

► **Monica Dugot**

CHRISTIE'S, USA

**IMPACT OF THE WASHINGTON CONFERENCE
PRINCIPLES ON ART MARKET PRACTICES:
MOVING THE DISCUSSION FORWARD**

Good afternoon. I am Monica Dugot – International Director of Restitution at Christie's – coordinating our restitution efforts globally. I was Deputy Director of the Holocaust Claims Processing office in New York for a number of years representing claimants before taking up my current position. I am privileged to have been engaged with Holocaust-era art restitution over the last twelve years, and am pleased to have the opportunity to contribute today.

I. THE BIG PICTURE

A Decade on from Washington

Over a decade on from the Washington Conference, international commitment and dedication on the part of the restitution community has meant that the problem of Nazi art spoliation is as vivid as ever. Indeed, the passage of time makes us more – not less – acutely aware of the need to address the issue of unrecovered Holocaust-era assets.

Consideration of art restitution requires individual attention to the provenance of each particular art object; research must be done against the background of the idiosyncrasies of the art market where an object might have fallen out of sight, been sold and resold or even altered beyond recognition. So provenance

research is a far from simple task, but it is the foundation for all art restitution efforts. As such, the availability of archives and access to information is of paramount importance.

Challenges for the Art Market

I would like to explore some of the challenges of art restitution from the auction house point of view. Auction houses are not – as is the case with museums – owners of the art we offer for sale. While we can offer assistance towards the amicable resolution of a claim, the art in question is not ours and ultimately the auction house is not the decision-maker. Rather, our role is to assist the parties, as much we can, in developing information, analyzing the significance of historical material and facilitating negotiations.

The combination of art, high commercial values, and restitution claims can create a combustible mix, not least when restitution is in the public eye. It is easy to catch the imagination of the public – and the media – with a claim to a high value work. But, the debate ignited by the return and sale of high-profile objects masks the real work of restitution where hundreds of modest pieces are studied every day.

Christie's Perspective

Christie's primary concern is to ensure that

1. Works of art offered for sale in our auctions can be freely acquired, with clear title; and
2. We do not compound the original spoliation by selling looted works of art.

Where looted art is identified in any of our consignments, we actively engage all parties to resolve any issue or claim.

Through the number of works of art that pass through our doors in any given year, our provenance research team sees as many restitution issues as any other sector of the art world. Facing this volume of claims puts Christie's in the position of working across the wide spectrum of collectors and claimants and places us at the center of the debate over best practices in the art market. Moreover, if we approach restitution issues openly and on the basis of sound provenance research, we can engender confidence in the way the art market deals with Holocaust-related claims and also in the reliability of the art market in general.

II. RESTITUTION AT CHRISTIE'S IN PRACTICE

Christie's 1933 – Present

Today Christie's promotes and fosters company-wide awareness of art restitution issues, driven by a team of four with the support of senior management. Our work covers the vetting of consignments, provenance research, claims resolution and an ongoing engagement with claimants and the restitution community.

We have recently been involved in the return of this Dürer print to the Kunsthalle Bremen, this Bogdanov-Belskii to the Taganrog museum, the Jan Wellens de Cock to the Estate of Max Stern and helped resolve the claim by the heirs of Adolph Bensinger for the Menzel pastel. Over the last five years, we have also been involved in an important number of settlements (around sixty) and are always pleased when we have been able to help the parties to find a just and fair resolution to a Holocaust-related art claim.

Our engagement in claims resolution and assistance in claims handling is provided at little or no cost to the claimant – and without obligation; we do not oblige settling parties we have assisted to consign their works to Christie's. Of course, we are pleased when they do, and we have, as you know, sold numerous artworks after restitution or as part of a settlement.

III. BRINGING ART AND CLAIMANTS TOGETHER

Christie's works across the art and restitution community and encourages a shared responsibility and a free and transparent exchange of information wherever possible. We all face similar hurdles in researching and resolving Holocaust art restitution claims: the "information vacuum" precipitated by lack of documentation complicated by the passage of time; lack of provenance information in spite of multiple changes of ownership; legal and moral arguments sometimes seemingly pulling in different directions; misunderstanding, confusion and hostility over where the onus lies to "prove" or "disprove" a claim; a lack of a universal framework for claims; and the absence of internationally binding standards for evaluating claims and defenses.

But those claims that are most intractable are where, for whatever reason, either or both sides refuse to engage. It is in all our interests therefore to articulate our perspectives as clearly as possible. Christie's always hopes to bring both parties to a position of mutual understanding and respect, based on a shared appreciation of the historical record.

This was the approach we took with this painting from the collection of Dr. Max Stern, which we flagged as part of our pre-sale vetting. At this early stage, we knew only that it had been in

Dr. Stern's hands but could not establish when. The Estate was eventually able to demonstrate that he had it in his possession in 1936. Although there were no specific sale records, when his 1936 possession was put in the context of the documented persecution of Dr. Stern, the presumption was made that his transfer at that time was not voluntary and, on this basis, restitution was agreed.

IV. CALL FOR A SHARED CLAIMS PROCESS

This slide¹ shows a number of disputed works where Christie's has helped to facilitate a settlement. While the intent of the Washington Principles still rings true today, our experience suggests that their lack of specificity – the lack of detail – means that in practice the Washington Principles alone are not sufficient to improve claims handling. From the auction house perspective, then, I would like to suggest that one of the things we need to establish alongside their broad brushstrokes are more specific procedural guidelines for the art market to use in dealing with Holocaust provenance issues and restitution claims.

To this end, as a first step and to begin the process, I would like to share with you Christie's own guidelines which set out a framework for handling provenance issues and claims, making clear the expectations and responsibilities of all concerned. (These guidelines will be available on our website.) We are announcing these guidelines publicly today, and sharing them with you, however they mostly consolidate the practices we have followed up to now.

¹ The speech was accompanied by the PowerPoint presentation.

The guidelines are based on four overarching principles: fairness, practicality, consistency and transparency, which are sometimes too easily obscured in the to and fro of heated negotiation. It is self-evident that claims need to be resolved quickly and fairly. And, those claims that are resolved fairly – and with the least amount of acrimony – are those where one side or both recognize(s) that there is some justice in the position of the other.

Many of us, on the other hand, will have dealt with claims, for example, where the current holder has no knowledge of an artwork's earlier history and although sympathetic, has limited options and a hostile response. Guidelines to deal with these situations need to be practical and fair. If they are [practical and fair] and if they are widely adopted, they can provide at least some procedural consistency and certainty for consignors and claimants alike, such as for timeframes and other aspects of claims handling.

With these principles in mind, Christie's guidelines set out on the one hand what we look for to be presented from the claimants' side: namely a clear, articulated claim, supported with as much information and documentation as is possible and which is presented in sufficient time before a sale is due to take place. By the same token, Christie's will (1) inform its consignor of a claim, (2) request that the consignor provide as much provenance information and documentation as is available, and (3) encourage its consignor to engage in a negotiation process looking towards a just and fair solution based on historical facts.

Although Christie's cannot be the arbiter of claims, there needs to be a threshold amount of information to support a claim before we can take such a serious step as withdrawing a work from sale. With

the most good will in the world, Christie's cannot take action where there is not a serious and substantiated cause for concern. For this reason, I am sure we all want to see a continuation of the process of opening government archives for provenance research.

I would like to use two contrasting examples. The comprehensive and thorough claim presented for this Master of Frankfurt painting from the Julius Priester collection clearly benefited from the careful research undertaken into the fate of the collection as a whole by the heirs' representatives. Information provided with the claim, demonstrated that the consigned painting was a clear match with one from the Priester collection. Moreover, the claim was supported by information from the Austrian archives detailing the act of confiscation and postwar attempts to recover the painting. While it took a little while to bring about a resolution, our consignor was nonetheless reassured from the outset that there was a colorable claim to answer.

However, when we were approached about this van Aelst sold at Christie's some time previously, although the claimant was able to give us the biographical details of his father's flight from Vienna, his claim rested solely on the family's recollection that a painting like this had hung in the family home. Sadly, there was nothing to back up this assertion, and we were able to find other examples of very similar still-lives by the artist and his followers. Indeed, subsequent research did establish that this painting was, in fact, in Italy during the years in question and had been in the hands of the same family since 1927.

These guidelines are also presented in the hope that we can agree on timeframes for progressing claims. Too often after a claim has been raised, the initial momentum is lost, with neither side engaged in dialogue. Such deadlock is frustrating and counterproductive, so

Christie's will expect parties to settle or proceed to court, arbitration or some other dispute resolution procedure.

Our guidelines also make clear Christie's obligations towards claimants. For example, we work with consignors (or current holders) and claimants and restitution experts alike to try to uncover – to the extent possible – the provenance of an object where concern has been raised; to publish as much information as we have; and to withdraw and hold a claimed object for sale pending resolution of a claim. The goal of these guidelines is to help claimants and claim recipients to make better and more prompt decisions based on an accurate assessment of the historical circumstances that gave rise to any particular claim. We believe that issuing these guidelines underscores Christie's serious intent to facilitate dialogue between parties and assist them in finding fair and equitable resolutions through provenance research and a just process.

Invitation to Cooperation

Ultimately, Christie's cannot resolve claims alone; it is the parties themselves who must do so by settling, walking away or litigating. With transparent guidelines, we can signal our ongoing intention to assist in the resolution of Holocaust-era claims and to help engender confidence in both collectors and claimants over how disputes are handled by the art market. I ask that you give us your thoughts on these guidelines. Also, I hope to establish a working group around this issue.

V. CONCLUSION

Working together with many of you, and with our shared intent and purpose to improve claims handling and to prevent looted

art from circulating through the marketplace, I hope that we might be able to build on the very real foundations of the last decade of experience under the Washington Principles, and set new benchmarks in diligence and claims processing for the next decade. Christie's looks forward to working with you over the coming years on developing workable auction house guidelines and on addressing such other suggestions that would facilitate the just and fair resolution of claims as may be made during the course of this Conference.

► **Felicitas Thurn**

DOROTHEUM, AUSTRIA

DOROTHEUM: PROVENANCE RESEARCH AND DUE DILIGENCE IN THE ART TRADE IN CENTRAL EUROPE

History

More than 300 years after its foundation by Emperor Joseph I, the Dorotheum is one of the most important auction houses in the world and the leading auction house in the German-speaking area with offices in Milan, Munich, Düsseldorf, Prague, Tokyo, Zagreb, Brussels, Tel Aviv, Rome, and Paris. For the broad range offered by the Dorotheum, more than 100 specialists are available, as well as over 40 departments. The highlights range from contemporary art to modern art, from design to old master paintings. As an auctioneer, the Dorotheum sells, as an agent, other people's property. The Dorotheum stems from the Pawn & Query Bureau established in 1707, located in Vienna's inner city. When the auction business began to prosper at the end of the 19th century with auctions being held in 13 separate

rooms, Emperor Franz Joseph commissioned the rebuilding of a Palais on the grounds of an old monastery, which was inaugurated in 1901. Already in the first thirty years of the 20th century, the Dorotheum saw many great private collections passing through its premises and held numerous specialist sales of books, manuscripts, medals, coins and other art objects. During the Nazi era, important posts within the Dorotheum hierarchy were assigned to supporters of the regime. The institution's infrastructure was used to auction off aryanised property, and although the Dorotheum itself was not actively involved in aryanisations, it benefited extensively as a trading agent from consignments by administrative bodies such as the Gestapo, customs and financial authorities, or the City of Vienna.

When the Dorotheum was privatized in 2001, the management made coming to terms with the Dorotheum's history during the Nazi era one of its prime concerns. Upon the sale of the Dorotheum, the ÖIAG – the Austrian Republic's investment and privatization agency – as former owner of the auction house, paid USD 32 million into the General Settlement Fund as a compensation payment for their Austrian holdings that cooperated with the Nazi Regime. The year 2006 saw the publication of a report by independent historical experts on the history of the Dorotheum from 1938–1945.¹ At the same time, the Dorotheum handed over all historical archival material to the Austrian State Archive in order to make it available to all researchers. The establishment of a department of provenance research set up in 2003 by the new directors was groundbreaking in Central Europe and continues to be the only in-house department of provenance research dealing with restitution issues in an auction house in continental Europe.

¹ Lütgenau, Schröck, Niederacher, *Zwischen Staat und Wirtschaft. Das Dorotheum im Nationalsozialismus*, Oldenbourg Verlag 2006.