Cyprus: Destruction of Cultural Property in the Northern Part of Cyprus and Violations of International Law

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CYPRUS

DESTRUCTION OF CULTURAL PROPERTY IN THE NORTHERN PART OF CYPRUS AND VIOLATIONS OF INTERNATIONAL LAW

Executive Summary

Due to the military invasion by Turkey in July and August 1974, the Republic of Cyprus has been de facto divided into two separate areas: the southern area under the Government of Cyprus, which is recognized as the only legitimate government; and the northern area, amounting to approximately 36 percent of the territory, under the non-recognized, illegal, and unilaterally declared "Turkish Republic of Northern Cyprus" ("TRNC"). As documented, the northern part of Cyprus has experienced a vast destruction and pillage of religious sites and objects during the armed conflict and continuing occupation. In addition, a large number of religious and archaeological objects have been illegally exported and subsequently sold in art markets. The Republic of Cyprus has asserted its ownership over its religious and archaeological sites located in Cyprus through use of its domestic legislation. The Cyprus government and the Church of Cyprus claim that such religious sites constitute part of Cyprus' cultural property and are of paramount importance to the collective history and memory of the people of Cyprus as a nation, as well as to humankind. In a few instances, Cyprus, either through diplomatic channels or through legal action, has been successful in repatriating religious and archaeological objects.

Protection of religious sites and other cultural property during armed conflict and occupation falls within the ambit of international humanitarian law, otherwise known as the law of war. The basic principle is that cultural property must be safeguarded and protected, subject to military necessity only when such property has been converted to a military objective. Pursuant to the major international agreement on this subject, the 1954 Hague Convention for the Protection of Cultural Property During Armed Conflict and its Protocols, as well as the legal regime on occupation, Turkey, as a state party, is required to refrain from acts of hostility and damage against cultural property located in the northern part of Cyprus; to prohibit and prevent theft, pillage, or misappropriation of cultural property; and to establish criminal jurisdiction to prosecute individuals who engage in acts of destruction, desecration, and pillage. Archaeological excavations in the occupied northern part of Cyprus are prohibited unless they are critical to the preservation of cultural property; in such a case, excavations must be carried out with the cooperation of the national competent authorities of the occupied territory. Such violations of conventional and customary international rules on the protection of cultural property may give rise to legal responsibility on the part of Turkey as the occupying power before an

international court or tribunal, provided that other requirements are met. A legal precedent for the responsibility of Turkey for actions against cultural property would be the judgments of the European Court of Human Rights. The Court, based on the "effective control" test, used in Loizidou v. Turkey, found Turkey responsible for deprivation of private property of Greek-Cypriots expelled from the occupied northern part of Cyprus.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the Rome Statute of the International Criminal Court (ICC) consider the destruction of cultural property to be a war crime. The ICTY has held individuals accountable for the destruction or damage done to institutions dedicated to religious, artistic, scientific, or historic monuments. Moreover, the ICTY has reaffirmed that the rules on protection of cultural property during armed conflict have achieved the status of customary international law; thus, they are binding erga omnes, against all states, even if a state is not party to an international humanitarian law instrument.

Two international Conventions governing protection of cultural property apply to the issue of illicit traffic and exportation of cultural property from the northern part of Cyprus: a) the 1970 UNESCO (United Nations Educational, Scientific, and Cultural Organization) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and b) the 1995 UNIDROIT (International Institute for the Unification of Private Law) Convention on Stolen or Illegally Exported Cultural Objects. A basic objective of both Conventions is to fight the illicit trade in art and cultural property. Under the 1970 Convention, which has been ratified by Cyprus and Turkey, parties are required to take steps to prevent illicit traffic through the adoption of legal and administrative measures and the adoption of an export certificate for any cultural object that is exported. Cyprus has complied with these requirements. In addition, the 1970 Convention regards as "illicit" any export or transfer of ownership of cultural property under compulsion that arises from the occupation of a country by a foreign power. The 1995 UNIDROIT Convention establishes uniform rules for restitution claims by individuals regarding stolen cultural objects and return claims by states regarding illicitly exported cultural objects. While Cyprus has ratified the Convention, Turkey has not.

The Cyprus Government stresses that the optimum way to preserve and protect its cultural property is to find a solution to the Cyprus issue and the end of the military occupation of the northern part of Cyprus. Meanwhile, Cyprus may opt, inter alia, to utilize judicial remedies to resolve outstanding disputes pertaining to its cultural and religious property either before foreign courts, as it has already done, or international and regional courts, provided that other criteria are met.

I. Introduction

Following the military invasion of Cyprus in 1974 and the continuing occupation of the northern part of Cyprus by Turkey, it has been documented that extensive destruction, desecration, and pillage of religious sites and other historic monuments, as well some disputed archaeological excavations and illegal exportation of objects, have occurred in the northern part of Cyprus. The Government of Cyprus claims that the impetus behind the acts of destruction and desecration of religious sites is the obliteration of their cultural and religious symbols, which form part of the cultural and spiritual heritage of Cyprus; as such they are extremely significant not only for the Greek-Cypriots, but also for the entire population of Cyprus and for humankind in general. On the other hand, the unilaterally declared and unrecognized (with the exception of Turkey) "state" of the "Turkish Republic of Northern Cyprus" ("TRNC") argues that its competent authorities are engaged in actions designed to preserve and protect religious sites, regardless of their origin and, moreover, that the excavations are taking place within the "TRNC's" own "sovereign" area.

It is against this background that this report analyses the international legal framework governing the protection of cultural property in the northern part of Cyprus. The report also examines the rights and obligations of Turkey and Cyprus arising out of international agreements and especially the legal consequences of the destruction and pillage of Cyprus' religious and cultural property by "TRNC."

The analysis focuses on the international legal norms and standards applicable to:

a) The protection of cultural property during armed conflict;

b) Occupied territory;

c) The protection of cultural property against the illicit trade and export of artifacts; and,

d) Religious intolerance.

In order to draw out the issues, the report provides a historical background, continuing to the time of the *de facto* partition of the island and the ensuing military occupation. Also included is a brief description of the reported destruction of cultural property that occurred in the northern part of Cyprus and an overview of Cyprus' domestic ownership laws on cultural property. In analyzing the international legal standards applicable to the protection of cultural property, this report examines three key legal issues:

a) Whether religious sites in Cyprus (including churches, chapels, monasteries, synagogues, and mosques used by the Greek Cypriot community and other minorities for religious purposes) qualify as "cultural property" as defined in the relevant law and thus warrant international protection;

b) Whether the northern part of Cyprus meets the legal definition of an occupied territory; and

c) Whether the destruction of religious sites in the northern part of Cyprus could give rise to international responsibility on the part of the occupying Turkish military forces in Cyprus; the sub-issue of whether "TRNC" bears any degree of responsibility is briefly touched upon as well.

The report concludes with a short overview of courses of action available to the Republic of Cyprus to pursue its legal claims against the destruction, illicit trade, and transfer of its cultural property.

II. Historical Background

The Republic of Cyprus is a small nation in size and population with a very rich and ancient history and civilization. Archeological findings indicate that Cyprus was inhabited around 7,000 B.C. The island was exposed to Christianity early, with the visit of Apostles Barnabas and Peter. During the Byzantine era, Cyprus was under the administration of Byzantine emperors for approximately 800 years (395-1191 A.D).[1] It was during this time that a great number of churches were built and decorated with mosaics and frescoes of exquisite beauty.[2] In 1571, Cyprus became part of the Ottoman Empire and in 1878 fell under British rule.

After a long period as a British colony,[3] the Republic of Cyprus became an independent nation on August 16, 1960, with the signing of the Treaty of Alliance, Treaty of Guarantee, and the adoption of the Cyprus Constitution.[4] Under the Treaty of Guarantee,[5] the three guarantor powers, Greece, Turkey and the United Kingdom, agreed to safeguard and respect the independence and sovereignty of Cyprus. Cyprus' population is composed of two communities; Greek-Cypriots, and Turkish-Cypriots. The two communities are linguistically and religiously distinct from each other. They had long inhabited the island in peaceful symbiosis, with some sporadic periods of political instability and internal strife. Prior to 1974, the Greek-Cypriot community comprised 80 percent of the population of Cyprus, the Turkish-Cypriots totaling approximately 18 percent, with the balance being comprised of a small percentage of Armenians, Maronites, and Latin.[6]

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[1] KYPROS CHRYSOSTOMIDES, THE REPUBLIC OF CYPRUS: A STUDY IN INTERNATIONAL LAW (2000); *see also* Republic of Cyprus, Press and Information Office, THE ALMANAC OF CYPRUS 16 (1996); Republic of Cyprus, Press and Information Office, WINDOW ON CYPRUS (2005).

[2] CHRYSOSTOMIDES, *supra* note 1.

[3] In 1914, Cyprus was annexed by Great Britain. Between the period of 1925 to 1960 Cyprus had the status of a Crown colony. For an analysis of the history of Cyprus, *see* CHRYSOSTOMIDES, *supra* note 1. *See also*, CRITON G. TORNARITIS, CYPRUS AND ITS CONSTITUTION AND OTHER LEGAL PROBLEMS (1980).

[4] M. ALAMIDES, THE CONSTITUTION OF THE REPUBLIC OF CYPRUS 3 (2004).

[5] Treaty of Guarantee, Aug. 16, 1960, 382 U.N.T.S. 3.

[6] CHRYSOSTOMIDES, *supra* note 1. Appendix E of the 1960 Cyprus Constitution recognizes three religious groups in Cyprus consisting of Armenians, Maronites, and Latins. Latins originated from the Franciscan Order of the Roman Catholic Church and were established in Cyprus during the Ottoman period. Members of these groups are guaranteed human rights and freedoms comparable to those afforded by the European Convention of Human Rights and are also constitutionally protected against discrimination.

Since the 1974 military invasion of Cyprus by Turkey and the ensuing occupation of the northern 37 percent of the island, the Republic of Cyprus has been *de facto* divided into two separate areas, with the southern area under the government of Cyprus, which is recognized as the only legitimate government, and the northern area under the non-recognized, illegal, and unilaterally declared "TRNC." The United Nations Peacekeeping Force in Cyprus (UNFICYP) was established in 1964 after the eruption of intercommunal violence in 1963, and is in control along the so called "green line" to guarantee maintenance of peace and security between the two communities.[7] The military invasion by Turkey was precipitated when the Greek military regime, with the assistance of the Cypriot armed forces, planned and executed a coup d'etat against the government of Archbishop Makarios, the first elected President of the Republic of Cyprus. On July 20, 1974, Turkey, using the coup d'etat as grounds to allegedly protect the Turkish community, intervened militarily in Cyprus in order to "reestablish the constitutional order."[8] A series of unsuccessful peace negotiations ensued between the two communities under the auspices of the United Nations (UN) until August 14, 1974, when Turkey initiated a second military attack on Cyprus and occupied 36.02 percent of the territory of the Republic of Cyprus.[9]

As a result of the 1974 Turkish invasion of Cyprus, almost 200,000 Greek-Cypriots fled their homes in the north and either became refugees or were internally displaced, and eventually settled in the southern part of Cyprus. The Turkish-Cypriots who lived in various parts of the island prior to 1974 moved to the north.[10]

Currently, the population of Cyprus includes approximately 660,000 Greek-Cypriots who live in the south, 89,000 Turkish-Cypriots in the north, and a Turkish military force of approximately 43,000. Moreover, Turkey has brought close to 160,000 Turkish settlers to the northern part of Cyprus from mainland Turkey in an effort to alter the demographics of Cyprus. The European Court of Human Rights of the Council of Europe, to which Turkey and Cyprus are members, in numerous instances has found Turkey to have violated various human rights in the northern part of Cyprus, in particular the rights of individuals to their property, and the right to life, liberty, and security.

The "TRNC" was unilaterally proclaimed in 1983 and adopted a Constitution. The United Nations Security Council, in Resolutions 541 and 550, adopted in 1983 and 1984, respectively, declared the secession invalid, null, and void. The Security Council also urged the

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[7] The role of the UNFICYP was expanded in response to the Turkish military invasions. For information on the UNFICYP, *see* http://www.un.org/Depts/dpko/missions/unficyp/. For an analysis of the efforts of the United Nations to find a workable solution to the Cyprus problem, *see* CLAIRE PALLEY, AN INTERNATIONAL RELATIONS DEBACLE, THE UN SECRETARY-GENERAL'S MISSION OF GOOD OFFICES IN CYPRUS 1999-2004 (2005).

[8] CHRYSOSTOMIDES, *supra* note 1.

[9] CHRYSOSTOMIDES, CYPRUS – THE WAY FORWARD 63 (2006).

[10] *See* Ministry of Foreign Affairs of the Republic of Cyprus, *The Third Vienna Agreement – August 1975* (Aug. 2, 1975) (communiqué issued after the third round of talks on Cyprus held in Vienna from July 31-Aug. 2, 1975), *available at* http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/0658E5B2F4D1A538C22571D30034D15D/$FILE/August%201975.pdf?OpenElement.

international community not to recognize the "TRNC."[11] Thus far, no country (with the exception of Turkey) has recognized the "TRNC" as a separate state under international law. The United Nations, the European Union (EU),[12] the Council of Europe,[13] and others[14] have repeatedly reaffirmed the status of the Republic of Cyprus as the only legitimate government. A number of national and international courts, in adjudicating legal issues that have incidentally raised the question of the status of the "TRNC," have not recognized its legitimacy.[15]

On May 1, 2004, the Republic of Cyprus, as a single state, joined the EU.[16] For the time being, the entire body (*acquis communautaire)* of EU law applies only to the southern part of the

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[11] S.C. Res. 541, U.N. Doc. S/RES/541 (Nov. 18, 1983) and S.C. Res. 550, U.N. Doc. S/RES/541 (May 11, 1984), *available at* http://www.un.org/Docs/sc/unsc_resolutions.html, *reprinted in* RESOLUTIONS ADOPTED BY THE UNITED NATIONS ON THE CYPRUS PROBLEM (Press and Information Office, Ministry of Interior, Republic of Cyprus, 1964-1990).

[12] On November 16, 1983, the European Community adopted a statement rejecting the declaration and expressing its deep concerns regarding the establishment of "TRNC" as an independent state. The statement also reaffirmed its support of the sovereignty, independence, and unity of Cyprus. The European Parliament has held hearings on the issue of destruction of cultural property and, *inter alia*, in 2006 it adopted a Declaration on the Protection and Preservation of the Religious Heritage in the northern part of Cyprus, EUR. PARL. DOC. P6_TA(2006)0335 (Aug. 30, 2006), *available at* http://www.europarl.europa.eu/registre/seance_pleniere/textes_adoptes/definitif/2006/09-05/0335/P6_TA(2006)0335_EN.pdf. The Parliament's Committee of Education and Culture also endorsed funds from the 2007 budget for a study on the situation of religious sites in northern Cyprus. Alexia Saoulli, *European Parliament Backs Funds for Study on Churches in the North*, Museum Security Network Mailing List (Sept. 14, 2006), *available at*, http://msn-list.te.verweg.com/2006-September/005975.html.

[13] In 1983, the Committee of Ministers of the Council of Europe issued a Resolution which, *inter alia*: a) deplored the declaration by the Turkish Cypriot leaders of the "purported independence of the so-called "Turkish Republic of Northern Cyprus"; b) declared the unilateral declaration invalid; and, c) reaffirmed its commitment to the Republic of Cyprus as the only legitimate government. Comm. of Ministers Resolution (83) 13, Nov. 24, 1983, on Cyprus, *available at* http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/C1E21396890CA83CC22571D2001E8A47/$file/Res%2083.pdf?OpenElement.

[14] The Commonwealth Heads of Government, in a meeting convened in New Delhi, India, November 23-29, 1983, condemned the declaration of the "TRNC" "to create a secessionist state in northern Cyprus, in the area under foreign occupation." A press communiqué was issued stating, inter alia, as follows:

> [The] Heads of Government condemned the declaration by the Turkish Cypriot authorities issued on 15 November 1983 to create a secessionist state in northern Cyprus, in the area under foreign occupation. Fully endorsing Security Council Resolution 541, they denounced the declaration as legally invalid and reiterated the call for its non-recognition and immediate withdrawal. They further called upon all States not to facilitate or in any way assist the illegal secessionist entity. They regarded this illegal act as a challenge to the international community and demanded the implementation of the relevant UN Resolutions on Cyprus.

Quoted in Loizidou v. Turkey (Merits), Eur. Ct. Hum. H.R., VI Dec. & Rep. (1996), *available at* http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?sessionId=9256208&skin=hudoc-en&action=html&table=F69A27FD8FB86142BF01C1166DEA398649&key=588&highlight=.

[15] For a review of several cases involving courts in the United States and the United Kingdom, the European Court of Justice, and the European Court of Human Rights, *see* CHRYSOSTOMIDES, *supra* note 1, at 280-315.

[16] *See* Press Release, Cyprus Government, Press and Information Office, EU Accession Treaty–Protocols on Cyprus, *available at* http://www.cyprus.gov.cy/moi/PIO/PIO.nsf/All/DA5EA02B13392A77C2256DC2002B662A?OpenDocument (last visited Mar. 9, 2009).

Republic, which is under the control of the government of Cyprus, since the latter is unable to exercise effective control in the northern part of Cyprus due to occupation.[17]

III. Destruction of Cultural Property and Illicit Trade of Stolen and Illegally Exported Artifacts

Various documents confirm that during the Turkish military invasion, and especially during the thirty-five years of occupation that have followed, a plethora of archaeological and religious sites have been damaged.[18] The destruction of historic monuments and the desecration of religious sites constitute issues of paramount importance for the people of Cyprus as a nation, because such monuments and religious sites represent and constitute part of Cyprus' vast cultural and religious heritage. The Cyprus government and the Church of Cyprus have campaigned for years to disseminate information before various fora[19] on the destruction of their cultural property, and to repatriate lost or stolen artifacts taken from religious sites in the northern part of Cyprus. The partial lifting of the restrictions of movement between the two communities across the ceasefire line in 2003 heightened the awareness of the Greek-Cypriot community, who witnessed for the first time the magnitude and the extent of the destruction and desecration of religious and other historical monuments.

In 2008, the Parliamentary Assembly of the Council of Europe issued Resolution 1628 on the Situation in Cyprus, in which it urged Turkish and Cypriot authorities, *inter alia*, to protect all religious monuments and permit restoration of such monuments where it is necessary.[20]

The United Nations Educational, Scientific, and Cultural Organization (UNESCO),[21] in implementing its exclusive mandate to protect cultural property, in 1984 provided the first official account of the destruction of cultural property. At that time, UNESCO issued a report on the implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict,[22] noting that the distinctive emblem required by the Convention had been

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[17] *See id*.

[18] For a description of the destruction of cultural property, *see* CHARALAMBOS CHOTZAKOGLOU, RELIGIOUS MONUMENTS IN TURKISH-OCCUPIED CYPRUS: EVIDENCE AND ACTS OF CONTINUOUS DESTRUCTION 28-29 (2008); FLAGELLUM DEI: THE DESTRUCTION OF THE CULTURAL HERITAGE IN THE TURKISH OCCUPIED PART OF CYPRUS (Nicosia, Cyprus: Press and Information Office, 2d ed. 1989); MICHAEL JANSEN, WAR AND CULTURAL HERITAGE: CYPRUS AFTER THE 1974 INVASION (2005).

[19] Including the United Nations Educational, Scientific, and Cultural Organization (UNESCO); the Council of Europe; the European Parliament; the International Council of Museums (ICOM); and others.

[20] Council of Europe Resolution 1628, para. 11.4, Oct. 1, 2008, *available at* http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta08/ERES1628.htm.

[21] Under the aegis of UNESCO several conventions have been adopted dealing with various aspects of cultural property. In addition, UNESCO has drafted numerous recommendations and declarations, as will be seen in subsequent parts of this report.

[22] In implementation of this Convention, parties are required to forward at least every four years to the Director-General of UNESCO a status report concerning domestic measures towards implementation of the Convention. Convention for the Protection of Cultural Property in the Event of Armed Conflict art. 26, para. 2, May 14, 1954, *entered into force* Aug. 7, 1956, 249 U.N.T.S. 215, *available at* http://portal.unesco.org/en/ev.php-

placed on the roofs and in front of important monuments, archaeological sites, museums and other institutions that are under the control of the government of Cyprus.[23] The report continued:

> Unfortunately, in the area occupied by the Turkish army, museums and monuments have been pillaged or destroyed. The government [of Cyprus] has repeatedly applied to UNESCO and asked the mission of observers to report on the condition of the monuments. So far, this mission has met with the refusal of the Turkish 'authorities.'[24]

The report referred to the area of Paphos, which was subject to aerial bombardment by Turkey in 1974 and was placed on the World Heritage List in 1980.[25] A subsequent UNESCO report adopted in 1989 described the situation in Cyprus in similar terms.[26]

The following data, made available by the Ministry of Foreign Affairs of Cyprus on its website, illustrate the extent of the destruction and pillage of cultural property in the northern part of Cyprus:

- 500 Greek Orthodox churches and chapels have been pillaged, vandalized, or demolished;
- 133 churches, chapels, and monasteries have been desecrated;
- the whereabouts of 15,000 paintings are unknown; and
- 77 churches have been turned into mosques, 28 are being used by the Turkish military forces as hospitals or camps, and 13 are used as agricultural barns.[27]

A serious project to systematically catalog and identify the religious monuments destroyed or desecrated in the northern part of Cyprus was undertaken under the aegis of the Museum of the Holy Monastery of Kykkos, located in the south, where the government of Cyprus is in control.[28] The Museum established a committee of experts, including university professors, an archaeologist, and an authority on the Byzantine period, to create an electronic database of the existing monuments and religious sites in the northern part of Cyprus. The database contains 20,000 photographs and pieces of registration data, which describe in detail the

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URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html. Based on national reports, UNESCO publishes its own reports.

[23] UNESCO, INFORMATION ON THE IMPLEMENTATION OF THE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT: 1984 REPORTS 25 (Dec. 1984), *available at* http://unesdoc.unesco.org/images/0006 /000623/062387eb.pdf.

[24] *Id*.

[25] *Id*.

[26] UNESCO, INFORMATION ON THE IMPLEMENTATION OF THE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT: 1989 REPORTS 11 (Nov. 1989), *available at* http://unesdoc.unesco.org/images /0008/000855/085585eo.pdf.

[27] Ministry of Foreign Affairs of the Republic of Cyprus, *Destruction of Cultural Heritage* (July 2006), *available at* http://www.mfa.gov.cy/mfa/mfa2006.nsf/cyprus07_en/cyprus07_en?OpenDocument.

[28] CHOTZAKOGLOU, *supra* note 18, at 28-29.

monuments and religious sites inspected. In particular, the database contains the registration data of 500 Christian churches and chapels in the northern part of Cyprus. It also includes 50 additional monuments, which are located in military areas controlled by the Turkish armed forces or in the buffer zone, under the watch of the UNFICYP. Most of these monuments belong to the Autocephalous Orthodox Church of Cyprus, while a few belong to the Armenians, Maronites, Catholic Church, and Jewish community.[29]

Other reported acts of vandalism include the rent or sale of medieval Christian churches and cemeteries to Turkish residents[30] or to European citizens who use the places as commercial offices, private museums, or stores.[31] The seventy-seven churches that were converted into mosques with minarets had text from the Koran inscribed where icons and paintings used to be.[32] Other religious monuments have been transformed into hospitals or camps for the use of Turkish armed forces.[33] A few specific examples are worth noting. The monastery of Saint Anastasia, located in the occupied village of Lapithos was converted into a hotel, with a swimming pool and a casino, and named "Anastasia Resort Hotel."[34] The monastery of Antiphonetes, a significant monastic center of the Byzantine era, with ornate murals and valuable icons, was destroyed, looted, and subsequently sold by art dealers.[35] The mosaics of the Churches of Holy Virgin Kyra and Kanakaria, which are deemed to be among the most significant monuments of Cyprus' history, have been destroyed, removed, and illegally exported, to be sold abroad.[36] A large number of icons and other church objects have disappeared.[37] It should also be noted that important private collections of Greek Cypriots who fled the north—the most notable case was the Hadjiprodromou private collection of 2,000 objects—were stolen and sold at auctions abroad.[38] The Government of Cyprus, along with the Church of Cyprus, has made considerable efforts and continues to do so in an effort to locate and assist in the return of cultural property.[39]

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[29] The Armenian Church of Cyprus was plundered and icons and manuscripts from the only Armenian monastery in Cyprus have been sold to art collectors abroad. The monastery was saved from being converted into a hotel through the efforts of the Armenian Prelature of Cyprus, the government of Cyprus, and international organizations. *See* Embassy of the Republic of Cyprus in Washington, D.C., *Cultural Heritage of Cyprus*, http://www.cyprusembassy.net/home/index.php?module=page&cid=10.

[30] CHOTZAKOGLOU, *supra* note 18, at 40, 150.

[31] *Id.* at 43.

[32] *Id*. at 50.

[33] *Id*. at 60.

[34] *Id*. at 74. *See also Cyprus denounces destruction of religious monuments*, THECYPRIOT.COM, June 24, 2008, *available at* http://www.thecypriot.com/pages/tempalp.aspx?ID=807&sub=1.

[35] CHOTZAKOGLOU, *supra* note 18, at 125.

[36] *Id.* at 122.

[37] *Id*.

[38] Carolyn V. Bachman, *An Introduction to the Issue of Preserving Cultural Heritage*, 15 BROWN CLASSICAL J. (2003), *available at* http://www.brown.edu/Departments/Classics/bcj/15-07.html.

[39] Their efforts were successful in some cases, including in the case of the mosaics from the Kanakaria Church, which were returned to the Church of Cyprus after a successful suit was instituted in the United States, as discussed below.

Foreign archaeological teams that were engaged in excavations in Cyprus were forced to discontinue their work after the 1974 events. Their valuable findings have been looted and the teams have not been able to return and resume their excavations.[40] According to some estimates, through illegal excavations in the northern part of Cyprus, more than 60,000 Cypriot artifacts have been stolen and exported abroad to be sold in auction houses or by art dealers.[41] The example of an ancient site dating from Neolithic times at the Cape of St. Andreas illustrates this point. The site, which had already been excavated under the aegis of the Department of Archaeology prior to 1974, was later damaged by the Turkish armed forces during the installation and hoisting of the flags of Turkey and the "TRNC."[42]

Another example of excavation in the northern part of Cyprus was the one carried out in the archaeological area of Salamis in the northern part of Cyprus under the aegis of the University of Ankara. It has been reported that numerous archaeological findings have been looted and auctioned abroad.[43] The Government of the Republic of Cyprus claims that such excavations are illegal and destroy the cultural heritage of Cyprus. The "TRNC" denies such allegations. To refute the claims, the Permanent Representative of Turkey to the United Nations argued in a letter dated September 6, 2001, that the area of Salamis "is situated within the sovereign territory of the Turkish Republic of Northern Cyprus, that any excavations are carried out with the consent of the Turkish Cypriot authorities and, contrary to the Greek-Cypriot allegations are perfectly legal."

In his letter, the Permanent Representative of Turkey also argued that during the period of 1963-1974, Greek-Cypriots engaged in acts of destruction of shrines, mosques, and other holy sites in Turkish villages.[44] On Cyprus' behalf, however, since 1989, the Department of Antiquities of Cyprus has been involved, as the need arose and based on budget allocations, in the restoration and renovation of all mosques which are deemed "ancient monuments." In 2000, the Department began a more systematic restoration of Moslem monuments. So far, the Department has renovated 17 mosques and mausoleums at a cost of approximately €471,585 (about US$599,943).[45] The restoration project is expected to be completed by 2010.

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[40] Jessica Dietzler, *The Case of Cyprus: SAFE Interviews Dr. Pavlos Flourentzos, Director of the Department of Antiquities of Cyprus*, SAVING ANTIQUITIES FOR EVERYONE (SAFE), *available at* http://www.savingantiquities.org/feature_cyprusinterview.php.

[41] For more information, *see* Ministry of Foreign Affairs of the Republic of Cyprus, *Destruction of Cultural Heritage*, http://www.mfa.gov.cy/mfa/mfa2006.nsf/cyprus07_en/cyprus07_en?OpenDocument (last visited Mar. 9, 2009).

[42] *Id*.

[43] *Id*.

[44] Annex to the Letter Dated 6 September 2001 from the Chargé d'affaires a.i. of the Permanent Mission of Turkey to the United Nations addressed to the Secretary-General, A/55/1032-S/2001/853 (Sept. 7, 2001), *available at* http://un.org/documents/ga/docs /55/a551032.pdf.

[45] CHOTZAKOGLOU, *supra* note 18, at 139. *See also* MUSLIM PLACES OF WORSHIP IN CYPRUS (Association of Cypriot Archaeologists, 2005) (illustrating through the examples of various renovated mosques the efforts of the Cyprus Government to respect and safeguard cultural property located in areas under its control).

IV. Cyprus' Legal Framework on Cultural Property

A. Domestic Legislation

There is no universally agreed upon and accepted definition of cultural property in the international community.[46] The concept and scope of the term "cultural property" vary according to the various international legal instruments that are applicable and the national legislation of each country.[47]

Nations that are rich in archaeological and/or religious monuments are considered "source" nations.[48] Source nations customarily enact two types of legislation in order to protect their cultural heritage and curb the looting and illicit export of artifacts from their borders, including:

a) National ownership laws that define what the term "cultural property" encompasses. Such laws may facilitate a country's legal claims before foreign or international courts in order to recover lost or stolen objects; and

b) Export restrictions on archaeological or religious objects or artifacts related to the arts or sciences. This type of all-encompassing legislation is called "blanket or umbrella" laws.[49]

Cyprus, as a source nation, has enacted laws to define what constitutes cultural property and which assert national ownership and control over its cultural property.[50]

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[46] Lisa J. Borodkin, *The Economics of Antiquities Looting and a Proposed Legal Alternative*, 95 COLUM. L. REV. 363, *citing* John H. Merryman, *The Retention of Cultural Property*, 21 U.C. DAVIS L. REV. 477 (1988).

[47] Information Kit, UNESCO, Protect Cultural Property in the Event of Armed Conflict, the 1954 Convention and its Two Protocols (1954 and 1999), http://portal.unesco.org/culture/en/ev.php-URL_ID=35312&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html.

[48] John Henry Merryman, *Two Ways of Thinking about Cultural Property*, 80 AM. J. INT'L L. 831, 832 (1986).

[49] *Id*.

[50] Turkey has also adopted legislation on cultural property. Law No. 2863 on the Protection of Cultural and Natural Heritage of 1983, as amended in 1987 and 2004. There are two implementing regulations: (a) On Movable Cultural Goods Having Ethnographical Value, No. 19803/1988: and (b) On Export and Import of Movable Cultural and Natural Property to be Preserved, No. 18314/ 1984. The Minister of Culture is the designated authority to regulate the procedures of temporary removal of movable cultural goods from Turkey. In 2006, Turkey, in preparation for harmonizing its domestic legislation with that of the European Union *acquis communautaire* (body of law) chapter 29 on Customs Union, sent a draft text to the European Commission to transpose Council Directive 93/7/, 1993 O.J. (L74) and is working on eventual transposition of Council Regulation 3911/92, 1992 O.J. (L395) . In addition to the international agreements to which Turkey is a party that are stated in the report, Turkey has ratified the following conventions: UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, which entered into force on April 20, 1982, *available at* http://whc.unesco.org/archive/convention-en.pdf; Council of Europe, European Convention on the Protection of the Archaeological Heritage, 1969 CETS 066 (2000), *available at* http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=066&CM=8&DF=3/19/2009&CL=ENG, *revised in* 1992 CETS 143, *available at* http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=143&CM=8&DF=3/19/2009&CL=ENG; Council of Europe, Convention for the Protection of the Architectural Heritage of Europe, 1985 CETS 121, *available at* http://conventions.coe.int/Treaty/Commun/

The 1935 Antiquities Law, as amended, which lists many buildings, etc., in an Annex, specifies in its Article 1 that the following qualify as ancient monuments:

a) Any object, building, or site included in the Annex; and,
b) Any other object, building, or site which is declared to be so by the Council of Ministers.[51]

The law defines "antiquity as":

> ...any object, movable or immovable, which constitutes a work of architecture, sculpture, graphic art, painting or generally any form of art which has been built, sculptured, painted or inscribed or generally made by humans prior to 1850 A.D., and which was found, discovered or excavated in Cyprus or was recovered from the territorial waters of Cyprus.[52]
>
> For ecclesiastical works which are of great archaeological or artistic or historic value the year 1940 A.D. shall be considered rather than 1850 A.D.[53]

The definition of "antiquity" includes movable and immovable items, ancient monuments, and buildings that are included in the Annex. Additional monuments can be added to the Annex by a decision of the Councils of Ministers.[54] The broad language of the law referring to "any form of art, which has been built, painted or made by humans," read in conjunction with the specific provision regarding ecclesiastical works which possess artistic, historic, or archaeological value leads to the conclusion that churches, chapels, or monasteries, including icons and other church objects fall within the definition and scope of the Cyprus Antiquities Law. More importantly, in addition to historic monuments, the Annex contains a number of churches that have been specifically deemed to be ancient monuments.

Two sections in the Cyprus Antiquities Law bestow ownership of antiquities upon the Government of Cyprus:

QueVoulezVous.asp?NT=121&CM=8&DF=3/19/2009&CL=ENG; and Council of Europe, European Landscape Convention, 2003 CETS 176. *See* SCREENING CHAPTER 29 CUSTOMS UNION AGENDA ITEM 4: CULTURAL GOODS (COUNTRY SESSION: THE REPUBLIC OF TURKEY), Mar. 13-14, 2006 (PowerPoint presentation), *available at* http://www.abgs.gov.tr/tarama/tarama_files/29/SC29DET_Cultural%20Goods.pdf.

[51] Antiquities Law art. 1, 3 NOMOI TES KYPRIAKES DEMOKRATIAS, LAWS OF THE REPUBLIC OF CYPRUS 36 (2000).

[52] *Id*. The territorial waters of Cyprus extend to 12 nautical miles by virtue of Law 45 of 1964.

[53] *Id*.

[54] *Id.* art. 6(as). Since 1974, the Government of Cyprus has added a number of other monuments to the Annex, including the Church of Panagia Ypatis and the Monastery of Agios Panteleimon in the District of Kyrenia; the following churches in the Famagusta District: Agios Thyrsos, Agia Solomoni, Metamorphosis Soteros, Archangel Michael; and in Rizokarpaso, the Monastery of Apostolos Andreas. Information provided to the author by officials of the Cyprus government, Mar. 2009.

a) Article 3 provides that ownership of all antiquities lying undiscovered in any land when the law entered into force in 1935 "shall be the property of the government";[55] and,

b) Article 7 provides that the ancient monuments included those listed in the Annex, as well as any monument that is added at a later time, "shall be the property of the government." Since 1974, the government has added additional monuments to the list.

Preservation and restoration of cultural property falls within the purview of the Department of Antiquities of the Ministry of Communications and Works. This Department is legally authorized to ensure that cultural property is protected and safeguarded in Cyprus.[56] Since 1999, a special squad for art has been established by the Cyprus police.[57]

The Antiquities Law prohibits excavations without a prior obtained license from the Director of Antiquities.[58] Violators face imprisonment and fines.

B. European Union Legislation

Cyprus transposed the EU legislation on cultural property to its domestic legislation prior to joining the EU on May 1, 2004. Thus, in 2002, Cyprus adopted the following two pieces of legislation:

- The Return of Cultural Objects Law No. 183(1) of 2002. Through this law, Cyprus harmonized its domestic legislation with the EEC Directive 93/7/EEC, as amended. The Directive deals with the return of cultural objects unlawfully removed from the territory of a member State.[59] As required by the Directive, Cyprus has designated the Antiquities Department of the Ministry of Communications and Works as the central authority to deal with cultural property issues.[60]

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[55] Antiquities Law art. 3.

[56] The Department of Antiquities of the Ministry of Communications and Works was established in 1935 pursuant to the Antiquities Law. See Republic of Cyprus, Department of Antiquities, *Historical Background*, http://www.mcw.gov.cy/mcw/da/da.nsf/DMLhistory_en/DMLhistory_en?OpenDocument (last visited Mar. 9, 2009).

[57] S. Hadjisavvas, *The Destruction of the Archaeological Heritage of Cyprus*, A SYMPOSIUM ON ILLICIT ANTIQUITIES: THE DESTRUCTION OF THE WORLD'S ARCHAEOLOGICAL HERITAGE (1999), *available at* http://www.mcdonald.cam.ac.uk/projects/iarc/culturewithoutcontext/issue5/brodie-watson.htm#Cyprus.

[58] Antiquities Law art. 14.

[59] The Return of Cultural Objects Law No. 183(1) of 2002, *transposing* EEC Directive 93/7/EEC, 1993 O.J. (L 774), *amended by* Council Directive 96/100/EC O.J.L. (60) 59, *and* Council Directive 2001/38/EC O.J. (L 187) 43.

[60] Antiquities Law art. 4.

- Law 182(1) of 2002 on the Export of Cultural Goods. The Law was enacted in order to enforce the European Community Regulations on the export of Cultural Goods.[61] Some important features of the Law are:
    a) Prohibition of the export of any cultural object to third countries (non-EU countries) without an export license;
    b) Establishment of a committee to decide as to whether or not a license should be granted;
    c) Assignment to the Antiquities Department of the task of securing the validity and authenticity of export licenses; and,
    d) Establishing criminal penalties of imprisonment of up to four years and/or a fine not exceeding more than 2,000 pounds (about US$4,311) to anyone who exports or attempts to export cultural goods.

In addition, Cyprus has ratified a series of international agreements dealing with cultural property. These agreements are detailed in the following section. Cyprus has also entered into bilateral agreements with China and the United States regarding import restrictions on archaeological artifacts.[62] In July 2007, a Memorandum of Understanding (MOU), initially signed with the United States in 2002, was extended until 2012. Under the MOU, the U.S. Department of Homeland Security (DHS) is authorized to enforce import restrictions on pre-classical and classical archeological objects,[63] religious artifacts dating back to the Byzantine era,[64] and ethnological materials, which are not accompanied by an export license issued by Cyprus. In addition to extending the duration of the MOU, the scope of the MOU was expanded to include ancient coins on the list of items that are restricted.[65] As long as the looting and illegal export of cultural objects from Cyprus continues, the government of Cyprus considers the

[61] Law 182(1) of 2002 on the Export of Cultural Goods, enforcing Regulation (EEC) No 3911/92 Relating to the Export of Cultural Goods, 1992 O.J. (L 395) 1, as amended.

[62] In an effort to safeguard their rich cultural heritage, Cyprus and China signed a Memorandum of Understanding dealing with the prevention of theft, illegal excavations and illicit import and export of cultural property on May 8, 2008. *See* Announcement, Republic of Cyprus, Department of Antiquities, Cyprus-China Agreement on Cultural Property, http://www.mcw.gov.cy/mcw/DA/DA.nsf/DMLnews_en/DMLnews_en?OpenDocument.

[63] Import Restrictions Imposed on Pre-Classical and Classical Archaeological Material Originating in Cyprus, 67 Fed. Reg. 47,447 (July 19, 2002) (codified at 19 C.F.R. pt. 12), *available at* http://www.mcw.gov.cy/mcw/DA/DA.nsf/All/0248A261B04159FAC2257204002595CE/$file/ Cyprus%20designated%20list.pdf.

[64] Import Restrictions on Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus, 71 Fed. Reg. 51,724 (Aug. 31, 2006) (codified at 19 C.F.R. pt. 12), *available at* http://frwebgate1.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=128422356138+0+2+0&WAISaction=retrieve.

[65] Adding coins has stirred some criticism by those who argue that such a move was unnecessary in the absence of serious systematic looting from Cyprus. Pavlos Flourentzos, Director of the Department of Antiquities of Cyprus, emphasized in an interview the significance of ancient coins to Cyprus' history especially because of the lack of ancient written sources, and noted that in numerous instances, the Cyprus police along with the Antiquities Department had joined forces to apprehend smugglers of coins. In October 2007, they arrested five smugglers who had stolen numerous artifacts along with several dozen coins. *See* Dietzler, s*upra* note 40.

MOU as a very important instrument to prevent illicit export. The government intends to begin negotiations with the United States to renew the MOU in due course.[66]

V. Definitions of Cultural Property Under International Legal Instruments

As stated above, there is no uniform definition of "cultural property." The term was introduced by the 1954 Hague Convention on the Protection of Cultural Property during Armed Conflict[67] and its two Protocols, adopted in 1954 and 1999.[68] These documents provide the following comprehensive definition, irrespective of origin or ownership:

> a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites, groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
>
> b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a); and,
>
> c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as "centres containing monuments."[69]

This definition is a non-exhaustive definition of the term "cultural property," as the phrase "such as" suggests. It explicitly encompasses a wide variety of cultural property, including religious monuments, movables or immovables that are "of great importance to the cultural heritage of every people." The notion of "religious monuments" includes all places of worship, including those used by Christians, Muslims, Jews, and others.

In order to qualify for international protection, religious monuments must also meet the standard of being of vital significance to the cultural heritage of "every people." The phrase "every people" *prima facie* carries two meanings: a) of all people jointly; or b) of each respective people.[70]

The French and Spanish texts of the 1954 Hague Convention, which are also authoritative, do not clarify what the term signifies since both refer to the cultural heritage "of peoples." It has been asserted that the second meaning is the more appropriate, which refers to

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[66] Information provided to the author by officials of the Cyprus government, Mar. 2009.

[67] 1954 Hague Convention on the Protection of Cultural Property during Armed Conflict (1954 Hague Convention), *signed* May 14, 1954, *entered into force* Aug. 7, 1956, 249 U.N.T.S. 240-88, *available at* http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[68] For a discussion of the 1954 and 1999 Protocols, *see* Parts VI and VII, *infra*.

[69] 1954 Hague Convention, *supra* note 67, art. 1.

[70] ROGER O'KEEFE, HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW 437 (2007).

the movable and immovable property of great importance to the cultural heritage of each respective party to the Convention.[71]

Other international legal instruments employ different terminology. Protocols I and II to the 1949 Geneva Conventions use the terms "cultural objects" and "places of worship."[72] Article 53 of Additional Protocol I, which applies in situations of international armed conflict, prohibits specifically acts of hostility against "historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples." Consequently, churches and other places of worship which are part of the "cultural or spiritual heritage of peoples," fall within the scope of Article 53.

The language of Article 53 indicates that religious sites must be protected if they meet the criterion of being part "of the cultural or spiritual heritage of peoples." Thus, it appears that the notion of cultural property under Protocol I has a broader scope than that provided for in the 1954 Hague Convention, which, as stated above, limits protection to cultural property that is "of great importance to all peoples."[73] However, the Commentary on the Additional Protocols confirms that "both texts connote the same basic idea," despite this difference in terminology.[74]

Among other international agreements, neither Article 56 of The Hague Convention (IV) Respecting the Laws and Customs of War on Land of October 18, 1907, nor the regulations annexed to it, define cultural property. The Convention does, however, refer explicitly to the elements of cultural property–that is, institutions dedicated to religion, charity, education, and the arts and sciences–and prohibits the destruction or willful damage to these institutions.[75]

The definitions adopted by contemporary courts and tribunals, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the 1998 Rome Statute of the International Criminal Court (ICC) are also pertinent to the review of the definition of cultural property.

Article 3(d) of the ICTY statute, entitled Violations of the Laws or Customs of War, provides that "seizure, destruction, or willful damage done to institutions dedicated to religion,

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[71] ROGER O'KEEFE, PROTECTION OF CULTURAL PROPERTY IN ARMED CONFLICT 104 (2006).

[72] 1977 Geneva Protocol I, Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflict, art. 53, 1125 U.N.T.S. 4, *available at* http://www.icrc.org/ihl.nsf/ 7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079; and 1977 Geneva Protocol II, Additional to the Geneva Convention of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflict, art. 16, 1125 U.N.T.S. 610, *available at* http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument.

[73] For a further discussion of the definition of cultural property, *see* Eduard Serbenco, *The Protection of Cultural Property and Post-Conflict Kosovo*, 18.2. REV. QUEBECOISE DR. INTER. 96 (2005).

[74] CLAUDE PILLOUD ET AL., ICRC COMMENTARY ON THE ADDITIONAL PROTOCOLS OF JUNE 8, 1977 TO THE GENEVA CONVENTIONS OF AUGUST 12, 1949 at 27, *cited in* Hirad Abtahi, *The Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the Former Yugoslavia*, 14 HARV. HUM. RTS. J. 8 (2001).

[75] DOCUMENTS ON THE LAWS OF WAR 55 (A. Roberts & R. Guelff, eds., 1989).

charity and education, the arts and sciences, historic monuments and works of art and science" are viewed as violations of the laws or customs of war.[76]

Article 8, paragraph 2(b)(ix), of the Rome Statute of the ICC explicitly declares as war crimes intentional attacks "against buildings dedicated to religion, education, art, science or charitable purposes, [and] historic monuments … provided they are not military objectives."[77]

Based on the above, religious monuments in the northern part of Cyprus and artifacts used for religious rituals and purposes and which signify Cyprus' deep links to Christianity clearly fall within the definition of the documents mentioned above and require the international protection accorded by the relevant provisions. It could also be asserted that certain places of worship dating from the Byzantine era in the northern part of Cyprus may additionally qualify as historic or architectural buildings that are of great importance to the cultural heritage of Cyprus.

VI. Protection of Cultural Property During Armed Conflict and Occupation

Irrespective of whether the 1974 armed conflict in Cyprus was lawful or unlawful (the legality of the resort to armed conflict is subject to the United Nations Charter and the law known as *jus ad bellum*), the continuing occupation of its northern part and the ensuing destruction of religious sites and other historic monuments in general, fall within the scope and application of the legal regime of international humanitarian law, that is, the law of armed conflict. Protection of cultural property during armed conflict and occupation is governed by the following international legal instruments:

- The 1907 Hague Regulations;
- The fundamental 1954 Hague Convention on the Protection of Cultural Property During Armed Conflict, its Regulations, and its subsequent Protocols; and
- The 1949 Geneva Conventions and Protocols.

A number of other international instruments against religious intolerance are applicable, along with the 1993 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage. Even though these documents lack binding force under international law, they nevertheless possess normative value and are declaratory of the views of the international community on protection of religious sites for posterity and against religious aggression.

It should also be noted that the legal literature suggests that actions to completely obliterate any religious or other physical symbols of an ethnic or religious group could, in extreme situations, amount to "cultural genocide."[78] Raphael Lemkin, the Polish law professor

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[76] ICTY, Updated Statute Of The International Criminal Tribunal For The Former Yugoslavia (Feb. 2008) (unofficial compilation), *available at* http://www.un.org/icty/legaldoc-e/basic/statut/statute-feb08-e.pdf.

[77] Rome Statute of the ICC art. 8, para. 2(b)(ix), *available at* http://www2.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf (last visited Mar. 4, 2009).

[78] *See, e.g.*, PATRICK BOYLAN, REVIEW OF THE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT 121 (1993), *available at* http://unesdoc.unesco.org/images/0010/001001/100159eo.pdf.

who coined the term "genocide" in 1944, described eight elements of genocide: biological, cultural, economic, moral, political, physical, social, and religious; each one referring to a different aspect that forms part of the existence of a people or a particular group. Cultural genocide may occur when institutions or objects devoted to religious, artistic, literary, or other cultural activities are destroyed during armed conflicts and occupations, but also in other instances when elements that constitute the culture of an ethnic group, such as language or traditions and rituals, are restricted or prohibited.[79]

The earlier drafts of the text of the 1948 Genocide Convention included language that prohibited cultural genocide, stating:

> (e) systematic destruction of historic or religious monuments or their diversion to alien uses, destruction or dispersal of documents and objects of historical, artistic or religious value and objects used in religious worship.[80]

However, the above paragraph was not included in the final text of the Genocide Convention, although the Convention did include the phrase "causing serious mental harm," which could arguably apply in situations where there is systematic and pervasive destruction and desecration of religious sites and objects,[81] as in the northern part of Cyprus.

A. Protection of Cultural Property During Armed Conflict

1. 1907 Hague Regulations[82]

Three Articles of the 1907 Hague Regulations, which are annexed to the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, may have a bearing on the destruction of cultural property that occurred during the 1974 armed conflict in Cyprus. They are:

- Article 27, which states that in sieges and bombardments, a party to a conflict must take all necessary measures to spare, as far as possible buildings dedicated to religion, art and historic monuments, as long as they are not used for military purposes;[83]
- Article 47, which formally prohibits pillage; and,[84]

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[79] David Nersessian, *Rethinking Cultural Genocide Under International Law*, Series 2, No. 12 HUM. RTS. DIALOGUE: CULTURAL RTS. 7 (Carnegie Council on Ethics and Int'l Affairs, Spring 2005), *available at* http://www.cceia.org/resources/publications/dialogue/2_12/section_1/5139.html.

[80] BOYLAN, *supra* note 78.

[81] *Id*.

[82] The 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, and its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, Oct. 18, 1907, 36 Stat. 2277, TS 539, *in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 46, *also available at* http://www.icrc.org/ihl.nsf/FULL/195.

[83] *Id*.

[84] *Id.* art. 47.

- Article 56, which provides that property dedicated to religion, charity or education, and the arts or sciences, even when it is state property, shall be considered private property. Article 56 also clearly prohibits the seizure, destruction, or willful damage to religious monuments, works of art, and science, and states that such actions "should be made the subject of legal proceedings."[85]

The Hague Convention of 1907, however, contains a general "participation clause." This clause provides that the agreement is applicable only if all the belligerents are parties to the agreement.[86] Application of the 1907 Hague Convention and its regulations to Cyprus and the Turkish occupation is uncertain, as explained below.

Turkey signed the Convention on October 18, 1907. At that time, Turkey made a reservation regarding Article 3. Article 3 provides for the liability of a belligerent party that is found to be in violation of its provisions, requiring such a party to pay compensation and be responsible for all acts committed by persons forming part of its armed forces. Turkey did not subsequently ratify the Convention. Turkey had, however, ratified the 1899 Hague Convention II Respecting the Laws and Customs of War on Land, which is the precursor to the 1907 Hague Convention. Therefore, Turkey could, as a result of that action, now be considered to be bound by the 1907 Hague Convention.[87]

On the other hand, Cyprus did not exist as an independent state at the time of the 1907 Convention. Further, Cyprus did not sign or ratify the Convention after it became an independent state in 1960. Thus, it would appear that the 1907 Hague Convention is not applicable to Cyprus. An argument based on customary international law can be made, however, that the 1907 Hague Convention regulations are applicable to the situation between Cyprus and Turkey.

The 1946 Nuremberg International Military Tribunal[88] confirmed that the 1907 Hague Regulations, including Articles 27 and 56 related to the protection of cultural property, have reached the status of customary international law. Consequently, the 1907 Hague Convention Regulations could be considered to be applicable to and binding even on states that were not parties to the 1907 Hague Convention.

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[85] *Id*. art. 56. Chrysostomides, citing Schwarzebberger, states that the phrase "should be made the subject of legal proceedings" indicates that destruction raises an obligation for the occupying power, Turkey, to take legal action against violators, whether they are civilians or members of armed forces. CHRYSOSTOMIDES, *supra* note 1, at 194.

[86] 1907 Hague Convention IV Respecting the Laws and Customs of War on Land art. 2.

[87] The precursor of the 1907 Hague Convention IV was 1899 Hague Convention II Respecting the Laws and Customs of War on Land. The 1907 Convention was intended to replace the 1899 Hague Convention; however eighteen state parties to the 1899 Convention did not ratify the 1907 Hague Convention. Turkey was among them. The original signatories to the 1899 Hague Convention remain bound by the 1899 Convention. DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 4.

[88] Information Kit, UNESCO, *supra* note 47.

2. 1954 Hague Convention on the Protection of Cultural Property during Armed Conflict

The 1954 Hague Convention on the Protection of Cultural Property during Armed Conflict (hereafter the 1954 Convention),[89] introduced the term "cultural property."[90] Its preamble reaffirms the significance of cultural property as a symbol of cultural heritage for all mankind. The 1954 Convention applies:

- In the event of declared war;
- In the event of any other armed conflict that may arise between two or more of the contracting parties, even if the state of war is not recognized by the parties to the conflict;
- During partial or total occupation; and,
- During peacetime. A number of provisions pertaining to the responsibilities of contracting states to safeguard the cultural property in their territory are applicable.[91]

The 1954 Convention imposes certain obligations and responsibilities on the contracting parties pertaining to the protection of cultural property. Under Article 2 of the 1954 Convention, the obligation to protect cultural property has two components:

(i) Safeguarding, as provided in Article 3; and,

(ii) Respect, as provided in Article 4.

Both Articles have achieved the status of customary international law.[92]

The obligation to safeguard cultural property, imposed in Article 3 of the 1954 Convention, requires states to take any necessary and appropriate measures based on their financial means during peace to safeguard the cultural property situated within their territory to ensure its integrity against any foreseeable effects during a potential armed conflict.[93] This obligation was included to signify the importance of cultural property not only for the state itself but for the entire international community.[94]

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[89] 1954 Hague Convention, *supra* note 67.

[90] The 1954 Hague Convention states that the drafters were influenced by the principles pertaining to the protection of cultural property during armed conflict, as contained in earlier Hague Conventions of 1899 and 1907 and the Washington Pact of 1935. *Id*.

[91] *Id*. art. 18.

[92] *See* Francesco Francioni and Federico Lenzerini, *The Obligation to Prevent and Avoid Destruction of Cultural Heritage: From Bamiyan to Iraq*, *in* ART AND CULTURAL HERITAGE 34 (Barbara T. Hoffman, ed., 2006).

[93] 1954 Hague Convention, *supra* note 67, art. 3.

[94] *Id*.

Cyprus and Turkey acceded to the 1954 Convention on September 9, 1964, and December 15, 1965, respectively.[95] The 1974 events between Turkey and Cyprus, irrespective of whether one defines them as "war," "armed conflict,"[96] or by other comparable terms,[97] fall within the scope and applicability of the 1954 Convention.

The *travaux préparatoires* (legislative history) of the Convention indicates that "measures to safeguard cultural property" include actions such as protection against possible fire or collapse of buildings, measures to relocate movables to special refuges, etc.[98] The concept of safeguarding cultural property and what it entails was further elucidated in the Second Protocol to the 1954 Hague Convention signed in 1999 (hereafter, 1999 Protocol).[99] That Protocol provides that states may take specific measures, including preparation of inventories, removal of movable cultural property, and protection *in situ*.[100] Pursuant to the 1954 Convention, the Cypriot authorities had the right to request technical assistance from UNESCO on safeguarding the cultural property located in Cyprus.

As a newly emerged state, Cyprus had to deal with political instability due to inter-communal strife during 1963-1964. Nevertheless, the Cyprus authorities did request technical assistance from UNESCO, as provided for in the Convention, to provide guidance to them as to the best practices for the conservation of mosaics and ancient built tombs with reliefs, and for the Saint Sophia Gothic Cathedral in Nicosia, under the supervision and direction of Dr. Carlo M. Musso, a UNESCO expert. A small number of private collections of antiquities were also registered.[101] Moreover, pursuant to Article 3 of the Convention, Cyprus as a party to the Convention is allowed to use its discretion "as [it] considered appropriate," to allocate available financial and technical resources, and to take measures to safeguard its cultural property.

It must be pointed out that the Convention does not allow a party to use another contracting state's failure to take measures to safeguard its property during peace time as an excuse to evade its own fundamental responsibility to respect cultural property in the event of armed conflict.[102] Consequently, in the case under consideration, irrespective of whether or not

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[95] *See* UNESCO Ratification and Accession List, 1954 Hague Convention, http://erc.unesco.org/cp/convention.asp?KO=13637&language=E.

[96] The ICTY Appeals Chamber stated in the Tadic case that "an armed conflict exists whenever there is resort to armed force between States." Anthony Cullen and Marko Divac Öberg, *Prosecutor v. Ramush Haradimjnaj et al: The International Criminal Tribunal for the Former Yugoslavia and the Threshold of Non-International Armed Conflict in International Humanitarian Law*, 12 ASIL INSIGHTS No. 7 (Apr. 23, 2008), *available at* http://www.asil.org/insights080423.cfm.

[97] DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 1.

[98] O'KEEFE, *supra* note 71, at 113.

[99] Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (1999 Protocol), The Hague, Mar. 26, 1999, *entered into force* Mar. 9, 2004, 2253 U.N.T.S. 172, *available at* http://www.icrc.org/ihl.nsf/FULL/590?OpenDocument.

[100] *Id*. at 250.

[101] 1954 Hague Convention, *supra* note 67, art. 23(1). Information on assistance offered by UNESCO provided to the author by officials of the Cyprus government, Mar. 2009.

[102] 1954 Hague Convention, *supra* note 67, art. 4, para. 5.

Cyprus had taken measures to safeguard its religious sites and other cultural property prior to the 1974 invasion and subsequent occupation, the destruction of cultural property that ensued could arguably give rise to Turkey's responsibility under international law.

The crux of the protection afforded to cultural property by the 1954 Hague Convention is embodied in Article 4 of the Convention. Under that Article, Turkey was required to take the following course during the military invasions of July and August 1974:

- Refrain from using cultural property and its immediate surroundings for purposes that were likely to expose it to destruction or damage during an armed conflict;
- Avoid any act of hostility against such property;
- Prohibit, prevent, and if necessary stop any form of theft, pillage, or misappropriation and any acts of vandalism against cultural property; and,
- Refrain from any act against cultural property as a reprisal.[103]

The 1999 Protocol to the Hague Convention imposes additional precautionary measures to be taken by the states that are parties to the Protocol. Turkey has not ratified the Protocol, thus it is not bound by it. The additional measures require a state to:

- Ensure that the items to be attacked are not cultural property;
- Take any feasible precautions in terms of means and methods in order to avoid or minimize any incidental damage to cultural property;
- Refrain from launching any attack that may be expected to bring about incidental damage to cultural property and "which would be excessive in relation to the concrete and direct military advantage anticipated"; and,
- Not to carry out, or to suspend the attack, if it is obvious;
  a) That the objective is cultural property; and,
  b) That the attack may be expected to cause incidental damage to cultural property.[104]

During the summer of 1974, the Acting-Director General of UNESCO sent telegrams to both parties to the conflict to remind them of their obligations, specifically arising from Article 4 of the 1954 Convention, to respect cultural property.[105] As reported:

> [N]ot having received any acknowledgment from the government of Turkey the Acting-Director General sent a further telegram to that Government … recalling the terms of the previous telegram and expressing his concern [over] the fate of important archaeological and historical monuments and sites as well as other cultural property in

[103] *Id*. art. 4.

[104] 1999 Protocol, *supra* note 99, art. 7.

[105] O'KEEFE, *supra* note 71, at 179, *citing* UNESCO reports.

> areas controlled by the Turkish army; he also appealed to the Government of Turkey to do its utmost to safeguard the cultural property and referred again to Article 4, paragraph 1 of the Convention.[106]

An initial report prepared by a consultant sent to Cyprus by UNESCO to assess the situation and make recommendations stated that in Paphos, an area in southern Cyprus, the Mosaics of the House of Dionysos, which were damaged during the Turkish invasion in July 1974, had been repaired by the Cyprus government. A mission was sent to the northern part of Cyprus in October of 1974. A UNESCO consultant reviewed the situation in March and June of 1975 and determined that "less had been accomplished to protect antiquities than had been hoped."[107] Later, the Director General of Antiquities came to the northern part of Cyprus from Turkey and made several recommendations, including the drafting of legislation on antiquities based on Turkish law, severe penalties for those who engage in stealing and exporting cultural property and the collection and cataloguing of all objects. Even if some of the recommendations were initially implemented under the guidance of UNESCO, the current situation, as documented, portrays the pillage and desecration of religious sites and other cultural property that has taken place in the northern occupied area. It should also be noted that after the adoption of UN Security Council resolutions in 1983 and 1984, which urged the international community not to recognize the secessionist actions of the "TRNC," UNESCO was precluded from visiting and providing expert advice to the "TRNC" on cultural property issues; to do otherwise would be contrary to the UN Resolutions and its actions could imply recognition of the "TRNC."

a. Special Protection

Under the 1954 Hague Convention, parties may designate a limited number of refuges that are intended to shelter movable cultural property,[108] or centers which contain monuments and other immovable cultural property "of very great importance," provided that such refuges meet two critical conditions:

(i) They must be located an adequate distance from any important military target, such as an airport or any large industrial center; and,

(ii) They are not used for military purposes.

The Convention established an International Register of Cultural Property. Member States are entitled to submit an application to the Director General of UNESCO to register centers containing monuments.[109] Cyprus has not entered any monuments in the International Register yet; according to government officials, however, it intends to prepare a list of

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[106] *Id*.

[107] J. DALIBARD, CYPRUS: STATUS ON THE CONSERVATION OF CULTURAL PROPERTY 3 (UNESCO, Jan. 1976) (internal report), *available at* http://unesdoc.unesco.org/images/0002/000217/021772eb.pdf.

[108] No refuge to protect movable cultural property has been designated by the Cyprus government.

[109] Article 12 of the Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, *in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 354, *available at* http://www.icomos.org/hague/hague.regulations.html (last visited Mar. 25, 2009).

monuments to submit to UNESCO. In case of occupation, the occupying power is competent to submit to the Director an application for registration.[110] Monuments that enter the International Register enjoy immunity from attacks unless they are used for military purposes.[111]

b. Enhanced Protection

The attempt to provide special protection to cultural property under the 1954 Hague Convention has reportedly never worked in practice.[112] Consequently, the 1999 Protocol to the 1954 Convention adopted an enhanced protection regime. Parties to the Protocol have the right to put under enhanced protection the part of their cultural heritage which is "of the greatest importance for humanity," provided that such heritage meets two additional requirements:

(i) It is protected by national legal and administrative measures which acknowledge the exceptional cultural, historic value of such property; and,

(ii) It is not used for military purposes or as covers for military sites.[113]

c. Distinctive Emblem

In order to easily identify cultural property during an armed conflict, the Convention provides that such buildings may bear a distinctive emblem that appears in the form of shield.[114] The emblem, repeated three times in the form of a triangle, can be used only in specific instances, such as being placed on immovable cultural property under special protection or to transport cultural property.[115]

d. Military Necessity

Protection of cultural property is not absolute, but is subject to the exception of military necessity.[116] The other party to the conflict may use such an exception as a defense if the

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[110] Information provided to the author by officials of the Cyprus government, Mar. 2009. With regard to the competence of the occupying power to submit such an application, *see* art. 13, para. 2 of the Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, *supra* note 109.

[111] 1954 Hague Convention, s*upra* note 67, art. 9.

[112] International Committee for the Red Cross (ICRC), Introduction to the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, *available at* http://www.icrc.org/ihl.nsf/INTRO/590.

[113] 1999 Protocol, *supra* note 99, art. 10.

[114] 1954 Hague Convention, *supra* note 67, arts. 6, 16. The emblem was affixed to the Cyprus Museum until 1975. Also, as required by UNESCO, World Heritage Sites are marked as such. Information provided to the author by officials of the Cyprus government, Mar. 2009.

[115] 1954 Hague Convention, *supra* note 67, art. 17.

[116] The long established international humanitarian law doctrine of military necessity is included in a number of instruments dealing with armed confli cts. *See* 1954 Hague Convention, *supra* note 67; 1999 Protocol, *supra* note 99; Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85;

cultural property in question is being used for military purposes. The 1954 Hague Protocol to the 1954 Hague Convention defines "military objectives," with regards to objects that because of their location, nature, purpose, or use can make "an effective contribution to military action and whose total or partial destruction, capture or neutralization … offers a definite military advantage."

The concept of military necessity presents challenges for the protection of cultural property.[117] As is widely recognized, this doctrine does not give unfettered power to national forces involved in armed conflict, but its scope is limited to those instances where a particular objective is sought. The Convention provides that general protection can be waived in instances "where military necessity imperatively requires such a waiver."[118] On the other hand, special protection of cultural property can be withdrawn in exceptional instances "of unavoidable military necessity," and "only for such time as that necessity continues."[119] The Convention's lack of definition of "military necessity" and lack of clarity of the provisions pertinent to military necessity were remedied by the 1999 Protocol to the 1954 Convention. Article 6 of the Protocol spells out the rules regarding the instances in which a waiver on the basis of imperative military necessity can be invoked. Article 13 contains the rules on the loss of enhanced protection.[120]

e. Prosecution of Individuals

Turkey and Cyprus as State parties to the Convention are required to adopt domestic criminal laws to prosecute and to impose criminal or disciplinary sanctions against individuals, irrespective of nationality, who either commit or order to engage in violations of the 1954 Hague Convention.[121]

3. Protocol I to the Geneva Conventions[122]

One of the fundamental principles of warfare, which also governs cultural property, is that attacks shall be limited strictly to military objectives and that civilian objects shall not be

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Convention (III) relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 287; and 1977 Geneva Protocol I, *supra* note 72, *all available at* http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/section_ihl_treaties_and_customary_law?OpenDocument.

[117] During the review process of the Hague Convention beginning in 1993, in the aftermath of the cultural destruction of property in the former Yugoslavia, the notion of military necessity was extensively debated. In the 1998 meeting, the UNESCO Secretariat drafted a definition of military necessity which was partially followed when the 1999 Protocol to the 1954 Hague Convention was adopted. *See* Jan Hladík, *The Review of the 1954 Convention and the Adoption of the Second Protocol Thereto*, No. 835 INT'L REV. OF THE RED CROSS 621-635 (Sept. 30, 1999), *available at* http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JQ39.

[118] 1954 Hague Convention, *supra* note 67, art. 4, para. 2.

[119] *Id*. art. 11, para. 2.

[120] *See* 1999 Protocol, *supra* note 99, arts. 6, 13, *available at* http://www.icrc.org/ihl.nsf/FULL/590?OpenDocument.

[121] 1954 Hague Convention, *supra* note 67, art. 28.

[122] 1977 Geneva Protocol I, *supra* note 72.

subject to attack or reprisal.[123] As stated previously, Protocol I, adopted in 1977, defines a military objective as one which can make an effective contribution to military action and whose destruction or damage constitutes a definite military advantage.[124] If there is doubt as to whether a place of worship, a house, or other dwelling is used to make an effective contribution to warfare, then "it shall be presumed not to be [so] used."[125]

In addition to the general principles stated above, Protocol I in effect incorporates the 1954 Hague Convention, by virtue of Article 53. This Article contains specific provisions dedicated to the protection of cultural objects and places of worship.[126] Thus, it prohibits the following acts:

- Acts of hostility directed against historic monuments, or places of worship which constitute the cultural or spiritual heritage of peoples;
- The use of such objects to support any military effort; and,
- To render historic monuments or places of worship as the object of reprisals.[127]

B. Protection of Cultural Property During Occupation

1. The Northern Part of Cyprus as "Occupied Territory"

In general, the law on occupation is based on a number of international legal instruments and customary norms. Article 42 of the 1907 Hague Regulations[128] Respecting the Laws and Customs of War on Land, which reflects customary international law,[129] defines a territory as occupied, "when it is actually placed under the authority of the hostile army" where "the

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[123] *Id*. art. 52, para. 1.

[124] *Id*. paras. 1, 2.

[125] *Id*. art. 52, para. 3.

[126] *Id*. (generally). Moreover, Article 16 of the 1977 Geneva Protocol II also prohibits the commission of any acts of hostility directed against works of art, historic monuments, or places of worship which are part of the cultural or spiritual heritage of peoples. 1977 Geneva Protocol II, *supra* note 72, *in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 456; *also available at* http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/d67c39 71bcff1c10c125641e0052b545.

[127] 1977 Geneva Protocol I, *supra* note 72, art. 53, *in* DOCUMENTS ON THE LAWS OF WAR, s*upra* note 75, at 55; *see also* 1977 Geneva Protocol II, *supra* note 72, art. 16 (reflecting similar language, which applies in a non-international armed conflict), *in* DOCUMENTS ON THE LAWS OF WAR, s*upra* note 75, at 436.

[128] The Regulations are annexed to the 1907 Hague Convention IV. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631, *available at* http://www.icrc.org/ihl.nsf/INTRO/195?OpenDocument.

[129] *See, e.g.*, Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 167, para. 78 (July 9, 2004), *available at* http://www.icj-cij.org/docket/files/131/1671.pdf?PHPSESSID= e3b65f0e5ef1d3d55455aa9e5ef80d24.

occupation extends only to the territory where such authority has been established and can be exercised."[130]

Central to the analysis of this issue, is the case law of two leading courts: the International Court of Justice (ICJ) and the European Court of Human Rights (ECHR).

In its 2004 advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*,[131] the ICJ examined the issue of whether Israel has the status of an occupying power in the West Bank. The Court did not elaborate on whether Israeli armed attacks were justified under conventional and customary international law in order to determine whether Israel was in fact an occupying power. The Court, upon articulating the definition of occupation as enunciated in Article 42 of the 1907 Hague Regulations, considered various UN Security Council Resolutions, which characterized the territory as occupied by Israel. It further stated that "under customary international law … territory is considered occupied when it is actually placed under the authority of a hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised."[132] The Court reached the conclusion that, based on customary international law, the Palestinian territories which Israel occupied in 1967 are still occupied and consequently, "Israel had the status of occupying Power."[133]

Moreover, in 2005, the ICJ issued its final judgment in the *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda).*[134] In examining whether the military forces of a state are present on the territory of another state because of military intervention, and thus qualifies as an occupying power under the rule of belligerent occupation in international humanitarian law, the Court stated that it must examine whether there is "sufficient evidence to demonstrate that the said authority was in fact established and exercised … in the areas in question." The ICJ cited its 2004 advisory opinion on the Israeli barrier case, and reached the conclusion that the Ugandan armed forces had substituted their own authority for that of the Government of Congo; it also stated that any grounds used by Uganda to justify its occupation are irrelevant to the issue.[135]

With regard to the northern part of Cyprus, both the United Nations Security Council and the General Assembly have adopted resolutions that, either in the preamble or in the operative part, contain language to the effect that the northern part of Cyprus is under foreign occupation

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[130] 1907 Hague Regulations, art. 42, *in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 57.

[131] I.C.J. Advisory Opinion, *supra* note 129.

[132] *Id.* para. 78.

[133] *Id*.

[134] Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), 2005 ICJ (Dec. 19, 2005), *available at* http://www.icj-cij.org/docket/files/116/10455.pdf. For a commentary on the case, *see also*, Margaret E. McGuinness, *Case Concerning Armed Activities on the Territory of Congo: The ICJ Finds Uganda Acted Unlawfully and Orders Reparations*, 1 ASIL INSIGHTS 10, (Jan. 9, 2006), *available at* http://www.asil.org/insights060109.cfm.

[135] Case Concerning Armed Activities on the Territory of the Congo paras. 167-180 (discussing belligerent occupation).

and also urge the international community to respect the sovereignty, independence, and territorial integrity of Cyprus. Resolution 37/253 of the General Assembly, adopted in May 1983, deplored "the fact that part of the territory of the Republic of Cyprus is still occupied by foreign forces" and demanded "the immediate withdrawal of all occupation forces from the Republic of Cyprus." Both UN bodies have further stated that the international community must refrain from taking any action that might prejudice the sovereignty and independence of Cyprus, and also refrain from any action that might lead to the partition of the island.[136]

The court system of the Council of Europe has taken a clear stand on this issue as well. Specifically, the European Commission of Human Rights[137] deemed that the northern part of Cyprus was indeed under the control of Turkey when it accepted the 1977 application of *Cyprus v. Turkey*, claiming a violation of various human rights in Cyprus.[138] Moreover, the ECHR has in effect also confirmed that the northern part of Cyprus is under Turkish occupation.[139] The ECHR based its reasoning on the presence of a large number of troops engaged in active duty in the northern part of Cyprus and held that the Turkish army indeed exercises "effective control over that part of the island."[140]

The question of applicability of the law on occupation depends primarily on whether in fact the territory has been placed under the authority of a hostile army.[141] The United States Army training manuals also rely upon this fact to determine whether or not an actual occupation

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[136] *See* S.C. Res. 365, U.N. Doc. S/RES/365 (Dec. 13, 1974), *available at* http://www.un.int/cyprus/scr365.htm. In this Resolution, the Security Council endorsed Resolution 3212 (XXIX) of the General Assembly on the "Question of Cyprus" and urged the parties to implement it immediately. A subsequent Security Council Resolution 367 adopted in 1975 endorsed Resolution 365 of the Security Council and 3212 of the General Assembly. S.C. Res. 367, U.N. Doc. S/RES/367 (Mar. 12, 1975), *available at* http://www.un.int/cyprus/scr367.htm. In Resolution 3212, the General Assembly called on all states to respect the sovereignty, independence, and territorial integrity of the Republic of Cyprus and urged the "speedy withdrawal" of all foreign armed forces and foreign military presence and personnel from Cyprus. G.A. Res. 3212 (XXIX), (Nov. 1, 1974), *available at* http://www.un.int/cyprus/Res3212GA.htm.

[137] Until Protocol 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, came into force in 1998, the court system of the Council of Europe included the European Commission of Human Rights, the Court of Human Rights, and the Committee of Ministers. The role of the European Commission was to determine the admissibility of a complaint. Protocol 11 terminated the Commission and established a single, full-time court. Protocol 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, May 11, 1994, *available at* http://conventions.coe.int/treaty/EN/Treaties/html/155.htm.

[138] Cyprus v. Turkey, IV Rep. Jud. & Dec. 5, 101 (2001), *available at* http://cmiskp.echr.coe.int/tkp197/view.asp?item=22&portal=hbkm&action=html&highlight=cyprus%20%7C%20v.%20%7C%20Turkey&sessionid=21069458&skin=hudoc-en.

[139] *See* Loizidou v. Turkey (Merits), para. 56, Eur. Ct. Hum. H.R., VI Dec. & Rep. (1996), *available at* http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?sessionId=9256208&skin=hudoc-en&action=html&table=F69A27FD8FB86142BF01C1166DEA398649&key=588&highlight=, discussed *infra*.

[140] *Id*.

[141] Mustafa Mari, The Israeli Disengagement from the Gaza Strip: An End of the Occupation? 8 Y.B. Int'l Humanitarian L. 356, 361 (2005).

exists.[142] Thus, it is irrelevant as to whether or not the use of force that led to the occupation of a territory met the test of legality, as the International Committee of Red Cross (ICRC) asserts. The latter, in affirming the applicability of international humanitarian law in situations where the requirements of occupation are fulfilled, clarified that it applies "regardless of the reason and motives that lead to the occupation (e.g. stated intention to 'liberate' the people of a country) and regardless of its legality under international law."[143]

As previously stated, Turkey in its initial military invasion of July 20, 1974, gained control of over two percent of Cyprus' territory. In the subsequent military attack of August 14, 1974, Turkish military forces gained control and occupied 36.02 percent of the territory of Cyprus. Currently, there are 43,000 Turkish troops and close to 160,000 settlers that Turkey brought to Cyprus from mainland Turkey.[144] Moreover, the "TRNC" is under the direct control of Turkey. These facts clearly suggest that the northern part of Cyprus meets the criteria of military occupation.

A number of international law experts also assert that the northern part of Cyprus is under military occupation. For instance, Ian Brownlie, a well-known expert in international law, states that the northern part of Cyprus is "under the military occupation of Turkey dating back to the Turkish invasion of Cyprus in 1974."[145] Eyal Benvenisti, an authority on the law of occupation, briefly examines the case of the northern part of Cyprus in the context of analyzing several cases of contemporary occupations, and states that the Turkish invasion resulted in having "the Turks with control of the northern third of the island."[146] He refers to the ties between the north and mainland Turkey, including its dependence on the military presence of the Turkish army and its dependence on Turkey's economy, to suggest that the northern part of Cyprus is indeed under the effective control of the Turkish army.[147] He also attributes the lack of recognition of the "TRNC" to the continuing dependency on Turkey, "whose presence there was deemed the fruit of illegal aggression."[148]

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[142] U.S. Dep't of Army Pam. 27-161-2, 2 INT'L LAW 159 (1962), *cited in* Jordan J. Paust, *The U.S. as Occupying Power over Portions of Iraq and Relevant Responsibilities Under the Laws of War*, ASIL INSIGHTS (Apr. 2003), http://www.asil.org/ insigh102.cfm.

[143] ICRC, *Occupied Territory – The Legal Issues*, http://www.icrc.org/Web/Eng/siteeng 0.nsf/htmlall/ section_ihl_occupied_territory?OpenDocument.

[144] Ministry of Foreign Affairs of the Republic of Cyprus, *Illegal Demographic Changes*, http://www.mfa. gov.cy/mfa /mfa2006.nsf/cyprus06_en/cyprus06_en?OpenDocument; *see also* Ministry of Foreign Affairs Circular, Sept. 19, 2007 (addressed to diplomatic missions).

[145] Ian Brownlie, *Recognition in Theory and Practice*, 53 BRITISH Y.B. INT'L L. (1982) 203, *cited in* CHRYSOSTOMIDES, *supra* note 1, at 144.

[146] EYAL BENVENISTI, INTERNATIONAL LAW OF OCCUPATION 178 (2004).

[147] *Id*.

[148] *Id.* at 180.

2. International Rules on Protection of Cultural Property Applicable to the Occupied Territory of Cyprus

Having established that the northern part of Cyprus meets the legal requirements to be defined as an occupied territory under international law, the following legal instruments apply to the protection of cultural property and the responsibilities that arise for the occupying power.

a. The 1954 Hague Convention

The 1954 Hague Convention establishes that it shall be applicable "to all cases of partial or total occupation of the territory of a high contracting party, even if the occupation meets with no armed resistance."

Article 5 of the Convention addresses issues of protection of cultural property located in occupied territory. Under Article 5, paragraph 1, a contracting party in occupation of whole or part of the territory of another contracting party is required, to the extent possible, to support the "competent national authorities of the occupied country in safeguarding and preserving its cultural property." Paragraph 2 of the same Article provides:

> Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close cooperation with such authorities, take the most necessary measures of preservation.[149]

The language of both paragraphs read together indicates that the occupied national authorities are primarily responsible for taking any necessary steps to protect and preserve their cultural property. Only if the said authorities are unable to do so, as in case of Cyprus where there is a dividing line between the north and south, then the "TRNC" authorities, in cooperation with the government of Cyprus, are obliged to take measures limited to preservation activities. In fact, no such cooperation has taken place. The "TRNC" is involved in archaeological activities on its own.

b. The 1954 Hague Protocol for the Protection of Cultural Property During Armed Conflict

The 1954 Hague Protocol for the Protection of Cultural Property During Armed Conflict was ratified by Turkey on December 15, 1965. The Protocol requires Turkey to:

a) Take measures to prevent the exportation of cultural property from the occupied northern part of Cyprus;[150]

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[149] 1954 Hague Convention, *supra* note 67, art. 5.

[150] O'KEEFE, *supra* note 71, at 260. O'Keefe comments that during the review stage of the 1954 Hague Convention, many participants expressed the opinion that due to the occurrence of several cases of illegal exportation of cultural property, a ban on excavations in occupied territories was essential and that such a ban ought

b) Take into its custody any cultural property that comes from the occupied territory and is imported into its territory;

c) Return any illegally exported property at the close of hostilities; and,

d) Pay damages to any good-faith holder of such property that must be returned to its rightful owners.[151]

The third requirement to "return any illegally exported property at the close of hostilities" poses a particular problem in the Cyprus case because the language used presupposes that the hostilities and the end of occupation of the territory where the cultural property was taken would occur at the same time. O'Keefe, an international law authority on cultural issues, comments that:

> this poses a conundrum in situations such as Cyprus, where, no legal state of war existing between the hostile Parties, it can be said that hostilities, in the sense of combat operations, have come to a close, but where occupation of part of the territory persists and has persisted for over thirty years. In such cases, unless the Party subject to the duty laid down in paragraph 3 is to retain custody over cultural property exported from the occupied territory until a final settlement is reached, which may be ad infinitum, it would seem in keeping with the object and purpose of the provision to return the property to the government of the unoccupied part of the territory. But paragraph 3 would not mandate this.[152]

The obligation to prevent exportation is not limited to the occupation authorities, but has a broader reach and includes the duty to prevent private parties from engaging in exportation. The obligation is also not limited to exportation that is illegal according to the domestic law of the party concerned, but it extends to all exportation of cultural property.[153] Patrick Boylan, another leading authority on the protection of cultural property during armed conflict, in reviewing the application of the 1954 Hague Convention in 1993, comments that the above provisions have been proven ineffective in a number of cases.[154] He cites a number of examples, including Indo-China in the 1960s and 1970s, the Iran-Iraq war of the 1980s, and "the leakage" of archaeological material, antiquities, and works of art from the occupied northern part of Cyprus.[155]

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to be included in a subsequent protocol. Several cases of illicit export were mentioned, including the plunder of Kuwait by Iraqi forces, the pillage of Angkor during the occupation of Cambodia by Vietnam, and "less explicitly but no less seriously, of the continuing theft of cultural property from Turkish occupied northern Cyprus." *Id*.

[151] 1954 Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict, art. 1, 249 U.N.T.S. 358-64, *in* DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 363.

[152] O'KEEFE, *supra* note 71, at 199.

[153] *Id*. at 198.

[154] BOYLAN, *supra* note 78, at 95, 96.

[155] *Id*.

c. 1999 Second Hague Protocol

The Second Hague Protocol, which has not been ratified by Turkey, in its Article 9(1)(a) requires an occupying power to prohibit and prevent any illicit export, other removal, and transfer of ownership of cultural property from the occupied territory. O'Keefe asserts that the use of "cultural property" encompasses not only movables which in effect (or actually) can be removed and exported to a foreign country, but also immovables, such as buildings and archaeological sites.[156] Therefore, the examples of churches that have been rented or sold to private individuals, as stated previously, are in direct violation of this rule.

d. Protocol I Additional to the 1949 Geneva Conventions

The occupying power is bound during the duration of the occupation, to the extent that it functions as a government, by Article 53 of the Protocol. This Article prohibits the destruction of real or personal private belonging to individuals or to the state or other public authorities, except where such destruction is deemed absolutely necessary by military operations.[157]

e. Paragraph V of the 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage

The 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage is also relevant to the analysis of instruments pertaining to the protection of cultural property in the northern part of Cyprus. Paragraph V of the Declaration provides that parties involved in an armed conflict, including occupation, must take any measures necessary to conduct their activities in such a way as to ensure the safety and integrity of the cultural property, in accordance with customary international law and the standards enunciated in international agreements on cultural property.[158]

f. Archaeological Excavations and the 1999 Protocol to the 1954 Hague Convention

As previously noted, the Republic of Cyprus is raising the issue of the excavations that are reported to take place in the northern part of Cyprus and argues that such excavations are illegal.

Article 5 of the 1954 Hague Convention dealing with occupation does not expressly prohibit the occupying powers from engaging in excavations; nevertheless, the pertinent

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[156] O'KEEFE, *supra* note 71, at 260.

[157] 1977 Geneva Protocol I, *supra* note 72, art. 53. Article 16 of Geneva Protocol II, *supra* note 72, also prohibits the commission of any acts of hostility which are directed against works of art, historic monuments, or places of worship which are part of the cultural or spiritual heritage of peoples.

[158] UNESCO, Legal Instruments, UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, Oct. 17, 2003, *available at* http://portal.unesco.org/en/ev.php-URL_ID=17718&URL_DO=DO_TOPIC&URL_SECTION=201.html.

language of Article 5 clearly indicates that the occupying powers must cooperate with the national competent authorities in instances where cultural property is endangered and needs to be preserved. Israel, a state involved in archaeological excavations in occupied territories, claims that the lack of explicit prohibition in the 1954 Convention renders such excavations by the occupying forces permissible under international law.[159] However, even though Article 5 of the 1954 Hague Convention does not expressly include such a ban, the prevailing view is that a prohibition is implied from the overall language and spirit of Article 5 and the 1954 Convention.[160] Along the same lines, it has also been suggested that Article 5 is deemed to be based on the principle that any excavations on occupied territory fall within the domain of the national competent authorities.[161]

The apparent lacuna in the text of the Convention regarding archaeological excavations has been remedied through the adoption of the 1999 Protocol to the 1954 Hague Convention. The Protocol spelled out the rules on excavations. Under Article 9, authorities that occupy part or a whole of the territory of another party are prohibited from engaging in archaeological excavations, except in cases where such excavations are essential to safeguard, record, or preserve cultural property, and from altering or changing the use of cultural property in a manner intended to cover or destroy cultural, historical, or scientific evidence.[162]

The "TRNC," by using as a defense the exception that excavations are allowed when they "are essential to safeguard, record or preserve cultural property," argues that such excavations are critical because the cultural heritage of the northern part of Cyprus is endangered and on the brink of disappearance, "because of accelerated deterioration"; furthermore, it argues that excavations occur within its "sovereign territory."[163] However, it must be pointed out that the "TRNC" lacks international standing and therefore is not a party to the Protocol; moreover, it engages in archaeological activities on Turkey's behalf. On the other hand, Turkey has not ratified this Protocol; thus arguably it cannot base its defense on a legal document that does not entail legal effects for Turkey.

Article 9 clarifies that any archaeological excavations, alterations, or changes of use of cultural property "shall be carried out in close co-operation with the competent national authorities of the occupied territory." An exception exists when the circumstances do not permit

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[159] N. Sliman, *The Protection of Cultural Property in Occupied East Jerusalem: Archaeological Excavations and Removal of Cultural Property*, *in* XXXV MULTICULTURALISM AND INTERNATIONAL LAW 350 (Kalliopi Koufa, ed., Inst. of Int'l Pub. Law and Int'l Relations of Thessaloniki, 2007).

[160] *See also* Recommendation on International Principles Applicable to Archaeological Excavations, adopted by UNESCO in 1956, *available at* http://portal.unesco.org/en/ev.php-URL_ID=13062&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[161] O'KEEFE, *supra* note 71, at 139.

[162] 1999 Protocol, *supra* note 99, art. 9, para. 1(b), *available at* http://www.icrc.org/ihl.nsf/FULL/590?OpenDocument.

[163] *See* Kaya Arslan, Position Paper (I) Regarding the Archaeological Excavation at Kaleburnu, in the Karpas Peninsula in North Cyprus, *available at* http://cpc.emu.edu.tr/articles/POSITION%20PAPER%20-I%20Regarding%20the%20archeological%20excavation%20at%20Kaleburnu,in%20the%20Karpas%20peninsula%20in%20North%20Cyprus%20-%20Kaya%20Arslan.pdf (last visited Mar. 4, 2009).

such close cooperation between occupation authorities and national competent authorities.[164] "TRNC" has not requested that the government of Cyprus be involved and cooperate in preservation efforts in the occupied area. In March 2008, and within the framework of renewed efforts to reach a settlement to the Cyprus issue, a Technical Committee composed of members of the two communities, Greek Cypriots, and Turkish Cypriots, was established to work jointly on restoration and preservation issues.[165]

C. Standards for the Elimination of Religious Intolerance[166]

Resolution 55/254 on Protection of Religious Sites, adopted by the United Nations General Assembly, condemns acts of destruction, damage, or endangerment against religious sites and calls upon states to ensure that religious sites are protected and safeguarded.[167] The Resolution of the Commission on Human Rights 2003/54 on Elimination of all Forms of Religious Intolerance urges states to take measures pursuant to their national legislation and international human rights standards, "to ensure that religious places, sites and shrines are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction."[168]

The above standards concern state action against religious sites but arguably they are also relevant in case of actions which could be attributed to unrecognized *de facto* regimes, such as the "TRNC."[169]

VII. Accountability for Violations of International Laws for the Protection of Cultural Property

The international instruments referenced above contain specific rules regarding state responsibility and individual responsibility of those who engage in acts to destroy cultural property or order others to commit such acts. Several international criminal tribunals have prosecuted and found guilty those who have engaged in the destruction of cultural property, including the 1946 Nuremberg Tribunal. Moreover, a number of rules regarding protection of cultural property during armed conflict and occupation have achieved the status of customary international law.

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[164] 1999 Protocol, *supra* note 99, art. 9, para. 2.

[165] Information provided to the author by officials of the Cyprus government, Mar. 2009.

[166] For an additional discussion of this topic, *see* Yael Romen, *The Demolition of Synagogues in the Gaza Strip*, ASIL INSIGHTS (Oct. 17, 2005), http://www.asil.org/insights051017.cfm.

[167] Protection of Religious Sites, G.A. Res. 55/254, para. 2, U.N. Doc. A/RES/55/254 (May 31, 2001), *available at* http://www.un-documents.net/a55r254.htm. Even though this resolution was adopted in the aftermath of the destruction of the Bamiyan Buddhas in Afghanistan, it is nevertheless an influential instrument since it expresses the views of the international community.

[168] Elimination of all Forms of Religious Intolerance, U.N. Commission on Human Rights Res. 2003/54, para. 4(e) (Apr. 24, 2003), *available at* http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2003.54.En? Opendocument.

[169] *Id.*

A. Responsibility Under Conventional International Law

A recognized principle of international law is that a state is internationally responsible for an internationally wrongful act, which may consist of either an action or omission and which is a) attributable to the state under international law; and b) constitutes a violation of an international obligation of the state.[170] A wrongful act is considered to have a continuing character if it extends during the entire period during which the causal conduct of a state continues and remains contrary to an international obligation during that period.[171]

1. 1954 Hague Convention and Protocols

Article 28 of the 1954 Hague Convention requires states to enact criminal rules in order to prosecute and impose criminal or disciplinary sanctions against persons, irrespective of nationality, who either commit or order others to commit actions in violation of the provisions of the Convention.[172] This provision has been criticized for its lack of specificity as to the list of crimes and procedural aspects of sanctions.[173] The 1999 Protocol to the 1954 Convention remedies the shortcoming of Article 28 by including in its Article 15 a list of concrete offenses that must be incorporated into the criminal and/or military legislation of state parties.[174] These offenses include:

- Attacking cultural property that is granted enhanced protection;
- Using cultural property under enhanced protection or its immediate surroundings to support military action;
- Extensive destruction or appropriation of cultural property under both documents;
- Attacking cultural property protected under both documents; and
- Thefts, pillage, misappropriation of, or acts of vandalism against cultural property protected under the Convention.

Parties to the 1954 Hague Convention and its 1999 Protocol are required to establish jurisdiction based on the nationality and territoriality principle. They are also obliged to

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[170] *See* Draft Articles on State Responsibility adopted by the International Law Commission in 2001 and submitted to the U.N. General Assembly, II YEARBOOK OF THE INTERNATIONAL LAW COMMISSION: 2001 (Part II). On December 12, 2001, the General Assembly of the United Nations adopted Resolution 56/83, entitled Responsibility of States for Internationally Wrongful Acts, and incorporated in its Annex the text of the Draft Articles. G.A. Res. 56/83, *available at* http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf.

[171] G.A. Res. 56/83, art. 14, para. 2.

[172] DOCUMENTS ON THE LAWS OF WAR, *supra* note 75, at 348.

[173] *See* Ian Hladik, *Protection of Cultural Property: The Legal Aspects*, *in* 80 ISSUES IN INT'L L. & MIL. OPERATIONS 326 (Richard B. Jaques, ed., Naval War College, 2006).

[174] The 1999 Protocol also deals with other issues associated with criminal responsibility, including extradition and mutual legal assistance. 1999 Protocol, *supra* note 99.

establish universal jurisdiction with regard to the first three offenses.[175] The 1999 Protocol does not preclude the possibility of individual criminal responsibility or the exercise of jurisdiction under national, international, or customary law.[176] However, the Protocol also includes a special provision for those states that are not parties to the Protocol, such as Turkey. It appears that in such a case, members of the armed forces and nationals of Turkey would not incur individual criminal responsibility by virtue of this Protocol, nor would Turkey be obliged to establish jurisdiction over such persons, or extradite them, unless Turkey accepts and applies this Protocol.[177]

To ensure implementation of its provisions, the 1999 Protocol established the Committee for the Protection of Cultural Property in the Event of Armed Conflict.[178] This Committee is also responsible for issuing, suspending or canceling the granting of enhanced protection, and for allocating funds for the protection of cultural property, as provided for in Article 29.[179]

Principles of state and individual responsibility are also included in the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage.. The Declaration defines intentional destruction as "an act intended to destroy in whole or in part cultural heritage, thus compromising its integrity in a manner which constitutes a violation of international law or an unjustifiable offence to the principles of humanity…."[180] It also states that anyone who intentionally destroys or fails to take the necessary steps to prohibit, prevent, put an end to, and punish intentional actions to destroy cultural heritage is responsible for such destruction.[181] A state bears responsibility irrespective of whether such property is in the UNESCO list of cultural property. States are also responsible for establishing jurisdiction over those individuals who either themselves engage in the destruction of cultural property or order others to commit such acts.[182]

2. Whether Responsibility Can Be Attributed to Turkey and/or the "TRNC"

In general, Turkey, as a party to the 1954 Hague Convention and to the 1954 Protocol, is bound by their provisions, specifically by Article 4 of the Convention related to respect of cultural property during armed conflict and Article 5 of the Convention, which applies in cases of occupation. As stated initially, a plethora of churches have been permanently converted into commercial offices, private museums, or stores, or have been subject to vandalism. On the other hand, the "TRNC" is a self-proclaimed entity, which remains unrecognized by the international

[175] *Id.* art. 16, para. 1.

[176] *Id.* para. 2(a).

[177] *Id*. para. 2(b).

[178] *Id.* art. 24.

[179] *Id*. art. 27.

[180] UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, *supra* note 158.

[181] *Id.* para. VI.

[182] *Id.* para. VII.

community.[183] The "TRNC" has been sustained from 1983 until the present through Turkey's financial, military, and political support. The legal status of the "TRNC" was dealt with by the ECHR in the *Loizidou* case and was defined therein as "a subordinate local administration."[184]

The case law discussed below, from a U.S. court and the ECHR, reflects the judicial approach on issues of stolen cultural property from the northern part of Cyprus, non-recognition of the "TRNC," and attribution of responsibility for violations of the European Convention on Human Rights and Fundamental Freedoms to Turkey, rather than to the "TRNC."

The case of *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc.*[185] is of particular significance. In this case, the Autocephalous Greek-Orthodox Church of Cyprus filed a replevin action in a District Court in the U.S. State of Indiana, and successfully recovered the Byzantine mosaics that were stolen from the Church of Kanakaria

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[183] For an analysis of the recognition and its effects, *see* THOMAS D. GRANT, THE RECOGNITION OF STATES: LAW AND PRACTICE IN DEBATE AND EVOLUTION (1999); *see also* STEFAN TALMON, KOLLEKTIVE NICHTANERKENNUNG ILLEGALER STAATEN : GRUNDLAGEN UND RECHTSFOLGEN EINER INTERNATIONAL KOORDINIERTEN SANKTION, DARGESTELLT AM BEISPIEL DER TÜRKISCHEN REPUBLIK NORD-ZYPERN [COLLECTIVE NON-RECOGNITION OF ILLEGAL STATES: LEGAL FOUNDATIONS AND CONSEQUENCES OF AN INTERNATIONALLY COORDINATED SANCTION WITH PARTICULAR REFERENCE TO THE TURKISH REPUBLIC OF CYPRUS] (2006) (arguing that the reason for the collective non-recognition of "TRNC" is the fact that it is founded in violation of international law).

[184] Loizidou v. Turkey (Merits), Eur. Ct. Hum. H.R., VI Dec. & Rep. (1996), *available at* http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?sessionId=9256208&skin=hudoc-en&action=html&table=F69A27FD8FB86142BF01C1166DEA398649&key=588&highlight=. The judgment in Loizidou v. Turkey was upheld in 2001, in Cyprus v. Turkey, *supra* note 138.

In 2004, the "effective control" test was upheld in the judgment of Ilaşcu and Others v. Moldova and Russia, Eur. Ct. Hum. H.R., VII Dec. & Rep. 262 (2004) *available at* http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Ilascu%20%7C%20v.%20%7C%20Moldova&sessionid=21070174&skin=hudoc-en.

It may also be possible under international law for a *de facto* regime such as the "TRNC" to incur responsibility for damage to cultural property. Under international criminal law, individuals can be held criminally responsible for actions that constitute international crimes. *See* Andrew Clapham, *Human Rights Obligations of Non-State Actors in Conflict Situations*, 88 INT'L REV. RED CROSS No. 863 (Sept. 2006).

[185] Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc., 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd* 917 F.2d 278 (7th Cir. 1990). In this landmark case, the Autocephalous Greek-Orthodox Church of Cyprus, (one of the oldest autocephalous churches of the Eastern Orthodox religion, first established in the Third Ecumenical Council of Ephesus (431 A.D.) and reaffirmed by the Council in Trullo (692 A.D.), and which, according to Article 110 of the 1960 Cyprus Constitution, has the exclusive right to administer its own affairs and property according to the Holy Canons and its Charter, brought a civil action to repatriate Byzantine mosaics that had been stolen in 1976 from the Kanakaria church. The Kanakaria church had been completely vandalized and was used as a stable for farm animals. Prior to the 1974 events, the Church of Cyprus had registered both the church and itself as the lawful owner of the Kanakaria church, in the Land registry of Cyprus. It is worth noting that the Defendant Goldberg claimed that the various decrees, such as the Abandoned Movable Property Law issued by the "Turkish Federal State of Cyprus" ("FSC"), the predecessor of the "TRNC", had divested the Church of Cyprus from its title to the Kanakaria church and the mosaics thereof, which belonged to the "FSC" Kanakaria. *Id*.

situated in the northern part of Cyprus. The Court held that the defendant never acquired good title or the right to possess the mosaics.[186]

The Court of Appeals affirmed.[187] The concurring judge, Judge Cudahy, referred to the 1954 Hague Convention on the Protection of Armed Conflict and to the UNESCO Convention of 1970 on the Means of Prohibiting and Preventing the Illicit Transport, Export and Transfer of Ownership of Cultural Property, and opined that under both Conventions, the mosaics would qualify as cultural property to be internationally protected.[188] He continued that the 1954 Hague Convention which prohibits the destruction of cultural property or the seizure during an armed conflict and occupation could be applicable in the Kanakaria case, and that Turkish military attempts to divest the Church of Cyprus of ownership of mosaics "might be viewed as an interference of the sort contemplated by the 1954 Convention."[189] The judge also stated that the 1970 UNESCO Convention, which deals with private conduct during peace time, "is also applicable to the theft and removal of the mosaics from Cyprus."[190]

Attribution of responsibility has also been examined in several cases by the ECHR. Even though the judgments rendered by the ECHR did not involve cultural property *per se* but deprivation of private property of Greek Cypriots who lost their properties in the northern part of Cyprus, it can be argued that the legal reasoning and key findings of the judgments can be also applied *mutatis mutandis* to the destruction of cultural property. In the landmark case of *Loizidou v. Turkey*, the ECHR found Turkey to be responsible for the violation of the applicant's claim to property, pursuant to Article 1 of Protocol I,[191] and stated, "responsibility of a Contracting Party could also arise when as a consequence of military action – whether lawful or unlawful – it exercises effective control of an area outside its territory … whether it be exercised directly, through its armed forces, or through a subordinate local administration[.]"[192]

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[186] *Id*. at 1399. The issue of transfer of title of a stolen object is handled differently in civil law countries than in common law countries. In some civil law countries, a thief can transfer title to a good-faith buyer after the passage of some time, and in other countries immediately. For a discussion of such issues, including the Kanakaria case, *see* PATTY GERSTENBLITH, ART, CULTURAL HERITAGE AND THE LAW: CASES AND MATERIALS 427 (2004).

[187] Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Arts, Inc., 917 F.2d 278 (7th Cir. 1990).

[188] *Id*. at 295.

[189] *Id*. at 296.

[190] *Id*.

[191] Loizidou v. Turkey (Merits and Just Satisfaction), Eur. Ct. H.R., IV Rep. & Dec. (1996), *available at* http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=loizidou%20%7C%20v.%20%7C%20turkey&sessionid=21108946&skin=hudoc-en. The Court, in its subsequent decision on the issue of "just and equitable" satisfaction under Article 50 of the Convention, awarded monetary damages for the loss of the use of the property by the applicant, non-financial damages for the loss of enjoyment of her property, and costs and interest with an annual rate of eight percent. Loizidou v. Turkey (Just Satisfaction), Eur. Ct. H.R., IV Rep. & Dec. (1998), *available at* http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=loizidou%20%7C%20v.%20%7C%20turkey&sessionid=21108946&skin=hudoc-en.

[192] Loizidou v. Turkey (Merits and Just Satisfaction), para. 52.

Drawing an inference from the fact that a large number of Turkish troops are stationed and operate in the northern part of Cyprus, the Court held:

> it is obvious from the large number of troops engaged in active duties in northern Cyprus that her army exercises effective overall control over that part of the island. Such control, according to the relevant test and in the circumstances of the case, entails her responsibility for the policies and actions of the TRNC.[193]

The Court continued: "it is important that the Turkish government has acknowledged that the applicant's loss of control of her property [house] stems from the occupation of the northern part of Cyprus by Turkish troops and the establishment there of the TRNC."[194]

Thus, based on the effective control test applied by the ECHR, Turkey, as an occupying power, cannot evade its international obligations pertaining to cultural and religious property located in the northern part of Cyprus by establishing a subordinate local administration that has no international standing.

3. Third-Party States to the Protocol

Paragraphs 2 and 3 of the 1999 Protocol impose an obligation on third parties, who are not parties to the conflict but are parties to the Protocol. Third-party states, in this instance, are required to take any imported cultural property into their custody, when that property originates in an occupying territory and enters the territory of the third party either directly from the occupied territory or indirectly through other states.

A third party who receives such property from an occupied territory is obliged, under Article 1 of the Protocol, to "return, at the end of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory." This paragraph has been clarified to indicate that the close of hostilities and the occupation of a territory are terminated at the same time.[195] However, there are instances, such as in the case of Cyprus, where the hostilities have ended, but the northern area of Cyprus nonetheless remains under occupation. In such cases, it has been asserted that third parties that have in their custody cultural property may retain the property until the Cyprus issue is settled, which could be an indefinite period. Third parties also have an alternative, which is to return such property to the competent authorities of the Republic of Cyprus, in accordance with the spirit of the Convention. However, the same author asserts that paragraph 3 of Article 1 of the Protocol does not mandate such action by the third-party state.[196]

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[193] *Id*. para. 56

[194] *Id*. para. 54.

[195] *Id.*

[196] *Id.*

B. Customary International Law

Customary international law can be invoked before national courts and is binding on all states irrespective of whether or not the states concerned have ratified existing international conventions governing the issue. The prohibition of actions intended to destroy cultural property during armed conflict is a fundamental customary international norm.

As stated previously, Articles 3 and 4 of the 1954 Hague Convention, pertaining to safeguarding and respecting cultural property, have achieved the status of customary international law.[197] The customary status was also affirmed by the United Nations Commission of Experts, which was appointed in 1993 to examine the grave violations of international humanitarian law in the territory of the former Yugoslavia.[198] At the judicial level, it has been confirmed by the ICTY in a judgment in the case of *Prosecutor v. Dario Kondic and Mario Cerkez,* of February 2001.[199] The Trial Chamber stated that the act of destruction and willful damage to institutions dedicated to religion has "already been criminalized under customary international law."[200] Thus, the Tribunal, citing the Nuremberg International Tribunal of 1946, held that an attack to destroy:

> ...when perpetrated with the requisite discriminatory intent, amounts to an attack on the very religious identity of a people. As such, it manifests a nearly pure expression of the notion of "crimes against humanity," for all of humanity is indeed injured by the destruction of a unique religious culture and its concomitant cultural objects.[201]

In regard to individual responsibility, the Nuremberg Tribunal has held that command responsibility applies not only to persons who order others to commit war crimes or crimes against humanity, but also to superiors for acts committed by subordinates, if they had knowledge of such acts. The principle of command responsibility was incorporated into Article 28 of the 1954 Hague Convention, which requires that parties undertake to establish criminal jurisdiction to prosecute and impose criminal sanctions or disciplinary measures against those who commit or order to be committed a violation of the provisions of the Convention.

VIII. Recovery of Illicitly Exported and Stolen Cultural Property

The destruction of cultural property includes not only the physical destruction of religious or archaeological sites but also acts of plunder, which may result in illegal exportation and

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[197] *See* Francioni and Lenzerini, *supra* note 92.

[198] BOYLAN, *supra* note 78, at 92.

[199] Prosecutor v. Dario Kordic and Mario Cerkez, Case No. IT-95-14/2-T, Trial Chamber Judgment (Feb. 26, 2001), *available at* http://www.un.org/icty/kordic/trialc/judgement/index.htm, *rev'd in part*, Prosecutor v. Dario Kordic and Mario Cerkez, Case No. IT-95-14/2-A, App. Chamber Judgment (Dec. 17, 2004), *available at* http://www.un.org/icty/kordic/appeal /judgement/cer-aj041217e.pdf. The Appeals Chamber partially reversed the Trial Chamber's decision on certain counts; however, it affirmed the Camber's decision regarding destruction or willful damage to institutions dedicated to religion, as a violation of the laws or customs of war.

[200] *Id*. para. 206.

[201] *Id*. para. 207.

sale.[202] Two international legal instruments address the problem of international trafficking in cultural property, and attempt to combat and suppress illicit traffic of cultural objects:

(i) The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;[203] and,

(ii) The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.[204]

These two Conventions share certain similar features. Both have adopted a broad definition of cultural property. The definition includes cultural objects, which, either on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science, or belong to those listed in the Annex. Both Conventions fight the illicit trade in art and cultural property and neither are retroactive, thus they apply between state parties only after their entry intro force. Under both Conventions, a victim of a stolen cultural object, be it an individual, a legal entity or a state, has the right to seek restitution.

Under the 1995 UNIDROIT (International Institute for the Unification of Private Law) Convention, a state party, an individual, or a legal entity who owned cultural objects that have been stolen may claim restitution. Cyprus has ratified the Convention, whereas Turkey has not.[205] Under the same Convention, only a state party may claim the return of illicitly exported cultural objects.[206] Other important aspects of both instruments are discussed below.

Even though customary international law on the protection of cultural property during peace time has not crystallized as much as the legal regime of protection of cultural property during armed conflict and occupation, the legal literature suggests that international rules on cultural property during peace have also achieved the status of customary international law for two reasons: (i) the large number of states ratifying the 1970 UNESCO Convention and the World Heritage Convention, which suggests acceptance by the international community; and (ii)

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[202] Hirad Abtahi, *The Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the Former Yugoslavia*, 14 HARVARD HUM. R. J. 15 (2001).

[203] Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention), *signed* Nov. 14, 1970, *entered into force* Apr. 24, 1972, 96 Stat. 2329, 823 U.N.T.S. 231, *available at* http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[204] UNIDROIT (International Institute for the Unification of Private Law) Convention on Stolen or Illegally Exported Cultural Objects (Rome, June 24, 1995), registered with the U.N. Mar. 31, 2007, No. 43718, *available at* http://www.unidroit.org/english/conventions/ 1995culturalproperty/main.htm.

[205] *See* List of Parties to the 1995 UNIDROIT Convention, *available at* http://www.unidroit.org/english /implement/i-95.pdf (last visited Mar. 6, 2009).

[206] *See* UNESCO Information Note, UNESCO AND UNIDROIT – COOPERATION IN THE FIGHT AGAINST ILLICIT TRAFFIC IN CULTURAL PROPERTY (Conference Celebrating the 10th Anniversary of the 1995 UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects), *available at* http://www.google.com/search?hl=en&q=UNESCO+Unidroit+cooperation+fight+&btnG=Search&lr=lang_en%7Clang_el (last visited Mar. 6, 2009).

the observation that it would be a paradox for international law to provide more protection to cultural property during armed conflict than during times of peace.[207]

A. The 1970 UNESCO Convention

The 1970 UNESCO Convention is the basic international instrument which governs the international movement and marketing of cultural property. Both Cyprus and Turkey have ratified the Convention; hence, they became bound by its provisions three months after depositing their instrument of ratification.[208] On the other hand, as required by the Convention, the Cyprus government must proceed in its recovery and return requests through diplomatic means. The government must provide all the necessary documents and other evidence, at its own expense, to establish and substantiate its claim for the recovery and return of illicitly exported items. It must also pay any incidental expenses due to delivery and return. No customs duties can be imposed on cultural property returned in this manner.

Cyprus ratified the 1970 UNESCO Convention on October 10, 1979, and Turkey ratified it on April 21, 1981.[209] Consequently, Cyprus and Turkey, since December 10, 1979, and July 21, 1981, respectively, were required to take the following measures in their domestic legislation:

a) Introduce a certificate authorizing and accompanying the export of the particular cultural property;

b) Prohibit the export from their territory of any cultural property without the export certificate;

c) Prohibit the import of cultural property stolen from a museum or a religious monument, provided that such property is documented as belonging to the inventory of that museum or religious monument; and,

d) Prevent museums and similar institutions from acquiring cultural property which originated from another country.[210]

Article 11 governs the exportation of cultural property from occupied territory and thus affects Turkey as a result. It declares as illicit "[t]he export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power...."

Moreover, Turkey, as a state party, is required at the request of the party of origin (in this case, Cyprus) to take appropriate steps to recover and return cultural property that was illegally

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[207] A.F. Vrdoljak, *Intentional Destruction of Cultural Heritage and International Law, in* XXXV MULTICULTURALISM AND INTERNATIONAL LAW, *supra* note 159, at 386.

[208] 1970 UNESCO Convention, *supra* note 203, art. 21.

[209] *See* List of Parties to the 1970 UNESCO Convention, *available at* http://portal.unesco.org/la/convention.asp?KO=13039&language=E

[210] 1970 UNESCO Convention, *supra* note 203, arts. 6-8.

imported within its territory, and to ensure that its appropriate authorities cooperate to facilitate the restitution of the illicitly exported cultural property to its rightful owner.[211] On the other hand, if Cyprus succeeds in its recovery claims, it must pay "just compensation" to innocent purchasers or to those who hold valid title.[212]

The 1970 Convention allows state parties to enter into bilateral agreements with other states to enforce each other's laws on cultural property. Based on such agreements, wronged states are in a better position in terms of standing to enforce their cultural property laws in foreign courts against those who illegally exported cultural objects[213] and to request enforcement of their national laws. While the 1970 Convention does not set a time limit on restitution requests, such a limit may exist under the domestic laws of a state party.[214]

B. The 1995 UNIDROIT Convention

The UNIDROIT Convention establishes two systems, one for stolen objects and the other for the return of "illegally exported objects."

1. Stolen Objects

A cultural object is considered stolen when it has been unlawfully excavated or lawfully excavated but unlawfully retained.[215] The possessor of a stolen cultural object is required to return the item. Such possessors are entitled to receive a "fair and reasonable compensation" at the time they return the item. In order to receive the compensation, two conditions must be met:

(i) The possessor did not know nor ought reasonably to have known that the item was stolen; and,

(ii) The possessor must furnish proof that he/she exercised due diligence at the time of acquisition of the item.[216]

Pursuant to the Convention, Cyprus may issue a claim for restitution within a period of three years from the time Cyprus became aware of the location of the cultural object and the identity of the possessor, and in any case within a period of fifty years from the time of theft.[217] However, Turkey has neither signed nor ratified the Convention.

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[211] *Id.* art. 13.

[212] *Id.* art. 7, para. b(ii).

[213] Note, Lisa J. Borodkin, *The Economics of Antiquities Looting and a Proposed Legal Alternative*, 95 COL. L. REV. 377 (1995).

[214] The Cyprus Antiquities Law does not provide such a limitation. The Return of Cultural Objects Law No. 183(1) of 2002, discussed in Part IV, *supra*, establishes a limitation of 75 years for the return of cultural objects to their country of origin.

[215] 1995 UNIDROIT Convention, *supra* note 204, art. 3, para. 2.

[216] *Id.* art. 4.

[217] *Id.* art., para. 3.

2. Return of Illegally Exported Cultural Objects

In case of cultural property that was illegally exported, Cyprus may file claims either with an administrative body or with a foreign court in order to recover artifacts exported in violation of its own laws.[218] A foreign court or other competent authority of the state where the request is made must order that the object be returned. In order to prevail, Cyprus must furnish proof that the removal of the item had an adverse effect on the integrity of a complex object, or the physical preservation of the object; or that the object is of significant cultural importance.[219]

C. Additional Conventions Ratified by Cyprus

Cyprus has ratified, *inter alia*, the following additional Conventions:

- Convention for the Safeguarding of Intangible Cultural Heritage.[220] Cyprus ratified this Convention on February 26, 2006.[221] The Convention entered into force in Cyprus on May 24, 2006. The main objective of this Convention is to safeguard and ensure respect for the intangible cultural heritage of the communities, groups, and individuals concerned.
- Convention Concerning the Protection of the World Cultural and Natural Heritage.[222] Cyprus acceded to this Convention on August, 14, 1975.[223] The Convention established the World Heritage List. This list includes three places of cultural significance that were recommended by Cyprus and are located in southern Cyprus.[224]

IX. Judicial Remedies and Other Methods of Dispute Resolution Concerning the Destruction of Cultural Property and Illicit Trade and Transfer

The Republic of Cyprus and the Church of Cyprus have launched a campaign to reclaim lost or illegally exported cultural objects that represent their rich religious and cultural heritage. One forum that has been utilized is that of litigation before foreign courts, as the case of the

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[218] *Id*. art. 5, para. 1.

[219] *Id.* art. 5, para. 3.

[220] Convention for the Safeguarding of Intangible Cultural Heritage, Oct. 17, 2003, 2368 U.N.T.S. 3, *available at* http://www.unesco.org/culture /ich/index.php?pg=00006.

[221] UNESCO, *The State Parties to the Convention for the Safeguarding of Intangible Cultural Heritage (2003)*, http://www.unesco.org/culture/ich/index.php?pg=00024 (last visited Mar. 6, 2009). Turkey has also ratified the Convention. *Id*.

[222] Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, *available at* http://portal.unesco.org/en/ev.php-URL_ID=13055&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[223] UNESCO, List of State Parties to the Convention Concerning the Protection of the World Cultural and Natural Heritage, http://portal.unesco.org/la/convention.asp?KO=13055&language=E (last visited Mar. 6, 2009).

[224] UNESCO, World Heritage List, http://whc.unesco.org/en/list (last visited Mar. 6, 2009).

Kanakaria Mosaics illustrates.[225] In addition, Cyprus has been able to repatriate a number of illegally exported antiquities, including part of a private collection that was located in European auction houses as well as a number of Byzantine icons. Specifically, in 2007, six invaluable Byzantine icons, dating back to the 13th and 14th century had been illegally exported either prior to or after the 1974 events. These items were returned to the Church of Cyprus, as the lawful owner after an agreement was reached with the Charles Pankow American Foundation in California.[226]

The 1954 Hague Convention has been criticized for lack of specific provisions to resolve conflicts pertaining to the application of the Convention and its 1954 protocol. The Boylan Report identifies, among other situations of outstanding disputes involving destruction of cultural property, the case of Cyprus and Turkey.[227] Boylan suggests that if parties to a conflict have ratified the 1977 Additional Protocol I, which incorporates the 1954 Convention, it could be possible to establish a fact-finding commission, as provided for by Article 90, to resolve disputes. While Cyprus has ratified Protocol I,[228] it appears that Turkey has not.[229]

Two international courts—the International Court of Justice under Chapter XIV of the UN Charter and Chapter II of the statute of the Court[230] and the ICC—are possible venues, provided that jurisdiction is accepted. In the case of the ICC, which came into effect in 2002, the Rome Statute provides it with jurisdiction to prosecute crimes against cultural property.[231] Article 8, paragraph(b)(ix) of the Rome Statute, titled "War Crimes," identifies as war crimes intentional direct attacks against buildings dedicated to religion, education, or historic places, provided that they are not military objectives. Such criminal conduct must occur within the context of an armed conflict.[232]

Even though the invasion occurred in 1974, the internationally wrongful acts of destruction, desecration, and pillage of religious and cultural property in the northern part of Cyprus have a continuing character that is closely linked to the 1974 events and the ensuing

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[225] *See* discussion of the Kanakaria Mosaics, Parts III and VI, *supra*.

[226] Ministry of Foreign Affairs of the Republic of Cyprus, *Smuggled Icons Returned to Lawful Owner –the Church of Cyprus,* , Dec. 1, 2007, http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/850B0CCA43B88255C225726100428EF4?.

[227] *See* BOYLAN, *supra* note 78, at 95.

[228] ICRC, International Humanitarian Law – Treaties and Documents, *Cyprus: Ratifications/Accessions*, http://www.icrc.org/ihl.nsf/Pays?ReadForm&c=CY (last visited Mar. 6, 2009).

[229] *Id.*, *Turkey: Ratifications/Accessions*, http://www.icrc.org/ihl.nsf/Pays?ReadForm&c=TR (last visited Mar. 6, 2009).

[230] *See, e.g.*, Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Merits Judgment), Gen. List No. 45, I.C.J. Reports of 1962 at 6, 14 (June 15, 1962), *available at* http://www.icj-cij.org/docket/files/45/4871.pdf. This case before the ICJ involved a territorial dispute issue between Cambodia and Thailand. The Court held that since the Temple of Preah Vihear was within the territory of Cambodia, Thailand was required to restore to Cambodia any objects taken from the Temple. *Id.*

[231] Rome Statute of the ICC, UN Doc. A/CONF. 183/9, 37 I.L.M. 1002 (1998), 2187 U.N.T.S. 90, *adopted* July 17, 1998, *entered into force* July 1, 2002, *available at* http://untreaty.un.org/cod/icc/ statute/romefra.htm.

[232] *Id.*

occupation. However, since Turkey is not a party to the ICC,[233] Cyprus is prevented from initiating legal action against Turkey before the ICC.

Parties also may use UNESCO to reach a settlement between them, as provided by Article 17, paragraph 5 of the 1970 UNESCO Convention, provided that such is requested by at least two state parties to the Convention who are involved in a dispute pertaining to its implementation.[234]

The 1995 UNIDROIT Convention allows parties to a dispute that arises due to a stolen or illegally exported cultural object to submit the dispute to any court or any other competent authority, or even to submit the dispute to arbitration.[235]

On March 23, 2009, a spokesman for the government of Cyprus, Stephanos Stephanou, in replying to a question as to whether Cyprus would request that Netherlands return to Cyprus four icons found in a private collection, which originally were stolen from the Church of Antifonitis in the city of Kyrenia, located in the occupied northern part of Cyprus, emphasized that the best way to preserve and protect the cultural heritage of Cyprus is to find a solution to the Cyprus issue and that military forces withdraw from Cyprus. The spokesman also referred to a decision to establish a bi-communal committee on cultural heritage.[236]

X. Concluding Remarks

Turkey, during thirty-five years of occupying the northern part of Cyprus, has engaged in acts of destruction, desecration, and pillage of religious and archaeological sites, which constitute the religious and cultural heritage of the peoples of Cyprus, and the preservation of which is essential for the interest of humankind in general. The Government and the Church of Cyprus, as the claimants of ownership of cultural property located in the northern part of Cyprus, have been actively pursuing the repatriation of stolen religious objects and cultural artifacts. Under conventional and customary international law, Turkey, as an occupying power, bears responsibility for acts against cultural property. Responsibility also arises based on legal instruments addressing the illicit export and transfer of ownership of stolen cultural objects from the occupied northern part of Cyprus.

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[233] As of March 23, 2009, 108 states had become parties to the Rome Statute. *See* U.N. Treaty Collection Status List (Rome Statute), *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=373&chapter=18&lang=en.

[234] 1970 UNESCO Convention, *supra* note 203.

[235] 1995 UNIDROIT Convention, *supra* note 204, art. 8.

[236] Cyprus Embassy News, *Cyprus Government Concerned with Destruction of Cultural Heritage in Occupied Areas*, Embassy of the Republic of Cyprus in Washington, D.C., *available at* http://www.cyprusembassy.net/home/index.php?module=article&id=4481.