

# BEST PRACTICES FOR THE WASHINGTON CONFERENCE PRINCIPLES ON NAZI-CONFISCATED ART

March 5, 2024

On 3 December 1998, 44 states participating in the Washington Conference on Holocaust-Era Assets endorsed the Washington Conference Principles on Nazi-Confiscated Art, which is incorporated by reference herein. These principles were subsequently commented on and clarified in the Vilnius Forum Declaration of October 5, 2000, endorsed by 38 states, the Terezin Declaration of June 30, 2009, endorsed by 47 states, and the 2010 Terezin Guidelines and Best Practices (which recognized the State of Israel's special moral role as a home for the largest number of survivors of the Holocaust (Shoah)).

In recognition of the 25th anniversary of the Washington Conference Principles, the following legally non-binding but morally important best practices clarify and improve the practical implementation of these Principles. As was the case with the Principles, the best practices were drafted with the awareness that there are differing legal systems and that states act within the context of their own laws. Countries will apply the best practices that follow in accordance with national laws.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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.