

The Prague Conference on Holocaust Era Assets: An Overview
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Chairmen, distinguished Members of the Commission, I would like to begin today by thanking you for holding this important hearing on the results and follow up actions relating to the Prague Conference on Holocaust Era Assets, which took place in June 2009.

This was the fifth Holocaust-related international conference in a series that began with the 1997 London Conference on Nazi-Looted Gold, and has included the 1998 Washington Conference on Holocaust-Era Assets, which dealt with insurance, archival access and looted Art: the Stockholm International Forum on the Holocaust, which dealt with education; and the Vilnius International Forum on Holocaust-Era Looted Cultural Assets. These conferences have helped to keep the need for justice for Holocaust survivors and their families before the eyes of the world. All of us concerned with achieving such justice for the victims of the Holocaust (Shoah), and for other victims of Nazi persecution, are deeply indebted to the Czech government for hosting and providing leadership for this historic Conference.

PRAGUE CONFERENCE ACHIEVEMENTS

The Prague Conference was by far the most ambitious of these conferences. It covered the widest array of issues, some of which, such as the social welfare needs of survivors, many of whom live in abject poverty, and private property compensation or restitution, the previous international conferences had never before considered. It also provided new momentum for other issues, such as art recovery. In addition, the Prague Conference was the first Holocaust-related conference to provide a follow up mechanism, the European Shoah Legacy Institute, which will ultimately be located in Terezin, also known as Theresianstadt, the site of an infamous Nazi concentration camp.

During the conference, we also managed to build a consensus around a set of non-binding, moral commitments for action. These commitments were embodied

in the Terezin Declaration, which all 47 participating states accepted and which as a result now serves as a highly detailed roadmap to resolve outstanding Holocaust issues. The Terezin Declaration's most important commitments cover improved social welfare benefits for survivors, new guidelines and best practices for compensation for real property losses and the return of Nazi-looted art, the preservation of Jewish cemeteries, the return of Judaica and Jewish cultural property, the opening of archives, and new initiatives in Holocaust education and remembrance.

With your permission, I will submit a copy of the Declaration for the record. I will also be happy to discuss all of these commitments here in more detail, if you wish. But for the moment I would like to focus in particular on three of these commitments: improved social welfare benefits for survivors, private property compensation, and art restitution.

SOCIAL WELFARE

Elderly Holocaust victims have certain unique social welfare needs. Many survivors lost their entire families in the Holocaust and thus cannot, like many of our senior citizens, rely on a family network of support in their old age. Many also suffer from more acute physical and mental problems than the general elderly population as a result of deprivation and persecution during the Holocaust era. Moreover, in many countries, particularly those of Central and Eastern Europe that have experienced economic downturns in the past few years, pension benefits have declined, leaving elderly victims even more exposed. As a result, hundreds of thousands of survivors throughout the world face significant health problems and are in such dire financial circumstances that they cannot live their remaining years in dignity. Calculations by experts suggest that total social welfare needs of survivors will slightly increase for about the next four to five years and then diminish rapidly after that. This means that the humanitarian needs of those who have already suffered so much during their lives are becoming increasingly critical and urgent but also time-limited.

As the Terezin Declaration noted, several states have begun to use a variety of creative mechanisms to provide assistance both to these needy Holocaust (Shoah) survivors and to other victims of Nazi persecution. These mechanisms include special pensions and special funds; the payment of social security benefits to non-residents; and the use of assets from heirless property. Some countries have also proposed adopting other methods of support for Holocaust survivors, such as making any concentration camp survivor eligible to receive a pension as a war

veteran. We encourage states to consider these and other such actions in order to find ways to address survivors' needs.

The Federal Republic of Germany provides perhaps the most prominent example of such a creative mechanism. It designated the Conference of Jewish Material Claims Against Germany as the successor organization for unclaimed property in the former East Germany. As a result, proceeds from the Claims Conference successor organization are now the single largest source of funding to address the unmet social welfare needs of Nazi victims worldwide.

In addition, Germany has developed extensive programs of benefits for former concentration camp survivors. Indeed, since the founding of the Federal Republic in 1949, Germany has provided 66 billion Euros in compensation and restitution to Holocaust victims. Austria also extends special benefits to all its former citizens who are Holocaust survivors or who were forced to flee Austria during the Holocaust: it allows them to obtain on favorable terms an old age pension and it extends to them the very generous Austrian nursing home benefits even when the survivor resides outside Austria. At the Prague Conference, we urged countries to consider such mechanisms and to extend any such pension or welfare benefits to their former citizens, even if they reside abroad.

PROPERTY RESTITUTION

I would now like to turn to the issue of property restitution and compensation. My association with this issue goes back to 1994, when then-Assistant Secretary Richard Holbrooke asked me to survey the issue while I was the US Ambassador to the European Union. During the following two years I travelled extensively in Eastern Europe to encourage the former Iron Curtain countries to return communal property (synagogues, churches, community centers, income producing buildings, and even cemeteries) confiscated during the Holocaust, much of it subsequently retained by the communist successor governments, to the re-emerging Jewish and non-Jewish communities. I discovered that the nature of the restitution laws differed from country to country as did the systems of land holding. Some countries had restitution laws on their books but were implementing them in an uneven manner. A number of other countries were still in the process of drafting such laws.

In other words, some countries were doing a better job of dealing with the issue than others. No country, however, had established a comprehensive,

systematic way of advertising a claims process, encouraging claimants to file, accepting and processing claims, adjudicating applications in a non-discriminatory and transparent manner, and making just awards of property or compensation other than the process developed by the Federal Republic of Germany for property located in the former East Germany.

In the intervening decade there has also been some progress on this issue. But implementation remains very uneven. Corruption, processing delays, difficulty in obtaining basic documentation, and inconsistent information about the application process have marred property restitution in too many countries. In some instances, basic legislation is still lacking. No country has been exemplary in this field, and many have been quite the opposite.

Now, at this point, one might reasonably wonder: why would governments want to restitute immovable property or pay compensation for it? Well, to begin, there are clearly moral arguments for returning what was wrongfully taken, even if the taking was not done by governments currently in power. These moral arguments were among the reasons the Czech government and we were able to convene the June 2009 Prague Conference on Holocaust Era Assets in the first place. But there are also very practical reasons why governments should want to restitute or compensate. Central and Eastern Europe contains a huge number, probably in the millions, of clouded or “cloudable” property titles to both private and communal properties. In some of these countries this prevents homebuyers and others from getting title insurance. In most it also makes mortgages more expensive than they should be. Real estate markets in many Central and Eastern European countries will never reach their full potential as engines of growth until Holocaust era confiscations and, of course, Communist era confiscations are addressed and resolved either through restitution or reasonable compensation.

Only governments can undertake to create national programs to receive and process claims from affected parties and to address the moral dimension. Just as importantly, only they can create truly unclouded and “uncloudable” property titles. The claimants, whether survivors of the Holocaust or victims of confiscations by the Communists, occupy a special place of interest too. If they are no longer alive, which is predominantly the case when it comes to Holocaust survivors, their heirs have every right to expect that they will be included in national claims processes for confiscated real estate.

In addition to the obvious unfairness to individuals and communities, the current flawed system also opens up the possibility of serious title disputes well

into the future. Unfortunately the individual countries in question, not to mention the European Union as a whole, have failed to recognize the serious impact that clouded titles can have on long term development plans. Investors are unlikely to put up money for new buildings if there is a possibility of ownership challenges. For reasons I cannot explain, this rather obvious point resonates neither in the countries directly concerned nor with the EU itself.

The list of problem areas in individual countries is too long for me to go into in detail this afternoon. Instead, I would like to focus on several countries where we are awaiting long overdue improvements to the current situation.

Let us begin with Poland, where, for several years governments have been making efforts to enact legislation governing private property restitution. Almost ten years ago, in 2001, the President of Poland vetoed the only law Parliament has so far passed. He did so, however, for the right reasons – because it was discriminatory. Most American citizens with property claims in Poland would not have been eligible to apply. Since then no new law has been enacted.

The Polish government, we understand, has now prepared new legislation, which it intends to submit to Parliament in due course. This new law would benefit claimants in Poland and abroad, including in the United States, and non-Jews would likely comprise the majority of claimants. Unfortunately, in our view, the proposed legislation still falls short in certain ways. It does not, for instance, include property in Warsaw, home to the largest pre-War Jewish population in Poland, which is admittedly difficult to do given the devastation of that city during the war; we understand, however, that there is a plan for the City of Warsaw to fill this void with a city law that will provide a compensation program funded by the sale of city-owned property.

Unfortunately, the law also sets up a potentially burdensome and costly claims process that would make it extremely difficult for many claimants – especially foreign ones – to apply; and it provides minimal levels of compensation to be paid out over a ten-year period. We hope the Polish Government can improve this draft law. At the same time, while the Polish government has already processed most non-Jewish claims for communal property, it has only processed about 33 percent of claims by the Polish Jewish community. We will therefore continue to urge Poland to speed the adjudication of Jewish communal claims as well.

Another area of potential progress in the near future concerns communal property in Lithuania. We understand the government, with the tacit agreement of

the Jewish community, will be submitting a communal property proposal to the Parliament soon. This proposal has been under discussion between the community and the government for several years. We continue to urge Lithuania to enact – and to implement – this law as well.

Finally, I should mention Romania, which has established a fund to pay compensation for property claims. This fund was created in 2005 but has yet to become operational. A fund manager was, however, recently appointed. The next step will be to register the fund on the Romanian stock exchange so that the value of its shares can be established and the shares traded. This, we hope, will enable Romania to implement fully its property restitution program.

There are also some other bright spots on the political horizon, though we still need to work with our European colleagues to make sure they come to pass. It is perhaps worth noting here that earlier this year the Parliamentary Assembly of the Council of Europe endorsed the idea that refugees and internally displaced persons have a right to restitution of housing and land, and that if restitution is not possible, replacement property or compensation should also be included in refugees' property rights. This is very helpful, since most of the countries in question are member states of the Council.

The Terezin Declaration also recognized that sixty five years after the end of World War II that the restoration of real and movable property to its rightful owners remains a work in progress. It therefore urged participating states to implement national programs to address unresolved immovable property issues. It also recommended an intergovernmental effort to develop non-binding guidelines and best practices for restitution and compensation of wrongfully seized immovable property by June 30 of this year. This effort is now reaching its final stages. I have, in fact, just returned from talks in Prague on this very subject, and I am confident that we will meet this deadline. These guidelines will make a substantial contribution to the resolution of outstanding property restitution issues.

RESTITUTION OF ARTWORKS

Let me now turn to the related issue of Nazi-looted art. The Washington Conference Principles on Nazi-Looted Art, which date back to 1998, have become the primary guideline for dealing with cultural objects that changed hands in Europe during the period from 1933 to 1945. They have resulted in a sea change in the art world. Although the Principles by no means created a perfect system,

they did assure that the international art market would become highly sensitive to Holocaust considerations.

As a result, since the adoption of these principles, the major art auction houses have been particularly careful to assure that items they put on the market are free of any Holocaust taint. This has not been without cost to them, but their decision to insist on bringing to the market only objects with unquestioned provenance has given buyers and sellers an assurance of clear title. This policy provides protection in a way that would not have been possible prior to 1998. Problem areas do remain, but the art market is much more transparent than it was previously.

The Terezin Declaration reiterated national commitments to these Principles. It also emphasized two issues that have become particularly important since 1998 – the need to develop the provenance of artworks through careful research and scholarship, and the need to resolve disputes based on what available records show about the location and ownership of artworks during the Holocaust period. The Terezin Declaration urges that archives be open and available for provenance research, and that the results of such research be publicly available. It also urges that courts and other fora that decide art restitution cases base their decisions on the facts of the individual case rather than relying on technical legal grounds such as statutes of limitation and what we lawyers call “laches” – that is, the failure to pursue a claim in a timely manner.

The reason the Declaration did so was this: Much of the evidence to support claims did not become available to claimants until the 1990s, when archives – including our own – first became open to the public. In some cases, because of a lack of provenance research or at least of its public distribution, the evidence is unfortunately still not available. This means that to impose statutes of limitation or to insist that a claimant ought to have initiated pursuit of a claim as soon as the loss was discovered may not always be appropriate. My goal from the beginning has been to enable the restoration of artworks to owners and families who lost that artwork because of the nature of the Nazi regime and the confusion and uncertainty which existed during the war and thereafter. I believe we must continue to focus on that objective in the future as well.

One of many developments since the drafting of the Washington Principles has been the recognition of the role that forced sales played during the Holocaust. A forced sale took place when the authorities urged an art owner to sell or otherwise dispose of artworks, perhaps to get an exit permit, or perhaps to ease the

pressure applied by the Gestapo and other agencies of the Nazi government. Sometimes this involved auctioning a collection, with a portion of the proceeds going to the owner and the balance to the Nazis. These sales were frequently quite complex, so that determining whether the price received for an object fully reflected its market value is not a simple matter. Litigation over forced sales has become a major focal point of art restitution cases in recent years.

The Washington Principles also called for the establishment of commissions or other fora to handle art restitution cases. The United Kingdom, the Federal Republic of Germany, France, Austria and the Netherlands have established such commissions; the United States has not. The German and British commissions, to be sure, are empowered to provide only non-binding recommendations to the parties. The French, Austrian and Dutch commissions, however, render decisions that are enforceable.

When considering such a commission for this country, of course, we should recognize that the situation in Europe is significantly different from that in the United States. With a notable few exceptions, European museums are owned by central, provincial or municipal governments, whereas in the United States the majority of museums are private (though they benefit from tax advantages afforded to cultural institutions operated on a non-profit basis.) As a result, European governments have more direct control over their museums than we do in the United States. In addition, the amount of art displaced between 1933 and 1945 and still in Europe is also considerably larger than the amount of displaced art now in the United States.

Since the Prague Conference, the State Department has held open meetings during which interested parties have had an opportunity to express their opinions about whether a commission would serve a useful purpose in the United States. These meetings produced a wide variety of recommendations on how such a commission should be structured and what its exact role should be. But there was at least basic agreement that a U.S. commission would provide a forum in which claimants could bring a claim without assuming the high costs of legal proceedings. Such a forum would be particularly well-suited to deal with claims for works of lesser value. This is because most experts believe that claims for high value artworks will inevitably go to the court system, since the value of the artwork would justify the expense of a judicial proceeding, whereas lesser value items would not.

We have not yet, however, come up with a model of a commission – what qualifications Commissioners should have, how they would be appointed, where in the federal government structure the commission would fit, what its exact responsibilities would be, how it would be funded. These are questions we are still studying. We would welcome any ideas that members of the Commission or other members of the Congress might have on this matter.

CONCLUSION

Let me now conclude by reiterating that the Prague Conference has far exceeded any of the previous four international conferences in which I participated in several respects:

- The preparation was the most extensive of the four and the most far-reaching in obtaining input from experts and stakeholders alike;
- The Terezin Declaration is the most comprehensive, detailed, and responsive to all the major issues in promoting Holocaust justice;
- The important issue of the welfare needs of survivors became a central focus of the Terezin Declaration, which means that the 47 nations present recognized the necessity of addressing the critical needs of survivors in their final years;
- The conference also created the European Shoah Legacy Institute at Terezin, which will, among other things, provide the first-ever follow-up mechanism;
- The conference additionally assigned the European Shoah Legacy Institute the specific task of developing by June 30 of this year voluntary best practices and guidelines regarding restitution and compensation of wrongfully seized immovable (real) property.

So where do we go from here? Our job in the State Department is to work with the states that participated in the Prague Conference to convert the moral commitments in the Terezin Declaration into concrete actions that will make a difference, sooner rather than later, in the lives of survivors and their families, and in preserving the memory of the Holocaust and imparting its lessons for future

generation. We feel the urgency of this task. The survivors are, after all, in their waning years, and we do not have time to waste.

COUNTRY-BY-COUNTRY REAL PROPERTY ASSESSMENT

With your permission, I would like to submit in the next couple of weeks a country-by-country assessment of immovable property restitution for inclusion in the record of my testimony.

Thank you.

