

Spoils of War v. Cultural Heritage
The Russian Cultural Property Law In Historical Context

My name is Charles Goldstein. I am counsel to the Commission for Art Recovery as well as the Foundation for International Cultural Diplomacy.

The subject of our symposium, Restitution-in-Kind, is of interest to the Commission because the Russian Law on Displaced Cultural Property from the Second World War is predicated on the assumption that, under international law, the Russian Federation has the right to keep works of art and archives taken by the Soviet Army from occupied areas in Europe as compensation for the loss of Soviet artworks during World War II. Although the Russian Law, as amended in 2000, purports to allow claims for some of these works of art and archives by other countries on behalf of victims of racial persecution, such claims have neither been encouraged nor honored in the decade since the Law was first enacted. The result is that Holocaust loot has been nationalized and removed from the reach of Holocaust victims who have been made to help compensate Russia for Nazi looting and destruction. The claim that international law justifies this taking as reparations or “compensatory restitution” is, therefore, of relevance to those Holocaust victims who claim a right to recover artworks looted either by the Nazis and taken into custody by the Soviets or taken by Soviet troops as they “liberated” moveable property from occupied areas during and after the War.

The Foundation for International Cultural Diplomacy focuses on the use of diplomacy as a means of promoting cultural values and the use of cultural valuables as a means of promoting, through diplomacy, the respect, protection and preservation of cultural heritage. Accordingly, the Foundation has an interest in the subject of “Restitution-in-Kind” and recovery of Holocaust loot through diplomacy. The Foundation would encourage discussion not only as to the existence or place of the concept of “Restitution-in-Kind” in existing international law but also as to the public policy considerations that are involved in the concept. Should there be a recognized principle, doctrine or law that requires, allows or prohibits the taking of artworks and archives as a form of reparations for wartime losses? If so, what should be allowed or prohibited?

It is the hope that, in the first instance, exploration of the legal foundations of public law relating to the principle of “Restitution-in-Kind” will support a conference proposed to be sponsored by the Foundation later this year in Europe that would explore implicit legal, policy and political questions.

Thank you for attending and for your contributions to the discussion.

The Commission for Art Recovery is a not-for-profit corporation based in New York, Ronald S. Lauder, Chairman. Its office is located at 767 Fifth Avenue, Suite 4200, New York, New York 10153. Inquiries may be addressed to Charles A. Goldstein, Counsel, 212-592-1523 or cgoldstein@herrick.com. Mr. Goldstein, Harvard Law School '61 J.D. cum laude, also is counsel to the New York law firm of Herrick, Feinstein LLP.

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