
1. Best Practices for the Washington Conference Principles on Nazi-Confiscated Art and the Way Forward

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Origins of the Best Practices

There is a history of refining the 1998 Washington Conference Principles on Nazi-Confiscated Art that were endorsed by 44 countries, and it is heavily tied to Prague and the Czech Republic.¹

The Holocaust-Era Assets Conference that took place in Prague in 2009 resulted in the Terezin Declaration that was endorsed by 47 countries that included, enhanced, and broadened the Washington Conference Principles.² At a subsequent meeting in Prague in 2010 the Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933–1945 were endorsed by 43 countries and set a precedent for the idea of adding a Best Practices document for movable cultural property as well.³

In November of 2022, Dr. Robert Řehák, Special Envoy for Holocaust, Interfaith Dialogue and Freedom of Religion, Ministry of Foreign Affairs of the Czech Republic, organized the Terezin Declaration Conference (Terezin 2) in the Czernin Palace in

¹ For the text of the Washington Conference Principles, see <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/>

² For the text of the Terezin Declaration, see <https://www.state.gov/prague-holocaust-era-assets-conference-terezin-declaration/>

³ <https://wjro.org.il/our-work/international-declarations-resolutions/guidelines-and-best-practices/>

Prague. Representatives of 47 countries were present. There was a panel on looted art issues that was chaired by Lord Eric Pickles, United Kingdom Special Envoy for Post-Holocaust Issues. Participants included David Zivie, Head of Mission for Research and Restitution of Looted Cultural Property 1933–1945, French Ministry of Culture; Anne Webber, Co-Chair of the Commission for Looted Art in Europe; Ferdinand Trauttmansdorff, former Austrian Ambassador in Prague; and this author. Various issues and problems with the restitution of cultural property looted in the Holocaust were raised, and at the end of the panel Ambassador Stuart Eizenstat, the main author of the Washington Conference Principles, asked whether a follow-up to the Washington Conference Principles would be helpful, to which the answer was a resounding “Yes.”⁴

The Special Envoys Network

In March 2023, UK Special Envoy for Post-Holocaust Issues Lord Pickles and the World Jewish Restitution Organization (WJRO) hosted at the Foreign and Commonwealth Office in London the first-ever international gathering of Holocaust envoys, to discuss initial steps in building a network of envoys across the world to address Holocaust-era property restitution. Also in attendance were ambassadors, experts, and other dignitaries.

At the meeting, more than 20 international representatives from over 10 countries discussed how to obtain justice for Holocaust survivors and their families.

In November 2023, in Washington, DC at the U.S. State Department, the second meeting of Special Envoys was held. The US Department of State and the World Jewish Restitution Organization (WJRO) brought together representatives from over 10 countries, including envoys, ambassadors, and experts focusing on addressing outstanding Holocaust-era property restitution issues. The group engaged in discussions about seeking effective solutions and involving European governments in achieving justice for Holocaust survivors, their families, and Jewish communities

⁵ See <https://www.state.gov/secretary-of-state-antony-j-blinken-video-remarks-at-the-25th-anniversary-of-the-washington-principles-on-nazi-confiscated-art-and-best-practices-event/>

⁶ This includes assistance with the JUST Act Report of the U.S. Department of State in 2020. See <https://art.claimscon.org/wp-content/uploads/2024/03/4-March-2024-Holocaust-Era-Looted-Cultural-Property-A-Current-Worldwide-Overview.pdf>

who had their property wrongfully seized during the Shoah.

In view of the 25th anniversary of the Washington Conference Principles, the decision was taken to draft Best Practices for those Principles. I became the initial principal drafter, but dozens of experts and government representatives were involved.

Part of the impetus was the fact that the International Holocaust Remembrance Alliance (IHRA) does not address property issues, compensation, etc., though a subset of the member countries are concerned with these matters, and establishing a Special Envoys Network is a way of addressing these concerns. Indeed, the field of Holocaust studies does not pay much attention to property issues, although the theft in the Holocaust was the largest in history, and property theft appears to be a regular part of genocide and other mass atrocities. A recent example is Ukraine.

On March 5, 2024, a ceremony took place at the United States Holocaust Memorial Museum at which via video Secretary of State Blinken introduced the Best Practices.⁵ A WJRO report by Dr. Ruth J. Weinberger and myself entitled “Holocaust-Era Looted Cultural Property: A Current Worldwide Overview” was then presented that was the latest in a series of such reports concerning the progress of the 47 countries that endorsed the Terezin Declaration beginning at the 2009 Prague Conference and then published every five years.⁶

The Best Practices:

Like the original Washington Conference Principles, the Best Practices were conceived as legally non-binding but morally important, so as to clarify and improve the practical implementation of the Principles.

The first thing the Best Practices do is to make crystal clear the scope of the Washington Conference Principles, that they include cultural property that is currently in private hands, not only paintings, and also community property. While this is in the Terezin Declaration, since it is the Washing-

ton Conference Principles that are usually cited, it needed and needs to be clearly stated:

A. *“Art” refers to the cultural property of victims of the Holocaust (Shoah) and other victims of Nazi persecution, in public or private hands, including but not limited to paintings and other visual and decorative art, sacred scrolls, synagogue and ceremonial objects, as well as libraries, manuscripts, archives, records, and musical instruments belonging to individuals and to Jewish and other communities, organizations, and institutions.*

The same thing is true of the means of plunder used. Thus forced sales and sales under duress were covered by the Terezin Declaration, but a clear re-statement was considered necessary:

B. *“Nazi-confiscated” and “Nazi-looted” refer to what was looted, confiscated, sequestered, and spoliated, by the Nazis, the Fascists and their collaborators through various means including but not limited to theft, coercion, and confiscation, and on grounds of relinquishment, as well as forced sales and sales under duress, during the Holocaust era between 1933–45.*

The issue of flight goods (Fluchtgut) has come to the fore primarily in the years since the Terezin Declaration, as have cases of sales such as that in the Guelph Treasure (Welfenschatz) case. In the discussions surrounding this, it was clear that from the standpoint of the victims, the sale of flight goods was a continuation of the theft:

C. *Taking into account the specific historical and legal circumstances in each case, the sale of art and cultural property by a persecuted person during the Holocaust era between 1933–45 can be considered equivalent to an involuntary transfer of property based on the circumstances of the sale.*

The dispute over the Dutch “balance of interests” policy came to a head in 2018, when Stuart Eizenstat as the main author of the Washington Confer-

ence Principles declared at the conference organized in Berlin by the German Lost Art Foundation (DZK) on the 20th anniversary of the Principles that just and fair solutions were intended to help the victims of the Holocaust and not the museums and other current possessors. That led to a major overhaul in the approach of the Netherlands in this area that to a large extent has returned Dutch practice to what it initially was under the Ekkart Committee in the late 1990's and early 2000's. But the point needed to be made expressly:

D. *“Just and fair solutions” means just and fair solutions first and foremost for the victims of the Holocaust (Shoah) and other victims of Nazi persecution and for their heirs. In principle, as set out in the Terezin Declaration, the primary just and fair solution is restitution, among other just and fair solutions.*

There were certain specific practices that needed to be corrected that were then addressed in the next two points. The first of these resulted from a problem with Czech legislation:

E. *Restitution should be to all lawful beneficiaries and heirs in accordance with a country's usual inheritance law. All pre-War owners who are identified through provenance research or their heirs should be proactively sought by the current possessors for the purpose of restitution.*

F. *In case of restitution, current possessors should not seek repayment from the pre-War owners or their heirs of the purchase price of Nazi-confiscated works of art in their collections. Compensation should be tax exempt.*

The next two points reiterated the importance of making all archives accessible, including private and dealer records and of using the internet, as well as the desirability of making provenance research an independent endeavor:

G. *Governments should encourage provenance research and projects to catalogue, digitize and make available on the internet public and private archives,*

including dealer records. Public and private collections should be encouraged to publish their inventories.

H. Provenance researchers should have access to all relevant archives and source documents. Provenance research carried out by public or private bodies should be made publicly available on the internet. Where queries are made, as a matter of fairness current possessors in particular should disclose all documentation related to acquisition and provenance to claimants. Provenance research, particularly regarding potential claims, ideally should be conducted by an independent research body to avoid possible conflicts of interest. Such an independent institution should be granted access to all relevant archives whether public or private.

The Best Practices acknowledge the work of commissions in those countries that have them but as a result of the problems experienced with the German "Limbach Commission," they call for unilateral access and for balanced and representative membership, as well as full publication of commissions' proceedings so that the grounds for decisions are clear to claimants:

I. Countries are encouraged to create an independent expert body whose composition may be the states' responsibility, to which unilateral access is available that can adjudicate cases of art and cultural property and arrive at or recommend a binding or non-binding decision (for example, the use of commissions in Austria, France, Germany, Netherlands, and the United Kingdom). Such bodies should have balanced, expert, and representative membership. Use of alternative resolution mechanisms is encouraged to avoid litigation.

J. Claims handling bodies such as national commissions, museums or other agencies, are encouraged to publish terms of reference and rules of procedure as well as their decisions and recommendations so that the claims process and grounds for decisions are fully transparent to claimants.

The importance of creating exceptions to existing legislation was made clear in the years after the

Terezin Declaration, particularly in such developments as the exceptions made in the laws of the United Kingdom and of France that make deaccessioning from state collections possible, and in the law of the United States through the HEAR Act to exempt Nazi-era restitution cases from statutes of limitations:

K. *To make restitution of art and cultural property that remains in state-owned collections and private hands possible, countries should consider making exceptions to barriers such as regulations against deaccessioning from state collections, statutes of limitations, market overt, usucapion (mode of acquiring title to property by uninterrupted possession of it for a definite period), good faith acquisition, and export bans.*

Since the Terezin Declaration there has been realization of the lack of information on restitutions and other solutions that have taken place, as well as the importance of there being help desks or similar mechanisms to assist persons needing information and assistance in this field:

L. *Countries and institutions should maintain and publish online comprehensive information and statistics on research undertaken, works of art that have been identified and restitutions or other fair and just solutions that have been achieved. Information should be published about claims which have been made and that have been resolved, including reasons for the decision, giving due regard to confidentiality.*

M. *Countries and institutions should establish central contact points to provide information, advice and help on any query regarding art, records, archives and claims.*

The 2000 Vilnius Forum Declaration is often overlooked, but it contains an important matter, namely the disposition of unclaimed "heirless" Jewish cultural property. Its restatement in this regard is included in the Best Practices:

N. *There is a recognized urgent need to work on ways to achieve a just and fair solution to the issue of spoli-*

ated art and cultural property where pre-War owners or their heirs, both individuals and legal persons cannot be identified, while recognizing there is no universal model for this issue and recognizing the previous Jewish or other ownership of such cultural assets.

Lastly, there has been growing interest in the Jewish communities of Europe in the return of those community items such as birth, death, and marriage registries (pinkasim) as well as other community texts and ritual items that were distributed by Jewish Cultural Reconstruction (JCR) and the Jewish Restitution Successor Organization (JRSO) to centers of Jewish life and scholarship in Israel, the United States, the United Kingdom and elsewhere, as well as such community cultural property that was taken during the communist or post-communist eras. The concern is particularly great concerning those items that are in private hands:

O. *Art and cultural property that is determined to have been the property of Jewish communities should be returned to an existing successor community, institution, or organization, and/or a successor organization for the Jewish people as a whole. The objects should not be seen as collection items but as part of the collective memory of the Jewish people. As yet unreturned items that exist in textual form, such as manuscripts, archives, scrolls, and books, should be digitized and made easily accessible over the internet.*

Good Results So Far

As of this writing, of the 47 countries that endorsed the Terezin Declaration (which reaffirmed the Washington Conference Principles), 26 countries have endorsed the Best Practices. These include all those with restitution commissions. Additional endorsements are expected.

The List of States endorsing so far is as follows:

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|---------------------------|-------------|
| 1. Albania | 5. Bulgaria |
| 2. Austria | 6. Canada |
| 3. Belgium | 7. Croatia |
| 4. Bosnia and Herzegovina | 8. Czechia |

7 <https://www.artnews.com/art-news/news/report-buhrle-foundation-provenance-research-not-sufficient-kunsthaut-zurich-1234711068/>

8 See <https://www.kmk.org/aktuelles/artikelansicht/bund-laender-und-kommunale-spitzenverbaende-verbessern-restitutionspraxis-in-deutschland-und-staerken.html> and also <https://www.claimscon.org/restitution-law/>

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| 9. Estonia | 18. Malta |
| 10. France | 19. Netherlands |
| 11. Germany | 20. North Macedonia |
| 12. Greece | 21. Romania |
| 13. Ireland | 22. Slovenia |
| 14. Israel | 23. Sweden |
| 15. Italy | 24. Switzerland |
| 16. Lithuania | 25. United Kingdom |
| 17. Luxembourg | 26. United States |

A striking result of the Best Practices has been an action of the Bührle Foundation in Switzerland. As reported by Art News:

On June 14, the E. G. Bührle Collection Foundation announced it was seeking "fair and just" solutions with the legal successors of the former owners of six works in its collection that were on display at the Kunsthaut Zurich. As a result, five of the paintings were removed from the Swiss museum on June 20.

The museum's board of trustees reassessed the provenance of the six works following the publication of the new "Best Practices" for dealing with Nazi-looted art published by the US State Department in March 2024.

The "Best Practices" expanded on the Washington Principles on which representatives of 44 nations and 13 nongovernmental organizations agreed on December 3, 1998, after three days of meetings at the State Department's Washington Conference on Holocaust-Era Assets.⁷

In other words flight goods are now to be taken into consideration. (Point C)

- Germany has improved its implementation of the Washington Conference Principles.⁸
- There is now a research project sponsored by the Claims Conference and the WJRO in cooperation with the Union of Italian Jewish Communities (UCEI) to establish what changes in legislation are needed in Italy to make restitution of cultural property taken under Fascism and Nazism possible. (Point K)

- While the decision was taken before the Best Practices, the Netherlands has determined that all unclaimed “heirless” Jewish cultural property will now go to the administration and eventually the ownership of the Centraal Joods Overleg (Central Jewish Consultation) of the Netherlands. The WJRO is in discussion with the CJO regarding the representation of Dutch Jewish survivors and heirs outside the Netherlands. It is likely that such unclaimed Jewish cultural property will be used for exhibition and education purposes as stated in the 2018 Jerusalem Declaration on Looted Art. (Point O)

9 „Strengthening the Advisory Commission“
International scientific study commissioned by the Federal Government Commissioner for Culture and the Media. Academic Director: Prof. Dr. Matthias Weller, Mag.rer.publ., Universität Bonn
 I. Provisions of the Washington Principles, point 70, p. 34

A Critique:

So far, the only criticism has been raised by Professor Matthias Weller of the University of Bonn, who has been directing a project under the government of Germany over the last five years to examine the ways in which the restitution commissions of the five countries that have them plus Switzerland have come to their conclusions:

“The Washington Declaration of 2024 is endorsed by only 22 states, yet it claims to establish universally applicable “Best Practices for the Washington Conference Principles on Nazi-Confiscated Art.” It lacks justifications and surveys on actual practices and their past conflict points (which would be necessary for a “best practice approach”), and there is also an absence of prior public discourse. These deficiencies call into question the legitimacy of the stated “best” principles for implementing the Washington Principles. Therefore, the Washington Declaration of 2024 summarizes political desiderata from the perspective of the actors rather than universally accepted practices.”⁹

The five-year examination of decisions made by the restitution commissions of Germany, Austria, France, the Netherlands, the United Kingdom, and to some extent Switzerland, by definition to a large extent is a review of limited and sometimes flawed bodies appointed by governments that have been concerned to varying degrees with protecting the

interests of the respective government collections and seeing the matter as one of civil law rather than as criminal law as it was understood by the Allied Forces. This was most obvious in the dispute over the Dutch “balance of interests” policy that came to a head in 2018 at the conference sponsored by the German Lost Art Foundation (DZK) in Berlin, when Stuart Eizenstat attacked the head at the time of the Dutch Restitution Committee and made it quite clear as the main author of the Washington Conference Principles that “fair and just” was intended to be first and foremost for the victims. Dutch policy has since undergone a major overhaul. (Point D)

Endorsement by 26 states includes all of the 5 or 6 reviewed by Weller. As to an absence of prior public discourse, the Best Practices resulted from years of discussion of issues surrounding looted art questions, discussion that included but was not limited to the views of lawyers and others appointed to the restitution commissions. So far as the Best Practices summarizing “political desiderata,” that is absolutely correct, since anything else is trying to fit a square peg into a round hole.

The Biggest Remaining Problem:

The biggest problem that remains in this field is the relative lack of progress in many of the relevant countries.

The 2024 WJRO report by Dr. Ruth J. Weinberger and myself entitled “Holocaust-Era Looted Cultural Property: A Current Worldwide Overview”¹⁰ concerning the progress of the 47 countries that endorsed the Terezin Declaration finds that there has been significant progress in art and cultural property restitution over the past 25 years, but much remains to be done. Key developments include:

Claims processes are now in place in many countries, but the numbers of cases handled and resulting restitutions often remain low.

Five out of the 47 countries have established restitution commissions to facilitate claims, but the overwhelming majority of countries still do not have one.

While there has been progress with public collections, there has been far less progress with regard to items formerly owned by individuals that are currently in private hands. There remains much to do with regard to provenance research, transparency of records, and facilitation of claims of items that are today held privately.

The report presents ratings based on whether or not a given country:

- a) has done historical research on the subject, whether through an historical commission or otherwise
- b) does provenance research on its collections
- c) has a claims process, whether through a restitution commission or otherwise
- d) has made a substantial number of restitutions.

Based on the above factors:

- Seven (7) countries have made major progress
- Three (3) countries have made substantial progress
- Thirteen (13) countries have made some progress
- Twenty-four (24) countries have made little or no progress.

In other words, at least half of the countries that endorsed the Washington Conference Principles and the Terezin Declaration still have much work to do.