

**LOOTED ART RESTITUTION : TEN IDEAS  
TO HELP SWITZERLAND MAKE AMENDS**

MASTER THESIS  
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"I hereby certify that this Master's/diploma thesis has been composed by myself, and describes my own work, unless otherwise acknowledged in the text. All references and verbatim extracts have been quoted, and all sources of information have been specifically acknowledged. This Master's/diploma thesis has not been accepted in any previous application for a degree.

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## I. Introduction

When I learned about the extent of the problem of Nazi looted art, I was stupefied. My initial reaction was followed by a strong desire to learn as much as possible about this subject, to gain some form of competence. But every new fact I learned merely led to more questions, more frustrations and eventually anger.

This anger stems from the realization that 87 years after the initial forced sales in Nazi Germany, the problem of art spoliation and restitution is still addressed only partially, with no solution in sight.

In the present work, an inquisitive, pragmatic and solution-oriented approach is used.

A reminder of what looted art and restitution are, technically speaking, and the examples that support them is followed by a survey - imperfect by its nature but nonetheless revealing - of the current state of affairs in Switzerland and, above all, of what could be done to contribute to the resolution of this very real problem for Switzerland today. This is undoubtedly a real ticking time bomb.

No one has forgotten the shock of 1995: the unclaimed Jewish assets affair, the resulting economic consequences, the mobilization required to repair the damage to Switzerland's reputation as much as possible, especially after Robert Studer, at the time Director of UBS, dismissed the validity of the claims made as "peanuts".

Nor the harmful history which preceded it, still relating to reputation, namely the circumstances surrounding the ending of Swiss banking secrecy.

One can therefore imagine the impact on the world of the discovery of one or more of the 100,000 works looted between 1933 and 1945 that are still "out there" in the cellars of a Swiss public or private museum, in the cellar of a well-known Swiss gallery, or on the walls of the granddaughter of a Swiss collector who has long since died.

Likewise one can imagine the impact on the world if Switzerland were to tackle this last difficult aspect of the role it played during the Second World War, in an exemplary manner and in the spirit of the 1998 Washington Agreement to which

it has adhered. If it were to invest the necessary energy into completing the home stretch of this journey with determination. The means exist, and they are not so complicated to implement, given the level of sophistication of the tools at the disposal of the Swiss state.

Questions relating to the restitution of looted art are on the rise. Not a day goes by without the press echoing the issues raised, extending well beyond the Gurlitt case. The public is touched, interested, even fascinated, especially when it has access to the narrative of the actual cases, and senses the undeniable charm of the encounter between general and specific history involved.

When rights-holders recount their quest - or the events that occurred when they were unaware of their status as potential beneficiaries - it is striking to see the importance and significance of the object found or recovered. But how this is achieved, the people encountered during this process, what they represent and who they become later in their lives are equally ways to transcend the painful origins of their search and manifestations of profound humanity. It is a healing paradox.

France, through its president, has openly raised the question of the restitution of African art in its collections. The effects extend to other countries, and to other periods of history than solely that of the colonies. Although Switzerland has no colonial past, it cannot escape questions regarding the restitution of looted African and colonial art. Indeed, many works of art and other cultural property dating from the colonial period are preserved in Swiss museums. Reflections on the fate of these objects and some concrete initiatives are emerging all over Switzerland<sup>1</sup>.

Through its humanist and "good offices" tradition, Switzerland can, if it so wishes, contribute many pieces to the puzzle that the various players working towards the restitution of artwork are helping to put together. The question of statutes of limitations, sometimes brandished as an insurmountable barrier, is being undermined by the principles adopted at the Washington Conference in 1998, which advocate finding fair and equitable solutions for art looted between 1933 and

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<sup>1</sup> BRICHET 2019, <https://www.rts.ch/info/culture/10294510-epoque-coloniale-et-oeuvres-spoliees-une-problematique-egalement-suisse.html> (last accessed on 17.08.2020).

1945. These principles are not binding, but Switzerland has subscribed to them and must be motivated by them.

It is up to Switzerland to open its archives, to train specialists, to be mobile and visible on the national and international scene, to work with the seriousness and intellectual honesty that have forged its reputation and which do not hinder creativity or courage.

## II. What do we know?

### 1. We know what the definition of looted art during the Second World War encompasses

Looting is generally defined as a spontaneous act, carried out by the victors that collect trophies to increase personal wealth. Its aim is also to destroy, to further annihilate the enemy. As a weapon, it is as primitive as a bayonet, a grenade, or as sexual violence inflicted in a war zone.

The present work concerns hundreds of thousands of crimes committed by Nazis in various ways, that all had the same outcome: the unlawful loss of a work of art by its legitimate owner. In the literature, such crimes are collectively referred to as art looting, plunder, pillage, theft or spoliation. The term spoliation will be used here because it encompasses the notions of destruction, theft, lawlessness and immorality<sup>2</sup>.

The majority if not all of Nazi spoliations were aimed at Jewish and European possessions. Their perpetrators were pursuing several objectives:

- The appropriation of major artworks to benefit dignitaries of the Nazi regime, such as Adolf Hitler himself, or the German nation as a whole (the *Führer Museum* project)<sup>3</sup>.
- The destruction or the dispersal of important art collections for the sole purpose of destroying the Jewish identity and/or hurting specific individuals.
- The sale of stolen art to help finance the Nazi war machine.

In the present context, "looted art" refers to a work of art that has been forcibly taken from its owner or owners directly by the Nazis or anyone associated with the Nazi regime, between 1933 and 1945. Starting in 1933, it also included "forced sales" of artworks to buy one's way out of Germany or Austria or to merely

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<sup>2</sup> See the American English definition of spoliation in the Oxford English Dictionary, [http://www.oxforddictionaries.com/definition/american\\_english/spoliation](http://www.oxforddictionaries.com/definition/american_english/spoliation).

<sup>3</sup> *The Führer's prerogative and the planned Führer Museum in Linz*, in: the National Fund of the Republic of Austria for Victims of National Socialism, <http://www.artrestitution.at/F.prerogative.html> (last accessed on 28.02.2016).

generate subsistence income<sup>4</sup>. It is thus of great importance to ascertain the origin of any work of art that may have been present in Nazi-controlled territories during the period of spoliation. It should be noted that although some Swiss museums still believe that "forced sales" / "flight assets" do not fall within the material scope of the Washington Conference and do not imply the search for a fair and equitable solution, they should be treated in the same way as looted art. Indeed, there is no effective difference between these two mechanisms of forced expropriation. For Jews deprived of their works of art, injustice, loss and affliction are the same in both cases<sup>5</sup>.

The Nazi art spoliation era began in 1933, as soon as Adolf Hitler came into office. Judging from the determination and the speed with which the Nazis began the destruction of the Jewish art heritage, there can be no doubt about Hitler's intentions right from the outset of his reign. The first book burnings<sup>6</sup> and destructions of "degenerate" art were orchestrated by Joseph Goebbels as early as March 1933. The boycott of Jewish stores and the systematic violence against Jews started on April 1. By the end of the year, some 35,000 Jews had left the country<sup>7</sup>, often after being forced to sell the works of art they owned at slashed prices just to be able to start a new life elsewhere. Various types of forced sales and spoliation were perpetrated by the Nazis and their sympathizers up until 1945.

## 2. We know what the definition of restitution is

Restitution is more than a means to repair an injustice. Returning a looted work of art to a descendant of its legitimate owner or compensating an ancient loss implies that society takes responsibility for crimes that are usually statute-barred. By so doing, it transcends the mere obligations imposed by the rule of law. Restitutions may be a deeply humane process, supported by undeniable moral values, a need to do good, a sense that it is impossible to act otherwise.

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<sup>4</sup> HAKKARAINEN/KOIVULAHTI, p. 60.

<sup>5</sup> RASCHÈR, pp. 239 et seq.

<sup>6</sup> FISHBURN, pp. 31 et seq.

<sup>7</sup> SMITH, p. 5.

### 3. We know there are different types of restitution

#### 3.1. Spontaneous restitution<sup>8</sup>

In 2009, somewhere in France, Jane Doe (fictional name) contacted local police for a peculiar reason. Ms. Doe had inherited 26 works of art that were abandoned to her family by fleeing Nazi officers at the end of the war. The family had always believed that these works of art had been stolen. Ms. Doe wished to have this art “restituted, if possible, to its legitimate owners”. She also stated that she had found these works of art “in an attic, amongst other objects of certain origin, such as a portrait of a great-uncle”.

These revelations led to an inquiry by French museum authorities. The family was right. Six of the Nazi-abandoned works were listed in the Directory of Spoliated Goods compiled in 1947-49<sup>9</sup>, claimed by a man named Raymond Bollack. Fifty years later (in 2000) a nephew of Bollack had contacted the Museum's Central Administration regarding this matter. An undeniable connection was made between this individual and the six looted works of art, making restitution a reality.

The authorities returned the remaining 20 works of art to Jane Doe's family instead of “impounding” them as MNR usually implies. MNR (*Musées Nationaux Récupération*)<sup>10</sup> is a program that allows storage of artworks of dubious origin in French national museums.

#### 3.2. Restitution under legal constraint<sup>11</sup>

In certain cases, and in particular when amicable means of settling the dispute cannot be found, the restitution of the works of art may be ordered by the courts. Here are two examples that illustrate this problem.

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<sup>8</sup> This restitution case was reported in: BAJOU 2013, <http://plundered-art.blogspot.ch/2013/08/un-exemple-atypique-de-restitution.html> (last accessed on 28.02.2016).

<sup>9</sup> Musées Nationaux Récupération (MNR) 2009, <http://www.culture.gouv.fr/documentation/mnr/MnR-rbs.htm> (last accessed on 28.02.2016).

<sup>10</sup> Musées Nationaux Récupération (MNR) official website: <http://www.culture.gouv.fr/documentation/mnr/MnR-pres.htm> (last accessed on 28.02.2016).

<sup>11</sup> RENOLD/CHECHI/BANDLE/RENOLD 2012, <http://unige.ch/art-adr> (last accessed on 28.02.2016).

i. *Example 1: The five Klimt paintings*

The five Klimt paintings that belonged to Ferdinand Bloch-Bauer are a textbook case (made into a movie<sup>12</sup>) that illustrates in a dramatic manner the power of law and the difficulty for some governments (in this case Austria) to face their past. This case also raises fascinating questions about restitution and the interpretation of wills, places of jurisdiction and applicable laws.

Ferdinand Bloch-Bauer died in 1945, leaving his nephews and nieces as heirs. In 1948, Maria Altmann, his niece, and other family members demanded from the Austrian authorities the restitution of the paintings that belonged to the deceased. The case was settled as follows: certain works of art would be restituted, providing that the family rescinded any claim to the Klimt paintings that were acquired by the authorities in a supposedly legitimate manner.

In 1998, a new law came into effect in Austria<sup>13</sup> ordering the state to retribute all works of art traded in the late 1930s in sales forced upon on all Jewish owners of valuable art who wanted an authorization to go abroad. The same year, Maria Altmann discovered the terms of her aunt's will and the lies perpetrated by the Austrian government in 1948 pertaining to the ownership of the Klimt works. These lies were clearly written on the tablets next to the two portraits of Adele Bloch-Bauer's displayed in the *Belvedere*. The Museum wanted the public to believe that the paintings were acquired in 1936 and 1938. But at that time, they were still hanging on the walls of Ferdinand Bloch-Bauer's home.

Maria Altmann's restitution procedure was launched in Austria in 1998. A year later, the Ministry of Culture refused to grant the restitution. The authorities also refused to waive the required "advance fees" that a plaintiff must pay to launch legal proceedings in Austria. Such fees are proportional to the value of the artwork, which meant an exorbitant amount of money for the Klimt masterpieces.

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<sup>12</sup> Wikipédia, *The Woman in Gold*, [https://en.wikipedia.org/wiki/Woman\\_in\\_Gold](https://en.wikipedia.org/wiki/Woman_in_Gold) (last accessed on 28.02.2016).

<sup>13</sup> The full text of the 1998 Austrian restitution law is available on the website of the National Fund of the Republic of Austria for Victims of National Socialism: <http://www.kunstrestitution.at/Le-galAuthoritie.html> (last accessed on 28.02.2016).

It is then that Ms. Altmann, a US citizen, decided to take legal action in her own country. After four years of proceedings, the US Supreme Court ruled that American authorities were competent in the matter and that the case was not statute-barred.

Although she had won a crucial legal battle, Altmann accepted a proposal of the Austrian authorities to submit her case to an arbitral tribunal in Vienna. This tribunal ruled that Adele Bloch-Bauer's will was invalid and that the five Klimt paintings, including the *Golden Portrait* of Adele Bloch-Bauer, should be restituted.

ii. *Example 2: The Camille Pissarro gouache painting "La Cueillette" or "La récolte des pois"*

This work has been the subject of four court decisions all ordering its restitution to Simon Bauer, its owner, and then, as time had passed, to his descendants, in addition to a decision to sequester the work, which appeared in an exhibition at the Musée Marmottan Monet in February 2017.

The reasons why the work remained in the hands of various third parties who acquired it during this period of time, in spite of court rulings all favorable to Simon Bauer and his descendants in 1945, 1951, 2017 and 2018, are as mysterious as, doubtless, numerous. Its journey is extravagant. It was in fact sold to an American gallery owner in 1965, who was then arrested. It was seized and then returned to this gallery owner, who had been released in the meantime. In 1966, the Direction des Musées de France authorized its export abroad, and it was sold in London to an unknown buyer, before reappearing in New York in an auction during which it was acquired by the Toll couple. They loaned *La Cueillette* to the Musée Marmottan Monet in early 2017 as part of the exhibition *Pissarro, le premier des impressionnistes*, and it was then placed in escrow<sup>14</sup>.

Despite these court decisions, the Toll couple brought an action before the *Cour de cassation* to decide on the soundness of the judgments passed by the *Tribunal de grande instance de Paris* and the *Cour d'Appel de Paris*. In its decision of July

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<sup>14</sup> NICOLAZZI/CHECHI/RENOLD 2019, <http://unige.ch/art-adr> (last accessed on 01.09.2020).



1, 2020<sup>15</sup>, the *Cour de cassation* put an end to a three-year judicial epic by rejecting the Toll family's appeal and thus confirming the decisions of the *Tribunal de grande instance de Paris* and the *Cour d'Appel de Paris*. Thus, the Bauer family will be able to recover the work sold in October 1943 by a French dealer appointed by the *Commissariat Général aux Questions Juives* from the 93 paintings confiscated from Simon Bauer at the time of his deportation to the Drancy concentration camp.

### 3.3. Compensation

The two examples described below illustrate an amicable method of resolving a dispute in a restitution case, allowing both parties to find a solution to their advantage, in return for the payment of a sum of money.

#### *i. Example 1: Haystacks at Giverny by Claude Monet*

*Haystacks at Giverny*, a masterpiece by Claude Monet, dated 1885, was offered for sale by its owner in Zurich around 2014. The private art dealers interested in the painting conducted provenance research as required by due diligence. There were no signs of any possible spoliation. The seller was pressed by time. So, the dealers bought the painting with the aim to resell it, as art dealers do.

But soon after the transaction a disturbing historical fact emerged: the painting was part of the works held by Maggy Bondanini's Athénée Gallery in Geneva in 1942. A second investigation was launched and the provenance of the painting was elucidated. The masterpiece was initially sold by the artist to Paul Durand-Ruel, who then sold it to an American collector. In 1931, it was bought by René Gimpel, a famous French art collector and dealer. When the war began, Gimpel sold the bulk of his art collection and joined the French resistance. With the proceeds of the sale, Gimpel did not need to work and could finance various resistance activities. The former art dealer was first arrested by the Vichy regime in

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<sup>15</sup> *Cour de cassation*, première chambre civile, 01.07.2020, no.B 18-25.695.

1942, but then released. In 1944, he was arrested by the Germans, and deported to the Neuengamme camp, where he died in 1945.

It is not clear how the Monet painting made its way to Geneva. It was bought by Emil Georg Bührle in 1944, and then sold as part of his estate to Fritz Nathan, a German art dealer operating in Switzerland. The painting was later acquired by another collector, whose heirs eventually contacted the private art dealers who uncovered the whole story.

The interests of René Gimpel's heirs had to be taken into account. It was a matter of ethics, legality (in the spirit of the principles of the Washington Conference of 1998) and business reputation. Restitution in this case was achieved through a global financial arrangement, a compensation for the consequences of a forced sale that took place back in 1942.

*Haystacks at Giverny* was sold by Christie's in New York on May 14, 2015. In the notes section documenting the sale, the following mention was made: "the present work is being offered for sale pursuant to a settlement agreement between the consignor and the heirs of René Gimpel. This resolves any dispute over ownership of the work and title will pass to the buyer"<sup>16</sup>.

The painting, estimated at between 12 and 18 million dollars, was sold for \$ 16,405,000. The terms of the agreement reached with Gimpel's heirs are kept secret.

It is interesting to add that on August 29, 2019, the *Tribunal de Grande Instance de Paris*, following the hearings on April 16 and June 25, 2019, rejected the request for the return of three paintings by André Derain by the French State to the five grandchildren of the art dealer and collector René Gimpel<sup>17,18</sup>. His

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<sup>16</sup> Christie's, Sale 3736, 2015, <http://www.christies.com/lotfinder/paintings/claude-monet-les-meules-a-giverny-5893259details.aspx?from=searchresults&in-ObjectID=5893259&sid=923fa808-c2f9-4373-af3a-f1fa3dd652e0> (last accessed on 28.02.2016).

<sup>17</sup> GIGNOUX 2019, <https://www.la-croix.com/Culture/restitution-trois-tableaux-Derain-proces-2019-06-25-1201031411> ; Le Journal des Arts.fr 2019, <https://www.lejournaldesarts.fr/actualites/bataille-au-tribunal-pour-trois-derain-144792> (last accessed on 01.09.2020).

<sup>18</sup> SITBON 2019, <https://www.france24.com/fr/20190830-france-gimpel-toiles-derain-restitution-heritiers-marchand-art-juif-spolie> (last accessed on 01.09.2020).

granddaughter, Claire Gimpel, has been fighting for several years to find and obtain restitution of the family heritage: "We have provided the Ministry of Culture with all the elements proving the spoliation", she stresses. *La Pinède à Cassis* is currently held by the Cantini Museum in Marseille. "It is the museum's star painting," she stresses. The other two paintings were found by the plaintiff during the Derain retrospective in Beaubourg in 2017. "I was teetering between tears and rage..."<sup>19</sup>.

ii. *Example 2: Dedham from Langham*

*Dedham from Langham*, a painting by John Constable, has been on display in a special room of the Museum of Fine-Arts of La Chaux-de-Fonds since 1986<sup>20</sup>. It is surrounded by 29 other masterpieces by artists such as Modigliani, Van Gogh, and Delacroix. These works constitute a bequest from the Junod couple, two local art patrons who wished to facilitate "access of the masses to quality culture".

The Constable painting was one of the sixty works confiscated by the Vichy regime after the death of Anna Jaffé in 1942. It was sold at auction, bought three times afterwards, and reached the Junods in 1946. They knew nothing of its provenance.

In 2006, Alain Monteagle, one of the descendants of Jaffé, demanded the restitution of the spoliated painting. In 2009, the Chaux-de-Fonds city authorities decided to dismiss the matter on the advice of the Federal Office of Culture and of two reputable jurists<sup>21</sup>. The authorities argued that the painting was acquired by the Junod couple in a lawful manner, that the terms of the bequest were binding, that the city's population may oppose the restitution and that a popular vote may

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<sup>19</sup> CAREZ 2019, <https://www.leparisien.fr/culture-loisirs/tableaux-spolies-par-les-nazis-claire-gimel-demande-a-l-etat-de-lui-rendre-ses-derain-15-04-2019-8053386.php> (last accessed on 01.09.2020).

<sup>20</sup> This painting is the focus of an ongoing restitution battle summarized in: RENOLD/CHECHI/BANDLE/RENOLD 2012, <http://unige.ch/art-adr> (last accessed on 28.02.2016).

<sup>21</sup> One of the expert legal opinions is available on the official website of the city of La Chaux-de-Fonds: [http://www.chaux-de-fonds.ch/images/Upload/Loi\\_musees/MBA/pro\\_chercheurs/Appendix%20avis%20de%20droit%20Live.pdf](http://www.chaux-de-fonds.ch/images/Upload/Loi_musees/MBA/pro_chercheurs/Appendix%20avis%20de%20droit%20Live.pdf) (last accessed on 28.02.2016).

be necessary. With all that, a tablet explaining the provenance was placed next to the painting in the museum.

In 2014, Alain Monteagle launched a petition asking the city's residents to demand restitution. In 2015, a conciliation request was submitted by Monteagle's lawyer, an expert in looted art. The appellant demanded either simple restitution or a "fair" auction that would benefit Jaffé's 11 heirs.

On September 28, 2017, and after a conciliation procedure that lasted a year and a half, the General Council of the city unanimously decided to accept the proposal of the City Council to return the painting to the heirs of Anna Jaffé. 80,000 euros were paid to the city by the *Commission d'indemnisation des victimes de spoliations intervenus du fait des législations antisémites en vigueur pendant l'Occupation* (CIVS), created by the French authorities in 1999. On March 12, 2018, the painting was returned to the heirs; Alain Monteagle, who represented them, declared that he was "very moved" on this occasion "to be reunited with part of his family"<sup>22</sup>.

It is likely that, among the reasons that made this agreement possible, the specter of a long and costly legal process played a role, in addition to the change in political leaders within the city authorities, not to mention a shift in mentality. It should also be noted that the *Bureau de l'art spolié* did not intervene in these negotiations, as noted by lawyer Marc-André Renold, representing the Jaffé heirs: "There is a lack of political will and they don't want to put money into it", he said. "When we were stuck on the Constable case, we turned to Berne and asked for help. They only offered us a conference room. In this kind of case, you're on your own."<sup>23</sup>.

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<sup>22</sup> GLOOR 2018, <https://www.arcinfo.ch/articles/regions/montagnes/le-constable-restitue-aux-heritiers-742814> (last accessed on 01.09.2020).

<sup>23</sup> HICKLEY 2018, [https://www.swissinfo.ch/eng/culture/crime-and-restitution\\_swiss-make-slow-progress-returning-nazi-looted-art/44566000](https://www.swissinfo.ch/eng/culture/crime-and-restitution_swiss-make-slow-progress-returning-nazi-looted-art/44566000) (last accessed on 01.09.2020).

#### 4. We know - better - the role played by Switzerland during the Second World War in the matter of looted art

The question of art looted between 1933-1945 will probably continue to tarnish Switzerland's reputation as long as it has not been tackled with the means and conviction it deserves. Moreover, when a work of art is rediscovered, the issue regularly emerges from questions that one asks oneself about a painting, a history, an individual, a family, or alleged ties. Switzerland seems condemned to keep revisiting its past - this particular past. We might as well make the best of it and proceed proactively.

The Jewish dormant accounts scandal which broke out in 1995 in Switzerland and the subsequent international outrage and pressure took the political class as well as the whole country by surprise. The Parliament was forced to launch a major historical and scientific research undertaking. The Independent Commission of Experts (ICE) that was created<sup>24</sup> to that effect revealed a rather unflattering attitude of the Swiss authorities during the years when national-socialism was in power.

The scandal and its consequences profoundly changed the perception of Switzerland as a decent country that adopted a somewhat ambiguous stand merely to survive. Instead, a much less comfortable vision emerged: Switzerland had played an important role in all kinds of spoliations (bank accounts-insurance policies, works of art) targeting the European Jewish community<sup>25</sup>. Between 1933 and 1945, Switzerland thus became the high spot for traffic and trade in art of all kinds, both legitimate and illegitimate<sup>26, 27</sup>.

The role played by Swiss museums is clearly described in the final report of the ICE:

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<sup>24</sup> Independent Commission of Experts Switzerland – Second World War (ICE) official website: [www.uek.ch/en](http://www.uek.ch/en).

<sup>25</sup> Independent Commission of Experts Switzerland – Second World War (ICE), pp. 405 et seq.

<sup>26</sup> RASCHËR, p. 234.

<sup>27</sup> BUOMBERGER, pp. 47 and 65 et seq.

"A special (and particularly well documented) category was the state museums: they purchased and collected art, but also accepted deposits and acted as agents for third parties in exceptional cases."<sup>28</sup>.

"Swiss museums were in a position to offer collectors a very attractive opportunity to transfer their assets, as they were able to arrange the import of artworks from the Reich with "free passage" into Switzerland while reassuring to the collector that the works in question would be on loan to the Swiss museum concerned. When a painting was sold, the import duties were generally charged to the purchaser, thus relieving the burden on Jewish owners who were usually short of foreign exchange. By declaring that the item was a loan, the German collector was exempt not only from import duty but also from emigration tax or other compulsory taxes and levies as, in formal terms, the transaction did not constitute a permanent transfer of an asset or a sale abroad. This made the Swiss museums an extremely attractive option.

In return, the museums – as a result of the influx of flight goods during the 1930s, but especially during the Second World War – had access to a wealth of exhibition material which was made available to them free of charge. During the Second World War, when the movement of loaned artefacts became virtually impossible in Europe, this opportunity to organize exhibitions gained tremendously in importance. The Kunstmuseum Basel, the Kunsthaus Zurich, and the Kunstmuseum Winterthur alone obtained at least 1,000 paintings and drawings in this way. Compared with the large number of Jewish-owned deposits, very few non-Jewish collections were available. These included, for example, the collection owned by the banker Baron von der Heydt, who had relocated to Ascona as early as 1930. The figure of around 1,000 deposits is doubled if the deposits by German artists and collectors who were persecuted in the purge of "degenerate art" ("Aktion Entartete Kunst") are included. On average, from each of the larger collections (flight assets) deposited in museums, one to two works were purchased for the museum concerned.

For the Jewish owners who wanted or were forced to sell off their works of art item by item, the various exhibitions served as useful publicity. By being displayed

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<sup>28</sup> Independent Commission of Experts Switzerland – Second World War (ICE), p. 349.

in public, the works of art were rated “museum worthy”, which encouraged sales, and they could be promoted to a wider public at the same time. Often, the exhibitions were followed very quickly by the auctions held by the Lucerne dealer and gallery-owner Theodor Fischer, who sold a substantial proportion of these flight assets at his auctions. Between 1933 and 1947, Fischer organized 47 auctions in total; most of the “emigrant auctions” took place between 1939 and 1942. By the time the auction took place, most emigrants had already left Switzerland. Often, the goods had to be offered at follow-up actions with higher deductions for the auctioneer. Fischer also purchased art at these auctions; indeed, he was the main buyer. Some of the cultural assets disposed of through auction, direct resale or exchange found their way back to Germany; there is documentary evidence of an exchange occurring after the Lucerne auction of the Julius Freund collection in March 1942.”<sup>29</sup>.

And finally:

“Our investigations revealed that in some cases, even catalogues of museums, of collections, and other catalogues which show the provenance of the objects of art, either ignore the gaps from the 1930s and 1940s or gloss them over with extraneous information. Given the current state of knowledge, academic catalogues and studies in the field of art history should no longer ignore the historical upheavals – especially the forced break-up of Jewish collections. Private collectors were more likely to purchase looted art than public collections. However, many of the private collections which were established during the period in question were later bequeathed to museums or transferred to public ownership in some other way. As a result, flight assets and looted art, or “degenerate art” purchased at the time, can be found in these public collections as well.”<sup>30</sup>.

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<sup>29</sup> Independent Commission of Experts Switzerland – Second World War (ICE), p. 356.

<sup>30</sup> *Id.*, p. 364.

## 5. We know what came of it

In 1998, all legal proceedings were terminated thanks to a global agreement reached between the representatives of the dormant accounts rights holders and the relevant Swiss banks. One of the consequences of this agreement was the creation in 1999 by the Federal Office of Culture of a Contact Bureau on Looted Art responsible for “dealing with issues arising from Nazi-looted art”, recommending “a transparent, legal and adequate approach with the aim of arriving at just and fair solutions”<sup>31</sup>. However, this Bureau has neither binding power nor is it recognized as a “moral authority” whose opinion could be voiced whenever a problem of spoliation and restitution arises.

More generally, once the extent of the responsibility of Switzerland in art looting was revealed, the response of the Swiss authorities turned out to be rather lame. Just like in the early days of the dormant bank accounts’ scandal, the passivity of the authorities implies that it is up to the plaintiffs to find an agreement or to take legal action. At the political level, no major action, with any binding power, has taken place that would in any way reflect the principles of the Washington Conference (1998), the Vilnius Declaration (2000) or the Terezin Declaration (2009). The Contact Bureau on Looted Art, created in 1999, is the only concrete, long-lasting manifestation of the political will of the Swiss authorities to address the problem at that time. The pressure to do so owed to two concomitant realities: the then ongoing work of the Independent Commission of Experts Switzerland - Second World War (ICE) and the signing by Switzerland of the Washington Conference Principles on Nazi-Confiscated Art. The work accomplished by the Contact Bureau on Looted Art and other relevant Swiss authorities is described in two activity reports, published in November 2010<sup>32</sup>, respectively, October 2016<sup>33</sup>.

One important accomplishment is the provenance research conducted on the collections that belong to the Swiss Confederation: it has led to only two cases of

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<sup>31</sup> Contact Bureau on Looted Art official website: <https://www.bak.admin.ch/bak/en/home/cultural-heritage/looted-art-from-the-nazi-period.html>.

<sup>32</sup> Federal Office of Culture official website: <https://www.bak.admin.ch/bak/en/home/news/nsb-news.msg-id-37240.html>.

<sup>33</sup> Federal Office of Culture official website: <https://www.bak.admin.ch/bak/fr/home/actualites/archives-des-actualites/actualites-2016/art-spolie-par-les-nazis---deuxieme-rapport-sur-letat-des-travaux.html>.



restitution. At the same time, the report does not state that any other work of art that belongs to the government may be of questionable provenance. Also, little if any provenance research has been conducted on the artworks present in “the majority of third-party museums”. The 2010 report thus naturally concluded that “measures are needed to intensify provenance research”.

The 15-page 2016 report, covering 6 years of activity, should logically draw up a list of such measures, noting the ones that have been already implemented.

Short of providing such a list, the report does make a few important points:

- Absence of any “multilateral cooperation” (e.g. an international conference);
- Existence of regular bilateral contacts between Switzerland, the USA, France and Germany that pertain to the Gurlitt case. Such contacts proved fruitful, providing Swiss museums with access to the [www.lostart.de](http://www.lostart.de) data bank and leading to the organization of an international symposium of experts in 2013;
- Regular collaborations with NGOs such as ICOM/WIPO/Commission for Looted Art in Europe, as well as with interested third parties (museums, art dealers, cantonal directors of public education) to raise awareness and inform all parties of the issues that pertain to provenance research;
- Participation of the Contact Bureau on Looted Art in 5 different symposia and international workshops;
- various proceedings of the Federal Council and participation in working groups of the Confederation;
- Development of expertise of the Contact Bureau on Looted Art, its follow-up of the Gurlitt case, the exhibition organized to present “degenerate art” at the Museum of Fine Arts of Bern, the increase in the number of “claims” the Bureau receives (though the nature of such “claims” is not specified);
- The launch in 2013 of an internet portal dedicated to looted art, the Bureau’s assessment of the situation in Switzerland through a voluntary survey of 551 museums and website redesign in 2016;
- Starting in 2016, a competitive grant program to support provenance research by third-party museums and collections. A total amount of CHF 907,833 has been awarded at his stage (2016).

In the last 25 years, ever since the Jewish dormant accounts “wake-up call”, questions pertaining to Nazi-looted art and provenance research have attracted the interest of the Swiss authorities. Better yet, some steps have been taken in the right direction. Nevertheless, a genuine political will, a strategy and real means to address the problem effectively are still lacking.

“As part of the implementation of the Cultural message 2016-2020, the Federal Department of Home Affairs (FDHA) has issued an “ordinance on the promotion of museums, collections and third-party networks for the preservation of cultural heritage” for the years 2016 and 2017. This promotion scheme will be the basis for the allocation of project contributions in 2016 and 2017. (...) In the new period, the FOC will grant contributions to museums and collections for their provenance research and the publication of their results. (art. 2 of the incentive scheme). This new thematic priority will be valid for the period 2016-2017, it will be renewed for the period 2018-2020”<sup>34</sup>.

This budget (CHF 2 million for the 2016-2017 period, renewable according to our understanding of the Message from the Federal Department of Home Affairs) allocated for provenance research in museums and collections is a recent development. The Contact Bureau on Looted Art has zero visibility for the general public and nothing is done to change this fact. For example, its existence is barely mentioned in the 2015 report<sup>35</sup> of the Federal Office of Culture, when presenting the “Museums and Collections” Department, whose yearly general budget amounted that year to CHF 17 million and whose workforce represented 16.7 full time equivalents. In the reports from 2016 to 2018, the same is true for the mention/visibility of the Contact Bureau on Looted Art. The amounts devoted to supporting provenance research are listed under the heading of “financial aid for the preservation of cultural heritage”. In 2015, i.e. before the decision to allocate these special funds, a sum of CHF 375,000 appeared here<sup>36</sup>. In 2016, 2017, 2018

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<sup>34</sup> Message from the Federal Department of Home Affairs (FDHA).

<sup>35</sup> Federal Office of Culture (FOC) of the Swiss Confederation, pp. 56 et seq.

<sup>36</sup> *Id.*, p. 65.

and 2019, it amounted to CHF 907,833<sup>37</sup>, CHF 913,833<sup>38</sup>, CHF 1,144,800<sup>39</sup> and CHF 1,144,800 respectively<sup>40</sup>.

Compared to the amount devoted by the FOC to global grants provided during the year (as opposed to its own expenses), this represents, respectively, a percentage of 0.64%, 0.65%, 0.82% and 0.82%.

It is interesting to note that, for example Memoriav, an association for the preservation of audiovisual cultural heritage, received subsidies of CHF 3,026,000 in 2018, included in the CHF 12,800,000 of the "Museums and Collections" sector, which also includes funds for provenance research.

To return to the Contact Bureau on Looted Art, its 2011-2016 activity report reflects a reality that leaves much to be desired. There is no evidence of any tangible process or will to expedite the process started nearly 20 years ago with the creation of the ICE. The reader is not even informed about the follow-up to the questionnaire sent in 2010: have the museums that never answered been ever contacted again? In view of the very clear information continued in the ICE report about the responsibility of Swiss museums during the Second World War, such a lack of dynamism is regrettable.

Perhaps the Contact Bureau on Looted Art was behind the "Bibliography on provenance research related to the period of National Socialism" published in May 2016 by the FOC, bibliographies from the same period on looted art during the period of National Socialism and on looted art in general, the list of possible archive collections in Switzerland that could prove useful for provenance research (2018) and the "Glossary of looted art during the period of National Socialism" (2019)<sup>41</sup>?

In a November 2018 report, the Confederation updated the 1998 FOC report entitled "Cultural Property of the Confederation: Investigation of the Period 1933-1945", taking into account the criteria applicable to provenance research, to

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<sup>37</sup> Federal Office of Culture (FOC) of the Swiss Confederation, p. 58.

<sup>38</sup> *Id.*, p. 62.

<sup>39</sup> *Id.*, p. 64.

<sup>40</sup> *Id.*, p. 56.

<sup>41</sup> Contact Bureau on Looted Art official website: <https://www.bak.admin.ch/bak/fr/home/patri-moine-culturel/l-art-spolie/la-recherche-de-provenance-pour-les-musees-en-suisse.html>.

conclude that no works in its collections were likely to have been subject to "confiscation" or "Nazi looting" during the period from 1933-1945.

"The results show that according to current knowledge no cultural property in the Confederation's collections is a work confiscated by the Nazis. However, the search for provenance remains a long-term task for museums and collections. (...) If new information on the provenance of certain works comes to light, the situation will have to be re-examined and any necessary measures taken. The collection strategies of the Confederation's museums and collections provide that, in future, works about to be acquired will have to be systematically researched for their provenance. Only works whose provenance does not pose any problems, and which, in particular, have no connection with Nazi looting, may be acquired".

The fact that there is no mention of forced sales alongside "Nazi looting" raises questions, if not problems. Moreover, the care with which these collections have been scrutinized in the light of "current knowledge" only makes the absence of similar approaches/results within cantonal museums and private organizations all the more glaringly obvious. What is missing from these federal documents is an account of the efforts made to convince them to undertake serious provenance research.

## 6. We know the historic importance of Switzerland's "good offices"

Switzerland's good offices: a philosophy. The term "good offices" combines two notions that lie at the heart of the concept of peace promotion as implemented by Switzerland: facilitation and mediation. The two notions overlap to the extent that both seek a negotiated solution without a position statement<sup>42, 43, 44</sup>. They are also part of a broader vision that is embedded in the country's DNA: neutrality. The importance of "Swiss good offices" is illustrated by the fact that Switzerland has

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<sup>42</sup> STEPHENS 2013, [https://www.swissinfo.ch/fre/diplomatie\\_les-bons-offices-face-à-la-nature-changeante-des-conflits/34795554](https://www.swissinfo.ch/fre/diplomatie_les-bons-offices-face-à-la-nature-changeante-des-conflits/34795554) (last accessed on 02.12.2020).

<sup>43</sup> BAUDOÛI, p. 202.

<sup>44</sup> TRASCHLER, pp. 1 et seq.

accompanied, “in past years, more than 30 peace processes in more than 20 countries” and during “these past seven years, the DFAE has participated in over fifteen peace negotiations.”<sup>45</sup>

The government also states that “Switzerland is committed to dealing with the past as part of its policy of promoting peace and human rights. It defends the idea of a qualified and targeted work on the past to allow a reconciliation of the society.”<sup>46</sup>.

At both bilateral and multilateral levels, it supports many initiatives “aimed at favoring the treatment of the past”, and “helping to develop new ideas and strategies”, “particularly in the following areas:

- Justice and peace
- Gender and repair
- (...)
- Archives and human rights
- Relationship between prevention and the treatment of the past”.

These ideals, so dear to the Swiss identity, strongly support the principles which prevail in the field of restitution:

- the search for a negotiated solution, facilitated by the passage of time which allows relativization and recontextualization,
- the absence of a “moral” position statement pertaining to any of the concerned parties,
- the reminder of the basic concepts prevailing at the heart of living in society, which can be summed up by “we can’t not give back what is not ours”<sup>47</sup>.

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<sup>45</sup> Federal Department of Foreign Affairs (FDFA) of the Swiss Confederation official website: <https://www.eda.admin.ch/eda/fr/dfae/politique-exterieure/droits-homme-securite-hu-main/paix/bons-offices-suisse/facilitation-mediation.html> (last accessed on 01.09.2020).

<sup>46</sup> Federal Department of Foreign Affairs (FDFA) of the Swiss Confederation official website: [www.eda.admin.ch/eda/fr/dfae/politique-exterieure/droits-homme-securite-hu-main/paix/traitement-passe.html](https://www.eda.admin.ch/eda/fr/dfae/politique-exterieure/droits-homme-securite-hu-main/paix/traitement-passe.html) (last accessed on 01.09.2020).

<sup>47</sup> Quote from Nathalie BONDIL, during a conference entitled “Droit et Art : Incidence sur le marché de l’art de la restitution des biens spoliés pendant la Deuxième Guerre mondiale. Étude et perspectives” held on 26.11.2014 at the University of Montréal, available at: <https://www.youtube.com/watch?v=agdoCewY7Yw>.

The creation of a neutral entity made up of experts in looted art and art restitution and active in the application of principles, such as the ones put forth by the Washington Conference, would perfectly fit the values defended and practiced by Switzerland since the Baden Treaty of September 7, 1714. In addition, such an entity would contribute to the fight against anti-Semitism, recognized as an important task by the Swiss authorities, in particular since the increase in anti-Semitic incidents that took place in the summer of 2014<sup>48, 49, 50</sup>. Again, political will is needed to allow such a structure to emerge.

## 7. We know what value to attach to Switzerland's reputation abroad

On October 22, 2017, on the set of the 7.30 news, Nicolas Bideau, Director of Presence Switzerland, estimated the value to be 20 billion, stressing that while its reputation was in good shape, Switzerland "nevertheless had many challenges to meet".

## 8. We know what other countries concerned by this issue are doing

Whatever efforts Switzerland has accomplished to date to come to terms with its unsettling past of Nazi art looting, it is not alone. Other countries are implicated as well and have addressed the problem in different ways. The situations in France, Finland, Germany and Poland are briefly described below.

The inclusion of France, Germany and Poland is obvious: these countries were heavily involved in the events that led to art spoliation. Finland, on the other hand, may seem at first glance an odd choice. Yet, while Finnish art collections and

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<sup>48</sup> Fédération suisse des communautés israélites (FSCI) official website: <https://www.antisemitisme.ch/content/analyse-2014-plus-d-incidents-et-le-ton-legard-des-juifs-sest-fait-plus-agressif>.

<sup>49</sup> Fédération suisse des communautés israélites (FSCI) official website: <https://www.antisemitisme.ch/content/introduction-rapport-sur-lantisemitisme-en-suisse-alemanique-2014>.

<sup>50</sup> Press release dated 1 December 2015 from Didier Burkhalter, Federal Councillor, Federal Department of Foreign Affairs (FDFA), available at: <https://www.admin.ch/gov/fr/start/dokumentation/medienmitteilungen.msg-id-59713.html> (last accessed 04.12.2020).

museums do not compare with the incredibly rich cultural heritage of France, Finland was nevertheless an active player in the sinister game of looted art trading.

## 8.1. France

*In France*, the Commission for the compensation of victims of spoliation (CIVS), created in September 1999<sup>51</sup>, “offers appropriate repair, restitution or compensation for looted cultural works.

The Commission decides, in equity, based on produced documents, on evidence dated from the period of the facts and on the presence of the works in the *catalogues raisonnés* or inventories.”.

The Commission has no decision-making competence on its own: it is restricted to making recommendations to the Secretary-General of the Government. According to a report written in 2015, a total amount of EUR 35,198,872 was “recommended” by the Commission for compensation purposes. The actual amount that was eventually allocated to the right holders in all the cases that were solved is not specified. As an example of its accomplishments, the Commission recommended the return of a painting carrying the MNR (Musées Nationaux Récupération) label to a “claimant” living in New York.

Corinne Hershkovitch, a French lawyer specialized in looted art, questions whether the creation of a repository of some 2000 works carrying the MNR label may only be used in the end as an excuse for inaction, a type of alibi. For example, in 2014, not a single case of provenance research was conducted in the existing public collections in France. Hershkovitch finds this reality particularly disturbing, considering the fact that the French art market was very active during the Second World War and that many works of art were acquired at the end of that war. To address the problem more effectively, she recommends the creation of a “group of wise men”, that could handle the more complex cases<sup>52</sup>.

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<sup>51</sup> Commission pour l'indemnisation des victimes de spoliations official website: <http://www.civs.gouv.fr/actualites/rapport-d-activite-2015/>.

<sup>52</sup> Recommandation from Corinne HERSHKOVITCH, during a conference entitled “Droit et Art : Incidence sur le marché de l'art de la restitution des biens spoliés pendant la Deuxième Guerre mondiale. Étude et perspectives” held on 26.11.2014 at the University of Montréal, available at: <https://www.youtube.com/watch?v=agdoCewY7Yw>.

For some time now, some French museums have adopted a proactive approach to finding the owners of works of art looted under the Nazi regime. This new way of proceeding contrasts with the rather passive attitude of museums which was, and for some still is, to wait for owners or their heirs to come forward on their own. Like the Musée des Beaux-Arts in Rouen, museums have set up systems to find the legitimate heirs of looted paintings. This requires significant human and financial resources but also a lot of time and represents a colossal task that is not always successful<sup>53</sup>.

## 8.2. Finland

*In Finland*, the problem of spoliated art was thoroughly investigated in 2001 in a university research project, dubbed DEAL (Distributors of European art legacy-Finland as relocation region of Nazi-looted art)<sup>54</sup>. One of the important findings in the study pertained to a significant number of artworks acquired through forced sales which were destined for Finland.

This finding dispelled the idea that Finland, rather absent from the international art marketplace, had little to do with the spoliation of artworks during the Nazi period. In reality, from the mid-1930s onward, Finnish art dealers and collectors travelled abroad extensively, made numerous contacts with other art dealers and participated in many auctions throughout Europe, in London in particular.

During World War II, the circle of Finnish collectors grew significantly. This was initially due to the perception of artworks as shelter value and later, towards the end of the war, to the emergence of a flourishing black market, where valuable artworks could be acquired at very low prices, given the scarcity of food and of other basic commodities. For example, Uuno Tiainen, a Finnish yachtsman, acquired some 40 works of art of varying quality, by exchanging them against cigarettes, smuggled into Finland with the complicity of customs officials. In spite of

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<sup>53</sup> MAHMOUDI 2020, <https://www.francebleu.fr/amp/culture/patrimoine/a-rouen-des-tableaux-voles-par-l-allemande-pendant-la-guerre-exposes-au-musee-des-beaux-arts-1596644523> (last accessed on 17.08.2020).

<sup>54</sup> HAKKARAINEN/KOIVULAHTI, pp. 58 et seq.



provenance research, it is still not known whether Tianen's collection contains looted art.

"Many works of art have been arriving in Finland ever since the 1930s and until the present day, using a variety of channels and routes of acquisition. The history of the ownership of these works is usually unknown. (...) The DEAL project has already been able to identify some Nazi-looted objects in Finland<sup>55</sup>.

(...)

Unfortunately, it has not been possible so far to carry out provenance research of works of art that belong to Finnish national collections. Yet, these collections include hundreds of works of art of unknown origin. And some of them are linked to art dealers that co-operated with the Nazis (...)" <sup>56</sup>.

*Trojan Horse*, a painting by Giovanni Domenico Tiepolo, acquired by the Finnish National Gallery from a Finnish auction house in 1996 is an example. This painting was initially purchased in the 1920s by a Parisian art dealer known to have had contacts with the Nazis. What happened to the painting between 1938 and 1947 is not known: there is a provenance gap. In 1947, the painting resurfaced in Berlin, in the hands of a Nazi art dealer. It was then acquired by Tauno Sutinen, a Finnish diplomat, through an intermediary and naturally ended up in Finland.

Finnish national museums declined to participate in the DEAL project stating budgetary constraints and lack of staff. Although the DEAL project members offered to carry out provenance research on collections free of charge, respecting the museum's timetables, the proposal was considered "unrealistic". The workload was deemed excessive for the museum's staff, taking into account the number of works that would have to be examined and the time constraints of the DEAL project.

The Finnish National Gallery comprises three museums, home to some 35,000 works, employing 250 professionals and visited by 500,000 people every year. For all three institutions, communication pertaining to provenance is simply missing. For instance, the website of Ateneum Art Museum, which displays

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<sup>55</sup> HAKKARAINEN/KOIVULAHTI, p. 61.

<sup>56</sup> *Id.*, p. 65.

international artworks of the 19th and 20th centuries among others, claims its values are "together, transparent, professional"<sup>57</sup>. However, no information pertaining to provenance research is made available on the website. The same holds true for the Museum of Contemporary Art Kiasma and the Sinebrychoff Art Museum, which displays works of Old Masters of the 14th to 19th centuries<sup>58</sup>.

Fortunately, thanks to the 27 regional and private museums that did join the DEAL project, provenance research can go on. Thus, contacts were made between descendants of foreign artists and museums to clarify the status of some 400 works, mostly donated by private collectors and which have provenance gaps spanning the years 1933-1945.

"Finland is now the first Scandinavian country where the art objects housed in museums are being researched for Nazi-era provenance"<sup>59</sup>. Sadly, this accomplishment is clearly not the result of any intervention or involvement of the public authorities.

### 8.3. Germany

In *Germany*, the fight against art spoliation began very early. Thus, requests "for cancellation of spoliation" of all kinds were received by the Roosevelt administration from emigrating Jewish claimants already during the war<sup>60, 61</sup>. The first legal framework to address the problem was established by the Allied powers, initially by the United States, with the active participation of American Jewish organizations. Other initiatives followed, such as the Luxembourg agreements in 1952, directly involving the German Federal Republic and Israel/ the Claims' Conference, the Federal law of compensation (1953-1956) followed by the Federal law of restitution (1957), with restrictive conditions that underwent a significant

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<sup>57</sup> Ateneum Art Museum official website: <http://www.ateneum.fi/museo/taidemuseon-historiaa-ja-kokoelmien-karttumisen-vaiheita/?lang=en>.

<sup>58</sup> Finnish National Gallery official website: <http://www.kansallisgalleria.fi/en/>.

<sup>59</sup> HAKKARAINEN/KOIVULAHTI, p. 66.

<sup>60</sup> GOSCHLER, pp. 158 et seq.

<sup>61</sup> LILLTEICHER, pp. 139 et seq.

amendment in 1964. In the end, the application of this law led to compensations totaling DM 4 billion (status in 2002).

A variety of institutions were created in Germany over the years to address the problem of looted art. These include the coordination office of the Länder for the return of cultural goods, created in 1994; the Lost Art Database, created in 2000 and which currently holds 2,500 entries; the independent Advisory Commission on the return of cultural property seized as a result of Nazi persecution, also known as the Limbach Commission, created in 2003; the German Lost Art Foundation, created in 2015. It should be pointed out that the purpose of the Limbach Commission is to make recommendations in order to avoid the launch of legal actions. As of December 27, 2016, 14 such recommendations have been issued. Importantly, the commission also acts as a mediator between State owners of possibly looted objects and their previous owners or their heirs<sup>62</sup>.

On June 3-4, 2016, an important event took place in Paris that examined in parallel French and German restitution policies, and brought together for the first time the French National Heritage Institute and the German Center of Art History. The two institutions compared the extensive legal arsenal in France with the German “soft law”, noting a significant increase in the number of restitution proceedings in Germany, which reflects a positive dynamic that is clearly lacking in France. For instance, the Karlsruhe Kunsthalle has recently created three permanent positions dedicated to provenance research and a dedicated website ([www.alfredflechtheim.com](http://www.alfredflechtheim.com)) compiles the results of provenance research carried out by 14 German museums (and one Swiss one). In contrast, the momentum generated in France in 2013 by the creation of a Working Group supposed to search for rights holders of looted artworks has hardly had any concrete results, likely because of a lack of a global vision of the situation<sup>63</sup>.

At the beginning of this year, the German Lost Art Foundation created “a specialized office to help people reclaim art and other cultural assets seized by the Nazis during WWII”. This help desk aims to facilitate the search for and restitution of Nazi looted property for victims and their descendants. Above all, it aims to

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<sup>62</sup> German Lost Art Foundation official website: [www.kulturgutverluste.de](http://www.kulturgutverluste.de).

<sup>63</sup> HUGOUNENQ 2016, <https://www.lequotidiendelart.com/articles/9247-la-france-et-l-alle-magne-confrontent-leurs-politiques-de-restitution-des-biens-spoliés.html> (last accessed on 03.12.2020).

reduce, if not eliminate, bureaucratic and institutional obstacles to the search for and restitution of looted works of art, often perceived as being a sign of the unwillingness to act on the part of the German government<sup>64</sup>.

#### 8.4. Poland

Since 1992, the Polish Ministry of Culture has been actively collecting information on cultural property "lost" after the Nazi withdrawal from Polish territory and aims to recover works of art that were looted during and after the war. For example, in December 2015, the Polish Ministry of Culture obtained the restitution of the bust of Diana signed by Jean-Antoine Houdon which had been looted during the war and which belonged to the Lazienki Palace in Warsaw and was being put on sale in Vienna<sup>65</sup>.

Despite the efforts and willingness of the Polish government to recover its own looted cultural property (more than 60,000 objects), it seems neither very willing nor in a hurry to return the objects looted and left by the Nazis and stored in its museums. "The Polish government wants to have as much as possible back," said Kamil Zeidler, a law professor at the University of Gdansk who has studied the issue, "but they don't want to give anything back to others."

There is no real consensus and willingness to act on the issue of restitution. Moreover, the Polish authorities and museums are frankly not working to find out the provenance of the spoliated works of art they hold.

"Poland still lacks a viable procedure for processing restitution claims from Holocaust victims both within the country and from abroad". According to experts, it is becoming urgent for Poland to face up to the problem of the restitution of the spoliated art held on its territory<sup>66</sup>. If nothing else, this would make its own restitution claims more legitimate.

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<sup>64</sup> REA 2020, <https://news.artnet.com/art-world/germany-help-desk-nazi-looted-art-1749198> (last accessed on 17.08.2020).

<sup>65</sup> CORTHAY 2016, <https://www.rts.ch/info/culture/arts-visuels/7901887-sur-les-traces-de-lart-spolie.html> (last accessed on 01.09.2020).

<sup>66</sup> SIEGAL 2020, <https://www.nytimes.com/2020/01/12/arts/design/poland-nazi-looted-art.html?searchResultPosition=1> (last accessed on 18.08.2020).

9. We know - approximately - how many looted works are still unretrieved

According to art restitution experts, approximately 600,000 major works of art were looted during the Nazi regime era (1933-1945). Today, some 100,000 of these works remain missing or orphaned because their right holders cannot be identified<sup>67, 68</sup>.

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<sup>67</sup> O'DONNELL, p. 54.

<sup>68</sup> BRADSHER 1997, <https://www.archives.gov/research/holocaust/records-and-research/documenting-nazi-plunder-of-european-art.html> (last accessed on 28.02.2016).

### III. What do we not know?

#### 1. Some questions have no answer

The time and the various steps taken to find the origin and restitution of art looted during the Nazi regime have made it possible to shed light on and understand the extent and role of forced sales and the almost systematic looting of works of art belonging to Jews. However, many questions remain unanswered even today, more than 87 years after Adolf Hitler's seizure of power. Today:

- We do not know where these looted works of art are
- We do not know why systematic provenance searches are not being undertaken
- We do not know what percentage of these works are in Switzerland
- We do not know why the Swiss are not aware of this part of history and history of Switzerland
- We do not know whether Swiss public opinion is in favor of taking steps to find these works, and if so, to return them or compensate their current holders
- We do not know what the political authorities think of such approaches
- We do not know what art market professionals (museums, gallery owners, foundations) think of such approaches
- We do not know what the strategy of the Confederation is
- We do not know if there is a hidden agenda
- We do not know why the Contact Bureau on Looted Art is so low-profile and non-proactive
- We do not know why the Swiss government does not see the benefit of adopting a proactive and exemplary approach to restitution

## 2. What should I do to gain answers to these questions? And what will I obtain?

As a preamble, I would like to emphasize that the aim of this work is to search for options and possible solutions in order to rectify the problems currently facing Switzerland. They will be listed in detail in the final part of this work.

### 2.1. A survey

#### *i. Survey participation: reaching the target audience*

The survey was implemented as web-based questionnaire, in two languages: English and French. An invitation to participate was sent by e-mail to professional and personal contacts and advertised on LinkedIn and Facebook. In all, almost 300 e-mails were sent.

The invitation message clearly stated that the survey was conducted as part of an EMAMS assignment and that all responses would remain anonymous, with no attempt to identify the respondents

A total of 77 valid responses were received over a “campaign period” that lasted approximately 10 days.

In an attempt to include the opinions of stakeholders for whom the problem of looted art is of particular concern, 75 e-mail messages were sent to relevant targets, such as Swiss museums and art galleries or individuals working in such institutions.

No responses were received from this second, targeted group.

#### *ii. Survey: questions asked and answers sought*

The fourteen questions that comprised the survey are listed below. The rationale behind each question, as well as the possible uses of the answers are also indicated.

Question No. 1	You are: - A Swiss national living in Switzerland - A non-Swiss national living in Switzerland - A Swiss national living outside of Switzerland - A non-Swiss national living outside of Switzerland
Rationale	Assessing whether Swiss nationals feel more concerned about the issue than foreigners. Assessing how foreigners perceive the attitude of Switzerland. Identifying different trends among Swiss nationals living abroad. Assessing how one's place of residence and nationality may impact one's views.
Possible uses	Identifying whose opinions can be voiced thanks to the survey.

Question No. 2	Your age group: -30 years or younger                      -51-60 years -31-40 years                                      -61-74 years -41-50 years                                      -75 years and older
Rationale	Assessing the level of interest of individuals born more than 25 years after the end of World War II (second and third post-war generations). Assessing the presence of any defensive or protective attitudes, similar to those that emerged during the unclaimed Jewish bank accounts problem in 1995.
Possible uses	Demonstrating the awareness of the problem among younger generations.

Question No.3	Your level of education: -University                      -Vocational School                      -Other
Rationale	Assessing the impact of the level of education on the opinions about the issue.
Possible uses	Identifying the most concerned socio-economic groups.

Question No 4.	Your profession
Rationale	Identifying possible correlations between profession and opinions.
Possible uses	Measuring the bias in the selection of survey respondents.

Question No. 5	How interested are you in art in general? - very little                      - average                      - it's my passion - somewhat                      - highly
Rationale	Identifying possible correlations between intrinsic interest in art and opinions about the issue.
Possible uses	Conveying to key stakeholders the potentially universal nature of citizens' concern about the problem of Nazi-looted art restitution.



Question No. 6	<p>What is your general opinion about looted art restitution as it pertains to Switzerland?</p> <ul style="list-style-type: none"> <li>- I have not heard about this problem in Switzerland</li> <li>- I have heard of it, but feel rather indifferent</li> <li>- It's just one of many different problems</li> <li>- It is important to address this problem</li> <li>- It is very important to accelerate the procedures</li> </ul>
Rationale	Assessing the perception of the importance and urgency of the issue.
Possible uses	Conveying to key stakeholders the potentially universal nature of citizens' concern about the problem of Nazi-looted art restitution.

Question No. 7	<p>What should be the attitude of Switzerland in addressing the problem of Nazi-looted art?</p> <ul style="list-style-type: none"> <li>- The current situation is satisfactory. Existing laws and institutions provide all the needed guarantees.</li> <li>- Switzerland must do more.</li> </ul>
Rationale	Assessing public trust in the current mechanisms that are supposed to address the issue
Possible uses	Conveying to key stakeholders the need to change the attitude of Switzerland with regards to the issue.

Question No. 8	<p>If you believe that the situation must change, how urgent is the need?</p> <ul style="list-style-type: none"> <li>- Not urgent (within 5 years)</li> <li>- Urgent (within 2 years)</li> <li>- Somewhat urgent (within 3 years)</li> <li>- Very urgent (within 1 year)</li> </ul>
Rationale	Assessing the urgency on the perceived need to change.
Possible uses	Conveying to key stakeholders the relative urgency to change the attitude of Switzerland with regards to the issue.

Question No. 9	<p>An official Swiss Institution has been created to address the problem of looted art restitution. True or False?</p> <ul style="list-style-type: none"> <li>- True</li> <li>- It is being created</li> <li>- False</li> <li>- I don't know</li> </ul>
Rationale	Assessing public awareness of the existence and activities of the Federal Contact Bureau of Looted Art.
Possible uses	Improving the efficiency and the relevance of the existing structures supposed to address the issue.

Question No. 10	<p>Do you think that the situation in Switzerland is different from that in other countries?</p> <ul style="list-style-type: none"> <li>- Absolutely not</li> <li>- No opinion</li> <li>- Switzerland is a very special case</li> <li>- I don't think so</li> <li>- Yes</li> </ul>
Rationale	Assessing the perceived specificities of Switzerland and the perceived risk of a "Swiss-bashing syndrome".
Possible uses	Prevent misrepresentations and false debates.

Question No. 11	Which adjective (1 word) would you use to qualify the current situation in Switzerland as it pertains to managing the problem of looted art?
Rationale	Assessing the prevalent feeling pertaining to the issue of Nazi-looted art restitution in Switzerland.
Possible uses	Impact the key stakeholders.

Question No. 12	Do you think that restitution/compensation should exist in cases where there is no LEGAL obligation for any reparation (such as when the buyer acted in good faith, and/or when limited by the statute of limitations)? - No, the existing laws are adequate - Yes, restitution or compensation, even partial, should always be proposed - I don't know - Only in certain cases
Rationale	Assessing the feasibility of solutions outside the existing legal framework. Assessing the view that extraordinary circumstances may call for extraordinary measures.
Possible uses	Conveying the legitimacy of the will of civil society to solve the issue irrespective of the legal framework.

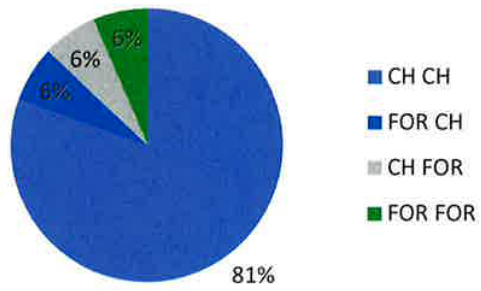
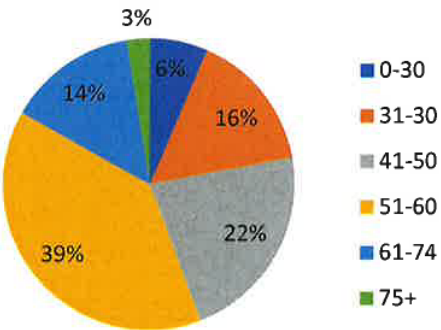
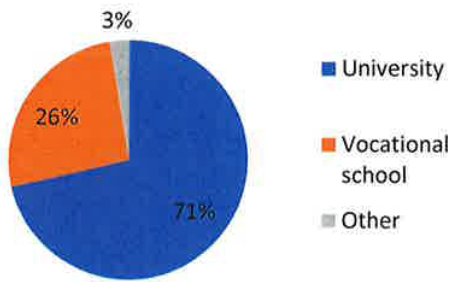
Question No.13	Are there similarities between the problem of looted art and its restitution and the problem of unclaimed Swiss bank accounts that belonged to Jewish World War II victims? - No - I don't know - Yes, many - Nothing significant - Yes, a few
Rationale	Assessing the awareness of the historical realities common to both "looted money" and "looted art".
Possible uses	Raising the awareness of key stakeholders about the possibility of a looming crisis similar to that of the unclaimed Jewish funds.

Question No.14	Do you think that Switzerland would benefit from being proactive in addressing the problem of Nazi-looted art and its restitution? - No - I don't know - Absolutely - Marginally - Probably
Rationale	Assessing the public's desire to position Switzerland as a promoter of a global solution to the issue of looted art restitution.
Possible uses	Conveying the opportunity to do good and to strongly connect Switzerland to its historical legacy.

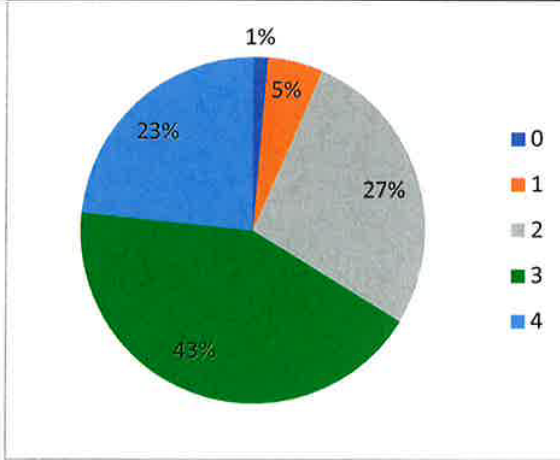
### *iii. Survey results and analysis*

The results of the survey are presented below. For each question, 77 answers were obtained, interpreted where indicated, and normalized. The results in

percentages are represented graphically for better legibility. Interpretations and comments, when deemed appropriate, are shown in the right-hand column.

1. Nationality and residence	
Results	Comments
 <p>CH CH: Swiss nationals in Switzerland  FOR CH: Foreign nationals in Switzerland  CH FOR: Swiss nationals abroad  FOR FOR: Foreign nationals abroad</p>	<p>The majority of respondents are Swiss nationals, residing in Switzerland.</p>
2. Age groups	
	<p>The age distribution appears relatively unbiased, considering the modalities used (Internet) and the individuals targeted (personal contacts).</p>
3. Education	
	<p>Lawyers constituted the largest group of respondents (13 or 17%, data not shown), a clear illustration of bias in the survey. Conversely, only one respondent (art dealer) may be directly impacted by the problem of art spoliation and restitution.</p>

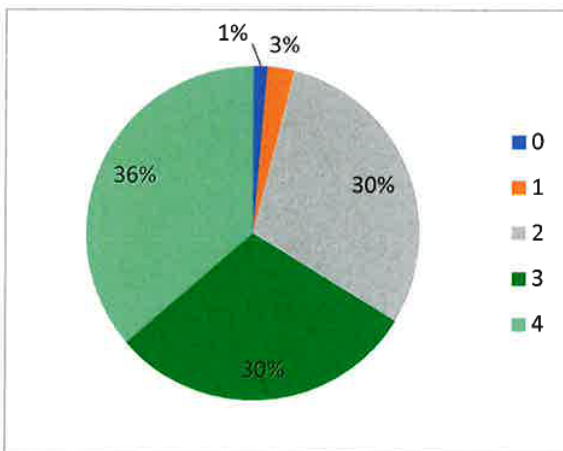
4. General interest in Art



Unsurprisingly, the majority of respondents (66%) declared a higher than average interest in art. This is another illustration of the bias in the approach to reach potential survey participants.

Key: 0, very low; 1, low; 2, average; 3, high; 4; very high

5. Awareness of the problem of looted art restitution in Switzerland

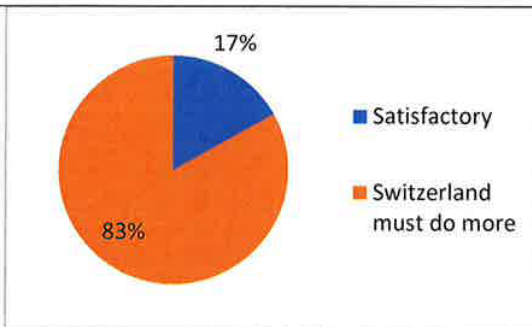


Almost all respondents (96%) are aware of the fact that Switzerland faces issues pertaining to Nazi-looted art restitution.

The recent, highly publicized case of the Gurlitt collection and the inherent bias in the survey probably both contribute to this high proportion.

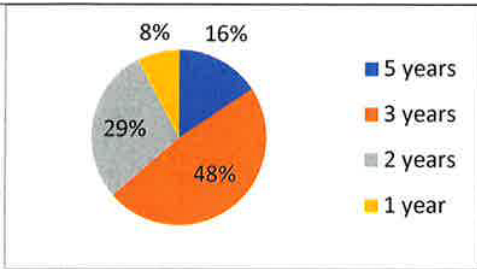
Key: 0, no aware; 1, aware, but indifferent; 2, aware; 3, aware and concerned; 4; consider urgent

6. Switzerland's current attitude in addressing the problem of Nazi-looted art



The fact that the vast majority of respondents (83%) believe that Switzerland must do more to address the problem is predictive of a very strong message that could be sent to the authorities, providing a true, statistically valid survey were to be conducted.

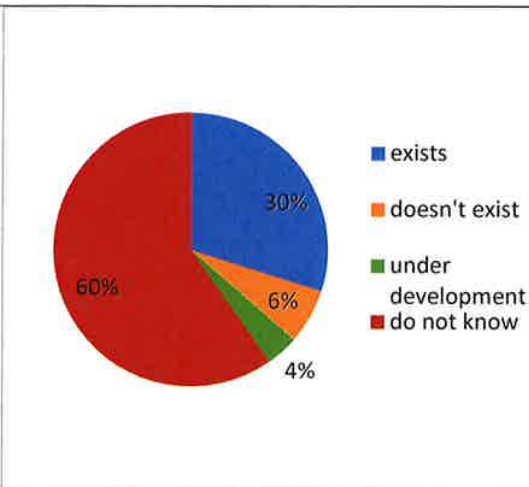
7. Degree of urgency to address the problem



The majority of respondents (84%) indicate a clear sense of urgency to effectively address the problem (in less than 3 years), considering the fact that Nazi art looting crimes have been known for over 70 years.

Key: The number of years indicates the maximum period acceptable for solving the problem

8. Awareness of the existence of the Swiss Contact Bureau on Looted Art



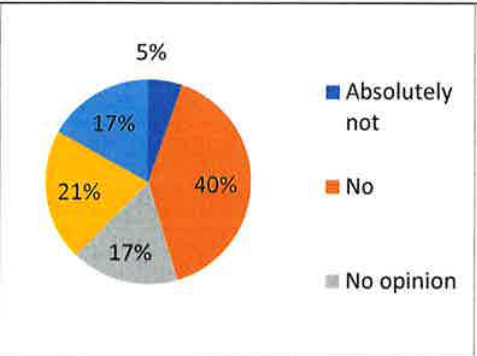
**SIGNIFICANT FINDING**

The majority of respondents (70%) are not aware of the existence of the Contact Bureau on Looted Art.

This is a remarkable finding, considering the selection bias of the survey, favoring highly-educated participants who have an interest in the subject.

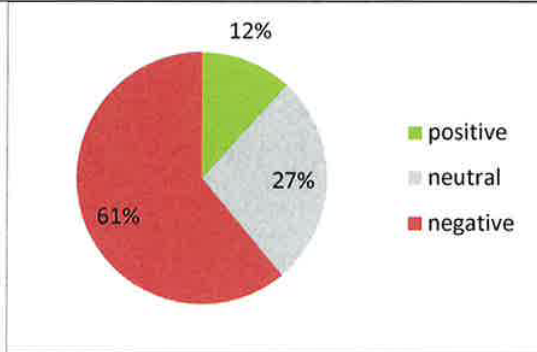
The authorities have clearly failed to communicate their decision to start addressing the problem.

9. Is the situation in Switzerland special, compared to that of other countries?



A sizeable proportion of respondents (21%) consider that Switzerland is a special case. It would certainly be of interest to understand the reasons behind this belief in a follow-up survey.

10. Global appreciation of the current handling of the problem of Nazi-looted art in Switzerland

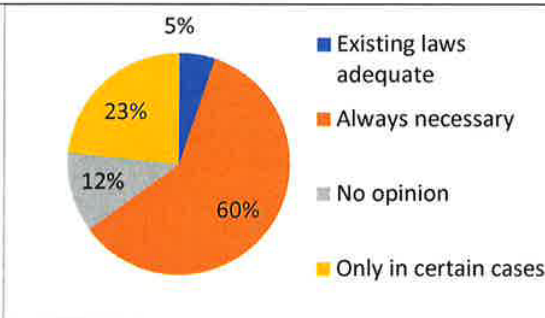


**SIGNIFICANT FINDING**

The fact that only 12% of the respondents appear to be satisfied with the way the problem of Nazi-looted art is handled in Switzerland is indicative of the looming danger of seeing Swiss authorities accused of carelessness or worse (as during the unclaimed Jewish bank accounts scandal).

NB: Respondents were asked to provide one adjective to qualify their impression. Adjectives were classified in three categories: 1, positive (e.g. concerned, cautious); 2, neutral (e.g. delicate, slow); negative (e.g. unsatisfactory, hypocritical).

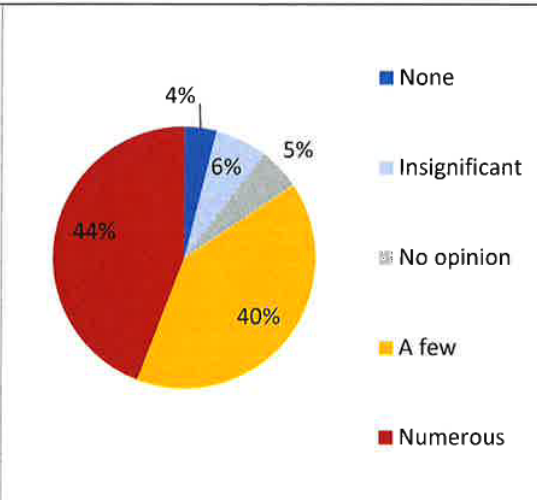
11. Is there a need for restitution/compensation modalities, outside the current legal obligations?



**SIGNIFICANT FINDING**

Only a small minority of respondents (5%) believe that existing laws provide an adequate framework to support restitution/compensation in cases of Nazi art looting. This result is particularly significant, considering that 13 of the 77 respondents (17%) were lawyers and 2 additional respondents had a strong connection to law (judge and police officer).

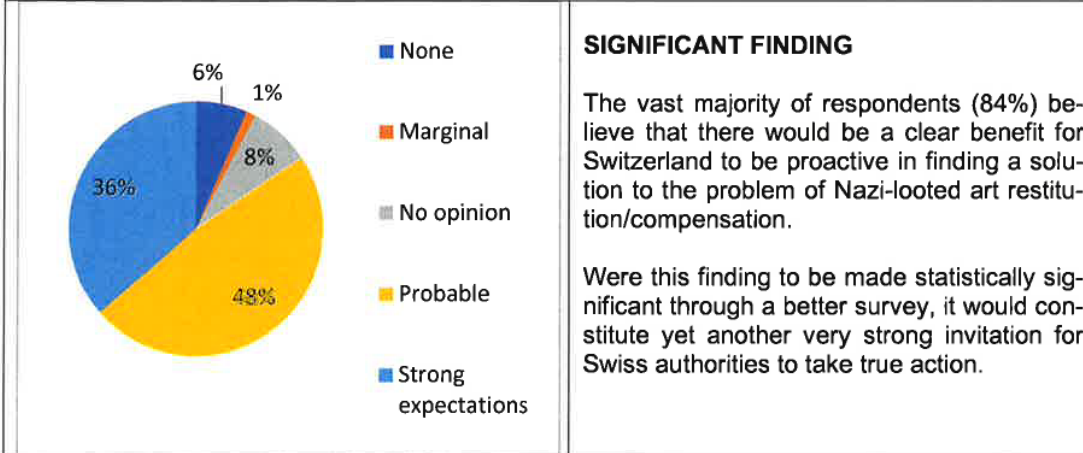
12. Similarities to the situation that prevailed in Switzerland in relation to the unclaimed bank accounts held by Jewish Holocaust victims



**SIGNIFICANT FINDING**

Only a small minority of respondents (10%) see no significant parallel between the current problem of Nazi-looted art in Switzerland and the past scandal of the unclaimed Jewish bank accounts. This finding may be interpreted as a clear invitation to the Swiss authorities to act to prevent a possible, if not likely, repetition of the unfortunate scenario that some call "Swiss bashing" with all the damage it does to the nation as a whole.

### 13. Benefits of a proactive attitude in addressing the problem of Nazi-looted art



It is important to point out the constraints and limitations of the present work. The information collected is by no means statistically significant, and is biased in several ways, considering the lack of any sensible survey methodology. Nevertheless, data is always data, and the survey conducted, in spite of its imperfections, provides some initial answers to key questions and establishes interesting trends. It also proves the concept of a survey as a means to collect valuable inputs from various stakeholders.

If I were to summarize the result of this survey taken to the extreme, I would say that it establishes, with its strengths and biases, that:

- A significant majority of the population (70%) is unaware of the existence of the Contact Bureau on Looted Art
- A small portion of the population (12%) is satisfied with the way the problem of looted art is being handled by the Swiss government
- A very small part of the population (5%) believes that the current legal framework for restitution is satisfactory, and a large majority of the population (60%) believes that there is a need to find other solutions
- A small portion of the population (10%) believes that there are only a few similarities between the theme of looted art and unclaimed assets
- A very large majority of the population (84%) believes that Switzerland would benefit from adopting a proactive attitude in solving the problem of looted art.

Therefore, politicians of all parties not only have the green light to take up these issues with confidence (there seems to be grassroots support on the part of the electorate), but everything indicates that the image of Switzerland would clearly benefit from an assertive and reinforced level of proactivity.

## 2.2. Letters

On January 16, 2018, I addressed letters to players whom I thought representative of the art world in order to submit a questionnaire to them, namely:

- The management of Christie's (International) SA in Geneva
- The management of Sotheby's SA in Geneva
- The management of Piquet Hôtel des ventes in Geneva
- The management of the Collection de l'Art brut in Lausanne
- The management of the Swiss Federation of Jewish Communities in Zurich
- The management of the Beyeler Foundation in Riehen
- The management of the BNP Foundation in Geneva
- The management of the Hermitage Foundation in Lausanne
- The management of the Fondation Gandur pour l'art in Geneva
- The management of the Fondation Nestlé pour l'art in Lausanne
- The management of the Fondation Pierre Gianadda in Martigny
- The management of the Stiftung Sammlung E.G. Bührle in Zurich
- The management of ICOM/AMS in Zurich
- The management of the Kunsthaus Zurich in Zurich
- The management of the Kunstmuseum in Berne
- The management of the Kunstmuseum in Basle
- The management of the Kunstmuseum in Lucerne
- The management of the Kunstmuseum in Solothurn
- The management of the Musée cantonal des Beaux-Arts in Lausanne
- The management of the Musée d'art et d'histoire in Fribourg
- The management of the Musée d'art et d'histoire in Geneva
- The management of the Musée d'art et d'histoire in Neuchâtel
- The management of the Musée des Beaux-Arts in La Chaux-de-Fonds



- The management of the Museum Oskar Reinhart in Winterthur
- Madame Isabelle Chassot, director of the Swiss Federal Office of Culture in Berne.

The text of the letter was as follows:

"Madam, Sir,

In 2015, in parallel with my bar practice, I started an Executive Master in Art Market Studies at the University of Zurich. My interest was quickly awakened by the problems of looted art (1933-1945) and restitution, to which I devoted some research and writing, and which is the subject of my Master's thesis.

It is in this context that I am taking the liberty of submitting to you the attached questionnaire, which I would be grateful if you could return to me at your earliest convenience, and if possible by January 31 of this year, for which I thank you in advance. If the electronic version of this letter and/or the answer it calls for are more convenient for you, I can send it/them to you at very short notice. You may also, and without further ado, reply to me by e-mail.

In view of the nature of certain questions, it is of course possible to distinguish between the position of XXX (foundation/institution) and the person of its director. If necessary, please indicate both.

I am of course at your disposal for any further information you may require and, in anticipation of hearing from you, please accept, Madam and Sir, my best regards".

The 3 following responses were received:

- From Dr Jonathan Kreutner, General Secretary of the Swiss Federation of Jewish Communities, on January 26, 2018:

"Unfortunately I could not find somebody who could answer these questions.

I am sorry I could not help you out.

Best regards"

- From Aurélie Couvreur, Curator of the Fondation de l'Hermitage, on February 14, 2018, with her apologies for the delay in answering me, due to the installation of the current exhibition, a completed questionnaire, mentioning that this is her personal position, which "does not necessarily reflect that of the institution".
- From Lara Boillet, administrative assistant at the Fondation Gandur pour l'art, on March 12, 2018, stating that after "careful study of your request, the Fondation Gandur pour l'art cannot respond favorably to your request".

No response from the other 22 recipients of this correspondence has been recorded. Apart from the fact that this lack of reaction is strikingly discourteous, ignoring such correspondence is not dissimilar from the arrogance with which the director of UBS, Robert Studer, on February 26, 1997, referred to the proportion of Jewish funds as "peanuts" as a proportion of the total unclaimed funds within UBS. In the event of a hypothetical crisis, for example triggered by the discovery of looted art in one of the museums questioned, what image would such an attitude of withdrawal and denial give of Switzerland?

On February 21, 2018, the following letter was sent to Erika JAKUBOVITS, Eva ZIRKL's intermediary and contact in connection with the Leopold Museum's restitution of two works by Egon Schiele in 2016:

"Dear Mrs Jakubovits,

My attention has been caught by the story of the 2016 two Schiele artworks restitution to Mrs Zirkl and the very interesting solution found between her and the Leopold Museum.

I passed my bar exam in Switzerland in 1990 and consider myself as a generalist, even if I mostly practice in criminal and family law fields. In 2015, I decided to start a Master in Art Market Studies at the University of Zurich (EMAMS). I am working on my master thesis right now, that will focus about restitution matters in Switzerland and abroad.

I was wondering whether it would be possible for you or a representative of Israelitische Kultusgemeinde to discuss with me the story of Mrs Zirkl long path and the -happy-ending of it according to what I read in the press. The subject is very interesting indeed and I would appreciate to know it more closely in order to usefully complete my thesis.

One of my goals is to show that win/win solutions exist, and that Switzerland really could take advantage in participating in a more proactive way to restitution matters, which from far is not the case yet.

I would of course be ready to come to Vienna (something I like about this Master is the travel part) in order to have this discussion.

I thank you in advance for your reply.

Yours sincerely".

No answer was received.

Between February 2 and August 15, 2018, 5 electronic exchanges took place with Dr. Jörg Schilliger, Head of the Public Relations Department at Dr. August Oetker AG, after the following correspondence was sent:

"Dear Mr Schilliger,

My attention has been caught by the campaign engaged by Dr Oetker in order to return the looted artworks belonging to its collection to their rightful owners.

I passed my bar exam in 1990 and consider myself as a generalist, even if I mostly practice in criminal and family law fields. In 2015, I decided to start a Master in Art Market Studies at the University of Zurich (EMAMS). I am working on my master thesis right now, that will focus about restitution matters in Switzerland and abroad.

I was wondering whether it would be possible for a representative of your company to discuss with me the courageous policy of Dr Oetker in this matter and choose a case of restitution (the Portrait of Adrian Moens by van Dyck? The Frühling im Gebirge by Thoma?) that I could think, work on and talk about in my thesis.

One of my goals is to show that win/win solutions exist, and that Switzerland really could take advantage in participating in a more proactive way to restitution matters.

I would of course be ready to come to Germany (something I like about this Master is the travel part) in order to have this meeting.

I thank you in advance for your reply.

Yours sincerely".

Initially, Dr. August Oetker AG was enthusiastic about the proposed meeting: "We would like to invite you to meet you here at our headquarters in Bielefeld for a discussion about our provenance research project". After sending in the "short sketch about your principal questions", namely the following:

- What were the reasons that prompted Dr OETKER to investigate if any of its artworks may have been looted? Under what circumstances was this important decision made?
- How many artworks had to be examined?
- What approaches, procedures, etc. had to be implemented to make the campaign successful?
- How many restitutions have already occurred?
- What difficulties did your company encounter?
- How did the concerned institutions/state entities/individuals react?
- What did it change for the company?
- Are there any regrets?

Dr August Oetker AG, written by Dr Jörg Schilliger, answered on April 6, 2018, that after a discussion “with my colleagues of our Provenance Research Team and, which is very important, with our lawyers who are permanent members of that team”, the latter reminded me, in all restitution cases, “we have settled up to now, a non-disclosure agreement”, and that subsequently “we can only give you restricted information about our project in the way we already have given to several media”.

Dr Schilliger then proposed to answer the questions “in the same way as we already have answered similar questions of journalists and we can send you our press releases in addition to that. Therefore we think a telephone interview will be the appropriate way, which can be easily arranged and should last no longer than 15-20 minutes considered the restrictions I mentioned above.” (...)

In view of the company’s emergency stop strategy and despite being cited as an example by [www.lootedart.com](http://www.lootedart.com) (Dr. Oetker is Showing the World What to Do With Nazi Looted Art, article dated March 8, 2017 by Isaac Kaplan), the proposal for a telephone meeting supposed to last “no longer than 15-20 minutes” was not accepted.

I am perplexed by the openness, the transparency of intentions, the results posted by the company and the obstacles that suddenly come into play when it comes to taking a closer look at the modus operandi and the individuals involved in such a process.

### 2.3. Interviews

#### *i. La Chaux-de-Fonds*

The case of the painting by John Constable hanging on the walls of the Musée des Beaux-Arts de la Chaux-de-Fonds is striking in more than one way<sup>69</sup>.

On the one hand, because the very legalistic position initially expressed by the city authorities was irrevocable: the statute of limitations had been reached, and

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<sup>69</sup> See above pp. 11 et seq.

there was no question of restoring the work which formed part of a group of paintings to be exhibited in the same place. The principles of the Washington Convention were trampled on.

On the other hand because, faced with legal action and the consequences it was likely to entail in terms of image, finances and energy, conciliation was attempted and succeeded. The parties were reasonable in their actions.

Finally, because if the painting was returned to the rightful owners, there is still a trace of it at the Musée des Beaux-Arts thanks to an original solution devised by its new director, who immediately accepted the principle of a meeting and was welcoming, responding without hesitation.

Interviewed on February 7, 2018, David Lemaire explained that he took up his position at the beginning of the year, and became aware of this sensitive issue when he applied for the position. In addition to the elements mentioned above initially preventing restitution (2009), the Museum had invested heavily in the conservation of the painting, the condition of which had required substantial work. The threat of a lawsuit was, of course, a factor, as was the "small compensation" granted by the CVIS. Moreover, the policies in place have completely changed since 2015, the year in which an unprecedented financial crisis erupted, revealing a CHF 20 million shortfall caused by an elected official from the UDC party. However, the vote by the General Council in September 2017 was unanimous, despite the left/right divide. The city, traditionally on the left, has also always been home to a large Jewish community. Due to the Gurlitt phenomenon, it has become important to be "on the right side of history".

David Lemaire specified that the City will carefully follow the fate of the painting, which was in danger of being sold, like the other works recovered by the heirs of Anna Jaffé. Even if they can "do what they want," it will "be scrutinized".

He points out that it is the former curator of the Musée des Beaux-Arts, Edmond Charriere, who in 2007 published his doubts about the "clarity" of the provenance of the painting, especially after examining the back. It is thanks to this instinct that the beneficiaries were alerted.

He added that he had the idea to call upon a French artist, Philippe Gronon, one of whose approaches is to photograph the backs of paintings. It is his work that will be exhibited in the place of the Constable, "acknowledging the fact that it has become invisible", and witnessing its stamps, its scars, its history of spoliation, and the care taken to preserve it.

Finally, David Lemaire pointed out that, within the museum, the question of provenance research is not a priority. It requires energy and resources that museums cannot necessarily provide. There are museums which would like to do more but are already terribly busy with their mission of "preserving, conserving and transmitting", which is quite different from the rules governing the art market.

*ii. Corinne Hershkovitch*

Corinne Hershkovitch has been a lawyer at the Paris Bar and a specialist in intellectual property for some thirty years, working alongside clients, the vast majority of whom entrust her with mandates for restitution of property spoliated during the period of 1933-1945. In 1999, the Louvre was ordered to return five paintings belonging to the heirs of Federico Gentili di Giuseppe on the basis of a post-war restitution order which was discovered by delving into the official journals of the time. She reacted immediately when I wrote to her about my work and desire to meet her, and warmly welcomed me at her Paris office on May 3, 2018.

Corinne Hershkovitch speaks from experience, and of the French position from the inside in terms of the restitution of looted art during this period. The following transcription is intended to be as faithful a rendition as possible of her remarks on this occasion:

"So I can talk to you about how things have evolved in France. Because it has evolved a lot, a lot, a lot. It took an exceedingly long time. I was, and I still am, persona non grata at the Ministry of Culture...

(...)

I had the worst time. So I started working on this file in 1995. In 1996, the Director of the Musées de France at the time, whose name was Françoise Cachin and who sensed things were coming, organized a colloquium to praise what France

had achieved during the war and at the time of the restitutions, and hid everything that had been done wrong. So that was the impetus for the management of the Musées de France, called at the time the Service des Musées de France, that was the impetus: we don't get involved in this game of restitution. So I was trapped, but... incredibly, and it lasted an awfully long time. I had some success anyway, because following this decision by the Court of Paris, I was entrusted with a lot of files. And then there was still the establishment of the Matteoli Commission which was allocated the task of making an inventory of what had been taken from the Jews, what could be returned, etc. And following that, a commission for the compensation of victims of spoliations was set up, so I was the first to go with claimants to defend cases, and I had a lot, because over the last 20 years, I've been in charge of claims very, very often, so I've followed all this very closely as well.

And then came my battle, it really was a battle, against the Service des Musées de France, which became the Direction des Musées de France, that lasted an exceptionally long time and is not quite over. But the real breakthrough came when Aurélie Filipetti, Minister of Culture between 2012 and 2014 or thereabouts, made a restitution in 2013. I was there because I had a client who was having a file restituted, and she gave a speech that completely broke away from the government's previous position. And she said, in a very, very moving way (you can find the speech on the website of the Ministry of Culture), it's no longer possible, we have to work on these restitutions. We have to be proactive, and up to now the position of the Musées de France was to say, "we are waiting for the requests and we are doing everything we can not to make restitution", and all of a sudden, she goes off in the other direction; she says that we have to "go get the files, find the heirs, and we have to make the restitutions."

(...)

Finally there are two milestones. There's Jacques Chirac's speech at the Vel d'Hiv in 1995, saying "France has an imprescriptible debt," and that was a complete change because until then the lid had been kept on tight. And then, the second one, the speech by Aurélie Filipetti, who said "we have to be proactive".

But in this field of the restitution of cultural property, we are left with the tree that hides the forest that is the MNR. That is to say, France has never applied the Washington Principles of the 1998 Washington Conference which France signed, insofar as it has not searched in its national collections for the provenance of works between dating from between 1933 and 1945. And yet verification operations began in 1998, at the same time as the conference. There were no guidelines on provenance research between 1933 and 1945. So here we are.

So from 2013, things started to move forward; Fleur Pellerin, who succeeded Aurélie Filipetti, went in the same direction, Audrey Azoulay even more so, and in the end... she stayed barely 8 months... she realized a little late the importance of the question. I met her, and there were a few of us who tried to alert her to this issue. And before leaving, she appointed her chief of staff, Director of Heritage, whatever, one of her advisers to write a report on this whole issue; he is called David Zivi. He worked for a year, putting together a really fantastic report, really making an inventory of all the problems, all the questions, the attitudes of some, the attitudes of others, how we should solve all this. And the report was delivered to the Minister last March. And at the same time, we also set up an informal group under the aegis of Bénédicte Savoy who is a Professor at the Collège de France; we sent a letter to the President, we are really trying to move things forward on a few focal issues which are first and foremost the search for provenance and training".

Asked about what should be done at a national level to speed up restitution processes and procedures, the lawyer responded that the establishment of provenance research as an academic field is very important, as it allows for "recognition of what we who point fingers have done before. (...) It is necessary to push, to promote this discipline so that students go into this field. (...) For the objects looted during the Second World War, there are archives, which are especially important, increasingly digitized databases, and we have to make an inventory of them. That's the methodology of provenance research, you have to work on it, you have to make it a field of study, you have to teach it, and that's how you'll come up with something. (...) So we don't really need a legal arsenal. Soft law is enough. We have the UNESCO Convention, which is very comprehensive. It's called the fight against illicit trafficking, but actually it's very comprehensive in terms of the



protection of heritage, on the possibility of relocating property. And then there is soft law, which does its job, but for that we need to set up a search for provenance. For me, this is really the main focus today.”

As for the international level, it would benefit, in her view, from a "supra-European Institute, a kind of scientific council for propagating good practice. This would be extremely useful. So for the moment I am genuinely concerned about France, but in the long term I think it would be extremely useful to have a scientific council that really helps good practice in this area. She added that she is "very much in favor of a memorial approach. That is to say, to really be part of a search for what was originally done, the way things circulated afterwards, the tracing of the work. There was an extremely interesting time which has not been studied much, the post-war period. All these works which circulated everywhere, what happened at the time when many European countries fell into the Soviet camp? That was an extremely interesting period, so it should be studied. That's why a supra-European institute could help share archives, share knowledge.”

Thus, Corinne Hershkovitch fervently calls for the existence of a "multi-stage mechanism: researchers must be trained using a well-proven methodology, and beyond that, there must be a council of the wise who know how to see with very different fields, with slightly different viewpoints, with real experience. That's how we'll get results. And then, provide the necessary funds, because it's urgent. The traces can disappear, it happens very quickly.”

### *iii. Report by David Zivie of February 2018*

Born in 1976, David Zivie followed a classic career path in the civil service after graduating from the Institut d'Etudes Politiques de Paris in 2000 and from ENA in 2004.

In May 2017, the French Minister of Culture and Communication entrusted him with a "mission on the handling of cultural property looted during the Second World War, on the organization put in place to find the owners of stolen works and their beneficiaries, and on the action aimed at museums that house (...) MNRs and public libraries that preserve looted works". He submitted a 147-page

report in February 2018, which was published on July 26, 2018 on the French Ministry of Culture's website.

The author takes a more indulgent look than Corinne Hershkovitch at the concrete action taken by the French government, especially since 2013. He lists the progress made since 1995, noting in particular the "real awareness that has taken place with regard to MNR works", an increased number of restitutions, and "some of the resources that have been devoted to research and the identification of looted owners and their heirs. He emphasizes that, for several years now, searches can be undertaken directly by government services which then become proactive and no longer solely by the victims of spoliations which he describes as a "major turning point in the restitution process".

David Zivie notes progress in training which takes the form of seminars given in specialized schools attended by "young professionals" who "approach this question with a new interest, in a dispassionate way, without hesitating to look at past events, and anxious to make progress in research and knowledge about the provenance of works".

In terms of the difficulties encountered, it is noted that, despite 111 restitutions of MNR since 1951, there are still 2050 works whose "owners have not been identified or which have not yet been restituted once their owners have been identified."

The ministerial instructions have not been complied with: the photographic documentation of the works has not been completed more than two years after orders to do so were issued, they are not presented to the public as required in the instructions, partially presented online. The French presence on the international scene is judged to be "weak".

The report also notes that the broader field of works created before 1933 or before 1945 and acquired as early as 1933 "does not seem" to be the subject of any research, whereas it could be "concomitantly with certain work on MNR". And a climate of mistrust, marked by tension, reigns between the State and the various players involved. The cumbersome nature of the research, the delays, the lack of responsiveness, organization and resources form the basis for the rational part of the criticisms thus formulated.

The author arrives at a series of proposals, including in particular:

- Providing the CIVS with an additional mission to "steer" research on looted works, accompanied by a "council of experts" from different backgrounds, with a self-referral function
- Provenance research and other actions related to books and artworks should be coordinated
- Ties with the art market should be strengthened
- Accelerating the search for MNR works and launching provenance searches on non-MNR works in public collections
- Recruitment of researchers from abroad as temporary reinforcements
- The organization of a new exhibition in a symbolic place
- The organization of an international colloquium on the 20th anniversary of the Washington Conference
- The promotion of real training in provenance research.

In conclusion, David Zivie regrets the climate "always tinged with mistrust" surrounding this issue. "The State, and the national museums in particular, are "paying" for 40 years of inaction. This is why the current action is insufficient, because of its lack of coordination, direction and visibility. (...) Beyond that, what is still missing, despite good will, is proof of the empathy of State services and museums. (...) Research must be neutral and precise, but the requests of families must be received sympathetically, and the good faith of the applicants must be assumed. (...) The political will and means are necessary in order to improve management, gather strength, and show that the State is acting. The memory of the spoliation of cultural property cannot become the main focus of remembrance of the Second World War; but the moral obligation towards the spoliated families is real, especially since the spoliation of cultural property was one of the elements of the Nazis' persecution of the Jews."

David Zivie concluded by noting that the treatment reserved for this question could serve as a model for "claim and restitution files that deal with other geographies, other chronologies, but which concern French museums, and which are opening up today. And that while the work that still needs to be done is "hard", its

accomplishment has never been so facilitated by more archives, digitization, scientific expertise, and the expanded field of research" (pages 95 and 96).

On January 3, 2019, while the French Ministry of Culture's website displayed a section on the front page entitled "Culture: what to remember about the year 2018," none of the subjects mentioned here concern the Zivie Report, never mind one of the subjects it evokes.

On the other hand, by decree of April 16, 2019, a mission headed by David Zivie was set up. It is responsible for "research that will make it possible to identify the stolen goods in public collections and to raise public awareness of the issue of restitution of spoliations committed as a result of anti-Semitic legislation. It will also work in conjunction with the Commission for the Compensation of Victims of Spoliation (CIVS), facilitating the search for legitimate owners. To carry out these tasks, a team of five people and a budget of €200,000 have been allocated to David Zivie."<sup>70</sup>.

The CIVS also benefited from the February 2018 report since its membership was increased by "four people qualified in the fields of art history, the art market, the history of the Second World War and heritage law" and that it "will make recommendations to the Prime Minister, who is solely competent to rule on all restitutions, after investigation of the claims by the Mission for the Search and Restitution of Looted Cultural Property.

For greater efficiency, the CIVS will be able to act on its own or receive applications from the victims and their heirs, by any person concerned or by the Ministry of Culture. It will also examine all property restitution files kept by public institutions. Finally, the phase of examining the files will be carried out by the new mission and will be distinct from the phase of recommendations made by the CIVS to the Prime Minister, who is the sole decision-maker."<sup>71</sup>.

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<sup>70</sup> HAMMACHE 2019, <https://www.lejournaldesarts.fr/actualites/la-mission-de-recherche-et-de-restitution-des-biens-culturels-spolies-est-officiellement> (last accessed on 01.09.2020).

<sup>71</sup> MARCILHAC 2019, <https://www.lejournaldesarts.fr/actualites/une-nouvelle-instance-pour-les-victimes-de-spoliation-144131> (last accessed on 01.09.2020).

iv. *"20 Years Washington Principles: Roadmap for the Future", Conference in Berlin, November 26-28, 2018, hosted by the German Lost Art Foundation.*

Wishing to attend this "situation report" and to gauge feelings, I registered for this free conference in Berlin.

First observation: no Swiss government official was featured on the speakers' program. No representative of the Swiss government took part in the discussion panels/workshops over these three days. However, there was a separate panel discussion on November 26 at 3.10 p.m. on the theme of "1998 to 2018 - National Developments", in which representatives from the Netherlands, Great Britain, Austria, the USA, Germany and France spoke. Only Ellinor Landmann, a journalist at RTS, with whom I had had a brief exchange of e-mails<sup>72</sup>, spoke on November 27, 2018, from 4.35 to 4.55 p.m., in order to provide the "Conclusions of an Observer".

Second observation: Switzerland's reputation only took a minor blow from Ronald Lauder (this time), who recalled the role played by Galerie Fischer, the CHF 2 million allocated by the Swiss government more than two years ago for provenance research, and urged private art dealers to open up their archives. Stuart Eizenstat noted, still just about Switzerland, that by opening its private museums and archives, it could make an enormous contribution to the advancement of restitution.

This call for access to the archives of private museums, art dealers and collectors has been underlined on several occasions, and is one of the central points of the "roadmap for the future", with all museum collections being put online, "more detailed" provenance search, "contact points" within the museums in order to help rights holders and the online publication of the decisions of the "panels" set up by the signatory countries to the Washington Principles (at this stage only five of them have respected this commitment and set up specific bodies: Austria, France, Germany, the Netherlands and Great Britain).

Third observation: through its Director, Isabelle Chassot, the FOC did not answer my question of January 3, 2019 as to why there was no official representative of

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<sup>72</sup> Appendix 1, p. 67.

the Confederation among the speakers, nor among the public invited to ask questions or make comments. In a letter dated January 22, 2019, she answered that "our country took part in this conference organized by the German authorities. The Confederation was represented by several people: the Swiss Ambassador in Berlin, Paul Seger, and the Head of the Museums and Collections Section, Benno Widmer, accompanied by colleagues from the Swiss Embassy and the Contact Bureau on Looted Art at the Federal Office of Culture." No doubt. But they remained silent.

Fourth observation: the German Lost Art Foundation, organizer of the event, did not answer my letter of January 3, 2019<sup>73</sup> asking how Switzerland was represented at this Conference and my surprise noting that there was no Swiss speaker on the program.

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<sup>73</sup> Appendix 3, p. 70.

#### IV. Actors of change

The table below lists the main stakeholders that can be considered as the ultimate recipients of the opinions and wishes expressed by respondents of a survey, such as the one conducted here. In essence, these stakeholders are in the position to initiate, carry out or support the work towards finding a global solution to the problem of Nazi-looted art restitution or compensation. In each case, their contributions and associated incentives, benefits and obstacles are also summarized.

Actor	Incentive/benefit	Obstacle/reservation
Museums	<p><b>Formal:</b> Compliance with the Washington Convention (provenance research, just and fair solution).</p> <p><b>Moral:</b> The presence of an artwork in a museum should not be controversial. It must have the right to be in a museum. Right implies much more than legality.</p> <p><b>Practical:</b> Opportunity for better communication with benefactors.</p> <p>Message to the public: art as a force for the greater good (cleanliness, clarity, unquestionable ethics, highest moral standards).</p>	<p>Mobilizing resources for provenance research. Opening a potential Pandora's box. Admission of guilt (failure to do right). Self-inflicted short-term public relations damage Endorsement of responsibility by the director (a museum director is not supposed to rewrite the history of his/her museum, employee sense of loyalty).</p>
Art Galleries (including those with a shady past,	<p>Business sustainability. Reputation. Differentiation relative to competition.</p>	<p>Loss of a certain clientele. Diminished profits. Lack of time.</p>

e.g. The Fischer Gallery in Lucerne)		
Art collectors	Satisfaction in case of a win-win scenario. Relief of consciousness. Positive publicity.	Wrongful family allegiance (inheritance cases). Financial loss. Admission of guilt (especially in the context of a family history). Loss of an emotional tie to a cherished artwork.
Art Foundations	Promotion of superior ethical and moral values inherent to art. Better communication with donors.	Confidentiality/privacy of collections. Opening a potential Pandora's box. Admission of guilt (failure to do right). Self-inflicted short-term PR damage.
NGOs	Promotion of superior ethical and moral values inherent to art. Historical research (cultural heritage). Education. Innovation (launch of new projects).	Lack of resources. Lack of knowledge.
Politicians	Promotion of ethics and humanistic values (applies to elected officials). Leadership. Improved international relations. Prevention of conflicts. Prevention of future crimes. Prevention of future acts of looting (fighting a sense of impunity).	Risk aversion. Fear of controversy (lack of consensus). Opening a potential Pandora's box. Lack of courage.
Jewish cultural organizations	Pursuit of justice / reparation of crimes.	Excessive polarization of the issue (backlash due to "Swiss bashing" and other "nation bashing").
Provenance researchers/ looted art hunters	Revenue. Publicity.	Poor perception by public (suspicion of greed). Bias.



Media	Scoop. Investigative journalism. Promotion of superior ethical and moral values (the Fourth Estate).	Audience fatigue (Swiss bashing). Lack of knowledge about the subject.
Free ports	Improving the image (respectability). Anticipating possible changes in regulations (increased transparency).	Loss of a certain clientele. Increased transparency. Change in operational rules.
Federal Office of culture/ Contact Bureau on Looted Art	Mandate to implement the Washington Convention. Accountability.	Bureaucratization. Organizational culture promoting consensual thinking.
Educational Institutions and historians	Opportunity to carry out academic research. Impartiality. Scientific methodology. Reaching specific audiences with differentiated messages.	Limited capacity to reach the general public.

## V. Vectors of change

The table below shows the principal means that could be employed to help find a global solution to the problem of Nazi-looted art restitution or compensation. The list does not claim to be exhaustive. Nevertheless, considering the current apparent lack of any progress, even partial implementation of any of the proposed modalities is expected to have an immediate and noticeable impact. The change in law would of course be a strong vector of change as it is a clear and definitive framework to address the issue added to well established processes (e.g. law followed by jurisprudence). But it also requires extremely strong political will of multiple actors, challenges a variety of stakeholders and is very slow to create and implement. It will therefore not be added to the list of these 10 vectors of change.

Vector/process/event	Incentives/benefits/strong points	Obstacles/reservations/weak points
International Conferences	<p>Addresses all aspects of the issue. Broad audience. Promotes Switzerland as the traditional "good offices" provider. Promotes Switzerland at all other levels. Reinforces existing partnerships. Creates new partnership opportunities. Allows formal and informal interactions. Stakeholders can finance all organizational aspects. May prevent the "Swiss bashing syndrome".</p>	<p>Requires important human resources. Mobilizing large stakeholders. Important time commitment. Requires strong political will.</p>
National Conferences	<p>In comparison with an international conference:</p> <ul style="list-style-type: none"> <li>• Easier to organize</li> <li>• Lower risk of controversial debates ("Swiss bashing")</li> <li>• Less resistance from potentially reluctant stakeholders</li> </ul>	<p>Requires important human resources. Mobilizing large stakeholders. Important time commitment. Requires strong political will.</p>

<p><b>Adoption of third-party good practices</b></p>	<p>Implementation of existing schemes. Improvement of existing schemes (benefitting from third party experience). Evidence-based approach. Opportunity for partnership with existing practitioners. A good response to the "Swiss bashing syndrome". Predictability of costs. Contributes to the adoption of existing schemes by others (snowball effect).</p>	<p>Potential failure to take into account the specificities of the "Swiss case".</p>
<p><b>Special exhibitions focusing on restituted art</b></p>	<p>Creative approach to the issue. Positive focus (success, esthetics). Promotes museums, art exhibitors, artists, sponsors and all other supporters as positive actors in addressing the issue. Interconnects all stakeholders with the general public. Promotes museum attendance. Easy to communicate on national and international levels. Easy budgeting (as a "regular" exhibit). Unlimited geographical coverage.</p>	<p>Availability of human resources. Requires strong leadership.</p>
<p><b>Educational programs</b></p>	<p>May reach different audiences with differentiated messages. Potential for long-term positive outcomes. Opportunity for continuing education of teachers and other educators.</p>	<p>Availability of human resources. Cost. Political will. May be slow to implement.</p>
<p><b>Media coverage</b></p>	<p>Potentially universal outreach. Strong impact. Editorial independence.</p>	<p>Risk of "Swiss bashing syndrome". Strong negative impact in case of low-quality media coverage. Fear of exposure.</p>
<p><b>Internet/social media</b></p>	<p>Low cost. Potentially universal outreach.</p>	<p>"Swiss bashing syndrome".</p>

	<p>Strong impact. Positive perception (grassroots initiatives).</p>	<p>Strong negative impact in case of low-quality content. Absence of any quality control.</p>
<p>Museum certification (looted art-free label)</p>	<p>Simplicity. Clear statement/positioning from museums and art galleries. Potential for quick adoption (snowball effect). May be perceived as definitive answer to the issue (dolphin-safe label on tuna fish cans). Simple implementation of the Washington convention. A highly structured approach. Easy to communicate. Costs can be borne by the beneficiaries. Exportable, potentially world-wide.</p>	<p>Availability of human resources. Costs (permanent budgets). Organizational challenges (guarantee of independence of the new structure). Difficult to communicate to the general public.</p>
<p>Creation of new museum departments</p>	<p>Assurance of quality processes in addressing the issue. Incentive for research. Long-term positive impact. May create a new standard for museology. Generic: applies to all issues (time, geography) that pertain to questionable provenance.</p>	<p>Requires political will and strength of conviction.</p>
<p>College of experts in an advisory capacity with the possibility of self-referral</p>	<p>Corresponding to the image of Switzerland: strong because consensus-based. Credibility. Online publication of the work, results obtained, with living accounts. Continue the financial effort in terms of provisions for researchers from abroad. Probably modest costs (indemnities).</p>	

## VI. Discussion

The purpose of this Master's thesis is not to castigate the supposed inaction of Switzerland, to look for culprits, to put them in the dock. It is, once the problem of administrative, bureaucratic and political sluggishness has been identified, primarily to **find solutions to benefit the rightful claimants in terms of restitution and Switzerland.**

The passage of time since the period in question, amounting to three generations, allows us to approach these questions from a more relaxed angle, with hindsight but not without emotion. Guilt for some, anger and sadness for others, but all history. Although they left a deep impression on the descendants of those involved in the Second World War, they were not the primary victims. Alongside the responsible and diligent States which are continuing their efforts to repair the severe injustices committed between 1933 and 1945 with regard to looted art as best they can, they too can find win/win solutions.

The actors of change and vectors of change chapters allow us to sketch out the first outlines of multifaceted solutions. Numerous players can play a proactive role, at their own level or more globally, in the search for and implementation of solutions to the problem of looted art. It seems important to promote coordinated actions on a collaborative basis. The consensus enabling action should emanate from one of them or from a neutral entity, such as a college of experts, which would take the lead in directing operations.

There are also many vectors of change. Organizing international and national conferences requires large budgets and a strong political will. This is perhaps where the problem lies. Change always requires an impetus and the overcoming of fears. Today, the Federal Office of Culture is part of the Federal Department of Home Affairs, headed by Federal Councillor Alain Berset. If the impulse has to come "from above", has he been sufficiently made aware of the cause to shake things up?

Exhibitions dedicated to looted art and the "Looted Art-free" label are approaches likely to reach a wide range of museum-goers. Here too, the willingness of the various players is essential, combined with the necessary creativity.

As far as the educational aspect is concerned, no Swiss university seems to offer specific teaching on provenance research and on the issue of restitution at a Bachelor's or Master's level. Perhaps this is dealt with in the context of a more general degree course. The creation of a specialized course in provenance research, or at least a course devoted to this subject alone, should be taken seriously and would be a beneficial investment in the long term: today's art history students will be tomorrow's curators. The idea is to awaken their interest and make them aware of the theme of restitution. In this way, things will be able to move forward under the impetus of informed, enlightened, well-trained and, hopefully, passionate people.

It would be interesting for Switzerland to enact a kind of ethical charter of transparency applicable to museums and art galleries and to create a database, following the example of the German public database (Lost Art), grouping together all the works preserved in Switzerland in order to make them visible to the general public. This database would allow the heirs of looted owners to claim ownership of the works of art, if need be.

There is an urgent need for Swiss state institutions and museums to fully grasp the issue of looted art and its restitution. Some initiatives seem to be emerging at a national level, such as the allocation of special funds to the research of provenance and the publication of results in the field of art looted during the National Socialist era. It would have been interesting to know the number of requests for financial aid made in order to determine whether the trend of requests is increasing or decreasing. Unfortunately, such statistics are not available to the public.

It is time to put an end to the consequences of the Nazi regime's actions and to show courage, humanity and honesty. Switzerland has the means to commit more resources and energy to promoting art restitution. And there is everything to gain by increasing visibility. Switzerland will only come out of this stronger.

Moreover, it should be noted that the lack of state action and political will in the area of provenance research and the restitution of looted art has allowed private entities to take over the restitution market which is proving to be particularly lucrative. For example, Art Recovery International (ARI) is a company active in England, the USA, France, Germany, Austria and Switzerland. This private company offers rights holders the possibility to register their claims in order to "make it clear to the art world that they need

to recognise or resolve your title claim before the object can be bought or sold in the marketplace.”<sup>74</sup> ARI offers a provenance search service and provides negotiating support and legal advice during the claim phase. The entire restitution process is therefore covered for a fee. Public inaction leaves the field open to private companies whose primary purpose is profit-making, whatever one may say. In doing so, the restitution of a spoliated work of art complies with the rules of the market and no longer solely with the logic of fair compensation for the damage suffered by Jews spoliated during the Nazi regime.

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<sup>74</sup> Art Recovery International (ARI) official website: <https://www.artrecovery.com/services>.

## VII. Limits and biases

One of the main limitations encountered during the writing of this Master's thesis is the lack of involvement, interest, willingness and/or time of the players involved. The absence of responses to the letters reflects the indisposition of those solicited to discuss the looted art and its restitution. Could it be called a code of silence?

The search for provenance and the restitution of looted art are areas that, on the one hand, raise moral questions that awaken painful memories and, on the other hand, very often hide important financial stakes for both the museums which hold the art and the beneficiaries.

As for the biases of the present work, they reside mainly in the methodology and the choice of people to whom the survey was sent. Indeed, the survey was sent to people with, for the most part, an above-average level of interest in art and a high level of education. Thus, their perception, sensitivity and knowledge of looted art and its restitution are somewhat biased. To alleviate this problem and to go further in the analysis, it would be interesting to conduct a larger-scale survey likely to reach all categories of the population in order to obtain more nuanced and representative results.



## VIII. Conclusion

The case of the unclaimed Jewish World War II Swiss bank accounts that remained dormant for some 50 years made international headlines some twenty years ago. The price to pay to “fix” the problem was more than money: its consequences are still felt today.

The problem of Nazi-looted art restitution/compensation in Switzerland presents some similarities to that of the Holocaust victims’ dormant bank accounts. It does not matter whether such similarities are grounded in reality or mere perceptions; both can do a lot of harm. The collective memory, recall and suspicion mechanisms are the same.

The inheritance of the Gurlitt art collection by the Bern Museum of Fine Arts and its impact on public opinion illustrates well the persistent nature of a rather old problem. All of a sudden, events that took place between 1933 and 1945 once again put Switzerland at the center of an unsolved issue.

The survey conducted in this work, in spite of its imperfections, suggests that a sizeable proportion of the Swiss population does care about the crimes committed up to 87 years ago. A stronger commitment to repair these crimes is clearly expected and is overdue. This expectation may be explained by the finding that the majority of the public seems to ignore the very existence of the Federal Contact Bureau on Looted Art. At the same time, would a better-informed public not demand a comprehensive solution to the problem? Would the action carried out by the Swiss authorities not be judged more harshly?

There appears to be a large degree of freedom with which the authorities may act. Indeed, the legal constraints, namely the statute of limitations, seem to have little importance in the eyes of the survey respondents. Equally important is the finding that the majority believes that Switzerland’s image would be positively impacted by energetic action and a proactive approach.

The status quo carries a non-negligible risk of seeing Switzerland at the heart of another scandal linked to World War II crimes. The time is right to repair the injustices inflicted on the rightful owners of art and the means to achieve justice are many and varied. To clear “the unfinished business of World War II”, as Stuart Eizenstat calls it.

By so doing, Switzerland will show the world that it has learned the lessons of the past and can become a positive reference in the fight against art looting.

Where there is a will there is a way.

## Appendixes

### Appendix 1: Exchange of emails with Ms. Ellinor Landmann

#### Email of January 4, 2019

“Dear Mrs Landmann,

I started an Executive Master in Art Market Studies at Zurich University and hope to finish my master thesis at the beginning of this year. The subject is related to looted art during 1933-1945 period and the actual position of Switzerland, suggesting a few steps that could be taken to improve restitution process.

I unfortunately had my plane to catch in Berlin, on November 27 at the end of the afternoon, and regret very much not to have been able to listen to your presentation. Do you by chance have it by written, or do you have some slides? I would very much appreciate to know the essentials of it, especially given the fact that Switzerland was clearly underrepresented.

I thank you in advance for your answer.

Best regards”.

#### Answer of January 4, 2019

“Dear Ms. Loroch

In my presentation I did not talk about the Swiss situation regarding looted art. My goal was to summarize the conference and talk about the omissions. Best regards Ellinor Landmann”.

## Appendix 2: Exchange of emails with Ms. Isabelle Chassot

### Email of January 3, 2019

"Madam Director,

At the same time as my practice as a lawyer at the Vaud Bar, I am continuing my work on a Master's thesis on the subject of the restitution of art looted during the period 1933-1945.

It is in this capacity that I attended the conference entitled "20 Years Washington Principles: Roadmap for the Future organized in Berlin on November 26 and 27

There were no official representatives of the Confederation among the speakers. Nor did I detect any among the audience who were called upon to ask questions or make comments.

I would be grateful if you could tell me the reasons for this absence, given the importance of this anniversary and the subject it concerns.

I look forward to hearing from you in the near future, Madam Director.

Kind regards."

### Answer of January 22, 2019

"Madam,

Thank you for your letters of January 3, 2019 to Mr. Widmer and myself regarding Switzerland's participation in the specialized conference on "20 Years Washington Principles: Roadmap for the Future".

Our country took part in this conference organized by the German authorities. The Swiss Confederation was represented by the Swiss Ambassador in Berlin, Paul Seger, and the Head of the Museums and Collections Section, Benno Widmer, accompanied by colleagues from the Swiss Embassy and the Contact Bureau on Looted Art of the Federal Office of Culture.

As for your Master's thesis, I invite you to consult, if you have not already done so, the "DFI/DFAE report on the state of the Confederation's work on looted art from 2011 to

2016 during the period of National Socialism" (cf. Appendix 1) and the document on "Chronology of the work of the Confederation for the period 1945 to 2016 on the problem of looted art during the period of National Socialism" (cf. Appendix 2), as well as the website [www.bak.admin.ch/rk](http://www.bak.admin.ch/rk), where you will find further up-to-date information.

Wishing you success in writing your Master's thesis. Kind regards".

### Appendix 3: Email sent to The German Lost Art Foundation

Email of January 3, 2019

"Dear Madam, dear Sir,

Let me first thank you for organising the Conference that took place on November 26-28 in Berlin. I found a great interest in it and was happy to be able to attend.

As a Swiss citizen concerned by the subject of restitution, I would like to know how Switzerland was represented during the Conference; I was quite surprised to see that no official speaker was on the program.

Did I miss something?

Thank you in advance for your answer.

Yours sincerely"