REMARKS BY ELLEN GERMAIN*

People sometimes ask whether it is still necessary to address Holocaust-era restitution, almost eighty years since the end of World War II. Shouldn't that be finished by now? Sadly, it's not. Numerous restitution issues remain unfinished in a variety of countries.[1] Restitution and compensation for property seized by the Nazis are important not only because they can provide a measure of justice for Holocaust survivors and their heirs, but because they are a reminder to perpetrators that there are consequences for their actions. Ensuring that there are processes and widely accepted principles for implementing restitution and compensation is the real-world application of rule of law to those who used antisemitism as an excuse to not only murder six million Jews, but to perpetrate the greatest theft in history.

So even now, almost eighty years after the end of World War II, it is still important for us to encourage countries to fulfill the commitments they made when they endorsed the Washington Principles on Nazi-Confiscated Art[2] (the "Washington Principles" or the "Principles") and the Terezin Declaration on Holocaust-Era Assets (the "Terezin Declaration").[3]

The 1998 Washington Conference Principles on Nazi-Confiscated Art changed the way the art world viewed looted art.[4] Ambassador Stuart E. Eizenstat, then–under secretary of state for economic, business, and agricultural affairs and a driving force behind the forty-four-nation conference and the Principles, said: "The art world will never be the same in the way it deals with Nazi-confiscated art. From now on, the sale, purchase, exchange, and display of art from this period will be addressed with greater sensitivity and a higher international standard of responsibility."[5]

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* U.S. State Department Special Envoy for Holocaust Issues. These remarks were made during the Symposium titled *Remedies for Looted Art and Cultural Property—Civil, Criminal or Consensual?* hosted by the *Fordham Law Review* on February 28, 2025, at Fordham University School of Law. The text of these remarks has been footnoted and lightly edited.

1. *See* WESLEY A. FISHER & RUTH J. WEINBERGER, WORLD JEWISH RESTITUTION ORG. & CLAIMS CONF. ON JEWISH MATERIAL CLAIMS AGAINST GER., HOLOCAUST-ERA LOOTED CULTURAL PROPERTY: A CURRENT WORLDWIDE OVERVIEW 6–7 (2024).

2. Washington Conference Principles on Nazi-Confiscated Art, Dec. 3, 1998, https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/ [https://perma.cc/RY9F-U9FV] [hereinafter Washington Conference Principles].

3. Terezin Declaration on Holocaust Era Assets and Related Issues, June 30, 2009, https://www.state.gov/prague-holocaust-era-assets-conference-terezin-declaration/ [https://perma.cc/G4PU-ZRMK] [hereinafter Terezin Declaration].

4. *See* Stuart E. Eizenstat, Under Sec'y of State for Econ., Bus., and Agric. Affs., Concluding Statement at Washington Conference on Holocaust-Era Assets (Dec. 3, 1998), https://1997-2001.state.gov/policy_remarks/1998/981203_eizenstat_heac_conc.html [https://perma.cc/9PGG-K6L6].

5. *Id.*

It took months of work to build consensus among the key countries to support the Principles, whose crucial points were that art confiscated by the Nazis should be identified and publicized; records and archives should be open and accessible; consideration should be given to unavoidable gaps in provenance in light of the circumstances of the Holocaust era, when trying to establish that a work of art was confiscated by the Nazis; pre-war owners and their heirs should be encouraged to make claims to Nazi-looted art; steps should be taken to achieve a "just and fair solution"; and nations should be encouraged to develop national processes to implement the Principles.[6] In some ways, these may seem like obvious and commonsense principles, but they had never before been publicly acknowledged.

The essential point in gaining consensus on the Principles was the reassurance in the preamble that they would be voluntary: each nation could "act within the context of their own laws."[7] And although critics immediately spoke out, unpersuaded that the principles would have any effect, Philippe de Montebello, then-head of the Metropolitan Museum of Art, said, "On the issue of the spoliation of art in the World War II/Nazi era, the genie is, at last, out of the bottle, and no resistance, apathy, or silence can ever fit it back inside again."[8] Both Eizenstat and de Montebello were right.

The Washington Principles were not only important in and of themselves as a new way to approach looted art, they also brought world attention to the staggering scale of the theft that accompanied the Nazis' murder of six million Jews. The Washington Principles were transformative, calling attention to the moral and ethical obligations on the holders of Nazi-looted art.[9] Thanks to the Principles, thousands of artworks, books, and Jewish cultural objects have been restituted or their claims successfully resolved.

In 2009, the Washington Principles were strengthened by the Terezin Declaration, endorsed by forty-seven countries at the Prague Holocaust Era Assets Conference.[10] The Terezin Declaration broadened confiscation to recognize that many Jews had their art and cultural property confiscated through "forced sales" or "sales under duress"; private institutions and individuals, not only public museums, were encouraged to support the Washington Principles; and nations were urged to "ensure that their legal systems or alternative processes" facilitated "just and fair solutions" and resolved cases based on the merits of the claim.[11]

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6. Washington Conference Principles, *supra* note 2.

7. *Id.*

8. Philippe De Montebello, *Break-Out Session on Nazi-Confiscated Art Issues: Principles to Address Nazi-Confiscated Art*, *in* NAZI-CONFISCATED ART ISSUES 441, 556 (1998).

9. Stuart Eizenstat, Special Adviser on Holocaust Issues Bureau of Eur. and Eurasian Affs., The Lasting Impact of the Washington Principles and Best Practices for the Restitution of Nazi-Confiscated Art, Remarks at the United States Holocaust Memorial Museum (Mar. 5, 2024), https://2021-2025.state.gov/the-lasting-impact-of-the-washington-principles-and-best-practices-for-the-restitution-of-nazi-confiscated-art/ [https://perma.cc/72GN-6QQJ].

10. Terezin Declaration, *supra* note 3.

11. *Id.*

In support of these efforts, in 2016, the U.S. Congress passed the Holocaust Expropriated Art Recovery Act,[12] or the HEAR Act, which created a uniform six-year statute of limitations that would only begin when a claimant had reason to know of the Nazis' theft of their family's art.[13] And in 2018, Congress passed the Justice for Uncompensated Survivors Today Act,[14] or the JUST Act, which required the State Department to report on the implementation of the Terezin Declaration by its endorsing countries.[15] My office produced that report in 2020 (before I took up this position), and it has proven an invaluable overview of countries' progress on restitution and compensation of Nazi-looted property.[16]

Last year, for the twenty-fifth anniversary of the Washington Principles, we introduced the Best Practices for the Washington Principles (the "Best Practices") at an international event in Washington, D.C.[17] The Best Practices were the result of intensive international collaboration among fourteen countries that have appointed a special envoy or equivalent to deal with Holocaust restitution and compensation. That informal network of envoys was started in 2023 by the World Jewish Restitution Organization (WJRO), the United Kingdom, and the United States with the goal of addressing remaining Holocaust-era restitution challenges in a more effective manner.

During the initial meetings, government officials, representatives of the WJRO, and art restitution experts decided that, for a first project, it would be useful to look at the lessons learned in twenty-five years of applying the Washington Principles and develop a set of legally nonbinding "best practices" to help with implementation of the Principles, and thereby reinforce them. This seemed like an appropriate way to mark their twenty-fifth anniversary and underscore the urgency of resolving remaining claims. Thirty-four countries have already endorsed them, with—we hope—more on the way.

The Washington Principles have had a ripple effect beyond art looted by the Nazis. Two years ago, Germany returned some of the famous Benin Bronzes to Nigeria.[18] France and the Netherlands both commissioned reports to look at art taken from their former colonies, and the Netherlands has

12. Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114-308, 130 Stat. 1524 (codified at 22 U.S.C. § 1621 note).

13. *Id.* at 1526–27.

14. Justice for Uncompensated Survivors Today (JUST) Act of 2017, Pub. L. No. 115-171, 132 Stat. 1288 (2018).

15. *Id.* at 1288–99.

16. *See generally* U.S. DEP'T. OF STATE, OFF. OF THE SPECIAL ENVOY FOR HOLOCAUST ISSUES, BUREAU OF EUR. AND EURASIAN AFFS., JUSTICE FOR UNCOMPENSATED SURVIVORS TODAY (JUST) ACT REPORT (2020).

17. *Best Practices for the Washington Principles on Nazi-Confiscated Art*, U.S. DEP'T OF STATE (Mar. 5, 2024), https://www.state.gov/office-of-the-special-envoy-for-holocaust-issues/best-practices-for-the-washington-conference-principles-on-nazi-confiscated-art [https://perma.cc/JZ4L-H82L].

18. *See* Ashley Ahn, *Germany Returns Looted Artifacts to Nigeria to Rectify a 'Dark Colonial History'*, NPR (Dec. 21, 2022, at 14:11 ET), https://www.npr.org/2022/12/21/1144666811/germany-nigeria-returns-benin-bronzes-looted [https://perma.cc/3874-ATKH].

returned hundreds of artifacts to Indonesia.[19] Last year, the Fowler Museum at UCLA returned seven royal objects taken from Ghana.[20] I am sure today's conference will provoke fascinating discussions of how these principles, developed to address art and cultural property seized by the Nazis during the Holocaust, continue to influence art and law today.

19. *See* Kate Brown, *The Netherlands Should Return Cultural Objects Looted from Former Colonies, a New Report Says—and Major Museums Agree*, ARTNET (Oct. 9, 2020), https://news.artnet.com/art-world/netherlands-report-cultural-objects-restitution-1914398 [https://perma.cc/GEM6-2SF4]; Kate Brown, *In a Groundbreaking Report, Experts Advise French President Macron to Begin the 'Restitution' of Looted African Art*, ARTNET (Nov. 20, 2018), https://news.artnet.com/art-world/french-restitution-policy-macron-1399429 [https://perma.cc/LHC5-XKR7]; Lynsey Chutel, *The Netherlands Returns Hundreds of Cultural Artifacts to Indonesia*, N.Y. TIMES (Sep. 20, 2024), https://www.nytimes.com/2024/09/20/world/europe/netherlands-indonesia-artifacts.html (on file with the *Fordham Law Review*).

20. *See* Sean Arenas, *Fowler Museum at UCLA Permanently Returns Objects to Asante Kingdom in Ghana*, UCLA NEWSROOM (Feb. 5, 2024), https://newsroom.ucla.edu/releases/ucla-fowler-museum-returns-objects-to-ghana [https://perma.cc/S692-645R].