

fair solutions,” and since Washington, we did need ten years to reach the present situation. Do not let it be another ten years before we find ways to shorten the lengthy procedures for the claimants and the institutions. European standards for general aspects and cross-approval of the decisions of the national institutions worldwide, or at minimum in Europe, are the only way to make substantial progress. I will release you into your own perspective.

Thank you for your attention.

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**HOLOCAUST ERA LOOTED ART: A WORLDWIDE
OVERVIEW**

The following is an overview based on preliminary data. It represents the results of the current best efforts research of the Conference on Jewish Material Claims Against Germany (“Claims Conference”) and the World Jewish Restitution Organization (WJRO) and is based upon information obtained by the Claim Conference/WJRO to date. It may contain factual or other errors. Governments, non-governmental organizations, and individual experts are invited to make corrections and comments on the website of the Claims Conference at www.claimscon.org.

Major intergovernmental conferences and resolutions during the past decade established international principles regarding the restitution of art and other cultural property, most notably

the *Washington Conference Principles on Nazi-Confiscated Art* (1998), *Resolution 1205* of the Parliamentary Assembly of the Council of Europe (1999), and the *Declaration of the Vilnius International Forum on Holocaust-Era Looted Cultural Assets* (2000). As a result, there have been some positive steps towards the restitution of movable artwork and cultural and religious property plundered from Jews, but progress has been slow, and there remains a very considerable amount of looted movable artwork and cultural and religious property that has not been recovered and that is still in private and public hands.

No mechanism was established to monitor progress by the over 40 governments that endorsed the Washington Conference Principles.

The main organizations of the world Jewish community that are active in the restitution of property looted from victims of the Holocaust, namely the Conference on Jewish Material Claims Against Germany and the World Jewish Restitution Organization, have been focusing on the systemic issues involved in art restitution throughout the world with the intent of improving and creating processes to enable more owners and heirs to recover their property. They have been working with Jewish communities around the world to bring increased attention to the restitution of looted artwork and movable cultural and religious property and in this regard have conducted extensive research over the past years on the status of provenance research and of claims processes for the restitution of artworks in most, if not all, relevant countries.

The variations among countries’ historical experiences and legal systems, as well as the complexities of provenance research and the establishment of claims processes, are such that it is not

easy to make generalizations. It is clear, however, that some sort of independent examination of progress is necessary, both within individual countries and between them. When, in 2005, the Claims Conference requested that the Association of American Museums (AAM) survey the progress of US museums in adhering to guidelines that the AAM had established for provenance research and restitution procedures, the AAM responded that it was not a policing organization and would not do such research. The Claims Conference response was that the Claims Conference also was not a policing organization but in the absence of any other choice, it would undertake to ask US museums to provide information themselves regarding implementation of the guidelines.¹

As part of the Claims Conference/WJRO Looted Art and Cultural Property Initiative, research has been carried out on a large number of countries, including all countries expected to participate in the Holocaust Era Assets Conference in Prague in June 2009, as well as some additional ones. Brief summaries for 50 countries of the very basic information relevant to implementation of the Washington Conference Principles on Nazi-Confiscated Art may be found at the end of the present report (see annex p. 1210).

Overview of Countries' Progress in Implementing the Washington Conference Principles

Based on the information gathered by the Claims Conference as summarized below, each country was placed into one of four broad categories:

¹ See *Nazi-Era Stolen Art and US Museums: A Survey* at http://www.claimscon.org/forms/US_Museum_Survey_Report.pdf.

1. Countries that have made *major progress* towards implementing the Washington Conference Principles on Nazi-Confiscated Art;
2. Countries that have made *substantial progress* towards implementing the Washington Conference Principles on Nazi-Confiscated Art;
3. Countries that have taken *some steps* towards implementing the Washington Conference Principles on Nazi-Confiscated Art; and
4. Countries that *do not appear to have made significant progress* towards implementing the Washington Conference Principles on Nazi-Confiscated Art.

The placement of a country in one or another category was based on available data regarding whether or not during the past decade a country established mechanisms to carry out provenance research and to process claims for restitution.

Of the 50 countries for which summaries are appended to this report, only four may be said to have made major progress towards implementing the Washington Conference Principles, while an additional 11 have made substantial progress in this regard. Of the remaining countries, six have taken some steps, while fully 23 appear not to have made significant progress towards implementing the Washington Conference Principles. For six of the countries, there is not enough information to be able to make a judgment. Put differently, only 34 percent of the 44 countries for which there is at least some information have made major or substantial progress towards implementing the Washington Conference Principles.

Obviously the situations faced by countries vary greatly. Perhaps the most obvious divide is between countries on whose territory the killings and robbery of the Holocaust took place and those countries that may have been involved in the history of the Holocaust and its aftermath but were not sites of the genocide itself. Whether perpetrator or victim nations, countries where the local Jewish population was robbed face greater complications and generally larger quantities of looted art in their museums than do countries that were simply the recipients of looted art. Thus, the challenges facing countries such as Germany and Ukraine are far greater than those facing countries such as Portugal and Canada.

Judgments regarding some of the countries may be open to question, but the fact remains that about two-thirds of the countries participating in the Holocaust Era Assets Conference in Prague in June 2009, most of which also participated in the Washington Conference in 1998, may be said only to have taken some steps or do not appear to have made significant progress towards putting the Washington Conference Principles on Nazi-Confiscated Art into practice. These countries may have taken important steps – e.g., the extensive work by the Russian Federation documenting the cultural losses of Russia – but they have not yet put in place the mechanisms necessary for provenance research and restitution of Nazi-confiscated art.

Note that in addition to most of them having endorsed the Washington Conference Principles, the countries in question – almost without exception – are signatories to the Code of Ethics of the International Council of Museums (ICOM), which calls for provenance research to be done on collections.

What Is to Be Done?

In addition to the specific recommendations made by the Working Group on Looted Art, there need to be international mechanisms to encourage countries to make progress in this area. The development of international laws may not be possible in the short term, but the further establishment of international guidelines and best practices, of regular progress reports, of an international association of provenance researchers, and of funding sources both within and across borders should help.

The return of plundered artworks and religious artifacts often has meaning beyond that of the restitution of other types of assets. These were personal possessions valued for their beauty and cultural significance, often handed down through several generations. In many cases, these artworks or artifacts are the last personal link heirs may have to families destroyed in the Holocaust. But beyond obligations to those from whom these artifacts were taken, our obligations to human civilization must include ensuring that our art collections are not based on robbery and genocide.

The following represent the recommendations of the Claims Conference and WJRO:

- ▷ Where they have not done so, institutions and states should be encouraged to undertake provenance research. Where it has commenced, efforts should be intensified in order that provenance research can be completed in an expeditious timeframe. Adequate funding for provenance research including grants to institutions and independent researchers is needed.

Include in what is deemed confiscated art and cultural property, transfers arising from looting, plunder, theft, coercion, abandonment, loss, or other forms of taking, as well as transfers of property, including “forced sales” that resulted from the direct or indirect effects of persecutory measures enacted into law or implemented by other political action by the Nazis and their collaborators during the Holocaust and its aftermath, whether such transfers were voluntary or involuntary.

- ▷ All countries should ensure the ongoing publication over the internet of provenance information including full details and images of looted objects and those with gaps in their provenance between 1933 and 1945.
- ▷ Provenance research requires that full access to archives and documentation be unhindered for all parties. The States should encourage private institutions and individuals, e.g., auction houses, art-dealers, galleries, and banks also to provide access to their records. Funding should be given to private entities to encourage accessibility of archives. There must also be free access to all archives dealing with the institutions involved in the plunder of the artwork.
- ▷ National claims procedures for fair and just solutions encompassing decisions on their merits, that is, on a moral basis and not on technical defenses such as the passage of time should be established. Procedures should include:
 - Sharing of evidence by both the current possessor and the claimant;

- Presumption of confiscation in favor of the claimant (the onus is on the later owner to rebut this presumption);
 - Relaxed standards of evidence for the original owner;
 - The burden of proof should not rest only on the claimant; the present possessor also has to prove the rightfulness of his possession;
 - Claimants should not be burdened by financial requirements.
- ▷ Export, citizenship, de-accession laws, statutes of limitations, inheritance and cultural heritage laws should not be used to prevent the restitution of property to claimants.
 - ▷ States should support and encourage the establishment of public or private organizations that advise, support, and assist claimants in provenance research, the legal procedures, restitution and other matters.
 - ▷ States should actively support the establishment and operation of an international association of all provenance researchers. The association should encourage cooperation between researchers, the exchange of information, the setting of standards, and education.
 - ▷ Institutions should be encouraged to provide provenance information in all exhibitions or other public presentations that include looted cultural property.
 - ▷ Countries should establish mechanisms for the resolution of disputed claims – these could include commissions,

advisory panels, or other alternative dispute resolution mechanisms comprised of balanced membership – including representation of victim groups – as an alternative to judicial proceedings to determine ownership issues and rights of claimants to confiscated property. Such mechanisms should have full transparency, include clear rules and procedures, and require the publication of decisions, recommendations, and terms of reference.

- ▷ Where necessary, states should enact or modify legislation in order to ensure the identification and recovery of looted artwork and cultural assets by original owners or their legal successors and to implement the principles contained herein.
- ▷ The Participating States should report on the implementation of these principles – including, but not limited to, the state of provenance research and its publication and the status of the restitution of artwork and cultural property – to an appropriate international entity. These reports should be publicly available.

For Classification and Summaries of Countries – see annex p. 1210.

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**THE RENEWAL OF THE RESTITUTION PROCESS:
ALTERNATIVE DISPUTE RESOLUTION METHODS**

**I. ALTERNATIVE METHODS OF DISPUTE RESOLUTION:
THE VARIOUS MECHANISMS**

Washington Principles on Nazi-Confiscated Art, December 3, 1998, Principle N° XI: “Nations are encouraged to develop national processes ... in particular as they relate to alternative dispute resolution mechanisms for resolving ownership issues.”

Claims for restitution and court proceedings: advantages and disadvantages.

Arbitration

The international basis for arbitration in the field of cultural property.

International arbitration in practice: the awards in *Maria Altmann et al. v. Republic of Austria* (January 15, 2006 and May 7, 2006).

Mediation and Conciliation

The international basis for mediation and conciliation in the field of cultural property.