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**For debate in the Standing Committee see Rule 47 of the Rules of Procedure
Pour débat à la Commission permanente – Voir article 47 du Règlement**

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Looted Jewish cultural property

Report
Committee on Culture and Education
Rapporteur: Mr Emanuelis Zingeris, Lithuania, European Democratic Group

Summary

The Nazis deliberately targeted the cultural identity of Jews. A certain amount of looted Jewish cultural property has been returned since the end of the Second World War, but much has changed hands and remains dispersed throughout Europe. The Assembly adds its weight to the process of restitution of such property to original owners or their heirs (individuals, institutions or communities). It calls for the organisation of a European conference, further to that held in Washington on the Holocaust Era assets, with special reference to the return of cultural property and the relevant legislative reform.

I. Draft resolution

1. One essential part of the Nazi plan to eradicate the Jews was the destruction of the Jewish cultural heritage of movable and immovable property, created, collected or owned by Jews in Europe.
2. This involved the systematic identification, seizure and dispersal of the most significant private and communal Jewish property.
3. Subsequent expropriation and nationalisation of Jewish cultural property, whether looted or not, by communist régimes was illegal, as well as similar action in countries occupied by the Soviet Union.
4. Though early moves were made following the end of the Second World War to find and return this looted property, a very considerable amount has not been recovered and has remained in private and public hands.
5. A new attempt is now being made, characterised inter alia by major conferences held in London and in Washington, to complete this process and advance the recovery of looted Jewish cultural property before the last of those persons from which it was taken has died.
6. The Assembly has long recognised the Jewish contribution to European culture (Resolution 885 (1987) and recently underlined the significance of Yiddish culture (Recommendation 1291 (1996)). From local community to national and European levels, Jewish culture is a part of the heritage.
7. Moreover Europe, as represented in the Council of Europe, now includes the wider Europe, including Russia, throughout which looted Jewish cultural property remains dispersed.
8. The Assembly believes that restitution to original owners or their heirs (individuals, institutions or communities) or countries is a significant way of enabling the reconstitution of the place of Jewish culture in Europe itself.
9. A number of European countries have already made moves in this direction, notably Austria and France.
10. The Assembly invites the parliaments of all member states to give immediate consideration to ways in which they may be able to facilitate the return of looted Jewish cultural property.
11. Attention should be paid to the removal of all impediments to identification such as laws, regulations or policies which prevent access to relevant information in government or public archives and to records of sales and purchases, customs and other import and export records. Russia in particular should keep open its files on Jewish heritage
12. Bodies in receipt of government funds which find themselves holding looted Jewish cultural heritage should return it. Where such works have been destroyed, damaged or are untraceable, or in other cases where restitution may not be possible, such bodies should be assisted to pay compensation at the full market value.

13. It may be necessary to facilitate restitution by providing for legislative change with particular regard being paid to

- i. extending or removing statutory limitation periods;
- ii. removing restrictions on alienability;
- iii. providing immunity from actions for breach of duty on the part of those responsible for collections;
- iv. waiving export controls.

14. Such legislative change may require modification and clarification of human rights laws in relation to security and enjoyment of property.

15. Consideration should also be given to

- i. providing guarantees for those returning looted Jewish cultural property against subsequent claims;
- ii. relaxing or reversing antiseizure statutes which currently protect from court action works of art on loan;
- iii. extinguishing later acquired title i.e. subsequent to the divestment.

16. The Assembly encourages co-operation in this question of non-governmental organisations, and in particular the European Jewish communities, on both national and European levels. Such encouragement extends to the exploration and evolution of out of court forms of dispute resolution such as mediation and expert determination.

17. Due diligence should be imposed on purchasers and the art world by the implementation of the Unidroit Convention on stolen or illegally exported cultural objects.

18. In circumstances where dealers or agents or intermediaries know or suspect a work they have in their possession is looted, provision should be made in law requiring them to hold on to it and alert the relevant authorities and every effort should be made to locate and alert the dispossessed owner or his/her heirs.

19. The Assembly calls for the organisation of a European conference, further to that held in Washington on the Holocaust Era assets, with special reference to the return of cultural property and the relevant legislative reform.

II. Explanatory Memorandum by Mr Emanuelis Zingeris

Introduction

1. An enormous amount has been written on the Holocaust and on the looting of Jewish cultural property by the Nazis. Less has been written on the confiscation of Jewish cultural property by the communists.
2. This report is based in part on a hearing held by the Assembly Committee on Culture and Education in Paris on 19 April 1999 the proceedings of which are appended. The participants in our hearing included J.D. Bindenagel, himself director of last November's Washington Conference on Holocaust Era Assets. The considerable amount of documentation submitted to that Conference is now available on the Internet.
3. Our aim in the Assembly is to reassert our European presence in this debate. The Council of Europe, with its historical origins in the aftermath of the Second World War, has a natural contribution to make towards recovering and returning some (alas, far from all can be recovered) of the cultural property that was looted from the Jews.

What happened?

4. "The Nazis used art instrumentally as a part of their larger political and ideological project". In his introduction to the Washington Conference Dr Petropoulos usefully distinguishes several categories of looted art.
5. The 1937 travelling Degenerate Art Exhibition carried an anti-Semitic message. Examples of such art, most probably Jewish, were purged from museums. Their fate is not known. A list of 17,000 works appeared in London in 1997.
6. Another approach was the confiscation of choice (and not necessarily Jewish) art-works from the collections of Jews for the future Hitler museum in Linz. To do this special units were set up such as the infamous "Einsatzstab Reichsleiter Rosenberg". Quality and illustration of German superiority were said to be the main criteria for selection. Most of this material was found by special units of the US army at the end of the Second World War. Special agents also worked privately for other Nazi leaders.
7. Other confiscated cultural Jewish property became the property of the state, as in Austria or France (with the Schloss collection being selected by the Louvre). Or it was sold to private buyers at auction at knock-down prices (works of art and art galleries).
8. A more direct target was property belonging to religious organisations (especially synagogues and libraries).
9. Clearly the Nazis looted much else. But we are concerned here with the deliberate targeting by them of the cultural and personal identity of Jews.
10. The scale of the looting is difficult to assess. A figure of 60,000 artworks is advanced for what was returned to France after the War.

11. A special chapter is needed to shed light on the looting and expropriation of Jewish cultural heritage by communist régimes and in particular in the Baltic countries under Soviet occupation.

Immediate post-war action

12. Immediately following the end of the Second World War a number of art experts were used by the Allied Control Council to seek out and return looted property. Different arrangements seem to have been made in the various areas of control and with no clear overall policy. Tens of thousands of works were however returned to individuals or to Jewish successor organisations.

13. This process continued, though without the initial sense of urgency, up to the entry into force of the Bonn Convention that terminated Allied Occupation of Germany in 1955. In the mid-1960s the West German Government paid compensation for an amount of unrecovered art losses except to the Baltic countries which were still occupied by the Soviet Union. The question then seems to have fallen from view till the 1990s.

Recent developments for recuperation and restitution on the national level in certain countries

14. **Austria.** There had been examples of looted property being auctioned off by the Austrian authorities with the proceeds going to funds for Nazi victims. The last seems to have been the auctioning in 1996 through Christies of unclaimed art-work kept since the end of the Second World War in a monastery at Mauerbach. This policy was then abruptly changed. One of the most positive developments in the last two years has been recognition by Austria of the dubious situation in many of its museum collections and the steps that have now been taken, through legislation (1998) and archive searches, to identify and restore artistic and cultural artefacts. Of particular note is the waiving of the statute of limitations regarding stolen art. Action taken in the state museums and collections is being followed by the provincial museums. See the statement by Dr Ambassador Winkler to the Paris Hearing.

15. **Belgium.** Recuperation efforts, which had petered out by 1964 when the *Office de récupération économique* was dissolved, began again in 1993. A major problem was lack of documentation. A national commission was set up in 1997 under the Prime Minister and reported in July 1998. Mrs Teitelbaum, President of the Coordinating Committee of Jewish Organisations in Belgium, described the situation in detail at the Paris Hearing.

16. **France.** The French position was very clearly stated at the Washington Conference by Mrs Cachin, Director of the Museums of France, and again at the Assembly's hearing in Paris. France is claimed to have been the most extensively and systematically looted country. After the initial post-war rush to return property, a number of pieces still remain in state museums as their owners are unidentified. There has been some criticism over this fact. These 2,058 pieces of unclaimed art-work, known mysteriously as "MNR" (*musées nationaux récupération*), remain the responsibility of the Direction des Musées de France. Although under French legislation after 30 years items become the property of institutions (museums) or private individuals, this has not been applied to these items and efforts are being made on the Internet to search for the original owners. The general question of the looting of Jewish assets was entrusted to a study mission, under Jean Mattéoli, set up under the Prime Minister in 1997. It has reported twice (November 1998 and January 1999). The emphasis is on

extensive research to trace what was taken and the original owners. The mission refuses the approach proposed by the World Jewish Congress to dispose of assets and distribute the proceeds.

17. **Lithuania.** Part of Jewish cultural property, which had been dispersed in various Lithuanian museums under Hitler's and Stalin's occupation régimes, has been brought together in the Gaon Jewish Museum in Vilnius following restoration of independence. On 29 August 1999 the International Commission for Evaluation of Crimes of Nazi and Soviet Occupation Régimes in Lithuania started a special investigation into the looting of Jewish cultural property.

18. **Netherlands.** The Netherlands Art Property Foundation (SNK) has been working systematically since the Second World War in tracing art looted by the Nazis. A report was recently published of items the owners of which could not be identified: the NK-collection (similar to the French MNR). The Dutch Museums Association is currently reviewing post-war acquisitions.

19. **Russia.** Occupying Baltic countries, Western Ukraine and Belarus in 1940, the Soviet Union started expropriation of private property including Jewish art collections. The latter were extensively destroyed by Stalinists between 1948 and 1953. At the same time a savage terror against religion was carried out, hundreds of synagogues being closed and their collections ruined or taken away. The Soviet Union deliberately and systematically removed cultural assets from Germany after the Second World War as compensation for cultural losses suffered as a result of German occupation. Such assets included items earlier confiscated by the Nazis from Holocaust victims. Certain items that could be identified as such were returned in the period immediately following the end of the Second World War in accordance with the Quadripartite Procedures for Restitution (see the 1946 SMAG report quoted by Mr Kulishov at the Washington Conference). One example was the return of a Prague synagogue organ. The Russian delegation at the Washington Conference also stated that the recent Russian law on cultural assets would not prevent restitution to identified Holocaust victims. At the Assembly's hearing in Paris, the Russian Government representative Mr Petrakov added that the time limit of October 1999 for registering claims was being reconsidered. In parallel with the processing of war booty, the Government is preparing a catalogue of missing Russian property.

20. **Switzerland.** As a neutral country Switzerland, escaped Nazi looting and also Allied attempts at recuperation of what might have been hidden in the country. Since 1996 steps have been taken, in the first place by the banking community to unburden gold and insurance deposits. They herald a further review of the origin of cultural property held in museums and private collections by a newly-created "Contact Bureau for Looted Art". The statute of limitation is however only 5 years.

21. **United Kingdom.** In addition to hosting the conference on looted Nazi gold (London, December 1997), the UK has been mainly involved in drawing the attention of museums and the international art market (in particular auction houses) to the problem of looted Holocaust property. A problem lies in the statutory responsibility of state museums to keep their collections intact. This was underlined by the representative of the National Museums and Galleries Conference at the Washington Conference. Subsequently a European Commission on Looted Art has been launched in London with the support of the European Council of Jewish Communities. The Co-Chair, Ms Webber made a submission to the Paris hearing and has been assisting in the subsequent preparation of this report.

22. **United States.** The US was very active in immediate post-war restitution. It has been a leading influence in the recent moves to involve museums in the identification and return of illegally held cultural property. The Seattle Art Museum has recently agreed to return a Matisse to the heirs of the French art dealer Paul Rosenberg. The State Department has shown a decisive interest in the question, in particular through Under Secretary of State Stuart Eizenstat and J.D. Bindenagel both before and after the Washington Conference of December 1998. As material submitted to the Washington Conference shows, part of the collections looted by the Nazis, was removed to the US as well as to Russia.

International cooperation

23. After immediate post-war cooperation in the late 1940s, interest in international activity for the restitution of looted cultural property has only resumed in the late 1990s.

24. This may be because of the release (after 50 years) of material in national archives. But is also linked to realisation that the generation of the Holocaust is fast dying out. Restitution of Holocaust assets has been linked to current restitution of cultural property seized by communist regimes; the principle of restitution is to some extent related to the establishment of democratic institutions, the rule of law and the market economy.

25. Restitution in the broader field has been going on from the end of the Second World War. The Tripartite Gold Commission adjudicated several grants up to its dissolution in 1997. On at least three occasions sums were paid by Germany to France (1948, 1952, 1961). The World Jewish Congress has been active in the courts against the Swiss banks and international attention focused on the class action lodged in New York in March 1997 relating to life insurance. This area was settled with the London Conference on Nazi gold and the setting up of an international fund.

26. The most significant steps forward in the field of cultural property were made by the Washington Conference in December 1998. This conference brought together 44 countries and representatives of non-governmental organisations (in particular the Jewish) and of the museum and art world. It reached consensus on 11 general principles. These divide into

- cooperation in tracing stolen art
- establishing provenance
- publicising information about stolen art
- finding flexible solutions for restitution
- establishment of national commissions with broad membership
- specific measures by nations

27. The main achievements of the Washington Conference were (a) to gather together all the interested parties and to place this on record on the Internet and (b) to appeal for cooperation and not insist on coercion. In this way a climate of greater confidence has been created. But it is essential that the impetus is enabled to go forward.

28. Other lists of principles had been drawn up before the Washington Conference (International Council of Museums, National Museum Directors' Conference - UK, Association of Art Museum Directors - US, and also proposed by Unesco secretariat). They are essentially complementary and apply to individual professional bodies.

29. Unesco may in due course look into this area. After some disagreement over principles, the Intergovernmental Committee for Promoting the Return of Cultural Property in January 1999 has finally invited the Director General of Unesco to convene a group of experts to report to its next session on cultural heritage displaced during the Second World War.

30. The Council of Europe has no governmental activity relating to Holocaust-era assets. The Legislative Support Task Force is mainly concerned with the development of laws and policy for the protection of the movable and immovable heritage. The Council indeed has for long been rather shy at taking on work on cultural property. Several governments moreover are particularly reticent about tackling retroactive legislation as has been seen in their reaction to the recent Unidroit Convention (even though this is not itself retroactive). The subject of looted Jewish cultural property fits however directly with the Council's mission. Most specifically the Assembly could help encourage member parliaments to tackle certain relevant areas of legislation to implement the Washington principles. The Austrian initiative to remove all statutory limitation periods for stolen art could for example be followed more generally.

31. Preliminary proposals have been developed in this area on the basis of suggestions put forward by Dr O'Keefe and other consultant legal experts following the Paris hearing. Some are briefly examined in the following section.

32. The US State Department would appear to be backing Council of Europe work in this direction. Mr Eizenstat in a briefing in May 1999 called on the Council to collaborate with Austria and the UK in the hosting of a meeting on Nazi confiscated art in the Spring of 2000.

33. In the same briefing he detailed other follow-up to the Washington Conference including:

- Conference on the restitution of communal property (Poland, November 1999)
- Holocaust education conferences (Stockholm and Prague)
- Discussion on forced and slave labour (Germany)
- Setting up of national commissions (17 countries have so far done so).

34. Certain of these national commissions have been entrusted with follow up on specific subjects. Austria is specifically responsible for the area of cultural property.

Some of the basic (legal) issues

35. **What property?** The broader category is generally accepted of Jewish and non-Jewish cultural property looted from Jews. This may be secular or religious. For legal reasons a distinction is made between the subject of this report which is movable cultural property (whether belonging to individuals or institutions), and other property: immovable private property, communal property (such as synagogues, schools etc), gold bullion, businesses, investments (bank accounts, insurance policies and other titles).

36. **Identification.** A major problem is the identification of cultural property taken during the Nazi period. In large part this is a technical and evidentiary problem. However, there are laws prohibiting or preventing access to information necessary to establish ownership in the relevant period and the subsequent history of a particular item. These are not aimed at Jewish claimants but are of general application in pursuit of government policy and the necessity to protect the interests of the public. Governments should examine those rules protecting information and establish whether they may be relaxed in the special circumstance of restitution of Jewish cultural property.

37. **To whom to return?** The argument extends beyond the specific field of restitution of cultural property. It is bound up in the notion of national identity. A difference is particularly noticeable between the French and American approaches (as in several commentaries on the Washington Conference). Indeed the position of the French Government and the Council representing Jewish Institutions in France (CRIF) was strongly in favour of cultural property remaining in France. Another observable difference is between the various individual national Jewish communities (as represented in the European Council of Jewish Communities), keen for cultural property to remain in the national community, and the largely US-based World Jewish Congress (which is represented in Europe through the Paris-based European Jewish Congress), itself more favourable to return to the international Jewish community.

38. There can be a real conflict of interest here. The European families of original owners of religious property can have emigrated to the US or Israel. The local Jewish community can be too small to justify the return of cultural property or even support an operational synagogue. Religious property might best be returned to a community that might be able to use it rather than to a museum (as argued by Rabbi Baker at our hearing).

39. But such problems can also be overcome by a pragmatic evaluation of each situation. At a recent Assembly hearing in Avila on the up-keep of religious buildings, the point was made that a community's concern for its historical past was not restricted to its present culture. The archaeological heritage provides an obvious example. Return of looted property can therefore be to the Jewish community or to the local community, to a re-established institution, to the state or to an international Jewish organisation.

40. It is important to maintain the possibility of an open approach. A distinction might be drawn between cases where ownership can be identified and where it cannot. Another situation arises where property has been disposed of (at auction for example) and the proceeds placed in a general fund for the families of Holocaust victims.

41. In general however it would appear reasonable for the Council of Europe, with its concern for the European cultural heritage and its diversity, to prefer solutions that return looted Jewish cultural property to the original Jewish communities and re-established institutions in Europe.

42. The best is to concentrate all available means, to get as much compensation as possible for looted Jewish cultural heritage, and to use this for restoring the destroyed Jewish cultural landscape in Europe, such as the former historical ghettos, synagogues, museums, archives, libraries, re-established Jewish institutions and academic centres of Judaica.

43. **Compensation.** In principle the primary aim is the restitution of cultural property to original owners (or return to heirs). The possibility of compensation would only arise where loss is established, restitution is impossible (items being destroyed) and responsibility identified. Often however situations arise where property is now quite legitimately held by a third party (museum or private collector). The force of the Washington principles is to encourage negotiation in such situations rather than lay down rules for compensation.

44. **Conditions of restitution.** Restitution should convey clear title, including the right of resale, and not simply the right to use property that might be revoked at a later time. It must also be recognised that we sometimes know little of transactions in particular items of cultural property during the Nazi period. In these circumstances, persons who make restitution

believing that they are acting bona fide may need a guarantee that they will be held free of liability to someone who later makes a claim to the same item.

45. Facilitation of restitution. European legal systems have rules to ensure the stability of transactions and the probity of those responsible for the conduct of organisations. These rules on limitation periods, bona fide purchase and the liability of managers, trustees etc. for misconduct are of general application but may prevent or inhibit restitution. There are other, more specific rules, prohibiting certain transactions such as sale or export of cultural property which are regarded as contrary to the public interest but which, once again, may prevent or inhibit restitution. Consideration will have to be given to legislative change in these areas with the aim of facilitating restitution. This will raise other considerations. For example, will such change be seized upon by others as a justification for allowing their own claims to restitution – other victims of Nazi action and indigenous peoples are only two such groups. Human rights questions will also be relevant. Change in legislation to facilitate restitution may well interfere with the rights of current holders of cultural property and require the payment of compensation to such persons.

46. Some European States have enacted legislation which prevents legal proceedings being taken for the return of cultural property by someone who previously owned it but lost it in some way, for example, by expropriation. Usually this applies to cultural property which has been loaned to a museum exhibition by a collector in another country. These laws would prevent actions for restitution of Jewish cultural property in circumstances where the local legal system is more conducive to such claims than that in the collector's own country. Consideration might be given to reversing or relaxing this legislation.

47. Why a special case for Jewish property? Of course there is reason to attempt to locate and return all cultural property seized by the Nazis. If the Jews were deliberately targeted, so too were the Gypsies-Roma and homosexuals. It would also be logical to exonerate all stolen property of any statute of limitation. The Washington Conference argumentation is indeed open to this wider application.

48. However restitution of Jewish cultural property provides a clearer focus within the wider picture.

49. It can also be argued that when Jewish art is in question, its restoration is also restoration of part of the lost cultural history of parts of Europe. In this context can be recalled the Assembly's earlier work on the Jewish contribution to European culture (Resolution 885 of 1987) and on Yiddish culture (Recommendation 1291 of 1996).

Conclusion

50. As was stated in Washington, what is needed is a combination of research, diplomacy and legal reform.

51. It is important that the discussion finds root in Europe. The Council of Europe would appear to be a most appropriate place for it. We have the historical setting. We also provide a pan-European framework for dialogue between governments, parliaments and non-governmental organisations. The Assembly could usefully take the initiative at this point in cooperation with member parliaments.

52. Natural partners in such an exercise would be the European Institute for Dispersed Ethnic Minorities (in Vilnius) and the European Commission on Looted Art (in London).

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Reporting committee: Committee on Culture and Education

Budgetary implications for the Assembly: None.

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Draft resolution: unanimously adopted by the committee on 24 September 1999

Members of the committee: MM. *Nothomb* (Chairman), *Zingeris* (Alt.: *Raskinis*), *Roseta*, de *Puig* (Vice-Chairmen), *Arzilli*, *Bartumeu Cassany*, *Bauer*, *Baumel* (Alt.: *Ehrmann*), *Billing*, *Chiliman*, *Cubreacov*, *Diaz de Mera*, *Dumitrescu*, *Ms Fayot*, *Mrs Fehr*, *Mr Glotov*, *Mrs Gogoberidze*, *Mrs Granlund* (Alt.: *Einarsson*), MM. *Hadjidemetriou*, *Hegyi*, *Hornhues*, *Irmer*, *Mrs Isohookana-Asunmaa*, MM. *Ivanov*, *Jakic*, *Kalkan*, *Mrs Katseli*, MM. *Kiely*, *Kofod-Svendsen*, *Lachat*, *Mrs Laternser*, MM. *Legendre*, *Lemoine*, *Libicki*, *Mrs Lucyga*, MM. *Van der Maelen*, *McNamara*, *Mezeckis*, *Mrs Moserova*, *Mr Nagy*, *Mrs Nemcova*, MM. *O'Hara*, *Pereira Marques* (Alt.: *Dias*), *Pinggera*, *Polydoras*, *Mrs Poptodorova*, MM. *Pullicino Orlando*, *Radic*, *Ragno*, *Risari*, *Mrs Saele*, *Mr Saĝlam*, *Mrs Schicker*, MM. *Shaklein*, *Mrs Stefani*, MM. *Sudarenkov*, *Svec*, *Symonenko (Khunov)*, *Tallo*, *Urbanczyk*, *Valk*, *Verbeek*, *Wilshire*, *Xhaferi*.

NB: The names of those who took part in the vote are in italics

Secretaries to the committee: *Mr Ary*, *Mrs Theophilova-Permaul*, *Ms Kostenko*