition of Salomon van Ruysdael's works.

Jacques married the beautiful Austrian opera singer, Désirée von Halban Kurtz, affectionately known as "Dési". They lived in grand style and were the toast of Amsterdam society; their parties at Jacques' Nijenrode Castle in Breukelen on the banks of the River Vecht, which Jacques bought in 1932 for exhibitions and entertaining, were legendary. On at least one occasion, Jacques created tableaux vivant, recreations of paintings in his collection using live models and physical objects. It was at Nijenrode in 1937 that Jacques and Dési first met and fell in love. Jacques held a charity party called "Vienna on the Vecht", which raised money for a number of charitable causes, including Jewish refugees. He invited Dési to

¹⁶ Peter C. Sutton, et al., *Reclaimed, Paintings from the Collection of Jacques Goudstikker 23-24* (Bruce Museum, Greenwich, CT, and The Jewish Museum, New York, NY) (2008).

perform at the event, and they married just six months later. They honeymooned in Egypt, and in January 1939, their son, Edo, was born.

But in the late 1930's, Jacques and his family could not insulate themselves from developments in nearby Germany and other countries as the Nazi regime rose to power. On May 10, 1940, their lives took a tumultuous turn when the Nazis invaded the Netherlands. Jacques, Dési, and Edo were at their country house, Ostermeer, on the day of the invasion. They stayed there as long as they safely could, leaving just a few days later to drive into Amsterdam. On the way, parachutes dropped from the sky. Rotterdam burned. The Nazi invasion under Reichsmarschall Göring was proceeding apace, and they realized that they had to flee. Fortunately, they had taken a few precautions: Dési had brought a handbag "filled with jewelry, money and passports."¹⁸ But Jacques' most valuable assets had to be left behind. He did, however, take with him a small black leather notebook, now known as the Blackbook, that contained an inventory of much of his collection.

They decided to escape by sea. Four friends crowded into the car with them, and Jacques drove to the port at IJmuiden. As Dési later recalled, they were not alone in making this trek: "The car ride became slower and slower. Horses, cars, ox carts, bicycles—everything moved in

¹⁷ Nicholas H. J. Hall, *Jacques Goudstikker - Dealer and Connoisseur in Christie's Catalogue, Important Old Master Paintings from the Collection of Jacques Goudstikker* (July 5, 2007).

¹⁸ See generally, *The Battle for Inheritance, A Gentleman Art Dealer*, Vrij Netherland, 1990.

the direction of the ocean.”¹⁹ When they reached the port, after some help by a Canadian soldier who remembered seeing Dési sing for the troops, they managed to secure passage on the SS Bodegraven, which was heading to South America after stopping in England.

For Jacques though, there was only a brief taste of freedom. Two days into the journey he went up to the deck at night for some air and broke his neck in an accidental fall through an uncovered hatch. Dési searched without success for Jacques. A crew member sent to look for him also fell through the hatch. He was cushioned by Jacques’ body and survived, but was paralyzed as a result of the fall. Jacques was buried in England, at Falmouth. Dési was not allowed to stay for the funeral; with her Austrian passport, she was considered an enemy alien. All she could do was make arrangements and secure a promise from the authorities that Jacques’ gravesite would overlook the sea. Dési and Edo continued their journey, eventually settling in New York, where they stayed for the duration of the War. But Dési was able to retrieve the Blackbook from Jacques’ pocket, and this would ultimately prove to be the key document used to establish the family’s claims to the artworks from Jacques’ collection.

Back in Amsterdam, Jacques’ and Dési’s homes and art collection, not to mention Jacques’ mother, who had refused to leave Amsterdam, awaited the Nazi onslaught. Adding to the chaos was the fact that the

¹⁹ *Id.*

manager who had been appointed by Jacques to oversee his properties and the affairs of the Goudstikker Gallery died suddenly on the day of the invasion, and Jacques had not appointed anyone to replace him. Within days after the Nazi invasion, Göring, who fancied himself an art connoisseur, came to the steps of the Goudstikker Gallery, and he and his agents arranged a forced sale of the collection. Under explicit warnings that her property and Jacques' would be confiscated, and worse -- that she would be "deported" -- Jacques' mother was persuaded to vote her minority block of shares in the gallery for a "sale" of its assets to Göring and his associate, Alois Miedl, at a fraction of their value. But Dési, who together with Edo inherited the majority of the Gallery's outstanding shares, refused to consent to the proposed "sale" when contacted by Jacques' former employees. It went forward anyway. Göring took more than 800 of the artworks to Germany, where many were displayed in his several residences, including Karinhall, his country estate near Berlin. Miedl began operating his own art dealership out of Jacques' gallery, using its remaining stock, its former employees, its infrastructure, and the goodwill of the Goudstikker name.

During the liberation of Germany, Allied forces recovered more than 200 Goudstikker works and sent them to the Central Collecting Point in Munich, where they were catalogued. These and other artworks that the Nazis had stolen from the Netherlands were then returned to the Dutch

Government. In 1946, Dési returned to the Netherlands to reclaim Jacques' stolen property. But she was met with great hostility by a post-War Dutch Government that -- despite purporting to establish a sensible restitution system in line with the London Declaration -- did everything in its power to make it difficult for Jews to recover their property.²⁰ Indeed, the post-War Dutch Recuperation Commission, notwithstanding the fact that Dési specifically refused the sale of the paintings, and that Göring's agents had threatened the life of Jacques' mother, actually determined that the artworks had been voluntarily sold to Göring for full value.²¹ In the end, the Dutch Government kept the works in the NK Collection, but never obtained legal title to them.

For almost sixty years, most of the returned Göring works were held in this way. And in 1996, both Dési and her son, Edo, died. The following year, around the time that the Dutch Government first announced a new restitution policy, Pieter den Hollander, a Dutch journalist, contacted Marei von Saher, who had married Edo and was Jacques' daughter-in-law and sole heir.²² Pieter told her that she might have a claim for artworks from Jacques' collection that were still in the Government's custody. He explained that the Dutch Government had adopted new guidelines that

²⁰ See generally Isaac Lipschits, *De Kleine Sjoa. Joden in Naaorlogs Nederland* (2d ed. 2001).

²¹ Recommendation Regarding the Application by Amerdamse Negotiatie Compagnie NV in Liquidation for the Restitution of 267 Works of Art from the Dutch National Art Collection, RC 1.15 at 8-9 (Dec. 19, 2005).

²² See generally den Hollander, *supra* note 15.

allowed Holocaust victims and their heirs to make claims for the property that had been seized during the War and never returned. This meant that Marei might have a fair opportunity in bringing her claim, one that Dési clearly never had.

A few weeks after that call, Pieter arrived in Greenwich, Connecticut, Marei's home town, armed with information that he had gathered from archives and from the Dutch Ministry of Culture. He met with Marei and Charléne, one of her two daughters. He asked many questions; as did Marei and Charléne. The next day, Charléne went with Pieter to the National Archives in Washington, where they spent two entire days looking at "top secret", "classified" documents describing what had happened at the Gallery during the War. It was there, in Washington, that Charléne realized that her family had been robbed twice: as she put it, "first by the Nazis and then by the Dutch Government."²³

Notwithstanding that revelation, many people discouraged Marei and Charléne, saying: what happened, happened; don't dwell on the past; you'll never get the Government to budge; move on. But Marei and Charléne recognized that it was their responsibility to restore their family's legacy. The magnitude of their task became apparent in their first formal meeting with Dutch Government officials in late 1997. They had been

²³ See Transcript of Restitution Committee Hearing Regarding the Application by Amerdamse Negotiatie Compagnie NV in Liquidation for the Restitution of 267 Works of Art from the Dutch National Art Collection (Sept. 12, 2005) [hereinafter Transcript].

advised that representatives of the Dutch Government wanted to discuss the Goudstikker matter at the Dutch Consulate in New York. Tellingly, Marei and Charléne were warned to come alone, without attorneys. But, when they arrived, they were met at the Consulate by senior officials from the Ministry of Culture -- together with a team of their Government attorneys.²⁴ It quickly became apparent that the Government's true purpose was not to discuss the restitution of the Goudstikker collection, but to ensure that its secret of more than 50 years would not be shamefully exposed.

Marei and Charléne therefore hired their own counsel, and in January 1998, Marei presented her claim to the State Secretary in charge of Cultural Affairs. But her application was denied, with the State Secretary saying that Dési had chosen to waive her claims to these works after the War.²⁵ Marei appealed the decision to the Court of Appeals of The Hague, but that decision went against her.²⁶ The Court of Appeals rejected the claims on narrow jurisdictional and procedural grounds, finding that it did not have jurisdiction to review the State Secretary's decision, nor independent authority to entertain Marei's application. The Court also declined to exercise its *ex officio* authority "as the legal successor to the [post-War]

²⁴ *Id.*

²⁵ Recommendation Regarding the Application by Amerdamse Negotiatie Compagnie NV in Liquidation for the Restitution of 267 Words of Art from the Dutch National Art Collection, RC 1.15 at 8 (Dec. 19, 2005).

Council [for the Restoration of Rights].”²⁷ It found that, because Dési had decided against bringing a restitution proceeding before the Council in the 1950’s, Marei could not bring the same proceeding before the successor tribunal in the 1990’s.

Following the Dutch Government’s adoption of revised restitution guidelines in 2002 and 2004, however, Marei was able to have her claim reviewed by the newly created Restitutions Committee. In relevant part, the guidelines to be applied by the Committee recommended that, for claims brought by art dealers and/or their heirs, artworks should be restituted if title could be proved with a “high degree of probability.”²⁸ The guidelines also recommended that, in considering whether a sale was involuntary, the Restitutions Committee should examine whether “the threat of reprisal and the promise of the provision of passports or safe conduct as part of the transaction” were present, and whether the sale was made by “managers not appointed by the owner from the stocks under their management[.]”²⁹ And, the rights of the pre-War owners or their heirs would be considered

²⁶ Hof’s- Gravenhage 16 December 1999, NJ 2003/34, (Amsterdamse Negotiatie Compagnie N.V./Von Saher-Langenbein)(Neth.).

²⁷ *Id.*

²⁸ Ekkart Committee, *Recommendations for the Restitution of Works of Art*, at 15 (Apr. 2001), available at www.herkomstgezocht.nl/download/aanbevelingen2en-metaanbevbr.doc.

²⁹ Ekkart Committee, *Recommendations for the Restitution of Artworks of Art Dealers*, at 4 (Jan. 28 2003), available at <http://www.herkomstgezocht.nl/download/aanbevelingen%20kunsthandel%20ENG.doc>.

waived only if there was evidence of an explicit decision to relinquish them during the post-War period.³⁰

But before the restitution guidelines could be applied, the facts had to be ascertained. The Restitutions Committee spent more than a year investigating Marei's claims. One part of the process was a hearing at which Marei and Charléne were able to express their views to the Committee. At that hearing, the Committee's Chairman, the late Judge B. J. Asscher, in effect apologized to Marei for the post-War Government's determination that the forced sale to Göring had been voluntary.³¹ That was an important moment, but the Committee continued to work on the claim for several more months, rendering its advice to the State Secretary in December 2005. It was, however, kept confidential pending a final decision by the State Secretary.

Knowing that the Restitutions Committee's advice had been rendered, but not yet knowing what it was, Marei traveled to The Hague on Wednesday, February 1, 2006, with the expectation that a decision was imminent. But delays ensued. Finally, on Monday, February 6, 2006, she gathered with her family, friends, lawyers, and other advisers. At about 4:00 p.m., the call from the State Secretary came. In a hushed room, Dick Schonis, Marei's lead Dutch lawyer, took the call, listened, and then raised

³⁰ *Id.*

³¹ See, Transcript, *supra* note 23.

his hand in relief and victory. He announced that the Dutch Government was restituting 200 Goudstikker works to Marei, having found that the works had been involuntarily taken through a forced sale.

After years of battle -- and over sixty years since the Nazi looting -- justice was finally achieved. The returned works included magnificent paintings by Salomon van Ruysdael, Claude Lorrain, and Jan van Goyen, as well as Italian works by Jacopo dal Casentino and Pietro de Rotari, to name just a few. But in the months that followed the restitution, some in the Dutch press reacted poorly, questioning why heirs of Nazi victims continued in their efforts to recover their property after so many years. One article wrote that “[p]eace [only] emerges if people let bygones be bygones.”³² As Marei noted in a letter to the Dutch press, however, this was the same sort of language used in the 1950’s by the Dutch officials with whom Dési had had to negotiate -- “seemingly wise, but actually cold and indifferent.”³³ Fortunately, the Dutch Government of 2006 understood the importance of undoing so many years of injustice.

The Dutch restitution was by no means the end of the Goudstikker saga. More than one thousand of the looted works were not found by the Allies after the War. Because the Blackbook is not illustrated, the family

³² Maarten Huygen, De Goudstikkercollectie had beter in bezit van de musea kunnen blijven [Goudstikker Collection Had Better Have Remained in the Possession of the Museums], NRC Handelsblad, Feb. 10, 2007, at 17.

³³ Marei von Saher, Restitutie van roofkunst is honorabel [Restitution of Stolen Art is Honorable], NRC Handelsblad, Feb. 20, 2007.

retained the noted art recovery specialist, Clemens Toussaint, who worked closely with the family and us on the Dutch restitution. He is here today. Clemens put together an expert team of art researchers and historians who, working in archives throughout Europe and the United States, have been conducting a massive research project to identify and locate the missing works. Their efforts, which have been reported in *The New York Times*³⁴ and numerous other publications, constitute one of the most comprehensive research initiatives ever to track down a single-owner art collection stolen by the Nazis. To date, many of the works have been identified, more than 100 have been located, and there have been more than 40 restitutions. That project is a book in itself, and I can not do it justice in a few minutes. But I will briefly recount just a few of the successes achieved.

As Marc Porter noted earlier today, the very first restitution came in the spring of 2002, when Jan de Cock's "Temptation of St. Anthony" was returned. The painting was part of an estate sale at Christie's. After being notified by the London-based Art Loss Register about the painting's Goudstikker provenance, Christie's informed the estate which, after some discussions with us, restituted the work. Other restitutions followed.

³⁴ See, e.g., Alan Riding, *Dutch to Return Art Seized by Nazis*, N.Y. Times, Feb. 7, 2006; see also Alan Riding, *Göring, Rembrandt, and the Little Black Book*, N.Y. Times, March 26, 2006.

In 2005, the Israel Museum in Jerusalem restituted a charcoal drawing by Edgar Degas donated to the museum in the 1970's. I met with the Director, James Snyder, in Jerusalem, armed with photographs that the Goudstikker research team had located, including a picture of the inscription on the back of a photo, enabling the museum to determine that its drawing was the missing Goudstikker work and not a similar drawing by Degas. As James stated at the time, it is critically important to address the subject of restitution in an appropriate fashion, noting that the museum was gratified to have been able to respond effectively to Marei's claim and hopeful that its positive response would support the ongoing effort to set standards for the field.

Other restitutions to the Goudstikker family include works by James Ensor, Anthonie Palamedesz, Anthony van Dyck, and Salomon van Ruysdael, among many others. The restitution of one painting by Rachel Ruysch is worth a moment of our time. The research team identified "Still Life with Flowers," dating from 1690, in the Gemäldegalerie Alte Meister in Dresden. It still had the Goudstikker label on the back, although stolen sixty-five years earlier. The museum was contacted, and it took the claim very seriously. Not wanting looted Nazi art in its collection under any circumstances, the museum quickly returned the work to Marei without the need for legal action. The negotiations took place in Dresden at a conference on the future of preserving and creating art and other cultural

property, at which I delivered a paper on the restitution of Nazi loot. The decision to retribute the Ruysch was made moments before I walked to the podium, and I was therefore able to show the slide (which I would have quickly slipped by if the negotiations had not gone so well) and announce the return, which was greeted by great applause and a standing ovation for the museum's directors and curators.

In these successful restitutions, those in possession of the looted art did not force Marei to prove her claim in court, did not defend on the ground that the statute of limitations barred the claim, and did not argue that returning the painting would open the floodgates to myriad claims against museums about their collections. Rather, upon discovering the presence of Nazi-looted art in their collections, they did the requisite research, negotiated in good faith and ultimately did the right thing.

Surprisingly, museums in the U.S. have generally been less cooperative than their Western European counterparts when presented with Goudstikker claims.³⁵ But that changed this spring, when the J. Paul Getty Trust in Los Angeles agreed to retribute to Marei a painting by Pieter Molijn, entitled "Landscape with Cottage and Figures", that dates back to around 1640, marking the first time that an American museum has returned a looted Goudstikker painting.³⁶

³⁵ See Konstantin Akinsha, *Restitution: Unfulfilled Promises*, ARTNews, Dec. 2006, at 131.

³⁶ Mike Boehm, *Getty Museum Agrees to Return Painting Looted by Nazis*, L.A. Times, March 29, 2011.

Marei has not been so fortunate with her claims against another Los Angeles institution from which she has been seeking the return of two monumental images of “Adam and Eve” by Lucas Cranach the Elder. After years of unsuccessful negotiations and two failed mediations, Marei filed suit against the museum in 2007. The U.S. District Court dismissed Marei’s claim, holding unconstitutional a California statute that eliminated the statute of limitations as a defense to Holocaust claims against museums and galleries, finding that it infringed on the power of the U.S. Government.³⁷ On appeal, that aspect of the decision was affirmed.³⁸ Marei then sought review by the Supreme Court of the United States, and on October 4, 2010, that Court issued an order inviting the Solicitor General to file a brief expressing the views of the U.S.³⁹ In May, nearly eight months later, the Solicitor General filed its brief, but to our surprise, opposed Marei’s Petition for review by the high court.⁴⁰ We immediately filed a Supplemental Brief, arguing that United States policy has consistently held that Holocaust claims should be decided by the courts if and when voluntary alternative dispute resolution fails. Moreover, in the Terezin Declaration, following up on the Washington Principles, the United States made clear that the statute of limitations defense should not be used to

³⁷ *Von Saher v. Norton Simon Museum of Art*, 2007 U.S. Dist. LEXIS 95757 (C.D. Cal. Oct. 18, 2007).

³⁸ *Von Saher*, 578 F.3d 1016 (9th Cir. 2009); amended by, petition for reh’g and reh’g en banc denied, 592 F.3d 954 (9th Cir. 2010).

³⁹ *Von Saher*, 131 S. Ct. 379 (2010).

impede the resolution of Holocaust claims on the merits. Yet, the Solicitor General argued in Marei's case that the California statute that sought to accomplish this very result was unconstitutional, even though in our federal system statutes of limitations for claims for stolen property are undoubtedly a traditional responsibility of state governments, not the Federal Government. As we further argued in our brief, the Solicitor General's position suggests that the Federal Government has far more power than the constitution grants it, and the Solicitor General is exaggerating the powers of the Federal Government at the expense of Holocaust victims' ability to bring their claims in the courts. We expect a decision from the Supreme Court -- either granting or denying Marei's petition to hear the case -- in the next few days.⁴¹

The Restitutions Committee has continued its work in the years since the Goudstikker restitution. From 2002 to 2010, the Committee recommended the restitution of 420 art objects (or about 54% of the total objects claimed).⁴² Of the 420 artworks returned, almost half were from the

⁴⁰ See Brief for the United States as Amicus Curiae, *Von Saher*, 131 S. Ct. 379 (2010) (No. 09-1254), available at <http://www.justice.gov/osg/briefs/2010/2pet/6invt/2009-1254.pet.ami.inv.pdf>.

⁴¹ After this paper was delivered, on June 27, 2011, the Supreme Court denied Marei's petition for a writ of certiorari. That same day, Marei filed a motion with the Ninth Circuit Court of Appeals for a stay of the issuance of the mandate and for leave to file a second petition for rehearing and rehearing en banc. On July 1, 2011, the Ninth Circuit granted Marei's motion, allowing Marei to file her second petition. On July 6, 2011 the Museum filed a motion for reconsideration of the July 1, 2011 decision. Decisions on Marei's second petition and the Museum's motion for reconsideration are pending.

⁴² Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (2010), available at <http://www.restitutiecommissie.nl/images/stories/files/report%202010.pdf>.

Goudstikker Collection. Many of the others were restituted to the heirs of the renowned art collector, F.B.E. Gutmann.

Recently, in October 2010, the Committee recommended the restitution of a painting by Jan van de Velde II, entitled “Winter Landscape”, to the heirs of Curt Glaser, a German Jew who had been forced to auction the painting to fund his escape from Nazi Germany. This restitution is of particular importance.⁴³ The painting had been donated to the Rijksmuseum in Amsterdam in 1935, and became part of the Dutch national art collection, but not the NK Collection, which contains only looted artworks returned by the Allies. Nonetheless, the Restitutions Committee issued a recommendation. Pursuant to its guidelines, sales by Jewish private owners in Germany beginning in 1933 onwards are considered involuntary, unless expressly proven otherwise. On that basis, the Commission determined that Glaser sold the painting involuntarily and that any prior compensation provided to the heirs by the German government was not an impediment to their restitution claim.⁴⁴

Other claims are still pending with the Restitutions Committee. For example, on March 29, 2007, the heir of the art dealer Nathan Katz, who owned and operated his art dealership with his brother, Benjamin Katz, filed a claim for the recovery of 227 artworks that were allegedly looted by

⁴³ See Restitutions Committee Recommendation Regarding Glaser, RC 1.99 (Oct. 4, 2010), available at http://www.restitutiecommissie.nl/en/rc_1.99/advies_rc_1.99.html.

⁴⁴ *Id.*

the Nazis. On July 1, 2009, the Restitutions Committee issued a recommendation regarding 31 of the disputed works, finding that there was insufficient evidence showing that the Katz brothers owned the works. A decision regarding the remaining works is still pending.⁴⁵

So: What about the future? Certainly, there are still many Nazi-looted artworks that have not been found. Indeed, Marei alone is looking for about 1,000 lost artworks. But one thing is clear. And it has been taught to us by claimants like Marei and so many other heirs of Holocaust victims. The key ingredient to successful Holocaust restitutions is perseverance in the face of longstanding hardship and the criticism of those who mock the recovery of Holocaust loot as an unnecessary “industry”. Their stories compel us to remember the horror that was the Holocaust and thus to celebrate our humanity and spirit of survival.

Thank you.

⁴⁵ Restitutions Committee Recommendation Concerning Art Dealership Katz (A), RC 1.90-A (July 1, 2009), available at http://www.restitutiecommissie.nl/en/rc_1.90-a/advies_rc_1.90-a.html.