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WITH
THE ANTIQUITIES COALITION



CULTURE IN CRISIS

PRESERVING CULTURAL
HERITAGE IN CONFLICT ZONES

Table of Contents

Acknowledgements	v
Contributors	vii
Preface	xi
Introduction	1
Daniel Serwer	
Chasing Cultural Narratives and Destruction in Syria and Iraq	3
Stephanie Billingham	
Introduction	3
Negotiating with Terrorists?	5
Daesh and Cultural Destruction: Iconoclastic or Propagandist?	6
Why Do So Many Not Value Cultural Goods As We Do?	10
Whose Heritage Is This?	12
Where Do We Go From Here?	15
Using a Market Reduction Approach to Tackle the Illicit Trade in Cultural Property – Prosecuting the White Collar Criminals of Cultural Antiquities Looting	17
Jessica Jones	
Introduction	17
Background on the Illicit Trade of Cultural Property	18
Modern Cultural Heritage Theft	18
Elements of the Trade	20
Current Legal Protection of Cultural Property?	21
International Conventions	21
Domestic Law in the United States	24
A New Approach to Legal Protection: Criminological Perspective	25

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Market Reduction Approach.....	26
Focusing Enforcement on Demand Forces.....	27
Prosecuting White-Collar Criminals of Cultural Property Theft	28
Current Criminal Legislation	28
National Stolen Property Act.....	28
Evaluating Alternative Legal Regimes for Recommendations	30
Lacey Act	30
Other Extraterritorial Criminal Frameworks.....	31
Recommendations for New Criminal Legislation	32
Domestic Registry	34
Registry Recommendations	35
CITES Practices	37
Conclusion	39
Intermediate Actors in the Illicit Antiquities Trade	41
Ceriel Gerrits	
Introduction	41
A Network Theory of Antiquities Looting.....	43
Location and Nature of the Antiquities Trafficking Networks.....	43
Model I: The Hierarchical Network/Organized Crime Group.....	45
Model II: The Opportunity Network.....	46
Model III: The Non- Hierarchical Centralized Network	47
Analysis Part I: Research and Accounts of Illicit Antiquities Trade Routes	48
Early-Stage Middlemen	48
Later-Stage Middlemen	51
Analysis Part II: Custom Data Analysis	54
The European Market	57
Antiquities (HS 9706).....	57
Collections and Collector's Pieces (HS 9705)	61
Original Sculptures and Statuaries (HS 9703)	62
United States	64
Antiquities (HS 9706).....	64
Collections and Collector's Pieces (HS 9705)	64
Original Sculptures and Statuaries (HS 9703)	64
Discussion.....	65
General Recommendations	66
To Researchers.....	66
To EU, Swiss and US Policy Makers	66

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

The Diwan al-Rikaz: A Study	69
Katelyn van Dam	
The Importance of Defining the Problem	69
Evolution of the Diwan System	70
The Diwan al-Rikaz	73
IS' Antiquities Operation	74
IS' Antiquities Trade	79
Conclusion	84
 Recommendations for the United Nations: Cultural Protection	
in the MENA Region	87
Rie Horiuchi	
Background: Strengthening the Prevention of Cultural Destruction	
in the MENA Region	87
Legal Framework: The 1954 Hague Convention	88
Local Capacity Building: Training Culture Protection Experts, Documenting	
Cultural Property	89
International Capacity Building: Training Deployable Cultural Police Officers	90
MENA Cultural Destruction Prevention Mechanism (CPDM)	91
The Human Rights Perspective: Applying a "Responsibility to Protect"	
Strategy to Cultural Protection	92
ICC Case: Identifying Cultural Destruction as a War Crime	93
UN Peacekeeping and Cultural Protection	93
Explicit Cultural Protection Obligations in the Peacekeeping Mandate: The Case	
of MINUSMA	94
The Implicit Cultural Protection Obligation in the peacekeeping Mandate: The Case	
of UNMIK	96
Should Cultural Protection be Explicitly Written in the Mandate?	97
Conclusion	99
 Cultural Heritage in Post-War Peace Building – Analyzing the Framework	
for Reconciliation and Rebuilding in Bosnia and Herzegovina	101
Ross Hurwitz	
Introduction	101
The War in Bosnian	104
Conflict of Identity	104

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

The Dayton Accord.....	106
Recovery and Reconstruction	108
Data Collection.....	108
Rebuilding Multiculturalism.....	109
Continued Ethnic Tensions	111
Developing a Long-Term Strategy.....	113
Virtual Memory.....	114
“Righteous Among the Nations”	115
Reconstruction vs. Commemoration	116
Conclusion.....	117
 Conclusion	 119
Daniel Serwer	
 Bibliography	 123

Acknowledgments

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Contributors



Stephanie Billingham

A great deal of work has already been done on how to preserve and restore cultural artifacts and goods before a conflict begins, and after it ends. Stephanie's research began as an exploration of what could be done to protect cultural sites within an active conflict zone, focusing on Daesh in Syria and Iraq given the extraordinary risk those country's heritage sites are currently facing. After concluding that negotiating with Daesh or paying ransom for artifacts was unacceptable and impossible courses of action, she interrogated the motivations behind Daesh's destruction of Syrian and Iraqi heritage, and the narratives that gave that destruction symbolic power and allure strong enough to recruit people. How did some people think of Mosul Museum, that they celebrated when sledgehammers were taken to its statuary?

Though Daesh's annihilation of Syrian and Iraqi heritage sites is intended to sever the relationship those populations have with their heritage and identity, the international community's narrative of a shared, universal cultural history has already done a great deal of that work for them. Whose values and history are museums preserving? Museums are centers of cultural capital to which a great number of people do not necessarily have access. Repatriation battles over archaeological artifacts taken from former colonies now on permanent display in the West's grandest museums have lasted decades with no end in sight. And it is widely perceived from media coverage, that western countries grieve the loss of Palmyra and other heritage sites more than Syria and Iraq's suffering and dying people. Does a shared, universal cultural heritage really exist? It would seem not. Stephanie concludes that international community's unthinking propagation of a narrative of universal shared heritage, which does not in fact exist, gives strength to Daesh's interpretation of the destruction of cultural heritage as a symbolic destruction of the West's cultural hegemony. We must acknowledge the strength of that narrative, and counter it by reforming our own - develop a new story of world heritage and legacy that is inclusive, and works to rebuild the relationships between people and their heritage that had already been torn asunder by archaeological looting during colonization.

Before coming to SAIS, Stephanie completed a Master of Arts in Dispute Resolution at the University of Victoria, in British Columbia, Canada. She spent her first year at SAIS Bologna, and last summer working on a coffee plantation in Ecuador. After graduating, she hopes to work in international humanitarian aid.



Cerial Gerrits

Cerial examined the structure and locations of the networks behind the illicit antiquities trade emanating from Syria and Iraq. The main challenge for this open-source research was the lack of reliable public data. To overcome this challenge, the research adopted a theoretical approach and tried to see how data that is available to the public fits in existing models of networks, in order to identify types of networks as well as knowledge gaps. By reviewing current findings of mainly journalists, as well as by analyzing customs data, the paper hypothesizes that it is unlikely that organized crime groups play a major role in the trafficking of looted antiquities (that is, looted by either the Syrian Army as well as Daesh and other rebel groups). Instead, the trafficking networks are likely consisting of temporarily connected people and groups who trade as long as they have the opportunity. In addition, there is a chance that besides these opportunistic networks, there exists a type of networks based on more long-term relations, though these probably only begin in later stages of the supply chain, especially when the trafficked antiquities have been smuggled out of countries contiguous with Syria and Iraq. The paper also identified three different ways antiquities are currently trafficked to end-markets: direct smuggling exports from early-transit countries (mainly Turkey, Lebanon, Kuwait and the UAE) to their country of destination; export from the early-transit countries after the antiquities have received falsified documents; and smuggling from the early-transit countries through other transit countries (mainly Greece and Bulgaria).

Cerial Gerrits is a Dutch graduate student at SAIS's Conflict Management Program.



Rie Horiuchi

Rie's focus includes cultural protection in United Nations peacekeeping missions. She makes recommendations for the international community on how to protect cultural properties before, during, and after conflicts. She hopes that her research will contribute to future UN policy making.

Rie is a first year MA student concentrating in Conflict Management and African Studies at SAIS. A native of Tokyo, she worked as an official in the Japanese Ministry of Defense. Wherever she travels, Rie loves visiting museums and art galleries. Her passion for art informs her career interest in cultural protection, security and conflict management.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones



Ross Hurwitz

When this project began, Ross set out to explore the role that cultural heritage plays in post-war peace building processes and how heritage has effectively, or ineffectively, been used to help reconcile former combatants. His research focused on the last 20 years of peace building initiatives in Bosnia and Herzegovina and the impact of the international community's framework for rebuilding and reconciliation. Unfortunately, he found this framework inadequate for dealing with the deep ethnic divisions still present in Bosnia today. Hopefully his recommended strategies for the international community will not only help Bosnia overcome its ethnic divisions, but ensure that future peace building operations take into account the delicate nature that cultural heritage plays in these post-war environments and how it can best be utilized to guarantee long-term peace and security in the future.

Ross is a first year MA candidate in Conflict Management. Prior to coming to SAIS, he received a BFA in Performing Arts and spent 5 years as a professional actor, specializing in classical theater and Shakespeare. Ross's interest in theater is based primarily in an actor's responsibility to explore the human experience and connect people from all walks of life. In 2014, Ross transferred these skills to the work of public service, international relations and conflict management. He spent a year on the Hill, first interning in the House of Representatives and then working in the press office for Senator Elizabeth Warren. Nevertheless, the importance of cultural heritage and the arts remains a key part of Ross's world view.



Jessica Jones

With a background in international law, Jessica focused on developing best practices from existing legal instruments. She analyzed existing international conventions protecting cultural property and U.S. law to formulate her recommendations. She found that current laws are ineffectual in stemming the huge demand for illicit cultural objects and more punitive domestic criminal sanctions are needed to deter future looting.

Jessica is a first year Masters candidate concentrating in Strategic Studies. Prior to SAIS, she worked as an attorney primarily in the government sector, including the Department of Justice and the State of Oregon.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones



Katelyn van Dam

Katelyn wrote her paper on the evolution of the Diwan al-Rikaz, the Islamic State's Ministry that handles their antiquities trafficking network. As the control of IS grows in the region, so too does their control over the entire supply chain of trafficked antiquities. Katelyn used her best investigative skills to attempt to illustrate the network from the archeology sites to the collectors in the West.

Katelyn is a first year Strategic Studies concentrator, minoring in Conflict Management. As a Marine combat veteran, Katelyn is interested in the many facets of illicit activities that finance bad actors. Understanding these networks is important to destroying these groups while preserving the history of mankind for future generations."

Preface

Antiquities Coalition

Iraq and Syria are now suffering unprecedented plunder and outright destruction of their heritage from armed conflict. Facing the largest cultural emergency since World War II, the global community stands at a crossroads. Violent extremist organizations like Daesh (also known as ISIL or ISIS) are arming their cause through antiquities looting and trafficking, while also deliberately and systematically destroying heritage as a weapon of war. The cultural crisis has become inseparable from the humanitarian crisis.

The Antiquities Coalition unites a diverse group of experts in the global fight against these cultural crimes—which are a threat not only to our shared heritage—but also to human rights and global security.

We realized the need for the Antiquities Coalition during the Egyptian Revolution of January 2011. In the weeks after the uprising, reports of mass looting lit up the archaeological hotlines, as Abusir, Dahshur, Saqqara and countless other ancient sites came under attack. To support the country during this time of crisis, we joined forces with other concerned individuals and institutions, eventually signing a historic public-private partnership with the Egyptian government in March 2014.

But as the crisis in Iraq and Syria illustrates, Egypt is not the only country at risk. Plunder for profit is funding crime and conflict around the world, erasing our past and threatening our future. We created the Antiquities Coalition to expand our work to other countries in crisis. Through independent research and outside collaborations, our not-for-profit organization tackles crimes against cultural heritage head on, by partnering with leaders from the worlds of culture, education, business, diplomacy, law, policy, security, and technology.

The Paul H. Nitze School of Advanced International Studies (SAIS) at Johns Hopkins is such a leader. For the past seven decades, SAIS has been at the forefront of academic excellence in international relations, producing the cutting edge research *and* thinkers needed to confront the day's most critical issues. Knowing this record of achievement firsthand, as a member of the SAIS Advisory Board, I was thrilled when Professor Daniel Serwer reached out to us suggesting a collaboration with the Antiquities Coalition.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Over the course of the 2015/2016 academic year, we were honored to partner with SAIS to explore today's heritage crisis through a student practicum, to our knowledge the first of its kind. For our organization, this was an unprecedented opportunity, not only to introduce this issue to a new generation of scholars, but also to address a wide range of research questions from both an academic and practical perspective. This fresh and interdisciplinary approach resulted in the papers that follow, which put forward a thorough analysis of the problem, but more importantly concrete recommendations to address it.

We believe the work of these students is a valuable contribution to the broader discussion on cultural racketeering—and moreover—that it comes at a critical time. The world's decision makers are now beginning to realize this is no longer a crisis of preservation, but one of national and even global security, and they are urging immediate action. In short: we need solutions more than ever.

In the following pages, you will find a number of such solutions, which thanks to the hard work of SAIS students and faculty, have successfully tackled an age old problem in a cutting edge way. We hope that you find these papers illuminating and welcome any feedback. Most of all, we hope that you will join us in this battle to stop the illicit trade of conflict antiquities, which threatens both our past and futures.

Introduction

Daniel Serwer

There is nothing new about the looting and destruction of cultural property. The Roman Emperor Titus looted and then razed the Jewish temple in Jerusalem, Napoleon shipped art taken during his conquests back to the Louvre, the Nazis and Soviets emptied museums and private collections, their fellow Americans have looted Native American sites. Even in peacetime, monuments like the Elgin marbles and the Pergamon Altar have found their way into foreign hands, often claiming to provide protection. The monuments and works of art that remain intact and in place from prior civilizations are only those that happened to survive.

Twenty-first-century technology has, however, changed the scale and quality of the looting and destruction. When the Islamic State took over a large part of Syria and Iraq in 2014, it organized a massive effort to loot artifacts that could be transported and destroyed what it could of the rest. The objective was two-fold: to demonstrate disdain for the culture that preceded Islam and to enrich the Islamic State's financial resources. Modern technology, including high explosives and earth-moving equipment, and global transportation networks made this possible on a scale not previously attempted. Many thousands of sites were looted and their artifacts sold into a world market, major monuments were destroyed, and many millions of dollars flowed into Islamic State coffers.

This appalling contemporary evolution of an age-old practice has attracted a good deal of public attention in the United States, Europe, and beyond. The 2001 Taliban destruction of the Bamian Buddhas and the looting of the Baghdad Museum after the 2004 invasion had sensitized Europeans and Americans, but they were still unprepared for the systematic, high-profile destruction that the Islamic State indulges in. The desire to "do something" was immediate and compelling.

What to do is far less clear. That was the issue the Antiquities Coalition raised in December 2015 with six master's students at the Johns Hopkins School of Advanced International Studies (SAIS) enrolled in a practicum on "cultural racketeering and cleansing." Antiquities Coalition wanted to know about best practices for law and law enforcement in the fight against the illicit antiquities trade, including what is done that works for nature conservation and historical preservation. Could easements or buying land be used to protect

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

archaeological sites? How does the Convention on International Trade in Endangered Species (CITES) compare with the UNESCO Convention on the Means of Prohibiting and Preventing the Import, Export, and Transfer of Ownership of Cultural Property? How can the UNESCO Convention be improved and strengthened?

For those of us who live and work in the U.S., American government policy is an area of particular concern. Through the use of bilateral agreements, the U.S. has imposed import restrictions on archaeological material from 16 countries, in an effort to reduce the incentive for pillage by discouraging trade in undocumented cultural objects. What effect have these memoranda of understanding had on the antiquities market? On imports into the U.S.? The U.S. has not designated a lead agency for combatting the illicit antiquities trade. Duties currently fall variously to the Departments of Homeland Security, Justice, State, Treasury, and others. How can the government develop an internal reporting structure to better address interagency coordination — especially as antiquities trafficking relates to terrorist financing?

International peacekeeping forces, whether through the United Nations or other intergovernmental organizations like NATO, could do more to protect cultural resources in times of instability. Have archaeological sites, museums, or other heritage sites ever been included in a peacekeeping mandate? Are there parallels for the protection of natural resources or even similar economic resources? What is the process for inclusion?

The SAIS students divvied up these issues and worked through the spring 2016 semester to elucidate them, with guidance from their Antiquities Coalition “client.” This small volume contains the results of their work, which was presented both to the Antiquities Coalition and publicly at SAIS in April 2016. We plan some further work in spring 2017 on these and related issues, in a practicum devoted to the broader issue of “Dealing With Extremists.”

The already ongoing implosion of the Islamic State and its control of territory should not lull us into forgetting the cultural destruction it has wrought. We should do what we can to beef up efforts to counter cultural racketeering and cleansing. The trade will continue with objects already looted and no doubt grow with the next insurgent onslaught. “Never Again” is a motto all too often observed in the breach. There will be a next time. We need to be ready for it.

Clashing Cultural Narratives and Destruction in Syria and Iraq

Stephanie G. Billingham

*“The destruction of ‘statues, sculptures, and engravings of idols and kings... caused an outcry from the enemies of the Islamic State, who were furious at losing a ‘treasured heritage’. The mujāhidīn, however, **were not the least bit concerned about the feelings and sentiments of the kuffār**, just as Ibrāhīm was not concerned about the feelings and sentiments of his people when he destroyed their idols.”¹*

– Dabiq Magazine, Issue 8

“Syria for me is like a wounded man; my job is to preserve his head. If one day this wounded man recovers his health, he can see what he is. But if we lose the Syrian heritage, we lose the Syrian common memory. And then we lose the Syrian identity.”²

– Ma’amoun Abdulkarim, Director of Syrian Antiquities

Introduction

Modern-day Syria, with its “incomparable ancient physical history,” is home to tens of thousands of archaeological sites and artefacts, “from the ruins of our earliest civilizations to Crusader-era fortifications and wonders of Islamic worship and art.”³ But caught between the civil war and the self-proclaimed Islamic States’ destruction of cultural artefacts, Syria’s rich collection of antiquities is under imminent threat. The Ancient City of Aleppo, designated a UNESCO World Heritage site in 1968, has been more than half destroyed by the fighting

¹ “Erasing the Legacy of A Ruined Nation,” *Dabiq* 8, March 2015, 22. Emphasis given.

² James Harkin, “Murdering History,” *Smithsonian Magazine* 46 (2016): 45.

³ *Ibid.*, 39.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

between Syrian President Bashar al-Assad and opposition forces; and the self-proclaimed Islamic State, hereafter referred to as Daesh, has in its ravaging of Syria and Iraq demolished the ancient sites of Palmyra, Nimrud and Hatra, structures which have been standing for more than 2,000 years.⁴ However, the two causes of destruction are different. In the fighting between the Syrian government and opposition, Syria's antiquities are collateral damage, tragically so, but not an unusual circumstance throughout human history. But, according to Johns Hopkins Professor of Archaeology Glenn Schwartz, Daesh deliberately annihilates cultural treasures on an unprecedented scale in Syria and Iraq.

Daesh's cultural targets are numerous and varied, from Shiite mosques and shrines, to Christian churches and monasteries, to pre-Islamic Assyrian and Roman sites. Antiquities small enough to be transported and sold on the black market have become a lucrative source of income for Daesh, while the destruction of architecture and relics too large to be moved have been featured in Daesh's high-quality 'documentaries' on its cultural rampage, simultaneously provoking anger from the West and drawing in new recruits. What can the international community do, if anything, to protect ancient architecture and larger relics? Though the sale of smaller Syrian and Iraqi antiquities on the black market is criminal and must be stopped, at least their loss is not permanent. Somewhere in the world they are safe and could be recovered. But not so with Palmyra and Hatra, Nineveh and Nimrud. What can the international community do, if anything, to protect these sights from Daesh?

A great deal of work has been done on preventing Daesh from capturing antiquities by moving them to safe places from 'danger zones' where Daesh has advanced territorially and restoring sites that have been damaged, but there has been little investigation into the potential for protecting ancient sites and relics in Daesh-held land. Would it be possible to negotiate with Daesh somehow for the ancient sites protection? Despite its "puritanical religious ideology" and absolutist statements of hatred and intended annihilation of all *kuffār* — unbelievers — it has been willing to collaborate with former and current members of the secular Ba'ath party and local tribe leaders, engage in economic relations with outsiders to sell oil and antiquities, and ransom foreign hostages to their home countries. All these interactions suggest that Daesh, when practicality or money is involved, is not as uncompromisingly absolutist as it first appears.

This essay will examine the narratives and counter-narratives of Daesh's destruction of cultural goods, to two purposes. Firstly, to determine whether or not negotiation with Daesh for cultural goods' protection would be possible; and secondly, to investigate the appeal

⁴ Harkin, "Murdering History," 44.

cultural destruction has for Daesh's sympathizers and recruits. If the international community is to succeed in either inducing Daesh to leave ancient sites alone, or drain the power and allure of its culturally destructive ideology, we must have a better understanding of why these acts hold such appeal for people in the first place.

Negotiating with Terrorists?

Before delving into narratives explaining Daesh's destruction of cultural goods, it is important to explore a theoretical framework with which to determine whether, depending on the narrative we accept, any sort of negotiation with Daesh would be possible. As William Zartman says, "officially the subject [of negotiating with terrorists] does not exist, we do not negotiate with terrorists," the field of negotiation also concedes that, "practically speaking, there are negotiations and negotiations, and terrorists and terrorists."⁵ In other words there are terrorists with which one can negotiate, and others with which one cannot.

We can differentiate between terrorists who use terror or lives "as exchange currency for other goals," and those whose "action is non-instrumental, a self-contained act that is completed when it has occurred and is not a means to obtain some other goal."⁶ The former are called contingent or instrumental terrorists, and the latter absolute terrorists. Negotiation is possible with contingent terrorists, as they either want to or are willing to exchange their hostages for something else — money, publicity, or captured allies or group members. Hostages are essentially bargaining chips for conditional terrorists, whether they are people or antiquities, with no intrinsic value to the terrorists beyond what can be gained by trading them for something else. They take some part of the opposing side (in this case antiquities), and try to get "the best deal out of the other side's efforts to get that part back, to make itself whole again."⁷

Absolute terrorists are "beyond negotiation," as they "do not want society to be whole again, they want it wounded and bleeding."⁸ Unwilling to discourse with other parties, their goals are unconditional and universal. Ultimately they wish to force the rest of the world to adopt their values and way of life, and compromise of any kind flies in the face of that.⁹ So we

⁵ I. William Zartman, ed., *Negotiating with Terrorists* (Boston: Martinus Nijhoff Publishers, 2003) 1.

⁶ *Ibid.*, 2.

⁷ *Ibid.*, 4.

⁸ *Ibid.*, 4.

⁹ *Ibid.*, 9-10.

must ask, which type of terrorist group is Daesh, absolute or conditional? Could it be both, depending on for what we are trying to negotiate? To answer this question in regards to antiquities, we must examine the narratives that drive Daesh's destruction of cultural artifacts and determine whether they are a potential bargaining chip, or if their destruction is an end in and of itself.

Daesh and Cultural Destruction: Iconoclastic, or Propagandist?

There are two primary narratives that make sense of Daesh's destruction of cultural artifacts. The first is a more traditional, widely accepted view that, given Daesh's own press, seems obvious at first glance: it is iconoclastic and a-historic, "brazenly and publicly destroy[ing] cultural relics in the name of religious purity."¹⁰ This was the dominant characterization of Daesh's motives in the wake of its destruction of the Mosul Museum in February 2015, which Daesh filmed and disseminated on the Internet through a carefully choreographed video. Watching Daesh militants use their own bodies to push ancient statuary to the floor before bashing them with sledgehammers, the international community decried the acts as "medieval iconoclasm, ignorant backwardness and anti-Western arrogance."¹¹ But is this really the case? The second narrative of Daesh as an innovator of propaganda, destroying cultural items not for iconoclastic reasons, but for the purpose of *filming it* to enrage the West and recruit more followers is ultimately more compelling, particularly after careful consideration of the video of the attack on the Mosul Museum.

The video, professionally filmed and edited, featured a synthesized bass drum and a dubbed soundtrack of Arabic songs mixed with machine-gun fire while Daesh militants use sledgehammers to smash the museums artefacts, in slow motion, with cross-fade takes.¹² Through alternating voice-overs and use of captions, the video quotes various Quranic verses justifying the damage and linking it historically to Muhammad's destruction of idols in Mecca. As one voiceover explains:

¹⁰ "What Islamic State gains by destroying antiquities in Iraq," Jeffrey Brown, *PBS News Hour*, February 27, 2015, Retrieved from <http://www.pbs.org/newshour/bb/islamic-state-gains-destroying-antiquities-iraq/>.

¹¹ Ömür Harmansah, "ISIS, Heritage, and the Spectacles of Destruction in the Global Media," *Near Eastern Archaeology*, Vol. 78, No. 3 (September 2015): 171.

¹² James Panero, "The vengeance of the Vandals," *The New Criterion*, December 2015, 40.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

“The Assyrians, Akkadians, and others took for themselves gods of rain, of agriculture, and of war, and worshipped them along with Allah, and tried to appease them with all kinds of sacrifices. The Prophet Muhammad shattered the idols with his own honorable hands, when he conquered Mecca. The Prophet Muhammad commanded us to shatter and destroy statues. This is what his companions did later on, when they conquered lands. Since Allah commanded us to shatter and destroy these statues, idols, and remains, it is easy for us to obey, and we do not care what people think, even if this will cost billions of dollars.”¹³

This line of reasoning holds no water as far as Islamic scripture is actually concerned. Only statues currently being worshipped above God are considered idols and need to be destroyed.¹⁴ Additionally, the last line declaring that “since Allah commanded us to shatter and destroy these statues” they are happy to do so, despite the monetary loss of “billions of dollars,” is a false though clever implication. Daesh is making significant profit from the looting and sale of antiquities, and the framing here is that it is making a monetary sacrifice in the name of Allah. The greater size and consequent difficulty in moving larger pieces makes them either impossible to move and sell, or lowers their value. From this perspective, Daesh is not destroying the statuary because of religious puritanism, but because it cannot derive any greater benefit from another course of action. This means that, in regards to antiquities, Daesh could be an instrumental terrorist. It is willing to trade captured antiquities for money, but has not attempted to do so regarding heritage sites and larger relics because of logistical limitations, and perhaps lack of offers.

The situation looks somewhat different based on other Daesh media. In the eighth issue of *Dabiq*, Daesh’s glossy propaganda magazine, an editorial called “Erasing the Legacy of A Ruined Nation” declares that the *kuffar* “had unearthed these statues and ruins in recent generations and attempted to portray them as part of a cultural heritage and identity that the Muslims of Iraq should be proud of.” The resultant outcry was not a shame, but part of the goal in destroying the statues, as it had “served to enrage the *kuffar*, a deed that in itself is beloved to Allah.”¹⁵ According to *Dabiq*, infuriating the West through cultural destruction is an end in and of itself. Schwartz argues that Daesh understands the inherent cultural values these objects hold for westerners, and in televising those objects’ destruction, intends to “scandalize

¹³ Panero, “The vengeance of the Vandals,” 40.

¹⁴ “What Islamic State gains by destroying antiquities in Iraq,” Jeffrey Brown, *PBS News Hour*, February 27, 2015, Retrieved from <http://www.pbs.org/newshour/bb/islamic-state-gains-destroying-antiquities-iraq/>.

¹⁵ “Erasing the Legacy of A Ruined Nation,” *Dabiq* 8, March 2015, 22.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

everyone who values those antiquities highly.”¹⁶ Daesh’s perception of the relationship between cultural artefacts and the western world is incredibly nuanced, and its destruction of the heritage we consider so dear accomplishes multiple goals, as it “allure[s] their sympathizers and patrons, recruit[s] further fanatics, humiliate[s] local communities while annihilating their sense of heritage and offend[s] the humanitarian west.”¹⁷ Dr. Ömür Harmansah, a professor of art history and specialist in Syrian art, argues that the carefully staged and choreographed videos are the end goal of Daesh’s cultural destruction, not destroying the goods themselves, precisely because it achieves this multifaceted and multidirectional goal of offending and hurting everybody except themselves.¹⁸

According to his analysis, the resulting “visual product is the reason for this destruction in the first place.”¹⁹ Daesh militants “deliberately chose ancient statuary fitting for historicized idol destruction” to most efficiently maximize western



1 - Destruction of Mosul Museum

horror.²⁰ Professor Harmansah states that instead of taking Daesh’s videos at face value, we must “contextualize this performance with respect to our contemporary global regime of monetary and historical value attached to antiquities,” and realize that Daesh is quite deliberately appropriating “these transnational associations and value systems of global heritage to choreograph effective spectacles” with the multifaceted, aforementioned goals in mind.²¹ This version of Daesh, far from being medieval and backward, is almost hypermodern in its sophisticated use and manipulation of modern media to further its ends.

What does this interpretation of Daesh’s motives offer to the determination of the

¹⁶ Harkin, 44.

¹⁷ Harmansah, 171.

¹⁸ Ibid., 171.

¹⁹ Ibid., 171.

²⁰ Ibid., 171.

²¹ Ibid., 175.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

group as either absolute or instrumental? Though Daesh has shown itself willing to negotiate with *kuffār* over certain bargaining chips (smaller antiquities, oil, foreign hostages), its ultimate goal of establishing a caliphate is absolute. Fitting the profile of an absolute terrorist, the destruction of heritage sites accomplishes so much through the resulting videos it is an end, not a means. But as William McCants notes, Daesh is “full of contradictions, which makes it hard to explain — apocalyptic language suffuses its propaganda, yet the group is careful in its planning and cunning in its execution.”²² Its dedication to establishing its caliphate is strong enough to justify modifying religious or political doctrines if doing so ultimately contributes to its end goal.²³ Daesh needs money so it sells oil and antiquities to *kuffār*. There is no benefit to having control over heritage sites excepting the opportunity to make a film about destroying them, albeit that benefit is significant.

Theoretically speaking this interpretation leaves potential room for negotiating with Daesh for heritage sites’ protection. If the international community could offer a deal it found more appealing than destroying the sites (which also takes time, money and resources), we might be able to induce Daesh to at least limit its destruction of cultural sites. Unfortunately, there are moral limitations that keep the international community from acting on this possibility, beyond the practical difficulties. Anything we could offer Daesh in trade that it would be willing to take would ultimately help its cause. Despite the incalculable value of the artefacts and sites Daesh has destroyed (and may yet destroy in the future), the damage inflicted on the rest of the world through any form of payment or trade would be equally incalculable. There is a history of Daesh ransoming people, but though we grieve the loss of both, the value of a human life and the value of a heritage site are different. Paying Daesh ransom for captured people is controversial, let alone negotiating payment for antiquities.

Kidnapping for ransom has been a helpful source of income for Daesh over the past two years, having released numerous journalists, aid workers and foreigners in exchange for money and killing others for whom their countries would not pay. In February 2016, the last of 230 Assyrian Christian hostages were freed after a year of captivity after their ransom was paid. On February 22, 2016 a confidential source told the Associated Press that the worldwide Assyrian community donated millions of dollars for their release.²⁴ Syrian Observatory for Human Rights director Rami Abdurrahman said that the community paid \$25-30 million for the captives’

²² William McCants, *The ISIS Apocalypse: the History, Strategy and Doomsday Vision of the Islamic State* (New York: St. Martin’s Press, 2015), 154.

²³ McCants, 154.

²⁴ Associated Press, “ISIS Collects millions in ransom for abducted Christians,” *CBS News*, February 22, 2016, Retrieved from <http://www.cbsnews.com/news/isis-collects-millions-in-ransom-for-abducted-christians/>.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

release, though the Assyrian Church, wanting to avoid allegations of supporting terrorism, requested the ransom's terms to be kept secret.²⁵ Allegedly faced with a cash shortage resulting from coalition airstrikes and other economic measures, ransom money has become much more dear a source of income for Daesh. It is for precisely this reason that the international community cannot offer ransom money for precious artifacts, though it is possible Daesh would accept it.

It is one thing to bargain and pay ransom for a human being, but another for a physical object, no matter its value. As Deborah Orr wrote in an opinion article in the Guardian last year, "the ancient ruins of Palmyra suffer no fear or despair, no pain or anguish. They are unable to defend themselves, or to flee. They feel nothing. But humans feel for them."²⁶ However this feeling cannot justify ransoming or paying Daesh to protect cultural artifacts, as that money would only be used to put other *people* at risk. Though in some cases there has been an instrumental terrorist leaving room for potential negotiation, it is an opportunity we cannot take. Daesh's brutality and the threat it poses to the Syrian and Iraqi people looms large enough as proof of absolute, uncompromising malevolence it would be unconscionable to provide it with any assistance. Furthermore, as Daesh's hold on territory is shrinking under the onslaught of the coalition, it is decentralizing and lashing out through terrorist attacks carried out by its foreign fighters. Greater monetary resources combined with decentralization and foreign fighters with European passports would be extremely dangerous for Western security, another reason not to negotiate or consider ransom for cultural artifacts. For now, there is nothing to be done, physically, to protect heritage sites and artifacts under Daesh's control. So where should the international community go from here?

Why Do So Many Not Value Cultural Goods As We Do?

Beyond exploring the immediate threat Daesh poses to Syrian and Iraqi cultural heritage, the discussion above also begs the question: why do Daesh sympathizers and recruits not value cultural goods as we do? The extent to which Daesh's leaders believe their own propaganda or use scripture to justify what they wish to do is a question for the ages. The more interesting question is, why does that video of Mosul Museum's statuary and pictures of

²⁵ Ibid.

²⁶ Deborah Orr, "Isis's murderous rampage continues. So why is it the lost artefacts that make the headlines?" *The Guardian*, May 22, 2015, Retrieved from <http://www.theguardian.com/commentisfree/2015/may/22/isis-murderous-rampage-palmyra>.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Palmyra being demolished have such allure for so many people? Asking the question does not present an opportunity to protect artifacts in the immediate short-term, but in the long-term answering the question may have a great deal of impact on our 'universal heritage' that we purport everybody shares. Whose values and history are being represented by cultural preservation, and to what purpose?

According to UNESCO director-general Irina Bokova, everybody's values are being protected. In a piece written for *Harvard International Review*, she takes on the matter of the universal value of Syrian and Iraqi cultural heritage, and the threat to it Daesh currently poses. She begins with the assertion that the destruction of the Mosul Museum, the city of Nimrud, and the UNESCO World Heritage site of Hatra "does not only matter for the people of Iraq and Syria — this heritage belongs to the whole of humanity as a universal legacy which is now reduced to rubble."²⁷ This pattern of cultural destruction is "a part of the same global strategy intended to destroy identities, tear apart social fabrics and fuel hatred."²⁸

After denouncing these acts as a war crime, she goes on to say that "it is not about making speeches: it is about changing the mindset, not letting extremists hijack cultures and religions, and for this we need stronger counter-extremism communication strategies."²⁹ For Bokova, dialogue and education on "the importance of that heritage for the history of humanity" is the key to prevent looting and destruction, which accelerates "the disintegration of society through the theft of its memory."³⁰ She further asserts that cultural artifacts are not commercial commodities, and the idea that some are "the property of the people of the place of origin... has gained full recognition."³¹ The article closes with the statement that "as heritage now stands at the frontline of a new war on minds, it is clear that heritage should be at the frontline of peacebuilding, and a central component of our response to the new conflict of the 21st century."³²

There are a number of assumptions Ms. Bokova makes in her piece, which art scholars are questioning as we begin to understand this 'new war on minds' of which she speaks. Two assumptions in particular are critically important moving forward in thinking about how to protect our universal cultural heritage. The first assumption is that a universal sense of heritage does exist. The second is that in destroying these sites and artifacts, Daesh is damaging a pre-

²⁷ Irina Bokova, "Fighting Cultural Cleansing: Harnessing the Law to Preserve Cultural Heritage," *Harvard International Review* 36, no. 4 (Summer 2015): 41.

²⁸ *Ibid.*, 40.

²⁹ *Ibid.*, 42.

³⁰ *Ibid.*, 41-2.

³¹ *Ibid.*, 42.

³² *Ibid.*, 45.

existing relationship between the Syrian and Iraqi peoples and their artifacts, which is central to their identities. Both these assumptions go to the core of the question, to whom do these artifacts belong? And who actually felt their heritage being destroyed when Daesh militants took sledgehammers to the Mosul Museum's statuary?

Whose Heritage Is This?

Vandalism of public goods such as street signs and garbage cans during protests symbolize larger dissatisfaction and anger with the institutions those objects represent. In the same way, Daesh militants' attack on the Mosul Museum and other sites represent a long-brewing anger towards the institutions and regimes those sites and artifacts embody: the cultural capital of the West. When we speak of the tragedy of those destroyed items and places, we assume there is a pre-existing relationship between the local people and those artifacts. Archaeology's dominant narrative is one of discovery and preservation, but Professor Wendy Shaw offers an alternative narrative that better accounts for the enthusiasm with which militants swung their sledgehammers.

She has argued that archaeology could also be considered as a process that "uproots ruins from their state of nature in order to bring them into a predetermined narrative of culture," a process which conceives of local culture as "a resource to be mined and given form."³³ From this perspective, "fine, well-designed museums tell societies

stories of themselves even as they invite people to forget their own relationships with objects not as history, but as inextricable parts of daily life."³⁴ And that pre-supposes that the local people from whom the museum's objects were taken even have access to that museum. The



³³ Wendy Shaw, "Destroy Your Idols," *X-Tra: Contemporary Art Quarterly* 18 (Fall 2015): 76.

³⁴ *Ibid.*, 76.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

exclusion of particular classes from centers of cultural capital is common in the United States and Western Europe, let alone Middle Eastern countries under dictatorships. Under Saddam Hussein, from just before the Persian Gulf War to April 2000, visitation to the Iraqi National Museum was restricted to his personal friends and individuals vetted by his personal security.³⁵ The museum was allegedly closed to the public to protect it from the coming invasion during the Persian Gulf War, but access remained restricted even after it 'reopened' in April 2000.³⁶ Many Iraqi citizens called the museum, "Saddam's personal treasure chest."³⁷ One must wonder how many of the militants wielding jackhammers and sledgehammers in Mosul Museum had ever been to a museum before, and what they knew of the pieces they destroyed.

As Shaw puts it, the destruction of these places and objects "operates as pure symbolism;" there is the 'West,' which sees inherent value in these centers for cultural capital (the British helped the Iraqi National Museum build its collection), and those who, "through resistance or lack of access, understand such cultural capital as a sign of their oppression."³⁸ UNESCO and Ms. Bokova's "vision of a world with a shared history is as profoundly modern as it is optimistic, but this makes it neither mandatory nor universal." Perhaps because we have not been sharing our history, and instead have "supported the destruction of local identification and enhanced class distinctions through circulation of cultural capital."³⁹

Setting aside the question of local access to museums in people's own countries, the legacy of colonization lives on in former colonial masters' continued ownership of looted artifacts, protected by the '1970 rule': only artifacts removed illegally or looted *after* 1970 must be repatriated to their countries of



3 - Iraqi student Zeidon Alkinani in Pergamon Museum, in front of the Ishtar Gate

³⁵ Spencer Tucker, ed., *The Encyclopedia of Middle East Wars in the Persian Gulf, Afghanistan and Iraq* (Santa Barbara: ABC-CLIO, 2010): 624.

³⁶ Ibid., 624.

³⁷ Ibid., 624.

³⁸ Shaw, "Destroy Your Idols," 77.

³⁹ Ibid., 91.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

origin. This rule protects the Pergamon Museum's hold on the Iraqi Ishtar Gate in Berlin; the National Archives' display of Iraqi Jewish artifacts in Washington, D.C.; the British Museum's claim on the Rosetta Stone; India's Koh-i-Noor diamond currently on display on the late Queen Mother's crown at the Tower of London; Berlin's Neues Museum's Nefertiti bust; and the British Museum's collection of Chinese antiquities, to name only a few.⁴⁰ The British acquired their collection of ancient Chinese pieces in 1860 when British and French troops ransacked the Old Summer Palace in Beijing, and later the Forbidden City during the Boxer Rebellion. The soldiers lit on fire or demolished two hundred buildings, and took nearly every sculpture, robe, and jewel from the thousand-acre site. A British officer wrote at the time, "You can scarcely imagine the beauty and magnificence of the places we burnt. It made one's heart sore to burn them."⁴¹ In response to Chinese requests for the items to be returned, the British Museum argued that, "the objects are part of world heritage and are more accessible to visitors in London."⁴²

Ironically, the Eighth Earl of Elgin, James Bruce ordered the destruction and looting. His father was the Lord Elgin who took the Parthenon friezes from Athens back to England where they are now on permanent display at the British Museum.⁴³ Despite Greece's demands over decades for their return, and the construction of a new museum designed to house and preserve them, Britain has refused to return them

Considering our dominating narrative of a shared world heritage, Western museums are loath to give back or share artifacts taken during colonization. It seems as though the 'full recognition' that some artifacts are 'the property of the people of the place of origin' is still somewhat lacking, or perhaps it depends on the artifact in question. In 2010, the Metropolitan Museum agreed to return nineteen small objects from King Tut's tomb to Egypt, after their researchers proved they had been stolen. The nineteen objects are small fragments of wood, textile and a little vase.⁴⁴ Mr. Zahi Hawass, Chief of the Egyptian Antiquities Department, having acquired the concession from the Metropolitan, has since begun pushing Berlin's Neues Museum to return the Nefertiti bust, as "many Egyptians believe these objects are significant to their national heritage, and their presence in European museums is a monument to the days of

⁴⁰ "Egypt Called; It Wants Its Rosetta Stone Back," Neda Ulaby, *NPR Weekend Edition Sunday*, aired November 4, 2010 on NPR, Retrieved from <http://www.npr.org/templates/story/story.php?storyId=131309154>.

⁴¹ "'Give us back our treasure': Chinese demand Cameron returns priceless artefacts looted during 19th century Boxer Rebellion." *Daily Mail*, December 4, 2013. Retrieved from: <http://www.dailymail.co.uk/news/article-2518111/China-demand-David-Cameron-return-Boxer-Rebellion-artefacts.html>.

⁴² Ibid.

⁴³ Karl Meyer, "The Chinese Want Their Art Back," *International New York Times*, June 20, 2015, Retrieved from http://www.nytimes.com/2015/06/21/opinion/the-chinese-want-their-art-back.html?_r=0.

⁴⁴ Ulaby.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

colonialist looting and exploitation.”⁴⁵ It is fortunate that Egyptians have maintained so close a relationship with their relics, even an ocean away. One wonders how closely average Iraqi and Syrian citizens identify with their relics. All these examples demonstrate that for all our speech of a ‘shared, universal heritage,’ precious few people have access to the artifacts embodying that ‘shared’ history, let alone those from whose countries some artifacts were taken, and now would have to travel across the world to see them. It is unsurprising that destroying the Mosul Museum “embodies the overthrow of global narratives of Western civilization and heritage.”⁴⁶

Further strengthening this alternative narrative of museums and relics having a distinct and closer relationship to the West is that we “can think of these objects as [Western] idols because the response to its destruction has been as great as that to human life.”⁴⁷ Whether or not Deborah Orr of the Guardian is correct in saying that lost artifacts make headlines more often than the human cost of Daesh’s rampage because the loss of a person to Daesh is too horrible to dwell upon, the fact of the matter is that in looking at the news, more grief is demonstrated over the destruction of Palmyra’s pillars than the men who had been executed while tied to them.⁴⁸ Europe’s doors are closing against the tide of Iraqi and Syrian refugees trying to escape Daesh’s madness, yet in November 2015 President Hollande, in a twist, announced his plan to “grant asylum” to artifacts and archaeological treasures at risk of destruction by Daesh.⁴⁹ Though President Hollande acknowledged that, “the right to asylum applies to people” as well as ‘world heritage,’ France has shown greater dedication to keeping Syrian and Iraqi artifacts safe than caring for the Syrian and Iraqi people fleeing for safety.

Where Do We Go From Here?

Daesh poses an imminent threat to Syrian and Iraqi cultural heritage, but there is nothing we can currently do to protect artifacts and sites under its control. Negotiation is not an option, nor is paying ransom for the antiquities and cultural sites’ safety. Without any inducement to halt cultural destruction and so much to gain by way of publicity, recruitment

⁴⁵ Ulaby.

⁴⁶ Shaw, 89.

⁴⁷ Ibid., 75.

⁴⁸ Orr.

⁴⁹ Henri Neuendorf, “French President François Hollande Takes Action Against ISIS Trade in Looted Antiquities,” *Artnet.news*, November 18, 2015, Retrieved from: https://news.artnet.com/art-world/france-asylum-isis-antiquities-366293?utm_campaign=artnetnews&utm_source=111815daily&utm_medium=email.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

material, and Western outrage, we can only expect Daesh to continue its campaign against cultural heritage. So what meaningful action can be taken?

What we can do is critically examine our preconceptions concerning 'universal' cultural heritage: whether it exists, and how our unthinking acceptance of a universal paradigm of culture may be alienating the people whose cultural heritage is most under threat. Some perceive Daesh's cultural destruction as liberating, quite literally overthrowing the hegemonic Western story of shared heritage in which they have no stake. Considering the current global political and cultural climate, is our current value system for cultural narratives and artefacts appropriate for the global preservation, protection and appreciation we want to achieve?

The international heritage community must critically investigate and re-develop its narrative of archaeology and cultural preservation. As art historian Dano Gamboni puts it, heritage preservation efforts must develop through collaboration of "several worlds, with differing visions of heritage or legacy; [worlds] can come into contact, communicate and negotiate those differences."⁵⁰ The first step is realizing that the narrative of a shared, universal heritage simply is not a reality for a great part of the world. Instead of unthinkingly submersing local values and relationships to relics into a 'universal' system of value espoused by UNESCO and the West, we must recognize that there are counter-narratives of world cultural legacy, which gives Daesh's cultural destruction symbolic strength. Bokova wrote of the need to develop stronger counter-extremism communication strategies, but before those counter-narratives can be crafted, we must better understand how our dominant narrative is perceived and received in these conflict areas where antiquities are at risk. The best counter-narrative to the extremism that works for cultural destruction is one that recognizes the diversity and complexity of our global community.

⁵⁰ Shaw, 91.

Using a Market Reduction Approach to Tackle the Illicit Trade in Cultural Property

Prosecuting the White Collar Criminals of Cultural Antiquities Looting

Jessica L. Jones

Introduction

On February 12, 2015, the United Nations (UN) Security Council adopted resolution 2199. Resolution 2199 condemned the Islamic State in Iraq and the Levant's (ISIL) destruction of cultural heritage in Iraq and Syria and noted that it and other terrorist groups generate income from the looting and illicit trade of cultural antiquities. Resolution 2199 also provided:

that all Member States shall take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011.⁵¹

A little unexpectedly, a United Nations Educational, Scientific, and Cultural Organization (UNESCO) legal study of resolution 2199 indicated that the resolution “imposes on all Member States obligations by which they were previously not bound.”⁵² This conclusion begs the question: Does international law not already require states to take steps to prevent the transnational illicit trade of antiquities?

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO Convention) provides the basic aspirational international legal framework for cultural heritage protection. To date, 129 nations are State Parties to the convention and are obligated under its provisions to

⁵¹ United Nations Security Council Resolution 2199, “Threats to international peace and security caused by terrorist acts,” S/Res/2199 (2015), paras. 15-17. Resolution 2199’s cultural heritage provisions cover acts by ISIL, Al-Nusrah Front and those associated with Al-Qaida. *Ibid.*, para. 17.

⁵² Vincent Négri, “Legal study on the protection of cultural heritage through the resolutions of the Security Council of the United Nations,” *UNESCO, #Unite4Heritage* (2015): 6.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

prohibit the illicit trade of antiquities. Resolution 2199 and its seemingly duplicative request to UN Member States demonstrate to the international community that current international and national legal regimes fail to adequately provide for the protection of cultural property.

While resolution 2199 and recent domestic legislation, such as the Protect and Preserve International Cultural Property Act, in the United States (U.S.) bring much needed attention to the issue of cultural property protection, these measures are country-specific and merely reactive. However, history demonstrates that any nation rich in artifacts is at risk of future looting and destruction. A new approach is necessary. Recently, a growing movement towards analyzing the illicit antiquities trade through a criminology lens emerged. Alongside this, there is an acknowledgement that the demand-side of the trade requires more effective regulation. By prosecuting the white-collar actors active in antiquities trading, the U.S. can decrease the overall demand for looted objects.

This paper will begin by analyzing the illicit trade of cultural property generally and then review current international and domestic legal regimes providing for cultural property protection. Then a new approach grounded in criminology's Market Reform Approach and its focus on demand-side regulation will be proposed as a means of attacking today's illicit trade of antiquities. This paper will then suggest why current criminal penalties in the U.S. are unable to combat antiquities looting and conclude by recommending legal measures necessary for effectively prosecuting the white-collar criminals promoting illicit trade. It is clear that there is "a tension between the estimates of the size of the illicit trade and the relative paucity of prosecutions in market nations,"⁵³ and as the main market for antiquities,⁵⁴ the United States must take action to eliminate its role in the destructive practice of cultural looting.

Background on the Illicit Trade of Cultural Property

Modern Cultural Heritage Theft

For millennia, victors of war looted the antiquities and archeological sites of their vanquished foe. ISIS' attacks on cultural heritage sites in Syria and Iraq are only the most recent embodiment of this historic practice. However, unlike in ancient times, the growing

⁵³ Derek Fincham, "Why the U.S. Federal Criminal Penalties for Dealing in Illicit Cultural Property are Ineffective, and a Pragmatic Alternative," *Cardozo Arts & Entertainment Law Journal* 25, no. 2 (November 2007): 644.

⁵⁴ Phillip Ramsdale, "International Flows of Selected Cultural Goods," *UNESCO Institute for Statistics* (2000). The United States remains the world's leading market with imports of \$60 billion in 1998.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

interconnectedness of nations means transnational wealthy consumers fuel the movement of looted goods far from their original source. Modern technologies amplify the size of the illicit trade of antiquities as transport infrastructure extends further into remote areas and faster modes of communication mean quicker and easier movement of goods. The Internet also facilitates the global market for illegally obtained goods.⁵⁵ An ordinary buyer can go online and purchase antiquities of minor commercial value that would have gone un-purchased by traditional consumers and auction houses.⁵⁶

The transnational nature associated with antiquities makes accurately estimating the size of the illicit trade of cultural property difficult. Much art theft goes undetected and many archeological sites go undiscovered or unmonitored. In fact, less than half of Interpol's 190 members report annual art crime data.⁵⁷ However, most estimates place the illicit trade in cultural property at around \$6 billion annually.⁵⁸ This regularly places cultural property crime as the third highest grossing criminal market after arms and narcotics trafficking.⁵⁹ Furthermore, criminal proceeds from other lucrative illicit trade activities often pass through antiquities transactions.⁶⁰

Though the roots of looting stretch far back in history, legal attempts to reduce the action are new. International conventions such as the 1954 Convention for the Protection of Cultural Property in the Case of Armed Conflict and the 1970 UNESCO Convention obligate State Parties to protect their nation's culture heritage. The UNESCO Convention defines "cultural heritage" as the "common heritage of mankind"⁶¹ and essential to a people's

⁵⁵ See Helen Lidington, "The role of the internet in removing the 'shackles of the saleroom,'" *Public Archeology* 2, no. 2 (December 2002).

⁵⁶ Siobhán Ní Chonaill, Anaïs Reding, and Lorenzo Valeri, "Assessing the illegal trade in cultural property from a public policy perspective," *RAND Europe* (2011), 8.

⁵⁷ Nikos Passas and Blythe Bowman Proulx, "Overview of Crimes and Antiquities," in *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, ed. Stefano Manacorda and Duncan Chappell (New York: Springer, 2011), 61.

⁵⁸ Ni Chonaill, Reding, and Valeri, "Assessing the illegal trade in cultural property," vii; United Nations Office on Drugs and Crime, *Protection against trafficking in cultural property* (Vienna: United Nations, 2009), available from https://www.unodc.org/documents/organized-crime/trafficking_in_cultural/CCPCJ_EG_1_2009_CRP_1/V0987314E.pdf.

⁵⁹ Lisa Borodkin, "The Economics of Antiquities Looting and Proposed Legal Alternative," *Columbia Law Review* 95, no. 2 (March 1995): 377.

⁶⁰ Ni Chonaill, Reding, and Valeri, "Assessing the illegal trade in cultural property," 4.

⁶¹ *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, Paris, 14 November, United Nations Treaty Series, No. 11806, article 1, available from http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html#DEPOSITORY [hereinafter UNESCO Convention].

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

historical and cultural identity.⁶² Clemency Coggins, a well-respected archaeologist describes the impact of looting and its destruction of the archaeological record thusly:

Once a site has been worked over by looters in order to remove a few salable objects, the fragile fabric of its history is largely destroyed. Changes in soil color, the traces of ancient floors and fires, the imprint of vanished textiles and foodstuffs, the relation between one object and another, and the position of a skeleton - all of these sources of fugitive information are ignored and obliterated by archaeological looters.⁶³

Largely an issue left to UNESCO in the past, the U.N. Security Council now views cultural looting as a critical security matter because of its role in terrorist financing. As international law enforcement continues to target traditional terrorist financing channels, non-state actors are turning to the antiquities trade.⁶⁴ In 2005, *Der Spiegel* reported that Mohammed Atta, one of the hijackers involved in the September 11, 2001 attacks, contacted a German university professor to seek advice on how to sell Afghan antiquities, presumably to raise terrorist funds.⁶⁵ In addition to selling antiquities, terrorists also impose taxes on antiquities smugglers wishing to transit through terrorist-held territory. Most recently, the Financial Action Task Force reported that ISIS had already instituted a system of taxation for smuggled goods.⁶⁶

Elements of the Trade

The illicit trade of cultural heritage property operates in a gray market, meaning that it has both licit and illicit components.⁶⁷ Unlike many other objects of illicit trade, antiquities may be illegally obtained but then enter the legal supply chain and be sold freely. Purchasers seek

⁶² Stefano Manacorda, "Criminal Law Protection of Cultural Heritage: An International Perspective," in *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, ed. Stefano Manacorda and Duncan Chappell (New York: Springer, 2011), 23.

⁶³ Lisa Borodkin, "The Economics of Antiquities Looting," 381.

⁶⁴ Colonel Matthew Bogdanos, "Thieves of Baghdad: Combating Global Traffic in Stolen Iraqi Antiquities," *Fordham International Law Journal* 31, no. 3 (2008), 730. Bogdanos writes:

This is not surprising. As the National Commission on Terrorist Attacks Upon the United States ("the 9-11 Commission") noted, international law enforcement has aggressively attacked traditional means of terrorist financing by freezing assets and neutralizing charities that had previously served as fronts for jihadists.

⁶⁵ Ibid.

⁶⁶ Financial Action Task Force, *Financing of the Terrorist Organisation Islamic State in Iraq and the Levant (ISIL)*, (2015), 17.

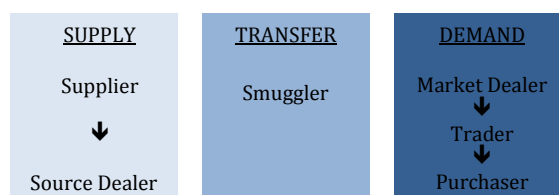
Kristina Alexander, "The Lacey Act: Protecting the Environment by Restricting Trade," *Congressional Research Service* (January 14, 2014), 5.

⁶⁷ Ni Chonaill, Reding, and Valeri, "Assessing the illegal trade in cultural property," 11. See also Blythe A. Bowman, "Transnational Crimes Against Culture: Looting at Archaeological Sites and the 'Grey' Market in Antiquities," *Journal of Contemporary Criminal Justice* 24, no. 3 (2008): 225.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

out products and engage with potential dealers in a legitimate marketplace. “In the international art world, the distinction between criminal activity and shrewd business dealing is a blurry one. There is essentially a sliding scale between smuggler, middleman, and dealer.”⁶⁸

There are six stages of the illicit trade of cultural property. On the supply side, local and small-scale thieves steal and loot the antiquities. The average looter receives less than 1% of an antiquity’s final sale price. The items then travel via smugglers. To cover an object’s illegal origins, these middlemen may fake or forge provenance⁶⁹ documents, often at a point of transit. Studies demonstrate that while “legitimate” dealers do not explicitly support the illicit trade of looted artifacts, they are often complicit in such transactions.⁷⁰ On the demand side, auction houses, museums, dealers, private collectors, and galleries purchase items.



Current Legal Protection of Cultural Property

International Conventions

There are two broad categories of international laws covering the protection of cultural heritage: (1) applies to protection during war and (2) applies to the illicit trade of cultural property. Signed in 1954, the Convention for the Protection of Cultural Property in the Case of Armed Conflict (1954 Hague Convention) was the first formulation of norms protecting cultural property. It applies in times of conflict and provides, amongst many things, that cultural property cannot be attacked unless due to “imperative military necessity.”⁷¹ The Second

⁶⁸ Lisa Borodkin, “The Economics of Antiquities Looting,” 384.

⁶⁹ “Provenance refers to the previous ownership history of an object.” Passas and Proulx, “Overview of Crimes and Antiquities,” 58.

⁷⁰ Simon Mackenzie, “The Market as Criminal and Criminals in the Market: Reducing Opportunities for Organised Crime in the International Antiquities Market,” in *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, ed. Stefano Manacorda and Duncan Chappell (New York: Springer, 2011), 73.

⁷¹ *Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention*, The Hague, 14 May 1954, *United Nations Treaty Series*, No. 3511, available from http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html#DEPOSITORY.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Protocol to the 1954 Hague Convention also provides for rules during armed conflict and contains enforcement provisions providing for criminal prosecution.⁷²

Important to the discussion here are the second set of international norms surrounding the trade of cultural property.⁷³ The 1970 UNESCO Convention focuses on the export, import, and transfer of ownership of cultural property and it is considered the cornerstone of cultural property protection. The UNESCO Convention creates burdens for both exporting and importing nations. To facilitate the legal export of goods, the Convention obliges State Parties to “draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property.”⁷⁴ Parties are to also “establis[h] and kee[p] up to date... a national inventory of protected property ... whose export would constitute an appreciable impoverishment of the national cultural heritage.”⁷⁵

To guarantee that items are being moved legally, the Convention calls for the use of an “appropriate certificate” to accompany an export and obligates the exporting state to “prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate.”⁷⁶ An importing State Party must: 1) “prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported;” and 2) “prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party.”⁷⁷ The Convention also provides that State Parties require “antique

⁷² *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict* 1999, The Hague, 26 March 1999, *United Nations Treaty Series*, No. 3511, available from http://portal.unesco.org/en/ev.php-URL_ID=15207&URL_DO=DO_TOPIC&URL_SECTION=201.html#DEPOSITORY. Article 15 of the Second Protocol requires States to establish criminal offenses for violations of the Protocol, including culture destruction and the “theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention.” *Ibid.*, art. 15.

⁷³ The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects is another source of international law providing guidance on cultural heritage transactions. In addition to settling statute of limitation variances across nations, the Convention also aims to create uniform rules regarding rights of bona fide purchasers and owners: “Identifying the ultimate goal as discouraging illicit trade, the 1995 UNIDROIT Convention tends to favor the original owner over the bona fide purchaser, contrary to civil law theory.” UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, Rome, 24 June 1995, available from <http://www.unidroit.org/instruments/cultural-property/1995-convention>. See also Jane Warring, “Underground Debates: The Fundamental Differences of Opinion that Thwart UNESCO’s Progress in Fighting the Illicit Trade of Cultural Property,” *Emory International Law Review* 19 (Spring 2005): 250-256.

⁷⁴ UNESCO Convention, art. 5(a).

⁷⁵ UNESCO Convention, art. 5(b).

⁷⁶ UNESCO Convention, art. 6(a).

⁷⁷ UNESCO Convention, art. 7(a)-(b).

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

dealers” to maintain a register recording every cultural item’s provenance and details of all cultural property transactions.⁷⁸

The Convention does not provide any criminal penalties and it does not demonstrate how a theft violation is established. However, it obligates State Parties to aid in the recovery and return of illegally imported objects and to “pay just compensation to an innocent purchaser or to a person who has valid title to that property.”⁷⁹ Overall, the Convention’s primary purpose was the creation of an export certification system to reduce the risk of illicit trade and to provide for administrative and civil remedies in the case of theft.

While the UNESCO Convention asserts that every nation must “respect its own cultural heritage and that of all nations,”⁸⁰ the provisions and implementation of the Convention fall short of its lofty goals. First, the Convention’s very provisions are lacking. The UNESCO Convention’s protections are not expansive enough because (1) State Parties must suppress only the illicit traffic of goods that are noted in the inventories of museums and similar institutions and (2) a State Party must request the aid of another State Party to impose broad import restrictions of cultural property. Second, the Convention’s provisions do not require State Parties to adopt criminal sanctions. As criminal law scholar Stefano Manacorda points out, “It is as if the legislator, paradoxically, has recognized the existence of unquestionably criminal acts in national law but ‘forgotten’ to draw from them the necessary consequences.”⁸¹

Furthermore, the national implementation practices of States Parties prove inadequate. Many nations made large reservations upon entry to the UNESCO Convention.⁸² The United States largely exempted itself from the Convention’s requirements and its reservations are seen as so extensive that Mexico declared: “It has reached the conclusion that these comments and reservations are not compatible with the purposes and aims of the Convention.”⁸³ Overall, the decision by key market countries to narrowly construe convention provisions largely

⁷⁸ UNESCO Convention, art. 10(a).

⁷⁹ UNESCO Convention, art. 7.

⁸⁰ UNESCO Convention, Preamble.

⁸¹ Manacorda, “Criminal Law Protection,” 41. It should also be noted that in contrast to the illicit antiquities trade that places criminal penalties secondary, the destruction of cultural heritage sites and artifacts during times of conflict is seen squarely through a criminal lens. From the United Nations International Criminal Tribunal for the Former Yugoslavia to the International Criminal court, in a time of armed conflict, intentionally directing attacks against cultural sites and buildings is a war crime.

⁸² For example, Austria entered a reservation establishing that the principle of “not acquiring objects of suspect origin will not apply to archaeological elements that are at risk because, for example, they come from war zones or areas of high risk.” *Study on preventing and fighting illicit trafficking in cultural goods in the European Union*, European Commission (October 2011), 38. Other nations place age and monetary restrictions on property that are afforded protections. “Reservations,” UNESCO Convention.

⁸³ Ibid.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

undermines the UNESCO Convention's admirable means of protecting the archaeological record.

Domestic Law in the United States

The United States implemented the UNESCO Convention by passing the Cultural Property Implementation Act (CPIA) in 1983.⁸⁴ The CPIA codifies article 7b(i) and article 9, covering stolen cultural property and country-specific import restrictions, respectively. 19 U.S.C. § 2607 pertains to Article 7(b) and provides:

No article of 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 from such institution after the effective date of this chapter, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the United States.⁸⁵

Thus, mirroring the UNESCO Convention's limited scope, the CPIA has narrow jurisdiction; "[e]xcept in instances of the theft of articles of cultural property that are accounted for in museum inventories or other records, the U.S. enabling legislation offers no automatic protection to other countries."⁸⁶ Another large deficiency of the CPIA is that it exclusively provides for the civil remedy of forfeiture.⁸⁷

19 U.S.C. §§ 2602 – 2606 implement Article 9 of the UNESCO Convention and authorize the United States under certain conditions to enter into bilateral and multilateral agreements and to impose broad import restrictions.⁸⁸ Most importantly, agreements are conditioned on a requesting country's cultural heritage being in danger and import restrictions must be done "in concert with" similar controls by other nations.⁸⁹ After import restrictions are imposed, a valid export certificate issued by the requesting State Party must accompany any export of a listed material.⁹⁰ The United States primarily enforces its obligations under the UNESCO Convention through bilateral agreements. Currently, the United States has entered into bilateral

⁸⁴ 19 U.S.C. §§ 2601-13.

⁸⁵ 19 U.S.C. § 2607.

⁸⁶ Maria Papageorge Kouroupas, "U.S. Efforts in the Protection of Cultural Property," in *Plundering Africa's Past*, ed. Roderick J. McIntosh (Indiana University Press, 1996), 87.

⁸⁷ 19 U.S.C. § 2609. See Patty Gerstenblith "The Legal Framework for the Prosecution of Crimes Involving Archeological Objects," *United States Attorneys' Bulletin* 64 (March 2016).

⁸⁸ 19 U.S.C. §§ 2602 – 2606.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

agreements with: Belize, Bolivia, Bulgaria, Cambodia, China, Colombia, El Salvador, Greece, Guatemala, Honduras, Italy, Mali, Nicaragua, and Peru.⁹¹

The reliance on bilateral agreements for the protection of cultural property raises a number of challenges. For one, the boundaries of modern nation-states and ancient cultures are often not identical. For example, the Incan, Mayan, and Roman civilizations are all ancient empires that exceed any one modern nation's borders. Thus, how effective would a United States – Italy agreement that prohibits the import of 2nd century Italian coins (the height of the Roman Empire) be when such coins can still be imported from the rest of Western and Eastern Europe and North Africa? Ancient cultures' lack of respect for modern sovereignty's borders also mean that "determining the country of origin of a particular object can be very difficult, especially when this is done based exclusively on stylistic and cultural features of the object."⁹² Recently, looters disguised objects taken from Iraq during the Second Iraq War as originating from other neighboring Middle Eastern countries.⁹³ And unsurprisingly, "customs agents do not possess the expertise to distinguish Syrian antiquities from Iraqi antiquities, or, for that matter, reproductions from authentic artifacts."⁹⁴

A New Approach to Legal Protection: Criminological Perspective

Though the second half of the twentieth century witnessed the development of international norms protecting cultural property, the massive growth in the illicit trade of antiquities demonstrates that current policies are not working. As Simon Mackenzie, Professor of Criminology at the University of Glasgow explained:

"Indeed, the inadequacy of the two main treaties governing the international movement of stolen cultural heritage – the UNESCO Convention 1970 ... and the UNIDROIT Convention on Stolen or Illegally Exported Culture Objects 1995 – coupled with the rarity of noteworthy cases where art and antiquities dealers have been convicted for smuggling-related offenses, reflects

⁹¹ Bureau of Educational and Cultural Affairs, "Bilateral Agreements," available at <https://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements>.

⁹² Patty Gerstenblith, "The Legal Framework for the Prosecution of Crimes Involving Archeological Objects," 12.

⁹³ Marion Forsyth, "Casualties of War: The Destruction of Iraq's Cultural Heritage as a Result of U.S. Action During and After the 1991 Gulf War," *DePaul University Journal of Art and Entertainment Law* 14, no. 1 (2004), 92.

⁹⁴ *Ibid.*

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

the fact that we are now in early formative stages of the development of suitable control mechanisms.⁹⁵

As headlines bring the ongoing looting in Syria to the public's attention, the United States must look for legal solutions separate from those found in the UNESCO Convention and the CPIA.

The growing attention to the problem of cultural property theft coincides with an increased understanding that this form of illicit trade, though uniquely destructive, shares the characteristic of other traditional crimes.⁹⁶ Criminology focuses on understanding the intricacies of a particular crime and the points at which the crime is vulnerable to detection and intervention.⁹⁷ Applying the study of criminology to cultural looting allows an analyst to "draw on a fund of relevant knowledge about the effectiveness of legal sanctions, deterrence and prevention, and ... experience in developing and evaluating solutions to specific forms of crime."⁹⁸

Market Reduction Approach

Past study of illicit markets led to the development of the Market Reduction Approach (MRA) as a strategy to lower crime. Overtime, MRA branched from solely applying as a means of reducing traditional theft crimes to extending to "commodity markets that are more exotic than domestic stolen goods markets."⁹⁹ MRA generally aims to:

- 1) Instill an appreciation among thieves that transporting, storing, and selling stolen goods has become at least risky as it is to steal goods in the first place; and

⁹⁵ Simon Mackenzie, "Dig a Bit Deeper: Law, Regulation and the Illicit Antiquities Market," *British Journal of Criminology* 45, no. 3 (May 2005), 251.

⁹⁶ See Greg Borgstede, "Cultural Property, the Palermo Convention, and Transnational Organized Crime," *International Journal of Cultural Property* 21, no. 3 (August 2014). For example, there has been a recent focus on using the United Nations Convention on Transnational Organized Crime to battle cultural looting. Borgstede writes:

The recent shift to use UNTOC for cultural property, however, demonstrates not only the international community's unhappiness with the current use of existing instruments, but also the idealized view of UNTOC as a tool of broad scope that can be applied generally to many different types of crime.

⁹⁷ Kenneth Polk, "Whither Criminology in the Study of the Traffic in Illicit Antiquities?" in *Criminology and Archeology: Studies in Looted Antiquities*, ed. Simon Mackenzie and Penny Green (Oxford and Portland, Oregon: Hart Publishing, 2009), 14.

⁹⁸ Andrew Lemieux and Ronald Clarke, "The International Ban on Ivory Sales and its Effects on Elephant Poaching in Africa," *British Journal of Criminology* 49, no. 4 (July 2009): 452.

⁹⁹ Mackenzie, "The Market as Criminal," 80.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

- 2) Make buying, dealing, and consuming stolen goods appreciably more risky for all those involved.¹⁰⁰

The MRA focuses on eliminating the *demand* for stolen objects and “recommends both general initiatives to reduce demand combined with practical advice for law enforcement measures aimed at key points in the chain of supply, to maximize their potential.”¹⁰¹

Focusing Enforcement on Demand Forces

Looting most often occurs in developing “source” nations that are rich in archaeological resources. Wealthier “market” nations then purchase the smuggled goods. Historic responses to looting have placed the burden of cultural property protection on source nations. However, source nation regulations that aim to decrease the supply of looted cultural objects face many obstacles that dampen their effectiveness.

First, looters often are the parties discovering archeological sites and source nations cannot monitor sites that they do not know exist.¹⁰² Second, many source countries are developing countries with limited resources that do not have the means or manpower to monitor even known sites and museums. In Syria alone, there are an estimated 10,000 archeological sites.¹⁰³ Third, the inability of many source nations to patrol thousands of national sites is exacerbated during times of conflict when personnel are redirected for military purposes.¹⁰⁴ Fourth, corruption at every level of enforcement, from underpaid guards and customs officials, to high-level officials decreases the impact of regulations.¹⁰⁵ Though source nations must continue to protect archaeological sites and to fight corruption, the study of illegal markets reveals that historic policies attempting to prohibit illicit trade through supply restriction policies fail.¹⁰⁶

¹⁰⁰ Mackenzie, “The Market as Criminal,” 81. See also Neil Brodie, “Syria and its Regional Neighbors: A Case of Cultural Property Protection Policy Failure?” *International Journal of Cultural Property* 22, no. 2-3(August 2015).

¹⁰¹ Mackenzie, “The Market as Criminal,” 80.

¹⁰² Fincham, “Why the U.S. Federal Criminal Penalties,” 393.

¹⁰³ Brodie, “Syria and its Regional Neighbors,” 319.

¹⁰⁴ Ibid., 319-322.

¹⁰⁵ Fincham, “Why the U.S. Federal Criminal Penalties,” 393. Even the most senior government officials are implicated in this illicit form trade. For example, former Prime Minister Constantine Mitsotakis was accused by a Greek Minister of Culture of owning a collection of antiquities that were allegedly acquired from illegal excavations. Alan Cowell, “Athens Journal; Under Acropolis, Art Meets Politics, Explosively,” *The New York Times*, February 4, 1994.

¹⁰⁶ Polk, “Whither Criminology in the Study of the Traffic in Illicit Antiquities?” 17-18.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

This finding is logical because the “trade is organized internationally around some highly localized centers of demand with a more extensive and distributed periphery of supply.”¹⁰⁷ Further, while the particularities of a source country’s illicit trade network are unique, demand forces, centered in New York and London, are uniform.¹⁰⁸ Thus, MRA prompts the regulation of *demand* forces in market countries and stresses that effective restrictions should “instill an appreciation” in high-end consumers of probable arrest and prosecution. “White-collar criminals are heavily influenced by the risk of detection and the likelihood and severity of punishment” and are not swayed by light penalties such as civil forfeitures to amend their actions.¹⁰⁹

Unfortunately, as previously explained, the UNESCO Convention and the CPIA do not provide for criminal penalties for cultural property violations. In line with the UNESCO Convention, current law in the United States and in other market countries focuses on the recovery and return of looted objects. Recognizing the central role that high-end consumers play in the perpetuation of cultural looting, it is imperative that the United States shift from prioritizing “source” protection of cultural property to eliminating demand in the market. To effectively scare consumers and reduce demand for looted antiquities, the United States must implement new criminal penalties for cultural property offenses that are known to bring violators to justice.

Prosecuting White-Collar Criminals of Cultural Property Theft

Current Criminal Legislation

National Stolen Property Act

Currently, the United States uses a general theft law to prosecute those who sell or purchase stolen antiquities. The National Stolen Property Act (NSPA), criminally punishes “whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to

¹⁰⁷ Brodie, “Syria and its Regional Neighbors,” 326.

¹⁰⁸ Simon Mackenzie and Penny Green, “Introduction: A Context for the Engagement of Criminology and Archaeology,” in *Criminology and Archaeology: Studies in Looted Antiquities*, ed. Simon Mackenzie and Penny Green (Oxford and Portland, Oregon: Hart Publishing, 2009), 2.

¹⁰⁹ Patty Gerstenblith, “Controlling the International market in Antiquities: Reducing the Harm, Preserving the Past,” *Chicago Journal of International Law* 8, no. 1 (June 2007): 178-179.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

have been stolen, converted or taken by fraud.¹¹⁰ When drafted in 1919, the original intent of NSPA was to punish criminals who completed a theft in State A and then used the channels of interstate commerce to move to State B to avoid State A's laws. However, beginning with *United States v. McClain*, the federal government uses the NSPA sporadically to prosecute white-collar criminals involved in the illicit trade of cultural artifacts.

In an NSPA case, to prove that an antiquity was stolen, the federal government must establish that another country owns the object. A foreign country can establish ownership over its antiquities only through a national patrimony law.¹¹¹ A patrimony law (or vesting law) can apply to a combination of discovered and undiscovered antiquities. According to the *McClain* court: "[The National Stolen Property Act] protects ownership derived from foreign legislative pronouncements, even though the owned objects have never been reduced to possession by the foreign government."¹¹² The Second Circuit, the judicial district covering New York, added another prosecutorial burden to the patrimony law requirement: a foreign country must actively enforce its patrimony law.¹¹³ In the *United States v. Schultz*, the court used Egypt's creation and utilization of an antiquities police force to combat looting as evidence that the nation actively enforced its patrimony law and ownership over cultural property.¹¹⁴ Unfortunately, while many nations have patrimony statutes, "enforcement lag[s] enactment."¹¹⁵

The NSPA also requires that the United States prove that the defendant knew that the object was stolen or illegally obtained. However, with the art community's traditional practice of dealing in objects with no provenance, proving that a defendant knew the illegal nature of an object is difficult. By not consistently enforcing proof of ownership and history, private parties on the demand side turn a blind eye to what are often transactions they know to be illegal.¹¹⁶

¹¹⁰ 18 U.S.C. § 2314.

¹¹¹ The U.S. requires that a country promulgate ownership via a patrimony law because the U.S. does not view the legal import of an illegally exported object as prohibited and an illegally exported object is not considered stolen. Paul M. Bator, "An Essay on the International Trade in Art," *Stanford Law Review* 34, no. 2 (January 1982): 287.

¹¹² *The United States v. McClain*, 593 F.2d 658, 664 (5th Cir. 1977). See also Stephen Urice, "Between Rocks and Hard Places: Unprovenanced Antiquities and the National Stolen Property Act," *New Mexico Law Review* 40, no. 1 (2010): 129.

¹¹³ Urice, "Between Rocks and Hard Places," 131.

¹¹⁴ *United States v. Schultz*, 333 F.3d, 416 (2d Cir. 2003).

¹¹⁵ See also Urice, "Between Rocks and Hard Places," 127. In *Peru v. Johnson*, a U.S. court reviewed a Peruvian vesting legislation. The patrimony law had not been used in a Peruvian court and the public register set forth in the statute had not yet been created. The U.S. court found that Peru's legislation did not have sufficient accompanying action and amounted only to an export restriction. Fincham, "Why the U.S. Federal Criminal Penalties," 631.

¹¹⁶ Simon Mackenzie, "Conditions for Guilt-Free Consumption in a Transnational Criminal Market," *European Journal of Criminal Policy and Research* 20, no. 4 (December 2014): 506.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Largely because the NSPA was not crafted with cultural heritage protection in mind, the federal government's ability to utilize the legislation to prosecute cultural theft property varies on a case-by-case basis. For example, neither the NSPA nor NSPA caselaw provides explicit directions on what constitutes sufficient patrimony legislation.¹¹⁷ Additionally, there are no judicial or governmental instructions on what action constitutes sufficient national patrimony enforcement. This lack of clear and uniform guidance on valid patrimony law and enforcement mechanisms means that prosecuting authorities are unsure whether potential charges are likely to be successful. Unsure of success, prosecutors are less likely to prosecute cultural property crime perpetrators and offenders can remain confident that they will likely never face justice. To remedy its paltry prosecution rate, the United States should look to other extraterritorial criminal penalties for insight into how to best craft antiquity specific criminal legislation.

Evaluating Alternative Legal Regimes for Recommendations

Lacey Act

The U.S. legislature should analyze the Lacey Act because it is one of the few domestic tools that utilize foreign law to establish criminality.¹¹⁸ Much like the aims of the NSPA, the U.S. Congress passed the Lacey Act in 1900 to prohibit persons from illegally killing game in State A to travel to State B to escape prosecution.¹¹⁹ Over time, the Lacey Act expanded and now prohibits the import, export, purchase, or sale of wildlife, fish, and plants when such action violates state, federal, tribal, or foreign law.¹²⁰ The Lacey Act demonstrates the "broader 'emerging trend' toward global enforcement, which represents a dramatic departure from conventional priorities."¹²¹

Violators of the Lacey Act face civil and criminal penalties.¹²² As to criminal penalties, the Lacey Act provides for both misdemeanor and felony liability. To avoid misdemeanor liability,¹²³

¹¹⁷ Urice, "Between Rocks and Hard Places," 260.

¹¹⁸ Significantly, the Lacey Act now serves "as a model for other regulatory statutes that allow for consideration of foreign law." Matthew White, "Overcriminalization Based on Foreign Law: How the Lacey Act Incorporates Foreign Law to Overcriminalize Importers and Users of Timber Products," *Washington University Global Studies Law Review* 12, no. 2 (June 2013): 98.

¹¹⁹ Alexander, "The Lacey Act," 1.

¹²⁰ 16 U.S.C. § 3372(2)(A). "Foreign law" not only encompasses statutes, but also regulations and administrative decisions of another country. A "foreign law" need not even be valid at the time of prosecution as long as it was enacted at the time of the offense. See White, "Overcriminalization Based on Foreign Law."

¹²¹ Rachel Saltzman, "Establishing a 'Due Care' Standard Under the Lacey Act Amendments of 2008," *Michigan Law Review First Impressions* 109, no. 1 (2010): 2.

¹²² The Lacey Act also has strict liability forfeiture provisions:

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

importers and consumers must exercise “due care” in determining whether a product is legal.¹²⁴ While courts in the United States have not discussed the act’s due care standard in great detail, some helpful principles are found. To analyze whether a party took sufficient action to determine legality of an object, courts emphasize a party’s level of experience and knowledge in the industry.¹²⁵ The Ninth Circuit, which handles more due care cases than any other jurisdiction, defines “due care” as “that degree of care which a reasonably prudent person would exercise under the same or similar circumstances.”¹²⁶ Courts also look favorably when parties comply with private sector initiatives such as voluntary programs that certify a product is legally acquired.¹²⁷

Felony liability consists of “any party who knowingly engages in a violation of the Act by importing, exporting, selling, or purchasing prohibited fish, wildlife, or plants with a market value greater than \$350.”¹²⁸ The Lacey Act requires that an actor not only know he or she was committing an action, such the selling of a product, but that the actor also know “that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation.”¹²⁹

Other extraterritorial criminal frameworks

While the Lacey Act requires knowledge of an item’s illegal nature to constitute a felony violation, other environmental laws impose less onerous burdens on prosecutorial efforts. In the European Union (EU), timber regulations obligate parties operating in the timber industry

All fish or wildlife or plants imported, exported, transported, sold, received, acquired, or purchased contrary to the provisions of section 3372 of this title (other than section 3372(b) of this title), or any regulation issued pursuant thereto, shall be subject to forfeiture to the United States notwithstanding any culpability requirements for civil penalty assessment or criminal prosecution included in section 3373 of this title.

16 U.S.C. § 3374(a)(1).

¹²³ Misdemeanor violations may be punished up to one year in jail, in addition to or instead of a fine. The maximum criminal penalty fine is \$100,000 for an individual and \$200,000 for a company. Alexander, “The Lacey Act,” 10.

¹²⁴ 16 U.S.C. § 3373(d)(2). See also Saltzman, “Establishing a ‘Due Care’ Standard.”

¹²⁵ *United States v. 2,507 Live Canary Winged Parakeets*, 34 F. Supp. 385, 392 (S.D. Fla. 1993). See also Saltzman, “Establishing a ‘Due Care’ Standard,” 3-4.

¹²⁶ Ninth Circuit Jury Instructions Committee, *Manual of Model Criminal Jury Instructions for the District Courts of the 9th Circuit*. 9th Cir. 9.11 (2003).

¹²⁷ Saltzman, “Establishing a ‘Due Care’ Standard,” 6.

¹²⁸ 16 U.S.C. § 3373(d)(1) (2012). An offender may be fined up to \$20,000 and imprisoned up to five years per violation. *Ibid*.

¹²⁹ 16 U.S.C. § 3373(d)(1).

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

to “exercise due diligence when placing timber or timber products on the market.”¹³⁰ The EU provides that due diligence consists of three elements:

- 1) Information: The operator must have access to information describing the timber and timber products, country of harvest, species, quantity, details of the supplier and information on compliance with national legislation.
- 2) Risk assessment: The operator should assess the risk of illegal timber in his supply chain, based on the information identified above and taking into account criteria set out in the regulation.
- 3) Risk mitigation: When the assessment shows that there is a risk of illegal timber in the supply chain that risk can be mitigated by requiring additional information and verification from the supplier.¹³¹

The EU also requires that traders identify all operators or traders in a product’s supply chain for the preceding five years and to whom they have supplied products.¹³²

In the United States, environmental laws such as the Clean Water Act, Comprehensive Environmental Response, Compensation, and Liability Act, and Resource Conservation and Recovery Act are general intent crimes. The government does not need to prove that the defendant knew that his or her actions violated a law but rather that the defendant “was aware of the conduct forming the basis of the violations.”¹³³ Thus, under the Clean Water Act, which criminalizes the “knowing discharge” of pollutants, the defendant is liable for knowingly discharging products and does not need to know that the product was a pollutant.¹³⁴

Recommendations for New Criminal Legislation

Currently, there is nothing in the U.S. statute books that strikes fear in white-collar criminals illegally selling or purchasing antiquities. The CPIA applies to a highly limited number of cultural goods and only provides for forfeiture and civil recovery. With a high knowledge

¹³⁰ *Laying down the obligations of operators who place timber and timber products on the market*, European Union, Reg. (EU) No. 995/2010, 20 October 2010, art. 4(1).

¹³¹ “Timber Regulation,” *European Commission*, available at http://ec.europa.eu/environment/forests/timber_regulation.htm.

¹³² *Laying down the obligations of operators who place timber and timber products on the market*, European Union, Reg. (EU) No. 995/2010, 20 October 2010, art. 5.

¹³³ Peter Crane Anderson, “Is BP Just a Drop in the Ocean? A Primer on Environmental Crimes and the Continuing Enforcement Trends,” *The Champion* (September/October 2010), 13.

¹³⁴ *Ibid.*, citing *United States v. Weitzenhoff*, 1 F.3d 1523, 1529-33 (9th Cir. 1993); *See also United States v. Wilson*, 133 F.3d 251 (4th Cir. 1997); John F. Cooney, “Multi-Jurisdictional and Successive Prosecution of Environmental Crimes: The Case for a Consistent Approach,” *Northwestern School of Law Journal of Criminal Law & Criminology* 96, no. 2 (Winter 2006): 436.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

standard and uneven judicial rulings on foreign patrimony laws and enforcement, the NSPA is not able to effectively prosecute wrongdoers. Congress needs to draft and adopt criminal legislation with cultural property's unique characteristics specifically in mind.

To start, any new legislation should model itself on the Lacey Act and prohibit the import, export, purchase, or sale of cultural property when such action violates state, federal, or foreign law.¹³⁵ While there are some who argue that the Lacey Act's reach is too broad and that the United States should not enforce the laws of another country,¹³⁶ the Lacey Act is universally respected as the strongest set of domestic laws aimed at conservation. The Lacey Act makes clear that its purpose is the worldwide preservation of species and habitats, particularly those outside the United States.

Those who think that today's Congress would not pass legislation respecting foreign law should note that in 2008, Congress passed amendments to the Lacey Act extending its protections even further to the timber industry. Timber, like cultural artifacts, travels through much more complex supply chains, often in economically and politically unstable regions.¹³⁷ Further, unlike other Lacey Act industries and akin to the cultural property community, the timber industry was not heavily regulated and lacked the "institutional capacity for insuring compliance."¹³⁸ If Congress welcomed the inclusion of timber to the Lacey Act's comprehensive regulatory scheme, there is no reason to believe the legislative body could not be swayed to enforce foreign laws for the protection of cultural property.

Additionally, like the Lacey Act, any future cultural property theft law should provide for both civil and criminal penalties, including misdemeanor and felony violations. For misdemeanors, a new law could use the Lacey Act's due care standard, in other words, the degree of care that a reasonable person would exercise under the same or similar circumstances. However, new legislation must not use the Lacey Act's knowing standard for felony violations. The art world's longstanding trade in items lacking in provenance would make proving that a defendant knew an object was looted very difficult. Future legislation could expand the Lacey's Act due care standard to felonies and simply require higher monetary thresholds for felony liability.

¹³⁵ The legislation could model itself on the CPIA and use the act's term of "archeological or ethnological material" to encompass cultural property. See 19 U.S.C. § 2601 (2).

¹³⁶ There are those who argue that the Lacey Act's reach is too broad and that the United States should not be enforcing the laws of another country.

¹³⁷ White, "Overcriminalization Based on Foreign Law," 390-95.

¹³⁸ *Ibid.*, 392.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

In addition, the U.S. could adopt either the EU's due diligence standard used in timber regulation or the knowing conduct standard found in other U.S. environmental laws for felony liability. Between the two, the EU's due diligence standard will likely be more acceptable to the art community because it allows inquiry into risk assessment and risk mitigation. Thus, in examining the purchase of an un-provenanced item, a purchaser or seller can proffer evidence as to what additional steps were taken to assure an antiquity's legality. In contrast, the knowing conduct standard found in U.S. environmental laws is much stricter. There, regardless of what mitigating steps an actor did to ascertain an object's legality, a party is liable for simply intending to purchase an antiquity.

As apparent from the above discussion, any future criminal legislation will analyze a defendant's knowledge of the illegal nature of the antiquity in issue. A defendant will argue they took reasonable measures to confirm an item's legal acquisition and prosecutors will argue that a defendant should have known that a cultural item was looted. Thus, a party's inquiry into an item's provenance or lack thereof will be a central issue in future judicial procedures. By ensuring more prosecutions for transactions involving suspect antiquities, the U.S. is implicitly promoting provenance searches. Private actors will begin inquiring into and requiring provenance because they know that such actions meet a due care standard. This results in a decrease for the demand of items lacking ownership information. Over time, the private sector will begin to view a cultural property registry as a safeguard from criminal punishment. The U.S. should take advantage of this shift in the practices of the antiquities community and take the lead in creating its own national registry and then in the coordinating of an international cultural property registry.

Domestic Registry

One clear way to increase all parties' abilities to determine the legal or illegal nature of an antiquity is to move the international community towards a comprehensive registry of cultural artifacts.¹³⁹ International law already places a duty on nations to establish and keep current a national inventory of protected property.¹⁴⁰ The Charter of Courtmayeur, which outlines recommended national and international actions to protect against illicit trade of cultural

¹³⁹ Warring, "Underground Debates," 263.

¹⁴⁰ UNESCO Convention, art. 10. Additionally, article 11(a) of the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage also requires that every State Party submit an inventory of "property forming part of the cultural and natural heritage." *UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage*, United Nations Educational, Scientific, and Cultural Organization, Paris: 16 November 1972, 1037 *United Nations Treaty System* No. 15511, art. 11(a).

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

objects, asserted, “Detailed and extensive information concerning the cultural patrimony of every nation is of the foremost importance.”¹⁴¹ Article 10 of the UNESCO Convention requires State Parties to “maintain a register recording the origin of each item of cultural property, names, and addresses of the supplier, [and] description and price of each item sold.”¹⁴² As UNESCO explained:

The inventory is a basic tool for the management of any resource. It is indispensable for the drawing up and implementation of policy with respect to the preservation and presentation of cultural property. Monuments and sites, museum objects and many other manifestations of our cultural heritage, both tangible and intangible, exist in vast numbers throughout the world. It is only when they are properly listed identified, and classified that programmes for their protection be systemically planned and carried through.¹⁴³

However, as previously noted, partial national implementation of the UNESCO Convention across State Parties allows nations to forgo the convention’s inventories provision, including the United States.¹⁴⁴ The ability of State Parties to abstain from creating registries – a central provision of the convention – is a major obstacle. Without a comprehensive inventory of cultural property, cultural property remains in the grey market as law enforcement and legitimate consumers have one less tool to ascertain the identification of stolen goods.¹⁴⁵

Registry Recommendations

“includes compulsory funding by member states who share the cost of protecting cultural property... should be directed toward national institutions for the express purpose of creating inventory lists that can be turned over to an international register to be kept by

¹⁴¹ *Charter of Courmayeur*, United Nations Educational, Scientific, and Cultural Organization, Italy: 25-27 June 1992, art. 3.

¹⁴² UNESCO Convention, art. 10.

¹⁴³ Meredith H. Sykes, “Manual on system of inventorying immovable property,” *UNESCO* (1984), preface, available at: <http://unesdoc.unesco.org/images/0006/000630/063035eo.pdf>. While UNESCO emphasized national inventories from the inception of the convention, the organization acknowledged that challenges surrounding “the scarcity of human and material resources,” “the sheer lack of information on simple yet effective means,” and “conceptual and practical difficulties” might hinder the process for many State Parties. *Ibid*.

¹⁴⁴ UNESCO Convention, art. 10. For example, the United States made a reservation to Article 10, stating that it understood the words, “as appropriate for each country” “as permitting each state party to determine the extent of regulation, if any, of antique dealers and declares that in the United States that determination would be made by the appropriate authorities of state and municipal governments.”

¹⁴⁵ There has been progress towards cataloging the world’s cultural property but among non-national organizations. The World Heritage List documents non-movable property. The International Council of Museums Code of Ethics obligates museums to keep updated inventories and the Art Loss Register lists stolen cultural artifacts. However, other than these efforts and other discrete and scattered museum inventories, there is no comprehensive list of movable cultural property.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

UNESCO.”¹⁴⁶ All items held in museums, private collections auction houses and with dealers, should be freely registered with a national government authority. Aware that many items will not have provenance, the international community could determine a cut-off date before which provenance need not be strictly required. For example, a future convention could use 1970, the year of the UNESCO Convention. Thus, any object acquired after that date must provide a history of ownership. Parties that possess items acquired before 1970 will be granted legal title.¹⁴⁷

As to the record information required of cultural objects, in the 1980s, UNESCO surveyed existing national inventories and suggested inventory criteria:

- 1) Identification meaning location, typology, and ownership;
- 2) Significance meaning importance and official designation;
- 3) Date meaning date and historical commentary;
- 4) Description;
- 5) Conservation/restoration/preservation; and
- 6) Document/reference including published bibliography, files and reports, maps, plans and drawings, and photographs.¹⁴⁸

Another set of database criteria is found with Object ID, “an international standard for describing cultural objects.”¹⁴⁹ Object ID was led by the J. Paul Getty Trust and developed in collaboration with “the museum community, international police and customs agencies, the art trade, insurance industry, and valuers of art and antiques.”¹⁵⁰ Currently, UNESCO, ICOM, Interpol, the FBI’s National Stolen Theft Art Program, the Italian Carabinieri, the London Metropolitan Police Art and Antiques Unit, and the World Customs Organization are a few of the participants using the guidelines set forth by Object ID.¹⁵¹

Whatever the information required in an international database, the new registry should be “uniform, secure, and more readily available.”¹⁵² Advances in technology should ensure that sellers, consumers and law enforcement officials should be able to access an online registry to verify the title and status of any object in real time. Overall, the “ability of legitimate

¹⁴⁶ Edythe E. Huang, “Looting in Iraq, Five Years Later: An Evaluation of the International Protection, Recovery, and Repatriation of Looted Cultural Artifacts,” *Rutgers Race and the Law Review* 10, no. 1 (2015): 215.

¹⁴⁷ See Simon Mackenzie, *Going, Going, Gone: Regulating the Market in Illicit Antiquities* (Leicester: Institute of Art and Law, 2005).

¹⁴⁸ Sykes, “Manual on system of inventorying immovable property,” Table of Contents.

¹⁴⁹ “About ObjectID,” *International Council of Museums*, available at <http://archives.icom.museum/objectid/about.html>.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Warring, “Underground Debates,” 265.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

market participants to undertake independent checks and to behave ethically can raise the standard of acquisition and trade.”¹⁵³

There are of course obstacles to creating an international registry. First, and most importantly, the political will to identify and provide provenance for so many items will be lacking in many market nations. However, as explained earlier, as government prosecutions for illicit transactions increase, potential defendants will seek out ways to decrease their liability. Inquiring into and checking provenance is the easiest way that a party can remain on the good side of the law and a national registry would facilitate that process. Further, Congress implemented the CPIA over the decade-long opposition of art dealers.¹⁵⁴ So regardless of current levels of support, Congress should begin a discourse on how to balance the antiquity community’s concerns regarding inventorizing with the need for a comprehensive registry. The previously noted recommendation that a future convention utilize a cut-off date from which provenance will not be strictly required and automatic title emerges is one such technique to appease the antiquities community.

Second, developing a national inventory to be then merged into an international database is costly. Many source nations, as well as the UN and Interpol do not have the resources to develop such an exhaustive inventory. Some argue that wealthier market countries do not have the economic incentive to aid other nations in cataloging objects.¹⁵⁵ However, the enormous interest shown by Western nations, especially the United States, in the role that the illicit trade of cultural objects plays in terrorism financing, points to a change in the wind. In fact, with ISIS on the Security Council’s agenda and its cultural looting in Congress’ legislative cross-hairs, this may be the most opportune moment to press for an international catalog.

CITES Practices

Regardless of the exact criteria required by a comprehensive database, an international registry will surely be complex. UNESCO can look to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) for lessons related to database

¹⁵³ Christa Rodt and Bernadine Benson, “Databases for Stolen Art,” *South Africa Crime Quarterly* 52 (June 2015): 11.

¹⁵⁴ Barbara B. Rosencrance, “Harmonious Meeting: The McClain Decision and the Cultural Property Implementation Act,” *Cornell International Law Review* 19, no. 2 (Summer 1986): 311.

¹⁵⁵ Warring, “Underground Debates,” 267-8.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

management and records keeping.¹⁵⁶ CITES creates a legal framework mandating that all 182 State Parties manage their export and import of certain species via a system of mandatory licensing, permits, and certificates. While CITES mirrors the UNESCO Convention's emphasis on export and import provisions, CITES goes beyond the UNESCO Convention to create an organizational structure dedicated to monitoring State Parties' compliance with trade restrictions: "The Secretariat's mandate comes from the treaty, which outlines its functions as studying party reports and requesting any further information necessary to ensure implementation; inviting parties' attention to matters pertaining to the treaty's aims; and making recommendations for implementing the treaty."¹⁵⁷

This organizational body allows CITES to manage an information system requiring State Parties to report to the CITES Secretariat trade data annually. Data from the annual reports is then entered into a comprehensive system to which "half a million trade records are added every year, can be accessed through the internet and [which] allows import and export records to be cross-matched" thus, "highlighting discrepancies between reported imports and exports."¹⁵⁸ Additionally, CITES currently utilizes a third party vendor, TRAFFIC, to manage the Elephant Trade Information System (ETIS).¹⁵⁹ This database contains information on ivory trade and elephant populations and is used to assess law enforcement efforts and needs.¹⁶⁰ CITES State Parties transmit data on ivory and other elephant product seizures to TRAFFIC within 90 days of the taking.¹⁶¹ TRAFFIC is funded by various national organizations, including the United Kingdom's Department for Environment, Food and Rural Affairs, the World Wide Fund for Nature, the CITES Secretariat, and the United States Fish and Wildlife Service.¹⁶²

¹⁵⁶ Rosalind Reeve, "Wildlife Trade, Sanctions and Compliance: Lessons from the CITES Regime," *International Affairs (Royal Institute of International Affairs 1944-)* 82, no. 5 (2006): 881-97, 2. CITES is tasked with "ensur[ing] that international trade in specimens of wild animals and plants does not threaten their survival." Lemieux and Clarke, "The International Ban on Ivory Sales," 3.

¹⁵⁷ Reeve, "Wildlife Trade, Sanctions and Compliance," 882.

¹⁵⁸ *Ibid.*, 5.

¹⁵⁹ "The Elephant Trade Information System (ETIS)," *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, available at <https://cites.org/eng/prog/etis/index.php>.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

Conclusion

As the links between terrorist groups and cultural looting grow, the eyes of the international community firmly rest on the illicit trade of antiquities as they search for solutions to this destructive practice. The UN Security Council and the United States Congress reaffirmed their commitment to stopping the import of looted items with country-specific import bans. However, continuing to implement reactive and limited measures will not stop the pillaging of cultural resources currently occurring in Syria or which are sure to occur elsewhere in the future.

The U.S. should break from previous efforts to regulate the supply side of the illicit market. The U.S. must develop stronger punitive laws that convince wrongdoers that they will be held accountable for their offenses. Without a real fear of criminal penalties, white-collar actors of the antiquities world craft a new narrative wherein their actions are not viewed as legal issues but as ethical decisions.¹⁶³ The U.S. should draft theft laws specifically targeting cultural property crimes. This legislation should criminalize violations of foreign law and acknowledge the varying use of provenance in the antiquities community. Congress must balance its mission of preserving the archeological record with the commercial and logistical concerns of the art world. Finding this balance will not be easy. However, the ongoing looting in war-torn regions demonstrates that novel strategies must be considered if we are to protect the “basic elements of civilization and national culture.”¹⁶⁴

¹⁶³ See Brodie, “Syria and its Regional Neighbors.”

¹⁶⁴ UNESCO Convention, Preamble.

Intermediate Actors in the Illicit Antiquities Trade

Ceriel Gerrits

Introduction

The aim of this paper is to examine customs data for clues about trafficking routes and see which experiences of previous antiquity lootings may apply to Syria, e.g., Afghanistan and Cambodia. It will try to see which parallels exist and where suspicion should give rise to further examination. Research in the looting of antiquities has attracted well deserved attention in recent years, especially since the attacks of Daesh on UN World Heritage sites in Syria. The current conduct in the field of art trafficking has focused extensively on demand side factors. Provenance and its legal challenges have received much scholarly attention.¹⁶⁵ As has the prosecution of art dealers and auction houses¹⁶⁶ as well as museums who display illicitly traded art.¹⁶⁷ Owing to the increased access to satellite imagery and increased media interest in the looting practices in Egypt and of Daesh in Syria and Iraq, understanding of the supply side of looted antiquities has also expanded.¹⁶⁸ What happens between the first supplying and the final demanders, however, has received less scholarly attention and remains largely uncharted territory for academics. As a result of a lack of information, the public debate and policy

¹⁶⁵ Simon Mackenzie, *Going, Going, Gone: Regulating the Market in Illicit Antiquities*, (Leicester: Institute of Art and Law, 2005); Laurence Massy, "The antiquity art market: between legality and illegality," *International Journal of Social Economics* 35, no. 10 (2008): 729-738.

¹⁶⁶ Tess Davis, "Supply and demand: exposing the illicit trade in Cambodian antiquities through a study of Sotheby's auction house," *Crime, Law and Social Change* 56, no. 2 (2011): 155-174; Christos Tsirogiannis, "Something is Confidential in the State of Christie's," *Journal of Art Crime* 9 (2013): 3.

¹⁶⁷ Cristiana Panella, "Lost in translation: 'Unprovenanced objects' and the opacity/transparency agenda of museums' policies," *Anuac* 4, no. 1 (2015): 66-87.

¹⁶⁸ Jesse Casana and Mitra Panahipour, "Satellite-Based Monitoring of Looting and Damage to Archaeological Sites in Syria," *Journal of Eastern Mediterranean Archaeology and Heritage Studies* 2, no. 2 (2014): 128-151; Sarah Parcak et al., "Satellite evidence of archaeological site looting in Egypt: 2002-2013," *Antiquity* 90, no. 349 (2016): 188-205.

discussions have focused extensively on either the tip or the tail of the illicit antiquities supply chain. Although there is an urgent need for more information on middlemen if policy is to be informed well on the functioning of illicit antiquity trade, the current state of research by scholars and serious journalists does not allow such open-source research paper to make solid statements that exceed the worth of conjectures. Instead, it is the aim of this paper to highlight suspicious trends and give suggestions to further research by postulating hypotheses.

This paper will approach the topic from a theoretical point of view. The theory used will come from conclusions from case studies of other illicit trade networks, a methodology applied later in the paper. Case study analysis provides the proper tool to deal with the complexity and the variance of antiquities trafficking networks. Unfortunately, there have been few instances in which researchers or journalists were able to unveil the entire supply chain, which ultimately confines the ability to test, and thus to prove, hypothesis about the trafficking networks. The problem with trafficking networks is that their nature has rarely been as well exposed in the way Davis and Mackenzie were able to give the anatomy of a network behind the trafficking of temple statues from Cambodia. A second valuable example of a completely unveiled network is the one mapped by Felch and Frammolino, who investigated the itinerary of an Aphrodite statue that was purchased by the J. Paul Getty Museum.¹⁶⁹ Nonetheless, a lot of intermediate links of the supply chain have been discovered and quite meticulously reported on by journalists. The paper will make a categorization of the different illicit antiquities trade networks based on previous case studies and then see how the existing information fits into this framework. Inherently, there will be insufficient information to construct a framework in such detail as Davis and Mackenzie or Felch and Frammolino were able to do. Several antiquities crime experts have also correctly noted that at this moment current knowledge on these trafficking networks that is insufficient to allow for big inferences or any numerical claims about quantities traded by Daesh and other actors in Syria and Iraq.¹⁷⁰ However, what this systematic evaluation of open-source data can do is to see which illicit market structures may be possible according to currently available information and which information regarding locations and levels of analysis is needed conduct more conclusive research.

¹⁶⁹ Jason Felch and Ralph Frammolino, *Chasing Aphrodite: the Hunt for Looted Antiquities at the World's Richest Museum*, Houghton Mifflin Harcourt (2011).

¹⁷⁰ e.g., Cristina Ruiz, "What do we really know about Islamic State's role in illicit antiquities trade?" *Art Newspaper*, March 1, 2016, Available from <http://theartnewspaper.com/news/what-do-we-really-know-about-islamic-state-s-role-in-illicit-antiquities-trade/>.

A Network Theory of Antiquities Looting

Understanding antiquities trafficking in terms of networks allows for a certain conceptual flexibility that is necessary for a framework of illicit antiquities trade in a globalized world. To a large extent current network theory of antiquities trafficking resembles that of the Phil Williams conceptualization of a transnational criminal network: it operates on the territory of two or more nations, it is able to mobilize resources, it pursues optimizing strategies across borders, it is specific and functional, it does not seek to dominate territory but merely to gain access and it violates laws on those territories.¹⁷¹ Essentially, there are also ways the antiquities trafficking networks are different from “regular” transnational crime networks: the final good, i.e., antiquities, are usually sold in open and public spaces, which requires that the good is turned from an illicit thing into a marketable licit good. Moreover, the buyers of the good can be very respected figures in society and the purchasing of antiquities is often regarded by society as an act increasing social status, as opposed to the purchasing of drugs and trafficked arms.¹⁷²

Networks can be understood as separate nodes that share a significant relation with each other. The location of these nodes, or their nature and that of the relations, is what varies from network to network.¹⁷³ This definition of networks covers most social activities: schools, churches and friendships are all networks. This paper will focus on the networks with the purpose to conduct criminal activities, specifically, the trafficking of looted antiquities. The nodes constituting such criminal network can be individual people, groups acting in a unitary way, firms or even computers, as long as they share a significant connection with each other.¹⁷⁴ This sets the understanding of networks used in this paper apart from the Social Network Analysis (SNA) used in sociology, which primarily takes only humans as nodes.¹⁷⁵

Location and Nature of the Antiquities Trafficking Networks

When it comes to the location of specific routes, the literature on other transnational criminal organization can equally give rise to expectations about the trafficking routes of illicit antiquities. Important to realize is that in the last two decades, the drug trafficking networks

¹⁷¹ Phil Williams, “Organizing transnational crime: Networks, markets and hierarchies,” *Transnational Organized Crime* 4, no. 3 (1998): 77.

¹⁷² Christine Alder and Kenneth Polk, “The Illicit Traffic in Plundered Antiquities,” in *Handbook of Transnational Crime and Justice*, eds. Philip Reichel and Jay Albanese (Thousand Oaks; Sage Publishers, 2005), 101.

¹⁷³ Williams, “Organizing transnational crime,” 74.

¹⁷⁴ *Ibid.*, 74.

¹⁷⁵ John Scott, *Social Network Analysis: A handbook*, (London: Sage Publishers, 2000), 3.

have undergone a shift from centralized crime cartels to more fragmentized groups. The case of the Colombian cocaine-cartels is perhaps the best example of this fragmentation.¹⁷⁶ The resulting flexibility not only helped the flow of drugs to switch nodes but also to change the location of these nodes. In recent years, for example, Nigeria has become a popular hub for drug-traffickers.¹⁷⁷ The reason for sudden shifts in location is the ability of traffickers to quickly capitalize on local opportunities. The shift to Nigeria concurred with the vast surge in drug trafficking through northern Mali subsequent to the Tuareg and Islamist rebellions. The United Nations estimated that the Mali route trafficked over more than \$1.25 Billion worth of cocaine and other drugs in 2013.¹⁷⁸ In an analysis of antiquities trafficking networks we may expect elements which show a similar flexibility, either local elements which can be incorporated quickly, as well as elements that are able to shift trafficking routes according to local opportunities and obstacles.

As mentioned above, however, an idiosyncrasy of antiquity trafficking is that while the tail of the supply chain finds itself in the illegal circuit, the end finds itself in the domain of legal activities. As opposed to the trafficking of arms and drugs, legal trade should then to a large extent be observable in customs data. The assumption that laundered antiquities trade should be reflected in customs data is owed to St. Hillaire's analysis of U.S. import data of Syrian antiquities.¹⁷⁹ His research has greatly improved the debate's understanding of the scale and nature of the antiquities trafficking problem and will also constitute the basis of an important part of the analysis below. Namely, unexplained spikes and trends in customs data may give rise to suspicions where the 'laundering' takes place and thus the location certain nodes.

Although it does not have to be the most important goal of the individual nodes in the network, the goal of the trafficking looting network is to make profit by transporting physical goods (i.e., looted antiquities) through its network from one place to a buyer. This process includes at least four separate steps: first there is the initial looter, possibly a digger; second, there is the early-stage intermediary who buys the good from the initial looter and offers it on the black market; third, the good is bought by a later-stage intermediary who is able to undo the illicit character of the good and offer it on the legal market to potential purchasers, which

¹⁷⁶ Jan van Dijk and Toine Spapens, "Transnational Organized Crime Networks," in *Handbook of Transnational Crime and Justice*, eds. Philip Reichel and Jay Albanese (Thousand Oaks: Sage Publishers, 2013), 215.

¹⁷⁷ Moises Naim, *Illicit: How Smugglers, Traffickers and Copycats are Hijacking the Global Economy*, (1st Anchor Books ed. New York: Anchor Books, 2006), 75.

¹⁷⁸ Yochi Dreazen, "Mali: Welcome to Cocainebougou," *Foreign Policy*, March 27, 2013. Available from <http://pulitzercenter.org/reporting/mali-drug-dens-dreazen-welcome-to-cocainebougou>.

¹⁷⁹ ""Antiques" from Syria: U.S. Cultural Property Import Stats Raise Suspicion," *Cultural Heritage Lawyer Blog*, December 29, 2015. Available from <http://culturalheritagelawyer.blogspot.com/2015/12/antiques-from-syria-us-cultural.html>.

form the fourth and final node.¹⁸⁰ This division into four-stage processes, however, does not exclude the possibility that one node forms two or more different steps or that one stage consists of several nodes. The digger may also offer the looted antiquity he found directly to a trader who can offer the good on the legal market.

Nonetheless, for the good to successfully go through the stages, an increasing degree of specialization is required, which will also exclude earlier specializations. For example, an early-stage intermediary may find it difficult to keep himself informed about the best tactics to cross a specific border as well as to remain aware of legal developments that could affect ways to “launder” the trafficked antiquity. Although interacting elements always need each other’s specialization in order to successfully complete the transaction,¹⁸¹ the different degree of specialization will result in an asymmetric balance in favor of the later-stage intermediary. This asymmetry is reflected in the share of the total profits of the trade,¹⁸² “Diggers” do not need much training to fulfill their role in the network but there were many notable professors among those who helped to falsify certificates of provenance which rendered the goods legal.¹⁸³

All four abovementioned stages in antiquity trade are recurrent in antiquity trafficking networks, but the way in which these networks are organized can be categorized into three theoretical models. These models evolve around three characteristics: first, the ability of the organization to sanction members or components; second, whether participants in the lower hierarchy of the network are subjected to a monopoly by the network; and, third, the presence of long-term agreements.

Model I: The Hierarchical Network/Organized Crime Group

The three abovementioned factors were first used by Pastore, Monzini and Sciortino to distinguish human trafficking networks from the Sicilian type of mafia organizations, i.e., the hierarchical network. Namely, they found that human trafficking network did not fill the entire space between the initial supplier and end-user, but that the supply chain was much more a string of loosely connected elements. A hierarchical network rather imposes a monopoly on those lower in the network, is able to put severe sanctions on its participants if they do not

¹⁸⁰ Peter B. Campbell, “The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage,” *International Journal of Cultural Property* 20, no. 02 (2013): 116.

¹⁸¹ Campbell, “The Illicit Antiquities Trade as a Transnational Criminal Network,” 116.

¹⁸² Ibid., 116.

¹⁸³ “While the West Seeks Tighter Curbs on the Trade in Antiquities Looted by ISIS, Italian Suspect Antiquities Continue to Appear at Major Auction Houses,” *Art-Crime Blogspot*, September 29, 2015. Available from <http://art-crime.blogspot.nl/2015/09/while-west-seeks-tighter-curbs-on-trade.html>.

comply, and establishes relations between its members for an indefinite period of time.¹⁸⁴ It is these hierarchical networks that pertain to the common conception of large organized crime groups. Such groups are still networks as all members share a meaningful relationship: membership of the crime group. However, not all criminal networks are also organized crime groups as this requires the network to have a certain structure, i.e., hierarchical organization, and continuous relations.¹⁸⁵ Often such organized crime groups also try to establish control over a specific market.¹⁸⁶

Model II: The Opportunistic Network

At the other end of the spectrum stands the Opportunistic Model. Although the hierarchical network may be highly relevant for various forms of criminal activity, it has lost scholarly attention in the area of antiquities trafficking to those networks in which there is no ability to sanction participants in the network and thus also no possibility to subject lower ranked nodes to a monopoly. The opportunistic model is one where people are connected mostly on a temporary basis with relations that may only know a few transactions before they disappear.¹⁸⁷ Organized crime groups, or elements of such groups, may still be part of this network, though they will represent just one or several nodes rather than span the entire network.¹⁸⁸ The opportunities that arise are based on the specializations of actors. In the case of trafficking networks this usually involves knowledge of the local areas. Trafficking networks based on such loose connections between local actors benefit from a flexibility¹⁸⁹ that makes it particularly hard for authorities to discover the network.¹⁹⁰

A good example of such a situation is the fracturing of the large Cali and Medellin cartels in Colombia into hundreds of smaller cocaine-trafficking organizations. Although the gangs do not pose a threat to existence of the state as much as the cartels, their multitude, spread and flexibility make their arrest an impossible task for law enforcements.¹⁹¹

¹⁸⁴ Ferruccio Pastore, Paola Monzini, and Giuseppe Sciortino, "Schengen's soft underbelly? Irregular migration and human smuggling across land and sea borders to Italy," *International Migration* 44, no. 4 (September 2006): 106.

¹⁸⁵ James O. Finckenauer, "Problems of Definition: What Is Organized Crime?" *Trends in Organized Crime* 8, no. 3 (Spring 2005): 75.

¹⁸⁶ Williams, "Organizing transnational crime," 72.

¹⁸⁷ Marcus Felson, *The Ecosystem for Organized Crime*, HEUNI Paper No. 26, European Institute for Crime Prevention and Control, affiliated with the United Nations Helsinki (October 2006), 9.

¹⁸⁸ Campbell, "The Illicit Antiquities Trade as a Transnational Criminal Network," 132.

¹⁸⁹ Williams, "Organizing transnational crime," 73.

¹⁹⁰ Phil Williams and Roy Godson, "Anticipating organized and transnational crime," *Crime, Law and Social Change* 37, no. 4 (June 2002): 311.

¹⁹¹ Jan van Dijk and Toine Spapens, "Transnational Organized Crime Networks," 215.

Model III: the Non-Hierarchical Centralized Network

However, when it appears that such opportunities have proven to be very lucrative, and there have been few involvements by authorities, relations among nodes have the potential to crystalize into a network in which still no sanctions are taking place but in which the connections between the nodes exist for extensive periods of time.¹⁹² In the trade of illicit antiquities, such networks may also have developed a hierarchy, in which the entity at the top of the hierarchy, often a later-stage middleman, derives its influence due to the information needed for successful coordination within the network, as well as the possession of a unique specialization.¹⁹³

An illustration of such a network is provided by Davis and Mackenzie. During their research in trafficking networks behind the looting of Cambodian temples, they discovered that for years one later-stage intermediary named Kanok in Bangkok was able to control a vast part of the Cambodian statuary trade for several decades.¹⁹⁴ His specialization centered around his connections with overseas art dealers and clients, as well as with the military, which was crucial to protect the transportation of the statues by the lower-stage intermediaries. Although sanctions did take place in this network, it was often not Kanok who ordered or executed the sanctions but middlemen who felt that they were cut out: the violence between nodes did not have the purpose to retain an organizational hierarchy but to retain profits. Participants in the network still had the opportunity to leave the business. More recently, it is very likely that Kapoor, a New York arts dealer, also fulfilled a similar pivotal role in the antiquities trafficking network for illicit South and South-East Asian art. After several decades of lucrative business, New York authorities raided his storage facilities and discovered various antiquities worth over \$100 Million. Kapoor was known to be travelling frequently between transit and source countries as well as the U.S. and was able to utilize various institutes and individuals in Asia to deliver reliable falsified certificates of provenance.¹⁹⁵ The quality of his illicit antiquities and related certificates of provenance, allowed him to sell many antiquities to museums, placing Kapoor in the high-end of the illicit South-East Asian antiquities trade.

¹⁹² Ibid., 230.

¹⁹³ Simon Mackenzie and Tess Davis, "Temple Looting in Cambodia Anatomy of a Statue Trafficking Network," *British Journal of Criminology* 54, no. 5 (June 2014): 722-740.

¹⁹⁴ Ibid., 16.

¹⁹⁵ "How to Smuggle a Saint Out of India," *New York Times*, 23 July 2015, Available from http://www.nytimes.com/interactive/2015/07/26/arts/design/kapoor_graphic.html.

ANALYSIS PART I: Research and Accounts of Illicit Antiquities Trade Routes

The first part of the supply, that of the diggers, has attracted much attention from scholars and journalists alike. Broadly, they usually conclude that looting of historical sites was already taking place prior to Daesh's arrival in early 2014, and that virtually all sides were involved, but that Daesh was the only actor to develop a policy on looting and that it escalated the plundering of historic sites to unprecedented levels.¹⁹⁶ Roughly, the looting taking place in the territory of Daesh is organized in two ways. First there is the ability of citizens to dig on private land and sell the found antiquities. A certain percentage of the gains then have to be paid to the Daesh administration. Second, there are organized looting teams that have access to heavy digging machinery and focus on the looting of historic sites on public lands.¹⁹⁷ The analysis below, however, does not only apply exclusively to looting conducted by Daesh.

Early-Stage Middlemen

Smuggling looted antiquities out of Iraq and Syria is usually done by someone else than the looter himself. Nonetheless, France 24 made a short video of a Syrian landowner who did the digging and smuggling himself. On his own land this digger searched for metal objects, after which he crossed the Turkish border as a refugee, to sell the artifacts and then try to return to Syria.¹⁹⁸ The case of this looter is not exceptional,¹⁹⁹ or limited to terrain occupied by Daesh, but is rather an example of a 'subsistence diggers' rather than of structural looting.²⁰⁰ Subsistence diggers work from their own land and loot to meet their subsistence needs rather than in the pursuit of profits. The subsistence looters met by France 24 and CBS News both also fulfilled the role of an early-stage middlemen by smuggling their loot out of Syria into Turkey. Some reports have also claimed that refugees often take antiquities with them when they leave

¹⁹⁶ e.g., Brigadier General (Ret.) Russell D. Howard, "Expert Commentary: Trafficking in Antiquities," *The Cipher Brief*, 13 Jan 2016, <https://thecipherbrief.com/article/trafficking-antiquities>.

¹⁹⁷ Jason Felch, "Twenty Percent: ISIS 'Khums' Tax on Archaeological Loot Fuels the Conflicts in Syria and Iraq," *Chasing Aphrodite*, August 14, 2014. Available from <https://chasingaphrodite.com/tag/amr-al-azm/>.

¹⁹⁸ Huby, Aouidj, and Al-Alepi, "Syria: On the trail of looted antiquities," *France 24*, May 4, 2015. Available from <http://www.france24.com/en/20150501-reporters-syrian-antiquities-trafficking-turkey-smuggling>.

¹⁹⁹ "Following the trail of Syria's looted history," *CBS News*, September 9, 2015. Available from <http://www.cbsnews.com/news/isis-looted-syrian-ancient-artifacts-black-market-us-and-europe/>.

²⁰⁰ Ashley Tilley, "ISIS, Blood Antiquities, and the International Black Market," Human Security Center *Policy Briefing*, February 1, 2016. Available from <http://www.hscentre.org/policy-unit/isis-blood-antiquities-international-black-market/>.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Syria. However, the artifacts they, as well as the subsistence looters, appear to be smuggling are usually not of high value; sometimes these objects are not worth more than a few dollars for local antiquities dealers.²⁰¹ As a result, the antiquities smuggled this way are destined to end up in the lower-end of the antiquities trade market. In any case, it is believed that the Free Syrian Army, al-Assad's troops as well as Daesh are somehow, in varying degrees, directly involved in the looting or transportation of antiquities.²⁰²

In 2013, prior to Daesh's announcement of the caliphate, another 'subsistence digger' involved in smuggling activities was interviewed by *Le Temps*, a Swiss newspaper outlet. Interestingly, the looter, a Syrian named Ayham who used to be active in both Syria and Turkey, complained about the rise of larger traders, who enjoyed protection of the 'jihadists' (perhaps al-Nusra?) and who were squeezing out smaller middlemen like him. From the report, it also became clear that the looter's profit-making ability was impeded by a lack of knowledge about the market values of the "found" artifacts. Moreover, Ayham did not limit himself to the market of illicit antiquities but also smuggled cigarettes and, occasionally, small arms.²⁰³

Also Daesh, although it has monopolized the entire looting operation of public property, does not bring the looted antiquities to the border itself but rather sell it to traders who are granted safe passage over the territory occupied by Daesh.²⁰⁴ This is confirmed by a report of *Russia Today*, which claims to have obtained evidence of certificates provided by Daesh for Turkish traders as well as bribes and requests to Turkish border guards to let those traders pass.²⁰⁵

Already in 2013, the *Syrian Times* reported that smugglers had bribed Lebanese border guards to transport tens of Roman busts and capitals, some worth well over a million USD on

²⁰¹ Joe Parkinson, Ayla Albayrak and Duncan Mavin, "Syrian 'Monuments Men' Race to Protect Antiquities as Looting Bankrolls Terror," *Wall Street Journal*, February 10, 2015. Available from <http://www.wsj.com/articles/syrian-monuments-men-race-to-protect-antiquities-as-looting-bankrolls-terror-1423615241>.

²⁰² Aryn Baker and Majdal Anjar, "Syria's Looted Past: How Ancient Artifacts Are Being Traded for Guns," *Time*, September 12, 2012. Available from <http://world.time.com/2012/09/12/syrias-looted-past-how-ancient-artifacts-are-being-traded-for-guns/>; Hubby, Aouidj, and Al-Alepi, "Syria: On the trail of looted antiquities;" Sam Hardy, "How the West buys 'conflict antiquities' from Iraq and Syria (and funds terror)," *Reuters*, October 27, 2014. Available from <http://blogs.reuters.com/great-debate/2014/10/27/how-the-west-buys-conflict-antiquities-from-iraq-and-syria-and-funds-terror/>.

²⁰³ "Ayham, profession contrebandier," *Le Temps*, August 19, 2013. Available from <http://www.letemps.ch/monde/2013/08/19/ayham-profession-contrebandier#.UheCbGQ4LHp>.

²⁰⁴ Parkinson, Albayrak, and Mavin, "Syrian 'Monuments Men' Race to Protect Antiquities as Looting Bankrolls Terror."

²⁰⁵ "ISIS 'Department of Artifacts' document exposes antique loot trade via Turkey," *RT*, March 31, 2016. Available from <https://www.rt.com/news/337829-isis-artifacts-trade-turkey/>.

European markets, from Syria to Lebanon. The authenticity and value of these numbers were confirmed by British archeologists.²⁰⁶ Interestingly, this report, which was conducted by an undercover journalist pretending to be a buyer, as well as a report made by the online news-provider BuzzFeed, provide similar accounts of the ease with which the traders have grown independent within their profession over time.²⁰⁷ For example, the Syrian Times quotes a dealer stating that he had been in a Syrian prison for three years for smuggling of antiquities but now had a team of looters working for him. Moreover, the Syrian dealers were happy to offer the most valuable busts and capitals to the disguised reporter.²⁰⁸ Similarly, the BuzzFeed journalist was offered to buy some of the looter's antiquities, despite that the latter was aware of the former's profession.²⁰⁹ Moreover, these traders were definitely active in the higher-end of the antiquities market as well, as indicated by the large amounts demanded for some of the goods they were willing to sell. The increase of Lebanon as a trade route appeared to come only after fighting arrived in the Syrian area bordering Lebanon.²¹⁰ The opportunity from insecurity thus plays a role in the location and shifts of antiquities trafficking networks similar to that of drug trafficking networks.

Although this contrasts somewhat with the reports mentioned above, Al-Azm contends that a great share of the looted antiquities is smuggled out of Syria via Turkey and that most of the smuggling is done by Turks taking the risk to enter Syria, buying the looted antiquities and taking it back with them to Turkey.²¹¹ There have been mixed reports about the ease and efficiency of Turkish borders. According to some, Turkish border guards are harsh the on smuggling of Turkish antiquities, but are willing to turn a blind eye to that of Syrian antiquities.²¹² Others claim that Turkish authorities are also vigorous on Syrian antiquities.²¹³

²⁰⁶ Hala Jaber, and George Arbuthnott, "Syrians loot Roman treasures to buy guns," *The Syrian Times*, May 5, 2013. Available from <http://thesyriantimes.com/2013/05/07/syrians-loot-roman-treasures-to-buy-guns/>.

²⁰⁷ Mike Giglio and Munzer al-Awad, "Inside the Underground Trade to Sell Off Syria's History," *BuzzFeed News*, July 30, 2015. Available from <http://www.buzzfeed.com/mikegiglio/the-trade-in-stolen-syrian-artifacts#.pqOB4YLZm>.

²⁰⁸ Jaber and Arbuthnott, "Syrians loot Roman treasures to buy guns."

²⁰⁹ Giglio and al-Awad, "Inside the Underground Trade to Sell Off Syria's History."

²¹⁰ Joanne Bajjaly, "Gangs Eyeing Syrian Antiquities," *alakhbar english*, March 11, 2012. Available from <http://english.al-akhbar.com/node/5043>; "army, paramilitaries and foreign security forces facilitate illicit trade in Syrian antiquities," *Conflict Antiquities*. <https://conflictantiquities.wordpress.com/2013/09/23/syria-civil-war-turkey-security-forces-collusion/>.

²¹¹ Felch, "Twenty Percent: ISIS 'Khums' Tax on Archaeological Loot Fuels the Conflicts in Syria and Iraq."

²¹² "Ayham, profession contrebandler," *Le Temps*, August 19, 2013; Isabel Hunter, "Syria conflict: The illicit art trade that is a major source of income for today's terror groups is nothing new," *Independent*, April 25, 2015. Available from <http://www.independent.co.uk/news/world/middle-east/syria-conflict-the-illicit-art-trade-that-is-a-major-source-of-income-for-todays-terror-groups-is-10204285.html>.

²¹³ Giglio and al-Awad, "Inside the Underground Trade to Sell Off Syria's History."

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Regardless of the vigor of Turkish border guards, it is clear that Lebanon's authorities pose much less of an obstacle for smugglers of antiquities.²¹⁴

It should also be noted that the market appears to contain fewer middlemen when the looted antiquities arrive in Turkey. Both the traders of the France 24 report as well as those of Buzzfeed were clearly collecting from several subsistence diggers as well as smugglers who took the risk to cross the borders.²¹⁵ The middleman interviewed by France 24, a Turkish citizen named Hussein, claimed that goods changed hands several times before arriving in Western markets.²¹⁶ In addition, the locations of the middlemen also seem to concentrate as regards to location. France 24 found Hussein in Gaziantep, a Turkish town close to the Syrian border. In April 2016 the Russian Ambassador to the United Nations, also stated that Gaziantep, as well as Kilis, are two transit hubs for illicit antiquities.²¹⁷

Hussein alleges that the arrival of Daesh changed the market dynamics. Namely, Daesh would be able to sell directly to those traders in Turkey who would sell the looted antiquities abroad,²¹⁸ thereby skipping several middlemen. Churkin does not mention a similar process in his very brief but precise account and claims that antiquities are first brought to the abovementioned transit hubs, after which they are sold on to organized crime groups in the port-cities of Izmir, Mersin and Antalya.²¹⁹

Later-Stage Middlemen

In addition to transporting the good abroad, crime groups would also provide provenance certificates,²²⁰ and thus give the good a licit status. None of the middlemen in Turkey who were approached mentioned anything about the certificates of provenance, nor did they give any specifics about transportation beyond Turkey and Lebanon. Nonetheless, there are other reports, which took the European markets as a departure point for their investigations and did try to cover the remainder of the trade routes. They mentioned

²¹⁴ Jaber and Arbuthnott, "Syrians loot Roman treasures to buy guns."

²¹⁵ Huby, Aouidj, and Al-Alepi, "Syria: On the trail of looted antiquities;" Giglio and al-Awad, "Inside the Underground Trade to Sell Off Syria's History."

²¹⁶ Huby, Aouidj, and Al-Alepi, "Syria: On the trail of looted antiquities."

²¹⁷ V. Churkin, *Letter dated 31 March 2016 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council.* [cited 2016]. Available from <http://docbox.un.org/DocBox/docbox.nsf/GetFile?OpenAgent&DS=S/2016/298&Lang=E&Type=DOC>.

²¹⁸ Huby, Aouidj, and Al-Alepi, "Syria: On the trail of looted antiquities."

²¹⁹ V. Churkin, *Letter dated 31 March 2016 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council.*

²²⁰ Ibid.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

numerous ways in which the early stage middlemen in Turkey and Lebanon are linked with the final dealers in Europe and the U.S.

First, artifacts would be diverted through the UAE, in particular through Dubai, where they would be laundered and then exported to Europe and the U.S.²²¹ In September 2014, a report by NDR, a German broadcaster, claimed that Dubai was not only one of the major transits hubs to Germany, but also the place where provenance certificates were falsified. The same report alleged that Germany had already become one of the main destinations and hubs for illicit antiquities. A possible explanation for this is found in German federal law that does not protect antiquities as much as many other countries, making it more attractive as a hub.²²² Moreover, one of the tricks applied by the traders to avoid suspicion of custom authorities was to label the looted antiquities as handicrafts before they were being shipped, rather than antiquities.²²³

A second way in which antiquities enter Western markets is through direct smuggling from Turkey or Lebanon through Greece or Bulgaria.²²⁴ Once these goods have entered the open market of the EU, it is very difficult for law enforcers to trace them. Danti has asserted that falsified provenance certificates are usually added in the EU, which claim that the antiquities have been in families for decades already.²²⁵ In December 2015, a larger smuggling organization in Bulgaria was dismantled and thousands of objects that probably came from either Syria or Iraq were confiscated. The artifacts found ranged from near valueless pottery to larger statues and were on their way to London.²²⁶ It does not appear that these objects were accompanied by some sort of provenance certificate, which would explain why they were being smuggled rather than declared at customs. Instead, it is believed that these antiquities would only receive their false provenance certificate in Europe, where they would also move several

²²¹ Brigadier General (Ret.) Russell D. Howard, "Expert Commentary: Trafficking in Antiquities," *The Cipher Brief*, 13 Jan 2016, <https://thecipherbrief.com/article/trafficking-antiquities>.

²²² Philipp Jedicke, "Germany attracts trade in looted artifacts," *Deutsche Welle*, October 24, 2014. Available from <http://www.dw.com/en/germany-attracts-trade-in-looted-artifacts/a-18019083>.

²²³ Hardy, "How the West buys 'conflict antiquities' from Iraq and Syria (and funds terror)."

²²⁴ Howard, "Expert Commentary: Trafficking in Antiquities."

²²⁵ Hunter, "Syria conflict: The illicit art trade that is a major source of income for today's terror groups is nothing new."

²²⁶ "Bulgarian Customs Prevent Smuggling of Ancient Coins, Artifacts into England," *novinite.com. Sofia News Agency*, December 14, 2015. Available from <http://www.novinite.com/articles/172239/Bulgarian+Customs+Prevent+Smuggling+of+Ancient+Coins,+Artifacts+into+England>.

hands in order to create a paper trail. This makes it harder for authorities to trace back the itinerary of the goods and thus all the more suitable to be exported to the U.S.²²⁷

In addition to imports as laundered goods via the UAE and smuggling through Greece or Bulgaria, there have also been reports that goods are directly imported from Turkey or Lebanon through a transaction between a middleman in Turkey and a dealer in Europe. For example, a BBC report of early 2015 provided an undercover investigation in which an art dealer was able to offer all the services, i.e., provenance certification and shipment, to transport illicit antiquities to London.²²⁸ The same BBC report also interviewed a lower-stage middleman in early 2015 who claimed that this happens even without the dealer having to see the antiquities. They make their judgment on the basis of pictures of the artifacts.²²⁹ Hardy confirms that information technology plays a major role in linking middlemen with other middlemen as well as with dealers. Ebay functions as a market place for illicit antiquities but traders also use more secure means such as Skype, WhatsApp and Klik.²³⁰ Brodie's study on internet trade indicates how easy it is to sell antiquities via Ebay without any proper provenance certification but also that the goods sold are usually of lesser quality than those found in antiquity shops and auctions.²³¹

At this point there is virtually no specific or reliable information available about the provenance falsification as part of the laundering process. In fact, the last two transfers, between the last two middlemen (one of which is the antiquity dealer) and the last middleman and the buyer, have not enjoyed as much attention as the smuggling of antiquities out of Syria and Iraq. Moreover, Dobrzynski correctly points out that there have not yet been any examples of antiquities on the consumer market which can be traced back to looting organized specifically by Daesh.²³² There is even the possibility that large pieces are held away from the

²²⁷ Rachel Shabi, "Looted in Syria – and sold in London: the British antiques shops dealing in artefacts smuggled by Isis," *The Guardian*, July 3, 2015. Available from <http://www.theguardian.com/world/2015/jul/03/antiquities-looted-by-isis-end-up-in-london-shops>.

²²⁸ Simon Cox, "The men who smuggle the loot that funds IS," *BBC News*, February 17, 2015. Available from <http://www.bbc.com/news/magazine-31485439>.

²²⁹ Cox, "The men who smuggle the loot that funds IS."

²³⁰ Shabi, "Looted in Syria – and sold in London: the British antiques shops dealing in artefacts smuggled by Isis."

²³¹ Neil Brodie, "The Internet Market in Antiquities," in *Countering Illicit Traffic in Cultural Goods The Global Challenge of Protecting the World's Heritage*, ed. F. Desmarais. (ICOM International Observatory on Illicit Traffic in Cultural Goods, 2015), 11.

²³² Judith H. Dobrzynski, "Antiquities and ISIS: Something Doesn't Add Up," *Real Clear Arts* [cited 2016]. Available from <http://www.artsjournal.com/realcleararts/2016/01/antiquities-and-isis-something-doesnt-add-up.html>.

market and are stored in warehouses²³³ as well as in free ports like Geneva and Dubai where goods do not have to be declared at the customs.²³⁴ In addition, free ports have the advantage that these places are near impossible for authorities to obtain a search warrant for investigations.²³⁵

The lack of any reliable sources on the falsification of certificates of provenance limits the ability to make any hypothesis about the form or the whereabouts of later-stage middlemen. What does appear from the discussion, however, is that there is a complete lack of hierarchy or centralization in any of the routes antiquities enter Europe. Although Daesh did appear to have reduced the number of middlemen, there are no signs it cooperates with organized crime organizations that dominate the rest of the supply chain. As for the middlemen who have been interviewed, they did not appear to fear sanctions and were eager to capitalize on the opportunity to sell to the interviewing journalist. There are no reports that suggest that large organized criminal organizations are responsible for more than a few transactions in the supply chain. Although much of the supply chain appears to be opportunistic, especially among the early-stage middlemen, it is of course possible that with early-stage middlemen and later-stage middlemen, there are more long-term relations. In particular, transactions in Europe may require more specialization, amongst others about provenance falsification. This specialization is probably valued higher than the skills of the lower-stage middlemen who smuggle antiquities out of Syria and Iraq. In addition, the possibility exists that the market is split and consists of several centralized networks besides opportunistic networks.

ANALYSIS PART II: Custom Data Analysis

As mentioned, another approach to find out more about the location of the later-stage middlemen is to observe the legal antiquities trade as this may provide hints where the falsification of the provenance certificates is taking place. Namely, the falsification of provenance requires a degree of professionalization found at this level of the antiquities

²³³ "Iraq says ISIS demolishes ruins to cover up looting operations," *Asharq Al-Awsat*, English edition, May 12, 2015. Available from <http://english.aawsat.com/2015/05/article55343406/iraq-says-isis-demolishes-ruins-to-cover-up-looting-operations>.

²³⁴ Susan Zalkind, "How ISIS Turned Looting Into Big Business," *Vocativ*, June 2, 2015. Available from <http://www.vocativ.com/world/isis-2/how-isis-turned-looting-into-big-business/>.

²³⁵ "Islamic State Is Selling Looted Art Online for Needed Cash," *Bloomberg*, June 28, 2015. Available from <http://www.bloomberg.com/news/articles/2015-06-28/isis-has-new-cash-cow-art-loot-it-s-peddling-on-ebay-facebook>.

trafficking chain. Moreover, we can assume that antiquities are unlikely to be declared at customs when they are not accompanied by a certificate stating their previous ownership or that the transaction is legal in another way. For example, Kapoor is known to have used at least once a falsified provenance certificate from an art dealer in Singapore while the respective object was imported illegally from India to New York.²³⁶ A certificate of provenance is mandatory in the antiquities trade as most countries have laws instated that render every artifact in the ground state property.²³⁷ Moreover, under the 1970 UNESCO convention *on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, traded antiquities should be accompanied by proof that these were legally exported from the source country. A provenance certificate can thus prove that an artifact is not looted. Antiquities traded licitly, and thus undergoing custom control, can thus be expected to be accompanied with correct paperwork, like the antiquities sold by Kapoor. In this case the good was listed as being imported from Chennai, India to New York, between which Kapoor made many trips. Knowing where antiquities are imported from and where they are exported to can thus reveal information about the locations of later-stage middlemen such as Kapoor. The case of an Aphrodite statue acquired by the J. Paul Getty Museum in 1988 underwent a similar process of laundering and ostensibly legal import to the U.S.²³⁸ What these two cases reveal is that the later-stage middlemen are as deeply connected to their location as the diggers and the early-stage middlemen and that they imported laundered antiquities (i.e., artifacts with falsified provenance) as if they were legal goods. It can thus be assumed that a significant part of the legal trade in antiquities may in fact consist of laundered artifacts. An increase of trade in antiquities then also indicates a rise in the trade of laundered antiquities as well as the location where later-stage middlemen are active. Unlike the Aphrodite case of Felch, these middlemen do not have to live in the exporting countries, but they will definitely have strong connections to early-stage middlemen there (e.g., Kapoor and the art dealers in Chennai).

To complement these accounts of investigative journalists and scholars in Part I, customs data were analyzed of antiquities imports to the European Unions (EU), the U.S. and Switzerland from Syria and Iraq and various contiguous countries, i.e. Jordan, Lebanon, Kuwait, Turkey, as well as the United Arab Emirates (UAE). Most importing governments are transparent about the exact values of their imports and exports and are publishing timely

²³⁶ Tom Mashberg and Max Bearak, "The Ultimate Temple Raider?: Inside an Antiquities-Smuggling Operation," *New York Times*, June 23, 2015. Available from http://www.nytimes.com/2015/07/26/arts/design/the-ultimate-temple-raider-inside-an-antiquities-smuggling-operation.html?_r=0.

²³⁷ Simon Mackenzie and Tess Davis, "Temple Looting in Cambodia Anatomy of a Statue Trafficking Network," *British Journal of Criminology* 54, no. 5 (June 2014): 722-740.

²³⁸ Felch and Frammolino, "Chasing Aphrodite."

figures. Nonetheless, a certain degree of the standardization and detail is required before the flow of antiquities can be observed and compared with each other. The analyzed countries publish data²³⁹ up to four or more numbers of standardized import and export code. Antiquities over 100 years old are labeled under the Harmonized Traffic Schedule (HTS) as 9706.²⁴⁰ Hence, no analysis could be conducted for imports from Iraq and Syria to the UAE, allegedly a transit hub for illicit antiquities trade, as this country only publishes information up to two HTS numbers, and sometimes includes other goods in the same HTS category than prescribed.

There are also various limitations to this approach. First, it should be noted that the sum of money does not always stipulate the actual value of the antiquities traded. Often, traders declare antiquities for a price that is many times below the market price in the country of destination in order to avoid import duties, or customs' suspicion. The data can thus only inform about the relative change of trade. Second, traffickers label artifacts not as antiquities but as "collectors' items" (HS 9705) to avoid customs' suspicion, especially in the case of gold coins.²⁴¹ Hence, the analysis will also report suspicious findings other than those in the antiquities category. Third, antiquities may be labeled as fakes,²⁴² also to avoid customs' suspicion and import duties, and thus not show up in the HS 9706 category but rather as HS 9703 imports.²⁴³ This poses further limits to the accuracy of customs data analysis of antiquities. Hence, the analysis will include a discussion of findings of the HS 9703 category as well. Fourth, the source country, not the transit country, should be listed as the country importing from when declaring goods at custom authorities, even after decades. Completely legal imports from other countries which list one of the analyzed countries as its location of origin can thus distort the import figures. Moreover, importers may still list the transit country as the source country without much risk of being caught at this. A good example of a case which combines several of these challenges was the import of a Libyan Roman statue from Turkey to England. It was declared as a "marble stone piece for home decoration" with a value

²³⁹ EU countries publish their data via Eurostat.

²⁴⁰ Other goods in the HTS 97 - Work of Art, Collectors' Pieces and Antiquities category are: 9701 - Paintings, drawings and pastels; 9702 - Original engravings, prints and lithographs, framed or not Framed; 9703 - Original sculptures and statuary; 9704 - Postage or revenue stamps, stamp-postmarks, first-day covers, postal stationery; 9705 - Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest.

²⁴¹ Rick St. Hilaire, "'Antiques' from Syria: U.S. Cultural Property Import Stats Raise Suspicion." *Cultural Heritage Lawyer*, 29 December 2015. Available from <http://culturalheritagelawyer.blogspot.com/2015/12/antiques-from-syria-us-cultural.html>.

²⁴² Ibid.

²⁴³ U.S. Customs and Border Protection, *What Every Member of the Trade Community Should Know About: Works of Art, Collector's Pieces, Antiques, and Other Cultural Property*, (May 2006).

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

of \$110,000. When the piece was intercepted by authorities it appeared that its real market value was close to 1.5 million British Pounds.²⁴⁴

The European Market

The analysis examined several European countries which are known as either transit countries or final destinations, or both. France, the Netherlands, Belgium and Germany all count as market countries,²⁴⁵ while in addition to being that, the UK is often regarded as a transit country to the U.S. as well.²⁴⁶ In addition, Italy and France were included as these countries are among the EU's largest economies and can thus be expected to have a sizeable demand for Syrian and Iraqi antiquities as well. Greece and Bulgaria were examined as these countries are known to be on the trade routes of illicit antiquities as well.²⁴⁷

Antiquities (HS 9706)

Table 1 shows the value of the HS 9706 imports for the selected countries and their partners in case the value exceeded 75,000 Swiss Franc or Euro. As a result, several countries are not present in Table 1: the Netherlands, Italy, Bulgaria and Greece. Moreover, in spite of the attention given to the antique market in Brussels, its regional imports from the Middle East are dwarfed by many others, especially Switzerland and the United Kingdom. These two countries were the only ones for which the yearly import from one of the selected countries in the Middle East exceeded 1 million Euros or Swiss francs.

²⁴⁴ Janet Ulph, "UK Customs seizure of looted Libyan statue," *Institute of Art and Law Blog*, October 22, 2015. Available from <http://www.ial.uk.com/news/uk-customs-seizure-of-looted-libyan-statue/>.

²⁴⁵ Alesia Koush, *Fight Against the Illegal Antiquities' Traffic in the EU: Bridging the Legislative Gaps*, Bruges Political Research Papers No 21/December 2011, (Bruges: College of Europe), 6.

²⁴⁶ Alexandra Carita, "Arte de guerra," *Expresso*, February 2, 2016. Available from <http://expresso.sapo.pt/internacional/2016-02-19-Arte-de-guerra?platform=hootsuite>.

²⁴⁷ Ibid.

Importer	Exporter	2007-2010 (ave)	2007-2013 (ave)	2011-2013 (ave)	2011-2015 (ave)	2014	2015
Belgium	Turkey	€ 107,132	€ 98,995	€ 88,145	€ 92,649	€ 125,574	€ 73,234
France	Turkey	€ 6,625	€ 68,490	€ 150,976	€ 138,806	€ 65,627	€ 175,475
	UAE	€ 81,945	€ 77,074	€ 70,579	€ 67,735	€ 14,013	€ 112,926
Germany	Turkey	€ 2,151	€ 15,789	€ 33,972	€ 47,437	€ 620	€ 134,651
	UAE	€ 132,549	€ 88,235	€ 29,150	€ 35,490	€ 90,000	€ -
Switzerland	Kuwait	CHF 694,573	CHF 396,899	CHF -	CHF -	CHF -	
	Lebanon	CHF 318,607	CHF 457,933	CHF 643,700	CHF 386,300	CHF 37	CHF 360
	Turkey	CHF 18,687	CHF 84,640	CHF 172,577	CHF 155,326	CHF 123,199	CHF 135,699
UK	UAE	CHF 2,586,233	CHF 2,246,844	CHF 1,794,325	1,371,577	CHF 212,600	CHF 1,262,313
	Jordan	€ 93,148	€ 56,698	€ 8,099	€ 4,859	€ -	€ -
	Kuwait	€ 314,917	€ 466,487	€ 668,581	€ 630,178	€ 46,477	€ 1,098,668
	Lebanon	€ 128,505	€ 138,019	€ 150,704	€ 130,764	€ 82,281	€ 119,427
	Turkey	€ 431,195	€ 366,935	€ 281,256	€ 244,508	€ 165,149	€ 213,625
	UAE	€ 2,960,598	€ 2,179,513	€ 1,138,067	€ 1,008,310	€ 910,046	€ 717,304
Table 1: HS 9706 imports between 2007 and 2015 of selected countries with value > 74,999							

Importer	Exporter	2007-2010 (ave)	2007-2013 (ave)	2011-2013 (ave)	2011-2015 (ave)	2014	2015
France	Lebanon	€ 10,148	€ 63,099	€ 33,701	€ 144,308	€ 225,530	€ 94,907
	UAE	€ 98,825	€ 69,900	€ 31,334	€ 774,584	€ 39,772	€ 3,739,146
Germany	Lebanon	€ 298	€ 828	€ 1,536	€ 19,276	€ 263	€ 91,509
	UAE	€ 12,342	€ 11,198	€ 9,672	€ 666,810	€ 2,196,261	€ 1,108,772
Netherlands	Kuwait	€ 86,400	€ 49,371	€ -	€ 3,369	€ -	€ 16,844
	UAE	€ 15,282	€ 22,663	€ 32,505	€ 111,011	€ 32,498	€ 425,042
Switzerland	Syria	CHF 495	CHF 248	CHF -	CHF 14,886	CHF -	CHF 74,430
	Turkey	CHF 398	CHF 37,511	CHF 86,994	CHF 177,884	CHF 597	CHF 627,841
UK	UAE	CHF 6,354	CHF 74,769	CHF 165,988	CHF 261,517	CHF 222,085	CHF 587,534
	Kuwait	€ 50,088	€ 637,592	€ 1,420,932	€ 2,538,275	€ 2,978,465	€ 5,450,115
	Turkey	€ 174,235	€ 123,240	€ 55,247	€ 99,143	€ 19,995	€ 309,979
	UAE	€ 34,244	€ 48,163	€ 66,722	€ 385,717	€ 1,330,722	€ 397,697
Table 2: HS 9705 imports between 2007 and 2015 of selected countries with value > 74,999							

Importer	Exporter	2007-2010 (ave)	2007-2013 (ave)	2011-2013 (ave)	2011-2015 (ave)	2014	2015
Belgium	UAE	€ 7,912	€ 5,909	€ 3,238	€ 43,133	€ 32,524	€ 173,428
France	Turkey	€ 21,030	€ 25,332	€ 31,068	€ 89,518	€ 294,222	€ 60,162
	UAE	€ 165,301	€ 179,407	€ 198,216	€ 264,985	€ 460,717	€ 269,558
Germany	Turkey	€ 25,129	€ 20,686	€ 14,762	€ 63,657	€ 206,429	€ 67,573
	UAE	€ 102,539	€ 182,450	€ 288,998	€ 180,506	€ 6,112	€ 29,426
	Lebanon	€ 3,065	€ 3,604	€ 4,321	€ 81,382	€ 8,896	€ 385,049
Italy	Turkey	€ 15,289	€ 10,099	€ 3,179	€ 18,602	€ 1,490	€ 81,986
	UAE	€ 4,495	€ 18,311	€ 36,733	€ 109,398	€ 408,663	€ 28,127
Netherlands	Turkey	€ 57	€ 4,492	€ 10,406	€ 31,139	€ 122,770	€ 1,704
Switzerland	Turkey	CHF 7,934	CHF 31,823	CHF 103,489	CHF 175,262	CHF 264,311	CHF 157,985
	UAE	CHF 1,907,640	CHF 1,223,898	CHF 312,242	CHF 240,620	CHF 12,120	CHF 254,254
UK	Lebanon	€ 37,838	€ 76,727	€ 128,579	€ 112,261	€ 161,380	€ 14,189
	UAE	€ 1,967,166	€ 1,798,389	€ 1,573,354	€ 1,121,844	€ 726,490	€ 162,671
	Turkey	€ 178,759	€ 140,709	€ 89,975	€ 82,396	€ 68,771	€ 73,285
Table 3: HS 9703 imports between 2007 and 2015 of selected countries with value > 74,999							

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

As for the United Kingdom, the imports from Kuwait in 2015 stand out as having increased significantly in the post-2011 context. However, the Kuwait imports did not increase since the arrival of Daesh, but rather marginally decreased. Interestingly, the imports from UAE and Turkey dropped substantially over the years.

Switzerland's imports from Turkey also rose, despite the fact that it is still small in terms of the reported size. In spite of the alleged rise in illicit antiquities trade following the rise of Daesh, and the claim that Lebanon is one of the main transit countries, imports from Lebanon appear to have plummeted in 2014 and 2015. Furthermore, in most European import markets, the imports did not even meet the 75,000 value threshold.

Reflecting on Table 1, import trends from Turkey, another major alleged transit country, appear to be ambiguous: while France, Germany and Switzerland show an increase of antiquities imports from Turkey, albeit from a very low base, the UK and Belgium saw a decrease. Moreover, France and Belgium were the only countries that showed an increase for the imports of antiquities from the UAE between the pre-war period and 2015, and the absolute value of imports in 2015 was not that large in either of these countries. The other analyzed countries showed a dramatic drop of the imports of antiquities from the UAE in this time period.

Collections and Collector's Pieces (HS 9705)

An odd trend from Table 2 can be discerned regarding the import of the HS 9705 goods from Kuwait to the UK. While the import of this good averaged the value of a family car between 2007 and 2010, this number steadily increased to a record-high of almost 5.5 million Euros in 2015. This category comprises "collections and collector's items" of, amongst others, historical and ethnographic interest, but also covers antique coins as well as fakes (except statues). The value of the UK's imports in HS 9705 goods even exceeds that of its genuine antiquities imports (see Table 1).

All importing European countries also showed multiplication of the import value of HS 9705 goods from UAE between the pre-war period and during the war, especially since the arrival of Daesh in 2014. Of course it is possible that the UAE has become more attractive as a transit hub for golden coins and old furniture collections, but the surge in the HS 9705 export values also raises suspicion, especially since this growth has taken place after the 2011 revolts in Arab countries and seems to have increased when the import of genuine antiquities decreased.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Original Sculptures and Statuaries (HS 9703)

As for the UK it should be noted that its imports from Turkey, UAE and Lebanon dropped. In general, for all analyzed countries except Germany the imports from Lebanon for the HS 9703 either dropped or were below the set thresholds. For the two biggest antiquity markets in Europe, Switzerland and the UK, the imports from the UAE decreased substantially since the pre-war period, while for the other European countries the numbers are mixed. Despite a peak in Germany's imports of statue from Lebanon, the absolute value remains relatively low compared to the country's size. Also for this category of imports, Lebanon's figures appear hardly relevant in comparison with those of the UAE and Turkey.

Exporter	2007-2010 (ave)	2007-2013 (ave)	2010-2013 (ave)	2011-2015 (ave)	2014	2015
Iraq	\$ 1,195,551	\$ 1,817,628	\$ 2,647,064	\$ 2,425,442	\$ 3,378,296	\$ 807,723
Jordan	\$ 551,750	\$ 334,860	\$ 45,674	\$ 33,078	\$ 22,319	\$ 6,050
Lebanon	\$ 1,576,659	\$ 1,517,882	\$ 1,439,513	\$ 1,257,949	\$ 147,561	\$ 1,823,643
Syria	\$ 7,078,604	\$ 6,881,640	\$ 6,619,022	\$ 5,088,852	\$ 4,948,573	\$ 638,619
Turkey	\$ 21,894,599	\$ 20,054,984	\$ 17,602,164	\$ 18,098,008	\$ 21,957,003	\$ 15,726,542
UAE	\$ 1,063,672	\$ 633,303	\$ 59,479	\$ 53,771	\$ 77,110	\$ 13,310
Table 4: HS 9706 imports to the US between 2007 and 2015 of selected countries with value > 74,999						
Exporter	2007-2010 (ave)	2007-2013 (ave)	2010-2013 (ave)	2011-2015 (ave)	2014	2015
Iraq	\$ -	\$ 19,600	\$ 45,732	\$ 67,779	\$ 153,934	\$ 47,763
Syria	\$ 190,653	\$ 177,844	\$ 160,764	\$ 158,012	\$ 302,666	\$ 5,100
Turkey	\$ 2,170,198	\$ 3,732,353	\$ 5,815,225	\$ 6,483,403	\$ 5,728,414	\$ 9,242,927
UAE	\$ 25,529	\$ 77,748	\$ 147,374	\$ 92,448	\$ 17,116	\$ 3,000
Table 5: HS 9705 imports to the US between 2007 and 2015 of selected countries with value > 74,999						
Exporter	2007-2010 (ave)	2007-2013 (ave)	2010-2013 (ave)	2011-2015 (ave)	2014	2015
Turkey	\$ 196,322	\$ 2,522,909	\$ 4,246,826	\$ 3,594,838	\$ 379,236	\$ 719,884
UAE	\$ 164,036	\$ 930,197	\$ 1,570,694	\$ 1,601,263	\$ 544,710	\$ 1,606,373
Table 6: HS 9703 imports to the US between 2007 and 2015 of selected countries with value > 74,999						

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

United States

*Antiquities (HS 9706)*²⁴⁸

Although there was a spike in the antiquities imported from Syria in 2013 of over \$11 million, as St Hillaire correctly noted, imports dropped again in 2014 and decreased even further in 2015. In other words, the arrival of Daesh in Syria concurred with a drop of legally imported antiquities from Syria by the U.S. Antiquities from Iraq, on the other hand, witnessed an increase since the start of the Syrian civil war in 2011 and were still above average in 2014. However, 2015 also witnessed a drop in antiquities imported from Iraq to the U.S. Nonetheless, the 2014 imports were considerably higher than the pre-war average and also of a substantial value in absolute terms. Both the UAE and Jordan saw a drop of exports to the U.S., as for the European countries, though in Lebanon imports were higher than the pre-war average in 2015. However, the Lebanese import market remains low compared to the scale of the American economy and other imports. In fact, all antiquity import figures are dwarfed by that of Turkey's exports to the U.S. These declined slightly after the outbreak of the war in 2011, recovered in 2014, only to fall back to low in 2015.

Collections and Collector's Pieces (HS 9705)

Imports under the HS 9705 category from Turkey increased significantly, since the outbreak of the civil war in 2011 and further since the arrival of the Daesh in 2014. The import from Turkey to the U.S. of the HS 9705 category is now over 4 times its pre-war average and nudging towards the \$10 million. Exports from Syrian were lower after 2010 than during and before, though 2014 witnessed relatively high value of imports. However, in 2015 the value of imports of Syrian Collections and Collector's items was reduced to a negligible amount again. Unlike the results from European imports, the UAE imports of HS 9705 to the U.S. did not steeply increase.

Original Sculptures and Statuaries (HS 9703)

The U.S. import of statuaries not being antiquities increased substantially from both Turkey and the UAE. Although the imports from Turkey had declined already since the

²⁴⁸ The U.S. publishes its trade statistics via the U.S. International Trade Commission and the U.S. Bureau of the Census.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

announcement of the Caliphate in 2014, its value is still substantially higher than the pre-war average.

Discussion

Which pieces do the analyses above provide which can be put in the postulated framework of antiquities trafficking networks? As mentioned in part I, it is unlikely that the illicit antiquities market from Syria and Iraq are made of the organized criminal networks, at least no evidence was found that indicated this. Instead, current open-source data suggests that if organized crime is involved, it constitutes just one or a limited amount of nodes. The trafficking market to Europe may be one that is either opportunistically organized or a mix between opportunistic model and centralized models, where the centralized model forms the upper tail of the supply chain.

As regards destination of the illicit antiquities, the customs data appears to raise several questions regarding countries that were understood to be major end-markets, especially the Netherlands, Belgium and Germany but also the UK and France. Imports from the UAE either dropped or were not large in those countries while those of collector's items from increased substantially. This can mean several things. First, markets change and this shift may be a coincidental change of concurring and fully legal market shifts. Second, it could indicate that antiquities are now incorrectly labeled as collectors' items to avoid suspicion from customs. Moreover, future research should try to find out why Belgium, the Netherlands and Germany do not have higher imports of antiquities than other reports suggest they should have. It would be interesting to look at an analysis of difference of customs' vigor for each of these countries, both in terms of customs being able to check the imports as well as the specific import regulation that may either give opportunities or pose constraints to antiquities traffickers.

In light of the evidence found by journalists, it seems implausible that Turkey's exports of antiquities from Syria and Iraq have not increased more substantially or in some cases has even decreased. This could mean that these antiquities are smuggled out of Turkey more often than they are given a falsified certificate of provenance and exported legally to Europe. It may also be possible that these goods are exported to other countries than those of the EU first, and 'laundered' there before they are brought to the European markets. However, seeing the anecdotal evidence of the smuggling operations from Turkey via Greece and Bulgaria, it is likely that smuggling indeed plays a major role. The same could be true for Lebanon, which appears

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

to have insignificant exports to Europe despite much investigative journalism claiming that it is a major transit country for Syrian antiquities. Attention should also be paid to the UK-Kuwait imports, especially since Kuwait has not attracted much attention as a hub for antiquities trafficking but seems to have increased its exports to the UK in recent years.

If goods are smuggled into Europe then certificates of provenance must also be added in Europe. Perhaps the difficulty to falsify provenance certificates may give a lead where these smuggling routes end. Currently, however, information on provenance falsification about antiquities from Syria and Iraq in Europe is not available and future research would do well to find out more about this.

The U.S., which is assumed to be a major market for antiquities, does not show any notable increases of antiquity imports. However, as for Europe, the steep increase in the HS 9705 import category from Turkey should raise the need for stricter verification of such imports from Turkey. Future research should focus on which routes illicit antiquities from Syria and Iraq enter on their way to the U.S.: through Europe, directly from contiguous countries, diverted through the UAE or Kuwait, or a mix of all three.

General Recommendations

To Researchers

- Focus research more on the middlemen in antiquities trafficking. Current research has done a great job to discuss the legal issues in end-markets but knowledge about middlemen, especially later-stage middlemen, is limited. Increasing the understanding of middlemen, however, may also raise new questions and links with policy that could counter antiquities trafficking.
- Maintain a more comparative focus during legal research and link this research more to the practice of antiquities trafficking. Comparing regulation regarding provenance and culpability for art crimes between different countries may give more insights into why some countries may be more attractive for antiquities traffickers than others.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

To EU, Swiss and US Policy Makers

- Explore the possibility of creating an international database for provenance certificates. It will be impossible to map all currently existing certificates of provenance in their various forms and with all their different owners and locations. But at least efforts could be made to collect more provenance information on antiquities originating from Syria and Iraq. Pictures and object-recognition for antiquities could work in a similar way as fingerprints to identify the same object and detect fraud with provenance certificates.
- Increase and standardize the reporting requirements for provenance certification in order to reduce the ease of provenance falsification. Provenance certification could also be required to obtain official, possibly notary, approval for new provenance certificates. Official registration, possibly through notary services, may reduce the ease of provenance falsification.
- Consider making the renewal of provenance certificates of antiquities originating from critical countries (i.e., Syria and Iraq) mandatory in antiquity trade for the next several years. This should include antiquities from these countries which were traded prior to 1970. The renewal should be registered at official (notary) services.
- Increase inspection of non HS 97 number-category imports that may be used to import antiquities illicitly in unsuspecting ways. In addition, the opportunities to use deliberate mislabeling to import illicit antiquities can be reduced by increasing the inspection of HS 97 goods labeled as fakes or reproductions.

The Diwan al-Rikaz: A Study

Katelyn van Dam

The Importance of Defining the Problem

The Islamic State is not the first conquering power to loot and sell treasure in order to fund its expenditures. According to archeologist Dr. Patty Gerstenblith, “Cultural looting was carried out throughout history for a number of reasons [one of which was] to raise funds to pay off troops, enrich military leaders and the public treasury, and fund future wars.”²⁴⁹ During Antiquity, the Romans would melt down precious metals for weapons. The Conquistadors were notorious for melting down Incan gold to mint into coins for royal Spanish coffers. This age-old practice has subsidized many expeditions and war fronts throughout human history.

If money is the blood flow of an economy, then terminating trade should be a priority to destroy an enemy state. Coalition warplanes target known IS oil facilities,²⁵⁰ while the Iraqi government is trying to figure out alternative ways to pay its citizens in IS held territories.²⁵¹ Of equal importance from a purely economic perspective is stopping the illicit trade of antiquities. “‘The illegal traffic in looted antiquities is buying the bombs and the bullets that are killing so many,’ U.S. Marine Colonel Matthew Bogdanos, who led the investigation into the 2003 looting of the National Museum of Iraq.”²⁵² Exactly how much money IS makes from looted antiquities is difficult to calculate. “The ongoing chaos of war and

²⁴⁹ Patty Gerstenblith, “Protecting Cultural Heritage in Armed Conflict: Looking Back, Looking Forward,” *Cardozo Public Law, Policy & Ethics Journal* 7, no. 3 (Summer 2009): 677.

²⁵⁰ Richard Sisk, “US, Allies Target ISIS Oil Facilities to Disrupt Financing,” *Military.com*, December 24, 2015, accessed April 23, 2016, <http://www.military.com/daily-news/2015/12/24/us-allies-target-isis-oil-facilities-to-disrupt-financing.html>.

²⁵¹ Damian Paletta and Adam Entous, “Militants in Iraq Siphon State Pay,” *Wall Street Journal*, 23 March 2015, accessed April 23, 2016, <http://www.wsj.com/articles/militants-in-iraq-siphon-state-pay-1427154029>.

²⁵² “Following the Trail of Syria’s Looted History,” *CBS News*, September 9, 2015. <http://www.cbsnews.com/news/isis-looted-syrian-ancient-artifacts-black-market-us-and-europe/>.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

the clandestine nature of the illicit antiquities trade make it impossible to calculate the amount ISIS has earned from pillaging cultural heritage.”²⁵³

Although the figures for how much money IS acquires from the sale of antiquities is much debated, there exists a staggering and very unique level of individual moral bankruptcy from Westerner and Arab collectors who would otherwise be disgusted with the idea of funding a terrorist organization like IS. Buyers who are most likely upright citizens turn a blind eye to funding a state that wants to attack their homeland in order to get their hands on an artifact from antiquity.

This links to the equally grave consequences of IS' antiquities trade. The artifacts being sold will sadly slip into private collections to be revealed in museums sometime in the future or lost to posterity indefinitely. Much of the permanent damage is to the archeological sites that are being pillaged unscientifically and without record. The depth, location, and often the position in which an artifact is found are clues to the buried story of past peoples. When amateur looters dig, they keep no records of these facts. Even worse, many artifacts are destroyed in pursuit of more valuable ones or out of carelessness. As IS industrialize their looting, larger machines are used for excavation. Backhoes are not particularly known for precision.

So what should the world do as the history of civilization is chaotically destroyed, looted and lost? It is first important to spend Einstein's 55 minutes to understand the problem in order to be better prepared to solve it. This paper attempts to present a comprehensive analysis of IS' antiquities trafficking using all of the available sources to include personal interviews of archeologists, international news articles, and analysis from various organizations and investigative journalists.

Evolution of the Diwan System

The Islamic State's so-called Caliphate was not created overnight. As the group moved into the chaotic territory of Northern Iraq and Eastern Syria, they took a gradual approach to state making. Surprising to some, the highly bureaucratic structure of IS' government has allowed it to capitalize on many disparate resources while maintaining control through its brutal interpretation of Sharia Law.

²⁵³ Howard, "Expert Commentary: Trafficking in Antiquities."

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

By 2009, ISI (the Islamic State in Iraq, precursor to IS), heavily demoralized and wounded by the Sunni Awakening, began entrenching itself in Mosul as a criminal enterprise. They extorted money from local businesses, committed terrorist attacks, and smuggled oil. ISI declared the existence of ministries, but they held no particular power beyond existing. In 2011, “it would not have made any sense to characterize ISI as a state.... But rather its status was akin to a Mafia organization, not yet governing any major towns or territory where it could display the workings of most if its supposed government ministries.”²⁵⁴ However, the break out of hostilities in Syria provided an unexpected and welcome opportunity for ISI to expand its influence and exercise its meticulous structure amongst the chaos.

Against the wishes of Al-Nusra Front (ANF) leaders, al-Baghdadi announced the merger of the two organizations in 2013. With this announcement on al-Furqan Media, the Islamic State of Iraq and al-Sham (ISIS) was born. “ISIS strategy for expansion... entailed a degree of gradualism.”²⁵⁵ Through local da’wah offices, ISIS began to exert control and marginalize competing organizations and groups.²⁵⁶ “It is evident from ISIS’ *modus operandi* in Syria in 2013 that the strategy for expansion and development was considered a slow, step- by-step process premised on the belief that such an approach would avoid a coordinated backlash from Syrian rebels analogous to the Sawha movement.”²⁵⁷

²⁵⁴ Aymenn al Tamimi, “The Evolution in Islamic State Administration: The Documentary Evidence,” *Perspective on Terrorism* Vol 9, Issue 4 (August 2015):119.

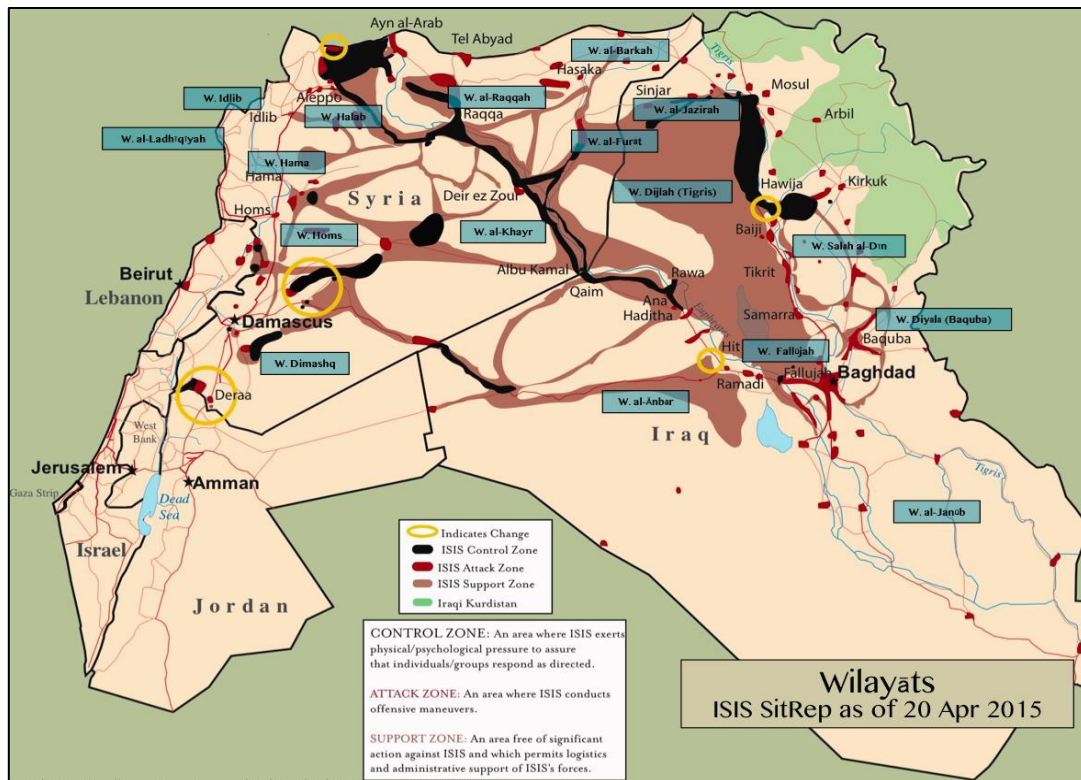
²⁵⁵ Ibid., 120.

²⁵⁶ An excellent in depth look at the importance and deception of the da’wah offices can be found in *Der Spiegel’s* “The Terror Strategist: Secret Files Reveal the Structure of the Islamic State” by Christoph Reuter. <http://www.spiegel.de/international/world/islamic-state-files-show-structure-of-islamist-terror-group-a-1029274.html>.

²⁵⁷ The Sawha movement is the Arabic name for the Sunni Awakening. Ibid., 122.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

In June 2014, ISIS declared the so-called Caliphate and officially became the Islamic State (IS). It was after this declaration that the diwans began to appear. The diwans are government ministries dedicated to specific issues. This ministry structure is similar to the structure of many Arab countries; it is not unique to IS.²⁵⁸ Control of the ministries is centralized, but each ministry is represented in local offices within wilayāts or states²⁵⁹ as depicted in the graphic below.



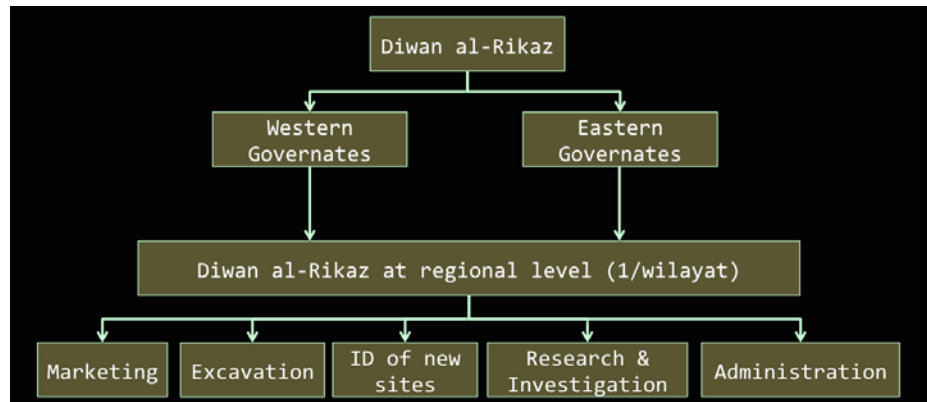
4 - It should be noted that these wilayāts are aspirational and do not necessarily represent IS control. (For example, not depicted on this map is Wilayāt al-Haramayn, which is located in Saudi Arabia.)

²⁵⁸ A comparative look at both monarchies and democracies reveals that all have a Council of Ministers in charge of their respective Ministries. These ministries have representation at the state and local levels. The whole system is very centralized. "Arab Political Systems, 2008," *Carnegie Endowment for International Peace*, accessed April 23, 2016, <http://carnegieendowment.org/2008/03/06/arab-political-systems-baseline-information-and-reforms-pub-16918>.

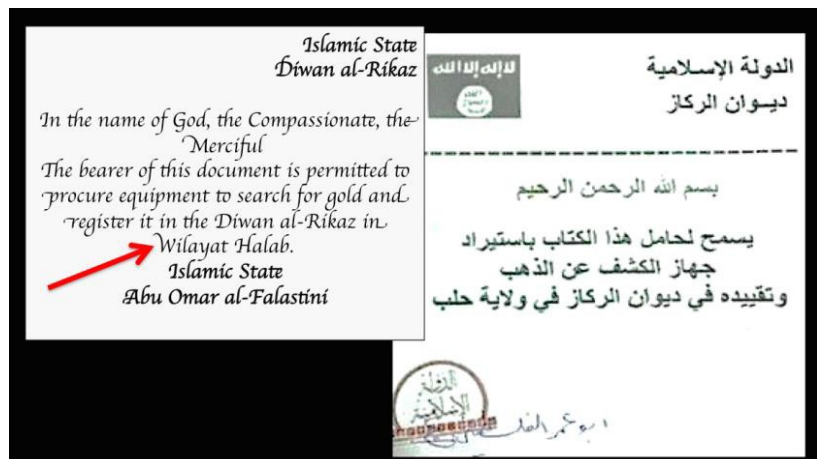
²⁵⁹ This map was found on "Understanding War," website published by the *Institute for the Study of War*. http://www.understandingwar.org/sites/default/files/ISIS%20Sanctuary%20April%202022_1.pdf. The author added the Wilayāts to the map.

The Diwan al-Rikaz

The Diwan al-Rikaz is the Ministry of Precious Objects that Come from the Earth. This diwan is primarily responsible for oil and antiquities. It is the most important bureaucratic entity that deals with looting and trafficking of artifacts within the aspirational boundaries of the so-called Caliphate.



During a U.S. special operations raid in May 2015, the head of the Diwan al-Rikaz, Abu Sayyaf, was killed. There were many documents found in his possession, amongst a number of artifacts. One of these documents explained the basic structure of the Diwan al-Rikaz. There is the central Diwan at the so-called Caliphate level, but through further investigation of licenses issued to looters,²⁶⁰ one finds the Diwan al-Rikaz offices exist at the local level. The focused sub-departments



²⁶⁰ This graphic was procured from Aymenn Jawad Al-Tamimi, "Unseen Documents from the Islamic State's Diwan al-Rikaz," *Middle East Forum: Promoting American Interests*, October 12, 2015, <http://www.meforum.org/5735/unseen-documents-from-the-islamic-state-diwan-al>.

(marketing, excavation, etc.) are most likely aspirational and based on the size of the antiquities market within the specific wilayāt.

IS' Antiquities Operation

Like other aspects of their nation building, IS was initially very light handed when it fell onto the thriving looting and smuggling operations. Similar to other aspects of the government, IS gradually organized and industrialized the entire pipeline. There is an internal IS document probably written sometime in mid 2014, that explains the importance of the Diwan al-Rikaz. Chapter seven of *Principles in the Administration of the Islamic State* explains the appropriate conduct for the “Administration of Projects:”

In parallel with military preparation in the lines of fighting and the camps, a committee is to be put in place to administer production projects and put in place plans to implement new investment projects....

It is not allowed to excavate for gold and antiquities except by expressed agreement from the Diwan al-Rikaz, and all transferred [smuggled] and stored materials will be confiscated for the interest of the Treasury.

And it is allowed to deal in gold not excavated from the ground according to the well-known Shari’a frameworks with immediate effect.²⁶¹

This text emphasizes the opportunity IS saw in the organization and collection of taxes (and later direct profits) from the illicit antiquities trade.

A visual example of their capability is the case of Tel Hariri, the ancient city of Mari. Tel Hariri is located along the Euphrates River, ten miles from the border with Iraq. When uncovered in the early 1930s by French archeologists, Mari was declared one of the most important archeological sites in Syria, an impressive claim in such a archeologically and culturally rich country. Archeologists found “25,000 cuneiform tablets in the Akkadian language, which documented the economic and political life of the city,” which thrived from 2900BC to 1759BC.²⁶² The Arab Spring brought pro-democracy protests to Syria that quickly devolved into civil war. In August 2011, Mari was still untouched by looters:

²⁶¹ Aymenn Jawad. Al-Tamimi, “Principles in the Administration of the Islamic State,” *The Guardian*, December 7, 2015. Accessed April 5, 2016. <http://www.aymennjawad.org/18215/principles-in-the-administration-of-the-islamic>.

²⁶² Daniel Demeter, *Syria Photo Guide: A Comprehensive Guide to the Cultural and Historic Sites of Syria*, accessed April 23, 2016, <http://www.syriaphotoguide.com/home/tel-al-hariri-mari-م.اري-ان-حريري-تم>.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones



In March 2014, there was evidence of amateur looting that can, unfortunately, be expected when an economy collapses and people turn back to harvesting natural resources to provide for their livelihood. In this case, the earth was ripe for harvest:



Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

However, the looting increased exponentially when IS took control of the area in June 2014. A mere seven months later, over 1000 new looting holes were observed from satellite imagery taken by the American Association for the Advancement of Science.²⁶³





Tel Hariri is just one example of many that illustrates how vital the looting and smuggling trade has become to IS. The actual amount of money IS gains from these looted antiquities cannot be confirmed, but the fact that this much organization is built around the illicit trade emphasizes the importance of this revenue stream.

IS initially took advantage of the revenue stream by charging already existing looters khums, a tax on war booty that is sanctioned in the Quran. "...and know that whatever ye take as spoils of war, Lo! A fifth thereof is for Allah, and for the messenger and for the Kinsman (who hath need) and orphans and the needy and the wayfarer..."²⁶⁴ Amongst the many documents collected from the Abu Sayyaf Raid were receipts collecting khums on looted antiquities.

²⁶³ Kathy Wren, "AAAS Analysis Shows Widespread Looting and Damage to Historical Sites in Syria," AAAS, December 17, 2014, accessed March 7, 2016, <http://www.aaas.org/news/aaas-analysis-shows-widespread-looting-and-damage-historical-sites-syria>.

²⁶⁴ Dr. Mohammed Chaudry quoting Al-Anfal 8:41, *Fundamentals of the Islamic System*, 1999, accessed March 23, 2016, http://www.muslimtents.com/shaafi/b16/b16_13.htm#3- Al-Khums.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

The Islamic State Diwan of Natural Resources Antiquities Division		In the name of Allah, the merciful, the compassionate  Collection receipt		Date: 15 DEC 2014 Number 103
I, the below signed:		Abu-Sayyaf al-Traqi		
Received from the brother:				
The amount:		191,560 SYP	Written:	One hundred ninety-one thousand five hundred sixty SYP exactly
Notes:		1/5 th the value of the Antiquities Sold in Al Khayr governorate		
Recipient signature: [Signature] [Seal of the Diwan of Natural Resources, head of the workshop]		Submitter signature: [Signature] [Seal of the Diwan of Natural Resources, head of Antiquities]		

Al-Furquan, the media arm of IS that primarily focuses on publishing videos of executions, released the video *And they give Zakah* in June 2015, confirming IS viewed antiquities trafficking as legitimate government business. In minute 26 of the video, the narrator explains, “Gems, treasures, and wealth from Jahiliyyah (all eras before Islam) that is found buried and can be identified by the names written on them or the images engraved on them, and so on. If it contains an Islamic mark then it is lost property and not treasure.”²⁶⁵ It is important to note that as IS’ social media capabilities grew, their ability to message a younger and wider audience also increased. The fact that “gems, treasures, and wealth” was considered significant enough to explain the tax system surrounding it in their video can be explained by two purposes. First, IS does not want to lose the opportune revenue stream that can be achieved by collecting taxes on the antiquities trade. Second, it serves as an advertisement to let those living within the so-called Caliphate or on the outskirts that this is an opportunity for them if they are not otherwise employed.

An interesting fact of note is that, in March 2016, an investigative report interviewed a disillusioned former smuggler who decided to stop working for IS (his cousin was a commander) because they demanded over 85 percent of the cut from trafficking.²⁶⁶ This serious change of policy can be explained one of two ways. The first is that the local commander got greedy and decided to cut out the middleman or take advantage of his relative. The second is that IS is in desperate need of funds and is using its full intimidation

²⁶⁵ “And They Give Zakah” quoted in Dr. Helene Lavoix, “Understanding The Islamic State’s System – Money, Wealth And Taxes,” *The Red (Team) Analysis Society*, accessed April 5, 2016, <https://www.redanalysis.org/2015/07/13/understanding-the-islamic-states-system-money-wealth-and-taxes/>.

²⁶⁶ Richard Engel, Aggelos Petropoulos and Ammar Cheikh Omar, “Smuggler of Stolen Artifacts From Palmyra Speaks Out About ISIS’ Illicit Operation,” *NBC News*, April 6, 2016, <http://www.nbcnews.com/storyline/isis-terror/smuggler-stolen-artifacts-palmyra-speaks-out-about-isis-illicit-operation-n551806>.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

power to coerce small-time smugglers into forfeiting hard earned pay. Either explanation speaks to an organization that is losing its control and influence.

IS requires a license system, allowing them to track looting and smuggling operations. This system covers a range of authorizations from digging at a certain site, acquiring specific equipment, as well as safe passage through IS and disputed territory. Originally, IS was just issuing licenses to local smugglers, but they quickly took over operations and began orchestrating industrial scale digging themselves. Mike Giglio, a *BuzzFeed* journalist met Abu Karim while investigating antiquities trafficking in Syria. Abu Karim restored antiquities before hostilities broke out and was coerced to work for IS when they overran his home in the summer of 2014:

The first thing Abu Karim noticed were the machines the extremists owned: metal detectors and treasure hunters that scan the ground for buried objects.... There were also bulldozers, hydraulic diggers, and boxes of dynamite. They don't need an expert like me, Karim recalled thinking.

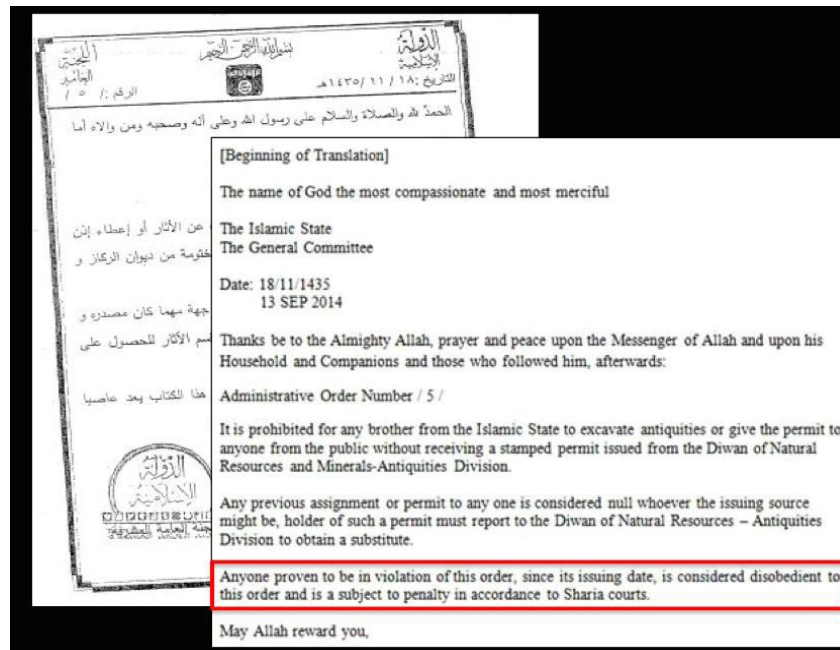
ISIS allowed civilians with the know-how to dig on their own, granting them special permission and charging a 20% tax, Abu Karim said. He also said that ISIS employed special teams to target high-value sites.²⁶⁷

Imagery of bulldozers in known archeological sites has been smuggled out of the territory. There are many issues with the potential destruction of smaller or more delicate antiquities are not lost on the casual observer, but these methods also reveal a more earnest desire to uncover antiquities quickly and en masse. The means reveal the significance of the antiquities trade to the Islamic State.

²⁶⁷ Giglio and al-Awad, "Inside the Underground Trade to Sell Off Syria's History."

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

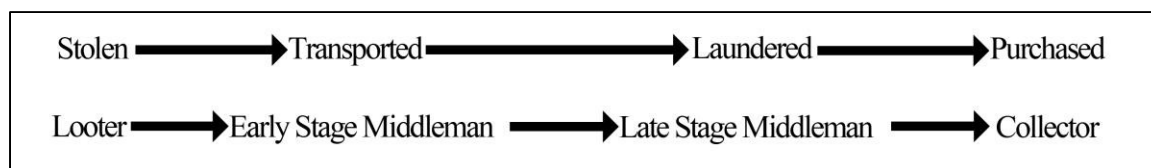
The punishment for partaking in the illicit antiquities trade outside of IS' control has grown more grim. If initially caught without a license to dig or to sell, the offender would get a slap in the wrist. Now, the punishment for the same action can carry a sentence of death. This follows the same pattern IS used when taking over all matters of the region. At first, they were lenient so as not to anger locals, but when absolute control was assumed, like many other areas of operation, the tyranny began.



IS' Antiquities Trade

This paper will not address the demand side of the illicit antiquities trade. The moral bankruptcy or intentional ignorance of many buyers is an issue that must be addressed and answered in great depth. One must also recognize that the quickest solution to the situation is to end the demand, but understanding trade routes in order to address the supply chain is also important.

A quick explanation of how to think about trade is a four-step process through which the antiquities progress: looter, early stage middleman, late stage middleman, and collector.²⁶⁸ In the case of IS, essentially all players in the Middle East are early stage



²⁶⁸ The graphic is courtesy of <http://www.illicitantiquities.com/structure/>.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

middlemen for antiquities travelling to Europe. This will be explored more deeply in the following paragraphs.

IS began the take over the entire regional trade shortly after declaring the so-called Caliphate. A recent *Wall Street Journal* article that profiled Abu Sayyaf's oil business illustrated strains within the so-called Caliphate's internal bureaucracy. Toward the end of 2014, the central governing powers of IS began to feel the squeeze of building an expanding state. One can surmise that the Minister would have looked to as many income streams as possible as world oil prices plummeted and the oil smugglers no longer found a deal in the offerings of IS' Diwan al-Rikaz.

Andrew Keller, the Deputy Assistant Secretary for Counter Threat Finance and Sanctions in the State Department's Bureau of Economic and Business Affairs pointed out, "ISIL does not just passively tax the sale of antiquities by others. It actively controls the trade to ensure maximum profit."²⁶⁹ According to Dr. Amr al-Azm,²⁷⁰ IS increased its participation and control in the digging and smuggling operations during this period of financial frustration:

[IS] established the Manbij Archaeological Administration (MAA) in the city of Manbij to manage and organize the systematic looting of archaeological sites in the region. Through the MAA, ISIS intensified its activities and became increasingly engaged directly in the looting, as opposed to its earlier reliance on locals and contractors. The MAA now organizes the sale and transfer of artifacts it acquires directly through its own digging operations and has established a network of approved dealers to whom the looted antiquities are sold, with middlemen facilitating the sales.²⁷¹

Whether all of the smuggling goes through this office is unknown, but there was a recent event where IS auctioned two Palmyrene statues in Raqqa. The fact that IS has taken over the majority of the illicit trafficking, from excavation to organizing buyers illustrates the importance of this revenue stream to IS.

Antiquities must be smuggled out of IS territory in order to eventually make it to collectors. Smart phones are a standard marketing tool. "Once artifacts are uncovered, photos of them pass constantly between smartphones, from the looters who uncover the objects in Syria to the merchants and middlemen who market them across its borders and

269 Jim Michaels, "Demand still high for ISIL's stolen antiquities from Palmyra, elsewhere," *USA Today*, April 1, 2016, <http://www.usatoday.com/story/news/world/2016/03/31/demand-still-high-isils-stolen-antiquities-palmyra-elsewhere/82476346/>, accessed April 20, 2016.

²⁷⁰ Dr. Al Azm is the lead of a group of Syrian archeologists and academics who are diligently trying to save these cultural heritage sites by stealthily documenting and tracking trafficked antiques with IS' territory.

²⁷¹ Amr Al Azm, "The Pillaging of Syria's Cultural Heritage, Middle East Institute," May 22, 2015, <http://www.mei.edu/content/at/pillaging-syrias-cultural-heritage>, accessed April 11, 2016.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

beyond.”²⁷² Often, cell phones are used to connect directly to buyers. This is one way Dr. Al Azm stays abreast of many of the looted antiquities in Syria. “Stolen antiquities are usually sold to Islamic State approved dealers, with payments in U.S. dollars. “Once the sales are completed these approved dealers are then given safe passage through ISIS territory.””²⁷³

The early stage middlemen that profit and maneuver in these shadows are difficult to detect. Many are just mafias that were previously established and now take advantage of a new source, but use the same established routes. It is much easier to get looted antiquities to various markets and ports outside of IS territory with the help of those who control the territory. There is a documented case of a Turkish intelligence agent who used Turkish soldiers to smuggle arms to IS and these same soldiers smuggled antiquities out of IS territory. Dr. Al-Azm also explained that Kurdish fighters and Free Syrian Army fighters will commit to a temporary cessation in fighting long enough to request permission to excavate, then return with their bounty and pick up arms against the organization with whom they just conducted business. Testimonies have also been recorded by many investigative journalists of lone wolf smugglers who use any means, including one story of smuggling antiquities out in a meat truck, to get the looted artifacts out of IS territory and receive their cut for their efforts.



6 - Syrian soldiers pose with funeral bust. These two soldiers were likely not working with IS when this photo was taken, but other soldiers have been accused of such activities. This photo also illustrates the lack of respect of the importance of these artifacts (See note attached to Footnote 25 for source information)

From these smugglers, sometimes the expensive items are auctioned in the region. Recently, the great funeral statues of Palmyra were auctioned in Raqqa for \$150,000 each. In

²⁷² Giglio and al-Awad, “Inside the Underground Trade to Sell Off Syria’s History.”

²⁷³ Joe Parkinson, Ayla Albayrak and Duncan Mavin, “Syrian “Monuments Men” Race to Protect Antiquities as Looting Bankrolls Terror,” *Wall Street Journal*, February 12, 2015. The photo shown above was sourced from the web archived Facebook page of Syrian Archaeological Heritage in Danger that is now defunct. <https://conflictantiquities.wordpress.com/2015/07/03/palmyra-looting-rebels-regime-islamic-state-propaganda/>.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

fact, sometimes there are fire sales in Raqqa up to three times per week. “The most frequent buyers are professional traffickers and organized criminal groups, who buy artifacts from ISIS directly... before smuggling them to brokers and buyers.”²⁷⁴ The interesting stipulation of IS auctions is the requirement for all-cash payments.²⁷⁵ This can be one more complication on the questionably prohibitive process to buy an artifact from IS that could possibly be purchased elsewhere in the market chain. However, it appears that certain buyers are well-connected enough to purchase these cherished relics directly from the Islamic State.

“Damascus, Beirut, Amman – the first stops are all the same.”²⁷⁶ Amman is still a viable stop for an antiquity en route to Europe, but Damascus is normally a stop similar to Raqqa now, where antiquities are either placed in a public auction or exchange hands to the next early stage middleman who will move it out of the country. According to Dr. Al-Azm, Beirut used to be a reliable stop before the Syrian Civil War began. However, once the conflict started the standard routes were disrupted. Smuggling antiquities to Turkish border towns is now the more likely route for IS’ antiquities trade. Many antiquities of lesser quality also flow into Turkish antique shops, as noted by a recent letter from the Permanent Representative of the Russian Federation to the United Nations.

²⁷⁴ Howard, “Expert Commentary: Trafficking in Antiquities.”

²⁷⁵ “Palmyra Reliefs on Auction in Raqqa,” The Oriental Institute: Modeling the Antiquities Trading in Iraq and Syria, https://oi.uchicago.edu/research/projects/mantis/news#_ftn1.

²⁷⁶ Steven Lee Myers and Nicholas Kulish, “‘Broken System’ Allows ISIS to Profit From Looted Antiquities,” *The New York Times*, 10 Jan 2016.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

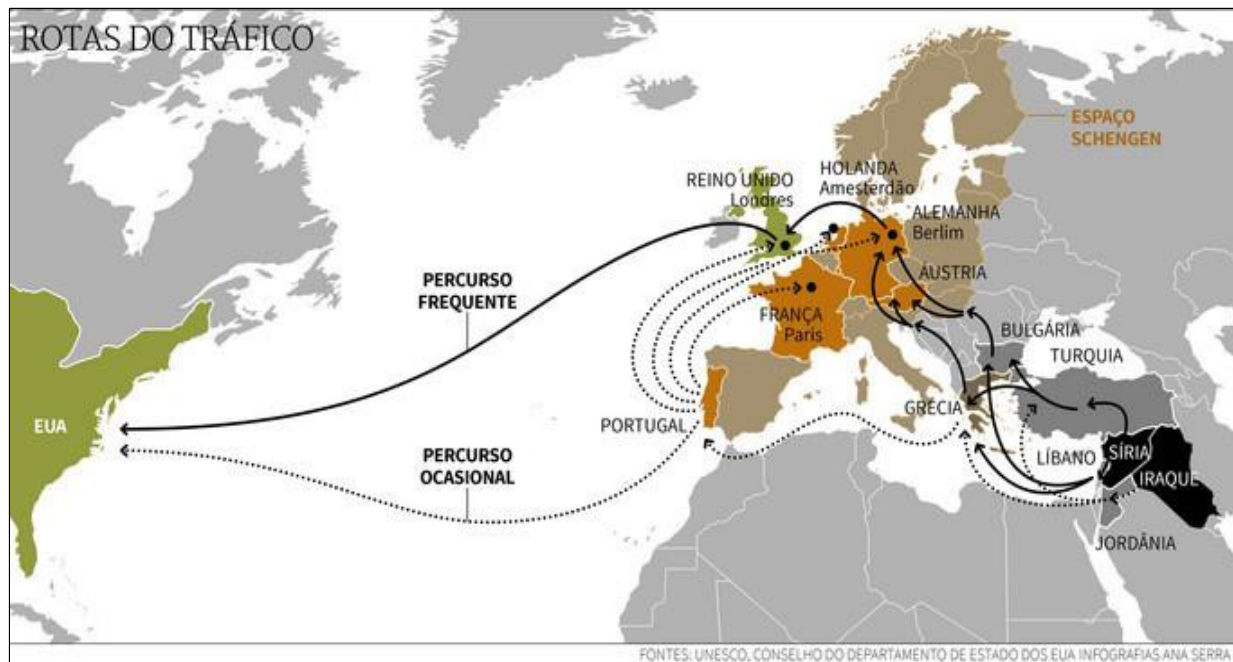


7 - These points were plotted using open source data. Manbij is identified in red. Discovered antiquities caches are represented by pink. Auction sites and antiquities dealers who deal directly with buyers are represented in yellow. Ports and exit points for antiquities leaving the area are represented by green. The countries most adept at forfeiting provenance are represented in blue.

The shipping ports identified in the Russian letter to the UN were Izmir, Antalya, Mersin, as depicted on the map above; sometimes antiquities will leave Beirut or Amman. The next stop is Bulgaria or Greece. In March 2015, police raided four houses in Eastern Bulgaria, where they found a cache of smuggled antiquities. “Among them was a square tablet depicting a procession. If genuine, its style would make it neither Roman nor Greek, like the rest, but even older, dating back nearly 5,000 years. Its appearance suggested it came from the ancient Sumerian city of Lagash, in what is today southern Iraq.”²⁷⁷ Bulgaria and Greece have well-documented reputations of a thriving business forging false provenance paperwork for many trafficked goods. These documents allow auction houses to sell the stolen antiquities and complicit or ignorant buyers to purchase them.

²⁷⁷ Myers and Kulish, “‘Broken System’ Allows ISIS to Profit From Looted Antiquities.”

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones



The next stop along the route is primarily Switzerland. Geneva, Basel and Zurich²⁷⁸ are the final stop of most antiquities prior to making their way into the collections of individuals. “These European destinations... are where illicit goods were typically laundered – changing hands, passing between dealer and conservator in order to create a paper trail that would then be used to sell objects on to auction houses in London and New York.”²⁷⁹ The demand for these items must be extremely high for many of these dealers to take the risk of purchasing them during the ongoing chaos.

Conclusion

The sad fact of the matter is that many of these trafficked artifacts will slip into private collections to be revealed in a museum someday for personal prestige or lost to posterity indefinitely, possibly forever. Correcting and punishing the moral bankruptcy of those who create the demand will be the most sustaining solution to this cultural devastation. However, as countries increase their assault into the so-called Caliphate to destroy the evil that

²⁷⁸ Rachel Shabi, “Looted in Syria – and sold in London: the British antiques shops dealing in artefacts smuggled by ISIS,” *The Guardian*, 3 July 2015, www.theguardian.com/world/2015/jul/03/antiquities-looted-by-isis-end-up-in-london-shops.

²⁷⁹ Ibid.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

is IS, it is absolutely necessary to educate policy makers and military decision makers on the facts of IS' illicit antiquities trade. This education and understanding will enable their sound decision-making and aid them in saving the history of human civilization for the future.

Recommendations for the United Nations: Cultural Protection in the MENA Region

Rie Horiuchi

Background: Strengthening the Prevention of Cultural Destruction

In past wars and conflicts, the international community has failed to protect many precious religious and cultural properties. This can be seen in examples such as the destruction of the Mostar Bridge and churches during the Bosnian and Kosovo conflicts, the destruction of the Buddhas of Bamiyan in Afghanistan by the Taliban in 2001, and the looting of antiquities in Iraq. In a recent case in Mali, Islamic mosques and mausoleums were destroyed by the extremist Islamist group linked with Al-Qaeda in the Islamic Maghreb (AQIM) during its occupation. Currently, the Islamic State of Iraq and Syria (ISIS) is blowing up historical sites in Syria and Iraq and showcasing its acts to the international community by uploading them on YouTube. The international community deplores this trend but seems unable to take appropriate action.

The United Nations (UN), namely the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Department of Peacekeeping Operations (DPKO), has invested in post-conflict reconstruction of cultural property. With regard to UN peacekeeping, most of the time when the peacekeepers set foot in a post-conflict situation, cultural property has already been destroyed or damaged by hostilities. Therefore, missions typically focus on the reconstruction phase. Reconstructed property, however, will never replace the originals since a “certain amount of original, historically authentic material will have been destroyed, thus affecting the inherent value of the buildings.”²⁸⁰ Hence, the importance of preventing the destruction of cultural property should be given more emphasis. The international community

²⁸⁰ ICTY, Prosecutor v. Jokic, Judgment. Case no. IT-01-42/1, Trial Chamber, March 18, 2004. Para 52. http://www.icty.org/x/cases/miodrag_jokic/tjug/en/jok-sj040318e.pdf.

should take action once and for all to prevent cultural destruction. This paper first introduces an international legal framework for the protection of cultural property in times of conflict. Second, it proposes some policies for the international community to promote cultural protection before, during, and after conflicts, emphasizing the importance of preventing destruction. The suggested policies are the following: capacity building; the establishment of a cultural destruction prevention mechanism; better coordination between UNESCO and the International Criminal Court (ICC), and the DPKO; and the inclusion of cultural protection in UN peacekeeping mandates.

Legal Framework: The 1954 Hague Convention

The 1954 Hague Convention requires states to “prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate” (Article 3).²⁸¹ During an armed conflict, states are required to respect cultural property “by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage” (Article 4).²⁸² In addition, states are obliged to “further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property” (Article 4.3)²⁸³

For the implementation of the Convention and its Protocols, Chapter 7 of the 1954 Hague Convention includes: dissemination (Article 30),²⁸⁴ international cooperation (Article 31),²⁸⁵ international assistance (Article 32),²⁸⁶ and assistance of UNESCO (Article 33).²⁸⁷ With regard to assistance, conflicted states may ask UNESCO for assistance and member states are

²⁸¹ UNESCO. *Final Act of the Intergovernmental Conference on the Protection of Cultural Property in the Event of Armed Conflict, the Hague*. Paris: UNESCO. 1954. Art. 3.

<http://unesdoc.unesco.org/images/0008/000824/082464mb.pdf>.

²⁸² Ibid., at Art. 4.

²⁸³ Ibid., at Art. 4.3.

²⁸⁴ Ibid., Art. 30.

²⁸⁵ Ibid., Art. 31.

²⁸⁶ Ibid., Art. 32.

²⁸⁷ Ibid., Art. 33.

“encouraged to provide technical assistance at [a] bilateral or [a] multilateral level (Article 33.2).”²⁸⁸

The form of assistance from UNESCO and the UN is not specifically stipulated in the Convention. Given this lack of specificity, I will now discuss local and international capacity building, the establishment of a cultural protection mechanism, and the inclusion of cultural protection in the UN peacekeeping mandate.

Local Capacity Building: Training Culture Protection Experts, Documenting Cultural Property

During peace time, the international community should solely place its efforts into building local capacity in cultural protection. For effective law enforcement, local customs officers and police officers should be trained to investigate and prosecute looting and destruction of cultural property. Countries that have police units for cultural protection, such as Italy’s Carabinieri, can share their experience and expertise. UNESCO should take the initiative in holding cultural security training for local law enforcement capacity building.

Culture Protection Experts who have deep knowledge in the management of cultural property should be trained and adequately staffed in museums and libraries. They should learn how cultural property should be treated in peacetime, as well as during and after a conflict. For instance, when Timbuktu’s ancient manuscripts were under threat of terrorists in 2012, a courageous librarian undertook the secret evacuation of manuscripts from Timbuktu to Bamako.²⁸⁹ Had he not undertaken these efforts, these manuscripts would have been completely destroyed by the terrorists.

Museums need to photograph and build databases for every piece to assist law enforcement agencies to recover them in the case of looting or destruction. In addition to this, the local authorities should document and protect monuments and religious sites which are not movable. UNESCO should also take the initiative in providing the documentation program.²⁹⁰

²⁸⁸ Ibid., Art. 33.2.

²⁸⁹ Joshua Hammer, “The Race to Save Mali’s Priceless Artifacts,” *Smithsonian Magazine*, January 24, 2014. <http://www.smithsonianmag.com/history/Race-Save-Mali-Artifacts-180947965/?no-ist>.

²⁹⁰ Donny George Youkhanna and McGuire Gibson, “What Cultural Ministries and Heritage Sites should do to Prepare for Conflict,” in *Antiquities Under Siege: Cultural Heritage Protection After the Iraq War*, ed. Lawrence Rothfield. (Lanham, MD: Altamira Press, 2008).

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Non-Governmental Organizations (NGOs) and academics can assist the documentation program by offering tools and skills such as cataloging museum property or creating 3D models of heritage sites. The lists of cultural property and heritage sites should be shared among custom officers, police, and the military to prevent them from being looted or destroyed. The documentation of cultural property and sites is useful not only for preventing destruction and looting but also for reconstruction.

Furthermore, contingency plans should be developed for every museum and library in case of armed conflict. When cultural property is under threat, museum staff and librarians should implement the contingency plan to safely preserve or evacuate the items. UNESCO should initiate these programs and lead the training of cultural experts and assist the local museums and libraries to develop contingency plans in case of armed conflicts. To integrate expert knowledge in cultural protection, UNESCO should include NGOs, academics, international military and police in coordinating the program.

International Capacity Building: Training Deployable Cultural Police Officers

Currently, there is no UNESCO presence in conflict zones for the explicit purpose of monitoring cultural heritage sites or property. UNESCO should establish a deployable cultural police unit which protects cultural heritage sites and prevents looting or destruction of property during and after conflicts. UNESCO should also take the initiative in training these police officers, with trainers including the international military and police (i.e., Italian Carabinieri, NATO²⁹¹, and INTERPOL²⁹²), archeologists, and NGOs. When cultural protection is included in a future UN peacekeeping mandate, cultural police officers should be deployed rapidly in the field with the assistance of the DPKO. The UN peacekeeping mandate as it relates to cultural protection will be discussed later.

²⁹¹ The North Atlantic Treaty Organization.

²⁹² The International Criminal Police Organization.

MENA Cultural Destruction Prevention Mechanism (CDPM)

As effective conflict prevention requires early warnings and an appropriate response,²⁹³ effective cultural protection also requires early warnings and an appropriate response. For this purpose, the UN should establish the Middle East and North Africa Regional Cultural Destruction Prevention Mechanism (MENA CDPM) that includes UNESCO, DPKO, local cultural ministries, museums, national and international military and police, NGOs and relevant organizations. Through this mechanism, the UN will gain access to every channel to provide early warnings of cultural destruction in each country and promote an appropriate response to prevent the destruction.

CDPM will establish its headquarters at UNESCO (Paris) and field offices in each country in the MENA region. Prevention Experts in the headquarters and Liaison Officers will coordinate closely to prevent the destruction of cultural property. The CDPM should utilize the existing UNESCO field offices in the MENA region, for example: Cairo, Addis Ababa, Amman, Beirut, Bamako, Doha, and Iraq. Liaison officers dispatched in the field offices will inform headquarters on a daily basis on the latest situation regarding the security of cultural property in the country.

Headquarters will diagnose the information from the field offices and assist the local authorities in establishing appropriate policies to prevent destruction. In establishing and implementing the policies, UNESCO should coordinate with the UN, local authorities, museums, national and international military and police, and NGOs.

If there is a risk of looting or destruction of cultural property, the headquarters should send an international cultural police officer or INTERPOL to the field office to assist local law enforcement authorities. Information sharing between UNESCO, DPKO, ICC, and INTERPOL is important, which will be emphasized later in this paper. If there is an imminent threat of a terrorist attack, the headquarters should report to the UN Security Council. UNESCO should assist local authorities to evacuate or take appropriate measures to safeguard the property temporarily until the threat is gone. Furthermore, a short-term preventive mission of cultural police units with the support of the DPKO is an option.

²⁹³ I. William Zartman, *Cowardly Lions: Missed Opportunities to Prevent Deadly Conflict and State Collapse*. (Boulder, Colorado: Lynne Rienner, 2005).

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

However, when a state fails to protect cultural property from hostilities during conflict, a UN peace operation may be an option. This paper now examines whether the UN peace operation has the obligation to intervene, from a human rights perspective.

The Human Rights Perspective: Applying a “Responsibility to Protect” Strategy to Cultural Protection

The Outcome Document of the 2005 United Nations World Summit and the Secretary-General’s 2009 Report on Implementing the Responsibility to Protect stipulate the three pillars of their strategy as follows:

Pillar 1: the State has the primary responsibility to protect its population from “genocide, war crimes, ethnic cleansing and crimes against humanity.”

Pillar 2: The member states should assist the State to fulfill its responsibility by encouraging and building capacities.

Pillar 3: The member states also have “the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”²⁹⁴ The member states should “respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection.”²⁹⁵

From a legal perspective, these pillars are anchored in established human rights law. Furthermore, the recent ICC trial, as I will elaborate, shows that cultural destruction fits into “war crimes” and “ethnic cleansing.” The first two pillars underline the importance of prevention. The member states should provide appropriate assistance for cultural protection by building local capacity. The third pillar emphasizes the obligation of the international community to respond when the prevention fails. In this context, the member states have a responsibility to respond when a state is failing to protect cultural property.

²⁹⁴ United Nations. *United Nations General Assembly Resolution 60/1, 2005 World Summit Outcome*, A/RES/60/1 (October 24, 2005), Para. 139.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>.

²⁹⁵ United Nations. *United Nations General Assembly, Report of the Secretary-General: Implementing the Responsibility to Protect*, A/63/677 (January 12, 2009), 9.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/206/10/PDF/N0920610.pdf?OpenElement>.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

ICC Case: Identifying Cultural Destruction as a War Crime

The recent International Criminal Court (ICC) case against Ahmed Al Mahdi Al Faqi set a strong precedent to define cultural destruction as a war crime. Since September 2015, the ICC has investigated Ahmed Al Mahdi Al Faqi, a former member of Ansar Eddine, who is alleged to have directed the destruction of religious sites in Timbuktu. As the ICC asserted in *Prosecutor v. Ahmad Al Faqi Al Mahdi* (2016),²⁹⁶ he is suspected of intentionally damaging ten historical and religious buildings in Timbuktu, specifically nine mausoleums and one mosque, during Ansar Eddine's occupation of Northern Mali in June 2012. It is worth mentioning that the International Criminal Tribunal for the former Yugoslavia (ICTY) has prosecuted individuals for the destruction of cultural and religious property in the past. This, however, is the ICC's first case in the destruction of religious and historical monuments as a war crime. This is an important step forward because the trial of Al Faqi by the ICC helps to build an international norm identifying cultural destruction as a war crime.

UNESCO, the ICC, INTERPOL, and the DPKO should collaborate more to increase prosecution of cultural destruction. UNESCO and DPKO staff in the field should share information relevant to the cultural looting and destruction with INTERPOL and ICC frequently. DPKO should offer logistical support to UNESCO, INTERPOL, and ICC as necessary, such as organizing preventive deployment missions or damage assessment missions. In addition, INTERPOL and ICC should share their expertise in law enforcement with the UNESCO and the DPKO staff to assist their efforts in cultural protection.

UN Peacekeeping and Cultural Protection

UN peace operations can play a major role in both preventing and responding to cultural destruction. However, to what extent the UN peace operations are obliged to implement human rights law has been under discussion.²⁹⁷ The first question lies in the rights defined as customary law. Some argue that human rights protection should be limited to protection "against violence and oppression," "against death or torture," and "against basic deprivation

²⁹⁶ ICC. *Prosecutor v. Ahmad Al Faqi Al Mahdi*, ICC-PIDS-CIS-MAL-01-03/16_Eng, "Case Information Sheet," March 24, 2016, <https://www.icc-cpi.int/iccdocs/PIDS/publications/AlMahdiEng.pdf>.

²⁹⁷ See, for instance, Sigrid Van Der Auwera, "Peace Operations and the Protection of Cultural Property during and After Armed Conflict," *International Peacekeeping* no. 17, Issue 1 (2010): 3-16. DOI:10.1080/13533311003589124.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

like hunger, sickness or lack of shelter.”²⁹⁸ However, as the legal precedents of ICTY and ICC cases prove, there is no doubt that the related laws such as the 1948 Genocide Convention and 1954 Hague Convention have acquired the status of customary law and destruction of culture fits into “war crimes,” “ethnic cleansing,” “crimes against humanity,” or all three. To this end, cultural protection should be recognized as a vital part of human rights.

The second question relates to the extent to which UN peace operations must protect cultural property. Do peacekeepers only have to ensure that their mission will avoid having a negative impact on local culture?²⁹⁹ Is respecting local culture enough? Since the destruction of culture is different from imminent violence against human lives, how should the mission prioritize the protection of human rights?

Peacekeeping mandates provide the legal principles of peace operations. The following section looks into two case studies in which UN peacekeeping missions both work on cultural protection: United Nations Interim Administration Mission in Kosovo (UNMIK) and United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). These mandates include an implicit and explicit cultural protection obligation for UN peacekeeping missions.

Explicit Cultural Protection Obligations in the Peacekeeping Mandate: The Case of MINUSMA

MINUSMA is the first peacekeeping mission to include the protection of cultural heritage explicitly in its mandate. Since the UN mission took over the African-led International Support Mission in Mali (AFISMA) following the adoption of UN Security council resolution 2100, the mission has been mandated to support the Mali authorities for cultural preservation. Its task is “to assist the transitional authorities of Mali, as necessary and feasible, in protecting from attack the cultural and historical sites in Mali, in collaboration with UNESCO.”³⁰⁰

²⁹⁸ Sylvia Maus, “Human Rights in UN Peacekeeping Missions: A Framework for Humanitarian Obligations?” in *International Law and Humanitarian Assistance*, eds. Hans-Joachim Heintze and Andrej Zwitter (New York: Springer Berlin Heidelberg, 2011), 112.

²⁹⁹ Secretary-General’s Bulletin on the Observance by United Nations Forces of International Humanitarian Law (ST/SGB/1999/13) prohibits UN peacekeepers from attacking or destroying cultural property. <https://cdu.unlb.org/Portals/0/Documents/KeyDoc1.pdf>.

³⁰⁰ United Nations. *United Nations Security Council Resolution 2100 (2013) Adopted by the Security Council at its 6952nd meeting, on 25 April 2013, S/RES/2100* (April 25, 2013), http://www.un.org/en/peacekeeping/missions/minusma/documents/mali%20_2100_E_.pdf.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

The Environment and Culture Unit (ECU) was established to implement this mandate.³⁰¹ The following are the activities undertaken by the ECU regarding cultural protection in Mali: training peacekeepers on Malian cultural heritage, supporting UNESCO's reconstruction program, supporting cultural events in northern Mali by offering logistic support, and providing the "transmission of intangible heritage and social cohesion."³⁰²

Collaboration between DPKO and UNESCO in the MINUSMA mission is represented in the creation of "Passeport pour le Patrimoine (Heritage Passport)"³⁰³ and cultural heritage training of peacekeepers by UNESCO. UNESCO has been providing their expert knowledge on culture to MINUSMA and the Malian authority by creating maps, brochures and offering trainings. At the beginning of the MINUSMA mission, "Heritage Passport" was created by UNESCO with the collaboration of the National Directorate of Cultural Heritage in Mali, and the International Centre for Earthen Architecture (CRAterre). It indicates the major cultural and historical sites in Northern Mali and briefly explains the Conventions related to culture protection. This "Heritage Passport" was given to MINUSMA peacekeepers, Malian armed forces, and NGOs in the field. Furthermore, UNESCO offered peacekeepers training to raise awareness of the protecting heritage sites in Mali.³⁰⁴

³⁰¹ In addition to the MINUSMA mandate, DPKO/DFS "Environmental Policy for UN Field Missions" (2009, June 1) has a dedicated paragraph (para. 44) on cultural and historical resources management. This is the basis of the establishment of the unit.

Cultural and Historical Resources Management

44 : The Director of Mission Support / Chief of Mission Support , the Force Commander and the Head of the Police Component, in coordination with the Director of Mission Support / Chief of Mission Support, will issue directions to their components to protect places of cultural, religious, historical and/or architectural value.

³⁰² United Nations. United Nations Multidimensional Integrated Stabilization Mission in Mali, "Cultural Heritage," 2016. <http://minusma.unmissions.org/en/cultural-heritage>.

³⁰³ UNESCO and Ministère de la Culture du Mali. *Passeport Pour Le Patrimoine Biens Culturels À Préserver*. 2012, <http://unesdoc.unesco.org/images/0021/002195/219590f.pdf>.

³⁰⁴ United Nations. "UNESCO has Developed Cultural Heritage Maps and a "Heritage Passport" to Help Protect Mali's Cultural Heritage," (February 4, 2013), <http://whc.unesco.org/en/news/981/>. In addition, UNESCO developed the brochure, "Protecting cultural heritage of Mali" for MINUSMA peacekeepers to assist them in identifying cultural sites and to respect and protect the cultural sites and property with the cooperation of the local authorities. See the brochure here:

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/brochure_MINUSMA_EN_20131116.pdf.

The Implicit Cultural Protection Obligation in the Peacekeeping Mandate: The Case of UNMIK

UNMIK was established in order to “provide an interim administration for Kosovo” and to establish and oversee “the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo (United Nations Security Council 1999, June 10).”³⁰⁵ UNMIK transferred responsibilities for culture preservation to the Ministry of Culture, Youth and Support (MCYS), one of the Provisional Institutions of Self-Government (PISG). UNMIK, however, is still responsible for the protection of minority rights, including cultural protection.

The UNMIK mandate does not explicitly reference the protection of culture. Instead, Resolution 1244 stipulates “protecting and promoting human rights”³⁰⁶ as one of the major responsibilities of UNMIK. Therefore, UNMIK has an “independent Human Rights obligation”³⁰⁷ apart from the state’s obligation. UNMIK has worked on cultural protection as part of their mandate of “protecting and promoting human rights.”

A few years before the conflict between Serbian police units and Kosovo Albanian rebel group broke up in Kosovo, Bosnia suffered from massive destruction of cultural property. It could be said that the capacity and willingness to protect cultural property from deliberate destruction in times of conflict of the international community was tested in Kosovo once again.³⁰⁸ Cultural protection in Kosovo was recognized by the international community as an “integral part of the process of improving and consolidating relations between the different communities in Kosovo, particularly between the Kosovo Albanian and Kosovo Serb communities.”³⁰⁹ In addition to building a safe and secure environment for the inhabitants, UNMIK and the NATO-led Kosovo Force (KFOR) paid particular attention to the protection and preservation of cultural heritage in Kosovo to facilitate ethnic tolerance and reconciliation between the Albanians and Serbs. The following is part of the statement made by the Special Representative of Security General (SRSG) at UNESCO headquarters in Paris in 2005, regarding

³⁰⁵ United Nations. *United Nations Security Council Resolution 1244 (1999) Adopted by the Security Council at its 4011th meeting, on June 10, 1999, S/RES/1244 (10 June 1999)*, <http://www.unmikonline.org/Documents/Res1244ENG.pdf>.

³⁰⁶ Ibid.

³⁰⁷ Maus, “Human Rights in UN Peacekeeping Missions: A Framework for Humanitarian Obligations?” 116.

³⁰⁸ Reconstruction Implementation Commission for Orthodox Religious Sites in Kosovo. *Activity Report 2005*. 2005, http://www.coe.int/t/DG4/CULTUREHERITAGE/COOPERATION/RIC/inc/eng/docs/2005_eng.pdf

³⁰⁹ United Nations Mission in Kosovo. *SRSG addresses the International Donors Conference for the Protection and Preservation of Cultural Heritage in Kosovo*, UNMIK/PR/1363 (May 13, 2005), <http://www.unmikonline.org/pages/default.aspx>.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

the activities taken by UNMIK and KFOR on cultural protection in Kosovo. It should be noted that the March 2004 riots event in which 35 of the Orthodox religious sites were heavily burnt and damaged by the Albanians triggered the determination of the UN to do more to protect cultural and religious sites in Kosovo.³¹⁰

‘On the issue of the protection and security of cultural sites, let me assure that UNMIK and KFOR are doing all that is necessary to ensure that the security environment in Kosovo remains as stable as possible. We have placed 47 cultural heritage sites under protection throughout Kosovo and all of these sites receive regular patrols and security checks, while others are under full time international police and KFOR protection. As we gradually hand over responsibilities to local authorities, I am confident that the local authorities will demonstrate the same concern for and protection of all cultural heritage in Kosovo.’³¹¹

In conclusion, cultural protection became one of the core tasks for UNMIK and KFOR as part of the human rights security and policies against ethnic cleansing, aiming for successful reconciliation between different communities.

Should Cultural Protection be Explicitly Written in the Mandate?

When cultural protection is not explicitly written into the mission mandate, it could be difficult to convince countries to contribute human resources or equipment for culture protection. For example, in the case of Bosnia-Herzegovina, the Council of Europe faced the difficulty of organizing culture damage assessment promptly since “none of the intergovernmental organizations already operating in Bosnia (naming particularly UNPROFOR³¹², UNHCR³¹³ and ECMM³¹⁴) believed their mandate included cultural heritage and none were willing to assist.”³¹⁵ In order to get the logistical, human, and financial resources from the member states, cultural protection should be explicitly stated in every mission mandate of the UN peacekeeping mission. The question is, to what extent are the member states willing to cooperate in this issue?

³¹⁰ To see the damaged sites, see Reconstruction Implementation Commission for Orthodox Religious Sites in Kosovo. *Activity Report 2005*.

http://www.coe.int/t/DG4/CULTUREHERITAGE/COOPERATION/RIC/inc/eng/docs/2005_eng.pdf.

³¹¹ Ibid.

³¹² United Nations Protection Force.

³¹³ United Nations High Commissioner for Refugees.

³¹⁴ European Community Monitoring Mission.

³¹⁵ Helen Walasek, “Destruction of the Cultural Heritage in Bosnia-Herzegovina: Introduction,” In *Bosnia and the Destruction of Cultural Heritage*, ed. Helen Walasek (England: Ashgate Publishing, 2015), 18.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

In February 2015, UN Security Council passed Resolution 2199 to oblige the member states to prevent illicit antiquities trading and to condemn the cultural destruction in Syria and Iraq by terrorists groups.³¹⁶ UNESCO had been advocating that the international community should take measures to deal with the cultural looting and culture destruction in Syria since the beginning of the conflict but until recently it was not in the priority of the Security Council's agenda. In fact, in her October 2015 interview to *Russia Today's Worlds Apart*, Bokova says "I remember during those times I was criticized in the press, [which said] that UNESCO is out of touch because people are dying and we are talking about bricks and stone."³¹⁷

UNESCO has put a lot of pressure on the UN Security Council to task peacekeepers to protect cultural sites in countries such as Syria, Iraq, and Libya. However, some member states argue that UN peacekeeping mandate should be clear and achievable, criticizing the increased task as a "Christmas tree mandate."³¹⁸ Cultural protection is still not regarded as a core business for UN peacekeeping operation. It is true that UN peacekeeping missions always face challenges with a limited amount of human, logistical, and financial resources to implement the mandate. The task to protect human lives should be always prioritized. However, it should be underscored that culture plays a major role in conflict prevention and peace-building.

Cultural protection is necessary not only because of the intrinsic value that cultural property holds but also it is part of the human rights security which is indispensable for the success of peacekeeping mission. In addition, the Medium-Term Strategy (2014-2021) published by UNESCO emphasizes the value of culture as a "positive and unifying force that can help prevent conflicts and facilitate peace-building as well as recovery and reconciliation" (para 126).³¹⁹ Culture has the power for "resilience, social inclusion, national reconciliation, and peace-building" (para 128).³²⁰ Therefore, cultural protection should be recognized as part of human rights security and should be acknowledged more seriously as a positive force for successful missions. In prioritizing the tasks of mandates, the UN should not underestimate the impact of culture on effective conflict prevention and peacekeeping. Since tangible and

³¹⁶ United Nations Security Council Resolution 2199 (2015) Adopted by the Security Council at its 7379th meeting, on 12 February 2015, S/RES/2199 (February 12, 2015), [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2199%20\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2199%20(2015)).

³¹⁷ Oskana Boyko, "'Cultural Cleansing is Human Tragedy of Middle East' – UNESCO Chief to RT," *Russia Today's Worlds Apart*, October 4, 2015, <https://www.rt.com/news/317632-unesco-isis-cultural-cleansing/>.

³¹⁸ United Nations Security Council, *Security Council Commits itself to Improving Transition, Exit Strategies for United Nations Peacekeeping Operations*, SC/9860 (February 12, 2010), <http://www.un.org/press/en/2010/sc9860.doc.htm>.

³¹⁹ UNESCO, *2014-2021 Medium-Term Strategy*, Paris: United Nations Education, Scientific, Cultural, Organization, 2014, Para. 126, <http://unesdoc.unesco.org/images/0022/002200/220031e.pdf>.

³²⁰ Ibid., Para. 128.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Intangible culture is inherent to human societies, it is important to incorporate its protection in every peacekeeping mandate. The wording in the mandate, however, may differ depending on the nature of conflicts and the actual threat the cultural property is facing in each conflict. Cultural destruction can be used as a means to destroy certain identities or looting can happen to fund terrorist groups. If the mission is taking place where the government is failing to protect cultural property from direct threat of damage or destruction, as is the case in the cultural resources-rich MENA region, the mandate should include clear and specific tasks for its appropriate protection. Nevertheless, to what extent the peacekeepers can play a positive role on cultural protection highly depends on the willingness of member states. It is not enough to include cultural protection in each mandate. Successful missions require member states' support by providing adequate financial, human, and logistical resources to achieve the task.

Conclusion

This paper has proposed a set of solutions for the international community, namely for the UN, for effective cultural protection before, during, and after conflicts. The international community should put more effort into prevention by building local and international capacity in cultural protection. The establishment of a prevention mechanism including UNESCO, regional offices, NGOs, and relevant agencies should promote more early warning of cultural destruction and facilitate swift response. Furthermore, UNESCO, law enforcement agencies, ICC, and DPKO should share more information to increase prosecutions of cultural destruction and looting. Finally, cultural protection, as part of the human security, should be included in every UN peacekeeping mandate with adequate support from member states. Cultural protection requires more attention especially in the cultural resources-rich MENA region, where local governments are failing to protect while indispensable cultural property is under threat of damage and destruction in conflicts. Past failures should not be repeated.

Cultural Heritage in Post-War Peace Building

Analyzing the Framework for Reconciliation and

Rebuilding in Bosnia and Herzegovina

Ross Hurwitz

Introduction

Cultural heritage is the historic continuance of a people's ethnic, religious, and social identity. It can be tangible (monuments, art, and documents) as well as intangible (oral traditions, dance, and language) and its role as a means of connecting a group of people to a place through time has made it a weapon and target of violence in war throughout history. As such, the fate of cultural heritage in post-war societies plays a crucial role in any successful reconciliation process.

Since the end of the Second World War, the importance placed on safeguarding cultural heritage has increased dramatically. The notion that culture and tradition represent a keystone to the sustainable peace and wellbeing of the world was a direct result of the wholesale destruction and bloodshed of World War II. In the ruins of Europe, humanity felt a shared sense of loss. While the cost in human life, 50 million by some estimates,³²¹ defies comprehension, the destruction of great cultural and archeological sites represented a tangible, palpable loss. During the 1994 war in Bosnia and Herzegovina, a Croatian journalist, Ksenija Drakulic asked "why do we feel more pain looking at the image of the destroyed bridge [the *Stari Most* in Mostar] than the image of the massacred people?" In responding to her own question, she writes: "We expect people to die...The bridge, in all its beauty and grace, was built to outlive us; it was an attempt to grasp eternity...A dead woman is one of us; but the bridge is all of us

³²¹ John Keegan, *The Second World War* (New York, N.Y., U.S.A.: Viking Penguin, 1990).

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

forever.”³²² It is difficult to equate the destruction of buildings and artifacts with the loss of human life. For many it feels tasteless and even vulgar, but when cultural artifacts and heritage are acknowledged to be the collective social identity of a community, their loss takes on a far greater meaning. Not only is a centuries old bridge a symbol of hundreds of years of civilization in Mostar, now in ruins, but with it the tangible connection to the city’s past and all the people who lived there.

Consequently, the reconstruction of these sites after the cessation of violence is often times seen as a necessary step toward reconciliation and peace. In this interpretation, which the international community fully supported in Bosnia, reconstruction acts as a symbol to both the local community and to the world that, as the saying goes, time really does heal all wounds. The case of Bosnia and Herzegovina, however, highlights many notable problems with this view. Foremost among them is the lack of ethnic reconciliation or political amity after 20 years of reconstruction efforts. In fact, numerous cases demonstrate that reconstruction of cultural heritage has only exacerbated ethnic tensions. This points to a much more complex issue in Bosnia and a problem for both those seeking reconciliation and those hoping to rebuild much that was lost over the course of the devastating conflict. Furthermore, it puts into question the international community’s hypothesis that reconstruction can initiate peace.

In order to explore the failure of the international effort to achieve peace and reconciliation through rebuilding, it is important to first analyze the conflict they sought to resolve and, second, the framework with which they attempted to resolve it. In this way, we can determine what policies and frameworks are most effective at rebuilding post-war societies, especially where religious and ethnic violence have been a central element of the conflict. Additionally, we can learn how the reconstruction of these societies’ cultural heritage can be harnessed as an instrument of positive peacebuilding and reconciliation. By analyzing and understanding how Bosnia and Herzegovina has struggled with these problems, a better framework can be established to aid governments, international organizations, and NGOs as they embark on this important work in future post-war environments.

³²² Amy Schwartz, “Is it Wrong to Weep for Buildings?” *The Washington Post* (1974-Current File), May 10, 1994, <http://search.proquest.com/docview/750975527?accountid=11752>.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones



323

³²³ Map of Bosnia and Herzegovina including Bosnian Federation and Republika Srpska. Digital image. Mappery. January 2009. Web. April 20, 2016, <http://www.mappery.com/Bosnia-and-Herzegovina-Map>.

The War in Bosnia

Conflict of Identity

The outbreak of war within the rapidly collapsing Yugoslavia in the early 1990s would turn out to be one of the most destructive conflicts seen in Europe since the end of World War II. In a statement from the International Criminal Tribunal for the former Yugoslavia (ICTY), Judge Fouad Riad remarked: “These are truly scenes from hell, written on the darkest pages of human history.”³²⁴ At its heart, the Bosnian War was a conflict of identities, fueled by a nationalist narrative which ultimately tore Yugoslavia apart. In order to understand why Bosnia and Herzegovina was especially brutal, and why lasting peace has remained elusive, it is important to look at the ethnic and cultural landscape of the country.

The notion of identity in pre-war Bosnia was complex. For centuries, the region’s three main ethnic populations (Bosniak Muslims, Serbian Orthodox, and Catholic Croats) coexisted in relative peace. Over hundreds of years these ethno-religious communities developed alongside one another, all the while maintaining three distinct cultural identities. In the aftermath of the war, the international community was eager to reestablish the multiculturalism of Bosnia’s past³²⁵. In many respects, however, this recollection of a Western notion of multiculturalism is a fantasy. Multiculturalism, according to anthropologist Tone Bringa, was not necessarily antithetical to Bosnian pre-war identity, but rather in the context of Bosnia, meant that “dealing with cultural differences was part of people’s most immediate experiences of social life.”³²⁶ Multiculturalism, therefore, is a misnomer in this situation. It does not refer to the Western concept of a multiethnic and multi-religious society uniting under a single notion of a common nationality. In reality, there was no singular Bosnian national identity, developed and strengthened over centuries of shared history and interaction. While it is true that these communities shared all the elements typically used to classify collective identity (culture, history, language, and land), “they do not share the one characteristic most theories agree is

³²⁴ International Criminal Tribunal for the former Yugoslavia, “Radovan Karadzic and Ratko Mladic Accused of Genocide Following the Take-Over of Srebrenica,” November 16, 1995. Accessed April 24, 2016. <http://www.icty.org/en/press/radovan-karadzic-and-ratko-mladic-accused-genocide-following-take-over-srebrenica>.

³²⁵ Helen Walasek, “Domains of Restoration: Actors and Agendas in Post-Conflict Bosnia-Herzegovina,” in *Bosnia and the Destruction of Cultural Heritage* (Farnham, Surrey, England: Ashgate), 205.

³²⁶ Tone Bringa, *Being Muslim the Bosnian Way: Identity and Community in a Central Bosnian Village* (Princeton, N.J.: Princeton University Press, 1995), 83.

necessary to define a group: the consent of the members that they are in fact a group.”³²⁷ This reluctance to identify with other Bosnians did not, however, indicate a simmering tension under the surface, ready to erupt at any moment. In fact, during the interwar period, particularly in major cities like Sarajevo, inter-ethnic marriages were common as well as mutual celebrations for various ethno-religious holidays.³²⁸ It was these years of relative peace that perhaps convinced the international community, incorrectly, that Bosnia was a multicultural and cosmopolitan state.

However, following the death of Marshal Tito, a nationalist sentiment was indeed growing and shifting perceptions within Yugoslavia, with Serbs in particular developing a belief in “collective victimhood.”³²⁹ An example of this is clearly demonstrated by a letter written to the Office of the High Representative after the war by the Serbian mayor of Banja Luka, Djodje Umicevic, stating all his reasons for not granting building permits for rebuilding Banja Luka’s Ferhadja Mosque. An analysis of the letter shows how the Mayor seems to think that “all time is collapsed into an everlasting present, in which history, myth and propaganda are merged to prove that the timeless suffering of victimized Serbdom gives Serbian nationalists the right to do whatever they please.”³³⁰ As Bosnia declared independence from Yugoslavia “a vacuum of devastating proportions was created...followed by a hailstorm of ethno-nationalist propaganda reminding Bosnians of historic animosities that had long been dormant.”³³¹ In this new and uncertain time, a sense of safety and security was dependent on belonging to an ethnic community; something familiar, secure, and trustworthy. It was in this environment that the battle lines were drawn.

As Yugoslavia broke apart, nationalist ideologues played off of these ethnic differences and long-suppressed memories of centuries-old grievances to incite the communities toward violence. Serbs in particular developed a narrative of an “Islamic fundamentalist-Vatican-

³²⁷ Emily G. Makas, “Interpreting multivalent sites: New meanings for Mostar’s Old Bridge,” *Centropa* 5, no. 1 (2005): 63-64.

³²⁸ Barry Hart and Edita Colo, “Psychosocial peacebuilding in Bosnia and Herzegovina: approaches to relational and social change,” *Intervention* 12, no. 1 (2014): 77.

³²⁹ Daniel Bar-Tal, and Sabina Cehajic-Clancy, “From collective victimhood to social reconciliation: Outlining a conceptual framework,” in *War, Community, and Social Change: Collective Experiences in the Former Yugoslavia*, Peace Psychology Book Series (Book 17), edited by. Dario Spini, Guy Elcheroth and Dinka Corkalo Biruski. New York, New York: Springer, 2014.

³³⁰ Letter from András Riedlmayer regarding mayor Umicevic. “MINELREL-L Archive (06301998-10:20:27-28149)”. *Minelres.Lv*. http://www.minelres.lv/minelres/archive/06301998-10_20_27-28149.html.

³³¹ John Calame, “Divided Cities and Ethnic Conflict in The Urban Domain,” in *Cultural Heritage in Post-War Recovery*, ICCROM Conservation Studies 6 (Rome. 2007). http://www.iccrom.org/ifrcdn/pdf/ICCROM_ICSO6_CulturalHeritagePostwar_en.pdf.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Austro-Hungarian-German plot to destroy Serbdom.”³³² Through incitement of fear and the desire to quickly carve out territory for themselves, Croats and Serbs rapidly gained control over a majority of the country. In each seized community, the new leaders began the process of driving out the other ethnic populations to develop ethnically pure cities and towns. Through this process of ethnic cleansing some of the worst atrocities of the war were committed.

Over the course of three years, Serbs, Croats, and Bosniaks fought one another for control of territory and even the right to exist. The goal of the nationalist Serb and Croat forces was to cleanse the country of any hint that other ethnic groups had ever lived there, and so they could never again claim ownership over the land. The result was wholesale destruction of cultural heritage sites across the country. According to one survey encompassing just nineteen municipalities, 332 Islamic religious sites received some degree of damage with 95% of these being completely destroyed. Additionally, 75% of the 57 Roman Catholic churches surveyed were destroyed.³³³ This destruction represents only a fraction of the crimes committed. In countless cities and towns, religious houses of worship, cultural monuments, and historical archives were erased from the landscape.

The Dayton Accords

By 1995, NATO airstrikes and greater pressure from the international community finally brought an end to the war with the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina, better known as the Dayton Accords. The basic framework for the agreement established the borders between Serb forces and Bosniaks and Croats. The front lines were repositioned to establish the new intra-state entities, The Federation of Bosnia and Herzegovina and The Republika Srpska (RS). These ethnically based entities would make up the larger Bosnia and Herzegovina but would retain significant autonomy. The legal basis for this dual arrangement was included in the new constitution, which was also part of the Dayton accords. Finally, Dayton also included a number of annexes, designed to address issues in the post-war environment, including the right of return, human rights, and the responsibility for cultural heritage protection.³³⁴

³³² Tim Judah, *The Serbs: History, Myth and the Destruction of Yugoslavia*, 3rd ed. (New Haven Conn.: Yale University Press, 2009), 231.

³³³ András Riedlmayer, *Deconstruction of Cultural Heritage in Bosnia-Herzegovina, 1992-1996* (Cambridge, MA, 2002).

³³⁴ Europe - Miscellaneous, *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, 21 November 1995.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

In his public remarks several days after the agreement was approved, President Clinton stated that the aim of Dayton was “to give all the people of Bosnia a much greater stake in peace than war, so that peace takes on a life and logic of its own.”³³⁵ Unfortunately, Dayton has only been able to achieve part of this goal. By allowing former combatants to continue to retain power through the political process in the new dual-entity dominated government structure, Dayton successfully neutralized potential spoilers to the peace process. By incorporating these individuals into political leadership at every level of government, both federal and entity levels, parties who had profited from the war were able to solidify and in some cases broaden their influence and economic power. The direct result of this incorporation was the failure of the latter half of Clinton’s goal, “that peace takes on a life and logic of its own.” While Dayton ensured these individuals retained war-time influence, corruption and nationalist rhetoric allowed for the continuation of the narrative of division and ethnic conflict. Therefore, the growth and development of a peaceful and multicultural Bosnia was destined to fail as long as the instrument of peace, Dayton, continued to empower former combatants seeking to maintain power and control.

While Dayton successfully brought an end to the violence and destruction, its concessions have resulted in lasting problems for long-term peace and reconciliation in Bosnia. The now institutionalized territorial gains made through ethnic cleansing cemented the physical division between the various communities. This separation would make the rebuilding and reconciliation processes exceedingly difficult as the international community sought the best way to assist Bosnia in its long route to peace.

With the institutionalization of the ethnic-based Federation and RS, Dayton’s provisions created a situation in which, even without violence or arms, the war was able to continue. Some scholars refer to this as a war by “other means.”³³⁶ While political war is certainly preferable to violent conflict, in Bosnia and Herzegovina this political confrontation would have a devastating impact on the prospects of peace and reconciliation. This new conflict did not seek to gain land and territory, but the domination of the historical narrative in the minds of the people and ultimately attempt to achieve, through political means, what they failed to achieve through war – a separate, ethnically pure nation. The nationalist leaders now sought control over the “truth.”³³⁷ This battle over the truth would directly impact the framework for

³³⁵ William J Clinton, “Address to the nation on implementation of peace in Bosnia-Herzegovina” (speech, Washington, DC, November 27, 1995), http://www.cnn.com/US/9511/bosnia_speech/speech.html.

³³⁶ Refik Hodzic, “Twenty Years Since Srebrenica: No Reconciliation, We’re Still at War | Balkanist,” *Balkanist.Net*, June 29, 2015. <http://balkanist.net/twenty-years-since-srebrenica-no-reconciliation-were-still-at-war/>.

³³⁷ Ibid.

post-war rebuilding efforts and highlight the significant separation between the international community's goals and Bosnians' wishes.

Recovery and Reconstruction

Data Collection

In the aftermath of war, with state capacity severely limited, it was up to the international community to begin to rebuild Bosnia and Herzegovina. A coalition, including the UN, NATO and various western countries, began the process of instituting Dayton's numerous governmental reforms, stabilizing the economy, providing much-needed humanitarian aid, and creating an environment in which civilian populations and peacekeepers could work safely.³³⁸ Coupled with these overwhelming responsibilities was the task of laying the foundations for reconciliation between the ethnic groups in order to ensure a lasting and constructive peace, per President Clinton's wishes.

The first task for any rebuilding effort is the detailed analysis that needs to be done to assess the scale of the destruction. In Bosnia, this was done fairly well. Numerous reports, from the UN, EU, Council of Europe, and others, survey the scale of the damage in great detail. The process of sending experts out into the field to document and photograph sites and interview local citizens is dangerous in the immediate aftermath of war, but vital. In addition to gaining necessary information regarding the state of infrastructure and heritage sites, specialists can also get pertinent information as to the state of the local population. This knowledge is key to any successful peace building mission, particularly a violent ethnic one, such as Bosnia.

The reports and documentation were well executed and able to provide necessary information, particularly to UNESCO and their efforts to form the Commission to Preserve National Monuments as stipulated in Dayton's Annex 8.³³⁹ However, in the aftermath of the conflict, the international community, the UN in particular has reduced Bosnia to:

just another "humanitarian crisis" which, paradoxically, reduces those most immediately affected from full human beings to "victims." Stripped of all local specificity...they become

³³⁸ Kori Schake, "The Dayton Peace Accords: Success or Failure?" *Studies in Contemporary History and Security Policy* 3 (1999): 281-295.

³³⁹ Walasek, *Destruction of Cultural Heritage*.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

indistinguishable from all the other nameless victims of floods, wars and other calamities around the world.³⁴⁰

This highlights a significant problem with the international community's rebuilding efforts. In the bureaucracy of organizations like the UN, coupled with international geopolitics, sometimes conflict responses must fit into pre-constructed boxes, which lack flexibility necessary to do more than feed and clothe those in need. The lack of clear understanding of the population's state of mind would prove to be the biggest failure of the international community's reconstruction and reconciliation efforts.

Rebuilding Multiculturalism

To most international actors, reconstruction of cultural heritage carried multiple benefits. First, it provided incentives for displaced populations to return to their former homes, thus relieving the significant burden that the nearly 2 million displaced people placed on the international humanitarian effort and, second, it furthered the international community's preferred narrative promoting Bosnia's multicultural history.³⁴¹ As a result of the scale of the problem, the resources allocated to post-war rebuilding efforts have been immense:

According to one estimate in 2009, Bosnia had received nearly \$14 billion in reconstruction aid right after the war, and by the end of 1996, 17 different foreign governments, 18 UN agencies, 27 intergovernmental organizations, and about 200 nongovernmental organizations (NGOs) - not to mention tens of thousands of troops from across the globe - were involved in reconstruction efforts.³⁴²

However, these vast recourses were not necessarily utilized in the most effective way. While the local population was interested in rebuilding mosques and other structures intimately connected to their cultural identity, which would incentivize their return home, international organizations and donors were not willing to risk instigating a potential conflict. Instead, they wanted to focus on rebuilding efforts which fell in line with their preferred narrative of Bosnia's multicultural history.

³⁴⁰ Andras Riedlmayer, "From the Ashes: The Past and Future of Bosnia's Cultural Heritage," in *Islam and Bosnia: Conflict Resolution and Foreign Policy in Multi-Ethnic States*, ed. Maya Shatzmiller, (Montréal: McGill-Queen's University Press, 2002).

³⁴¹ Refugees, United. 2016. "UNHCR - Bosnia and Herzegovina." *Unhcr.Org*. <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48d766&submit=GO>.

³⁴² Michael J. Boyle, *Violence after War: Explaining Instability in Post-Conflict States*, (Baltimore: Johns Hopkins University Press, 2014), 100.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

The reconstruction of Mostar's *Stari Most* [Old Bridge] typifies the international response, and its ultimate failure in tackling reconstruction in post-war Bosnia. The new Old Bridge was reconstructed through an international effort of the World Bank, the United States, European Union, and most controversially, Turkey. This effort has been referred to by numerous scholars as a Potemkin village, an illusion to satisfy the international community in the hopes of returning the city to the place that it was before the war.³⁴³ For the citizens of Mostar, both Bosniak and Croat, simply rebuilding what had existed prior to the war had no significant impact on reconciliation or peace. In fact, in some ways, the international community's rebuilding efforts has caused the bridge to now be seen as, not a symbol of their city or heritage, but of the international community. This cartoon by Đoko Ninković [Figure 8], depicts the Bosniak and Croat political parties watching on as the Office of the High Representative in Bosnia (representing the new Old Bridge), precariously straddles the River Neretva. They seem to be biding their time, waiting for him to fall again. To the international community, the bridge was a potent symbol of reconnecting two divided communities. It did not occur to them that, perhaps the two communities did not wish to be reconnected. The lack of understanding of the local context in a post-war society can lead the international community to take actions that counteract their larger goals in the region. In Bosnia, as in all post-war environments, context is key and local actors are the most important resource when deciding what and how to rebuild.

³⁴³ Makas, "Interpreting multivalent sites."

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

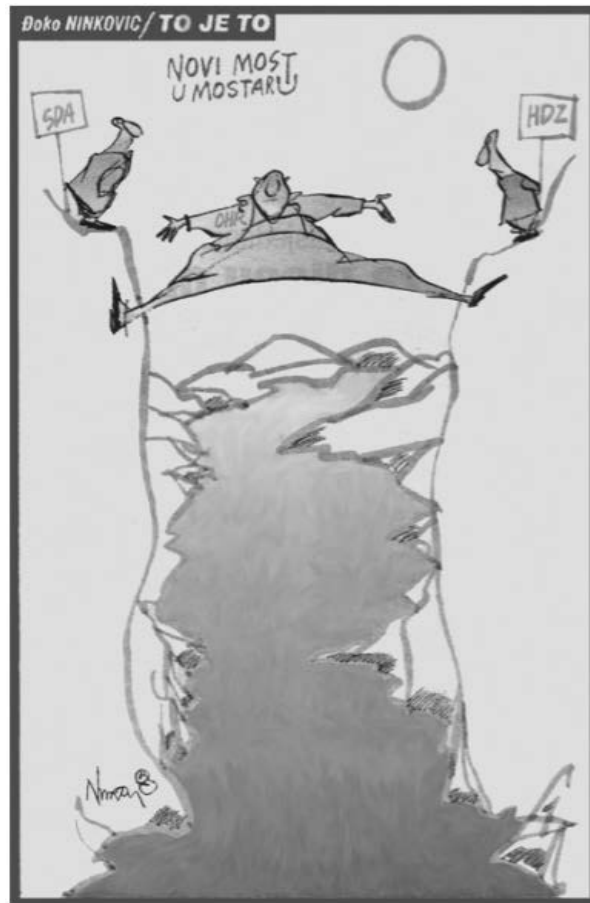


Figure 8 - "To Je To: Novi Most u Mostaru" [That's That: The New Bridge in Mostar] Makaš, E.G. 2012. "Rebuilding Mostar: International and Local Visions of a Contested City and Its Heritage".

Continued Ethnic Tensions

Despite the international community's failure to grasp the local context and provide a reconstruction policy which facilitated reconciliation, rebuilding commenced. In communities all around Bosnia, mosques, churches and secular structures have been re-erected in their formerly "cleansed" communities. This has not happened without continuous and widespread resistance, and sometimes violence, from ethnic communities.

The Muslim community of Banja Luka saw 13 of their mosques, some dating back to the 15th century, razed by Serbian nationalists. The goal of the Serb forces was to be able to believably say that Muslims had never lived in Banja Luka. But with the end of the war, Bosniaks returned to their former homes and wished to rebuild their mosques. The fight over the

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

rebuilding of the Ferhadja Mosque would last over a decade and even result in violence and death as Serbian nationalists began rioting in the streets as the corner stone for the new mosque was being laid. “To further insult the Muslims, the mob chased a pig into the park where the mosque once stood, slaughtered it, and hung its head in front of the Islamic community building, where about 250 people...hid from the mob.”³⁴⁴ A few years would pass before the corner stone was able to be placed and rebuilding started, but it was clear that rebuilding the mosque would not lead to the international community’s promised reconciliation.

Another example, again in the town of Mostar, involves the Croat community’s 100-foot-tall cross on the summit of Hum Hill, overlooking the city below. In the shadow of the international community’s effort to rebuild the city’s bridge, the Catholics of Mostar erected this monument in full knowledge of how it would antagonize the city’s Bosniak community since “the particular hill on which the cross was erected was the exact place from which the city was shelled first by Bosnian Serb paramilitaries and then by the [Croats].”³⁴⁵ In this example, building and commemorating are being used by one ethnic group as a means of continuing the fight that they cannot win with armed force. Despite what international parties might say and despite the vast time and resources employed to rebuild, Mostar is still a divided city.

Perhaps the best example of the continued ethnic tension among Serbs, Croats, and Bosniaks occurred in July of 2015. At the commemoration of the 20th anniversary of the genocide of 8,000 men and boys in the Bosnian town of Srebrenica by Serbian forces, a crowd of angry Bosniaks began to throw stones at Aleksandar Vučić, the Prime Minister of Serbia, who come to pay his respects to the dead while still failing to acknowledge that the event constituted genocide.³⁴⁶ The event clearly shows the continued animosity that is still deeply engrained in the hearts and minds of many of the people of Bosnia.

Rebuilding has been taking place in Bosnia for 20 years. Unfortunately, the international community’s goal has been unfulfilled. Had they attempted to develop a framework, which not only sought to rebuild what had been destroyed, but also initiated long-term strategies aimed at tackling the deeply rooted causes of the conflict, including nationalist narratives and continued animosity for crimes perpetrated during the war, the effort might have produced better results. Sadly, today, Bosnia is as divided as ever and the international community’s framework for reconciliation and rebuilding is unlikely to help.

³⁴⁴ Riedlmayer, “From the Ashes.”

³⁴⁵ Makas, “Interpreting multivalent sites.”

³⁴⁶ “Bosnia Report - July - September 2000.” *Bosnia.Org.Uk*.

http://www.bosnia.org.uk/bosrep/report_format.cfm?articleid=1010&reportid=160.

Developing a Long-Term Strategy

Without a doubt, the most important lesson to take away from Bosnia and Herzegovina is the importance of understanding the local context when undertaking any peace building endeavor. Any conflict management practitioner will extol the virtues of rigorous research and field work to understand the various factors at play in any post-war society, but unless this knowledge is utilized and implemented effectively, a peaceful and prosperous post-war society will be difficult to obtain. The international community did their due diligence before attempting peace building efforts, but in rebuilding efforts the intricacies of the inter-ethnic community relations were not always understood or accounted for. This leaves the process open to miscommunication, antagonism, and sometimes outright violence.

With this in mind, it is also important that international actors clearly delineate short-term safety and security goals with long-term peace and development objectives. By seeking to rush any element of a long-term process, particularly reconciliation between former combatants, without fully understanding the cultural dynamics at play, the international community risks further intensification of a hostile environment. This is often a difficult balance between the timeline necessary for a society in transition and the realistic political constraints of the international players that many intervening countries face from domestic constituencies. In an effort to demonstrate progress to a domestic population, many countries will support projects, particularly rebuilding cultural heritage sites, which the war-torn communities are not yet able to cope with.

When seeking to reconstruct culturally significant sites, it is important to strike a delicate balance between rebuilding to facilitate the return of refugees in the immediate aftermath of war and the long-term restoration of the cultural heritage of a society. In order for these sites to be safe in the long-run it is vital that operations not only focus on rebuilding the necessary locations to encourage refugees to return but all to address the root causes of the deeper ethnic divisions within the society. This takes time and patience, but there are a number of initiatives that have shown potential in Bosnia. The international community would be smart to use these strategies to think of reconciliation and cultural heritage in much broader terms, and hopefully create an environment where sustained peace is possible.

Virtual Memory

Bosnia's campaign of ethnic cleansing created roughly 2 million internally displaced persons and refugees. These individuals found themselves living in exile, cut off both physically and emotionally from their communities.³⁴⁷ Without any clear indication of if, when, or even whether these individuals should return to their homes, many communities sought alternative ways to maintain a connection to their history and to their friends and former neighbors. With refugees and diaspora communities spread around the globe, the internet provided the most effective means to maintain this important link. Websites, like *www.kozarac.ba*, *www.focaci.org*, and others, were instrumental in creating a virtual Bosnia which would "become quite literally sites of memory, heritage and identity, key mechanisms in recreating the localities from which communities had been expelled, keeping alive what had been lost through destruction and absence."³⁴⁸ These online communities allowed individuals to post photographs, stories, documents, and news, which enabled the community to not only endure, but in many instances where the ethnic cleansing had been particularly effective, to prove that they had existed at all.

While many of these websites have fallen out of use over the years as refugees return to their homes, the model that was used in Bosnia can be an important reference point to refugee communities today. As the conflicts in Syria and other countries in the Middle East continue to produce large numbers of refugees, international parties, whether UN agencies or NGOs, can help facilitate the creation of these online communities. It is important to recognize, however, that part of the success of these sites has been the organic nature in which they arose and met the individual needs of the community which it served. By involving the international community, the tendency to standardize this process could potentially harm its effectiveness. To prevent this, international organizations can contribute minimally to the enterprise, possibly providing sources to buy website domains or to facilitate information campaigns to ensure individuals know that this resource is available to them.

The Internet is an important tool to capitalize on and developing new ways to utilize it to not only to assist refugee populations, but also to create and safeguard cultural heritage and community identity could prove useful in the future.

³⁴⁷ Schake, "The Dayton Peace Accords: Success or Failure?"

³⁴⁸ Walasek, *Bosnia and the Destruction of Cultural Heritage*.

“Righteous Among the Nations”

There is an old Jewish saying, “whoever saves a single life, saves an entire world.” In the aftermath of war and violent conflict it is easy to become engrossed with the atrocities committed (and Bosnia had more than its fair share). In all the debates about genocide and ethnic cleansing, an important, and potentially crucial, narrative was overlooked. In the nearly 70 years since the end of The Holocaust, the international Jewish community has devoted significant resources to promoting the stories of the *Righteous Among the Nations*. These *righteous* individuals risked their lives to save their Jewish friends and neighbors, and sometimes complete strangers, from the evils of the Nazi regime. Today, with the benefit of distance, the actions of these individuals might seem rational, but in the context of their realities, their actions were nothing short of extraordinary. These men and women were the exception rather than the rule and the honors bestowed on them today speak to their importance. Exhibits and monuments to them can be seen in Holocaust memorials around the world and even in the U.S. Capitol.

These stories are not merely told to honor those who risked their lives, but also to assist in the healing process. For many Jews, even decades after WWII ended, the horrors of the war are still profoundly real. The overwhelming brutality of the acts perpetrated against fellow human beings is enough to make anyone question the inherent nobility of mankind. But by telling the stories of the *Righteous*, Jews and millions of others around the globe have found a kind of antidote to hate. The task of remembering the evils while celebrating those who proved that wherever evil exists, you can always find good, have been an invaluable addition to the effort to come to terms with the past and assist communities impacted by war.

Today, an unlikely figure has been advocating for greater acknowledgement of Bosnia’s righteous, individuals she refers to as *upstanders*. Svetlana Broz, the granddaughter of Josip Broz Tito, has worked tirelessly since the end of the war to document and recount the stories of ordinary Bosnians of every ethnicity who “actively [confronted] the choice of standing up against immorality and the degeneration of humanity or keeping quiet and accepting things the way they [were], as bystanders do.”³⁴⁹ There are many stories of *upstanders* in Bosnia. In the town of Dobo, for example, Serb forces broke into the Catholic Croat parish to destroy their archives, but the manuscripts “had been hidden at the priest’s request by ‘good people, local

³⁴⁹ Svetlana Broz, “When Nobody Stood Up and Everybody Was Guilty: A Puzzle of Individual Responsibility and Collective Guilt,” in *War, Community, And Social Change: Collective Experiences in The Former Yugoslavia*, Peace Psychology Book Series (Book 17), edited by. Dario Spini, Guy Elcherth and Dinka Corkalo Biruski. New York, New York: Springer, 2014, 155-161.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Serbs,' who took them to their houses...and who returned them after the end of the war."³⁵⁰ Another story recounted by Broz tells of a group of Croatian soldiers who lined up Muslim men, women, and children and asked a local Croatian man to decide who the soldiers should kill and how. The local Croatian, a friend and neighbor of many in the line, immediately said: "'You should be ashamed of yourselves! These people are innocent. Release them. Let them go home.' Then he...said [to the captives], 'I'm so sorry. This is all I can do. I know they will kill me tonight. I wish all of you the best.'" That night the soldiers, indeed, killed their fellow Croat.³⁵¹ Stories, like these, cut to the heart of the human experience of war, but more importantly, they make the listener question themselves and their own actions. These stories are told in the hopes that, should future generations find themselves in similar circumstances, they will recognize that there are choices in life and hopefully they will take strength from the actions of the *upstanders* they have learned about.

Through the organization *Gariwo: Gardens of the Righteous Worldwide*, and their Sarajevo office, Broz and others seek to archive and share these stories of *upstanders*. They hope to create a cultural center and memorial in Sarajevo in the vein of Yad Vashem, the Holocaust memorial garden in Israel. This center is meant to be a place of remembrance and education for all the people of Bosnia, to come together and retell the stories of those that rejected the narrative of hate and fear. Supporting efforts like this has many valuable benefits, both in Bosnia as well as in future post-war zones. The importance of narrative in these environments is vital to ensuring a lasting peace. In places like Bosnia, nationalist political leaders have continued to dominate the narrative with divisive and chauvinistic rhetoric that has only engrained the stories of ethnic violence and hatred that were rampant throughout the war. These stories continue to divide communities today. However, by regaining control of the narrative, and replacing divisiveness with the narrative of choice and civil courage, local NGOs and civil society organizations like *Gariwo*, with the assistance of international partners, can counteract the antagonism produced by the existing rhetoric, creating "an axis around which a healthy future can be constructed"³⁵².

Reconstruction vs. Commemoration

Perhaps one of the most important questions for the international community to address is the role that commemoration and memory play in the rebuilding process. In Bosnia,

³⁵⁰ Riedlmayer, *Deconstruction of Cultural Heritage*.

³⁵¹ Broz, "When Nobody Stood Up"

³⁵² Ibid.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

according to a Council of Europe report, “[t]he intention behind restoration and reconstruction...has been to demonstrate a return to normality, re-affirming cultural identity and restoring places to their former familiar appearance” but the report goes on to posit that:

the key to successful reconstruction is the recognition of the scale and character of the place, which should assume priority over issues of contemporary or historicist style. The identity of the people and the community as it exists in the post-conflict period should be a prime factor in assessing reconstruction needs and appearances.³⁵³

The report points at an important question. After years of violent and destructive conflict, have the requirements of the community, or even its emotional character, changed and should the rebuilding effort reflect this transformation or should all efforts be made to reconstruct exactly what was lost? To what degree does returning to normality, and reconstructing sites as they were, fail to incorporate the community’s new reality? Additionally, is it necessary or even possible to incorporate the destruction of a site into its rebuilding? Where exactly the balance can be found is a difficult question to answer, but the first place to look would have to be within the community itself. The people, for whom these sites exist as part of their everyday lives, know better than any international actor how reconstruction efforts should proceed.

The international community’s failure to properly understand the new context of post-war Bosnia directly resulted in the failure of its framework for rebuilding. Clearly, further research must be done to address the question of how local actors can be brought into the reconstruction process to, not only build local support and ownership, but to determine how the reconstructed site can best represent the changed community as well as perform the functions it needs to.

The current conflicts in Syria and Iraq, as well as potential future conflicts, will all require that these questions be answered before rebuilding can proceed. Otherwise, the international community risks the future peace and security of the cultural heritage sites in question.

³⁵³ Ismeta Dervoz, “Cultural Heritage in Crisis and Post-Crisis Situations,” Committee on Culture, Science, Education and Media, *Council of Europe*, 2015, 11.

Conclusion

Throughout history, cultural heritage has been caught in the crossfire of conflict and war. Today, despite unprecedented efforts by the international community to preserve and protect cultural patrimony in times of crisis, destruction of artifacts, antiquities, and cultural sites is an all too frequent occurrence. As the ability to protect these sites remains questionable, it is vital for international organizations and peace builders to prepare a post-war framework that effectively incorporates the rebuilding of cultural heritage. Otherwise, they risk doing irreparable damage to the sites, the delicate balance of peace, and to their ability to effectively and legitimately work in these communities.

As the case of Bosnia and Herzegovina shows us, this is not an easy task and despite their best intentions and efforts, the international community can sometimes get it wrong. Without recognizing the primacy of the local needs and mindset, the international framework falls short. But by understanding the realities on the ground and aiming for a process that integrates the domestic population into the framework, many of the failures in Bosnia might be avoided. Additionally, while rebuilding efforts recognize the long-term scale of the process, short-term solutions can often prevent the sought-after reconciliation. By incorporating long-term peace building strategies, which focus on preserving community identities and shifting the narrative, rebuilding can take place within an environment that is slowly but surely moving towards lasting peace. The goal should be an environment where the cultural heritage of the community may at last be safe.

Conclusion

Daniel Serwer

This volume of essays begins and ends with authors who conclude that culture is relative. What Westerners may regard as the “cultural heritage of mankind,” Islamic State fighters and ideologists regard as idols no more worthy of preservation than those Mohammed smashed in Mecca almost 1400 years ago. Destroying them serves the dual purpose of offending the West and helping the Islamic State to recruit. A Bosnian bridge that internationals treasure as a symbol of peace and brotherhood is a source of contention between local Croats and Bosniaks. If we are to preserve a semblance of objectivity and hope for effectiveness, we need to keep in mind not only our own conceptual frames but also those of others.

While she regards Islamic State cultural destruction as more instrumental and propagandistic than religious, Stephanie Billingham in Chapter 1 concludes that negotiating ransom in exchange for cultural preservation would be morally wrong, even if theoretically possible. It would put resources into the hands of people who would use them for violent ends. People should be valued over statues. But at the same time she concludes that we have to do more to ensure local ownership of cultural artifacts if we want local people to protect them. Simply asserting that Palmyra is the common heritage of mankind does not make it so. In too many countries, cultural artifacts are separated—sometimes by removal during a prior colonial period—from ordinary people, who rarely see, study, or appreciate them. The cartoon by Chappatte suggesting that those smashing artifacts are on their first visit to a museum is poignant and far too plausible.

Likewise, Ross Hurwitz in Chapter 6 underlines the importance of listening attentively to local people in considering what may or may not contribute to cultural reconciliation after war. The preconceptions of foreigners are not likely to track well with the predilections of those who have lived through war. Their memories and preferences should guide memorialization if we expect it to have a serious impact on the way people think and act. He offers examples: Bosnia’s virtual, on-line communities linking displaced people and refugees with their original homes and the Israeli practice of designating as “righteous among nations” those who saved Jews during the Holocaust. Both suggest that rebuilding relations is more important than just putting up memorials or reconstructing objects destroyed during wartime.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Looting of cultural artifacts is nevertheless to be prevented whenever possible. It damages not just the objects but our understanding of history and ourselves while enabling terrorists to sustain their assault on civilizations that bridge the Middle East and Europe. Three of the remaining chapters in this book look at the long supply chain between archaeological sites in Islamic State-controlled territory in Iraq and Syria and buyers in Western Europe, the Gulf, and North America. The authors try to piece together what can be done to block the looting, the trade and ultimately the sale of cultural artifacts.

Jessica Jones argues in Chapter 2 that the United States has not done all it can and should do to dis-incentivize trafficking in looted artifacts. It has minimally implemented the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property but that is far from sufficient. The UNESCO convention has shortcomings. It requires that artifacts be registered in museum inventories in order to be protected. Broader protection is only available if a bilateral agreement is in place. U.S. law specifically relevant to cultural artifacts provides only for civil, not criminal penalties, focused on recovery and return. The only criminal prosecutions possible are under an act that requires the government to prove that a foreign country owned an artifact and the defendant knew it was illegally obtained.

Jones suggests that the U.S. should model new legislation on the Lacey Act, which provides criminal and civil penalties for trade in illegally killed wildlife, or European Union regulations regulating timber trade, which put the burden of proof on the operators rather than the regulator. She also suggests an international registry of cultural artifacts managed by an international secretariat like the one that administers the UNESCO Convention on International Trade in Endangered Species of Wild Fauna and Flora.

Ceriel Gerrits in Chapter 3 looks at the intermediaries who effect the trade of cultural artifacts between the initial looter and the ultimate buyer. He develops a network theory of antiquities looting, one that is largely decentralized and non-hierarchical from the initial looter through middlemen to art dealers in richer countries. There is little or no evidence of organized crime involvement. But a good deal of mystery surrounds a key value-added step in the antiquities trade: creation of provenance documents required for legal sale in many recipient countries. Examination of customs documentation increases the mystery: they show little evidence of increased trade from Iraq and Syria, or the likely intermediary countries, despite the known increased looting in the last two years or so. He recommends heightened awareness by Customs officials to avoid mislabeling of artifacts as well as an international registry of provenance certificates.

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

Katelyn van Dam in Chapter 4 elucidates the workings of the *Diwan al Rikaz*, which organizes and oversees the Islamic State's system for exploiting cultural artifacts as a source of revenue. This is no slap-dash affair. It includes licensing of smaller operators, who are required to pay up to 85% of their income to the Diwan, as well as industrial-scale efforts by the Diwan itself. Manbij, a Syrian town near the Turkish border recently taken by Kurdish-led forces, appears to have played a particularly strong role in the smuggling network. Fighters on all sides in the Syrian war are known to have participated in the antiquities trade. Damascus and neighboring countries, including Lebanon, Turkey and Jordan play a crucial role before artifacts move on to Greece, Bulgaria and the United Arab Emirates before making their way to Europe and the U.S.

Chapters 5 focuses on what the UN can do about the illicit trade in antiquities. Rie Horiuchi thinks the UN could do better in preventing cultural damage, limiting it during conflict and improving its performance after conflict. This would require capacity building for cultural protection experts, training internationals as deployable cultural police, creation of a Cultural Destruction Prevention Mechanism for the Middle East and North Africa, application of Responsibility to Protect to cultural artifacts, and explicit incorporation of cultural protection into UN peacekeeping mandates, as was done in Mali (but not Kosovo, where cultural protection nevertheless was pursued).

While the SAIS students were at work, the Antiquities Coalition, the Middle East Institute and the Asia Society convened their *#CultureUnderThreat* Task Force, which issued its "Recommendation for the U.S. Government" in April 2016.³⁵⁴ The two efforts were distinct, even if the Antiquities Coalition was involved in both. The Task Force consisted of distinguished scholars and people working for non-governmental organizations. Its recommendations are generally speaking consistent with those made here.

The Islamic State is now losing territory: perhaps half of what it once controlled in Iraq and one-quarter of what it once controlled in Syria. The issue of cultural artifacts is likely to decline in political salience as a consequence. Palmyra is already back in government hands, as are other archaeological sites. The loss of Manbij will likely crimp trafficking in artifacts, as it will make transport across the Turkish border more difficult. Raqqa and Mosul will fall eventually.

³⁵⁴ #CultureUnderThreat Task Force, "Recommendations for the U.S. Government," April 2016, <http://taskforce.theantiquitiescoalition.org/wp-content/uploads/2015/01/Task-Force-Report-April-2016-Complete-Report.pdf>

Culture in Crisis: Preserving Cultural Heritage in Conflict Zones

These developments should not however blind us to the continued trafficking, albeit at a lower level, or block us from preparing for the next onslaught, whether from the Islamic State or some other group in the Middle East or beyond. The kinds of legal and institutional reform recommended here will not happen overnight. The respite from Islamic State expansion should be put to good use. It has demonstrated a capacity to monetize artifacts that some future group will surely imitate and improve on. There is a need to maintain the pressure for tighter controls, lest we find ourselves ill-equipped in the next war.

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