

WAR AND CULTURAL PROPERTY

MODERATOR:

HECTOR FELICIANO, Author, "The Lost Museum: The Nazi Conspiracy to Steal the World's Greatest Works of Art"

PANELISTS:

KONSTANTIN AKINSHA, Author, "Beautiful Loot: The Soviet Plunder of Europe's Art Treasures"

ELIZABETH BECKER, Pentagon Correspondent, *The New York Times*; Author, "When the War Was Over: Cambodia and the Khmer Rouge Revolution"

CHARLES PARKHURST, Retired Art Historian, Former U.S. Army Officer, Monuments, Fine Arts, and Archives Division, Allied Military Government

PETER MCCLOSKEY, Office of the Prosecutor, International Criminal Tribunal for Yugoslavia, The Hague, The Netherlands

FELICIANO: In any given country, in times of peace, cultural property can be legally bought, sold, or even looted. It can be shown and admired and serve as an element of national identity.

But in times of war, cultural property can be destroyed, disfigured and looted. This destruction and loot can live on, either randomly or systematically. Cultural property or patrimony is almost always victim to war, and it will naturally be one-sided because of what it represents or who it represents, whether it applies to Nazi loot, to Soviet loot, to Cambodia, and to Yugoslavia.

I will now give the microphone to Charles Parkhurst, who was a U.S. Navy officer who was in charge of seizing and protecting monu-

ments and assessing the looting of art by the Nazis in World War II. He also participated in what probably is the only case of insubordination from an occupying army. This insubordination was known as the Wiesbaden Manifesto, by a group of U.S. Army officers who protested the eventual transfer of art from German museums to American museums.

PARKHURST: What follows will be an abbreviated recounting of a World War II episode verging on the "insubordination" referred to by the moderator in his introduction. Its culminating event, the drafting of a letter of protest, took place on November 7, 1945, within an art-collecting depot of the Monuments, Fine Arts and Archives section (MFA&A) of the United States Military Government. The letter was produced and signed by Monuments officers gathered in the Landesmuseum at Wiesbaden, which at the time served as a collecting point for retrieved art. The only signed copy of the letter was sent to the head office of MFA&A at General Eisenhower's Supreme Headquarters, called SHAEF.

I shall begin by reading an excerpt from what I believe was the first notice of this matter by the press, printed in *The New Yorker* for November 17, 1945, as part of a "Letter from the Rhineland," from its correspondent, 'Genet,' the pen name of Janet Flanner, who wrote:

"In Frankfurt-am-Main, there is an important relic of a badly damaged principal art museum—three now-ironic words are carved above its portico: *Wahr/Schön/Gut*. Wiesbaden, Marburg and Frankfurt are the Rhineland's three most important centers for our Army's Monuments, Fine Arts and Archives sub-commission, whose war-and-peace duty it has been to save beauty from destruction, and disinterestedly to guard art works until they have been returned to their cor-

rect owner, whether the owner is Germany or looted Poland or France.

“A couple of days ago, the monuments men in Wiesbaden received official word to ship from their depository to the United States four hundred of its finest German pictures. This export project, casually suggested by American officials at Potsdam, perhaps as a well-meaning attempt to keep the pictures warm this winter in the steam-heated United States, is already regarded in liberated Europe as shockingly similar to the practice of the Einsatzstab Rosenberg, or Minister of Nazi Kultur Rosenberg’s Foreign Art Loot Bureau.

“It has been precisely the task of our monuments men to undo what we Americans had disdained Rosenberg and the Nazis for doing, and what it was supposedly our policy never to imitate. Of the many errors in occupation we have committed in Germany, nabbing German art à la Nazi will most certainly make the emptiness of the battered museum’s slogan—‘the True, the Beautiful, the Good’—as applicable to us as it is to the citizens of Frankfurt.”

A more complete story is told by Lynn H. Nicholas, in “The Rape of Europa” (Knopf, New York, 1994), a splendidly researched account of the fate of Europe’s treasures in the Third Reich and the Second World War, with unsparing details in two final chapters about those things of which I shall speak here. First, I shall provide some background for what Janet Flanner and the MFA&A officers were in a flap about, then read to you the document known as the “Wiesbaden Manifesto,” an instrument devised by monuments officers to protest orders that they, like Flanner, viewed as wrong-headed and venal, and contrary to what—by reason of professional training, instinct, and indoctrination by our superior officers at

SHAEF (plus a dose of youthful idealism)—most of us understood to be our charge.

Unofficial art rescue as an activity within the American forces had taken place in Normandy, after the landings. I mention only Corporal John Skilton’s personal efforts to salvage damaged *calvaires* along the road through Brittany as he advanced. After the Rhine crossing, officers George Stout, Walker Hancock, Sheldon Keck, Walter Huchthausen, and a few others, during combat, saved what art they could from under the tracks of war through Northern Germany. As possible, they returned it whence it came, or to improvised safe havens. By the time I arrived in Europe in 1945, after naval duty at sea as a gunnery officer, the battle in Germany was over, the MFA&A was a reality, and two or three Central Collecting Points were in operation. I was indoctrinated at SHAEF and sent to assist Lieutenant James Rorimer, who had been on the job early, and had already compiled much information through interrogation; scouted out “the lay of the land” in the American Zone, and made plans for that area before many of us had arrived. Corporal Skilton had been his assistant, but now had gone to Würzburg where he almost single-handedly saved the Residenz Palace and its glorious Tiepolo frescoes from destruction.

Rorimer and I were to work largely in southwest Germany, where we pinpointed 1,036 art repositories. At each repository, as needed, we provided for local security, listed the contents, and noted available information about ownership. Subsequently, personnel from one of our Central Collecting Points retrieved the art for further research and eventual restitution to rightful owners, or we shipped it back directly to the country of ownership. Among these repositories was the castle of Neuschwanstein, where had been found all the records of Hitler’s art-looting task force, the Einsatzstab Reichsleiter Rosenberg (ERR). In this site, also, was a vast amount of art seized by ERR

from Jewish collections in Paris, for the repatriation of which a special task force was created under Captain Edward Adams. Its careful work over the better part of a year was to identify, pack, and ship to Paris, 49 freight cars chock-a-block with art.

All this labor was now being put at risk, wrongly, we believed. The Nazis had taken art as “spoils” or “loot,” which we now sought to process for restitution to rightful owners or trustees. But some of us feared that other objectives for our labor might lie hidden from us. And so an alarm sounded on or about November 5, 1945, when an uncalled-for notion of protective custody was implied in a cable received by Captain Walter Farmer at Wiesbaden, presumably from the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas, at Washington (also known as the Roberts Commission). The cable read: “Higher headquarters desires that immediate preparations be made for prompt shipment to the UNITEK [US] of a selection of at least two zero zero German works of art of greatest importance. Most of these are now in Art Collecting Point Wiesbaden. Selections will be made by personnel from Headquarters European Theater who will assist in packing and shipment by motor transport to Bremen.” (Nicholas, p. 393)

The Roberts Commission’s emissary also requested the addition of the Czernin Vermeer, Nazi loot from Vienna, held in a Central Collecting Point at Munich, only recently established by Lieutenant Craig Smyth in the former Nazi party headquarters buildings. Smyth cleverly blocked this effort. Events had moved into high gear. Captain Farmer immediately called upon all Monuments officers he could reach to meet with him at Wiesbaden collecting point.

The cable from Washington was very specific, and just because it was, we were led to be sus-

picious of the motivation for the order. These pictures, it seemed to us, fitted nicely into the collections of the National Gallery of Art, whose curators had compiled earlier lists for the Roberts Commission, the membership of which included several officers of the Gallery. But works of art on these first lists were drawn from all over Germany. When it was explained by our officers (hoping to delay matters) that it was not feasible to locate and transport such widely scattered objects to Wiesbaden, the commission quickly substituted a list of 202 paintings, almost entirely from the Kaiser Friedrich Museum in Berlin. By that time these paintings had been moved into the Wiesbaden collecting point.

Although, indeed, this cabled order led some of us to question motivation, suspicion is not proof; it is not even evidence. Nevertheless, it made us wary. The “operation” that ensued was bitingly encoded by one of us as “Westward Ho, Waiteau!”, and we immediately began our protest. It was November 7, 1945.

Not all officers could get to Wiesbaden on short notice, but of the 25 who did, all but one signed the protest, which was written then and there by one of us, a gifted writer, Captain E. Parker (Bill) Lesley, and signed as drafted, with only a short prudential clause inserted unanimously to forestall risk of courts martial. Later, five other officers expressed private sentiments to the same effect in separate letters; three more expressed agreement with the draft but did not feel at liberty to sign; and three could not be reached. Thus 32 of the 35 MFA&A officers then assigned to Germany supported this protest. May I add, I have always found this letter a moving document, which stirs me even as I re-read it. Lynn Nicholas commented, “The Founding Fathers would have been proud.” (p. 395)

Here is that letter. It has not been read often enough by people who care about these matters. Addressed to no one in particular, it was

C O P Y

U.S. FORCES, EUROPEAN THEATER
GERMANY

7 November 1945

1. We, the undersigned, Monuments, Fine Arts and Archives Specialist Officers of the Armed Forces of the United States, wish to make known our convictions regarding the transportation to the United States of works of art, the property of German institutions or nationals, for purposes of protective custody.

2. a. We are unanimously agreed that the transportation of those works of art, undertaken by the United States Army, upon direction from the highest national authority, establishes a precedent which is neither morally tenable nor trustworthy.

b. Since the beginning of United States participation in the war, it has been the declared policy of the Allied Forces, so far as military necessity would permit, to protect and preserve from deterioration consequent upon the processes of war, all monuments, documents, or other objects of historic, artistic, cultural, or archaeological value. The war is at an end, and no doctrine of "military necessity" can now be invoked for the further protection of the objects to be moved, for the reason that depots and personnel, both fully competent for their protection, have been inaugurated and are functioning.

c. The Allied Nations are at present preparing to prosecute individuals for the crime of sequestering, under the pretext of "protective custody" the cultural treasures of German-occupied countries. A major part of the indictment follows upon the reasoning that even though these individuals were acting under military orders, the dictates of a higher ethical law made it incumbent upon them to refuse to take part in, or countenance, the fulfillment of these orders. We, the undersigned, feel it our duty to point out that, though as members of the armed forces, we will carry out the orders we receive, we are thus put before any candid eyes as no less culpable than those whose prosecution we affect to sanction.

3. We wish to state that from our own knowledge, no historical grievance will rankle so long, or be the cause of so much justified bitterness, as

(This page and following page) Copy of the Wiesbaden Manifesto. (Courtesy Charles Parkhurst)

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the removal, for any reason, of a part of the heritage of any nation, even if that heritage may be interpreted as a prize of war. And though this removal may be done with every intention of altruism, we are none the less convinced that it is our duty, individually and collectively, to protest against it, and that though our obligations are to the nation to which we owe allegiance, there are yet further obligations to common justice, decency, and the establishment of the power of right, not of expediency or might, among civilized nations.

/s/ Stephen Kovalyak
/t/ STEPHEN KOVALYAK
1st Lt. Inf., 0314411
(U.S. Zone)

/s/ Patrick J. Kelleher
/t/ PATRICK J. KELLEHER
Capt., TC, 01944717
Office of Military Government for Land Great Hesse

/s/ Lamont Moore
/t/ LAMONT MOORE
2nd Lt., AUS, 02011967
Office of Military Government (U.S. Zone)

/s/ Samuel Ratensky
/t/ SAMUEL RATENSKY
1st Lt., AUS, 02025813
Office of Military Government for Land Great Hesse

/s/ Charles P. Parkhurst, Jr.
/t/ CHARLES P. PARKHURST, JR.
Lt. (jg), USNR, 298080
Office of Military Government (U.S. Zone)

/s/ Sheldon W. Keck
/t/ SHELDON W. KECK
2nd Lt., AUS, 02025318
Office of Military Government for Stadtkreis and Landkreis Marburg

/2/ Edith A. Standen
/t/ EDITH A. STANDEN
Capt. WAC, L 117136
Office of Military Government (U.S. Zone)

/s/ Walter I. Farmer
/t/ WALTER I. FARMER
Capt., CE, 01108653
Office of Military Government for Stadtkreis Wiesbaden

/s/ Walker K. Hancock
/t/ WALKER K. HANCOCK
Capt., Inf., 0513319
Office of Military Government for Stadtkreis and Landkreis Marburg

/s/ Julius H. Buchman
/t/ JULIUS H. BUCHMAN
Capt., FA, 01171068
Office of Military Government for Stadtkreis Frankfurt

/s/ Frederick C. Shradly /t/ FREDERICK C. SHRADY 2nd Lt., AUS, O2025815 Office of Military Government for Land Great Hesse	/s/ Richard H. Kuhlke /t/ RICHARD H. KUHLMKE 1st Lt., Ord., O1556305 Office of Military Government for Stadt- kreis Frankfurt
/s/ Everett P. Lesley, Jr. /t/ EVERETT P. LESLEY, JR. Capt., QMC, O1581907 The General Board, U.S. Forces, European Theater	/s/ Theodore A. Heinrich /t/ THEODORE A. HEINRICH 2nd Lt., AUS, O2015985 Office of Military Government for Regie- rungsbezirk Kassel
/s/ Clyde K. Harris /t/ CLYDE K. HARRIS 1st Lt., OE, O1116157 Office of Military Government for Regie- rungsbezirk Hessen	/s/ Doda Conrad /t/ DODA CONRAD 1st Lt., AUS, O1691535 Office of Military Government (U.S.)
/s/ Edwin O. Rae /t/ EDWIN O. RAE Capt., AC, O1643246 Government for Bavaria	/s/ William A. Lovegrove /t/ WILLIAM A. LOVEGROVE 1st Lt., CWP, O1797674 Office of Military Government (U.S. Zone)
/s/ Edward J. Butrux /t/ EDWARD J. BUTRUX Capt., QMC, O1575023 Office of Military Government for Regie- rungsbezirk Hiederbayern and Oberpfalz	/s/ Walter W. Horn /t/ WALTER W. HORN 1st Lt., Inf., O1326328 Office of Military Government (U.S. Zone)
/s/ J. T. Morey /t/ J. T. MOREY 1st Lt., CL, O1113367 Office of Military Government for Regie- rungsbezirk Oberbayern	/s/ Robert A. Koch /t/ ROBERT A. KOCH 1st Lt., AUS, O2011971 Office of Military Government for Wurt- temberg - Baden
/s/ Dale V. Ford /t/ DALE V. FORD 2nd Lt., OE, O1112695 Office of Military Govern- ment for Landkreis Heilbronn	/s/ Thomas C. Howe, Jr. /t/ THOMAS C. HOWE, JR. Lt. Comdr. USMR, 237822 Office of Military Government (U.S. Zone)

COPY

The following officers have expressed agreement with the sentiments of this paper but do not feel at liberty to sign any statement:-

JAMES J. RORIMER
Capt., AUS, O-537225
Office of Military Government
(Western District)

LESLIE J. POSTE
2nd Lt., AUS, O2025871
Office of Military Government
(Western District)

W. B. VAN HORNWICK
Capt., Inf. (Armd), O-1108653
Office of Military Government
for Stadtkreis Wiesbaden.

The following officers have expressed similar senti-
ments by means of separate letters to Major B. La Farge:-

JOHN H. COULTER
Lt. Comdr., USNR, 13699
Office of Military Government
for Bavaria (U.S.)

CRAIG H. SMYTH
Lt., USNR, 173172
Director, Munich Collecting Point

EDWARD E. ADAMS
Capt., QMC, O-444347
Office of Military Government
(U. S. Zone)

HARRY D. R. GRIER
Capt., Inf., O-1305762
Office of Military Government
for Germany (U.S.)

KURT F. KAUSCHLOTT
2nd Lt., AC, O-1540391
U. S. Headquarters Berlin District

The names listed above include 32 of the 35 MFAZA
Specialist Officers now in Europe assigned to headquarters
in Germany. No contact has been possible with the remaining
three officers owing to the shortage of time and the distances
involved.

It may also be noted that, while no attempt has been made
to ascertain the opinion of the enlisted men and civilians in
the Monuments, Fine Arts and Archives organization, nor of
the personnel of American Monuments, Fine Arts and Archives
organizations outside of Germany, all the individuals in these
categories who have read this paper have expressed complete
agreement with its sentiments.

sent to the top American in our MFA&A office at SHAEF, Major Bancel LaFarge. When and how it was released I can only speculate; but, as we have seen, it got to Janet Flanner very quickly. Last known to be in our office at SHAEF, the only signed copy is doubtless still secure in Army files somewhere; but we each took a copy at the time of signing.

FELICIANO: Konstantin Akinsha was instrumental in finding the extent of all of the Soviet plunder right after the war with the Soviet-occupying armies.

AKINSHA: I believe that Comrade Stalin was much more successful than the American government, because the American government didn't succeed in transporting 202 paintings to the United States, and Comrade Stalin succeeded in transporting to the Soviet Union more than 2.5 million art objects. I think that this success was connected with a complete absence of idealism, but before I describe historical events, I want to say a few words about the current situation.

On the 15th of April 1998, the Cultural Federation of the Russian Parliament adopted the Federal Law on Cultural Valuables Removed to the U.S.S.R. as a Result of World War II. The president of Russia protested this law. He refused to sign it. But after the adaptation of the Cultural Federation, he was expected to sign the law and send it immediately to the constitutional court. We have a constitutional court that will research it for a pretty long period of time, and soon, this law will be enacted.

The main task of the law is to proclaim all cultural valuables removed to the U.S.S.R. as a result of the second World War—"trophy artworks"—the property of the Russian Federation. Russian parliament announced that the removal of such property was completely legal and was realized in agreement

with Allied partners, according to the decisions of the Control Council of Germany, and according to international agreements of the Soviet Union.

It is not true. The Control Council of Germany never gave permission for restitution in kind. Such a discussion never took place. The Control Council asked Russia to supply a list of artworks that were looted by Nazis during the war. But the Soviet delegation failed to supply such a list.

How were these cultural valuables removed to the U.S.S.R.? In 1943, in Moscow, the Special Committee—which was dealing with the composition of a list of so-called "equivalents"—was created. Their goal was to prepare lists of artworks that could be taken as compensation for damage committed to the U.S.S.R. by the Nazis. The best art historians in the country began to compose such lists when the future of the work was not clear yet.

However, very soon, the task was changed. Art historians understood that they could not collect any grounded information about looters of the Soviet Union. Many parts of the country were still under occupation, and the temptation to compose lists—not of equivalents, but of very good artworks that they wanted to see in the Soviet museums after the end of the war—was very strong. By the end of 1943, the decision was made to create, after the end of the war, a huge museum, which was to be erected in Moscow and was to become a kind of a war memorial that would accommodate all the best artworks from the occupied countries. The commission was very upset when Italy left the war, because all the lists for Italy were already prepared, and there was a long discussion about what they would do, they already knew what they wanted to take there. Already in 1944, Russian brigades were sent to occupied European countries. I'm not talking only about Germany, Poland, Czechoslovakia,

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Hungary and other countries were in the zone of Soviet occupation. In 1945, we finally reached Berlin.

We were not talking about compensation. We were talking about removal—removal of everything that was of some artistic value. It was the policy of the Soviet Union in occupied Germany. Basically, every ministry of the Soviet Union sent special “trophy” brigades to occupy the country to remove everything. The documents of the time are strikingly open and cynical. We can go through the lists and lists of millions of pairs of shoes, hats, umbrellas, and other things, just sent to the U.S.S.R. By the way, violation by the Soviet administration of reparation agreements led, in many ways, to the first conflict that started the Cold War.

Artistic policy on removal of art objects was no different. Throughout the brigades, art historians, who were dressed in military uniforms, operated around occupied territory of Germany. The good museum collectibles were transported to Moscow—such collections as the Leipzig Museum’s complete Pergamon Altar, and basically everything that was found.

Trophy brigades were not interested in provenance. Collections that were looted by the Nazis in the Soviet countries were simply packed and transported. Already during the first years of occupation, Allied forces tried to receive information from Russian sites on Russian activities in the Soviet zone of occupation. Russians refused to give such information. However, American intelligence gave pretty good information and a pretty good picture of what was going on in the Russian zone, and such information was supplied to the State Department and the White House.

Immediately after the war, President Truman sent a letter to Stalin asking him about the fate of the Dresden Gallery. Stalin answered it with a very foggy letter that the Dresden Gallery could be secure if it were in our hands.

After the war, trophies were hidden for one simple reason—the Soviet government decided it was more profitable to create an East German republic than a museum of trophy art. During the days of Khrushchev, more than one million art objects were returned to Poland and East Germany. Remains are still in Russia. During the resistance to East Germany, it was decided not to return objects from the Federal Republic of Germany and the source countries. So today, in Russian museums, we see artworks from different German museum collections and artworks that belonged to such countries as the Netherlands, and to numerous private owners.

Today, members of Russian parliament are saying they believe all these paintings belong to Russia, because in the war, Russia lost 47 million lives, 427 museums were devastated, and more than a half million artworks were stolen. It’s true. War has paid an unbelievable price.

But it was not only Russian lives. This war was won by the Soviet Union, and to say how many of these lives belong to Uzbeks, Kazaks, Ukrainians, or Estonians, we cannot say. When Russia mentions the more than 400 museums, these museums were situated on the territory of both its states, both the Ukraine and Belarussia. So Russia has appropriated trophies, and appropriated all victims of the war. Unfortunately, the problem of trophy art became a problem of Russian nations. And it’s very sad. This century started with restitution in kind. After the first World War, the (Russians) violated the Hague Convention and took some artworks from Germany as a restitution in kind. In many ways, it’s still up to the German Nazis to rise to the looting of Germany after the first World War and to use it for nationalist purposes.

Today in Russia, we are facing the refutation of history. Unfortunately, an international agreement doesn’t work. It’s very sad.

FELICIANO: Now, the story of a journalist who saw what happened in Cambodia, and who followed it through.

BECKER: My story is different. It's a story of a war in Cambodia, an Asian country, recently independent from the French, and a war where the people who walked away were not necessarily members of a great army, but people like you and me.

I first understood the connection of looting and war as a journalist the first few months covering it when, with one of my favorite Italian colleagues, we were interviewing some refugees. We stopped them. They had been fleeing from American bombing, and they had fled their homes. B-52 bombers had made it impossible to stay. They couldn't go in one direction because the Khmer Rouge were there, so they were fleeing toward Phnom Penh. We stopped them, and asked them the usual questions: "Where are you from? Why did you flee? How many children? Who died?"

Then, my Italian colleague asked the last question: "Do you have anything for sale?" I said, "What is that question about?" He said, "Elizabeth, you either buy it here and give them the better price, or you buy it on the Rue d'Argent and give it to the Madam who will take most of the profit."

That started me on a line of inquiry that continues today. I then went to the Ministry of Culture and discovered that the people who were buying most of this art were the diplomats, the journalists, the humanitarian aid workers.

Before you think that I'm just casting blame and making an easy point, it wasn't so simple in a war. The people were selling their artworks. Then there were those of us who were covering the war and would go out and watch the battles. In a country like Cambodia, the natural fortresses were the pagodas, and the

military would naturally fall back and stage their battle from a pagoda. You had walls. It was a good staging base.

As a result of the fighting, the temples would be destroyed, and artifacts would find their way into the backpack of a soldier or whomever, and then they would go to the market. So you start with the family possession of a silver pagoda, perhaps, or a death cloth—that is what you put in front of someone before they die so that they see heaven. Gradually, you can see how the small artifacts from your temple, from your home, from your family possessions, everything becomes for sale. It's not one army versus another army, one army taking loot, but everything becomes for sale.

In one of the last battles, a reporter got a call from a New York broker, who asked him to buy up all of these death cloths, because it would be helpful for a boutique that wanted to make a whole bunch of pillows out of them. At one point, the Minister of Culture did send a circular out to all of the embassies, asking that no more cultural properties be taken out. That was ignored.

UNESCO came. In the '70s, there was already a sense that you could protect the cultural artifacts, and UNESCO sent out boxes to all the major spots in the country with the temples and artifacts to be saved, and asked the monks to bury the artifacts. The only things that they have ever recovered are empty boxes, because in war, the question of protection is pretty much impossible. You're all talking about trying to enforce international law in peace. In war, the last thing the people are going to worry about are those cultural artifacts. They'll sell their Buddha to keep their child alive. The monks will not bury their artifacts when they are worried about feeding the people who were coming into their pagodas. And as much was destroyed by the bombs and by the firepower of the weapons as was stolen.

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“...Who’s going to suggest that the very small national budget overseen by those very corrupt officials is going to, in any way, protect those art objects?”

The Temple of Angkor, because it was so well-known, was the one thing that was protected during the war. No one would touch Angkor. It’s the largest religious building in the world. It’s a funerary temple. Angkor is a sort of Khmerization of the Sanskrit word for “city,” and it is a city of temples: awe-inspiring, rediscovered first by the Portuguese, who brought the story back and nobody believed it. Then finally when the French came at the end of the 19th century, the French naturalists did rediscover it, and the French helped rebuild it. It has a place in the whole world patrimony such that nobody touched it, not a bomber, not a Khmer Army, either the republic or the Khmer Rouge, or the Vietnamese.

In the country, it felt strange that the only thing that was protected were the beautiful temples. When the Khmer Rouge took over, in the middle of the genocide, the one thing that survived was the Angkor temples. I was able to go to Cambodia during the Khmer Rouge period and was surprised that the one thing they were proud of is that they were able to preserve the temple. You have this strange connection between who you are when you, in fact, are a country like Cambodia—at its knees, yet having one of the most beautiful temple complexes in the world. They save the temple, they let the country fall apart and they’re responsible for the death of 2 million out of 6 million people. Then you have another war, and this time, everything is for sale. This led to tons of Angkor stone showing up on the Thai border.

Out of Paris, various cultural organizations have tried very hard to find some of this and return it. But the war continued and the people who ran Cambodia under the Vietnamese did not win international recognition. So Angkor was under the control of a government that had no international recognition. And in an attempt to win that recognition, they tried even to use the temples again to say, “If you don’t recognize us, they’re just going to

be looted and looted.” That didn’t work.

Finally, in peace, the archaeologists were able to reconvene in Paris and Bangkok to look at what was left of Angkor. It’s now been repaired in cement by the Indians, re-looked at by the Japanese, the French went in, and so forth. But the effect of war has been dramatic for the temples. The whole city of temples is built around tanks of water, because it was also the very practical center of the kingdom as well as the religious center. Irrigation ditches were going out, big tanks to irrigate the rice fields, the temples to reflect the cosmology of Mt. Mehru, the entire Hindu cosmology. It requires great upkeep just to make sure that things don’t sink so that the stone doesn’t move.

In the middle of all this, bandits had been coming in. One thing that war leaves behind is weapons. And you don’t have simple people who want to cut up one stone or two, but entire groups of military people—some retired, some not—who cut away hundreds of tons of stone. Just recently in *The New York Times*, Seth Mydans wrote how they discovered that Banteay Chmar had lost 500 tons. The new technology is making it very easy. Cambodia is so blessed with so many temples, yet it’s so poor that there’s no way to protect them. And you are left with a situation where through war, revolution, and now poverty, who’s going to suggest that the very small national budget overseen by those very corrupt officials is going to, in any way, protect those art objects?

The question this leads to is: If one does believe that there is a responsibility to protect such incredible sites as Angkor, then what is the international responsibility to pay for them, in a country like Cambodia?

FELICIANO: Now we will be talking about Yugoslavia. Peter McCloskey is a trial attorney at the Office of the Prosecutor, Investigations

Section, of the International Criminal Tribunal for Yugoslavia in the Hague.

MCCLOSKEY: For the last four years, I have been investigating the case of Srebrenica, which was the murder of 8,000 people in a four-day period in July 1995.

I want to give you some rough background on some of the damage that occurred during the war in the former Yugoslavia.

I'll be talking about what you call "non-removables." I'm not speaking of art that was looted, or objects from churches, or objects from mosques. As you know, there's not much you can take from a mosque. And investigating and prosecuting this kind of a crime is very difficult.

The War Crimes Tribunal was enacted near the end of the war by the Security Council of the United Nations. We are an arm of the Security Council and we do have the power to prosecute people for war crimes, including genocide, murder, crimes against humanity, and the damage, destruction and theft of cultural property.

In Bosnia, mosques and churches that suffered major damage throughout the war. Croatia suffered some tremendous damage. The old city of Dubrovnik was shelled, and quite a few of the beautiful structures and churches and other buildings there were destroyed or greatly damaged.

This happened throughout the former Yugoslavia. And while I don't want to get into the blaming business, it is clear that most of the damage that occurred was done by the Bosnian-Serbs. The Bosnian-Croats come in second, and some of the other damage was caused by the Muslims, at a much lower level than the other two.

... Destroying churches and mosques clearly

played a part in this war. I want to ask you a question, and that is: Prosecuting people for this kind of destruction, is it worth it? Is it something that an International Criminal Tribunal should put its resources into doing? I can describe to you an image of a large excavation. In the bottom of it, there's about 150 people, corpses with their hands tied behind their backs, bullet holes through their skulls, and many of them are blindfolded. They're all Bosnian men between the ages of 12 and 70. We found, during our investigation, about 4,000 men in graves like this.

So in situations where we're talking about genocide, crimes against humanity—be it the World War II version, the genocide in Cambodia, which is probably in the millions, or the genocide of Bosnia—is there a place for the prosecution for war crimes of the nature of damaging or destroying buildings? We are not the Allied forces coming through, with 30 men assigned to one task. We're not the victorious Soviet forces. We have a small group of people in the Hague that are charged with investigating the entire war, and now Kosovo is happening. Is it really worthwhile to do this?

I think the answer to that is "yes," as they decided in Nuremberg that it was. From a prosecutorial point of view, this destruction clearly goes to the motivation of the people that are committing the genocide. They are trying to wipe out the people and the trace of the people that they have been sharing the country with. So by prosecuting these crimes, we're assisting in the prosecution of the bigger crime: the genocide.

But that isn't the only reason why we prosecute these crimes. One of our witnesses we've called in the prosecution of these crimes is Colin Kaiser. He works for UNESCO. In his testimony, he spelled out one of the more obvious and important reasons why we prosecute these crimes. This is what he told a judge

"Is there a place for the prosecution for war crimes of the nature of damaging or destroying buildings?"

in response to a question about how people reacted when their structures were blown up and destroyed.

He said, "The destruction of a mosque or a church is different from the destruction of a Bosnian's house. What happens to you, everybody knows that you're mortal. Your life is a series of accidents. But the mosque or the church, it represents an order to the world. When you destroy that, you are sort of tampering or threatening their existence. It's often been said to me in my travels during the war, and not only about churches and mosques, but about other major cultural buildings, that, 'We get used to being killed. We know that human life is no more tangible or permanent than the life of a butterfly. But when we see these other buildings being destroyed, we see the rest of the world starting to crumble around us, and we become lost.'"

And we felt that *this was an important part of our case*. I think even the people in the graves that I can't find, that I can't put in my genocide case, will appreciate what we're doing here. And I know the rest of the world will appreciate that, also. But another question arises, and that's "How far do we go in the prosecution of this crime?" You heard a term brought up, "military necessity." Military necessity is part of the international law that is built up from the Lieber Code, and it is part of the customary international law upon which our statute was based.

Let me give you a hypothetical situation and ask you where you would go, one I borrowed from Professor Merryman.

Let's say we have a famous old church with incredible frescos on it. And on the belfry of that church, there's an artillery spotter, and he's dropping artillery on your troops. You have two choices. You can call in artillery of your own and blow the hell out of that spot, and you have just destroyed a 3,000-year-old

church but you will have knocked out that spotter. Or does a soldier have a duty to send in ground troops, at the risk of losing his men, merely to save a cultural monument? This is something that soldiers have to deal with, and we're making a policy that will decide what we require of soldiers, and whether it is worth it. How far do we go? This issue can obviously be broader than just the protection of cultural monuments. It can go so far as, "How far do we go in the protection of civilian lives? What kind of a duty do soldiers have in their objective, and the lives that they are trying to save?"

AKINSHA: I was traveling in the last two years in the region pretty intensively. It is not only the destruction of architectural monuments: We know many examples of museum collections that were removed in typical Nazi ways, such as the whole collection of the Vukovar museums—there's a perfect collection of west European paintings in Sarajevo. The main thing is that the locations of these collections are known. The contents of the Vukovar museum are stocked in Belgrade; paintings from a museum in Sarajevo, according to three diplomatic sources, are in Banja Luka, and there's no movement. These paintings are not returning to their museums.

Of course, how to judge these crimes is a very important issue. But I have another question: how do you prevent those crimes? I talked to the director of the museum in Vukovar a couple of years ago when she still was stuck in a cellar in Croatia, running the so-called Museum of Vukovar in exile. She told me this story. When Serbian tents were on the other side of the river, she put on the building a huge sign of the Hague Convention, a sign to designate protection of architectural monuments in museums. The next day, Serbs begin to shell this building, because the sign was very attractive. The same day, she sent a telegram to UNESCO, reporting that Serbs are bombing the building. UNESCO answers

that they don't want to be part of it, saying, "It's your problem, just try to sort it out."

Where is the prevention mechanism? Various international laws could stop this crime. If you can stop the crimes, it probably will liberate us from the necessity of organized tribunals later.

MCCLOSKEY: In Germany, it's my observation and others' that, there being no national American central control where all decisions about cultural property came from, this was left up to the field commanders. And that was true of the Russian zone, the French zone, the British zone, and the American zone. And because it was a new idea, they weren't prepared, by foresight or foreaction, to set up the organizations and to organize their forces in some way. And so everything has to be scrounged. But that's at the will of that commander.

Eisenhower was pretty good on this, and he provided us with a letter with his signature, which was copied, that said, "This building was determined by the monuments officers to be off-limits to all military personnel." This could go on cultural treasures such as 17th-century churches, 18th-century houses, etc., that were of cultural meaning and significance.

On the other hand, we couldn't get a simple sign for simple places that just said, "Off-limits to personnel." They wouldn't print it up for you because there was no general order to do this. There was, in short, no preparation for any exigencies.

I've got a portion of the letter that Eisenhower wrote, and he was well before his time. "If we have to choose between destroying a famous building and sacrificing our own men, then our men's lives count infinitely more and the building must go. But the choice is not always so clear-cut as that. In many cases, the monu-

ments can be spared without any detriment to operational needs."

Nothing can stand against the argument of "military necessity." That is an accepted principle. But the phrase "military necessity" is sometimes used where it would be more truthful to speak of "military convenience," or even of "personal convenience" or, I do not want to cloak it, "slackness" or "indifference." This particular letter may have some relevance to what is going on today in Kosovo.

QUESTION FOR MR. MCCLOSKEY:

I'm not really aware of what constitutes a war crime. You've added in destruction of monuments and such. Let's say I'm a commander and I'm advancing through a country I've invaded, and I have a deep respect for churches and mosques, and even individuals. I don't kill anyone. But I torch crops, shoot livestock, dam up rivers, do anything I can to dam up people. Is that considered a war crime? Do we protect monuments and then allow livestock and crops to be destroyed?

MCCLOSKEY: That depends. I think you have to consider the military necessity of that. I think some of the generals and colonels in Vietnam would have said "yes." In some of the villages, we had to kill livestock, we had to burn out the villages, because that's where the Vietcong were staying, and those were the people that were killing us. So if there is a justifiable military reason to do it, that may or may not be a defense, depending on how the judges interpret these treaties and what we argue it to be a defense. A lot of times, that will depend on what the international community wants it to be.

If a letter came out of a conference supporting the idea that military necessity should not be a defense, and that was enacted in the UNESCO statute, then there may be no defense to that. But it's also against the law to destroy property, to take property. And that's

"The phrase 'military necessity' is sometimes used where it would be more truthful to speak of 'military convenience,' or even of 'personal convenience'..."

also part of the the indictment, because that's also part of the ethnic cleansing that occurred, the destruction of homes, the destruction of personal property. That's also a war crime, if there's no military necessity.

MARTIN WIESBER (Office of Justice in Switzerland): I was legal counsel for UNESCO in Cambodia during the UN-sponsored election period. It was said this morning that usually, we should not blame the source nations for not doing anything at all. Cambodia is a good example. They don't have the resources to do anything at all. And then we talk about giving and taking something.

It puzzles me that there is an outcry at pictures showed to us by Mr. McCloskey, of the Mostar bridge, for example. As soon as things *turn more normal, there are no international efforts, apart from international agencies—* which do not have the means necessary to put up cooperation mechanisms—between museums and art associations. I think the community should also think about mechanisms to help those countries restore culture, not only the buildings, but also the country itself.

BECKER: There has been, through UNESCO meetings in Paris and Bangkok, the beginnings of a group. But more money has to be given to these countries to protect these extraordinary monuments.

It's only recently that the Cambodian government has allowed this. There has been international pressure and finally the government is working in that direction. So it's now a possibility.

AUDIENCE MEMBER: I'm really interested in the concept of military necessity, and the contradiction between this concept and international conventions that are preventing the damage of architectural monuments. Kosovo is marked by unique Byzantine

churches. Serbian television is already broadcasting footage of damage to numerous churches in Kosovo. The administration said that all targets in Kosovo and Yugoslavia are off-limits. What does this mean? Churches are off-limits, too? What is this: necessity, or possibility of neglect and destruction of cultural monuments?

MCCLOSKEY: For some reason, the United States did not want to become a part of the international criminal tribunal that is being now put together in Rome. But if a Serb convoy hid out in one of these famous monasteries and was shooting shoulder-armed missiles at F-16s, NATO planners, would they be as thoughtful as Eisenhower was, who actually assigned cultural officers in 1944 to his troops? Or would they go in and take it out? I'd like to think they know what they're doing and that they'd think twice before doing that. But sometimes things happen from 15,000 feet, and you're not that aware of what you're doing, and part of proving criminal intent is identifying willfulness and negligence. And recklessness does not come into play, though that's a fuzzy area, and a lot of it depends on the treaties and the body of law.

BECKER: The reason that the United States didn't sign another international tribunal is precisely because the United States said, very publicly, that they didn't want to put American soldiers in that kind of jeopardy. They did not want to be judged for international war crimes. They wanted their own national tribunal.

AUDIENCE MEMBER: The terrible damage that has occurred in Yugoslavia has been obvious, and establishing the culprits is going to be a little more difficult. Yet, there are other places in the world where both the damage and the culprits are very evident. One example in very recent history: Northern Cyprus was invaded by Turkish troops not too long ago,

less than 25 years ago. The damage to the churches and the plunder that has taken place in that small country is unheard of in modern times, except for more recent times. We know exactly who the culprits are. They are the bonafide Turkish Army. These are not renegade soldiers. These are bonafide Turkish soldiers. Much of the plunder is showing up in various markets around the world. Is your group, Mr. McCloskey, doing anything to bring that to light, as well as you're obviously doing in Yugoslavia?

MCCLOSKEY: We were created by the Security Council with the former Yugoslavia in mind, only. Prior to Nuremberg, international law in this area was designed for countries to take care of their own. And if anyone knows the history of how the Germans took

care of themselves after World War I, that doesn't work very well.

Now the Security Council is also considering a war crimes tribunal for Cambodia. The Cambodians don't seem to want that. It's a difficult thing to have, and it would take an act of the U.N. to create another kind of war crimes tribunal, something that's obviously not done very often. The world court is in the early stages, and it is not being supported by the U.S. The U.S. is in the leadership position in the world, so without the U.S.'s participation, there's some doubt as to whether that court will have anything. But you also have some problems with prosecuting things after they've already occurred. This was a problem they had to deal with in Nuremberg and with other tribunals.