



Article scientifique

Article

2014

Published version

Open Access

This is the published version of the publication, made available in accordance with the publisher's policy.

---

## Protecting Holy Heritage in Italy—A Critical Assessment through the Prism of International Law

---

Cechi, Alessandro

### How to cite

CHECHI, Alessandro. Protecting Holy Heritage in Italy—A Critical Assessment through the Prism of International Law. In: International Journal of Cultural Property, 2014, vol. 21, n° 04, p. 397–421. doi: 10.1017/S0940739114000253

This publication URL: <https://archive-ouverte.unige.ch/unige:101371>

Publication DOI: [10.1017/S0940739114000253](https://doi.org/10.1017/S0940739114000253)

# Protecting Holy Heritage in Italy—A Critical Assessment through the Prism of International Law

Alessandro Chechi\*

**Abstract:** In Italy, churches, chapels, and monasteries are often rich in precious artifacts. However, these religious buildings cannot be easily protected from theft because either they have no antitheft measures or they are abandoned. This article examines the problematic state of the holy heritage in the Italian territory from a legal perspective. In particular, it looks at Italian legislation and the international instruments entered into by the Italian State. The article argues that this protective legal regime is affected by various shortcomings and loopholes that mostly relate to the implementation of existing legal standards. Notably, it appears that these problems originate from the fact that most of the holy heritage situated in Italy belongs to the Catholic Church, and at the same time, it constitutes the historical and artistic patrimony of the Italian State. The article calls for a more efficient management of such precious vestiges by the stakeholders involved and for a revision of the domestic legislation with a view of properly incorporating the achievements of international cultural heritage law.

## 1. INTRODUCTION

Every religion has its own holy heritage. This is made of buildings, monuments, shrines, landscapes, and sites, as well as objects of worship such as books, icons, sculptures, and relics of saints. Moreover, there are the objects made for ceremonial purposes and also decorative elements such as paintings and stained glass windows.

---

\*Art-Law Centre, University of Geneva, Switzerland; Ph.D. in International Law, European University Institute, Italy. Email: [alessandro.chechi@unige.ch](mailto:alessandro.chechi@unige.ch).

ACKNOWLEDGMENTS: I wish to thank Professor Leonard Hammer and the three anonymous reviewers for their comments on earlier versions. All errors remain my own.

Less obvious treasures are archives and libraries. This treasury is of special spiritual significance to believers and communities in that it is essential to perpetuate a faith and to perform ceremonies. For instance, according to the *Catechism of the Catholic Church*, sacred art should evoke and glorify the transcendent mystery of God and draw people to adoration, to prayer, and to the love of God.<sup>1</sup>

The Roman Catholic Church has been a real patron and promoter of art.<sup>2</sup> Over the centuries, craftspeople, architects, painters, and sculptors have been called upon to erect monuments, transform temples, and embellish churches to serve the religious tasks of the Roman Church, specifically teaching the Doctrine to the illiterate. For many believers who could not read or write, representations of the Bible were concrete forms of catechesis.<sup>3</sup> The Church has never adopted any particular style of art as its own, but has recognized styles from every period, according to the talents of artists, the historical circumstances, and the rituals. Nevertheless, the Church has reserved for itself the right to decide what artworks were in accordance with faith and fit for religious use.<sup>4</sup>

Many efforts have been made over time to protect these precious vestiges from destruction, desecration, and theft. The Catholic Church was the first to attempt to give a cause of action against the destruction and the looting of *res sacrae*.<sup>5</sup> One of the early endeavors to ensure the preservation of religious property occurred in 989 at the Synod of Charroux, where it was proclaimed that places of worship were protected due to the sacred nature of places and objects. Another instance dates back to 1039, when Pope Benedict IX condemned the pillage of the Cathedral of Gniezno (Poland) by Bretislav of Bohemia by stating that it was not “proper to loot God’s churches of their sanctities and articles devoted to God in any war ... since wars are waged against people only, not against objects related to Heavens and worship.” Later on, in 1462, Pope Pius II prohibited the destruction of historical monuments with the bull *Cum Almam Nostram Urbem*, whereas Pope Sixtus IV outlawed the removal of works of art from churches with his bull *Quam Provida* of 1474. The Council of Trent of 1535, while expressing its view against iconoclasm by means of a decree, added a new and very important element. It called upon bishops to instruct to the faithful about the significance and usefulness of sacred images for the purpose of conducting a truly Christian life.<sup>6</sup>

Some centuries later, in 1802, a document of Pope Pius VII included among the goods worth conserving not only those of antiquity but also all those that dated to other historical periods. Based on these instructions, on 7 April 1820 Cardinal Pacca issued a decree regarding the inventory of all cultural goods in Rome and in the Pontifical state:

Any Superior, Administrator or Rector, or individual who directs public buildings and places, ecclesiastical or secular alike, including Churches, Oratories, Convents, where collections of Statues and Paintings are preserved, Museums of Sacred and secular Antiquities, and even one or more precious artistic Objects of Rome and of the State, without person

of exception, even if privileged or very privileged, should present a very exact and distinct Note of the objects mentioned above in double copy, with a description of each piece.<sup>7</sup>

By recommending the drafting of an inventory, this edict became the inspiring model for the laws drawn up in the following centuries in many European states.<sup>8</sup> Other protective norms have been issued in more recent times. Of considerable importance is Circular Letter No. 34215, issued by Cardinal Gasparri on 1 September 1924. This was addressed to the bishops of Italy and announced the establishment of a “Special Central Commission for Sacred Art throughout Italy” with the task of promoting everywhere an attentive and correct conservation and enhancement of the sacred cultural and artistic patrimony.<sup>9</sup> Moreover, the Code of Canon Law of the Catholic Church of 1983 forbids the sale of sacred relics and the profanation of movable or immovable assets.<sup>10</sup>

This article focuses on Italy and on the most significant and famed part of its cultural and historical patrimony, the holy heritage of the Catholic Church. Indeed, the Italian territory is scattered with cathedrals, churches, convents, and museums that are rich in mosaics, manuscripts, paintings, statues, and other visual works that have been accumulated since at least the second century.<sup>11</sup> This article discusses whether the holy heritage of the Catholic Church located in Italy receives adequate legal protection from theft and illicit exportation. To provide a full understanding of the problems at stake, this article proposes a conceptualization of holy heritage (section 2) and describes the existing legal framework (section 3). In particular, it looks at the principal aspects of Italian laws, the agreements concluded between Italy and the Holy See, and the instruments adopted under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and of the European Union (EU). This survey will demonstrate that, although there is no multilateral agreement establishing a special regime for holy places, existing rules and procedures can be applicable to such properties. Next, the article critically analyzes the Italian legislation and questions whether the approach adopted by the Italian State and the Holy See is adequate to thwart the illicit trafficking in religious art (section 4). Finally, it draws some brief concluding remarks (section 5).

## 2. DEFINING HOLY HERITAGE

According to ancient Roman law, the objects belonging to the realm of faith were classified as either sacred (*sacræ*), religious (*religiosæ*), or holy (*sanctæ*). Gaius explained that the sacred nature depended on the will of religious authorities, and its attribution (or withdrawal) followed a ceremony carried out by them. Religious materials pertained to funerary rituals, cemeteries, and graves. Even in this case, the religious attribute depended on a human decision. Finally, objects could be defined as holy if dedicated to or reserved for gods and goddess. As such, they were subjected to a sort of godly law. Despite the differences, these three categories had

some common features. On the one hand, they were inalienable (*extra commercium*) and inappropriable (*extra patrimonium*). On the other hand, the violation of their special status entailed severe consequences. The most serious punishments followed damage to *res sanctae*. In these cases, the author of the transgression had to be put to death.<sup>12</sup>

Today there exists no official or universally accepted definition of holy heritage, and laws and policies differ from country to country. It is not possible, within the limited space of this article, to provide a detailed, comparative examination of state practices. Therefore, this section will attempt to provide a definition of holy heritage by focusing only on the Italian legal system and on the treaties adopted under the aegis of UNESCO. It is to these international instruments that we now turn.

The treaties regarding the protection of the *tangible* heritage from the vicissitudes of war and illicit trafficking merely establish that they apply to “monuments,” “buildings,” “centers,” and (movable) “cultural property” as long as these are important, *inter alia*, on “religious” grounds.<sup>13</sup> In particular, the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970 (1970 UNESCO Convention) defines as illicit the acquisition and import of cultural property stolen from, *inter alia*, religious monuments or similar institutions (Article 7(b)(i)). It is also worth noting that the Statutes of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP) establishes that a “request for the restitution or return ... may be made concerning any cultural property which has a fundamental significance from the point of view of the spiritual values ... of the people of a ... State...” (Article 3(2)). The 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (WHC) does not define the notion of “cultural heritage” on the basis of religious or spiritual significance. However, the Operational Guidelines for the Implementation of the World Heritage Convention clarify that the inscription of properties on the list set under the WHC (the WHC List) is justifiable by virtue of their religious meanings or purposes. In effect, some of the criteria for the assessment of “outstanding universal value” include terms that evoke the features of religious sites. Indeed, nominated properties should “exhibit an important interchange of human values,” “bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared,” or “be directly or tangibly associated with events or living traditions ... or with beliefs.”<sup>14</sup>

The international instruments regarding the *intangible* cultural heritage are no less elusive. In fact, there is no reference to religion in the 2001 UNESCO Universal Declaration on Cultural Diversity or in the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage. In the latter case, during negotiations it was accepted that religions were to be excluded from the notion of intangible cultural heritage insofar as their canonical, theological, and orthodox aspects were concerned. Nevertheless, rituals and popular customs concerning practices and expressions associated with a faith do qualify as intangible heritage.<sup>15</sup>

In light of the foregoing overview, it can be argued that—in contrast to the conceptualization offered by ancient Roman law—the definition of holy heritage embraces every object that presents at least two of the following three layers. The first is the religious (or spiritual) layer. This explains why certain buildings, places, and objects (which are associated with divine manifestations or supernatural events) are essential to a specific living religious group to manifest, practice, develop, and teach its religious customs and ceremonies. These spaces or objects have a special value as intermediaries with a power beyond the people or used in ceremonies that attempt to connect the people with that power.<sup>16</sup> The second is the symbolic (or profane) layer. This relates to the emotional and historical relationship between a space or an item, including the rituals, the memories, and the legends that surround them, and the identity of individuals or of a given community. For instance, many sanctuaries have played an important role in the history of a religion and hence have a profound spiritual connection with peoples, *be they religious or not*, which continuously endeavor to maintain and protect them. The third is the artistic (or cultural) layer. This refers to the fact that religious artifacts, churches, monasteries, shrines, mosques, synagogues, and temples and their decorative elements often have an inestimable cultural importance—and often a monetary value.

All in all, this three-layer conceptualization explains why monuments and artifacts are treasured also by peoples other than the communities of believers to which such heritage is ascribed. In other words, whereas the cultural and historical heritage of the Catholic Church located in Italy remain the witnesses of the age-old spiritual traditions of generations of Christians, humanity as a whole regards such vestiges as a common heritage and recognizes the common responsibility to safeguard them for future generations.

This three-layer understanding of holy heritage is well reflected by Italian legislation. This is evidenced by Article 2(2) of the Code of Cultural Heritage and Landscape (Cultural Heritage Code).<sup>17</sup> According to this provision, cultural objects are “the immovable and movable objects that ... present artistic, historical, archaeological, ethno-anthropological, archival and bibliographical interest and ... any other object identified by law which constitutes material evidence *having the value of civilization*.”<sup>18</sup> The broad notion of “civilization” emphasizes that art and culture are human-centered concepts that change depending on what is perceived as valuable according to time and place, and that reflect the national, regional, local, ethnic, or religious heritage and identity of individuals or communities. If compared to the static definition provided by previous legislation,<sup>19</sup> it becomes evident that Article 2(2) put emphasis on the manifold functions of cultural heritage and on its evolutionary and dynamic nature. Therefore, according to Article 2(2) any cultural object—irrespective of its aesthetic significance or monetary value—embodies distinctive spiritual, historical, and intellectual values that are collectively created, valued, shared, and handed down from generation to generation within a given human group.

This linkage was unveiled by the Italian Constitutional Court in 1990: It affirmed that when the value, or interest, of certain objects derives from their connection with past events related to the history, civilization, or customs of a nation or a group, such a value is not distinct or detached from the objects, but penetrate into them. These objects become the material supports of such value.<sup>20</sup> This means that any protective system must necessarily take account of these material and immaterial components.

The three-layer conceptualization delineated above also emerges from the reading of Articles 9(1)<sup>21</sup> and 10(3)<sup>22</sup> of the Cultural Heritage Code and Article 16 of Law No. 222 of 20 May 1985.<sup>23</sup> On the one hand, these provisions acknowledge that the objects belonging to the Catholic Church are the repository of religious and cultural interests given that certain places and objects of artistic significance are used by worshippers to express their devotion and by the clergy for missionary purposes, catechesis, and Christian education. On the other hand, these norms evidence the collaboration of the Italian Republic and the Holy See for the protection of the properties of *cultural* and *religious* interest—even if these belong to ecclesiastical bodies and institutions—and envisage a coordination of protection activities with the *needs of worship*.<sup>24</sup>

### 3. THE LEGAL FRAMEWORK

Italy is one of the richest nations in terms of cultural heritage. It is therefore not surprising that its patrimony is subject to extensive state regulation and control. This protective legal framework, which is one of the strictest in Europe, is scattered in a number of interrelated instruments, which include the Constitution, the Civil Code, and the treaties entered into by the Italian State. The following sections focus on these instruments.

#### 3.1. Domestic Legislation

A. The Constitution of 1948 establishes the foundation for the protection of the national heritage. Article 9 proclaims that “[t]he Republic ... promotes cultural development and ... safeguards the ... historic and artistic heritage of Italy.” The meaning of this provision can be fully understood if read together with other articles. In this manner, it becomes clear that the protection and promotion of the national cultural patrimony is necessary to contribute to the cultural enrichment and spiritual uplifting of each individual and to “remove all economic and social obstacles that ... prevent full individual development” (Article 3) and the enjoyment of “the inviolable human rights” recognized by the Italian Republic (Article 2). These include the right to freedom of religion (Article 19). In this respect, Article 8 guarantees that all religious denominations other than Catholicism are equally free before the law and have the right to organize themselves according to their own norms, provided they do not conflict with the Italian legal system. In sum, Article 9

requires the Italian State to conserve the national historical and artistic patrimony and to actively encourage the development of culture in all its meanings.

B. The Civil Code of 1942 contains a few key articles that are worthy of examination. Article 822 defines the extent of the state's *demanio* (public domain): Subject to designation, all state-owned immovable property of historic, archaeological or artistic interest, as well as the collections of public museums, painting galleries, archives and libraries, belongs to the *demanio*. Article 823 explains that the state's *demanio* is inalienable and cannot be subject to third parties' rights. Accordingly, the property in the public domain cannot be acquired through commercial transactions, even if in good faith, or through *usucapione* (acquisitive prescription). Hence state-owned cultural property are *extra commercium*. Finally, Article 831 explicitly prohibits the use of buildings dedicated to Catholic worship for other purposes.

C. The Cultural Heritage Code is the primary piece of legislation regulating the protection of the national cultural patrimony. It is impossible to deal with all details of the Cultural Heritage Code within the confines of this article. An examination of the key provisions will suffice.

As mentioned, Article 2 of the Cultural Heritage Code provides a broad definition of cultural heritage, whereas Articles 53 and 54 pinpoint the categories of objects forming the inalienable "cultural domain," thereby reiterating the abovementioned norms of the Civil Code. Articles 10 and 11 contain a (non-exhaustive) list of protected objects. More specifically, Article 10 distinguishes between state-owned (paras. 1 and 2) and non-state-owned (para. 3) cultural objects. This distinction entails different degrees of protection and procedural rules. In this respect, Article 12 establishes a special procedure (*verifica*) to ascertain whether the objects indicated in Article 10(1)—"belonging to the State, the Regions, the other territorial government bodies, as well as to any other body or public institution and private non-profit legal person, including recognized ecclesiastical bodies"—have an "artistic, historical, archaeological or ethno-anthropological interest." Instead, Article 10(3) provides that the protection of the objects belonging to private entities—that is, entities other than those indicated in Article 10(1)—depends on the procedure set forth in Article 13 (*dichiarazione*). According to Article 13, an object may be defined as "cultural" provided that it is "particularly important" or expresses an "exceptional cultural interest."

Evidently, the statute's language gives the government much discretion as to which objects it chooses to protect. On the one hand, if the government concludes, following the procedure under Article 12, that an object "belonging to the State" or to "recognized ecclesiastical bodies" does not have a cultural value, it can be removed from the *demanio* and sold on the market (Article 12(4), (5), and (6)) and even exported. On the other hand, as Article 13 requires a qualified ("particularly important" or "exceptional") "artistic, historical, archaeological or

ethno-anthropological interest,” it is more arduous for non-state-owned objects to fall within the scope of the Cultural Heritage Code.

These norms can be criticized in that they set up procedures that are “constitutive” of a cultural value and not merely “declaratory.” In other words, such norms contradict the idea—expressed, *inter alia*, in Article 2 of the Cultural Heritage Code—that “artistic, historical, archaeological or ethno-anthropological” qualities are inherent to an object. Accordingly, their existence should not depend on the outcome of an administrative procedure.

The Cultural Heritage Code has been modified several times since 2004. Now various provisions explicitly refer to “recognized ecclesiastical bodies” as a special category of non-state owners. For instance, these “recognized ecclesiastical bodies,” as owners, possessor, or holders of objects forming part of the cultural patrimony of the nation, are called upon to guarantee their conservation (Articles 1 and 10(1)). Furthermore, the Cultural Heritage Code states that the sale of the objects belonging to such bodies must be authorized by the Ministry of Cultural Heritage and Activities, which must verify that the sale does not put at risk the conservation or the public enjoyment of the cultural property concerned (Article 56(4bis)).

### *3.2. The Bilateral Agreements between the Italian State and the Holy See*

The Lateran Pacts were concluded on 11 February 1929 between the Kingdom of Italy and the Holy See.<sup>25</sup> The Lateran Pacts include the Lateran Treaty, the Financial Convention and the Lateran Concordat. Article 2 of the Lateran Treaty establishes that the Italian State recognizes “the sovereignty of the Holy See in the field of international relations as an attribute that pertains to the very nature of the Holy See, in conformity with its traditions and with the demands of its mission in the world.” Moreover, the Preamble and Article 3 of the Treaty affirm that Italy recognizes the full ownership and the sovereign authority and jurisdiction of the Holy See over the Vatican. As a consequence, the Lateran Pacts subjected the inhabitants of the Vatican to the sovereign authority of the Holy See while on the territory of Vatican City.<sup>26</sup> Moreover, Article 4 forbids any intervention in Vatican City on the part of the Italian government or any authority other than that of the Holy See. In particular, St. Peter’s Square is open to the public and is subject to supervision by the Italian police authorities. But should the Holy See consider it necessary to temporarily prohibit the public from free access to the Square, the Italian authorities must withdraw beyond the outer lines of Bernini’s Colonnade and the extension thereof. Likewise, the artistic and historical treasures existing within Vatican City are open to scholars and visitors, but the Holy See is free to regulate their admission. With regard to the regime of the shrines located outside the Vatican area, they shall enjoy the status of extraterritoriality. The Lateran Treaty refers to the patriarchal Basilicas of St. John Lateran, St. Mary Major, and St. Paul, and to the

Lateran Palace (Articles 13–16). According to Article 27 of the Lateran Concordat, the basilicas outside Rome (the basilicas of the Santa Casa in Loreto, San Francesco in Assisi, and Sant'Antonio in Padua) have been ceded to the Holy See, but they do not enjoy any extraterritorial status.<sup>27</sup>

Ostensibly, the Lateran Pacts did not dedicate much attention to the issue of holy heritage protection. In this respect, the Agreement on the Modification of the Concordat of 1984 is more pertinent for the present study.<sup>28</sup>

With this agreement, the Italian Republic and the Holy See “reaffirmed that the State and the Catholic Church are each in their own way independent and sovereign” (Article 1). Moreover, the Italian State undertook to collaborate with the Holy See for the protection of the common artistic and religious heritage. Article 12(1) stresses that the “Holy See and the Italian Republic, in their respective roles, shall collaborate for the protection of their historical and artistic heritage,” and that, “[w]ith the aim of harmonizing the application of Italian law with religious requirements, the competent bodies of both Parties shall agree upon appropriate measures to safeguard, utilize and enjoy property of cultural and religious interest belonging to ecclesiastical bodies and institutions.” Moreover, the Holy See committed to “pursue any excavations necessary and the removal of sacred relics ... in accordance with State law and to any rights of third parties” (Article 12(2)). On the same footing, Article 5 provides that “[b]uildings open for worship cannot be requisitioned, occupied, expropriated or demolished save in exceptional circumstances and by prior agreement with the relevant ecclesiastical authorities. Except in emergencies, the police force shall not enter places of worship in the pursuance of their duties without prior notification to the ecclesiastical authorities.”

The 1984 Agreement was followed by three understandings. The first was adopted in 1996 with the objective to define the forms of the collaboration between Italy and the Holy See and to identify the competent authorities for each side.<sup>29</sup> The parties also established a Central Office for Ecclesiastical Cultural Heritage of Religious Interest (Central Office) in order to ensure continuity to the bilateral cooperation, to examine issues of common interest and to propose guidelines for the best development of cooperation. The second understanding was signed in 2000 and concerned archives and libraries.<sup>30</sup> The third understanding was adopted in 2005 in order to take account of, *inter alia*, the enactment of the Cultural Heritage Code.<sup>31</sup>

The latter accord is important because, on the one hand, it reiterated the norms of the 1996 understanding on the role of the Central Office and on the periodic meetings of the representatives of the Italian Ministry and of the Episcopal Conference, as the best manner to define proposals and action programs. On the other hand, the 2005 Understanding introduced significant novelties. First, Article 2(3) underlines the importance of the inventorying and cataloguing of cultural objects as the basis for their correct understanding and preservation. In this respect, it is worth mentioning the document titled “The Inventory and Catalogue of the Cultural Heritage of the Church,”<sup>32</sup> which was issued in 1999 by the Pontifical

Commission for the Cultural Heritage of the Church.<sup>33</sup> After a description of the interest shown by the Church for its cultural patrimony, the document offered to bishops, church bodies, and institutions located in Italy and abroad a general orientation for inventory procedures of their art-historical patrimony, which should be progressively integrated within a cataloguing system, on the basis of their specific ecclesial needs, political situation, economic resources and personnel available. Second, Article 2(4) of the 2005 Understanding affirms that, without prejudice to the Italian norms in force, the cultural objects of religious interest belonging to ecclesiastical bodies and institutions should be preserved *in situ*. The removal and transfer of an artwork to a more secure environment can only be decided jointly by the parties, namely, the Italian Ministry and of the Episcopal Conference. The same collaboration is envisaged with regard to materials that must be removed from their original location when such spaces have lost their religious function because they have been destroyed or have been turned over permanently to profane use by decree of the competent ecclesiastical authorities. The logic behind the removal is simple: Objects of religious interest should not be deprived of their function. The third novelty concerns maintenance activities (Article 2(5)) and archaeological excavations and researches to be carried out in buildings open to worship (Article 6), and the issue of the access to such spaces (Articles 2(7) and 6(3)). Besides calling for the respect of existing legislation, these provisions establish that the agreement of the parties is essential in order to strike a balance between the needs of worship with the necessity to carry out such activities. Last, there is the issue of security. Article 2(6) of the Understanding affirms that the Ministry and the Episcopal Conference shall provide adequate measures for to enhance the protection of buildings dedicated to worship and the property threatened by theft, degradation and abandonment.<sup>34</sup>

### *3.3. International Conventions and European Union Instruments*

Various international organizations are at the forefront in the fight against theft and the smuggling of cultural objects. These certainly include INTERPOL, UNESCO, and the EU. UNESCO has come to play a leading role also in the specific area of the protection of holy heritage. Besides conventions, whose content is summarized below, it is worth noting that UNESCO convened an international seminar in Kiev in 2010 on the role of religious communities in the management of properties inscribed in the WHC List.<sup>35</sup> This seminar provided the first opportunity for discussing at the international level the development of a new comprehensive approach to the protection of holy heritage<sup>36</sup> and for advancing a new understanding of holy heritage: It encompasses not only sites of religious and cultural importance but also any resource enhancing intercultural dialogue and understanding between all communities.

A. The UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 (the 1954 UNESCO Convention) provides that, in the

event of armed conflict, the States Parties must respect the cultural property located in their own territory as well as in other states; refrain from any use of the property and its immediate surroundings for military purposes; and refrain from directing any act of hostility against such property (Article 4(1)). States Parties further undertake to prohibit; prevent; and, if necessary, put a stop to any form of theft, pillage, or misappropriation of cultural property (Article 4(3)). Moreover, the occupying force is obliged to aid the occupied state in the preservation of its patrimony (Article 5). The 1954 UNESCO Convention also encourages the marking of immovable cultural property with a distinctive emblem (Articles 6 and 16). Article 8 of the 1954 UNESCO Convention provides that, subject to certain conditions, "... a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of great importance" may be placed under "special protection" by way of their inscription on the "International Register of Cultural Property under Special Protection." The whole of Vatican City State was granted special protection as a center containing monuments with the registration of 18 January 1960.<sup>37</sup> Detailed provisions on the removal and return of cultural property are set forth in the First Protocol. Pursuant to Article I, occupying powers must prevent and avoid any exportation of cultural objects from occupied territories and, in the event that such exportation would occur, to provide restitution.

B. The 1970 UNESCO Convention operates mainly by imposing obligations on States Parties. They are requested to set up specific services for the protection of cultural property (Article 5); introduce a certification system (Article 6); impose penalties (Article 8); and control trade in cultural objects (Article 10(a)). There is also a provision whereby the States Parties undertake, consistent with municipal laws, "to admit actions for recovery of lost or stolen items ... brought by or on behalf of the rightful owners" and "to facilitate recovery" of objects declared "inalienable" by the state of origin (Article 13(c) and (d)). Under Article 7(a) States Parties undertake to adopt measures to discourage state-controlled museums and similar public institutions from acquiring cultural property illegally exported after the 1970 Convention has entered into force. Article 7(b) circumscribes the duty of return to cultural objects stolen from a limited range of sources, that is, "from a museum or a religious or secular public monument or similar institution" and "provided that such property is documented as appertaining to the inventory of that institution." Accordingly, the 1970 Convention does not cover the objects removed from private individuals and, notably, the non-inventoried devotional objects and ornaments kept in Christian churches and chapels.

C. The 1972 WHC presents a well-developed machinery that includes a list of specifically designated cultural and natural properties having "outstanding universal value" (Article 11). The WHC List is constantly updated by the WHC Committee. This committee scrutinizes whether the site(s) nominated by States Parties can

be inscribed or not, examines reports on the state of conservation of inscribed properties, and may ask States Parties to take action when properties are not being properly managed. Therefore, the territorial state is responsible for any WHC site within its borders and has a series of obligations to preserve and protect the site. Alongside these obligations there are important mechanisms of financial aid for the territorial state. A cursory perusal of the WHC List reveals that many properties have been inscribed therein for their religious or spiritual connection. Among them, numerous historic cities and places possess components of religious significance and are recognized as holy by different communities. These include Jerusalem, the holy city for Judaism, Christianity, and Islam, which was inscribed in the WHC List in 1981, and Vatican City, which was inscribed in 1984.<sup>38</sup>

D. The overall goal of the 1995 UNIDROIT Convention on Stolen or Illegally Exported of Cultural Objects (UNIDROIT Convention)<sup>39</sup> is to contribute to the fight against the illicit traffic in cultural objects by addressing the problems resulting from the differing national rules and the weaknesses of the 1970 UNESCO Convention. Specifically, the 1970 UNESCO Convention admits no private action, provides a restitution procedure that is highly ineffectual, makes no reference to limitation periods, and does not deal with the issue of bona fide purchasers. The UNIDROIT Convention applies to claims of international character and deals with both theft and illicit exportation. Unlike the 1970 UNESCO Convention, the UNIDROIT Convention applies to all objects, as there is no requirement that a wrongfully removed object be inventoried or designated by the country of origin. As far as theft is concerned, the UNIDROIT Convention contains an outright obligation of restitution, even if stolen cultural objects are recovered in those systems of law that protect the good faith possessor (Article 3(1)). Any claim for restitution must be made within specific time limits (Articles 3(3) and (4)). Upon restitution of the claimed artifact, the UNIDROIT Convention entitles the bona fide purchaser to a “fair and reasonable compensation” if it is proved that he or she “exercised due diligence when acquiring the object” (Articles 4). As for illegal exportation, the UNIDROIT Convention dictates the return of cultural property through the enforcement of the export prohibitions of the country of origin, regardless of what the law of the state of location provides. This provision is particularly important because of the default rule against the enforcement of foreign export controls: Although art-rich countries can legitimately enact export control laws, they cannot create an international obligation for other states to recognize and enforce those measures. A time limitation on claims also applies (Article 5(5)). As in the case of the restitution of stolen objects, there is a provision on compensation, subject to the circumstances of the case (Article 6).

E. Finally, it is necessary to look at the EU and the special rules concerning the enforcement of the export controls for art objects of its individual Member States: Regulation 116/2009 on the Export of Cultural Goods (which has replaced and

repealed Regulation 3911/92 on the Export of Cultural Goods of 1992), and Directive 2014/60 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State (which has replaced and repealed Directive 93/7 on the Return of Cultural Objects Illegally Exported from the Territory of a Member State of 1993). As the establishment of the Internal Market on 1 January 1993 required the abolition of the internal frontiers, which would have undermined the power of Member States to prevent the illicit movement of cultural objects through the application of border controls, these measures were designed to work together to foster Member States' reciprocal recognition of domestic provisions designed to fight the illicit trade in antiquities.

Regulation 116/2009 aims to prevent the exportation outside of the EU of works of art that have been unlawfully removed from the country of origin. It sets up a procedure according to which the objects defined as national treasures and belonging to one of the categories listed in the Annex can be exported to third countries only if accompanied by an export certificate issued by the Member State of origin. Directive 2014/60 addresses the movement of cultural objects between and among EU Member States. It affirms the duty to return all art objects identified as “national treasures possessing artistic, historic or archaeological value under national legislation or administrative procedures” (Article 2(1)) that have been unlawfully removed from the territory of a Member State, and grants the right to a Member State to initiate proceedings against the possessor or the holder before the competent court in another Member State. Therefore, the courts of each Member State must enforce the export control laws of other Member States.

To conclude, it is worth noting that the scope of application of Directive 2014/60 is broader than that of its predecessor. In effect, Directive 93/7 assisted Member States in securing the return of cultural objects classed as “national treasures possessing artistic, historic or archaeological value” under national law, provided that they met one of the following conditions: (i) they fell within one of the categories listed in the Annex to the Directive; or (ii) they formed an integral part of public collections recorded in the inventories of museums, archives, or libraries or those of ecclesiastical institutions. As hinted above, these two conditions do not appear in the text of Directive 2014/60. This is potentially a concern for collectors and art trade professionals. On the other hand, this means that objects that have not been inventoried or documented—this is the case of many ecclesiastical items, as it shall be demonstrated in the next section—fall within the protective regime provided for by this regional instrument.

#### 4. OBSTACLES TO THE PROTECTION OF HOLY HERITAGE

The preceding section shows that the Italian State and the Holy See have engaged in various forms of cooperation in order to reconcile two different interests: the preservation of the religious and cultural patrimony situated on the Italian soil and its use for religious purposes. In this respect, it appears that the accords concluded

by Italy and the Holy See, together with Italian laws—including implementing the legislation of the international treaties entered into by the Italian State<sup>40</sup>—have brought to the fore common problems and shared objectives and allowed political and legislative solutions to be identified. In particular, the bilateral system that regulates the status of the Catholic holy spaces in Italy can be considered a good solution in the light of two factors: the geographical situation of the Vatican State as an enclave within the Italian territory and the fact that the dominant religion in Italy is Catholicism.

Furthermore, it can be argued that the bilateral collaboration between Italy and the Holy See and Italian legislation are mutually supportive. More specifically, the legal instruments analyzed above demonstrate that the Italian State has acknowledged that the large majority of churches in Italy belong to the Catholic Church and that priests, monks, and other clerics are the actual guardians of religious treasures. As is well known, the Roman Catholic Church has places where heritage is exhibited to the public as secular objects, such as St. Peter's Basilica and the Vatican Museums, but much of what it possesses is used for devotional purposes in parishes and dioceses. On the other hand, the legal sources analyzed in this article also indicate that most religious buildings are considered by the state as an important part of the national patrimony, as repositories of precious works of art.<sup>41</sup>

Finally, the existing legal framework constitutes an important tool in the fight against the theft and trafficking in cultural objects in general and of religious items in particular. It is a fact that every year thousands of such churches, chapels, and monasteries are robbed of their most precious artworks.<sup>42</sup> Although churches often contain fabulous artworks, they are open to the public, as museums are, but are not nearly as well guarded.<sup>43</sup> This problem was emphasized by Domenico Giani, the head of the Vatican police, at the General Assembly of INTERPOL in November 2012. He said that churches, particularly in Italy, are packed with valuable works of art that cannot be easily protected from theft because they often are in isolated church buildings where no antitheft measures are employed or in churches that basically are abandoned because religious practice has fallen steeply.<sup>44</sup>

Many examples can be used to illustrate this problem, such as the theft of Caravaggio's *Nativity with Saints Lorenzo and Francesco*, reportedly worth over \$20 million. This was stolen off the wall of a church in Palermo in 1969. The fate of the painting is subject to much speculation. In addition to stories of its outright destruction, it is also rumored to have been given as wedding gift to an Italian *mafioso*. The fact remains that the painting has yet to resurface.<sup>45</sup> Another example concerns the theft of a sarcophagus from the church of San Saba in Rome. This was found some years later on Sotheby's catalogue for its antiquities sale. This case is interesting in that it allowed the Italian *Carabinieri* to begin their investigation of the art dealer Giacomo Medici.<sup>46</sup> Another notorious case is that of a 24-inch-tall statuette of Baby Jesus, carved from the wood of an olive tree from Gethsemane in the 15th century and kept in Rome's ancient Basilica of Santa Maria in Aracoeli. The statuette was stolen in 1994 and has never been recovered.<sup>47</sup>

These examples demonstrate that, despite its merits, the existing protective legal system is not entirely effective. The following sections discuss some of the obstacles that stand in the way of a satisfactory protection of the holy heritage of the Catholic Church located in Italy.

#### 4.1. *“Arbitrary Actions” and Lack of Inventories*

Many contemporary examples illustrate that clerics at times disregard Italian legislation. This often occurs because of the misguided (or, depending on whom one asks, dishonest) belief that existing legislation does not apply to objects used for religious purposes or housed in religious buildings. For instance, in 2009 a priest in Florence was indicted together with an antiques dealer for the alleged sale, without the prescribed authorization, of various objects including relics of saints.<sup>48</sup> Another illustration is provided by the case of a priest in Arezzo who sold two paintings without giving notice to, or receiving, governmental authorization. The dealer who purchased the paintings later resold them to a third party. After criminal charges were brought against the priest and the dealer, the third-party buyer was ordered to return the paintings.<sup>49</sup>

These acts were condemned as “arbitrary actions” by the Pontifical Commission for the Conservation of the Artistic and Historical Patrimony of the Church.<sup>50</sup> This commission, which was established out of the concern for the protection of the “artistic and historic heritage of the Church and of humanity as a whole,”<sup>51</sup> recalled that pastors must have a profound understanding of the value of sacred art and of the need to preserve these resources for “their cultural and pastoral valorization.” It then acknowledged that “the preparation of the clergy for this task ... has been quite weak and incomplete if not entirely absent.” The negative consequences of this lack of sensitivity in the management of cultural objects—thefts, illegal sales, damages provoked by improper and destructive use, incomplete and devastating restorations, and inadequate care—have often been the reason for complaint on the part of ecclesiastical and civil authorities. This Pontifical Commission stressed that because of such “arbitrary actions” and theft, a considerable part of that patrimony is now lost.<sup>52</sup>

Equally significant problems concern the inventory (and subsequent cataloguing) of materials of cultural value. The Pontifical Commission has long recognized that that is the major requisite for the protection of the artworks belonging to the church. Indeed, it represents the preliminary step to all types of activities that involve both church and state authorities, according to their proper field of competence, such as guardianship, protection against theft, conservation, and restoration. The importance of prevention through inventory was emphasized by Domenico Giani at the General Assembly of INTERPOL. He said that it is necessary that local Catholic authorities make a complete inventory of their art. Not only does an inventory represent an important tool for getting lost items back and making the illicit trafficking more difficult, but it also ensures that local Catholic officials are aware of

the items they have.<sup>53</sup> In addition, the *Carabinieri's* Cultural Heritage Protection Office has published a manual advising parish priests (and the heads of other religious institutions) on how to protect their premises and property. This manual begins with an admonition to make a careful inventory of what is owned. Each object should be measured, accurately described, and photographed.<sup>54</sup>

The inventory of religious art was the object of the document "The Inventory and Catalogue of the Cultural Heritage of the Church"<sup>55</sup> and also of the Circular Letter, "Inventory of the Institutes of Consecrated Life and the Societies of Apostolic Life Cultural Patrimony: Some Practical [sic.] Orientations."<sup>56</sup> The latter document acknowledged that various institutes have not been able to take the task in hand because they lack suitable personnel and funds. It then warned that the lack of vigilant attention to the historical and artistic patrimony of the Church on the part of these institutes "is in direct violation of both canonical and civil regulations." Finally, it provided some practical recommendations pertaining, *inter alia*, to formation of personnel, technical assistance, funding, and legal sources.

#### 4.2. Problems of Legal Coordination and Codification

Other problems relate to the coordination of the applicable legal sources. These problems seemingly derive from the Italian legislature's failure to incorporate properly into national laws the standards set forth by international treaties and EU law. In particular, it appears that the domestic implementation of the key treaties was carried out with no (or little) compliance with the procedures established under Italian constitutional law.<sup>57</sup>

To begin with, the 2004 version of the Cultural Heritage Code only mentioned the UNIDROIT Convention. This aspect was widely criticized given that the Cultural Heritage Code was adopted in order to, *inter alia*, adapt the national legislation to international treaties and guarantee the strict observance of international norms. Accordingly, many scholars described the Cultural Heritage Code as "incomplete" and stressed that the absence of any reference to the 1970 UNESCO Convention was illogical given its importance regarding the problem of illicit trafficking and its complementarity with the UNIDROIT Convention.<sup>58</sup> As said, the Cultural Heritage Code was amended to adhere better to international law. Now it contains a clause on the control of the international circulation of cultural objects (Article 64bis) and another provision on the 1970 UNESCO Convention (Article 87bis). However, the introduction of Article 87bis does not resolve a key problem concerning the 1970 UNESCO Convention, namely, the fact that there exists no provision on its implementation. In effect, this *non-self-executing* treaty was ratified through the *special* procedure, and therefore many of its provisions remain inapplicable in the absence of *ad hoc* legislative measures.<sup>59</sup> Moreover, the Cultural Heritage Code does not mention the treaties ratified by Italy on the protection of cultural heritage in the event of armed conflict (such as the 1954 UNESCO Convention), whereas it contains references to the UNESCO Convention on the

Protection of the Underwater Cultural Heritage of 2001, the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage of 2003, and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005.

Another illustration of the problems of coordination and adaptation under consideration concerns Law No. 213/1999 on the implementation of the UNIDROIT Convention. Italy, as the home of UNIDROIT and the host of all the meetings of governmental experts as well as the diplomatic conference, took the lead in the ratification of the UNIDROIT Convention.<sup>60</sup> Nevertheless, Law No. 213/1999 has attracted substantial criticisms because it can hardly be construed to give full effect to the UNIDROIT Convention.<sup>61</sup> This is mainly due to the fact that this treaty was ratified through the *ordinary* procedure,<sup>62</sup> even if many of its provisions are *self-executing*. An examination of Article 4 of Law No. 213/1999 demonstrates that it seriously undermines the effectiveness of the UNIDROIT Convention. Article 4(2), which addresses the issue of the indemnity, states that to obtain compensation, the possessor must demonstrate to have acquired the object in “good faith.” This provision reflects the UNIDROIT Convention in that, first, it confirms that a post-theft purchase does not extinguish the ownership title of the dispossessed owner, even if the purchaser was in good faith, and, second, because it places on the possessor the burden of proof. The problem is that the Convention does not use the parameter of good faith, but the different concept of “due diligence.” These two concepts are not interchangeable, because *good faith* merely entails that the purchaser was not aware that the object was stolen or illicitly exported, whereas *due diligence* requires that the buyer adopted an affirmative course of action by investigating suspicious circumstances and inquired into the provenance of the object.<sup>63</sup> To further complicate the matter, the Italian Civil Code states that good faith is presumed (Article 1147(3)) and that a purchaser of movables acquires a good title notwithstanding any defect in the seller’s title or in that of prior transferors, provided that (i) the transaction is carried out in a manner which is appropriate, as regards the documentation effecting or evidencing the sale, to a transaction of the type in question; and (ii) the purchaser is not aware of any unlawful origin of the goods at the time when he or she acquires them (Article 1153).<sup>64</sup> In practical terms, this means that under Law No. 213/1999, compensation can be awarded to every possessor of stolen or illicitly exported cultural objects. Clearly, this adversely affects the UNIDROIT Convention’s goal to thwart the illicit trafficking.

Article 4 of Law No. 213/1999 contains another procedural variation compared to the 1995 UNIDROIT Convention as it does not distinguish the cases of theft and illicit exportation with regard to the payment of compensation. Another specific contradiction is that Law No. 213/1999 does not contain any norm to implement the non-self-executive provisions of the UNIDROIT Convention, such as Article 6.<sup>65</sup> Article 7 of Law No. 213/1999 poses further problems. It states that Italy will apply Directive 93/7<sup>66</sup> to its relations with other EU Member States to

the exclusion of the UNIDROIT Convention. This provision aims to comply with the “disconnection clause” contained in Article 13(3) of the UNIDROIT Convention, which reads: “[i]n their relations with each other, Contracting States which are Members of organizations of economic integration or regional bodies may declare that they will apply the internal rules of these organizations or bodies and will not therefore apply as between these States the provisions of this Convention the scope of application of which *coincides* with that of those rules” (emphasis added). This means that EU Member States can become signatories to the UNIDROIT Convention even though EU law will govern their relations. However, Article 13(3) demands that the scope of application of the rules in competition is coincident. This key aspect is not reflected by Article 7 of Law No. 213/1999. In fact, it does not reproduce textually Article 13(3), thereby excluding the application of the UNIDROIT Convention, even though Directive 93/7 has a narrower scope of application. In effect, the Directive (i) does not apply to situations where the definitions of “unlawfully removal” and “national treasure” are not met; (ii) contains a definition of cultural property that is based upon financial value, a concept not present in the UNIDROIT Convention; (iii) denies standing to private individuals; and (iv) provides for shorter limitation periods.<sup>67</sup> Hopefully, this incongruity will be corrected by the Italian Parliament with the norms required to transpose the new Directive 2014/60 into national laws.

With respect to EU law, Article 74 of the Cultural Heritage Code is ambiguous in that it establishes that the “exportation outside European Union territory of the property indicated in Annex A [of the Code] is governed by ... Regulation [116/2009] and the present article.” However, EU regulations are directly applicable, i.e., they are binding in their entirety in all Member States and, in principle, require no measure to incorporate them in national law. Therefore, Article 74 hides the fact that the Cultural Heritage Code can regulate the matter of the exportation of cultural goods only to the extent permitted by Regulation 116/2009, that is, only with respect to its *non-self-executing* norms. In addition, Annex A of the Cultural Heritage Code, which should serve to identify the objects that are subject to the norms on the exportation and restitution, is not identical to the Annex provided for by Regulation 116/2009. In effect, the penultimate paragraph of the Annex to the Regulation has been omitted. This states that the “assessment of whether or not the conditions relating to financial value are fulfilled must be made when an application for an export license is submitted” and that such a financial value must be determined on the basis of the market of “the Member State referred to in Article 2(2) of the Regulation,” which is the state of origin of an illicitly exported cultural object. Arguably, this omission signals that the Italian legislature was not satisfied with the restitution mechanism set up by the regulation. As a result, the Cultural Heritage Code provides that the financial value of the objects for which an application for an export license is submitted is determined on the basis of the Italian market, and not the state of origin.<sup>68</sup>

## 5. CONCLUSION

Many much-publicized examples of art theft from churches and other religious buildings in Italy and elsewhere demonstrate that “criminal activities are now articulated at a global level, with systems of coordination and according to criminal pacts that go beyond the boundaries of States ... with sophisticated technical means, huge financial resources, at times dark political complicity.”<sup>69</sup> On the other hand, the analysis in the preceding sections reveals that the domestic legal protective framework for the protection of the holy heritage of the Catholic Church located in Italy is very fragmented and that the major problem regarding this framework relates to its implementation.

As mentioned, this problem is connected to the fact that the large majority of religious buildings belong to the Catholic Church and, at the same time, constitute an important part of the Italian cultural and historical heritage. This means that the Italian State and the Holy See bear the responsibility to collaborate in order to reconcile the protection of the common artistic, historical, and religious heritage with the needs of worship. It also entails that vandalism, theft, and the dispersion of countless sacred objects as a result of illicit trafficking occur because of the failures and loopholes in the legal systems and practical tools deployed by the Italian State and the Holy See.

As far as the law is concerned, the goal for lawmakers, policymakers, and enforcement authorities should be to maximize the protection of buildings, monuments, and the art objects located therein by taking into account their distinctive historical, artistic, and religious (and monetary) values, given the finite resources available. However, if the foregoing discussion shows anything, it is that the Italian legislature has failed to insert some of the key principles, rules, and standards contained in international treaties into the corresponding implementing legislation. The intent of this article is to contribute to the ongoing debates on the topic, to urge a more efficient legal regulation and management of the Italian cultural and religious heritage.

## ENDNOTES

1. *Catechism of the Catholic Church*, pt. three (“Life in Christ”), sec. two (“The Ten Commandments”), chap. two (“You Shall Love Your Neighbor as Yourself”), art. 8 (“The Eighth Commandment”), subsection VI (“Truth, Beauty, and Sacred Art”), paras. 2500–2053.

2. Martens, “Law, Art and the Ecclesiastical Heritage,” 414.

3. Martens, “Law, Art and the Ecclesiastical Heritage,” 417.

4. Martens, “Law, Art and the Ecclesiastical Heritage,” 416, 418.

5. Kowalski, *Art Treasures and War*, 18.

6. Kowalski, *Art Treasures and War*, 18.

7. Pontifical Commission for the Cultural Heritage of the Church, “The Inventory and Catalogue of the Cultural Heritage of the Church.”

8. Emiliani, *Leggi, bandi e provvedimenti*, 130–45.

9. Pontifical Commission for the Cultural Heritage of the Church, “The Inventory and Catalogue of the Cultural Heritage of the Church.”

10. See *Code of Canon Law*, canons 1190, 1283, 1376, and 1377.

11. In effect, identifiably early Christian art, notably the mosaics and frescoes in the catacombs of Rome, only survives from that period. See Jensen, *Understanding Early Christian Art*, 15–16.

12. Bart, “Patrimoine et religion,” 20.

13. See Article 1(a) of the UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954; and Article 1 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970.

14. UNESCO, *Operational Guidelines*, chap. II.D, para. 77.

15. See the Lists of Intangible Cultural Heritage and Register of Best Safeguarding Practices set up under the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, [www.unesco.org/culture/ich/index.php?lg=en&pg=00559](http://www.unesco.org/culture/ich/index.php?lg=en&pg=00559).

16. O’Keefe, “Repatriation of Sacred Objects,” 225.

17. Code of Cultural Heritage and Landscape, amended with Legislative Decree No. 156 of 2006, Legislative Decree No. 157 of 2006, Legislative Decree No. 62 of 2008, Decree Law No. 70 of 2011, and Law No. 112 of 2013.

18. Emphasis added. This definition originates from a 1967 report on the status of cultural property protection in Italy conducted by a fact-finding body, the Franceschini Commission, after the Minister who presided over it.

19. Cf. Article 1 of Law No. 1089 of 1 June 1939 on the Protection of Things of Artistic and Historic Interest, which stated that the law protects all “movable and immovable things of an artistic, historic, archaeological, or ethnographic interest.”

20. *Corte Costituzionale*, 6 March 1990, No. 118. The decision was adopted following a question of constitutionality raised by two Italian Tribunals with regard to Articles 1 and 2 of Law No. 1089/1939.

21. “The Ministry ... shall attend to the exigencies of *cultural property of religious interest* belonging to bodies and institutions of the Catholic Church and of other religious denominations, according to the *needs of worship*, and in agreement with the respective authorities” (emphasis added).

22. “Cultural property shall also include: ... (d) immovable and movable objects ... which are particularly important ... as a testimony of the identity and history of ... religious institutions.”

23. “Religious activities are directed to worship and the care of souls, the formation of the clergy, for missionary purposes, catechesis, and Christian education.” Provisions on Ecclesiastical Institutions and Properties in Italy.

24. See Understanding between the Ministry of Cultural Heritage and the President of the Italian Episcopal Conference on the Protection of Cultural Heritage of Religious Interest Belonging to Ecclesiastical Bodies and Institutions, 26 January 2005, implemented with the Decree of the President of the Republic No. 78 of 4 February 2005 [hereinafter “Understanding between the Ministry of Cultural Heritage and the President of the Italian Episcopal Conference 26 January 2005”].

25. The Lateran Pacts were ratified by Italy with Law No. 810 of 1929. The Pacts settled the so-called Roman Question, which arose in 1870 when the newly formed Kingdom of Italy annexed the Papal State, thereby forcing the Pope and all religious authorities to live in the Vatican, a small area inside Rome. The Roman Question therefore concerned the status under international law of the Holy See as it was deprived of its territorial sovereignty.

26. The anomalous character of the Holy See and Vatican City on the international plane must be underlined. On the one hand, Vatican City has no permanent population, apart from clerics who reside there and whose sole function is to support the mission of the Holy See as a religious entity. Italy carries out a substantial number of administrative functions with regard to Vatican City. Moreover, Vatican City exists not to support its inhabitants but to provide a base for the central administration of a non-state entity, the Catholic Church. Therefore, as it does not satisfy all criteria for statehood, it is doubtful whether it can be regarded as a state. On the other hand, both the Holy See, as the central authority and administrative organ of the Catholic Church, and Vatican City State have received

general recognition by the international community as *distinct entities possessing international legal personality*. This is proved by the fact that they are members of international organizations, they take part in international conferences, and they adhere to international agreements. For example, the Holy See participates in the meetings of the UNESCO World Heritage Committee and of the ICPRCP, and of the Cultural Heritage Committee of the Council of Europe. Therefore, these entities are closely linked and are essentially part of the same construct: The Holy See is both an international legal person in its own right and the government of Vatican City State (Crawford, *The Creation of States*, 223–30), whereas the international personality of the latter rests partly on its approximation to a state and partly on acquiescence and recognition by states and international organizations (Brownlie, *Principles of Public International Law*, 64).

27. Leanza, “General Problems of International Law Concerning Sacred Places,” 41–43.

28. Agreement between the Holy See and the Italian Republic, Modifications to the Lateran Concordat, 18 February 1984, with Supplementary Protocol, ratified with Law No. 121 of 25 March 1985.

29. Understanding between the Ministry of Cultural Heritage and the President of the Italian Episcopal Conference on the Protection of Cultural Heritage of Religious Interest Belonging to Ecclesiastical Bodies and Institutions, 13 September 1996, implemented with the Decree of the President of the Republic No. 571 of 26 September 1996.

30. Understanding between the Ministry of Cultural Heritage and the President of the Italian Episcopal Conference on the Conservation and Consultation of Archives of Historical Interest and Libraries Belonging to Ecclesiastical Bodies and Institutions, 18 April 2000, implemented with the Decree of the President of the Republic No. 189 of 16 May 2000.

31. Understanding between the Ministry of Cultural Heritage and the President of the Italian Episcopal Conference 26 January 2005. This understanding repealed and replaced the understanding of 1996.

32. Pontifical Commission for the Cultural Heritage of the Church, “The Inventory and Catalogue of the Cultural Heritage of the Church.”

33. The Pontifical Commission for the Cultural Patrimony of the Church was established in 1993 by Pope John Paul II, substituting the Pontifical Commission for the Conservation of the Artistic and Historical Patrimony of the Church, created five years earlier within the Congregation for the Clergy. See *Commission for Cultural Heritage of the Church*, [www.vatican.va/roman\\_curia/pontifical\\_commissions/pcchc/documents/rc\\_com\\_pcchc\\_pro\\_20051996\\_en.html](http://www.vatican.va/roman_curia/pontifical_commissions/pcchc/documents/rc_com_pcchc_pro_20051996_en.html). In July 2012, the Commission was united to Pontifical Council for Culture by Pope Benedict XVI with the *Motu Proprio Pulchritudinis fidei* (see *Pontifical Council for Culture*, [www.cultura.va/content/cultura/en/organico/profilo.html](http://www.cultura.va/content/cultura/en/organico/profilo.html)).

34. Roccella, “La nuova intesa con la Conferenza episcopale italiana.”

35. See *Initiative on Heritage of Religious Interest* (<http://whc.unesco.org/en/religious-sacred-heritage/>).

36. See *Kyiv Statement on the Protection of Religious Properties within the Framework of the World Heritage Convention* (<http://whc.unesco.org/en/religious-sacred-heritage/#Kyiv>).

37. Information on the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1995 Reports, CLT-95/WS/13, December 1995, p. 28 ff. See also *Armed Conflict and Heritage* ([www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/the-hague-convention/](http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/the-hague-convention/)).

38. See *World Heritage List* (<http://whc.unesco.org/en/list/>).

39. This Convention was adopted by UNIDROIT upon request of UNESCO.

40. The 1954 UNESCO Convention was ratified with Law No. 268 of 19 February 1957; the 1970 UNESCO Convention was ratified with Law No. 873 of 30 October 1975; WHC was ratified with Law No. 184 of 6 April 1977; the 1995 UNIDROIT Convention was ratified with Law No. 213 of 7 June 1999. Directive 93/7 was implemented by Law No. 88 of 30 March 1998, whereas the new Directive 2014/60 has not yet been transposed into national law.

41. Feliciani, “Les édifices de culte,” 153.

42. See the database of the Italian *Carabinieri* Cultural Heritage Protection Office ([http://tpcweb.carabinieri.it/tpc\\_sito\\_pub/simplecerca.jsp](http://tpcweb.carabinieri.it/tpc_sito_pub/simplecerca.jsp)) and of INTERPOL ([www.interpol.int/Crime-areas/](http://www.interpol.int/Crime-areas/))

Works-of-art/Works-of-art), which show the works of art recovered by the police and those that have not been recovered.

43. Farouki, "Spirited Away."

44. Cindy Wooden, "Vatican Police Chief Talks to Interpol about Protecting Religious Art," *Catholic News Service*, 8 November 2012, [www.catholicnews.com/data/stories/cns/1204693.htm](http://www.catholicnews.com/data/stories/cns/1204693.htm).

45. Passas and Bowman Proulx, "Overview of Crimes and Antiquities," 54–55.

46. Watson and Todeschini, *The Medici Conspiracy*, 19–20.

47. Judith Harris, "International Treasures: Italian Police Work to Stem Church Art Theft," *Catholic News Service*, 4 April 2014, [www.catholicnews.com/data/stories/cns/1401395.htm](http://www.catholicnews.com/data/stories/cns/1401395.htm).

48. "Sparite opere d'arte: indagati sacerdote e antiquario," *La Nazione*, 3 April 2009, [www.lanazione.it/firenze/2009/04/03/162861-sparite\\_opere\\_arte\\_indagati\\_sacerdote\\_antiquario.shtml](http://www.lanazione.it/firenze/2009/04/03/162861-sparite_opere_arte_indagati_sacerdote_antiquario.shtml).

49. *Corte di Cassazione (sez. Civile I)*, 7 April 1992, No. 4260.

50. Pontifical Commission for the Conservation of the Artistic and Historical Patrimony of the Church, "Circular Letter."

51. On the origin and transformation of the Pontifical Commission, see notes 32 and 33.

52. Pontifical Commission for the Conservation of the Artistic and Historical Patrimony of the Church, "Circular Letter."

53. Wooden, "Vatican Police Chief Talks to Interpol."

54. Harris, "International Treasures."

55. Pontifical Commission for the Cultural Heritage of the Church, "The Inventory and Catalogue of the Cultural Heritage of the Church."

56. Pontifical Commission for the Cultural Heritage of the Church, "Inventory of the Institutes."

57. The *ordinary* procedure entails the adoption of a domestic piece of legislation (normally an ordinary law) whose content mirrors the treaties to be implemented. In other words, this procedure entails the reformulation of international norms by the domestic legislature. Under the *special* procedure, the Parliament adopts an ad hoc act. This gives the president of the Republic the authorization to ratify a given treaty by stating that full and complete execution will be given to it. This means that international norms are not rephrased by the Italian legislature. In effect, the text of the treaty is normally annexed to the law. The special procedure is preferred as a way to avoid discrepancies between international and domestic laws. Instead, the ordinary procedure remains essential for the implementation of non-self-executing international norms. Conforti, *Diritto internazionale*, 308–11.

58. See, e.g., Pavoni, "L'incompiuta 'codificazione'"; and Lafarge, "La circolazione dei beni."

59. See note 57 above.

60. Doyal, "Implementing the UNIDROIT Convention," 694.

61. See, e.g., Francioni, "Principi e criteri ispiratori," and Pavoni, "L'incompiuta 'codificazione.'"

62. See note 57 above.

63. Article 4(4) of the 1995 UNIDROIT Convention codifies an international standard of diligence for a flexible assessment of the circumstances of the acquisition: "In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances."

64. This provision creating absolute protection for good faith buyers is unique to Italy. Other civil law states have adopted a less extreme position by drawing a distinction between lost and stolen property. See Renold, "Stolen Art."

65. "Instead of compensation, and in agreement with the requesting State, the possessor required to return the cultural object to that State may decide: (a) to retain ownership of the object; or (b) to transfer ownership against payment or gratuitously to a person of its choice residing in the requesting State who provides the necessary guarantees."

66. See section 3.3(E) above.

67. Pavoni, "L'incompiuta 'codificazione,'" 353.

68. Pavoni, “L’incompiuta ‘codificazione,’” 373–75.

69. Statement by Archbishop Dominique Mamberti (Secretary for Relations with States of the Vatican State Secretariat) to INTERPOL’s General Assembly, 6 November 2012, [www.zenit.org/en/articles/statement-by-archbishop-dominique-mamberti-to-interpol-s-general-assembly](http://www.zenit.org/en/articles/statement-by-archbishop-dominique-mamberti-to-interpol-s-general-assembly).

## BIBLIOGRAPHY

Agreement between the Holy See and the Italian Republic, Modifications to the Lateran Concordat, 18 February 1984, with Supplementary Protocol, ratified by Italy with Law No. 121 of 25 March 1985.

Bart, Jean. “Patrimoine et religion. Les dieux possèdent-ils un patrimoine?” In *Le patrimoine culturel religieux. Enjeux juridiques et pratiques culturelles*, edited by Brigitte Basdevant-Gaudemet, Marie Cornu, and Jérôme Fromageau. Paris: L’Harmattan, 2006, 17–34.

Brownlie, Ian. *Principles of Public International Law*. Oxford: Clarendon Press, 1998.

*Catechism of the Catholic Church*. Libreria Editrice Vaticana. [www.vatican.va/archive/ENG0015/\\_INDEX.HTM](http://www.vatican.va/archive/ENG0015/_INDEX.HTM) (2003).

*Code of Canon Law*. Libreria Editrice Vaticana. [www.vatican.va/archive/ENG1104/\\_INDEX.HTM](http://www.vatican.va/archive/ENG1104/_INDEX.HTM) (1983).

Code of Cultural Heritage and Landscape, Legislative Decree No. 42 of 22 January 2004. *Gazzetta Ufficiale della Repubblica Italiana* 45 (24 February 2004).

Conforti, Benedetto. *Diritto internazionale*. Napoli: Editoriale Scientifica, 2010.

Crawford, James. *The Creation of States in International Law*. Oxford: Oxford University Press, 2006.

Directive 93/7 on the Return of Cultural Objects Illegally Exported from the Territory of a Member State of 1993, OJ L74/74, 27 March 1993.

Directive 2014/60 on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State, OJ L 159/1, 15 May 2014.

Doyal, Stephanie. “Implementing the UNIDROIT Convention on Cultural Property into Domestic Law: The Case of Italy.” *Columbia Journal of Transnational Law* (2000–2001): 657–700.

Emiliani, Andrea. *Leggi, bandi e provvedimenti per la tutela dei beni artistici e culturali negli antichi stati italiani 1571–1860*. Bologna: Ed. Alfa, 1978.

Farouki, Jumana. “Spirited Away: Art Thieves Target Europe’s Churches.” *Time*, 10 January 2008.

Feliciani, Giorgio. “Les édifices de culte: une composante du patrimoine historique et artistique de la Nation italienne.” In *Le patrimoine culturel religieux. Enjeux juridiques et pratiques culturelles*, edited by Brigitte Basdevant-Gaudemet, Marie Cornu, and Jérôme Fromageau. Paris: L’Harmattan, 2006, 149–58.

Francioni, Francesco. “Principi e criteri ispiratori per la protezione internazionale del patrimonio culturale.” In *Protezione internazionale del patrimonio culturale: interessi nazionali e difesa del patrimonio comune della cultura*, edited by Francioni Francesco, Angela Del Vecchio, and Paolo De Caterini. Milano: Giuffrè, 1999, 11–19.

Jensen, Robin Margaret. *Understanding Early Christian Art*. Oxon/New York: Routledge, 2000.

Kowalski, W. Wojciech. *Art Treasures and War*. Leicester: Institute of Art and Law, 1998.

Lafarge, François. "La circolazione dei beni culturali, dopo le modifiche al Codice." *Aedon—Rivista di arti e diritto* 1. [www.aedon.mulino.it/archivio/2009/1/lafarge.htm](http://www.aedon.mulino.it/archivio/2009/1/lafarge.htm) (2009; accessed 31 July 2013).

Lateran Pacts between the Kingdom of Italy and the Holy See, 11 February 1929, ratified by Italy with Law No. 810 of 1929.

Leanza, Umberto. "General Problems of International Law Concerning Sacred Places." In *Between Cultural Diversity and Common Heritage. Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, edited by Silvio Ferrari and Andrea Benzo, Burlington: Ashgate, 2014, 37–56.

Martens, Kurt. "Law, Art and the Ecclesiastical Heritage." In *Art & Law*, edited by Eltjo Schrage, Bernard Tilleman, Alain Verbeke, and Bert Demarsin. Brugge: die Keure, 2008, 414–41.

O'Keefe, J. Patrick. "Repatriation of Sacred Objects." *Art Antiquity and Law* (2008): 225–41.

Passas, Nikos, and Bowman Proulx, Blythe. "Overview of Crimes and Antiquities." In *Crime in the Art and Antiquities World*, edited by Manacorda Stefano and Duncan Chappell. New York: Springer, 2011, 51–67.

Pavoni, Riccardo. "L'incompiuta 'codificazione' italiana delle norme internazionali e comunitarie sulla circolazione dei beni culturali: interazioni fra sistemi e problemi in material di adattamento." In *Il Codice dei beni culturali e del paesaggio tra teoria e prassi*, edited by Piergigli Valeria and Maccari Anna Lisa. Milano: Giuffré, 2006, 331–88.

Pontifical Commission for the Conservation of the Artistic and Historical Patrimony of the Church. "Circular Letter Regarding the Cultural and Pastoral Training of Future Priests in Their Upcoming Responsibilities Concerning the Artistic and Historic Heritage of the Church." [www.vatican.va/roman\\_curia/pontifical\\_commissions/pcchc/documents/rc\\_com\\_pcchc\\_19921015\\_futuri-presbiteri\\_en.html](http://www.vatican.va/roman_curia/pontifical_commissions/pcchc/documents/rc_com_pcchc_19921015_futuri-presbiteri_en.html) (15 October 1992).

Pontifical Commission for the Cultural Heritage of the Church. "The Inventory and Catalogue of the Cultural Heritage of the Church." [www.catholicculture.org/culture/library/view.cfm?recnum=2886](http://www.catholicculture.org/culture/library/view.cfm?recnum=2886) (8 December 1999).

———. "Inventory of the Institutes of Consecrated Life and the Societies of Apostolic Life Cultural Patrimony: Some Practical [sic.] Orientations." Circular Letter of Mauro Piacenza, then President of the Pontifical Commission for Sacred Archeology, Prot. N. 14/06/4. [www.vatican.va/roman\\_curia/pontifical\\_commissions/pcchc/documents/rc\\_com\\_pcchc\\_20060915\\_inventariazione\\_en.html](http://www.vatican.va/roman_curia/pontifical_commissions/pcchc/documents/rc_com_pcchc_20060915_inventariazione_en.html) (15 September 2006).

Provisions on Ecclesiastical Institutions and Properties in Italy for the Support of the Catholic Clergy Serving in Dioceses (*Disposizioni sugli enti e beni ecclesiastici in Italia e per il sostentamento del clero cattolico in servizio nelle diocesi*). Law No. 222 of 20 May 1985. *Gazzetta Ufficiale della Repubblica Italiana* 129 (3 June 1985).

Regulation 3911/92 on the Export of Cultural Goods of 1992, OJ L 395/1, 31 December 1992.

Regulation 116/2009 on the Export of Cultural Goods of 12 December 2008, OJ L 39, 10 February 2009.

Renold, Marc-André. "Stolen Art: The Ubiquitous Question of Good Faith." In *Resolution of Cultural Property Disputes*, edited by the International Bureau of the Permanent Court of Arbitration. The Hague: Kluwer Law International, 2004, 251–63.

Roccella, Alberto. "La nuova intesa con la Conferenza episcopale italiana sui beni culturali d'interesse religioso." *Aedon—Rivista di arti e diritto* 1. [www.aedon.mulino.it/archivio/2006/1/roccella.htm](http://www.aedon.mulino.it/archivio/2006/1/roccella.htm) (2006; accessed 31 July 2013).

Understanding between the Ministry of Cultural Heritage and the President of the Italian Episcopal Conference on the Conservation and Consultation of Archives of Historical Interest and Libraries Belonging to Ecclesiastical Bodies and Institutions, 18 April 2000, implemented with the Decree of the President of the Republic No. 189 of 16 May 2000.

Understanding between the Ministry of Cultural Heritage and the President of the Italian Episcopal Conference on the Protection of Cultural Heritage of Religious Interest Belonging to Ecclesiastical Bodies and Institutions, 13 September 1996, implemented with the Decree of the President of the Republic No. 571 of 26 September 1996.

Understanding between the Ministry of Cultural Heritage and the President of the Italian Episcopal Conference on the Protection of Cultural Heritage of Religious Interest Belonging to Ecclesiastical Bodies and Institutions, 26 January 2005, implemented with the Decree of the President of the Republic No. 78 of 4 February 2005.

UNESCO. Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, 249 U.N.T.S. 240.

———. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 17 November 1970, 823 U.N.T.S. 231.

———. Convention Concerning the Protection of the World Cultural and Natural Heritage. 16 November 1972, 1037 U.N.T.S. 151.

———. Convention for the Safeguarding of the Intangible Cultural Heritage. 17 October 2003, UNESCO Doc. 32C/Resolution 32.

———. Statutes of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, adopted by 20 C/Resolution 4/7.6/5 of 24 October–28 November 1978.

———. *Operational Guidelines for the Implementation of the World Heritage Convention*. Paris: UNESCO, 2013.

UNIDROIT. Convention on Stolen or Illegally Exported of Cultural Objects, 24 June 1995, 34 I.L.M. 1322.

Watson, Peter, and Todeschini, Cecilia. *The Medici Conspiracy*. New York: Public Affairs, 2006.