International Journal of Cultural Property (2010) 17:139–146. Printed in the USA.
Copyright © 2010 International Cultural Property Society
doi:10.1017/S0940739110000068

Introduction

Patricia Kennedy Grimsted*

World War II was the occasion of the greatest theft, seizure, loss, and displacement of art treasures, books, and archives ("cultural items") in history. Since then, governments and others have attempted to justify either their right to keep or to claim the return of the cultural items displaced as a result of the war and its aftermath. Such issues have intensified on the Eastern Front since the collapse of he Soviet Union and the opening of the Soviet secret depositories of long-hidden cultural items brought to Soviet territories at the end of the war. The principal protagonists in the public arena have been the Federal Republic of Germany (Germany), the Republic of Poland, and the Republic of Hungary, each claiming that the Russian Federation (Russia) has refused to negotiate adequately the return of cultural items displaced during and after the war that are now located in its territory.

Many other countries have unresolved claims or pretensions as well. Very often hidden within these claims and disputes are the claims of victims of Nazi persecution, most notably Holocaust victims, who also seek return of loot presently in the possession not only of Russia but also of many other countries in Europe and across the seas. Public international law has not proven to be of significant help in resolving these disputes among nations; private international law, aside from conflict of law principles, has not been relevant or applied to claims of Holocaust victims. National laws in European countries also have not been of material help to such victims. Sometimes public policy and commissions—at the national level—have aided claimants in varying degree, as in Germany, Austria, France, the United Kingdom, and the Netherlands.

Although the issue has become more political than legal in nature since 1998, Russia has based its refusal to return cultural items on a federal law enacted that year and ultimately upheld by Decree of the Constitutional Court of the Russian Federation (with amendments enacted in 2000). That law in its historical context is the underlying subject of this issue.[1] The law declared, without analysis, that Russia had a legal right under international law (under an asserted doctrine of

*Senior Research Associate, Ukrainian Research Institute; and Associate, Davis Center for Russian and Eurasian Studies, Harvard University; Honorary Fellow, International Institute of Social History, Amsterdam. E-mail: grimsted@fas.harvard.edu

https://doi.org/10.1017/S0940739110000068 Published online by Cambridge University Press

"compensatory restitution") to confiscate and nationalize all or most remaining cultural items that came into possession of the Soviet Union in enemy or other Soviet-occupied territory. None of the other countries that were Allies during the war have recognized any such Russian "right" or have asserted their own right to compensatory restitution. Germany has insisted, from the outset, that Russian confiscation of so-called trophy art and other cultural items was contrary to international law, which in 1945, according to the German government, did not support Soviet confiscation or the later Russian claim of compensatory restitution. Germany also asserts that the law contravenes the "Treaty . . . on Good-Neighborliness and Cooperation" that it signed with the Soviet Union in 1990 and the "Agreement . . . on Cultural Cooperation" made with Russia in 1992.[2] Russia signed similar treaties and agreements with many other countries since 1990, all calling for the mutual return of displaced cultural treasures.[3]

The Russian Constitutional Court sought to justify Russia's right to keep displaced cultural items as compensatory restitution by reference to international law as it existed during and immediately after World War II, but no other court has considered the issue in that context. And even the Russian Constitutional Court, while it questioned the concept of compensatory restitution, failed to establish its viability or the compliance of the Russian law with international law. An updated English translation of the law with its amendments, prepared by Konstantin Akinsha and Patricia Grimsted for the Harvard Symposium, appears as an appendix, together with a bibliographical listing of related Russian legal instruments.

That law as passed and amended makes no distinction among archives, library books, and art, and it sets only minimal possibilities for return of cultural property on a country-to-country basis, to those countries that fought against the Axis powers and to victims of the National-Socialist regime.

There have been only two cases of the return of art under the law, and one case of return of books. Two of those returns were to Protestant victims within the Axis powers, and both required the passage of an additional law by the Russian parliament. The symbolic return of 146 rare books to the Calvinist College of Sárospatak in northeast Hungary (2006) took over a decade to negotiate and remains the only return of library books to any country under terms of the 1998 Russian law.[4] Many additional rare books, however, and even much more valuable art from Hungarian Jewish private collections remain in Russia.[5] The only return of art under the law to any country outside the former Soviet Union were the stained glass windows from the Marienkirche in Frankfurt on Oder in exchange for German financing reconstruction of a medieval church in Novgorod (2002 and 2008).[6] It is hard to label such returns as restitution because, under terms of the law, the recipients were required to provide extensive compensation in exchange for the returns.

As to successor states to the former Soviet Union, Ukraine received in 2002 a few (but not the most important) frescoes or mosaics from St. Michael's Cathedral of the Golden Domes in Kyiv, which the Stalinist regime destroyed in 1936.

https://doi.org/10.1017/S0940739110000068 Published online by Cambridge University Press



Figure 1. El Greco's portrait of Saint James from the collection of Baron Mór Lipót Herzog, now held in the Nizhnii Novgorod Museum of Art. An image of the painting appears in Genieva et al., eds., *Catalogue of Art Objects from Hungarian Private Collections*, 97. The painting is also featured on the cover of the catalog of the 2005 exhibition "Hortus Bellicus" in Nizhnii Novgorod. *Image courtesy the Commission for Art Recovery.*

https://doi.org/10.1017/S0940739110000068 Published online by Cambridge University Press

Those fragments had been plundered by retreating Germans in 1943, were found and returned to the Soviet Union by the United States, but ended up in the Hermitage in Leningrad (now St. Petersburg). Other fragments from the same church likewise plundered during the war remain elsewhere in Russia, and the most famous mosaic of Saint Demetrius of Thessalonica (known as Dmytrii Soluns'kyi in Ukrainian), lent to Moscow with other fragments for an exhibition in 1938, hangs prominently in the Tretiakov Gallery. The Ukrainian case was even brought before UNESCO.[7]

As explained in the article in this issue by Patricia Grimsted entitled "Why do Captured Archives Go Home?", since the law was signed, Soviet-captured archives, in contrast to books and art, from World War II have been returned from Russia to six European countries, including many examples of files seized from or relating to Holocaust victims. In all but one case, Russia received significant compensation or exchange.

There are still many potential claimants abroad, however, and Russian authorities have not always been quick or eager to respond. Attempts made by the U.S. Department of State, for example, under the Russian law to recover displaced cultural property on behalf of individual Holocaust victims now American citizens, have been virtually ignored. The Russian 1998 law, as amended in 2000, does provide the possibility of proceedings in Russian courts to obtain the return of displaced cultural property. So far, however, only one such lawsuit has been attempted in Moscow. The costly case lingers, unresolved, after many years, mainly because of technical defenses raised by the Ministry of Culture.

While there is no real prospect of a determination in an international judicial forum, perhaps an analysis of international law as it existed in 1945 in its historical context might be useful at least in clarifying the disagreement among the nations involved in disputes over displaced cultural items. It is not to be expected that everyone will agree on either the analysis or the conclusions drawn from it. But an understanding of differences of opinion with regard to international law in historical context might allow for diplomatic and private initiatives that could lead to partial, if not complete, solutions to disputes.

Conventions, treaties, and decisions have changed the terms of debate since World War II. But what of all the cultural items that appear to be the "last prisoners of World War II"?[8] And how does the dispute over cultural items relate to the Washington Principles adopted by 44 nations in 1998 (including the Russian Federation) and the Terezin Declaration adopted in 2009 by 46 nations (including the Russian Federation), which called for just and fair resolution of claims by Holocaust victims and their heirs to cultural items looted during genocide? Wholly apart from mass murder, the looting of Jewish property was recognized as a war crime by the Nuremberg Tribunal.

The two-day symposium at Harvard Law School in February 2008 was convened to search for answers. What follows are articles prepared in connection with that conference.

https://doi.org/10.1017/S0940739110000068 Published online by Cambridge University Press

Wayne Sandholtz reviews international law, as understood in the West, and concludes that the principle of restitution in kind, which most nearly coincides with the concept of compensatory restitution, did not exist in customary international law or applicable conventions or treaties during this period. He asserts that the concept of compensatory restitution has no legal basis whatever. His presentation casts our symposium in the context of his larger study of international legal traditions, *Prohibiting Plunder*.[9] Some may suggest that twentieth-century dictators Adolf Hitler and Joseph Stalin were only following the earlier tradition of cultural plunder by Napoleon Bonaparte. Sandholtz shows, however, the extent to which France, following the final defeat of Napoleon in 1815, was obliged to return most of the trophy art that had been seized from abroad during the Napoleonic wars.

Factual historical research and analysis with respect to Allied acts and procedures relating to restitution issues during and immediately after World War II and the simultaneous Soviet unilateral seizure of cultural trophies are offered by both Konstantin Akinsha and Michael Kurtz. Akinsha follows developments on the Soviet scene, finding that only limited attempts were made to determine what was plundered and damaged in the Soviet Union by the German invasion, but that the Soviet Union did compile a "wish list" of German and Italian cultural treasures that it intended to confiscate. Stalin's top-secret decrees (still classified) ordered the simultaneous dispatch of the trophy brigades, whose seizures of *Beautiful Loot* were only very occasionally and vaguely labeled as "compensation" for losses.[10] Kurtz, on the other hand, follows the Allied negotiations over postwar cultural restitution, including the unsuccessful attempt to define the scope of, or set forth working procedures for, restitution in kind. His analysis well demonstrates that the failure to agree on restitution and reparation of cultural property among the Allies, caused by Soviet intransigence, effectively left each of the four powers to deal unilaterally with cultural property issues in its own occupation zone in Germany. Kurtz had earlier described the U.S. postwar restitution program in his *America and the Return of Nazi Contraband*.[11] In his article here, we learn more about the Allied negotiations in which the Soviets participated. We thereby gain expanded understanding about the diplomatic context under which trophy confiscation, or what Russia today is calling compensatory restitution, was accomplished as the Red Army reached Berlin. Both Kurtz and Akinsha document the Soviet admission at the time and open justification of their removal of war trophies from Germany.

Patricia Grimsted concentrates on the debates within Russia during the 1990s over passage of the Russian 1998 law, focusing on some of the nonlegal components in the strong popular support for the law nationalizing the long-hidden cultural items that came into Soviet and then Russian possession. She also examines the mechanisms established to implement the law within the Russian government bureaucracy and the pending question of official publication identifying displaced cultural items, which, under the law, would set the clock ticking toward an 18-month statute of limitations for claims. As we turn to more specific implementation and the return of cultural objects under the law, Grimsted focuses on the

https://doi.org/10.1017/S0940739110000068 Published online by Cambridge University Press

displaced archives that have gone home to European countries, including many files from Holocaust victims, the long and complicated negotiations for their return, and the other captured records that remain in Moscow, including many Holocaust-related files.[12]

In a contrasting case study of private plunder by a Russian soldier of privately German-owned art, which should hence not come under jurisdiction of the Russian 1998 law, Konstantin Akinsha analyzes the sad fate of the Bremen Kunsthalle collection, which, despite agreements and a legal basis for its return home, still remains "hostage" in Moscow. The fate of that collection, long the pride of the Hanseatic City of Bremen, has thus been the subject of bitter public debate in Russia, becoming the *cause célèbre* in the restitution impasse between Russia and Germany.

Adding further legal perspective and historical context to our collection, Lawrence Kaye discusses antiseizure statutes in the United States and the United Kingdom, with case studies involving implications for Russian, Russian-nationalized, and/or Russian-owned works of art. In the British case, the recent antiseizure statute was enacted at Russian insistence because of its concern for potential seizure of cultural items that the Soviet Union had earlier nationalized and that Russia was now loaning to museums abroad.

A final case study involves a pending lawsuit in the United States against the Russian Federation seeking the return of a privately owned religious library and archives, as described by Michael Bazyler and Seth Gerber. The library had been nationalized after 1917, but the archival materials are another example of twice-plundered property owned by a Jewish community forced to flee the Nazi regime.

Finally in a thoughtful personalized German perspective, Wolfgang Eichwede considers the polarization of attitudes in Russia and Germany that have created so much ill will on the cultural front. He makes a plea for innovative and nondoctrinaire thought and diplomacy, without which, he believes, little or nothing will be accomplished to return or to share with the world the cultural items still displaced in Russia.

Together for the first time, these related aspects of the same issue—ownership, control, return, or sharing of cultural property displaced to the Soviet Union as a result of the Second World War and which remain in Russia—are considered. Russia does not accept the virtually unanimous opinion of Western scholars and experts regarding international law, but unfortunately, there is no authoritative statement of its position other than the 1998 Federal Law itself. While focusing on different aspects of international law and the historical context of the Russian law, our authors appear to be unanimous in deeming the 1998 law unsatisfactory, either in promoting legitimate restitution, or in offering a viable alternative resolution of the fate for the remaining cultural hostages in the Russian Federation.

ENDNOTES

1. An English translation of the Federal Law of 15 April 1998, "On Cultural Valuables Displaced to the USSR as a Result of the Second World War and Located on the Territory of the Russian Federation," no. 64-FZ, appears as Appendix 1 in this issue.

https://doi.org/10.1017/S0940739110000068 Published online by Cambridge University Press

2. "Treaty between the Federal Republic of Germany and the Union of Soviet Socialist Republics on Good-Neighborliness, Partnership and Cooperation," Bonn, 9 November 1990; English translation in Simpson (ed.), *The Spoils of War*, 304–307; and the "Agreement between the Government of the Federal Republic of Germany and the Government of the Russian Federation on Cultural Cooperation," Moscow, 16 December 1992, English translation in Simpson (ed.), *The Spoils of War*, 304–307. See the text of the relevant articles quoted in Grimsted, "Russian Legal Instruments Relating to Cultural Property," Appendix 2, in this issue.

3. See the Grimsted compilation, "Russian Legal Instruments Relating to Cultural Valuables," Appendix 2, in this issue.

4. See Grimsted and Akinsha, "The Sárospatak Case."

5. See *Katalog proizvedenii izobrazitel'nogo iskusstva iz chastnykh vengerskikh kollektsii.*

6. Regarding the major portion returned from the State Hermitage, see *Marienkirche Stained-Glass Windows*.

7. See more details in Grimsted, *Trophies of War and Empire*, 60–63, 121, 218.

8. The expression was used by Russian Minister of Culture Evgenii Sidorov in October 1995, when he opened the exhibition of the long-hidden Master Drawings from the Koenigs Collection at the Pushkin Museum in Moscow, as symbolizing "a liberation of the last prisoners of war—cultural valuables." His remark appears in his Foreword to the English edition of *Five Centuries of European Drawing*, as earlier quoted in Grimsted. "Displaced Archives and Restitution Problems on the Eastern Front". The phrase is again used by Charles Goldstein in his Foreword to this collection, echoing Ambassador Ronald S. Lauder's use of the phrase in an address to the Washington Conference on Holocaust Era Assets in November 1998.

9. See Sandholtz's more extensive treatment, *Prohibiting Plunder*.

10. See also the more extensive treatment by Akinsha and Kozlov, *Beautiful Loot*.

11. See Kurtz, *America and the Return of Nazi Contraband.*

12. See also Grimsted, Hoogewoud, and Ketelaar (eds.), *Returned from Russia*.

BIBLIOGRAPHY

Akinsha, Konstantin, and Grigorii Kozlov. *Beautiful Loot: The Soviet Plunder of Europe's Art Treasures*. New York: Random House, 1995.

Five Centuries of European Drawings: The Former Collection of Franz Koenigs: Exhibition Catalogue, 2.10.1995–23.3.1996. Milan: Leonardo Arte, 1995; Ministry of Culture of the Russian Federation; Pushkin State Museum of Fine Arts, Moscow. (Also published in Russian).

Grimsted, Patricia Kennedy. "Displaced Archives and Restitution Problems on the Eastern Front in the Aftermath of the Second World War." *Contemporary European History*, 6, pt. 1 (1997), 27–74.

———. *Trophies of War and Empire: The Archival Heritage of Ukraine, World War II, and the International Politics of Restitution*. Foreword by Charles Kekskeméti. Cambridge MA: Harvard Papers in Ukrainian Studies, 2001.

———, and Konstantin Akinsha. "The Sárospatak Case: Rare Books Return to Hungary from Nizhnii Novgorod: A New Precedent for Russian Cultural Restitution?" *Art, Antiquity and Law* 11, no. 2 (2006): 215–49.

———, F. J. Hoogewoud, and Eric Ketelaar, eds. *Returned from Russia: Nazi Archival Plunder in Western Europe and Recent Restitution Issues*. Institute of Art and Law [UK], 2007.

Katalog proizvedenii izobrazitel'nogo iskusstva iz chastnykh vengerskikh kollektsii /Catalogue of Art Objects from Hungarian Private Collections. Moscow: "Rudomino," 2003. Series "Obretennoe nasledie"/

https://doi.org/10.1017/S0940739110000068 Published online by Cambridge University Press

"Heritage Revealed". A free PDF file is available at the VGBIL web site: http://www.libfl.ru/restitution/catalogs/index.html.

Kurtz, Michael. *America and the Return of Nazi Contraband: The Recovery of Europe's Cultural Treasures*. Cambridge: Cambridge University Press, 2006.

Marienkirche Stained-Glass Windows. The Exhibition Catalogue. St. Petersburg: Slavia, 2002. Sponsored by the Ministry of Culture of the Russian Federation and the State Hermitage.

Sandholtz, Wayne. *Prohibiting Plunder: How Norms Change*. Oxford: Oxford University Press, 2007.

Simpson, Elizabeth (ed.). *The Spoils of War: World War II and Its Aftermath: The Loss, Reappearance, and Recovery of Cultural Property*. New York: Henry N. Abrams, 1997.

https://doi.org/10.1017/S0940739110000068 Published online by Cambridge University Press