

Cultural Heritage and Security Policy

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ABSTRACT

National security and cultural heritage protection are connected in several ways. Cultural policy as a component of security policy plays a crucial role in promoting social cohesion, diplomatic relations, international cooperation, and regional stability. Instrumental in shaping and promoting national identity, cultural heritage fosters unity among citizens. Safeguarding cultural heritage can contribute to national cohesion and resilience, which are essential components of national security. Caring for culture is not only necessary for maintaining history but also for sustaining economic growth and stability. Protecting and preserving a nation's culture can enhance its international reputation, strengthen diplomatic relations, and promote peaceful cooperation with other countries. During the 2003 Iraq War and the conflict against ISIL and other terrorist groups, evidence demonstrated that funds generated as a result of looting and illegal trafficking of artifacts were used by insurgents to fund their terrorist activities, armed conflict, and other illegal actions. Protecting sites and artifacts is therefore also essential in reducing security threats and safeguarding national interests. This combination of factors has resulted in changes to U.S. policy and programming, particularly in the areas of U.S. foreign policy, cultural policy, and law enforcement. This Article explores how the real or perceived relationship between threatened cultural heritage and national security developed, how this relationship has changed U.S. foreign and cultural policy, and whether these changes are for the better or the worse from a broader policy perspective, particularly with respect to the goal of cultural heritage preservation.

“Cultural policy is security policy”

– Lee Satterfield, Assistant Secretary of State for Educational and Cultural Affairs.¹

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¹ Lee Satterfield, Ass't U.S. Sec. of State, Remarks at Signing of Memorandum of Understanding between the United States and Yemen (Aug. 30, 2023) (memorandum restricting the import into the United States of illegally exported archaeological and ethnological materials)

I. INTRODUCTION

The linkage of cultural heritage destruction and, in particular, the looting and sale of cultural objects on the international market with national and global security has become increasingly prevalent since the time of the 2003 Gulf War. These connections have continued to become clearer with the thefts and looting of cultural objects in later conflicts. This recognition has led to an investment of increased resources and changes in law and policy in the attempt to stem the flow of illegally obtained cultural objects onto the international market. While the explicit goal of these changes is to enhance security, these changes also have the added benefit of helping to safeguard cultural heritage itself. This Article explores how the real or perceived relationship between cultural looting and national security developed, how this relationship has transformed U.S. foreign and cultural policy, and whether these changes are for the better or the worse from a broader policy perspective, particularly with respect to the goal of global cultural heritage preservation.

The trade in looted artifacts is a phenomenon of global dimensions, resulting in a loss of knowledge, adversely affecting the scientific record, and—most importantly—depriving communities of their cultural traditions and heritage. The ongoing demand for cultural items results in thefts from cultural repositories and looting of archaeological sites. There is money to be made in the looting, laundering, and sale of ancient things. The question that we pose and attempt to answer is: to what extent do the destruction, theft, and illegal trade of cultural artifacts pose a threat to national and global security, and what measures can be taken to counter these illegal activities? Further, does connecting these activities to global and national security make us more secure and promote the preservation of cultural heritage?

Part II of this Article considers the historical background to the development of the linkage between cultural heritage and security. Part III presents the difficulties of assessment and quantification of cultural theft, looting and destruction. Part IV describes the post-2003 evolution of the association of cultural heritage destruction and theft to national security policy. This discussion addresses the evidence garnered with respect to the 2003 Gulf War; the activities of ISIL in Syria and Iraq; the conflicts in Afghanistan, Libya, and Yemen; and the conflict in Ukraine. The suggestion that cultural looting is tied to other forms of

(signing attended by author); *see also* Lee Satterfield (@ECA_AS), X (formerly known as Twitter) (Nov. 3, 2023), https://x.com/ECA_AS/status/1720517912304267586 [<https://perma.cc/T62V-MPUR>] (“Cultural policy = security policy.”).

illegal conduct, such as money laundering and other financial crimes, is also considered.

Part V considers the reactions to this linkage at both the international level through U.N. Security Council resolutions and the U.S. national level through the adoption of new law that is legally enforceable ("hard" law) with a corresponding creation of new law enforcement entities and cultural diplomacy policies ("soft" law). Part VI presents a preliminary analysis of whether these developments accomplish their now-stated goal of increasing national and global security and the potential cost to achieving the overall goal of preserving cultural heritage for the benefit of future generations. We conclude by noting that the correlation of cultural theft and looting with national security threats has both made cultural preservation a higher priority for governments, intergovernmental entities, and nongovernmental entities while providing greater security by reducing sources of revenue for armed conflict and criminal activities. We also note a concern that cultural heritage preservation, when not linked to security concerns, may suffer because the value of preserving cultural heritage for its own sake may now be viewed as a lower priority.

II. LINKING CULTURAL HERITAGE DESTRUCTION AND SECURITY POLICY

The destruction of cultural heritage and the theft of cultural objects have a long history, stretching back to antiquity and often associated with armed conflict and other forms of violence. The destruction of cultural heritage by a conquering army was often motivated by the desire to demonstrate the complete conquest of the vanquished and to eradicate their separate identity as a means of discouraging thoughts of independence from the conqueror. At the beginning of what might be thought of as the modern era, from the mid-to-late eighteenth century to today, Napoleon looted cultural objects from throughout Europe, not only to deprive those who were defeated but also to demonstrate the moral superiority of the French and of France as the rightful location of humanity's artistic and cultural treasures. During the Second World War, Nazi Germany combined these strategies: the destruction of distinct cultural identities, demonstration of the inferiority of other non-Germanic cultural groups, and enrichment of the Nazi leadership and state with cultural objects that fit within the Nazi belief of its superiority. To these motives arguably a third was added: the acquisition of hard currency to help fund the war effort through the sale of artworks considered objectionable by the Nazi leadership to Western collectors, particularly in Britain and the United States.²

² The primary example of this during the Nazi era was the deaccessioning and sale of so-

The linkage between the goal of furthering national security, namely that of defeating armed insurgencies, and a policy of protecting cultural heritage from both destruction and theft became current during the 2003 Gulf War and its aftermath. A decade later came concern that the Islamic State in Iraq and the Levant (ISIL) utilized cultural destruction as a potent propaganda vehicle, particularly for recruiting new fighters, and cultural theft as a means of funding its armed conflict and terrorist activities. In both of these conflicts, for the first time, cultural heritage destruction and looting were documented in real time, enabled by more state-of-the-art forms of cultural heritage documentation. The sophistication of remote sensing documentation methods, such as satellite imagery and unpiloted aerial vehicles (i.e., drones), has continued to evolve in the monitoring of cultural destruction as seen in the current conflict in Ukraine.³

In the twenty years since the 2003 U.S.-led invasion, the idea that the theft and looting of cultural objects pose a threat to U.S. national and global security has become entrenched. As a result, both international agencies, such as the United Nations Security Council, and national entities, such as the U.S. Congress and U.S. State Department, have enacted policies that reflect these concerns. During the Iraq war and subsequent conflicts in Syria and Iraq, scholars, journalists and government officials argued that funds generated as a result of looting and illegal trafficking of artifacts are used by actors, such as the insurgents during the Iraq War and ISIL, to fund their terrorist activities, armed conflict, and other illegal actions. Arguably, it is this connection that resulted in changes to U.S. policy and programming, particularly in the areas of U.S. foreign policy, cultural policy, and law enforcement.

The linkage of cultural heritage destruction, theft and looting with security has been accepted by both international and national entities. As a result, the U.N. Security Council adopted three resolutions that

called “degenerate” paintings from German museums. Despite qualms about whether these sales were helping the Nazi war effort, Western collectors were eager to acquire these works, in part justifying their actions based on a narrative that they were thereby rescuing these works from possible destruction by the Nazi government, the common savior trope used in defense of questionable acquisitions. See LYNN H. NICHOLAS, *THE RAPE OF EUROPA* 3–6 (1994); Samuel Andrew Hardy, *Conflict Antiquities’ Rescue or Ransom: The Cost of Buying Back Stolen Cultural Property in Contexts of Political Violence*, 28 INT’L J. CULTURAL PROP. 5, 5–6 (2021).

³ See, e.g., *Remotely Monitoring Ukraine’s Cultural Heritage with the Conflict Observatory*, SMITHSONIAN GLOB., <https://global.si.edu/projects/remotely-monitoring-ukraine%E2%80%99s-cultural-heritage-conflict-observatory> [https://perma.cc/E7CS-QN8U]. More recent reports produced by the Smithsonian Cultural Rescue Initiative are now posted on the Smithsonian’s research portal, such as Katharyn Hanson et al., *Site-Based Report: Kharkiv Regional Philharmonic Orchestra in Kharkiv, Ukraine*, SMITHSONIAN, https://smithsonian.figshare.com/articles/report/_b_Site-Based_Report_b_b_Kharkiv_Regional_Philharmonic_Orchestra_in_Kharkiv_Ukraine_b_/25412245 [https://perma.cc/9BNE-TZ5E].

related in part or in whole to addressing the problem,⁴ and many countries, including the United States, and the European Union adopted legislation implementing those resolutions. Many countries also enacted financial regulations to apply their money laundering provisions to trade in artworks and antiquities. Focus on combating cultural theft and looting prompted formation of specialized law enforcement entities, such as the Federal Bureau of Investigation (FBI) Art Crime Team, and encouraged adoption of the Ambassadors Fund for Cultural Preservation in the U.S. Department of State. Finally, intergovernmental and nongovernmental entities, including UNESCO and the Blue Shield movement, focused on means of preventing losses from theft and looting.

III. CHALLENGES IN QUANTIFYING CULTURAL HERITAGE THEFT AND LOOTING

Many things are said and written about the theft and destruction of cultural heritage which, upon closer examination, are not necessarily borne out by whatever evidence, often meager, is available. The most commonly stated but problematic claim relates to the purported size of the illegal elements of the art market in cultural property, art works and, more specifically, archaeological objects. The illegal trade has been valued at up to \$6 billion or more per year and characterized as the second, third, or fourth largest illegal global market.⁵ Accurately

⁴ See S.C. Res. 1483 (May 22, 2003); S.C. Res. 2199 (Feb. 12, 2015); S.C. Res. 2347 (Mar. 24, 2017).

⁵ Sometimes this trade is characterized as trade in cultural property and other times as trade only in antiquities or archaeological artifacts. This illegal trade has been variously stated to follow trade in illegal arms, narcotics, and sometimes human trafficking. See, e.g., Michele Kunitz, *Switzerland & the International Trade in Art & Antiquities*, 21 NW. J. INT'L L. & BUS. 519, 519–20 (2001) (stating the illegal trade in art and antiquities is second or third largest and variously estimated to be worth \$800 million to \$6 billion annually); Ayla Jean Yackley, *Accord Between U.S. and Turkey to Counter Illicit Trade in Artefacts Divides Historians and Preservationists*, THE ART NEWSPAPER (Feb. 3, 2021), <https://www.theartnewspaper.com/2021/02/03/accord-between-us-and-turkey-to-counter-illicit-trade-in-artefacts-divides-historians-and-preservationists> [<https://perma.cc/X7T8-S9DQ>] (citing an estimate that the criminal market is worth \$6 billion); Alex W. Barker, *Looting, the Antiquities Trade, and Competing Valuations of the Past*, 47 ANN. REV. ANTHROPOLOGY 455, 456 (2018) (citing U.N. report that annual trade in illicit antiquities was worth \$7.8 billion, ranking third behind drugs and arms trafficking). In 2023, UNESCO cited statistics on the profits from the illegal trade in cultural goods of \$225 million to \$3 billion annually (the Museum Association), \$300 million to \$6 billion annually (the Organized Crime Group of the UK Metropolitan Police and INTERPOL), and \$1.6 billion (the sum available for money laundering through the art market according to the International Monetary Fund or 2.7% of the world's GDP in 2009; however, this number seems to be a miscalculation of the figure given in the UNODC report and should be \$1.6 trillion.). The U.N. Convention against Transnational Organized Crime indicates that trafficking of cultural goods is correlated to terrorism financing, organized crime, illicit trafficking of drugs and firearms, money laundering and corruption. *The Illicit Trafficking of Cultural Goods Shall Be Recognized as a Security Issue*, UNESCO (Nov. 23, 2023), <https://www.unesco.org/en/articles/illicit-trafficking-cultural-goods-shall-be-recognized-security-issue?fbclid=IwAR0leOQBNOO-vHyFe1azXHferOpEV6KIOw0VUIYpO4chushSLZsONbDDON8>

estimating the exact dollar figure for the illegal antiquities trade is impossible, as it is an underground, hidden, and secretive market carried out almost entirely (with the exception of some quasi-government actors such as ISIL) by private actors. Additionally, the monetary value of this trade can fluctuate depending on various factors such as the region, demand, the capriciousness of collectors, and the specific artifacts involved. Many estimates suggest that the illegal antiquities trade is a multibillion-dollar industry annually, which, if accurate, would make it a compelling market for generating meaningful funds to support insurgency, terrorism, and other nefarious actions.

In 2023, Donna Yates and Neil Brodie of the Trafficking Culture network published an article that exhaustively studied the origins and history of claims to the market value and rank order of the illegal trade in antiquities.⁶ They persuasively trace the origin of the claim that the trade in illegal antiquities is the third-largest illegal trade (following arms and narcotics) to a statement made, without support, by John J. Riley, a U.S. Department of Treasury official, in 1974.⁷ While Yates and Brodie agree that the illegal trade in antiquities is a matter of serious concern, they argue that the reiteration of and reliance on unsubstantiated claims only serve to undermine credibility, as these claims attempt to quantify the harm of illegal trading in the wrong terms.⁸ It is this association with a billion dollar figure and its often cited description as third in volume only to other criminal networks involving narcotics and arms that has gained traction in the spheres of diplomacy and securitization, spurring changes in policy and programming.

The challenge is determining what difference or harm these statements—arguably misstatements—create in understanding cultural heritage policy. The most obvious problem is that the use of unsupported and likely incorrect data diminishes respect for the academic and legal institutions that repeat these claims. Second, the use of misinformation hands a weapon to market proponents who oppose efforts to curtail the market in illegally obtained artifacts,⁹ an effort at curtailment

[<https://perma.cc/2MHC-ZMPL>].

⁶ Donna Yates & Neil Brodie, *The Illicit Trade in Antiquities is Not the World's Third-Largest Illicit Trade: A Critical Evaluation of a Factoid*, 97 ANTIQUITY 991 (2023).

⁷ Yates and Brodie cite to a letter from the Regional Director of Investigations of the Bureau of Customs, Department of the Treasury, John J. Riley, discussed in *The Antiquities Market: News and Commentary on the Illicit Traffic in Antiquities*, 1 J. FIELD ARCHAEOLOGY 215, 215 (1974).

⁸ See Morag M. Kersel, *Challenging a 50-Year-Old Factoid About the Illegal Antiquities Trade*, HYPERALLERGIC (July 27, 2023), <https://hyperallergic.com/835894/challenging-a-50-year-old-factoid-about-the-illegal-antiquities-trade/> [<https://perma.cc/G3NM-H4DB>].

⁹ For an example of such market proponents, see The Comm. for Cultural Poly & The Glob. Heritage All., *Comments on UNESCO's Draft Model Provisions on the Prevention and Fight Against the Illicit Trafficking of Cultural Property*, CULTURAL PROP. NEWS (Nov. 11, 2022), <https://culturalpropertynews.org/comments-on-unescos-draft-model-provisions-on-the-prevention-and-fight-against-the-illicit-trafficking-of-cultural-property/> [<https://perma.cc/V8BD-ZP2W>].

that is nonetheless justified. A third point is the question of whether the use of poor data results in equally poor policy or whether, as Michael Press stated, “poor policy causes the repetition of false claims.”¹⁰ Overall, a core point we wish to make in this Article is, as Kersel points out, that national security is not the fundamental reason for attempting to curtail the trade in illegally obtained artifacts. Rather, she commented,

whether the illegal trade in antiquities is ranked third or 43rd, the harm is the same—the looting of archaeological sites and theft from museums and other sites in the quest for items for the antiquities market. A looted artifact ripped from the ground has lost its archaeological context, knowledge is lost, and locals are unable to access their past. As Yates and Brodie highlight, there is no real need to measure the illegal trade to assess its negative impact: We only need to see an image of a looted landscape, or the feet of a statue whose torso and head have been removed for the market.¹¹

As Kersel makes clear, there are many reasons to stem the flow of illicitly obtained cultural objects in addition to their link to national or global security threats. The theft of known objects deprives local and national communities of their heritage and diminishes the ability of the global community to enjoy and learn from such objects. The looting of archaeological sites to obtain objects for the international market imposes additional and more severe negative externalities. When an archaeological site is looted and objects are retrieved unscientifically, their intangible stratigraphic relationship and contextual association with other objects, faunal and floral remains, architectural features, and human remains are destroyed. This heritage is an unrenovable resource that cannot be duplicated; its destruction permanently diminishes or destroys our ability to understand and reconstruct the past. This should be the predominant rationale for attempting to curtail such looting through imposing detrimental consequences on those involved in the trade, including disruption of the trade at the destination market end. To this extent, the size of the market and the threat that such looting poses to national or global security are less significant because any looting imposes these detriments. We acknowledge that knowing the extent of the problem measured in terms such as monetary value can

¹⁰ Michael Press (@MichaelDPress), X (formerly known as Twitter) (June 30, 2023, 4:14 AM), <https://x.com/MichaelDPress/status/1674708142033104900> [<https://perma.cc/PZ3Z-MQRL>]; see also Michael D. Press, *How Social Media is Allowing for Illegal Antiquities Trafficking*, HYPERALLERGIC (July 11, 2019), <https://hyperallergic.com/508907/how-social-media-is-allowing-for-illegal-antiquities-trafficking/> [<https://perma.cc/LR46-3U5E>].

¹¹ Kersel, *supra* note 8.

be an important tool for informing the extent of resources that should be devoted to stemming these activities so long as the goal is achieving greater security. If the goal is preservation of cultural heritage and enhancing knowledge of the past, then knowing the extent of the loss can also be useful in determining the resources that should be devoted to solving the problem. However, the extent of that loss cannot be measured in monetary terms, although it might be quantifiable in other terms, such as the numbers of sites looted, graves disturbed, and artifacts trafficked.

In terms of a potential relationship to terrorism and other transnational crimes, it is worth noting that undocumented antiquities are an ideal source of income for criminal activity. Their previously unknown character means that it is difficult to track down their movements or to definitively determine their legal status. Their undocumented nature poses unique challenges to law enforcement; legal efforts to stem their trade have necessitated the development of sui generis legal doctrines. There is a virtually unlimited supply of freshly looted objects, and there is significant resistance to effective legal detriments imposed at the destination end of the market supply chain when these objects surface among leading cultural institutions and well-heeled, often politically connected private collectors.

IV. BUILDING A NARRATIVE: THE EVOLUTION OF LINKING CULTURAL THEFT AND LOOTING TO NATIONAL SECURITY

To the extent we can determine, the first suggestion¹² of a linkage between archaeological thefts and terrorism was put forward by Matthew Bogdanos in an opinion piece published in *The New York Times* on December 10, 2005.¹³ Bogdanos was a U.S. Marine Corps Colonel and is an Assistant District Attorney in the District Attorney's Office for New York County (Manhattan).¹⁴ Bogdanos founded and still leads

¹² Media stories linked the funding for flying lessons for Mohamed Atta, one of the lead 9/11 attackers, to his attempted sale of antiquities in Germany. See, e.g., Heather Pringle, *Jihadist and Young Archaeologist*, HEATHER PRINGLE: BLOG (Feb. 1, 2010), <https://heatherpringle.com/2010/02/01/jihadist-and-young-archaeologist/> [<https://perma.cc/GNY6-U4FM>]. However, this assertion has never been substantiated.

¹³ Matthew Bogdanos, *The Terrorist in the Art Gallery*, N.Y. TIMES (Dec. 10, 2005), <https://www.nytimes.com/2005/12/10/opinion/the-terrorist-in-the-art-gallery.html> [<https://perma.cc/K83F-3DQK>] [hereinafter Bogdanos, *Terrorist in Art Gallery*]. This article was later elaborated in MATTHEW BOGDANOS, THIEVES OF BAGHDAD: ONE MARINE'S PASSION TO RECOVER THE WORLD'S GREATEST STOLEN TREASURES (2006).

¹⁴ Bogdanos was known primarily for some high-profile murder prosecutions. However, he had completed an M.A. at Columbia University in Classical Studies and so evinced a strong interest in archaeology. He led the Joint Interagency Coordination Group for the U.S. Central Command that conducted criminal investigations in Iraq including the thefts of antiquities from the Iraq Museum in Baghdad in April 2003. See Matthew F. Bogdanos, *Joint Interagency Cooperation: The First Step*, 37 JOINT FORCE Q. 10, 14 (2005). Corine Wegener, an Army major reservist in Civil

the Antiquities Trafficking Unit of the District Attorney for New York County, discussed below. In his *New York Times* article, Bogdanos asserted that looted antiquities were found with other forms of contraband, especially weapons, in Iraq during the 2003 Gulf War. He further linked terrorists arrested in Iraq with antiquities that were stolen from the Iraq Museum and asserted that trafficking in antiquities ranked second “as a cash source for the terrorists.”¹⁵ His findings corroborated the *9/11 Commission Report* claims that al-Qaeda, anticipating that its accounts would be frozen after the September 11 attacks, sought to safeguard its finances by sinking money into a diverse portfolio, which included antiquities.¹⁶

For several years following, the linkage between antiquities looting and security threats received less attention until the rise of ISIL in 2013 and reports of large-scale looting of archaeological sites, primarily in eastern Syria. This phase of the linkage narrative received national attention, again through an opinion piece published in *The New York Times*, authored by three archaeologists who had recently returned from a training program for Syrian museum professionals in preservation of cultural heritage conducted in Gaziantep, Türkiye.¹⁷ Some of those participating in the training program were living in areas controlled by ISIL and they reported that ISIL was reaping monetary rewards through the looting of archaeological sites, primarily by imposing a tax on the looters based on the monetary value of their finds. ISIL would grant licenses to the looters and earn additional funds through taxing the smugglers and occasionally selling off objects themselves.¹⁸

The idea that ISIL was profiting and earning funding for its armed conflict in Iraq and Syria and for terrorist activities abroad quickly caught on and was repeated in numerous publications, including in statements issued by the U.S. State Department and by some researchers who received funding from State Department sources.¹⁹ Assessment

Affairs and curator at the Minneapolis Institute of Arts, was the Arts, Monuments, and Archives officer for the 352nd Civil Affairs Command in Baghdad and worked with the Iraq Museum staff in reconstituting the museum after its looting in April of 2003.

¹⁵ Bogdanos, *Terrorist in Art Gallery*, *supra* note 13.

¹⁶ *Id.*

¹⁷ Amr Al-Azm, Salam Al-Kuntar & Brian I. Daniels, *ISIS' Antiquities Sideline*, N.Y. TIMES (Sept. 2, 2014), <https://www.nytimes.com/2014/09/03/opinion/isis-antiquities-sideline.html> [<https://perma.cc/V35M-AKCN>].

¹⁸ *Id.*; see also Russell Howard, Jonathan Prohov & Marc Elliott, *Digging In and Trafficking Out: How the Destruction of Cultural Heritage Funds Terrorism*, 8 CTC SENTINEL 14, 16–17 (2015).

¹⁹ The best funded of these research projects was the Cultural Heritage Initiatives of the American Society of Overseas Research [ASOR], which published weekly and monthly reports of the cultural heritage damage in Syria. See *Weekly/Monthly Reports*, AM. SOC'Y OF OVERSEAS RSCH., <https://www.asor.org/chi/reports/weekly-monthly> [<https://perma.cc/29Q8-B422>]. While also documenting cultural heritage destruction, the director of this project, Michael Danti, made numerous public statements concerning the linkage between this looting and funding of terrorism

of the extent of looting was significantly aided by increasingly sophisticated methods of remote sensing, primarily through satellite imagery not available in earlier conflicts to the same degree or to the same level of accuracy.²⁰

The only direct evidence of ISIL's revenue stream came from a raid conducted by U.S. special forces on the compound of Abu Sayyaf, informally described as the chief financial officer of ISIL, in the spring of 2015. Based on information obtained from this raid, U.S. government officials estimated that ISIL earned several million dollars from mid-2014 to mid-2015.²¹ The Abu Sayyaf raid also gave an important indication of ISIL's motive and method of operation with respect to antiquities. Publicized widely through the Internet, ISIL garnered public attention and outrage at the intentional destruction of cultural sites, monasteries, and Islamic shrines, although ISIL did not "advertise" the looting of sites. On a large and public stage, ISIL destroyed immovable structures, such as ancient temples and Islamic mosques and shrines, and objects either too large to move or too well known to sell on the international market. ISIL posted these destructive activities publicly as performative propaganda, both to attract fighters and to demonstrate the powerlessness of the West to prevent the destruction.²²

and armed conflict. See, e.g., *Looting Antiquities: A Fundamental Part of ISIS' Revenue Stream*, NPR (Sept. 29, 2014, 4:13 PM), <https://www.npr.org/2014/09/29/352538352/looting-antiquities-a-fundamental-part-of-isis-revenue-stream> [<https://perma.cc/U7VR-DHT4>]; Jason Felch, *Danti's Inference: The Known Unknowns of ISIS and Antiquities Looting*, CHASING APHRODITE (Nov. 18, 2014), <https://chasingaphrodite.com/2014/11/18/dantis-inference-the-known-unknowns-of-isis-and-antiquities-looting/> [<https://perma.cc/P7AN-XEBW>]. That the issue of cultural destruction and looting was clearly a priority for the State Department was demonstrated in a high-level event held at the Metropolitan Museum of Art at which then-Secretary of State John Kerry and other State Department officials condemned ISIL's actions. See Josh Niland, *John Kerry Blasts ISIS's Cultural Destruction in Met Speech*, ARTNET NEWS (Sept. 23, 2014), <https://news.artnet.com/art-world/john-kerry-blasts-isis-cultural-destruction-in-met-speech-111572> [<https://perma.cc/764N-Z8WZ>].

²⁰ See, e.g., Susan Wolfinbarger, et al., *Ancient History, Modern Destruction: Assessing the Current Status of Syria's World Heritage Sites Using High-Resolution Satellite Imagery*, AM. ASS'N FOR THE ADVANCEMENT OF SCI. (Sept. 2014), <https://www.aaas.org/resources/ancient-history-modern-destruction-assessing-current-status-syrias-world-heritage-sites> [<https://perma.cc/J4CM-AG4Z>].

²¹ See Andrew Keller, U.S. Dep't of State, Remarks on Documenting ISIL's Antiquities Trafficking: The Looting and Destruction of Iraqi and Syrian Cultural Heritage: What We Know and What Can Be Done (Sept. 29, 2015), <https://2009-2017.state.gov/e/eb/rls/rm/2015/247610.htm> [<https://perma.cc/T7G4-PLS2>]. Receipts found on Abu Sayyaf's hard drive indicate a tally of \$265,000 as being realized from the sale of antiquities between December 6, 2014, and March 26, 2015. However, it is not known how large a territory is reflected in this tally.

²² Many different motivations have been attributed to ISIL for the destruction of cultural heritage. See, e.g., Ömür Harmanşah, *ISIS, Heritage, and the Spectacles of Destruction in the Global Media*, 78 NEAR E. ARCHAEOLOGY 170, 175 (2015); Christopher W. Jones, *Understanding ISIS's Destruction of Antiquities as a Rejection of Nationalism*, 6 J. E. MEDITER. ARCHAEOLOGY & HERITAGE STUDS. 31 (2018); Wendy M. K. Shaw, *In Situ: The Contraindications of World Heritage*, 6 INT'L J. ISLAMIC ARCHITECTURE 339, 341 (2017); see also Miroslav Melčák & Ondřej Beránek, *ISIS's Destruction of Mosul's Historical Monuments: Between Media Spectacle and Religious*

However, away from public view, it orchestrated the looting of non-Islamic materials and sold them or taxed their sale for profit. Found among Abu Sayyaf's records was an image of a pagan deity and a Christian book.²³ Because these objects were likely thought to have market value, they were not damaged.

Subsequent scholarly efforts have been aimed at quantifying how much funding ISIL might have realized based on analyses of the extent of the observable looting²⁴ and market research. Rather than a site-level analysis, a recent market study of a particular coin type, the seventh-century Umayyad copper "Standing Caliph" coins, concluded that there was an increase of sixty-six percent in the number of undocumented (and therefore likely recently looted and trafficked) coins of this type from Syria between 2012–2021.²⁵

While the looting of sites and the museum in Iraq in 2003 and after struck a chord with the public, the looting of antiquities in Syria by ISIL and its potential linkage as a funding source for armed conflict and terrorism received a level of attention and justification for security policy changes unmatched in other conflicts. One might query why other conflicts where looting of archaeological sites was also documented—such as those in Afghanistan, Libya, and Yemen—did not achieve the same level of attention, but there is no single, readily discernible answer. Brodie suggests that the degree of media attention reflects the extent of looting, but that is not a complete answer. He posits that media attention tends to focus with a concomitant effort by the international community to alleviate the situation in places "where cultural heritage is under real or perceived threat of destruction in areas of political concern to the international community."²⁶ Perhaps ISIL's successes in Iraq and Syria between 2014 and 2016 appeared to pose more of a threat to countries such as the United States, and therefore the perception of the

Doctrine, 6 INT'L J. ISLAMIC ARCHITECTURE 389, 389 (2017). Melčák and Beránek note that the destruction in the area of Mosul focused on local religious sites. They attribute the pattern of ISIL's destruction to a goal of demolishing graves linked to a Salafi teaching that opposed any construction above graves.

²³ Keller, *supra* note 21; *ISIL Leader's Loot Photo Gallery*, BUREAU OF EDUC. & CULTURAL AFFS. (July 17, 2015), https://eca.state.gov/files/bureau/isil_leader_loot.pdf [<https://perma.cc/3P3L-4AEP>]. Other objects found included many ancient coins of different time periods, ceramics, and a Neo-Assyrian ivory plaque. Some of these objects had Iraq Museum numbers. It is not known whether ISIL looted these from the Mosul Museum, where the objects had been sent at some earlier time, or whether they came from the initial looting of the Iraq Museum in 2003 and had been warehoused somewhere in Iraq or Syria that subsequently came under ISIL control.

²⁴ See, e.g., Fiona Greenland et al., *A Site-Level Market Model of the Antiquities Trade*, 26 INT'L J. CULTURAL PROP. 21 (2019).

²⁵ Neil Brodie, 'Standing Caliph' Coins from Syria: Probably Looted and on the Market, in "TO ALEPPO GONE . . ." ESSAYS IN HONOUR OF JONATHAN M. TUBB 175, 180 (Irving Finkel, J.A. Fraser & St. John Simpson eds., 2023).

²⁶ Neil Brodie, *Why Is No One Talking About Libya's Cultural Destruction?*, 78 NEAR E. ARCHAEOLOGY 212, 213 (2015).

threat posed by ISIL was easier to understand. It is certainly the case that media attention plays a critical role in public attention, which may also be reflected in changes in government and international community policy responses.

Ironically, perhaps, the one other conflict that began to receive attention in recent years was the civil war in Cambodia, which occurred decades earlier between the mid-1970s and mid-1990s. However, evidence of massive looting of temple sites in Cambodia beginning in the 1960s and the appearance on the market and in museums of these looted objects prompted a recent reassessment of the histories of these objects. This led to understanding of the role that the looting and sale of these objects by the Khmer Rouge played in funding the civil war in Cambodia, as well as how trade-based money laundering and the use of offshore storage facilities and financial accounts aided the international market in illegally obtained artifacts. Such objects were also useful in facilitating other forms of international criminal activity.²⁷

The ongoing conflict in Ukraine presents a different nexus between cultural heritage destruction and security policy. There is evidence of thefts from museums, churches, and other cultural institutions and, in some cases, these stolen objects have appeared on the international art market.²⁸ However, there does not seem to be the same type of association between those activities and the funding of the conflict itself. Cultural heritage has moved from being a facilitator of armed conflict to being a key (although not the only) component of Russia's justification for the conflict. Russia's defense for its aggression relies, in part, on the

²⁷ Press Release, U.S. Att'ys Off., S. Dist. of N.Y., U.S. Attorney Announces \$12 Million Settlement of Civil Forfeiture Action Against Estate of Antiquities Trafficker Douglas Latchford (June 22, 2023), <https://www.justice.gov/usao-sdny/pr/us-attorney-announces-12-million-settlement-civil-forfeiture-action-against-estate#:~:text=In%202019%2C%20Latchford%20was%20indicted,invoices%20and%20shipping%20documents%2C%20including> [<https://perma.cc/9V8F-D577>].

²⁸ Archaeological materials have been intercepted by U.S. law enforcement. See Ukrainianska Pravda, *US Returns Scythian Swords and Cuman Sabre Taken by Russians to Ukraine*, YAHOO! (Mar. 12, 2023), <https://www.yahoo.com/lifestyle/us-returns-scythian-swords-cuman-120007110.html> [<https://perma.cc/74F2-X7V6>]; Press Release, U.S. Customs and Border Prot., CBP at JFK Returns Cultural Artifacts to Ukraine (Mar. 10, 2023), <https://www.cbp.gov/newsroom/local-media-release/cbp-jfk-returns-cultural-artifacts-ukraine> [<https://perma.cc/9ARR-EVMN>]; *DHS Secretary Alejandro Mayorkas Delivers Remarks at the Ukraine Cultural Artifacts Repatriation Ceremony*, U.S. DEP'T. OF HOMELAND SEC. (Sept. 21, 2023), <https://www.dhs.gov/media-library/assets/photo/48221> [<https://perma.cc/ZDV2-TLMY>]; Nikolai Berg & Robert Coalson, 'Cultural Expropriation': Russia Steps Up Seizures of Artifacts in Occupied Ukraine, RADIO FREE EUROPE (Oct. 28, 2023) <https://www.rferl.org/a/russia-ukraine-cultural-appropriation-artifacts-looted-war/32657653.html> [<https://perma.cc/3XZQ-5FSZ>]; *14 Historical Artifacts, Stolen by Russians, Have Been Returned to Ukraine*, UKR. MINISTRY OF CULTURE & INFO. POL'Y (MCIP) (Oct. 20, 2023) <https://mcip.gov.ua/en/news/14-historical-artifacts-stolen-by-russians-have-been-returned-to-ukraine/> [<https://perma.cc/DY3T-QM86>]. For a broader discussion of the extent of looting in the occupied areas of Ukraine, see Sam Hardy & Serhii Telizhenko, *Russia's 'Doomed to Expand [its] Aggression' Against Ukraine: Cultural Property Criminals' Responses to the Invasion and Occupation of the Donbas Since 20th February 2014*, 14 HISTORIC ENV'T: POL'Y & PRAC. 286 (2023).

argument that Ukraine is not a distinct culture, people, or nation from Russia itself and therefore should be unified with Russia.²⁹ Part of Russia's strategy seems to be to take cultural artifacts to occupied parts of Ukraine, such as Crimea, or to Russia itself.³⁰ Its strategy also seems to rely on the wholesale destruction of distinct elements of Ukrainian culture, including churches and museums, not only as collateral damage but also through intentional targeting of cultural sites and the eradication of specific religious groups and ethnicities.³¹

V. CORRESPONDING CHANGES IN LAW AND POLICY

The real and perceived guilt over the failure in 2003 of the U.S. military to protect the Iraq Museum and, subsequently, to protect archaeological sites in Iraq from the effects of military activity and further looting fueled negative perceptions of the United States as a country that lacked empathy for the cultural heritage of the region and the devastating effects on the collective world history.³² In 2011, Eric Nemeth argued that the "implicit tactical relevance of cultural property to security transcends national borders" which should lead to a U.S. focus on security.³³ Convinced that terrorism was benefiting from looting and the destruction of cultural heritage and that national security was at risk, national governments and international organizations, such as the U.N. Security Council, took notice and acted.

The increased focus on theft and looting was effectuated through changes in both domestic U.S. law and international law, often with the cooperation of the United States. This section of the Article turns to

²⁹ Soon after the February 2022 invasion, the Russian Historical Society established an "inter-museum working group" that focuses on the occupied parts of Ukraine's eastern Donetsk and Luhansk regions. The purpose of this group is, in part, to demonstrate that Ukraine's culture does not exist independently but rather is a part of Russia's cultural heritage. In November 2022, the representative of the Luhansk branch of the working group stated: "During trips to the territories where the main events of this year have happened, more than 4,000 items have been collected. Many of them are already being studied, and on the basis of these collections we have already opened four exhibitions in major Russian museums." Berg & Coalson, *supra* note 28.

³⁰ See, e.g., *Rapid Report: Kherson Regional Art Museum Reported Looting Event*, UKR. CONFLICT OBSERVATORY (Dec. 15, 2022), <https://hub.conflictobservatory.org/portal/apps/sites/#/home/pages/looting-1> [<https://perma.cc/65LU-QFWJ>]; Michael Burleigh, *Russian Looting in Ukraine War Threatens to Become the Art World's Hidden Shame*, I NEWS (Sept. 18, 2023), <https://inews.co.uk/opinion/russian-looting-ukraine-war-art-world-hidden-shame-2622988> [<https://perma.cc/BL6N-ZG6J>].

³¹ See Robert Bevan, *Heritage Destruction Brings Putin One Step Closer to Prosecution, According to Landmark Report*, ART NEWSPAPER (Sept. 13, 2023), <https://www.theartnewspaper.com/2023/09/13/heritage-destruction-brings-putin-one-step-closer-to-prosecution-according-to-landmark-report> [<https://perma.cc/D6CK-URZC>].

³² CHRISTINA LUKE & MORAG M. KERSEL, U.S. CULTURAL DIPLOMACY AND ARCHAEOLOGY: SOFT POWER, HARD HERITAGE, 1–2 (2013).

³³ Erik Nemeth, *Collecting Cultural Intelligence: The Tactical Value of Cultural Property*, 24 INT'L J. OF INTEL. & COUNTERINTEL. 217, 217 (2011).

changes that have resulted from the increasing recognition of the linkage of cultural theft and destruction to national and global security. Rather than approaching these changes from a strictly chronological perspective, they are grouped by their characteristics and their impact on legal and nonlegal developments as a reflection of evolving policy. The first section considers changes that represent hard law, which is legally enforceable. The second section addresses changes in law enforcement mechanisms, and the third turns to the power of diplomacy or soft law as expressions of security policy goals.

A. Legal Changes

The looting of the Iraq Museum and other sites produced a number of unintended, and, perhaps ironically, mostly beneficial consequences for international and domestic law concerning cultural heritage. These included: broad enactment of import and trade restrictions on cultural materials illegally removed from Iraq; an increase in ratification and implementation of the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention), including final ratification by the United States in early 2009³⁴ and ratification of all three Hague instruments by the United Kingdom in 2017;³⁵ and an increase in ratification and implementation by States of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention).³⁶ Some of these efforts at ratification began before the 2003 invasion, particularly for the 1970 UNESCO Convention, but it is arguable that the images of widespread looting provided an additional impetus.

1. United Nations Security Council resolutions

The U.N. Security Council adopted two resolutions, one in 2003 concerning Iraq and the other in 2015 concerning Syria, to address the issue of the looting and theft of antiquities and other cultural objects. With respect to cultural heritage, these resolutions focused primarily on only a narrow subset of cultural heritage preservation—namely, the

³⁴ Thirty States have ratified the 1954 Hague Convention since the 2003 Gulf War. For United States ratification, see S. EXEC. REP. NO. 110-26 (2008).

³⁵ Cultural Property (Armed Conflicts) Act 2017, c. 27 (U.K.); see also John Glen, *Statement on Ratification of the 1954 Hague Convention and Protocols*, U.K. PARLIAMENT (Sept. 12, 2017), <https://questions-statements.parliament.uk/written-statements/detail/2017-09-12/HCWS125> [<https://perma.cc/KHG9-TXMC>].

³⁶ Forty-six States ratified the 1970 UNESCO Convention following the 2003 Gulf War, including some of the largest market countries, such as Switzerland, Germany, Belgium, and Austria, although in some cases the ratification process was initiated before the war.

deterrence of looting of cultural institutions and archaeological sites. The first of these resolutions, Security Council Resolution 1483, was adopted on May 22, 2003, in response to the looting of the Iraq Museum and other cultural institutions in Baghdad. It called for all U.N. Member States to take actions to prevent trade in cultural materials illegally removed from Iraq and to facilitate the return of such objects to Iraq.³⁷

In February 2015, the U.N. Security Council took similar action, reaffirming its earlier commitment to preventing trade in cultural materials illegally removed from Iraq and calling for new prohibitions on trade in cultural materials illegally removed from Syria after the beginning of the civil war in March 2011.³⁸ Resolution 2199 condemned the destruction of cultural heritage in Iraq and Syria, “whether such destruction is incidental or deliberate, including targeted destruction of religious sites and objects.”³⁹ The condemnation of incidental destruction marks a departure from the narrower provisions of the 1954 Hague

³⁷ S.C. Res. 1483, *supra* note 4. This resolution called for the lifting of the broad trade sanctions against Iraq that had been in place since 1990 when Iraq invaded Kuwait. However, it also states in paragraph seven that the Security Council:

Decides that all Member States shall take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since the adoption of resolution 661 (1990) of 6 August 1990, including by establishing a prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed, and calls upon the United Nations Educational, Scientific, and Cultural Organization, Interpol, and other international organizations, as appropriate, to assist in the implementation of this paragraph.

Id. at ¶ 7 (no emphasis). The resolution was adopted under Chapter VII of the U.N. Charter and is therefore legally binding on all U.N. Member States. *See id.* These trade restrictions were enacted on a broad scale, particularly among Western market nations. Examples of national and regional legislation adopted to implement this resolution include: Emergency Protection for Iraqi Cultural Antiquities Act of 2004, Pub. L. No. 108-429, 118 Stat. 2599, §§ 3001–3003 (2004) (U.S.); Iraq (United Nations Sanctions) Order 2003, S.I. 2003/1519, § 8 (U.K.); Council Regulation 1210/2003, 2003 O.J. (L 169) 6 (E.C.); Ordonnance instituant des mesures économiques envers la République d’Irak, RS 946.206, art. 1a (modified May 28, 2003) (Switz.). In addition to its wide implementation into domestic law, this Security Council Resolution has fostered the restitution to Iraq of thousands of looted archaeological artifacts. *See, e.g.,* Patty Gerstenblith, *Hobby Lobby, the Museum of the Bible and the Law: A Case Study of the Looting of Archaeological Artifacts from Iraq*, in ANTIQUITIES SMUGGLING: IN THE REAL AND VIRTUAL WORLD 59 (Layla Hashemi & Louise Shelley eds., 2022).

³⁸ S.C. Res. 2199, *supra* note 4. The Resolution has been implemented by the European Union, *see* Council Regulation 1332/2013, 2013 O.J. (L 335) 3 (EU) (amending Council Regulation 36/2012, 2012 O.J. (L 16) 1, art. 4 (EU), and adding art. 11c, concerning restrictive measures in view of the situation in Syria); by the United Kingdom as a criminal provision, *see* Export Control (Syria Sanctions) (Amendment) Order 2014, S.I. 2014/1896, ¶ 2 (inserting art. 12A); and by Switzerland, *see* Verordnung über Massnahmen gegenüber Syrien, AS 2015.45, art. 9A, ¶ 1 (revised on Dec. 17, 2024). The United States implemented the Resolution through the Protect and Preserve International Cultural Property Act, Pub. L. No. 114-151, 130 Stat. 369 (2016). This legislation provides for import restrictions on cultural materials illegally removed from Syria after March 2011.

³⁹ S.C. Res. 2199, *supra* note 4, ¶ 15.

Convention and indicates an incorporation of the principles of proportionality, feasibility, and distinction, perhaps as a reflection of customary international law. However, the substantive provisions are limited to calling on all U.N. Member States to prevent the trade in Iraqi and Syrian cultural property.⁴⁰ In the case of Iraq, the focus on looting, particularly from cultural institutions, made sense because the Resolution was adopted in the wake of the looting of the Iraq Museum and other cultural institutions throughout the country. In the case of Syria, the focus on looting of repositories and archaeological sites as a source of funding for ISIL narrowed the scope.⁴¹

The U.N. Security Council had adopted Resolution 2199 in response to information concerning the looting of cultural objects to fund the various parties to the conflict in Syria and upon recommendation of the Analytical Support and Sanctions Monitoring Team.⁴² The U.N. Security Council had included in Resolution 2199, which addressed several aspects of ISIL and al-Nusra Front funding, the provision mentioned above that reaffirmed Resolution 1483 in prohibiting trade in cultural objects illegally removed from Iraq and adopted a similar provision with respect to cultural objects illegally removed from Syria after March 2011. Further recommendations from the Analytical Support and Sanctions Monitoring Team of 1267/1989/2253 ISIL (Da'esh) and al-Qaeda Sanctions Committee⁴³ with the goal of reducing antiquities trafficking as a source of revenue generation for ISIL and other terrorist groups culminated in U.N. Security Council Resolution 2347 and, in particular, paragraph 17. Resolution 2347 is the Security Council's first and, so far, only resolution devoted exclusively to cultural heritage and focused principally on the role of looted and stolen cultural objects in terrorism financing and associated criminal activities, such as money laundering, bribery, and corruption.⁴⁴

The provisions of Resolution 2347 carry three main elements: recognition of the general international law principles embodied in the different treaties mentioned earlier that have the goal of protecting cultural heritage and preventing its destruction; general concern with terrorism and its financing through international networks; and the role of the looting of archaeological sites and thefts from cultural institutions, whether directly or indirectly orchestrated by ISIL, al-Nusra Front, or other terrorist groups, in terrorism finance.

⁴⁰ The wording here repeats that of S.C. Res. 1483, *supra* note 4.

⁴¹ See S.C. Res. 2199, *supra* note 4, ¶ 16.

⁴² *Id.* ¶ 21.

⁴³ S.C. Res. 2347 *supra* note 4, ¶ 16.

⁴⁴ *Id.*

Nonetheless, Resolution 2347 is limited in substantive provisions and even more limited in requirements established for Member States. Perhaps in response to possible objections from major-market countries, Resolution 2347 “*requests*” rather than requires that Member States take appropriate steps to fulfil the provisions of Resolutions 1483 and 2199, even though these were both adopted earlier as mandatory provisions.⁴⁵ Paragraph 17 of Resolution 2347 comes the closest to substantive content, stating that the Security Council “[c]alls upon Member States . . . to *consider* adopting” the outlined measures.⁴⁶ These measures include: improving inventories, adopting regulations on export and import, establishing specialized law enforcement units, improving tracking of criminal activity and law enforcement efforts, improving provenance documentation and due diligence standards, and educating and raising awareness of illegal trafficking in cultural objects.⁴⁷

While encouraging cooperation, information sharing, and better documentation among the various national agencies and intergovernmental organizations is positive, the Resolution is short on substantive requirements. In particular, the focus on documentation is likely to be frustrated because antiquities looted from the ground and sold directly onto the international market cannot, by definition, be documented—a feature that makes them particularly well-suited as a vehicle for money laundering, terrorism finance, and other criminal activity.

Resolution 2347 was the product of significant recognition from the world community of the detrimental effects of looting of cultural sites and repositories. This attention was generated primarily through the connection between thefts and looting of cultural objects and the funding of terrorism and armed conflict. This focus on income generation for terrorism, however, brings some disadvantages. First, it is a tacit recognition that the existing treaty regime is insufficient to prevent such looting and destruction. Second, given how targeted Resolution 2347 was at the specific situations in Iraq and Syria, the cultural heritage of other areas of the world that may be victims of thefts and looting will

⁴⁵ *Id.* ¶ 8.

⁴⁶ *Id.* ¶ 17 (emphasis added).

⁴⁷ *See generally id.* More specifically, the Resolution lists the following as actions that Member States should take: improving inventories; adopting regulations on export and import; contributing to and updating the World Customs Organization Harmonized System Nomenclature and Classification of Goods; establishing specialized units among law enforcement; establishing national databases and contributing to databases maintained by intergovernmental organizations, such as UNESCO, INTERPOL and the World Customs Organization (WCO), that track criminal activity and law enforcement efforts; engaging museums and the trade in improving provenance documentation and due diligence standards; inventorying of cultural objects removed from areas of armed conflict; and engaging in efforts to educate and raise awareness concerning illegal trafficking in cultural objects.

not receive the same level of protection. Third, as a corollary, Resolution 2347 indicated that the world community is, for the most part, concerned with links to terrorism and is less focused on the damage caused to the world's cultural heritage through such activities.

2. Increase in implementation of the 1970 UNESCO Convention

“Cultural policy is security policy,” stated Lee Satterfield, Assistant Secretary of State for Educational and Cultural Affairs at the August 30, 2023, signing of a Memorandum of Understanding (MOU) between the United States and Yemen.⁴⁸ The MOU limits the import into the United States of archaeological and ethnological materials illegally exported from Yemen. This statement makes clear the United States' position on the market for illegal antiquities as an area of concern for governments and policymakers due to the link between the looting of archaeological sites and terrorism financing. Tackling the issue of trafficked antiquities is now part of an overall effort to counter the funding of bad actors, terrorism, and insurgency.

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention) is the primary legal instrument for regulating international trade in cultural objects. As of late 2024, it has 147 State Parties. Of the implementing market State Parties, most have adopted a system of reciprocal import restrictions—that is, cultural objects that are illegally exported from one State Party in violation of an export control cannot be imported into another State Party.⁴⁹ The two exceptions are Switzerland and the United States, which require an additional bilateral agreement or MOU to impose such import restrictions.⁵⁰

The process established by the United States implementing law, the Convention on Cultural Property Implementation Act (CCPIA),⁵¹ is particularly burdensome to other States Parties. The form of the United States' implementation was heavily affected by objections from the market community⁵² which opposed any restrictions on the U.S. market in

⁴⁸ Satterfield, *supra* note 1.

⁴⁹ See Patty Gerstenblith, *Implementation of the 1970 UNESCO Convention by the United States and Other Market Nations*, in THE ROUTLEDGE COMPANION TO CULTURAL PROPERTY 70, 78–81, 84–85 (Jane Anderson & Haidy Geismar eds., 2017). The United Kingdom has adopted an approach that differs from other market countries; it did not enact specific implementing legislation for the convention.

⁵⁰ *Id.* at 82–83. For Switzerland's bilateral agreements, see *Bilateral Agreements*, SWITZ. FED. OFF. OF CULTURE (May 4, 2023), <https://www.bak.admin.ch/bak/en/home/cultural-heritage/transfer-of-cultural-property/bilateral-agreements.html> [<https://perma.cc/3F5H-B9MJ>].

⁵¹ Pub. L. 97-446, 96 Stat. 2350, 19 U.S.C. §§ 2601–13 (2006).

⁵² See, e.g., Barbara C. Rosecrance, *Harmonious Meeting: The McClain Decision and the*

cultural materials. The lobbying power of market proponents and collectors also hampered this implementation, particularly through the efforts of Senator Daniel Patrick Moynihan, who had close connections to antiquities collectors.⁵³

The provisions addressing undocumented cultural objects implement only Article 9 of the 1970 UNESCO Convention and are therefore restricted to ethnological and archaeological materials. The CCPIA requires that a State Party submit a request accompanied by a statement of facts that demonstrates how the requesting State satisfies the statutorily required determinations; agreements are limited to five years in duration so that they must be renewed every five years.⁵⁴ Most relevant for this discussion is that this process is reactive in nature and has no mechanism for quick response in emergency or crisis situations, including during armed conflict.⁵⁵ This reactive nature, and particularly the requirement that requests be submitted through diplomatic channels, means that the United States is often unable to respond effectively in crisis situations.

As a result, the United States was required to adopt specific legislation by Congress with respect to Iraq and Syria to fulfill its responsibilities under U.N. Security Council Resolutions 1483 and 2199.⁵⁶ In the case of Iraq, the import of all goods had been prohibited since 1990⁵⁷ unless a license was granted by the Office of Foreign Asset Controls. In 2003, Resolution 1483 called on Member States to lift the economic sanctions on Iraq with exceptions for arms and related materiel.⁵⁸ The United States complied in lifting most of the economic sanctions but

Cultural Property Implementation Act, 19 CORNELL INT'L L.J. 311, 317–21 (1986). For United States objections to implementation of the 1970 UNESCO Convention, see Paul M. Bator, *An Essay on the International Trade in Art*, 34 STAN. L. REV. 275, 372 (1982).

⁵³ Senator Moynihan and his wife Elizabeth Moynihan were connected to the major antiquities collectors Leon Levy and Shelby White. See *Elizabeth Moynihan Collection*, SMITHSONIAN FREER GALLERY OF ART & ARTHUR M. SACKLER GALLERY (2016), <https://sirismm.si.edu/EADpdfs/FSA.A2013.06.pdf> [<https://perma.cc/KAG4-FZX2>]; *Founders*, LEON LEVY FOUND., <https://www.leonlevy.org/founders/> [<https://perma.cc/XK65-VCSY>].

⁵⁴ See generally *supra* note 52.

⁵⁵ The CCPIA has a process for emergency or crisis situations. 19 U.S.C. § 2603. However, this process still requires that a requesting State *first* submit a request for an agreement to the United States through diplomatic channels with the accompanying documentation required for an agreement as well as support for why an emergency situation exists. See also Patty Gerstenblith, *The Disposition of Movable Cultural Heritage*, in INTERSECTIONS IN INTERNATIONAL CULTURAL HERITAGE LAW 17, 34–35 (Anne-Marie Carstens & Elizabeth Varner eds., 2020).

⁵⁶ Emergency Protection for Iraqi Cultural Antiquities Act of 2004, Pub. L. No. 108-429, 118 Stat. 2434, §§ 3001–3003 (2004) (implementing U.N. Security Council Resolution 1483 for Iraq); Protect and Preserve International Cultural Property Act, Pub. L. No. 114-151, 130 Stat. 369 (2016) (implementing U.N. Security Council Resolution 2199 for Syria).

⁵⁷ See S.C. Res. 661, ¶ 3(a) (Aug. 6, 1990) (requiring all States to prohibit import of all commodities and products originating in Iraq and exported after date of resolution).

⁵⁸ S.C. Res. 1483, *supra* note 4, ¶ 10.

continued import restrictions for cultural objects under the Iraqi Sanctions Regulations.⁵⁹ The authority granted to the President to impose emergency import restrictions was not utilized until April 2008;⁶⁰ this change in achieving import restrictions represented a shift in policy in the wake of the post-2003 invasion of Iraq by coalition forces. The continuation of the import restrictions on cultural objects from Iraq under the Iraqi Sanctions Regulations indicated that this was still considered a matter of national security for the United States.

In a 2013 publication, Luke and Kersel looked closely at the dates for MOUs under the 1970 UNESCO Convention, making the case for political parallels, which were favorable to U.S. policy in areas of civil unrest that posed a security risk.⁶¹ MOUs often accompany United States foreign policy. For struggling democracies, the preservation of cultural heritage may promote social cohesion and stability. Encouraging the protection of archaeological materials and culture is integral to U.S. diplomatic efforts and greater regional security.⁶² Prior to 2013, cultural property agreements with Latin American countries offered the most comprehensive geographic and chronological coverage.

In response to the perceived security threats posed by ISIL, however, the State Department embarked on an initiative to increase the number of bilateral agreements. Although the CCPIA has been in existence for more than forty years, in the past eight years (since late 2016), the United States has entered into sixteen new agreements (out of a current total of thirty agreements). Eight of these new agreements are with Mediterranean rim or Arab countries (Algeria, Egypt, Jordan, Libya, Morocco, Tunisia, Türkiye, and Yemen). In addition to Iraq and Syria, emergency import restrictions are in effect for Afghanistan and Ukraine.⁶³ Requests for agreements are pending from an additional six countries (Afghanistan, Lebanon, Nepal, North Macedonia, Mongolia, and Ukraine). This is a remarkable increase in requests and resulting agreements, likely reflecting not only the need for import restrictions from the world's largest market country but also the diplomatic and security bilateral relationships that are established through these agreements. These agreements provide means for the United States to

⁵⁹ 31 C.F.R. § 575.533(5) (2003).

⁶⁰ 19 C.F.R. § 12.104j (2008).

⁶¹ LUKE & KERSEL, *supra* note 32, at 67–70.

⁶² See generally *id.*

⁶³ See *Current Agreements and Import Restrictions*, U.S. DEPT OF STATE BUREAU OF EDUC. & CULTURAL AFFS., <https://eca.state.gov/cultural-heritage-center/cultural-property/current-agreements-and-import-restrictions> [<https://perma.cc/2YU6-KBRQ>]. The import restrictions in place for Iraq and Syria are technically denominated as emergency import restrictions, but these operate differently. Most importantly, the Iraq restrictions have no time limit, and the Syria restrictions have the possibility of sunseting but with no specific time limit.

provide law enforcement training and other capacity-building resources to the other country, although these aspects are not technically part of the bilateral process. The agreements are also a training tool for U.S. law enforcement agencies that become more familiar with the cultural objects from these countries. Law enforcement agents are therefore trained to intercept cultural objects both at the border and after the objects have entered the United States. Given that the agreements need to be renewed every five years and the increase in number of agreements, it is unclear at this point whether this pace of agreements can be maintained and, conversely, whether the U.S. Congress will be prepared to implement a more suitable and responsive process through new legislation.

Switzerland ratified and implemented the convention only in the fall of 2003. Unlike the United States, Switzerland's agreements implement Article 3 of the 1970 UNESCO Convention. Long a major market country as well as transit point for looted cultural materials from countries such as Italy, Switzerland is the only other country (in addition to the United States) that requires an additional bilateral agreement to adopt import restrictions. Switzerland currently has nine bilateral agreements.⁶⁴ Its legislation also allows it to impose emergency import restrictions under Article 9 without need for an agreement.

3. Anti-money laundering legislation

Generally speaking, anti-money laundering legislation subjects individuals and entities in certain industries to reporting regulations, including Know-Your-Client and Suspicious Activity Report requirements.⁶⁵ In 2018, the European Union adopted its fifth Anti-Money Laundering Directive.⁶⁶ This Directive subjects "persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses" where the value of the transaction is worth more than €10,000 to anti-money laundering regulations.⁶⁷ The Directive applies to transactions involving both works of art and antiquities. The United Kingdom added art market

⁶⁴ SWITZ. FED. OFF. OF CULTURE, *supra* note 50.

⁶⁵ In the effort to reduce trade-based money laundering and other financial crimes, certain requirements are placed on actors in particular businesses. In the United States, these requirements are imposed through the Bank Secrecy Act of 1970, Pub. L. No. 91-508, 84 Stat. 1114 (codified as amended in scattered sections of 12 U.S.C. and 31 U.S.C.). "Know-Your-Client" regulations require certain businesses and financial institutions to verify the identity and potential risks posed by certain clients. Government regulations require certain businesses and financial institutions to file "Suspicious Activity Reports" for certain financial transactions that exceed a monetary threshold.

⁶⁶ Council Directive 2018/843, 2018 O.J. (L 156) 43 (EU).

⁶⁷ *Id.* art. 1(c)(i).

participants to its anti-money laundering regulations in 2019.⁶⁸ The regulations define “art market participant” to mean a firm or solo practitioner who engages in a transaction involving works of art worth more than €10,000.⁶⁹ Such transactions include the storage of works of art. These regulations apply to “works of art” as defined in section 21(5)(a) and section 21(6) to (6B) of the United Kingdom’s Value Added Tax Act 1994.⁷⁰ While the European Union regulation applies to all works of art, including archaeological objects, the United Kingdom provisions are interpreted to exclude archaeological objects from coverage of the anti-money laundering regulations.

In 2021, the U.S. Congress amended the Bank Secrecy Act in section 6110(a)(1) of the Anti-Money Laundering Act of 2020.⁷¹ This amendment added “a person engaged in the trade of antiquities” to the list of financial institutions subject to the requirements of the Bank Secrecy Act.⁷² Therefore, in contrast to the European Union and United Kingdom regulations, the United States regulations apply only to transactions involving antiquities and do not seem to apply to other types of works of art—a rather anomalous position. However, the U.S. Financial Crimes Enforcement Network has not yet issued regulations to accompany this amendment, and therefore the regulations for implementing this provision are not in effect despite the U.S. Congress requiring regulations be issued within one year of the amendment’s enactment.⁷³ Therefore, crucial terms for implementing the amendment, such as “antiquities,” are not yet defined.

One may conclude that these moves by the United States, United Kingdom, and European Union were in response to the general belief that the art market in general and, in some cases, the market in antiquities were providing funding to terrorism and other forms of international criminal activity. The Preamble to the EU Directive cites U.N. Security Council Resolution 2199 concerning “threats to international peace and security caused by terrorist acts.”⁷⁴ Although the Preamble does not mention U.N. Security Council Resolution 2347, these changes to anti-money laundering regulations may be viewed as an

⁶⁸ The Money Laundering and Terrorist Financing (Amendment) Regulations 2019, S.I. 2019/1511, § 4 (amending regulation 8(2)).

⁶⁹ *Id.* § 6.

⁷⁰ Value Added Tax Act 1994, c. 23, § 21 (U.K.).

⁷¹ William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat. 3388, §§ 6001–6003 (2021).

⁷² *Id.* at 6110(a)(1)(B).

⁷³ Treasury continues to monitor the art and antiquities market for associated illicit financial risks. See U.S. DEP’T OF TREASURY, NATIONAL STRATEGY FOR COMBATING TERRORIST AND OTHER ILLICIT FINANCING at 10, 39, 47 (May 2024), <https://home.treasury.gov/system/files/136/2024-ILlicit-Finance-Strategy.pdf> [<https://perma.cc/Q878-DWNL>].

⁷⁴ Council Directive 2018/843, *supra* note 66, ¶ 7.

implementation of that resolution as well. It is perhaps ironic that the specific impetus in the United States for inclusion of the art market came from a Senate report that the art market had facilitated evasion of sanctions against oligarchs,⁷⁵ but the U.S. regulation refers to “antiquities” and not the art market more generally.

B. Law Enforcement Efforts

An office within the U.S. State Department’s Bureau of Educational and Cultural Affairs originally had the sole purpose of implementing the 1970 UNESCO Convention in the United States. The responsibilities of this office started to expand in 2001 with establishment of the Ambassadors Fund for Cultural Preservation, discussed below, followed by an array of programs in the aftermath of the looting of the Iraq Museum and sites in Iraq. As a result, this office morphed into the Cultural Heritage Center, which, in default of a Ministry of Culture, took on many of the functions and responsibilities (at least with respect to the international role of the United States) that in other countries would be managed by the Ministry of Culture.

One of these programs was a newly created entity—the Cultural Antiquities Task Force (CATF).⁷⁶ Today, the CATF comprises several federal agencies, including the Departments of State, Defense, Homeland Security, Interior, Justice, and Treasury, that “share a common mission to combat trafficking in antiquities in the United States and abroad.”⁷⁷ It coordinates cooperation among these U.S. government agencies, trains U.S. law enforcement, and provides training and capacity building for foreign countries, particularly those countries with which the United States has a cultural property MOU.

Before the reorganization of federal agencies that followed the 9/11 attacks, the U.S. Customs Service, which was then part of the Treasury Department, had a unit, the Customs Art Recovery Team, devoted to cultural property investigations and recoveries. The U.S. Customs Art Fraud Investigation Center, established in 2000, became part of the Department of Homeland Security and was then redeployed to investigate

⁷⁵ See STAFF OF S. PERMANENT SUBCOMM. ON INVESTIGATIONS, 116TH CONG., *THE ART INDUSTRY AND U.S. POLICIES THAT UNDERMINE SANCTIONS* (2020). Russian TV commentator Dimitri Simes and his wife were indicted in 2024 for allegedly engaging in money laundering and assisting a sanctioned Russian oligarch through trade in art and antiques, in addition to other means. Press Release, U.S. Dep’t Just., TV Presenter Who Worked for Channel One Russia Charged with Violating U.S. Sanctions Imposed on Russia (Sept. 5, 2024) <https://www.justice.gov/opa/pr/tv-presenter-who-worked-channel-one-russia-charged-violating-us-sanctions-imposed-russia> [<https://perma.cc/2Y35-SGDV>].

⁷⁶ See LUKE & KERSEL, *supra* note 32, at 91–93; *Cultural Antiquities Task Force*, U.S. DEPT OF STATE BUREAU OF EDUC. & CULTURAL AFFS., <https://eca.state.gov/cultural-heritage-center/cultural-antiquities-task-force> [<https://perma.cc/GKN9-TMCC>].

⁷⁷ *Id.*

cases involving terrorism and financial fraud.⁷⁸ In the meantime, in 2004, the FBI established an Art Crime Team linked to the FBI's Art Theft Program.⁷⁹ Customs handles solely international cases, while the FBI handles investigations of both domestic and international cases. Many of the FBI cases involve fraud and forgery, as well as domestic theft and cases involving Native American cultural heritage. The Department of Homeland Security now has a Cultural Property, Art and Antiquities Program as well.⁸⁰

Mindful of the lack of interagency (or even intra-agency) collaboration and cooperation in the days following the 2003 invasion of Iraq, the Cultural Heritage Coordinating Committee (CHCC) was established in 2016. Although it did not codify the CHCC, the 2016 Protect and Preserve International Cultural Property Act⁸¹ expressed the sense of Congress that the Department of State should create the CHCC. The CHCC was to serve as a forum by which federal agencies and the Smithsonian Institution “with responsibility for the preservation and protection of international cultural property” would work together in:

coordinat[ing] core United States interests in—

(A) protecting and preserving international cultural property;

(B) preventing and disrupting looting and illegal trade and trafficking in international cultural property, particularly exchanges that provide revenue to terrorist and criminal organizations;

(C) protecting sites of cultural and archaeological significance; and

(D) providing for the lawful exchange of international cultural property⁸²

Coordinating diplomatic and law enforcement efforts to combat antiquities trafficking, disrupt trafficking networks, and protect against the

⁷⁸ See David D'Arcy, *US Customs Art Squad Reassigned to War on Terror*, THE ART NEWSPAPER (Dec. 31, 2003), <https://www.theartnewspaper.com/2004/01/01/us-customs-art-squad-reassigned-to-war-on-terror> [<https://perma.cc/42A4-LSJX>].

⁷⁹ Cassie Packard, *How Does the FBI Art Crime Team Operate?*, HYPERALLERGIC (Jan. 17, 2022), <https://hyperallergic.com/701155/how-does-the-fbi-art-crime-team-operate/> [<https://perma.cc/W8P8-G4CB>].

⁸⁰ *Cultural Property, Art and Antiquities Program*, U.S. IMMIGR. & CUSTOMS ENF'T (Mar. 14, 2023), <https://www.ice.gov/investigations/cultural-property-art-and-antiquities> [<https://perma.cc/9ME7-ZDJX>].

⁸¹ Protect and Preserve International Cultural Property Act, Pub. L. No. 114-151, § 2, 130 Stat. 369 (2016).

⁸² *Id.* § 2(4).

looting and destruction of cultural property around the world, the CHCC was set up expressly to “prevent and disrupt looting and trafficking of antiquities, especially when linked to terrorist and criminal organizations.”⁸³ Finally, the CHCC aims to strengthen the ability of the Executive Branch to protect and preserve cultural property at risk from instability, conflict, natural disasters, or other threats. It is clear that the main purpose of the CHCC is the furthering of national security through the securitization of cultural heritage.

The final element in expanding law enforcement capacity has been the creation of the Antiquities Trafficking Unit (ATU) in the Office of the District Attorney for New York County (Manhattan). The unit was created in 2017 and has recovered more than 4,600 antiquities, which the ATU estimates to have a value of more than \$400 million.⁸⁴ The unit frequently collaborates with special agents from Homeland Security Investigations. The dedication of considerable resources by the District Attorney’s Office indicates once again the seriousness with which the United States now views the problem of antiquities trafficking. While the ATU’s jurisdiction is limited to Manhattan, this is the heart of the art market in the United States, which is the largest art market in the world. The work of the ATU is therefore significant and effective; it takes a considerably more aggressive approach than that of federal law enforcement, filling a lacuna that need not exist.⁸⁵

This focus on U.S. law enforcement efforts should not exclude anti-trafficking efforts taken by law enforcement units in other countries. While these are too extensive to detail here, few countries have the same financial and law enforcement resources to devote to antiquities trafficking that the United States has had since 2003. It must also be recognized that the most resources are required to disrupt the market in destination market countries, such as the United States. The one exception to this may be Italy, which has developed the Carabinieri Art Squad (*Comando carabinieri per la tutela del patrimonio culturale*). This unit was founded in 1969 and works to resolve cases of cultural property thefts both domestically within Italy and internationally.⁸⁶ In

⁸³ *Cultural Heritage Coordinating Committee*, U.S. DEP’T OF STATE BUREAU OF EDUC. & CULTURAL AFFS., <https://eca.state.gov/cultural-heritage-center/cultural-heritage-coordinating-committee> [<https://perma.cc/983H-4WVA>].

⁸⁴ *Interview with Matthew Bogdanos about Antiquities Trafficking Unit*, CTR. FOR ART LAW (Oct. 22, 2023), <https://itsartlaw.org/2023/10/22/interview-with-matthew-bogdanos-about-the-antiquities-trafficking-unit/> [<https://perma.cc/2TAQ-XU9S>].

⁸⁵ This aggressiveness and dedication of resources should also be attributed to Matthew Bogdanos’ passion for and interest in the matter of antiquities looting and trafficking, informed to a large extent by his experiences in Iraq in 2003. See *supra* notes 13–15 and accompanying text.

⁸⁶ *Carabinieri Command for the Protection of Cultural Heritage*, CARABINIERI, <https://www.carabinieri.it/chi-siamo/oggi/organizzazione/mobile-e-speciale/comando-carabinieri-per-la-tutela-del-patrimonio-culturale> [<https://perma.cc/5QB2-ATXR>].

addition, the Carabinieri Art Squad has worked in other countries to assist them in protecting their cultural heritage.⁸⁷

C. Greater Security through The Ambassadors Fund for Cultural Preservation?

Since its establishment in 2001, the Ambassadors Fund for Cultural Preservation (AFCP),⁸⁸ another program administered by the Cultural Heritage Center at the U.S. Department of State, serves as a means of cultural diplomacy and an element of national security policy. As its mandate, the AFCP provides financial assistance for the restoration, protection, and conservation of cultural sites, artifacts, and traditions in economically disadvantaged countries. The process of physically protecting and safeguarding cultural artifacts, sites, and traditions through various means ensures the preservation and continuity of heritage, often in the face of or in the aftermath of threats. By helping to protect and restore important cultural elements in partner countries, the program fosters goodwill and understanding between nations that may be at odds in other political arenas. Its original conception was as an opportunity to show a different American face to other countries, one that is non-commercial, non-political and non-military.

The AFCP represents a soft power approach to U.S. State Department diplomatic efforts abroad.⁸⁹ Characterized as an apolitical initiative, it is clear that politics and diplomatic relations are at the center of AFCP programming; projects are strategically located in areas known for poorly planned or executed U.S. intervention (e.g., Afghanistan between 2001 and 2021, Cambodia, Guatemala, Iraq) or in areas with a particular U.S. diplomatic agenda (see discussion above). Acknowledging the growing importance of the AFCP, a 2004 Senate Report stated: “The Committee acknowledges the critical role that public diplomacy plays in both addressing the root causes of terrorism and in U.S. foreign relations generally.”⁹⁰ This Report goes on to recommend increased funding for the AFCP from \$1 million to \$1.75 million, but with the stipulation that a specified amount (\$700,000) should be used solely for projects in the Middle East.⁹¹

⁸⁷ See Ugo Zottin, *Italian Carabineers and the Protection of Iraqi Cultural Heritage*, in THE DESTRUCTION OF CULTURAL HERITAGE IN IRAQ 235 (Peter G. Stone & Joanne Farchakh Bajjalj eds., 2008); LAURIE RUSH & LUISA BENEDETTINI MILLINGTON, THE CARABINIERI COMMAND FOR THE PROTECTION OF CULTURAL PROPERTY: SAVING THE WORLD’S HERITAGE (2015).

⁸⁸ Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act of 2001, Pub. L. No. 106-553, 114 Stat. 2762 (2001).

⁸⁹ LUKE & KERSEL, *supra* note 32, at 98–120.

⁹⁰ S. REP. NO. 108-144, at 132 (2004).

⁹¹ *Id.* at 135.

In response to the 9/11 attacks, the 2003 invasion of Iraq by a United States-led coalition, the Arab uprising, and general unrest, anti-Muslim sentiments in the United States have increased. As a countermeasure, the AFCP has dedicated larger and larger amounts of money toward restoration projects in Muslim-majority countries: a strategic bolstering of national security policy through soft diplomatic programming. This commitment enhances the image of the United States abroad, contributing to a more positive perception of U.S. leadership in the field of cultural preservation particularly in areas with cultural heritage at-risk. In February of 2023, the AFCP awarded \$7 million, despite the initial call for between \$10,000 and \$500,000, to the Ukraine Cultural Heritage Response Initiative to support Ukrainian efforts to protect its cultural heritage.⁹² Funds will be used to protect and repair damage to Ukrainian cultural heritage sites and collections, as well as expand and strengthen public-private partnerships with civil society in Ukraine. The AFCP continues to play a vital role in the United States' broader global efforts to preserve and protect cultural heritage, thus ensuring greater security and stability for nations at risk. By preserving cultural heritage, the AFCP (and by extension the United States) promotes a better understanding and appreciation of the diverse cultures and histories of different countries. This understanding contributes to enhanced mutual respect and can serve as a bridge for communication and cooperation among nations.

VI. IS SECURITY POLICY AIMED AT CULTURAL HERITAGE A GOOD THING?

Security policies aimed at protecting cultural heritage can be considered a positive and necessary measure for several reasons. In the short term, a focus on security policy increases the tools available to counter trafficking and destruction of cultural and archaeological heritage, while also being politically persuasive. Security policies help safeguard key components of a community's identity and history ensuring that they are passed down to future generations. Security measures can deter theft and illegal trafficking of artifacts, which help prevent culturally significant and monetarily valuable cultural items from being lost or traded on the black market and may mitigate the funding of terrorism through the sale of objects. Security policies directed at cultural heritage can help allay risks of intentional or collateral damage and protect irreplaceable cultural objects. Security measures can help the

⁹² Media Note, U.S. Dep't of State, U.S. Department of State Announces \$7 Million for Ukraine Cultural Heritage Response Initiative (Feb. 23, 2023), <https://www.state.gov/u-s-department-of-state-announces-7-million-for-ukraine-cultural-heritage-response-initiative/> [<https://perma.cc/M447-BMAH>].

preservation of these sites, thereby supporting sustainable tourism and economic benefits for local communities.

Implementing security policies for cultural heritage can foster international collaboration. Nations that demonstrate a commitment to protecting cultural heritage may find common ground and build positive diplomatic relationships with others who share similar values. Secured cultural heritage sites can serve as venues for cultural exchange programs, fostering understanding and dialogue among different communities and nations. Implementing security policies helps fulfill national commitments to international agreements and conventions that emphasize the importance of protecting cultural heritage demonstrating a nation's dedication to global cultural preservation efforts.

Current U.S. policy and programming are reactive rather than proactive in nature, which results in uncoordinated and inconsistent responses to the protection and preservation of cultural heritage. This may mean that in the long term the needed tools are not available when no security threat is perceived. This may indicate that protection of cultural heritage is understood to be only instrumental as a means of promoting national security rather than as an end to itself. The U.S. approach demonstrates the inconsistencies and variations in levels of support and tools that are chosen to counteract these threats. With a reactive approach, inconsistent funding changes with each presidential administration's priorities and is often driven by a case-by-case assessment of the degree and type of threat to U.S. security. This inconsistency also affects the quality of research into both cultural heritage protection and security policies to the extent that such research is driven by variable funding resources based on transitory perceptions of security threat and other diplomatic and foreign relations concerns. This may also demonstrate a need for a centralized dedicated ministry, such as a Ministry of Culture that exists in most other countries. The case for cultural heritage protection and diplomacy is constantly having to be made, although the tie to terrorism made it a little easier to convince law makers that cultural heritage matters and contributed to enactment of the Protect and Preserve International Cultural Property Act in 2016.

VI. CONCLUSION

The intersection of cultural heritage and security policy is a compelling and increasingly relevant field of study. Initially, these two spheres may seem distant, but a closer examination reveals the intricate ways in which cultural policies can directly affect a nation's security and resilience, further indicating that centralized coordination and collaboration are necessary if a country cares about the link between

looting and terrorism. Cultural identity, heritage, and the preservation of artistic and historical objects are not merely matters of cultural significance; they are integral components of a nation's security fabric. This intricate relationship underscores the importance of understanding how cultural policy can, and often does, function as a critical dimension of a nation's security strategy.

Despite the interconnectedness of cultural policy and national security, there is a notable gap in comprehensive analysis and strategic integration of cultural assets and identity preservation into security policies and practices. This absence of a cohesive framework hampers the ability of nations to harness the full potential of cultural resources in bolstering security, thereby leaving these assets vulnerable to various threats. A pressing problem emerges: How can governments and international organizations develop effective policies and strategies that integrate cultural assets, identity preservation, and heritage protection as essential components of their security arrangement to enhance national resilience and safeguard global cultural diversity?

In his remarks on the signing of the MOU formalizing the relationship between the U.S. Department of State and the Smithsonian Institution, Secretary of State Antony Blinken reaffirmed the U.S. position that "cultural policy *is* security policy."⁹³ Cultural heritage policy as a component of security policy plays a crucial role in promoting social cohesion, diplomacy, international cooperation, and regional stability. By recognizing the importance of cultural heritage, nations can contribute to a more secure and interconnected world. A well-designed and implemented proactive security policy aimed at cultural heritage can be a positive force for preserving and promoting the rich diversity of human history and culture locally, nationally, and internationally.

⁹³ Press Release, U.S. Dep't of State, Secretary Antony J. Blinken at a Memorandum of Understanding Signing Ceremony with the Smithsonian Institution (Dec. 19, 2023), <https://www.state.gov/secretary-antony-j-blinken-at-a-memorandum-of-understanding-signing-ceremony-with-the-smithsonian-institution/> [<https://perma.cc/B5G7-FULD>] (emphasis added).

