International Art and Cultural Heritage Law

PATTY GERSTENBLITH, JACQUELINE CHEZAR, DAVID BRIGHT, AND KEVIN RAY*

This article summarizes important legal developments in 2016 in international art and cultural heritage law.

I. The Protect and Preserve International Cultural Property Act

The United States implements its obligations under the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property through the Convention on Cultural Property Implementation Act (CPIA). Under the CPIA, a State Party can request assistance under Article 9 of the Convention when its cultural patrimony is in jeopardy due to the pillage of archaeological or ethnological materials. A request is submitted through diplomatic channels with supporting documentation relating to the four statutory determinations that are prerequisites to such an agreement. The United States can then impose import restrictions on designated categories of archaeological and ethnological materials pursuant to a bilateral agreement. Another mechanism also exists for imposing import restrictions in “emergency” circumstances. The term “emergency” is at best a misnomer and is frequently misleading because this provision is not applicable unless the requesting State first asks for a bilateral agreement. This process is therefore not opportune in cases of true emergency situations, as demonstrated by the recent examples of Iraq and Syria.

* Patty Gerstenblith is Distinguished Research Professor, DePaul University College of Law, and a Senior Advisor to the ABA’s Art & Cultural Heritage Law Committee (Part I). All opinions expressed in these materials are those of the author and not necessarily those of the U.S. Department of State or of the U.S. government. Jacqueline Chezar is Executive Director and Assistant General Counsel at The Depository Trust & Clearing Corporation and a Senior Advisor to the ABA’s Art & Cultural Heritage Law Committee (Part II). David Bright is an Attorney, Simmons Perrine Moyer Bergman PLC, and Co-Chair of the International Art & Cultural Heritage Law Committee (Part III). Kevin Ray is Of Counsel, Greenberg Traurig, LLP, and Immediate Past Co-Chair of the ABA’s Art & Cultural Heritage Law Committee (Editor) (Part IV).

4. 19 U.S.C.A. § 2602 (West 2007) (describing the process for imposing import restrictions pursuant to an emergency action and the definition of emergency condition).

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW
In the case of Iraq, as is well known, the Iraq National Museum in Baghdad was looted during the United States-led invasion in March and April of 2003. For the next several years, archaeological sites, particularly in the southern part of Iraq, were looted on a massive scale. In May of 2003, the United Nations Security Council adopted Resolution 1483, calling on all Member States to “take appropriate steps to facilitate the safe return to Iraqi institutions of [illegally removed] Iraqi cultural property . . . including by establishing a prohibition on trade in or transfer of such items . . . .” It was not possible for Iraq to engage in the CPIA process to request import restrictions. To fulfill U.S. obligations, Congress enacted special legislation, the Emergency Protection for Iraqi Cultural Antiquities Act, in late 2004, and import restrictions were later imposed.

The cultural heritage of Syria has suffered considerable damage, destruction, and looting since the beginning of the civil war in March 2011. While some of the looted archaeological sites, such as Ebla and Apamea, are located in western Syria, several major sites, including Dura-Europos, Mari and Raqqa, are located within territory controlled by the so-called Islamic State of Iraq and the Levant (ISIL). Satellite imagery shows that these sites were looted on an industrial scale after falling under ISIL control in 2014. Both on-the-ground reports and evidence gathered in a raid carried out by special operations forces in May 2015 indicate that ISIL is reaping monetary benefit from the looting of archaeological sites.

In February 2015, the UN Security Council adopted Resolution 2199, which, mirroring the resolution concerning Iraq, called on all UN member states to prohibit the import of cultural materials illegally removed from
Syria after March 2011.\textsuperscript{12} Even before adoption of the Resolution, the European Union had acted to prohibit import of cultural materials from Syria,\textsuperscript{13} as did Switzerland,\textsuperscript{14} while the U.K. adopted criminal sanctions.\textsuperscript{15} In the spring of 2016, after an earlier unsuccessful attempt, Congress enacted and the President signed into law, the Protect and Preserve International Cultural Property Act (PPICPA), H.R. 1493.\textsuperscript{16} Import restrictions were then imposed on cultural materials illegally removed from Syria after March 2011.\textsuperscript{17}

As with the Iraq legislation, several aspects of the CPIA were modified to make the import restrictions appropriate to the current situation in Syria. These include eliminating the requirement for a request for a bilateral agreement and a redefinition of the term “archaeological or ethnological material of Syria” to mean “cultural property” as it is defined in the CPIA.\textsuperscript{18} But the Syria legislation differs in two ways. One is a fairly complex sunset provision that will terminate the emergency import restrictions when it is possible for Syria to bring a request for a bilateral agreement under the normal CPIA process, and the President determines that it would not be against the national interest of the United States to enter into such an agreement.\textsuperscript{19}

A second difference is the addition of a “safe harbor” provision. The President may waive the import restrictions if the “owner or lawful custodian” of the object requests that it be temporarily located in the United States for protection purposes and there is “no credible evidence that granting a waiver . . . will contribute to illegal trafficking . . . or financing of criminal or terrorist activities.”\textsuperscript{20} The material must be returned to the

\begin{itemize}
\item \textsuperscript{12} S.C. Res. 2199, ¶ 17 (Feb. 12, 2015) (reaffirming the earlier Security Council Resolution 1483, paragraph 7, with respect to Iraq). As with the Iraq Resolution, this Resolution was adopted under Chapter VII of the United Nations Charter, which makes it mandatory on all U.N. member states to act in accordance with the resolution. \textit{Id.}
\item \textsuperscript{13} Council Regulation 1332/2013 of Dec. 13, 2013, Amending Regulation 36/2012 concerning restrictive measures in view of the situation in Syria, O.J. (L 335), art. 3b, art. 11c (EU).
\item \textsuperscript{14} Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] June 8, 2012, SR 946.231.172.7 (2012), as amended by Der Schweizerische Bundesrat, Mar. 10, 2017, art.9A, para. 1 (Switz).
\item \textsuperscript{15} The Export Control (Syria Sanctions) (Amendment) Order 2014, No. 1896, para. 2, art. 12A (UK).
\item \textsuperscript{16} Protect and Preserve International Cultural Property Act, Pub. L. 114-151, Stat. 1493.
\item \textsuperscript{18} 19 U.S.C. § 2601(6) (2007). This definition tracks that of cultural property in Article 1 of the 1970 UNESCO Convention. \textit{Id.}
\item \textsuperscript{19} Protect and Preserve International Cultural Property Act, P.L. 114-151, § 3(h), 130 STAT. 369 (2016).
\item \textsuperscript{20} \textit{Id.} at § 3(c)(2).
\end{itemize}
owner or lawful custodian upon request. Materials for which a waiver has been granted may be placed in the temporary custody of the United States Government or of a cultural or educational institution “for the purpose of protection, restoration, conservation, study, or exhibition, without profit.”

In addition to the import restrictions, the PPICPA states the sense of Congress that the President should establish an interagency committee “to coordinate the efforts of the executive branch to protect and preserve international cultural property at risk from political instability, armed conflict, or natural or other disasters.” This committee is to be chaired by an Assistant Secretary in the Department of State and includes representatives of the Smithsonian Institution and relevant Federal agencies. It should consult with governmental and nongovernmental organizations, including the United States Committee of the Blue Shield, museums, and educational and research institutions. The law also requires an annual report from the President on the activities of the inter-agency committee, implementation of the Iraq and Syria import restrictions, and actions taken to fulfill obligations under international agreements, including the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

While Congress enacted special legislation in the cases of Iraq and Syria, it is not feasible to expect Congress to proceed on a reactive, country-by-country basis, each time a crisis creates the conditions for large-scale looting of archaeological sites and cultural repositories. Under the existing structure of the CPIA, the United States is clearly unable to respond effectively to emergency situations in which cultural heritage is destroyed and looted objects may fund terrorism and armed conflict, as seems now to be the case in Libya. One might conclude that, under these circumstances, a more general corrective legislation is needed to remedy this inability to act in a timely and realistic manner to protect cultural heritage from the threats of looting and theft of cultural remains.


22. *Id.* at § 2.

23. *Id.* at § 4.

II. Amendment to Germany’s Cultural Property Protection Law - Kulturgutschutzgesetz

On July 8, 2016, German Parliament, the Bundesrat, adopted revisions to Germany’s Cultural Property Protection Law (“Kulturgutschutzgesetz” or KGSG) in an effort to take further action toward prohibiting illegal trafficking of cultural objects, protecting cultural objects of national significance from export, and facilitating the return of cultural objects that were exported illegally from their country of origin. The new law addresses matters that were previously found in various regulations and is an attempt to create one coherent, uniform, legal framework to address, among other matters, the trading in, and import and export of, cultural objects in Germany.

The Bundesrat is the legislative body that represents Germany’s sixteen federal states (Länder) at the national level. While preservation of cultural objects is generally considered a matter to be regulated by the German Länder, the federal government has responsibility over protection of nationally valuable cultural property, and over the protection of cultural property of foreign states that may have been illegally imported into Germany. Each of the sixteen Länder will have an important role in enforcing the new law.

Among the new provisions, the KGSG requires a license for the export of artwork to any foreign nation, including other European Union countries. The requirement applies only to artwork 70 years or older and valued at \( \geq 300,000 \). Works of living artists are exempt from this requirement, minimizing the impact of the regulation on the contemporary art market. Despite this limited exemption, the requirement is viewed as significantly expanding the existing export license requirements under European Union law and some fear will have a negative impact on the German art market.

Under existing EU regulations, each EU country must require an export license for the export of artwork outside of the EU, but a license is not required for movement of artwork between EU countries. Each of the sixteen Länder is responsible for issuing these export licenses, and is also tasked with creating a register of works that are considered

---

28. Id. at § 24.
29. Id.
“cultural property of unique national importance.” Designated works are considered Germany’s national heritage and, as such, are prohibited from export and may not be granted an export license. An object could be designated for this register if it is deemed to be particularly important for German cultural heritage and export of the object would constitute such a loss to German cultural heritage that prohibition of export is in the public interest. There is no requirement that such objects be created in Germany or by German citizens, but if the creator of the work is still living, that person’s consent must be obtained to place the work on this register.

The KGSG also requires any antiquity imported into or sold in Germany to be accompanied by an appropriate export permit from its country of origin and adequate evidence that it had been legally removed from that country. Additionally, domestic sales of cultural objects must be accompanied by detailed due diligence, including documentation of prior ownership and location, and whether movements were accompanied by appropriate export permits. Antiquities are to be considered illicit unless proven otherwise, and many collectors and antiquities dealers have expressed concern about the effect this requirement will have on the antiquities market. Because objects that are subject to this requirement are likely to have crossed many borders since removal from their country of origin, few will have such documentation.

Finally, among the more significant provisions within the KGSG is a simplification of the procedures required for foreign countries to request the return of cultural objects that were illegally exported. Such requests must include a (1) description of the item; (2) statement confirming the item is considered national cultural heritage under the legislation or administrative procedures of the requesting state; and (3) statement confirming that the cultural heritage has been transferred from its territory illegally. Privately owned items that are the subject of such a request will be required to be surrendered and the owner will be compensated the original purchase price if the owner is able to prove due diligence was exercised in the purchase.

The stated goal of the revised KGSG is to implement European Union Directive 2014/60/EU, on the return of cultural objects unlawfully removed from a Member State, and to improve German implementation of the 1970

33. Id. at § 21.
34. Id.
35. Id. at § 7.
36. Id. at § 30.
37. Id. at §§ 40–48.
38. Id. at §§ 49–57.
39. Id.
40. Id.
UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention). Thus, the revised law is intended to bring German law into line with international standards. Similar laws exist in other EU states, notably Italy and Greece. The legislation is also viewed as a response to trafficking of cultural objects from areas of conflict.

Despite its worthy goals, the revised KGSG met outspoken public criticism when it was proposed in 2015. Critics included many German art and antiquities collectors, dealers, and museum directors, as well as prominent artists including Georg Baselitz and Gerhard Richter, most of whom raised concerns regarding the revised export license requirement. While the adopted version of the regulation was updated to address some of the criticism, many remain concerned about the effect the law may have on the Germany’s art market.

III. Fletcher v. Doig

Peter Doig (Doig) is a Scottish artist who has enjoyed considerable commercial and critical success. At auction, his paintings have sold for as much as $USD 25.9 million. His works appear in the collections of the Art Institute of Chicago, British Museum, Los Angeles County Museum of Art, Museum of Modern Art, and Tate Gallery.

On April 30, 2013, a former corrections officer from Canada named Robert Fletcher (Fletcher), and Bartlow Gallery, Ltd., a Chicago art gallery (Bartlow; collectively, the Plaintiffs), filed a complaint in the United States District Court for the Northern District of Illinois, Eastern Division. The lawsuit was originally filed against Doig, Gordon VeneKlasen, Matthew S. Dontzin, and The Dontzin Law Firm, LLP, (Defendants), but the Court dismissed the claims against VeneKlasen and Dontzin, and the Dontzin Law Firm, LLP for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2).

43. Interview with Monika Grütters, Minister of State for Culture and Media, Die Bundesregierung, (2016).
The Plaintiffs claimed that Fletcher owned an artwork created by Doig in 1976 (the Painting). The Plaintiffs also claimed that Fletcher had entered into a series of agreements with Bartlow to market and sell the Painting. The Plaintiffs further claimed that Leslie Hindman Associates, Inc. (Hindman), a Chicago auction house, had intended to sell the Painting, until actions by the Defendants caused Hindman to decide to withdraw the Painting from the auction.

The Plaintiffs alleged that in the mid- to late-1970s, Fletcher was employed at Thunder Bay Correctional Center in Thunder Bay, Ontario, Canada (the Correctional Center). The Plaintiffs stated that in 1975, Fletcher enrolled at Lakehead University in Thunder Bay where he claimed to have met Doig, who he alleged also attended Lakehead University at that time. The Plaintiffs further claimed that Doig stopped attending classes at Lakehead University shortly thereafter, and was remanded to the Correctional Center.

The Plaintiffs alleged that Fletcher and Doig recognized one another from their concurrent time at Lakehead University. The Plaintiffs also alleged that Doig was incarcerated for possession of LSD. The Plaintiffs claimed that Doig was a participant in the Correctional Center’s fine and recreational arts programs. The Plaintiffs further claimed that Fletcher observed the Painting at various stages of completion, at the Correctional Center.

The Plaintiffs alleged that Fletcher assisted Doig with applying for and obtaining parole, and became his parole officer. The Plaintiffs further alleged that Fletcher purchased the Painting from Doig in 1976 for $100.00, and has owned it since that time. The Plaintiffs claimed that a friend of Fletcher’s observed the Painting many years later, and believed it to be a work by Doig. The Plaintiffs further claimed that Doig’s age, background, employment history, and drug use supported their claims that it was he who painted the Painting.

The Plaintiffs stated that in 2011 they had contacted Doig and VeneKlasen, a New York art dealer who professionally represented Doig, by
e-mail about the Painting and the possibility that it was authored by Doig.\textsuperscript{64} VeneKlasen responded by email, denying that the Painting was a work of Doig, that Doig knew Fletcher and that Doig had ever been to Thunder Bay.\textsuperscript{65} Bartlow replied by e-mail that if Doig provided them with information and evidence of his whereabouts between 1976 and 1978 that disproved his authorship of the Painting, the Plaintiffs would conclude their inquiries.\textsuperscript{66} Through counsel, Doig and VeneKlasen sent a cease and desist letter to Bartlow.\textsuperscript{67} Also through counsel, Doig and VeneKlasen advised Hindman that they denied Doig’s authorship of the Painting, and threatened legal action if it were sold as a work of Doig.\textsuperscript{68}

The Plaintiffs’ claims for relief were two-fold. First, the Plaintiffs claimed that the actions of the Defendants constituted interference with prospective economic advantage.\textsuperscript{69} Second, the Plaintiffs sought declaratory relief establishing their right to attribute the Painting to Doig.\textsuperscript{70}

As the sole defendant after the Court’s dismissal of VeneKlasen and Dontzin, and The Dontzin Law Firm, LLP, Doig answered the Plaintiffs’ petition on October 21, 2014.\textsuperscript{71} While admitting to some of the factual aspects of the Plaintiffs’ petition, Doig denied the substance of the claims alleged by the Plaintiffs and asserted affirmative defenses of justification and failure to state a claim.\textsuperscript{72}

Doig presented evidence before, and at trial, that the Painting, which was signed “Pete Doige,” was actually the work of a man named Peter Doige.\textsuperscript{73} Marilyn Doige Brovard (Ms. Brovard) stated in a declaration that she was the sister of Peter Edward Doige (Mr. Doige), who attended Lakehead University in the 1970s, served a sentence at the Correctional Center, and told her that he took painting and music classes while incarcerated there.\textsuperscript{74} Brovard also stated that she has paintings made by her brother of desert scenes, similar to the Painting, and that she believes Doige painted the Painting.\textsuperscript{75}

A seven-day bench trial was held in August 2016 before District Court Judge Gary Feinerman, who issued an oral decision in favor of Doig on
August 23, 2016.76 The Judge stated “Peter Doig could not have been the author of this work.”77 Despite that decision, the Painting remains available through Bartlow, which states on its website that “[t]he owner of the painting, Bob Fletcher, bought the painting from Peter Doig in 1977, but Doig denies that he was the artist or that he knew Bob Fletcher.”78

IV. The Prosecutor v. Ahmad Al Faqi Al Mahdi, ICC-01-/12-01/15

In June and July, 2012, the Islamist groups Ansar Dine and Al-Qaeda in the Islamic Maghreb (AQIM) engaged in widespread ideologically-driven destruction of mosques, monuments, and manuscripts in Timbuktu, Mali, as part of a non-international armed conflict between Malian Government forces and groups including Ansar Dine and AQIM. For Ansar Dine and AQIM, the destruction of the monuments themselves was not enough. After the monuments were destroyed, the perpetrators “carried the clay obtained from the monuments outside the city . . . to prevent them from being rebuilt with the same clay in the future.”79 “The government of Mali referred the situation in Mali to the International Criminal Court (ICC), and the ICC’s Prosecutor opened an investigation in January 2013.

The ICC issued a warrant for the arrest of Ahmad Al Faqi Al Mahdi on September 18, 2015, and on December 17, 2015, the Office of the Prosecutor charged Al Mahdi with responsibility for the war crime of attacking protected objects under Article 8(2)(e)(iv) of the Rome Statute of the International Criminal Court (ICC Statute), which proscribes “[i]ntentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.”80 Al Mahdi was the leader of the Ansar Dine/AQIM morality brigade called the Hesbah, which was “entrusted with regulating the morality of the people of Timbuktu, and . . . preventing, suppressing and repressing anything perceived. . . to constitute a visible vice.”81

Specifically, Al Mahdi was charged with directing (and participating in) attacks against ten buildings of a religious or historical character: (1) the mausoleum Sidi Mahamoud Ben Omar Mohamed Aruit; (2) the mausoleum

---

77. Id.
Sheikh Mohamed Mahmoud Al Arawani; (3) the mausoleum Sheikh Sidi Mokhtar Ben Sidi Muhammad Ben Sheikh Alkabir; (4) the mausoleum Alpha Moya; (5) the mausoleum Sheikh Sidi Ahmed Ben Amar Arragadi; (6) the mausoleum Sheikh Muhammad El Mikki; (7) the mausoleum Sheikh Abdoul Kassim Attouaty; (8) the mausoleum Ahmed Fulane; (9) the mausoleum Bahaber Babadié; and (10) Sidi Yahia mosque. All of the attacked sites were dedicated to religion and historic monuments. None were military targets. With the exception of the mausoleum Sheikh Mohamed Mahmoud Al Arawani, all were designated as UNESCO World Heritage sites.  

The trial in the case of The Prosecutor v. Ahmad Al Faqi Al Mahdi was held on August 22–24, 2016, at which Al Mahdi admitted guilt as to the charges. This case marked not only the first time the Court had applied Article 8(2)(e)(iv), but also the first time the Court had applied Article 65, which allows a defendant to make an admission of guilt at the start of a trial. The Article 65 procedure combines elements of the common law ‘guilty plea’ (authorizing discussions similar to plea agreements) and civil law (requiring the Court to independently evaluate whether the admission is supported by the facts of the case). After the admission of guilt is made, the trial proceeds, evidence is introduced, and witness testimony is taken.  

Evidence at trial established that Al Mahdi initially opposed the decision to destroy the sites, noting that “all Islamic jurists agree on the prohibition of any construction over a tomb,” but recommending “not destroying the mausoleums so as to maintain relations between the population and the occupying groups.” Despite his initial opposition, Al Mahdi agreed to attack the sites, personally determining the sequence in which the sites would be attacked, personally supervising certain attacks, and participating in others.  

The Court took particular note of a statement that Al Mahdi made to journalists during the destruction of the Sidi Yahia Mosque, which provides a summary of the groups’ ideological and culturally-specific reasoning for the attacks. “What you see here,” Al Mahdi told the journalists:  

Is one of the ways of eradicating superstition, heresy and all things or subterfuge which can lead to idolatry. We heard about a door in the ancient mosque of Sidi Yahya. If it is opened, the Day of Resurrection will begin. Following an investigation, we discovered that it was a condemned door in the courtyard of an old mosque. The door was condemned and bricked up. Over time, a myth took hold, claiming that the Day of Resurrection would begin if the door were opened. We fear that these myths will invade the beliefs of people and the ignorant who,

---

82. Id.
83. Id. at 19.
84. Id. at 20-21.
because of their ignorance and their distance from religion, will think that this is the truth. So we decided to open it. 85

On September 27, 2016, the Court issued its judgment and sentence in the case, unanimously finding Al Mahdi guilty of intentionally attacking protected cultural sites. 86 The Prosecution recommended that Al Mahdi be sentenced to between nine and eleven years imprisonment. But after considering mitigating circumstances (Al Mahdi’s admission of guilt, his cooperation with the Prosecutor, his expression of remorse for the victims of his acts, his initial reluctance to commit the acts, and his behavior during his detention), the Court sentenced Al Mahdi to nine years imprisonment, with the time he had already spent in detention being deducted from that sentence, as authorized by Article 78(2) of the ICC Statute. 87

International law protects cultural heritage from destruction and plunder during armed conflict (both international and domestic) through a variety of instruments. But most of these instruments impose liability on states, not individuals. These instruments include Convention (IV) Respecting the Laws and Customs of War on Land of 1907, 88 the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (which imposes not only obligations to safeguard cultural heritage during international/crossborder conflicts, but also, importantly, during internal conflicts), 89 the two 1977 Protocols to the Geneva Conventions on

85. Id. at 22.
86. Id.
87. Id. at 48.
88. Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, art. 27, Oct. 18, 1907, INTERNATIONAL COMMITTEE OF THE RED CROSS, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=4D47F92DF366A7EC12563CD902D6788. The Regulations annexed to the Convention state: “In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.” Id.
89. Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954, Andorra-Uru., 249 U.N.T.S. 240. Article (4)(1) states: “The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property.” Id. Article 19(1) imposes a corresponding obligation to safeguard cultural heritage in internal (not international or cross-border) conflicts: “In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property.”). Id.
Humanitarian Law of 1949,90 the Second Protocol to the Hague Convention,91 and the 2003 UNESCO Declaration on the Intentional Destruction of Cultural Heritage.92 While individual criminal liability for the destruction of cultural heritage was slower to develop, it is embodied in the statutes of the International Criminal Tribunal for the Former Yugoslavia and, most importantly, the ICC.

---

90. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 U.N.T.S 5 (Article 53 provides: “Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited: (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; (b) to use such objects in support of the military effort; (c) to make such objects the object of reprisals.”); see also Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609 (Article 16 provides: “it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.”).


92. UNESCO Declaration on the Intentional Destruction of Cultural Heritage adopted by the General Conference of UNESCO at its 33rd session, Paris, 19 Oct. 2005, reprinted in Standard Setting in UNESCO, vol. II (2007) 733. Article VII, in proclaiming the principle of individual criminal responsibility for acts of destruction of cultural heritage, affirms: “States should take all appropriate measures, in accordance with international law, to establish jurisdiction over, and provide effective criminal sanctions against, those persons who commit, or order to be committed, acts of intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization.”). Id.