

Spoils of War

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On February 14, 1997 Dieter Opper died after long suffering from a serious disease. Without Dieter Opper the international newsletter "Spoils of War" would not exist. In his capacity as head of the department of culture of the Senate of Education, Science, Culture and Sports of the Free Hanseatic City of Bremen, during the last years he put a special effort to the question of cultural losses connected with World War II. It was his conviction that this problem is a vital one concerning the relations of the Federal Republic of Germany especially with it's neighbors in Middle and Eastern Europe. He pleaded vehemently for a policy of mutual understanding and reconciliation. His approach to the topic was focused by the historical perspective - that it was Nazi-Germany that started not only World War II but also the looting of cultural property.

Dieter Opper also stressed the necessity to see the problem of cultural losses due to World War II as a European one. Therefore he initiated the first meeting of experts on this topic from Eastern, Central and Western European countries since the end of the war. This conference - "Cultural Treasures Moved Because of the War - A Cultural Legacy of the Second World War. Documentation and Research on Losses" - took place in Bremen on November 30 to December 2, 1994. He was editor of the documentation of the meeting which was published in 1995. During the conference in Bremen the idea of "Spoils of War" was born. It was Dieter Opper who made the financing of the first issues possible and who supported the editorial board in a very special and encouraging way.

The editorial board wants to take this last opportunity to honor this support and to express its gratitude. We are very sad to have lost Dieter Opper.

Spoils of War

International Newsletter, No. 4, August 1997

Editorial

Special attention has been given in this issue of "Spoils of War" to the Russian Federal Law "On Cultural Values Removed to the U.S.S.R. as a Result of World War II and Located in the Territory of the Russian Federation". Although the law has not yet come into force because of President Yeltsin's refusal to sign it, the editorial board decided to print the text of the law in this issue. We think it is of special importance to our readers to know the exact content of this law which has already been accepted by both Houses of the Russian Parliament.

The editorial board asked several experts from different countries to express their point of view concerning the law. We particularly want to thank these authors for their readiness to contribute to this special topic. The international discussion we are able to present is very interesting and to our knowledge unique.

As you will realize, this issue is the most extensive newsletter until now. This does not mean, however, that we want to grow bigger every time. The extent of this issue is due to the fact that in 1997 there will only be one issue of "Spoils of War". The editorial office - the Coordination Office of the Federal States for the Return of Cultural Property - will move from Bremen to Magdeburg at the end of this year. Therefore it is not possible to keep our usual publishing rhythm of July/December. The next issue of "Spoils of War" will appear in March 1998. We will inform all our readers in time about the new editorial address.

The text of "Spoils of War" No. 4 - like all issues published until now - is available on internet (<http://www.dhh-3.de/looted/>). Please note that the editorial center can now be contacted by e-mail (KSTdLfdRvK@aol.com).

"Spoils of War" is distributed without subscription costs, because it is the policy of the editorial board to make sure that everybody who is interested is able to get a copy of this newsletter. We would be, however, very grateful to those of our readers who in return can provide the editorial center with a copy of their books, articles or other published material which might be of interest to us.

We are glad that our newsletter is going already into its third year. The interest in it and the still growing distribution list prove the importance and helpfulness of this publication, which is the only one on World War II losses. We want to stress once more that this publication would not be possible without your information, critical remarks, contributions and comments. Please don't stop supporting us in this way.

Yours sincerely

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Russian Edition of "Spoils of War"

We gladly announce that through the activity of the Library for Foreign Literature in Moscow and its director, member of our board Ekaterina Genieva, and thanks to the Open Society Institute all issues of the international newsletter "Spoils of War" published until now are translated into the Russian language. We think that this is a very important step not only for the distribution of the newsletter in this country but also for the general process of understanding through information in this complex and difficult matter. The purpose of our newsletter has always been international cooperation and exchange of information. This translation will help us to reach even more of our colleagues. However, those of our authors who do not wish to have their contributions translated, are asked to let us know.

The following two contributions explain the background of the Russian edition. The personal statement of the Russian translator - for the openness of which we want to express our deepest gratitude and respect - shows the emotional dimension the topic of spoils of war still has in Russia.

On the Appearance of the Russian Edition of Spoils of War

We express our gratitude to the Open Society Institute whose generosity allowed us to participate in the International Program of Cooperative Actions directed to resolve the problems resulting from World War II, which nowadays, 50 years after this war's ending, continue to agitate us painfully. It is of special value that the Institute's aid has made it possible for us to translate the bulletin "Spoils of War" into Russian and to publish it.

The publication is of the utmost necessity. The Russian public should be familiarized with the way other involved sides see the commonly inherited problem of restoring to the rightful owner what was lost or taken away, which is the actual meaning of restitution.

Due to many reasons, we can hardly hope that mutual understanding, even approximately, could be reached easily, for too deep a gulf has separated us during all these years. The gulf is filled with the mythologemas of national self-identification, which for decades was built on a complex mixture of truth and fabricated lies, nice feelings and propaganda calculation. We here, even those who hated socialism, lived with the feeling of this country's martyrdom, righteousness, and global kindness. People abroad, having their own reasons, felt differently.

Generally, in order to come to an understanding, you should express your opinion, then hear your opponent out, and do it not only once, but once and once again. The new knowledge is sometimes unpleasant, and to assimilate it you will have to get civic courage. Nevertheless, there is no other sensible way to settle the affairs. Now Russian-speaking, the bulletin "Spoils of War" will help us to hear each other, to look deeper into the opponent's arguments, to think over our own reasons. Now, while president Yeltsin's veto on the law "On Cultural Values Removed to the USSR during World War II and Located in the Territory of the Russian Federation" is not yet overcome, there is some hope to reach a reasonable decision, acceptable for everyone involved. The word 'reason', I believe, is the key word here.

Ekaterina Genieva, General Director of the
All-Russia Library for Foreign Literature (VGBIL), Moscow

From the Russian Edition's Translator

During the last month I have been translating, word by word, two issues of this bulletin, no. 1 and 2. I oblige myself to follow the intonation strictly. Sometimes I feel pain, sometimes resentment, my feelings are often wounded. I am tired of all wars in general, and I don't want to hear about World War II, but it's impossible not to. I was born after this war. For us, it is the Great Patriotic one. My father was in it, my grandfather perished in it, and two uncles, too. No, if I stop to think for a moment, many of my relatives were killed in this war. By the way, none of them had crossed our country's borders. But when, in any text, I see an impersonality like "Soviet soldiers", I see the faces from the faded photographs at home. I suppose a great number of the former USSR's inhabitants feel the same. And I don't doubt that Germans also, hearing the impersonal words "German soldiers", see faces dear to them...

If I may digress, I will recall the library tour I made around Germany some years ago. My deepest impression then was the un-authenticity, the novelty of smallish, beautiful, ancient towns - Speyer, Hildesheim, Paderborn - which were bombed by the Allies for German edification. I felt myself disappointed, which is a wrong word, and tried to seek the right one for some vague sense of injury caused neither by Germany, nor by the Allies, but by life itself, by Something that orders to build, then to destroy, then to build again and so, the famous Roman cathedrals, which belonged first of all to God himself, then to humanity as a whole, and only lastly to the German people, stood new and fresh, not even feigning authenticity. Later, when I tried to tell about it in Moscow, I was invariably and austerely asked: "Well, have

you forgotten about Pskov and Novgorod?" No, I have not. But I am against the opinion that if you ruin our Pskov, we will destroy your Leipzig. Because, as a result, we, all of us, become poorer.

Actually, have we enriched ourselves concealing, to mention just one example, Renoir's roses shown at last, after 50-years incarceration, at the Hermitage exhibition "Hidden Treasures"?

The matter is, hidden were not only the treasures brought from the Western countries. We, the general public, did not know, and up to now still do not know exactly, what treasures of our national heritage are lost to us because of the war. Ask anyone about our losses - you'll hear the names of destroyed cities, palaces, and the story about the Amber Room. But where is the comprehensive, detailed inventory?

Soon the Russian reader will receive the third issue of "Spoils of War". Then, he will possibly find himself overwhelmed with facts rendered though in an intentionally dry manner. Sometimes, well-known facts, being interpreted from abroad, look differently, change plus for minus. And the gist of the matter, it seems to me, does not consist in the question if the interpretation is true. You just understand suddenly: that's what they think of us. That's how we look like in the world's eyes. And, at that, we are silent! This is a many-voiced, polyglot chorus, deprived of Russian speech.

Now, let us hope, it will sound. Let us hope, then, that when the bulletin will be distributed all over Russia, the lack of information on the subject will be made up for, in some measure, and the public opinion will take the new knowledge into consideration. Let us hope that the response will be expressed also by letters to the editorial board written, perhaps, by those who work with spoils of war in museums, archives, and libraries. After all, it is a waste when the books and the museum exhibits bring people neither use nor joy. And, by having at least shown every item to the public, having named every one, we shall atone a little for "hidden treasures" for the offence of keeping them in the power of dark political forces.

Evelina Melenevskaya, Senior Bibliographer,
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International Discussion of the Russian Law

Before printing the text let us recall the developments over the last years which led to the actual Federal Law "On Cultural Values Removed to the U.S.S.R. as a Result of World War II and Located in the Territory of the Russian Federation". The history of this law actually began already in 1994, when the Russian Academy of Sciences, Institute for State and Law presented a "Report about the Legal Basis for the Solution of the Questions Concerning the Cultural Property Transferred to the USSR as a Result of World War II". In March 1995 the Council of Federation presented two drafts for a Russian law, principally based on this report. In May 1995 the Committee for Education, Culture and Science and the Committee for Foreign Affairs of the State Duma carried out a parliamentary hearing to consider these

drafts. On June 7, 1995 the State Duma rejected both drafts at the first reading. In consequence they were revised and united. The new draft was presented in May 1996 in the State Duma and accepted on July 5, 1996. Unexpectedly it was the Council of Federation that rejected the law on July 17, 1996. The draft was referred to the mediation committee.

The final version of the law was accepted almost unanimously by the State Duma on February 5, 1997. The Council of Federation authorized the law which was consequently handed over to the President of the Russian Federation, B.N. Yeltsin. He exercised his veto on March 17, 1997 because the law from his point of view represented a unilateral decision and did not take into account standard norms of international law. The State Duma confirmed the law at the beginning of April 1997. The Council of Federation postponed its decision several times. Finally it was agreed to vote in written form in order to make sure the voting of all members. The law was accepted and referred again to President Yeltsin to sign it. The President refused to do so and sent the law back to the Council of Federation arguing that the formal procedure of the voting was not correct. In June the Council of Federation returned the law to President Yeltsin. It is expected that he will call on the Constitution Court.

Members of the Russian government, especially of the Ministry of Foreign Affairs and the Ministry of Culture, declared several times that they do not agree with the Federal Law although the background of these positions differs in many respects.

Federal Law on Cultural Values Removed to the U.S.S.R. as a Result of World War II and Located in the Territory of the Russian Federation

Please note that this is not an official translation. Although all the facts are transmitted correctly the formulations may not always be according to the standard of English law texts. We hope for your understanding.

The present Federal Law regulates relations in connection with cultural values removed to the U.S.S.R. as a result of World War II and located in the Russian Federation territory.

The primary goals of this Federal Law are:

- to protect the said values from misappropriation and prevent their illegal export from the Russian Federation as well as their unlawful transfer to whomsoever;
- to develop the necessary legal base for the practical use of the said cultural values to a partial compensation for the damage suffered by the cultural property of the Russian Federation through the plunder and destruction of its cultural values by Germany and its war allies during the Second World War;
- to safeguard the Russian Federation interests in settling disputes with foreign states concerning the said cultural values by consistently observing the principle of mutuality;

- to provide an opportunity for first-hand acquaintance with the said cultural values to Russian Federation citizens and foreign nationals, including professionals in the fields of education, science and culture;
- to create favourable conditions for continuing development of international co-operation in the fields of education, science, and culture.

Chapter I. General Regulations

Article 1. The Russian Federation Legislation on Cultural Values Removed to the U.S.S.R. as a Result of World War II and Located in the Territory of the Russian Federation

The Russian Federation legislation on cultural values removed to the U.S.S.R. as a result of World War II and located in the Russian Federation territory consists of this Federal Law and other statutory acts to be issued in correspondence with the Constitution of the Russian Federation and this Federal Law.

Article 2. International Legal and other Acts on which this Federal Law Is Based

This Federal Law is based on international legal and other acts passed during and after World War II, which remain in force with regard to the property relations that resulted as consequence of these acts: the Peace Treaties of 1947, statutory acts passed on the basis of the rights and supremacy of the occupation forces in Germany in 1945-49, the State Treaty on the Restoration of an Independent and Democratic Austria of May 15, 1955, the Treaty of Final Settlement with Germany of September 12, 1990, and also provisions of Article 107 of the United Nations Charter and the United Nations Declaration [London Declaration of the Allies] of January 5, 1943.

Article 3. Validity of this Federal Law with Respect to the Actual Possession of Cultural Values Removed to the U.S.S.R. as a Result of World War II and Located in the Russian Federation Territory

The present Federal Law applies to all cultural values removed to the USSR during World War II and located in the territory of the Russian Federation, irrespective of the actual possessor and the circumstances which led to this actual possession.

Article 4. Principal Terms Used in this Federal Law

For the purpose of this Federal Law the following principal terms will be used:

Restitution - the kind of international legal material obligation of a state which is guilty of an act of aggression or some other act contradicting international law to remove or lessen the material damage inflicted on another state by restoring the original condition, in particular by returning the property it has plundered and illegally taken out of the other state's territory;

Compensatory restitution - the kind of international legal material obligation of an aggressor state, applied wherever the enforcement of the said state's liability in form of a regular restitution is impossible, to compensate for the material damage inflicted on another state by handing over to the damaged state objects of the same kind (or by their acquisition by the damaged state in its own favor) as those that were plundered and illegally removed by the aggressor state from the territory of the damaged state;

Cultural values - any property of a religious or secular nature which has historic, artistic, scientific or any other cultural importance: works of art, books, manuscripts, incunabula, archival materials, components and fragments of architectural, historical and artistic monuments, as well as those of monumental art and other categories of objects specified in Article 7 of the Russian Federation Law "On the Export and Import of Cultural Values";

Removed cultural values - any cultural values that have been removed by way of compensatory restitution from the territories of Germany and its former war allies - Bulgaria, Hungary, Italy, Romania and Finland - to the territory of the U.S.S.R., pursuant to orders of the Soviet Army military command, the Soviet Military Administration in Germany or instructions of other competent bodies in the U.S.S.R. and that are now located in the territory of the Russian Federation;

Former enemy states - Germany and its Second World War allies: Bulgaria, Hungary, Italy, Romania and Finland;

Property of former enemy states - any property, whether state-owned, private, municipal, or owned by public and other organisations and associations, in former enemy states;

Affected states - any states (with the exception of the Russian Federation and the states specified in Article 7 of this Federal Law) whose territory was fully or partially occupied by the forces of former enemy states;

Property of an affected state - any property, whether state-owned, private, municipal, or owned by public and other organisations and associations, in affected states;

Cultural institutions - Russian state-owned (including departmental) and municipal museums, archives, libraries and other scientific, educational, entertaining and instructional institutions, enterprises and organisations which operate in the fields of education, science and culture.

Article 5. Composition of Removed Cultural Values

Removed cultural values, in terms of their former state affiliation, include:

- cultural values which used to be the property of former enemy states;
- cultural values which are, in the sense of Article 4 of this Federal Law, the property of affected states which have lost their right of property to these values due to their failure to file a restitution claim within the time period stipulated by the statutory acts referred to in Article 8 of this Federal Law; and
- cultural values whose state affiliation has not been established (ownerless objects).

Chapter II. Removed Cultural Values and Rights of Ownership

Article 6. On the Right of Ownership of the Russian Federation to Removed Cultural Values

All cultural values located in the territory of the Russian Federation that were brought into the U.S.S.R. by way of exercise of its right to compensatory restitution - with the exception of those mentioned in Articles 7 and 8 of this Federal Law - are in the ownership of the Russian Federation and constitute federal property.

Article 7. On Guarantees for the Rights of ownership of the Republic of Byelorussia, the Latvian Republic, the Lithuanian Republic, the Republic of Moldavia, Ukraine and the Estonian Republic to Removed Cultural Values

1. The provisions of Article 6 of this Federal Law do not apply to the rights of ownership of the Republic of Byelorussia, the Latvian Republic, the Lithuanian Republic, the Republic of Moldavia, Ukraine and the Estonian Republic to cultural objects which could have been found among the removed cultural values but which were plundered and taken away during World War II by Germany and (or) its war allies not from the territory of the Russian Soviet Federative Socialist Republic but from the territories of the Byelorussian Soviet Socialist Republic, the Latvian Soviet Socialist Republic, the Lithuanian Soviet Socialist Republic, the Moldavian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and the Estonian Soviet Socialist Republic, and which were the national property of the said Union Republics and not that of other Union Republics which formed part of the U.S.S.R. within its boundaries of February 1, 1950.

2. Cultural objects referred to in section 1 of this Article may be handed over to whomever is their rightful owner in the Republic of Belorussia, the Latvian Republic, the Lithuanian Republic, the Republic of Moldavia, Ukraine and the Estonian Republic subject to their compliance with section 4 of Article 18 of this Federal Law and their agreement to take the same approach, based on the principle of mutuality, to the cultural values of the Russian Federation that have been removed to the U.S.S.R. from former enemy states and are located in their territory.

Article 8. Removed Cultural Values Not Classified in Articles 6 and 7 of this Federal Law

Articles 6 and 7 of this Federal Law do not apply to the following cultural values:

1. Cultural values for which an affected state presents evidence of having claimed their restitution before the expiry of the periods fixed by the statutory acts given below:

- until March 15, 1948, with regard to Bulgaria (Article 22, section 7 of the Peace Treaty with Bulgaria), Hungary (Article 24, section 7 of the Peace Treaty with Hungary), Italy (Article 75, section 6 of the Peace Treaty with Italy), and Romania (Article 23, section 7 of the Peace Treaty with Romania);
- until September 15, 1948, with regard to Finland (Article 25, section 2 of the Peace Treaty with Finland);
- until February 1, 1950, with regard to Germany under the procedure established by the Council of Ministers of the U.S.S.R.

2. Cultural values that were the property of religious organisations or private charities and which were used exclusively for religious or charitable aims and did not serve the interests of Militarism and (or) Fascism;

3. Cultural values that used to belong to individuals who were deprived of these values because of their active fight against Nazism (Fascism), including their participation in national resistance movements against the occupation regimes of former enemy states and collaboration regimes, and (or) because of their race, religion or nationality.

Article 9. Terms of Transfer of Cultural Values Classified in Article 8 of this Federal Law to the Affected States

1. Cultural values classified in subsections 1, 2 and 3 of Article 8 of this Federal Law for which an affected state files a restitution claim within 18 months of coming into force of this Federal Law and presents evidence that they are classified in the corresponding subsection (subsections) of Article 8 of this Federal Law and officially confirms that it has not received any lump compensation for these values from Germany or any other former enemy state, are to be handed over to the affected state on the terms provided in Article 18 of this Federal Law.

The rights according to the first paragraph of subsection 1 of this Article may be exercised by any affected state which offers to the Russian Federation on the principle of mutuality no less favourable legal terms for the return of that part of the cultural values of the Russian Federation plundered by former enemy states that is, currently or in the future, in the territory of the respective state and for which the U.S.S.R. has made restitution claims.

2. All removed cultural values classified in subsections 1, 2 and 3 of Article 8 of this Federal Law for which no affected state has filed a restitution claim within 18 months of the coming into force of this Federal Law nor presented evidence required under the said subsections of Article 8 of this Federal Law, become federal property.

Article 10. Terms of Transfer of Cultural Values Classified in Subsections 2 and 3 of Article 8 of this Federal Law to the Former Enemy States

1. Cultural values classified in subsections 2 and 3 of Article 8 of this Federal Law for which a former enemy state will file a restitution claim within 18 months of the coming into force of this Federal Law and presents evidence that they are classified in subsection 2 and (or) subsection 3 of Article 8 of this Federal Law, may be handed over to whomever is their rightful owner in the claimant state on the terms provided in Article 18 of this Federal Law.

The rights according to the first paragraph of subsection 1 of this Article may be exercised by any of the former enemy states that takes special legislative measures to meet its obligation to return, free of charge, to the Russian Federation its cultural values that were plundered and illegally removed by former enemy states and which are, currently or in the future, located in the territory of the respective former enemy state.

2. All removed cultural values classified in subsections 2 and 3 of Article 8 of this Federal Law for which the respective former enemy state within 18 months of the coming into force of this Federal Law has neither filed a claim nor presented evidence as required under the said subsections of Article 8 of this Federal Law become federal property.

Article 11. Removed Cultural Values Not Liable to Transfer to Foreign States or International Organisations and (or) Export from the Russian Federation

Cultural values (archival and other materials, relics, and other values) that by virtue of their content or nature may serve the purposes of resurrection of the spirit of Militarism and (or) Nazism (Fascism) may not be handed over to foreign states or international organisations and (or) exported from the Russian Federation.

Article 12. Removed Cultural Values That are Family Relics

1. Removed cultural values that are family relics (family archives, photographs, letters, decorations and awards, portraits of family members and their ancestors) which have become federal property according to Article 6 of the Federal Law, may for humanitarian reasons be handed over to properly authorised representatives of the families which used to be the owners of these values (relics) on the terms provided by Article 19 of this Federal Law.

2. Section 1 of this Article does not extend to family relics of active figures in militarist and (or) Nazi (Fascist) regimes.

Article 13. Rights of Cultural Institutions in Regard to Removed Cultural Values

1. Cultural institutions entrusted under the Civil Code of the Russian Federation with the day-to-day management of removed cultural values which are federal property according to Article 6 of this Federal Law exercise the rights of ownership, use and disposal of these cultural values according to the purpose of its activity and the purpose of the values. However, alienation and (or) transfer of these cultural values, except as provided in section 2 of this Article, may be effected only on the basis of a federal law and on the terms provided in this Federal Law.

2. Duplicates of removed cultural values that are in the day-to-day management of cultural institutions, namely books, lithographs and other print publications, may be the subject of cultural exchange with foreign institutions and organisations provided these duplicates are of no interest to other cultural institutions in the Russian Federation.

Chapter III. International Co-Operation in the Matter of Identification and Restitution of Cultural Values of the Russian Federation

Article 14. Cultural Values Illegally Removed from the Russian Federation while Occupied by German Troops and its War Allies during World War II

The Russian Federation will co-operate with the states that exercised jointly with the U.S.S.R. supreme authority in Germany during its occupation - the United Kingdom of Great Britain and Northern Ireland, the United States of America, and the French Republic - with the aim of identifying and restituting to the ownership of the Russian Federation cultural values that might have been transferred to these states from the respective occupation zones of Germany.

The Russian Federation will also co-operate to the same purpose with any other state in which its cultural values may be located and which has signed, or acceded to, the United Nations Declaration [London Declaration of the Allies] of January 5, 1943 by concluding appropriate international agreements provided in Article 22 of this Federal Law.

Article 15. Terms of Exchange of Removed Cultural Values for Cultural Values of the Russian Federation Located outside the Russian Federation

Any exchange of removed cultural values for Russian Federation cultural values which are located outside the Russian Federation for which the Russian Federation has not filed a restitution claim is permissible only in case of equivalence of the exchange as determined by an authorised federal body concerned with the preservation of cultural values. The respective exchange will be legalised by an international treaty of the Russian Federation with due regard for the provisions of Chapter V of this Federal Law.

Chapter IV. Procedure of Enforcement of this Federal Law

Article 16. Authorised Federal Body for the Preservation of Cultural Values

1. The control over the preservation of removed cultural values and the preparation of decisions on questions of rights of ownership to values will be entrusted to an authorised federal body for the preservation of cultural values (in the following referred to as the Federal Body).

2. The Federal Body will be given the following functions:

- to examine claims of foreign countries and applications of foreign nationals according to Article 18 and Article 19 of this Federal Law, to prepare decisions on such claims and to make decisions on such applications;
- to apportion removed cultural values among cultural institutions with the aim of practically using these values as repair of the damage suffered by these cultural institutions as the result of the plunder and destruction of their property by the troops of former enemy states;
- to resolve disputes between cultural institutions concerning the apportionment of cultural values among them;
- to define the categories and storage conditions of removed cultural values not liable to transfer to foreign countries or international organisations and (or) to export from the Russian Federation;
- to issue permits to cultural institutions to exercise their right according to Article 13 of this Federal Law to use duplicates of removed cultural values for cultural exchange with foreign institutions and organisations;
- to exercise control over the compliance with the rules of foreign trade activity in regard to removed cultural values;
- to present - jointly or in agreement with the Ministry of Foreign Affairs of the Russian Federation - to the government of the Russian Federation proposals for negotiations concerning removed cultural values;
- to control the observance of this Federal Law.

3. Decisions passed by the Federal Body in accord with its functions and authority as provided in this Article have binding force. Federal Body decisions may be appealed against according to regulations of the Russian Federation law. A decision which has not been properly appealed against within the time period established by Russian Federation legislation is considered to have come into force and may only be altered or revoked by another decision of the Federal Body.

4. An Interministerial Council on Questions of Cultural Values Removed as a Result of World War II will be set up as a consulting panel. The head of the Federal Body is the chairman of the Interministerial Council on Questions of Cultural Values Removed as a Result of World War II.

Article 17. Applications and Claims of Cultural Institutions Concerning Removed Cultural Values and Restitution of their Property

A cultural institution may apply to the Federal Body for apportionment of certain cultural values from the removed cultural values in compensation for the damage suffered by this institution as the result of the plunder and (or) destruction of its property by the troops of former enemy states, as well as it may file claims because of disagreement with the apportionment of such property. The procedure of examination of these applications and claims is determined by a regulation to be approved of by the government of the Russian Federation.

A cultural institution may also appeal to the Federal Body for restitution of cultural values which used to be in its possession and which without foundation have been handed over to another cultural institution.

Article 18. Claims of Foreign States for Removed Cultural Values

1. Claims for removed cultural values classified in subsections 1, 2 and 3 of Article 8 of this Federal Law can only be made by the government of the claimant state to the government of the Russian Federation; claims of natural and juristic persons, municipal bodies, non-governmental and other organisations and associations are not accepted for examination.
2. The transfer of a removed cultural value to the claimant state is carried out on the basis of a federal law. A federal law on the transfer of removed cultural values is passed on the basis of a bill introduced by the government of the Russian Federation in agreement with the respective state authority of the Russian Federation entity in which territory the regional cultural institution entrusted with the day-to-day management of the respective cultural value is located.
3. Without the passing of an appropriate federal law, no removed cultural value may be the subject of an act of transfer, donation, exchange or any other form of alienation for the benefit of states, organisations, or individuals.
4. The transfer of a claimed removed cultural value to the claimant state is carried out against the reimbursement of the expenses for its identification, expert examination, storage and restoration, as well as its transfer (transportation costs etc).
5. Based on a federal law on the transfer of the removed cultural value the Federal Body instructs the cultural institution charged with the day-to-day management of the removed cultural value, which is the subject of the claim, to conclude an agreement with the organisation (institution or individual) duly authorised by the government of the claimant state on the basis of which the reimbursement of the expenses referred to in section 4 of this Article and the actual transfer of the value (relic) is effected.

The original of the minutes on the transfer of the removed cultural value is registered and kept at the Federal Body and copies thereof by the cultural institution and the parties concerned.

Article 19. Claims for Family Relics

1. Claims for removed cultural values which are family relics according to Article 12 of this Federal Law may be filed with the Federal Body by duly authorised representatives of the families that used to be the owners of these values (relics).
2. If a claim is accepted, the Federal Body will pass a decision to transfer the family relic which is subject of the claim to the family which used to be the owner thereof, against payment of its value as well as reimbursement of the costs of its identification, expert examination, storage, restoration and transfer (transportation etc.).
3. The cultural institution charged with the day-to-day management of the removed cultural value being claimed on instruction of the Federal Body will conclude an agreement with the duly authorised representative of the family which used to be the owner of the good (relic) on the basis of which the payment of its value and the reimbursement of the expenses referred to in section 2 of this Article as well as the actual transfer of the good (relic) is effected.

The original of the minutes on the transfer of the cultural value (relic) is registered and kept at the Federal Body and copies thereof by the cultural institution and the parties concerned.

Article 20. Removed Cultural Values Located in Cultural Institutions of Russian Federation Entities or in Municipal Cultural Institutions

Until the period of acceptance of claims of foreign states for removed cultural values as defined in Articles 9 and 10 of this Federal Law expires, those cultural values that are located in cultural institutions of the Russian Federation entities or in municipal cultural institutions are considered federal property according to Article 6 of this Federal Law.

The redistribution of removed cultural values among federal cultural institutions of Russian Federation entities or municipal cultural institutions is not permissible before the expiry of the above mentioned period.

Article 21. Liability for Violation of this Federal Law

Individuals guilty of violation of this Federal Law are liable in administrative, civil and criminal respect according to Russian Federation legislation.

Chapter V. The Present Federal Law and International Treaties of the Russian Federation**Article 22. International Treaties Concluded by the Russian Federation in Pursuance of the Aims of this Federal Law**

The Russian Federation concludes treaties under international law which promote the achievement of the aims of this Federal Law, including treaties under international law:

- on the settlement of questions connected with the reimbursement of the expenses of the Russian Federation and its cultural institutions for the preservation and restoration of removed cultural values that were handed over to foreign states not by way of concluding a treaty or in accordance to international treaties that have no provisions for such reimbursement and which were concluded by the government of the USSR or the government of the Russian Federation with the governments of other states before the coming into force of this Federal Law;
- on the equivalent exchange of removed cultural values for Russian Federation cultural values located outside the Russian Federation;
- on assistance to cultural institutions of the Russian Federation in their cooperation with cultural institutions in other states to exchange removed cultural values for cultural values that were lawfully removed from the territory of the Russian Federation at different times as well as to purchase such values;
- on government guarantees by the receiving country ensuring the preservation and inviolability of removed cultural values while on display in art salons, international exhibitions or other expositions;
- on return to the Russian Federation of its cultural values plundered and illegally removed from the USSR by the occupation forces of former enemy states.

Article 23. Ratification of Treaties under International Law by the Russian Federation Concerning the Cultural Property of the Russian Federation

The treaties under international law of the Russian Federation concerning removed cultural values, like any other treaty under international law of the Russian Federation concerning its cultural property, have to be ratified.

Chapter VI. Concluding Clauses**Article 24. The Coming into Force of this Federal Law**

This Federal Law comes into force on the day of its official publication.

Article 25. Harmonization of Norm Setting Legal Acts with this Federal Law

It is proposed to the President of the Russian Federation, and the government of the Russian Federation is instructed to harmonize their norm setting legal acts with this Federal Law.

The following comments on this law by international experts are printed in alphabetical order according to the authors' names.

A Bill which Faces the Past

To consider such a complicated problem as the return of cultural values lacks perspective if the restitution responsibility of Germany and its satellites for their damage to cultural values of the former USSR people, including the Ukrainian people, is not taken into account. It also demands taking into account the political facts which happened in the world and which are stated in "The Paris Charter for a New Europe" of 1990.

The law "On Cultural Values Removed to the USSR as a Result of World War II and Located in the Territory of the Russian Federation" concentrating on the internal legislation does not observe the constitutional principle of prime superiority of international law and fully ignores "The Hague Convention" of 1907, previous international agreements between the USSR and Germany, and the ones between the Russian Federation and Germany of 1990 and 1992.

The preface of this law stating that it creates "favorable conditions for continuing development of international cooperation" is quite disputable in this sphere. The same is true for the conception of this law, because transferred trophy values are considered as compensatory restitution only for the damage of Russia, fully ignoring the damage to the cultural values of Ukraine and often to other former republics of the USSR as well.

As for the right of ownership of Ukraine to cultural values which had been robbed and taken out during the war by Germany and its allies and ended up among the values transferred to the Russian territory, the realization of it is limited by this law to specific conditions (Art. 7). Firstly, a cultural value may be passed to Ukraine, which already laid claim to it, under the condition of full compensation to Russia for

all the expenses for its identification, expertise, saving, restoration, as well as transport expenses etc (Art. 18, p. 4). Secondly, under the condition that Ukraine agrees to adopt on a mutual base the same attitude towards the cultural values of Russia.

Taking into account the actual absence of such Russian cultural values on the territory of Ukraine, the fact that even experts have no access to the values of Ukraine in the warehouses in Moscow, Saint Petersburg and Nizhny Novgorod, and the fact that the Russian members of parliament refused to ratify the Agreement of the CIS "About the Return of Cultural and Historical Values to the Countries of its Origin" of 1992, we consider the practical realization of this law in the national interest of Ukraine to be very problematic, as it has been, by the way, during the previous 50 years of restitution stagnation since the war.

Victor Akulenko, Doctor of Law, Leading Scientist of the V. Koretsky Institute of State and Law of the National Academy of Science of Ukraine, Kiev

The Russian Law on Removed Cultural Property: Some International Law Remarks

The Russian Federal Law "On Cultural Values Removed to the U.S.S.R. as a Result of World War II and Located in the Territory of the Russian Federation" has not yet entered into force at the time this article was written. Adopted by two thirds of the total number of deputies of the Federation Council and the State Duma following a presidential veto, it should normally have been signed by President Yeltsin within seven days of its overwhelming parliamentary approval, and published (Article 107, §3, of the Russian Constitution of December 12, 1993¹). It seems the President has the intention of challenging this law in the Constitutional Court. It remains, however, to be seen if the Russian Constitutional Court has the power to review the international legality of federal laws; at first sight, its power to review such legislative acts appears to be limited to their compliance with the Constitution of the Russian Federation (article 125, §2 of the Russian Constitution), which is quite logical.

Whatever the outcome of those domestic legal problems might be, a quick appraisal of the international law aspects of that Russian law might be of interest.

I. General Overview

The law declares federal property of the Russian Federation "all cultural values located in the territory of the Russian Federation that were brought [as a result of World War II] into the U.S.S.R. by way of exercise of its right to compensatory restitution" (Article 6), "pursuant to orders of the Soviet Army Military Command, the Soviet Military Administration in Germany or instructions of other competent bodies in the U.S.S.R." (Art. 4). "Cultural values" are understood in a very broad sense, i.e. "any property of a religious or secular nature which has historic, artistic, scientific or any other cultural importance" (Art. 4). Those goods could have been owned by the state or privately.

Five different types of properties may, however, be claimed under the law:

- a) the cultural values plundered by Germany or its allies that were the national property of the former Soviet republics (including the Baltic States);
- b) "the property of religious organisations or private charities and which were used exclusively for religious or charitable aims and did not serve the interests of militarism and/or Fascism";
- c) the cultural values previously owned by individuals who have been victims of Nazi/Fascist persecutions based on racial, religious, ethnic or political discriminations;
- d) all other removed cultural values located in Russia and originating from territories of states - other than the former Soviet republics - that were occupied during the war by Germany or her allies;
- e) family relics.

The cultural values plundered by Germany or its allies that were the national property of the former Soviet republics (including the Baltic States) are to be returned to their legitimate owners, if the expenses for their identification, examination, storage, restoration and transportation are paid for by the republic concerned and if that state agrees to return to Russia the removed Russian cultural values present on its territory (Art. 7). No time limit is set for those claims of restitution. Any kind of cultural object seems to be eligible for restitution when it is claimed by a former Soviet republic, except those that "by virtue of their content or nature may serve the purposes of resurrection of the spirit of militarism and (or) Nazism (Fascism)" (Art. 11). Those objects are in general excluded from any restitution.

Germany and its European war allies may claim the restitution of the removed cultural values of types b) and c) originating from their territories (Art. 10, §1).

The states that were occupied during the war by Germany or its allies - the rights of the former Soviet Republics being preserved elsewhere as mentioned earlier - may also claim the restitution of the removed cultural values of types b) and c) originating from their territories. Additionally, they may claim the restitution of all their other removed cultural values located in Russia (Art. 8, §§2 and 3). However, the admissibility of those last claims is conditioned to the existence of a formal restitution claim made to the former enemy concerned by the state from which territory the claimed object has been removed. This formal restitution claim should have been presented within six months of the entry into force of the 1947 Peace Treaties or, if it concerned Germany, before February 1, 1950 according to the procedure established by the Council of Ministers of the U.S.S.R. with respect to (East) Germany (Art. 8, §1).

The states, either former enemies or allies of Russia, must present all their restitution claims - of types b) and c) for the former enemies, and of types b), c) and d) for the states having been occupied by Germany or her allies - within 18 months of the coming into force of the law (Art. 9, §1 and 10, §1). Claims will only be admissible if made by countries ready to turn over to Russia its plundered cultural values located in their territories. Former enemy states must agree to return Russian values free of charge (Art. 10, §1, al. 2), whereas the states having been occupied by Germany or its war allies benefit from a true reciprocity in the sense that they must be

ready to return Russian property on "no less favorable legal terms" than the ones imposed by the Russian law (Art. 9, §1, al. 2). In other words, only those states may charge Russia - as Russia charges them - for the identification, examination, storage, restoration and transportation of the goods (Art. 7). States victim of Axis' aggression must also certify that they have "not received any lump compensation for these values from Germany or any other former enemy state" (Art. 9, §1, al. 1).

Another difference that appears between the claims of former enemies of Russia and the claims of the other states is that only the restitutions to those last states seem to be compulsory by law for the Russian authorities. The law indicates, at least in its translated English version, that the claimed removed cultural values *have* to be turned over to the states having been occupied by Germany or its allies (Art. 9, §1, al. 1), whereas the restitutions claimed by those former enemies *may* be carried out (Art. 10, §1, al. 1).

The same discretion seems to be applicable regarding the return of non-Fascist family relics (type e) that, "for humanitarian reasons", *may* be handed over to authorized representatives of the families concerned (Art. 12, §1). The nationality of the families concerned does not seem relevant. The return of such relics is subordinated to the payment of the costs of their identification, examination, storage, restoration and transportation (Art. 19, §2). Contrary to all other cases where the restitution claim is a state-to-state procedure (Art. 18, §1), the return of family relics may be asked by "duly authorized representatives of the families that used to be the owners of these values (relics)" (Art. 19, §1). However, that does not seem to prevent a state that has been occupied by Germany or its allies to claim such family relics under claims of type d).

Pending any return, all the removed cultural values are deemed to be Russian federal property (Art. 20, al. 1).

The law creates a Federal Body mainly charged with the preservation of removed cultural values and the preparation of the decisions regarding their return (Art. 16). It provides also for some procedural rules that have to be completed by a future Federal Law on the transfer of removed cultural values (Art. 18, §2).

II. Legal Appraisal

1. Regarding the goods that can be returned to the states that were occupied during the war by Germany or its allies, the Russian law raises no crucial legal questions. It is, after all, only normal - from an international law as well as from a domestic law point of view - that Russia returns the result of the Axis' plunders that was transferred to the Russian territory following Russian orders. Depriving Germany or its allies of wrongful possessions does only result in a rightful possession if done by the state that was first wrongly deprived.

The restitutions are, however, conditioned in various ways. Some remarks may be made in that regard.

Under the Russian law, the beneficiary of the restitution has to pay for the maintenance of the removed cultural values and their transport. This condition would only

be acceptable if it is established that the Soviet troops acted bona fide at the time, thinking they were only displacing enemy values. This can, of course, be doubted. A practical problem remains also in the evaluation of those costs. The fact that the same charges can be imposed on Russia when returning its cultural values removed in territories that have been occupied by Germany or its allies will probably lead the parties to settle their differences in that regard.

On the other hand, the law prevents any restitution if the damage caused has already been compensated by the aggressor states. This condition is rather surprising. Such a reparation payment usually only settles claims between the creditor and the debtor and is of no effect on the property title of the removed (thought lost) value, which continues to belong to the party that has been wrongly deprived of it. The payment of any kind of reparation does not seem therefore a good reason for Russia to retain the object concerned. If the object is returned, it would eventually be for the faulty state that paid compensation to claim for a (partial) reimbursement.

The 18 months claiming period seems a priori perfectly reasonable. The fact that a prior claim must have been presented to the vanquished states within the time limits set by the 1947 Peace Treaties seems also normal in law, since it concerns the restitution of cultural values first removed by those former enemies. Moreover, the states concerned are in principle all parties to the 1947 Peace Treaties. The time limit set for prior claims made to Germany (February 1, 1950) does not result from a multilateral peace treaty but has been unilaterally decided by the Council of Ministers of the U.S.S.R. for its own zone of occupation. One knows indeed that the external restitutions have been reserved matters for the Four Occupying Powers². For instance, the restitution claims of cultural objects supposedly present in the Western Zones had, following the "Überleitungsvertrag" (Treaty of Transition), to be presented at the latest before May 8, 1958.³ The date set by the Soviet authorities seems therefore capable of operating against the claiming states that were occupied by Germany or its war allies. Problems may, however, arise regarding values that were thought to be destroyed, and therefore not claimed in due course, whereas in fact they were removed by the Soviet Union and only recently 'discovered'.

2. Regarding the goods that are to be retained and appropriated by Russia - except those that "by virtue of their content or nature may serve the purposes of resurrection of the spirit of militarism and (or) Nazism (Fascism)" (Art. 11) -, the law is based on the idea of "compensatory restitution". This notion is defined in Article 4 as "the kind of international legal material obligation of an aggressor state, applied wherever the enforcement of the said state's liability in form of a regular restitution is impossible, to compensate for the material damage inflicted on another state by handing over to the damaged state objects of the same kind (or by their acquisition by the damaged state in his own favor) as those plundered and illegally removed by the aggressor state from the territory of the damaged state".

It is obvious that, even before the outlawry of war, certain cultural goods were specially protected during the time of armed conflicts.⁴ It is indeed difficult to find any military advantage in the destruction of such goods, or in their appropriation as war booty. However, neither the rules concerning the prohibition of the destruction of

cultural goods nor those relating to war booty are breached by the Russian law. The big question raised by the Russian law is indeed to know whether (and to what extent) international law allows for the unilateral appropriation, by a state that has been aggressed, of cultural values that belonged to the aggressor state(s) and were removed to the victim's territory by its duly authorized organs, as a form of reparation of the damage caused by the aggressor(s) to cultural values of the victim state.

The least one can say is that no straightforward legal appraisal of "compensatory restitutions" - better labeled as "reparations by replacement" - can be made. The question is specially difficult in relation to conflicts prior to the entry into force of the 1954 "The Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict", whose Article 1(3) states that cultural property "shall never be retained as war reparations". In order to have a clearer view of the issue, a distinction should be drawn between the situations where a peace treaty has been signed and the others where no such settlement has yet been reached.

3. Under the 1947 Peace Treaties, the vanquished states have renounced all claims arising out of the war⁵ and have accepted that their property or the one of their nationals present in the territories of the victors may be seized and liquidated as a way of reparations.⁶ In order to prevent any private law difficulties or claims, the defeated states have accepted in the treaties to compensate their nationals whose properties are so liquidated. Some exceptions are provided for, like regarding the goods belonging to religious and charitable institutions. No exception is, however, made for cultural goods in general. The Russian law seems to conform with those provisions. It should however be stressed that only the goods that were present in the victor's territory at the time of the entry into force of the treaties are covered by those contractual provisions.

4. The situation with regard to goods originating from Germany is more difficult to address.

The "2+4" Moscow treaty of September 12, 1990 on the Final Settlement with Respect to Germany⁷ has been considered by some, if not as a "peace treaty",⁸ at least as a definitive - though implicit - renouncement of all reparation claims against Germany.⁹ This question is nearly as much puzzling as the legal status of Germany after the war has been. In any case, such renouncement could not prevent by itself "reparations by replacement" as provided for by the Russian law, since it does not call for any performance by Germany of any kind of obligation.

By Article 16 (2) of the Good Neighborhood and Cooperation Treaty signed by Germany and the U.S.S.R. on November 9, 1990, both states agreed to return to their rightful owners or successors "lost or unlawfully transferred art treasures which are located in their territory".¹⁰ The Russian law on removed cultural values seems to run contrary to this commitment, which was reiterated on December 16, 1992 in Article 15 of the cultural agreement concluded between Germany and Russia.¹¹ However, the Russians consider that the terms of those articles only concern the properties that were really lost (and not only hidden) or stolen (and not removed by the authorities).¹² Since the Russian law does not validate in any way individual

plunder by Soviet soldiers acting without orders, it could be viewed as compatible with those international obligations. More fundamentally, it presupposes that the unilateral displacement and appropriation of the aggressor's cultural values for "reparation by replacement" purposes are not per se unlawful in international law. That view is, of course, highly debatable. In such a short essay, it is obviously difficult to pass a definitive judgment on this problem. It is, however, possible to make some remarks and to point at some solution.

It should first be remembered that the breach, by Nazi Germany and its allies, of the fundamental rule that forbids wars of aggression calls for proper compensation of the loss suffered by the victim states, even in the absence of any treaty provision to that effect. In case of destruction, the reparation takes usually the form of a (financial) compensation. But is compensation the only form of reparation when the "restitution in kind" of cultural values is impossible? Of course, every piece of art is unique and irreplaceable by another one. However, it seems that the states' practice accepts some forms of "reparations by replacement". For instance, the 1947 Peace Treaties provide explicitly for such possibility when it is impossible for the vanquished state "to make restitution of objects of artistic, historic or archaeological value, belonging to the cultural heritage of the United Nation from whose territory such objects were removed by force". The vanquished state shall in that case transfer to the victim state "objects of the same kind (...) and of approximately equivalent value" if such objects exist in its territory.¹³ The Versailles Treaty contained already in 1919 similar clauses.¹⁴ Of course, the creditor is obviously always free to accept any kind of reparations to settle its claim. The problem is, however, to know whether such a form of reparations can be imposed on the debtor, absent its consent.

After the outlawry of war, such a possibility could only result from a special "sanction" of the "crime of aggression", which would not so much lay in the substantial amount of reparations that should be "paid" by the aggressor, but in the (unilateral) manner they could be extracted by the creditor. This might be possible, although rather uncertain. It is in any case quite difficult to demonstrate in a few pages. At least some states' practice seems to suggest it and some recent works of the International Law Commission tend to back up this view.¹⁵ The reference made in the Russian law to article 107 of the UN Charter as a legal basis for the act may point to the same direction, however obsolete this article may have become.

However that may be, such unilateral extraction of reparations by the victim state could not be unlimited. Firstly, objects that are intrinsically part of the cultural heritage of a nation should be returned and should not serve as "reparations by replacement". Secondly, in the case of cultural values, a certain "rule of reason" should at least apply. In other words, the unilateral appropriation of cultural values of the aggressor would only be acceptable if they have a certain likeness with the ones of the victim state that they are supposed to replace. As irreplaceable as it may be, if a destroyed piece of art has to be replaced, it should be replaced by an object of the same kind and approximately the same value. This criterion has been employed in the Peace Treaties and the Russian law explicitly refers to it when it defines the "compensatory restitution" as the handing over to "the damaged state objects of the

same kind (...) as those that were plundered and illegally removed by the aggressor state". In practice, the terms of the Russian law fail however to respect this "rule of reason" and allow for the unilateral retention of some cultural values that have nothing in common with those that they are supposed to replace. This is probably difficult to accept. The retention of such unsimilar cultural values may be viewed as a "pledge" in order to receive financial compensation from the aggressors. One must however not analyse such a pretension, since the Russian law does not refer to that purpose.

In any case, assuming it exists in international law, such unilateral right to extract reparations, even so limited, would be without prejudice to claims to ownership based on domestic law titles.

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Notes:

¹ Available on internet at <http://www.bucknell.edu/departments/russian/const/constit.html>.

² For the Western Zones, see the 1949 London Occupation Status, art. 2.

³ Convention on the Settlement of Matters Arising out of the War and the Occupation, as amended by Schedule IV to the Protocol on the Termination of the Occupation Regime in the Federal Republic of Germany, signed in Paris on October 23, 1954, Chapter V, art. 2, §2, II BGBI. (1955) 433.

⁴ The protection of cultural goods in times of armed conflicts results from numerous international instruments: Art. 27 The Hague Rules of 1907; Art. 5 The Hague Convention IX of 1907; Art. 25 and 26 Hague Draft Rules on Air Warfare of 1923; 1954 The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (and Protocol); Art. 53, 85 of 1977 Geneva Protocol I; Art. 6 of 1981 UN Convention on Prohibitions or Restrictions on the Use of certain Conventional Weapons. One may add the 1945 UNESCO constitution, the 1972 Paris Convention on world heritage and, for the American States, the 1935 Washington Treaty ("Roerich Pact"). Besides those instruments that forbid the destruction of cultural goods, the general rules regarding the prohibition of pillage (Art. 28 and 47 of The Hague Rules 1907, Art. 33 of Geneva Convention IV 1949) and which limit the right to war booty (Art. 53 of The Hague Rules 1907) are of course relevant.

⁵ Art. 76 (Italy); Art. 30 (Romania); Art. 28 (Bulgaria); Art. 32 (Hungary); Art. 29 (Finland).

⁶ Art. 79 (Italy); Art. 27 (Romania); Art. 25 (Bulgaria); Art. 29 (Hungary). Concerning Finland, the rule is however one of restoration (Art. 27).

⁷ II BGBI. (1990) 1317 or 19 ILM (1990) 1186.

⁸ See A. Gattini, *Restitution by Russia of Works of Art Removed from German Territory at the End of the Second World War*, EJIL, 1996, p. 76.

⁹ I. Seidl-Hohenveldern, *Das Ende der Reparationen nach dem Zweiten Weltkrieg, Verfassungsstaatlichkeit*, Festschrift für K. Stern, München 1997, S. 92.

¹⁰ 30 ILM (1991) 504 or I.I BGBI. (1991) 798.

¹¹ II BGBI. (1993) 1256.

¹² A. Gattini, *op. cit.*, p. 77.

¹³ Art. 75, §9 (Italy); Art. 22, §3 (Bulgaria); Art. 24, §3 (Hungary).

¹⁴ Art. 247.

¹⁵ See article 52 of the Draft Articles on State Responsibility, adopted in 1996.

About the Basic Legal Principles of the Russian Law

The Federal Law passed by the Russian Parliament about the cultural objects brought to the USSR as a consequence of World War II and which are located in the territory of the Russian Federation is founded on the following basic principles:

- First: the principle of compensatory restitution according to international law
- Second: the statement of ownership of the Russian Federation of the transferred cultural objects
- Third: the idea that the legal relations concerning the return of cultural objects are relations between states according to their legal nature
- Fourth: the idea that only the parliament can decide about the return of the cultural objects which are to be found on Russian territory.

1 - Principle of Compensatory Restitution

All the cultural objects that were transferred to the territory of the Russian Federation, apart from some strongly limited exceptions, will be considered as property of the Russian Federation with reference (Art. 6) to the principle of compensatory restitution (restitution in kind). Under the term of compensatory restitution the Law understands in accordance with international law the responsibility of a state which has committed an act of aggression. Such responsibility is applied in cases where the implementation of such a responsibility by means of normal restitution (return of cultural objects transferred unlawfully from the country affected by the aggression) is impossible. The compensatory restitution takes place by means of the return of similar objects of the same kind to the damaged state (or their acquisition by the damaged state in its own favor) to compensate for the objects which were stolen and taken out from the territory of the damaged state by the aggressor country. That means that in agreement with the Soviet (Russian) international law doctrine, the Law understands by restitution the type of material responsibility of an aggressor country according to international law. The Law takes for granted that this principle was anchored in the Peace Treaties of 1947 and in other international law files.

2 - Ownership

According to Art. 6, all the transferred cultural objects which were removed to the USSR to guarantee its right to compensatory restitution and which are located in the territory of the Russian Federation are the property of the Russian Federation and in federal ownership. As far as the exceptions of these regulations are concerned (Art. 7, Art. 8), the majority of them concerns objects that were the property of religious organizations or of private charitable organizations, or the property of people, who were dispossessed because of their race, religion or nationality or of people, whose property was confiscated because of their active fight against National Socialism (Fascism) (Art. 8).

The Law cannot be understood in such a way, that all the cultural objects transferred to the USSR as a result of World War II and which are located in the Russian territory are now the national property of Russia. The right of ownership affects the cultural objects which were transferred to the USSR to guarantee its right to compensatory restitution. This category is defined by the Law as only those cultural objects which were transferred due to orders of the military command of the Soviet Army

and the Soviet Military Administration in Germany or by virtue of other competent bodies under the jurisdiction of the USSR. Such a conclusion is reached on the basis of the title of the Law and Art. 3. According to Art. 3 the Law applies to all cultural objects which were transferred to the USSR as a consequence of World War II and which are located in the Russian territory, independent from the actual possessor as well as independent from the circumstances of the origin of such actual possession. That means, that all the rules, for example about the return of cultural objects, about the conditions of an exchange of transferred cultural objects against cultural objects of the Russian Federation (Art. 15), and other rules, have to be applied. But Art. 6 about the right of ownership is valid only for the first above mentioned category of cultural objects.

It is known that among the cultural objects which are located in the territory of the Russian Federation are objects that in former times were in private possession (of private property). According to this law cultural objects that are family relics have also become federal property, but for these objects there was planned a possibility for the return to the family representative under special conditions (against payment of its value and reimbursement of the diverse costs).

3 - International Law Relations

The Law takes logically for granted that the demands for restitution can only be made by the governments of foreign countries to the government of the Russian federation. Foreigners, as private individuals, can neither submit claims to the government nor charges in courts of the Russian Federation. The Law provides just one exception to this rule. According to Art. 16, a federal body will be established (an authorized federal body for the preservation of cultural objects). This organ prepares the drafts of the decisions (according to Art. 18) and takes decisions about proposals concerning family relics (according to Art. 19). About such decisions private individuals can submit charges in court.

4 - Question of Authority

As regards authority, all kinds of handing over or return of cultural objects according to the Law can only take place on the basis of a law. That means, that the decision belongs exclusively to the authority of the parliament and not the president, the government or other organs of the executive power of the Russian Federation. Without the passing of an appropriate federal law, no removed cultural property can be the object of a handing over, a gift, exchange or any other form of disposition in favor of countries, organizations or individuals. Thus the law plans a very strict regulation concerning the acceptance of decisions about the return of cultural objects. They can only be returned on the basis of federal laws. The acceptance of such laws means that in practice the return of cultural objects will be in most of the cases impossible, apart from the return of cultural objects that were removed to Russia not following orders of the Soviet Army, but unlawfully by other people and whose presence in Russian territory is now unlawful.

The above given explanations refer to the objects that were earlier property of an enemy state (Germany, and countries allied with Germany in the Second World

War: Hungary, Romania, among others). Concerning the objects that were brought to Germany from Poland, former Yugoslavia, France, Belgium, The Netherlands, and other countries whose territory was totally or partially occupied by enemy states, there are special regulations in the Law that are not mentioned in the above comments.

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Hungarian Considerations Regarding the Russian Law on Cultural Property

The contracting parties to the "Convention IV on the Laws and Customs of War on Land" "to render service to the interests of humanity and to the continually advancing requirements of civilization" agreed to this Convention at the Second Hague Peace Conference in 1907, which had been initiated - similarly to the First Peace Conference - by the Russian Tsar. At the same time, the political atmosphere in which these Peace Conferences took place was unfavorable: the states were engaged in a struggle for survival, imperialism thrived, the great powers competed for colonies and the extension of their 'spheres of influence'.

As it is well-known, the Russian Duma and the House of Federation accepted the Federal Law on Cultural Property. To come into force the law should be signed also by the President of the Russian Federation, Boris Yeltsin. The regulations of the law are very strict. It declares all cultural values which were brought into the USSR by way of exercise of "its right to compensatory restitution", with certain exceptions, and are located within the Russian Federation, to be owned by this federation and constitute federal property.

It is also well-known that an enormous quantity of extremely valuable cultural values were removed from Hungary at the end of the World War II.

The Russian law calls for comment. First of all, to do so, I will refer to the Convention IV of The Hague Peace Conference of 1907, the rules of which are based on the principle of inviolability of enemy private property: private property cannot be confiscated (Art. 46) and pillage is formally prohibited (Art. 47). Certain types of private property are the object of specific rules, for example, cultural property. So Art. 56 of The Hague Rules states: "The property of municipalities, that of institutions dedicated to religion, charity, and education, arts and sciences, even when state property, shall be treated as private property. All seizure, destruction or willful damage done to institutions of this character, to historic monuments, to works of art and science, is forbidden and should be made subject to legal proceedings".

The Encyclopedia of Public International Law states that, generally speaking, booty of war consists of enemy governmental movable property only. As a rule, private enemy property is immune from capture on the battlefield. This rule is subject, however, to some exceptions. It is permissible to seize as booty on the battlefield weapons and ammunition, military equipment, military papers and the like, even if

they constitute private property.¹ The same opinion can be read from L. Oppenheim in his book of 1952 about the law of booty by saying: "It is now obsolete as regards private enemy property."² The removal by the Red Army of the Hungarian private property and of the Hungarian property protected by Art. 56 of The Hague Rules was thus a violation of the international law.

On the other hand, another international convention would be violated by the Russian law, namely, the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 1 of which states: "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 the international law". The declaration of the cultural values as state property by the Russian law would be certainly considered as nationalisation by the European Court of Human Rights.

After having commented the Russian law in a multilateral framework, I will now refer to the bilateral relations between Hungary and Russia in virtue of the Paris Peace Treaty, Art. 23. Hungary was bound to pay to the Soviet Union a compensation of \$ 200,000,000 in commodities, machine equipment, river craft, grain etc for the losses caused to the Soviet Union in the Soviet Union. In order to fulfill this obligation a special agreement was concluded on June 16, 1945. The obligations were fulfilled in time by Hungary. Accordingly, there can be no justifiable claim under the concept of war compensation against Hungary.

In the Paris Peace Treaty Hungary recognized also that the Soviet Union was entitled to all German assets in Hungary which were transferred to the Soviet Union by the Control Council for Germany as war compensation for the losses caused to the Soviet Union by the Axis Powers (Art. 28). Hungary took in time all necessary measures to facilitate such transfers. Hungary accepted also the principles of the London Declaration of the Allies of January 5, 1943, Art. 24 and accordingly returned the property removed from the territory of any of the United Nations. Notwithstanding, due to the Armistice Convention, Hungary received a favor according to which the property in Germany of Hungary and of Hungarian nationals would no longer be treated as enemy property and all restrictions based on such treatment would be removed. The Control Council for Germany laid down in its directive of April 17, 1946 that apart from the United Nations having signed the London Declaration and having been under German occupation, these other countries, too, had a claim to restitution, the territory of which had been entirely or partially under the military occupation of Germany or its allies, and which were explicitly designated by the Control Council. By virtue of other rules the restitution was made possible for Hungary if the property had been removed after October 15, 1944.

Consequently, Hungary is entitled to the restitution of the Hungarian property removed to the Soviet Union as a result of World War II.

So the Russian law would violate in several aspects the Paris Peace Treaty with Hungary as can be read from the explanation above. The Russian law would infringe therefore the above mentioned international conventions of the Russian Fed-

eration. In such cases the constitution states that the international conventions shall be applied (Art. 15).

This statement complies also with the wording which is quoted in the first lines, that is, the contracting parties concluded the Hague Convention IV to render service to the interests of humanity and to the continually advancing requirements of civilization. The requirements of present times are duly expressed by an Unidroit-Convention which states that the possessor of a cultural object which has been removed shall return it.

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Notes:

¹ J. Dinstein: V. I. Pp. 432-433.

² L. Oppenheim, H. Lauterpacht: International Law. London 1952.

The Russian Bill to Nationalize Trophy Art: An American Perspective

The art world's attention has recently focused on a high-stakes political debate in Russia over whether to nationalize the vast collection of trophy art taken by the Soviet Army during and after the Second World War. Under the banners of rightful restitution and moral indignation, the Russian Parliament has sought to implement legislation that would lay claim to all "cultural artifacts" currently found in Russia as "partial compensation for ... the plunder and destruction" of Russia's cultural values by Germany and her war allies. A defiant President Yeltsin has twice refused to sign the measure, fearing the likely international repercussions it would have on Russia's efforts to recover its own precious artworks from Germany, and making it virtually impossible for Russia to display the art beyond its own borders.

This article examines the legal underpinnings of Russia's claim to the trophy art, and the extraterritorial effect such nationalization legislation would have in the United States. The article concludes that if such trophy art were to enter the United States, Russia's claim of ownership would be vulnerable to challenge in a U.S. court on the grounds that the initial seizure was plunder in violation of international law, and that neither the continued secretive retention of the trophy art for decades nor the Russian government's belated attempt to retroactively validate its position through nationalization are sufficient to divest the former owners of their rights in the art.¹

The Russian Claim

It was not until 1990 that Russia first revealed to the world the vast collection of trophy art stored secretly in museums throughout the countries of the former Soviet Union.² For many Russians, this immense assemblage of exceptionally valuable art is seen as just compensation for the devastating damage inflicted on their country during the war. The former Soviet Union suffered the loss of over twenty million citizens during the war as well as the systematic looting and destruction of museum collections.³ However, when the German army began to weaken in November 1943, the Soviet sought retribution.⁴ A Soviet "Trophy Commission" scoured Germany and other Axis countries to find hidden treasures and have them shipped back to the

Soviet Union.⁵ At the time, Soviet officials envisioned that the art would fill a grandiose "Stalin Museum" in Moscow that would be the envy of the world.⁶

Presently, most Russians believe that their government should never return the trophy art. Notwithstanding such strong public sentiment, shortly after the treasures' existence was made known, the Soviet Union and Germany - which was the primary target of the Soviet Trophy Commission⁷ - signed agreements for the mutual exchange of the art. Among the agreements was the 1990 Good Neighborliness Treaty, which stated that "missing" or "unlawfully transferred" art treasures located in either country's territory "will be returned to their owners or their legal successors".⁸ Nevertheless, the countries have exchanged few works since then.⁹

The Russian Bill to Nationalize the Trophy Art

The bill proposed in Russia to nationalize the trophy art declares that all "cultural values" currently found in the territory of the Russian Federation are federal property "irrespective of the actual possessor and the circumstances which led to this actual possession".¹⁰ Retention of the artworks is intended to be a "partial compensation for the damage suffered by the cultural property of the Russian Federation...".¹¹

Although the Russian bill contains several exceptions, such as for "the property of religious organizations or private charities ... used exclusively for religious or charitable aims" and for cultural artifacts that belonged to individuals who were deprived of their property "because of their active fight against Nazism (Fascism)",¹² the proposed processes by which the Russian government would entertain claims for these exempted artifacts is complicated and success seems difficult. Only governments may make formal claims to recover such exempted artifacts, and a separate claim must be made for each of the estimated hundreds of thousands of artworks now under Russian control.¹³ Even if the governments asserting such a claim were to be successful, it would still be responsible for all costs, including the costs of storage, restoration, conveyance and expert examination related to each object recovered.¹⁴

United States Courts Would Most Likely Not Recognize Russian Claims to the Trophy Art

President Yeltsin is rightly concerned that if the bill became law, Russia would find it difficult to exhibit its trophy art outside the Russian Federation. Indeed, if the nationalization legislation is ultimately enacted and such art were to enter the United States, the original owners (or their successors-in-interest) would have compelling legal grounds for seeking return of the art through the U.S. courts.¹⁵ Based on well-settled property law principles in the United States, the German claimants would appear to have clearly superior rights in the art,¹⁶ subject only whether or not U.S. courts would recognize the Russian nationalization legislation as a controlling "act of state".

Under the act of state doctrine, courts in the United States normally accord full recognition to the official acts of recognized governments, and will not entertain lawsuits, which seek to directly or collaterally challenge those official acts.¹⁷ Nonetheless, the doctrine does have its exceptions and limitations. As customarily applied in cases involving the appropriation of property by a foreign government, the doctrine mandates only that:

the Judiciary Branch will not examine the validity of a taking of property within its own territory by a foreign sovereign government ... recognized by this country at the time of suit, in the absence of a treaty or other unambiguous agreement regarding customary international law.¹⁸

Thus, the act of state doctrine does not appear to be operative in situations where either (1) the seizure of property occurred outside the foreign sovereign's borders, or (2) the status of the property is subject to a treaty or "other unambiguous agreements regarding controlling legal principles" or a principle of customary law not in dispute.

Applying these principles to Russia's nationalization legislation, it is apparent that the act of state doctrine would not prohibit U.S. courts from favorably considering recovery claims brought by the original German owners of the trophy art. First, the Soviet armies seized the art beyond the borders of the Soviet Union, in the occupied territory of Germany, Hungary and other former Axis countries. Second, the Soviets' seizure and continued retention of the art violate several international treaties.¹⁹ In particular, Russia and, later, the Soviet Union were parties to several treaties which condemned pillage or plunder as compensation for losses suffered in war. For example, each of the three Hague Conventions protects cultural property.²⁰ Specifically, Article 53 of the 1899 Hague Convention on the Laws and Customs of War provides that an army of occupation may only confiscate property which may be used for military operations.²¹ Additionally, Article 56 requires that public property such as artworks and religious property are to be treated as private property and not intentionally destroyed or damaged.²²

The Hague Convention of 1907 contains similar provisions and specifically states that

[a]n army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.²³

Likewise, the 1954 Hague Convention seeks to prevent the use of cultural property as war reparations.²⁴ The preamble states that "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind...".²⁵ Among the Convention's provisions, Article 4 requires the signatory conventions to have respect for the cultural property of other sovereign nations.²⁶ Upon the invasion of a country, the invader must take the same measures to protect the cultural property of the invaded nation as the nation itself should have taken.²⁷

The continued retention of the trophy art also appears to violate the principles of the 1970 UNESCO Convention.²⁸ The Soviet Union was a signatory to the UNESCO Convention which prohibits the importation of cultural property illegally exported or stolen from a foreign nation.

Cultural property is defined as "property which is of importance to the fields of archeology, prehistory, history, literature, art, or science".²⁹ Germany has specifically declared that the art seized by the Soviet army was part of its cultural heritage, and the same can undoubtedly be said of trophy art seized from other former Axis countries. Thus, the restitution provision of the Convention requires Russia, as the importing country and the successor to the treaty obligations of the Soviet Union, to take steps to return such cultural property to the appropriate country of origin.³⁰

The notion that the act of state doctrine would not be an impediment to adjudicating claims to trophy art in the United States is further supported by statutory provisions recently enacted by the U.S. Congress. Under a statute known as the "Hickenlooper" or "Sabbatino" Amendment, Congress expressly provided that the act of state doctrine does not apply in cases involving a claim by any party, including a foreign state, to property: (1) that is physically before the court, (2) that was confiscated by a foreign state after January 1, 1959, and (3) that was taken contrary to international law, unless otherwise determined by the President of the United States (22 U.S.C.A. §2370(e)(2)(1990)). Arguably, the Russian parliament's current attempt to retroactively legitimize the country's illegal seizure of trophy art during World War II could be considered a "confiscation after January 1, 1959" under the statute, thus, providing the court with an additional basis for finding the act of state doctrine inapplicable and entertaining a suit for the recovery of the art.

Conclusion

If a court in the United States were to examine the issue of ownership of the trophy art, it could be expected to conclude that the art's initial seizure and subsequent nationalization by Russia were not protected by the act of state doctrine. Rather, the seizure of the art would likely be considered illegal plunder and, Russia's retention and nationalization of the trophy art would be deemed a violation of international law as set forth in The Hague Conventions and the UNESCO Convention.

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Notes:

¹ The author wishes to thank Scott Richie and Sheila Rock for their assistance with this article.

² Yury Buida, *Letting Trophy Art Go*, *Moscow Times*, April 10, 1997.

³ Sylvia L. Depta, *Twice Saved or Twice Stolen?: The Trophy Art Tug-of War Between Russia and Germany*, 10 *Temp. Int'l & Comp. L.J.* 371 (Fall 1996).

⁴ *Id.* at 375.

⁵ The Soviets' so-called Trophy Commission compiled remarkably detailed lists of objects (and their specific locations) in the museum collections of Germany, Austria, Italy, Hungary, Romania, and Finland, which were to be targeted by Soviet troops. Konstantin Akinsha & Grigorii Kozlov, *The Discovery of the Secret Repositories, The Spoils of War* (Abrams 1997), at 163. The pillage of art undertaken by the Trophy Commission was only stopped by the institution of special units of American and English soldiers known as the "monuments men", who accompanied the Allied troops through Europe, protecting monuments, fine arts, archives and other cultural values. Depta, *supra* note 3, at 376.

⁶ Akinsha, *supra* note 5, at 164.

⁷ The German government claims that approximately two hundred fifty thousand works of art that were taken from Germany are still in the possession of Russia, along with two million rare books and tons of archives. Dimitry Zaks, *Parliament Defies Yeltsin on War Art*, *The Moscow Times*, May 14, 1997.

⁸ *Treaty on Good Neighborliness, Partnership and Cooperation*, Nov. 9, 1990, F.R.G.-U.S.S.R., 30 *I.L.M.* 504. See also S. Shawn Stephens, *The Hermitage and Pushkin Exhibits: An Analysis of the Ownership Rights to Cultural Properties Removed from Occupied Germany*, 18 *Hous. J. Int'l L.* 59,80 (Fall 1995). The treaty was reaffirmed by the parties in the *German-Russian Cultural Agreement of 1992*. *Id.*

⁹ The author is not aware of a single object claimed by a private entity or family that has been returned.

¹⁰ *Federal Law on Cultural Values Removed to the U.S.S.R. as a Result of World War II and Located in the Territory of the Russian Federation*, Chapter I, Article 3 and Chapter II, Article 6.

¹¹ *Id.* at Preamble.

¹² *Id.* at Chapter II, Article 8 (2) and (3).

¹³ *Id.* at Article 18.

¹⁴ *Id.*

¹⁵ As a practical matter, neither Russia nor a state-sponsored institution would even contemplate exhibiting such art in the United States unless formal assurances of legal protection could be obtained from the U.S. government. Such protection would be necessary for Russia because the immunity from suit that foreign states are customarily accorded is no longer available under the *Foreign Sovereign Immunities Act* for cases "in which rights in property taken in violation of international law are in issue and that property ... is present in the United States." 28 *U.S.C.* § 1605(a)(3). Nevertheless, it is not entirely far-fetched that artworks seized from institutions or individuals by the former Soviet Union could have since fallen into private hands and, if they were to appear on the U.S. art market, claims for their return could be made by the original owners. In such instances, the possibility could arise that either: (1) the current possessors would claim that official seizure by the Soviet government, or later acts by that government or successor governments, divested the original owners of their rights; or (2) Russia could intervene in the litigation, and seek to have the property returned to it, rather than the other claimants. Indeed, virtually identical arguments - from the context of a different war and different countries - were raised in a U.S. court in *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 917 *F.2d* 278 (7th Cir. 1990). The original owner of the disputed artifacts, represented by the author, prevailed in that case.

¹⁶ Under fundamental principles of international law, as recognized by U.S. courts, only "booty" (which is defined as "property necessary and indispensable for the conduct of war, such as food, means of transportation, and means of communication") may lawfully be taken by an occupying

force during times of war. *Menzel v. List*, 267 N.Y.S.2d 804, 810 (Sup. Ct. 1966). Theft of artwork is "pillage" or "plunder", which "is the taking of private property not necessary for the immediate prosecution of war effort, and is unlawful". *Id.* at 811. Good title to such illegally obtained property cannot, under U.S. law, be transferred to another - even a good faith purchaser for value - because "[o]nly the true owner's own conduct, or the operation of law ... can act to divest that true owner of title in his property..." *Federal Republic of Germany v. Elicofon*, 536 F. Supp. 813, 833 (E.D.N.Y. 1978). Thus, both the original taking of the trophy art by the Soviet Union and any subsequent transfer of the stolen items would be void under U.S. law.

¹⁷ The act of state doctrine reflects the general concern of U.S. courts about the competency of the judiciary to decide questions in the area of foreign relations. Under this doctrine, a U.S. court may refuse to sit in judgment on the legitimacy of a foreign sovereign's public acts, even if those acts are offensive to the public policy of the United States. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 84 S. Ct. 923, 11 L. Ed. 2d 804 (1964).

¹⁸ *Sabbatino*, 376 U.S. at 428, 84 S. Ct. at 940, 11 L. Ed. 2d at 823-24.

¹⁹ To the extent that the United States is a signatory to such international treaties, they are deemed by U.S. courts to be a binding and enforceable part of U.S. domestic law. In addition, a court in the United States may examine and apply principles of international law which the court considers to be reflective of the public policies of this country. 9 James Wm. Moore, *Moore's Federal Practice* § 44.1.04[2] (3d ed. 1997).

²⁰ John H. Merryman, *Two Ways of Thinking About Cultural Property*, 80 *Am. J. Int'l L.* 831, 835 (Oct. 1986). The Russian Federation informed the U.S. government in 1992 that it would continue to honor the obligations undertaken by the Soviet Union through international agreements. Stephens, *supra* note 2, at 84.

²¹ Stephens, *supra* note 2, at 77.

²² *Id.*

²³ *Convention Respecting the Laws and Customs of War on Land*, Oct. 18, 1907, art. 56, 36 Stat. 2277. Both the United States and Russia are signatories of this Convention.

²⁴ *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, May 14, 1954, 249 U.N.T.S. 240. See also, Stephens, *supra* note 2, at 78.

²⁵ Merryman, *supra* note 18, at 836.

²⁶ Hans Kennon, *Take a Picture, It May Last Longer if Guggenheim Becomes the Law of the Land: The Repatriation of Fine Art*, 8 *St. Thomas L. Rev.* 373, 385 (Winter 1996).

²⁷ *Id.* Although the United States was not a signatory to the 1954 Convention, at least one court has suggested that the Convention articulates U.S. public policy concerning the protection of cultural property. See *Goldberg*, 917 F. 2d at 295-96.

²⁸ *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, Nov. 14, 1970, 823 U.N.T.S. 231, 10 *I.L.M.* 289.

²⁹ Stephens, *supra* note 2, at 85.

³⁰ Kennon, *supra* note 24, at 387. The UNESCO Convention was adopted by the United States in 1983 and thus applies only to thefts occurring after that date. *Church of Cyprus*, 917 F. 2d at 297. However, the United States Court of Appeals, Seventh Circuit, has also indicated that the UNESCO Convention embodies U.S. policy of protecting cultural property. *Id.*

Russian Law: The Polish Perspective

After years of silence and refusal of any discussion of the fate of works of art removed by the Russian military administration from territories of various European countries it seems now that the Russian parliament looks for the way out of this uncomfortable situation. The proposed remedy is the "Federal Law on Cultural Values Removed to the U.S.S.R. as a Result of World War II and Located in the Territory of the Russian Federation" adopted recently by the Duma and the Federation Council after a long and complicated parliamentary procedure. This Law is not yet a

binding legal instrument but due to its potential consequences on a major international scale it should be a subject of wider discussion.

My note is, however, not intended to comment on such aspects of this Law, for example, on its coherence with the law of nations or the political consequences of its final procedural acceptance. In fact it was President Yeltsin who commented clearly enough by announcing he would send it to the Constitutional Court. I will rather focus on the position of Poland in the whole story, in particular by answering the question to what extent heritage lost by Poland in the course of the last war and occupation can be affected by this Law.

First of all we should make clear that Poland and the Russian Federation are parties to the Treaty on Friendly and Good Cooperation signed in 1992, which in its article 13 provides also a good legal basis for the final liquidation of the effects of war in the field of culture. It has, of course, only a complementary character to the principles of the international law of war in question, and makes more precise the direction which both states decided to follow towards solving the problem. According to the treaty's provisions, as well as to other agreements signed later, Poland and Russia nominated special governmental commissioners who in 1993 adopted clear rules of their joint work on the archival research, exchange and release of information, restitution, etc. It is also worth mentioning that a Russian Commissioner works under the auspices of the State Commission for the Restitution of Works of Art and is a member of this body. Taking into account all these regulations and in particular their legal character we can reach the easy and unquestionable conclusion that the discussed new Russian Law is not relevant to Polish claims. This can not, however, be by any means so obvious if we have the objectives of that Law carefully examined.

According to its Article 3, the Federal Law covers "all cultural values removed to the USSR during World War II and located in the territory of the Russian Federation, irrespective of the actual possessor and the circumstances which led to this actual possession". Such objects are declared in Article 6 to be property of the Russian Federation unless:

- "affected states" prove they claimed them within the proper time limit (for example, before February 1, 1950 in case of claims for objects looted by German Nazis) (Article 8.1)
- cultural objects in question were the property of religious or private charitable organizations, and were used only for religious or charitable purposes (Article 8.2)
- cultural objects in question were the property of persons who lost them as a result of their fight against Nazism or against occupants, and/or because of their race, religion or nationality (Article 8.3).

All "affected states" must provide fully documented claims within the time limit of 18 months (Article 9) from the moment the law comes into force. These claims will be reviewed and finally proceeded by a special Federal Agency to be established pursuant to Article 16.

One of the final provisions declares that "the Russian Federation concludes treaties under international law which promote the achievement of the aims of this Federal Law", including agreements "on the settlement of questions connected with the reimbursement of the expenses of the Russian Federation and its cultural institutions for the preservation and restoration of removed cultural values that were handed over to foreign states not by way of concluding a treaty or in accordance to international treaties that have no provisions for such reimbursement and which were concluded by the government of the USSR or the government of the Russian Federation with the governments of other states before the coming into force of this Federal Law".

Critical analysis of all above quoted provisions, as well as other ones, must lead to the conclusion that the discussed Law is entirely unclear and dubious. Does it really mean that the Russian Federation will try to renegotiate terms of restitution accomplished in the 1950s? How could countries like Poland, which were almost completely destroyed and certainly totally disorganised, claim all its works of art and give full evidence of losses just during the early years after the war was finished? Will the new federal body take over duties of the already working State Commission for the Restitution of Works of Art and the whole work start again from the beginning?

These and many other questions can not be answered by even a very careful reading of the discussed Federal Law. What is known for sure is that such an act will not help to build new and better relations between "affected states" as it was many times declared to be the policy of the Russian Federation. With the passage of time people can certainly forgive even the wanton destruction of towns and villages but will never forget lost heritage which constitutes a part of their national identity.

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Comment on the Russian Federal Law of 1997 on Cultural Values

Article 2 of the statute mentions international instruments on which it is based and which allegedly justify "compensatory restitution" as enacted in Article 6. None of these instruments legalize pillage, or any confiscation of foreign cultural property. Already during World War II such behavior was forbidden under international customary law. That the whole statute is also carelessly drafted is evidenced by article 2 itself. It calls the London Declaration of the Allies of January 5th, 1943, a "United Nations Declaration of January 5, 1943", making it a U.N. instrument while the United Nations were not founded until 1945. Not mentioned are the treaties with Germany of November 9, 1990 and of July 8, 1993 (there is no treaty of September 12th, 1990 as the statute reads) which provide the restitution of cultural property.

Apparently Russia 'discovered' new sources of public international law. The Soviet Union still knew its obligations and returned the treasures of the Dresden Gallery. Democratic Russia is going to confiscate again what was already taken fifty years

ago, and has already exhibited some of these treasures, for a long time clandestinely withheld from the public, although - according to the Russian attitude - there was no reason for behaving like a thief.

Russia suffered severely from German occupation and plundering. How can this be compensated or how can co-operation (cp. Articles 14 et seq. of the statute) be guaranteed if Russia takes unilateral measures? There is a Wiesbaden Declaration of November 7, 1945 which states: "No historical grievance will rankle so long, or be the cause of so much justified bitterness, as the removal, for any reason, of a part of the heritage of any nation, even if that heritage may be interpreted as 'a prize of war'". The same is true for keeping such a prize of war.

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Special Reports

Legal Issues

Introduction to International Law of Restitution of Works of Art Looted during Armed Conflicts. Part III

This is the third part of a series of articles on the history of the international law on restitution by the same author.

After a time of theoretical discussions on looting and restitution during the Enlightenment, described in Part II, the question of restitution was practically raised on a major scale by extremely turbulent events at the end of the 18th and beginning of the 19th century. They are so well known that we do not need to give more details. It is enough to remember that because of Napoleon's plans for making Paris a greater center of art, comprising the most famous works of art from all over Europe, the time of his reign was simply a period of continuous looting. According to Gérard and Isabey it was only the Republic of France, "thanks to her power and the superiority of her artists and educational system", where these works of art could be properly and definitely protected. The French certainly realised the legal aspect of their activity. Therefore, even simple pillaging often assumed a hidden form maintaining the appearances of legality by giving it the form of benevolence or compensation, usually coerced armistice and peace treaties. We can give numerous examples of such agreements, for example, 3 armistices signed in 1796 alone (with the Prince of Parma, with the Prince of Modena and with the Holy See), as well as a peace treaty signed with Venice one year later. All of them include clauses on gifts of particular works of art or collections specified only in the quantity of objects to be given to the specially sent commissaries.

A typical example of such a clause reads as follows: "The Pope will give over to the French Republic 100 paintings, busts or statues according to the choice made by the

commissaries who will come to Rome, among these objects one should find in particular the bronze bust of Junius Brutus and the marble bust of Mark Brutus which are now located in Capitol, additionally 500 manuscripts chosen by these commissaries" (Art. VIII of the Armistice with Holy See, signed in Bologna on July 23, 1796).

Other examples of the discussed practice are the Albani-Braschi and Pope Pius VI. collections, which were handed over as 'compensation' for the murder of General Duphot in Rome.

Napoleon's defeat brought the expected time of clearance of the accounts. After a prolonged period of bargains and intensive endeavors of diplomats, the allied forces could finally remove their treasures from the Louvre. It was not an easy task although the very principle of restitution was not questioned. On the one hand this was complicated by the political circumstances of the time. The allied forces, who were re-establishing the ancient regime in France, supported the Bourbons and did not want to weaken their position by a too open restitutorial operation. On the other hand the French simply did their best to stop the return of objects. One of the witnesses present in Paris noted that works of art to be returned to Prussia were taken from the Louvre by a unit of 200 soldiers under the command of Eberhard von Grote, and it almost ended in a clash with an intervening detachment of the French National Guard.

All these events had a decisive impact on the development of international law. Nahlik described their importance in his book giving this part in question the following title: "The great chapter in restitution of works of art - Paris 1815". The essence of the whole story is the fact that due to the complete and consistent restitution that concluded the Napoleonic Lootings, the full protection of works of art and the ban on their capture during war was definitely established as a rule of international customary law. That was finally confirmed by the allied forces' own behavior: they took from France nothing more than they lost. We may also add in conclusion that this rule was generally observed during the following century. Rigby vividly summarized that in words: "Probably no one would have been more amazed than Napoleon himself to learn how his ravenous fingers were closing the looting gate in Europe, closing it so well, in fact, that it could be sealed by the peace-makers of World War I, and kept sealed until Adolf Hitler blew off the hinges".

The discussed rule was then confirmed with satisfaction by the contemporary doctrine of the law of nations. In 1819, Klüber wrote the following on the issue of war prizes: "Nowadays, works of literature and fine arts, as well as objects used in religious ceremonies are respected and usually spared and left undisturbed". Wheaton was even more firm when he stated: "By the ancient law of nations, even what was called *res sacrae* was not exempted from capture and confiscation. Cicero conveyed this idea in his expressive metaphorical language, in the Fourth Oration against Verres, where he says that: "Victory made all the sacred things of the Syracusans profane". But by the modern usage of nations, which has acquired the force of law, temples of religion, public edifices devoted to civil purposes only, monuments of art, and repositories of science, are exempted from the general operations of war".

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On the Restitution to Italy of Cultural Property Removed to Germany during the Second World War under the Terms of the 1947 Treaty of Peace

Summary: 1. Foreword. - 2. The provisions of the Treaty of Peace between Italy and the Allied and Associated Powers, signed at Paris on February 10, 1947, relating to the return of property taken during the Second World War: a) Article 75. - 3. Continued; b) Article 77, para. 2. - 4. Possibility of integrating Article 77, para. 2, by the provisions of Article 75 of the Treaty of Peace by way of interpretation.

1. Now that several years have elapsed since the break-up of the Soviet Union and the end of the Cold War we may realistically address the issue of the return of cultural property removed to Germany from Italian territory during the Second World War by the Nazi forces of occupation, which subsequently fell into the hands of the Allied and Associated Powers - and in particular of the Eastern European countries - parties to the Treaty of Peace concluded with Italy on February 10, 1947.

The relevant provisions of the Treaty of Peace for our purposes are Articles 75 and 77, para. 2. Article 75 refers to the hypothesis of restitution of property by Italy - expressly mentioning cultural property - removed from the states then belonging to the United Nations; Article 77, on the other hand, deals with the (reverse) hypothesis of property removed from Italy to be returned by the Allied and Associated Powers parties to the Treaty. As we shall see, Article 75 of the Treaty must be borne in mind, with certain provisos, when interpreting Article 77, para. 2, in so far as it contains a far more detailed set of provisions governing the restitution of property than Article 77.

2. The first point to be examined is therefore Article 75 of the Treaty of Peace. Article 75 imposes on Italy the obligation to restore, in the shortest possible time and in good order, all the property (including gold) that had been removed by any of the Axis Powers, by force or duress, from the territory of any of the states belonging to the United Nations. This obligation covers all identifiable items or property present in Italy and remains effective irrespective of any subsequent transactions after the date of their removal. The obligation to return the property includes a series of complementary (or implicit) obligations, namely: a) the obligation to bear all the costs relating to labor, materials and transport in Italy in order to return them, b) the obligation to co-operate, at Italy's expense, and provide all necessary facilities to search for the property to be returned, and c) the obligation to take all the measures to effect the return of property then held in any third country by persons subject to Italian jurisdiction.

Article 75 places the burden of identifying the property to be returned and of proving ownership on the requesting state, and the burden of proving that the property was not removed by force or duress rested with the Italian government. A procedural provision in this norm requires claims to be presented within six months from

the entry into force of the Treaty. Lastly, Article 75 provides that if, in particular cases, it is impossible to return "objects of artistic, historical or archaeological value", Italy would transfer objects of the same kind, and approximately equivalent value, as the objects removed, as far as the objects are obtainable in Italy.

In conclusion, there is no doubt that the property to be returned under Article 75 also included cultural property. Furthermore, the whole provision is framed in such broad terms, leaving absolutely no ambiguity by the wording "all property" in para. 2, that one is compelled to conclude that the obligation of restitution must have included both public and private property (cultural or otherwise) belonging to both natural and juridical persons. There would also appear to be no doubt whatsoever that the restitution of the property by Italy was also subject to the presentation of an explicit claim by the state then belonging to the United Nations from whose territory the property had been taken, and therefore that no such obligation existed if no such claim had been made, or if any such claim was presented later than six months following the entry into force of the Peace Treaty.

3. Let us now turn to Article 77, para. 2 of the Treaty which, as already indicated above, refers to the reverse situation to the one contemplated in Article 75, namely, the return to Italy of property removed to Germany during the Second World War.

Even by a cursory glance it can be noticed that Article 77, para. 2 is far less detailed than Article 75. For in contrast to Article 75, a whole series of important references are missing: a) the present location of the property, b) the irrelevance of subsequent transactions after the removal of the property, c) the complementary obligations to (or implicit in) restitution, and in particular the obligation to return the property in good order and in the shortest time, d) the need to submit a claim for the return of the property by a specific deadline, e) states on which the onus to identify the property and prove both ownership and the fact that the property was removed without the force or duress is placed, f) "objects of artistic, historical or archaeological value" and hence specifically cultural property, and particularly the possibility of their restitution "by equivalence".

Article 77, para. 2, however, contains - apart from a number of elements in common with Article 75 -, several additional elements not found in Article 75. It provides that the objects removed and to be returned must be the property of Italy or Italian nationals, that the property must have been removed to Germany and that the removal must have taken place after September 3, 1943.

Bearing this in mind, the first point is to interpret Article 77, para. 2 of the Treaty on the basis of what it expressly provides. Firstly, it would appear to be beyond dispute that this norm imposes a real obligation of restitution of property on all the parties to the Peace Treaty other than Italy. For apart from the absolutely unambiguous wording, the whole provision would otherwise be totally meaningless.

Secondly, it is clear from Article 77, para. 2 referring to property belonging both to Italy and to Italian nationals, that the property for which there is an obligation of restitution includes both publicly and privately owned property.

Thirdly, there is no reason on assuming that Article 77, para. 2 does not either refer to cultural property. For by not specifying (nor excluding to be applicable to) particular classes of property, this norm suggests that it refers to all types of property, and therefore includes property belonging (not only to the state or private individuals but also) to both natural and juridical persons.

Lastly, we feel that there can be no doubt that Article 77, para. 2 applies to cultural property removed to Germany and which today is located in states parties to the Treaty of Peace other than Italy or under the actual or potential jurisdiction of one of these states. Specifically referring to "property ... removed ... from Italian territory to Germany" without any reference to their present whereabouts, the provision clearly applies regardless of the place to which they were subsequently transferred.

4. At this point it would seem opportune to ask whether the more specific provisions of Article 75 might be used to fill the corresponding "lacunae" in Article 77, para. 2 of the Treaty. More precisely, one wonders whether, and to what extent, Article 75 might be used in respect of aspects not regulated in Article 77, para. 2 to integrate this latter norm by way of interpretation.

It must be recognized immediately that in order to solve this problem it is necessary, from the methodological point of view, to consider the different purposes that the provisions of a peace treaty respectively concerning the victors and the vanquished have or one should presume they have. On this basis, there are no grounds for automatically interpreting the provisions relating to the one group of norms for the purpose of interpreting those relating to the other group. On our opinion, however, at least as far as the specific problem dealt with here is concerned, such an interpretation can be admitted with regard to the provisions of a peace treaty whose purpose ranges beyond the distinction between victorious and vanquished states. Put in this way, the problem is which provisions of Article 75 are strictly connected to (and justified by) the status of the victor or the vanquished, and which, on the contrary, are independent of that status.

In our opinion, these latter provisions are, first and foremost, those which lay down obligations deemed to be implicit in the obligation of restitution, namely: the obligation on the state against which the claim is made to do everything possible to ensure that the property located in third countries is returned by anyone subject to its jurisdiction; the irrelevance - as far as the existence of the obligation of restitution is concerned - of any transactions subsequent to the removal of property; and the obligation of restitution by 'equivalence' when the restitution 'in kind' is impossible and to the extent to which (it can be shown that) the requested state is able to procure, within its own territory or anyway within its own jurisdiction, 'equivalent' property to that originally removed. The provisions laying down obligations, such as those contained in Article 75 relating to identifying the property and providing proof of ownership (by the claimant state), can also be extended to apply to Article 77, para. 2 in that they are strictly 'technical' in character. For it is clear that these obligations - by their very nature, and hence regardless of which of the two states is victor or vanquished - cannot lie with any states but those indicated in Article 75, since the

state against which the claim is made could hardly be expected to provide proof of ownership of the property in the claimant state.

With specific regard to the 'burden' of identifying the property, it should also be noted that - as the claimant state often does not know the whereabouts of the property taken from it and therefore which other state to present the claim to, and may not even know whether other property whose restitution could be requested exist elsewhere - it is clearly only a formal obligation on the claimant state. In fact, one must presume that the claimant state knows and can identify which property has been taken from it better than the state against which the claim is made. Concretely, identification can only be made through reciprocal co-operation between the two states, regardless of their being victor or vanquished. The onus placed on the claimant state to identify the property must also include the obligation to request the restitution of the property which is explicitly indicated in Article 75 and implicitly inferable from Article 77, para. 2 in so far as the contents of the latter can be integrated by reference to the contents of the former. However, the deadline provided by Article 75 for submitting the claim for restitution (or any other deadline) cannot be extended to apply to Article 77, para. 2 because the deadline provision cannot be implicitly inferred from (being totally independent of) the obligation of restitution or the obligation to identify the property. Consequently, the obligation of restitution referred to in Article 77, para. 2 only subsists if and when Italy presents a claim to a state party to the Treaty of Peace on whose territory, or anyway under whose jurisdiction, the property is located, on the basis of an (at least initial and provisional) identification of that property.

Lastly, the provision contained in Article 75 relating to the onus (placed on the state against which the claim is presented) of showing that the property was removed without force or duress can also be extended to the hypothesis provided by Article 77, para. 2 because both these norms are intended to facilitate restitution, and therefore both must be interpreted, in dubious cases, in a manner which entails - not excludes - the obligation of restitution; and this precisely occurs when the (particularly onerous after a long time has elapsed) burden of proving that the property had been removed without force or duress lies with the state required to return it in the event (which is more than likely) that the proof cannot be furnished.

Conversely, the status of victor or vanquished is of relevance in the provisions of Article 75 where the obligation is imposed on the state against which the claim is made to bear all the restitution costs, an obligation which entails all the costs relating to labor, materials and transport incurred in the process of restitution and providing, at its own expense, all the necessary facilities for the search for and the restitution of property eligible for restitution. For these are obligations imposed by the victor state on the vanquished state to provide services which would not be imposed on it under normal circumstances. Requiring a state (the victor under the terms of the Peace Treaty) not only to return property belonging to others under its jurisdiction, but also to pay the costs for returning the property to another state (the vanquished state, into the bargain) seems to push the scope of the Treaty far beyond its original purposes and the relations established under it between the victorious and the van-

quished states, also bearing in mind that the property was removed by the Nazi forces of occupation, and not by the state required to return them. All that can be said here is that, notwithstanding Italy's obligation to bear all the costs of restitution incurred by the state required to return the removed property, in the event of any doubt about the amount of costs, the amount closer to the lower rather than the higher costs claimed should be used. A justification for this conclusion may be found in the well-known case law of domestic courts of the vanquished states in the wake of both the First and Second World Wars based on a narrow interpretation of peace treaties.

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Library Losses

Catalogue of the Books from the Sárospatak Collection in the Nizhny Novgorod Library. Further Developments

Access as a key notion underlying each library function has been introduced to Russian librarianship relatively recently. Not surprisingly, apart from political reasons (existing in the past and still affecting the present), access to removed collections has been seriously hindered. Even now, 50 years after the war, book collections originating from different countries have not been properly identified, described and introduced to researchers.

The Sárospatak collection has shared the fate of most of the 11 million books brought soon after the war to the Soviet Union and scattered all over its vast territory. This extremely valuable collection has been kept in the Nizhny Novgorod Regional Library for many years, but no-one of the staff even dared to make it accessible to users. Thank God it was well preserved due to the professionalism of the librarians in charge and was not discarded like thousands of documents of similar origin housed in basements or storage facilities entirely inappropriate for housing library materials. When the collection was identified as the one belonging to Sárospatak it was obvious that regardless of any political decision about restitution its existence had to be known by researchers across the country on the one hand and by those who compiled it, i.e. by the Hungarians, on the other hand.

The Sárospatak Reformed Church College still has the records of all the missing items which helped enormously to verify the origin of the items located currently in Nizhny Novgorod. Nevertheless, due to the uncertain situation with the restitution, the collection was to be catalogued and thus be accessible. This explicit target was explained to the Open Society Institute, Budapest, which finally took the decision to provide financial support to the project. The final product of the project conducted by the joint team of librarians from the Regional Library of Nizhny Novgorod, Hungary (National Library, Sárospatak Reformed Church College Library, Hungarian Cultural Centre in Moscow) and the Library for Foreign Literature in Moscow, should be a catalogue of short title descriptions published in a traditional format and

in the form of an electronic version put on internet. The project is in progress now. The preliminary descriptions of 1448 items of the collection have been checked against reference sources for further verification with the original publications in Nizhny Novgorod. The short title methodology enables us to identify documents with a high level of trustworthiness, though it does not differentiate between the so-called variants of editions which are not that frequent in the pre-18th century publishing practice. In a number of cases this verification was impossible because there were no corresponding citations in the Hungarian National Bibliography compiled until 1635.

The whole project is to be finished by August 1997. Hopefully its results will stimulate the uncovering of other collections that have become victims of the last war and inspire Russian librarians to implement practical actions towards finishing the war by the end of the millennium.

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Valuable Books from Hungary in Nizhny Novgorod

The library of the Reformed (Helvetian denomination) College in Sárospatak was founded together with the College itself in the 16th century. In the 17th century the library received the renowned collection of the Rákóczi family. A sizeable part of this collection was lost when in 1671 the school was banished from the town. The library of the College which was re-admitted to the town in the early 18th century was enriched by donations from its former students and the library has since then continuously served education in Hungary. A magnificent library hall was built in 1834. The library currently houses about 400,000 works.

In 1938, fearing the outbreak of the war, the most valuable volumes from the library were shipped to the vaults of two banks in Budapest (Hungarian Trade Bank, First National Savings Bank) for safeguarding. The three cases containing these volumes disappeared at the end of the war, and only two of the listed items were found. A third one was taken away by one of the workers when the items were packed for shipment in 1945; he returned it later to the Sárospatak library. The greater part of these books was eventually identified in the Regional Scientific Library of Nizhny Novgorod during 1994-95.

The manuscripts listed among the over 1,400 items included a Polish Bible (1390-1455), a theological treatise written in 1404 in Vienna, the Attila biography written by Leonardus Aretinus in the later 15th century, church song-books from Hungary from the 16th-17th centuries (Patay graduale, Csáti graduale), an Old Slavic evangelical book and various mixed tomes. There were 27 incunabula, including one which in the 15th century was annotated with Hungarian glosses. Most of these printworks date from the 16th-17th centuries and are written in an archaic Hungarian: they were either printed in Hungary or were the works of Hungarian authors printed abroad. These are extremely important in terms of the Hungarian culture: one of these 118 unique works is the first printed edition of the poems of Bálint

Balassi, one of the greatest Hungarian poets of the Renaissance. Of about 60 other printworks present here there are no other examples known in Hungary. It is thus fairly obvious that the books from the Sárospatak library now in Russia include extremely valuable and unique volumes. Some of these are invaluable and irreplaceable for the Hungarian culture, while others represent a significant value also by international standards.

A register from 1938 lists the volumes shipped to Budapest in 1938; another list was made during 1994-95 in Nizhny Novgorod. The eleven items containing archival documents and 50 gold coins from the coin collection also disappeared at the same time as the volumes.

The 16th-17th century Hungarian language printworks and other old books in the collection of Baron Móric Kornfeld were also deposited in the vaults of the Hungarian Trade Bank. In Nizhny Novgorod we were able to identify two incunabula which were registered as artworks owing to their binding and colored illustrations, as well as 61 old Hungarian printworks, eight of which are unique pieces. The 17th-20th century printworks from the collection of Tihamér Kuhárszky and his manuscripts on Egyptology were also deposited here. We identified several volumes containing ex librises from various Hungarian private collections. The collection of the local museum contains a French printwork with 61 engravings from the 17th to the 20th centuries from the collection of Alajos Péterffy.

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Publications

Review of the Russian Press for 1997 on the Question of the Restitution of Cultural Values

This review of the Russian press was made on the basis of the "Restitution File", being compiled by the chief bibliographer of the Information Centre of the Library for Foreign Literature, O.M. Ivlieva (contact phone 095-915-3636).

More than fifty articles, devoted to the discussion of the problem in whose possession the cultural property should be that was removed to Russia after the Second World War, have appeared this year on pages of the Russian press. The majority of the publications is a resonance of the debates in the parliament about the "Federal Law on Cultural Values Removed to the USSR as a Result of World War II and Located in the Russian Territory" (Federal Law).

Newspapers covered in detail hearings of the Federal Law. Among them we can see short articles in the newspapers *Izvestiya*, *Segodnya*, *Kultura*; "without comments" information messages in *Pravda*, *Nezavisimaya Gazeta*, *Moskovskii Komsomolets*; and more emotional statements of journalists in the newspapers of the so-called spiritual opposition such as *Zavtra* and, on the contrary, stressing its democratic pathos, *Komsomolskaya Pravda*. Not a single newspaper with a political column kept silent about this exciting theme. Among the authors were the former USSR Minister of Culture Nikolai Gubenko and the present Deputy Minister of Culture of the Russian Federation Mikhail Shvydkoi, the writer Viktor Rosov and the war veteran Vadim Sadovnichenko, the journalists Svetlana Sukhova, Boris Lysenko, Mikhail Sidlin, Sergei Palii, Boris Vinogradov, Emina Kuzmina and many others.

The chronicle of the events drawn from periodicals looks as follows. On March 23, 1995 the Council of the Federation, using the right of the legislative initiative, placed for discussions in the State Duma the draft of the above mentioned Federal Law, which was accepted by the senators. However, at the first reading in the Duma the draft did not receive the necessary number of votes. Only on July 5, 1996 at the third reading the draft was accepted in the Duma and sent for consideration to the Council of the Federation. However, on July 17 something unexpected happened. The Council of the Federation, probably not able to withstand accusations in the mass media, and also the pressure from the government side, rejected the draft and sent it back for revision. On February 5, 1997 a modified draft of the law was placed again for discussion in the State Duma and was accepted in this new form. On March 5, quite surprisingly, without any problems, the law was authorised by the Higher Chamber of the Parliament and was handed over for signature to the President of the Russian Federation B.N. Yeltsin. The President rejected the Federal Law, basing his decision on the fact that "the law proclaims a unilateral decision on the problem of the removed cultural values without taking into consideration standard norms of the international law". On April 4, the State Duma once more approved the law aiming to overcome the President's veto. Now it was time for the Council of the Federation's word. On April 16, the Higher Chamber of the Parlia-

ment made the decision to transfer the discussion of the law to the next plenary session (i.e. on May 14), and before the session to carry out a 'by call' voting with the help of signature sheets, that would ensure 100% voting on overcoming the President's veto. By many politicians and journalists this fact was perceived as a present, issued by the senators for the President's visit to Germany. And already on April 17, i.e. the day after the session of the Council of the Federation, Boris Yeltsin met in Baden-Baden with the Chancellor of Germany, Helmut Kohl, but the expected sharp edges of the problem of 'trophy art' were removed, as the Federal Law was not accepted, and 'Boris', as always, brought in his briefcase a gift for 'his friend Helmut', this time in the form of documents from archives of the German Minister of Foreign Affairs of the Weimar Republic, Walter Rathenau, and microfilms of archival materials of the SED (Socialist United Party of Germany). Russian journalists paid special attention to the fact that the Russian President handed over to the Head of the German State a two-page list of Russian cultural values being kept, in the opinion of the experts, in Germany at the moment and being a subject to restitution.

Coming back to publications in periodicals on removed cultural values, we can note that we cannot see, not even in a single article of the domestic press, a categorical opinion that Russia should return 'trophy objects of culture'. The USSR suffered in the Second World War from Germany and its allies (the loss is estimated approximately in 1,3 trillion US dollars), and the trophy cultural values, on the basis of legal agreements accepted at the end of the war as an insignificant compensation, were taken out to Russia. And exactly on the pages of the newspapers we can see a discussion about the methods of resolving the question of the removed cultural property in conditions of a changed standing of Russia in the world's community. The legislative authority in face of practically all members of the parliament votes for resolute measures. From here comes a categorical tone of the Federal Law which, for some stipulated exceptions, deprives Western countries of the hope of restitution of removed cultural objects. But the executive authority led by the Ministry of Culture of the Russian Federation rejects the legal basis of the law which proclaims all removed cultural values as property of Russia. Deputy Minister of Culture of the Russian Federation, Mikhail Shvydkoi, writes in the article "Do No Harm!"¹: "You should really try hard to accept the law on nationalisation at the end of the XXth century".

Doctor of jurisprudence Evgeny Usenko², Abdulkhan Akhtamzyan³ and also employees of the State and Law Institute of the Academy of Sciences, acting on the side of the legislators, as confirmation of their point of view about the Russian property on 'trophy' values refer to such legal documents as the Act of Unconditional Capitulation of Germany, Yalta and Potsdam decisions on reparations, the Paris peace agreements of 1947, the UNO Status. There are among these legal substantiations and 'fresher' ones, for example, the letter of September 12, 1990 of the Ministers of Foreign Affairs of the four powers who won in World War II, which stresses that Germany refuses the claims of any kind to these states and recognises after-war decisions as permanent and invariable ones.

Some people working in the field of culture and military leaders act in support of the Federal Law. Several newspapers have published their address to the President of the Russian Federation, the Prime Minister and the two Chambers of the Russian parliament, in which they warn that in case of the rejection of the law "the third grand robbery of Russia for the last 100 years" would take place.

On the other hand, the persistence with which the executive authority refuses to recognise the Federal Law is quite understandable as well. For several years the President of the Russian Federation, the Prime Minister, and also the Minister of Foreign Affairs have signed a number of international agreements in which Moscow has undertaken obligations "to restore justice" and to return cultural values to Western countries. The string of these legal documents was started by the agreement between the USSR and the Federal Republic of Germany, signed on November 16, 1990, Article 16 of which stipulates the returning of the cultural values illegally removed during the Second World War.

Besides legal arguments each side mentions in the article the facts proving their point of view. So Nikolay Gubenko and his supporters continue to count our losses in the Great Patriotic War (the losses are about 180 million books and about 570,000 works of art) and to talk about the compensatory cost of 'trophy art'. His opponents call to think about the fate of the allies of the USSR in the Second World War, which also lost a significant amount of their cultural values: they would lose the right of property on them, if they appeared on the territory of the Russian Federation. Of course, there are some special clauses for them in the draft of the Federal Law, but the mechanism of returning 'trophy art' is not developed, and each time it will be necessary to accept an additional law on transfer or exchange of objects of culture.

The supporters of the Federal Law stand for the observance of the principle of 'justice'. We already returned to the German people masterpieces of the Dresden Art Gallery, 320,000 books, 15,000 manuscripts and archival documents, part of the books from the unique Gotha collection, but "who will return or compensate cultural values, lost or stolen by German occupants in Russia?"⁴. The executive authority objects to them that the right to private property is firm, that is why it is necessary to take into account the fact that "some values were taken out under the order of Soviet military administration in Germany and others were brought to Russia in a soldier's bag". And, despite all our losses in this war, we are a great country, and "our laws ... should comply with our greatness".

Among all these provoking newspaper trials, perhaps one article "It All Comes from our Habit of Secrecy"⁵ stands out for being very calm in tone and sober in its stated opinion. In this article the Director of the Art Institute, Alexey Komech, says, firstly, that the problem of 'trophy art' probably wouldn't exist, if the masterpieces allocated to our museums on a completely lawful basis were on display and accessible to everybody, instead of being concealed out of some false bashfulness. "There is no secret storing in Western countries; usually everything, which is in stock, is known". Secondly, everything that came to us illegally should be returned. And, thirdly, the

question of an exchange or sale of objects of culture is not only complicated, it is immoral. A hidden meaning here is offensive: you are poor, we will help you.

Yet it is necessary to reflect on a symptomatic publication of the journalist Ludmila Volkova "Who Will Be a Decision-Maker in the Question of Military Trophies?"⁶. Her article is a review of a telephone poll of Moskovskii Komsomolets' "Public Voice". The question of the poll was to return to Germany the works of art taken out to the Soviet Union, or not to. 80% of the people who called considered that we shouldn't return the works of art; 16% are categorically sure of the opposite; and only 4% still doubt. Among those who doubt only one reader put forward, from our point of view, a correct decision: "It is very difficult to answer unequivocally, we do not know all the details. We need the facts to think it over".

In the article of Tatyana Maximova "Hide Rembrandt! The enemy does not sleep"⁷ one should think that the author speaks not exactly about restitution. The album of the Dutch diplomat Andrey Vinius is being kept in the Library of the Academy of Sciences (St. Petersburg) in the Manuscripts and Rare Books Department. 170 drawings which belong to the 'golden century' of Dutch art (17th century) are assembled in this album. This edition requires restoration. The Dutch offered help free-of-charge for the right of exhibiting the album in the Netherlands. The Ministry of Culture didn't give its permission to take "cultural values out of the country". A conclusion can be drawn immediately: let these unique drawings deteriorate here, but we will never give them back to the Dutch.

Such an unreasonable decision, unfortunately, becomes typical for state leaders of Russia. We shouldn't forget that in the discussions and acceptance of the Federal Law the specificity of individual subjects of culture, their particular importance for national spiritual life were never taken into consideration. And consequently it is necessary not only to return those things, that have got to our territory illegally, but also cultural objects, that were not required by the Russians, for example, a significant number of the books in foreign languages, which nobody read and would hardly read in our country; and, at last, to return things that we are, unfortunately, unable to keep for mankind in the state in which they should be kept. We should honestly admit that our country is in such a condition that we don't have any means for the construction of new specially equipped storages for the archival documents, for rare books. We can not ensure preservation and restoration of the unique subjects of culture. That is why, probably, we should think about our descendants in world scale.

Evgenia Korkmasova, Library for Foreign Literature, Moscow

Notes:

¹ Literaturnaya Gazeta. March 12, 1997. P. 9.

² Article "The Displaced Values is Russian Property". In: Rossijskaya Federatsiya. No 19. 1996. P. 48-50. Article "Have Some Decency, Gentlemen!...". In: Rossijskaya Federatsiya. No 4. 1997. P. 52-53.

³ Article "There is No Such Things as Free-of-Charge Masterpieces". In: Vek. 1997. No 8. 225. P. 12.

⁴ A. Akhtamsyan "There is No Such Things ...".

⁵ Kultura. March 15, 1997. P. 3.

⁶ Moskovskii Komsomolets. March 11, 1997. P. 7.

⁷ Komsomolskaya Pravda. March 12, 1997. Application. P. 1.

Proceedings of Amsterdam Symposium (1996) Published

In "Spoils of War" No. 2 Josefine Leistra reported on our Amsterdam symposium in April 1996, marking the 50th anniversary of the return of looted Dutch book collections (pp. 31-33). The same issue included a summary of Col. S.J. Pomrenze's symposium lecture on his activities in Offenbach in Spring 1946 (pp. 18-20).

We are glad that now, exactly one year later, the proceedings have been printed thanks to the co-operation of all lecturers, the editorial committee and the great efforts of our translator and editor Lee Mitzman (Amsterdam). A substantial support of the Netherlands Inspectorate of Cultural Heritage and the ISSH printing facilities enabled us to publish the full text of all lectures and introductions.

The full (and in some cases extended) lectures are divided (just like the symposium) into several sections. The heading "Looking Back" covers the lectures by Mr. Pomrenze (on the Offenbach Archival Depot) and by A.J. van der Leeuw (on the Dutch claims in the Fifties).

The second section is entitled "Current Research" and includes the lectures on Rosenberg's Music Theft Apparatus (Willem de Vries), on the "Vicissitudes des archives maçonniques françaises sous le régime de Vichy (1940-1944)" (Vicissitudes of the French Free Masons Archives under the Vichy-regime, Florence de Lussy), on "Das Schicksal der Dokumente des YIVO in Wilna" (The Fate of the YIVO-Documents in Vilnius, Esfira Bramson) (both followed by an English summary), and the extensive contribution by Patricia Grimsted on "New Clues in the Records of Archival and Library Plunder: The ERR Ratibor Center and the RSHA VII Amt Operations in Silesia" (with a new map showing all relevant sites).

The third section on "Recovery and Co-operation" contains the lectures on books, archives and art of Western origin kept in Eastern Europe, especially in Russia: "The Fate of the Archives and Books of the Belgian Socialist Movement" (Wouter Steenhout and Michel Vermote), "Exploring Western Archives in Russia" (Hans de Vries), "German Literary Treasures in the Russian State Library for Foreign Literature" (Ekaterina Genieva), "On the Recovery of Art. Recent Developments" (Josefine Leistra) and on "Russia's only Restitution of Books to the West: Dutch Books from Moscow (1992)" (Frits J. Hoogewoud).

Next to the lectures we added a fourth section with illustrated "Introductions" given during the excursions to institutions and collections looted during World War II: Bibliotheca Rosenthaliana, Ets Haim, Jewish Historical Museum, the Jewish archives in the Amsterdam Municipal Archive, the Women's Archives and the International Institute of Social History in Amsterdam and the Freemasons' Collection in the Hague. Short bibliographies to all articles and quite a number of new illustrations enhance the usefulness of the book.

Frits J. Hoogewoud, Bibliotheca Rosenthaliana, Amsterdam

The Return of Looted Collections (1946 - 1996): An Unfinished Chapter. Ca. 120 pp. (ISBN 90 6861 1364). Full details about acquiring the book are to be obtained from Bibliotheca Rosenthaliana, Amsterdam University Library, Singel 425, 1012 WP Amsterdam, The Netherlands.

Hungarian Publications on the Spoils of War

The title of László Mrávik's article "Saved How Many Times?"¹ is an ironic reflection on the title of the exhibition in the Pushkin Museum of Moscow with artworks seized by the Red Army during World War II ("Twice Saved"). In this article Mravik repeatedly emphasizes that between 1945 and 1949 the Red Army seized and shipped out of Hungary an exceptionally high number of artworks, thereby violating all international legal norms. This fact can be conclusively proven by the existent documents. It can also be confirmed that the Soviets destroyed a part of these artworks and collections while still in Budapest, in the depository where they were collected: stamp collections were burned, porcelain was smashed to pieces, while a part of the goldsmith's work was melted down.

This conclusively disproves the cynical and untrue statements made by Irina Antonova, Director of the Pushkin Museum, that Hungarian Jewish art collectors had sold their collections to the Germans. According to international treaties, Hungarian Jewry, which was systematically stripped of its properties and shipped off to concentration camps, cannot be regarded as a belligerent party, and neither can various church organizations. Thus their former properties were seized entirely unlawfully by the Soviet Army. The Russian government is in fact continuing the atrocities perpetrated by the Holocaust by refusing to return the property of the former victims. The intentions of the Russians were clearly signaled by Irina Antonova when she included some of the paintings housed in the Grabar Institute of Moscow which have already been identified by Hungarian experts in the permanent exhibition of the Pushkin Museum. In conclusion Mravik notes that the steps taken by the current Hungarian government for reclaiming the artworks in question are ineffective.

In 1994 László Mravik organized two exhibitions - in the Museum of Applied Arts in Budapest and in the Helikon Castle Museum of Keszthely - showing the photos of outstanding artworks from Hungary which in the course of the 20th century were either sold abroad, seized or destroyed. The catalogue of the exhibition, also written by Mravik,² offers a good overview of the losses of artworks suffered by Hungary in the 20th century, including - among others - paintings by Rembrandt and the French impressionists, outstanding medieval goldsmiths' works, textile and coin collections which were taken out of the country.

The first great losses were suffered during the great economic slump of the 1930s when collectors began selling off pieces from their collections, mostly abroad, to improve their finances. Before World War II a part of the collections owned by wealthy Hungarian Jews was also sold abroad as a result of the anti-Jewish legislation. In March 1944 the Germans occupied Hungary, and Eichmann and other high

ranking German officers seized most of what had remained of these collections either through blackmail or simply by taking them away. These artworks were later shipped to Germany and at the end of the war they were seized by the Red Army in Berlin.

The greatest losses, however, were caused by the Red Army which occupied the country in 1945. Special Russian military units raided the vaults of the Budapest banks where, beside other valuables, they also seized about 3,000 artwork deposits from these vaults. According to Mrávik's estimates, these could amount to as much as half a million artworks. These were for some time stored in Budapest, and together with artworks seized in other parts of the country, they were shipped to the Soviet Union between 1945 and 1949, where they have been housed to the present day. Characteristically enough, on August 3, 1945, the then Hungarian Minister of Culture wrote a letter to Marshal Voroshilov, the Soviet President of the Allied Control Commission, in which he requested that the Hungarian artworks stored in Budapest should be returned to their rightful owners and to Hungary. Voroshilov did not even bother to reply. Together with other documents, a copy of this letter is also published in the catalogue. The catalogue includes as well a reproduction of archive photos of 42 outstanding artworks.

István Fodor, Director of the Magyar Nemzeti Múzeum, Budapest

Notes:

¹ Új Művészet VII. Nos 10-11, October-November 1996.

² Mravik, Laszlo: Scattered Collections. Keszthely 1994.

Conferences

International Conference "Libraries, Books, Ideology during the Second World War (1939-1945)" in Jurmala (Latvia)

The National Library of Latvia, through this conference, taking place in Jurmala from October 8-12, 1996, aimed to fill the still existing blank leaves in the history of Eastern Europe, i.e. in the history of its libraries, publishing houses, censorship, books destroyed or robbed as spoils of war during World War II.

23 papers were delivered in total. Most of the participants and speakers were from the Baltic States: 15 Latvians, 3 Estonians, 2 Lithuanians. Among the foreign speakers were 2 Poles, and speakers from Russia, the United States, Finland and Hungary (one from each country). The choice of the speakers reflected the main theme of the conference: the situation of culture in the Baltic countries during the war. The situation there was quite specific and not very typical compared to other countries in Europe occupied by the Nazis. During World War II the Baltic States lived through two occupations: Soviet (which, for example, lasted in Latvia from August 5, 1940 till June 1941) and German (until summer 1944). Thus the lectures had to describe and characterize two separate systems of cultural repression: Soviet and Nazi. The papers either gave a combined account of both systems or described

them separately. One of the speakers discussed only the Soviet period (K. Konstantinus: Latvian Book Publishing during the First Year of Soviet Occupation 1940-1941) and six other speakers dwelt exclusively on the German occupation (e.g. I. Skinke: The Work of the General Directorate for Education and Culture 1941-1944; A Glimpse at Historical Sources). Ten speakers referred to the entire 1940-1944 period (e.g. V. Zanders: Book Publishing in Latvia during World War II).

Generally, the papers of Baltic speakers used a sharper tone in the description of the Soviet occupation than in the description of the German occupation. The latter one took a relatively smooth course in these countries because the Baltic States engaged in a far-reaching cooperation with the Germans who allowed them to keep some forms of local administrative authority, run publishing houses and libraries, and the cultural life, though censored, had not been so much destroyed as in the USSR or in Poland. The speakers presented the activity of publishing houses (5 papers), ideology of occupiers and their power apparatus (3 papers), the situation of individual literary genres (such as the novel, 1 paper), the situation of libraries (3 papers), official censorship (2 papers), the situation of bibliography (1 paper). A Hungarian speaker, Laszlo Szogi, referred in his paper on "The Influence of Wartime Events and Ideologies on Hungarian Scientific Libraries" to the situation of research libraries in a country which for the most part of the war was a German ally and in which only in 1944 part of the collections were affected by the wartime threat as they were taken, among others, into the depths of Russia.

Different problems were raised by Russian and Polish authors. Irina Matveyeva from the National Library of Russia in St. Petersburg in her lecture entitled "Removal of Russian Book Collections during World War II" presented the war losses in quantitative terms by different categories of libraries, gave an account on the displacement of books both in the territory of Russia and the Baltic States, transport of collections to Germany and problems with their restitution. Andrzej Mezynski of the Parliamentary Library in Warsaw in his paper "Losses from Polish Libraries during World War II" gave some figures illustrating the entire picture of losses of Polish libraries (ca. 30 million books lost), and also described the mechanism of destruction hidden behind the whole process. Hanna Laskarzewska of the National Library in Warsaw in her address "Is it Possible to Study Losses of Libraries 50 Years after the End of World War II?" spoke about the methodological and factographic difficulties of the attempts to describe library losses from the perspective of 50 years that have passed since the end of the war.

The papers will be published in a special conference proceedings volume.

Andrzej Mezynski, Library of the Sejm, Warsaw

Conference "Property and Restitution - A Moral Responsibility to History" in Geneva

The Simon Wiesenthal Centre, an international Jewish human rights organization with headquarters in Los Angeles and a membership of over 400,000, convened for a conference in Geneva on June 23-25, 1997 entitled "Property and Restitution - A Moral Responsibility to History".

The Centre, which draws the lessons of the Holocaust to the analysis and combat of contemporary prejudice, placed about two years ago the issue of assets looted by the Nazis among its highest priorities. Beyond the research significance, the elderly and frail condition of Holocaust survivor claimants demanded a political and media initiative from the Centre to sensitise governments, banks, insurance companies and museums implicated in the restitution process.

Thus, 27 experts from 18 countries and three continents assembled in Geneva to present their findings on gold, real-estate, objets d'art and other property plundered from the victims.

Government officials, representatives of investigating commissions, lawyers, bankers and ethicists also addressed claim procedures, juridical precedents, the use of internet and electronic media in the search for owners, political leadership's responsibility to the victims of Nazism and the role of religion on the spiritual and moral account. A special reception to honor five Swiss 'righteous gentiles', who jeopardized their own lives to rescue fugitives from the Nazi atrocity, emphasised the role of the individual in preserving human values. The conference provided the first public platform for the General Secretary of the Tripartite Commission for the Restitution of Monetary Gold, since its establishment in 1947.

The veteran war criminal investigator, Simon Wiesenthal, closed the conference with his message on "Memory as the Key to the Future".

On August 15, 1944, with the Allies approaching Paris, a train of looted art was stopped by the Resistance on its way to the German frontier. On the same day, a train of deportees left Drancy for Auschwitz; it was never stopped. This counterpoint provided a poignant departure for the conference session on "Looted Objects d'Art-The Path to Recovery". Moderated by International Herald Tribune correspondent Barry James, Konstantin Akinsha, Hector Feliciano, Josefine Leistra and Doris Lemmermeier approached the problems of art location and restitution, respectively, from the former Soviet, French, Dutch and German perspectives. Added details were provided on the Mauerbach auction in Austria. The arrival of three members of the Russian Duma with a list of art objects sought for repatriation by Moscow provided an intriguing twist, as also an itemized collection from Argentine sources, recently discovered in Buenos Aires.

Director of Archives Quai d'Orsay, Ambassador Louis Amigues, spoke of claims procedures for the some 1,950 "MNR" (non-reclaimed) items in the Museums of France, but would not confirm rumors that these heirless objects could be placed for

safekeeping in the Museum of Jewish Art and Tradition, about to open next year in Paris. Nor was it denied that a bust of Madame de Pompadour in President Chirac's Elysée Palace and an early mould of Rodin's "The Kiss" in Prime Minister Jospin's Matignon mansion were included in the "MNR" list.

The Paris auction houses for property and art thrived at their peak under the German occupation. The exposure of such abuses illustrates the perils of collaboration with evil.

The fall of the Berlin Wall and the opening of archives in East-Central Europe launched the first debates on restitution of Jewish property lost to the Nazis and the Communists. The European Parliament presented reparation as the key to the entry into the community of the enlightened and democratic West. The Simon Wiesenthal Centre is now receiving three or four claims per day from Australia to Chile, South Africa to Israel, as the media take up the enquiry on a global level.

"Justice, Justice, shalt thou pursue", the Biblical injunction hints at twin acts of commission. In the context of genocide these point to remembrance and restitution. Restitution or reparation is not charity but "Tikkun", an acknowledgment of responsibility and settlement of rights.

Restitution is a moral pedagogy, and in respect to the current campaign, the Simon Wiesenthal Centre emphasises two caveats:

1. The focuses of research (neutral Switzerland, Sweden, Portugal, Spain, Argentina and occupied France or Norway, etc) are not the bearers of collective guilt. Alliances must be built with all elements in those societies that seek the truth.
2. The issue is not exclusive to Jewish claimants. Coalitions should be made with other victims' organisations, for the Shoah, in its aim of total extermination of the Jews, was *primus inter pares*, but was also a bench mark for the atrocities wrought upon all other victims of Nazism.

The Geneva conference program carried a quotation from Leviticus Chapter 25.10: "In the fiftieth year, thou shalt ... retribute to each man his property...". If, by creating a synergetic effect between experts and participants, the Wiesenthal Centre's conference has assisted in reinforcing the push for transparency as a moral responsibility, its purpose will have been partially achieved, for the exposure of these truths lances a long-festering boil and allows the pus to drain. The cleansing of the wound can be an act of catharsis for the collaborator, added armament against Holocaust denial and a final accounting for the victims - both Jewish and non-Jewish - and their heirs.

Shimon Samuels, Director for International Liaison,
Simon Wiesenthal Centre, Paris

Conference "The Restitution of Cultural Treasures: Problems of Repatriation and Common Usage" in Minsk

The international scientific conference on "The Restitution of Cultural Treasures: Problems of Repatriation and Common Usage (Legal, Scientific, and Ethical Aspects)" took place in Minsk on June 19-20, 1997 under the aegis of UNESCO.

It was organized by the National Scientific Education Centre F. Scaryna with the participation of the Ministry of Culture and Education, the Ministry of Foreign Affairs of Byelorussia, and the UNESCO. The other participants were delegates from eight European countries, including the Ukraine. On this occasion the intergovernmental collection "Vyartanno" (Returning) no. 3 was published. It deals with archival materials on the problems of search and repatriation of national cultural treasures which are outside the borders of Byelorussia (see Bibliography).

The conference highlighted the importance of combining the efforts of the international community concerning the mentioned problems in the spirit of international legal norms in accordance with the U.N.O. documents about science, education and culture. The conference proved the cooperation effectiveness of scientists and cultural workers regarding the restitution of cultural values.

Fruitful discussions on legal, scientific and ethical restitution aspects, which are considered to be new opportunities for cooperation in the cultural field, led to new knowledge branches: the necessity to update national legislative norms and to adjust them to the international standards, to create a common database in this field.

The main subject of the conference was Russia. In connection with the law adopted in Russia "On Cultural Values Removed to the USSR as a Result of World War II and Located in the Territory of the Russian Federation", the topical question arose about treasures looted by the Nazis from museums, archives, libraries of Ukraine, Byelorussia, Lithuania, Latvia, Estonia and Moldavia which were removed to Russia in 1945-46.

Russia ignored the agreement signed by the presidents of the CIS "About the Repatriation of Cultural and Historical Treasures to Countries of their Origin" (Minsk, February 14, 1992). These are the ethical problems and the problems of cooperation in the European space: they exist or they are supposed to be in force.

The close cooperation of post-Soviet countries in the field of cultural heritage (concerning its discovering, searching and usage) was also discussed. The necessity to take into account international legislative acts and ethical aspects in order to settle conflicts was stressed. The conference dealt with the question of organizing a meeting with the intergovernmental expert groups from the CIS in Moscow in order to start projects that will contribute to the return of cultural objects. The participants agreed to call upon UNESCO to pay attention to these problems in post-Soviet countries.

Great attention should also be paid to the cultural treasures which were discovered on the territory of other countries after the migration from Germany in 1945-1946.

The participants called upon the Secretariat of UNESCO to organize a special session of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Treasures to the Countries of their Origin and its Restitution in Case of Illicit Appropriation, and to the problems of actualization of the search for treasures lost during the Second World War.

The conference in Minsk proved the effectiveness of the steps, taken towards enrichment of international experience concerning the repatriation and restitution of cultural treasures.

Alexander Fedoruk, Head of the National Commission
of the Restitution of Cultural Treasures to Ukraine, Kiev

The text of the final document of this conference see country report Byelorussia.



The Role of UNESCO "Intergovernmental Committee for Promoting the Return of Cultural Property" in the Resolution of Disputes Concerning Cultural Property Removed in Consequence of the Second World War

One of the unsettled issues of the Second World War has been the restitution of cultural property taken during the hostilities. In the absence of peace treaties or special restitution agreements neither the "Protocol to The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict" 1954, nor the UNESCO "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property" are directly applicable to this issue because their provisions are not retroactive, although the principles of the Hague Convention represent customary international law.

What options are available for states wishing to recuperate such property? As in any disagreement between states on movable cultural property, they may undertake bilateral negotiations in order to conclude a restitution agreement settling their mutual claims.

If the bilateral negotiations fail, the states may use the services of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin and its Restitution in Case of Illicit Appropriation. This Committee was set up in 1978 by the General Conference of UNESCO and its founding was motivated by the claims of recently decolonized states for the return of cultural property which they had lost to the colonial countries. Although its competence has never been invoked in the case of conflict-linked removed cultural property, it would have jurisdiction in conformity with Article 4 of its Statutes.¹

The Committee is composed of 22 member states of UNESCO. Currently Bangladesh, Bolivia, Cameroon, Canada, the Czech Republic, Ecuador, Ethiopia, Guatemala, India, Italy, Kuwait, Libyan Arab Jamahiriya, Madagascar, Myanmar, the Netherlands, Peru, the Republic of Korea, Slovakia, Sri Lanka, Togo, Ukraine and Zaire (Democratic Republic of the Congo) are members of the Committee. The Committee meets every two years, and half of its members are elected every two years by the General Conference of UNESCO.

Its major role is to serve as a negotiating forum at assisting the member states of UNESCO to resolve claims for the restitution or return of cultural property to its country of origin. It should be pointed out that the Committee does not have power to adjudicate; it may only mediate and recommend.

The Committee also encourages technical co-operation, training activities, exchange of information on legal and other aspects of the fight against illicit traffic in cultural property and last, but not least, it raises political awareness of this problem.

To date, the Committee has held nine sessions. Sessions of the Committee are not limited to its members; representatives of other member states of UNESCO and of states which are not members of UNESCO are present in substantial numbers as observers, international intergovernmental (e.g. INTERPOL, the Council of Europe, the International Institute for the Unification of Private Law) and non-governmental organizations (e.g. the International Council of Museums) take part in the work of the Committee. The Committee adopts recommendations which deal with various aspects of the fight against illicit traffic of cultural property.

Some cases of restitution within the Committee should be mentioned: the exchange of artefacts between museums in Jordan and the United States of America, the return of over 7,000 cuneiform tablets from the German Democratic Republic to Turkey and the return of over 12,000 pre-Columbian objects to Ecuador from Italy after a seven-year litigation. Other cases are still pending: the well-known case of the Parthenon Marbles held presently in the British Museum which are claimed by Greece from the United Kingdom, the claim of Turkey against the Federal Republic of Germany related to a sphinx from the Hittite capital at Boghuzkoy and finally, the claim of the Islamic Republic of Iran against Belgium concerning gravegood from Khorvin (the last case is still being litigated).

At a symposium held in Kiev from December 12 -13, 1996, Ukraine, which is a Member of the Committee, sponsored a Recommendation which was adopted, proposing that the Committee should be asked to hold a special session to discuss issues related to cultural property removed as consequence of the Second World War.

In conformity with Article 5(1) the Committee has the right to convene an extraordinary session dealing with this issue.² However, it is evident that not all Committee members are equally interested in this matter. In such case, the Committee may also create an ad hoc subcommittee³ or an ad hoc working group⁴ composed of a limited number of experts representing the states concerned which would study this matter.

It might be preferable to create a sub-committee of only those Committee members which are really concerned in the matter, inviting participation from other member states of UNESCO which are also concerned. Another possible procedure would be for UNESCO to establish a simple working group, not specifically attached to the Intergovernmental Committee, to study the problem, in accordance with the general mandate of the Constitution of the organization.

To conclude, mediation through the Committee may have some advantages. First, the states concerned would be able to exchange their views in a neutral forum without being obliged to accept some obligatory decision of this forum. Second, this issue would be discussed from a number of points of view; not necessarily only the legal one. Finally, the states would be able to avail themselves of the experience of the UNESCO Secretariat in this field.

Lyndel V. Prott, Chief, Jan Hladik, Assistant Program Specialist,
International Standards Section, Division of Cultural Heritage, UNESCO, Paris

Notes:

¹ Article 4. "The Committee shall be responsible for:

1. Seeking ways and means of facilitating bilateral negotiations for the restitution or return of cultural property to its countries of origin when they are undertaken according to the conditions defined in Article 9;
2. Promoting multilateral and bilateral co-operation with a view to the restitution and return of cultural property to its countries of origin:..."

² Article 5(1)

"1. The Committee shall meet in regular plenary session at least once and not more than twice every two years. Extraordinary sessions may be convened as specified in the Committee's Rules of Procedure."

³ Article 6

1. The Committee may set up ad hoc subcommittees for the study of specific problems related to its activities, as described in paragraph 1 of Article 4. Membership of such subcommittees may also be open to member states of UNESCO which are not represented in the Committee.
2. The Committee defines the mandate of any such *ad hoc* subcommittee."

⁴ Rule 10.3

"The Committee may set up working groups for studying certain problems related to those of its activities which are defined in Article 4, paragraphs 2 to 7 of its Statutes."

Rule 10.4

"The terms of reference of the ad hoc subcommittees and working groups shall be defined by the Committee."

Judaica Librarians Visit Vilnius

Background

The fate of Jewish library collections in Europe represents an important chapter in any discussion of cultural treasures and their disposition during and after World War II. The Einsatzstab Reichsleiter Rosenberg confiscated Jewish libraries and archives en masse, and shipped them to Frankfurt am Main for incorporation into the "Institut zur Erforschung der Judenfrage" (Institute for Research of the Jewish Question). After the defeat of Nazi Germany, hundreds of thousands of books and periodical

volumes, archival folders, and ephemera from European Jewish libraries were found near Frankfurt.

Some were returned to their original owners, whether in their original locations (e.g., the Rosenthaliana Library in Amsterdam¹) or in their re-established headquarters elsewhere (e.g., the YIVO Institute, located in Vilna [Vilnius] from 1925 to 1940 and in New York City thereafter²). For most of the pillaged Jewish libraries, however, no successor institutions survived the war. The Jewish Cultural Reconstruction program was devised to distribute tens of thousands of 'orphaned' books to Jewish libraries throughout the world.³

Not all of the confiscated collections were removed from their places of origin. For example, there are now approximately 50,000 Hebrew and Yiddish books (along with tens of thousands of newspaper issues) in the possession of the Bibliographical Centre of the National Library of Lithuania (NLL), Vilnius. These materials eluded the fate of an even greater quantity of Jewish library and archival items that had been sent from that city to Frankfurt during 1942 and 1943.

Beginning in November 1996, a series of news reports in *The New York Times*, *The International Herald Tribune*, and *The Jewish Week* (New York) brought to the attention of the general public the Vilnius collections, which in addition to books and periodicals, also include Torahs and other Jewish sacred scrolls. A coalition of American Jewish organizations was formed in December 1996 to discuss the Jewish collections at the NLL and formulate proposals that would address their disposition.

Judaica Librarians' Delegation Visits Vilnius

In January and February 1997, two fact-finding missions to Vilnius - the first one sponsored by the American Jewish Committee and the second one organized by U.S. Senator Richard Durbin (Democrat, Illinois) - paid brief visits to the NLL and its Bibliographic Centre. These delegations were followed by one consisting of three U.S. Judaica librarians, who visited Vilnius from March 19 to 26, 1997. The librarians' delegation, which was sponsored by the National Foundation for Jewish Culture, with financial support from the Andrew W. Mellon Foundation, was headed by Herbert Zafren, Director-Emeritus of Klau Library at Hebrew Union College - Jewish Institute of Religion (Cincinnati); the other participants were Pearl Berger, Dean of Libraries of Yeshiva University (New York), and Zachary Baker, Head Librarian of the YIVO Institute for Jewish Research (New York). They were asked to look into the following issues:

- (1) Provenance of the collections;
- (2) Quality and research value;
- (3) Physical condition and preservation needs;
- (4) Access and cataloguing;
- (5) Plans for the future.

This was the first delegation of professional Judaica librarians to be granted full and unimpeded access to the Jewish collections at the NLL.

Findings of the Judaica Librarians' Delegation

(1) Provenance: The largest single bloc of books - 15,000 volumes, or approximately one third of the Hebrew and Yiddish books at the Bibliographic Centre - belonged to the Hevrah Mefitse Haskalah, the largest library operating under Jewish community auspices in Vilnius. During the Nazi occupation, that library served the doomed Jewish inhabitants of Vilnius as the Ghetto Library,⁴ in 1944, after liberation, the Ghetto Library was incorporated into the short-lived Vilnius Jewish Museum. When the museum was liquidated at the end of 1948, its library was absorbed by the State Book Chamber of the Lithuanian S.S.R. - antecedent of today's Bibliographic Centre. The director of the Book Chamber, Antanas Ulpis, ignored orders to destroy Jewish materials under his jurisdiction and consequently these were rescued, in effect, a second time.⁵

Jewish materials comprised but a small fraction of the Book Chamber's overall collections. The Book Chamber was designated by the Soviet authorities as the central repository for the restricted library collections ("spetsfondy") of Lithuania. These restricted collections were opened up only during the era of glasnost; the earliest published report on the Book Chamber's Jewish collections appeared in 1987.⁶ Representatives of Jewish research establishments outside of the former Soviet Union have visited the Book Chamber on a regular basis since early 1989. Thus, the most recent press reports emanating from Vilnius can be regarded as "old news".

Books and newspapers from two institutions which currently operate outside of Lithuania - the YIVO Institute (New York) and the Telshe (Telsiai) Yeshiva (Cleveland) - were also encountered by the librarians' delegation. The Bibliographic Centre possesses library materials bearing stamps and mailing labels from defunct libraries as far away as Warsaw and Czestochowa, Poland; however, the vast majority were originally owned by Jewish institutions and individuals in pre-war Vilnius (then under Polish rule) and Lithuania.

(2) Quality/research value: According to the NLL's criteria, the publications in the Jewish collections fall into three categories: (a) Lithuanian imprints, (b) Lituanica, i.e., publications with some connection to Lithuania (including items - regardless of subject matter - bearing stamps and labels indicating that they once belonged to libraries in Lithuania), and (c) materials published outside of Lithuania and lacking any connection with that country. A spot check by the Judaica librarians' delegation indicated that perhaps 85% of the Hebrew-alphabet books in the Bibliographic Centre are readily available in Judaica libraries elsewhere - especially the U.S. and Israel - and that many of the remainder are also available in variant editions and printings. A residue of some 1,000 unique items - especially 19th and 20th century ephemera - may be found among the books. As for the periodicals and newspapers, most dating from the interwar decades, these include many issues not collected by libraries outside of Lithuania and for this reason they possess considerable research value.

(3) Condition/preservation needs: While there are some indications of deterioration and mistreatment, perhaps the most striking observation one can make, in view of the Jewish collections' tragic history, is that they have survived at all. Fortunately, the relatively cool and uniform climatic conditions prevailing in the former church

sanctuary to some degree retarded the collections' deterioration, over time. The NLL has ambitious plans for the physical conservation of these materials; in addition, microfilming of Lithuanian Jewish newspapers in the Bibliographic Centre - part of a project that is being coordinated by the Library of Congress (Washington, DC) - is under way.

(4) Access and cataloguing: Handwritten cards provide catalogue access to the Jewish collections at the NLL, and the library administration hopes eventually to include this information in its automated catalogue. There is a shortage of staff with the expertise needed to catalogue Hebrew and Yiddish materials at the NLL, which currently employs only two part-time individuals with knowledge of those languages.

(5) Plans for the future: The future of the Jewish collections at the NLL hinges on the following internal and external factors:

(a) The NLL's plans to incorporate two copies (whenever possible) of all Lithuanian publications - regardless of language - into its National Archive of Lithuanian Imprints;

(b) The re-established State Jewish Museum's claims on Lituania, duplicates, and periodica (the museum is headed by the parliamentarian Emanuelis Zingeris);

(c) The claims made by institutions outside of Lithuania (e.g., YIVO, Telshe Yeshiva) on those portions of their pre-war collections - including Lithuanian imprints, Lituania, and non-Lithuanian imprints - that are still in Vilnius.

The NLL administration is amenable to discussing the exchange of non-Lithuanian books and duplicates in the Lituania category, but is not prepared to agree to claims by institutions outside of Lithuania for the return of their pre-war property. The NLL administration, furthermore, regards the Torahs and other sacred scrolls as manuscripts rather than ritual objects, and is storing them in its manuscript division. (Four Torah scrolls, however, were recently released by the NLL to synagogues in Lithuania.)

Concluding Observations

After the librarians' delegation returned from Vilnius, a report was prepared which was submitted to its sponsors in early May 1997. The report included a summary of findings and a list of recommendations aimed at enhancing international cooperation and improving access to the collections in Vilnius. The delegation's members recognize that Vilnius is only one of several centers in Eastern Europe known to possess extensive Judaica libraries, and that work needs to be done to learn more about collections elsewhere in the region.

To what extent can library collections that did not leave their places of origin be regarded as "spoils of war"? As far as Jewish collections are concerned, the answer ought to be obvious: The systematic and largely successful attempt to exterminate the Jews of Europe created a situation whereby book collections frequently outlasted their individual or institutional owners. (In a very few cases, these owners themselves were able to relocate, while their property remained behind.) The fate of the Jewish library collections in Vilnius cannot be divorced from the historical fac-

tors which brought them to their present location at the NLL's Bibliographic Centre. Their ultimate disposition remains, for the above-enumerated reasons, yet to be resolved.

Zachary M. Baker, Head Librarian,
YIVO Institute for Jewish Research, New York

Notes:

¹ Hoogewoud, Frits J.: The Nazi Looting of Books and Its American 'Antithesis': Selected Pictures from the Offenbach Archival Depot's Photographic History and Its Supplement. *Studia Rosenthaliana* 26:1/2 (1992). Pp. 158-192. [Discussion of the postwar restitution of the Bibliotheca Rosenthaliana, Amsterdam.]

² Dawidowicz, Lucy S.: *From That Place and Time: A Memoir, 1938-1947*. New York 1989 (ISBN 0-393-02674-4), paperback edition 1991 (ISBN 0-553-35248-2). [Includes the author's firsthand account of the salvaging of Jewish books and archival documents, including above all materials belonging to the YIVO Institute, found in Germany at the end of World War II.]

³ Poste, Leslie I[rlyn]: Books Go Home from the Wars. *Library Journal*. Dec. 1. 1948. Pp. 1699-1704. [Overview of post-war sorting operations in Germany and distribution of books orphaned by the Nazis' extermination of European Jewry. See also Poste's doctoral dissertation: *The Development of U.S. Protection of Libraries in Europe during World War II* (Chicago: The University of Chicago, Graduate Library School, 1958).]

⁴ Shavit, David: *Hunger for the Printed Word: Books and Libraries in the Jewish Ghettos of Nazi-Occupied Europe*. Jefferson, NC 1997 (ISBN 0-7864-0203-2). [For the most complete account in English of the operations of the Vilna Ghetto Library, 1941-1943, see Chapter 6, "Vilna Ghetto". Pp. 93-112.] - Hermann Kruk (1897-1944): *Bibliothekar und Chronist im Ghetto Wilna (1941-1943)* (Librarian and Chronicler of the Vilna Ghetto). Übersetzt aus dem Jidd[ischen] und herausgegeben von Maria Kühn-Ludewig. Hannover 1990. [Includes a biographical essay about Kruk, director of the Ghetto Library in Vilnius, by Pinkhas Schwartz, and the annual report by Kruk, "Ghetto-Bibliothek und Ghetto-Leser (1942)" (Ghetto Library and Ghetto Readers). In German translation.] - Sharlet, Jeff: Keeper of a Civilization. *The Book Peddler*. No. 21. Spring 1996. Pp. 9-21. [Interview with Dina Abramowicz, former librarian of the Vilna Ghetto Library's Reading Room; since 1947 a librarian at the YIVO Institute. New York.]

⁵ Fishman, David E.: *Embers Plucked from the Fire: The Rescue of Jewish Cultural Treasures in Vilna*. New York: YIVO Institute for Jewish Research 1996. [Overview of the rescue and recovery of the YIVO Institute's pre-1939 collections, emphasizing materials remaining in Lithuania; in English and Yiddish.]

⁶ Zingeris, Emanuelis: *Knygu hebraju ir jidis kalbomis fondai Lietuvoje* (Collections of Hebrew and Yiddish books in Lithuania), *Knygotyra* 13 (2) (1987). Pp. 86-103. [The first published description of the Lithuanian State Book Chamber's Jewish collections; includes English and Russian summaries. A Yiddish version of Zingeris's article: *Bikher un mentshn: vegn dem goyrl fun yidishe un hebreishe bikher-fondn in Lite* (Books and People: Concerning the Fate of Yiddish and Hebrew Book Collections in Lithuania), appeared in *Sovetish heymland*. No. 7. 1988. Pp. 70-73.]

For Germany and Themselves: the Motivation behind the Nazi Leaders Plundering and Collecting of Art. Part I

Based on the book "Art as Politics in the Third Reich" (Chapel Hill, London 1997, ISBN 0-8078-2240-X) we will publish a series of articles by the author Jonathan Petropoulos.

The core argument of the book, *Art as Politics in the Third Reich*, is that the National Socialist elite, although among the most malevolent and destructive figures in history, viewed themselves as arbiters of culture and devoted inordinate time, energy, and resources to artistic matters. The volume is divided into two sections: the first concerns the evolution of the cultural bureaucracy and details the involvement of the top leaders in the administration of art, artists, and related institutions. Organized chronologically, this section documents the efforts of not only Joseph Goebbels and Alfred Rosenberg - individuals who had a legitimate claim to manage cultural affairs by nature of their state and party positions - but Heinrich Himmler, Hermann Göring, Baldur von Schirach, Joachim von Ribbentrop, and many others. Section I reveals the Nazi leaders' cultural ambitions and chronicles the gradually more radical nature of their policies, as intimidation gave way to repression and purges of museums became plundering campaigns. The official cultural policies of the Third Reich, I argue, are inextricably linked to the more general program of military expansion and racially-determined genocide.

The second section of the volume, which forms the basis for this and the following articles, documents the efforts of the elite to amass private art collections and then seeks to make sense of this behavior. Reconstructing the leaders' private collections required considerable detective work. As a doctoral candidate, I spent over three years in European archives (mostly in Koblenz, Berlin, Munich, Vienna, Paris, and Amsterdam), as well as considerable time in American repositories (mainly Washington and Los Angeles), trying to move beyond the previous studies which treat the collections of Hitler and Göring. Indeed, very similar books have been written about the collections of these two leaders based upon the outstanding office of Strategic Service/Art Looting Investigative Unit reports from the immediate postwar period.¹ After initial research, it became evident that other members of the Nazi elite followed the lead of Hitler and Göring. This, then, became a central challenge: to examine the collecting practices of the subleaders. Because efforts to amass art collections proved so widespread among the Nazi leadership corps, this behavior served as a means of expressing aspects of their personalities and world views. The Nazi elite approached culture with a conscious and even sophisticated understanding of its expressive potential, and therefore took an activist posture in its management. They were deeply sensitive to symbols, myth, and rituals, and used them all as forms of communication.²

While scholars have tended to focus upon their public propaganda - whether it entails radio addresses, the party congresses at Nuremberg, or the seemingly unceasing succession of other state-sponsored campaigns - their manipulation of art also provided a means for articulating important messages.³ This communication was often

private or limited to the Nazi elite, and the messages were often of a different nature than those directed to the public at large. Beyond any "esprit de corps" or ego gratification, this perception of an elite was important because it was central to the character of the regime. This dichotomy of public and private provided one of the central dynamics of their rule. In this way, one can understand better many of the apparent paradoxes in their behavior: how avowed socialists amassed such enormous wealth, how these barbarous men could view themselves as cultured, and how their supposedly coordinated and efficient government gave rise to so much infighting. In short, an understanding of both the public and the private allows for a more sophisticated understanding of their rule. Art was a major preoccupation for them because it had import in both realms.

They did not so much appreciate art in itself, but rather viewed it as an opportunity to communicate their larger concerns and objectives. Indeed, this instrumental approach to art held true for both their publicly stated goals, as well as their more private ambitions. The common link in both spheres was this instrumentalization, and moreover, their preoccupation with power.

Scholars have explicated systems of meanings in myriad different ways, but anthropological and linguistic strategies have predominated recently, especially in the realm of cultural history.⁴ Acknowledging the need for a critical engagement with these newer approaches and constructs (as there are limitations to such strategies), they nonetheless prove useful to understanding the National Socialist case.⁵ If one takes care to include other methodologies - not to limit oneself to the anthropological and linguistic, but also to make use of psychology, political science, and art history, among other disciplines - one can better understand the leaders, their world-views and their system of rule. An eclectic and interdisciplinary cultural history also prevents one of the main pitfalls of poststructuralism - the threat, in Jane Caplan's words, "that National Socialism will be reduced ... to the level of one more spectacle in a society of commercially determined spectacles - the fear that the ultimate way of interpreting or representing the concentration camp will no longer be as a consummate human catastrophe, but as ritual or play".⁶ The goal in explaining the phenomenon of Nazi art collecting is to provide a sophisticated and penetrating analysis of the NS leaders - to move closer to an understanding of their complex collective mentalité - and not to render the subjects bloodless actors.⁷

Dietrich Orlow has noted that the history of the Third Reich "must at time read like a series of interwoven political biographies."⁸ As both political power and art collecting were so highly personal, it is indeed useful to approach the collecting phenomenon by summarizing the behavior of a few of the NS elite. The starting point, as noted above, is Adolf Hitler, as he dominated both the political and artistic spheres within Nazi Germany. His megalomania found expression in both cases, as he sought world domination while striving to amass the greatest art collection of all time.⁹ His personal collection of nineteenth-century German landscape and genre paintings, which he assembled in the early-to-mid-1930s, evolved into the makings of the "Führermuseum", the planned centerpiece of a cultural complex in his childhood home of Linz, Austria.¹⁰

By 1945, this collection included 6,755 paintings, of which 5,350 have been classified as Old Masters.¹¹ Highlights of the collection include Vermeer's "An Artist in his Studio"; Rembrandt's "Democritus and Heraclitus"; Leonardo da Vinci's "Leda and The Swan"; Bruegel the Elder's "Hay Harvest"; and Watteau's "The Dance". Besides Old Masters, Hitler pursued German art of the 19th century: Grützner, Spitzweg, Waldmüller, Thoma, Friedrich, Runge and the Austrian artist, Hans Makart were among his favorites. There was to be no contemporary Nazi art in the "Führermuseum": "the artistic embodiment of Germany's spiritual renewal", to quote Goebbels, would be placed in the "Haus der Deutschen Kunst" (House of the German Art) in Munich and other museums in the Reich. In the private sphere, Hitler confined nearly all contemporary Nazi works to the offices: perhaps two dozen among the thousand works which adorned his residences stemmed from the post-World War I period.¹² This suggests an opinion that Hitler often expressed to his inner circle, but not to the public: that Nazi art was of poor quality.

Hitler amassed his collection through various means. He first acquired art in a private, personal way, as he utilized royalties from "Mein Kampf" and the donations from wealthy benefactors such as Fritz Thyssen to indulge his taste in 19th century German landscape and genre painting.¹³ His personal photographer and adviser, Heinrich Hoffmann, who shared a penchant for this art, played a key role in helping him collect works in the late 1920s and 1930s.¹⁴ Personal gratification gradually gave way to megalomania, and after visiting the great Italian galleries in Rome and Florence in 1938, Hitler conceived a plan to create the "Führermuseum" in Linz. He first sought out an expert to oversee the building of the collection, and based upon the recommendation of the Berlin art dealer Karl Haberstock, he selected Dr. Hans Posse, a renowned museum director whose specialty was Renaissance and Dutch art.

At the start of 1938 Posse was unemployed, having been sacked as director of the Dresden "Gemäldegalerie" (Picture Gallery) by the Gauleiter of Lower Saxony Martin Mutschmann, the reason purportedly being Posse's lack of political zeal and his earlier purchase of 'degenerate' modern art.¹⁵ Hitler arranged for Posse's rehabilitation - including the reappointment to his former post in Dresden - and shortly thereafter named him "Sonderbeauftragter des Führers" (special emissary of the Führer), a position with wide-ranging authority where he acted in Hitler's name. The once apolitical Posse was won over quickly to the dictator's vision. In 1938, the two met on several occasions to discuss the secret plans for the museum. The advent that year of operations to confiscate Jewish property in Austria and then in the "Altreich" moved them out of the realm of the rhetorical, as Posse and Haberstock searched through SS-guarded depots for artworks suitable for the collection. Later, the plunder from Poland and the confiscated possessions from Western European Jews (most notably a selection from the over 21,000 artworks taken from French Jews by Alfred Rosenberg's Einsatzstab, ERR), provided them with an illicit but impressive array of objects for the "Führermuseum".¹⁶

There was considerable effort expended to make the Linz project appear legitimate. First there was the pervasive "Amtssprache" or "bureaucratized language", which

was used in the hope of camouflaging deeds: e.g., many works were described as "sichergestellt" or "secured", when in fact, they were stolen from "enemies" of the Reich (most often Jews, but also Freemasons, Communists and others).¹⁷ There were also frequent (but ineffective) orders admonishing the subleaders to avoid improper utilization of artworks which fell into their hands: these pleas for propriety being of course hypocritical and selfinterested. Third, it was stressed (and undeniably true) that much of Hitler's collection came by way of purchase. Hitler's agents spent over 163 million Reichsmarks on artworks, making him the greatest art buyer of all time.¹⁸ These purchases were for the most part declared legally binding by postwar investigations - the art thus becoming the property of the German state.¹⁹

Besides purchase and plunder, Hitler enhanced the collection by way of gifts, as the tribute flowed from subordinates, admirers and foreign leaders. These gifts were often placed in Hitler's residences (the Berghof, the Reich Chancellery, and his Prinzregentenplatz apartment in Munich), although during the war he safeguarded many works in castles and salt mines, and expressed his ownership by way of keeping photographic albums with him in the Führerhauptquartier.

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Notes:

¹ See, for example, David Roxan and Kenneth Wanstall, *The Rape of Art: Hitler's Plunder of the Great Masterpieces of Europe* (New York 1965); Matila Simon, *The Battle of the Louvre: the Struggle to Save French Art in World War II* (New York 1971); Charles de Jaeger, *The Linz File* (Exeter 1981); Ernst Kubin, *Sonderauftrag Linz: Die Kunstsammlung Adolf Hitlers* (Vienna 1989); Jakob Kurz, *Kunstraub in Europa, 1939-1945* (Hamburg 1989). More recently Günther Haase has used these reports, but supplemented them with some fine archival research in *Kunstraub und Kunstschutz. Eine Dokumentation* (Hildesheim 1991); and Lynn Nicholas has relied heavily upon them in her award winning *The Rape of Europa: The Fate of Europe's Treasures in the Third Reich and the Second World War* (New York 1994).

² See Jay Baird, *To Die For Germany: Heroes in the Nazi Pantheon* (Bloomington/Indianapolis 1989), and J.P. Stern, *The Führer and the People* (Berkeley/Los Angeles 1975).

³ For excellent studies on public propaganda, see Z.A.B. Zemon, *Nazi Propaganda* (New York/Oxford 1964), Robert Edwin Herzstein, *The War That Hitler Won: The Most Infamous Propaganda Campaign in History* (New York 1978), and Michael Balfour, *Propaganda in War, 1939-1945. Organizations, Policies, and Publics in Britain and Germany* (London 1979). For an example of a more specifically focused study in this sphere, see Hamilton Burden, *The Nuremberg Party Rallies, 1923-1939* (London 1967).

⁴ Lynn Hunt, *The New Cultural History* (Berkeley 1989), 11.

⁵ Roger Chartier, who has adopted a critical approach to literary theory, for example, warns against the reductive tendencies of poststructuralism. See Chartier's critique, "Text, Symbols and Frenchness", *Journal of Modern History*, 57 (1985), 682-95.

⁶ Jane Caplan, "Postmodernism, Poststructuralism, and Deconstruction: Notes for Historians", in *Central European History* 22, nos. 3-4 (1989), 275. Other historians have also expressed support for an eclectic cultural history. See Eley, "Is all the World a Text? From Social History to the History of Society Two Decades Later", *CSST Working Paper #55* (October 1990), 23.

⁷ For critical discussions on the origins of this project, see Volker Sellin, "Mentalität und Mentalitätsgeschichte", *Historische Zeitschrift*, 241 (1985), 555-98.

⁸ Dietrich Orlow, *The History of the Nazi Party, 1933-1945* (Pittsburgh 1973), 7.

⁹ For Hitler's ambitions for world conquest, see the discussion of his "Stufenplan" in Eberhard Jäckel, *Hitler's World View: A Blueprint for Power* (Cambridge 1981), and Milan Hauner, "Did

Hitler Want A World Dominion?", *Journal of Contemporary History*, 13, No. 1 (January 1978), 15-32.

¹⁰ See note 1 above.

¹¹ See S. L. Faison, Consolidated Interrogation Report No. 4: Linz: Hitler's Museum and Library (OSS Report, 15 December 1945), 79.

¹² In terms of his private residents, note, for example, that post-war Office of Strategic Service investigators determined that 534 works were housed at the Berghof. See S.L. Faison, Consolidated Interrogation Report No. 4, 78. This accords with the calculations of Peter Adam, who observed "In his country retreat, the Berghof, there were no contemporary works - despite the fact that he bought thousands of pieces in the official art exhibitions. But compared with the work of older masters, this number was still relatively small. Among the 3,423 art works Hitler stored away during the last years of the war in the mines of Bad Aussee, only 24 were contemporary works, among them 2 paintings by [the architect Paul Ludwig] Troost obviously kept for sentimental reasons, a picture by Albin Egger-Lienz, and one by Sepp Hilz...". Peter Adam, *Art of the Third Reich* (New York 1992), 119. As an example of NS art in one of Hitler's offices, see the Ziegler's triptych "The Four Elements", located in Hitler's quarters in the Braunhaus. Hitler purchased vast quantities of NS art (e.g., his annual buying trips to the "Große Deutsche Kunstausstellungen" in Munich), but did so on behalf of the state, rather than himself personally. See the tables listing Hitler's purchases from the "Haus der Deutschen Kunst" in Otto Thomae, *Die Propaganda-Maschinerie: Bildende Kunst und Öffentlichkeitsarbeit im Dritten Reich* (Berlin 1978), 345-49.

¹³ Wulf Schwarzwäller, *Hitlers Geld: Bilanz einer persönlichen Bereicherung* (Rastatt 1986), 148.

¹⁴ Heinrich Hoffmann, *Hitler Was My Friend* (London 1955), and the revised German edition, *Hitler wie ich ihn sah: Aufzeichnungen seines Leibfotografen* (Munich 1974).

¹⁵ Kurz, *Kunstraub in Europa*, 32-34.

¹⁶ For the best studies of the ERR, see James Plaut, Consolidated Interrogation Report No. 1: Activity of the Einsatzstab Reichsleiter Rosenberg in France (OSS Report, August 15, 1945), Reinhard Bollmus, *Das Amt Rosenberg und seine Gegner: Studien zum Machtkampf im nationalsozialistischen Herrschaftssystem* (Stuttgart 1970), and Jean Cassou, *Le Pillage par les Allemands des Oeuvres d'Art et des Bibliothèques Appartenant à des Juives en France* (Paris 1947).

¹⁷ For more on "Amtssprache" in the Nazi Bureaucracy, see Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York 1963), 48-49.

¹⁸ This is also the estimation of the art historian Jakob Kurz, *Kunstraub in Europa*, 18.

¹⁹ For the expenditure figure for Sonderauftrag Linz, see Janet Flanner, *Men and Monuments* (New York 1957), 226. For the postwar committees which determined proper ownership of art, see Michael Kurtz, *Nazi Contraband: American Policy on the Return of European Cultural Treasures, 1945-1955* (New York 1985), and Hugh Craig Smyth, *Repatriation of Art from the Collecting Point in Munich After World War II* (The Hague 1988).

The Oval Hall Salon in the Library for Foreign Literature Devoted to Restitution Problems

Once a month the Oval Hall Salon of the Library for Foreign Literature brings together scientists, writers, literary critics, artists, actors, musicians, theologians - everybody concerned about the fate of national and world culture. Here, in a free and friendly dialogue, the problems of general concern - regardless of age, occupation and political preferences - are being discussed.

On March 18, the guests of the Salon were representatives of TV-Kultura film studio.¹ They presented short fragments of various films produced by the studio and devoted to the problem of so-called 'trophy art'. Besides the films "By Rights of

Conquerors", "Zoo Story", "Tracing a Disappeared Collection" the audience was shown fragments of the studio projects which are far from completion.

The art director of the studio, Boris Karadjev, was speaking on the specific character of the creation of these films related to the fact that at the time when the studio started working on the project, all the documents on collections removed to the Soviet Union were marked 'secret', as, though, were marked all the storages where these collections were kept. Even now people directly involved with the process of moving art collections from the territory of Hitler Germany and its allies prefer not to give real information about how this process took place. They remember perfectly well how much you might pay for unnecessary outspokenness not a long time ago, in the Soviet time. Luckily, the persistence of the authors helped them not only to get an access to confidential documents in secret storages, but also to persuade witnesses and participants of the events to take part in the creation of the films.

The chief administrator of the Moscow Art Theatre - Andrey Belokopytov, who became colonel in 1945 - was moving from Berlin the legendary gold of Heinrich Schliemann's collection. Lieutenant Adrian Rudomino (son of the founder of the Library for Foreign Literature Margarita Rudomino) was organizing the removal of highly important books including the famous Gutenberg Bible. Captain Victor Baldin, in command of the engineer battalion, accidentally found and brought to Moscow (actually saving these masterpieces) one of the best collections of the European drawing of the 15th-19th centuries, the collection of the "Kunsthalle in Bremen". Sophia Vand-Polak, chief keeper of the town of Gor'kiy's Fine Arts Museum suddenly found herself after the Second World War in possession of paintings from private Hungarian collections, taken by the Nazis to Germany.

Part of the art objects, mentioned and shown in films, to some very limited extent, have become accessible to the public, as happened to Schliemann's Gold which was exhibited in the Pushkin Museum in Moscow. But, to a considerable extent, what was seen by the participants of the meeting in the Oval Hall on March, 18 could be called a sort of 'discovering anew' something, that for long decades was considered irrevocably lost. So, special interest of the librarians, present at the Oval Hall, was aroused by the videoshooting of incunabulas and manuscripts from the Sárospatak library now located in one of the Russian provincial libraries. These materials have never been on display before.

In a vivid discussion practically everyone was fulfilled with one wish - that all cultural values, for so long believed 'missing' and for such a long time kept in notorious "spezkhrans" (special depositories) should return to museum halls, to libraries and picture galleries.

All participants of the meeting agreed with the opinion of the film authors, supported by one of the hosts of the salon, Theodor Shanin from Manchester University, Director of the Moscow School of Social and Economic Sciences, that the Russian public opinion, as well as the opinion of the Russian Intelligentsia, can and should become the essential factor in the determination of the fate of the 'spoils of war', that we shouldn't reduce the circle of the 'involved' to a small group of politi-

cians and lawyers. Regardless what fate awaits the 'spoils of war', the most important thing today is to return the masterpieces into cultural circulation and to organize free access to them for the experts.

Culture, as a river, springs from many sources. If one of them dries up, the loss for all is considerably greater than it seems to be at first sight. And not only people of a separately taken country - the whole of mankind suffers from the losses of cultural heritage of the countries being at war. Films, shown in the Oval Hall, remind us about something forgotten in discussions: the problem of restitution has not only a political, but also a humanitarian side. Though it is quite understandable why the accent in the Russian press is laid on political aspects.

As a result of military actions, evacuation, occupation, looting, confiscations, captures, etc, a huge number of culture and art monuments disappeared from the world's cultural field. According to the international agreements for more than 50 years numerous researchers, lawyers, diplomats, politicians - individually and within the framework of activity of national and international organizations and commissions - conduct works on revealing, returning, and restoring of removed and lost cultural values.

Primarily because of its public importance, this work was covered in detail in all countries, except for the states comprising the socialist camp. In Russia, until recently, the question of the fate of cultural values, lost and removed during war time and the 'just after war' period, was considered, actually, to be top secret. From this we can understand that single art pieces and the whole collections' movements, unfortunately, cause innumerable rumors and various political speculations. Only accurate and precise information will help to stop these speculations, to put everything into the right places. The films, created by TV-Kultura studio, are produced to play their role in a truthful coverage of this problem.

Leonid Sitnikov, Editor-in-chief, TV-Kultura, Moscow

Notes:

¹ TV-Kultura film studio was created in 1993 as structural part of the editing and publishing complex Kultura, launched by the Ministry of Culture of the Russian Federation. On the instructions of the Ministry of Culture the studio took part in the information support of a number of federal cultural programs; some projects were initiated by the studio itself; films produced by TV-Kultura were shown by Russian TV and by various foreign companies. The main direction of the studio's activity is propaganda of Russia's cultural heritage, popularization of the events, aimed at the renaissance of Russian spiritual traditions. The studio plans to start working on a cycle of TV programs about dramatic pages of the history of Russian culture.

Country Reports

Belgium

Two important events related to the consequences of the Second World War occurred this year in Belgium. Firstly, the government decided to set up a commission to study the fate of the values owned by the Belgian Jewish community and secondly, a painting claimed by Belgium since 1944 has been located.

Given the international context (the existence of similar commissions in other countries such as France, Switzerland, Norway, Sweden, Hungary and Poland and the revelations about the gold kept by the Swiss banks), the Belgian government decided in June to establish a commission to investigate what has happened to the values belonging to members of the Jewish community of Belgium who were deported during the German occupation. The commission, which is part of the Prime Minister's services, is presided by Baron Jean Godeaux, former chairman of the Belgian National Bank. The members of the commission are representatives of the different ministries involved (namely Economic Affairs, Foreign Affairs, Justice and Public Health), historians and representatives of Jewish organisations. The first meeting of the commission has taken place in July and the start of the work is scheduled for early September. The commission will investigate various subjects, including the bank sector, insurance, real estate and cultural property.

Almost at the same time, the Belgian Restitution Service was able to locate a painting claimed by Belgium since the end of the war. The painting "The Man of Sorrows" is an oak panel painted in the 15th century by an unknown Flemish master and is currently in the collections of the Metropolitan Museum of Art in New York (USA). It used to be part of the most important private Belgian collection of Flemish primitives, the Renders collection, which was illegally sold to Herman Göring in 1941. This case, as well as another one involving the Metropolitan Museum, was well covered in the "Boston Globe". Thanks to the catalogues ("Missing Art Works of Belgium I & II") published and widely distributed by our services, Walter Robinson, journalist of the Boston Globe, could locate the painting. The Belgian state now intends to make a claim in order to recuperate the painting as soon as possible.

Last but not least, Jacques Lust, who was in charge of the Cultural Property Restitution Department within the Ministry of Economic Affairs, is now working at the Archives of the Contemporary Art Department of the Museums of Fine Arts of Belgium in Brussels and it is Nicolas Vanhove who replaces him at the Ministry of Economic Affairs.

Jacques Lust and Nicolas Vanhove, Ministry of Economic Affairs, Brussels

Byelorussia

The following is the text of the final document of the International Scientific Conference on Restitution of Cultural Values: the Problems of Return and Joint Use (Legal, Scientific and Moral Aspects) in Minsk on June 19-20, 1997. For a report on this conference by Alexander Fedoruk see section special reports.

We, scientists, statesmen and public figures of the seven European countries (Byelorussia, Germany, Great Britain, Poland, Russia, Ukraine and the Czech Republic), which assembled for the International Scientific Conference on the Return and Joint Use of Cultural Values:

1. Express our thanks to UNESCO and the Ministries of Foreign Affairs, Culture and Education of the Republic of Byelorussia for having given us the opportunity to hold the discussion on the urgent problem of restitution and joint use of cultural values. In the 36 addresses and reports read out at the conference, the legal, scientific and moral aspects of restitution were examined, the practice of restitution in the post-socialist countries was summarized, new valuable facts were brought into scientific use and the directions of further cooperation were outlined.
2. Take notice of the fact that for the improvement of the national legislation and for bringing it to conformity with the international standards it is very important to scientifically systematize the international legal reports on restitution and return of cultural values to the countries of their origin which have lost them due to armed conflicts, dependence, smuggling and in other illegal ways;
think that the experience of working out and the publication of the collection of articles "Legal Protection of Cultural Values. International Documents" in Ukraine deserves attention and should be popularized in the other post-socialist countries.
3. Consider that in connection with the adaptation by the Russian Federation of the law "On Cultural Values Removed to the USSR as a Result of World War II and Located in the Territory of the Russian Federation", the following problems take on special significance:
 - the role of Ukraine, Byelorussia, Lithuania, Latvia, Estonia, Moldavia in deciding the fate of these values; and their accessibility to the citizens of the above-mentioned states.
 - the problem of the values from the museums, archives and libraries of the above-mentioned states transferred to the territory of the Russian Federation as a result of World War II.
4. Call on the governing bodies of the CIS countries to make multilateral and bilateral agreements on the issues of exposure, return and joint use of cultural values.
5. Appeal to the governments of the CIS countries and to the Russian Federation government in particular to:
 - resume the activities of the Intergovernmental Advice Committee on the issues of restitution of cultural values, which was stipulated by the Tashkent Agreement on Cooperation in the Sphere of Culture (1992).

- create favourable conditions necessary for experts work, so that they could study the migration of cultural values and scientifically process that massive part of cultural heritage which was concealed or excepted from the scientific use.
6. Appeal to the statesmen and intelligentsia of CIS countries in which many museum collections are of very intricate origin and of great value for several states, to pay special attention to the search for moral ways of settlement of conflict situations and to display good will and good neighborly initiatives on different levels.
 7. Ask the Secretariat of UNESCO:
 - to hold a special session of the Intergovernmental Committee on the issue of assistance in the return of cultural values to the countries of their origin or the restitution of these values in case of misappropriation during or after World War II.
 - to render financial support to investigations in this sphere.
 8. Ask the governments of the Republic of Byelorussia and the Russian Federation to create state bodies and scientific institutions (or departments in already existing institutions) which would deal with the issues of exposure, return and joint use of cultural values of their own countries, which are being kept abroad.
 9. Call on for the integration of efforts to expose, return and use jointly the debatable cultural values. Attach special importance to the creation of the information base in this sphere, the beginning of which is being laid in the Francisk Skarina National Scientific and Educational Centre and in the scientific institutions of the other post-socialist countries.
 10. Call on for the integration of the efforts of the state institutions, public organizations, scientific and creative intelligentsia of the Republic of Byelorussia to establish the State Program "Returned Names".
 11. Note that the Byelorussian master Lazar Bohsha's work, the Cross of Saint Euphrosinya of Polatsk which disappeared at the beginning of the Great Patriotic War, is not only a Byelorussian national relic; but the property of the whole East-European culture, call on for the integration of the efforts of scientists and officials from different countries to discover and return this historical, cultural and spiritual value.

Adam Maldzis, National Scientific Education Centre F. Skarina, Minsk

France

The question of the 2,000 works of art, named "MNR" ("Musées nationaux récupération"), which were entrusted in 1949 to the care of the French museums, has been at the end of the activities of the "Commission de récupération artistique" (Commission of Artistic Recuperation) of foremost topicality during the last months (cf. "Spoils of War", no 2, pp. 24-24). Accused of not having made these artworks sufficiently public for 50 years and of not having searched for their eventual owners, suspected of having received 'stolen goods', the "Direction de musées de France"

(Directorate of the Museums of France, DMF) has engaged, since autumn 1996, in a vast information campaign which is not yet completely finished.

This campaign has begun with the organization of the colloquium "Spoils of War and Restitutions. The Destiny of French Works of Art During the Second World War" ("Pillages et restitutions. Le destin des oeuvres d'art sorties de France pendant la Seconde Guerre mondiale"), held in Paris, November 17, 1996, under the chairmanship of Françoise Cachin, Director of the Museums of France. Four important topics were on the agenda, explored by 15 French and foreign speakers: the protection of the national heritage (public and private) during the war; the Nazi plunder, the artmarket under the occupation, the restitutions carried out since the liberation. The publication of the speeches held, co-edited by the DMF and the Parisian editor Adam Biro, will be printed soon. Four days before the colloquium, on November 13, 1996, a catalogue of the MNR had been entered in internet (<http://www.culture.fr> under the heading "Documentation"). It lists the MNR deposited in the national museums, the museums of the province and the Mobilier national (national collection of royal furniture): around 2,000 identification descriptions accompanied by photographs, meant to enable potential owners to recognize their properties. Access to internet is in France still the privilege of a minority.

The DMF, preoccupied with reaching the largest possible public, has therefore also asked the main national museums safe-keeping the MNR (The Louvre, Orsay, Versailles, Sèvres) to organize presentations of these artworks, of which one part is usually stored in depot, mostly due to their mediocre quality or their large quantity. The "Musée national d'art moderne" (National Museum of Modern Art, MNAM) at the "Centre Georges Pompidou" has taken the same initiative on its behalf. As regards the museums in the province, where almost 700 works of art of the "Récupération artistique" have been deposited since the 50's, they are also organizing special presentations at the instigation of the DMF. This undertaking has been carried out from the beginning of April to the beginning of May 1997: initiated by a press conference by the Ministry of Culture, it caused the interest of a numerous public and inspired many articles in the French as well as in the foreign press.

However, it has only resulted in very few restitution demands of the MNR works¹ which could be taken into consideration by the Ministry of Foreign Affairs and the DMF. And for good reason: the great majority of MNR, far from having been plundered, were works acquired on the Parisian artmarket, in public sale or in the galleries, by the German collectors and museums, in particular by Göring and Hitler, and which were recovered by the Allies by virtue of the solemn London Inter-Allied Declaration of 1943 (which annulled commercial transactions with the occupant) or as compensation for the indemnities given to the Reich by the Vichy government for the occupation costs. This came out of the research in the archives of the "Récupération artistique", kept at the Quai d'Orsay, by a team of curators of the museums of France, consisting of Elisabeth Foucart-Walter, Anne Roquebert and Claude Lesné. The first results, concerning more than 300 works of art, have been delivered in the extensive press dossier published by the DMF on the occasion of the presentations in April to May, a dossier which contains a detailed outline, both

historical and juridical, on the question as well as a complete catalogue of the MNR deposited in the museums of France. This research is also the base of information available on internet, which from November 1996 to May 1997 has registered more than 20,000 searches of visitors.² In the end, when the research will be accomplished, an exhaustive MNR catalogue will be published by the "Réunion des musées nationaux" (Union of the National Museums).³

Robert Fohr, Head of Communications, Guillaume de La Broise,
Directorate of the Museums of France, Paris

¹ The painting "Landscape" by Albert Gleizes (RIP) recently returned to its owners by the MNAM, had been subject of a restitution demand in 1996.

² This pace has clearly slowed down since May.

³ Reminding you that, in this same context, on behalf of the DMF the Union of National Museums has re-edited, as reprint, the essential book by Rose Valland "Le Front de l'art" ("The Art Front", 120 FF).

Germany

No official meetings of joint restitution commissions with other states have taken place since the publication of the last issue of "Spoils of War". On April 16th, 1997 the Polish-German working group met in Berlin for the first time. This working group was established on an expert level in order to exchange information and to clear up problems before the meetings of the official commission. Both parties agreed that the meeting had been very fruitful and had taken place in an atmosphere of mutual understanding. It became apparent that the experts of both countries have similar problems and experiences. The next meeting of the working group is going to take place in autumn this year in Warsaw. The members agreed on tasks to be worked out until the next meeting. Both sides will prepare lists of lost cultural objects and also lists of restitutions between Poland and East/Western Germany since the end of the war. On June 24-25, 1997 a Polish delegation visited the "Koordinierungsstelle". Monika Kuhnke, expert of the Office of the Commissioner for the Polish Cultural Heritage Abroad, and Henryk Kondziela, retired art historian, formerly working at the National Museum of Poznan, studied the documents concerning Polish art losses and were shown the database of the "Koordinierungsstelle". They were accompanied by Ewa Labno-Falecka, cultural attaché at the Polish Embassy in Cologne.

The Russian law was the focus of attention of the media in Germany. As the discussion about the law in Russia is still going on, no official actions were undertaken. During his visit in Germany President Yeltsin and Chancellor Kohl discussed the problem of the cultural losses due to World War II, but no concrete results were achieved. President Yeltsin announced the possibility of the return of the Rathenau archive to Germany. The also mentioned party archive of the SED ("Sozialistische Einheitspartei Deutschlands", Socialist United Party of Germany) has nothing to do with World War II losses.

The list of lost objects of the Art Museum of Sewastopol Named after M.P. Kroschitski (Ukraine), was handed over to the German side during the last negotiations. Research is done concerning this list but until now no positive result could be achieved. The Ukrainian-German Commission last met in February 1996.

The Italian Catalogue of Losses "Treasures Untraced - An Inventory of the Italian Art Treasures Lost during the Second World War" was distributed to German institutions to find out if any of the lost art works are in the possession of German museums. The results of this enquiry are not yet complete.

On February 7, 1997 an informal meeting concerning World War II losses took place in Bonn between French and German representatives. The willingness to return museum objects and archival material was discussed as well as the research for special cultural objects. On July 17, 1997 the official meeting of the joint commission took place in Potsdam.

Four drawings were given back by an unknown Ukrainian to the "Kunsthalle Bremen" (Art Gallery Bremen) in February: Christian Morgenstern - "Elblandschaft" (Scenery on the Elbe), Christoph Nathe - "Baumgruppe" (Group of Trees), Adolf Schroedter - "Musikantenschlägerei" (Fight of Musicians), Max Joseph Wagenbauer - "Waldweg mit Brücke" (Forrest Path with Bridge). The drawings were among those taken by the Soviet army.

The portrait "Lady Elizabeth Hervey mit Taube im Arm" (Lady Elizabeth Hervey with Dove in the Arm) was given back to the "Kunstsammlungen zu Weimar" (Art Collections Weimar). It had been offered by Sotheby's in New York and returned after an agreement with the possessor was reached (see Restitutions).

Doris Lemmermeier, Coordination Office of the Federal States
for the Return of Cultural Property, Bremen

Hungary

The annual meeting of the Hungarian-Russian Restitution Committee took place on February 24-25, 1997 in Budapest. The committee reviewed the work done in the previous year, during the course of which Hungarian experts identified 126 paintings and sculptures of Hungarian origin which are now housed in the Grabar Institute in Moscow. However, the Russian party only considers the identification of 80 artworks accurate and suggested that further work is necessary for the positive identification of the remaining 54 artworks. Hungarian experts also examined 397 books housed in the Nizhny Novgorod library: 149 originate from the library of the Reformed College in Sárospatak, and 137 from various other Hungarian collections, while 12 other books still remain to be identified.

The Hungarian party requested the books from the Sárospatak library to be returned as soon as possible to the original owner. The Russian party promised to take the necessary steps concerning this matter. The Russian party gave a brief overview of the law on artworks which was passed by the Russian parliament, according to

which the artworks seized during World War II were declared Russian property. The Hungarian party also requested to be granted permission to search for artworks of Hungarian origin in other Russian museums and to be allowed to carry out research in Russian archives. The two parties agreed that the identification of artworks in the above mentioned two collections should be finished by May 31, 1997.

The Russian party briefly reviewed the recently begun work of cataloguing the Russian losses suffered during the war. According to their preliminary findings, together with the German army, the Hungarian army, too, seized various Russian artworks and books in Kursk.

The annual meeting of the Hungarian-Ukrainian Restitution Committee was held on April 3-4, 1997 in Ungvár (Uzhgorod). This committee also reviewed the work done in the previous year. The Ukrainian party has begun assembling the list of artworks lost during the war; the first part of this list has already been published. Preparations have been made for returning a Hungarian hand-written book in the Kiev library, as well as for the publication of the Ukrainian translation of Nándor Fettich's 1943 Kiev diary. (Fettich, a renowned Hungarian archaeologist, was commissioned by the Germans to inspect the museum collections in Kiev. During his stay in Kiev, Fettich did everything in his power to prevent the Germans from taking these collections from Kiev.)

The two parties agreed to continue their research in archives and to exchange photocopies of relevant documents in their respective archives. A Ukrainian informatics expert will study the computer database of the Hungarian National Gallery in Budapest sometime during this year. The work of the Hungarian-Ukrainian Restitution Committee is characterized by a spirit of understanding and mutual trust.

István Fodor, Director of the Magyar Nemzeti Múzeum, Budapest

Italy

The country report on Italy published in "Spoils of War" no. 2, informed the readers about the Italian quest for lost art treasures up to the establishment of the "Commissione Interministeriale per le opere d'arte" in December 1995 and about its first activities. In 1996 the Commissione Interministeriale completed the distribution of the Italian ("L'opera da ritrovare") and English ("Treasures Untraced") versions of our inventory of the Italian art treasures lost during the Second World War, on which its work is based.

In November 1996 the German version ("Verschollene Werke") was finally out of the printing press. According to an informal agreement reached with the German Foreign Ministry, "Verschollene Werke" was distributed to museums and cultural institutes throughout the Federal Republic of Germany by the two offices responsible for the recovery of the German spoils of war: the "Dokumentationsstelle des Bundesministerium des Inneren" in Berlin and the "Koordinierungsstelle der Länder" in Bremen. The results of this effort are not yet definitely known. The agreement with Germany foresees a friendly discussion at the end of the exercise to

decide which of the identified works will remain in Germany and which will be returned to Italy.

We are nevertheless aware of the presence in the Berlin "Antikensammlung" of four statues, formerly in Göring's Karinhall villa. In a museum in Lower Saxony there is since 1956 a huge painting, formerly of the Italian Embassy in Berlin, left behind in their barracks by a British regiment. The quest for other missing paintings from the Italian Embassy in Berlin has been moved to London.

Not via London, via Paris another painting of the Italian Embassy in Berlin ended up in the Wadsworth Atheneum of Hartford, Ct. Apparently sold in 1945 by Russian soldiers to a Wagon-lit employee, the "Bath of Bethsheba" by Jacopo Zucchi was offered by the same Wagon-lit employee to the Italian Embassy in Paris in 1947. The bureaucratic procedure for disbursing the 30,000 lire requested to the Italian government for the return of the painting was not positively concluded. The painting was subsequently sold to a Parisian art dealer and bought in good faith by the Wadsworth Atheneum in 1965. In 1970 it was identified as the masterpiece formerly in the Italian Embassy in Berlin by the Italian art expert Federico Zeri.

Since then, in bouts separated by several years, discussions were held between the Italian authorities and the American museum. They were resumed by the Interministerial Commission and led to a highly satisfactory agreement.

Recognizing that it was "the right thing to do", the Board of Trustees of the Wadsworth Atheneum has resolved, in a formal resolution, "to a de-accession from the European Painting Collection ... the "Bath of Bethsheba" ... in order to restitute it to its proper owners, ... contingent upon the receipt and viewing of a loan exhibition": "The Lesson of Caravaggio". Consisting of Caravaggio's "Narcissus" and 28 other paintings by his Italian followers from the collection of Palazzo Barberini, the Museum from where the "Bath of Bethsheba" originally went to Berlin and where it will stay from 1998 on, given that the exhibition will go to Hartford, Ct. in the spring of 1998.

Without any type of compensation, a parade shield of the XVIth century was returned to the Musei Civici of the town of Bologna in the fall of 1996 (see "Spoils of War" no. 3). The Commissione Interministeriale heard from a collector that this valuable piece, known as Targa Ovata, had been seen in the art market not many years before. It had been sent, just before the outbreak of war, from Bologna to Naples, for the Terre d'Oltremare exhibition, from where it disappeared. Being very well documented, even in the catalogue of the Wallace Collection, where its companion piece, a war hat, is kept since the last century, the case for its recovery was a strong one.

Letters were sent to all the main armor collections around the world until a curator gave clear indications of the American private collection where it was held. The Commissione Interministeriale approached the collector, Ambassador Ronald Lauder, who had bought it, in perfect good faith, on the art market in 1986. Ambassador Lauder, a true lover of the arts, immediately returned the shield to the Italian Consulate General in New York.

In December 1996 the two relevant Ministers, Dini of Foreign Affairs and Veltroni of Cultural Heritage, signed a new joint decree renewing the life of the Commissione Interministeriale until 31.12.1997. Currently a new review of its activities is under way.

According to its results, it will be decided on the future activities of the Commissione Interministeriale or, its main task having been accomplished, whether the quest for the Italian cultural heritage lost during the Second World War will be left to the "Comitato per le Restituzione" established by the Ministry of Foreign Affairs in 1994.

Mario Bondioli Osio, President of the
Interministerial Commission for Artworks, Rome

Luxembourg

1997 has been until now a very quiet year compared to the preceding ones. Nothing really important has happened in the field of documentation or information on lost works of art. So our aim to publish a list of missing works of art has not been achieved.

The international collaboration in the field brought together representatives from different countries in Paris in November 1996, but one day was really too short to have important exchanges on a personal basis. The main interest was focused on the problem of the MNR paintings in the Louvre and so the international aspects were of lesser interest to the participants.

The Benelux collaboration suffers from the departure of our Belgian colleague, Jacques Lust. We would like to thank him for all he did in this field and we hope that this loss will not bring to an end an exemplary collaboration based on friendship and a frank exchange of information. We wish him all the best in his new job.

The information we are still waiting for from Russia has not yet arrived, but we try and hope that in the end we will get what we are waiting for.

There are rumors that one of the paintings that disappeared at the end of the war in a castle in Italy, belonging at that time to the Prince of Luxembourg, has re-appeared in an auction in Austria. We hope that our Italian friends can find out more about this.

We think that the time has come to bring people together once more to see what has been achieved since we met in Bremen in 1994. One should try and organize a meeting in 1998.

Paul Dostert, Historian, Ministry of Culture, Luxembourg

Archival Reports

International Institute of Social History (IISH): Present Cooperation with Russia on Microfilm Project

History

The contacts between Russia and the IISH are long-standing. Even during the Cold War, bilateral discussions about book and archive collections and exchanges of recent information took place. Our institute was especially interested in the Central Party Archive, part of the former Institute for Marxism-Leninism (IML). Small wonder, as both institutes manage the papers of Marx and Engels and jointly possess the world's largest collection on social movements. Although our relationship with the IML was generally rather cool (we did not have access to the inventories), we reached an agreement to exchange documents for publication purposes.

During the Perestroika in the second half of the 1980s our ties strengthened. We cautiously talked about exchanging materials on microfilm. Such an arrangement would benefit both institutions, as the transactions would not involve cash payments. Following the dissolution of the Soviet Union in 1991, the plans accelerated dramatically. In August and September 1991 Eric Fischer, the IISH director at the time, and Jaap Kloosterman, the institute's present director, visited Moscow and finalized these plans. By then the Central Party Archive had been renamed the "Rossiiskii Tsentr Chraneniya i Izutchenya Dokumentov Noveizhei Istorii" (RCChIDNI, Russian Centre for Preservation and Research of Modern Historical Documents). In 1993, IISH staff members Leo van Rossum and Götz Langkau drafted a list of priorities for exchanging microfilms based on the discussions conducted two years earlier. The exchange of films was under way.

Exchange

In the years following World War II the IISH began to suspect that materials taken from the institute by the Einsatzstab Rosenberg during the war had reached countries in Eastern Europe and especially the former Soviet republics. This impression was confirmed when the institute received 192 boxes of archives (including the archive of the Dutch Social-Democratic Party) from Poland in 1956. Although no connection exists between our cooperation with Russian archival institutions, such as the RCChIDNI, and the documents that ended up in the Soviet Union after World War II, the institute's administration believes that the location of the documents should not hamper good relations with Russian institutions. The restitution issue has become a complicated matter that needs to be solved by politicians.

Many archival researchers who visited Russian institutions in recent years have discovered that local governments have acquired a taste for Western currency. In principle the IISH does not pay for copies of archives and has never done so in the past. While the institute has provided material support during hard times, this aid was unre-

lated to the copies.

Significantly, the interest of the Russian institutions almost exclusively concerns Russian material in the West. This situation can complicate a quantitative exchange.

Collections

The most important among the claims of the IISH concerns the papers of Joseph Bloch, in fact the archive of the "Sozialistische Monatshefte" (Socialist Monthly Issues). Cooperation with the Centre for the Preservation of Historical Documentary Collections ("Centr Chraneniya Istoriko-Dokumental'nykh Kollektzii", CChIDK), the former Special Archive ("Osobyj Archiv") in Moscow, recently enabled the IISH to procure microfilms of the Bloch collection.

Since 1992, the institute has worked with the Memorial Research and Document Centre in Moscow, which has accumulated a major collection on the victims of state terror in the Soviet Union. The institute donated film equipment to make the project possible. In 1995 we signed an agreement with another organization that works with Gulag victims ("Vozvrashtchenie" (Return) in Moscow) to film an important collection of manuscripts. Another agreement is with the "Moskovskaya Nezavisimaya Obshchestvennaya Biblioteka" (MNOB) and provides for exchanging literature put out by unofficial publishers and samizdat literature. Thus far we have received 4,000 periodical titles.

We are working with the "Rossiiskii Centr" (Russian Center, RCChIDNI) in Moscow to arrange for translation of its printed inventory lists of major archives. The lists are being processed in Moscow and are also available for consultation in Amsterdam.

The films we received from this institution include the archives of August Bebel, Eduard Bernstein, Etienne Cabet, Wilhelm Dittmann, Ferdinand Lassalle, Karl Liebknecht, Clara Zetkin, and the "Internationale Arbeiter Assoziation" (International Working men's Association).

Literature

In the near future Götz Langkau will provide more detailed information about the institute's Russian acquisitions of 'Western' archives on microform in: *Internationale Wissenschaftliche Korrespondenz zur Geschichte der deutschen Arbeiterbewegung*, which is published in Berlin. Additional information about acquired collections may be found in the Annual Reports of the IISH.

Peter Manasse, Curator, International Institute of Social History, Amsterdam

The Computer Database of the Hungarian National Gallery

With this article on the Hungarian database we start a series of presentation of various databases dealing with the topic of World War II losses.

The Objectives

1. To describe the artworks which were lost between 1938 and 1944 and which were taken from Hungary in violation of the then export regulations. The sale of these artworks was a violation of the law even if they were sold abroad by their rightful owners. (About 5 per cent of the losses.)
2. To describe the artworks taken from the country between March 1944 (the German occupation of Hungary) and April 1945 (the expulsion of the Germans), partly shipped off by various German military units and partly by the Fascist Szálasi Government, and which were never returned to Hungary due to the activity of OMGUS and other authorities of restitution. It must be noted here that about 90-92 per cent of the artworks taken out of the country were returned between 1945 and 1948. About 80 per cent of these artworks were returned to their rightful owners, while the remaining 20 per cent unlawfully came into the possession of various Hungarian institutions, such as museums, archives, libraries, ministries and financial institutions. This situation can hardly be considered acceptable. (About 5 per cent of the losses.)
3. To describe the artworks which were seized as booty by special military units (the Economic Officers' Commissions) of the Soviet Union from the vaults of Hungarian banks. These operations took place between late January and early April 1945 in Budapest. The four largest banks in Budapest were looted in late January and early February 1945. Most of these artworks were shipped out of Hungary in late summer 1945, but there were some shipments as late as 1947. A high number of artworks was seized outside Budapest, mainly from the manor houses in Transdanubia and the bank vaults of various towns by the Soviet military officials based in Budapest. Very little was shipped off from the storage depots under Soviet control. Although this loss only accounts for about 1-2 thousandth of the losses, it is nonetheless important to determine the exact number. (About 85 per cent of the losses.)
4. To describe the artworks which were smuggled out of Hungary between 1945-49. These were in part identical to the artworks shipped to the West and later returned to their rightful owners. (About 5 per cent of the losses.)

Sources Used

1. Hungarian and international catalogues, references, books and periodicals
2. Museum inventories
3. Documents in various Hungarian archives, primarily the documents housed in the Hungarian National Archives:
 - a. The documents of the Hungarian Royal Collections (1927-1947)

- b. The register of artworks seized from Hungarian Jews by the government commissionership (1944)
 - c. The documents of the Ministerial Commission for the Artworks seized from Public and Private Collections (1945-1948)
 - d. The documents of the Ministerial Commission for Endangered Private Collections (1947-1951)
 - e. The documents of the Central Corporation of Banking Companies
 - f. Bank documents
 - g. Family archives
4. Special collections in major public libraries (such as the Budapest Collection in the Szabó Ervin Library)
 5. Archive photographs
 - a. Photo archives of various museums (Museum of Applied Arts, Hungarian National Museum, Museum of Fine Arts, Kiscelli Castle Museum of the Budapest Historical Museum)
 - b. Photo archives of the National Board of Monuments
 - c. Bequests of photographers active in the 1940s
 - d. Private photo archives

Evaluation

Considering that systematic research in this field has not yet been conducted in Hungary since most archives were previously (and some still are) inaccessible, the computer processing seemed the single practicable solution in order to gain fairly swift results. As a first step, two major databases had to be assembled:

1. A catalogue of the identifiable artworks which were unlawfully taken out of the country (scheduled to be published this year, "The Sacco di Budapest and Depredation of Hungary", and containing historic documents, about 70 of which will be published for the first time, as well as about 48,000 catalogue entries)
2. The creation of a database containing all known data of the artworks in private collections prior to 1945. The greater part of these artworks includes the items seized by the Soviet military authorities and shipped out of Hungary, causing the greatest known damage to the cultural heritage of Hungary. This database will include the following data:
 - Hungarian exhibitions before 1945
 - All Hungarian auctions before 1945
 - References in archival documents

The estimated number of references is about 3 million, of which 170,000 have already been entered into the database. The program used is a DOS based software developed in Hungary (Ariadne). The search through the currently entered 170,000 references lasts for about 5 minutes; however, this time will not increase even after more references are entered. Image processing is done by scanning and with an insert video camera. A total of 7,000 paintings have been entered into the database. Some of these include up to 50-60 smaller details.

Technical Equipment Used in Data Processing

Due to financial restrictions and our own limited technical expertise, only IBM compatible computers assembled in Hungary are used. We started out using Windows 3.1 and 3.11, and we are now switching to Windows 95. Word processing is done with Winword 6.0, image processing with Photo Styler 2.0, Corel 5.0, Photoshop 3.0, while the camera is handled by Screen Machine. Scanning is done with Recognita Plus. The data are stored on CDs: a black-and-white image takes up about 10-30 Mbytes, color images about 10-50 Mbytes. Images recorded using the camera take up less space.

Computers

PC: 128 Mbytes memory, 10 Gbyte winchester, Pentium

PC: 128 Mbytes memory, 6 Gbyte winchester, Pentium

PC: 32 Mbytes memory, 4 Gbyte winchester, Pentium

PC: 32 Mbytes memory, 6 Gbyte winchester

PC: 16 Mbytes memory, 2 Gbyte winchester

2 CD writers (one is usually out of service)

1 A/3 universal scanner (suitable for slides, photos and illustrations)

1 A/4 scanner

1 insert camera (Sony mechanics and electronics, Canon optics)

1 color photocopier (A/3) and printer

1 Hewlett-Packard laser printer (black-and-white, text only, A/4)

2 Iomega Zip Drives

It is quite obvious from the above that we would need more professional equipment. The currently used PC environment often breaks down, calling an unwelcome halt to the work. Owing to the general financial restrictions we have accepted that we will have to work with the above, rather amateur equipment.

The financial resources for this research were adequate between 1992 and 1994, but grants have become irregular since 1995, and this year about 57 per cent of the annual grant (as defined in 1992!) has been withheld, the result being that successful work is now rather illusory.

Another serious obstacle to our research is that in the decades before 1990, all the documents proving the seizure of artworks by the Soviet Union were removed from the archives of Hungarian financial institutions (over 90 per cent of the relevant documents). These still exist, but are inaccessible to research since they are not under the authority of the Ministry of Culture. Consequently, it is extremely difficult to locate the documents which would prove the fact that these artworks were seized and shipped out of Hungary.

We could positively identify about one half of the 150 artworks that were part of the Soviet war booty and which we could examine personally. This fairly good ratio will undoubtedly deteriorate if we are also given the possibility to examine goldsmiths' works.

About 98-99 per cent of the artworks that were taken out of Hungary were parts of private collections, and most of these were deposited in bank vaults between 1942 and 1945.

Laszlo Mrávik, Art Historian, Hungarian National Gallery,
Leader of the Research Group for Lost Hungarian Works of Art, Budapest

American Restitutions to the Soviet Union after World War II

The Research Project "Fate of the Treasures of Art Removed from the Soviet Union during World War II" at the Forschungsstelle Osteuropa at the University of Bremen edited a Database available on CD-ROM with the title: Property Cards, Claims and Shipments. American Restitutions of Soviet Cultural Treasures to the Soviet Union after World War II. With an Introduction.

Included is a specialized bibliography about the fate of Soviet cultural losses, Nazi art looting in the Soviet Union and repatriations as far as they are known. The Database gives an overview about all restitutions to the former Soviet Union through the Office of Military Government in the U.S. Zone Germany (OMGUS), especially during 1945-1948.

It is organized in four sections according to the type of document:

1. Property Cards Art (PCAs),
2. Claims,
3. Shipments,
4. Bibliography.

But what do these documents mean? What are they about? The historical background is described in the introduction ("Begleitheft") of the CD-ROM.

Enormous amounts of Soviet cultural treasures looted by various Nazi organizations had been hidden in depots. The Monuments, Fine Arts & Archives Branch (MFA&A) of the Property Division of OMGUS found the treasures in a castle near Höchstädt/Donau, the castle of Colmberg in Franken and the monasteries Cartause Buxheim and Banz near Staffelstein. The MFA&A officers recovered archeological and other scientific collections, libraries, archives, furniture from the 17th and 18th centuries, paintings, icons and many other art objects in the NS depositories. The so-called "monuments men" established Central Collecting Points in Munich, Wiesbaden and Offenbach where they tried to identify the recovered art from occupied countries all over Europe. Hundreds of Nazi-depots were evacuated to these Collecting Points. The staff tried to find the owner of each of the millions of items stored there during the years 1945-1948.

They described each identifiable art work, sometimes crates on the so-called Property Cards. These cards provide in different categories information about Title, Author, Subject, Presumed Owner, Inventory Number, History and Ownership, No. of Document and others of every art object. All the information is transferred to Section 1 of the Database (PCAs). In response to the allied agreement ahead of restitution, Soviet

missions had to claim their missed cultural objects (Section 2, Claims). After the claiming process, the American and Soviet missions had to sign a receipt for the cultural treasures they received. Together with the receipt the Soviet missions got a list with all objects which were handed over, the so-called Shipmentlist (Section 3, Shipments). The handover process was carried out in different "shipments". If there was no doubt about the ownership, cultural objects were also given back directly from the Collecting Point. Restitutions were made only to nations, not to private people, in this case to the government to the USSR. After the beginning of the difficulties in the allied reparation proceedings, the government of the US Zone decided to exclude from restitution to the Soviet Union government the property of Jewish culture, people living in exile and property of the Baltic States. The representatives from the Soviet Military Administration in Germany took over 534,120 "items" in 13 shipments from October 1945 to September 1948. So far, these proceedings are described in the documents, which have also been transferred to CD-ROM. The main fund of documents is in the National Archives, Washington, D.C. and the "Bundesarchiv Koblenz" (Federal Archives Koblenz).

The CD-ROM is available for scientific and public institutions to prime cost directly from the editor.

Ulrike Hartung, Research Unit Eastern Europe, University of Bremen

Eichwede, Wolfgang, Ulrike Hartung: Property Cards Art, Claims und Shipments. Amerikanische Rückführungen sowjetischer Kulturgüter an die UdSSR nach dem Zweiten Weltkrieg. CD-ROM. Redaktion und Dokumentation: Ulrike Hartung, Wolfram v. Rotberg. Bremen 1997. Im Selbstverlag. ["Property Cards Art, Claims and Shipments. American Restitutions of Soviet Cultural Treasures to the Soviet Union after World War II." With a detailed explanation and introduction in form of a text book.]

Restitutions

Return of a Tischbein Painting to Weimar

On February 4, 1997 the painting "Lady Louisa Hervey mit Taube im Arm" (Lady Louisa Hervey with Dove in the Arm) by Johann Friedrich August Tischbein was handed over by Sotheby's, New York, to a representative of the "Kunstsammlungen zu Weimar" (Art Collection Weimar). A long debate of the paintings further whereabouts found thus a happy ending.

The Tischbein is registered at the Art Collection Weimar since 1837. During the war it was deposited at castle Schwarzburg (Thuringia), where it was stolen in June/July 1945 by an American soldier. The loss was reported in "Verlorene Werke der Malerei" (Lost Works of Art), a catalogue of German war losses which appeared in 1965.

The details of the sales of the painting during the last decades are now known. In January 1964 a collector in New York bought it from an American private gallery for the price of 1,700 \$. In January 1965 the painting was sold to an art dealer in Munich for 3,000 \$. This dealer sold the painting to another dealer. He asked the general director of the "Bayerische Staatsgemäldesammlungen" (Bavarian State Collection of Paintings) for an expert report, who drew the attention to the Weimar loss. Nevertheless the painting was sold again



for 28,000 DM. The new owner offered the painting to the Art Collection of Weimar for exchange or purchase. The Weimar director, Walther Scheidig, requested the owner and the Munich art dealer to undo the sale, which happened in December 1965/January 1966. The painting returned to the American collector in New York and to the private gallery who possessed the painting first. In February 1966 the magazine "Weltkunst" (World Art) was warning not to buy the painting.

Nothing happened until November 1995. The painting then appeared at Sotheby's in New York. Sotheby's informed the Art Collection in Weimar, which confirmed the loss. During the whole of 1996 various models for possible restitution were discussed. It was planned to have the painting handed over to a non-profit-organization

by the owner, who should get a certificate of donation in return. The American Council for Germany was ready to negotiate. The German Embassy was asked for help. But the owner of the painting, although knowing that she was in possession of a stolen work of art, refused all offers.

It was only at the end of 1996 that finally the art collector agreed to give the painting back to the first owner in the United States, who was willing to negotiate and did not want to have anything to do with stolen art. An expense allowance was paid and generously sponsored by the Dresdner Bank. So it has been possible to return the picture to its real owner - the Art Collection in Weimar. Besides the Dresdner Bank we would like to express our special thanks to Willi Korte, Andrews & Kurth L.L.P., Christoph van Berg, Prince Michael zu Sachsen-Weimar und Eisenach, the Federal Ministry of the Interior and the General Consulate of the Federal Republic of Germany in New York.

The Art Collection in Weimar hopes to get knowledge of the whereabouts of ten more paintings which were at the depository in castle Schwarzburg and were stolen by American soldiers. Among them were paintings by Dürer, Caspar David Friedrich and Cranach the Elder. Two of them, portraits by Dürer, came back from the U.S. to Weimar after a trial in 1982. The rest is still missing.

Thomas Föhl, Deputy Director, Art Collection Weimar

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The bibliography gives an overview of books in two parts: 1. Books on general aspects, giving a good insight into the history of spoils of war, policy of restitutions after the war and into legal issues which are related to cultural property and published during the last years; 2. important publications about looted art of various countries. Articles of the daily press are only included in special cases.

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Latest News

Walter Farmer Died

In August 1997 Walter Farmer died at the age of 86 in Cincinnati. Walter Farmer was one of the MFA&A officers in Germany after the end of World War II. He was the first director of the Wiesbaden Collecting Point and the initiator of the "Wiesbaden Manifesto" in 1945 (see "Spoils of War" no. 2, p. 53). For this courageous and honourable initiative Walter Farmer was known and respected worldwide. He received several awards in Germany. On May 5th, 1997 he was honored with the "Humanitärer Preis der deutschen Freimaurer" (Humanitarian Award of the German Freemasons). The laudatio was held by Klaus Goldmann, Museum of Pre- and Early History in Berlin and expert on the question of art looting related to World War II. Klaus Goldmann stressed the importance of the Manifesto and the significant role that Walter Farmer played in it. According to Goldmann, the "Wiesbaden Manifesto was written with better phrasing than found in any international treaty relating to cultural heritage of a nation". Walter Farmer accepted the award in gratitude and in memory of General Eisenhower: "I am proud to honor him as I am proud to have served under him".

Viktor Baldin Died

On January 4th, 1997 Viktor Baldin died in Moscow. As an officer of the Red Army in 1945 he was at the castle Karnzow, where the "Kunsthalle Bremen" had deposited drawings to protect them. Soldiers found these drawings in the cellar and took them away. Baldin realized the value of the drawings and tried to get official assistance to recover them. As this could not be achieved he took 362 drawings and 2 paintings back to Moscow. At the end of 1947 he gave them to the State Research Museum of Architecture Named after A.V. Shtchusev. In 1963 he was appointed director of this museum. In 1989 he publicly announced the existence of these drawings and paintings in the Soviet Union. Since then these art works are known as the so-called "Baldin Collection". Viktor Baldin made great efforts to return the drawings and paintings he recovered in Karnzow to the owner, the Kunsthalle Bremen. Viktor Baldin visited Bremen several times. 1995 the Baldin Collection was exhibited at the Eremitage. President Yeltsin assured him, that "the drawings saved by you will go back to Bremen soon". But Viktor Baldin died without having been able to fulfill his wish to return the drawings to the "Kunsthalle".

One Gutman Case Settled in U.S.

The heirs of Friedrich and Louise Gutmann - Nick and Simon Goodman and Lili Gutmann - are trying to achieve the return of artworks belonging to the family which were lost during World War II. In March this year the case of a painting by Sandro Botticelli entitled "Portrait of a Young Man in a Red Cap", dated 1484, was solved. The painting was sold by Sotheby's for \$ 650,000. The two parties agreed on a financial settlement for the heirs.

During World War II the Gutmanns lost not only their property but also their lives. Friedrich Gutmann was beaten to death at the concentration camp in Theresienstadt, Louise Gutmann died in the gas chambers at Auschwitz.

Two more of their artworks reappeared after a long time and are now object of legal ac-

tions. David C. Searle bought a monotype by Edgar Degas, "Landscape with Smokestacks". It seems that neither he nor the Chicago Art Institute, to whom he left the task and whose trustee David C. Searle is, carried out decent research about the history of this monotype. On the list of previous owners the name of Hans Wendland can be found. Wendland made huge profits during the war by selling looted art and also made paintings available for the private collections of Adolf Hitler and Hermann Göring. The lawsuit is not yet settled. The third case concerns a Renoir - "Appletree in Bloom" - which was sold by Sotheby's in 1969. The family required to be informed about the identity of the private collector who bought it. A New York judge ordered Sotheby's to turn over the records. The attorney for the Gutmann's heirs is Thomas R. Kline from Andrews & Kurth.

Objects of the Amber Room Found in Germany

Two objects of the legendary Amber Room surprisingly appeared in the Federal Republic of Germany. The Amber Room was a gift from the Prussian king Friedrich Wilhelm I. for the Russian Tsar Peter the Great. It was brought to Petersburg in 1716. In 1755 it came to Tsarskoye Selo near Petersburg, where it was built in at the Palace of Katherine. In 1941 German soldiers dismantled it and transported it to Königsberg, where the trace of the Amber Room is lost. On May 13, 1997 the police in Bremen secured a mosaic which is supposed to belong to the Amber Room. The authenticity of the mosaic (measurements 55 x 70,5 cm) is going to be examined. The present owner, who inherited the mosaic 12 years ago and who claims having received knowledge about the provenance only in 1990, wanted to sell the object. Instead of the buyer the police arrived. Obviously the mosaic, which is one of four mosaics from the Amber Room, took a different route from the rest of the looted objects. The father of the present owner accompanied the transport to Königsberg and took the mosaic in an unobserved moment.

Another object of the Amber Room is said to be in Germany. A carpenter from Leipzig claims that 18 years ago he restored a chest of drawers, richly ornamented with marquetry. Afterwards it was sold to West Germany. The carpenter worked during that time for the "Kunst- und Antiquitäten GmbH" (Art and Antiquity Ltd.), which belonged to the imperium of Schalck-Golodkowski, currency provider of the former German Democratic Republic. He is convinced of the authenticity of the chest of drawers. Its present location is unknown.

German Freemason Document Found in U.S.

In the Library of Congress of the U.S. the "Freimaurer Schutzbrief" (Freemasons Letter of Protection) of Friedrich the Great, signed on July 16th, 1774 to the Grand Land Lodge of Germany was found. The "Schutzbrief" was taken by an US officer and freemason in Thuringia from castle Burgk. The Department of State approached the editor of the Freemasons periodical "Eleusis" in Germany to learn about the owner of this document, which is agreed to be the Grand Land Lodge of Germany. The "Schutzbrief" will soon be returned in an official ceremony, probably at castle Burgk.

Unusual Recovery of Artworks in Darmstadt

The recent return of several works of art to the Hesse State Museum Darmstadt exemplifies the variety of historical backgrounds subsumed under war losses and the zealous search of the Hessian museum staff (cf. "Spoils of War", no. 3).

Not from abroad but from the neighboring state Rheinland-Pfalz (Rhineland-Palatinate) did eight paintings return in this particular case. From 1816 to 1945 the province Rhine-Hesse was part of Hesse-Darmstadt being Darmstadt its capital. During this period a number of works were loaned to the State Department of Rhine-Hesse and to the city of Mainz. In 1909 alone 17 paintings were loaned to the Provincial Administration in Mainz to decorate its chambers. Two of these were already reported missing in 1929. In 1945, after the air raids on Mainz, the other works were declared war losses. One painting, however, had not even been missed by the Darmstadt Museum because the loan records had been destroyed.



Magdalene. Oil on Tempera on Wood,
ca. 1500

The creation of the two federal states Rhineland-Palatinate and Hesse and the ensuing institutional separation hindered the post-war search for the lost treasures, and it is only during the last decade that a fruitful cooperation has developed between museum staffs in the two states. Based on this cooperation two altar pieces with depictions of the saints Elisabeth, Barbara, Magdalene and Wendelin (South German, ca. 1500), "The Birth of Adonis" (Italian, ca. 1600), "The Walk to Emmaus" (probably Dutch), "Fox, Shotgun and Dead Poultry" (German, 18th century), "Waterfalls in Tivoli" (German, ca. 1800), copy after Rembrandt's "Self-portrait with Helmet" (German, 19th century) and "Portrait of the Grandduchess Mathilde of Hesse-Darmstadt" (German, 19th century) could be located and finally returned. Having at last been returned, the paintings will be restored and scientifically researched. Although the identification process is not yet complete, "The Birth of Adonis" will probably be attributed to Adam Elsheimer.

The successful return of these paintings is proof of the urgent need to research the history of cultural institutions and of the requirement for a profound differentiation in the way war losses are registered.

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- Tell us about the restitutions you know about.
- Ask your colleagues to write us about their research.
- Send us press articles related to the topic of World War II losses.

Thank you for your cooperation - we certainly will appreciate it!

The fifth number will appear in March 1998.

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