No. 14-545

In the Supreme Court of the United States

NORTON SIMON MUSEUM OF ART AT PASADENA AND NORTON SIMON ART FOUNDATION,
Petitioners,

v.

MAREI VON SAHER,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

RONALD L. OLSON
LUIS LI
FRED A. ROWLEY, JR.
ERIC P. TUTTLE
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071
(213) 683-9100
fred.rowley@mto.com

GREGORY G. GARRE
Counsel of Record
MAUREEN E. MAHONEY
NICOLE RIES FOX
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2207
gregory.garre@lw.com

Counsel for Petitioners

TABLE OF CONTENTS

ADDENDUM

TABLE OF AUTHORITIES

Page(s)

CASES

INTRODUCTION

The respect owed by the courts to the Executive's foreign policy statements not only is a matter of the utmost importance, but is central to the proper functioning of the separation of powers. In this case, a divided panel of the Ninth Circuit went to extraordinary lengths to scrutinize and reject the Executive's statement of U.S. foreign policy bearing directly on this dispute. Pet. 19-28. If there were any doubt about the extraordinary nature of the Ninth Circuit's action in this case, it is resolved by Judge Wardlaw's strenuous dissent below. As she put it, "we are not at liberty to find that the State Department's articulation of U.S. foreign policy is not 'convincing,'" Pet. App. 35a; "[w]e have no authority … to decide what U.S. foreign policy is," *id.*; and the majority's contradiction of the Executive's views "'compromise[s] the very capacity of the President to speak for the Nation with one voice in dealing with other governments,'" *id.* at 34a (citation omitted).

In response, respondent ignores Judge Wardlaw's dissent—omitting any reference to it in her statement of the proceedings below and referencing it just once, in passing, in her entire brief (Opp. 28). And instead of acknowledging any of the flaws in the Ninth Circuit's decision below, respondent fiercely defends it, proclaiming that the Ninth Circuit got it "exactly right" (*id.* at 2) and urging an activist role for the courts in matters of foreign policy that is starkly at odds with the restraint called for by this Court's cases (Pet. 16-19). Respondent's unapologetic defense of the Ninth Circuit's decision simply highlights the problems with that decision and the Ninth Circuit's harsh attack on the Solicitor General's brief. If the Ninth Circuit's

remarkable decision in this case is allowed to stand, it will become a blueprint for future panels of the Ninth Circuit to follow when they disagree with the Executive's foreign policy views. The Ninth Circuit's decision warrants further review by this Court.

ARGUMENT

I. AS THE DISSENT EXPLAINED, THE NINTH CIRCUIT IMPROPERLY SCRUTINIZED AND REJECTED THE EXECUTIVE'S FOREIGN POLICY VIEWS

Respondent's primary tactic to avoid certiorari is to try to transform the decision below from a wolf into a lamb. Thus, according to respondent, "[t]here can be *no doubt* that the Ninth Circuit fully accepted and accurately set forth the US policy regarding Nazi-looted art" (Opp. 1 (emphasis added)) and the petition "*egregiously* misstate[s] the Ninth Circuit's decision" (*id.* at 20 (emphasis added)). But the Ninth Circuit's decision speaks for itself—and offers a starkly different view of U.S. foreign policy than the Executive's.

Judge Wardlaw's dissent alone dispels respondent's argument that petitioners' concerns are illusory. Agreeing with the key arguments in Norton Simon's petition, Judge Wardlaw recognized that "the central objective of U.S. foreign policy in this area"—as articulated by the Executive—is "to avoid entanglement in ownership disputes over externally restituted property if the victim had an adequate opportunity to recover it in the country of origin." Pet. App. 32a; *see* Pet. 5-7. In addition, she recognized that the Ninth Circuit majority's decision permitting respondent's lawsuit to proceed "directly thwarts" that policy (Pet. App. 32a; *see* Pet. 19-28) and conflicts with this Court's decisions (Pet. App. 34a-36a; *see* Pet. 25-

28). Judge Wardlaw's views of course did not prevail below. But her dissent refutes the notion that Norton Simon has fabricated the question presented.

As Judge Wardlaw demonstrated, the Ninth Circuit did not, by any stretch, get "Federal policy exactly right." Opp. 2. The Ninth Circuit majority's account of U.S. restitution policy departs in critical respects from the Solicitor General's statement of that policy. For example, the Solicitor General explained that under the external restitution policy as well as the principles set forth in the Washington Conference on Holocaust Era Art Assets and the Terezin Declaration, "[w]hen a foreign nation … has conducted bona fide post-war internal restitution proceedings following the return of Nazi-confiscated art to that nation under the external restitution policy, the United States has a substantial interest in respecting the outcome of that nation's proceedings." Pet. App. 123a; *see* Pet. 5-7. The Ninth Circuit, by contrast, recharacterized U.S. foreign policy, bluntly questioned the adequacy of the Netherlands' post-war proceedings, and held that the U.S. courts should resolve an ownership dispute that was subject (or at least potentially subject) to the Netherlands' own restitution proceedings. Pet. 20-24.

In particular, the Ninth Circuit refused to accept the Solicitor General's determination that the Dutch "post-war internal restitution proceedings" were "bona fide" (Pet. App. 123a; *cf. id.* at 19a, 23a), and rejected the Solicitor General's conclusion that "the Dutch government has afforded petitioner and her predecessor adequate *opportunity* to press their claims, both after the War and more recently" (*id.* at 122a-23a (emphasis added)). *See also id.* at 19a (questioning whether the Dutch restitution

proceedings were "appropriate"). Respondent tries to brush off this conflict by characterizing the Executive's determination that the post-war Dutch internal restitution process was indeed bona fide as a question of *fact*, not policy. Opp. 14, 24, 26. That is incorrect.

As Judge Wardlaw explained, the Solicitor General's determination that the Dutch restitution proceedings were bona fide and provided respondent an adequate opportunity to press her claims is "a quintessential policy judgment committed to the discretion of the Executive." Pet. App. 33a-34a. That is underscored by respondent's own argument, which attacks the adequacy and authenticity of the post-war Dutch restitution process generally, not just as applied to the Cranachs. *See* Opp. 6-8 (attacking "actions of the Dutch government" and alleging "widespread" mistreatment of Jewish claimants); *id.* at 15-16 (citing Ekkart Committee and arguing that Dutch government "acted in a cold and bureaucratic manner" in handling restitution claims). There are two sides to the debate over the adequacy of the Netherlands' post-war restitution proceedings. But as the Solicitor General informed this Court, the Executive—including the State Department—has determined that "the Netherlands … has conducted bona fide post-war internal restitution proceedings." Pet. App. 123a; *see id.* at 121a-22a (discussing the Netherlands' "expanded restitution policy"). Whether looked at generally or as to the Cranachs particularly, the Ninth Circuit was not free to override that foreign policy judgment.

Moreover, as the Solicitor General explained, U.S. foreign policy looks to whether Nazi-looted artwork either was "subject (or *potentially* subject)" to bona fide internal restitution proceedings. Pet. App. 120a

n.3 (emphasis added); *see* Pet. 26. That is consistent with the Executive's focus on whether a claimant had an "adequate *opportunity*" to make a restitution claim. Pet. App. 122a-23a (emphasis added). That formulation of U.S. policy underscores that the "bona fide" determination is a policy judgment concerning the adequacy of the restitution process generally and potentially made available by the foreign nation to which Nazi-looted artwork was externally restituted.

Treating the question whether a country's internal restitution proceedings are bona fide as one of fact to be decided on a case-by-case basis would defeat a key purpose of the United States' external restitution policy. As the Solicitor General explained, the United States adopted the external restitution policy to prevent the United States from becoming entangled in disputes over the disposition of artwork returned to foreign countries. *See* Pet. App. 105a ("The [State Department] foresaw that once the external restitution had been made, the United States would play no further role in disposition of the property."); *id.* at 119a (United States sought to avoid "becoming entangled in difficult ownership questions regarding confiscated property"). Requiring a factual determination in each case as to whether artwork was subject to a "bona fide" proceeding would embroil the United States in just the sort of disputes that the Executive sought to avoid through its external restitution policy, and invite potentially disruptive and conflicting determinations by district courts across the country on whether foreign nations acted in a "bona fide" manner.

Contrary to respondent's claims (Opp. 26), the Executive's determinations that the Netherlands' post-war restitution proceedings were bona fide and that

respondent was afforded an adequate opportunity to seek restitution for the Cranachs are just like the policy judgments to which this Court deferred in *Munaf v. Geren*, 553 U.S. 674, 702 (2008). In *Munaf*, the Court deferred to the Executive's determination that the Iraqi Justice Ministry and Iraq's "prison and detention facilities have 'generally met internationally accepted standards for basic prisoner needs'"—a determination that was based on "'the Executive's assessment of the foreign country's legal system and … the Executive['s] … ability to obtain foreign assurances it considers reliable.'" 553 U.S. at 702 (alterations in original) (citation omitted). The Court concluded that "[t]he Judiciary is not suited to second-guess such determinations—determinations that would require federal courts to pass judgment on foreign justice systems and undermine the Government's ability to speak with one voice in this area." *Id.* The same goes for the adequacy of the Dutch restitution process—which likewise would require federal courts to pass judgment on a foreign justice system.

II. RESPONDENT'S ATTACKS ON THE SOLICITOR GENERAL'S BRIEF ARE AS UNFOUNDED AS THE NINTH CIRCUIT'S

Like the Ninth Circuit majority, respondent is harshly critical of the Solicitor General's statements—based on court filings and decisions in the Dutch proceedings—that the Cranachs were actually subject to Dutch restitution proceedings, and all but accuses the Solicitor General of fabricating the record. Opp. 15-20. But like the Ninth Circuit's rebuke, respondent's attacks are both misguided and unfounded.

To begin, although respondent—like the Ninth Circuit—devotes most of her attacks to the Solicitor

General's "factual determination" that the Cranachs were subject to the Dutch restitution proceedings, that determination is not necessary to the conclusion that allowing this case to proceed would compromise U.S. foreign policy. As the Solicitor General explained, what matters under U.S. foreign policy is not whether the Cranachs were actually subject to Dutch restitution proceedings, but whether they were "subject (or *potentially subject*)" to those proceedings. Pet. App. 120a n.3 (emphasis added); *see* Pet. 26. Because it is "beyond dispute" (Pet. App. 32a (dissent)) that the Cranachs were *potentially* subject to the Dutch restitution proceedings, it is academic under U.S. policy whether the Cranachs were *in fact* subject to the Dutch restitution proceedings. And because the Executive has determined that those proceedings were bona fide, litigating ownership to the Cranachs in the U.S. courts would conflict with U.S. foreign policy.

In any event, respondent's attacks on the Solicitor General's determination that the Cranachs were subject to Dutch restitution proceedings are as unfounded as the Ninth Circuit's critique. Respondent does not dispute that her 1998 petition to the Dutch Court of Appeals included a claim for monetary restitution as to the Cranachs and other paintings that were no longer in the Dutch government's possession, and the Dutch Court of Appeals specifically recognized that respondent sought damages for transferred works. Pet. App. 130a-33a. Instead, respondent suggests that her 1998 claim was submitted purely under the Dutch government's "1997 policy," which—she says—made "no provision … for damage claims." Opp. 19. Not so.

Decree E-100—establishing the Netherlands' post-war restitutions scheme—expressly allows for

monetary relief in certain circumstances. *See* C.A.E.R. 42 (Art. 34 §§ 1(a), 3). The Dutch Court of Appeals construed respondent's appeal as also requesting it to consider her petition directly under Decree E-100, Pet. App. 135a, 139a-42a, and observed that respondent amended her claim to request that the Court "order the State to pay the[] sales prices" to respondent for "any of this property" that was part of the Göring transaction and that the State "has in the meantime sold," *id.* at 131a-33a. The Court of Appeals did not address respondent's request for damages, because it rejected her challenge to the 1950s restitution proceedings and found that respondent was not entitled to any relief under Decree E-100. But that is irrelevant to the question whether the Cranachs were *subject* to the Dutch restitution proceedings in view of respondent's own request for damages.

Respondent's characterization of the 2006 restitution proceedings (Opp. 9-10, 18-19) is also flawed. As explained (Pet. 27), the prior decisions by the State Secretary and the Court of Appeals were based on their conclusions that respondent's predecessor *could* have filed a claim for the Göring transaction under Decree E-100 in the 1950s but that she made "a conscious and well considered decision" (Pet. App. 139a) not to do so. Far from disavowing those findings, the State Secretary's 2006 restitution decision specifically *reaffirmed* the Court of Appeals decision as the "final decision in this case." Addendum (Add.) 6a. Although the State Secretary nevertheless decided to return artworks in the Dutch government's possession to respondent, her decision makes clear that she did so as a matter of discretion (indeed,

respondent's claim was "not included in the current [Dutch] restitution policy"). *Id.* at 1a-9a.

Respondent emphasizes the Restitution Committee's recommendation. Opp. 9-10. But the State Secretary expressly rejected the Restitution Committee's conclusion that respondent's claim to the Cranachs had not previously been settled. *See* Add. 6a ("Unlike the Restitution Committee I am of the opinion that in this case it is a matter of restoration of rights which has been settled. In 1999 the Hague Court of Appeal in its capacity as Restoration of Rights Court gave a final decision in this case. This is why this case is not included in the current restitution policy."). And the fact that the Dutch government chose to return works in the Netherlands' possession does not mean that the government sought to disturb the Dutch Court of Appeals' or State Secretary's earlier decisions as to works that already had been transferred.

Respondent tries to make something of Norton Simon's letter to the State Secretary seeking confirmation about the Cranachs' status following the Restitution Committee's 2006 decision. Opp. 17-18. But nothing in that exchange alters the decisions of the Restitution Committee, Dutch Court of Appeals, or State Secretary. And respondent's representation that the State Secretary "specifically declined [Norton Simon's] request to confirm that the 1998 and 1999 decisions were not reversed" (*id.* at 19) is belied by the State Secretary's own statement that the Dutch Court of Appeals' decision was "final." Add. 6a.

Finally, as Judge Wardlaw observed, respondent's attempt to draw a bright line between the Executive's statements "'explaining federal foreign policy' and 'mak[ing] factual determinations'" is "unworkable" and,

as the decision below underscores, simply invites the courts to second-guess the Executive on foreign policy matters. Pet. App. 37a n.4 (dissent) (alteration in original). The Ninth Circuit had no basis to override either the Solicitor General's statements about the U.S. foreign policy implicated by the Cranachs or his interrelated statements about the foreign restitution proceedings concerning the Cranachs.

This Court well knows the care that the Solicitor General takes in making such representations on behalf of the Executive, including the State Department. The Ninth Circuit was off base in dismissing the Solicitor General's statements on such foreign policy matters.

III. RESPONDENT'S OTHER OBJECTIONS TO CERTIORARI ARE UNPERSUASIVE

Respondent's attempt to paint the question presented as "narrow" and "fact" dependent fails. Opp. 13-14, 28-30. When respondent sought certiorari in 2010, she herself asserted that the Ninth Circuit's decision threatened to "interfere[] with the Federal Government's position with respect to the return of Nazi-looted art." 2010 Von Saher Pet. 3 (No. 09-1254). In response, this Court solicited the views of the Solicitor General. Respondent's contention that this case lacks any broader significance now that the Ninth Circuit has *dismissed* the Solicitor General's views on the impact of this case on U.S. foreign policy concerning Nazi-looted art is nonsense. Moreover, regardless of the particular circumstances of this case, the Ninth Circuit's critical treatment of the Solicitor General's brief in this case will invite future Ninth Circuit panels to dismiss the Executive's views on U.S. foreign policy when they disagree with them.

Respondent surmises that when the Solicitor General submitted his brief in 2011, he "intended that this case would go back to the District Court and proceed under the general statute of limitations," which must mean that the Solicitor General saw no conflict between respondent's lawsuit and U.S. foreign policy. Opp. 4; *id.* at 30. But the Solicitor General explicitly observed that respondent's action "implicates substantial foreign affairs interests of the United States," Pet. App. 123a, and "raises particular inconsistencies with implementation of restitution policies to which the United States has adhered," *id.* at 116a. The fact that the Solicitor General did not address dismissal of the case in 2011 is not surprising because the issue before the Court was the constitutionality of a California statute of limitations. In any event, on remand, the courts were not free to disregard the Solicitor General's foreign policy views.

Nor is the interlocutory posture of the case an impediment to review. Opp. 14, 34. The case was also interlocutory when this Court called for the views of the Solicitor General in 2010. Moreover, as explained (Pet. 32 n.3), when, as here, a petition presents "'an important and clear-cut issue of law that is fundamental to the further conduct of the case,'" the interlocutory posture of a case is not a barrier to review. The proper weight to give the Executive's foreign policy views is plainly such an issue. Not only did the Ninth Circuit below erroneously overturn the district court's dismissal of this case by rejecting the Executive's views, but the court's decision impacts the important act-of-state issue that remains in the case. *Id.* at 29-31. Respondent asks the Court to ignore that issue. Opp. 32 n.7. But the Solicitor General has

already recognized that this litigation at least implicates "[t]he act of state doctrine and considerations of international comity." Pet. App. 123a.

Indeed, although respondent argues that "[n]o decisions of foreign governments will have to be overturned" to grant the relief she seeks here, Opp. 33, this litigation seeks to overturn no fewer than three separate actions of the Dutch government. *See* Pet. 30.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RONALD L. OLSON
LUIS LI
FRED A. ROWLEY, JR.
ERIC P. TUTTLE
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071
(213) 683-9100
fred.rowley@mto.com

GREGORY G. GARRE
Counsel of Record
MAUREEN E. MAHONEY
NICOLE RIES FOX
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2207
gregory.garre@lw.com

Counsel for Petitioners

DECEMBER 30, 2014

ADDENDUM

ADDENDUM TABLE OF CONTENTS

[seal omitted]

To the President of the House of Representatives of the States General
PO Box 20018
2500 EA The Hague

The Hague	Our Reference
6 February 2006	DCE/06/5640

Subject	Enclosure(s)
Information regarding the request to return the Goudstikker Collection	Copy recommendations and research report Restitution Committee in the Goudstikker case

I am writing to inform you of the decision I have taken following the request to return the 267 art objects, which the State has in its possession, that formed part of the trading stock of Kunsthandel J. Goudstikker N.V., as it existed on May 10, 1940. The request was submitted on June 10, 2004, with an amendment by letter of September 20, 2005, to the Advisory Committee on Requests for Restitution of Art Objects lost in the Second World War (the Restitution Committee). The recommendations of the Committee, which are attached, were sent to me on January 2, 2006.

[Translator seals omitted]

The extended restitution policy

The Restitution Committee based its recommendations on the extended restitution policy. In 2001 the government, following other countries and the 1998 Washington Principles on Looted Nazi Art, decided to depart from a purely legal approach of the restitution of "war art" and to choose a more moral policy approach. This was done at the recommendation of the Ekkart Committee: the committee that was charged from 1997 until 2005 with conducting an investigation into the origins of the so-called NK-collection; the collection comprising of art objects that were recuperated from Germany after the war and are now still in the possession of the State. The Ekkart Committee was also charged with advising the government on the basis of the results of that investigation. In the first instance, the Ekkart Committee advised on art objects originating from possessions of (Jewish) Individuals, after which in 2003 recommendations followed regarding art objects originating from art dealers, followed in 2004 by its final recommendations. The government adopted without any exception all recommendations (please see TK 2000-2001, 25 839, no. 26, 27, 34 and 36). This extended restitution policy forms part of the general government policy regarding restoration of rights and World War II Assets that was established on March 21, 2000.

The Restitution Committee

Together with this extension of the restitution policy it was, also at the request of the House, decided to establish in 2001 an advisory committee that would deal with individual requests for restitution. This was

in keeping with a more moral policy approach of the issue of restitution and was also in line with developments in other European countries. The establishing of a committee to give advice on individual requests for restitution also fulfilled the need to arrive at a decision by the State Secretary for Culture, as objectively as possible, on requests for restitution. After all, as custodian/possessor of the NK-collection the State is a directly involved party.

General Consultation of November 22, 2001

In 2001, during the General Consultation of 22 November (TK 2000-2001, 25 839, no. 28) the complete House supported the extended restitution policy in which the State Secretary for Education, Culture and Science promised that:

- anyone can submit a claim,
- the State Secretary for Education, Culture and Science will only test whether it concerns 'war art' before asking the Restitution Committee for advice,
- the State Secretary for Education, Culture and Science will only differ from the recommendations in cases in which the Restitution Committee evidently has not kept within the established policy framework.

Request to return objects of the Goudstikker Collection

Actual history of the Goudstikker Collection

As a result of the recuperation of art after the Second World War the State has had in its possession part of the Goudstikker Collection. In 1952 the Goudstikker

heirs reached a settlement with the State in which part of the works were returned and part remained in possession of the State. In 1998 the heirs submitted a request to the State Secretary for Education, Culture and Science (Nuls) to return the works still in possession of the State. The State Secretary denied this request and then the Applicants commenced three proceedings: a notice of objection was filed, civil proceedings were commenced and a request for restoration of rights was filed with the Hague Court of Appeal (as restoration of rights Court). The request for restoration of rights was taken up with a stay of the objections and civil proceedings.

On 16 December 1999 the Court of Appeal disallowed the request for restoration. The Court did examine whether there was an urgent reason to award restoration of rights of its own motion. The Court concluded that there was no reason to do so.

On April 26, 2004 (with an addition on July 31, 2005), the heirs submitted a request with the State Secretary for Education, Culture and Science to return the works on the basis of the extended restitution policy. The State Advocate agreed with the Applicants that the pending (legal) proceedings would be stayed, awaiting the recommendations of the Restitution Committee and my decision in the case.

Recommendations of the Restitution Committee

The Committee finds that the Goudstikker case is not a matter of restoration of rights which has been settled and with regard to the restitution has advised me as follows:

- *to reject* the request to return 40 of the 267 art objects of which it is certain or likely that they did not belong to Goudstikker on May 10, 1940. Since these objects did not belong to Goudstikker on May 10, 1940 there is no basis for granting the request for restitution;

- *to reject* the request to return the paintings delivered to Miedl during the war which fall under the provision of article 1.4 of the settlement agreement of August 1, 1952;

- *to allow* the request for the art objects belonging to the Göring transaction, with the exception of NK 1437 and NK 1545 which are missing, while the included meta-paintings are returned in their capacity of meta-paintings;

- *to allow* the request for the art objects which belong to the Ostermann paintings, with the exception of NK 1886 and NK 1887 which have been stolen.

The Committee also advises on the *consequences of restitution*. The Restitution Committee advises not to impose a repayment obligation regarding the consideration received back then when the objects were sold, but to settle the obligation with any financial claims the Applicants may have against the State. The Committee puts forward four reasons for advising a settlement:

- a number of paintings have been lost and the Committee, in principle, finds it not unreasonable if the Applicant would be indemnified for these paintings;

- Goudstikker has suffered heavy losses during and because of the war and occupation;

- at least 63 paintings from Goudstikker's trading stock have been auctioned by the Dutch State in the Fifties;

- the Dutch State has enjoyed a right of use over the paintings for a period of nearly six decades without paying any consideration in exchange.

The Restitution Committee finds that there is not any public interest that could oppose the actual restitution of art objects. In addition, the Committee therefore states not to want to decide on any application of the Dutch Cultural Heritage Preservation Act after restitution has been effected.

Conclusion

As has been set out above, in its advice the Restitution Committee gives its recommendations both as to the art objects that are to be returned and as to the logistical manner in which this restitution has to be dealt with, which the committee calls "the consequences of restitution".

Request for restitution:

Unlike the Restitution Committee I am of the opinion that in this case it is a matter of restoration of rights which has been settled. In 1999 the Hague Court of Appeal in its capacity as Restoration of Rights Court gave a final decision in this case. This is why this case is not included in the current restitution policy.

I am nevertheless of the opinion that in this special case there are grounds that justify a restitution in keeping with the recommendations of the Committee. In this regard I have in particular taken into account the facts and circumstances surrounding the involuntary loss of property and the manner in which the matter was dealt with in the early Fifties as this has been put forward by the Committee in its extensive investigation.

Consequences of restitution

The Committee advises not to attach financial obligations to the restitution while at the same time waiving payment by the State of damages to the Applicant for the missing objects. The Committee advises to equalise both items (cancel each other out). This part of the argumentation is adopted in the recommendations.

Judging the other arguments of the Committee

The 3 additional arguments of the Committee for settling are not adopted, in order to be consistent with respect to former decisions and to prevent creating undesirable precedents.

- *No compensation for incurred losses*

On the basis of the present policy, the Dutch State cannot be blamed for the Goudstikker gallery's financial losses which were caused by the war. The government's position on World War II Assets contained in the letter of March 21, 2000 does not accept general liability for damage caused by the German occupation.

However, the government in its letter does state that by providing a certain amount the government wishes to do final justice to criticism of the treatment of the victims of persecution in the restoration of rights. Shifting Goudstikker's heavy losses, during and because of the war and occupation, to the State is not consistent with this policy.

- *No compensation for auctioned objects:*

As far as the auctions are concerned that took place in the Fifties, the Ekkart Committee advised in its final

recommendations to arrive at a general policy to the effect that an indexed percentage of the proceeds of these auctions are to be made available to a charity goal of a Jewish cultural nature. According to the Ekkart Committee this avoids the appearance of the State enriching itself, even though it is no longer possible to precisely establish which art objects were involved. This recommendation has been adopted by the government. Now that it is a matter of a general arrangement for the objects that were auctioned in the early 1950's, it is no longer logical to again claim from the State; in this particular case claiming possible enrichment.

- *No compensation for enjoying the right of use by the Dutch State:*

The possible enjoyment of use of the Goudstikker collection by the State is compensated by the costs of maintenance, storage and in many cases the considerable restoration costs incurred by the State. There has never been such compensation in former cases where restitution took place.

Finally

I have confirmed my decision in a letter to the applicants' lawyers. In this letter I have announced that I have ordered the State Advocate to come to a final agreement on the present request to return the works.

I also asked the Netherlands Institute for Cultural Heritage (ICN) to handle the actual implementation of the decision and to hand over the objects to Jacques Goudstikker's heirs. The ICN expects that the actual transfer of the objects will take about a year.

The Restitution Committee in its recommendations also points out a possible public interest which may be at issue in the event of restitution. With the Committee I am of the opinion that there is no public interest in this case which could impede restitution. However, I am quite aware of the cultural-historical importance of the art objects and they may be irreplaceable for the Dutch cultural heritage. In my letter I notified the Applicants that I would like to discuss the options of keeping certain art objects available for the public to see.

The State Secretary for Education, Culture and Science

(Medy C. van der Laan)

I, Angenita Anthonia Maria Bezemer-van Gendt, certified translator for the English language, sworn in at the District Court in Utrecht, do solemnly and sincerely declare that the following is a true and full translation from Dutch into English made by me of the document hereunto annexed, which was submitted to me for translation, and in testimony whereof I have hereunto set my hand this fourteenth of February of the year two thousand and six.