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**For debate in the Standing Committee see Rule 47 of the Rules of Procedure
Pour débat à la Commission permanente – Voir article 47 du Règlement**

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Looted Jewish cultural property

Appendices to the report
Committee on Culture and Education
Rapporteur: Mr Emanuelis Zingeris, Lithuania, European Democratic Group

Appendix 1: Summary of the Paris hearing
Appendix 2: Discussion paper on the legal issues by Dr Patrick O'Keefe
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Appendix 1. HEARING ON LOOTED JEWISH CULTURAL PROPERTY

Paris, 19 April 1999

OUTLINE FOR THE HEARING

The aim of the hearing was to inform the Committee of the results of international co-operation so far, and most recently the Washington Conference of December 1998, and to identify steps national parliaments in Europe might take to help further the process. These will be formulated subsequently in the report Mr Zingeris is to present to the Assembly.

Introduction

- Senator Charles-Ferdinand NOTHOMB, Chairman of the Committee on Culture and Education, Member of the Belgian Senate [*Chairman of the hearing*]
- Mr Emanuelis ZINGERIS, Rapporteur and Vice Chairman of the Committee on Culture and Education, Member of the Lithuanian Seimas and Founder of the European Institute for Dispersed Ethnic Minorities (Vilnius)

The Washington Conference

- J.D. BINDENAGEL, Director of the Washington Conference on Holocaust-Era Assets, US State Department, Washington
- Rabbi Andrew BAKER, Director of European Affairs, American Jewish Committee

The legal issues

- Dr Patrick O'KEEFE, legal consultant

Action in individual European countries

- **Austria:** Ambassador Hans WINKLER, Director for the Americas, Austrian Ministry of Foreign Affairs, Vienna
- **Belgium:** Mrs Viviane TEITELBAUM, President of the Coordinating Committee of Jewish Organisations in Belgium, and also representing the European Jewish Congress
- **France:** Mrs Françoise CACHIN, Director of the Museums of France
- **Russia:** Mr Victor V PETRAKOV, Deputy Head of the Department for the Cultural Heritage, Ministry of Culture of the Russian Federation, Moscow
- **United Kingdom:** Mrs Anne WEBBER, Co-Chair of the European Commission of Looted Art (London) and also for the European Council of Jewish Communities

Conclusion

- Summing up by the rapporteur Mr ZINGERIS

SUMMARY

A verbatim account is available in English only under reference AS/Cult (1999) 31

The Chairman welcomed participants to the hearing on looted Jewish cultural property. Time was very short and each speaker was limited to 15 minutes for presentation and questions. The Committee members should leave statements to later discussion in committee and the Assembly debate.

Mr Zingeris, Rapporteur, presented the subject of the hearing, dedicated to the values of the Council of Europe and to the 50th Anniversary of the European Declaration of Human Rights. The Holocaust was a crime against humanity and also a crime against Jewish culture. The Nazis had confiscated and destroyed thousands of works of art from Jewish collections in an attempt to obliterate the Jewish cultural heritage.

In its Recommendations 885 (1987) and 1291(1996) the Parliamentary Assembly of the Council of Europe had drawn attention of the international community to the importance of the Jewish contribution to European culture

The present report covered point 9 of Recommendation 1291 on Yiddish culture in which the Assembly called for the restitution of Jewish cultural heritage looted during World War and under communist régimes.

The London and Washington conferences had played an important role in giving this issue a world dimension.

The Parliamentary Assembly should help to initiate new legislation on this subject in national parliaments of Council of Europe Member States and propose further action at the European level to the Committee of Ministers.

Mr Bindenagel, Director of the Washington Conference on Holocaust-Era Assets, thanked the Committee for the invitation to the hearing and presented the results of the Washington Conference convened in December 1998 as well as follow-up.

After the end of the war the allies had prepared a comprehensive system of identification and return of stolen assets. By 1950 most artwork, recovered by Allied military forces had been returned. The system had worked well except in Eastern Europe under Soviet control. With the collapse of the Soviet system there had been a renewed interest in re-establishing justice and a renewal of the process of restitution. President Clinton had re-launched this process in 1995 by asking Stuart Eizenstat, US Ambassador to the European Union, to renew efforts to assist Holocaust victims. Mr Eizenstat had initiated the Washington Conference on Holocaust- Era Assets, which had elaborated 11 principles on art.

The 44 countries represented at the conference had adopted by consensus these “Washington Conference Principles on Art” that addressed the sale, purchase, possession, and exchange of Nazi-confiscated art.

In the follow-up to the conference Russia had offered co-operation in the returning of Nazi-confiscated art and in opening up Russian archives to research.

The interest shown by the Parliamentary Assembly of the Council of Europe in the results of the conference in itself was a testimony to its large success and would give an important boost to the implementation of its principles.

Rabbi Baker, Director of European Affairs of the American Jewish Committee presented his organisation, founded in 1903 which represented the majority of American Jews. He recalled that the Jewish community had never accepted the term of “Wiedergutmachen” (“making good again”) given by the post-war West German Government to the process of compensation and restitution, as no one could restore what was lost. The enormity of the crime of the Holocaust argued against this term. Instead a moral and legal obligation to make amends for the crimes of the Nazi era should be recognised.

He pointed out issues related to heirless or unclaimed assets, Jewish cultural property and the different attitudes of European countries towards the claims for the return of Jewish communal property. For their revival, Jewish communities in Europe needed help and financial support and they should be included in discussion of the restitution of assets.

The largest numbers of European Jews who survived the Holocaust had escaped to Israel and America. The disposal of Jewish cultural properties - at least those that could not be matched with individual claimants - should be linked with Jews who could use them today, and not restricted to their a geographical point of origin.

Holocaust victims should be supported financially as many of them faced health problems. To restore Jewish life destroyed by the Nazis, special support should be directed to Jewish education, Jewish youth activities and cultural expression.

Mr O’Keefe, legal consultant, presented his paper on the legal issues involved. He stressed that the legal situation in the USA differed from Europe. Three aspects were of major importance in the return of looted cultural property: limitation periods, inalienability and export controls.

Most European countries had different limitation periods after which the possessor acquired “good title”. Negotiations surrounding the new Unidroit Convention (which was not relevant itself as not retrospective) showed that it might be possible to change limitation periods. As matters stood, most Jewish assets had already passed beyond existing limitations.

Concerning inalienability, holders of assets would often be unable to return them to the claimant even if they wish so. Strict regulations applied to what could be given back, for instance by museums and trustees. Therefore special legislation would be necessary solve this problem.

Export controls varied from country to country in Europe. Some countries had limited lists of objects allowed for export. A special regime for the export of looted assets would have to be considered. The best solution would be negotiation and mediation in each particular case.

Mr Staes stressed that looted assets were not only kept in private collections, but also were travelling all over the world. Therefore, he felt, the only way to settle the problem would be to set up global standards rather than apply the legislation of individual countries.

Mr Hadjidemetriou considered this meeting one of the most important for the Committee and was satisfied that it had taken such an international dimension. It had created a precedent for world culture and national cultures. It underlined a tight link between people, buildings and culture. Jewish life and heritage should be re-established. Legal regulations were very complicated and it was important to adopt global solutions.

Mrs Lucyga said that it was a very complicated issue for Germany. One should take into account that under communism confiscation of goods and properties had continued. Reparation should be conducted within strict legal frameworks. She asked Mr O'Keefe to what extent his document covered the experience of other European countries, for example, the re-unification of Germany.

Mr Baciu welcomed the adoption of the eleven principles of the Washington Conference, which had been also signed by the Romanian delegation.

In answering the questions **Mr Bindenagel** said that the Washington Conference had recognised that it could never cover all the legal aspects of the problem if it was to return anything in the lifetime of holocaust survivors. Therefore it had concentrated on the practical issues and on developing principles for action by countries.

With regard to the question asked by Mrs Lucyga, he stressed the importance of the Russian proposal at the Washington conference to strengthen co-operation by opening archives and doing research on what had been stolen. The efforts of the French Government in providing information about unclaimed assets (MNR) on the Internet and the work of archivists in Germany and the USA were crucial to understanding the matter and providing a basis for restitution.

He agreed with Mr Baker's comments about the importance of the Jewish community and the necessity to promote the idea of cultural diversity and respect for it.

Mr Baker in reply to Mrs Lucyga admitted that the process of restitution had been rather adversarial as different parties were involved, and pursued their own interests. But in some countries, as for example in the Czech Republic, the Jewish community was working together with governmental bodies and this represented a new positive approach to the problem.

Mr O'Keefe considered the Washington principles very much an essential part of an educational process, as well as the changing of legislation.

Ambassador Winkler, Director for the Americas in the Austrian Ministry of Foreign Affairs, presented an Austrian Law adopted in December 1998, that could be a model for legislation on the return of looted cultural assets. The necessity of such a law had been realised after the confiscation of two Schiele paintings which had been on exhibition in New York. When individual claims had been made, the Court had ordered the confiscation of the paintings. This case had shown the difference with the American legal system, which did not have a limitation period.

The Austrian approach was a unique one, as the State had acted on its own initiative giving directions to all State and Federal museum directors to look into their collections and check if there was anything of doubtful origin. The objects of doubtful origin were classified into three categories: those that had been retained in the course of export controls; those that

had changed owners during the war and those whose owners were unidentified. The law provided that all these works of art should be given back. 90% of all looted assets were in Federal museums, and collections, but local and regional museums which were not included in the law, would also search for looted art in their collections. Individual claims were also studied by a special commission.

Mrs Teitelbaum, President of the Co-ordinating Committee of Jewish Organisations in Belgium, presented research work on the looting of Jewish property in Belgium. The process in Belgium as well as in other European countries had been well planned and would never have been possible without the collaboration of local authorities. The Nazi military forces had used the Belgian administration to implement their insidious plans on the spoliation of Jewish property and the deportation of 17 thousand Jewish people. In 1940 the Nazis had started the expropriation of the archives belonging to Jewish, socialist and Masonic organisations. Since 1942 all Jewish libraries, art works, furniture and other precious objects had been taken by the Einsatzstab Reichsleiter Rosenberg (Nazi authorities). Some Belgian collectors had used the occupation period to sell art works to German agents who had worked for Göring or to the future Führer Museum in Linz.

After the war the Belgium authorities had created the Office on Economic Recuperation, a part of which had dealt with the return of art objects. By 1952 Belgium had recuperated 2749 books and 492 art works. But a great part of stolen art assets still had to be returned. The Ministry of the Economy had published two volumes of a registry of stolen art assets and three more volumes would be issued soon.

Today many countries were working on the return of only a part of Jewish looted assets, as it would be impossible to identify, find and return all the objects confiscated by the Nazis. It was important to establish co-operation in the field of research between specialists on restitution and museum workers in order to discover the historical truth.

Mrs Cachin, Director of the Museums of France, spoke about the situation of looted cultural assets in France which had been one of the worst affected countries during the war. The Allies had recovered and had brought back to France 61 257 artworks and various other items and 45 441, or three-quarters, had been returned to their owners over the period 1945-1949. 15 816 items remained unclaimed. 2058 unclaimed art works had been designated by the Selection Committee created by an official decree in 1949 for temporary deposit with national museums (known as MNR- Musées Nationaux Récupération). Since 1959 some 30 art objects had been returned by the Museums Directorate to their owners. Efforts were being made to identify looted art objects in French museums and art galleries. The Catalogue of Property Looted during the Second World War had been published in 1950 and was being updated by the central records department of the Ministry of Foreign Affairs. The list of the MNR art works had been put on the Internet and was regularly updated. To ease the identification and restitution process it was important to develop research on the provenance of art works placed in the safekeeping of the national museums authority.

Mr Petrakov, Deputy Head of the Department for the Cultural Heritage of the Russian Ministry of Culture, stressed the importance of the Washington Conference and the hearing organised by the Council of Europe. He gave detailed information on the legislation of the Russian Federation relating to the transfer and protection of cultural goods and explained the main provisions of the new Russian law on cultural assets that had been removed and were currently located in the repositories of Russian museums.

The results of the Washington Conference had found great support in all cultural institutions of the Russian Federation although part of the public opinion felt that nothing should be restituted out of Russia. Russia was experienced in research work on looted assets and was ready for co-operation in this field. At present it was negotiating the return of the Esterhazy Library. The Ministry of Culture had started work on the preparation of a major Catalogue of looted cultural assets lost by Russia during the Second World War. Much work needed to be done in the State Archives of the Russian Federation where many documents relating to looted cultural assets had been stored. An international group of experts could be established to assist in this, as much of the material was not in Russian. The Ministry of Culture had sent special instructions to all museums to look through their collections and identify objects that could have been looted by the Nazis.

He also stressed the educational aspects of the process of restitution and called upon wide international co-operation and concrete action to reinforce this process.

Mrs Webber, Co-Chair of the European Commission of Looted Art (ECLA), presented her organisation which had been set up in the wake of the Washington Conference to provide a co-ordinated, focused and representative response on all issues raised by the conference. ECLA had created an extensive consultative network which brought together a wide range of groups, institutions and experts. The issue of looted Jewish cultural property was primarily a European issue, as the looting had been motivated by a wish to erase the contribution of Jewish collectors to the European cultures. Nazi-looted assets were the only remains of Jewish memory from that time.

Since Washington some progress had been made, but there was no timetable for the implementation of the principles and the pace was slow. The principles made no mention of the key concept of restitution and such crucial issues such as claims were not specified. Some American museums were ignoring guidelines on dealing with looted art. The international art market was uncontrolled and hundreds of looted art works continued to appear on sale.

The victims had faced an unequal struggle to recover their looted artworks and governments sometimes had hindered their search. There should be no discrimination of claims and there was a critical need to provide uniform legal standards, both within countries and across Europe as a whole. All European countries should follow the Austrian precedent of waiving the statute of limitations as regarded looted art.

ECLA was formulating a series of codes of practice on this problem: a timetable for the implementation of the Washington principles; transparency of working practices of the art market; a central registry of information on looted works; a mediation unit for nazi confiscated art. Common objectives, common laws and a commitment to co-operation were essential in dealing with this complicated problem. An international conference should be convened in Europe to address these issues.

Mr Zingeris summarising the hearing thanked all participants for their valuable contributions whose main ideas could be used in the preparation of the draft recommendations of his report. The efforts of all European organisations dealing with looted assets must be co-ordinated and it would be important to bring together the 17 international commissions on restitution to attract their attention to looted cultural heritage. This hearing was significant not only for the Jewish people but for all the European nations involved in the Second World War.

Parliamentarians present at the hearing:

| | | | |
|-----|--------------------|-----------------|----------------|
| MM. | NOTHOMB | (Chairman) | Belgium |
| | ZINGERIS | (Vice-Chairman) | Lithuania |
| | ROSETA | (Vice-Chairman) | Portugal |
| | de PUIG | (Vice-Chairman) | Spain |
| | BACIU | | Romania |
| | BILLING | | Sweden |
| | CHILIMAN | | Romania |
| Mr | ELO | | Finland |
| | GNAGA | | Italy |
| | HADJIDEMETRIOU | | Cyprus |
| Mrs | ISOHOOKANA-ASUNMAA | | Finland |
| Mr | JAKIC | | Slovenia |
| Mrs | KELTOSOVA | | Slovakia |
| MM. | KIELY | | Ireland |
| | KOLLWELTER | | Luxembourg |
| | LIBICKI | | Poland |
| Mrs | LUCYGA | | Germany |
| Mrs | NEMCOVA | | Czech Republic |
| MM. | MANCHULENKO | | Ukraine |
| | O'HARA | | United Kingdom |
| | RISARI | | Italy |
| | SHAKLEIN | | Russia |
| | STAES | | Belgium |
| | URBANCZYK | | Poland |
| | VOLCIC | | Italy |
| | WRIGHT | | United Kingdom |

Secretariat:

- Directorate of Education, Culture and Sport
Mr MAZZA, Head of the Education Department

- Office of the Clerk of the Assembly
MM. GRAYSON, Head of Division
ARY, Secretary to the Committee
Mrs THEOPHILOVA-PERMAUL, Co-Secretary
Ms KOSTENKO, Co-Secretary

Appendix 2. DISCUSSION PAPER ON THE LEGAL ISSUES INVOLVED

by Dr Patrick O'Keefe, consultant expert

Recent years have seen a number of efforts to set standards and principles for the return of cultural property looted from Jewish people by the Nazis. Among these are the

- . Principles With Respect to Nazi-Confiscated Art adopted by the Washington Conference on Holocaust-Era Assets 1998
- . International Council of Museums Recommendations Concerning the Return of Works of Art Belonging to Jewish Owners made by the ICOM Executive Council 1998
- . Statement of Principles and Proposed Actions on Spoliation of Works of Art During the Holocaust and World War II Period by the National Museum Directors' Conference (NMDC - United Kingdom) 1998
- . Statement of Principles of the Association of Art Museum Directors (AAMD - United States of America) on the Spoliation of Art during the Nazi/World War II Era (1933-1945)

These statements are important in creating a structure and climate of opinion conducive to return. However, States now have to consider whether more concrete steps should be taken to facilitate the process. In this it must be realised that any meaningful attempt to recover cultural property looted from Jewish people will involve difficult decisions and considerable effort. In order to streamline the process and prevent unnecessary delay, decisions must be taken on six significant issues:

- . material to be covered
- . inventories of losses
- . tracing of looted cultural property
- . recovery processes
- . liability of current holders
- . dispute settlement

National governments will have to address a variety of different situations where these issues arise: for example,

- . claims from one's own nationals for objects held in the State in national collections or private hands
- . claims from nationals of other countries for objects held in the State in national collections or private hands
- . claims from other States on behalf of their nationals for objects held in the State in national collections or private hands

The particular nature of the claim will influence the way in which it is brought and the issues it raises.

Private organisations are being created to fill a perceived void and encourage government action. For example, the European Commission on Looted Art was launched in March 1999 with its stated aims being "to monitor developments and progress in the implementation of the Washington Principles, to set the agenda for action, to support claimants, to communicate and co-ordinate the work of the various groups and agencies, and to press for European legislation on these issues".

Against this background, it is now necessary to investigate the six stated issues in more detail.

Material to be covered

There are various categories of looted cultural property. One is that of property taken by State forces and still held by that State as, for example, the collections of cultural property from Germany held by Russia. Although most of this came from public collections, some came from private individuals. However, the fate of these is very much a matter for international negotiation and will not be discussed in this paper. Nor will there be any emphasis on those collections, which are the remnants of cultural property, sent back to national States from the collection points at the conclusion of World War II. The *Musées Nationaux Récupération* in France is an example of this. There are obviously works looted from Jewish people in this collection but once again the issues are peculiar to these works. This paper is concerned with a third category: cultural property either looted from Jewish people or cultural property of Jewish origin looted from general collections which in either case has disappeared but which, in the interests of justice, must be identified and a decision made as to its ultimate disposition.

A decision must be made as to what type of cultural property is to be sought, as it will have implications for the type and range of legal problems that could arise. Much of the discussion to date has concentrated on looted paintings. These are very significant both in terms of numbers and value. However, they were not the only objects of cultural property that were looted. There were also antiquities, carpets, tapestries, sculpture, books, and furniture. Some of these were of considerable monetary value. Others, of lesser such value, may well be of great emotional significance to the person concerned or their descendants. The crucial question is that of identification. This can be a problem with paintings but it will be an even greater difficulty with, for example, a carpet. An expert may be able to distinguish one carpet from another but, outside that narrow circle, to identify a particular one after many years would be almost impossible especially when no photographs exist. Similarly with furniture. Unless the piece is of exceptional importance or there are recorded distinguishing features it will be extremely difficult to trace.

The paragraphs above speak of "looted" cultural property. There is no space here to go into the nuances contained in this concept. It is enough to say that this can well give rise to legal difficulties when one tries to establish what happened in chaotic circumstances almost 60 years ago. Cases have already arisen where it has proven difficult to establish the circumstances of a sale during the period in question or the legal conditions under which an object was held.

Inventories of Losses

One of the greatest problems for those who had cultural property looted during the Nazi era has been the publication of their loss. It is really only since the advent of computers and the possible creation of electronic databases that this has become feasible for people without

specialised knowledge of the art market. Such databases are essential for tracking down both the current location of cultural property and the nature of its owners during the Nazi period.

Some databases already exist. For example, one purpose of the Commission for Art Recovery of the World Jewish Congress is to register claims for the victims of Nazi art theft. The Commission has a claim form which can be downloaded from its website (<http://www.wjc-artrecovery.org/sub.htm>). The form "seeks information regarding the person filing the claim (the claimant), the person from whom art was actually stolen (the victim), the art objects themselves, and the circumstances of the theft". The Commission indicates that, although the more information there is the better, "incomplete information is perfectly acceptable". Another body, the Holocaust Claims Processing Office, a division of the New York State Banking Department, in 1998 expanded its activities to include the search for lost and looted art - one rationale being that many artworks were held in safe deposit boxes or listed on insurance policies, both of which are subject to the Office's investigation. A third body is the Art Loss Register; set up in London in 1991 to assist in the recovery of stolen art. With the financial support of its major shareholders, principally Sotheby's and Aon, its database was recently expanded to include looted art on a *pro bono* basis. All looted art registrations are included in the process whereby the Register checks auction catalogues for matches with material coming up for sale.

An agreement has been reached between the Commission for Art Recovery of the World Jewish Congress, the Holocaust Claims Processing Office and the Art Loss Register to exchange data. This shows the way forward. Databases of only national scope have limited value. It is probably too much to expect a central inventory to be established by one of the international organisations. If that were correct, there should be national or regional inventories, well publicised, in which records of losses can be registered. These inventories should be interconnected electronically so that a query made of one will mean an automatic search of all. It will not be easy to achieve. The history of attempts to achieve this by the databases of stolen cultural heritage are instructive and show that action must be taken before individual, incompatible databases are established.

Tracing of Looted Cultural Property

Complementary to the registration of details of looted cultural property are the processes for tracing looted cultural property. For example, the Commission for Art Recovery of the World Jewish Congress states:

Our researchers comb many resources (including archival documents, books, and museum catalogues) in search of works of art whose provenance's contain the names of individuals or institutions known to have bought, sold, or traded in art stolen by the Nazis, names of families whose works were confiscated or works whose provenance's exhibit suspicious wartime gaps. Information about insurance records, Nazi confiscation lists, and post-war allied restitution organisations is also compiled.

Various national governments have commenced to investigate what happened to cultural property looted from Jewish persons. Belgium, for example, set up a commission for this purpose in 1997. In France, the study group on the despoliation of French Jews was created in 1996 with substantial resources at its disposal.

Looted cultural property can also be traced through auction house sales. It is reported that Sotheby's New York are already investigating objects offered for sale which have any hint in their past that they may have been looted. The European Commission on Looted Art states that one of its objectives "is to bring the commercial art market inside the process, and to establish a code of practice and a set of working goals".

Suggestions have also been made that institutions should search their collections to see if they contain objects whose provenance indicate that they may have been looted by the Nazis. Three major problems are inherent in this: cost, the state of record keeping and the status of collections. To search a collection thoroughly is an expensive operation. The actual cost will depend on how extensive a search is required. Moreover, it is well known that many collections have inadequate and defective documentation. Thus the origin of a particular object may well be impossible to ascertain with any accuracy. Finally, what powers does the government have to require such a search? This currently depends on the status of the collection. Some institutions holding collections will be government controlled or funded. They may be compelled to make such searches. Others will not be. Even in France, the State may not require the municipalities in charge of the principal museums in the big cities to undertake any research or restitution of cultural property which they own. Privacy protection laws will have to be considered; not only in respect of the institution but also of donors.

Austria provides an example of such a process. There a Commission of experts has been formed to examine the provenance of all artworks acquired in the period 1938 to 1960 by the ten museums under the jurisdiction of the Ministry of Culture. State and local museums are not affected by this pronouncement by the Minister although the comment has been made that "such institutions are likely to be under intense pressure to consider returning works in their collections found to have been improperly acquired or held".

There may be other laws or regulations which affect the ability to trace looted cultural property. For example, the French Decree of 28 August 1980 on "Documents administratifs ne pouvant être communiqué au public" issued by the Ministry of Culture may fall into this category. If documents involve matters affecting the rights of third parties, the State is prohibited from handing them over in circumstances where otherwise distribution could not be compelled by those affected by them. A draft law currently in preparation will specify in which cases the rights of third parties prevent the handing over of an archive.

Recovery Processes

It will first be necessary to establish the history of an object. Sometimes even the original taking may be in question. If there was a sale, what were the circumstances and what law applied? Was the object at the time of taking subject to any legal restrictions e.g. had it been gifted to an institution although still in the possession of the donor?

It is 54 or more years since the Nazis looted cultural objects belonging to Jewish people. In those years such objects may well have passed through a number of hands by transactions involving a series of different legal systems. The rules under which title is lost by one person and acquired by another are complex and by no means uniform among States even within Europe.

In States using the Civil Law it is common for a person who buys an object in good faith to acquire a good title after a set period of time even though the object was stolen. For example, in France possession represents title and a person who loses an object or has it stolen from

him or her has only three years from the date of loss or theft in which to reclaim it. To avail himself of this protection, the good faith possessor does not have to prove his title, but his possession must be continuous, uninterrupted, peaceful, public, unambiguous and as owner. Moreover, Article 2280 of the French Civil Code states:

If the current possessor of a stolen or lost object bought it at a fair or a market, or in a public sale, or from a merchant of such objects, the original owner can reclaim it only on payment to the possessor of the purchase price.

Since purchase of cultural property from a dealer is common, this provision has considerable force. Finally it must be noted that at the end of 30 years from the date of theft or loss, under French law the current possessor acquires a title good against the whole world, even though the object may not have been acquired in good faith (Article 2262, Civil Code).

In England the general law is that a thief cannot acquire good title to stolen goods. An action against the thief to recover stolen goods may be brought by the true owner at any time. However, where the object is "converted", as for example by being sold to an innocent purchaser, and a period of six years has passed, the title of the original owner is extinguished. This means that, although an object of cultural property was looted in 1944, the law now regards its current good faith owner as having a good title.

In the United States of America the law on this point depends on the state where proceedings are brought. The law of New York state differs substantially from the above: the three year time limitation period does not commence to run until the dispossessed owner has made demand on the current holder for return of the object and has been refused. Demand would presumably be made when the whereabouts of the object is discovered but there is no maximum period of time after which a claim cannot be made. Nor does the dispossessed owner have to exercise reasonable diligence in locating the stolen object although the affirmative defence of *laches* (delay in asserting a right) can be raised where he or she has not diligently sought to discover the whereabouts of the object or its possessor.

Sometimes there is a question as to which limitation rule is applicable. The history of Joachim Wtewael's painting *The Holy Family with Saints John and Elizabeth* illustrates this. The painting had disappeared from Thuringia in Germany in 1946. It next appeared in Moscow in the possession of two art smugglers; was taken out Russia and eventually found its way through a series of dealers to a Panamanian company, Cobert Finance S.A. In joined cases in London in 1998 - *City of Gotha v. Sotheby's and Cobert Finance S.A.* and *Federal Republic of Germany v. Sotheby's and Cobert Finance S.A.* - Moses J. decided that it would be contrary to English public policy to permit a party which admitted it had not acted in good faith to retain the advantage of a lapse of time during which the plaintiffs had no knowledge of the whereabouts of the painting and no possibility of recovering it. The judge had held that the German 30-year period for extinguishing title even when the holder was not in good faith did not commence to run till 1987. However, if it had commenced before that date and the title had been extinguished under German law, this would not be recognised in England. As this is contrary to common practice under Civil Law, it remains to be seen whether it will be followed by other courts.

States will have to consider whether it is necessary to change the rules on limitation and the consequences of doing so. In New York there has been a proposal to the effect that the victim of a theft who doesn't register the loss with the Art Loss Register loses the right to demand the object's return six years after the theft. If the victim hasn't listed it, and doesn't list it for the

next three years, it can never be claimed and the current holder gets a good title. The proposal involved giving Holocaust victims more time - ten years had been mentioned. A number of organisations concerned with Holocaust claims have opposed the proposal including the Commission for Art Recovery of the World Jewish Congress and the Washington based Holocaust Art Restitution Project.

It is instructive here to consider the UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects 1995. In doing this, it must be made clear at the outset that the Convention is not retrospective and can have no direct effect on any transaction arising out of events before it comes into operation for the States concerned. However, the provisions adopted by States in 1995 show how nations are now viewing the issues discussed here. A central tenet of the Convention is that the "possessor of a cultural object which has been stolen shall return it" (Article 3(1)). States then had to deal with the problem of time lapse. They adopted two criteria. First, any claim must be brought "within a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor". Second, there is an overall period of 50 years from the time of the theft. On this basis, for individual Jewish claimants, time would now have expired. In respect of Jewish cultural property looted from public collections, the period would not yet have expired. Here only the three-year rule applies unless a State has specifically declared at the time of becoming party to the Convention that the claim is subject to a 75-year time limit. The concept of a public collection includes "a religious institution in a Contracting State" or an institution which has an essentially cultural, educational or scientific purpose and is recognised by the State as serving the public interest.

Finally, and most significantly, Austrian Law No. 181 of 4 December 1998 - "*Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen*" - empowers the Federal Minister of Finance to give back to their original owners, or successors in the case of death, cultural objects from the Austrian Federal Museums and Collections without payment. This legislation overrides, for a period of 25 years, the provisions of the Monument Protection Act on voluntary transfer of objects in the sole ownership of the State and the export control legislation for cultural objects.

Any changes in the provisions affecting ownership discussed above will have to consider human rights law and, in particular, Article 1 of the First Protocol to the *European Convention on Human Rights* (38 European States Party):

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

How does this affect the situation? For example, a person may hold an object as owner and be safe from any attack on his rights because the time for any other claimant to take legal proceedings for recovery has expired. If the limitation period were extended or eliminated altogether, it might render the holder liable to such proceedings for recovery. This could well be argued to be interference with peaceful enjoyment of possession (note that mere expectations of ownership rights are not protected by Article 1). Although it is clear that the

State has the right to deprive a person of objects in his possession, it may well be necessary that compensation be paid by the State to the current holder when the object is ordered to be returned to the claimant. The arguments are complex and beyond the scope of this paper.

Another area of law that affects the recovery process is comprised of the antiseizure statutes that have been adopted by some States. These are designed to prevent claimants taking legal proceedings for recovery of an object which is temporarily in the country concerned, usually as part of a museum exhibition. In Europe, the most recent major incident was the attempt, in 1993, by Mme. Shchukin to recover paintings from her father's collection which had been expropriated in Russia at the time of the 1917 Revolution. She took proceedings for recovery in the French courts when the paintings were on loan to the Pompidou Centre for an exhibition: "Henri Matisse 1904-1917". The proceedings failed but the French Government enacted a law which, when applied by administrative decision, protects from seizure all cultural items lent by a foreign power, local authority or cultural institution to the French State or any other legal person designated by the French State, for public exhibition in France. It is not known what other countries in Europe have such rules.

Liability of Current Holders

Persons responsible for a collection will often be unable to return an object even though they feel there is a moral obligation to do so. For example, an item of cultural heritage may have been looted from a Jewish person in 1943 and is identified as being in the collection. It is also shown that its acquisition was such as to establish good title in the responsible body e.g. a museum. The museum management would like to return it but could themselves be held legally liable if they did so. Much will depend on the obligations in law of the management to the collection. For example, ownership of the collections of the British Museum is vested in trustees under the *British Museum Act* 1963. They can sell, exchange, give away or otherwise dispose of any object in the collections only in specified circumstances; namely, if

- a. the object is a duplicate of another such object, or
- b. the object appears to the Trustees to have been made not earlier than the year 1850, and substantially consists of printed matter of which a copy made by photography or a process akin to photography is held by the Trustees, or
- c. in the opinion of the Trustees the object is unfit to be retained in the collection of the Museum and can be disposed of without detriment to the interests of students.

In order to legally dispose of an object now found to have been looted, the Trustees would have to bring the action within these terms. The only alternative would be an Act of Parliament allowing the disposal.

Public responsibility seems to be the position currently being adopted by the Seattle Art Museum which is being sued by the Rosenberg family for return of Matisse's 1928 *Odalisque*. The painting was bequeathed to the museum in 1991 by a person who bought it in 1954. The ownership of the painting in the period up to 1941 is disputed. The Director of the Gallery has stated:

... as an institution holding works of art in public trust, we are obligated to determine the full facts of the case. There's still a period of time in which we really don't know what happened to the painting and who held the title.

In some States, once an object is accessioned into the collections, it is thereafter inalienable. Giving it legally to another person could only be done under the authority of the legislature. Anything else would open the person or persons responsible to major sanctions. In France, collections cannot be alienated because they are part of the public domain and are imprescriptible. However, alienation is possible after a decision placing the object outside the public domain ("declassament"). This decision is within the competence of the municipal council in respect of communal museums and of the Minister for national museums although for political reasons the Minister may feel the need for the backing of the legislature.

It may be desirable for a procedure of guarantee to be established to protect persons who return objects in good faith from legal proceedings by later claimants. For example, a museum decides to return a painting to a person who has presented persuasive evidence that her father was its owner in Germany in 1938 when she last saw him. Nothing is known of the painting's subsequent history till 1985 when it was offered as a gift to the museum by a prominent collector who is now dead but it is suspected that he acquired it from a dealer associated with the Nazis. The museum has full capacity to make the return. However, three years later another person makes a claim showing that the father had legitimately sold the painting after the daughter departed and it had been seized by the Nazis from the purchaser, the mother of the second claimant. Should the museum be protected against any claim that this person may bring?

Claimants may be prepared to accept something in lieu of the actual object; thus avoiding the problems set out above although perhaps giving rise to new problems. For example, there has been a dispute over Degas's pastel *Landscape with Smokestacks* which an American businessman, Searle, had announced he would donate to the Art Institute of Chicago but which was then claimed by the Goodman family as having been looted in Paris. The settlement involved the Goodmans selecting two appraisers - one from Christie's or Sotheby's and the other from a list of prominent art dealers proposed by the Institute. The price was to be the average of the two appraisals. The Art Institute would pay half that amount to the Goodmans. A December 1998 report suggests that the appraisal process has significantly written down the value of the pastel. Searle paid \$850,000 for it in 1987 but it appeared to have been appraised at \$500,000.

Dispute Settlement

Disputes could arise in many ways. For example, the descendant of a Jewish person who had a piece of sculpture looted during the war may have found it in a museum and disputes the latter's story as to the way in which it was acquired; or the museum might allege that the sculpture was one of a number cast at the same time and the one it holds is not the one claimed; or the museum may just refuse to take any action.

There is a variety of ways to resolve disputes: negotiation, mediation, conciliation, arbitration, court process. Court process means the formal procedure of commencing legal proceedings and eventually obtaining a ruling from the court as to who owns the object in dispute. There may well be appeals from that and subsequent rulings until the highest court in the jurisdiction have given its judgement. This is both expensive and time consuming. Courts also have rules as to what evidence they can accept and, when the events concerned took place so many years ago, it may be difficult to satisfy those rules. But, more significantly, the discussion above shows that legal proceedings may not be entertained because the claim is out

of time and the current holder has good title. In these circumstances, it would be better to resort to one of the other methods of dispute settlement.

Negotiation, mediation, conciliation and arbitration are themselves processes which require skill and goodwill for a successful outcome. But it must be noted that, with the exception of arbitration, the result is not legally enforceable. With all these processes, both parties need to know how they work and what would be required of themselves. They need to know where to go for assistance.

The Association of Art Museum Directors recommends "that member museums consider using mediation wherever reasonably practical to help resolve claims regarding art illegally confiscated during the Nazi/World War II era and not restituted". The Commission for Art Recovery of the World Jewish Congress specifically states that at present it does not provide mediation services but may take on such a role in the future. In England, the Institute of Art and Law, located at Leicester, has resolved to establish a dispute resolution division which will field, process, adjudicate and or mediate upon claims within this area. A senior former practising solicitor has been appointed to set up the formal structure and advise on its operation. The division expects to become operational in mid 1999. Among its panel of expert adjudicators and mediators will be former judges, practising lawyers and academics both in law and other relevant fields.

All European countries have organisations, which provide assistance with the conduct of arbitration; sometimes also mediation and conciliation. The International Chamber of Commerce, headquartered in Paris, has a Court of Arbitration, which provides facilities for the conduct of arbitration and conciliation. One problem with utilising the resources of these generalist organisations is that there is no guarantee the person chosen to arbitrate will have any expertise in the area. Moreover, unless there has been prior consent to arbitration, it requires the consent of both parties to initiate the process.

The great advantage of mediation for the claimant in the context under discussion is that it can get round the problem of the museum or other holder being legally unable to return an object. The holder may wish to do so on moral grounds or to avoid adverse publicity but is constrained by legislation; the rules on trusteeship or inalienability as discussed above. In these circumstances, the parties may be able to agree on a cash payment or some other form of compensation although this in turn may need to be endorsed by the government.

The person of the mediator is crucial to the success of any mediation. Sir Anthony Mason, former Chief Justice of the Australian High Court, has said of the mediator:

... a mediator must have a good knowledge of the legal system and the relevant law. Beyond that, mediators may have a range of qualities. Some are proactive, some evaluative, others facilitators. Consideration of the qualities of the mediator to be appointed is very important as the success of the mediation depends to a large extent on securing a mediator whose abilities are appropriate to the characteristics of the particular dispute. That means ascertaining what is the reason for the failure of the parties to reach agreement and selecting a mediator who is best equipped to overcome the reason for the failure of negotiations to that point.

Confidentiality is a great advantage of mediation when there is a desire to avoid publicity.

Export Controls

Most Member States of the Council of Europe have controls on export of cultural heritage. There are great variations in how these work. For example, in Germany there is a list of approximately 2000 items which are forbidden to be exported. In the United Kingdom, there is a procedure whereby the export of objects is delayed while efforts are made to raise funds to keep it within the country. In Italy, export licences may be granted but allegations are often made that they are very difficult to obtain. Consequently, the significance of export controls for the restitution of cultural property looted from Jewish people will depend very much on the country concerned.

Assuming that export controls would be applicable, the situation of the recipient becomes relevant. Is he or she within the State; outside the State or is within the State but wants to export the object outside the State? If the recipient is within the State, and wants to keep the object, there would not be a problem. If the recipient is outside the State, and has been for a long period of time, it would be possible for the administrators to argue that this constitutes a special circumstance justifying a departure from the normal rules. The difficult case is that where the recipient wants to send the object outside the State e.g. so as to obtain a better price on the international art market. Here the State would have to justify any departure from the normal rules to others who have sought and failed to obtain a licence. One possible argument could refer to the circumstances in which the property was originally lost.

Conclusion

There is much to occupy governments considering the return of cultural property looted from Jewish people or Jewish cultural property otherwise looted.

1. Links with and between private organisations should be established and encouraged. The activities of such bodies need to be publicised.
2. The creation of databases of details of looted cultural property and information pertaining to such property should be encouraged and assisted; in particular, governments could do much to ensure that these are linked to provide efficient and effective distribution of information.
3. Public collections under government control or influence should be required to examine their collections for suspect acquisitions and encouragement should be given to private collections to do the same; the legal implications of this must be assessed.
4. Certain practices of the art market should be examined to see if these unduly hinder the process of recovery; for example, the insistence on secrecy as regards consignors and purchasers
5. The provisions affecting the process of recovery and the liability of current holders should be examined to see if any change is desirable and, if so, what.
6. The various techniques for resolving disputes should be publicised and support given for those institutions offering specialised services in this area.

Some Background Material:

The international newsletter *Spoils of War*

Alford, K.D. *The Spoils of World War II: The American Military's Role in Stealing Europe's Treasures*

Feliciano, H. *The Lost Museum: The Nazi Conspiracy to Steal the World's Greatest Works of Art*

Gattini, A. "The Fate of the Koenigs Collection: Public and Private International Law Aspects" (1997) 6 *International Journal of Cultural Property* 81

Honan, W.H. *Treasure Hunt: A New York Times Reporter Tracks the Quedlinburg Hoard*

Mason, A.M. (Sir) "Mediation and Art Disputes" (1998) 3 *Art Antiquity and Law* 31

Nicholas, L.H. *The Rape of Europa: The Fate of Europe's Treasures in the Third Reich and the Second World War*

Petropoulos, J. *Art as Politics in the Third Reich*

Simpson, E. (ed.) *The Spoils of War*

Appendix 3. EUROPEAN COMMISSION ON LOOTED ART (principles and objectives)

ECLA, the European Commission on Looted Art, was launched in March 1999 in London to provide an expert, co-ordinated and representative response on all issues relating to the looting of art and other cultural property by the Nazis between 1933 and 1945.

The Commission is the European response to the December 1998 Washington Conference on Holocaust-Era Assets and to the endorsement by 44 nations of eleven principles for action in this area. ECLA is monitoring the implementation of these principles across the world and working with all countries in Europe to ensure decisive action is taken.

ECLA works through a comprehensive consultative network which brings together the widest range of communities, groups, institutions and experts working with all countries in Europe to ensure decisive action is taken.

ECLA works through a comprehensive consultative network which brings together the widest range of communities, groups, institutions and experts working in this field across 35 countries of Europe, and the USA. The ECLA is non-profit making, and works on behalf of Jewish and non-Jewish families alike. It also represents the European Council of Jewish Communities on matters of looted art and other cultural property.

The key purposes of the ECLA is to provide a clear, precise body of policy, principles and procedures, a coherent and common framework for action, in order to bring about a just resolution of all the looted property issues across the European continent. The repercussions of the massive depredation of art by the Nazis between 1933 and 1945 are only now being acknowledged by governments, museums, galleries and collectors. For nearly 55 years heirs have attempted with little success and without institutional help to locate and recover looted works. This too is only now being recognised.

ECLA promotes public policy and legislative change. It acts as a centre of research and information for all interested parties, and is establishing a central registry of all information known on looted art. ECLA carries out historical research, provides guidance and assistance to claimants, and pursues individual restitution claims. It is committed to aiding the recovery of looted works by the rightful owners or their heirs.

The ECLA has secured the co-operation of expert consultants from the art and legal worlds. It has established working ties with museums, the leading auction houses, commercial galleries, and other professional bodies and representative organisations internationally.

Codes of practice are being drawn up so that positive measures can be taken by governments, institutions and individuals to deal with the specific legal, historical and restitution issues arising out of the identification of art seized by the Nazis.

The Commission is in the process of consulting with its expert members and associates to develop constructive, non-confrontational models for dealing with restitution claims in order to mitigate the constraints and deficiencies of the ordinary legal process.

The Commission has set down several key objectives:

1. The first objective of the ECLA is to establish a timetable for the implementation of the eleven Washington Principles by the 44 countries which agreed them. The ECLA is working towards an international conference in Europe devoted to this issue.
2. The identification of looted works in museums, galleries, government and private collections, and in sale rooms, is a fundamental goal and the ECLA's second objective. The ECLA is asking for a commitment from each country to carry out inventories of all works in public collections in order to identify looted works, and to make public all such information. The ECLA is establishing a Central Registry of all information currently available and will disseminate this information around the world in order to further the identification of such works and encourage claimants to come forward.
3. The Washington Principles call upon countries to make all relevant records and archives open and accessible. As its third objective, the Commission is working with organisations and experts throughout Europe to ensure that this takes place.
4. The international art world remains largely outside the process. The fourth objective of the Commission is to bring the commercial art market inside the process, and to establish a code of practice and a set of working goals. The accuracy and completeness of provenance, especially for the years 1933 – 1945, standards of due diligence and availability of records will be a particular focus. The aim will be to bring clarity and transparency to the working practices of the art market, and to restore public confidence through the art world's commitment to such goals.
5. The fifth objective of the European Commission on Looted Art is to put restitution at the centre of the agenda and to provide backing and support to claimants for the pursuit of claims and for the return of works known to be looted. Statutes of limitations vary both within and outside Europe. Laws on recovery of stolen works vary even within countries. The Commission is working towards the establishment of uniform legal standards in order to facilitate such claims. The ECLA is also working closely with the Council of Europe and other political bodies in Europe on legislative proposals to enable a more just context for the recovery of looted works.
6. The Commission's sixth objective is to identify the rightful owners or heirs of all works known to have been looted. The ECLA will publicise all information on the history of looted works throughout the world through its Central Registry of Information and its international network of communities and organisations. International tracing networks have been established to ensure that all possible steps are taken to track down such heirs. The Commission is producing a set of guidelines on the way in which works ultimately found to be heirless are to be treated.
7. The Washington Principles encourage nations "to develop alternative dispute resolution mechanisms". The ECLA has convened an international committee to formulate such mechanisms in Europe in order to enable the avoidance of litigation and to provide an

international standard for cases that arise. The ECLA is consulting with all parties who might be involved in such claims including the art trade, historians, claimants and international legal experts.

8. The ECLA is committed to co-operation with all institutions, agencies and experts and to acting as a centre of research, information and guidance to all those involved.

(October 1999)

Appendix 4. COMPENDIUM OF STATEMENTS OF PRINCIPLE

- **Washington Conference Principles on Nazi-Confiscated Art Released in connection with the Washington Conference on Holocaust-Era Assets, Washington, DC, December 3, 1998**
- **Recommendations of the International Council of Museums (ICOM) concerning the Return of Works of Art Belonging to Jewish Owners – Paris, December 1998**
- **Statement of Principles and proposed actions on Spoliation of works of Art During the Holocaust and World War II Period by the National Museum Directors' Conference (NMDC – United Kingdom): November 1998**
- **Report of the Association of Art Museum Directors (AAMD – United States of America) Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945): June 1998**

Washington Conference Principles on Nazi-Confiscated 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.

I. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.

II. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.

III. 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.

IV. 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.

V. 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.

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

VII. 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.

VIII. 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.

IX. 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.

X. 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.

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

ICOM Recommendations concerning the Return of Works of Art Belonging to Jewish Owners

During its last meeting, held in Paris in December 1998, the Executive Council of the International Council of Museums (ICOM) discussed the issue of works of art confiscated from Jewish owners during the Second World War and kept in museums or public collections.

According to ICOM's Code of Professional Ethics, the Executive Council wished to reiterate that In all activities, museum employees must act with integrity and in accordance with the most stringent ethical principles as well as the highest standards of objectivity

Concerning the confiscation of Jewish works of art, the Executive Council of ICOM made the following recommendations to museum professionals around the world:

- To actively investigate and identify all acquisitions of a museum, especially those acquired during or just after the Second World War, that might be regarded as of dubious provenance (notably objects once belonging to Jewish owners and stolen, looted or removed forcibly).
- To make such relevant information accessible to facilitate the research and identification of objects of doubtful provenance by potential rightful owners or their heirs.
- To actively address and participate in drafting and establishing procedures, nationally and internationally, for disseminating information on these objects and facilitating their rightful return.
- To actively address the return of all objects of art that formerly belonged to Jewish owners or any other owner, and that are now in the possession of museums, to their rightful owners or their heirs, according to national legislation and where the legitimate ownership of these objects can clearly be established.

Created in 1946, ICOM is the international organisation of museums and professional museum workers. Composed of 15 000 members from around the world, ICOM is devoted to the promotion and development of museums and the museum profession.

In 1986, ICOM adopted a Code of Professional Ethics that every museum professional agrees to respect upon joining the Organisation. This Code, now translated in more than 20 languages, lays down precise rules governing the acquisition and de-accessioning of collections, and personal responsibility towards the collections, the public and the profession.

The Executive Council is ICOM's governing body. It is composed of 10 members elected triennially and chaired by Jacques Perot (France), President of ICOM.

National Museum Directors' Conference
Spoliation of works of art during the holocaust and world war II period
Statement of principles and proposed actions

1 Introduction

- 1.1 The principles and recommended actions outlined below were drawn up at the request of the National Museums Directors' Conference (NMDC) by a working group drawn from member institutions, and have been approved by the NMDC.
- 1.2 The NMDC is a UK wide voluntary association of 26 national cultural institutions receiving funding from central government and including 20 museums, the three national libraries, the Royal Botanical Gardens in Kew and Edinburgh and the Public Record Office. For the purposes of this document all actions shall be taken to refer to the museums and libraries.
- 1.3 The powers of the institutions comprising the NMDC are governed by statute or Royal Charter and their expenditure is subject to scrutiny by the Government departments that fund them. Restitution or compensation in any single case may therefore be affected by such statutes or Royal Charters and as a result may depend on governmental consent, and/or assistance.
- 1.4 This document outlines the broad principles and proposed actions agreed by the NMDC. It is not intended to create or alter any existing legal right or obligation.
- 1.5 It also recommends the development of more detailed documents:
 - a. practical guidance for institutions on surveying collections and dealing with new acquisitions and loans;
 - b. guidance and information for enquirers or potential claimants;
 - c. general guidance for institutions on dealing with claims to be developed in conjunction with the Museums and Galleries Commission (MGC) and the Museums Association (MA).
- 1.6 For the purpose of interpreting this document, wrongful taking shall mean any act of theft or other deprivation, the legality of which is open to reasonable challenge, and which was committed during the Holocaust and World War II period.

2. Statement of Principles

- 2.1 NMDC recognises and deplores the wrongful taking of works of art that constituted one of the many horrors of the Holocaust and World War II.
- 2.2 NMDC members support the principles outlined in the MA Code of Practice for Governing Bodies dated 1994 which states that the "Collections Management Policy should ensure, through the appropriate documentation, that the museum does not acquire or exhibit any stolen or illegally exported works and that it acquires legal title to items accessioned to its collections".
- 2.3 NMDC is committed to working with other institutions and organisations both within the UK and internationally to increase awareness and understanding of the facts surrounding the spoliation of works of art by the Nazis and others during the Holocaust and World War II period.
- 2.4 NMDC is committed to giving prompt and serious consideration to claims to title for specific works in their collections.

- 2.5 In line with its members' general policies for and commitment to increasing public access to information about their collections, NMDC advocates a practical approach to reviewing and making accessible information relating to provenance of their collections, taking into account the nature and size of the collections concerned and the resources available.
- 2.6 NMDC advocates a process of reviewing, reporting and researching the issue of works of art wrongfully taken which respects the dignity of all parties and the complexity of the issue. Each claim represents a unique situation which must be reviewed thoroughly on a case by case basis taking into account both the interests of individuals and the statutory and legal responsibilities of the institutions.

3. **Actions concerning research and access to information**

- 3.1 NMDC recommends that each national museum, gallery or library should have an action plan with regard to research on and access to information about their existing collections. This will vary in scope and timescale according to the size and nature of the collections and the resources available and may include:
- research based around specific enquiries;
 - collation and monitoring of new information about provenance for this period as part of ongoing research;
 - identification of objects for which provenance is unknown for any point during the years 1933 – 1945.

The guidance referred to at 1.5. a above will advise on issues to consider in prioritising research and making information available.

- 3.2 Each institution will nominate a person as the main point of contact for enquiries on this subject who will also keep a central record of research being undertaken.
- 3.3 NMDC will in turn keep a central record of the nature of the research being undertaken in each institution.
- 3.4 NMDC undertakes to draw up guidance for potential enquirers including information about the collections of each institution, points of contacts, and types of information that may be available (e.g. databases, files, websites).
- 3.5 NMDC plans to work together with overseas colleagues, the UK government, MA, MGD, the Holocaust Educational Trust and other UK organisations to collect the details of useful information sources, for example about missing objects, and the history of the movement of works of art during the period.

4. **Procedures for acquisitions and incoming loans**

- 4.1 In accordance with standard good practise institutions acquiring any new object should:
- exercise due diligence in satisfying themselves that the vendor or donor or executors have good title to the object;
 - in accordance with the MA guidance (referred to above) and registration requirements of MGC take reasonable steps to satisfy themselves that the object has not been wrongfully taken without restitution having taken place subsequently;

- seek from the vendor, donor or executors the fullest possible information with regard to provenance including for the years 1933 – 1945.
- 4.2 In accordance with standard practise all information with regard to provenance collected during the acquisition process must be recorded on the main acquisition file.
- 4.3 For unique works of art with a value in excess of the level requiring an export licence, for which the provenance in the period 1933 – 1945 is uncertain, and which may have been outside the UK for all or part of this period, it is recommended that a check be made with the Art Loss Register and/or other appropriate databases of missing works or art/claimants. Detailed guidance (referred to at 1.5 a above) will provide suggestions regarding other types of check that may be carried out, depending on the nature of the acquisition.
- 4.4 If there is no evidence of wrongful taking then the acquisition may proceed. If there is evidence of wrongful taking then the institution should not proceed to acquire the object.
- 4.5 Guidance for staff (referred at 1.5 a above) should include information and advice on:
 - use of warranties
 - information to seek from vendor or lender
 - suggested sources of information and approaches to checking provenance.
- 4.6 Consistent with current practice institutions should publish, display or otherwise make accessible all recent gifts, bequests and purchases thereby making them available for further research examination and study.
- 4.7 Borrowing institutions should ensure that the terms of the UK Government indemnity record the fact that it does not cover any third party claims or draw the attention of the leader to this fact.
- 4.8 In the event that an institution believes that an object it is seeking to borrow, or is likely to become, the subject of a claim, it should not proceed with the loan.

5. **Discovery of the wrongful taking of works of art**

- 5.1 If, in the light of new information, a member institution becomes aware that an object in its collection was or is likely to have been wrongfully taken during the Holocaust and World War II period and was not subsequently restituted this information should be made public and recorded with NMDC, MGC and DCMS and the known facts regarding the provenance of the work shall be shown on object labels and in any new publications relating to the work.
- 5.2 Making public means issuing a press release to all media to which the institution in question usually issues press releases and to such principal additional media within the UK are generally known to serve any ethnic or national group likely to have a particular interest in the matter. The guidance referred to at 1.5 a and 4.5 above will provide advice on such additional media.
- 5.3 An institution would normally expect to receive any claims within a period of six years from the publication of new information relating to provenance in accordance with 5.1 and 5.2 above.
- 5.4 If a claimant shows within a reasonable period of compliance by an institution with 5.1 and 5.2 above that on a balance of probabilities a work of art was wrongfully taken during the Holocaust and World War II period, and that but for such wrongful taking, the claimant would have an interest in the object, then the institution will seek to

resolve the matter in an equitable, appropriate and mutually agreeable manner, (taking into account the possibility of competing third party claims) as permitted by its governing legislation and in conjunction with the DCMS.

6. Processes for dealing with enquiries and claims

- 6.1 Each institution shall nominate a member of staff as the main point of contact for enquiries and claims.
- 6.2 Should an institution receive a claim that an object in its collection was wrongfully taken during the Holocaust and World War II period it shall record the date and nature of the claim both in a register kept by it for that purpose and in the dossier of the object concerned and shall, as soon as practicable, advise NMDC, MGC and DCMS of the claim. Within the limits of its then existing resources the institution shall review such claim promptly and thoroughly with the claimant including requesting evidence of the claimant's interest in the object to help determine its provenance.
- 6.3 Guidance for enquirers and claimants should include information and advice on searching for objects and information should be included with a claim.
- 6.4 NMDC should keep a central record of the progress of all claims received.

7.0 Recommendations for the wider museums community with MGC and MA

- 7.1 NMDC recommends:
 - a. A UK wide survey of objects which institutions currently believe might have been wrongfully taken during the Holocaust and World War II period.
 - b. Subject to the nature of collections and the resources available a survey of objects the provenance of which during all or part of that period is unknown. This will have to be conducted in conjunction with the MA, the MGC and the Area Museum Councils (AMCs).
- 7.2 AMCs should discuss with their members and the MGC which other actions recommended for national museums in this document are appropriate for them to take.

**Report of the Association of Art Museum Directors (AAMD – United States of America)
Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945)**

June 4, 1998

AAMD Statement of Purpose: "The purpose of the AAMD is to aid its members in establishing and maintaining the highest professional standards for themselves and the museums they represent, thereby exerting leadership in increasing the contribution of art museums to society."

I. Statement of Principles

A. AAMD recognizes and deplores the unlawful confiscation of art that constituted one of the many horrors of the Holocaust and World War II.

B. American museums are proud of the role they, and members of their staffs, played during and after World War II, assisting with the preservation and restitution of hundreds of thousands of works of art through the U.S. Military's Monuments, Fine Arts and Archives section.

C. AAMD reaffirms the commitment of its members to weigh, promptly and thoroughly, claims of title to specific works in their collections.

D. AAMD urges the prompt creation of mechanisms to co-ordinate full access to all documentation concerning this spoliation of art, especially newly available information. To this end, the AAMD encourages the creation of databases by third parties, essential to research in this area, which will aid in the identification of any works of art which were unlawfully confiscated and which of these were restituted. Such an effort will complement long-standing American museum policy of exhibiting, publishing and researching works of art in museum collections in order to make them widely available to scholars and to the general public. (See III. below.)

E. AAMD endorses a process of reviewing, reporting, and researching the issue of unlawfully confiscated art which respects the dignity of all parties and the complexity of the issue. Each claim presents a unique situation which must be thoroughly reviewed on a case-by-case basis.

II. Guidelines

AAMD has developed the following guidelines to assist museums in resolving claims, reconciling the interests of individuals who were dispossessed of works of art or their heirs together with the fiduciary and legal obligations and responsibilities of art museums and their trustees to the public for whom they hold works of art in trust.

A. Research Regarding Existing Collections

1. As part of the standard research on each work of art in their collections, members of the AAMD, if they have not already done so, should begin immediately to review the provenance of works in their collections to attempt to ascertain whether any were unlawfully confiscated during the Nazi/World War II era and never restituted.

2. Member museums should search their own records thoroughly and, in addition, should take all reasonable steps to contact established archives, databases, art dealers, auction houses, donors, art historians and other scholars and researchers who may be able to provide Nazi/World-War-II-era provenance information.

3. AAMD recognizes that research regarding Nazi/World-War-II-era provenance may take years to complete, may be inconclusive and may require additional funding. The AAMD Art Issues Committee will address the matter of such research and how to facilitate it.

B. Future Gifts, Bequests, and Purchases

1. As part of the standard research on each work of art:

(a) member museums should ask donors of works of art (or executors in the case of bequests) to provide as much provenance information as possible with regard to the Nazi/World War II era and

(b) member museums should ask sellers of works of art to provide as much provenance information as possible with regard to the Nazi/World War II era.

2. Where the Nazi/World-War-II-era provenance is incomplete for a gift, bequest, or purchase, the museum should search available records and consult appropriate databases of unlawfully confiscated art (see III below).

(a) In the absence of evidence of unlawful confiscation, the work is presumed not to have been confiscated and the acquisition may proceed.

(b) If there is evidence of unlawful confiscation, and there is no evidence of restitution, the museum should not proceed to acquire the object and should take appropriate further action.

3. Consistent with current museum practice, member museums should publish, display or otherwise make accessible all recent gifts, bequests, and purchases thereby making them available for further research, examination and study.

4. When purchasing works of art, museums should seek representations and warranties from the seller that the seller has valid title and that the work of art is free from any claims.

C. Access to Museum Records

1. Member museums should facilitate access to the Nazi/World-War-II-era provenance information of all works of art in their collections.

2. Although a linked database of all museum holdings throughout the United States does not exist at this time, individual museums are establishing web sites with collections information and others are making their holdings accessible through printed publications or archives. AAMD is exploring the linkage of existing sites which contain collection information so as to assist research.

D. Discovery of Unlawfully Confiscated Works of Art

1. If a member museum should determine that a work of art in its collection was illegally confiscated during the Nazi/World War II era and not restituted, the museum should make such information public.
2. In the event that a legitimate claimant comes forward, the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner.
3. In the event that no legitimate claimant comes forward, the museum should acknowledge the history of the work of art on labels and publications referring to such a work.

E. Response to Claims Against the Museum

1. If a member museum receives a claim against a work of art in its collection related to an illegal confiscation during the Nazi/World War II era, it should seek to review such a claim promptly and thoroughly. The museum should request evidence of ownership from the claimant in order to assist in determining the provenance of the work of art.
2. If after working with the claimant to determine the provenance, a member museum should determine that a work of art in its collection was illegally confiscated during the Nazi/World War II era and not restituted, the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner.
3. AAMD recommends that member museums consider using mediation wherever reasonably practical to help resolve claims regarding art illegally confiscated during the Nazi/World War II era and not restituted.

F. Incoming Loans

1. In preparing for exhibitions, member museums should endeavor to review provenance information regarding incoming loans.
2. Member museums should not borrow works of art known to have been illegally confiscated during the Nazi/World War II era and not restituted unless the matter has been otherwise resolved (e.g., II.D.3 above).

III. Database Recommendations

A. As stated in I.D. (above), AAMD encourages the creation of databases by third parties, essential to research in this area. AAMD recommends that the databases being formed include the following information (not necessarily all in a single database):

1. claims and claimants
2. works of art illegally confiscated during the Nazi/World War II era
3. works of art later restituted

B. AAMD suggests that the entity or entities creating databases establish professional advisory boards that could provide insight on the needs of various users of the database. AAMD encourages member museums to participate in the work of such boards.