The Preservation of Art and Culture in Times of War
April 4-6, 2017

In March 2001, six months before the attacks of 9/11, the Taliban provoked international outrage when it destroyed two ancient statues of the Buddha carved into a hillside in the Bamian valley in Afghanistan. Mullah Mohammed Omar, the Taliban’s leader at time, considered the statues idolatrous, and the effort to destroy them was part of a broader effort to purge the nation of pre-Islamic cultural sites and artifacts. This episode provides a vivid illustration of the degree to which cultural property has become a target in modern warfare. Achieving a better understanding of the damage inflicted by such attacks and strengthening efforts to prevent them will be the aim of our present conference.

Beyond demoralizing the enemy in war, the obliteration and looting of sacred buildings, works of art, and religious articles has the additional purpose of effacing a people’s connection to a particular locale, possibly paving the way for the permanent displacement of that population. Thus, the destruction of cultural property is more than a material and aesthetic loss, but a component of ethnic cleansing and genocide. Seeing the problem in this light adds greater urgency to the effort to stop such tragic acts.

This two-day conference will attempt to solidify the moral and legal basis for preserving art and culture against destruction, and the extent of the duty to do so. Should we risk lives to protect art and culture? Or should we intervene in the destruction of culture only when it is incident to our other military aims? The conference will also examine how art is used to fund terrorism and what methods and means can be introduced to eliminate the black market in looted art. What responsibility does an occupying force have to prevent its own forces from taking “souvenirs,” and what responsibility does it have to protect those same artifacts from looting or destruction by the occupied nation’s own citizens or from neglect by bureaucratic incompetency or indifference? Finally, the conference will discuss efforts to bring perpetrators to justice and create an international legal framework for preventing such incidents in the future.
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Schedule

TUESDAY, APRIL 4
3:30pm
Conference Registration and Exhibit Tours Cultures in the Crossfire: Stories from Syria and Iraq Begin

3:30pm - 5:00pm
Exhibit Tour for Registered Participants

5:00pm - 5:10pm
Welcome Remarks - Dean Theodore Ruger, Professor Claire Finkelstein and Dr. Julian Siggers

5:10pm - 6:30pm
Keynote Panel - Open to the Public, Registration Strongly Recommended

New Frontiers in the Protection of Cultural Heritage

Much has changed since the pioneering fight of the “monuments men” to preserve cultural property from the Nazi onslaught. While the World War II campaign focused on discrete artifacts such as paintings or sculptures, recent preservation efforts have viewed entire sites as cultural property, whether for historical, religious or archaeological reasons. Subsequent legal conventions (The Hague 1954; UNESCO 1970; UNIDROIT 1995), have given the effort to preserve cultural property new tools and new vigor. At the same time, attacks on cultural property—led by non-state actors and motivated by religious intolerance, national chauvinism or greed—have become fiercer, with some insurgent groups attempting to obliterate places of national importance in an effort to re-write cultural history. Taking into account the perspectives of art, archaeology, history, law and the military, how must preservation efforts change in response to armed conflict in the twenty-first century?

Dr. Richard Leventhal, Director of the Penn Museum’s Penn Center for Cultural Heritage, moderates a wide-ranging discussion with panelists: Irina Bokova, Director-General, UNESCO; Karima Bennoune, Professor of International Law, University of California-Davis School of Law and United Nations Special Rapporteur in the field of cultural rights; Derek Gillman, Distinguished Teaching Professor, Westphal College of Media Arts & Design, Drexel University, and Former Executive Director and President, Barnes Foundation; Richard Goldstone, a retired Justice of the Constitutional Court of South Africa, and first prosecutor of the UN International Criminal Tribunals for the former Yugoslavia and Rwanda; and Shamila Batohi, Senior Legal Advisor to the Prosecutor at the International Criminal Court.

This program has been approved for 1.5 CLE ethics credits for Pennsylvania lawyers. CLE credit may be available in other jurisdictions as well. Attendees seeking CLE credit should bring separate payment in the amount of $60.00 ($30.00 public interest/non-profit attorneys) cash or check made payable to The Trustees of the University of Pennsylvania.

6:30pm - 7:30pm
Cocktail Reception, Open to Registered Guests

7:30pm
Dinner, Participants on their own

WEDNESDAY, APRIL 5
Conference Open to Invited Participants

8:30am - 9:15am
Breakfast

9:15am - 9:30am
Welcome Remarks - Dr. Julian Siggers
The Preservation of Art and Culture in Times of War: Schedule • Penn Law

9:30am - 10:45am Session 1: The Value of Cultural Heritage

Moderator: Professor and CERL Director, Claire Finkelstein

The uses and meanings of cultural artifacts and sites are many and varied. Depending on one’s frame of reference, they may be sacred, and hence of religious significance, works of art, and hence of aesthetic significance, or merely utilitarian and of no normative value whatsoever. What makes an object a cultural artifact? What endows a site with cultural and religious significance? Viewed by members of a particular national or ethnic group, an object’s uses and meanings will look different than they do to the outsider. A sacred likeness of the deity to one person is to another a document of historic record, and to a third a museum treasure. How is the meaning and cultural value of an object affected by removing it from its original context? Is cultural heritage only that material and those sites recognized by the state and the international community? How does the destruction or removal of cultural property affect a nation or ethnic group?

10:45am - 11:15am Break

11:15am - 12:30pm Session 2: Intelligence and the Documentation of Cultural Destruction

Moderator: Dr. Ian Ralby

In order to prevent and repair the destruction of cultural heritage, it is necessary for the international community to acquire reliable intelligence regarding the nature and extent of the damage taking place. This poses a severe challenge, especially during active hostilities, when intelligence gathering is focused on military operations safeguarding life. In the Former Yugoslavia, ICTY was able to assemble contemporaneous ground-level documentation of cultural heritage destruction, which facilitated the prosecution of perpetrators of such crimes. In the case of ISIS, by contrast, the majority of evidence for the destruction of cultural heritage is provided by ISIS itself, whether in the form of disseminated videos or self-reported sources of funding. Do considerations of sovereignty bar the collection of aerial surveillance data if the host country does not agree to outsider monitoring? Does gathering information regarding cultural heritage destruction constitute espionage? Do host countries in which cultural heritage destruction is taking place have an obligation to provide data to the international community regarding destruction within its borders?

12:30pm - 2:00pm Lunch - Keynote - C. Brian Rose “The Role of Soldiers and Refugees in Cultural Heritage Protection”

2:00pm - 3:15pm Session 3: Law of War Responsibilities to Protect Cultural Property

Moderator: Professor Patty Gerstenlith

If the state does have a duty to preserve cultural heritage, what should the role of the military be in carrying out that obligation? How should we weigh the duty to protect cultural heritage against the other duties the military may have, such as the duty to protect human life? For example, should the need to protect heritage sites prevent the military from taking forceful action, even when such action might result in a quick end to hostilities and a reduction of civilian casualties? How are troops to be trained to recognize cultural artifacts and instructed in the steps needed to preserve them? Given the scarcity of resources and the dangers of operating in war zones, what resources should be devoted to these efforts and how should such missions be prioritized relative to other military aims?

3:15pm - 3:45pm Break

3:45pm - 5:00pm Session 4: Repatriation of and Compensation for Stolen Art and Artifacts

Moderator: Mr. Lawrence Kaye

Artifacts with a dubious past are sometimes purchased or obtained in good faith, before their troubled history is uncovered. What post-war ethical and legal obligations emerge with respect to the repatriation of such stolen art and artifacts? If such artifacts are repatriated, to whom should they go? After generations have passed since their theft, to whom do those artifacts rightfully and legally belong? Legal action taken in the aftermath of Nazi looting has set precedents for repatriation and compensation, allowing many
items to be returned to their home countries or to the families that owned them. What lessons can we take away from these legal actions, and how might past experience be applied to the current situation in the Middle East?

5:00pm - 6:00pm  Cocktail Reception- Invited Participants Only

6:00pm - 8:00pm  Dinner by the Sphinx - Invited Participants Only

THURSDAY, APRIL 6

Conference Open to Invited Participants

9:30am - 10:15am  Breakfast

10:15am - 11:30am  Session 5: Destruction, Looting, and Accountability

Moderator: Mr. Thomas R. Kline

The development of the Hague Conventions and their subsequent applications in World War II and the former Yugoslav war have established a foundation for prosecutions of the destruction of cultural heritage. Yet these legal conventions apply to state-sponsored operatives. How does the non-state actor fit into this framework? What ethical issues arise when perpetrators claim that their destructive acts were compelled by religious belief rather than vengeance or hatred for an enemy? Additionally, actors in an armed conflict may inflict damage on a heritage site because it contains valuable artifacts that can be stolen and sold. Recently, non-state terrorist organizations such as Al Qaeda and ISIS have joined this nefarious trade, selling objects from one locale to finance bombings or shootings in another. What is the likely deterrent efficacy of prosecuting non-state actors who steal or destroy cultural heritage?

11:30am - 12:00pm  Break

12:00pm - 1:15pm  Session 6: Domestic and International Legal Reforms

Moderator: Dr. Robert Bewley

Much has changed since the 1954 Hague convention on cultural property in armed conflict and the 1970 UNESCO and 1995 UNIDROIT conventions on illicit trafficking of cultural artifacts. This session will look at the latest developments, both in the creation and application of laws regarding global cultural treasures. Based on what we have learned about the involvement of non-state actors, new military technologies, and the financing schemes of terrorist organizations in relation to cultural heritage, the session will attempt to lay out a legal framework for the protection of objects and sites of cultural significance. How might the role of law be fortified, both in the United States and internationally, to respond to new threats to the world's cultural heritage?

1:15pm - 2:45pm  Lunch

2:45pm - 4:00pm  Session 7: Collaborative Efforts to Protect Cultural Heritage: Where do we go from here?

Moderator: Dr. Peter Gould

Recently, universities and museums have come together in the face of the Syrian civil war to assist in the efforts of their Syrian counterparts to protect cultural heritage from the ravages of conflict. How do they transform the mission of a museum? What is the role of the international academic community, museums, and researchers for the preservation of culturally sacred sites, museums, and objects within conflict regions? What can we do to stop the theft and sale of cultural property? How can we prevent harm to looted cultural artifacts while also preventing terror organizations from profiting from them? How can the law contribute toward cultural protection?
### Participants

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<thead>
<tr>
<th>Name</th>
<th>Organization/Title</th>
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<tbody>
<tr>
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<td>FBI Art Crime Team</td>
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<td>Special Agent Donald Asper</td>
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<td>Ms. Shamila Batchi</td>
<td>Director of Public Prosecutions, KwaZulu Natal High Court</td>
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<td>Dr. Karima Bennoune</td>
<td>University of California–Davis School of Law, Professor of International Law; U.N. Special Rapporteur, Cultural Rights</td>
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<td>Dr. Robert Bewley</td>
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<td>Ambassador Irina Bokova</td>
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<td>Dr. Michael Danti</td>
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<td>Ms. Chiara Gastaldi</td>
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<td>Professor Patty Gerstenblith</td>
<td>Director of the Center for Art, Museum &amp; Cultural Heritage Law, DePaul University</td>
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The Preservation of Art and Culture in Times of War: Participants • Penn Law

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Partner, Cultural Heritage Partners

Ms. Deborah M. Lehr
Chairman of the Antiquities Commission

Professor Richard Leventhal
Executive Director of the Penn Cultural Heritage Center

Lt. Col. Thomas Livoti
U.S. Marine Corps

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Mr. Jules Zacher
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The Preservation of Art and Culture in Times of War: Background Readings

SESSION 1: THE VALUE OF CULTURAL HERITAGE


SESSION 2: INTELLIGENCE AND THE DOCUMENTATION OF CULTURAL DESTRUCTION


SESSION 3: LAW OF WAR RESPONSIBILITIES TO PROTECT CULTURAL PROPERTY


Department of Defense, Cultural Property Protection - Theory.


SESSION 4: REPATRIATION OF AND COMPENSATION FOR STOLEN ART AND ARTIFACTS


SECTION 5: DESTRUCTION, LOOTING, AND ACCOUNTABILITY


The Preservation of Art and Culture in Times of War: Background Reading.


Daniels, Brian I. "Is the destruction of cultural property a war crime?" Apollo Magazine (Nov. 28, 2016).


SECTION 6: DOMESTIC AND INTERNATIONAL LEGAL REFORM


SECTION 7: COLLABORATIVE EFFORTS TO PROTECT CULTURAL HERITAGE: WHERE DO WE GO FROM HERE?


The Preservation of Art and Culture in Times of War: Background Readi...