



---

## Soviet World War II Trophy Art in Present Day Russia: The Events, the Law, and the Current Controversies

Lina M. Monten

Follow this and additional works at: <https://via.library.depaul.edu/jatip>

---

### Recommended Citation

Lina M. Monten, *Soviet World War II Trophy Art in Present Day Russia: The Events, the Law, and the Current Controversies*, 15 DePaul J. Art, Tech. & Intell. Prop. L. 37 (2004)

Available at: <https://via.library.depaul.edu/jatip/vol15/iss1/3>

This Case Notes and Comments is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Journal of Art, Technology & Intellectual Property Law by an authorized editor of Via Sapientiae. For more information, please contact [digitalservices@depaul.edu](mailto:digitalservices@depaul.edu).

## **SOVIET WORLD WAR II TROPHY ART IN PRESENT DAY RUSSIA: THE EVENTS, THE LAW, AND THE CURRENT CONTROVERSIES**

### I. INTRODUCTION

At the end of World War II, in retaliation for the massive losses of cultural property the Soviet Union suffered at the hands of the Nazis, Soviet “trophy brigades” stole enormous amounts of cultural property from what later became the Soviet zone of occupation in Germany. This “trophy art” was taken to Soviet museums but only slightly more than half had been returned when in the 1960s the Soviet government officially denied the existence of any more stolen art in its museums. Therefore, when the collapse of the Soviet Union in the early 1990s brought to light vast depositories of trophy art, the question of ownership resurfaced.

This article examines the issues involved in the debate over the ownership of the trophy art: Who has a rightful claim to the cultural property under international law? What is the validity under international law of a recently enacted Russian law which declares the trophy art to be the property of the Russian government? What effect has the Russian law had on the debate? What is the current state of the trophy art debate and what will it take to resolve it?

Part II of this article details the historical background of the Soviet lootings of Germany from the establishment of the trophy brigades, to the actual lootings, to the events during the cold war. This part will examine five specific pieces or collections of trophy art to demonstrate the diversity of objects that were involved and to introduce the reader to objects which will be referred to throughout the article to show that the outcomes for the various objects are vastly different.

Part III first discusses the controversy that followed when

Russia acknowledged that it did, indeed, have large amounts of trophy art hidden away in its museums and then goes through the international law that applies to the situation. Specifically, this part explains and analyzes the applicable multilateral treaties, as well as two bilateral treaties between Germany and Russia and concludes that Russia does not have a valid claim to the art and is obligated under international to return it.

Part IV first examines a Russian law, enacted in 1997, which, with few exceptions, declares the trophy art property of the Russian government. It also examines President Yeltsin's subsequent challenge of the law in the Russian constitutional court. This part then critically analyzes the law and the constitutional court's decision and concludes that both the law and the court's decision are incompatible with international law and that the Russian law, therefore, does not solve the problems under international law and does not give Russia a valid claim to the trophy art. Part IV concludes with the recognition that a 2000 amendment to the law that renders it consistent with the constitutional court's opinion, does not change the fact that the statute is invalid under international law.

Part V first explores Russia's efforts to implement the law and problems and inadequacies associated with such efforts. Next, this part addresses the current state of affairs between Germany and Russia as they have evolved as a result of the Russian law and concludes that though shadowed by popular opposition in Russia to returns, the cultural relations between the two countries are slowly improving. It then illustrates that there seems to be a mutual willingness to, not only find a solution to the trophy art problem, but to improve relations between the two countries in other respects as well. Part V then shows that this trend has led Germany, at least for now, to accept slow diplomatic progress that fosters mutual respect, over a fast solution to which it would be legally entitled under international law. This part concludes that the improved relations must lead to an eventual willingness of the Russian people to not view the art as compensation before minds in the Russian legislature can be changed.

Ultimately, part VI concludes that the only complete solution to

the trophy art problem is either an amendment to, or a repeal of, the Russian law, but that for now claimants are restrained to working within the bounds of the statute.

## II. HISTORICAL BACKGROUND: SOVIET LOOTINGS OF GERMANY

### *A. The Road to the “Trophy Brigades” and Plans for a Super Museum*

The Nazis hated Slavic culture and attacked it with particular cruelty.<sup>1</sup> Slavs were considered primitive people, fit only for hard labor serving the Reich.<sup>2</sup> A total of thirty million Soviets lost their lives during World War II: millions died in prison camps, had to endure forced labor or torture in concentration camps, were murdered in cold blood, or starved to death.<sup>3</sup> Since the start of the war, the Nazis systematically destroyed artifacts representing Slavic culture.<sup>4</sup> Nonetheless, items that could be classified as “Germanic” were preserved and looted from Soviet museums.<sup>5</sup> In

---

1. KONSTANTIN AKINSHA & GRIGORII KOZLOV, *BEAUTIFUL LOOT: THE SOVIET PLUNDER OF EUROPE’S ART TREASURES* x (1995).

2. *Id.* In fact, Hitler referred to the Soviet population as *Untermenschen*. Andrea Gattini, *Restitution by Russia of Works of Art Removed from German Territory at the End of the Second World War*, 7 *EUR. J. INT’L L.* 67, at 9 (1996), available at <http://www.ejil.org/journal/Vol17/No1/art4.pdf> (last visited Mar. 6, 2004).

3. AKINSHA & KOZLOV, *supra* note 1, at x-xi.

4. Lynn H. Nicholas, *World War II and the Displacement of Art and Cultural Property*, in *THE SPOILS OF WAR: WORLD WAR II AND ITS AFTERMATH: THE LOSS, REAPPEARANCE AND RECOVERY OF CULTURAL PROPERTY* 41 (Elizabeth Simpson ed., 1997). See generally Mikhail Shvidkoi, *Russian Cultural Losses during World War II*, in *THE SPOILS OF WAR: WORLD WAR II AND ITS AFTERMATH: THE LOSS, REAPPEARANCE AND RECOVERY OF CULTURAL PROPERTY* 67-71 (Elizabeth Simpson ed., 1997) (detailing Russia’s cultural losses during the war).

5. Nicholas, *supra* note 4, at 41. “Other things, not Germanic, were simply considered too good for the inferior Slavs . . . for example, the Tchaikovsky Museum in Klin and its contents, being all Slavic, did not qualify for preservation – it was ransacked and turned into a motorcycle-repair garage.” *Id.*

fact, Hitler had plans for a grand Führermuseum in his native city of Linz, Austria, and he had selected specific pieces from Soviet museums to be looted and included in the planned museum.<sup>6</sup>

In 1942, the Soviet government formed an Extraordinary State Commission to handle problems stemming from the Nazi occupation.<sup>7</sup> Toward the end of the war, the commission asked several Soviet experts on painting, sculpture, and applied arts to prepare lists of “objects in German museums that [they] thought were exceptionally valuable.”<sup>8</sup> The idea was for Soviet museums to be “compensated” via artwork from enemy museums that were equivalent to the ones that had been lost.<sup>9</sup> The task of quantifying Soviet losses turned out to be extremely difficult because some areas were still under Nazi occupation.<sup>10</sup> Still, it was clear that thousands of objects had been destroyed or looted, so the experts began to simply list masterpieces in enemy museums, because it was decided that stealing “secondary art” would be senseless.<sup>11</sup>

From the idea of equivalents soon arose the idea of a super museum: a Museum of World Art, in Moscow.<sup>12</sup> Of course, comparing the idea to Hitler’s plans in Linz is unavoidable.<sup>13</sup> The

---

6. AKINSHA & KOZLOV, *supra* note 1, at 23; *see* Nicholas, *supra* note 4, at 41.

7. AKINSHA & KOZLOV, *supra* note 1, at 19. The full name of the commission was: “The Extraordinary State Commission on the Registration and Investigation of the Crimes of the German-Fascist Occupiers and Their Accomplices and the Damage Done by Them to the Citizens, Collective Farms, Public Organizations, State Enterprises, and Institutions of the USSR.” *Id.*

8. *Id.*

9. *Id.* at 19-20.

10. *Id.* at 21-23. For instance, historical landmarks, such as the cities of Novgorod and Pskov, and palaces outside the cities of Leningrad, Kiev, and Minsk. *Id.*

11. AKINSHA & KOZLOV, *supra* note 1, at 23-25; Konstantin Akinsha & Grigori Kozlov, *The Discovery of the Secret Depositories, in THE SPOILS OF WAR: WORLD WAR II AND ITS AFTERMATH: THE LOSS, REAPPEARANCE AND RECOVERY OF CULTURAL PROPERTY* 163 (Elizabeth Simpson ed., 1997).

12. AKINSHA & KOZLOV, *supra* note 1, at 33.

13. *Id.* at 34.

During the course of the war, only two nations organized well-planned strippings of museums and cultural institutions

focus, thus, shifted from merely replacing what had been lost, to removing the cultural objects as a “penalty.”<sup>14</sup> Justifications for the establishment of such a museum were not hard to find:

The German-fascist barbarians, who tried to annihilate Russian culture and destroyed many famous examples of Russian art, must be held responsible for their crimes. The museums of the Axis countries are full of wonderful masterpieces, which must be given to the Soviet Union as compensation. All valuables received from the Axis countries must be concentrated in one place and can play the role of a perfect memorial dedicated to the glory of Russian arms.<sup>15</sup>

The final list included works of art from Germany, Austria, Hungary, Romania and Italy, though the bulk of the targeted objects were in German museums, specifically the cities of Munich, Berlin, Dresden, Leipzig and Hamburg.<sup>16</sup> In the end, the

---

in the countries occupied by their military forces. These nations were Hitler’s Germany and Stalin’s USSR. The similarity between Hitler’s project to build a Führermuseum in Linz and Stalin’s idea to build a World Museum of Art in Moscow is striking but not exceptional. It is one more point of comparison between the two most monstrous totalitarian regimes of the twentieth century.

Akinsha & Kozlov, *supra* note 11, at 165.

14. Akinsha & Kozlov, *supra* note 11, at 164.

15. Russian Center for the Preservation of Documents of Modern History, coll. 962, inv. 6, file 1345, p. 6, *quoted in* AKINSHA & KOZLOV, *supra* note 1, at 25. The idea of the super museum was also inspired by themes that emerged during the war, namely a nationalistic, rather than purely Marxist perspective. This was strengthened by the need to unite the people to fight the aggressor. AKINSHA & KOZLOV, *supra* note 1, at 34.

16. AKINSHA & KOZLOV, *supra* note 1, at 37-40. The Munich museums targeted were the Old and the New Pinakothek, with 125 and fourteen paintings selected as equivalents, respectively. From the Dresden Gallery, several masterpieces were selected, notably Raphael’s *Sistine Madonna*. In Berlin, focusing on the Kaiser Friedrich Museum, the Soviets had selected no less than

total value of the “equivalents” was estimated at \$70,587,200.<sup>17</sup>

*B. The Looting of Europe by the “Trophy Brigades”*

On February 25, 1945, the Russian State Committee of Defense established the Special Committee on Germany, which was to be responsible for stealing valuables throughout Europe.<sup>18</sup> These were the so called “trophy brigades,” which consisted of experts from prestigious institutions representing theater, art and art history, who were handpicked for the dangerous assignment.<sup>19</sup> These individuals were civilians and the mission was secret, so to appear less suspicious, and to blend in with the rest of the Red Army, they wore uniforms.<sup>20</sup> The establishment of the trophy brigade by the Soviet Union directly contradicted the objectives of the other allied nations, as well as that of the Allied Control Council (“ACC”), to which the Soviet Union, along with the other victors of the war, belonged.<sup>21</sup> Upon discovering the extent of the Nazi lootings, the ACC sought to return the artwork to their

---

179 equivalents. Specific masterpieces were, likewise selected from museums in Leipzig and Hamburg. In addition, collections in Augsburg, Braunschweig, Darmstadt, Frankfurt, Karlsruhe, Kassel, Oldenburg, Potsdam, and Würzburg were chosen. *Id.* at 38-40.

17. *Id.* at 41. “The *Sistine Madonna* was valued at \$2,000,000. The most expensive object was the Pergamon Altar, which was valued at \$7,500,000, and the cheapest was a knife in the Egyptian collection in Berlin, appraised at only \$200.” *Id.* See discussion *infra* Part (II)(B)(3).

18. AKINSHA & KOZLOV, *supra* note 1, at 44.

19. *Id.* at 45.

20. *Id.* at 45-46.

21. The Allied Control Council, consisting of the victors of the war, that is, the United States, Great Britain, France, and the Soviet Union, established in 1945 after Germany’s surrender, became the governing body. Its intent was to govern the German territory during the post-war years during which Germany was occupied by the allied powers. See Michael J. Kurtz, *The End of the War and the Occupation of Germany, 1944-55: Laws and Conventions Enacted to Counter German Appropriations: The Allied Control Council*, in *THE SPOILS OF WAR: WORLD WAR II AND ITS AFTERMATH: THE LOSS, REAPPEARANCE AND RECOVERY OF CULTURAL PROPERTY* 112-16 (Elizabeth Simpson ed., 1997).

rightful owners.<sup>22</sup> This disparity between the Soviet mission, and the goal of the other allied powers, helps explain the secrecy of the trophy brigades.<sup>23</sup>

Early on during the war, many German museums began to hide their most valuable objects.<sup>24</sup> Consequently, when the bombardment took place in 1945, most of the masterpieces were hidden in places such as cellars of museums, underground shelters and caves.<sup>25</sup> The trophy brigades were fully aware that they were searching for art that had been hidden, and in the tracks of the Red Army, they left for Germany in February of 1945.<sup>26</sup> Soon thereafter, they made their first large discovery in an underground shelter in the village of Hohenwalde, which became the first important art transportation from Germany to the Soviet Union.<sup>27</sup> In the months that followed, the trophy brigades made many similar discoveries. The following sections will introduce four specific examples of trophy art in an effort to illustrate the different types of art the brigades targeted, the different reasons the brigades had for putting a piece of art on the list, and the exceptional importance given of some of the works. These examples will be mentioned throughout this article in order to demonstrate that there are vast differences in what happened to the works of art after they were looted.

### *1. The Trojan Gold*

In 1873, Heinrich Schliemann, a German amateur archeologist, was digging on the hill of Hissarlik in present day Turkey where the ancient city of Troy is believed to have been located, when he made an enormous discovery of gold, silver, bronze, and ceramic

---

22. *Id.* at 116.

23. *See id.*

24. AKINSHA & KOZLOV, *supra* note 1, at 52.

25. *Id.* at 58.

26. *Id.* at 48-49. The discovery included the collection from the Kaiser Friedrich Museum in Posen, as well as collections from Tallinn and Riga. *Id.*

27. *Id.* at 51.



objects.<sup>28</sup> He later smuggled his findings, often referred to as the “Trojan Gold,” into Greece, and in 1881 donated the treasure to the people of Germany.<sup>29</sup> Museum officials promised to display it in Berlin for all time, which is where it remained for the next sixty years.<sup>30</sup> Interestingly, Schliemann had offered the treasure to the Russian government, but withdrew the offer when told that it would not be displayed at the State Hermitage Museum (“Hermitage”) in St. Petersburg.<sup>31</sup> The trophy brigades remembered this and the Trojan Gold was on the list.<sup>32</sup>

In 1941, the Trojan Gold was taken to the Flakturm Zoo, a newly built anti-aircraft tower, to protect it from potential bombardment.<sup>33</sup> The treasure, along with many other works of art

---

28. AKINSHA & KOZLOV, *supra* note 1, at 7-8, 58; see Heinrich Alexander Stoll, *Heinrich Schliemann: Das Leben des Troja-Ausgräbers in Daten*, at <http://schliemann-museum.de/hsm/biografie.html> (last visited Mar. 3, 2004). Schliemann had made it his quest to prove that the Trojan War was real and not just a legend in Homer’s *Iliad*. To him the discovery proved that the Trojan War took place. See generally HOMER, *THE ILIAD* (Robert Fagles, trans., Penguin Books 1990). The most impressive of the objects found in the treasure were two diadems made out of gold, possibly worn by a queen or princess. Archeologists have concluded that Schliemann’s treasure likely dates back more than one thousand years before the Trojan War. Nonetheless, no one disputes the fact that Schliemann found the city of Troy. *The Treasure of Troy*, at <http://www.unmuseum.org/troy.htm> (last visited Mar. 5, 2004).

29. AKINSHA & KOZLOV, *supra* note 1, at 8-9; Stoll, *supra* note 28. Schliemann had obtained an agreement with the Turkish government that gave him permission to dig at Hissarlik, but the agreement also stated that anything found had to be divided with the government. *The Treasure of Troy*, *supra* note 28; Stoll, *supra* note 28.

30. AKINSHA & KOZLOV, *supra* note 1, at 9.

31. *Id.* at 21.

32. *Id.*

33. Klaus Goldmann, *The Trojan Treasures in Berlin, the Disappearance and the Search for the Objects after World War II*, in *THE SPOILS OF WAR: WORLD WAR II AND ITS AFTERMATH: THE LOSS, REAPPEARANCE AND RECOVERY OF CULTURAL PROPERTY 200-01* (Elizabeth Simpson ed., 1997); see AKINSHA & KOZLOV, *supra* note 1, at 9. In 1939, the Trojan Gold was packed into three crates and taken into the basement of the Museum for Pre- and Early History, from where it was moved to the vault of the Prussian State Bank in 1941, and later that same year moved to the Flakturm Zoo anti-aircraft tower. *Id.*

from Berlin museums, remained in the tower until 1945.<sup>34</sup> In February of 1945, orders were given to move all of the art stored in the tower to areas west of the Elbe River that were to be occupied by British and American forces, to keep the Soviet Army from getting to it.<sup>35</sup> Much of the art was moved, but the Trojan Gold was not; it was considered too risky.<sup>36</sup> It is now known that in May 1945 the treasure was loaded onto a truck headed for Moscow, however, it was long unclear whether the Soviet army had in fact taken the Trojan Gold.<sup>37</sup>

## 2. *The Pergamon Altar*

The highest valued object on the list was the Pergamon altar, a huge<sup>38</sup> Ancient Greek marble structure built around 180 B.C., rediscovered by German archeologists in 1899, and displayed at the Pergamon Museum in Berlin since 1901.<sup>39</sup> It had taken forty Germans four weeks to dismantle the altar, after which the pieces were stored in the Flakturm.<sup>40</sup> When the Soviets found out that the British and Americans would again take over the sector of Berlin

---

34. Goldmann, *supra* note 33, at 201.

35. *Id.*; AKINSHA & KOZLOV, *supra* note 1, at 10.

36. AKINSHA & KOZLOV, *supra* note 1, at 10, 63, Dr. Wilhelm Unverzagt, director of the Museum for Pre- and Early History, and a devoted Nazi, stayed with the crates in the Flakturm. It is now believed that After Hitler's suicide, realizing that losing the treasure was inevitable, he agreed to protect it until competent authorities arrived. Nonetheless it was long disputed why Unverzagt would have given the treasure to a Soviet official as this was in direct violation of Hitler's orders. *Id.* at 78; see Goldmann, *supra* note 33, at 201.

37. AKINSHA & KOZLOV, *supra* note 1, at 78; Goldmann, *supra* note 33, at 202-03.

38. The altar has the shape of a horse shoe and it is 36.44 meters wide and 34.20 meters deep. See Cicoda Travel Agency: Pergamon, at <http://www.cicoda.com/htm/pergamon.htm> (last visited Mar. 22, 2004).

39. T. Cramer, K. Germann & W. Heilmeyer, *Petrographic and Geochemical Characterization of the Pergamon Altar (Telephos Frieze) Marble in the Pergamon Museum, Berlin*, available at [http://www.lagerstaetten.tu-berlin.de/staff/cramer/antikmarmor/eigene\\_publicationen/asmosia\\_publication.html](http://www.lagerstaetten.tu-berlin.de/staff/cramer/antikmarmor/eigene_publicationen/asmosia_publication.html) (last visited Mar. 11, 2004).

40. AKINSHA & KOZLOV, *supra* note 1, at 76, 83.

in which the Flakturm was located, concerns were raised because time was running out.<sup>41</sup> Amazingly, in only two days, three-hundred Soviet soldiers managed to move the marble pieces and put them on a train to Leningrad – a fate suffered by countless other works of art from Berlin collections.<sup>42</sup> The Soviet refusal to share information about the existence of the trophy brigades with the other allied nations reflected a new distrust between the Soviet Union and the three western nations. The hurried removal of the Pergamon altar demonstrates particularly well that the reason for the haste was a Soviet acknowledgement that their actions were not sanctioned by the other allied powers, but were, in fact, in direct contradiction to those of the ACC: “The western allies were already regarded as enemies – but not yet openly. The cold war had started even before the real war was over.”<sup>43</sup>

### 3. *The Sistine Madonna and Other Dresden Discoveries*

Another highly valued item on the list was the *Sistine Madonna*, painted by the renowned Italian painter Raphael<sup>44</sup> in about 1513.<sup>45</sup> The painting had long been part of the Dresden Gallery,<sup>46</sup> where it

---

41. *Id.* at 79.

42. *See id.* at 68-88.

43. *Id.* at 79.

44. For a biography of Raphael see Raphael of Urbino: Painter and Architect (1483-1520), at <http://www.artist-biography.info/artist/raphael/> (last visited Mar. 11, 2004).

45. *See* Raffaello Sanzio: The Sistine Madonna, at <http://www.kfki.hu/~arthp/html/r/raphael/5roma/2/03sisti.html> (last visited Apr. 21, 2004). The painting was probably intended to be placed on the tomb of Pope Julius II. Scholars have deduced the painting’s original purpose from the fact that Pope Sixtus, pictured as Saint Sixtus on the left, was the patron saint of the family of Guiliano della Rovere, who became Pope Julius II. In addition, St Barbara, pictured on the right, as well as the two winged ‘genii’ at the bottom, symbolize the funeral ceremony. *Id.*

46. For centuries the painting remained in the convent of St. Sixtus in Piacenza, but was later given to Augustus III, King of Saxony, who in 1720 started a special collection. The collection later became part of the Dresden Gallery. *See* Raffaello Sanzio: The Sistine Madonna, at <http://www.kfki.hu/~arthp/html/r/raphael/5roma/2/03sisti.html> (last visited Mar.

remained until World War II.<sup>47</sup> The Red Army arrived in Dresden in May 1945; a city largely destroyed by British and American bombardment in February that same year.<sup>48</sup> The trophy brigades found their way to the Village of Gross Cotta, and there, in a damp tunnel, they discovered a railroad car containing a locked crate, that had a thermometer attached to it: the crate held the *Sistine Madonna*.<sup>49</sup>

The Gross Cotta site also contained about four-hundred paintings, including masterpieces by Rembrandt, Giorgione, Watteau, Canaletto, Rubens, Titan and José de Ribera.<sup>50</sup> A second important depository discovered in Dresden was Weesenstein Castle, which contained five-hundred canvases, including a unique collection of nineteenth-century German drawings and forty etchings by Rembrandt.<sup>51</sup> In a third major depository close to Dresden, in Pockau Lengfeld, the brigades found paintings in an old barn, as well as in unventilated, dark, damp tunnels in a mine, conditions so bad that some paintings had been damaged.<sup>52</sup> Works found in this shelter included paintings by Titan, Rembrandt, and Botticelli.<sup>53</sup> The brigades reported the Dresden discoveries to Stalin and in a telegram he personally declared the transportation

---

10, 2004); Geschichte der Staatlichen Kunstsammlungen Dresden, at <http://www.staatl-kunstsammlungen-dresden.de/deutsch/maimus.htm> (last visited Mar. 10, 2004).

47. Geschichte der Staatlichen Kunstsammlungen Dresden, *supra* note 46.

48. AKINSHA & KOZLOV, *supra* note 1, at 114, 118.

49. *Id.* at 116, 122-23.

50. *Id.* at 120-21, 129. Among the paintings were: *Rape of Ganymede* by Rembrandt, *The Sleeping Venus* by Giorgione, *Self-Portrait with Saskia* by Rembrandt, “a little silvery landscape” by Watteau, a Dresden landscape by Canaletto, *Diana* by Ruben, *Young Woman in White* by Titan, and *Saint Agnes* by Jose de Ribera. *Id.*

51. *Id.* at 118, 125, 129.

52. *Id.* at 125-26. In a makeshift room, the experts found stacks of paintings. Many of the paintings were in an awful condition, with their backs covered by white mold. In some cases, where there were tiny cracks in the paint, the mold had also spread to the front of the paintings. AKINSHA & KOZLOV, *supra* note 1, at 125-26.

53. *Id.* at 126.

of the art from Dresden to be of “state importance.”<sup>54</sup> The Gross Cotta find was the trophy brigades’ greatest achievement.<sup>55</sup>

#### 4. *The Baldin Drawings*

In addition to the workings of the trophy brigade, private plunder was also widespread.<sup>56</sup> Perhaps the best known example involved Viktor Baldin, a young field engineer, who, in 1945, discovered portfolios full of drawings and watercolors by such famous artists as Titian, Goya, Rembrandt, van Gogh and Cézanne in the cellar of Karnzow Castle, north of Berlin.<sup>57</sup> The castle was, it turns out, a storage depository for part of Bremen Kunsthalle’s collection, and hoping to safeguard the works from other officers who did not understand their value, Baldin packed 362 drawings and two paintings – a Dürer and a Goya – into his suitcase.<sup>58</sup> He returned with them to the Soviet Union and in 1947 donated them to the Shchusev Museum of Architecture in Moscow.<sup>59</sup>

#### 5. *Prelude to the Cold War*

Similar to the hasty transportation of art out of Berlin due to the imminent transfer in power, for fear of the other allies discovering what the Red Army was doing, the removal of artwork from

---

54. *Id.* at 129. “Give necessary help in transportation to Moscow of the Cargo prepared by the brigade . . . Remember that the cargo is of state importance, provide the necessary security, report the accomplishment. Stalin.” Russian Center for Preservation and Study of Documents of Modern History, coll. 962, inv. 6, file 1357, pp. 319-22, *quoted in* AKINSHA & KOZLOV, *supra* note 1, at 129.

55. AKINSHA & KOZLOV, *supra* note 1, at 112.

56. *Id.* at 243; Peter Plagens, *War and Remembrance*, NEWSWEEK, Mar. 13, 1995.

57. *See* AKINSHA & KOZLOV, *supra* note 1, at 244-45; Plagens, *supra* note 56.

58. AKINSHA & KOZLOV, *supra* note 1, at 245-46; Plagens, *supra* note 56. The author is not aware why works from a collection in Bremen were stored as far away as Berlin.

59. AKINSHA & KOZLOV, *supra* note 1, at 246.

Dresden was also expedited.<sup>60</sup> As mentioned, the ACC made efforts to collect and return art looted by Nazis to the original owners.<sup>61</sup> As a result of these efforts, many works of art from the Soviet Union were, in fact, returned and only few remained in Germany.<sup>62</sup> Consequently, it is clear that while the other allied powers were returning Nazi looted art, the Soviets continued to search for art hidden in their zone of occupation for an entirely different reason.<sup>63</sup> Making the actions of the trophy brigades even more contentious is the fact that the Red Army did not care whether the art they stole was the property of the German government, or that of private collectors.<sup>64</sup> A portion of the art they looted had, in fact, first been stolen by the Nazis and had, therefore, belonged to victims of the holocaust.<sup>65</sup> Particularly noteworthy are collections that had belonged to Jewish art collectors throughout Europe.<sup>66</sup> From 1945 on, the Pushkin Museum (“Pushkin”) in Moscow received more than five-hundred crates containing artwork, so many that some were sent to the Hermitage in Leningrad because the Pushkin was simply overloaded.<sup>67</sup> In all, the Soviet Union transferred more than 2.5

---

60. *Id.* at 121.

61. Wilfried Fiedler, *Legal Issues Bearing on the Restitution of German Cultural Property in Russia*, in *THE SPOILS OF WAR: WORLD WAR II AND ITS AFTERMATH: THE LOSS, REAPPEARANCE AND RECOVERY OF CULTURAL PROPERTY* 175, 176 (Elizabeth Simpson ed., 1997); Kurtz, *supra* note 21, at 112-16.

62. Fiedler, *supra* note 61, at 176 (internal citation omitted). It is, however, not known whether or how many of the works or art were, in fact, returned to the area from which they originated, it is, for instance possible that art that originated in the Ukraine and Belarus never made it back, but remained in Russia. *Id.*

63. *See* Fiedler, *supra* note 61, at 176; Kurtz, *supra* note 21, at 116.

64. *See* Alan Riding, *Are Finders Keepers?*, N.Y. TIMES, Mar. 12, 1995, 4, at 3.

65. *See id.*

66. Alfred Lipson, *Nazi Loot Belongs to Jewish Victims*, WALL ST. J., May 5, 1995. For instance, Baron Andras Herzog, a well-known Jewish art collector in Hungary, had a major art collection that included several masterpieces by such artists as Goya and El Greco, that was seized by the Nazis. *Id.*

67. AKINSHA & KOZLOV, *supra* note 1, at 130.

million works of art from its zone of occupation in Germany, mostly from Berlin, to the Soviet Union.<sup>68</sup> The continued and deliberate refusal by the Soviet Union to disclose to its war-time allies its actions regarding the massive amounts of cultural property it had removed from its zone, shows that the cold war had, indeed, started before the real war was over.

### C. The Cold War

Initially, the Soviet Government made few efforts to keep the massive amounts of trophy art a secret.<sup>69</sup> This began to change in 1946 when Stalin, against the advice from the other allied nations, allowed the Communist and Social Democratic parties in the Soviet zone to unite, making it his aim to turn the zone into a Soviet “puppet state.”<sup>70</sup> In 1946, the Pushkin planned a special exhibition for the purpose of showing even the best pieces of trophy art, including the *Sistine Madonna*; however, the exhibition never opened.<sup>71</sup> Though the museum blamed technical difficulties, the reasons were entirely political.<sup>72</sup> Political reasons also led the Hermitage to interrupt preparations to reassemble the Pergamon Altar.<sup>73</sup> The Pushkin did maintain a “secret museum-within-a-museum” where only select people were allowed, but even this changed in 1949.<sup>74</sup> The Soviet Union refused to cooperate with the other allied powers to restore stability to Germany as a whole, and blocked all land routes to West Berlin from the western zones, giving rise to two German states, a division of Europe by an iron curtain, and the cold war.<sup>75</sup> At this point, the Soviet government

---

68. Fiedler, *supra* note 61, at 176.

69. *Id.*

70. AKINSHA & KOZLOV, *supra* note 1, at 154.

71. *Id.* at 184.

72. *Id.*

73. *Id.*

74. *Id.* at 184-85.

75. DONALD S. DETWEILER, GERMANY: A SHORT HISTORY 210 (3d ed. 1999). “With the start of the Cold War, the general political climate and the relationship between the Allies in particular underwent changes. By the end of the 1940s, former war allies were no longer political allies.” Valery Koulichov,

began to impose secrecy about the trophy art, but at a level moderate compared to what was to come.<sup>76</sup>

### *1. Soviet "Rescue" Propaganda: Return of the Dresden Collection*

By early 1950, the Soviet Union began correspondence with its "puppet state," the newly established German Democratic Republic ("GDR"), about the return of the trophy art to the GDR, including the Dresden masterpieces.<sup>77</sup> At the same time, the Soviet government began to spread propaganda, arguing that the artwork had been "saved" by the Soviet Union, when they were half-ruined, while accusing the Germans of letting the paintings rot in caves.<sup>78</sup> As a result, in 1955 a hugely successful exhibition of the "rescued" masterpieces from Dresden opened at the Pushkin.<sup>79</sup> At the opening the Minister of Culture, Nikolai Mikhailov, stated that the "masterpieces had been saved twice: first from the damp caves by the heroic Red Army and, second, by museum officials and restorers."<sup>80</sup> After the exhibition, the collection was returned to the

---

*The History of the Soviet Repositories and Their Contents, in THE SPOILS OF WAR: WORLD WAR II AND ITS AFTERMATH: THE LOSS, REAPPEARANCE AND RECOVERY OF CULTURAL PROPERTY 171 (Elizabeth Simpson ed., 1997).*

76. See AKINSHA & KOZLOV, *supra* note 1, at 186; Koulichov, *supra* note 75, at 172.

77. See Koulichov, *supra* note 75, at 172.

78. AKINSHA & KOZLOV, *supra* note 1, at 196-97.

79. *Id.* at 196.

80. *Id.*; Summary of the Symposium Presentation Given by Irina Antonova on the Returns Made by the Soviet Union to the German Democratic Republic (GDR) during the Cold War Period, *Instances of Repatriation by the USSR, in THE SPOILS OF WAR: WORLD WAR II AND ITS AFTERMATH: THE LOSS, REAPPEARANCE AND RECOVERY OF CULTURAL PROPERTY 146 (Elizabeth Simpson ed., 1997).* The exhibition even caused "the strange phenomenon of *Sistine Madonna* mania." AKINSHA & KOZLOV, *supra* note 1, at 196-97. Irina Antonova, Director of the Pushkin Museum, commented on the "rescue" as follows: "No one ever again will see the treasures of the exhibits the way we saw them in those unforgettable years or experience that feeling of pride, happiness, and inspiration that flowed from our participation in the salvation of these great treasures." Hailing the returns as heroic, Antonova continued: "Never before had any state that was a victim of aggression entailing such



GDR, where it was first displayed in Berlin, and then transferred back to Dresden.<sup>81</sup> Despite endless gratitude for Soviet generosity by its fellow communists in the GDR, the Western press was not convinced, feeling that the “rescue” version of events was untrue, and that some of the alleged restorations had been done poorly.<sup>82</sup> At a press conference, Western journalists also asked questions about the whereabouts of the Pergamon altar – which the Soviet representative refused to answer.<sup>83</sup>

## *2. Soviet-GDR Decree on Cultural Valuables: Return of 1.5 Million Works of Art*

In May 1957, further discussions between the Soviet Union and the GDR led to the adoption of the decree “Concerning Cultural Valuables of the GDR that are in the Soviet Union for Temporary Storage,” which detailed the establishment of a commission which would facilitate the return of cultural valuables taken from the GDR by the Soviet Union, as well as the return of cultural valuables taken from the Soviet Union by Germany.<sup>84</sup> According to the Soviet Ministry of Culture’s official figure, at this time, 2,614,874 pieces of trophy art were located in Soviet museums.<sup>85</sup> Many Soviet museums now undertook massive restoration projects because many of the works of art were in terrible shape; nonetheless, “[t]he myth of the rescued masterpieces had to be

---

monstrous consequences, . . . made such gifts to countries whose deeds had warranted a judgment by an international court.” Summary of the Symposium Presentation by Antonova, *supra* note 80, at 146.

81. AKINSHA & KOZLOV, *supra* note 1, at 198; Summary of the Symposium Presentation by Antonova, *supra* note 80, at 146. See Gemäldegalerie Alte Meister, at <http://www.staatl-kunstsammlungendresden.de/deutsch/maimus.htm> (last visited Mar. 11, 2004).

82. See AKINSHA & KOZLOV, *supra* note 1, at 199.

83. *Id.*

84. *Id.* at 205. The GDR submitted a list of claims, which the curators at the Pushkin Museum noted as being “composed very diplomatically, with the East Germans parroting the Soviet myth about the ‘saving’ of the artwork.” *Id.*

85. *Id.* at 206.

maintained.”<sup>86</sup> The East Germans eventually informed the Soviets that they could not return anything because there were no works of art belonging to the Soviet Union in the GDR.<sup>87</sup> Still, Soviet officials, apparently not bothered by the fact that the deal was no longer an exchange, stuck to their promise to return the “saved” art.<sup>88</sup> Interestingly, when the East Germans received a preliminary list of artwork to be returned, they specified that pieces originating from museums that were now part of West Berlin be kept in the Soviet Union.<sup>89</sup> In the fall of 1958, before leaving the Soviet Union, much of the art, including the massive Pergamon Altar, was put on display.<sup>90</sup> In all, the Soviet Union returned 1,569,176 objects of trophy art to the GDR by 1959; the Pergamon Altar was included, but the Trojan Gold was not.<sup>91</sup> As a result of the previously mentioned uncertainty about whether the Soviet Union had, in fact, taken the Trojan Gold, the country was able to deny that it had the treasure and, therefore, was able to get away with not returning it.<sup>92</sup>

### 3. Total Secrecy

After these returns, about one million objects of trophy art remained in depositories in the Soviet Union.<sup>93</sup> In 1960, the Soviet government made a decision that no more trophy art returns would

---

86. AKINSHA & KOZLOV, *supra* note 1, at 205-06. Referring to the restoration workshops as a “field hospital,” according to Antonova: “Nearly all of the paintings arrived from Germany ‘bandaged up’ – with warning stickers on those parts that had been damaged, applied . . . at the sites of their discovery. [The restorers] saved from destruction . . . many . . . treasures.” Summary of the Symposium Presentation by Antonova, *supra* note 80, at 146.

87. See AKINSHA & KOZLOV, *supra* note 1, at 209.

88. See *id.* at 209-13. The decision was nonetheless strongly opposed by numerous art historians who felt nothing should be returned unless there was a promise that something would be received in return. *Id.* at 210-11.

89. See *id.* at 213.

90. *Id.* at 213-15.

91. See AKINSHA & KOZLOV, *supra* note 1, at 216.

92. See Goldmann, *supra* note 33, at 202-03.

93. AKINSHA & KOZLOV, *supra* note 1, at 216.

take place.<sup>94</sup> It is possible that the decision came after weighing the benefits of either opening the depositories and making the art available to the public, or keeping it secret to be used as a bargaining tool with the West; if this was the case, the latter was chosen.<sup>95</sup> At this point, the Soviet government imposed an absurd level of secrecy, and publicly denied the existence of any remaining trophy art.<sup>96</sup> In 1967, another return took place, but this time even the return was secret and done as a “quiet deal” between the governments of the Soviet Union and the GDR.<sup>97</sup> Soviet officials initially contemplated a more extensive return, but finally decided to give back only a handful of canvases that had originated in Dresden.<sup>98</sup> Similar small deals took place throughout the 1970s; the last known one occurred in 1986.<sup>99</sup> The situation took a whole new spin when the fall of the Berlin Wall made the issue of one million remaining pieces of trophy art a concern for the unified Germany.<sup>100</sup>

### III. CONFIRMATION OF RUSSIAN HOLDINGS AND THE APPLICABLE INTERNATIONAL LAWS

#### *A. Collapse of the Soviet Union and the Controversy that Followed*

##### *1. Russia’s Acknowledgement of the Quantities of Trophy Art*

In 1990, Konstantin Akinsha and Grigorii Kozlov, two Soviet art historians who had discovered information about trophy art hidden away in secret depositories in the Soviet Union, published

---

94. *Id.* at 216 (quoting, Russian Center for Preservation and Study of Documents of Modern History, coll. 4, inv. 16, file 7).

95. *See* Koulichov, *supra* note 75, at 172.

96. *Id.*

97. AKINSHA & KOZLOV, *supra* note 1, at 225.

98. *Id.*

99. *Id.* at 225-26.

100. *See id.* at 226.

an article in *ARTnews* about their findings.<sup>101</sup> Because the article concerned information that had been kept secret from the public during most of the cold war, it stirred up a debate that had been silent for decades.<sup>102</sup> Fully aware of the impact their article would have, when asked why they wrote the article, Kozlov merely stated that they “wanted to tell the truth.”<sup>103</sup> Though made possible by perestroika, it was still sensational that two Soviet art historians dared speak up about the subject, and the fact that the article was published in a Western magazine made it impossible for the Soviet government to ignore it.<sup>104</sup> The article did, in fact, lead to the KGB paying Kozlov a visit, but likely due to the West’s awareness of the situation neither Akinsha nor Kozlov was in any way punished for writing it.<sup>105</sup> In October 1991, Minister of Culture, Nikolai Gubenko, finally made an official statement admitting the existence of the secret depositories discussed in the article; however, when asked about the Trojan Gold, he stated that he did not know anything about its whereabouts.<sup>106</sup> Shortly thereafter, the Soviet Union ceased to exist and was replaced by eleven independent states,<sup>107</sup> the Russian Federation becoming the successor state to the Soviet Union.<sup>108</sup> It was not until 1992 that

---

101. *Id.* at 230-34.

102. AKINSHA & KOZLOV, *supra* note 1, at 234-37.

103. *Id.* at 235.

104. *See id.* at 234-40.

105. *See id.* at 236-37.

106. *Id.* at 239-40.

107. *See* Agreement Establishing the Commonwealth of Independent States, Dec. 8 1991, Bel.-Russ.-Ukr., A/47/60, *reprinted in* 31 I.L.M. 138, 149 (1992) [hereinafter Agreement Establishing the Commonwealth of Independent States]. In the agreement, the three nations that had originally founded the Soviet Union, Belarus, Russia and the Ukraine, declared that “the Union of Soviet Socialist Republics as a subject of international law and geopolitical reality no longer exists.” *Id.* Preamble.

108. On December 24, 1991, the United Nations Secretary General informed the members of the United Nations of a letter he had received from the Russian Federation according to which “the membership of the Union of the Soviet Socialist Republics in the United Nations . . . is being continued by the Russian Federation.” Agreement Establishing the Commonwealth of Independent States, *supra* note 107, at Background/Content Summary.

the German government became aware of the actual quantities of looted art located in Russia,<sup>109</sup> and in 1994, Russia finally admitted that the Trojan Gold was in its possession.<sup>110</sup>

From a cultural perspective, Germany considers the artworks to be “part of its cultural heritage as definitive statements of German culture and illustrative of her people’s cultural identity and history,” and that it is, therefore, entitled to their return.<sup>111</sup> Germans also feel they are entitled to “objects of ancient civilizations once displayed permanently in German museums and considerably influential on German cultural life.”<sup>112</sup> As one scholar rightfully states:

[T]he incredible extent of the removal of cultural property from Germany. . . . [make] the outstanding importance of this cultural property for the cultural identity of the German people . . . obvious. From the very beginning the Soviet communists realized that the plundered works of art were irreplaceable parts of the cultural achievement of the German people. . . . [T]he German cultural treasures stored in the former Soviet Union are tantamount to a walk

---

109. AKINSHA & KOZLOV, *supra* note 1, at 251.

110. *Id.* at 223-24. The Trojan Gold, it turns out, was located in a safe behind a steel door hidden by curtains behind the tour guide’s office at the Pushkin Museum. *Id.* Germany was particularly displeased when the Pushkin finally did admit that it was in the possession of the Trojan Gold, because one of the individuals who had publicly denied the fact was the museum’s director, Irina Antonova, who had been photographed together with the soldiers who took it. Lewis Dolinsky, *Cultural Heritage Held Hostage*, S.F. CHRONICLE, Nov. 10, 2000.

111. S. Shawn Stephens, *The Hermitage and Pushkin Exhibits: An Analysis of the Ownership Rights to Cultural Properties Removed From Occupied Germany*, 18 HOUS. J. INT’L L. 59, 82 (1995). *But see* Alexander Blankenagel, *Eyes Wide Shut: Displaced Cultural Objects in Russian Law and Adjudication*, 8 E. EUR. CONST. REV. 4, available at <http://www.law.nyu.edu/eccr/vol8num4/special/displaced.html> (last visited Mar. 7, 2004).

112. Stephens, *supra* note 111, at 82. An obvious example is the Trojan Gold which though excavated in Turkey has importance to Germany because Schliemann who excavated the treasure was German.

through the entire history of Germany.<sup>113</sup>

Furthermore, since many of the objects are of no cultural significance to Russia, they are not on display in Russian museums, nor are they appropriately cared for.<sup>114</sup> In the words of the German Minister of Culture, Michael Naumann, many of the pieces of cultural property are “irrelevant to Russia [and are] rotting in boxes.”<sup>115</sup>

Russia, on the other hand, feels that it should be allowed to keep the trophy art. As soon as Germany raised the issue of possible returns, many Russians,<sup>116</sup> in particular conservative, nationalistic groups, announced that they felt the Russian people had a right to maintain the German cultural property “as indemnity for the 30 million dead and for all the suffering and atrocities Russia had to endure through Nazi aggression.”<sup>117</sup> Even more than fifty years after the end of World War II, the war is far from forgotten and the sentiment is that the loss of cultural property cannot be compared with the human losses suffered by the Soviet Union.<sup>118</sup>

---

113. Fiedler, *supra* note 61, at 176. *Contra* Deborah Solomon, *The Gallery: “Twice Saved” World War II Booty*, WALL ST. J., A. 12, Apr. 13, 1995. “The works in question are not antiquities, and have no special connection to Germany’s cultural roots or heritage.” *Id.*

114. Dolinsky, *supra* note 110.

115. *Id.*

116. Russia, *at* <http://comartrecovery.org/accomplishments/russia/text/russia.htm> (last visited Mar. 7, 2004). The Russian Duma estimates that as many as 86 percent of all Russians oppose the return of the trophy art. Patricia Kennedy Grimsted, *Russia’s “Trophy” Archives—Still Prisoners of World War II?*, OPEN SOCIETY ARCHIVES 43, available at <http://www.osa.ceu.hu/publications/2002/RussianTrophyArchives/RussianTrophyArchives.html>. (last visited Apr. 18, 2004).

117. Gattini, *supra* note 2, at 16. As described by one journalist, “[t]he attitude is We suffered; this hoard is partial compensation. You were the first to loot, and you destroyed out palaces and churches for the sake of destruction. You took our art and acted as if we were unworthy to possess it.” Dolinsky, *supra* note 110.

118. See Michael R. Gordon, *Russian parliament Overrides Yeltsin Veto Concerning Looted Art*, N.Y. TIMES, May. 14, 1997. As explained by one journalist:

Indeed, as stated by Irina Antonova, director of Pushkin: “We have now marked the fiftieth anniversary of the end of the Second World War. But the war has not truly ended, as long as we have not settled the unresolved issues in the areas of cultural property.”<sup>119</sup>

## 2. *Displaying the Trophy Art*

Following the admission of the trophy art’s existence, in spite of the controversy surrounding it, in 1995 Russian museums took a different approach and made the decision to display some if it.<sup>120</sup> Strangely, a race developed between the Hermitage and Pushkin museums as to who could put the trophy art on display first.<sup>121</sup> The Hermitage had been planning an exhibition for months, but was beaten by Pushkin, which quickly put together an exhibition seemingly with the express goal of doing so before the Hermitage.<sup>122</sup> Accordingly, the Pushkin opened its exhibition on February 27, 1995, and the Hermitage did so, a month later, on March 25, 1995. The Hermitage named its exhibition “Hidden Treasures Revealed,” which sounds truthful enough, while the Pushkin went with “Twice Saved,” avoiding the fact that the works

---

The hold that the war still has on the public mind was vividly demonstrated . . . [in May 1997] during the emotional celebration of the anniversary of the Soviet victory over Nazi Germany. . . . [Y]oung cadets marched proudly through Red Square, as Yeltsin stood on a reviewing stand in front of the Lenin mausoleum. Elderly veterans gathered at the sprawling Victory Park. Television broadcasts were dominated by patriotic films and the day was capped by a city-wide fireworks display.

*Id.*

119. Summary of the Symposium Presentation by Antonova, *supra* note 80, at 146.

120. See, e.g., Robert Hughes, *Spoils of War: Russia’s New Displays of Art Looted from Germany Reignite a Debate over who Rightfully Owns such Plunder*, TIME MAGAZINE, Apr. 3, 1995; Plagens, *supra* note 56; Solomon, *supra* note 113.

121. See Hughes, *supra* note 120; Solomon, *supra* note 113.

122. See Hughes, *supra* note 120; Solomon, *supra* note 113.

had been hidden away and seemingly focusing on the same propaganda as in 1955.<sup>123</sup>

As one might expect, the exhibitions did create controversy.<sup>124</sup> Antonova, the Pushkin director, expressed her opinion regarding the ownership question: “Soviet troops saved these artworks, while the fascists wrecked ours . . . [w]e deserve some form of compensation.”<sup>125</sup> On the other hand, Konstantin Akinsha, co-author of the article that restarted the trophy art debate, made the following statement: “I don’t see the difference between the nationalist orgy at the Pushkin and what’s happening in Chechnya. Russia is drifting in a rightward direction.”<sup>126</sup>

Hence, as one journalist appropriately noted, “the thrill of revelation won’t make the issue of repatriation go away.”<sup>127</sup> The issue must, therefore, be analyzed from a legal standpoint.

### *B. International Treaties That Address the Issue of Cultural Property*

#### *1. The 1899 and 1907 Hague Conventions*

The Hague Conventions Concerning the Laws and Customs of War on Land of 1899 and 1907 (“1907 Hague Convention”)<sup>128</sup> codified customary international law that applied to warfare on

---

123. Hughes, *supra* note 120; Solomon, *supra* note 113.; see Seth A. Stuhl, *Spoils of War? A Solution to the Hermitage Trove Debate*, 18 U. PA. J. INT’L ECON. L. 409, 411 (1997). Criticizing the artistic quality of “Twice Saved” one journalist commented as follows: “Because of the show’s uneven quality, and its lack of an art-historical theme, the only thing holding ‘Twice Saved’ together is the fact of its theft.” Solomon, *supra* note 113.

124. Plagens, *supra* note 56.

125. Hughes, *supra* note 113.

126. Plagens, *supra* note 56.

127. *Id.*

128. Convention Concerning the Laws and Customs of War on Land (1907), 100 B.S.P. 338, LIV L.N.T.S. 437, LXXII L.N.T.S. 458; CLX L.N.T.S. 456 [hereinafter 1907 Hague Convention].



land and included sections on the protection of cultural property.<sup>129</sup> Article 23(g) makes clear that it is forbidden “[t]o destroy or seize the enemy’s property, unless. . . imperatively demanded by the necessities of war.”<sup>130</sup> Article 56 states that all property, including State property, “dedicated to religion, charity and education, the arts and sciences”<sup>131</sup> must be treated as private property, which under Article 46 means that it may not be confiscated<sup>132</sup> and under Article 47 that it may not be pillaged.<sup>133</sup> Thus, these provisions effectively exclude the legitimacy of “war booty.”<sup>134</sup>

## 2. The 1954 Hague Convention

After World War II, it became clear that the 1907 Hague Convention did not sufficiently protect cultural property.<sup>135</sup> As a result, following the war, efforts were made most notably by the United Nations Educational, Scientific and Cultural Organization (“UNESCO”), to provide better protection for cultural property during war.<sup>136</sup> The efforts led to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (“1954 Hague Convention”), which was first signed on May 14, 1954.<sup>137</sup> The

---

129. Margaret M. Mastroberardino, *The Last Prisoners of World War II*, 9 PACE INT’L L. REV. 315, 329 (1997).

130. 1907 Hague Convention, *supra* note 128, art. 23(g).

131. *Id.* art. 56.

132. *Id.* art. 46. “Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.” *Id.*

133. *Id.* art. 47. “Pillage is formally forbidden.” *Id.*

134. Gattini, *supra* note 2, at 4.

135. Mastroberardino, *supra* note 129, at 331.

136. *Id.*

137. The 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 215 (1954) [hereinafter 1954 Hague Convention]; *see generally* Jifi Toman, THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT: COMMENTARY ON THE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT AND ITS PROTOCOL, SIGNED ON 14 MAY 1954 IN THE HAGUE, AND ON OTHER INSTRUMENTS OF INTERNATIONAL LAW CONCERNING SUCH PROTECTION (1996). As of December 18, 2003, the

1954 Hague Convention was the first international treaty to specifically protect cultural property during war, but its purpose was merely to add to the 1907 Hague Convention, not replace it.<sup>138</sup> The treaty requires, among other things, that cultural property carry “distinctive markings,” for “facilitat[ing] its recognition,”<sup>139</sup> as well as “special protection” in certain circumstances via placing the item on an “international register.”<sup>140</sup> Though the convention is a step in the right direction, many scholars feel that it is not enough.<sup>141</sup>

### 3. *The UNESCO Convention*

A further international attempt to protect cultural property came with the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (“UNESCO Convention”), first signed on November 14, 1970.<sup>142</sup> The convention’s goal is improved international cooperation with respect to the protection of cultural property, and it, therefore, supplements the 1954 Hague Convention.<sup>143</sup>

---

agreement has been ratified by 108 countries, including Russia and Germany. UNESCO: Convention and First Protocol for the Protection of Cultural Property in the Event of Armed Conflict, at [http://www.unesco.org/culture/laws/hague/html\\_eng/page9.shtml](http://www.unesco.org/culture/laws/hague/html_eng/page9.shtml) (last visited Mar. 10, 2004).

138. 1954 Hague Convention, *supra* note 137, art. 36. “Guided by the principles concerning the protection of cultural property during armed conflict, as established in the Conventions of The Hague of 1899 and of 1907. . . .” *Id.* Preamble.

139. *Id.* arts. 6, 16, 17.

140. *Id.* art. 8.

141. *See, e.g.,* KIFLE JOTE, INTERNATIONAL LEGAL PROTECTION OF CULTURAL HERITAGE 314 (1994). “The inefficacy of the Convention can be attributed to three factors 1) the inherent shortcomings of the text . . . 2) the low number of ratifications . . . ; and 3) Member States; apparent reluctance to abide whole-heartedly by its provisions.” *Id.*

142. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 10 I.L.M. 289 [hereinafter UNESCO Convention].

143. UNESCO Convention, *supra* note 142, art. 2(1). Specifically the Convention requires signatories to

Specifically, it requires, among other things, that all exported cultural property be accompanied by an export certification,<sup>144</sup> that signatories “prevent museums and similar institutions . . . from acquiring cultural property . . . which is illegally exported,”<sup>145</sup> and that signatories “recover and return any such cultural property imported.”<sup>146</sup> The Soviet Union was bound by the convention as a signatory and Russia continues to be bound as a successor state.<sup>147</sup> And even if that were not the case, Russia is still bound by the convention because it codifies customary international law.<sup>148</sup>

### *C. The 1990 Good-Neighbourliness Treaty, and the 1992 Cultural Cooperation Agreement*

At the very end of the cold war, on September 9, 1990, Germany and the Soviet Union entered into a treaty that addresses the issue of the return of cultural property, the Treaty on Good Neighbourliness, Partnership and Cooperation<sup>149</sup> (“Good Neighbourliness Treaty”), signed by Chancellor Helmut Kohl and President Mikhail Gorbachev.<sup>150</sup> Russia adopted the treaty when it became the successor state to the Soviet Union.<sup>151</sup> According to

---

recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of impoverishment of the cultural heritage of the countries or origin of such property and that international cooperation constitutes one of the most efficient means of protecting each country’s cultural property against all the dangers resulting therefrom.

*Id.*

144. *Id.* art. 6.

145. *Id.* art. 7(a).

146. *Id.* art. 7(b).

147. Stephens, *supra* note 111, at 83.

148. *Id.* at 86.

149. Treaty of Good Neighborliness, Partnership and Cooperation, Nov. 9, 1990, 1990, F.R.G.- U.S.S.R., 30 I.L.M. 504 [hereinafter Good Neighbourliness Treaty].

150. AKINSHA & KOZLOV, *supra* note 1, at 251.

151. See Alma Alta Declaration, Dec. 30, 1991, Azer.-Arm.-Belr.-Kaz.-Kyrg.-Mold.-Russ.-Taj.-Turkm.-Uzb.-Ukr., A/47/60, *reprinted in* 31 I.L.M.

Article 16 of the Good Neighbourliness Treaty, Germany and the Soviet Union agree that “lost or unlawfully transferred art treasures which are located in their territory will be returned to their owners or their successors.”<sup>152</sup> Notably, this agreement was entered into *before* the German government became aware of the quantities of artworks still stored in Russia.<sup>153</sup> Consequently, two years later, on December 16, 1992, with Germany now aware of the full extent of the problem, the two countries entered into an Agreement on Cultural Cooperation (“Cultural Cooperation Agreement”) reaffirming their commitment to solve the problem of trophy art.<sup>154</sup> Article 15 reiterates: “lost or unlawfully transferred cultural property which is located in their sovereign territory will be returned to its owners or successors.”<sup>155</sup> A joint commission to implement the agreement was subsequently established.<sup>156</sup>

At the commission’s first meeting however, the Russians advanced an unexpected interpretation of the Article 16 language, according to which the property removed by the trophy brigades was not “lost” because the Soviet authorities were all along aware of its location in state museums.<sup>157</sup> Similarly, they asserted that the artworks were not “unlawfully transferred,” but instead removed

---

138, 149 (1992).

152. Good Neighbourliness Treaty, *supra* note 149, art. 16. The Preamble to the Treaty states: “Moved by the desire to further develop and intensify the fruitful and mutually beneficial cooperation between the two States in all fields and to give their mutual relationship a new quality in the interests of their peoples and of peace in Europe.” Pursuant to this desire the parties agreed to include the sensitive issues included in Article 16. *Id.*

153. AKINSHA & KOZLOV, *supra* note 1, at 251.

154. Agreement between the Government of the Federal Republic of Germany and the Russian Federation on Cultural Cooperation, Dec. 16, 1992, 34 II BGBl. (1993) 1256 [hereinafter Cultural Cooperation Agreement], in *THE SPOILS OF WAR: WORLD WAR II AND ITS AFTERMATH: THE LOSS, REAPPEARANCE AND RECOVERY OF CULTURAL PROPERTY* Appendix 15, 306-07 (Elizabeth Simpson ed., 1997).

155. *Id.* art. 15.

156. AKINSHA & KOZLOV, *supra* note 1, at 251.

157. Gattini, *supra* note 2, at 12.

for security reasons.<sup>158</sup> Germany had assumed there would be no question about the trophy art's inclusion as this, in Germany's opinion, was the purpose of the agreements.<sup>159</sup> As a result, at a 1995 conference on "The Spoils of War" in New York, representatives of the two countries insulted each other in front of a large audience.<sup>160</sup> Hence, by the mid 1990s, relations between the two countries were not improving as desired.

#### *D. Analysis of Russia's Position under International Law*

The Vienna Convention on the Law of Treaties, to which Germany and Russia are signatories, codifies the customary international law concept of *pacta sunt servanda*, according to which "treaties must be followed."<sup>161</sup> Therefore, the terms of the Good Neighbourliness Treaty and the Cultural Cooperation Agreement must be followed by Germany and Russia.<sup>162</sup>

The Russian interpretation of "lost" and "unlawfully transferred" in the Good Neighbourliness Treaty and the Cultural Cooperation Agreement is not acceptable.<sup>163</sup> The Soviet Union may have been aware of the existence of the trophy art, as it now asserts, but it nonetheless publicly denied its existence until the beginning of the 1990s.<sup>164</sup> This means that because Germany, the original owner of the artworks, was not aware of the location of the artworks, the treaty language must be interpreted from

---

158. *Id.*

159. *See id.*

160. AKINSHA & KOZLOV, *supra* note 1, at 252. Specifically, some Germans accused Russia of stalling and some Russians claimed that Germany had no rights to make claims to any of the artworks given the suffering Germany had caused Russia during the war. *Id.*

161. Vienna Convention on the Law of Treaties, May 23, 1969, 25 I.L.M. 543, Preamble (1986) ("Affirming also that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention."). *See Fiedler, supra* note 61, at 177.

162. Stephens, *supra* note 111, at 82.

163. *See Fiedler, supra* note 61, at 177.

164. *See id.*

Germany's perspective.<sup>165</sup> This leads to the conclusion that as far as Germany was concerned, the artwork was indeed "lost."<sup>166</sup>

With respect to "unlawfully transferred," the relevant law that defines a transfer as unlawful is found in international treaties. There is no treaty that makes lawful the removal of cultural property from Germany by the Soviet Union.<sup>167</sup> The 1907 Hague Convention, as mentioned, prohibits confiscation of private property, prohibits pillage, and requires state property to be treated as private property, as per Articles, 46, 47 and 56 respectively, and permits seizure of enemy property only in situations of military necessity, as made clear by Article 23(g).<sup>168</sup> Russia, thus, violated the 1907 Hague Convention because it *did* confiscate private property, pillage, confiscate institutional property, and seize property for reasons other than military necessity, which means that the artworks were, indeed, "unlawfully transferred."<sup>169</sup>

Accordingly, because Russia's removal of the trophy art was in violation of international law, Russia does not have a valid claim to it and is legally bound to return it to Germany.<sup>170</sup>

Many scholars agree that because Russia loses under international law, the right thing for Russia to do is to simply return the artwork.<sup>171</sup> This position is, however, not unanimous:

---

165. *See id.*

166. *See id.*

167. *Id.*

168. *See* 1907 Hague Convention, *supra* note 128, arts. 46, 47, 56, 23(g).

169. *See* Fiedler, *supra* note 61, at 177; *see also* Amy L. Click, *German Pillage and Russian Revenge, Stolen Degas, Fifty Years Later – Who's Art Is It Anyway?*, 5 TULSA J. COMP. & INT'L L. 185, 205 (1997) (arguing that it is "clear that Russia violated the terms of the [1907] Hague Convention").

170. *Accord* Elissa S. Myerowitz, *Protecting Cultural Property During a Time of War: Why Russia Should Return Nazi-Looted Art*, 20 FORDHAM INT'L L.J. 1961 (1997) (arguing "that prior international treaties protecting cultural property should be used as a guide to settle the dispute between Russia and Germany as to which is the rightful owner of cultural property looted during World War II").

171. *See, e.g.,* Fiedler, *supra* note 61, at 177; *see also* Click, *supra*, note 169, at 207 (asserting that though Russia's violation of the Hague convention may be understandable but that Russia's violations of the two more recent treaties is not, and that as a result "[f]or the peace of Europe and closure of old wounds, the

some scholars feel that even though Germany is legally entitled to demand the return of the art it nonetheless should not do so. Alexander Blankenagel, for instance, asserts that for ethical reasons Germany should not insist on the return of the art, but feels that “the only possible solution is a negotiated agreement between the two states.”<sup>172</sup> Other views against returning the works include arguments that Germany is hypocritical in trying to use international law in its own favor after being the first to break it during World War II,<sup>173</sup> and that there is an issue of where to draw the line, fearing that demands for the trophy art by Germany would open the floodgates for international repatriation demands in the art world.<sup>174</sup> Such views, according to which Russia should not be required to return *any* of the artwork have, however, been received particularly unfavorably by victims and heirs of victims of the

---

Russians should return the art to Germany, so that it may be claimed by the rightful owners . . .”).

172. Blankenagel, *supra* note 111.

For ethical reasons, I feel strongly that Germany is not in a position to demand the return of these so-called displaced cultural objects from the Russian Federation, even if it is legally entitled to do so. In my view, the only possible solution is a negotiated agreement between the two states, which . . . might also serve as a new paradigm in international law for coping with the general problem of other such well-traveled objects.

*Id.*

173. Solomon, *supra* note 113.

[I]t’s hypocritical of Germany to clamor the rights guaranteed by international law when it violated international law by invading Russia in June 1941. The law is not a matter of convenience to be ignored in wartime but then politely invoked when the soldiers come home from their murderous deeds and suddenly want their Renoirs back. The provision in the Hague Convention that bars looting is naïve and ill reasoned, for it fails to acknowledge that the overall public interest should at times outweigh claims to property.

*Id.*

174. See Sylvia Depta, Comment: *Twice Saved or Twice Stolen?: The Trophy Art Tug-of-War between Russia and Germany*, 10 TEMP. INT’L & COMP. L.J. 371 (1996).

Holocaust. As mentioned, a number of the looted works originally belonged to victims of the Holocaust, so in response to assertions that Russia should be allowed to keep the art, one Jewish commentator made the following remark: “Clearly, justice and fairness demand a different solution: the twice-stolen property belongs to the original rightful owners – the Jewish people.”<sup>175</sup>

#### IV. DEVELOPMENT OF THE RUSSIAN LAW ON TROPHY ART

##### *A. 1997 Law “On Cultural Treasures Transferred to the USSR During World War II and Held in the Russian Federation”*

###### *1. The 1997 Law*

As previously mentioned, the enormous losses suffered by Russia during World War II have led many present day Russians to believe Russia should be allowed to keep the trophy art.<sup>176</sup> As a

---

175. Lipson, *supra* note 66.

176. See Gattini, *supra* note 2, at 16; Grimsted, *supra* note 116, at 43; Russia, *supra* note 116; see also Patricia Kennedy Grimsted, *U.S. Restitution of Nazi-Looted Cultural Treasures to the USSR, 1945-1959* (Prologue: Quarterly of the National Archives and Records Administration 34(1) (Spring 2002): 27-41); A Condensed Version of the “Introduction to the NARA-issued CD-Rom on U.S. Postwar Restitution to the USSR, 2002,” available at <http://www.archives.gov.ua/Eng/NB/USRestitution.php> (last visited Mar. 28, 2004).

Duma leaders adamantly assured legislators that Russia should legally be entitled to keep all of its extensive spoils of war-especially those seized from Germany and other Axis powers-because none of the Soviet cultural treasures looted by the Nazis had been returned from Germany. They claimed, “Now we are asked to return . . . what we received from the aggressor. We ourselves, we received nothing that had been taken away.” There was often the implication, sometimes even explicit, that, if they were not still in Germany, then the Soviet cultural treasures plundered by the Nazis must have all been taken to America. Nikolai Gubenko, the former minister



result, in 1997, the Russian government enacted a law intended to ensure that the artwork remain in Russia entitled “On Cultural Treasures Transferred to the USSR during World War II and Held in the Russian Federation” (“1997 Law on Cultural Valuables”).<sup>177</sup> Specifically, Article 6 of the law reads:

All displaced cultural valuables imported to the USSR in realization of its right to compensatory restitution and located on the territory of the Russian Federation, with the exception of those specified in Articles 7 and 8 of the present Federal Law, are the property of the Russian Federation and are federally owned.<sup>178</sup>

The legal basis for the law is the principle of compensatory

---

of culture under Mikhail Gorbachev who shepherded the law through the legislature, kept repeating to the press: “Russia Has Been Robbed Twice’-first by Fascist Germany and then by its Allies. Most of the displaced cultural treasures found at the end of the war in Germany, including the Russian ones, were transported across the ocean.” Available documentation does not support such statements, yet they persist. As the Iron Curtain fell around the Stalinist regime and Germany was divided in two, information about the significant postwar cultural restitution by the Western Allies and the retrieval of Soviet cultural treasures and archives that did take place was never made public.

*Id.*

177. Russian Federation Law on Cultural Valuables Displaced to the USSR as a Result of World War II and Located to the Territory of the Russian Federation, Federal Law N64-FZ, Apr. 15, 1998, [hereinafter 1997 Law on Cultural Valuables] (this is an English translation of the original Russian version of the law), *available at* <http://comartrecovery.org/policies/es9.htm> (last visited Mar. 7, 2004); *see* The Russian Law on Cultural Property Displaced to the U.S.S.R. as a Result of World War II: Summary of the Law’s Major Provisions, The Documentation Project, *available at* <http://docproj.loyola.edu/r-law/r4.html> (last visited Mar. 7, 2004); Russia, *supra* note 116.

178. 1997 Law on Cultural Valuables, *supra* note 177, art. 6.

restitution, also referred to as restitution in kind.<sup>179</sup> The effect of the law is that with the exception of three specific categories in Articles 7 and 8, all cultural property, which the law refers to as “cultural valuables,” currently in Russia, and brought there by the Soviet trophy brigades as “compensatory restitution,” is property of the Russian government.<sup>180</sup> Article 3 states that this is the case “irrespective of the actual possessor and the circumstances leading to this actual possession.”<sup>181</sup>

Interestingly, the law refers to the trophy art as “displaced cultural valuables,” which Article 4 defines as “cultural valuables removed in implementation of compensatory restitution from the territories of Germany and its former military allies.”<sup>182</sup> These former allies are Bulgaria, Hungary, Italy, Romania and Finland, which Article 4 also defines as “former enemy states.”<sup>183</sup> Article 8 specifies the three categories of cultural valuables that are exempt from the law:

- (1) Cultural valuables for which an interested state presents evidence of having filed a claim for their restitution . . .
- (2) Cultural valuables which were the property of religious organizations or private charitable organizations . . .
- (3) Cultural valuables which belonged to individuals who were deprived of these valuables because of their active struggle against Nazism, . . . and (or) because of their race, religion or national affiliation.<sup>184</sup>

According to Article 4, “interested states” are “any states . . . whose territory was occupied in full or in part by the forces of

---

179. Tim Schröder, *The Russian Constitutional Court's Decisions on the Restitution on Cultural Values*, 7 SPOILS OF WAR, INT'L NEWSLETTER 6, 7 (2000); see Gattini, *supra* note 2, at 16-21.

180. See 1997 Law on Cultural Valuables, *supra* note 177, art. 6.

181. *Id.* art. 3.

182. See *id.* art. 4.

183. *Id.*

184. *Id.* arts. 8(1)-(3).

former enemy states.”<sup>185</sup>

Notably, Article 9 further states that these three exceptions are merely *temporary*, and that claims must be made before October 21, 1999, that is, eighteen months after the law becomes effective.<sup>186</sup> If this is not done, the cultural valuables become property of the Russian government.<sup>187</sup> In addition, Article 18 expressly states that only states, and not individuals, are eligible to file claims and that such claims must be made to the Russian government.<sup>188</sup> The only limited exception to this rule is provided in Article 19, according to which claims for “family heirlooms” may be filed directly by individuals, but also requires payment of the full value of the cultural valuable in question.<sup>189</sup> Article 18 also specifies that before any cultural property may leave Russia, the

---

185. 1997 Law on Cultural Valuables, *supra* note 177, art. 4.

186. *See id.* art. 9.

187. *See id.*

All displaced cultural valuables specified in subsections 1, 2 and 3 of Article 8 of the present Federal Law for which interested states have not filed a claim for return within 18 months of the entry into force of the present Federal Law, or presented the evidence required by said subsections of Article 8 of the present Federal Law, shall become federal property.

*Id.*

188. *See id.* art. 18(1). “Claims regarding displaced cultural valuables . . . can be made by the government of the claimant state only to the government of the Russian Federation; claims of natural and legal persons, municipal bodies, non-governmental and other organizations and associations are not subject to consideration.” 1997 Law on Cultural Valuables, *supra* note 177, art. 18(1).

189. *See id.* at arts. 19(1) & (2).

(1) Claims for displaced cultural valuables which are family heirlooms . . . may be filed with the Federal body by the duly authorized representatives of families to whom the valuables (heirlooms) formerly belonged. (2) If a claim is recognized, the Federal Body will issue a decision to transfer the family heirloom which is the object of the claim to the family to which it formerly belonged, subject to payment of its value as well as reimbursement of the costs of its identification, expert examination, storage, restoration and transfer. . . .

*Id.*

State Duma must first approve the transfer by voting on it.<sup>190</sup>

With respect to Germany, despite the apparent blanket ban on returns, Article 15 does permit the *exchange* of cultural valuables for cultural valuables currently located in Russia,<sup>191</sup> although such exchanges may take place “only in case of equivalent value of said valuables.”<sup>192</sup> Significantly, it must be remembered that the law applies only to the trophy art looted by the trophy brigades and, thus, has no application to works looted by private individuals.

Importantly, holocaust victims fall under the third exception.<sup>193</sup> The commitment to return cultural valuables that belonged to Holocaust victims was, in fact, reaffirmed by the Ministry of Culture at a conference in December of 1998, though at the same time it was made clear that this commitment did *not* include other trophy art taken from Germany and that such art was considered reparations.<sup>194</sup> Some groups representing Holocaust victims hailed this pronouncement as a great improvement,<sup>195</sup> while others noted that no specific information was given and that the process would be cumbersome because the claims would still have to be made by the government on behalf of the individuals.<sup>196</sup> Still, it must be also be remembered that the Russian government is not itself permitted to authorize returns unless it has the approval of the

---

190. *See id.* art. 18(2).

191. *See id.* art. 15.

192. *See* 1997 Law on Cultural Valuables, *supra* note 117, art. 15.

193. *See id.* art. 8(3).

194. Judith H. Dobrzynski, *Russia Pledges to Give Back Some of Its Art Looted in War*, N.Y. TIMES, Dec. 3, 1998.

195. *Id.* For instance, Lynn H. Nicholas, the author of “The Rape of Europa” stated “I don’t believe the Russians have ever said publicly that they would give anything back.” *Id.* Likewise the Israeli Undersecretary of State, Stuart Eizenstat referred to the announcement by Russia as “a real breakthrough.” Marilyn Henry, *Vilnius Conference Urges Speedier Restitution of Nazi-Looted Cultural Property*, JERUSALEM POST, Oct. 10, 2000. One commentator aptly noted that “[i]t is remarkable that Russia has now publicly admitted that there is a group whose claim on German art riches might come before or alongside its own. It shows a surprising reassessment of history.” *Holocaust Gestures Half-Baked*, MOSCOW TIMES, Dec. 5, 1998.

196. *See* Dobrzynski, *supra* note 194.

Duma, because under the law every single return must be approved by a vote.<sup>197</sup> In the depressing words of one journalist, “[t]he communists and nationalists who dominate the Duma, and who are currently in a furor of thinly disguised anti-Semitism, are unlikely to [approve returns to Holocaust victims].”<sup>198</sup>

Understandably, a great deal of controversy has been associated with the law. This was also demonstrated by the political struggle it caused, with President Boris Yeltsin on one side and the two chambers of the Russian Parliament, the State Duma and the Federal Council, on the other.<sup>199</sup> Hoping to maintain close ties with Western leaders, in particular German Chancellor Kohl, President Yeltsin opposed the law.<sup>200</sup> In fact, Yeltsin twice vetoed earlier versions of the law on grounds that they were contrary to international agreements.<sup>201</sup> Nonetheless, the Duma twice overrode his veto, which led the Russian Constitutional Court to force Yeltsin, on procedural grounds, to sign the law.<sup>202</sup> After doing so Yeltsin, however, challenged the law, on its face, in the constitutional court emphasizing that the law was incompatible with norms of international law and that the adoption was procedurally flawed.<sup>203</sup>

---

197. *See id.*

198. *See id.*

199. Schröder, *supra* note 179, at 6.

200. Gordon, *supra* note 118; *Russia's Duma Approves Nazi Art Restitution Law*, AGENCE FRANCE PRESSE, Apr. 26, 2000.

201. Russia, *supra* note 116.

202. *Id.*; *see* Gordon, *supra* note 118. This first case in the Constitutional Court dealt only with procedural issues and established that the President may not obstruct the enactment of a law when the Constitutional Court has ruled that the President must sign it, but the President *may* challenge the law in the Constitutional Court after it has entered into force. Schröder, *supra* note 179, at 6-7.

203. Schröder, *supra* note 179, at 7; *see* Gordon, *supra* note 118. A provision in the Russian constitution specifies that international law trumps all domestic laws.

## 2. *The Decision of the Constitutional Court*

The constitutional court had engaged in fifteen months of consultations when it finally decided the case on July 20, 1999.<sup>204</sup> In its opinion, the court declared the law partially unconstitutional.<sup>205</sup> With respect to the legal basis for the law, compensatory restitution, the court in essence took for granted that compensatory restitution is admissible with respect to cultural valuables that originated in Germany or its former allies.<sup>206</sup>

Notably, the provision in Article 9, according to which not only German cultural valuables but also cultural valuables from “interested states” become Russian property unless one of the three exceptions applied, the court held unconstitutional because these states were not Soviet enemies and must, therefore, not be punished for the looting done by Germany.<sup>207</sup> Consequently, with respect to cultural valuables originating in interested states, they will not become Russian property.<sup>208</sup>

---

204. Decision of the Constitutional Court of the Russian Federation No. 12-P of July 20, 1999 on the Verification of the Constitutionality of Provisions of the Federal Law on Cultural Values Displaced to the USSR as a Result of World War II and Situated on the Territory of the Russian Federation, part 6 [hereinafter Decision of the Russian Constitutional Court] (this is an English translation of the original Russian version of the opinion) *available at* [http://comartrecovery.org/policies/russ\\_dec.htm](http://comartrecovery.org/policies/russ_dec.htm) (last visited Mar. 7, 2004).

205. Schröder, *supra* note 179, at 7; *see also Russia Rules on War Booty*, BBC NEWS, July 20, 1999, *available at* <http://news.bbc.co.uk/1/hi/world/europe/399125.stm> (last visited Mar. 7, 2004) (reporting on the Constitutional Court’s ruling); *The Week in Review: Moscow*, NAT’L L. J., Aug. 2, 1999 (reporting on the Constitutional Court’s decision).

206. Schröder, *supra* note 179, at 7. *See discussion infra* Part IV.A.3.

207. *See* Decision of the Russian Constitutional Court, *supra* note 204, part 5; Schröder, *supra* note 179, at 7-8.

208. *See* Decision of the Russian Constitutional Court, *supra* note 204, part 5; Schröder, *supra* note 179, at 7-8.

[T]he damage inflicted to Russia by an aggressor state is actually compensated at the expense of countries that themselves were victims of aggression which is unacceptable under the universally accepted principle of international law according to which an aggressor state bears the burden of

Regarding Article 9's eighteen month time limit within which claims must be filed, the court found that the statute's requirements could be difficult or even impossible to fulfill within that time.<sup>209</sup> Specifically, the court held that the provision was void because many cultural valuables remain hidden in Russia and if they are not discovered within the eighteen months, the original owners would have no way to demand their return.<sup>210</sup>

The court also addressed the procedure of the adoption of the law by the Russian Parliament. When the law had been voted on, the requisite number of members of Parliament was not present.<sup>211</sup> Therefore, in order for the law to pass, some members voted for

---

responsibility for launching and waging an aggressive war, and, therefore, no sanctions may be imposed upon a victim country. . . . Therefore, in pursuance of just compensatory restitution the Russian Federation could not have acquired the right of ownership to cultural values owned by interested states.

Decision of the Russian Constitutional Court, *supra* note 204, part 6.

209. Decision of the Russian Constitutional Court, *supra* note 204, part 10; Schröder, *supra* note 179, at 8.

210. Decision of the Russian Constitutional Court, *supra* note 204, part 10; Schröder, *supra* note 179, at 8. The opinion reads:

[T]he 18-month period set for making claims must start from the time when a person qualified by law has learned or has real possibility to learn that a cultural value owned by the person is located on the territory of the Russian Federation. . . . [N]ot all information about displaced cultural valu[ables] located on the territory of the Russian Federation is now widely available. Under such circumstances those owners in interested and former hostile states . . . who under this Law and with due regard to this Decision have the right for the return of displaced cultural values they had owned, but, however, at the present time due to the lack of generally available information they do not have and can not have any information on whether the corresponding articles are located on the territory of the Russian Federation, are in fact deprived of any chance to make their claims.

Decision of the Russian Constitutional Court, *supra* note 204, part 10.

211. Schröder, *supra* note 179, at 8.

themselves, as well as for their missing colleagues.<sup>212</sup> The court admitted that this violated voting procedures, but refused to declare the entire law void.<sup>213</sup> The court gave three reasons for this: no one had later expressed doubts about the result; the practice has previously been used without objection; and if the court were to declare this law void, the validity of all other laws passed in a similar manner would be called into question.<sup>214</sup> In sum, the court ruled that victims of Nazi persecutions, so called interested states, are eligible to pursue claims.<sup>215</sup>

*B. Analysis of the 1997 Law and the Constitutional Court's Decision*

The constitutional court, as mentioned, merely assumed the legitimacy of “compensatory restitution” as a legal ground for why Germany and its allies lost their rights to the property.<sup>216</sup> According to the court, “[i]mposition of . . . compensatory restitution of cultural values . . . is based on the principle of international legal responsibility of an aggressor state for launching and conducting an aggressive war which was recognized in international law well before the beginning of World War II.”<sup>217</sup>

---

212. *Id.*

213. Decision of the Russian Constitutional Court, *supra* note 204, part 13; Blankenagel, *supra* note 111; Schröder, *supra* note 179, at 8.

214. Decision of the Russian Constitutional Court, *supra* note 204, part 13; Blankenagel, *supra* note 111.

[I]t is necessary to take into account also the fact that declaring the disputed Law as being at variance with the Constitution of the Russian Federation as regards the procedure involved in its adoption since deputies of the State Duma failed to observe the principle of personal participation in voting could have given grounds to doubts also about constitutionality of other federal laws adopted earlier.

Decision of the Russian Constitutional Court, *supra* note 204, part 13.

215. Russia, *supra* note 116.

216. Schröder, *supra* note 179, at 7; *see* Decision of the Russian Constitutional Court, *supra* note 204, part 4.

217. Decision of the Russian Constitutional Court, *supra* note 204, part 4.



The court went on to assert that compensatory restitution in this case is justified because “[t]he legal power of measures undertaken by victorious states as regards Germany and its former military allies was confirmed in the United Nations Chapter.”<sup>218</sup>

The court appears, however, to err in stating that international law entitles victors to compensatory restitution, because it fails to cite relevant international agreements in support and,<sup>219</sup> in fact, it fails to even mention the international treaties that *do* address the issue raised in the case.<sup>220</sup> Significantly, the court does not even mention Articles 23(g), 46, 47 and 56 of the 1907 Hague Convention, which are clearly relevant because, as explained, absent military necessity, they forbid pillage, seizure, and destruction of cultural property at the time of war.<sup>221</sup> Equally significant is the fact that the court fails to make any mention of Article 16 of the Good Neighbourliness Treaty, and Article 15 of the Cultural Cooperation Agreement, both of which, as earlier detailed, are certainly relevant to the issue at hand because they both require the return of “lost or unlawfully transferred art treasures.”<sup>222</sup> Arguably, the court should have at least referred to

---

218. *Id.* part 4; Blankenagel, *supra* note 111.

219. Schröder, *supra* note 179, at 7.

The only reasoning to be found in the decision are some notes about the peace treaties of 1947, and, with regard to Germany, references to the supreme powers of the Allied occupation forces 1945-1949 and the joint declaration of the governments of the Federal Republic of Germany and the German Democratic Republic on the undecided property questions of 15 June, 1990.

*Id.*; see Decision of the Russian Constitutional Court, *supra* note 204, part 4.

220. See Blankenagel, *supra* note 111. In the words of one scholar: When a court bases its decision on prior treaties or agreements under international law it should, at a minimum, cite relevant sources. . . Here . . . both the addressee and the readers of the decision are kept in the dark as to which written sources of international law are thought to justify these interpretations.

*Id.*

221. 1907 Hague Convention, *supra* note 128, arts. 23(g), 46, 47, 56; see Blankenagel, *supra* note 111.

222. Good Neighbourliness Treaty, *supra* note 149, art. 16; Cultural

these agreements to explain the Russian interpretation that the “lost or unlawfully transferred” language does not apply to the trophy art recently revealed in Russian museums.<sup>223</sup> Nonetheless, it is important to note that the enactment of a domestic statute that declares the trophy art to be Russian property in no way solves the international law issue regarding Russia’s and Germany’s divergent interpretations of “lost or unlawfully transferred.”<sup>224</sup>

If, as the court claims, the Soviet Union acquired the cultural property legally as a result of compensatory restitution, three questions are raised. First, why did the Soviet Union hide the artwork and impose total secrecy?<sup>225</sup> The court’s reasoning that the property was acquired legally is on its face inconsistent with the Soviet practice of systematic secrecy and denial of the existence of the trophy art throughout the latter part of the twentieth century. If the trophy art had indeed been acquired legally one would expect proud displays of the masterpieces that the Soviet Union had acquired, not secrecy and denial.<sup>226</sup> Second, why was some of the

---

Cooperation Agreement, *supra* note 154, art. 15; *see* Blankenagel, *supra* note 111.

223. *See* Blankenagel, *supra* note 111.

224. Gattini, *supra* note 2, at 16. Commenting further on Russia’s interpretation of the Good Neighborliness Treaty and the Cultural Cooperation Agreement, one scholar points out that they both contain language in their preambles about a “general obligation of friendliness” and “good intentions.” He then concludes that even if one agrees with the Russia’s interpretation: “It seems strange, and a violation of this general obligation, for the Russian government to pass a law that rudely cuts off an ongoing dialogue about a problem by denying the very existence of the problem.” Blankenagel, *supra* note 111.

225. *See* Blankenagel, *supra* note 111.

226. *See* Gattini, *supra* note 2, at 17.

Quite paradoxically, the major obstacle to a recognition of the claim of legitimate ownership of the removed property derives from the very attitude held by the Soviet Government for almost fifty years. The complete secrecy maintained about the existence of special depots, together with the repeated denials by official authorities of the presence of German cultural items in the Soviet Union, is not easily reconciled with the current will to regard the removed German cultural property

cultural property returned to the GDR in the 1950s?<sup>227</sup> Had the works of art really been acquired in a lawful manner, it seems absurd to simply give it back to the previous owner. It seems even more absurd to enter into an agreement with the GDR that has as its sole purpose to facilitate such returns that in its title refers to the cultural valuables as being “in the Soviet Union for *Temporary Storage*.”<sup>228</sup> Likewise, if the art was rightfully Russian, it also seems strange for the Soviet Union to declare that the artwork was in its possession because the Red Army had “saved” it. Third, why was the 1997 law passed at all?<sup>229</sup> If the property was already legally Russian, one would hardly expect the enactment of a law declaring this to be the case.

The lack of authority cited by the court with respect to compensatory restitution could likely be explained by the fact that international law seems unconvincing with respect to its overall existence. The Hague Conventions do not address the question of whether compensatory restitution exists.<sup>230</sup> Customary international law also does not answer the question.<sup>231</sup> Still according to one scholar: “[W]e may wonder if, in the decades following the Second World War, an *opinio juris* has been found which by now excludes the retention or handing over of cultural property for reparations in any form.”<sup>232</sup> She concludes that though the question has not yet been answered, “international law has for some time clearly been moving towards the recognition of the principle of unconditional protection of national cultural heritage.”<sup>233</sup> Another scholar puts it more bluntly, saying that restitution and compensation are separate legal concepts used to make an injured party whole, and that it is not within the injured

---

as legitimately owned as reparations.

*Id.*

227. See Blankenagel, *supra* note 111.

228. See AKINSHA & KOZLOV, *supra* note 1, at 205 (emphasis added).

229. See Blankenagel, *supra* note 111.

230. 1954 Hague Convention, *supra* note 137; Gattini, *supra* note 2, at 19.

231. Gattini, *supra* note 2, at 19.

232. *Id.*

233. *Id.* at 21.

party's discretion to make himself whole by choosing whatever he likes from the injurer, thus "[c]ompensatory restitution, as described either by Art. 6 of the law . . . or by the Constitutional Court, simply does not exist."<sup>234</sup>

Similarly, the failure of the court to include relevant international agreements appears deliberate, perhaps because it knew Russia had, indeed, violated them. It likewise appears as though the court deliberately did not justify Russia's interpretation of "lost" or "unlawfully transferred," perhaps because it knew such interpretations were not sound. These omissions, thus, do not appear accidental and failing to address the issues was the only way the court could reach the conclusion it did – a conclusion that, again, is not legally sound.

The court's reasons for not voiding the law despite violations of procedural rules seem unconvincing as well, though doing so on the procedural prong would, admittedly, have led to an even more embarrassing result given the fact that such violations appear standard.<sup>235</sup>

In sum, an analysis of the decision indicates that the German interpretation is correct and that Russia's claims to the art fail under international law.<sup>236</sup> The court's reasoning for upholding parts of the law was not sound and it should have declared the entire law void.

### *C. Amendment to the Law in 2000*

On April 26, 2000, pursuant to the constitutional court's

---

234. Blankenagel, *supra* note 111.

235. *See id.*

236. *See also* Depta, *supra* note 174, at 388-90; Grimsted, *supra* note 176.

The conflicts about the passage of that law have created a virtual new Cold War with Western members of the Council of Europe. The Russian law negates countless international conventions and resolutions adopted by the United Nations, UNESCO, and other bodies, as well as several bilateral agreements, calling for the restitution of plundered cultural treasures to their countries of origin.

*Id.*

decision and realizing that the law, as it then stood, would effectively prevent the return of art stolen from victims of the Holocaust, the Duma voted to amend the law.<sup>237</sup> The amendment, which can rightfully be called merely a new version of the law, was immediately signed into law by President Vladimir Putin.<sup>238</sup> The amendment did not change the basic message of the law; cultural valuables are not to be returned to Germany and its allies, unless the aforementioned exceptional circumstances apply.<sup>239</sup> It does, however, give “interested states,” that is, countries that had opposed occupation by Nazi Germany, the possibility of the return of cultural valuables.<sup>240</sup> The amendment maintains the requirement that, with the exception of family heirlooms, only governments are eligible to make claims for the art,<sup>241</sup> but changes the eighteen month requirement from the enactment of the law to the date the Russian government *publicly* states that the work of art is located in Russia.<sup>242</sup> The amendment did not change the possibility to

---

237. Amendments and Supplements to the Federal Law On Cultural Treasures Transferred to the USSR during World War II and Held in the Russian Federation, Federal Law N70-FZ, Apr. 26, 2000 [2000 Amendment to the Russian Law] (this is an English translation from the original Russian version of the amendment), *available at* <http://comartrecovery.org/policies/es1-0.htm> (last visited Mar. 8, 2004); *see* Russia, *supra* note 116.

238. Grimsted, *supra* note 116, at 15.

239. 2000 Amendment to the Russian Law, *supra* note 237; *see* Grimsted, *supra* note 116, at 15.

240. 2000 Amendment to the Russian Law, *supra* note 237; Grimsted, *supra* note 116, at 15. Article 3 now reads “[t]his . . . law shall be applicable . . . irrespective of their actual ownership.” Compared to the previous version which read, “[t]he . . . law shall be applicable . . . irrespective of the actual possessor and the circumstances leading to their actual possession,” it becomes clear that such circumstances now do matter, indicating that the victims of the Holocaust are not included under the law. 2000 Amendment to the Russian Law, *supra* note 237.

241. 2000 Amendment to the Russian Law, *supra* note 237, art. 9.

242. *Id.*; Russia, *supra* note 116. “[C]laim[s] for . . . cultural treasures . . . may be declared by any [interested] state at any time when it becomes aware that such treasures . . . is . . . held in the Russian Federation but not later than 18 months as of the date of publication . . . of . . . information on such treasures.” 2000 Amendment to the Russian Law, *supra* note 237, art. 5.

make exchanges, nor the requirement that every transfer must be voted on by the Duma.<sup>243</sup>

Though the current situation is certainly preferable to a complete ban on returns, there is nonetheless reason for concern. A remaining problem with the law is that, with one limited exception, claims may still be filed only by governments, so private individuals still do not have standing but must convince their respective governments to sue the Russian government in the Russian court system on their behalf.<sup>244</sup> This requirement is a clear deterrent, because not only is it burdensome for an individual to have to convince the government to file the claim, but if successful, that individual must then persuade the government to deliver the artwork to them.<sup>245</sup> Litigation is expensive and time consuming, not to mention intimidating given that the suits must be brought against the Russian government.<sup>246</sup> In addition, the distinctions the law makes between “interested states” which may file claims, and “former enemy states” which may not, absent the limited exceptions, appear to assume that an individual who wishes to file a claim would request that the government of the country where his/her ancestor had the piece stolen be the one to sue on his/her behalf.<sup>247</sup> This is misleading because the vast majority of the art was stolen from what became the Soviet zone of occupation. Therefore, in order to be able to file a claim, it seems as though a non-German would first have to prove that the art work somehow ended up in that zone, as a result of Nazi lootings, and then that it actually did belong to them and thus originated in an “interested state.” At the very least, these distinctions further complicate the return process.

---

243. See 1997 Law on Cultural Valuables, *supra* note 177, arts. 15 & 18.

244. Russia, *supra* note 116.

245. See *id.*

246. See *id.*

247. *Id.*

## V. CURRENT STATE OF AFFAIRS

### *A. Efforts by Russia to Implement the Law: Interdepartmental Panel and Cooperation Agreement with Research Project on Art & Archives, Inc.*

Presently, the 1997 law, modified by the 2000 amendment, is the law governing trophy art in Russia. Consequently, in an effort to implement the law, the Russian government enacted the Resolution of the Russian Federation Government of March 11, 2001, No. 174, together with a number of implementing regulations.<sup>248</sup> The resolution calls for the establishment of an “Interdepartmental Panel on Cultural Treasures Relocated as a Result of World War Two,” chaired by the Minister of Culture, which has as its task to review and make recommendations regarding claims made for the return of cultural property located in Russia.<sup>249</sup> Significantly, in order to comply with the publication requirement of the law, the Interdepartmental Panel is also responsible for preparing and maintaining a list of the relevant cultural valuables,<sup>250</sup> which is “subject to publication in a special

---

248. Resolution of the RF Government of March 11, 2001, No.174. “On Measures for Realization of the Federal Law ‘On Cultural Treasures Relocated into the Union of Soviet Socialist Republics as a Result of World War Two and Retained on the Territory of the Russian Federation’” [hereinafter Resolution No. 174], *available at* [http://comartrecovery.org/policies/russ\\_res.htm](http://comartrecovery.org/policies/russ_res.htm) (last visited Mar. 8, 2004); *see* Russia, *supra* note 116.

249. Regulation on Interdepartmental Panel on Cultural Treasures Relocated as a Result of World War Two (approved by Resolution of the RF Government of March 11, 2001 No.174), *available at* [http://comartrecovery.org/policies/russ\\_res.htm](http://comartrecovery.org/policies/russ_res.htm) (last visited Mar. 8, 2004); *see* Russia, *supra* note 116; Grimsted, *supra* note 116, at 16.

250. *See* Regulation on the Procedure for Consideration of Applications and Claims of Cultural Institutions Related to Distribution of Cultural Treasures Relocated as a Result of World War Two and Retained on the Territory of the Russian Federation (approved by Resolution of the RF Government of March 11, 2001, No.174), *available at* [http://comartrecovery.org/policies/russ\\_res.htm](http://comartrecovery.org/policies/russ_res.htm) (last visited Mar. 8, 2004).

catalogue published by the Russian Federation.”<sup>251</sup>

Yet another way in which Russia is taking steps to implement the law, specific to cultural property from *victims* of the Holocaust, is a cooperation agreement between the Ministry of Culture and the Research Project on Art & Archives, Inc. (“RPA&A”), signed on December 18, 2001.<sup>252</sup> RPA&A is an American non-profit organization that is acting in coordination with the United States Department of State.<sup>253</sup> The purpose of the agreement is for the Ministry of Culture and the RPA&A to “cooperate with one another in finding and identifying objects of art or cultural value” currently located in Russian museums as a result of World War II.<sup>254</sup>

### *B. Ministry of Culture’s Websites*

In a further effort to implement the law, specifically its publication requirement, the Ministry of Culture has begun posting images and descriptions of the trophy art on a website.<sup>255</sup> Though the establishment of the site is a step in the right direction, there are problems. The site is entirely in Russian, which is clearly problematic because many potential claimants are unlikely to

251. Resolution No. 174, *supra* note 248, art. 4.

252. Cooperation Agreement between the Ministry of Culture of the Russian Federation and The Research Project on Art & Archives, Inc. (USA) in the Search for Art lost or Displaced as a Result of Word War II, Dec. 4, 2001, [hereinafter Ministry of Culture – RPA&A Agreement] *available at* <http://www.comartrecovery.org/policies/Article5.pdf> (last visited Mar. 10, 2004).

253. *Id.* at Preamble.

254. *Id.* para. 1; *see* Russia, *supra* note 116. The Agreement specifies five institutions, including the Pushkin Museum and the Hermitage, institutions as “priority institutions,” which are believed to include the greatest number of relevant cultural property. *See* Ministry of Culture – RPA&A Agreement, *supra* note 252, para. 4.

255. Sophia Kishkovsky, *New Glasnost on World War II’s ‘Displaced’ Art*, N.Y. TIMES, Mar. 15, 2003. The website has two addresses, <http://www.lostart.ru> and <http://www.restitution.ru>. *Id.*



understand Russian.<sup>256</sup> The site also does not have a search function to enable a possible claimant to search for a specific work of art by an artist's name or the work's title.<sup>257</sup> Instead, the site consists of merely long lists of art located at a given museum.<sup>258</sup> As of March 2003, there were ten thousand items on the site, but according to Aleksandr Kibovsky, the Ministry of Culture's official in charge, the goal is to have 500,000 included by 2005.<sup>259</sup> When asked about an English version of the site, Kibovsky explained that a lack of money was to blame and that the ministry was focusing on making the information public in at least Russian.<sup>260</sup> The site does, however, include color photographs and information about dimensions of paintings, as well as titles of foreign language books in their original language; features that could be of some assistance for non-Russian speakers searching the site.<sup>261</sup> As of March 2004, nineteen museums, libraries and archives in many cities, including Moscow and St. Petersburg, had provided lists for the website.<sup>262</sup>

It is disconcerting that, despite the fact that there exists only a Russian language version of the website, and despite the fact that it is poorly organized the Ministry of Culture now enforces its eighteen month time limit, which means that if a petition is not filed within eighteen months, the artwork becomes property of the Russian government.<sup>263</sup> Because Russia now enforces this rule, it is imperative that the country take steps to make this necessary information more readily available. To this end, Russia could, for instance, take an approach akin to that of organizations which address the same problem but with respect to art looted by the

---

256. *See id.*

257. *Id.*

258. *Id.*

259. *Id.*

260. Kishkovsky, *supra* note 255.

261. *Id.*

262. *Id.* Among other things, the site includes a list of hundreds of paintings currently located at the Pushkin State Museum, in Moscow. *Id.*

263. *See id.*

Nazis, such as the Commission for Looted Art in Europe<sup>264</sup> and The Central Registry of Information on Looted Cultural Property 1933-1945.<sup>265</sup> These two organizations cooperate in an effort to research, identify and recover cultural property looted by Nazi Germany and have websites that provide information about relevant laws, information about cultural property seized by the Nazis in a comprehensive database, as well as information about how to make a claim.<sup>266</sup> A similar effort with respect to the trophy art in Russia would likely be of great assistance to claimants.

### *C. Current Relations between Germany and Russia*

#### *1. German-Russian Diplomacy*

The official German standpoint, as expressed in 2002 by the German Culture and Media Minister, Julian Nida-Rümelin, is that any claim that Russia thinks it may have to the trophy art is inconsistent with international law.<sup>267</sup> But for the time being, instead of contesting the validity of the law, Germany seems to be trying to do what it can within the realms of the Russian law the way it is written. As a result, Germany has recently focused more on improving its relations with Russia from a diplomatic

---

264. See generally Commission for Looted Art in Europe, at <http://www.lootedartcommission.com/index.htm> (last visited Apr. 16, 2004).

265. See generally Central Registry of Information on Looted Cultural Property 1933-1945, at <http://www.lootedart.com/> (last visited Apr. 16, 2004).

266. The Commission for Looted Art in Europe and the Central Registry of Information on Looted Cultural Property 1933-1945, are organizations that operate out of Great Britain and cooperate with each in order to “help[] families, communities and institutions worldwide with research, identification and recovery of looted cultural property.” Commission for Looted Art in Europe, *supra* note 264. The Central Registry specifically “[p]rovides . . . an international database of all information and research on works of art, books, Judaica, and other cultural objects seized by the Nazis; and encourages the disclosure of all relevant archives and records.” Central Registry of Information on Looted Cultural Property 1933-1945, *supra* note 265.

267. *Art Law ‘Inconsistent,’* MOSCOW TIMES, Jan. 28, 2002.

standpoint in hopes of softening Russia's attitude to the trophy art issue.

The German Minister of Culture, Michael Naumann, states that Germany does not deny the losses suffered by Russia during World War II, however, he questions "the wisdom of forever 'counting who did what to whom – and therefore who owes what to whom'" and points out that Germany lost a third of its territory.<sup>268</sup> His message, however, is that:

[F]uture understanding will rest upon a version of each other's culture that is older than fascism. A national identity is defined, among other things, by its cultural products. These are, so to speak, innocent. If they are not used, but just smolder away as trophies in basements, it serves an ancient macho revenge – which believes that if you have the essential symbols of another tribe, you have their soul. The least we can do for cultural rapprochement is convey respect for those pieces in each other's history that are the least responsible for hatred and war.<sup>269</sup>

As previously mentioned, the vast majority of the art looted by the Nazis was returned to the Soviet Union following the end of the war.<sup>270</sup> This leads to the realization that even though much was destroyed, Germany has a lot more cultural property to gain than Russia does.<sup>271</sup> Acknowledging that the two countries are not even attempting to address displacement of art resulting from private plunder, as a result of which there certainly is Russian art in Germany, Naumann states that Germany does not expect Russia to return the art without receiving anything in return.<sup>272</sup> According to Naumann, Germany will, for instance, assist Russia in restoring

---

268. Dolinsky, *supra* note 110.

269. *Id.*

270. *See id.*

271. *See id.*

272. *See id.*

churches, and there are plans for a Russian Academy in Berlin.<sup>273</sup> The purpose of the academy would be “to bring together scientists, politicians, and cultural figures from the two nations.”<sup>274</sup>

Russia’s President Putin seems to be largely on the same page with Germany, as evidenced by his statements that “Russia understand[s], value[s], and treasure[s] Russian-German relations.”<sup>275</sup> In addition, on a purely economic level Putin has stated that “Germany is Russia’s leading partner in Europe and the world,”<sup>276</sup> so the importance of good relations between the two countries can hardly be overestimated. The trick in Russia, however, is to get the popular opinion to agree when it comes to the issue of trophy art since the majority of Russians still see the trophy art as rightful compensation.<sup>277</sup> In the words of the Moscow Architecture Museum’s Director, David Sarkisian, “In all spheres, the war is over for us. We’re already friendly with Germans, we marry them, we dream of traveling there and they here. But for some reason, there is a terrible war going on for culture.”<sup>278</sup>

In February of 2003, in a further effort to “enable both countries to get a broader picture of each other and get rid of prejudices that still exist on both sides,” President Putin and German President Johannes Rau opened the “Russian-German Cultural Encounters 2003-2004” which consisted of a series of cultural events in both countries.<sup>279</sup> The series included more than 350 theatre

273. Dolinsky, *supra* note 110.

274. *Id.*

275. Kristina Shevory, *Germany Gives Back Looted Art to Russia, Countries Will Trade Items Stolen in WWII*, ASSOC. PRESS, Apr. 30, 2000.

276. *Putin Gets Chummy with Leader of Germany*, ST. PETERSBURG TIMES, June 17, 2000.

277. *See* Gattini, *supra* note 2, at 16.

278. *Disputed German Art Collection Causes Political Row in Russia*, DEUTSCHE WELLE, Mar. 31, 2003, at [http://www.dw-world.de/dwelle/cda/detail/dwelle.cda.detail.artikel\\_drucken/0,3820,1441](http://www.dw-world.de/dwelle/cda/detail/dwelle.cda.detail.artikel_drucken/0,3820,1441) (last visited Apr. 18, 2004).

279. *Berlin, Moscow Tighten Ties Through Culture*, DEUTSCHE WELLE, Feb. 9, 2003, at [http://www.dw-world.de/dwelle/cda/detail/dwelle.cda.detail.artikel\\_drucken/0,3920,1441](http://www.dw-world.de/dwelle/cda/detail/dwelle.cda.detail.artikel_drucken/0,3920,1441) (last visited Apr. 18, 2004). The opening ceremony included a concert by the St. Petersburg Philharmonic in which works by Beethoven and Tschikowsky were played. Other highlights include a

performances, operas, ballets, exhibitions, literary events, and film screenings that were held in the two countries during the twelve months that followed.<sup>280</sup> President Putin made clear at the opening ceremony that he felt “serious success in bilateral politics would not be possible without close cultural contacts” and until the countries are “free from the burden of the cold war.”<sup>281</sup> President Rau made similar remarks feeling that the program will enable Germans and Russians to “get to know each other better and learn as much as possible from the cultural heritage and contemporary culture of the other country.”<sup>282</sup> It thus appears as though the two countries seem to have come to the realization that in the end improved relations, and therefore ultimately a solution to the problem of trophy art, can be achieved only with the approval of their respective peoples. Programs such as the joint German-Russian 2003-2004 program seem like steps in the right direction.

Still, despite all the positive dialogue, hampering the progress is the 1997 law and its 2000 amendment. Ultimately, it appears as though the only way to really solve the issue of trophy art would be either a new amendment to the Russian law, or its complete repeal. Given the improving relations, it is unlikely that Germany will attempt to take any drastic steps, such as to request that an international tribunal declare the Russian law to be a violation of international law, because such a move would undo all the improvements the relations between the two countries have seen since the early 1990s and would only lead to further animosity. Whether the relations will improve enough to where Russia will be willing to take needed steps to change the law still remains to be seen.

---

performance at a festival of Russian in Saarbrücken by the ballet of Moscow’s famous Bolschoi Theatre, Russian films being shown at the international film festival, the Berlinale, in Berlin, and an exhibition entitled “Berlin-Moscow/Moscow-Berlin 1950-2000” that started in Berlin and was then moved to Moscow. *Id.*

280. *Id.*

281. *Id.* (internal quotations omitted).

282. *Id.* (internal quotations omitted).

## 2. Exchanges, Proposed Exchanges, and Failed Attempted Exchanges

The slow improvements of German-Russian cultural relations can be seen with respect to the actual trophy art as well; in 2000, years of negotiations led to the first exchange, pursuant to Article 15 of the law.<sup>283</sup> The historic exchange involved the return of the Bremen Leaves collection to Germany, which had been stored in the same castle as the Baldin collection; Russia received a clock and a mosaic from the famous Amber Room that had been built by Czar Peter the Great and looted by the Nazis.<sup>284</sup> Another exchange took place in June 2002, which meant the return of 14th century stained glass panels to a church in Frankfurt an der Oder, while Russia received seven czarist-era paintings.<sup>285</sup> This exchange was likely aided by a \$3.5 million donation by a German gas company to reconstruct the Amber Room in St. Petersburg.<sup>286</sup>

In March 2003, much controversy developed regarding the possible return of the Baldin Collection – today worth about \$23.5 million.<sup>287</sup> The collection was displayed in Moscow in 2003,<sup>288</sup> and a decision was made to return the collection without compensation following the Moscow exhibition.<sup>289</sup> The Minister of Culture, Mikhail Shvydkoi, explained that because the collection was stolen

---

283. See, e.g., Henry Meyer, *Russia returns War-Looted German Artworks*, AGENCE FRANCE PRESSE, Apr. 28, 2000.

284. *Id.*; see AKINSHA & KOZLOV, *supra* note 1, at 246-50.

285. *Russia's Hermitage Museum Returns Stained-Glass Panels Looted During WWII to Germany*, GLASS ON WEB, June 29, 2002; Roland Eggleston, *Russia: Germany Sees Slow Progress in Regaining Art Treasures*, RADIO FREE EUROPE/RADIO LIBERTY, May 21, 2001.

286. Eggleston, *supra* note 285.

287. *Trophy Art in Limbo: Legislators Stop Repatriation of WWII Loot*, May 1, 2003, 46 RUSSIAN LIFE 3, 2003 WL 15866501.

288. *Disputed German Art Collection Causes Political Row in Russia*, DEUTSCHE WELLE, Mar. 31, 2003, available at [http://www.dw-world.de/english/0%2C3367%2C1441\\_A\\_821145%2C00.html](http://www.dw-world.de/english/0%2C3367%2C1441_A_821145%2C00.html) (last visited Mar. 11, 2004).

289. *Trophy Art in Limbo: Legislators Stop Repatriation of WWII Loot*, *supra* note 287.

by an individual it did not qualify as trophy art, so the law requiring an exchange did not apply.<sup>290</sup> Baldin, an art restorer, had all his life pledged Soviet and Russian leaders for the return of the collection to the Bremen Kunsthalle.<sup>291</sup> Sadly, Baldin died in 1997 before his dream could come true.<sup>292</sup> Before the exchange could take place, however, the Prosecutor General's Office, stepped in and told Shvydkoi that the return was illegal, arguing that the Kunsthalle had not proven that it had owned the collection, and that it was the property of the Russian Federation.<sup>293</sup> As a result, the return never took place, but in January 2004, Shvydkoi insisted that the collection "must be returned" and said "we will do so when the time is right."<sup>294</sup>

Another recent controversy surfaced in September 2003 and involved a painting by the Flemish painter Peter Paul Rubens, from around 1611, entitled *Tarquin and Lucretia*, which hung in Frederick the Great's Sanssoussi palace near Potsdam until World War II.<sup>295</sup> A Russian businessman sent an anonymous e-mail with a picture of the painting to the German Historical Foundation, its former owner, with an offer to return it if the sender was

290. *Id.*

291. *Disputed German Art Collection Causes Political Row in Russia*, *supra* note 288. "They had to be saved, but I also knew they had to be returned. This collection wasn't mine; it belonged to the culture of humanity," Baldin stated more than fifty years later. *Trophy Art in Limbo: Legislators Stop Repatriation of WWII Loot*, *supra* note 287.

292. *Disputed German Art Collection Causes Political Row in Russia*, *supra* note 288. See also Viktor Baldin Dies, 4 SPOILS OF WAR 96, 96, available at <http://www.dhh-3.de/biblio/bremen/sow4/ln1.html> (last visited Mar. 28, 2004).

293. *Trophy Art in Limbo: Legislators Stop Repatriation of WWII Loot*, *supra* note 287. To add to the complexity of the situation, when the Russian Prosecutor General's office stepped in, it did so strongly supported by the former Minister of Culture Nikolai Gubenko. See *id.* The argument that the Bremen Kunsthalle had not proven that it had owned the collection is ludicrous because many of the drawings had been rubber stamped by Bremen Kusthalle.

294. *Russia's Culture Minister Pledges to Return Trophy Art Collection*, AGENCE FRANCE PRESSE, Jan. 24, 2004.

295. Kevin O'Flynn, *Missing Rubens Painting Turns up in Moscow*, ST. PETERSBURG TIMES, Sept. 30, 2003.

compensated with twenty-five percent of the painting's value.<sup>296</sup> The e-mail was traced to Vladimir Logvinenko, who claimed to have purchased the painting on the open market, but reports link him to the Russian mafia.<sup>297</sup> The canvas is badly damaged from having been folded, but the painting is nonetheless said to be worth as much as \$80 million.<sup>298</sup> President Putin and Chancellor Schröder were scheduled to negotiate the painting's return, when in January of 2004 the Ministry of Culture announced that the painting was not trophy art because it was not on the list of artwork stolen by the trophy brigades and that the government, thus, could do nothing to facilitate the return.<sup>299</sup>

Yet another interesting, and recently discussed case, involves the personal archives of former German Foreign Minister, Walther Rathenau.<sup>300</sup> Although the archives are not art, they are nonetheless of significant cultural value for Germany because Rathenau was the first foreign minister of Germany's unsuccessful attempt at democracy between the World Wars, the so called Weimar Republic.<sup>301</sup> Rathenau, who was Jewish, was subsequently assassinated by the Nazis.<sup>302</sup> Because the archives were looted by the trophy brigades, they qualify as "cultural valuables" under the law.<sup>303</sup> In January of 2004, the media reported that Russia would refuse to return the Rathenau archives, causing outrage in the German government.<sup>304</sup> On behalf of the

---

296. Colin McMahon, *Germany, Russia Debate Fate of Recovered Masterpiece*, CHICAGO TRIBUNE, Oct. 10, 2003.

297. Bernard Besserglik, *Rubens Masterpiece Forms new Front in Russia-Germany Trophy Art War*, AGENCE FRANCE PRESSE, Oct. 1, 2003.

298. *Russia Stonewalls on Return of War Booty Rubens*, AGENCE FRANCE PRESSE, Sept. 30, 2003.

299. *Russia's Culture Minister Pledges to Return Trophy Art Collection*, *supra* note 294.

300. *Russian Culture Ministry Official Comments on Situation over Rathenau Archive*, INTERFAX NEWS SERV., Jan. 18, 2004.

301. *See* Dolinsky, *supra* note 110.

302. *Id.*

303. *Russian Culture Ministry Official Comments on Situation over Rathenau Archive*, *supra* note 300.

304. *Id.*



Ministry of Culture, Alexander Kibovsky stated that he did not know the origin of the story, and that “[t]he Rathenau archive will be returned . . . if it is proved that this return will be in compliance with Russian and international laws.”<sup>305</sup> The archives have not yet been returned, but it should be only a matter of time until they are.

As far as Schliemann’s Trojan Gold, the ceramics and bronzes from the treasure, which remain at the Hermitage, were exhibited there in 1998-1999.<sup>306</sup> The gold, which is still at the Pushkin was also briefly displayed in 1996, which triggered calls for its return by Germany.<sup>307</sup> Following the constitutional court’s decision in 1999, Irina Antonova was however quoted saying that the treasure will remain in Russia.<sup>308</sup> As a result, in 2000 the Pushkin museum officially made the Trojan Gold part of its permanent collection.<sup>309</sup> According to the Museum’s chief curator and deputy director Tatyana Potapova, it took the museum such a long time to put the treasure on permanent display due to “lack of space” – not calls for its return by Germany.<sup>310</sup> It is very unlikely that the constitutional court’s decision did not have at least some bearing on why the museum previously refused to permanently display the treasure. Nonetheless, in 2001 there were reports of negotiations between Germany and Russia regarding the treasure, however, according to Chancellor Schröder’s cultural affair’s adviser, they were “at too delicate a stage for detailed comment.”<sup>311</sup> Whether Schliemann’s gold will remain in Russia or be returned to Germany remains to

---

305. *Id.*

306. Exhibition Archive: Schliemann. St-Petersburg. Troy, [http://www.hermitagemuseum.org/html\\_En/04/b2003/hm4\\_3\\_2t.html](http://www.hermitagemuseum.org/html_En/04/b2003/hm4_3_2t.html) (last visited Mar. 11, 2004).

307. *Trojan Gold Will Remain in Russia*, ASSOC. PRESS, July 21, 1999.

308. *Id.*

309. John Varoli, *Trojan Gold Put on Permanent Display in Moscow: Pushkin Museum Quashes Rumors of Plans for Trophy Art Show in Germany*, ART NEWSPAPER, Apr. 14, 2002, available at <http://allemandi.com/TAN/news/article.asp?idart=1415> (last visited Mar. 28, 2004).

310. *See id.*

311. Giles Whittell, *Russia May Return Pounds 45bn Nazi Booty*, LONDON TIMES, Jan. 9, 2001.

be seen.<sup>312</sup>

### 3. *Voluntary Returns*

In addition to returns done pursuant to the Russian law, two instances of voluntary returns are worth mentioning. At a 2001 meeting between President Putin and Chancellor Schröder, a private Russian citizen named Timur Timerbulatov, as a good will gesture, handed over to the German Culture and Media Minister Nida-Rübelin a painting by Padius Christopher.<sup>313</sup> The painting had been part of the Dresden Gallery collection prior to World War II, but disappeared during the war; Timerbulatov purchased it from a private owner in 1992.<sup>314</sup> This return was made possible by the fact that the painting was *not* covered by the Russian law as it had been stolen by a private individual and not the trophy brigades.<sup>315</sup> Another similar voluntary good will gesture involved the return of three more paintings to the Dresden Gallery by a private Russian collector.<sup>316</sup> These paintings had likewise disappeared during the war and because there was no indication that they had been taken by the trophy brigades, the Russian law did not stop the collector from returning them to Dresden.<sup>317</sup>

These returns show what acts of kindness by individuals can accomplish when the country's law forbids such straight returns to Germany without compensation. It, thus, appears from the latest

---

312. To make the situation even more complicated, Turkey is also bringing a claim against Germany for the treasure arguing that Schliemann had originally promised to give the government half of anything found, and now feels entitled to that half. See Dolinsky, *supra* note 110; Whittell, *supra* note 311.

313. See A. V. Kibovskij, *Russia: Short Reference about the State Policy of the Russian Federation in 2001 Concerning Displaced cultural Assets*, 8 SPOILS OF WAR 56, 57 (2003).

314. *Id.*

315. *See id.*

316. *Id.* These three paintings were: *On the Seashore* by Pieter Mulier from the middle of the 17th century, *The Girl on the Knees of a Man* by Gerritt Lundens from the second half of the 17th century, and *Red Musk Prayer* by Max Slevogt, from 1914. *Id.*

317. *See* Kibovskij, *supra* note 313, at 57.

diplomatic effort that not only are the two countries getting closer to an understanding, but as a somewhat surprising additional benefit these improvements seem to also have fostered private citizens, who are aware that they possess stolen works, to take steps to return them to their rightful owners: efforts that by virtue of the 1997 law cannot be made with respect to the trophy art.

*D. Successful Returns Under the New Law Not Involving Germany*

Although the bulk of the trophy art originated in Germany a notable portion did not but had instead already been looted once by the Nazis from elsewhere. Since the enactment of the law, successful claims have been made from countries other than Germany. A significant return made pursuant to the new law involves the so called “Rothschild archives.” The archives belonged to the renowned, wealthy, Jewish Rothschild banking family that had been operating its business in Vienna since 1769.<sup>318</sup> Immediately after Austria became part of Nazi Germany in 1938, the Rothschild’s bank and homes were ransacked by the Nazis and the family’s archives that detailed the banking dynasty’s history were confiscated.<sup>319</sup> These priceless archives, some of which are of “almost totemic significance in family history,” were then stolen from Germany by the trophy brigades and taken to Moscow.<sup>320</sup> The 419 files, in twenty-nine archival boxes, were

---

318. *Russia Mulls Return of Archive to Rothschild Family*, AGENCE FRANCE PRESSE, May 11, 2001, 2001 WL 2404145. For more information about the Rothschild Archives and the history of the family’s banking business, see, the website of the Rothschild Archives, at <http://www.rothschildarchive.org/ta/> (last visited Apr. 18, 2004).

319. *Id.*; Douglas Davis, *An Offer the Russian Couldn’t Refuse*, JERUSALEM POST, June 10, 2001.

320. Davis, *supra* note 319. Many of the Rothschild documents had been assembled by Salomon Rothschild in Vienna and included a recording of Mayer Amschel’s 1769 appointment as Hoffactor (Crown Agent) to Prince William of Hesse. Mayer Amschel founded during the 18th century what later became a banking dynasty in the Frankfurt ghetto. Another extremely valuable document among those returned from Russia was a partnership agreement signed by Mayer Amschel’s five sons between 1815 and 1852 which “created a

rediscovered in 1993 and in 1999, pursuant to the Article 19 exception according to which private individuals may file claims for family heirlooms, the family submitted a request to the Russian government for their return.<sup>321</sup> Despite not being art, similar to the Rathenau archives, the files qualify as “cultural valuables” because they were looted by the trophy brigades, and due to their great importance to the family, they qualify as family heirlooms under the Article 19 exception.<sup>322</sup> The Rothschilds were eligible to file a claim, even though Austria was a “former enemy state” and not an “interested state,” because the family was Jewish and a victim of Nazi atrocities.<sup>323</sup> To make the Russian government more willing to give up the priceless archives, the Rothschilds decided to search for a comparable treasure they could offer as the payment required by Article 19.<sup>324</sup> They found what they were looking for in some 12,000 love letters written by Czar Alexander II to his mistress Princess Catherine Dolgoruky and 1,435 letters by Catherine to Alexander over a fourteen year period starting in 1866.<sup>325</sup> When the family found out that Christie’s auction house had offered the letters to the Russian government, but that the government had been unable to afford them, its wealthy British and French branches agreed to buy them for \$300,000.<sup>326</sup> After long negotiations, in June of 2001, Russia agreed to return the archives and accept the love letters as payment.<sup>327</sup> With the exception of exchanges done with Germany, this was the first successfully brought claim that implemented the new Russian law.<sup>328</sup>

Another interesting return carried out in 2001 involved four

---

framework for their future international cooperation – and laid the foundation of their fortune.” *Id.*

321. *Id.*; *Russia Mulls Return of Archive to Rothschild Family*, *supra* note 318; see 1997 Law on Cultural Valuables, *supra* note 177, art. 19(1).

322. See 1997 Law on Cultural Valuables, *supra* note 177, arts. 6, 19(1).

323. See *id.* art. 8(3).

324. Davis, *supra* note 319; 1997 Law on Cultural Valuables, *supra* note 177, art. 19(2).

325. Davis, *supra* note 319.

326. *Id.*

327. *Id.*

328. *Russia Mulls Return of Archive to Rothschild Family*, *supra* note 318.

fragments of 12th century frescoes from the Mikhailovskij Zlatoverhij Cathedral in Kiev, in the Ukraine.<sup>329</sup> The frescoes had first been stolen by the Nazis from Kiev and then stolen a second time by the trophy brigades and kept at the Hermitage since 1953.<sup>330</sup> The return was possible because the Ukraine qualifies as an “interested state” because, as required by the law, it was a victim of Nazi aggression.<sup>331</sup> Especially interesting is the fact that the Ukraine was part of the Soviet Union, yet during the entire cold war the frescos were never returned, and now *after* the Ukraine gained its independence it was able to use the newly enacted law intended to keep the cultural property in Russia to its advantage and have the frescoes returned!

## VI. CONCLUSION

The cold war has been over for fourteen years and during these fourteen years much has happened concerning the future of thousands of works of art, taken from Germany by the Soviet trophy brigades during World War II, that to this day remain in Russia. From reluctantly admitting the existence of massive amounts of trophy art in its museums in 1991, to passing a law declaring all of it to be Russian property in 1997, to domestic political turmoil over the legality of the law that led to an amendment in 2000, Russia seems to since have begun to slightly soften its all-or-nothing approach to the trophy art. The Russian law, including its amendment, is in clear violation of multilateral treaties and in equally blatant violation of two German-Russian bilateral agreements from 1990 and 1992, which means that Germany is legally entitled to the return of the art. Still, Germany seems to have adopted a wait-and-see approach where it is willing to operate within the Russian law the way it is written. Though the law refuses to allow outright returns to Germany, it does permit exchanges of cultural property between Russia and Germany, and

---

329. Kibovskij, *supra* note 313, at 57.

330. *Id.*

331. *See id.*; 1997 Law on Cultural Valuables, *supra* note 177, art. 4.

several significant such exchanges have, in fact, taken place. The law is also more flexible when addressing claimants either from countries that are not former allies of Germany or victims of the Nazi regime, although the law does contain an eighteen month statute of limitation that starts at the time the government publicly announces that it has a given piece, which is a concern due to the inadequate methods used to make the information. Returns have, however, also taken place pursuant to these provisions of the law. Still, the majority of the remaining trophy art originated in Germany and Germany would now like it back.

The German-Russian relations with respect to the issue of trophy art are improving, but slowly. Politics is a major factor and the two governments are already on much better terms than they were fourteen years ago. There is already significant economic cooperation between the countries, but due to the touchiness of the trophy art issue, culture lags behind. Still, despite the evident unfairness of the Russian law, there seems now to be a mutual willingness to solve the issue diplomatically and to the satisfaction of both parties. Another major factor is money. As demonstrated by the Amber Room donation and the stained glass windows' subsequent return, as well as by Germany's willingness to renovate churches in exchange for trophy art, money can at times be the deciding factor that either makes or breaks a deal.

Overall, Germany has been more willing to make exchanges than Russia, but that is not surprising given that Germany has a lot to gain and that Russia has a lot to lose because most of what was looted by the Nazis was returned to the Soviet Union/Russia long ago. The Russian government seems to be trying to strike a delicate balance between improving relations with Germany and pleasing its people who still see the art as compensation; an understandably hard thing to do. It, therefore, appears that for relations between the two countries to truly improve, the improvement must be reflected in the popular opinion not merely in the opinions of those in power. It seems as though the two governments have realized this and are now making constructive efforts to educate their citizens, so as to get rid of prejudices and thereby move toward a solution to the problem of trophy art that

the people of both countries can approve. Voluntary returns by private individuals seem to indicate that people's minds are indeed changing.

In the end, the troublesome reality is that the entire situation is dictated by a domestic Russian law that is demonstrably in violation of international law. Germany's official position acknowledges this violation, but at least for now, for lack of a better alternative and unwilling to risk undoing already achieved progress, it is willing to work within the framework of the Russian law. As long as popular opinion in Russia follows the improvements seen in diplomacy, there is hope that the Russian legislature might reconsider the law, which could mean the eventual return of the Trojan Gold. Ultimately, the only true solution to the question of who owns the trophy art is to repeal or amend the Russian law that declares it property of the Russian government, because Russia does not have a valid claim to the art.

*Lina M. Montén\**

---

\* J.D. Candidate 2005, Marquette University Law School; B.A. with distinction 2001, University of Wisconsin, Madison. The author would like to thank her parents, Hannele and Kaj-Erik, her sister Anna, and her brother Linus for their love and support. The author would also like to thank Professor Andrea Schneider of Marquette University Law School for her valuable comments and suggestions during the research and writing of this article.