

# Fordham Intellectual Property, Media and Entertainment Law Journal

---

Volume 33 XXXIII  
Number 3

Article 2

---

2023

## Ukraine on My Mind: Cultural Heritage and the Current Armed Conflict

Irina Tarsis

Follow this and additional works at: <https://ir.lawnet.fordham.edu/iplj>



Part of the [Intellectual Property Law Commons](#)

---

### Recommended Citation

Irina Tarsis, *Ukraine on My Mind: Cultural Heritage and the Current Armed Conflict*, 33 Fordham Intell. Prop. Media & Ent. L.J. 566 (2023).

Available at: <https://ir.lawnet.fordham.edu/iplj/vol33/iss3/2>

This Symposium is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Intellectual Property, Media and Entertainment Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

---

## Ukraine on My Mind: Cultural Heritage and the Current Armed Conflict

### Cover Page Footnote

\* Irina Tarsis, Esq., Founder and the Managing Director of the Center for Art Law (US/CH) is an art historian and a practicing attorney. She wishes to thank Atreya Mathur and the team of the Center for Art Law for their work on preservation of art and cultural property at risk during armed conflict.

# Ukraine on My Mind: Cultural Heritage and the Current Armed Conflict

Irina Tarsis\*



*“Bloodlands: Viburnum (2022)”*  
Copyright: Zhenya Oliinyk @evilpinkpics

---

\* Irina Tarsis, Esq., Founder and the Managing Director of the Center for Art Law (US/CH), is an art historian and a practicing attorney. She wishes to thank Atreya Mathur and the team of the Center for Art Law for their work on preservation of art and cultural property at risk during armed conflict.

**Ой у лузі  
червона калина**

Ой у лузі червона калина  
похилилася,  
Чогось наша славна  
Україна зажурилася.  
А ми тую червону калину  
підіймемо,  
А ми нашу славну Україну,  
гей-гей, розвеселимо

**In the Meadow  
Red Viburnum**

In the meadow, there is a  
red viburn that has bent  
down low,  
For some reason, our  
glorious Ukraine has been  
worried so  
So we'll take that red kalyna  
and we will raise it up,  
And we'll be sure our glorious  
Ukraine, shall, hey—  
hey, rejoice

*The following keynote address was delivered on October 7, 2022, during the Fordham Law Intellectual Property, Media & Entertainment Law Journal Symposium, “Duplicate, Decolonize, Destroy: Current Topics in Art & Cultural Heritage.”<sup>1</sup> It was prefaced by a YouTube video of “Ukrainian Folk Song ARMY REMIX | Andriy Khlyvnyuk x The Kiffness.”<sup>2</sup> The upbeat remix of a folk song was performed as a collaboration between South African musical talent David Scott, known as the Kiffniss, and Andriy Khlyvnyuk, the lead singer of the Ukrainian band, Boombox (Бумбокс), who took leave from his concert tours to join the military forces of Ukraine and fight as a soldier against the invading forces. Nearly a year after the start of the war, Ukraine is still fighting to defeat the*

---

<sup>1</sup> Fordham Law Intellectual Property, Media & Entertainment Law Journal Symposium, *Duplicate, Decolonize, Destroy: Current Topics in Art & Cultural Heritage*, YOUTUBE (Dec. 22, 2022), <https://www.youtube.com/watch?v=zUK2T13rEyY&t=8376s> [https://perma.cc/3C9L-MJHE].

<sup>2</sup> The Kiffness, *Ukrainian Folk Song ARMY REMIX | Andriy Khlyvnyuk x The Kiffness*, YOUTUBE (Mar. 4, 2022), <https://www.youtube.com/watch?v=lu8m5FA2nL8> [https://perma.cc/692F-X99A].

*Russian Federation's invading forces while actively seeking to protect and preserve its cultural heritage. As the war in Ukraine continues, UNESCO has verified that since February 24, 2022, "104 religious sites, 18 museums, 82 buildings of historical and/or artistic interest, 19 monuments, 11 libraries" have been damaged or destroyed, and these numbers are increasing.*<sup>3</sup>

INTRODUCTION .....	568
I. INSTRUCTIVE LESSONS FROM THE BÜHRLE LEGACY .....	569
II. <i>VON SAHER v. NORTON SIMON MUSEUM OF ART: THE UKRAINIAN CONNECTION</i> .....	574
III. EUROMAIDAN AND WAR IN DONBAS .....	575
IV. WHAT DOES IT MEAN IF SOMEBODY'S NAME IS ON A SANCTIONED PERSON'S LIST? .....	580
V. BACK TO SWITZERLAND.....	584
VI. QUESTIONS & ANSWERS .....	592

#### INTRODUCTION

Let me begin by saying thank you to the organizers for including me in this very important and insightful conference. I am humbled to be addressing you in a keynote format on the subject of Ukrainian cultural heritage and armed conflict. In preparation, I have been thinking about the best way of presenting the subject to you as the war in Ukraine is ongoing, and I do not think there is one best way, so I will try to approach this topic from different angles, related to the themes of the conference: duplicate, decolonize, and destroy.

In my professional practice I have been focusing on authenticity, provenance, and protection of cultural heritage. I am the founding director of the Center for Art Law, an attorney practicing in the areas of copyright and fair use, artists rights, and title disputes, and an art historian, focusing on education and Nazi-era looted art. I have

---

<sup>3</sup> Alexandre Larcen, *Damaged Cultural Sites in Ukraine Verified By UNESCO*, UNESCO (Jan. 10, 2023), <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco> [<https://perma.cc/JN4B-GYUN>].

litigated in New York, usually on behalf of artists and their heirs in connection with property consigned to galleries, or entrusted to other fiduciaries, who unscrupulously forgot to account for and return this property to its rightful owners.

As much as I wish I could be with you in the room in person, I am addressing you from Switzerland. So, I thought I would invite you to visit with me. Here is one of the main squares in Zürich today. This is the Sechseläutenplatz, where many town festivities take place year-round. Here is a row of empty flagpoles; we just had an international film festival. All the film festival flags have been taken down but the Ukrainian flags, the Ukrainian national colors, are still flying. They have been here for eight months, and I doubt they will be removed before the Russian-Ukrainian war ends.

As you probably know, Switzerland has a reputation for neutrality, military and otherwise.<sup>4</sup> Well, it seems that in 2022, even Switzerland cannot remain neutral. Ukrainian flags on official flagpoles and an open border policy for war refugees who are running away from the war demonstrate that even the Swiss cannot remain neutral today. They have been supporting Ukraine since the full-scale Russian invasion on February 24, 2022.

#### I. INSTRUCTIVE LESSONS FROM THE BÜHRLE LEGACY

When we walk up from the Sechseläutenplatz Square, we reach the Kunsthaus Zürich, the art museum of Zürich and its brand new Extension Wing (Erweiterung), which was designed by David Chipperfield, and opened in the Fall of 2021.<sup>5</sup> One of the collections on display at the Erweiterung has been causing a lot of controversy. I am referring to the so-called Bührle Legacy. Emil Bührle was a Swiss industrialist, more specifically, a manufacturer and distributor of guns and ammunition. Over the course of his lifetime, Bührle sold quite a lot of arms to the Nazi regime, sold some to the Soviet

---

<sup>4</sup> Giorgio Cafiero, *Why Switzerland Is Breaking Away from 500-Year-Old Neutrality*, TRT WORLD (Sept. 12, 2022), <https://www.trtworld.com/opinion/why-switzerland-is-breaking-away-from-500-year-old-neutrality-60704> [<https://perma.cc/B9EC-SW82>].

<sup>5</sup> See *Erweiterung*, KUNSTHAUS ZÜRICH, <https://www.kunsthau.ch/museum/ueberuns/erweiterung/> [<https://perma.cc/GW6R-3RW4>].

government,<sup>6</sup> and even won a commission to export missiles to the United States in the 1950s. From selling arms Bührle made his sizable fortune, becoming reportedly the wealthiest man in Switzerland by the end of World War II. In 1945, his fortune was estimated around 140 million Swiss Francs and part of that wealth he put forth towards buying art. A year before his death, in 1955, Bührle made the list of world's top art collectors, despite—or as a result of—buying a lot of paintings from the Jewish collections looted between 1933 and 1945.

Indeed, while Bührle was getting rich from selling guns and ammunition to the Axis Powers, he was buying art, some of which was looted from persecuted Jewish collectors and dealers. When the wing of the Kunsthaus opened last year, it showcased a large portion of the Bührle collection, including medieval, Renaissance, and nineteenth-century paintings. There has been a lot of critique of the fact that the Bührle collection, on display in the heart of the city and occupying prime real estate, has a lot of the paintings that he bought of questionable provenance, and that Bührle was sued for possessing stolen property. In fact, Bührle had to return a number of paintings by order of the Swiss Supreme Court to the original or rightful owners including Paul Rosenberg, a famous French art dealer.<sup>7</sup>

A number of the Kunsthaus patrons threatened to revoke their promised gift and recall the loan in disapproval of the Bührle connection.<sup>8</sup> This legacy—of buying looted art with funds made from the war—left a lasting stain on the provenance of fine art objects, a concept I would like you to keep in mind as we continue with this presentation about cultural heritage and armed conflict.

---

<sup>6</sup> See Andrea Tognina, *Emil Bührle and the Art of War*, SWISSINFO.CH (Jan. 6, 2021), <https://www.swissinfo.ch/eng/business/emil-buehrle-and-the-art-of-war/46227430> [https://perma.cc/675H-RTRR].

<sup>7</sup> See Teresa Giovannini, *The Holocaust and Looted Art*, 7 ART, ANTIQUITY & L. 263, 272 (2002).

<sup>8</sup> See Kito Nedo, *The Ugly Provenance of Kunsthaus Zürich's Collection*, FRIEZE (Feb. 8, 2022), <https://www.frieze.com/article/ugly-provenance-kunsthaus-zurichs-collection> [https://perma.cc/U2RA-FGVB].

What is culture? Who owns it? Who gets to anoint something “heritage” and how does the label stick? We have workable definitions.<sup>9</sup> We also have our own ideas.

Now, let me back up to admit that this is my first keynote. I have written papers and presented lectures in other contexts where I teach or share my research, but I have a sneaking suspicion that one of the reasons for my addressing you in a keynote has more to do with no act of mine, but rather the fact that a long time ago I happened to be born in Kyiv, a native Russian speaker who came to the United States at the age of twelve and later become a member of the New York Bar and the art law profession. I did keep my interest in Russian culture and increasingly in Ukrainian culture. My mother does cook borscht, not a particularly interesting thing—it’s a beet soup and lots of families with Eastern European roots cook it. But we are faced with the question of what is culture, who owns it, and why and how do we determine that as others try to destroy or distort it?

So, one of the ways we can think of culture is when somebody else tells us that what we are experiencing and what we are seeing is important. For example, this summer UNESCO inscribed Ukrainian borscht cooking onto the List of Intangible Cultural Heritage in Need of Urgent Safeguarding.<sup>10</sup> In addition, Ukraine is home to at least seven UNESCO World Heritage Sites. One of them is the Saint-Sophia Cathedral and Related Monastic Buildings, Kyiv-Pechersk Lavra, whose belfry I chose as the theme of our presentation today.

Wars have happened forever, like epidemics or pandemics. We were apparently due for a pandemic, but I had naively thought that by the 21st century we would have eradicated large-scale wars. With two World Wars under our belt, we should know how to avoid destruction of cultural heritage and loss of human life on the scale witnessed in Ukraine today. Who in this room expected that in 2022,

---

<sup>9</sup> See, e.g., UNESCO, *Mexico City Declaration on Cultural Policies*, World Conference on Cultural Policies, 1 (July 26–Aug. 6, 1982), <https://unesdoc.unesco.org/ark:/48223/pf0000052505> [<https://perma.cc/M6GF-XKCB>].

<sup>10</sup> Press Release, UNESCO, Culture of Ukrainian Borscht Cooking Inscribed on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding (July 1, 2022), <https://www.unesco.org/en/articles/culture-ukrainian-borscht-cooking-inscribed-list-intangible-cultural-heritage-need-urgent> [<https://perma.cc/S4G9-9F43>].



ICOM would be creating a Red List for Ukraine?!<sup>11</sup> In fact, there are at least 30 armed conflicts happening around the world. Wouldn't it be nice if all the wars could be stopped before they started? And if they couldn't be prevented entirely, then wouldn't it be nice if we would be able to stop them within hours or days of their commencement, preventing looting and destruction that wars inevitably bring. With all the technological advancements, one would think we should be able to figure out a way to design levers or identify points of pressure that can be used to get the oxygen out of the war machine. Who could have such power? People? Our common economic interests?

In any case, as I was preparing for this presentation I kept coming across the same quote of Confucius, that "signs and symbols rule the world, not words nor laws." Unfortunately, that might still be the case. While we are aspiring to use words instead of guns, and having laws to predict our lives, we seem to be repeating the same mistakes over and over again. There is a Russian saying: "Law is not written for fools; if it is written, then it is not read; if it is read, it is not understood; if it is understood, then wrongly, because he is a fool." The Russian invasion of Ukraine was more foolish, it was in violation of many international conventions, and it has inflicted enormous losses. Ukraine was one of the countries most affected by World War II, with many towns destroyed, museums looted, and lives taken.<sup>12</sup>

So, the international conventions most relevant to our conversation today are the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention<sup>13</sup> and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage.<sup>14</sup> We have the

---

<sup>11</sup> See *ICOM Launches the Emergency Red List of Cultural Objects at Risk—Ukraine*, INT'L COUNCIL OF MUSEUMS (Nov. 24, 2022), <https://icom.museum/en/news/launch-icom-red-list-ukraine/> [https://perma.cc/X985-4LNH].

<sup>12</sup> See, e.g., John Varoli, *Ukraine Suffered "Colossal" Looting During World War II*, ART NEWSPAPER (May 31, 2009), <https://www.theartnewspaper.com/2009/06/01/ukraine-suffered-colossal-looting-during-world-war-ii> [https://perma.cc/9DG8-GVZC].

<sup>13</sup> See Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 214.

<sup>14</sup> Convention for the Safeguarding of the Intangible Cultural Heritage, Oct. 17, 2003, 2368 U.N.T.S. 35, <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>.

privilege of hindsight, and we could do better so the 1954 Hague Convention was drafted and adopted after World War II. Had we had this Convention in existence, maybe the losses then would have been less or if the cultural losses were different, we might not have had the Conventions. In 1991, Ukraine gained its independence after the collapse of the Soviet Union. According to the Ukrainian Law on Museums and Museum Affairs of 1995, objects from Ukrainian museums are property of the Ukrainian State.<sup>15</sup>

Fast forward to the 1990s and 2000s. Armed with the Hague Convention from 1954 and many other tools and lessons to guide us, we witnessed destruction of cultural property and heritage during the Balkan Wars—when many historical and culturally significant buildings were destroyed, important libraries burned, and museums looted—and the looting of the Iraq Museum following the U.S.-led invasion in 2003. We will be marking a twenty-year anniversary of this tragedy next year. And now we see the destruction and looting of museums in Kherson (the Oleksiy Shovkunenko Kherson Art Museum), Mariupol, and many other towns across Ukraine.<sup>16</sup>

For many people the world is now divided into “before February 24, 2022” and “after.” That is certainly true for me. Prior to the invasion, I did a lot of provenance research and study of Nazi-era looted art. One of the books that has been influential in my studies was *Beautiful Loot: The Soviet Plunder of Europe’s Art Treasures* by Konstantin Akinsha and Grigorii Kozlov, with Sylvia Hochfield. The last few times I traveled to Ukraine included my aunt’s funeral—she was a Holocaust survivor, and I am thankful she did not live to see this war—and a trip in connection with a painting called

---

<sup>15</sup> See *Про музеї та музейну справу* [Law of Ukraine on Museums and Museum Business], (Oficijnyj Visnyk Ukrainy, 1995, No. 249/95), <https://zakon.rada.gov.ua/laws/show/en/249/95-%D0%B2%D1%80#Text> [https://perma.cc/N8TV-W7PH]; see also *The Law of Ukraine on Museums and Museum Business*, YAROSLAV THE WISE INST. L. INFO. (Jan. 1, 2004), [http://world.moleg.go.kr/cms/commonDown.do?DLD\\_CFM\\_NO=B43Z58AXS5D8Z4N2RALR&FL\\_SEQ=14469](http://world.moleg.go.kr/cms/commonDown.do?DLD_CFM_NO=B43Z58AXS5D8Z4N2RALR&FL_SEQ=14469) [https://perma.cc/W5A4-69EM].

<sup>16</sup> See, e.g., Bethany Dawson, *Putin’s Forces Have Looted Nearly 40 Museums in Ukraine, Plundering Thousands of ‘Priceless’ Treasures, Says Culture Minister*, INSIDER, (Oct. 9, 2022, 11:27 AM), <https://www.businessinsider.com/ukraine-putins-forces-loot-40-museums-of-priceless-treasures-minister-2022-10?r=US&IR=T> [https://perma.cc/Q5D5-QSCS].

“Portrait of a Young Artist” or “Portrait of Magda Mandel,” which is a family heirloom held in a museum in Uzhhorod.<sup>17</sup> The heirs of Magda reside in the United States, and they are trying to reconstitute the portrait, so far unsuccessfully.

## II. *VON SAHER V. NORTON SIMON MUSEUM OF ART*<sup>18</sup>: THE UKRAINIAN CONNECTION

Before February 2022, my focus was on Nazi-era looted art. There were plenty of headlines about Ukraine refusing to return looted paintings, and a number of exhibitions dedicated to looted art that surfaced in Crimea. An interesting nexus with Ukraine is presented by the restitution case litigated in California, *Von Saher v. Norton Simon Museum of Art*. It concerned a pair of paintings by the Old Master, Lucas Cranach the Elder, entitled “Adam” and “Eve.”

Cranach was a German Renaissance painter and illustrator. Somehow, this pair of works made their way to Ukraine and, at first unattributed, were located in the Church of the Holy Trinity in Kyiv. The works date back to around 1520; they were nationalized after the Soviet Revolution, transferred to the Art Museum of the Ukrainian Academy of Science, and later sold at auction in Berlin in 1931, as part of state-owned property. The two works were purchased by a Jewish art collector, Jacques Goudstikker, who lived in the Netherlands. The *Von Saher* case narrates the fate of the Cranachs quite well, as the ownership was contested by Goudstikker’s heirs, whose collection was looted in 1940, and erroneously returned to the wrong claimants. After the *Von Saher* lawsuit was decided ultimately in favor of the California museum, in 2020 Ukrainian activists voiced an interest in claiming the masterworks for Ukraine because these pieces were Ukrainian cultural property before the 1917 Revolution.<sup>19</sup> While the Cranachs, in my opinion, are unlikely to ever be

---

<sup>17</sup> See Josh Cohen, *Ukraine’s Duty to the Heirs of Holocaust Survivor Magda Mandel*, LOOTEDART.COM (June 6, 2018), <https://www.lootedart.com/news.php?r=T3HH4W507231> [<https://perma.cc/E6HX-DRL7>].

<sup>18</sup> *Von Saher v. Norton Simon Museum of Art*, 897 F.3d 1141 (9th Cir. 2018).

<sup>19</sup> See Marina Baranovskaya & Oleh Klymchuck, *Ukraine Seeks to Bring Home Long-Lost Renaissance Artwork*, DW (Oct. 27, 2020), <https://www.dw.com/en/ukraine-seeks-to-bring-home-renaissance-artwork-sold-under-false-pretenses/a-55407860> [<https://perma.cc/KF2T-UBVL>].

permanently returned to Ukraine, some other art objects looted from Ukraine during World War II that surfaced in the United States have been restituted to Ukraine, including a genre painting of Ivan the Terrible,<sup>20</sup> the romantic painting “An Amorous Couple, or A Loving Embrace” by Pierre Louis Goudreaux,<sup>21</sup> and many others.

### III. EUROMAIDAN AND WAR IN DONBAS

Events following the 2013 Maidan Uprising, such as the 2014 annexation of Crimea by the Russian Federation and the Russian-backed efforts to split other parts of the country, started a new spiral in the cultural heritage debate. Possession, location, and the very integrity and safety of tangible and intangible cultural heritage in Ukraine fell under threat of looting, eradication, and destruction. In an attempt to bring about change in policy and activity in the Russian Federation, many nations imposed sanctions against select Russian businesses and political leaders.

During and following the 2013 Maidan Uprising, Russian and Ukrainian museum administrators hurried to recover artworks that had been loaned. A few hundred artifacts were on loan from Ukraine, including museums in Crimea, to a museum in the Netherlands. At the same time in 2013, a number of valuable artifacts and artworks were on loan from the Russian Federation in Ukraine; an exhibition of Andrej Rublev icons was closed in advance of the scheduled opening and the loaned items were returned. However, the loans to the Netherlands—known as “Crimean Treasures” or “Skythan Gold”—got stuck in the Allard Pierson Museum because Ukraine was asking for them to be returned to Ukraine, as the country that lent materials, and the Crimean museums were asking to get

---

<sup>20</sup> See Collin Binkley, *Painting Stolen in WWII Is Heading from US to Ukraine*, TIMES OF ISRAEL (Dec. 23, 2018, 9:12 AM), <https://www.timesofisrael.com/painting-stolen-in-wwii-is-heading-from-us-to-ukraine/> [https://perma.cc/K3L3-2TMQ]; see also Askold Krushelnycky, *Painting Looted During World War II Returns to Ukraine*, KYIV POST (Sept. 12, 2019, 4:18 PM), <https://www.kyivpost.com/ukraine-politics/painting-looted-during-world-war-ii-returns-to-ukraine.html> [https://perma.cc/D7MA-LGY9].

<sup>21</sup> See David D’Arcy, *A ‘Missed Opportunity’? US Seeks to Return Paintings Looted By Nazis to Ukraine*, ART NEWSPAPER (Mar. 27, 2019), <https://www.theartnewspaper.com/2019/03/27/a-missed-opportunity-us-seeks-to-return-painting-looted-by-nazis-to-ukraine> [https://perma.cc/2BB5-LKN7].

their loaned materials back in their capacity as the institutions that lent the artifacts. By that time, Crimea was already annexed, and the Russian Federation quickly passed a law, Fed Law No. 9-FZ, stating that Crimean Museum holdings were to be included in the registry of the Museum Fond of the Russian Federation. Sending the loaned artifacts to Crimea would be tantamount to handing them to occupying forces with no guarantees that the objects would actually remain in the territory of Crimea and not be transferred to other Russian institutions. Unable to make the decision, the borrowing institutions turned to the Amsterdam District Court and later to the Amsterdam Court of Appeal, for directions as to where these artifacts should go. In 2021, the Amsterdam Court of Appeals ruled that the “Crimean Treasures” ought to be returned to Ukraine.<sup>22</sup>

Another “disruption” in curatorial and museum management plans that involves cultural property on the territory of Ukraine concerns art brought into the country following World War II. The saga of the trophy art is well studied elsewhere, and one of the related stories concerned the Art Museum in Simferopol, Crimea that received trophy art from the Suermondt-Ludwig Museum in Aachen, Germany.<sup>23</sup> After sixty Suermondt Ludwig Museum pieces were located in Crimea, years of negotiations followed in an attempt to find a working solution where both museums and two nations would be able to share possession of the pieces.<sup>24</sup> Naturally, after the annexation of Crimea, negotiations between the Aachen Museum and the Semphiropol museum ceased.<sup>25</sup>

---

<sup>22</sup> See *Allard Pierson Museum Has to Hand Over the Crimean Treasures to the Ukrainian State*, DE RECHTSpraak, (Oct. 26, 2021), <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Gerechtshoven/Gerechtshof-Amsterdam/Nieuws/Paginas/Allan-Pierson-Museum-has-to-hand-over-the-Crimean-Treasures-to-the-Ukrainian-State.aspx>. [https://perma.cc/9A9H-C6GD]. It is unclear whether all the loaned materials in connection with this case have been returned to Ukraine.

<sup>23</sup> See Maria Danilova, *Ukraine Unlikely to Return German Paintings*, SAN DIEGO UNION-TRIB. (Nov. 13, 2008), <https://www.sandiegouniontribune.com/sdut-eu-ukraine-germany-art-111308-2008nov13-story.html> [https://perma.cc/GHG4-Z48F].

<sup>24</sup> See *Phantom Gallery*, SUERMONDT-LUDWIG MUSEUM, <https://suermondt-ludwig-museum.de/en/research/phantom-gallery/> [https://perma.cc/KN8J-WR6D].

<sup>25</sup> “*Evacuation*” of Crimean Museums to the Territory of the Russian Federation Will Be a War Crime, MKIPU (Oct. 15, 2022), <https://mkip.gov.ua/news/7904.html> (last visited Feb. 23, 2023) (“[A]ccording to the reports on the activity of museums for 2013, the number of museum objects of the state part of the Museum Fund of Ukraine remaining in

Following the annexation of Crimea, Russian-backed separatists took control over parts of the Donbas region of eastern Ukraine in an attempt to break away from Ukraine and its cultural associations. Contemporary art gallery Izolyatsia was seized, its art collection looted, and a public art installation, the 2012 piece “Transform!” by Cameroonian artist Pascale Marthine Tayou, demolished.<sup>26</sup> Art and artifacts in Crimean and Donbas museums were reportedly relocated to institutions in the Russian Federation.

There are many efforts to preserve art and cultural heritage in Donbas—an area already contested and war-ravaged prior to 2022. Before the invasion this year, there were numerous such ongoing efforts by private initiatives and local activists; for example, one called Museum Open for Renovation was making efforts to protect cultural patrimony and move everything to safety, from Soviet cultural patrimony to folk art, photographs, and archives located on the territories that were in armed conflict. Some headlines read, “Russia may have Crimea, but it can’t have this ancient Scythian gold.”<sup>27</sup> Query whether Russia may have either. Regardless, the sanctions that were placed following the annexation of Crimea continued to expand in an attempt to isolate the Russian oligarchs who supported the Russian regime that was waging war on Ukraine. In 2022, a 147-page report was issued by the United States Senate Committee on Homeland Security and Governmental Affairs, explaining how the

---

museum institutions located in the territory of the Autonomous Republic of Crimea and the city of Sevastopol amounted to approximately 1 million 200 thousand units. There were 26 museums and 5 historical and cultural reserves of state and communal ownership (with the status of legal entities) on the territory of the peninsula. 29 legal entities registered at the addresses of Ukrainian museum institutions in Crimea after February 20, 2014, illegally use museum collections in their activities, which before the beginning of the temporary occupation of Ukraine on February 20, 2014, were permanently stored in cultural institutions of Ukraine and in accordance with the Law of Ukraine ‘On Museums and museum case’ belong to the state part of the Museum Fund of Ukraine.”).

<sup>26</sup> Sarah Cascone, *Militants Blow Art Basel Artist’s Giant Lipstick Sculpture*, ARTNET (June 26, 2015), <https://news.artnet.com/art-world/militants-destroy-lipstick-sculpture-312145> [<https://perma.cc/8DAB-U8YF>].

<sup>27</sup> Andrew Roth, *Russia may have Crimea but it can’t have this ancient Scythian gold*, WASH. POST (Dec. 14, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/12/14/ukraine-just-won-a-big-international-legal-battle-and-the-prize-is-scythian-gold/> [<https://perma.cc/9DQX-6JD2>].

art industry was undermining the United States' policies of sanctions.<sup>28</sup>

The world did not start or end on February 24th, but when I woke up that day and said good morning to my husband, he said, "It's not a good morning." His family is in Russia and my family is in the United States. We speak Russian to our kids. I am not trying to "cancel Russian culture" but I am very angry, and I am certainly decolonizing my speech and knowledge base. This tragedy is not only personal to me; it is personal to millions of people. Millions of people have been displaced; millions of people have been dispossessed. Too many people have been killed. Museums and libraries have been looted and destroyed. Yet again. It's not a tenable or acceptable or credible scenario.

We are witnessing genocide and crimes against humanity all over again. I promised to myself not to show you any sensitive content but here is a photograph of the Academic Regional Drama Theater in Mariupol, which served as an air raid shelter for civilians, with the words "CHILDREN" written on both sides to indicate that the building was a refuge. This building does not actually exist anymore and there are mixed reports as to how many people died, because this theater was bombed on March 16th.<sup>29</sup>

So, there are lots of questions, perpetual questions being asked: "Who is to be blamed?" and, "what is to be done?" I think it is also important to note who is asking the question and where do we begin. One of the places that you might want to begin, if you have the time, is by listening to a wonderful Yale University Lecture series that is being offered in the Fall of 2022, taught by Professor Timothy Snyder. It is called "The Making of Modern Ukraine."<sup>30</sup> It is

---

<sup>28</sup> See generally STAFF OF S. PERMANENT SUBCOMM. ON INVESTIGATIONS, 116TH CONG., THE ART INDUSTRY AND U.S. POLICIES THAT UNDERMINE SANCTIONS (2020), <https://www.hsgac.senate.gov/imo/media/doc/2020-07-29%20PSI%20Staff%20Report%20-%20The%20Art%20Industry%20and%20U.S.%20Policies%20that%20Undermine%20Sanctions.pdf> [<https://perma.cc/R62K-5F3F>].

<sup>29</sup> Reuters, *Facade All That Remains of Bombed Mariupol Theater*, YOUTUBE (Dec. 24, 2022), <https://www.youtube.com/watch?v=W8J8F1lxCO8> [<https://perma.cc/CX2C-5JSU>].

<sup>30</sup> Timothy Snyder, *The Making of the Modern Ukraine. Class 1: Ukrainian Questions Posed by Russian Invasion*, YOUTUBE (Sept. 3, 2022), <https://www.youtube.com/>

accessible, brilliant, and puts into the large world context the reason why the situation in Ukraine is not just a small regional problem, but something that concerns all of us.

Immediately after the Russian invasion of Ukraine there were many statements made by international organizations, national organizations, curators, art historians.<sup>31</sup> There have really been an astounding number of reports, conferences, exhibitions, and efforts underway to try to help and make sense of this armed conflict and to stop it. There have been fundraisers and donations, and benefit concerts, and untold numbers of videos and photographs produced and memes and all these efforts were astounding. The responses that rolled in and the devastation that we witnessed, all in a relatively short period of time. For me, as an observer, because I am sitting in the safety and comfort of my office, and I doubt many of you have traveled to Ukraine during the last eight months, the fact that the International Council of Museums (ICOM) is putting together a Red List of Cultural Objects at Risk for Ukraine is shocking.<sup>32</sup> Maybe I should not be shocked, maybe every country, every type of cultural heritage should be listed on a Red List, just in case. Red Lists are designed to familiarize border control, law enforcement, and all

---

watch?v=bJczLlwp-d8&list=PLh9mgdi4rNewfxO7LhBoz\_1Mx1MaO6sw\_  
[https://perma.cc/47TU-54JC].

<sup>31</sup> See, e.g., *Statement Concerning the Russian Invasion into Ukraine*, INT'L COUNCIL OF MUSEUMS (Feb. 24, 2022), <https://icom.museum/en/news/statement-russia-invasion-into-ukraine/> [https://perma.cc/C2CE-Q4SE]; *UNESCO's Statement on the Recent Developments in Ukraine*, UNESCO (Feb. 24, 2022), <https://www.unesco.org/en/articles/unescos-statement-recent-developments-ukraine> [https://perma.cc/4VUC-CJKF]; *The UN and the War in Ukraine: Key Information*, UNITED NATIONS (Sept. 3, 2022), <https://unric.org/en/the-un-and-the-war-in-ukraine-key-information/#:~:text=Aggression%20against%20Ukraine,Charter%20of%20the%20United%20Nations> [https://perma.cc/2TN7-SUBZ]; Max Weber College, *Konstantin Akinsha Warns of Loss of Cultural Heritage in War*, UNIV. ERFURT (Mar. 11, 2022), <https://www.uni-erfurt.de/en/max-weber-kolleg/kolleg/recent-news/news/news-detail/konstantin-akinsha-warns-of-loss-of-cultural-heritage-in-war> [https://perma.cc/X6CA-MZXX]; *Cultural Heritage—Along with Human Life—At Risk in Ukraine*, INT'L FOUND. FOR ART RSCH. (Mar. 4, 2022), [https://www.ifar.org/news\\_article.php?docid=1628694687](https://www.ifar.org/news_article.php?docid=1628694687) [https://perma.cc/EPD2-HMYE].

<sup>32</sup> See *Red Lists*, INT'L COUNCIL OF MUSEUMS, <https://icom.museum/en/red-lists/> [https://perma.cc/4W56-6LGP].



others interested with those art and cultural objects that are at risk of illicit trade.

In addition to the statements by international organizations, on March 2nd, Attorney General Merrick B. Garland announced the launch of a new task force, called Task Force KleptoCapture intended to enforce the sanctions and export restrictions imposed by the United States against corrupt Russian oligarchs, who are in great part responsible for this senseless war.<sup>33</sup> Just like during World War II there were lists of Nazi-collaborators and enablers, and just like in the case of Bührle, whose activities made him a person of interest because he was selling weapons to the Germans, Task Force KleptoCapture was created to locate assets that belong to persons on sanctioned person lists.

I believe that we are all interconnected (not unlike mushrooms). We can talk about anti-money laundering regulations affecting the art market, we can discuss enforceability of international law, and we can talk about humanitarian law and human rights all related to the same set of current events. There have been lists of sanctioned persons created before 2022. After the annexation of Crimea in 2014 there were already a number of individuals placed on the sanctioned persons' list and this list keeps on growing.”

#### IV. WHAT DOES IT MEAN IF SOMEBODY'S NAME IS ON A SANCTIONED PERSON'S LIST?

There are different provisions and different lists (for example, some people who are on the U.S. list are not necessarily on the E.U. lists and vice versa). Sanctioned persons cannot buy or sell property in the jurisdiction where they are listed; they cannot import luxury goods into the Russian Federation.<sup>34</sup> If they have bank accounts,

---

<sup>33</sup> See Press Release, U.S. Dep't of Just., Attorney General Merrick B. Garland Announces Launch of Task Force KleptoCapture (Mar. 2, 2022), <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-launch-task-force-kleptocapture> [<https://perma.cc/A36P-5HFB>].

<sup>34</sup> See Irina Strelkovskaya, *From Sanctioned Persons to Seizure of Cultural Property: Insights Into Current International Regulations*, CTR. FOR ART L. (Oct. 4, 2022), <https://itsartlaw.org/2022/10/04/from-sanctioned-persons-to-seizure-of-cultural-property-insights-into-current-international-regulations/> [<https://perma.cc/RM6V-4U3N>].

banks are not allowed to release the funds and if they have art collections, they—the sanctioned persons—cannot arrange to have their art be shipped, consigned, or probably conserved, as all these service-providing professionals are banned from conducting business with sanctioned individuals. Which means, if you have information related to sanctioned Russian oligarchs’ or businesses’ property, there is something *you* can definitely do to try and end this war sooner. You can communicate this information to the Task Force KleptoCapture<sup>35</sup> or you can communicate it to the Ukrainian National Agency on Corruption Prevention<sup>36</sup> and have it recorded in the War and Sanctions database.

There are a lot of other efforts that non-lawyers and non-Ukrainians have created in response to the 2022 invasion. One of these, an outstanding initiative by cultural heritage professionals—perhaps some of you have contributed to it—is called “Saving Ukrainian Cultural Heritage Online” (SUCHO).<sup>37</sup> SUCHO’s premise is that while few are able to travel to Ukraine right now, even though we might want to go and clean the streets and plant new flowers, and hug all the elderly and children, and so on and so forth, what we *can* do with our technical skills and our computers, is to try and archive materials that are available for the time online. There have been instances where certain museums and their websites would go dark and you would not be able to find information. This tendency is not new to the Ukrainians, it’s not unique to the Russian Federation. It has happened over the years with revisionist content and just loss of data that can either be co-opted or taken down and lost. SUCHO volunteers have been working very hard on archiving digital content and at-risk sites.

---

<sup>35</sup> See Iris E. Bennett et al., *Department of Justice KleptoCapture Task Force—Director Andrew Adams Shares Observations on Current Efforts and Expected Developments*, STEPTOE (Dec. 14, 2022), <https://www.stepto.com/en/news-publications/international-compliance-blog/department-of-justice-kleptocapture-task-force-director-andrew-adams-shares-observations-on-current-efforts-and-expected-developments.html> [https://perma.cc/Z7QR-8LTY].

<sup>36</sup> See *About the Project—War and Sanctions*, WAR & SANCTIONS, <https://sanctions.nazk.gov.ua/en/about/> [https://perma.cc/V2GS-Z822].

<sup>37</sup> *Saving Ukrainian Cultural Heritage Online*, SUCHO, <https://www.sucho.org/> [https://perma.cc/SEA3-B7CY].

The Ukrainian government itself of course, their Ministry of Culture, regional authorities, and volunteers have been cataloging cultural heritage losses. One of the portals that records and lists damaged and destroyed cultural heritage sites is an online resource Destroyed Cultural Heritage of Ukraine.<sup>38</sup> It is not clear whether all the destruction is intentional and targeting Ukrainian culture is a goal in and of itself, or the destruction is incidental collateral damage. However, had the invasion on February 24th not happened, these hundreds of sites, archives, and repositories would not be at risk or lost.<sup>39</sup>

One of the damaged artifacts on the Ukrainian endangered list, independently confirmed by UNESCO observers, are stone statues dating back to the ninth through thirteenth centuries.<sup>40</sup> The carved stones were not entirely destroyed, and the circumstances of their damage are unclear, but the very fact that they have been somehow knocked down and broken should send shivers down everybody's spine. Before proceeding, I would like to acknowledge the amazing number of scholars and journalists<sup>41</sup> who have been working on the subject of documenting cultural heritage violations and losses. Sofia Kishkovsky is one of the reporters who has focused much of her attention to the art and cultural heritage of Ukraine under attack in the course of 2022. We owe these journalists and photographers much debt and gratitude for their work. Another person who also has been understandably active in keeping track of Ukrainian culture under threat is the aforementioned Konstantin Akinsha, the co-

---

<sup>38</sup> See *Destroyed Cultural Heritage of Ukraine*, MIN. OF CULTURE & INFORMATION, <https://culturecrimes.mkip.gov.ua/> [<https://perma.cc/83YU-VXN3>]. As of publishing, the site lists more than 550 affected buildings and memorial sites.

<sup>39</sup> See Robert Bevan, *Reports Say Putin Is Deliberately Targeting Ukrainian Heritage—But Is That True?*, ART NEWSPAPER (Apr. 27, 2022), <https://www.theartnewspaper.com/2022/04/27/reports-say-putin-is-deliberately-targeting-ukrainian-heritagebut-is-that-true> [<https://perma.cc/7YAK-VYQH>].

<sup>40</sup> See Sophia Kishkovsky, *Ukrainian Stone Statues—Likened to Easter Island's Moai—Destroyed During Russian Invasion*, ART NEWSPAPER (Sept. 21, 2022), <https://www.theartnewspaper.com/2022/09/21/ukrainian-stone-statueslikened-to-easter-islands-moaidestroyed-during-russian-invasion> [<https://perma.cc/9P96-5UJZ>].

<sup>41</sup> See Jason Farago, *The War in Ukraine Is the True Culture War*, N.Y. TIMES (July 15, 2022), <https://www.nytimes.com/2022/07/15/arts/design/ukraine-war-culture-art-history.html> [<https://perma.cc/XB4A-EK5R>].

author of *Beautiful Loot*. An art historian, he has been focusing more on the Ukrainian cultural losses in the present time.

UNESCO, as I mentioned earlier, has been doing quite a lot to spotlight and protect Ukrainian tangible and intangible cultural heritage. Not only have they been keeping track of the damaged sites, they have their own list that gets updated quite regularly, and right now they have confirmed damage to over 190 sites, a shorter list than that maintained by the Ukrainian Ministry of Culture, where, as of today, there are over 300 sites documented as damaged or fully destroyed.<sup>42</sup>

After the war, the costs of reconstruction and the duration of rejuvenating cities and villages will begin. In the meantime, Ukrainian musicians, architects, and visual artists are fighting to keep life and hope for the future. Commercial centers and schools that have been bombed are being reclaimed by civilians who are staging photoshoots, exhibitions, dances, and concerts in these bombed out locations. One of the leading Ukrainian musicians, Svyatoslav Vakarchuk,<sup>43</sup> of the rock group Okean Elzy, who has been traveling around Ukraine and performing concerts for soldiers on the frontline and in hospitals and train stations to raise morale of the military personnel and civilians, brought his musician-colleagues for a performance in a demolished building in Kharkiv. (Please note this building at the Constitution Square in Kharkiv, as we will return to it at the end of the presentation).

And finally, there have been impressive efforts on behalf of the private individuals, businesses, and nonprofits appalled by the senseless war in Ukraine, all wishing to lend a hand. To name just a couple, de PURY held an auction titled “Benefit for Ukraine’s People & Culture” online on April 21st.<sup>44</sup> Proceeds from the sale were donated to the Appeal of Conscience Foundation, the Museums for

---

<sup>42</sup> See Larcán, *supra* note 3.

<sup>43</sup> Daniel Boffey, *The Dangerous Tour: Ukraine’s Top Rock Star Takes Music to the Bunkers*, GUARDIAN (Mar. 25, 2022), <https://www.theguardian.com/world/2022/mar/25/the-dangerous-tour-ukraines-top-rock-star-svyatoslav-vakarchuk-takes-music-to-the-bunkers> [<https://perma.cc/U4DA-4K4H>].

<sup>44</sup> See *Benefit for Ukraine’s People & Culture*, DE PURY, <https://auction.de-pury.com/auctions/1-5S2TFM/benefit-for-ukraines-people-culture> [<https://perma.cc/2MRY-KT4G>].

Ukraine, and a number of front-line charitable organizations, including the Maria Prymachenko Family Foundation, the Ukrainian Frontier Organization, 100% Life, and the Museum Crisis Centre, as well as projects of the Ukrainian Emergency Art Fund, such as the Ukrainian Emergency Pavilion. An educational nonprofit in New York, Institute for Fine Art Research (IFAR), held a conference on April 27th, entitled “Ukrainian Cultural Heritage: What’s Damaged; Destroyed; Documented; and Being Done” coupling it with a stand-alone list of Cultural Heritage Preservation Resources and Aid Organizations.<sup>45</sup> Here, too, one of the buildings highlighted was a library and will appear again at the end of my remarks.<sup>46</sup>

## V. BACK TO SWITZERLAND

The World Economic Forum (WEF) which meets in Davos, historically used to see a lot of Russian businesspeople, including Russian oligarchs. This year, there was no official participation, and the Russian House would have remained shut but for an exhibition that took place there instead. The building that is known as the Russian House of the Forum was repurposed by the Pinchuk Art Center and other organizers, into an exhibition space under the title of the “Russian War Crimes House.”<sup>47</sup> The exhibition, co-curated by Björn Geldhof, presented photographs from across Ukraine post-invasion, documenting places and lives that have been affected. During the multi-day WEF program, art collector Viktor Pinchuk<sup>48</sup> and Professor Timothy Snyder spoke on the panel at the “Russian War Crimes House,” trying to address questions such as, “Where is the war going, and what will the future of Ukraine and the world look like after

---

<sup>45</sup> See *Ukrainian Cultural Heritage: What’s Damaged; Destroyed; Documented; and Being Done*, INT’L FOUND. FOR ART RSCH. (Apr. 27, 2022), [https://www.ifar.org/past\\_event.php?docid=1649960899](https://www.ifar.org/past_event.php?docid=1649960899) [<https://perma.cc/4GSV-PC2J>].

<sup>46</sup> See Sophia Kishkovsky, *Museum Building Heavily Damaged in Ukraine’s Battle-Ravaged City of Chernihiv*, ART NEWSPAPER (Mar. 15, 2022), <https://www.theartnewspaper.com/2022/03/15/museum-building-heavily-damaged-in-ukraines-battle-ravaged-city-of-chernihiv> [<https://perma.cc/Z9Q8-CB3L>].

<sup>47</sup> RUSSIAN WAR CRIMES, <https://www.russianwarcrimeshouse.org/> [<https://perma.cc/YBD7-L7FC>].

<sup>48</sup> Ukraine House Davos, *Ukraine House Davos 2022—Day 1—Keynote: What Is at Stake in Ukraine and Why You Should Care*, YOUTUBE (June 9, 2022), <https://www.youtube.com/watch?v=FC-Eu-THPCo> [<https://perma.cc/8ECE-9C5F>].

the war?” One of the recurring motifs throughout this year has been the need to safeguard Ukrainian cultural heritage, from traditions of cooking (think borscht) to language, embroidery, visual arts, and architectural ensembles.

During the European Cultural Heritage Days in 2022, the European Parliament issued a detailed report documenting and explaining “Russia’s cultural war against Ukraine.”<sup>49</sup> It contains information on both the international and domestic Ukrainian efforts to protect Ukrainian cultural heritage during this armed conflict and well into the future.

Simultaneously, countless volunteers among library and museum experts, and more officially museum-related organizations worldwide, have been joining efforts<sup>50</sup> and arranging to send packing supplies and digitization equipment, trying to help their Ukrainian counterparts. Note, for example, the Heritage Emergency Response Initiative.<sup>51</sup> This is an initiative that Ukrainian museum curators created. They have been working on getting supplies to the institutions that need immediate evacuation and help.

As I mentioned already, with the technology available to us in the twenty-first century, many people are able to document the destruction and losses. Volunteers and people on the ground are taking photographs and 3D images of places like the destroyed youth library in Chernihiv<sup>52</sup> that, at some point in the future, will need to be rebuilt so the history and heritage they represent are not lost entirely.

---

<sup>49</sup> Magdalena Pasikowska-Schnass, *European Cultural Heritage Days: Russia’s cultural war against Ukraine*, EURO. PARLIAMENT THINK TANK (Sept. 16, 2022), [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2022\)733650](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)733650) [<https://perma.cc/MCE6-WRYQ>].

<sup>50</sup> See, e.g., *The Joint ICOMOS-ICCROM Mission to Ukraine*, <https://www.iccom.org/news/joint-icomos-iccrom-mission-ukraine#:~:text=The%20purpose%20of%20the%20mission,recovery%20planning%20of%20cultural%20heritage> [<https://perma.cc/PL26-DAG2>].

<sup>51</sup> See generally REPORT #2 ON THE ACTIVITIES OF HERITAGE RESCUE EMERGENCY INITIATIVE (HERI) [hereinafter HERI REPORT], <https://drive.google.com/file/d/1deb5PTaP3VdbGErJtcLBG91yjgo1HmA/view> [<https://perma.cc/RJV8-VK23>]. For more information on HERI, see *Heritage Rescue Emergency Initiative (HERI)*, CIMAM, <https://cimam.org/museum-watch/museum-watch-actions/anti-war-petitions-and-resources-in-response-to-russias-invasion-of-ukraine/fundraising-initiatives/heritage-rescue-emergency-initiative-heri/> [<https://perma.cc/W3Q7-8FH5>].

<sup>52</sup> See HERI REPORT, *supra* note 51, at 20–23; see also Kishkovsky, *supra* note 46.

This is a very quick belated disclaimer—or a reminder. As I am sifting through information in very likely and unlikely places—Telegram accounts, international media sources, Facebook—I am reading information that comes from Bots and propagandists, and I am doing searches in different languages, using different search platforms. This year, I was reminded that depending on the very spelling or transliteration of your search, depending on how you spell your searches, you might get different information. We are united and divided by the information bubbles around us. For example, if you spell Luhansk—a city in Donbas—with an “h” you get information from *Ukrainian* sources, and if you spell it with a “g” you get *Russian* sources. This means that on the same day, the same search will generate different information, at times conflicting and mutually exclusive. War for cultural heritage, a sense of ownership, and belonging, is also being waged through and with the use of syntax.<sup>53</sup>

So, what can we do? To conclude and to focus your attention now, in the twenty-first century, you would probably agree that we can do without antiquated and barbaric weapons that are lethal, destructive, and imprecise. We have such untested tools as DAOs (one organized by Russian art collective, Pussy Riot) that are raising money for the Ukrainian army;<sup>54</sup> there are NFT artists and online charitable concerts; exhibitions of posters made by young graphic artists, all speaking against the war and in support of Ukrainian territorial integrity. Museum professionals can do a lot. Attorneys can do a lot, and not only with the tools of their trade.

This summer, I helped start a summer camp for Ukrainian refugee kids in the vicinity of Zürich. It was called “Viel Spass” (“A Lot of Fun”) and it ran for five weeks. Funding for the camp came from Swiss families and fundraisers organized by local schools. The camp

---

<sup>53</sup> For more on the subject of de-colonizing Ukrainian contributions to the arts and cultural heritage, see, for example, Stephanie Stacy, *Malevich Is Not Russian: Activist Group Takes to Instagram to Demand That Ukrainian Heritage Is Recognised*, ART NEWSPAPER (May 18, 2022), <https://www.theartnewspaper.com/2022/05/18/malevich-is-not-russian-activist-group-takes-to-instagram-to-demand-that-ukrainian-heritage-is-recognised> [<https://perma.cc/2HEH-TDA3>].

<sup>54</sup> See Will Gottsegen, *New DAO Raises \$3M in ETH for Ukrainian Army*, COINDESK (Feb. 27, 2022), <https://www.coindesk.com/tech/2022/02/27/new-dao-raises-3-million-eth-for-ukrainian-army/> [<https://perma.cc/B4DQ-F82P>].

was intended for kids who came to Switzerland as refugees. They spent time eating traditional foods, painting national colors on coloring sheets, and preparing for the new school year in a new country, with subjects being taught in a foreign language. What I learned was that I should not be working with so many kids and so closely. It is hard and it requires patience and flexibility that I lack. It is hard to have dozens of kids from five to fifteen running around, vying for your attention and challenging your authority on when they have to eat and when they have to play sports. Thankfully, there are many patient and talented people who can work with kids, making sure they are fed on time and get a variety of activities from art to music to sports to keep them active and happy, and not thinking about the friends that they left behind, and their fathers and grandparents, and all other losses and disappointments brought by war.

The Russian invasion of Ukraine resulted in immense devastation to cultural institutions and repositories (such as the destruction of schools, libraries, and museums), deaths of people of all professions, and the displacement of hundreds of thousands of families and millions of children. Most of the displaced people want to go back home, even though their towns are destroyed. As Ukrainian refugees plan to come back and Ukrainian citizens look to the post-war life, what else can we do? What will happen to them and their cultural heritage after the war? To prepare for life after this war, reconstruction projects are underway, for example, the Ukraine Recovery Plan. At a Swiss-Ukrainian conference held in Lugano in July 2022, government officials and economists discussed the steps and the funds needed to rebuild infrastructure, clear out debris, and build new housing and schools, among other projects.<sup>55</sup>

Where will the funds come from to rebuild Ukraine? This brings me back to the subject of sanctions. In 2021, according to Transparency International, Ukraine ranked 122th out of 180 countries on the

---

<sup>55</sup> See *Ukraine Recovery Conference*, UKRAINE RECOVERY CONF., <https://www.urc2022.com> [<https://perma.cc/RC74-62SN>]; see generally INT'L WORKING GRP. ON RUSSIAN SANCTIONS, *Why and How to Confiscate Russia's Sovereign Assets to Help Rebuild Ukraine* (Stanford Freeman Spogli Inst. Int'l Studies, Working Paper No. 6, 2022), <https://drive.google.com/file/d/1cBAR-tpJSqU8R1nVPHSKcSTFKcSEWbfi/view> [<https://perma.cc/Z6GF-UJWZ>].



Corruption Perceptions Index (CPI).<sup>56</sup> The ranking meant that Ukraine was the second most corrupt country in Europe followed only by the Russian Federation. Sending donations to Ukraine to assist it in its plight could feel strange, for fear that the donations could be misdirected. To ensure that corruption is reduced, there is a National Agency for Corruption Prevention (NACP), which, according to its mandate, “is responsible for the development of anti-corruption policy and prevention of corruption.”<sup>57</sup>

The unity and leadership that Ukrainian people have demonstrated in the face of the Russian military might and propaganda efforts make me feel hopeful that the funds earmarked to help humanitarian causes and reconstruction efforts are being used as described. The NACP’s mandate is not only to prevent and detect corruption in international corporations but also to make public information about sanctions against individuals and companies “abetting Russia’s open aggression against Ukraine.”<sup>58</sup> The NACP is working with its counterparts in other countries—the United States, France, Germany, to name a few—to identify individuals involved in the war, including oligarchs with art collections, and publish their profiles on the War and Sanctions database. The NACP is looking for tips and receiving information about art collectors and their agents who are looking to circumvent sanctions and move their collections or sell art despite the prohibitions. For those who are working at auction houses and galleries, or storage facilities and art fairs, the database offers an opportunity to report property of sanctioned persons that can be frozen and later turned over to Ukraine for reconstruction purposes.<sup>59</sup>

---

<sup>56</sup> See *Corruption Perceptions Index*, TRANSPARENCY INT’L, [https://www.transparency.org/en/cpi/2021?gclid=Cj0KCQiAn4SeBhCwARIsANeF9DL\\_q4tgJZtawKPLowBNSKvOwazlQf6YKHM\\_82uoRknOjyQ6jLZo5MaAiUoEALw\\_wcB](https://www.transparency.org/en/cpi/2021?gclid=Cj0KCQiAn4SeBhCwARIsANeF9DL_q4tgJZtawKPLowBNSKvOwazlQf6YKHM_82uoRknOjyQ6jLZo5MaAiUoEALw_wcB) [https://perma.cc/B7GT-HV5Q].

<sup>57</sup> See *About NACP*, NAT’L AGENCY ON CORRUPTION PREVENTION <https://nazk.gov.ua/en/about-nacp-2/#:~:text=The%20National%20Agency%20on%20Corruption,policy%20and%20prevention%20of%20corruption> [https://perma.cc/B5TS-4SR5].

<sup>58</sup> See *The Main Database of Sanctions That Were Imposed After Russia’s Attack on Ukraine*, WAR & SANCTIONS, <https://sanctions.nazk.gov.ua/en/> [https://perma.cc/S3D9-PY2V].

<sup>59</sup> In December 2022, American senators proposed turning over to Ukraine in 2023 frozen assets of sanctioned individuals. See Azi Paybarah, *Senate Backs Plan to Use Money*

Authorities in many countries with sanction regimes have already started seizing property of Russian sanctioned individuals—Viktor Vekselberg (since 2018), Oleg Deripaska (since 2018), and others.<sup>60</sup> Now, imagine a museum in Switzerland, or the United States, or Russia in seventy years, that displays art from the personal collection of Deripaska, or the Rosenberg brothers (who were called out in the 2021 Report) or Viktor Vekselberg. These individuals are sanctioned and are also known to have been active on the international art market for years. Someone surely knows where these assets are stored, where these artworks are, and, when they surface, what to do with recording and reporting their trajectory.

At some point in time, they could be gifted or loaned to a museum in St. Petersburg, Moscow, or somewhere else. There could be a room or a wing named after Vekselberg, or Deripaska. How will the museum visitors feel about these honors? Alternatively, these art collections may be seized and forfeited, if in a specific jurisdiction where their owners attempt to violate sanctions, engage in money laundering, avoid taxes, or fund criminal activities. There is something that could be done now to prevent embarrassment for the next generation from walking into a neo-Bührle scenario—to avoid the embarrassment of a Bührle-like legacy hanging over art on national museum walls.

On October 3, 2022, the U.S. Supreme Court denied a cert petition to hear Oleg Deripaska's plea seeking to lift sanctions imposed

---

from *Seized Russian Assets to Aid Ukraine*, WASH. POST (Dec. 22, 2022), <https://www.washingtonpost.com/politics/2022/12/22/senate-russia-ukraine-aid/> [<https://perma.cc/L3YW-K3CP>]. Similarly, Estonian authorities proposed turning over frozen assets of sanctioned individuals to Ukraine for reconstruction purposes.

<sup>60</sup> See, e.g., Anny Shaw, *Here Are Some of the Russian Art Collectors Facing Western Sanctions*, ART NEWSPAPER (Feb. 28, 2022), <https://www.theartnewspaper.com/2022/02/28/here-are-some-of-russias-wealthiest-art-collectors-facing-western-sanctions> [<https://perma.cc/5EJM-A7DE>]; Vivienne Chow, *Authorities Have Seized Russian Mega-Collector and Former Tate Donor Viktor Vekselberg's \$90 Million Superyacht in Spain*, ARTNET (Apr. 5, 2022), <https://news.artnet.com/art-world/viktor-vekselberg-yacht-seized-209438> [<https://perma.cc/F5YU-ZHVQ>], Eileen Kinsella, *A Diego Rivera Painting Was Among the Assets FBI Agents Seized From Sanctioned Russian Oligarch Oleg Deripaska*, ARTNET (Apr. 25, 2022), <https://news.artnet.com/art-world/rivera-seizure-oligarch-oleg-deripaska-2104524> [<https://perma.cc/RP2H-6487>].

against him in the United States.<sup>61</sup> In 2021, a Diego Rivera painting was seized<sup>62</sup> from the Deripaska residence and in 2022, Deripaska was indicted for trying to “circumvent U.S. sanctions through lies and deceit to cash in on and benefit from the American way of life.”<sup>63</sup> His associate, British national Graham Bonham-Carter, was arrested for trying to move a Deripaska-owned work of art out of the United States.<sup>64</sup>

Looking to the future and to avoid having museums named after or containing art contaminated by association with war criminals and individuals responsible for feeding the war machine ammunition (think: Bührle), it is possible to act now. For the agents of sanctioned persons, like Graham Bonham-Carter and others with information related to illicit activities, they can report location of the assets, artworks, yachts, and more to law enforcement.<sup>65</sup> Information can be brought to the attention of the Center for Art Law, or reported to KleptoCapture Task Force in the United States, or by using the NACP’s Whistleblower Portal on the Assets of Persons Involved in the Russian Aggression against Ukraine.<sup>66</sup>

Whether you share the information or not, always conduct your due diligence and research to make sure you are not facilitating money laundering and sanction violations, which indirectly serve to

---

<sup>61</sup> *Deripaska v. Yellen*, No. 21-5157, 2021 U.S. Dist. LEXIS 110350 (D.C. Cir. Mar. 29, 2022), *cert. denied* 143 S. Ct. 117 (2022).

<sup>62</sup> See Kinsella, *supra* note 60.

<sup>63</sup> Press Release, U.S. Dep’t of Justice, Russian Oligarch Oleg Vladimirovich Deripaska and Associates Indicted for Sanctions Evasion and Obstruction of Justice (Sept. 29, 2022), <https://www.justice.gov/opa/pr/russian-oligarch-oleg-vladimirovich-deripaska-and-associates-indicted-sanctions-evasion-and-obstruction-of-justice> [https://perma.cc/6PQA-SFC2]. For the unsealed indictment, see Sealed Indictment, *United States v. Deripaska, et al.*, S1 22 Crim. 518 (S.D.N.Y. Sept. 28, 2022), <https://www.justice.gov/opa/press-release/file/1539061/download> [https://perma.cc/R5D2-CAF5].

<sup>64</sup> Luc Cohen, *British Businessman Charged over Helping Russian Oligarch Evade U.S. Sanctions*, REUTERS (Oct. 11, 2022), [www.reuters.com/world/europe/uk-businessman-charged-with-conspiring-violate-sanctions-oleg-deripaska-2022-10-11/](https://www.reuters.com/world/europe/uk-businessman-charged-with-conspiring-violate-sanctions-oleg-deripaska-2022-10-11/) [https://perma.cc/XJC6-E2GG].

<sup>65</sup> See *Kleptocracy Asset Recovery Rewards Program*, U.S. DEP’T OF TREASURY, <https://home.treasury.gov/about/offices/terrorism-and-financial-intelligence/terrorist-financing-and-financial-crimes/kleptocracy-asset-recovery-rewards-program> [https://perma.cc/QJM4-G7KR]; H.R. 389, 116th Cong. (2019).

<sup>66</sup> *Russian Assets Whistleblower Tool*, WAR & SANCTIONS, <https://reportsassets.nazk.gov.ua/en> [https://perma.cc/AKZ3-XURD].

prolong armed conflict and destroy cultural heritage along the way. I am not interested in canceling Russian culture. As Anton Chekhov said, “Any idiot can face a crisis; it’s the day-to-day living that wears us out.” The word of 2022 was “permacrisis.”<sup>67</sup> To prepare for 2023, and to continue protecting cultural heritage in the face of demolition and destruction, I think we need to all work together to cut the oxygen out of the military machine by using economic sanctions and by using our moral compasses, doing what resonates with us.

My teenage daughter, an artist in the making, informed me that while the Russian-Ukrainian war entirely consumed my energy and debilitated my work, she was not as affected by these events. There were other crises, threats to reproductive rights and human rights in the United States and the protests in Iran, just to name a couple, that she thought more important. For me, the plight of Ukraine, Kyiv being my place of origin, is resonating very deeply. I look forward to Ukraine’s victory, aided by assistance from the international community, and to the cities rising back stronger and better.

To conclude, let me share with you possible reconstruction plans for the future, as seen by artists and architects. In the summer, a projected RecreatUA asked creatives of all types to submit ideas and designs for renovations of the damaged and demolished buildings in Ukraine.<sup>68</sup> There are some wonderful ideas to renovate the library in Chernihiv, the commercial center in Kharkiv, where Vakarchuk performed with other musicians among the rubble, the drama theater in Mariupol, which was bombed with hundreds of civilians hiding inside, and other buildings bearing physical and emotional scars across the country. Ukrainian cultural heritage now contains fresh imagery, inspired by the 2022 war and inflicted by the war scars. Proposed renovations, which do not demolish but incorporate the scars, so as to not forget the life before, is what preservation of culture heritage is about. For these ideas to be realized even in some part, funds from the sanctioned persons, Russian oligarchs and

---

<sup>67</sup> Helen Bushby, *Permacrisis Declared Collins Dictionary Word of the Year*, BBC NEWS (Nov. 1, 2022), <https://www.bbc.com/news/entertainment-arts-63458467> [<https://perma.cc/BJ69-EB8Z>].

<sup>68</sup> See *Re:Create Ukraine*, RE:CREATE UKRAINE, <https://recreateua.com/> [<https://perma.cc/WN5J-6J2E>].

corrupt politicians, would come in very handy. Let's lend a hand and help as much as we can. Thank you.

## VI. QUESTIONS & ANSWERS

**Question:** *Do you know of many Russian artists involved in also helping [raise awareness and resist the war]? Because we've seen obviously Ukrainian artists on that side but that's their family, that's their land, that's their heritage, so it's obvious that Ukrainian artists are involved. How many Russian artists are helping those projects, and being vocal about their position?*

**Answer:** I'm an optimist. I think Ukraine is going to win this war. I don't know what the victory will look like because there has been so much loss of life, but I do believe Ukraine is going to win. I think there's a different tragedy with the Russian Federation because people have not been able to express themselves. They have not been able to really protest because they're very aggressively attacked and beaten; many have been labeled "foreign agents." There are a number of Russian musicians who speak out against the war. Also, a fair number of theater artists, museum curators, and theater directors quit. It is very dangerous to speak against what the Russian Federation is doing on the inside. With the partial mobilization announced last month, many, many people fled the Russian Federation. There are artists who are doing their best speaking out against the war and donating proceeds for their concerts to Ukrainian causes. There are lots of individuals who are trying to help displaced Ukrainians on the territory of the Russian Federation as well. It's just not as easy to document. Artists who come to mind are Andrei Makarevich, Maxim Gulkin, Nogu Svelo, Chulpan Khamatova, Pussy Riot, and many others.<sup>69</sup>

**Question:** *Thank you for the remarks. They're really moving and obviously this creates the sort of awful conflict between the need to save lives and the threat to culture, which I won't ask you to*

---

<sup>69</sup> See Andrew Roth, *Russian Activists Sign Open Letter Calling for End to War in Ukraine*, GUARDIAN (Mar. 25, 2022), <https://www.theguardian.com/world/2022/mar/25/russian-activists-sign-open-letter-calling-for-end-to-war-in-ukraine> [<https://perma.cc/GFF2-F497>].

*adjudicate, but for those in the room with some experience and knowledge of cultural property law, if you had to say what's the one thing or a short list of ways they can apply that knowledge and experience, where would you point them?*

**Answer:** Thank you for a great question. There is an opportunity for example for the art market participants, and here I'm thinking about galleries, and auction houses, auction house experts, insurance companies, and storage companies to share information. It is a business decision, too, that individuals can make. There is information about art collections of sanctioned persons that can be useful for the KleptoCapture or other anti-corruption agencies to have. As far as attorneys are concerned, a lot of work needs to be done right now with immigration law. There are many people looking for asylum, not only Ukrainian nationals but also Russian citizens who are not supporting Putin's War. So, immigration lawyers can do a lot. Another idea is that we can hire Ukrainian artists to help them financially and to showcase their talents. The Center for Art Law was lucky to work with a young Ukrainian artist, Sofia Tomilenko, on the poster we commissioned for our annual conference in July. Right now, we are working with a team from Ukraine to redesign our website. These small projects, as well as donations to support humanitarian and other anti-war efforts, have a tangible impact on individuals, on individual artists, on specific businesses. In terms of larger predictions and preparations that we can make, I think there will be a special court at some point to review the war crimes and to assess the compensation owed to the people of Ukraine.

There are many ongoing efforts from volunteers and professionals who are working on collecting evidence to make the case that this war is genocidal and in violation of international conventions. There will be a need for attorneys to come and work with the evidence to seek justice for the injustice we are seeing and Ukraine is experiencing. Allow me to reference one more book, written by a French attorney, Philippe Sands, called *East West Street: On the Origins of "Genocide" and "Crimes Against Humanity."*<sup>70</sup> It narrates the history of Lviv, once a Polish and Austro-Hungarian and now a

---

<sup>70</sup> PHILIPPE SANDS, *EAST WEST STREET: ON THE ORIGINS OF "GENOCIDE" AND "CRIMES AGAINST HUMANITY"* (Kropf 2016).

Ukrainian city, and the history of the legal terms that were coined following World War II: crimes against humanity and genocide. Attorneys Lauterpacht and Lemkin, who are credited with formulating these causes of action and concepts, both went to law school in Lviv and were both Holocaust survivors.