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United States Court of Appeals,
Seventh Circuit.
AUTOCEPHALOUS GREEK-ORTHODOX
CHURCH OF CYPRUS and The Republic of Cy-
prus, Plaintiffs-Appellees,
v.
GOLDBERG AND FELDMAN FINE ARTS, INC.,
and Peg Goldberg, Defendants-Appellants.
No. 89-2809.

Argued Jan. 16, 1990.
Decided Oct. 24, 1990.
Rehearing and Rehearing En Banc Denied Nov. 21,
1990.

Before [BAUER](#), Chief Judge, and [CUDAHY](#), Circuit
Judge, and [PELL](#), Senior Circuit Judge.

[BAUER](#), Chief Judge.

There is a temple in ruin stands,
Fashion'd by long forgotten hands;
Two or three columns, and many a stone,
Marble and granite, with grass o'ergrown!
Out upon Time! it will leave no more
Of the things to come than the things before!
Out upon Time! who for ever will leave
But enough of the past and the future to grieve
O'er that which hath been, and o'er that which must
be:
What we have seen, our sons shall see;
Remnants of things that have pass'd away,
Fragments of stone, rear'd by creatures of clay!
from *The Siege of Corinth*,

George Gordon (Lord Byron) [FN1](#)

[FN1](#). Reprinted in *The Complete Poetical
Works of Byron* 384-96 (Cambridge ed.
1933).

Byron, writing here of the Turkish invasion of Cor-
inth in 1715, could as well have been describing the
many churches and monuments that today lie in ruins
on Cyprus, a small, war-torn island in the eastern
corner of the Mediterranean Sea. In this appeal, we
consider the fate of several tangible victims of Cy-
prus' turbulent history: specifically, four Byzantine
mosaics created over 1400 years ago. The district
court awarded possession of these extremely valuable
mosaics to plaintiff-appellee, the Autocephalous
Greek-Orthodox Church of Cyprus ("Church of Cy-
prus" or "Church"). [Autocephalous Greek-Orthodox
Church of Cyprus v. Goldberg & Feldman Fine Arts,
Inc., 717 F.Supp. 1374 \(S.D.Ind.1989\)](#). Defendants-
appellants, Peg Goldberg and Goldberg & Feldman
Fine Arts, Inc. (collectively "Goldberg"), claim that
in so doing, the court committed various reversible
errors. We affirm.

I. Background

In the early sixth century, A.D., a large mosaic was
affixed to the apse of the Church of the Panagia
Kanakaria ("Kanakaria Church") in the village of
Lythrankomi, Cyprus. The mosaic, made of small
bits of colored glass, depicted Jesus Christ as a young
boy in the lap of his mother, the Virgin Mary, who
was seated on a throne. Jesus and Mary were at-
tended by two archangels and surrounded by a frieze
depicting the twelve apostles. The mosaic was dis-
played in the Kanakaria Church for centuries, where
it became, under the practices of Eastern Orthodox
Christianity, sanctified as a holy relic. It survived
both the vicissitudes of history, [see Autocephalous,
717 F.Supp. at 1377](#) (discussing the period of Icono-
clasm during which many religious *280 artifacts
were destroyed), and, thanks to restoration efforts,
the ravages of time.

Testimony before Judge Noland established that the
Kanakaria mosaic was one of only a handful of such
holy Byzantine relics to survive into the twentieth
century. Sadly, however, war came to Cyprus in the
1970s, from which the mosaic could not be spared.

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The Cypriot people have long been a divided people, approximately three-fourths being of Greek descent and Greek-Orthodox faith, the other quarter of Turkish descent and Muslim faith. No sooner had Cyprus gained independence from British rule in 1960 than this bitter division surfaced. Civil disturbances erupted between Greek and Turkish Cypriots, necessitating the introduction of United Nations peacekeeping forces in 1964. (U.N. forces still remain in Cyprus.) Through the 1960s, the Greek Cypriots, concentrated in the southern part of the island, became increasingly estranged from the Turkish Cypriots, concentrated in the north.

The tensions erupted again in 1974, this time with more violent results. In July, 1974, the civil government of the Republic of Cyprus was replaced by a government controlled by the Greek Cypriot military. In apparent response, on July 20, 1974, Turkey invaded Cyprus from the north. By late August, the Turkish military forces had advanced to occupy approximately the northern third of the island. The point at which the invading forces stopped is called the "Green Line." To this day, the heavily-guarded Green Line bisects Nicosia, the capital of the Republic, and splits the island from east to west.

The Turkish forces quickly established their own "government" north of the Green Line. In 1975, they formed what they called the "Turkish Federated State of Cyprus" ("TFSC"). In 1983, that administration was dissolved, and the "Turkish Republic of Northern Cyprus" ("TRNC") was formed. These "governments" were recognized immediately by Turkey, but all other nations in the world—including the United States—have never recognized them, and continue to recognize the Republic of Cyprus ("Republic"), plaintiff-appellee in this action, as the only legitimate government for all Cypriot people.

The Turkish invasion led to the forced southern exodus of over one-hundred thousand Greek Cypriots who lived in northern Cyprus. Turkish Cypriots living in southern Cyprus (and tens of thousands of settlers from mainland Turkey) likewise flooded into northern Cyprus, resulting in a massive exchange of populations.

Lythrankomi is in the northern portion of Cyprus that came under Turkish rule. Although the village and the Kanakaria Church were untouched by the invad-

ing forces in 1974, the villagers of Greek ancestry were soon thereafter "enclaved" by the Turkish military. Despite the hostile environment, the pastor and priests of the Kanakaria Church continued for two years to conduct religious services for the Greek Cypriots who remained in Lythrankomi. Hardy as they must have been, these clerics, and virtually all remaining Greek Cypriots, were forced to flee to southern Cyprus in the summer of 1976. Church of Cyprus officials testified that they intend to re-establish the congregation at the Kanakaria Church as soon as Greek Cypriots are permitted to return safely to Lythrankomi. (Thirty-five thousand Turkish troops remain in northern Cyprus.)

When the priests evacuated the Kanakaria Church in 1976, the mosaic was still intact. In the late 1970s, however, Church *281 of Cyprus officials received increasing reports that Greek Cypriot churches and monuments in northern Cyprus were being attacked and vandalized, their contents stolen or destroyed. (Such reports were necessarily sketchy and unverifiable as officials from the Republic and Church of Cyprus have been denied access to northern Cyprus.) In November, 1979, a resident of northern Cyprus brought word to the Republic's Department of Antiquities that this fate had also befallen the Kanakaria Church and its mosaic. Vandals had plundered the church, removing anything of value from its interior. The mosaic, or at least its most recognizable and valuable parts, had been forcibly ripped from the apse of the church. Once a place of worship, the Kanakaria Church had been reduced to a stable for farm animals.

Upon learning of the looting of the Kanakaria Church and the loss of its mosaics (made plural by the vandals' axes), the Republic of Cyprus took immediate steps to recover them. As discussed in greater detail in Judge Noland's opinion, *see* [717 F.Supp. at 1380](#), these efforts took the form of contacting and seeking assistance from many organizations and individuals, including the United Nations Educational, Scientific and Cultural Organization ("UNESCO"); the International Council of Museums; the International Council of Museums and Sites; Europa Nostra (an organization devoted to the conservation of the architectural heritage of Europe); the Council of Europe; international auction houses such as Christie's and Sotheby's; Harvard University's Dumbarton Oaks Institute for Byzantine Studies; and the foremost mu-

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seums, curators and Byzantine scholars throughout the world. The Republic's United States Embassy also routinely disseminated information about lost cultural properties to journalists, U.S. officials and scores of scholars, architects and collectors in this country, asking for assistance in recovering the mosaics. The overall strategy behind these efforts was to get word to the experts and scholars who would probably be involved in any ultimate sale of the mosaics. These individuals, it was hoped, would be the most likely (only?) actors in the chain of custody of stolen cultural properties who would be interested in helping the Republic and Church of Cyprus recover them.

The Republic's efforts have paid off. In recent years, the Republic has recovered and returned to the Church of Cyprus several stolen relics and antiquities. The Republic has even located frescoes and other works taken from the Kanakaria Church, including the four mosaics at issue here. These four mosaics, each measuring about two feet square, depict the figure of Jesus, the busts of one of the attending archangels, the apostle Matthew and the apostle James.

To understand how these pieces of the Kanakaria mosaic resurfaced, we must trace the actions of appellant Peg Goldberg and the other principals through whose hands they passed in 1988.

Peg Goldberg is an art dealer and gallery operator. Goldberg and Feldman Fine Arts, Inc., is the Indiana corporation that owns her gallery in Carmel, Indiana. In the summer of 1988, Peg Goldberg went to Europe to shop for works for her gallery. Although her main interest is 20th century paintings, etchings and sculptures, Goldberg was enticed while in The Netherlands by Robert Fitzgerald, another Indiana art dealer and "casual friend" of hers, to consider the purchase of "four early Christian mosaics." In that connection, Fitzgerald arranged a meeting in Amsterdam for July 1st. At that meeting, Fitzgerald introduced Goldberg to Michel van Rijn, a Dutch art dealer, and Ronald Faulk, a California attorney. Van Rijn and Faulk were strangers to Goldberg. All she knew about them was what she learned in their few meetings, which included the fact that van Rijn, a published expert on Christian icons (she was given a copy of the book), had been convicted by a French court for art forgery; that he claimed to be a descendant of both Rembrandt

and Rubens; and that Faulk was in Europe to represent Fitzgerald and van Rijn.

At that first meeting in Amsterdam on July 1, 1988, van Rijn showed Goldberg photographs of the four mosaics at issue in *282 this case and told her that the seller wanted \$3 million for them. Goldberg testified that she immediately "fell in love" with the mosaics. Van Rijn told her that the seller was a Turkish antiquities dealer who had "found" the mosaics in the rubble of an "extinct" church in northern Cyprus while working as an archaeologist "assigned (by Turkey) to northern Cyprus." (Goldberg knew of the Turkish invasion of Cyprus and of the subsequent division of the island.) As to the seller, Goldberg was also told that he had exported the mosaics to his home in Munich, Germany with the permission of the Turkish Cypriot government, and that he was now interested in selling the mosaics quickly because he had a "cash problem." Goldberg was not initially given the seller's identity. Goldberg also learned that Faulk, on behalf of Fitzgerald and van Rijn, had already met with this as-yet-unidentified seller to discuss the sale of these mosaics. Her interest quite piqued, Goldberg asked Faulk to return to Munich and tell the seller-whose identity, she would eventually learn, was Aydin Dikman-that she was interested.

Faulk dutifully took this message to Dikman in Munich, and returned to Amsterdam the following day. Faulk returned from that meeting with a contract he signed as agent for van Rijn to purchase the mosaics from Dikman for \$350,000. When Goldberg met with Faulk on July 2, she was not told of this contract, however. Faulk merely informed her that Dikman still had the mosaics (though he was "actively negotiating with another buyer"), and that, in Faulk's opinion the export documents he had been shown by Dikman were in order. Faulk apparently showed Goldberg copies of a few of these documents, none of which, of course, were genuine, and at least one of which was obviously unrelated to these mosaics. See [Autocephalous, 717 F.Supp. at 1382](#).

The next day (all of this happening rather fast), the principals gathered again in Amsterdam. Goldberg, van Rijn, Fitzgerald and Faulk agreed to "acquire the mosaics for their purchase price of \$1,080,000 (U.S.)." The parties agreed to split the profits from any resale of the mosaics as follows: Goldberg 50%;

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Fitzgerald 22.5%; van Rijn 22.5%; and Faulk 5%. A document to this effect was executed on July 4, 1988, which document included a provision reading, "This agreement shall be governed by and any action commenced will be pursuant to the laws of the state of Indiana."

In those hectic early days of July, Goldberg contacted Otto N. Frenzel III, a friend and high-ranking officer at the Merchants National Bank of Indianapolis ("Merchants"), and requested a loan from Merchants of \$1.2 million for the purchase of the mosaics. She told Frenzel that she needed \$1,080,000 to pay van Rijn and the others, and she required the additional \$120,000 to pay for expenses, insurance, restoration and the like. Merchants assured her that financing could be arranged, if she could provide appraisals and other documents substantiating the transaction. With Fitzgerald's and van Rijn's help, Goldberg obtained the appraisals (all three of which valued the mosaics at between \$3 and \$6 million), and sent them to Merchants. That done, she and Fitzgerald hurried to Geneva, Switzerland, for the transfer of the mosaics, which was to take place on July 5. After arriving in Switzerland, Goldberg learned that her requested loan had been approved by Merchants and the money would be forthcoming, though a few days behind schedule. Her financing secured, Goldberg proceeded to the July 5 meeting as scheduled. She could not yet turn over the money, but she wanted to get a look at what she was buying.

The July 5 meeting was held in the "free port" area of the Geneva airport, an area reserved for items that have not passed through Swiss customs. Faulk and Dikman arrived from Munich with the mosaics, which were stored in crates. Dikman introduced himself to Goldberg and then left; this brief exchange was the only time the two would meet. Goldberg then inspected the four mosaics. She testified that she "was in awe," and that, despite some concern about the mosaics' deteriorating condition, she wanted them "more than ever."

***283** During the few days that Goldberg waited in Switzerland for the money to arrive from Merchants, she placed several telephone calls concerning the mosaics. She testified that she wanted to make sure the mosaics had not been reported stolen, and that no treaties would prevent her from bringing the mosaics into the United States. She called UNESCO's office

in Geneva and inquired as to whether any treaties prevented "the removal of items from northern Cyprus in the mid- to late-1970s to Germany," but did not mention the mosaics. She claims also to have called, on advice from an art dealer friend of hers in New York, the International Foundation for Art Research ("IFAR"), an organization that collects information concerning stolen art. She testified that she asked IFAR whether it had any record of a claim to the mosaics, and that, when she called back later as instructed, IFAR told her it did not. Judge Noland clearly doubted the credibility of this testimony, noting, among other things, that neither Goldberg nor IFAR have any record of any such search. (A formal IFAR search involves a fee and thus generates a bill that would serve as proof that a search was performed.) [Autocephalous, 717 F.Supp. at 1403](#). Judge Noland also questioned Goldberg's testimony that she telephoned customs officials in the United States, Switzerland, Germany and Turkey. *Id.* The only things of which Judge Noland was sure was that Goldberg did *not* contact the Republic of Cyprus or the TRNC (from one of whose lands she knew the mosaics had come); the Church of Cyprus; "Interpol," a European information-sharing network for police forces; nor "a single disinterested expert on Byzantine art." *Id.* at 1403-04.

However Goldberg occupied her time from July 5 to July 7, on the latter date the money arrived. Goldberg took the \$1.2 million, reduced to \$100 bills and stuffed into two satchels, and met with Faulk and Fitzgerald at the Geneva airport. As arranged, Goldberg kept \$120,000 in cash and gave the remaining \$1,080,000 to Faulk and Fitzgerald in return for the mosaics. Faulk and Fitzgerald in turn split the money with van Rijn, Dikman and their other cohorts as follows: \$350,000 to Dikman (as per Faulk and van Rijn's prior agreement with him); \$282,500 to van Rijn; \$297,500 to Fitzgerald; \$80,000 to Faulk; and \$70,000 to another attorney in London. Along with the mosaics, Goldberg received a "General bill of sale" issued by Dikman to Goldberg and Feldman Fine Arts, Inc. The following day, July 8, 1988, Goldberg returned to the United States with her prize.

Back home in Indiana, Goldberg took what she had left of her \$120,000 cut and deposited it into several of her business and personal bank accounts. After paying for the insurance and shipment of the mosaics, as well as a few unrelated art purchases, that sum

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amounted to approximately \$70,000. Her friends and business associates in Indiana soon took quite an interest in her purchase; literally. For large sums of money, Frenzel, Goldberg's well-placed friend at Merchants, and another Indiana resident named Dr. Stewart Bick acquired from van Rijn and Fitzgerald substantial interests in the profits from any resale of the mosaics.

Peg Goldberg's efforts soon turned to just that: the resale of these valuable mosaics. She worked up sales brochures about them, and contacted several other dealers to help her find a buyer. Two of these dealers' searches led them both to Dr. Marion True of the Getty Museum in California. When told of these mosaics and their likely origin, the aptly-named Dr. True explained to the dealers that she had a working relationship with the Republic of Cyprus and that she was duty-bound to contact Cypriot officials about them. Dr. True called Dr. Vassos Karageorghis, the Director of the Republic's Department of Antiquities and one of the primary Cypriot officials involved in the worldwide search for the mosaics. Dr. Karageorghis verified that the Republic was in fact hunting for the mosaics that had been described to Dr. True, and he set in motion the investigative and legal machinery that ultimately resulted in the Republic learning that they were in Goldberg's possession in Indianapolis.

After their request for the return of the mosaics was refused by Goldberg, the Republic*284 of Cyprus and the Church of Cyprus (collectively "Cyprus") brought this suit in the Southern District of Indiana for the recovery of the mosaics. Judge Noland bifurcated the possession and damages issues and held a bench trial on the former. In a detailed, thorough opinion (that occupies thirty-one pages in the Federal Supplement), Judge Noland awarded possession of the mosaics to the Church of Cyprus. Goldberg filed a timely appeal.

[CUDAHY](#), Circuit Judge, concurring:

A second and unrelated, but important, aspect of this case involves the treatment of the cultural heritage of

foreign nations under international and United States law. The United States has both acceded to international agreements and enacted its own statutes regarding the importation of cultural property. These regulatory efforts have encompassed transfers of property during both wartime and peacetime and apply whether the property was originally stolen or "merely" illegally exported from the country of origin. The two most significant international agreements that attempt to protect cultural property are the 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict (the "1954 Hague Convention"), 249 U.N.T.S. 215 (1956), and the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Transport, Export and Transfer of Ownership of Cultural Property (the "UNESCO Convention"), 823 U.N.T.S. 231 (1972). Under both these multinational treaties, as well as under the United States' Convention on Cultural Property Implementation Act, [19 U.S.C. § 2601 et seq. \(1983\)](#), the Cypriot mosaics would be considered cultural property warranting international protection. For example,*296 Article I of the UNESCO Convention defines cultural property as "property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to one or more of the following categories:

- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old ...;
- (g) property of artistic interest, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material...."

The 1954 Hague Convention may be applicable to the case before us given the incursion of Turkish armed forces into Cyprus in 1974 and our ongoing refusal to recognize the government established in the northern part of Cyprus. The 1954 Hague Convention, which is but the most recent multilateral agreement in a 200-year history of international attempts to protect cultural property during wartime, prohibits the destruction or seizure of cultural property during armed conflict, whether international or civil in nature, and during periods of belligerent occupation.

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The Hague Convention also applies to international trafficking during peacetime in cultural property unlawfully seized during an armed conflict. The attempt of the government established in northern Cyprus by the Turkish military to divest the Greek Cypriot church of ownership of the mosaics might be viewed as an interference of the sort contemplated by the 1954 Hague Convention. If this were the case, the acts and decrees of the northern Cyprus government divesting title to this cultural property would not demand the deference of American courts.

The second international agreement, the UNESCO Convention, focuses on private conduct, primarily during peacetime, and thus is also applicable to the theft and removal of the mosaics from Cyprus.^{FN4} Article 7 of that Convention requires signatory nations:

^{FN4}. For a more detailed discussion of the UNESCO Convention, see Jora, *The Illicit Movement of Art and Artifact: How Long Will the Art Market Continue to Benefit from Ineffective Laws Governing Cultural Property?* 13 Brooklyn J. Int'l L. 55, 62-66 (1987), and for discussion of the United States' implementation of the UNESCO Convention, see Note, *Harmonious Meeting: the McClain Decision and the Cultural Property Implementation Act*, 19 Cornell Int'l L.J. 311, 318-21 (1986).

(a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported....;

(b)(i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party ..., provided that such property is documented as appertaining to the inventory of that institution;

(ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property ..., provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property....

It is clear that the mosaics in the case before us were stolen (under any reasonable definition of that word) from a religious institution and that the mosaics were extensively documented by the Dumbarton Oaks publication as belonging to the Kanakaria Church. While the UNESCO Convention seems to contemplate primarily measures to be implemented by the executive branch of a government through its import and export rules and policies, the judicial branch should certainly attempt to reflect in its decisionmaking the spirit as well as the letter of an international agreement to which the United States is a party.

The UNESCO Convention, although ratified by Congress in 1972, was not formally implemented in the United States until the *297 enactment of the Cultural Property Implementation Act in 1983. The Cultural Property Implementation Act, [19 U.S.C. §§ 2601-2613](#), focuses primarily on implementation of Articles 7(b) and 9 of the UNESCO Convention, which call for concerted action among nations to prevent trade in specific items of cultural property in emergency situations. The delay in the enactment of the Cultural Property Implementation Act apparently was caused, in part, by pressure from art dealers and traders, who argued that if the United States undertook unilateral import controls, illegal cultural property would simply be sold to those art market countries lacking similar import controls. In fact, the Cultural Property Implementation Act was perhaps finally enacted only because it was perceived as a restraint of sorts on certain Customs officers. These officials had deemed all archaeological materials that a foreign country had claimed were "stolen" to be subject to seizure under the National Stolen Property Act, [18 U.S.C. § 2311 et seq. \(1934\)](#). The Cultural Property Implementation Act, therefore, emphasized the need for concerted action and, in particular, seemed to prefer action resulting from bilateral treaties between the United States and the affected source countries. Such treaties have now been put into effect with a few countries, including Mexico, Guatemala and Peru.

As indicated, the Cultural Property Implementation Act addresses primarily the question of import controls and, in section 2607, prohibits the importation into the United States of any "cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which is stolen

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from such institution....” This section is not directly applicable here, first, because the mosaics were stolen after the effective date of the statute and, second, because the statute is directed at import controls rather than replevin suits. Nonetheless, the policy that the Act embodies is clear: at the very least, we should not sanction illegal traffic in stolen cultural property that is clearly documented as belonging to a public or religious institution. This is particularly true where this sort of property is “important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people.” [19 U.S.C. § 2601\(2\)\(C\)\(ii\)\(II\)](#).

Focusing on a relatively short segment of what might otherwise be considered its “history,” the United States chooses sometimes to ignore the ancient cultural heritage of the land which it now occupies. But a short cultural memory is not an adequate justification for participating in the plunder of the cherished antiquities that play important roles in the histories of foreign lands. The UNESCO Convention and the Cultural Property Implementation Act constitute an effort to instill respect for the cultural property and heritage of all peoples. The mosaics before us are of great intrinsic beauty. They are the virtually unique remnants of an earlier artistic period and should be returned to their homeland and their rightful owner. This is the case not only because the mosaics belong there, but as a reminder that greed and callous disregard for the property, history and culture of others cannot be countenanced by the world community or by this court.