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Guarding its loot

By Allan Gerson

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The exhibition "From Russia" is currently drawing excited crowds at London's Royal Academy of Arts Museum with its show of major Impressionist and other masterworks that until now have been held by Russia in secret.

They were allowed to be shown only after Britain acceded to a very unusual condition: that Parliament enact special legislation providing complete immunity to Russia from individuals who might claim lawful ownership.

Thus, assuming an individual succeeded in the arduous steps of meeting the burden of proof that the paintings in question are in fact private property unlawfully taken by a Russian regime, he or she would then come against the insurmountable hurdle of an official bar to prosecuting the claim. Not surprisingly, the new British legislation has drawn a storm of criticism.

Why would Russia go to such extraordinary lengths to protect itself?

First, the art exhibited relates to a 1918 decree relative to works of art confiscated by the Bolsheviks in the Russian Revolution of 1917. So any claim would not turn on recent successes of claims related to art seized during World War II. Second, it is no easy matter to achieve a judgment against a foreign government based on a demonstrable showing of superior title.

Nevertheless, Russia decided to take no chances. It knows that a lot more is at stake than the current exhibition.

What is at stake is approximately 10 to 15 percent of the world's great art treasures that were well catalogued in 1939, but disappeared from sight at the conclusion of World War II.

That was the subject of a recent conference at the Harvard Law School, "Spoils of War vs. Cultural Heritage: The Russian Cultural Property Law in Historical Context." Experts who attended agree that Russia is hiding works valued at \$10 billion to \$15 billion, perhaps even more, and that they have been doing so since the end of World War II, when trainloads of looted works (what the Russians refer to as "trophy art") arrived from all areas occupied by the Red Army east of the Oder River, including Hungary, Romania, Czechoslovakia, Poland, eastern Austria and Germany.

Long before the outbreak of the war, Adolf Hitler had planned vast underground storage facilities for artworks to be systematically looted from all the great European museums, as well as private collections. Hitler had planned to plunder all collections in Europe East, Center and West, and as far North as Norway (the Oslo Museum never got its 860 paintings back). What Hitler began, Stalin finished as Russia - not Germany - became the terminal point of Europe's looted art.

Some art treasures also made their way to the United States - the U.S. Army sent back 202 works of art from the Kaiser Friedrich Museum. That was enough to cause a groundswell of criticism, leading to the return of the paintings in 1948.

Of course, some GIs also took "trophies," including some very valuable items, such as the manuscripts taken from a church in Quedlinburg, Germany. But this was in contravention of U.S. policy, not in furtherance of it, and as far as is known, the 202 paintings were the only officially sanctioned transfer from the U.S. Zone of Occupation in Germany. France and Britain, the other occupying powers, did likewise with regard to much smaller amounts. By contrast, Russia never returned its vast quantities of twice-looted Nazi art.

Instead, the Soviet Union for years refused to acknowledge that it even had these treasures. A little over 10 years ago this was made public when Konstantin Akinsha, a distinguished Ukrainian art historian, and Grigory Kozlov, a former curator at the Pushkin Museum, disclosed the plunder during and following World War II of millions of artworks.

The Soviets showed some of this looted work publicly in 1991, then quickly put it back in hiding. They have never provided an inventory to the world, seemingly intent on holding in hiding their "trophy art" for another 60 or more years.

Some works, as the recent British experience shows, are allowed to trickle out for exhibition purposes, but only under the strictest conditions protecting them from any claims by lawful owners. A few cultural properties have been returned to Germany, most significantly the return in the 1950s of valued art to East Germany's Dresden Museum.

However, unlike other European nations that have passed laws committing themselves to determine rightful ownership and act accordingly, the Russians passed a law in 1998 that legalized the illegal seizure and provided that art works taken from Germany were "war trophies" not subject to restitution. The justification was that these works constitute "restitution-in-kind."

Yet international law has prohibited the plunder of cultural property since 1907. In any event, where restitution is appropriate it must be done by means of bilateral or multilateral agreement, not unilateral action.

But even assuming that Russia has a valid claim for restitution-in-kind on the grounds that what it possesses offsets the plunder of the Soviet Union by the Nazis during World War II, this argument cannot justify retention of private property.

The 1998 Russian law draws an exception for private property of victims of the Holocaust and those whose property was taken as part of the Nazi persecutions based on race, religion, or ethnic identity. But there have been no claims by Holocaust survivors or their families for the simple reason that Russia has not come forth with an accounting of what it possesses.

Moreover, beyond victims of the Holocaust, there is no justification - and the international law community is unanimous on this point - for confiscation of any privately held art property. Its continued retention is simply unlawful. Actions by museums that profit from exhibiting these works and countries that accept such exhibitions are complicit in enabling Russia to hold on to stolen art.

Surely it is not in Russia's long-term interests to face ostracism as an international outlaw in holding on to such property. Russia may make a shameless deal with Britain to enable both countries to profit from exhibitions, but this pattern of conduct is not sustainable for long.

As the Harvard Law School conference makes clear, Russia's retention of the world's art treasures will be subject to continuing demands for a full accounting and, where appropriate, restitution or compensation (at least in part) to rightful owners.

Everyone, including Russia, stands to gain by a public disclosure of the treasures Russia holds in its hidden repositories. Surely an accommodation can then be reached whereby Russia is credited for allowing the world and its own citizens to view these treasures, while at the same time permitting some equitable arrangement with the rightful owners.

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