

**Christie's 25th Anniversary of the Washington Principles on
Nazi-Confiscated Art
Keynote Address**

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I want to applaud Christie's, and especially Marc Porter, Chairman of Christie's Americas, and Richard Aronowitz, Global Head of Restitution for Christie's, for organizing this program on the 25th anniversary of the Washington Principles on Nazi-Confiscated Art, and for shining light on this important issue. At a time of increased antisemitism, Holocaust denial and distortion, and sheer ignorance of the Holocaust, forums like this are especially timely.

I. The Greatest Theft in World History

The Holocaust was the greatest genocide in world history, murdering six million Jews, two-thirds of European Jewry, and millions of others. (At the outbreak of World War II in 1939, there were 17 million Jews in a world of one billion. In 2023, there are only 14.7 million Jews in a world of nine billion. **But it was also the greatest theft of property.** The expropriation and aryanization of Jewish property was not random or incidental, but an integral part of the Nazis' plan to eliminate all vestiges of Jewish life in Europe, root and branch—homes, businesses, bank accounts, insurance policies, personal possessions like jewelry, artworks, cultural and religious objects. And they also worked slave laborers to death to help run the German war effort. Leading German banks and insurance companies became facilitators of the exploitation of Jewish assets, in the purchase, sale and insuring of aryanized assets as part of their everyday business. Large numbers of ordinary Germans became involved in purchasing Jewish assets on the cheap, from pots and pans to costly rugs and furnishings (Gerald D. Friedman, "Confiscation of Jewish Assets and the Holocaust", U.S. Holocaust Memorial Museum, Center for Advanced Holocaust Studies, Symposium, September 2003, Washington, D.C.) A significant percentage of the German armed forces was financed by looted Jewish assets. (Haaretz, November 8, 2010).

The allies were aware of the theft of art and on January 5, 1943, in the London Declaration, called on neutral countries not to trade in art looted by the Nazis, often to no avail.

Courageously, U.S. Army commanders included curators and art historians embedded as "Monuments, Fine Arts, and Archives" officers- the famous **Monuments Men**, with the express purpose of recapturing and protecting the looted art in the final period of the war. They obtained as many as 100,000 artworks and, pursuant to an order from President Truman, ordered these looted objects to be catalogued and returned to their countries of origin, relying on those governments after the war to trace the owners and return the stolen property. Some were returned: in France, for example, France returned 45,000 artworks of the 60,000 stolen objects that were repatriated. But in 1949, the French dissolved their commission and of the 15,000 remaining pieces, 2,000 were placed in their public museums and 13,000, considered "heirless" were sold at auction. A similar fate occurred in the Netherlands.

The full dimensions of the theft, including art, only became known when the wall of silence on the fate of the remaining looted art was breached after the end of the Cold War when archives in the former Soviet Union and former East Bloc countries were opened. Four scholars in the 1990s wrote path-breaking books (Lynn Nicolas, Jonathan Petropoulos, Konstantine Akinsha, and Hector Feliciano), and Elizabeth Simpson organized a 1995 Bard Graduate Center for Decorative Arts Conference in New York entitled *The Spoils of War*.

As many as 600,000 artworks and millions of books and religious objects were stolen with the same efficiency, brutality, and scale as the Holocaust itself. An indifferent painter during his early years in Vienna, Hitler had several thousand of the most valuable paintings installed in a Führermuseum in his childhood home, Linz, Austria, while priceless religious and cultural objects were planned for a "museum to a dead race" in Prague.

In revenge for the Nazis mass destruction of the Russian cultural patrimony, including over 400 museums, the Soviets in turn systematically plundered huge amounts of historic German treasures, some from masterpieces once owned by Jews.

I had never to my knowledge met a Holocaust survivor growing up in Atlanta, nor studied it in high school or college, since none were taught. My epiphany occurred in 1968 when I met a fellow

campaign worker in the 1968 Hubert Humphrey presidential campaign, Arthur Morse, who had just published an explosive book, *While Six Million Died*, describing what President Roosevelt and his administration knew about the genocide of the Jews and failed to act. I pledged that if I ever had a senior position in the U.S. government, I would do all I could to remove this cloud from the otherwise glorious history of the U.S. in World War II. My first opportunity was in April 1978, when I recommended to President Carter as his White House Domestic Policy Advisor, that he name a Presidential Commission on the Holocaust chaired by Elie Wiesel, which led directly to the U.S. Holocaust Memorial Museum, whose governing council I now chair.

The next opportunity came in the Clinton administration, when I accepted a dual role as Special Representative of the President on Holocaust Issues, while serving in four senate-confirmed positions. Tonight, I speak as a private citizen, even as I also describe what I did within the U.S. government then.

II. The Washington Principles on Nazi Confiscated Art

At the December 1997 London Gold Conference (returning remaining gold bars stolen by the Nazis), I got the British government to reluctantly agree to have a closing panel on looted art, and then invited the participating countries to come to Washington for a conference devoted exclusively to looted art and cultural objects.

At a Congressional hearing led by Congressman James Leach (R-IN), in February 1998, Philippe de Montebello, the Director of the Metropolitan Museum of Art in New York and a leader of the Association of Art Museum Directors (AAMD) was pressed to organize a task force to make recommendations on how the Association's 170 American museums should deal with possible Nazi-looted art in their possession. They created a set of AAMD standards for American museums to research, identify, and return Nazi-looted art.

My staff (led by J.D. Bindenagel) and I at the State Department worked for months leading up to the Washington Conference to try to build a consensus among the key countries behind the AAMD principles. But key European nations and their museums did not want to part with any of their artworks and resented having American principles imposed on them, so we repackaged them into

11 principles that looked different but kept the essential points:

- Art confiscated by the Nazis should be identified by those that held them and publicized.
- Records and archives should be open and accessible, with personnel to facilitate the search.
- In establishing that a work of art was confiscated by the Nazis consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and circumstances of the Holocaust era.
- Pre-war owners and their heirs should be encouraged to make claims to Nazi-looted art.
- If the pre-war owners can be identified, steps should be taken to achieve a "**just and fair solution**", and likewise if no heirs can be found, commissions with balanced membership should be established to assist in addressing ownership issues.
- Nations are encouraged to develop national processes to implement their principles, especially alternative dispute resolution mechanisms to resolve ownership issues.

I felt if we could persuade one European country to take the lead others might follow. I traveled to Austria and found a courageous leader, Minister of Education and Culture, Elisabeth Gehrler, who assured me her country would pass a new law that would allow Nazi-looted art in their museums to be returned to the rightful owners, and they did so the day the Washington Conference opened.

Still, after three days of intensive negotiations in Washington, we teetered on the brink of failure. With only a few hours before the closing session, I convened representatives from France, Germany, and Switzerland and offered to give countries political cover by language that assured them the Washington Principles would be voluntary: each nation could "act within the context of their own laws." That did it. But to avoid risking a vote by the 44 countries, judge Abner Mikva, the chairman of the conference, devised a diplomatic device, declaring the Washington Principles adopted by consensus. No nation objected.

But critics immediately derided them as useless. They were proven wrong. At the closing plenary Phillippe de Montebello, whose father had been in the French Resistance, sitting next to me got it right, whispering, "the art world will never be the same, and to the conference he said directly: "on the issue of the spoliation of art in the World War II/Nazi era, the genie

is, at last, out of the bottle and no resistance, apathy, or silence can ever fit it back inside again”.

The Washington Principles were not only important in and of themselves in the world of art, but they also called world attention to the enormity of the staggering theft that accompanied the genocide.

III. The Impact of The Washington Principles

Voluntary though they are, with United States leadership, the Washington Principles have been **transformative**, creating a moral and ethical obligation on the holders of Nazi-looted art, which many, though not all, have assumed to return them to their rightful owners or devise other “just and fair solutions”, like compensation, long-term loans, and other negotiated agreements. **Thousands of artworks, books, and Jewish cultural objects have been restituted or claims have been successfully resolved.**

1. Five nations (Austria, Germany, France, the Netherlands, and Britain) created claims commissions to provide a forum for heirs to recover art confiscated from their families. They each publish their decisions and in the last five years formed a network to share experience and knowledge to guide best practices, they meet regularly and publish a biannual newsletter which is of great value also to those countries which still have no national claims process. These might eventually create guidelines for “just and fair” solutions.

2. With the mixed experience of over 10 years, in June 2009, the Washington Principles were strengthened by the 47-nation **Terezin Declaration** at the Prague Holocaust Era Assets Conference organized by the Czech Republic, with strong support by the U.S. government. Confiscation was broadened to include “forced sales; and sales under duress”, recognizing many Jews and other Nazi targets were forced to sell their artworks to get funds to pay for exit taxes and visas. Private institutions and individuals, not only public museums, were encouraged to support the Washington Principles; recognizing that restitution could not be accomplished without knowledge of the potentially looted cultural property, emphasis was placed on “intensified systematic provenance research”; and nations were urged to “ensure that their legal systems facilitate “just and fair solutions” and that claims are resolved expeditiously on the merits of the claims.

(a) **The Vilnius International Forum on Holocaust-Era Looted Cultural Assets in January 2000** provided additional focus on Nazi-looted art and cultural and religious objects.

(b) In 2022, again with the leadership of the Czech government **the Terezin II Conference** was held in Prague, reaffirming the Terezin Declaration by 35 countries.

3. The U.S. Congress on a bipartisan basis has been particularly supportive.

(a) Concerned about the use of statutes of limitation by American museums to deny recovery of Nazi-looted art, Congress passed **the 2016 HEAR Act to create a unique six-year statute of limitations** that would only begin when a claimant had reason to know of the Nazis' theft of their family's art.

(b) In the **2018 JUST Act** (Justice for Uncompensated Survivors Today), Congress called on the State Department to report on the **implementation of the Terezin Declaration by its signatory countries. The State Department undertook an exhaustive study** (in which I was directly involved) by its embassies and in 2020 reported **on the implementation of the Terezin Declaration**. Among other things, it found that after a promising start on provenance research, art restitution, and the creation of a portal connecting over 170 U.S. museums to facilitate claims to Nazi-confiscated art, American museums began asserting affirmative defenses to block restitution of looted art, in contravention of the Washington Principles and Terezin Declaration to make decisions on the merits; were lagging in conducting provenance research; and had antiquated software which complicated the identification of potential Nazi-looted art by claimants.

5. On the 20th anniversary of the Washington Principles, to encourage more art recovery in Germany, I signed (along with then-Special Envoy for Holocaust Issues Tom Yazdgerdi) a **2018 memorandum of understanding with Germany's Federal Commissioner for Culture and Media** (Monika Grütters) that quadrupled funds to German museums for provenance research, envisioned ending the statute of limitations for Holocaust art claims, and committed to deny federal subsidies for publicly supported museums that refused to participate in claims cases for restitution.

6. With the intervention of the U.S. government, international organizations, and the leadership of the Dutch government, in 2022, the Netherlands **reversed the backsliding** by their museums and claims commission by **ending their "balance of interest test"**, which had allowed Dutch museums to keep Nazi-looted art

if its importance to their collections was determined to "outweigh" the interests of the heirs.

7. There has been some progress in Israel, Luxembourg (which recently agreed to a comprehensive restitution program), **and Switzerland. Croatia** is moving in the right direction following a report by the world Jewish Restitution Organization (WRJO) and intervention by the U.S. government. They have restituted paintings plundered by the pro-Nazi Ustashe from the Reichsman family.

7. Christie's (led for years by Monica Dugot, and now by Richard Aronowitz) **and Sotheby's** (led by Lucien Simmons) **have created full-time restitution staffs**, and changed their consignment agreements, to review all art consigned to them to sell or auction that passed through European hands between 1933-1945 to be sure they are not dealing in Nazi-looted art. They will not sell those with suspicious provenance. Christie's alone has resolved over 300 claims and recently decided to broaden their provenance research to include how the wealth of those seeking to sell their art was acquired during the Nazi era, after a recent controversy. Sotheby's has also returned many paintings and has partnered with the Louvre in Paris to help pay for their provenance research.

(a) A front page story in the New York Times two weeks ago (Tom Mashberg and Graham Bowley, "Schiele artworks looted by Nazis are returned, New York Times, September 21, 2023) reported on the return from three American museums and two private collectors to the heirs of Fritz Grunbaum, a Viennese cabaret artist, of seven Egon Schiele paintings confiscated from him by the Nazis, which will be auctioned by Christie's in New York this year. The proceeds will fund a scholarship program in Grunbaum's name for young musicians. Interestingly, prosecutors and the Department of Homeland Security used criminal rather than civil law to seek their return.

8. A new profession of provenance researchers has developed and new organizations, like the London-based Commission for Looted Art, created to represent the victims to identify, locate, and recover their looted cultural property. This commission has also created a database of over 25,000 looted art and cultural objects. There is also the database of art objects at the Jeu de Paume (the ERR database). Both of these databases show what objects were taken, from whom, and the fate of the objects; other databases include the German Lost Art Database; and a new Jewish Digital Cultural Recovery Project Foundation in Berlin,

developed by the Claims Conference and World Jewish Restitution Organization will provide an international digital platform for archival documentation, research and education on the widespread plunder by the Nazis and their allies of Jewish-owned artworks and cultural heritage projects.

9. France has recently shown commendable leadership. In July of this year, they passed a law permitting the deaccession from their museums of Nazi-looted artworks in state collections. Until then, each successful claim required an individual law to enable the restitution to take place. The Commission for the Compensation of Victims of Spoliation (CIVS, whose anniversary I addressed in 2019), was given authority over looted art, and recommendations on restitution now go to the Prime Minister's office. In 2022, the French Senate restituted 15 artworks in its collection, and five more artworks have been returned so far this year.

(a) This is having an impact on Italy as the World Jewish Restitution Organization (WJRO) is working with the Italians on changing the laws regarding deaccession and restitution.

10. The Washington Principles have had an unexpected recent ripple effect as Germany, France, the Netherlands, the UK and other countries are reviewing art and cultural objects confiscated during their colonial period. Germany recently returned priceless Benin bronzes to Nigeria, and the French Prime Minister has a commission to review their possessions. The Dutch and Belgians are likewise examining their colonial possessions.

IV. Unfinished Business: The Way Forward in The Future

While much has been accomplished, much remains to be done in the area of justice for those robbed of their artworks, and cultural and religious objects as part of the Holocaust. We are only at the tip of the iceberg. It is estimated that some 100,000 of the 600,000 paintings and cultural objects stolen have never been returned, and for those who do get them recovered, it can take decades of hard and expensive work, like that by the Grunbaum family.

Russia's brutal war against Ukraine has seen a wanton destruction of Ukraine's cultural heritage and massive theft of art once again in Europe.

Reiterating again that I am speaking in my personal capacity throughout this speech, I believe:

1. We should undertake a project to update the gaps in the Washington Principles and Terezin Declaration in the light of 25 years of experience.

(a) De-accession laws which bar museums returning art should be modified for Nazi-looted art, as the UK did in 2009 and France has recently done.

(b) Statutes of limitations should be amended, as in the 2016 HEAR Act in the U.S., so they run only from the time heirs reasonably have notice of the confiscation during the war-time period. Also, other legal acquisition of property mechanisms, like usucapion should not apply for Nazi looted cultural objects.

(c) Countries should maintain comprehensive statistics on restitution.

(d) **Flight-goods should be covered** by the Washington Principles and Terezin Declaration. After their escape, persecuted persons lost their sources of income and many survived by selling their artworks under distress.

(e) The burden of proof should be on those holding Nazi-confiscated art when evidence is produced by the victims of a theft.

(f) We should develop creative options for heirless Nazi-looted art where there are no living heirs, by ensuring that all is done to trace the heirs of all looted artworks so they can be returned to their rightful owners. Serbia did so in 2016.

2. We must **start with provenance research**, because without that, recoveries are impossible. Yet it is a low priority for art museums. In its 2020 just report, the State Department concluded that "in most European countries, too many public and private art museums do not conduct provenance research on their art collections, research that is essential to provide information about potential claims for Nazi-confiscated art." Most of these museums are European Union member states, but aside from a general resolution from the European Parliament, the European Commission and Council have done virtually nothing to encourage property restitution and compensation in general or art restitution within the EU. Their silence speaks volumes. It is time for the EU to get off the sidelines.

Political will is critical. In France, which had been slow in doing provenance research, they are "now the only country where the effort to identify, return or compensate Nazi-confiscated

artworks and cultural objects rests in the office of the head of government, the Prime Minister." (2020 JUST Act report)

3. A number of key European countries such as Poland need to do more. Others, such as Spain and Portugal, need to conduct more provenance research, including to identify art that may have transited their countries during World War II.

4. **Russia** has done little to follow the Washington Principles, despite legislation signed by President Putin following the Washington Conference. It has "enormous numbers of artworks, library collections and archives which their Soviet trophy brigades brought into the USSR, mostly Moscow, from Soviet-occupied Germany and its allies as 'compensatory restitution' "for the huge losses of cultural property inflicted on Soviet territory." This included substantial amounts of art taken by the Nazis from Jews. President Putin signed a law in 2000 in support of some of the major provisions of the Washington Principles. They have done some inventorying of looted property in Russian museums and libraries, but little provenance research, and while some of the information is in public databases, the "rest of the information remains largely inaccessible. They also have no claims process, and "Russian retains Nazi-confiscated art". (2020 JUST report).

5. Much remains to be done to **improve the functioning of the five European claims commissions, and many more need to be created so that families can recover their looted artworks wherever they reappear. For the United States, because our museums are almost all private, I personally believe the United States should do more to stress alternative dispute resolution mechanisms, as called for by the Washington Principles, rather than resort constantly to litigation.**

(a) The five commissions have been publishing their decisions since they were created.

(b) **Germany, which has been so courageous and generous in supporting Holocaust survivors** with over \$90 billion since 1952; with mandatory Holocaust education; moving monuments to memory, including stolperstein outside the homes and businesses confiscated by the Nazis; outlawing Holocaust denial and Nazi-symbols. **In 2012, the sensational discovery of 1200 artworks in the apartment of Cornelius Gurlitt, son of a Nazi-associated art dealer, Hildebrand Gurlitt, brought the issue of Nazi-confiscated art front and center to Germany and the world.**

But since then, Germany has done too little in art restitution, as indicated by their own commission. The 2018 memorandum I signed has not been implemented (German Advisory Commission), nor has the coalition agreement to strengthen the Advisory Art Commission. A significant amount of Nazi-looted art is still held by German state and private institutions, and there are no comprehensive statistics in German on restitution efforts that have taken place. This lack of transparency has led to a critical perception of Germany's handling of Nazi-looted art worldwide. **Their commission** (formerly the Limbach Commission, now the Beratende Commission) was created 20 years ago "to develop recommendations for the resolution of disputed cases in accordance with the Washington Principles", but only if both parties involved agree to the case being referred to it. So far, it has ruled on only 23 cases during its lifetime, in part because their museums are reluctant to participate; their provenance research lags. Their decisions are not binding but, in their words, "play an important role in the decision-making process of museums and their state or municipal sponsors and have considerable significance for the art market. The commission itself refers to there being a large number of Nazi-looted artworks yet to be returned, saying that the Lost Art Databased alone lists some 35,000 findings of confiscated artworks and another 40,000 confiscated artworks being sought, and a further 55,000 find entries of seized cultural assets, with "countless other cases of loss... (which) has not yet been sufficiently researched to enable a search or finds report to be published." The Advisory Commission noted it has no "legal personality of its own and no binding legal basis" and no legally binding rules of procedure. So "questions of restitution of cultural assets seized as a result of Nazi persecution are not regulated by law in Germany." **They conclude: "The lack of a legal basis for an institution that is to decide on the restitution of cultural assets lost as a result of Nazi persecution in the country of the perpetrators is inappropriate and insufficient."**

(a) **The Chancellor Scholz Coalition Agreement of the current German government promised many improvements in the field of restitution, but the Advisory Commission notes "none of these points has been implemented",** which could remove some of the barriers to recover Nazi-looted art. **Germany should consider passing a law which provides a legal mandate for the commission governing all federal and state museum collections throughout Germany, including its states (länder), and which establishes a unilateral right to start a mediation upon a claimant's request for all government-owned collections. Importantly, Germany's own**

advisory committee, the Beratende committee, has recommended such legislation in its statement last month. The law could create a presumption that all museum holdings in which artworks and cultural property transferred by Jews and other persecuted people during the Nazi era between January 30, 1933 to May 9, 1945, was looted or transferred under duress, and should be returned to the persecuted person or their heirs. The commission's findings could be mandatory, although subject to appeal to a court.

(b) **Germany does not have an independent body for provenance research to avoid conflicts of interest (unlike Austria, the Netherlands, and France),** which creates potential conflicts of interest for provenance researchers employed by the museums. This could be lodged in the commission. Germany's own Advisory Commission notes that "the provenance research funded by the federal government in Germany is inadequately regulated." The funds for research go to the museums and only since 2018 have the descendants of victims also been able to receive research funds. So far, however, only twelve research projects have been funded." The German commission recommends that "money for provenance research ...should not go exclusively to the museums but to an independent research institute. This could also help to reduce the sometimes immense costs for the victims and their descendants in enforcing their rights."

(c) **The German Advisory Commission can only deal with cases in which both parties agree to participate, except for art held by a handful of nationally owned museums. The advisory committee notes that the "main obstacle to the Advisory Commission handling of more looted art cases is that the victims' descendants have no opportunity to initiate proceedings before the Advisory Commission on their own initiative...contradicting principle no. 7 of the Washington Principles ("pre-war owners and their heirs should be encouraged to register their claims to works of art.")** The advisory committee notes this lack of self-initiation is "met with incomprehension both in Germany and abroad". The rules of the British Spoliation Advisory Panel and the Restituicommisssie in the Netherlands provide for unilateral appeal by victims.

The Bavarian government argues there is no law creating the commission and therefore no reason to pay attention to it, despite the threat of withdrawing federal funding from museums, as embodied in the 2018 Germany-U.S. Memorandum of Agreement in which I participated.

The German Advisory Commission also notes it can "only make recommendations and not issue binding decisions. Those cannot be enforced. Their implementation is left to the parties." They recommend they "must be able to issue binding and thus enforceable decisions".

(d) In a powerful conclusion, the German Advisory Commission states that correcting the deficiencies in their operation "must now be done as a matter of urgency, in order to silence criticism at home and, above all, abroad that the Federal Republic of Germany is neither sufficiently able nor really willing to make adequate reparations for Nazi injustice with regard to cultural property... this criticism is particularly unfortunate because it is likely to discredit the work of the Advisory Commission as a whole, although the achievements of the commission over the past two decades can be considered successful and effective within the narrow limits imposed by the system" (National Organizations-Holocaust Looted Art and Cultural Property Initiative, <https://art.claimscon.org/resources/national-organizations#germany>)

V. Conclusion

As this welcome Christie's event has us look back on 25 years of the Washington Principles on Nazi-Confiscated Art and bids us to look at the future, they are an example of what voluntary international standards can accomplish, if supported by historical facts and principles that appeal to the moral conscience of the world.

Anne Webber, co-chair of the Commission for Looted Art in Europe, noted in an interview with Christie's that "the Washington Principles reminded people that Nazi looting wasn't incidental to the Nazi project of extermination and murder of the Jewish population of Europe, it was absolutely central to it."

Starting in 2023 with the leadership of Britain's Lord Eric Pickles, the UK Special Envoy for Post-Holocaust Issues, he sponsored a meeting of some dozen special envoys in London.

But the Washington Principles and the Terezin Declaration also demonstrate the central importance of continued leadership by the United States government, with the same bipartisan support and zeal we have shown over these past 25 years.

The Washington Principles have had a lasting impact beyond anything we could have imagined at the time. Above all, they are a reminder of the importance of striving for justice. This battle must go on.