

State of the Art: How Cultural Property Became a National-Security Priority

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ABSTRACT. For much of the twentieth century, the United States did little to help repatriate looted antiquities, thanks to a powerful coalition of art collectors, museums, and numismatists who preferred an unregulated art market. Today, however, the country treats the protection of cultural property as an important national-security issue. What changed? This Essay tells the story of how a confluence of events—including the high-profile destruction and looting of cultural property in Afghanistan and Iraq, as well as the revelation that looted antiquities were helping to bankroll terrorist organizations in the Middle East—convinced both Congress and the State Department to take the issue seriously. It then asks what this shift says about how the United States sets its policy agenda and reflects on how cultural property law should evolve from here.

INTRODUCTION

On May 2, 2018, in a ceremony in the backyard of the Iraqi ambassador’s home in Washington, D.C., U.S. government officials returned 3,800 ancient Iraqi artifacts that had been smuggled illegally into the United States.¹ The artifacts, which included “cuneiform tablets, cylinder seals, and clay bullae,” dated as far back as the second and third millennium B.C.² In early 2011, U.S. Customs and Border Protection agents had intercepted a series of suspicious packages

1. Emily Cochrane, *Iraqi Artifacts Once Bought by Hobby Lobby Will Return Home*, N.Y. TIMES (May 2, 2018), <https://www.nytimes.com/2018/05/02/us/politics/iraq-artifacts-hobby-lobby-ice.html> [<https://perma.cc/E29U-DQ5D>]; Press Release, U.S. Immigration & Customs Enf’t, ICE Returns Thousands of Ancient Artifacts Seized from Hobby Lobby to Iraq (May 2, 2018), <https://www.ice.gov/news/releases/ice-returns-thousands-ancient-artifacts-seized-hobby-lobby-iraq> [<https://perma.cc/SS7N-3VFJ>].

2. Press Release, U.S. Immigration & Customs Enf’t, *supra* note 1.

shipped from Israel and the United Arab Emirates to Hobby Lobby, a nationwide arts-and-crafts retailer that would later become known for its public opposition to the Affordable Care Act. The discovery set off a multiyear investigation that culminated in July 2017 with a civil complaint against Hobby Lobby and the seizure of thousands of artifacts.³ “The Republic of Iraq . . . has a celebrated heritage as a cradle of civilization,” U.S. Attorney Richard P. Donoghue said in a press release announcing the successful return of the artifacts.⁴ “We are proud to have played a role in removing these pieces of Iraq’s history from the black market of illegally obtained antiquities and restoring them to the Iraqi people.”⁵

This was not the first time that the United States had intervened in the black market to repatriate stolen antiquities. Since 2008, Immigration and Customs Enforcement (ICE) has returned more than 1,200 items to Iraq, including a valuable limestone statue of Lamassu, a winged bull deity from the palace of the Assyrian King Sargon II.⁶ Since 2007, ICE has returned some 12,500 artifacts to over thirty countries – dinosaur fossils to Mongolia, Khmer statues to Cambodia, an ancient gold coffin to Egypt, royal seals to South Korea, and more.⁷ Over roughly that same timeframe, Congress has passed two bills tackling the import of stolen antiquities – from Iraq in 2004⁸ and Syria in 2016.⁹ And the State Department has, in recent years, been trying to increase the number of bilateral agreements it signs with countries to protect their cultural heritage.¹⁰

Just a few decades ago, these events would have seemed all but unthinkable. For much of the twentieth century, the United States was relatively uninterested in repatriating stolen cultural property, thanks in part to a powerful coalition of art collectors, museums, and numismatists who preferred an unregulated art market.¹¹ What changed? This Essay tells the story of how a confluence of

3. Cochrane, *supra* note 1.

4. Press Release, U.S. Immigration & Customs Enf’t, *supra* note 1 (quoting Richard P. Donoghue).

5. *Id.*

6. *Id.*

7. Press Release, U.S. Immigration & Customs Enf’t, 2 Historic Khmer Statues Returned to Cambodia (Apr. 9, 2020), <https://www.ice.gov/news/releases/2-historic-khmer-statues-returned-cambodia> [<https://perma.cc/4DU9-V9ZV>].

8. Emergency Protection for Iraqi Cultural Antiquities Act of 2004, Pub. L. No. 108-429, 118 Stat. 2599.

9. Protect and Preserve International Cultural Property Act, Pub. L. No. 114-151, 130 Stat. 369 (2016) (codified at 19 U.S.C. § 2601 note (2018)).

10. Video Interview with Jeremy Sabloff, former Chair, Cultural Prop. Advisory Comm. (Apr. 9, 2020).

11. One exception to this general statement was the effort the United States undertook during and in the aftermath of World War II to protect the cultural heritage of Europe. In 1943, for

events—including the high-profile destruction and looting of cultural property in Afghanistan and Iraq, and the discovery that looted antiquities were helping to bankroll terrorist organizations in the Middle East—convinced both Congress and the State Department to take cultural property seriously.¹² It then asks what still remains to be done for the United States to live up to its international commitments.

The story begins in 1970, when the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property—a landmark international agreement restricting trade in archaeological, ethnological, and cultural materials.¹³ But for more than a decade, Congress struggled to pass legislation implementing the Convention, bowing to pressure from art dealers and collectors who feared that such legislation would weaken the U.S. art market and cost them financially.

example, General Dwight D. Eisenhower issued an order urging the protection of historical monuments in Italy. See *History of Protection of Cultural Property: World War II & Monuments Men 1943-1949*, U.S. COMMITTEE BLUE SHIELD, <https://uscbs.org/world-war-ii---monuments-men.html> [<https://perma.cc/Q9TX-SDNF>]. That year also saw the creation of the Monuments, Fine Arts, and Archives program of the Allied armies, under whose auspices the so-called Monuments Men worked to track, recover, and return objects looted during the war. *Id.* Overall, however, such efforts were relatively isolated.

12. As far as I am aware, the only other article to address the development of U.S. policy toward cultural property in a similar way was written in 1985, a full decade before the United States began approving bilateral agreements with other countries to stem the looting of cultural antiquities, and before lawmakers began thinking about the importance of protecting cultural property in terms of long-term national-security interests. See Lawrence J. Persick, *The Continuing Development of United States Policy Concerning the International Movement of Cultural Property*, 4 DICK. J. INT'L L. 89 (1985).
13. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231, http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html [<https://perma.cc/SC64-AQ63>] [hereinafter UNESCO Convention]. The Convention defines cultural property as “property which, on religious or secular grounds, is specifically designed by each State as being of importance for archaeology, prehistory, history, literature, art or science,” and which includes “[r]are collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest”; property relating to history and “to events of national importance”; “products of archaeological excavations” or discoveries; “elements of artistic or historical monuments or archaeological sites which have been dismembered”; “antiquities more than one hundred years old, such as inscriptions, coins and engraved seals”; “property of artistic interest,” such as original sculptures and engravings; “rare manuscripts and incunabula, old books, documents and publications of special interest”; “postage, revenue and similar stamps”; “sound, photographic and cinematographic archives”; and “articles of furniture more than one hundred years old and old musical instruments.” *Id.* art. 1.

When Congress finally passed the Convention on Cultural Property Implementation Act of 1983,¹⁴ the law took a weaker approach to cultural property protection than its supporters might have wished. Many signatories to the UNESCO Convention had chosen to ban suspicious imports from other signatory countries outright. The United States, by contrast, instituted a system that put the onus on other countries, requiring them to ask for assistance if they felt that their cultural property was in “jeopardy.”¹⁵ If a country sought and received a bilateral agreement with the United States, the United States would agree to ban imports of certain items of note, such as archaeological artifacts, sculptures, funerary objects, and jewelry. But the law did not make it easy for countries to request such agreements. To qualify, states had to demonstrate that their cultural property was at risk; that they had taken reasonable steps to address that risk; that U.S. aid was necessary and likely to help; and that alternative measures would not suffice.¹⁶ In addition, once states requested an agreement, their proposals had to go through a lengthy bureaucratic process involving the Federal Register and a newly formed State Department committee tasked with evaluating the proposals on their merits. Perhaps unsurprisingly, despite the fact that it has been more than three decades since Congress passed the law, only twenty countries currently have these bilateral agreements with the United States—accounting for less than fifteen percent of the state parties to the UNESCO Convention.¹⁷

But the number of agreements has been steadily rising, and in recent years, Congress has bypassed the statutory scheme twice to address looting from Iraq and Syria. The increased interest in protecting cultural property can be attributed to at least two factors. First, a number of high-profile episodes in the early years of this century—especially the destruction of Afghanistan’s Bamiyan Buddhas in 2001 and the pillaging of Baghdad’s Iraq Museum in 2003 during the Iraq War—brought the issue media coverage and public attention.¹⁸ The looting

14. Convention on Cultural Property Implementation Act of 1983, Pub. L. No. 97-446, 96 Stat. 2329 (codified at 19 U.S.C. §§ 2601-2613 (2018)).

15. 19 U.S.C. § 2602(a)(1)(A) (2018).

16. *Id.* § 2602(a)(1)(A)-(D), (a)(3).

17. Bureau of Educ. & Cultural Affairs, *Current Import Restrictions*, U.S. DEP’T ST., <https://eca.state.gov/cultural-heritage-center/cultural-property-advisory-committee/current-import-restrictions> [<https://perma.cc/5JK2-EEZY>]. I have left Yemen off the list because it does not yet have a formal agreement, although emergency import restrictions are now in place.

18. See, e.g., Barry Bearak, *Afghan Says Destruction of Buddhas Is Complete*, N.Y. TIMES (Mar. 12, 2001), <https://www.nytimes.com/2001/03/12/world/afghan-says-destruction-of-buddhas-is-complete.html> [<https://perma.cc/R3HA-S8U8>]; John F. Burns, *A Nation at War: Looting; Pillagers Strip Iraqi Museum of Its Treasure*, N.Y. TIMES (Apr. 13, 2003), <https://www.nytimes.com/2003/04/13/world/middleeast/looting.html>.

of the Iraq Museum struck a particular nerve in Congress thanks to reports that American soldiers had done nothing as thieves ransacked the museum.¹⁹ Second, over the past five years or so, it has become clear that terrorist organizations—in particular, the Islamic State, also known as ISIS—profit from the theft and sale of antiquities. Washington has responded to this revelation by upgrading the protection of cultural property into an issue of national security.

The fact that it took counterterrorism to truly galvanize support for protecting cultural property confirms the power of national security in American political discourse. National security, as one recent article put it, “is the preoccupation that never has to explain itself.”²⁰ When policymakers or advocates want a given policy to be taken seriously, they will often emphasize its national-security implications. Consider, for example, recent arguments made by refugee advocates on both sides of the aisle that “resettlement initiatives help advance U.S. national security interests by supporting the stability of our allies,” and that proposals to halt the resettlement of Syrian and Iraqi refugees would “undermine our core objective of combating terrorism.”²¹ Making an issue a national-security priority can lend advocates greater credibility and spur bipartisan support—and cultural property offers a case in point.

Still, Washington could be doing more, and not just in cases that clearly implicate national security. Protecting cultural property can help stem the spread and reach of terrorist and other transnational criminal organizations. But helping to protect a country’s cultural property—even a country of lower strategic importance to the United States—comes with broader diplomatic benefits as well, signaling respect for a country’s heritage and building durable goodwill. Recognizing this, Congress should amend the Convention on Cultural Property

.com/2003/04/13/world/a-nation-at-war-looting-pillagers-strip-iraqi-museum-of-its-treasure.html [https://perma.cc/5637-BMS9].

19. See, e.g., Burns, *supra* note 18 (“Officials with crumpled spirits fought back tears and anger at American troops, as they ran down an inventory of the most storied items that they said had been carried away by the thousands of looters who poured into the museum after daybreak on Thursday and remained until dusk on Friday, with only one intervention by American forces, lasting about half an hour, at lunchtime on Thursday.”). Burns’s reporting was later disputed after an official investigation into the looting revealed that the only U.S. Army unit in the vicinity had been engaged in active combat and had been forced to retreat from the museum after facing heavy fire. See Matthew Bogdanos, *The Casualties of War: The Truth About the Iraq Museum*, 109 AM. J. ARCHAEOLOGY 477, 506–07 n.108 (2005).
20. Dexter Fergie, *The Strange Career of ‘National Security’*, ATLANTIC (Sept. 29, 2019), <https://www.theatlantic.com/ideas/archive/2019/09/the-strange-career-of-national-security/598048> [https://perma.cc/P6HK-VQXJ].
21. 20 Former National Security Officials Sign Letter to Congress in Support of the U.S. Refugee Program, REFUGEE COUNCIL USA (Dec. 1, 2015), <https://rcusa.org/resources/20-former-national-security-officials-sign-letter-to-congress-on-the-security-of-the-refugee-program> [https://perma.cc/V7F7-QNBS].

Implementation Act to include an affirmative statement that the U.S. government considers protecting cultural property to be an important policy objective. Ideally, this would pave the way for the United States to follow the lead of other UNESCO signatories who, instead of waiting for countries to ask for help, put the burden on importers of archaeological objects and other items to prove that they have obtained such items legally.²²

If the United States retains its system of bilateral agreements, however, it could at least make it easier for countries to request and receive assistance from the United States—for example, by encouraging diplomats to publicize the existence of these agreements and urge countries to apply. Likewise, the State Department should continue to explore ways of streamlining the evaluation process such that countries that need assistance need not wait too long for approval. Although the State Department pursues many other critical priorities, the protection of cultural property should be neither dismissed nor forgotten—and any reforms should be accompanied by a robust law-enforcement effort. Looting is likely to become only a more serious problem in the coming years, with violent conflicts and a global pandemic providing ample opportunity for thievery, and online marketplaces making it easier to sell stolen goods without detection.²³

This Essay proceeds as follows. Part I explores the legislative history surrounding the passage of the Convention on Cultural Property Implementation Act, which implemented the UNESCO Convention in the United States. In highlighting the congressional debates and the various special-interest groups, Part I shows how the final version of the law reflected a compromise between those who wanted strong cultural-property protections and those who favored weaker ones. Part II investigates how cultural property grew to become a national-security concern for the United States, beginning with the destruction of the Bamiyan Buddhas in Afghanistan and ending with a discussion of terrorist financing. It also explores what this trend says about the importance of national security to the setting of U.S. policy priorities. Finally, Part III draws on interviews with a host of experts on looted antiquities, including State Department diplomats, researchers, prosecutors, and members of the Cultural Property Advisory Committee to consider how the U.S. cultural-property regime might be strengthened, including by reforming the Convention on Cultural Property Implementation Act.

22. See, e.g., Taxation & Customs Union, *Imports of Cultural Goods into the EU*, EUR. COMMISSION, https://ec.europa.eu/taxation_customs/business/customs-controls/cultural-goods_en [https://perma.cc/6H43-WY8E].

23. See Karen Zraick, *Now for Sale on Facebook: Looted Middle Eastern Antiquities*, N.Y. TIMES (May 9, 2019), <https://www.nytimes.com/2019/05/09/arts/facebook-antiquities-syria-iraq.html> [https://perma.cc/U9CW-H7H4].

I. IMPLEMENTING THE UNESCO CONVENTION

The protection of cultural property became an official global priority in 1970, with the adoption of the UNESCO Convention.²⁴ Recognizing that cultural property “increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations,” the treaty asked states to stop importing stolen cultural property and to help states whose patrimony was in jeopardy.²⁵ Perhaps unsurprisingly, some of the first countries to implement the treaty were those that had long histories of theft and looting, such as Cambodia (the seventh country to join), Libya (the tenth), Iraq (the twelfth), Egypt (the fifteenth), and Syria (the twenty-second).²⁶

Noticeably absent from the initial list, however, were countries that had historically served as the largest markets for stolen art: China, France, the United Kingdom, and the United States.²⁷ The United States had a particularly complicated relationship with the treaty. Moved by reports of the severity of archaeological looting abroad, it had been one of only a few states with a large global art market to participate in the drafting.²⁸ (Switzerland and the United Kingdom, by contrast, opted not to take part.) Yet the United States ultimately exerted its influence to water down the text. The initial draft had “proposed a comprehensive ban on international trade in virtually all cultural property unless the object was accompanied by an export license from the country claiming patrimony.”²⁹ Fearing undue encroachment on the U.S. art market, the United States pushed for final language that eschewed a comprehensive ban in favor of more targeted import restrictions, allowed states to add reservations to the treaty, and required countries whose cultural property was in jeopardy to take affirmative steps to protect their heritage.³⁰

24. UNESCO Convention, *supra* note 13.

25. *Id.* arts. 5, 7 & 9.

26. *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, UNITED NATIONS EDUC., SCI. & CULTURAL ORG., <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E> [<https://perma.cc/LMZ7-K7VD>].

27. *Id.*

28. For more on this history, see Asif Efrat, *Protecting Against Plunder: The United States and the International Efforts Against Looting of Antiquities* 33-41 (Feb. 13, 2010) (unpublished manuscript), <https://ssrn.com/abstract=1552339> [<https://perma.cc/GL4N-SGD8>].

29. Mark B. Feldman, *Reform of U.S. Cultural Property Policy*, CULTURAL PROP. NEWS (Apr. 10, 2014), <https://culturalpropertynews.org/mark-b-feldman-reform-of-u-s-cultural-property-policy> [<https://perma.cc/NDC4-KUL4>].

30. See Efrat, *supra* note 28, at 36-37; Feldman, *supra* note 29.

The U.S. Senate gave its advice and consent to the ratification of the Convention in 1972, but it added a reservation preventing the treaty from entering into force until the United States passed implementing legislation, which did not happen for more than a decade.³¹ In 1983, Congress finally passed the Convention on Cultural Property Implementation Act after many failed attempts. This Part explores why Congress took so long to pass the implementing legislation by taking a deep dive into the congressional hearings that took place in the late 1970s and early 1980s. It concludes by assessing the law itself, which created a legal framework under which the United States could block the import of stolen antiquities but also included key concessions to opponents of the bill.

A. *The Road to the Convention on Cultural Property Implementation Act*

The first version of the Convention on Cultural Property Implementation Act was introduced in 1973 but failed to make it out of committee;³² another version, introduced in April 1977, languished in the Senate.³³ In 1979, in a hearing on yet another version of the bill, Mark B. Feldman, the deputy legal adviser at the State Department, emphasized the urgency of the law. “Clandestine excavations of archaeological sites and the pillage of ancient monuments destroy the record of past civilizations,” he said.³⁴ The United States should aid countries seeking the return of their cultural objects, he continued, “on grounds of principle, good foreign relations, and concern for the preservation of the cultural heritage of mankind.”³⁵

Feldman had come to believe that the United States had a moral obligation to counteract the theft of cultural property after seeing mounting evidence that the “pillage of archeological sites threatened irreplaceable cultural resources, including well documented Mayan monuments in Mexico and Central America.”³⁶ He had played a key role in negotiating a 1970 treaty between the United States

31. Leonard D. DuBoff et al., *Proceedings of the Panel on the U.S. Enabling Legislation of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 4 SYRACUSE J. INT’L L. & COM. 97, 98 (1976).

32. See H.R. 11754, 93rd Cong. (1973).

33. See H.R. 5643, 95th Cong. (1977).

34. *Cultural Property Treaty Legislation: Hearing on H.R. 3403 Before the Subcomm. on Trade of the H. Comm. on Ways and Means*, 96th Cong. 4 (1979) [hereinafter *1979 Hearing*] (statement of Mark B. Feldman, Deputy Legal Adviser, U.S. Department of State).

35. *Id.*

36. Feldman, *supra* note 29.

and Mexico “providing for the recovery and return of stolen archeological, historical and cultural properties,”³⁷ as well as in drafting legislation that Congress passed in 1972 that “prohibit[s] imports of pre-Colombian monumental and architectural sculpture exported illegally from Latin America.”³⁸

Now, however, art dealers drowned out his plea. Art dealers and their allies in Congress argued that the United States would be the only major art-importing country to ratify the UNESCO Convention, which would allow other countries to gain a competitive advantage over the United States. “What are the prospects for the other major art importing countries, such as Switzerland, Japan, and Germany ratifying the convention in the foreseeable future and why haven’t they done so?” asked one congressman, voicing a concern that would be raised several times during the hearing.³⁹ Feldman conceded it would likely “be some time” until other major art importers accepted the convention, but, he said, “we are hopeful that they will do so, particularly if the United States takes the lead in going first.”⁴⁰ It would not be the first time, he added, that the United States “set the pattern for international conduct.”⁴¹ Another witness, Michael Glass, then general counsel at the International Communication Agency,⁴² added another reason that the United States would benefit from taking decisive action: the rising theft of Native American artifacts, which meant that Washington might one day want to pressure other countries to adopt strict import controls on items coming from the United States.⁴³ Still, at least one art dealer maintained that enacting the bill “would penalize and effectively end the importation into this country of broad classes of works of art, works which had not been pillaged, looted or stolen.”⁴⁴

37. Feldman, *supra* note 29 (citing Treaty of Cooperation Between the United States of America and the United Mexican States Providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties, U.S.-Mex., July 17, 1970, 22 U.S.T. 494).

38. Feldman, *supra* note 29.

39. 1979 *Hearing*, *supra* note 34, at 6.

40. *Id.*

41. *Id.*

42. The International Communication Agency was an agency charged with overseeing American public diplomacy. *Report on the International Communication Agency*, U.S. ADVISORY COMMISSION ON PUB. DIPLOMACY ii (1980), <https://www.state.gov/wp-content/uploads/2019/06/1980-International-Communications-Agency-Report.pdf> [https://perma.cc/GY4X-NCNC].

43. 1979 *Hearing*, *supra* note 34, at 12 (statement of Michael A. Glass, General Counsel, International Communication Agency).

44. *Id.* at 39 (statement of Douglas C. Ewing, President, American Association of Dealers in Ancient, Oriental, and Primitive Art).

Another critique came from coin collectors – numismatists – who, alongside antique dealers, formed a vigorous lobby against the bill. They worried that the law would spur overenforcement on the part of customs officials, who might feel empowered to clamp down on coin imports. As one congressman, speaking on behalf of a numismatics expert, put it, “Dealers feel that the Customs process would be suspicious of all coin imports, as they are about any white powder shipment because of cocaine traffic.”⁴⁵ Numismatists also worried that the bill, in seeking restrictions on importing items recovered from “clandestine or accidental diggings,” would end up targeting coin collectors who found valuable coins in open fields.⁴⁶

Others worried that the bill would impact innocent buyers who might not know the legal status of their property. Representative Sam M. Gibbons illustrated the problem with a hypothetical: “Suppose my wife and I are shopping in some foreign country and just taking in the antique places and things of that sort, and we happen to pick up something,” he said.⁴⁷ “We are not experts in the field and we don’t even know much about what we are looking at except that it is attractive to us. How am I to be protected as a good faith purchaser when I try to bring that product back into the United States?”⁴⁸ In fact, the law did contain protections for good-faith purchasers. And as one law professor explained, the bill was designed to target a narrow set of “really very, very special” objects – objects that an unassuming American tourist would be unlikely to pick up at a bazaar.⁴⁹

Finally, art collectors and others argued that the bill would do a disservice to great works of art. Great art might be destroyed if the bill forced the United States to return cultural property to its country of origin. According to Gerald G. Stiebel, a former president of the National Antique and Art Dealers Association of America, for example, “the market place” – as opposed to the U.S. government – was best placed to protect art.⁵⁰ Art collectors were willing to “make the financial commitment” to ensure high-quality care, he said, and works that ended up in a museum would be safeguarded and preserved for public enjoyment.⁵¹

45. *Id.* at 14 (statement of Rep. Toby Roth).

46. *Id.* at 13.

47. *Id.* at 26.

48. *Id.*

49. *Id.* at 28 (statement of Paul Bator, Professor, Harvard Law School).

50. *Id.* at 59 (statement of Gerald G. Stiebel, President, The National Antique and Art Dealers Association of America).

51. *Id.*

B. The 1983 Act and Political Compromise

Thanks in part to such opposition, the 1979 bill stalled in committee.⁵² When the Convention on Cultural Property Implementation Act finally passed in 1983, it reflected a compromise between the U.S. government, archaeologists, museum officials, and art historians, on the one hand, and art dealers, on the other.⁵³ The law laid the legal groundwork for the United States to negotiate bilateral agreements with countries requesting aid under Article 9 of the UNESCO Convention, which provides that “[a]ny State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States . . . to participate in a concerted international effort . . . to prevent irremediable injury to the cultural heritage of the requesting State.”⁵⁴ Under the new law, the President had the power to enter into a bilateral agreement with a requesting state to apply import restrictions to looted archaeological or ethnological materials.⁵⁵

But the law also contained several provisions that appeared designed to slow down the process. For one, requesting states had to issue a formal request to the United States along with “a written statement of the facts” demonstrating, among other things, that their cultural patrimony was in jeopardy; that they had taken reasonable steps to protect their patrimony; that import restrictions would be “of substantial benefit” in deterring the pillage of such patrimony; that “less drastic” remedies were unavailable; and that any import restrictions would be consistent with the global interest in the benefits of cultural property for science, culture, and education.⁵⁶ Such information would be especially time consuming to gather if the country in question had not digitized the data, or if the relevant data were housed in multiple agencies.⁵⁷ In addition, no agreement could last longer than five years without being renewed, and the President could not adopt an agreement unless other major importers were implementing—or were likely to implement—similar restrictions themselves.⁵⁸

52. See H.R. 3403, 96th Cong. (1979).

53. See *Miscellaneous Tariff Bills—1982: Hearings Before the Subcomm. on Int’l Trade of the S. Comm. on Fin.*, 97th Cong. 433 (1982) (statement of Dr. Richard E. W. Adams, President, Society for American Archaeology) (“This bill represents compromise among the various interests, scientific and cultural on the part of the archaeologists, museum officials, and art historians, and commercial on the part of the art dealers.”).

54. UNESCO Convention, *supra* note 13, art. 9.

55. Convention on Cultural Property Implementation Act of 1983, Pub. L. No. 97-446, § 303, 96 Stat. 2329, 2352 (codified as amended at 19 U.S.C. § 2602 (2018)).

56. 19 U.S.C. § 2602(a)(3), (a)(1)(A)-(D) (2018).

57. Video Interview with Jeremy Sabloff, *supra* note 10.

58. 19 U.S.C. § 2602(b), (c)(1).

The Convention on Cultural Property Implementation Act also set up a lengthy bureaucratic process by which the State Department would evaluate agreements. Under the new law, a proposal to initiate a bilateral agreement would follow roughly the same procedure as a new agency rule. The request would first have to be published in the Federal Register, after which it would be considered by a Cultural Property Advisory Committee, to be composed of eleven members – two members representing museums; three experts in archaeology, anthropology, or ethnology; three experts in archaeological, ethnological, and other cultural property; and three members representing the interests of the general public.⁵⁹ Today, the Advisory Committee meets roughly three times per year in Washington, D.C. to consider new proposals.⁶⁰ Each session has a private component and a public one. The public meetings, which run about one hour, allow members of the public to offer feedback on proposals and engage in dialogue with the committee. Each private meeting lasts roughly two to two-and-a-half days, during which committee members evaluate each request in turn, focusing mainly on whether the proposals meet the criteria listed in the Act.⁶¹ (In their fall meeting, committee members also review all existing agreements in case there are any outstanding issues to be addressed.) Finally, the committee writes and submits to the President (via senior State Department officials) a report outlining their views and recommendations. All told, the process can take many months, if not years.⁶² And, once made, each agreement must be renewed every five years.⁶³

The new law thus catered to two primary interests. In implementing the UNESCO Convention, it first placated those, like career State Department diplomats, who believed that the United States had waited long enough to legislate to protect cultural patrimony. But the law also included concessions to the numismatists and art dealers by placing strict requirements on requesting states and creating a heavily bureaucratized process for approving the agreements. According to Tess Davis, executive director of the Antiquities Coalition, a Washington, D.C.-based nonprofit working to protect cultural property, such concessions were necessary because “restricting the art market was less accepted in 1983 than it is now” and “lawmakers wanted to cover their bases by giving much more

59. 19 U.S.C. §§ 2605(b), 2602(f)(1).

60. Telephone Interview with Jeremy Sabloff, Chair, Cultural Prop. Advisory Comm. (May 8, 2019).

61. *Id.*

62. Video Interview with Jeremy Sabloff, *supra* note 10.

63. 19 U.S.C. § 2602(b), (c).

deference to the market.”⁶⁴ If the statute were written today, she said, it would likely come with stricter regulations.⁶⁵

Notably, while the discussion around cultural property in the 1970s and 1980s focused on the interests of U.S. museums and coin collectors, it largely overlooked broader American security interests. Supporters of the law emphasized the value of preserving mankind’s cultural heritage, as well as the ‘unique ability of the United States to change the incentives surrounding looting worldwide. Yet despite discussion of the importance of building “good foreign relations,”⁶⁶ and a recognition that importing stolen artifacts “in some cases severely strains our relations with the countries of origin, which often include close allies,”⁶⁷ there was little sense that addressing the theft of cultural property could or should be a national-security priority for the United States.

II. CULTURAL PROPERTY AND U.S. NATIONAL SECURITY

Given the bureaucratized nature of the cultural-property regime and the fact that protecting cultural property did not rank highly on the list of U.S. foreign-policy priorities,⁶⁸ it should come as little surprise that it took another twelve years before the United States completed its first bilateral agreement—with El Salvador in 1995, followed by Canada, Guatemala, Mali, and Peru in 1997.⁶⁹ Though it has been more than three decades since the passage of the Convention on Cultural Property Implementation Act, the State Department currently has only twenty bilateral agreements with other countries—“a pathetic record,” in the words of one former State Department employee.⁷⁰

But since 1983, and especially in the last two decades, the United States has begun to view protecting cultural property as increasingly important. In fact, Congress bypassed the bureaucratic Convention on Cultural Property Implementation Act scheme at least twice (for Iraq in 2004 and Syria in 2016). This

64. Video Interview with Tess Davis, Exec. Dir., Antiquities Coal. (Apr. 16, 2020).

65. *Id.*

66. 1979 *Hearing*, *supra* note 34.

67. S. REP. NO. 97-564, at 3 (1982).

68. Video Interview with Larry Schwartz, former Deputy Assistant Sec’y for Pub. Diplomacy, Bureau of Near E. Affairs, U.S. Dep’t of State (Apr. 10, 2020).

69. See Bureau of Educ. & Cultural Affairs, *supra* note 17. The U.S.-Canada agreement was effective from 1997 to 2002. Patty Gerstenblith, *United States of America and Canada Expert Report*, UNITED NATIONS EDUC., SCI. & CULTURAL ORG. 3 n.8 (2012), http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Gerstenblith_en.pdf [https://perma.cc/89JS-9EKZ].

70. Telephone Interview with Larry Schwartz, former Deputy Assistant Sec’y for Pub. Diplomacy, Bureau of Near E. Affairs, U.S. Dep’t of State (May 3, 2019).

Part explores the factors underlying this shift, including the highly publicized theft and destruction of cultural property in Afghanistan and Iraq and the discovery that terrorist groups such as ISIS have used the sale of stolen antiquities to bankroll their operations.⁷¹ It then considers what the shift says about how Washington conceptualizes its policy priorities.

A. *The Bamiyan Buddhas and Baghdad's Iraq Museum*

According to one former State Department officer, one of the first episodes to raise modern public awareness of cultural property was the destruction, in 2001, of the Bamiyan Buddhas in central Afghanistan.⁷² In March of that year, the Taliban, “with hammers, spades, and explosives,” began destroying the Buddhas, “priceless artifacts that 800 years ago survived the wrathful cannon fire of Genghis Khan.”⁷³ They acted in response to a surprise edict issued by Mullah Muhammad Omar, then the Taliban’s supreme leader, who declared, “These idols have been gods of the infidels.”⁷⁴ Speaking to reporters in Kabul, the Taliban’s minister of information and culture proclaimed, “The head and legs of the Buddha statues in Bamiyan were destroyed yesterday,” adding that “soldiers are working hard to demolish the remaining parts.”⁷⁵

The demolition of the Buddhas, which had been carved out of sandstone cliffs in the sixth century, sparked widespread public outrage, with government and religious leaders across the globe speaking out against the mullah’s edict.⁷⁶ Kofi Annan, then the United Nations Secretary-General, met with a Taliban of-

71. Although beyond the scope of this Essay, another factor that put the protection of cultural property on the State Department’s radar was the Clinton-era effort to locate and return Nazi-confiscated art. The Washington Principles on Nazi-Confiscated Art, negotiated by the State Department in 1998, declared: “Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.” Office of the Special Envoy for Holocaust Issues, *Washington Conference Principles on Nazi-Confiscated Art*, U.S. DEP’T ST. (Dec. 3, 1998), <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art> [https://perma.cc/97DV-CW74].

72. Telephone Interview with Larry Schwartz, *supra* note 70.

73. Barry Bearak, *Over World Protests, Taliban Are Destroying Ancient Buddhas*, N.Y. TIMES (Mar. 4, 2001), <https://www.nytimes.com/2001/03/04/world/over-world-protests-taliban-are-destroying-ancient-buddhas.html> [https://perma.cc/X9TG-S6EV].

74. *Id.*

75. *Id.*

76. Bearak, *supra* note 18.

ficial in Islamabad, Pakistan, in an unsuccessful attempt to stop the destruction.⁷⁷ In the U.S. House of Representatives, Congressman Phil English condemned the Taliban's actions, calling them "grotesque," barbaric, and "an act of mindless iconoclasm by a regime noted for its intolerance of all values that do not precisely conform to their own."⁷⁸ In language that echoed how many supporters of the Convention on Cultural Property Implementation Act spoke of the importance of cultural property, the congressman declared that the statues "had represented a common heritage of all mankind."⁷⁹

But it was the looting of the National Museum of Iraq in Baghdad in 2003, during the Iraq War, that really struck a nerve in Congress; Colonel Matthew Bogdanos, who led the investigation into the looting as an active-duty Marine, called it "the landmark event for cultural heritage protection."⁸⁰ When American troops entered Baghdad that April to topple Saddam Hussein's government, the ensuing chaos set off mass looting, with pillagers ransacking the museum and stealing some 15,000 artifacts.⁸¹ When all was done, items of extraordinary cultural value were missing from a museum that had been "home to one of the finest collection of antiquities in the world."⁸² Among the looted items were the Sacred Vase of Warka, the world's "oldest known carved-stone ritual vessel";⁸³ the Mask of Warka, a limestone head "generally believed to be the world's oldest known naturalistic sculpture of a human face"; and the Bassetki Statue, dating to roughly 2250 B.C.⁸⁴ Like the destruction of the Bamiyan Buddhas, the museum looting set off a global outcry, but this time, much of the anger was directed toward the United States, whose troops were criticized for standing by as the worst of the looting took place.⁸⁵ In fact, the only U.S. Army unit in the vicinity

77. *Id.*

78. 147 CONG. REC. 3594, 3594 (2001) (statement of Rep. Philip English).

79. *Id.*

80. Video Interview with Colonel Matthew Bogdanos, Assistant Dist. Attorney, Manhattan Dist. Attorney's Office (Jun. 21, 2020). In 2005, Bogdanos won a National Humanities Medal for his investigation and recovery efforts, which resulted in the return of more than 5,000 artifacts to the museum. See Press Release, Nat'l Endowment for the Humanities, President Bush to Award the 2005 National Humanities Medals (Nov. 8, 2005), <https://www.neh.gov/news/press-release/2005-11-08> [<https://perma.cc/56M5-M3VN>].

81. Bogdanos, *supra* note 19, at 494.

82. *Id.* at 477.

83. *Id.* at 478 n.5.

84. *Id.* at 478, 478 nn.6 & 8.

85. See, e.g., Julio Godoy, *Worldwide Move to Stop Sale of Loot*, INTER PRESS SERV. NEWS AGENCY (Apr. 15, 2003), <http://www.ipsnews.net/2003/04/iraq-worldwide-move-to-stop-sale-of-loot> [<https://perma.cc/HSH3-GW35>] ("It is impossible to understand that the U.S. troops only stood by while thieves were plundering the Iraqi museums . . ." (quoting German archaeologist Michael Petzet)).

of the museum did try to investigate a report of looting at the museum, but as they moved closer, they “immediately drew heavy fire from the compound, forcing them to retreat.”⁸⁶ American commanders told reporters that they lacked the manpower to guard the museum, as they were focused on defeating pockets of paramilitary forces across Baghdad who remained loyal to Saddam Hussein.⁸⁷

Against this backdrop, American lawmakers acted quickly to aid Iraq.⁸⁸ In November 2004, Congress passed the Emergency Protection for Iraqi Cultural Antiquities Act,⁸⁹ authorizing the President to impose import restrictions on “archaeological or ethnological material of Iraq” without needing to wait for a formal request from the Iraqi government.⁹⁰ The U.S. government later relied on this authority to impose emergency import restrictions on “objects of ceramic, stone, metal, glass, ivory, bone, shell, stucco, painting, textile, paper, parchment, leather, wood, and other items of archaeological, historical, cultural, rare scientific, or religious importance.”⁹¹ In 2009, the State Department helped set up the Iraqi Institute for the Conservation of Antiquities and Heritage, an institute in Erbil where international experts help train Iraq’s museum staff in the preservation of their cultural property.⁹² (Today, the Institute has an Iraqi board of directors and a U.S.-Iraqi advisory council.⁹³) The State Department’s support of Iraqi heritage continues to this day. In 2017, for example, the State Department, alongside the Smithsonian Institution, announced a \$400,000 project to help Iraq’s State Board of Antiquities and Heritage secure ancient artifacts in Nimrud, which was liberated from ISIS control in late 2016.⁹⁴

86. Bogdanos, *supra* note 19, at 506–07 n.108.

87. Burns, *supra* note 18.

88. Telephone Interview with Larry Schwartz, *supra* note 70 (“When we appeared to be standing by and doing nothing as everything got looted in Iraq, it was quite a big story. Ever since then, we’ve been paying for it.”).

89. Emergency Protection for Iraqi Cultural Antiquities Act of 2004, Pub. L. No. 108-429, 118 Stat. 2599.

90. *Id.* § 3002.

91. Press Release, U.S. Dep’t of State, United States Imposes Import Restrictions to Protect the Cultural Heritage of Iraq (Apr. 30, 2008), <https://2001-2009.state.gov/r/pa/prs/ps/2008/apr/104224.htm> [<https://perma.cc/PSS5-BMQ8>].

92. Cultural Heritage Ctr., *The Iraqi Institute for the Conservation of Antiquities and Heritage*, U.S. DEP’T ST. (Mar. 1, 2015), <https://eca.state.gov/cultural-heritage-center/highlight/iraqi-institute-conservation-antiquities-and-heritage> [<https://perma.cc/NDN3-67RC>].

93. *Id.*

94. Press Release, U.S. Dep’t of State, U.S. Department of State and Smithsonian Partner on Emergency Cultural Heritage Work in Iraq (Mar. 30, 2017), <https://it.usembassy.gov/u-s-department-state-smithsonian-partner-emergency-cultural-heritage-work-iraq> [<https://perma.cc/8WXM-ER26>].

B. Looted Antiquities and Terrorist Financing

Beyond the highly publicized lootings in the Middle East, what really spurred the U.S. government to prioritize the protection of cultural property was the discovery that ISIS was using the theft and sale of antiquities to finance its terrorist operations. In February 2015, the United Nations Security Council passed Resolution 2199, condemning the destruction of cultural heritage in Iraq and Syria and urging member states to take steps to prevent terrorist groups from benefitting from the sale of looted antiquities.⁹⁵ Later that year, in May, U.S. Special Forces raided the compound of ISIS leader Abu Sayyaf, in Deir Ez-zor, Syria, and discovered a number of documents, including official letterhead and receipts, detailing how the terrorist group was exploiting the sale of illicit antiquities as a source of funding.⁹⁶ All told, receipts suggested that ISIS had made more than \$1.25 million from looting.⁹⁷ Western intelligence officials reported that looting constituted ISIS's second-largest source of funding, after oil.⁹⁸ In remarks at the Metropolitan Museum of Art in September 2015, Andrew Keller, then the State Department's Deputy Assistant Secretary for Counter Threat Finance and Sanctions and one of the leaders of Washington's efforts to counter ISIS's finances, said:

We are convinced, based on evidence from the Abu Sayyaf raid, that ISIL is engaged in the systematic looting and trafficking of antiquities, and that it derives significant income from these activities. We need to stop

95. Press Release, United Nations, Unanimously Adopting Resolution 2199 (2015), Security Council Condemns Trade with Al-Qaida Associated Groups, Threatens Further Targeted Sanctions (Feb. 12, 2015), <https://www.un.org/press/en/2015/sc11775.doc.htm> [<https://perma.cc/7QNQ-RTWR>].

96. Katie A. Paul, *How Daesh Turns Illicit Digs into Dollars*, ANTIQUITIES COALITION (Nov. 8, 2016), <https://theantiquitiescoalition.org/how-daesh-turns-illicit-digs-into-dollars> [<https://perma.cc/3QZR-H4PP>].

97. *Id.*

98. Duncan Mavin, *Calculating the Revenue from Antiquities to Islamic State*, WALL ST. J. (Feb. 11, 2015, 7:26 AM ET), <https://www.wsj.com/articles/calculating-the-revenue-from-antiquities-to-islamic-state-1423657578> [<https://perma.cc/SS5J-4FEF>]. Note, however, that it is difficult to calculate the amount of financing precisely because “satellite images don’t show how much the looters are finding, or what type or quality of artifacts they turn up,” and “[t]he value at which antiquities are sold on the open market beyond the region held by Islamic State is . . . of limited use, because pieces that have changed hands many times will almost certainly increase in value along the way.” *Id.*

them, both to protect our common heritage and to deprive them of funds that fuel their reign of terror.⁹⁹

As more information was uncovered, it became clear that ISIS's illicit operation was woven into the fabric of its growing bureaucracy.¹⁰⁰ The terrorist group had created a Department of Antiquities within its Office of Resources, or the Diwan al Rikaz. Looters wishing to raid archaeological sites within ISIS-controlled territory had to buy a permit from the department, which meant that the group profited even if no valuable items were ever found. If the looters did uncover valuable artifacts, ISIS officials gave them three to five weeks to find a buyer and claimed twenty percent of the profit of each sale. If the looters could not find a buyer within that timeframe, the Department of Antiquities would reclaim the artifacts and search for a buyer on its own. If successful, sixty percent of the sale would go to ISIS (the other forty percent would still go to the looter). If unsuccessful, the department would turn the items over to the Diwan al Rikaz, which would sell them at auction in Raqqa, Syria, claiming eighty percent of the sale for the terrorist organization.¹⁰¹

In the years since this discovery, the political will to address the illicit sale of cultural antiquities has increased alongside a wider recognition that doing so might be in the long-term security interests of the United States. In 2016, for example, the House of Representatives held a hearing on “how the United States can counter the plunder and sale of priceless cultural antiquities by the Islamic State and others.”¹⁰² In contrast to the hearings of the late 1970s, national security was front and center. In his testimony, for example, Yaya J. Fanusie, a director at the Foundation for Defense of Democracies' Center on Sanctions and Illicit Finance, exhorted the United States to make antiquities looting “an intelligence

99. Andrew Keller, Deputy Assistant Sec'y for Counter Threat Fin. & Sanctions, U.S. Dep't of State, 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/4DVK-5WJL>].

100. See *id.*; see also Russell D. Howard, Marc D. Elliott & Jonathan R. Prohov, *IS and Cultural Genocide: Antiquities Trafficking in the Terrorist State*, JOINT SPECIAL OPERATIONS U. (2016), <https://theantiquitiescoalition.org/wp-content/uploads/2017/01/IS-and-Cultural-Genocide-Antiquities-Trafficking-in-the-Terrorist-State.pdf> [<https://perma.cc/64L3-K7VR>].

101. Paul, *supra* note 96.

102. *Preventing Cultural Genocide: Countering the Plunder and Sale of Priceless Cultural Antiquities by ISIS: Hearing Before the H. Comm. on Fin. Servs.*, 114th Cong. 2 (2016) (statement of Rep. Stephen Lynch).

and law enforcement priority.”¹⁰³ Another witness, the founder of the Monuments Men Foundation for the Preservation of Art, a group dedicated to honoring the memory of those who helped to recover art stolen by the Nazis, emphasized the diplomatic benefits of cultural-property protection: “If we want to curry favor and do ambassadorial work in building up the esteem of the United States in the eyes of the world,” he said, “showing respect for cultural treasures of other countries, which [was] the hallmark policy of President Roosevelt and General Eisenhower during World War II, will do more than all of the foreign aid we are giving away, in my opinion.”¹⁰⁴

In 2016, Congress passed the Protect and Preserve International Cultural Property Act, which directed the President to impose import restrictions on cultural property from Syria.¹⁰⁵ In the same bill, Congress expressed its sense that the President should “establish an interagency coordinating committee to coordinate the efforts of the executive branch to protect and preserve international cultural property at risk from political instability, armed conflict, or natural or other disasters.”¹⁰⁶ This resulted in the creation of the Cultural Heritage Coordinating Committee, which consists of twelve agencies including the State Department, the Department of Defense, the Department of Homeland Security, the Department of Justice, and the Smithsonian Institution.¹⁰⁷ In a 2017 congressional hearing, several lawmakers expressed a desire to go even further. One of the sponsors of the 2016 bill asked if there were other countries for whom the United States should consider adopting import restrictions.¹⁰⁸ A research associate at the Smithsonian responded that the United States should pursue an agreement with Afghanistan. “I am at this point almost more concerned about the nexus between looting and al-Qaida and Afghanistan than I am about Daesh and Syria and Iraq,” he said.¹⁰⁹ “But there is no protection.”¹¹⁰ Indeed, nearly

¹⁰³. *Id.* at 9 (statement of Yaya J. Fanusie, Director of Analysis, Center on Sanctions and Illicit Finance, Foundation for Defense of Democracies).

¹⁰⁴. *Id.* at 31 (statement of Robert M. Edsel, Founder and Chairman, Monuments Men Foundation for the Preservation of Art).

¹⁰⁵. Pub. L. No. 114-151, 130 Stat. 369 (2016) (codified at 19 U.S.C. § 2601 note (2018)).

¹⁰⁶. *Id.*

¹⁰⁷. Bureau of Educ. & Cultural Affairs, *Cultural Heritage Coordinating Committee*, U.S. DEP’T ST., <https://eca.state.gov/cultural-heritage-center/cultural-heritage-coordinating-committee> [<https://perma.cc/VB2S-VCEC>].

¹⁰⁸. *The Exploitation of Cultural Property: Examining Illicit Activity in the Antiquities and Art Trade: Hearing Before the Subcomm. on Terrorism and Illicit Fin. of the H. Comm. on Fin. Servs.*, 115th Cong. 21 (2017) (statement of Rep. Edward Royce).

¹⁰⁹. *Id.* (statement of Brian I. Daniels, Research Associate, Smithsonian Institute).

¹¹⁰. *Id.*

twenty years after the destruction of the Bamiyan Buddhas, the United States still has no bilateral agreement protecting Afghanistan's endangered antiquities.

C. *The "National Security" Obsession*

The 2016 and 2017 hearings revealed a marked evolution in how lawmakers and experts speak about cultural property. Art dealers and coin collectors no longer have a determinative say: only a handful of them still comment publicly to oppose new cultural-property agreements, usually to little avail.¹¹¹ In a testament to how much things have changed, in March 2019, the House of Representatives passed a bill requiring art collectors and dealers to comply with the Bank Secrecy Act, which asks businesses to help the U.S. government detect and prevent financial crimes.¹¹² Museums, too, have been chastened, especially after a series of scandals in the early 2000s involving the purchase of looted art made it politically infeasible for them to oppose good-faith efforts to protect cultural property.¹¹³

Today, the loudest voices come from the State Department and law enforcement, as well as from experts on the Middle East and terrorist financing—a testament to a growing consensus that stemming the looting of antiquities bolsters U.S. national security. Once cultural property was tied to ISIS—and to terrorism more broadly—it became easier to get lawmakers and members of the public on board. Mark Vlasic, a law professor and Hollywood producer who helped to publicize the link between looting and terrorist financing, put it this way: “In many ways, it helps to frame it as a national-security issue to make it more important. When you observe that stolen cultural heritage is funding ISIS, and that these terrorists could kill more Americans based on the money they have, then all of a sudden it becomes something we need to pay more attention to.”¹¹⁴

111. Video Interview with Tess Davis, *supra* note 64.

112. *The Antiquities Coalition Applauds House Resolution on Financial Crimes and Cultural Racketeering*, ANTIQUITIES COALITION (Mar. 21, 2019), <https://theantiquitiescoalition.org/the-antiquities-coalition-applauds-house-resolution-on-financial-crimes-and-cultural-racketeering> [https://perma.cc/BUM9-GMA8].

113. In 2005, Marion True, the longtime curator of the Getty Museum, was indicted by authorities in Rome for trafficking illicit antiquities; soon after, she was forced to resign. The scandal revealed that for decades, museums in America, Europe, and elsewhere had been buying looted objects, in violation of U.S. and foreign law. In the aftermath of the scandal, several of America's leading museums transferred more than one hundred Greek, Roman, and Etruscan antiquities, valued at more than half a billion dollars, to the Italian and Greek governments. For more on this, see JASON FELCH & RALPH FRAMMOLINO, *CHASING APHRODITE: THE HUNT FOR LOOTED ANTIQUITIES AT THE WORLD'S RICHEST MUSEUM* (2011).

114. Telephone Interview with Mark V. Vlasic, Adjunct Professor of Law, Georgetown Univ. (June 16, 2020). Vlasic is also an Executive Producer of the CBS and Amazon Prime television show

This fact demonstrates the power of the “national security imagination,” as one historian has put it.¹¹⁵ Historically speaking, the concept of “national security” is relatively new. Sitting U.S. presidents publicly mentioned “national security” only four times between 1918 and 1931, an average of once every three years.¹¹⁶ It was not until the 1940s that the term entered common parlance, thanks to the historian Edward Mead Earle, who began popularizing it in speeches he gave across the country advocating a more aggressive foreign policy.¹¹⁷ The birth of the national security imagination created a “new, militarized way of looking at the world [that] transformed the economy into a geopolitical machine, distant conflicts into immediate dangers, and military preparedness into a permanent condition,” and “shattered the boundary between civilian and soldier, domestic and foreign, and even war and peace.”¹¹⁸ Soon, national security appeared to be everywhere: in President Franklin Delano Roosevelt’s famous “Arsenal of Democracy” fireside chat; in the National Security Act of 1947, which birthed the National Security Resources Board, the Central Intelligence Agency, and the National Security Council; and, of course, in the rhetoric surrounding the Cold War.¹¹⁹

Today, national security has grown ever more central in the wake of 9/11 and the global war on terror. In addition to becoming more pervasive, the concept of national security has also become more capacious, expanding to include far more than traditional military-related aims. Policymakers now use “national security” to talk about everything from refugee policy to climate policy to a Chinese company’s majority stake in the dating app Grindr.¹²⁰ In the post-Cold War world, J. Benton Heath argues that national security has morphed into a “multifaceted concept” encompassing a wide range of policy areas. He calls this the “new national security,” writing that “the concept of national security has transformed from its relatively stable Cold War meaning” to now “address a range of threats,

Blood & Treasure, which follows an antiquities expert and art thief who team up to catch a terrorist funding his operation through looted treasure.

115. Fergie, *supra* note 20.

116. Andrew Preston, *Monsters Everywhere: A Genealogy of National Security*, 38 *DIPLOMATIC HIST.* 486, 487 (2014).

117. Fergie, *supra* note 20.

118. *Id.* For additional background into the origins of “national security” as a term of art, see Dexter Fergie, *Geopolitics Turned Inwards: The Princeton Military Studies Group and the National Security Imagination*, 43 *DIPLOMATIC HIST.* 644 (2019).

119. See Fergie, *supra* note 118; Fergie, *supra* note 20.

120. Jacob Rosenberg, *The Trump Administration Apparently Considers Grindr a National Security Threat. What is Going On?*, *MOTHER JONES* (Apr. 4, 2019), <https://www.motherjones.com/politics/2019/04/the-trump-administration-apparently-considers-grindr-a-national-security-threat-what-is-going-on> [<https://perma.cc/HZS3-W57Y>].

including nonstate actors and nonmilitary and nonhuman threats, such as economic crises, cybersecurity, infectious disease, climate change, transnational crime, and corruption.”¹²¹ In the wake of COVID-19, Oona Hathaway has argued that the United States should “broaden the lens of national security” to include supporting global health programs, “rejuvenating international institutions” like the World Health Organization, and advocating for universal health care.¹²²

The national securitization of policy has a dark side: emphasizing national security often provides cover for illegal or misguided policy decisions (Guantánamo Bay is one clear example). The emphasis also allows the United States to continue to expand the national-security state, often at the expense of civil liberties and diplomacy.¹²³ And the focus on national security can unfairly sideline policy aims, such as advancing human rights, that are just as laudable on their own terms. Robert Malley and Stephen Pomper made a version of this argument in response to calls to treat COVID-19 as a national-security issue, writing that “[i]f the pandemic has taught us anything it should be that investments in social and economic justice are as important as national security—not that in order to be important they have to fit under the latter label.”¹²⁴ In the case of cultural property, a narrow conception of national security might sideline efforts to protect the heritage of the majority of countries where looting is not financing terrorist activity.

Yet there is an upside for policies that receive the national-security bump as well. Bringing more policy priorities into the national-security fold can be a welcome opportunity to interrogate what the country should care about and

121. J. Benton Heath, *The New National Security Challenge to the Economic Order*, 129 YALE L.J. 1020, 1024, 1033 (2020).

122. Oona Hathaway, *COVID-19 Shows How the U.S. Got National Security Wrong*, JUST SECURITY (Apr. 7, 2020), <https://www.justsecurity.org/69563/covid-19-shows-how-the-u-s-got-national-security-wrong> [<https://perma.cc/G3QC-CDCU>]; see also Jacob S. Hacker & Oona Hathaway, *Universal Health Care Is a National Security Issue*, JUST SECURITY (Mar. 12, 2020), <https://www.justsecurity.org/69130/universal-health-care-is-a-national-security-issue> [<https://perma.cc/Z9HR-GLAZ>].

123. For more on this argument, see Robert Malley & Stephen Pomper, *The Perils of Hying Pandemic Response As a National Security Issue*, JUST SECURITY (May 4, 2020), <https://www.justsecurity.org/70001/the-perils-of-hying-pandemic-response-as-a-national-security-issue> [<https://perma.cc/8Y9N-QJAF>] (“By invoking national security, an administration can open up a world of flexibility for itself—bypassing human rights restrictions on foreign assistance, suspending immigration, imposing (or lifting congressionally imposed) sanctions, and classifying information to shield it from public disclosure.”).

124. *Id.*

why¹²⁵—and can reveal that an overlooked issue may be in the long-term strategic interests of the United States. This, according to many advocates, is what has happened to the protection of cultural property. “The State Department has realized that cultural-property agreements are valuable diplomatic tools, and they are more willing to pursue them,” according to Tess Davis, of the Antiquities Coalition.¹²⁶ “Part of that might owe simply to the personalities involved. But with ISIS on the front page of newspapers, that’s certainly raised awareness.”¹²⁷ Vlasic made a similar observation: “When you frame cultural property as a national-security issue, you’re going to go from talking to only the education-and-culture side of the State Department, to talking to the regional bureaus, the terrorist-finance folks, the ISIS envoy and intelligence officials, and there’s a bigger budget in those areas as well.”¹²⁸

III. THE ROAD AHEAD

Although cultural property has become a higher priority for the U.S. government in the decades since the passage of the Convention on Cultural Property Implementation Act, Washington could still be doing more—and not just for countries linked to the U.S. war on terror. The fact that Congress felt the need to bypass the original statutory scheme for Iraq and Syria suggests that the bilateral-agreement process leaves something to be desired. And the number of countries that have bilateral agreements with the United States remains relatively low. The United States should take advantage of the interest in protecting cultural property, due to its national-security nexus, to strengthen the current legal regime. This Part investigates how that can be done, and why protecting cultural property in general—not only when national security is clearly implicated—is both good optics and smart policy.

The United States is an outlier when it comes to how state parties to the UNESCO Convention have approached their obligations under the treaty. Many of the other signatories—including most of the bigger markets for global art—have passed domestic laws prohibiting the import of cultural property stolen

125. For more on this, see Oona Hathaway’s Twitter thread responding to Robert Malley and Stephen Pomper, Oona Hathaway (@oonahathaway), TWITTER (May 4, 2020, 10:21 AM ET), <https://twitter.com/oonahathaway/status/1257314479441801216> [<https://perma.cc/YN4L-3RXX>].

126. Video Interview with Tess Davis, *supra* note 64.

127. *Id.*

128. Telephone Interview with Mark V. Vlasic, *supra* note 114.

from other state parties. Germany, for example, requires cultural property imported from other state parties to be accompanied by a valid export permit.¹²⁹ The United Kingdom criminalizes importing and dealing in “tainted” cultural objects, defined as items whose excavation is illegal in the country where they originated.¹³⁰ In April 2019, the European Union passed a regulation prohibiting “the introduction of cultural goods . . . which were removed from the territory of the country where they were created or discovered in breach of the laws and regulations of that country.”¹³¹ The United States is one of only a few countries that requires a bilateral agreement before it will act, in part based on a belief that banning suspicious imports outright “removes from the hands of the importing country both the substantive decision as to what art objects should enter the country, and the institutional decision as to the scope of the enforcement regime it is practical and desirable for it to operate.”¹³²

Congress has the power to change course. It could amend the Convention on Cultural Property Implementation Act to include a blanket ban on the import of stolen cultural patrimony, akin to what already exists in countries like Germany or the United Kingdom. “Most other market countries have undertaken a much simpler approach,” said Allison Davis, a research analyst at the State Department who serves as executive director of the Cultural Property Advisory Committee.¹³³ “Do we need to keep doing things our way when the rest of the world has changed?”¹³⁴ Amending the statute would have several clear benefits, among them signaling the strength of the U.S. commitment to its UNESCO obligations, sending a clear message to illicit buyers and sellers, and fostering goodwill among countries whose patrimony is most at risk. It would also prevent Congress from having to act in a piecemeal fashion, as it did for Iraq and Syria, when a particular situation becomes especially troublesome.

129. See Letter from Tess Davis, Exec. Dir., Antiquities Coal., to Cultural Prop. Advisory Comm., U.S. Dep’t of State (Apr. 1, 2020) (on file with author).

130. *Id.*

131. Regulation (EU) 2019/880 on the Introduction and the Import of Cultural Goods, EUR. PARL. DOC. L 151 (2019), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.151.01.0001.01.ENG [<https://perma.cc/AL75-467U>].

132. Paul M. Bator, *An Essay on the International Trade in Art*, 34 STAN. L. REV. 275, 327–28 (1982) (arguing against a general rule barring “the import of all art objects whose export was itself not legally authorized”). In addition to the United States, Switzerland is one of the few countries with a system of bilateral agreements for cultural-property protection. See Fed. Office of Culture, *Bilateral Agreements*, FED. DEP’T HOME AFF., <https://www.bak.admin.ch/bak/en/home/cultural-heritage/transfer-of-cultural-property/bilateral-agreements.html> [<https://perma.cc/9UG5-PWZE>].

133. Video Interview with Allison Davis, Exec. Dir. Cultural Prop. Advisory Comm., U.S. Dep’t of State (Apr. 16, 2020).

134. *Id.*

But, Davis cautioned, abandoning the U.S. approach would not come without a cost. The system of bilateral agreements, she underscored, encourages “deep engagement” between the United States and foreign governments to address the illicit sale of looted goods.¹³⁵ The 2019 agreement between the United States and Algeria, to take a recent example, commits Washington to using “its best efforts to facilitate technical assistance” to Algeria to protect its cultural property.¹³⁶ These kinds of provisions have “resulted in exchange programs, police training, police collaboration, and all sorts of other initiatives that have actually improved the situation in these countries,” said Davis.¹³⁷ The State Department’s Cultural Antiquities Task Force, for example, helps “[b]uild capacity of foreign law enforcement and heritage managers to protect and preserve sites and objects,” and has supported more than ninety-five domestic and international cultural property training programs since 2004.¹³⁸ This kind of tailored cooperation may build trust that will benefit the relationship in the long run and result in higher levels of property protection. Still, the State Department could offer aid to or otherwise collaborate with countries that need help even without a system of bilateral agreements.

In the absence of the political will necessary to overhaul the Convention on Cultural Property Implementation Act in its entirety, Congress and the State Department could still do more to improve the current regime. According to Larry Schwartz, a former U.S. diplomat, the current system has two primary problems. First, the arduous process of negotiating a bilateral agreement can be difficult for foreign governments to navigate. Some countries start applications only to let them stall for several years—Egypt and Turkey being two prominent examples.¹³⁹ The multiyear timeline is incongruous with the timeline of diplomats, who rarely stay in one posting for more than two or three years.¹⁴⁰ Second, cultural-property agreements are rarely a top priority for either country. Countries whose patrimony most needs protection are often in the midst of civil war, state breakdown, or other conflict; their highest priority—and rightly so—is survival. Although priceless artifacts are important, they are understandably less critical

^{135.} *Id.*

^{136.} Memorandum of Understanding Between the United States of America and Algeria, U.S.-Alg., art. II(3), Aug. 15, 2019, T.I.A.S. No. 19-815 [hereinafter *Algeria Agreement*], <https://www.state.gov/wp-content/uploads/2019/10/19-815-Algeria-Cultural-Property-Frank.pdf> [<https://perma.cc/Z76T-QYA9>].

^{137.} Video Interview with Allison Davis, *supra* note 133.

^{138.} Bureau of Educ. & Cultural Affairs, *Cultural Antiquities Task Force*, U.S. DEP’T ST., <https://eca.state.gov/cultural-heritage-center/cultural-antiquities-task-force> [<https://perma.cc/ZK8V-CA63>].

^{139.} Telephone Interview with Larry Schwartz, *supra* note 70.

^{140.} *Id.*

when it comes to senior-level discussion with the United States than security, humanitarian assistance, or commercial agreements. This is all the more true given the difficulties of submitting an official request for help to the United States, assuming countries happen to be aware of the opportunity in the first place.¹⁴¹ For the United States, cultural-property agreements likewise tend to rank low on the list of priorities, after big-ticket diplomatic concerns like nuclear nonproliferation, climate change, and terrorism.¹⁴²

When the United States does make cultural property a priority, however, both countries benefit. Egypt is a case in point. After learning that Egyptian officials had been wanting to pursue an agreement with the United States, Schwartz worked with an Egyptian delegation to help them finish the application. As he recalled, “We sat down and hammered out an application over a period of two to three weeks.”¹⁴³ When the agreement was finalized, in 2016, Schwartz said that the Egyptians were pleased to have taken a significant step toward protecting their cultural patrimony, and both countries could point to the agreement as a bright spot in an otherwise tumultuous relationship.¹⁴⁴

To facilitate such agreements, Congress or the State Department – or both – should formally make them a priority. “If we were to pass a law or issue a memo from the Secretary of State saying that it is the policy of the United States to endeavor to develop a bilateral cultural-heritage agreement where cultural property is endangered, that would immediately bring into play dozens more agreements,” said Schwartz.¹⁴⁵ Ideally, formal or informal agency guidance would encourage U.S. diplomats to advocate for bilateral agreements in high-risk countries. Indeed, such an assignment would fit neatly within their broader mission to strengthen relations between the United States and the country where they are posted.

Congress might also consider relaxing some of the application requirements. Currently, countries must prove that they are taking action on their own to stem

^{141.} *Id.* Although the Convention on Cultural Property Implementation Act does allow the President to pursue “emergency implementation of import restrictions” if cultural property is in serious jeopardy, states must still request assistance via the usual procedures and supply “information which supports a determination that an emergency condition exists.” 19 U.S.C. § 2603(a), (c)(1) (2018).

^{142.} Telephone Interview with Larry Schwartz, *supra* note 70.

^{143.} *Id.*

^{144.} *Id.*; see also Press Release, U.S. Dep’t of State, Secretary Kerry Signs Cultural Property Protection Agreement with Egypt (Nov. 29, 2016), <https://2009-2017.state.gov/r/pa/prs/ps/2016/11/264632.htm> [<https://perma.cc/BX4D-BRSD>] (noting that the agreement “underscore[d] the United States’ commitment to our relationship with Egypt”).

^{145.} Video Interview with Larry Schwartz, *supra* note 68.

the looting, but meeting this standard will be difficult for countries that lack robust state capacity or that do not keep detailed records of their cultural property. If the United States wishes to incentivize states to address looting on their own, it can do so *ex post* rather than *ex ante*: the United States already suggests self-help measures in the agreements themselves, and often promises U.S. training and aid.¹⁴⁶

To ensure that agreements are considered in a more timely manner, the Cultural Property Advisory Committee, which currently meets three times a year,¹⁴⁷ could meet more frequently. As it stands, according to former committee chair Jeremy Sabloff, the private meetings that normally last roughly two and a half days afford only enough time to consider two new agreements and one renewal.¹⁴⁸ If the committee wants to be able to review more than six new agreements a year, it will have to either meet for longer or add more meetings. This will not be easy: committee members are unpaid volunteers, and most of them have full-time jobs in addition to their State Department service.¹⁴⁹ Given these constraints, the committee and its staff have, over the past few years, implemented a variety of reforms to make meetings more efficient, including asking for written comments in advance of their public meetings and interacting more regularly with cultural-heritage personnel in the relevant country (museum staff, government officials overseeing cultural heritage, legal experts, and the like) to fill any gaps in knowledge.¹⁵⁰ Earlier this year, in response to reduced capacity on the support staff for the committee, the State Department entered into an interagency agreement with the Department of the Interior's International Technical Assistance Program to secure staffing support and technical assistance.¹⁵¹

To further streamline the process, Congress could amend the Convention on Cultural Property Implementation Act to provide clear authority for the State Department to pursue not just bilateral agreements but multilateral ones as well. Then the United States could enter into agreements with entire regions—like

146. See, e.g., Algeria Agreement, *supra* note 136, arts. II(3)-(4) (including provisions requiring Algeria to “use its best efforts to take necessary steps consistent with the 1970 UNESCO Convention . . . to protect its cultural patrimony” and “to engage and collaborate with other countries having a significant import trade in cultural property from Algeria”).

147. Telephone Interview with Jeremy Sabloff, *supra* note 60.

148. Video Interview with Jeremy Sabloff, *supra* note 10.

149. Video Interview with Allison Davis, *supra* note 133; Video Interview with Jeremy Sabloff, *supra* note 1057.

150. Video Interview with Jeremy Sabloff, *supra* note 10.

151. Video Interview with Allison Davis, *supra* note 133; see also Office of Int'l Affairs, *International Technical Assistance Program*, U.S. DEP'T INTERIOR, <https://www.doi.gov/intl/itap> [<https://perma.cc/2JZM-YLDM>] (describing the program).

Central America or the Maghreb – where there is regional cooperation and common cultural heritage, without having to go through the trouble of negotiating individual agreements with each state. Multilateral agreements come with their own challenges, not least the increased difficulty of achieving consensus and the fact that individual countries may not wish to forsake the opportunity of having a one-on-one relationship with the United States.¹⁵² But they would also save time, as the State Department would no longer have to renew multiple agreements every five years, and might also ease the burden on committee staff and volunteers.¹⁵³

Finally, the simplest reform is also the most obvious: the State Department should publicize that these agreements exist. Governments around the world are often unaware that they need a bilateral agreement with the United States to benefit from UNESCO Convention protections, especially since countries like Germany and the United Kingdom prohibit suspicious imports automatically.¹⁵⁴ When countries at risk do learn about the agreements, they usually want to pursue one.¹⁵⁵ The State Department should therefore encourage diplomats to publicize the agreements abroad. Cultural-property agreements are a natural diplomatic tool, a way to build or strengthen friendly ties, especially as the United States competes for global influence with a rising China. Demonstrating respect for another country's cultural heritage is a relatively simple way to express friendship. As Schwartz put it, "Countries can't meet up to grab a drink at a bar. They have to find areas where they can build relationships."¹⁵⁶

Of course, the State Department cannot stem the theft of cultural property on its own; law enforcement has an equally important role to play. In recent years, a particularly successful model of antiquities prosecution has emerged in New York at the Manhattan District Attorney's office.¹⁵⁷ Its Antiquities Trafficking Unit has seized over \$175 million worth of antiquities since it was informally created in 2012, including ancient statues from Lebanon, a Buddhist sculpture from Pakistan, and a mosaic from one of Caligula's ships.¹⁵⁸ Colonel Matthew

¹⁵². Video Interview with Allison Davis, *supra* note 133.

¹⁵³. Video Interview with Tess Davis, *supra* note 64.

¹⁵⁴. *Id.*

¹⁵⁵. Telephone Interview with Larry Schwartz, *supra* note 70.

¹⁵⁶. *Id.*

¹⁵⁷. See Jason Daley, *Manhattan DA Launches First Antiquities Trafficking Unit*, SMITHSONIAN MAG. (Dec. 22, 2017), <https://www.smithsonianmag.com/smart-news/manhattan-da-launches-first-antiquities-trafficking-unit-180967607> [<https://perma.cc/JVW3-M7L7>].

¹⁵⁸. James C. McKinley, Jr., *Looted Antiques Seized from Billionaire's Home, Prosecutor Says*, N.Y. TIMES (Jan. 5, 2018), <https://www.nytimes.com/2018/01/05/nyregion/antiques-seized-from-billionaire-michael-steinhardt-cyrus-vance.html> [<https://perma.cc/PJ64-EUEY>]; Video Interview with Colonel Matthew Bogdanos, *supra* note 80.

Bogdanos, who heads the unit, attributes its success to two features of New York theft laws: a good-faith purchaser cannot shield a stolen antiquity from seizure, and the state treats the possession of stolen property as a “continuing crime,” which means that prosecutors generally do not have to worry about the statute of limitations.¹⁵⁹ Moreover, the Second Circuit has held that “it does not matter that the antiquities . . . were stolen in a foreign country, or that their putative owner is a foreign entity,” so long as the country of origin has a law on the books declaring ownership of its cultural property.¹⁶⁰ For prosecutions to be most successful, however, Bogdanos has argued that the effort must be global, with countries coordinating “simultaneous investigations of smugglers, sellers, and buyers in different countries.”¹⁶¹

Although the impetus to establish a dedicated antiquities unit in New York owed partly to the link between cultural property and terrorist funding, Bogdanos ascribes the unit’s staying power to the goodwill the office has generated at home and abroad. “If it came out tomorrow that there were no longer any link between terrorism and antiquities, we’d still exist,” he said.¹⁶² “You can’t tether cultural heritage protection too much to any one pillar of national security. The goodwill of people in other countries matters, and any conversation about national security has to take that into account.”¹⁶³

CONCLUSION

In the near future, the looting of priceless antiquities is likely to increase. Social media platforms and online marketplaces have made it easier for looters to sell illicitly acquired items online – as of May 2019, there were at least ninety Facebook groups, for example, connected to the illegal sale of Middle Eastern antiquities¹⁶⁴ – and harder for law enforcement to find them. Violent and pro-

159. Video Interview with Colonel Matthew Bogdanos, *supra* note 80; *see also* Letter from Cyrus R. Vance, Jr., Dist. Attorney of N.Y. Cty, to Khaled El-Enany, Minister of Antiques of Egypt 2 (May 29, 2019) (on file with author) (explaining unique features of New York State law).

160. *United States v. Schultz*, 333 F.3d 393, 402-03 (2d Cir. 2003).

161. Matthew Bogdanos, *Thieves of Baghdad: Combatting Global Traffic in Stolen Iraqi Antiquities*, 31 *FORDHAM INT’L L.J.* 725, 736-37 (2007).

162. Video Interview with Colonel Matthew Bogdanos, *supra* note 80.

163. *Id.*

164. Zraick, *supra* note 23. In June 2020, in response to the identification of “at least 200 Facebook groups with nearly two million members that were using the platform to find black market buyers,” Facebook announced that it would remove content “that attempts to buy, sell or trade in historical artifacts.” Tom Mashberg, *Facebook, Citing Looting Concerns, Bans Historical Artifact Sales*, *N.Y. TIMES* (June 23, 2020), <https://www.nytimes.com/2020/06/23/arts/design>

tracted conflicts in the Middle East, most recently in Syria and Yemen, have provided fertile ground for looters seeking to acquire and sell ancient antiquities. And the COVID-19 pandemic has generated new opportunities for cultural racketeering. With tourists staying at home and police around the world focusing on health-related priorities, “criminals have free reign to engage in illegal metal-detecting and other illicit excavation.”¹⁶⁵ In Turkey, law enforcement caught smugglers claiming to be health workers, and watchdog groups have reported an uptick in Facebook posts in groups dedicated to the sale of looted antiquities.¹⁶⁶ It is thus all the more important for the United States to take concrete steps toward stemming these crimes.

As this Essay has demonstrated, the United States’s attitude toward cultural property has evolved. The country took more than a decade to fully implement the UNESCO treaty on cultural-property protection, and even then, the resulting law was relatively weak. Today, however, U.S. officials largely accept that combatting the illicit sale of antiquities is not just good for preserving mankind’s cultural heritage; it is also smart foreign policy. That shift has revealed something important about how the United States thinks about its priorities, and about the ever-growing sphere of national security.

Still, the United States remains an outlier in its approach to deterring the theft and illicit sale of stolen goods — and it doesn’t need to be. It is time to update the Convention on Cultural Property Implementation Act and the legal regime it created. Deterring the looting of cultural heritage can block a key source of funding for terrorists, clean up the global art market, and provide an easy way for the United States to establish or maintain friendly relations with other countries. The United States should make it easier, rather than harder, to take advantage of these benefits.

Nikita Lahwani is a 2020 graduate of Yale Law School. I am grateful to Claire Priest for encouraging me to write this essay; to Sarah Bashadi, Jon Finer, Andrew Henderson, Bianca Herlitz-Ferguson, Mitchell Johnston, Alexander Nabavi-Noori, Alasdair Phillips-Robins, and Simone Seiver for their thoughtful edits and guidance; and to Colonel

/facebook-looting-artifacts-ban.html [https://perma.cc/VGX3-9SR3]. An antiquities expert, however, said that the “policy is only as good as its enforcement.” *Id.*

165. *How Will COVID-19 Impact Cultural Racketeering?*, ANTIQUITIES COALITION (May 15, 2020), <https://theantiquitiescoalition.org/how-will-covid-19-impact-cultural-racketeering> [https://perma.cc/A26F-F4EM].

166. *Id.*; see also Emily Sharpe, *Online Antiquities Smugglers Are Taking Advantage of the Coronavirus Crisis*, ART NEWSPAPER (Apr. 29, 2020), <https://www.theartnewspaper.com/news/increase-in-online-trade-of-illicit-antiquities-during-the-coronavirus-crisis> [https://perma.cc/ZCE3-GL2Y] (reporting on “an uptick in posts on Facebook groups involved in buying and selling looted objects from the Middle East and North Africa in recent months, as many countries went into lockdown”).

Matthew Bogdanos, Allison Davis, Tess Davis, Jeremy Sabloff, Larry Schwartz, and Mark Vlastic for helping me to shape and sharpen my arguments. I am especially grateful to Sam Winter-Levy, as always, for his meticulous editing and unwavering support. All errors and omissions are my own.