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Volume 49 | Issue 1

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2017

# Talking Foreign Policy: Art, Diplomacy and Accountability

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## Recommended Citation

Michael P. Scharf, *Talking Foreign Policy: Art, Diplomacy and Accountability*, 49 Case W. Res. J. Int'l L. 251 (2017)

Available at: <http://scholarlycommons.law.case.edu/jil/vol49/iss1/17>

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## TALKING FOREIGN POLICY: ART, DIPLOMACY, AND ACCOUNTABILITY<sup>1</sup>

*Broadcast quarterly, “Talking Foreign Policy” is a one-hour radio program hosted by Case Western Reserve University School of Law Co-Dean Michael Scharf, in which experts discuss the salient foreign policy issues of the day. The broadcast on October 7, 2016, addressed international law and art.*

*Dean Scharf created “Talking Foreign Policy” to break down complex foreign policy topics that are prominent in day-to-day news cycles, yet difficult to understand. “Talking Foreign Policy” is produced in partnership between Case Western Reserve University School of Law, the only U.S. law school with its own foreign policy talk radio program, and WCPN 90.3 ideastream, Cleveland’s National Public Radio affiliate. Archived broadcasts are available for viewing in video format online at [law.case.edu/Academics/Academic-Centers/Cox-International-Law-Center/Talking-Foreign-Policy](http://law.case.edu/Academics/Academic-Centers/Cox-International-Law-Center/Talking-Foreign-Policy).*

*This broadcast featured:*

- *Paul R. Williams, President and co-founder of the Public International Law & Policy Group, who has advised parties to treaty negotiations around the world;*
- *Mark Ellis, Executive Director of the International Bar Association;*
- *Bill Schabas, a professor at Middlesex University and a leading expert in human rights law, who has served as a commissioner on two international investigative commissions;*
- *Shannon French, Director of the Inamori International Center for Ethics and Excellence and an expert on law and morality; and*
- *Milena Sterio, Associate Dean and Professor of Law at Cleveland-Marshall College of Law, who is also one of the*

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1. Transcript edited and footnotes added by Benford Frazier, Kevin Hayes, Ruth Johnson, and Kevin J. Vogel.

*permanent editors of the IntLawGrrls blog and an expert in the field of international law.*

TALKING FOREIGN POLICY:  
ART, DIPLOMACY, AND ACCOUNTABILITY — OCTOBER 7, 2016  
BROADCAST

MICHAEL SCHARF: Welcome to Talking Foreign Policy! I'm your host, Michael Scharf, Dean of Case Western Reserve University School of Law. In this broadcast, our expert panelists will be discussing art, diplomacy, and accountability. Joining us remotely from a studio in Washington, D.C., is Dr. Paul Williams, President of the Public International Law & Policy Group, who has been working on issues of accountability for international crimes in Syria. Good to have you on, Paul!

PAUL WILLIAMS: Thanks, Mike. It's my pleasure.

MICHAEL SCHARF: Here at the WCPN ideastream studio here in Cleveland, we are joined by Dr. Mark Ellis, Executive Director of the International Bar Association, who is visiting this week from London.

MARK ELLIS: Wonderful to be here.

MICHAEL SCHARF: Also with me here in the studio is Professor Bill Schabas of Middlesex University in London, a leading expert in human-rights law, who has served as a commissioner on two international investigative commissions.

BILL SCHABAS: Thank you for having me.

MICHAEL SCHARF: Our panelists also include Dr. Shannon French, with us on the show again. She's the Director of the Inamori International Center for Ethics and Excellence and an expert on law and morality.

SHANNON FRENCH: Delighted to be here, Michael.

MICHAEL SCHARF: And our final panelist is Professor Milena Sterio, Associate Dean at Cleveland-Marshall College of Law. She is a frequent guest on our show and an expert on international law and policy. Thank you all for being with us today!

In our first segment, we will look into one of history's great, great art disputes, the case of the so-called "Elgin Marbles." At the British Museum, which is just a few Tube stops from Bill Schabas's office in London, millions of people every year visit a famous collection of huge marble statues that once covered the walls of the ancient Greek Parthenon. Bill, can you tell us the story of how these statues,

considered the most important examples of ancient Greek art and building design, ended up in the British Museum?

BILL SCHABAS: Sure. Well, around 1800 the British ambassador to Turkey, because Athens and Greece [were] still a part of the Ottoman Empire, decided that he was going to start collecting these marbles off the Parthenon. He originally had a plan just to do drawings of them, but then he got greedier and actually just started ripping them off. He allegedly got permission from the Turkish government, although this is all kind of mired now in the fog of the archives and no one can find a document that actually gave him permission to take them down. He took them all down over a period of about ten years. He took the best of the marbles, about half of them, and shipped them to England. Originally, he was going to put them in his own castle somewhere in Scotland. Later, he sold them successfully to the British government. So now they're placed in the British Museum, about half of them. There are little bits of the marbles from the Parthenon that are in other museums around the world—there are a few pieces in the Louvre, in Paris, and in some German museums—but the bulk of them and the best part of the Parthenon are there in London.<sup>2</sup>

MICHAEL SCHARF: I was always struck that they call these marbles, because it sounds like something small, but they are literally the sides of the Parthenon.<sup>3</sup> I suppose everybody in this room has been to the British Museum. They have a scale replica of the Parthenon, where the real walls of the Parthenon are. When you go up to the Acropolis in Greece, you're seeing a skeleton of the Parthenon, which used to be full, other than what Lord Elgin did. Right?

BILL SCHABAS: Well, you know the Parthenon, which was built of course at the time of Pericles, 500 or so BCE, has been gradually withering over the years. Parts of it have been destroyed by a variety of manners.<sup>4</sup> It was converted into a church at one point, and that

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2. See also Victoria Ward, *Why Are the Elgin Marbles So Controversial—And Everything Else You Need to Know*, TELEGRAPH (Dec. 5, 2014, 8:43 AM), <http://www.telegraph.co.uk/news/uknews/11274713/Why-are-the-Elgin-marbles-so-controversial-and-everything-else-you-need-to-know.html> [https://perma.cc/2KAB-3KJF].

3. A short video made by the British Museum shows the statues' scale. *Bonnie Greer on the Parthenon Sculptures at the British Museum, Greece: Parthenon Room 18*, BRITISH MUSEUM, [http://www.britishmuseum.org/explore/galleries/ancient\\_greece\\_and\\_rome/room\\_18\\_greece\\_parthenon\\_scu.aspx](http://www.britishmuseum.org/explore/galleries/ancient_greece_and_rome/room_18_greece_parthenon_scu.aspx) (last visited Nov. 28, 2016) [https://perma.cc/2CC6-HGMW].

4. See Evan Hadingham, *Unlocking Mysteries of the Parthenon*, SMITHSONIAN (Feb. 2008), <http://www.smithsonianmag.com/history/unlocking-mysteries-of-the->

involved ripping out parts of it so that they could put in the religious architecture necessary for it to be a church. Then, when the Ottomans took over, they converted it into a mosque and built a minaret. There were some bombs that went off there, some explosions (it had been used as a powder magazine). So, it was in rough shape already when Elgin got to it and he was able to go and pick off some of the pieces.

MICHAEL SCHARF: I suppose he could say, “Well, I’m saving it for the future.” Now Bill, our radio audience can’t see this, but you’re wearing a t-shirt with Greek wording on it—and it’s all Greek to me. (I always wanted to say that.) What does it say?

BILL SCHABAS: Well, in Greek it says, “The Parthenon Museum.” I visited the Parthenon Museum last week, actually. I was on vacation in Greece visiting friends and went to the museum for the first time. It opened fifteen years ago or more, and it was built by the Greek government to house the sculptures and the marbles on the Parthenon. What they’ve done, in effect, is rebuild how the marbles were on the Parthenon. You can see the Parthenon from the museum, it’s just next to it, but the marbles are in better condition. And they’ve re-assembled all the pieces together with plaster casts of the parts that are in the other museums, including the parts in the British Museum. So you see the original parts that remained, about half of the pieces—not the best ones—in the original marble, then you see the plaster casts that were made. They’re not a great copy. I’m sure if you go down to the gift shop in the museum, you can buy beautiful plaster copies of the art, but I think the Greeks intentionally left them a little bit rough to make the point that these are not the original marbles, they are poor copies of the originals in London.<sup>5</sup>

MICHAEL SCHARF: Why is it so important for the Greek people and the Greek government to have the return of their marbles?

BILL SCHABAS: Well, Greece has been claiming them back literally since it became independent. Lord Byron, who was a great supporter of Greek independence, wrote a poem condemning Elgin’s theft of the marbles at the time<sup>6</sup> and Greece has regularly repeated its demand to get them

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parthenon-16621015/ (last visited Nov. 28, 2016) [https://perma.cc/X2ND-NEHA].

5. For an image of the Parthenon frieze, with both original sculptures and plaster casts, see *The Frieze*, ACROPOLIS MUSEUM, <http://www.theacropolismuseum.gr/en/content/frieze-0/0> (last visited Nov. 28, 2016) [https://perma.cc/4M9C-YYXN].
6. LORD BYRON, *THE CURSE OF MINERVA* (4th ed., 1820), available at <https://books.google.com/books?id=MugQAAAAAYAAJ&dq=curse%20of%20minerva&pg=PA3#v=onepage&q=curse%20of%20minerva&f=false> [https://perma.cc/528R-LV3M].

back. It's quite symbolic—this is the center of the great Greek classical culture. And it's very, very important for the Greeks—in a moral, philosophical sense, in terms of their own feeling of whom they are—to have those marbles there, next to them so to speak, in their capital city.

MICHAEL SCHARF: And I mentioned that Lord Elgin, or the British, have made the argument that they are saving the marbles for the rest of the world. Let's turn to Shannon French, our famous ethicist who is with us today. Shannon, Greece argues that because its new, high-tech Acropolis Museum makes it possible to exhibit the Elgin Marbles in Athens, in a large exhibition space (the one that was just described to us) where they can be protected and observed by everybody who comes to visit, that Britain no longer has any excuse not to return them. Now, the British Museum has their own argument. They say, "All right, it's not just about protecting them for the future. We're a better venue because we present all the cultures of the world (I guess all the places that they stole things over the years), so you can see everything in one place, and we have many more visitors, so the marbles should stay with us." As an ethicist, how do you evaluate those competing claims?

SHANNON FRENCH: Well, I think this is one of the relatively rare cases where the ethical perspective is actually a little easier to nail down than maybe the legal issues involved. I think it helps sometimes to just think in terms of, "What is the decent thing to do?" To use a very simple analogy: imagine that you heard of a village that was being overrun by some invader and you happen to be a disinterested party. You wander into the village just after the invasion, and all the villagers have been chased out and you see a beautiful, very fragile vase. If you took it out of—perhaps, let's give the benefit of the doubt—the desire to protect it for posterity. But then later, the villagers recover their village and they come back and they say, "Gosh we really want that vase back that we would have preserved." Wouldn't the decent thing to do be to return it? That doesn't seem that obscure. And I understand, because I personally love and respect the British Museum and enjoy going there, their argument about numbers of visitors, but obviously Greece is going to argue, "We will have visitors, too, especially if you give back the marbles."

MICHAEL SCHARF: You know, it's not really just the British Museum. The analogy you just gave, that's repeated over and over in many countries. Let me turn to Milena Sterio, our expert in international law. Milena, it's a fact of history that our great museums happen to be housed in capitals of major political and military powers, who have come into possession of certain objects through not-entirely-legitimate means, but it's also a fact that they are great museums. The British Museum, the Louvre, the Met and similar institutions, they're also part

of the world's cultural heritage. So, if the Elgin Marbles are forced to be returned to Greece, could this set a restitution precedent that would empty the world's greatest museums?

MILENA STERIO: Well, Michael, I looked into this a little bit and it turns out that we already have a restitution precedent, so let me just give you a few examples. In 2014, the Los Angeles-based Getty Museum returned to Greece a fourth-century B.C. Macedonian gold wreath and also a sixth-century B.C. marble statue of a woman.<sup>7</sup> This same museum gave back 500 ancient artifacts to Italy in 2001.<sup>8</sup> The Heidelberg University of Germany gave back to Greece a small piece of the Parthenon itself actually,<sup>9</sup> and in 2008 the Vatican gave back a Parthenon fragment to Greece.<sup>10</sup> So we actually have several examples of restitution taking place. Now these huge museums, such as the Louvre, the Met, and the British Museum, have so many objects that even by giving back some of them—that perhaps are very famous but that deserve to be given back—I don't think we are in any danger of emptying those museums.

MICHAEL SCHARF: All right, so there is a precedent. Let's turn to Paul Williams down in Washington, D.C. Paul, you have helped negotiate a number of international disputes across the globe. Greece has been requesting the return of the Elgin Marbles for over 30 years. Why do you think this dispute has continued for so long without resolution if all these other museums, as Milena has said, are already returning their versions of the Elgin Marbles?

PAUL WILLIAMS: Well, Michael, I think we have to be honest here that this dispute regarding the marbles reflects a legacy and a culture of impunity for art institutions, museums, and collectors. The precedents Milena noted were decisions by the museums to return the objects; they

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7. *E.g.*, Hugh Eakin & Anthee Carassava, *Getty to Return Gold Wreath to Greece*, N.Y. TIMES (Dec. 11, 2006), <http://www.nytimes.com/2006/12/11/arts/12articnd.html> [<https://perma.cc/WJG3-MKSC>].
  8. *Ancient Objects Return to Italy*, BBC (Nov. 14, 2001), <http://news.bbc.co.uk/2/hi/entertainment/1655673.stm> [<https://perma.cc/68Y9-E9GX>].
  9. Hannah Cleaver, *Pressure Over Elgin Marbles as Piece of the Parthenon Goes Back to Greece*, TELEGRAPH (Jan. 11, 2006), <http://www.telegraph.co.uk/news/worldnews/europe/greece/1507561/Pressure-over-Elgin-Marbles-as-piece-of-the-Parthenon-goes-back-to-Greece.html> [<https://perma.cc/9VTH-5CE5>].
  10. *Vatican Sends Back Parthenon Head*, BBC (Nov. 8, 2008), <http://news.bbc.co.uk/2/hi/europe/7717269.stm> [<https://perma.cc/7SUT-E4DT>].



weren't the result of litigation or obligations under international law. The law that governs the return of these types of antiquities is essentially based on the law of plunder, which was sanctioned during the colonial era. There are very difficult hurdles to overcome, seeking to litigate the return of antiquities, and there are huge jurisdictional problems. The Greeks have tried and contemplated litigation and it's been completely unsuccessful.<sup>11</sup>

MICHAEL SCHARF: Bill Schabas, you litigate a lot of cases—in international tribunals, in domestic tribunals, human rights cases, all kinds of things. Is there an arguable claim in a court of law somewhere that Greece can turn to, or does Greece's claim have to be resolved only in the political and diplomatic sphere?

BILL SCHABAS: Well, you used the phrase “arguable claim.” There's certainly enough to pass what I call the “straight-face” test of litigation, where you could stand up in court and make an argument that would have some legal foundation. There's a legal opinion that was prepared about a year ago by the British barristers Geoffrey Robertson and Amal Clooney, where they set out a strategy that they proposed to the Greek government. One of them is to get a case at the International Court of Justice—the World Court—but it wouldn't be a lawsuit filed by Greece, it would have to be an advisory opinion, which would be requested by UNESCO or by the General Assembly of the United Nations. The other is to go to the European Court of Human Rights, and Greece could take the United Kingdom to the European Court of Human Rights. Both of these have difficulties, but there is an arguable claim and sometimes the threat of taking a case to court, with the uncertainties for both sides, has a way of coloring the political discussion, and that might help to turn the corner for Greece in its negotiations with the United Kingdom. The United Kingdom has been quite intransigent so far, although they've done public opinion polls in the U.K. and found that a great majority of people in the United Kingdom recognize that the marbles should go back to Greece.<sup>12</sup> There's a great way to solve it all, and that's to have proper copies of it made. I think the British have said, “Listen, you have the copies in Athens,

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11. The Greek culture minister, when explaining why Greece would not sue the British Museum for return of the Parthenon sculptures, “suggested that the path of litigation was fraught with peril” and said, “in international courts, the outcome is uncertain.” Liz Alderman, *Greece Rules Out Suing British Museum Over Elgin Marbles*, N.Y. TIMES (May 15, 2015), <http://www.nytimes.com/2015/05/15/world/europe/greece-british-museum-elgin-marbles.html> [<https://perma.cc/ZR58-2X6T>].
  12. For one such poll, see William Jordan, *British People Tend to Think Elgin Marbles Should Be Returned*, YOU.GOV (Oct. 18, 2014, 1:19 PM), <https://yougov.co.uk/news/2014/10/18/british-people-tend-want-elgin-marbles-returned/> [<https://perma.cc/YA8M-58TY>].

isn't that good enough?" Well, if it's good enough for the Greeks, it should be good enough for the British, too, so why don't they keep the copies and let the Greeks have the originals back?

MICHAEL SCHARF: Well, it's time for us to take a short break. When we return, we will discuss other controversies surrounding efforts at obtaining return of great works of art and artifacts throughout the world, from the Machu Picchu relics, to the "Woman in Gold," to the recent masterpieces found in attics in Europe, so stay with us.

————— Station Break —————

MICHAEL SCHARF: Welcome back to Talking Foreign Policy, brought to you by Case Western Reserve University and WCPN 90.3 ideastream. I'm Michael Scharf, Dean of Case Western Reserve University School of Law. We've been talking about international art disputes. Our expert panel includes Mark Ellis, the Executive Director of the International Bar Association; Bill Schabas, who served on two international truth commissions; Paul Williams, a former State Department official who negotiated a number of international disputes; noted ethicist Shannon French; and international law scholar Milena Sterio. Earlier in the broadcast, we were discussing the case of the Elgin Marbles. In this segment of our program, we will be discussing disputed ownership and the returning or keeping of other famous works of art throughout the world. Let's begin by talking about the case of the Machu Picchu artifacts. Paul Williams, down in Washington, D.C., you explored the ruins of the mystical, mountaintop city in Peru just this past June. Did you see any artifacts while you were there? Any pots, sculptures, carvings?

PAUL WILLIAMS: Well, actually, Michael, I spent most of my time taking pictures of you posing with llamas (laughter). But when I did have a moment or two to look around at the ruins and sort of search around for some artifacts to bring home, just like Lord Elgin, I was unable to find any because I had been beaten to it by the Yale researcher and explorer, Hiram Bingham, who discovered the hidden city in 1911.<sup>13</sup> And, as most folks did in those days, he brought most of what he could lift and pack away back to the United States, and it's been with Yale up until very recently.

MICHAEL SCHARF: So, after years of negotiation, Yale has recently announced that the two sides had reached an agreement. Can you tell us a little bit about that?

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13. See, e.g., Richard Cavendish, *Richard Hiram Bingham Re-Discovered the 'Lost' City of the Incas on July 24<sup>th</sup>, 1911*, HISTORY TODAY (July 2011), <http://www.historytoday.com/richard-cavendish/discovery-machu-picchu> [<https://perma.cc/A7BG-ZGMF>].

PAUL WILLIAMS: Essentially, there was a bit of a “name-and-shame” effort on the part of Peru vis-à-vis Yale, and Yale officially recognized that Peru owned the cultural objects, which was no major concession to begin with. But then Yale did agree to return the objects to Peru, while also guaranteeing that it was able to retain a number of objects on a long-term loan to continue academic and scholarly research on those objects.<sup>14</sup>

MICHAEL SCHARF: So, do you think this a good blueprint to resolving the Elgin Marbles and other disputes?

PAUL WILLIAMS: Yeah, it is actually quite an impressive blueprint and one that I think should be followed by the international museums and academic institutions that have this cultural property. One of the things is, oftentimes it’s very clear where this cultural property comes from and whose culture it is, and it’s certainly not the academic institutions’ and the museums’. Coming up with some type of arrangement, as the other guests have talked about vis-à-vis the Elgin Marbles, where it’s returned but there’s access and maybe some residual element of the antiquities that can remain on display at Yale or the other institutions, may be a good solution. But basically getting the property back to its original owners is not only the right thing to do, it’s the legal thing to do.

MICHAEL SCHARF: Well, it’s not always easy to figure out who the owners are. Let’s talk about the cases of Nazi-confiscated art, which is round[ed]-up in museums and even attics throughout Europe. One famous example is the case of the “Woman in Gold.” It’s a painting of a Jewish woman named Adele Bloch-Bauer that was made by the artist Gustav Klimt in 1907. Let’s bring in Mark Ellis, who has been patiently waiting, to join our conversation. Mark is the Executive Director of the International Bar Association. Mark, can you tell us about this case?

MARK ELLIS: Michael, it’s a fascinating case and perhaps the listeners would have also had an opportunity to watch the movie “Woman in Gold” last year with Helen Mirren,<sup>15</sup> as you mentioned in your opening statement. Here was a situation where this famous painting was made quite early before the war and was in the Bloch-Bauer family, a

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14. Diane Orson, *Yale Returns Machu Picchu Artifacts to Peru*, NPR (Dec. 15, 2010, 3:10 PM) <http://www.npr.org/2010/12/15/132083890/yale-returns-machu-picchu-artifacts-to-peru> [https://perma.cc/N3RX-AUVQ].

15. See Lewis Panther, *Remarkable True Story Behind Helen Mirren’s New Film The Woman in Gold*, MIRROR (Apr. 4, 2015, 7:10 PM), <http://www.mirror.co.uk/news/world-news/remarkable-true-story-behind-helen-5460199> [https://perma.cc/3HA9-75JJ].

prominent Jewish family in Vienna. But once Nazi Germany took over and Austria became under the rule of the Nazis, the Nazis decided to transfer this very famous painting to a museum, the National Museum in Vienna. Bloch-Bauer's niece, Ms. Altmann, had decided that actually she was, in fact, the heir of this painting and it belonged to her family and she began to pursue the litigation that was mentioned earlier. She decided to litigate this through the courts in Vienna and Austria and she failed, no surprise there. She then turned her attention to pursuing this litigation in the United States and that actually was ultimately successful, as the case went all the way to the U.S. Supreme Court on an issue dealing with [the] Foreign Sovereign Immunities Act. In the end, when she won that case at the Supreme Court,<sup>16</sup> the Austrian government knew that it was in trouble and that it was going to be very difficult to prevent her from obtaining this painting. And something extraordinary happened: it didn't go from litigation, it went into arbitration and she was offered an opportunity to arbitrate the ownership of this painting, but under two caveats: one, it would be arbitrated back in Vienna; and two, if she lost, she would be prevented from pursuing any other type of litigation back in the United States. That was a big decision on her part. She made that decision, she went to Vienna, and it was arbitrated there and she won. That was extraordinary, I think, for a couple of reasons. One, if you've visited Vienna, this painting still resonates with the city. We talk about something symbolic; this painting is symbolic to the city of Vienna. You wouldn't know that this painting was no longer there and yet it is now sitting in New York.<sup>17</sup> So, it can occur, and rightful restitution, the ability to bring back property that was stolen to the rightful owner, worked in this case. It was the right thing to do.

MICHAEL SCHARF: Well, why can't Greece do that with the Elgin Marbles in the U.S. Courts?

MARK ELLIS: Well, I believe that Greece, in fact, should be able to obtain those marbles back and I ultimately think that's exactly what's going to happen as well.

MICHAEL SCHARF: Bill, are there any procedural blocks for a country like Greece coming into a U.S. court to litigate this case between it and Britain?

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16. Republic of Austria v. Altman, 541 U.S. 677 (2004).

17. Klimt's *Adele Bloch-Bauer I* is now in the collection of the Neue Galerie in New York City. See *Collection: Austrian, Fine Arts*, NEUE GALERIE, <http://www.neuegalerie.org/collection/Austrian/Fine%20Arts?page=1#223> (last visited Nov. 28, 2016) [<https://perma.cc/3AVT-NPYC>].

BILL SCHABAS: Oh yes, big time. I think that if there were not, someone would have done it a long time ago. I think it's a problem because it's not private litigation—between individuals, some individual who stole the painting or was in possession of it and the original owner—but you're dealing instead with governments. There's an immunity problem there that I think would be well-known and familiar to all international lawyers. I'm not disagreeing with Mark that there may be a way to get in there, but it's not obvious

MARK ELLIS: No, and of course it wasn't obvious at the time when this case was brought up to the U.S. Supreme Court. That was a very important decision the Court said about the retroactive nature of the Foreign Sovereign Immunities Act. So, you know, litigation can help and law can change and I think this is an important thing to remember.

MICHAEL SCHARF: So, more recently than that, in 2012, I think many people remember reading in the press that a treasure trove of paintings by Henri Matisse, Pablo Picasso, Marc Chagall and other great artists was discovered in the attic of an apartment in Munich, Germany.<sup>18</sup> Mark, what has become of these priceless works of art, which were presumably stolen by the Nazis and then just stored in this attic for all those years?

MARK ELLIS: Yeah, another fascinating story. You have all this precious art that no one knew existed, which was hidden in the attic of a gentleman—Mr. Gurlitt—and Mr. Gurlitt collected this art. It was assumed that this art was looted and the Austrian government authorities came in and confiscated the art. There was an interesting twist, though, in that they actually gave the art back to Mr. Gurlitt with the understanding that he would assist the authorities in identifying those paintings that in fact were looted, and he would assist in getting these returned to the rightful owner.

MICHAEL SCHARF: And then he died, right?

MARK ELLIS: And then he died soon after that agreement, but he had bequeathed all of those paintings to a museum in Switzerland. So now, it's the Swiss museum that is undergoing this very long and arduous process of trying to determine which paintings in fact were taken illegally.

MICHAEL SCHARF: And even if all of them were looted, they can't figure out who they belong to because unlike in the movie, *The Monuments*

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18. See Melissa Eddy, *Few Answers on True Owners of Art Found in Gurlitt Trove*, N.Y. TIMES (Jan. 14, 2016), <http://www.nytimes.com/2016/01/15/world/europe/gurlitt-art-collection-germany.html> [<https://perma.cc/KVA8-H453>].

*Men*, where you had a character keeping a log of each stolen artifact or painting, there may not be such a record in this case.

MARK ELLIS: Well, I think that's always been a challenge on this, but you could solve it with the same situation in "The Woman in Gold" with Mrs. Altmann, who was the niece of Bloch-Bauer. The evidence that can be presented to, in fact, show that there was ownership is out there.

MILENA STERIO: There's actually an Athenian Cultural Association that sued the United Kingdom in the European Court of Human Rights, and just this past summer the European Court threw out the lawsuit, saying that it didn't have jurisdiction because this happened 200 years ago, before the court had come into existence.<sup>19</sup> Some of these would apply, but the problem then is that they apply to objects that have been illegitimately taken or stolen and the British government has made this argument that, at least with respect to the Elgin Marbles, that those were not illegitimately taken, that Lord Elgin actually had permission to do this.

MICHAEL SCHARF: So these conventions are great, but really only for future situations and not for the great past ones that we've been talking about. Paul, even if there are claims for the return of some of these antiquities, in many cases the individuals and institutions that purchase them also seem to have a legal right. They're innocent purchasers for value. Why should they be forced to give up artwork and antiquities that they bought in good faith?

PAUL WILLIAMS: Well, you've identified a key point. Balancing the interests of the original owner and the good-faith purchaser of stolen property can be intensely challenging, and there are two sets of rules that address this. There's the Anglo-American approach, which is essentially that the stolen property is always stolen property no matter how many times it's changed hands. You can't cleanse the property of its illegal origin simply by passing it through the chain of ownership. However, on the other hand—and probably the majority rule—is that of the civil law countries, which say that if you have stolen property and someone buys it without knowing that it's stolen property, they become a good-faith purchaser and essentially the taint of that property being stolen has been erased. Then it can go from one good-faith purchaser to another good-faith purchaser and you're not able to reclaim the property. Now, the 1995 treaty that Milena mentioned

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19. See Ian Johnston, *First-Ever Legal Bid for Return of Elgin Marbles to Greece Thrown Out by European Court of Human Rights*, INDEPENDENT (July 19, 2016), <http://www.independent.co.uk/news/uk/home-news/elgin-marbles-return-greece-legal-bid-thrown-out-eu-court-human-rights-a7145216.html> [<https://perma.cc/8FSN-TXWT>].

attempts to deal with this issue, and essentially says that there is a right to the return of all stolen antiquities whether they were bought in good faith or not. But the catch is that the individual who was victimized, or the family that was victimized, or the country, must compensate—[*SIGNAL CUT*]

MICHAEL SCHARF: Did we just lose Paul Williams in Washington, D.C.? Ok, we'll continue on until we establish that link. I think Paul was just saying that, well do you know the end of that?

SHANNON FRENCH: Well, I know that what he was pointing out is that there's a push to then compensate the people who made the good-faith purchases on the argument that they were not at fault. They still have to return the items, and if you again think of that from an ethical point of view, it's quite clear. I find your stolen dog and I fall in love with it, but then you make a valid claim to it, I still have to return the dog. But we all feel empathy for me and someone might say, "Here, I'll pay the vet bills that you paid in that time."

MICHAEL SCHARF: Or a finder's fee or something.

SHANNON FRENCH: Something, yes, but you still have to return the dog to the rightful owner.

MICHAEL SCHARF: One of the big problems here is that these people don't know whether they're purchasing somebody else's dog or not. Milena, do you think it'd be possible to establish some kind of an international registry of works of art and stolen works of art, and then to maybe require collectors to inform themselves about the registry and about which pieces may be stolen as a way to solve this problem?

MILENA STERIO: Sure. Some of the bigger law enforcement agencies, such as INTERPOL, the Scotland Yard, and the FBI, actually already have international databases of stolen art.<sup>20</sup> But for law enforcement in general, this is really low-priority because although stealing artifacts and cultural objects can shock all of us, it doesn't imply the taking of lives. So law enforcement agencies in general prefer to focus their resources and manpower on what they consider to be more serious, dangerous crimes.

MICHAEL SCHARF: So, we could do it, but it's just not something that's important enough to do.

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20. See, e.g., *National Stolen Art File*, FEDERAL BUREAU OF INVESTIGATION, <https://www.fbi.gov/investigate/violent-crime/art-theft/national-stolen-art-file> (last visited Nov. 29, 2016) [<https://perma.cc/3UY2-Y95Z>].

MILENA STERIO: Sure, and let me just mention this, there's actually a commercial company based in London called the Art Loss Register,<sup>21</sup> which is a computerized international database which works for profit and does precisely that. It establishes a registry, tries to keep track of stolen objects, and then tries to help with the restitution—for a hefty fee. The fees are based on the percentage of the value of the stolen object. So, if we were dealing with a Gustav Klimt painting that is worth, let's say, \$10 million, the company might charge something like five percent and so that's a very hefty fee.

MICHAEL SCHARF: Paul, are you back with us from D.C.?

PAUL WILLIAMS: I'm back with you guys.

MICHAEL SCHARF: So, let me ask you a follow-up. Especially in times of conflict, it's easy for cultural artifacts to be looted and smuggled from their country of origin. You spend a lot of time in the Middle East with your negotiating teams, so you see that first hand. Is there anything being done to prevent the current looting in Syria and Iraq so that future repatriation efforts will not be necessary?

PAUL WILLIAMS: Unfortunately, I think Milena hit the nail on the head when she said that there's essentially this culture of impunity that's developed because antiquities are not really a high priority for law enforcement. This sort of laissez-faire approach to basically putting an end to the illicit trade has led to a situation where the Islamic State—which is a terrorist organization we're all familiar with and which has targeted European as well as American interests—raises anywhere from \$200 million to \$8 billion a year through the sale of conflict antiquities. Quite frankly, you could call these “blood antiquities,” and the problem is that this regime that allows the Elgin Marbles to stay in the United Kingdom is that exact same regime that the international community is now trying to apply to ISIS to stop this trade, and they've been hugely, hugely ineffective. You essentially have these various streams, or pathways, of trade for illegal antiquities now becoming pathways for a trade of conflict, and blood antiquities that are funding terrorist organizations that are directly interested in attacking Europeans, Americans, and other citizens. So, I think we're in very desperate times and we don't have a legal regime or, quite frankly, a policing regime that's up to snuff to deal with it.

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21. THE ART LOSS REGISTER, <http://www.artloss.com/en> (last visited Nov. 29, 2016) [<https://perma.cc/UK53-TY3H>].



MICHAEL SCHARF: And without this registry that Milena was talking about, you could literally go to an auction at Sotheby's and be buying items that were looted from Palmyra and other places by ISIS, right?

PAUL WILLIAMS: And you could do it knowingly and get away with it.

MICHAEL SCHARF: Wow. So, with that, let's take another short break, and when we return we'll talk about international criminal responsibility for destruction of cultural objects. Stay with us.

————— Station Break —————

MICHAEL SCHARF: This is Michael Scharf, and we're back with Talking Foreign Policy. I'm joined today by experts in international law and diplomacy, and we've been talking about international art disputes. In this final segment of our broadcast, we'll discuss the hurdles to achieving international criminal responsibility for destroying archeological sites and cultural artifacts. You know, in the past few years, the world has been shocked when the Taliban dynamited the 1,700-year-old giant Buddha statues carved into a mountain in Afghanistan,<sup>22</sup> when the Islamic militants destroyed historic shrines and libraries and tombs in Timbuktu, Mali,<sup>23</sup> and most recently, when ISIS bulldozed ancient temple complexes in Palmyra, Syria, and apparently sold the artifacts on the black market.<sup>24</sup> Let's start off with our international peace negotiator, Paul Williams, who is in Washington, D.C. Paul, why is it important to seek individual accountability for the destruction of cultural artifacts in conflict zones?

PAUL WILLIAMS: Well, Mike, this is a very important and a very tricky question, because when you talk about the Buddha statues, the shrines, the libraries, we're all offended and traumatized, to a degree. But when you seek accountability for the individuals who destroyed these things at the same forum where we're seeking accountability for people who've committed mass torture, mass rape, possibly genocide, crimes against humanity, folks start to argue that it's only a statue, it's only a library,

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22. See Ahmed Rashid, *After 1,700 years, Buddhas Fall to Taliban Dynamite*, TELEGRAPH (Mar. 12, 2001, 12:00 AM), <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/1326063/After-1700-years-Buddhas-fall-to-Taliban-dynamite.html> [https://perma.cc/KYE9-JDJX].
  23. See Amir Ahmed, *Mali Islamists Destroy Tombs in Timbuktu*, CNN (Oct. 19, 2012, 5:28 AM), <http://www.cnn.com/2012/10/18/world/africa/mali-shrines/> [https://perma.cc/6HEV-97F5].
  24. See *Following the Trail of Syria's Looted History*, CBS NEWS (Sept. 9, 2015, 6:57 AM), <http://www.cbsnews.com/news/isis-looted-syrian-ancient-artifacts-black-market-us-and-europe/> [https://perma.cc/9JU9-QFKB].

it's cultural property, it's not mass rape, it's not mass torture. But the reality, Michael, is that most of these conflicts are about destroying the identity, destroying the "other," be it ethnic, religious, cultural. And part of that effort to destroy the other group is oftentimes destroying their cultural heritage. So destroying the libraries, the shrines, the statues is part and parcel of the war crime of seeking to either exterminate or destroy or severely traumatize the other party to the conflict. It's also hugely important for reconciliation. A lot of these objects are symbols that inspire national unity. If they're destroyed, then when you do have an end to the conflict and you're seeking reconciliation and reunification, you don't have those cultural symbols, those indicators of national unity that people can rally behind. Instead, you have a legacy of anger, division, retaliation, and revenge. So there's a huge need to prosecute those who destroy cultural artifacts in conflict zones.

MICHAEL SCHARF: Let's turn to Mark Ellis, the Director of the International Bar Association. Mark, everything that Paul says seems so obvious. Why is it only now that we are seeing a more focused effort on prosecuting the crime of destroying cultural heritage?

MARK ELLIS: It's been fascinating listening to this, because we're trying to distinguish between the laws that are on the book, that should prevent this type of act—and they've existed for hundreds of years, from the 1800s through the Geneva Conventions during the war, up to, Milena had mentioned, the 1954 Hague Convention on the Protection of Cultural Properties. The laws exist. But enforcing them, becoming aware of them is something different. And I think it has changed, for two reasons. One, as we often talk about, is social media. We're getting more information; we're seeing this first-hand. We're not reading about it in a report later on, we're witnessing it twenty-four hours later. And oftentimes we're witnessing—because those that are actually doing the damage, destroying the cultural property, are doing so because it's part of their ethos—they're filming it, they're putting it on YouTube. We're aware of this, and it is a massive, massive problem, as Paul Williams has just stated. And second, I think we should give credit to these emerging international criminal courts, particularly with the International Criminal Tribunal for the Former Yugoslavia, because they started to initiate legal proceedings, legal definitions within their statutes to allow for this accountability aspect. So, those would be the two important areas.

MICHAEL SCHARF: Mark, let me ask you a personal question. When I first met you, before you were Director of the IBA, you were the Director of the American Bar Association's Central European Law Initiative. And you were stationed for long periods of time in Sarajevo

during the war, the Yugoslav conflict. Is that when you became aware of the impact of cultural destruction?

MARK ELLIS: Without doubt, it was a very personal journey for me, having lived in Yugoslavia before the war, lived there after the war, and as you've just indicated lived there [for] a time during the war. And it's interesting because Yugoslavia brought to the attention of the world this terminology of "ethnic cleansing" and clearly, we witnessed it. But, for me, the ethnic cleansing I saw was on a spectrum. You certainly had ethnic cleansing of people, but there is no doubt that during that war there was ethnic cleansing of the *identity* of people. And that was very directed and very specific and it was there to destroy the cultural aspects of a people. And by destroying their identity, you would commit this additional crime. And so yes, watching that—watching museums being destroyed on purpose, watching churches, museums, all of this—it was a part of the direction of the war.

MICHAEL SCHARF: And the great bridge at Mostar.

MARK ELLIS: Mostar—the old town of Dubrovnik that was purposely bombed. I was sitting in Sarajevo during the time when the National Library, this great library in Sarajevo, was being bombed. It was being bombed from the hills of Sarajevo.<sup>25</sup> It wasn't for any other purpose other than to destroy the history of a people. That was it.

MICHAEL SCHARF: So, you mentioned the creation of the Yugoslavia tribunal. That was the first international tribunal since Nuremberg. And you were part, as many of us were in this room, of the creation of that tribunal. It's the first tribunal to actually try cases involving the destruction of cultural property. Could you tell us about some of that?

MARK ELLIS: Well, that's exactly right. The genesis of that was what was occurring in Sarajevo, in the former Yugoslavia during the war, since we were seeing this directive of trying to eliminate the culture of a people. When the U.N. Security Council then created this new tribunal for Yugoslavia, to bring to account those who have committed crimes, they specifically focused on this act, on this crime, based on the conventions and regulations and declarations that came before it. And so you have within the statute of this tribunal a specific provision under war crimes that deals with this type of destruction and the court went forward with eleven important cases that focused in this area. So, a

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25. For photos of the library before and after its post-war reconstruction, see *Sarajevo Reopens Historic City Hall and Library Destroyed in War*, TELEGRAPH (May 9, 2014, 3:43 PM), <http://www.telegraph.co.uk/news/worldnews/europe/bosnia/10819836/Sarajevo-reopens-historic-city-hall-and-library-destroyed-in-war.html> [<https://perma.cc/7V6S-K6HE>].

very important development in international law was what occurred by this particular tribunal because of the atrocities that were committed in the former Yugoslavia, both against people and cultural property.

MICHAEL SCHARF: But, as I understand it, nobody was ever tried and convicted only for destruction of cultural property. It was a sort of an “and,” an additional count in these cases. Is that right?

MARK ELLIS: That is correct. And it’s always a little bit surprising for me that that was the case, and I think this is just the process of development in law, and that is why you now have in the International Criminal Court the first case that’s focusing solely on the destruction of cultural heritage.

MICHAEL SCHARF: All right, let’s talk about that case. This is the case of an Islamic militant named Al Mahdi, who has been prosecuted for the destruction of ancient cultural sites in Timbuktu, Mali.<sup>26</sup> And, interestingly, Al Mahdi has entered a guilty plea. So, let’s go to Bill Schabas. Bill is one of the people on this planet who has written the most about the International Criminal Court and its proceedings. There have been a number of commentators, Bill, who have argued that the ICC prosecutor should focus on the massacre of people, rather than the destruction of property.<sup>27</sup> The Al Mahdi case seems to challenge the notion we were talking about that property is a second-rate crime. But what do you think? Should cultural property crimes be viewed as secondary or equal to crimes such as mass rape, torture, murder, and even genocide?

BILL SCHABAS: I don’t think we have to get into deciding which one is more important or whether they’re equal or unequal. The fact is, of course, the prosecutor of the International Criminal Court has to focus on the loss of human life and crimes that involve violence against human dignity. That said, I think it’s perfectly legitimate and important that the prosecutor also deals with crimes like the destruction of cultural property, as she’s done in this case. It’s very easy to second guess the prosecutor, and I’ve been guilty of it myself on many occasions. We look at the decisions she makes—it’s a very hard job. But in this situation, she’s picked one case, it was an

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26. *See Ahmad al-Faqi al-Mahdi: The Vandal of Timbuktu*, BBC (Sept. 27, 2016), <http://www.bbc.com/news/world-africa-37438360> [<https://perma.cc/D7JX-7YJW>].

27. *See, e.g.,* Johnathan Jones, *Destroying Priceless Art is Vile and Offensive—But It Is Not a War Crime*, GUARDIAN (Aug. 22, 2016, 9:24 AM), <https://www.theguardian.com/artanddesign/jonathanjonesblog/2016/aug/22/ahmad-al-mahdi-war-crimes-the-hague-destroying-mausoleums-timbuktu> [<https://perma.cc/A9NP-R2RG>].

inexpensive trial because he pleaded guilty and he was cooperative. She's made a good point with it, and I say hats off on that score to her for doing it. I wouldn't want to see that become her obsession or the sole priority of the court, but nothing wrong with doing it. I don't think people who say she shouldn't do it because it's not serious enough have a strong argument.

MICHAEL SCHARF: You know, the whole concept of "Timbuktu" in the United States was a concept of a place that was far-off and exotic—what actually did they destroy? What are we talking about here?

BILL SCHABAS: Well, the main destruction—and again, this was not even a case of ethnic cleansing, this was a case of religious fundamentalism, of a religious fundamentalist group that disagreed with the religious practices of people in Timbuktu. They're all Muslims; they're debating amongst themselves about what the significance is of these objects, which were tombs and a mosque, and that's what Al Mahdi went and destroyed. It's all been rebuilt now,<sup>28</sup> and people will quarrel about whether the rebuilding—like the bridge at Mostar, by the way, which has also been rebuilt. Nobody's proposing we rebuild the Parthenon, but sometimes we rebuild them and actually they're as good as new when it's all done.

MICHAEL SCHARF: So, Milena, why is this Al Mahdi case a potentially significant precedent for the International Criminal Court and the world community?

MILENA STERIO: Well, sure. Bill has already talked about some of this. This case has really allowed the International Criminal Court to reposition itself as a court that's relevant, because this case took relatively little time and little resources. Within about two years, the defendant was identified, transferred to the custody of the court, and then he pled guilty, as Bill has already said, and he will be sentenced a little bit later in September 2016.<sup>29</sup> This was the first ever guilty plea by any ICC defendant, it was the first ever prosecution for the crime of destruction of cultural property, and it was the first ever Islamic militant that was prosecuted in the ICC. And Al Mahdi, not only has he pled guilty, but he has also promised to cooperate with the tribunal and to potentially lead the prosecutor towards other potential defendants and to reveal information about other crimes.

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28. *See Timbuktu Mausoleums in Mali Rebuilt after Destruction*, BBC (July 19, 2015), <http://www.bbc.com/news/world-africa-33587325> [<https://perma.cc/5X8E-XUM8>].

29. Al Mahdi was sentenced to nine years' imprisonment. *Al Mahdi Case*, INTERNATIONAL CRIMINAL COURT, <https://www.icc-cpi.int/mali/al-mahdi> (last visited Nov. 29, 2016) [<https://perma.cc/4659-T566>].

MICHAEL SCHARF: Well, why do you think he's doing that?

MILENA STERIO: Do you want to be a cynic about it, or not?

MICHAEL SCHARF: Yes.

MILENA STERIO: People who are cynical note that when Al Mahdi was transferred to the International Criminal Court, he was actually already imprisoned in Niger—he was sitting, serving a sentence in Niger. Some have suggested that he actually thought that serving prison time at The Hague would be much more attractive than sitting in a Niger prison. Others have also said that Al Mahdi was really the only available defendant, or the only easily available defendant to the court, and that some others who had been involved in these crimes in Timbuktu had already fled or had passed away, so he was sort of the easy defendant. And the case, by the way, is also significant because it implied cooperation with the tribunal by not only Mali, but also Niger, where Al Mahdi had been in prison.

MICHAEL SCHARF: Have any of you been to the prison in Scheveningen? I've been there, too.

BILL SCHABAS: Sure, I've been there. I mean, I went there as a visitor.  
(Laughter.)

MICHAEL SCHARF: I'm sure that's what Al Mahdi was hoping, too. Can you describe the conditions of that prison, compared to what the prison conditions might be in Niger?

BILL SCHABAS: Well, of course it's a modern European prison, and it's well-ventilated and it's clean, and all of this.

MICHAEL SCHARF: They have a basketball court, right? Big-screen TVs. They have an art center where you can do art and sculptures.

BILL SCHABAS: They have all the facilities one would expect, you're quite right. It's a humane prison. It's what prison should be.

MICHAEL SCHARF: They have five conjugal visit sites for people to bring in—

BILL SCHABAS: I would be careful about exaggerating the idea that this is a deluxe prison compared to what exists in Africa. Because for African defendants, it's true that the sanitary issues and all of this are much better in The Hague than they are in an African prison, but there are people who are very far from their families, the culture is different, the food is different, the environment is different. I think one could

exaggerate that this is a paradise, for an African prisoner to be taken to Northern Europe and fed herring and roast potatoes.

MICHAEL SCHARF: A gilded cage is still a cage, is that what they say? Mark?

MARK ELLIS: What I was going to say was—and I agree with Milena, you can see this in a cynical way, why he made that decision—but also if you read his statement in court when he was found guilty, it's actually a very moving statement. I think he's come to the recognition that he erred, and he erred in a very significant way, and he's asking for forgiveness, he wants to change his ways. He knows he's not getting out of prison anytime soon, but he recognizes that he's done wrong to the people and he's asking for forgiveness. I thought it was a very powerful statement and I would hope we would see that in the future.

MICHAEL SCHARF: But isn't he a small fry? So, Milena, the International Criminal Court is a court of last resort; it's a court that's only supposed to prosecute "the worst of the worst." How does this guy fit into those requirements?

MILENA STERIO: Sure, so you can criticize this case on two grounds—on so-called gravity and complementarity. What you're asking about is complementarity: that the ICC is really not supposed to take over national prosecutions, it's only supposed to prosecute for countries unwilling or unable to prosecute themselves. Al Mahdi was already detained by Niger authorities, he was already imprisoned there, and yet when the ICC made this request to have him transferred, Niger said, "Sure, you can have him." We might quibble about whether this case really satisfies the complementarity principles. On gravity issues, there's this idea that the ICC is really supposed to only look at the most serious crimes and prosecute those who are most responsible for those most serious crimes. Al Mahdi was really not the only one involved in the destruction of these cultural, religious propert[ies]. There were others, so we can question whether the crimes themselves are serious enough and whether Al Mahdi really is the one most responsible for having done these things.

MICHAEL SCHARF: Well, Bill Schabas then, is there an argument that he's just a scapegoat, that he's the wrong person?

BILL SCHABAS: No, I wouldn't say that. I agree with Mark when he says that the statement and the confession and everything has the ring of being genuine. I found it quite compelling as well. I'll tell you what the real problem is with the prosecution of Al Mahdi: the Rome Statute, the legal basis for the prosecution, it actually only deals with attacks on cultural property in the context of military engagements and a battlefield context, which arguably was not the case in the Al Mahdi

prosecution. Now he's pleaded guilty, so those issues have not been developed.

MICHAEL SCHARF: But doesn't the court have the duty to review the guilty plea and decide that it still comes within its statute?

BILL SCHABAS: Well, they do, and we haven't seen the judgment yet. We'll see if they decide to do it, but the issue wasn't raised in the hearing.<sup>30</sup> The problem is, there's a great deal of destruction of cultural property—the cases have already been referred to, destruction by the Taliban and by al-Qaeda—that happened when they controlled territory that was far from the battlefield. You know, when I was in Athens last week, I went to another museum, where there was an exhibition by Ai Weiwei, the great Chinese artist, and it shows one of his famous works of art—it's kind of a work of art—he takes a valuable Ming vase that's 2,000 years old, and he breaks it, drops it on the floor, and it was his way of drawing attention to what happened during the Cultural Revolution in China, when there was a great deal of destruction of old—very much like what happened in Mali, where they were destroying old cultural property.

MICHAEL SCHARF: So this is a video of him, he buys legally—

BILL SCHABAS: He bought it.

MICHAEL SCHARF: —this very expensive vase and he just throws it down and breaks it and he says, “How do you feel about that?”

BILL SCHABAS: He's making a statement, and the problem is, that's not covered by the Rome Statute, that sort of thing. The Rome Statute is very inadequate, and it's going to be very hard to prosecute those cases. So, there's a lot more work that needs to be done developing the legal framework here in order to address these problems.

MICHAEL SCHARF: Let's turn to Shannon French. You're the author of a book called *The Code of the Warrior*, which is now coming out in a second edition, that adds a whole chapter on al-Qaeda and this whole area, right? So, you've studied military behavior, you know how the military thinks. If they give this guy the nine-to-eleven years the prosecutor is asking for, or even less, do you think that is going to have a deterrent effect on others—militants—in Syria and Iraq and around the world?

SHANNON FRENCH: Well, first of all, as a scholar, like most of us, when I hear about the destruction of irreplaceable texts, for example, I think the punishment is much too weak, and I think it should be something

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30. The ICC accepted the guilty plea and convicted Al Mahdi. *See id.*



medieval. But in any case, no, genuinely I don't think deterrence is the key goal here, but it never has been in the prosecution of war crimes. The key goal is to reaffirm our own values and to try to continue to build the international consensus around what is unacceptable.

MICHAEL SCHARF: This has been one of the most fascinating broadcasts we have had, and I'm sorry to say we're coming to the end of our time. Paul Williams, Mark Ellis, Bill Schabas, Milena Sterio, and Shannon French, thank you all so much for providing your insights on art, diplomacy, and accountability. I'm Michael Scharf. You've been listening to Talking Foreign Policy.