

CULTURAL RACKETEERING: AN ANALYSIS OF THE U.S. RESPONSE

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I. INTRODUCTION

The United States comprises the largest market for art in the world. As terrorist groups and mafia syndicates continue to loot and traffic art and antiquities out of the Middle East, a strong U.S. policy response is necessary both to decrease the market demand for the cultural property and to dismantle the organized criminal groups that are funneling the priceless pieces into unauthorized hands. Part II of this Note examines the legal ramifications of the 1982 Convention on Cultural Property Implementation Act and the 2016 Protect and Preserve International Cultural Property Act. It also addresses the Protect and Preserve International Cultural Property Act, S. 1887, as well as the Stop Terrorist Operational Resources and Money Act (STORM Act), S. 3125—Congress’s latest attempt to derail cultural racketeering by attacking terrorist group funding opportunities. Part III discusses the various international treaties and conventions that the United States has ratified relating to cultural racketeering and some that it should ratify to confront the problem of cultural racketeering with a full toolkit of policy options. Finally, Part III analyzes the substance of the international treaties and conventions that it has ratified to determine whether the United States is complying with its provisions regarding the protection of cultural artifacts and the prevention of international trafficking.

II. WARTIME TRAFFICKING OF CULTURAL PROPERTY AND THE UNITED STATES’ ROLE IN SUCH TRAFFICKING

Part II provides an overview of the art trafficking phenomenon, the role of the United States as a receiving state for looted cultural property, and the applicable U.S. legal framework, including the Convention on Cultural Property Implementation Act of 1982, the Protect and Preserve International Cultural Property Act of 2016, and other proposed legislation.

A. *Background and Overview of the Art Trafficking Phenomenon*

The Antiquities Coalition, a non-governmental organization striving to end the looting and trafficking of antiquities, defines cultural racketeering as “the systematic looting and trafficking of art and antiquities by organized crime.”¹ The Coalition views cultural racketeering as a global problem that “requires a global solution.”² France Desmarais, Director of Partnerships

¹ *Cultural Racketeering*, THE ANTIQUITIES COALITION (Jan. 9, 2016, 12:05 PM), <https://theantiquitiescoalition.org/problems-and-solutions/cultural-racketeering/>.

² *Id.*

and Programs at the International Council of Museums, called the illegal excavations and lootings in the Middle East and North Africa in the last decade “the largest-scale mass destruction of cultural heritage since the Second World War.”³ Cultural racketeering is a centuries-old problem often driven by economic desperation that frequently occurs in the midst of war. The extent of the cultural racketeering problem in the Middle East and North Africa during the present turmoil, however, is unprecedented in scope and implication, according to the Antiquities Coalition and other reports on the crisis.⁴

Ever since the Syrian Civil War commenced in 2011 and the Islamic State of Iraq and Syria, also known as ISIS or ISIL, declared its quest to “fight to uphold the tenets of Islam established by the Prophet Muhammad” through an extremist interpretation of the teachings of the religion, ISIS has looted and trafficked cultural antiquities on a mechanical, efficient scale in order to raise money for its militant efforts.⁵ In addition to financing its terrorist efforts by looting cultural landmarks and heritage sites, ISIS destroys the cultural sites in its wake, thereby “cultural cleansing” the sites’ heritage. Although “cultural cleansing” is a modern term, “the deliberate and systematic destruction of a targeted group and its cultural heritage, with the intention of eliminating not only a people, but all physical evidence of them” is a common pursuit of terrorist groups that has spanned the ages.⁶ ISIS is not the first group to fund its activities from looting, while destroying what remains of a group’s origin.⁷

Although it is impossible to determine precisely the annual income that stolen artifacts accrue for ISIS, “estimates range from the low tens of millions by [Michael Danti, an archeologist who directs the Boston-based

³ Steven Lee Myers & Nicholas Kulish, ‘Broken System’ Allows ISIS to Profit from Looted Antiquities, N.Y. TIMES (Jan. 9, 2016), http://www.nytimes.com/2016/01/10/world/europe/ira-q-syria-antiquities-islamic-state.html?_r=1.

⁴ THE ANTIQUITIES COALITION, *supra* note 1; Kulish & Myers, *supra* note 3.

⁵ Annalise Lekas, #ISIS: The Largest Threat to World Peace Trending Now, 30 EMORY INT’L L. REV. 313, 316 (2015); *see* Kulish & Myers, *supra* note 3.

⁶ THE ANTIQUITIES COALITION, <https://theantiquitiescoalition.org/> (last visited Oct. 5, 2017). *See also* Sarah Dávila-Ruhaak, *Beyond the Destruction of Syria: Considering a Future in Syria and the Protection of the Right to Culture*, 15 J. MARSHALL REV. INTELL. PROP. L. 522 (2016); Louise Arimatsu & Mohbuba Choudhury, *Protecting Cultural Property in Non-International Armed Conflicts: Syria and Iraq*, 91 INT’L L. STUD. 641 (2015); Maram Susli, *The Agenda Behind ISIS’ Cultural Genocide*, NEW EASTERN OUTLOOK (Aug. 7, 2015), <http://journal-neo.org/2015/07/18/the-agenda-behind-isis-cultural-genocide/>.

⁷ *See* Bahá’í International Community Representative Offices, *Situation of Baha’is in Iran*, (Oct. 5, 2017), <https://www.bic.org/focus-areas/situation-iranian-bahais/current-situation>; Barry Sautman, “Cultural Genocide” and Tibet, 38 TEX. INT’L L.J. 173 (2003).

Cultural Heritage Initiative] to \$100 million by a French security official.”⁸ To put that statistic into perspective, one artifact from the Middle East looted from a tomb, temple, or museum can bring as much as \$1 million on the international antiquities market.⁹ Hundreds of thousands of these artifacts are looted on a continual basis, as the terrorist groups continue to fund their efforts through cultural racketeering.¹⁰

While the true extent of the cultural racketeering phenomenon is not known, there have been numerous confiscations in countries, such as Bulgaria, which constitute prime routes linking Turkey and the Middle East to Western Europe.¹¹ Figurines, jewelry, coins, and other materials, aging from 2,000 to 5,000 years old, have been saved from continuing through the black market by these confiscations.¹²

ISIS has claimed responsibility for destroying Assyrian Lion statues in Raqqa, the “Temples of Bel and Baalshamin, seven funerary towers, the triumphal arch, and the likely mining of the citadel and theater at Palmyra,” some of the oldest and most important cultural sites in Syria.¹³ Worse still, ISIS posted online footage of the destruction of the Temples of Bel and Baalshamin and the theatre at Palmyra as “part of a propaganda campaign that includes videos of militants rampaging through Iraq’s Mosul Museum with pickaxes and sledgehammers, and the dynamiting of centuries-old Christian and Muslim shrines.”¹⁴ Videos of ISIS’ destructive acts against both people and cultural property have constituted only a portion of its online global campaign to spread its message and recruit support.¹⁵ Its coverage of cultural property destruction, however, has yielded global recognition of the damage and destruction of historically significant sites.¹⁶

⁸ Alistair MacDonald, Georgi Kantchev & Benoit Faucon, *The Men Who Trade ISIS Loot*, WALL ST. J., at A11 (Aug. 7, 2017), http://online.wsj.com/public/resources/documents/print/W SJ_-A011-20170807.pdf.

⁹ THE ANTIQUITIES COALITION, *supra* note 1.

¹⁰ *Id.*

¹¹ Myers & Kulish, *supra* note 3.

¹² *Id.*

¹³ Nibal Muhesen, Marina Lostal & Emma Cunliffe, *The Destruction of Cultural Property in the Syrian Conflict: Legal Implications and Obligations*, 23 INT’L J. CULT. PROP. 19–20 (2016).

¹⁴ Andrew Curry, *Here Are the Ancient Sites ISIS Has Damaged and Destroyed*, NAT’L GEOGRAPHIC (Sept. 1, 2015), <http://news.nationalgeographic.com/2015/09/150901-isis-destruction-looting-ancient-sites-iraq-syria-archaeology/#close>.

¹⁵ See generally Faisal Irshaid, *How ISIS is Spreading Its Message Online*, BBC NEWS (June 19, 2014), <http://www.bbc.com/news/world-middle-east-27912569>.

¹⁶ *Id.* For more information on ISIS online recruitment and presence see Jamil N. Jaffer & Daniel J. Rosenthal, *Decrypting Our Security: A Bipartisan Argument For A Rational Solution to the Encryption Challenge*, 24 CATH. U. J.L. & TECH. 273 (2014); Morgan Stacey,

In addition to ISIS' destruction of historical sites in the ancient Greek and Roman Cities of Palmyra, Dura-Europos and Mari, thieves and terrorist groups looted the City of Apamea even before ISIS began its destruction and looting.¹⁷ Recent reports have found that those cities have uncovered widespread evidence of destruction and continuing systematic looting.¹⁸

Cities looted most heavily in Iraq include Hatra, a Roman Empire-era former capital and UNESCO World Heritage site, selected for its cultural, historical significance and legally protected by international treaties; Nineveh, a flourishing capital in Ancient Assyria around 700 B.C.; Khorsabad, a well-preserved ancient Assyrian capital built around 700 B.C.; and Nimrud, the first Assyrian capital, founded 3,200 years ago.¹⁹ Sculptures and statues from Iraq were reportedly demolished with sledgehammers by ISIS, and other ancient ruins were bulldozed and left in ruin.²⁰ When ISIS took over the City of Mosul, Iraq, in 2014, the group looted the city's libraries and universities and sold centuries-old manuscripts and books on the international black art market.²¹ In February 2015, ISIS bombed the Mosul central public library, destroying thousands of irreplaceable "manuscripts and instruments used by Arab scientists" and released video footage of the group destroying artifacts from the Mosul Museum, Iraq's second largest museum.²²

One of the most tragic looting of cultural sites to date is that of the Step Pyramid of Djoser, the world's oldest pyramid.²³ The "4600-year-old UNESCO World Heritage Site was pockmarked with looters' pits, the ground strewn with broken bits of sarcoph[a]gi, mummy wrappings, and pottery shards," and armed gangs with heavy equipment professionally digging for artifacts were responsible.²⁴

These sites are merely a few of many devastated historical sites in the Middle East and North Africa region, where ISIS reaps destruction in order to "recapitulat[e] the early history of Islam"²⁵ by eradicating religious heritage differing from the group's interpretation of Islamic teachings. Thus, cultural racketeering and the funding of terrorist activities are not only

Americans, ISIS, and Social Media: How the Material Support Statute Can Help Combat Against Its Collision, 30 NOTRE DAME J.L. ETHICS & PUB. POL'Y 201 (2016).

¹⁷ See Curry, *supra* note 14.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ THE ANTIQUITIES COALITION, *supra* note 1.

²⁴ *Id.*

²⁵ Curry, *supra* note 14 (quoting Columbia University historian Christopher Jones).

rampant due to the opportunities to bypass international and national laws during the current political upset in the Islamic region, but they are also consistent with ISIS' practice of destroying the significance of many cultural artifacts from the Middle East and North Africa region that it calls "heresy" to its ideology.²⁶

Because the Middle East and North Africa region are filled with sites of historical significance across several national borders, it is difficult for archeologists and states in the Middle Eastern and North African countries to monitor sites to prevent looting.²⁷ However, progress has been made in facing this daunting task. Dr. Sarah H. Parcak, an archeologist specializing in the use of satellite technology, has transformed the almost impossible mission of identifying all the historic sites that have been looted into a more manageable monitoring system by using satellite technology to track racketeers, noting changes in site appearances from 400 miles above Earth.²⁸ Provided by Google Earth, Digital Globe, and NASA, her satellite images of countries in the Middle East and North Africa region spanning from 2010 to present have helped investigators pinpoint numerous possible lootings that were later inspected on the ground and found to be accurate.²⁹ The most notable confirmed lootings include those from "tombs of wealthy Egyptians from the Middle Kingdom, circa 2030–1640 B.C.," in Cairo, Egypt, and in the Middle Kingdom capital of Lisht, Egypt, where the "number of looting pits spotted from space rose to 690 in 2012 from 515 in 2011, with the affected area spreading to more than eight square kilometers from two square kilometers."³⁰ When Parcak visited the Lisht area after gathering data from the satellite, "she mapped 50 tombs, almost all of which had been looted."³¹ The satellite imaging analysis has aided in discovering looted sites in Egypt and the former Roman Empire, but it could be used in the Northern Africa, Iraq, and Syria regions to effectively discover more looted sites.

²⁶ Sarah Almkhatar, *The Strategy Behind the Islamic State's Destruction of Ancient Sites*, N.Y. TIMES (Mar. 28, 2016), <https://www.nytimes.com/interactive/2015/06/29/world/middleeast/isis-historic-sites-control.html>.

²⁷ See generally Pamela Engel, *ISIS' Looting of the Middle East is 'The Largest-Scale Mass Destruction of Cultural Heritage Since' WWII*, BUS. INSIDER AUST. (Jan. 13, 2016), <https://www.businessinsider.com.au/isis-antiquities-destroyed-smuggling-2016-1>.

²⁸ Ralph Blumenthal & Tom Mashberg, *TED Prize Goes to Archaeologist Who Combats Looting with Satellite Technology*, N.Y. TIMES (Nov. 8, 2015), http://www.nytimes.com/2015/11/09/arts/international/ted-grant-goes-to-archaeologist-who-combats-looting-with-satellite-technology.html?_r=0.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

Although satellite monitoring of historical sites has helped investigators better track the looting of sites as they occur, the groups persist in looting cultural artifacts.³² Experts say weak and inconsistent laws in countries with the highest demand for the antiquities and in those through which racketeers must travel to transport the antiquities from Syria and Iraq provide loopholes for “long-established smuggling organizations” that “are practiced in getting the goods to people willing to pay for them, and [are] patient enough to stash ancient artifacts” in unassuming buildings until the search for the missing antiquities diminishes with time.³³ Because racketeers are willing to store the stolen objects as long as necessary before selling them, laws, customs, and border controls must anticipate the delayed deliveries and should maintain some form of documentation to keep up with items that are reported missing in order to catch them before they are delivered to buyers.³⁴ Otherwise, when an antiquity crosses an international border years after it was looted from its home or owner, the chances of its being seized and returned are significantly lower.³⁵

Afghanistan, Iraq, Syria, Mali, Egypt, Libya, Yemen, Tunisia, and other countries in the Middle East and North Africa region are currently facing civil war, economic instability, and political upheavals that make protection of the countries’ cultural artifacts less organized.³⁶ Thus, these countries are prime targets for racketeers.³⁷ The United States is home to the largest market for art in the world, comprising 43% of the global art market.³⁸ As such, its efforts to prevent further devastation of the Cradle of Civilization’s history by decreasing demand for cultural artifacts through new legislation and by complying with international treaties highly affect the success of the global effort to end cultural racketeering.

B. U.S. Legal Framework

This section reviews the current U.S. legal framework affecting the protection of cultural property, including the 1982 Convention on Cultural Property Implementation Act (CPIA) and the Protect and Preserve

³² *Id.*

³³ Myers & Kulish, *supra* note 3.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Katie A. Paul, #CultureUnderThreat: Recommendations for the U.S. Government 6, 2, THE ANTIQUITIES COALITION (Apr. 2016), <http://taskforce.theantiquitiescoalition.org/wp-content/uploads/2015/01/Culture-Under-Threat-Task-Force-Report-Complete-Document-.pdf>.

³⁸ *Id.* at 2.

International Cultural Property Act. Following these discussions is an overview of pending legislation.

1. 1982 Convention on Cultural Property Implementation Act

In 1982 Congress passed the CPIA, enabling the U.S. government to implement Articles 9 and 7(b)(1) of the 1954 Hague Convention.³⁹ President Ronald Reagan signed the CPIA into law in 1983.⁴⁰ Article 7(b)(1) requires State Parties to ban the entrance into the United States of documented cultural property stolen from museums or public monuments in one of the State Parties' territories.⁴¹ Article 9 allows State Parties, whose cultural heritage is in danger from raiding, to ask for help from other State Parties in order to control "exports, imports, and international commerce in the specific cultural materials concerned."⁴²

Key provisions of the CPIA include the authorization of a designated executive agency to enter into agreements with State Parties to impose restrictions on cultural property being imported into the United States; the authorization of the President to impose emergency import restrictions as interim to Article 9 requests; the authorization of the Secretary of the Department of Treasury to create and publish a list of cultural material subject to import restrictions to protect cultural artifacts remaining in its country of origin when import restrictions take effect; and the prohibition on importation of stolen cultural property designated under Article 7(b)(i) of the Convention.⁴³

The Department of Homeland Security has the authority to enforce the provisions of the CPIA.⁴⁴ The Cultural Property Advisory Committee (CPAC) advises the departments "with respect to entering into or extending agreements or emergency actions," reviews requests from State Parties to help protect their cultural property, and reviews existing agreements for updates and needed modification.⁴⁵ The CPAC is comprised of officials who represent the interests of museums, the public, the art market, archaeologists,

³⁹ Bureau of Educ. and Cultural Affairs, *Cultural Property Protection: Background*, U.S. DEP'T OF ST., <https://eca.state.gov/cultural-heritage-center/cultural-property-protection/process-s-and-purpose/back-ground> (last visited Oct. 9, 2017).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

and anthropologists.⁴⁶ When a request for the United States to assist a fellow State Party is submitted, the CPAC considers the following in deliberating what responding action it should recommend to the executive agencies:

- (1) [if] the cultural patrimony of the requesting nation is in jeopardy from the pillage of archaeological materials;
- (2) [if] the requesting nation has taken measures to protect its cultural patrimony;
- (3) [if the] U.S. import restrictions, either alone or in concert with actions taken by other market nations, would be of substantial benefit in deterring the serious situation of pillage, and
- (4) [if] import restrictions would promote the interchange of cultural property among nations for scientific, cultural, and educational purposes.⁴⁷

An executive officer reviews the CPAC's recommendation and then makes a final determination on the request.⁴⁸

2. 2016 Enactment: *The Protect and Preserve International Cultural Property Act*

On March 19, 2015, U.S. Representative Eliot Engel (D-New York) sponsored and introduced the Protect and Preserve International Cultural Property Act.⁴⁹ In the version originally passed by the House of Representatives, the Act "required the establishment of a Coordinating Committee on International Cultural Property Protection and the designation of a U.S. Coordinator for International Cultural Property Protection."⁵⁰ The Senate, however, amended the bill before passing it, removing the mandate to create the committee.⁵¹ Instead, the Senate bill "expresse[d] that it is the sense of Congress that the President *should* establish an interagency

⁴⁶ *Convention on Cultural Property Implementation Act (CPIA) of 1983: Fact Sheet*, ARCHAEOLOGICAL INST. OF AM. (Apr. 1, 2010), <https://www.archaeological.org/news/sitepreservation/75>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Protect and Preserve International Cultural Property Act, H.R. 1493, 114th Cong. (2016).

⁵⁰ Republican Policy Committee, *Senate Amendment To H.R. 1493, Protect And Preserve International Cultural Property Act*, U.S. HOUSE OF REPS. REPUBLICAN POL'Y COMMITTEE, <https://policy.house.gov/legislative/bills/senate-amendment-hr-1493-protect-and-preserve-international-cultural-property-act> (last visited Oct. 3, 2016).

⁵¹ *Id.*

coordinating committee to coordinate the efforts of the executive branch to protect and preserve international cultural property.”⁵² The Senate amendment removed the bill’s requirement for the creation of a committee and the appointment of a coordinator, and instead, it merely advised the President that the Senate believed he should create such a committee and appoint such a coordinator.

As passed by the House of Representatives, H.R. 1493 “authorized Federal agencies to enter into agreements with the Smithsonian Institution for the temporary use of the institution’s staff for the purposes of furthering international cultural property protection activities.”⁵³ The final version of H.R. 1493, which became Public Law 114-151 on May 5, 2016, had several key provisions. First, as previously stated, the Act states that Congress believes “the President should establish an interagency coordinating committee to coordinate and advance executive branch efforts to protect and preserve international cultural property at risk from political instability, armed conflict, or natural or other disasters.”⁵⁴ It recommends the committee “be chaired by a Department of State employee of Assistant Secretary rank or higher,” and it should “include representatives of the Smithsonian Institution and Federal agencies with responsibility for the preservation and protection of international cultural property.”⁵⁵ It should also “consult with governmental and nongovernmental organizations . . . and participants in the international art and cultural property market on” such efforts.⁵⁶ Most importantly, it should “coordinate core [U.S.] interests in protecting and preserving international cultural property, preventing and disrupting looting and illegal trade and trafficking in international cultural property . . .,” protect “sites of cultural and archaeological significance,” and provide “for the lawful exchange of international cultural property.”⁵⁷

Furthermore, the Act “imposes new import restrictions on cultural artifacts removed from Syria.”⁵⁸ Section 3, titled “Emergency Protection for Syrian Cultural Property,” commands the President to exercise his authority “under section 304 of the Convention on Cultural Property Implementation Act . . . to impose import restrictions set forth in section 307 of that Act . . . with respect to any archaeological or ethnological material of

⁵² *Id.* (emphasis added).

⁵³ *Id.*

⁵⁴ Protect and Preserve International Cultural Property Act, *supra* note 49.

⁵⁵ *Id.* §§ 2(1), 2(2).

⁵⁶ *Id.* § 2(3).

⁵⁷ *Id.*

⁵⁸ *President Signs Engel Bill To Stop Isis From Looting Antiquities*, CONGRESSMAN ENGEL (May 9, 2016), <https://engel.house.gov/latest-news1/president-signs-engel-bill-to-stop-isis-fro-m-looting-antiquities/>.

Syria.”⁵⁹ Restricting imports from Syria has the potential to decrease the U.S. demand for trafficked cultural artifacts from Syria, if the restrictions effectively reach artifacts traded on the black market. Of note, however, the law allows an exception for the temporary protection and restoration of artifacts in the United States as necessary, as long as the material is returned to its rightful owner or lawful custodian as soon as possible.⁶⁰ These import restrictions are to “remain in effect until the crisis in Syria is resolved and America is able to work with a future Syrian government to protect cultural property from trafficking under a bilateral agreement, in accordance with America’s national interests.”⁶¹

Finally, Section 3(b) of the Protect and Preserve International Cultural Property Act calls for the President’s annual determination of first, whether the government of Syria is capable “of fulfilling the requirements to request an agreement under section 303 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2602)”; and second, if it would be in the United States’ interest to enter into such an agreement, promising to work with Syria if it requests help in preserving its historical sites and artifacts.⁶²

Although the Protect and Preserve International Cultural Property Act officially suggests to the President that he should create an interagency coordinating committee chaired by a Department of State employee of Assistant Secretary rank or higher to protect and preserve international cultural property, he is under no legal obligation to do so, as the Act simply states “[i]t is the sense of Congress” that he should.⁶³ Nevertheless, soon after the statute became law the Departments of State, Treasury, and Homeland Security moved quickly to enforce the emergency import restrictions the Act mandated, in an effort to prohibit Syrian cultural artifacts from illegally entering the United States through the black market.⁶⁴ Furthermore, the Department of State reportedly made progress in “creating a new interagency coordination body to raise awareness and capacity

⁵⁹ Protect and Preserve International Cultural Property Act, *supra* note 49, § 3(a).

⁶⁰ *Id.* § 3(c)(3).

⁶¹ *President Signs Engel Bill to Stop Isis From Looting Antiquities*, *supra* note 58.

⁶² Protect and Preserve International Cultural Property Act, *supra* note 49. The Convention on Cultural Property Implementation Act is discussed in Part III of this Note. But in brief, if the President finds that the cultural patrimony from a country requesting assistance under the Act “is in jeopardy from the pillage of archaeological or ethnological materials” of its nation, the President may enter into an agreement with the culturally endangered nation, or with other nations willing to help, to decrease market demand for the endangered materials by applying import restrictions on the goods. 19 U.S.C.A. § 2602 (West, Westlaw through Pub. L. No. 115-45).

⁶³ Protect and Preserve International Cultural Property Act, *supra* note 49, § 2.

⁶⁴ See Press Release, U.S. Dep’t of State, U.S. Department of State Announces New Cultural Heritage Initiatives (Sept. 22, 2016).

building in cultural heritage preservation and protection efforts, and strengthen law enforcement efforts against trafficking in antiquities and terrorist financing.”⁶⁵ The interagency coordination body was to have its first meeting in October 2016.⁶⁶ Although the President has not appointed a Department of State employee to chair the committee, these initial steps in implementing the Protect and Preserve International Cultural Property Act are promising affirmations of the Executive Branch’s commitment to discontinuing any role the United States plays in the international cultural racketeering problem.

Furthermore, as Section 2 of the Act recommended, in August 2016, the State Department partnered with the Smithsonian Institute to hold a workshop for the Conservation of Antiquities and Heritage at the Iraqi Institute to discuss with archaeological and ethnological officials in the Middle East and North Africa region the need for concerted efforts to protect the cultural and religious patrimony of the regions.⁶⁷ The State Department and Smithsonian Institute together also “funded the creation of a training manual for Kurdish and Iraqi security forces to educate them on protecting cultural and religious heritage sites in and around Mosul in preparation for [an] upcoming liberation.”⁶⁸

3. *Pending U.S. Legislation*

The final portion of Part II discusses pending U.S. legislation: a supplement to the Protect and Preserve International Cultural Property Act, S. 1887, and the Stop Terrorist Operational Resources and Money (STORM) Act, S. 3125.

a. Protect and Preserve International Cultural Property Act, S. 1887

On July 29, 2015, Sen. Robert Casey Jr. (D-PA) introduced a bill called “Protect and Preserve International Cultural Property Act S. 1887” that would substantiate the Protect and Preserve International Cultural Property Act in May 2016.⁶⁹ The Act would require that the Secretary of State

⁶⁵ *Id.*

⁶⁶ *Id.* I have e-mailed the U.S. Department of State asking for further information on who is on the committee and if it has met yet, but have yet to receive a response.

⁶⁷ See U.S. Department of State Announces New Cultural Heritage Initiatives, *supra* note 64.

⁶⁸ See *id.*

⁶⁹ *114 Bill Profile S. 1887 (2015–2016)*, PROQUEST CONGRESSIONAL, <http://0-congressional.proquest.com.gavel.law.uga.edu/congressional/result/congressional/pqpdocumentview?accountid=14537&groupid=96023&pgId=6a4a0298-2e81-406e-a218-0207cb121582&rsId=156F24B8C67>.

“designate a Department of State employee at the Assistant Secretary level or above to serve concurrently as the United States Coordinator for International Cultural Property Protection” to coordinate the U.S. effort to protect international cultural property against illegal trade and trafficking both at home and abroad.⁷⁰ The Coordinator would also chair the newly established Coordinating Committee on International Cultural Property Protection. Working together, the Coordinator and the Coordinator’s Committee would strive to achieve the following:

Resolve interagency differences; develop strategies to reduce illegal trade and trafficking in international cultural property in the United States and abroad, including by reducing consumer demand for such trade; support activities to assist countries that are the principle [sic] sources of trafficked cultural property to protect cultural heritage sites and to prevent cultural property looting and theft; work with and consult domestic and international actors such as foreign governments, intergovernmental organizations, nongovernmental organizations, museums, educational institutions, and research institutions to protect international cultural property; and to submit to the appropriate congressional committees the annual report required under section 6.⁷¹

The Committee would be composed of members from the following executive agencies: the Department of State; the Department of Defense; the Department of Homeland Security, including U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection; the Department of the Interior; the Department of Justice, including the Federal Bureau of Investigation; the U.S. Agency for International Development; the Smithsonian Institute; and any other entities that the Coordinator considered appropriate in the effort of accomplishing the Committee’s cause to fight cultural racketeering.⁷² The committee would further be charged with “consult[ing] with governmental and nongovernmental organizations, including the U.S. Committee of the Blue Shield, museums, educational institutions, and research institutions on efforts to promote and protect international cultural property.”⁷³ Congress has yet to vote on S. 1887.⁷⁴

⁷⁰ Protect and Preserve International Cultural Property Act, S. 1887, 114th Cong. (2015–2016).

⁷¹ *Id.*

⁷² *See id.*

⁷³ *Id.*

b. Stop Terrorist Operational Resources and Money (STORM) Act, S. 3125

On June 29, 2016, Senator Casey introduced another bill—the Stop Terrorist Operational Resources and Money Act—in an effort to limit ISIS’ source of funding for its militant activities.⁷⁵ Instead of focusing solely on combating cultural racketeering, the STORM Act “would provide the President additional leverage to penalize foreign governments failing to shut down terrorist financiers and facilitators.”⁷⁶ Specifically, the President would be able to classify a country not doing its part to limit the financing of terrorism as a “Jurisdiction of Terrorism Financing Concern.”⁷⁷ If classified as such, the United States could punish the country by (1) cutting off exports worth more than \$5 million under any statutes requiring prior review of the U.S. government as a condition for the export over a twelve-month period, (2) withdrawing or suspending development or security assistance to the government, or (3) inflicting any one of various other recourses under the Act.⁷⁸ If the President chooses not to penalize the offending state under the Act, the President “may enter into an agreement with a foreign government that obligates the foreign government to more effectively counter activities that finance the operations of, or acts of international terrorism by, foreign terrorist organizations.”⁷⁹ If this bill were to pass, it could give the President leverage against the countries with an ISIS presence to do their parts in weakening the terrorist group’s support systems.

While the Protect and Preserve International Cultural Property Act, S. 1887, has only an eleven percent chance of getting past the Senate Foreign Relations Committee and a mere four percent chance of being enacted, the STORM Act has a diverse and persuasive group of supporters to date, who will contribute bipartisan leverage to its enactment: Johnny Isakson (R-Georgia), Elizabeth Warren (D-MA), and Marco Rubio (R-FL).⁸⁰

⁷⁴ PROQUEST CONGRESSIONAL, *supra* note 69.

⁷⁵ *Introduced New Legislation: The STORM Act*, SENATOR BOB CASEY (June 30, 2016), <https://www.casey.senate.gov/about/highlight/introduced-new-legislation-the-storm-act>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Stop Terrorist Operational Resources and Money Act, S. 3125, 114th Cong. (June 29, 2016) (West, Westlaw).

⁷⁹ *Id.*

⁸⁰ *S. 1887: Protect and Preserve International Cultural Property Act*, Govtrack (Oct. 4, 2016), <https://www.govtrack.us/congress/bills/114/s1887> (stating the prognosis that S. 1887 will become law under its projection methodology used); David Andrew Weinberg, *Fifteen Years Since Pivotal Executive Order, STORM Act Could Help Fight Terror Finance*, THE HILL (Sept. 23, 2016), <http://origin-ny1.thehill.com/blogs/congress-blog/homeland-security/297342->

III. RELEVANT INTERNATIONAL LAW FRAMEWORK

Part III provides an overview of the relevant international law framework under which the United States has agreed to protect cultural property: the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and the 2000 United Nations Convention Against Transnational Organized Crime (The Palermo Convention).

A. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict

The Convention for the Protection of Cultural Property in the Event of Armed Conflict was adopted in 1954 in The Hague, Netherlands (1954 Hague Convention), just after World War II had ravaged Europe's cultural heritage and antiquities.⁸¹ The 1954 Hague Convention was the first "international treaty with a world-wide vocation focusing exclusively on the protection of cultural heritage in the event of armed conflict."⁸² More than 115 countries have committed to the Convention and to protecting cultural property from harm's way during armed conflict through the "adoption of peacetime safeguarding measures such as the preparation of inventories; the planning of emergency measures for protection against fire or structural collapse; and the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property."⁸³ The 1954 Hague Convention further ensures "respect for cultural property" located in State Parties' own territories, "as well as within the territories of other State Parties by refraining from any use of the property and its immediate surroundings . . . for purposes likely to expose it to destruction or damage in the event of armed conflict, and by refraining from any act of hostility directed at such property," with the consequence of sanctions for breaches of the Convention.⁸⁴

fifteen-years-since-pivotal-executive-order-storm-act (listing the sponsors of the STORM Act).

⁸¹ *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, UNESCO, <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/convention-and-protocols/1954-hague-convention/> (last visited Oct. 18, 2017).

⁸² *Id.*

⁸³ *The Hague Convention 1954*, BLUE SHIELD INTERNATIONAL, <http://www.ancbs.org/cms/en/about-us/hague-convention>.

⁸⁴ *Id.*

The 1954 Hague Convention and its First Protocol were introduced at the same time.⁸⁵

The text of the Convention covers mostly treatment of cultural property during peacetime and the avoidance of harming cultural property during armed conflict. The First Protocol contains provisions regarding export and import restrictions during armed conflict.⁸⁶ Article I of the First Protocol states that the Parties agree “to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property,” to hold in custody “cultural property imported into its territory . . . from any occupied territory,” and to return any cultural property confiscated to the government of where it was taken.⁸⁷

In 1999, a Second Protocol to the Hague Convention was adopted at The Hague, Netherlands, in response to “criminal acts committed against cultural property in the course of the many conflicts that took place” in the late 1980s and the early 1990s.⁸⁸ The drafting of the Second Protocol took into account the evolving international cultural property protection and humanitarian law that had taken effect after the original Convention’s implementation in 1954.⁸⁹ Specifically, the Convention called for (1) greater preparatory measures to be taken in peacetime to protect cultural property against “the foreseeable effects of an armed conflict;” (2) for all feasible measures to be taken to verify that “objectives to be attacked are not cultural property;” (3) to refrain from launching an attack which is expected “to cause incidental damage to cultural property;” and (4) to cancel or suspend an attack if it is realized that a protected piece will be harmed.⁹⁰ Article 8 further enhances the Convention’s measures by requiring Parties to “avoid locating military objectives near cultural property” and to remove the property from the “vicinity of military objectives” as necessary.⁹¹ Article 9 of the Second Protocol requires Parties to the Convention to prevent and prohibit any illicit

⁸⁵ Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954, The Hague, May 14, 1954 [hereinafter First Protocol], <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/convention-and-protocols/1954-first-protocol/text/#c280777>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ 1999 *Second Protocol to the Hague Convention*, UNESCO, <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/convention-and-protocols/1999-second-protocol/> (last visited Oct. 18, 2017).

⁸⁹ *Id.*

⁹⁰ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999, The Hague, Mar. 26, 1999 [hereinafter Second Protocol], http://portal.unesco.org/en/ev.phpURL_ID=15207&URL_DO=DO_TOPIC&URL_SECTION=201.html.

⁹¹ *Id.* art. 8.

export, removal, archaeological excavation, or alteration of cultural property when a Party is occupying another Party's territory.⁹²

Aside from the protections granted under the original Convention and the First Protocol, the Second Protocol creates a category of cultural property worthy of "enhanced protection."⁹³ Cultural property received enhanced protection if it can be shown that the property is of "cultural heritage of the greatest importance for humanity," is "protected by adequate domestic legal and administrative measures recognizing its . . . value," and if "it is not used for military purposes or to shield military sites."⁹⁴ Any cultural property that is deemed to receive enhanced protection under the Second Protocol shall be avoided at all costs by all Parties to the Convention, should they launch an attack to the property's surrounding area, under Article 12.⁹⁵ The Second Protocol further "specifies the sanctions to be imposed for serious violations with respect to cultural property and defines the conditions in which individual criminal responsibility shall apply," unlike the original Convention and First Protocol.⁹⁶

B. 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

The 1970 United Nations Educational, Scientific and Cultural Organization Convention (1970 UNESCO Convention) is a multinational treaty signed in Paris on November 14, 1970, at UNESCO's Sixteenth Session as the "Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property."⁹⁷ It was entered into on April 24, 1972.⁹⁸ The countries that ratify the Convention become "State Parties" to the Convention and enter into the treaty due to the shared recognition that

⁹² *Id.* art. 9.

⁹³ *Id.* art. 10.

⁹⁴ *Id.*

⁹⁵ *Id.* art. 12.

⁹⁶ UNESCO, *supra* note 88.

⁹⁷ United Nations Educational, Scientific and Cultural Organization, 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 [hereinafter 1970 UNESCO Convention]. See UNESCO, States Parties: Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, <http://portal.unesco.org/la/convention.asp?KO=13039&language=E>.

⁹⁸ See UNESCO, States Parties: Convention on Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, *supra* note 97.

the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting therefrom.⁹⁹

One hundred thirty-one countries are parties to the Convention.¹⁰⁰ The State Parties agree to fight cultural racketeering however they are able “by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.”¹⁰¹

The main requirements of the Convention are found in Articles 5, 6, 7, and 9. Article 5 requires State Parties (1) to create a national service for the protection of the nation's cultural heritage to contribute “to the formation of draft laws and regulations designed to secure the protection” from “illicit import, export and transfer of ownership of important cultural property”; (2) to establish and maintain a national inventory of important cultural property; (3) to “organize the supervision of archaeological excavations” to ensure preservation of important cultural sites; and (4) to take other measures aimed at the protection of such property.¹⁰²

Article 6 requires State Parties to “prohibit the exportation of cultural property from its territory” unless the government certifies it to be exported.¹⁰³ Article 7 requires State Parties to do whatever necessary to “prevent museums and similar institutions within its territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force” of the Convention; to prohibit any “import of cultural property stolen from . . . another State Party”; and if asked, to “recover and return any such cultural property imported” to its home State Party.¹⁰⁴

Article 9 allows a “State Party . . . whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials” to request help from other State Parties to control and protect from illicit activity “exports and imports and international commerce in the specific materials

⁹⁹ 1970 UNESCO Convention art. 2.

¹⁰⁰ See list of State Parties at “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Paris, Nov. 14, 1970, UNESCO, <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha>.

¹⁰¹ 1970 UNESCO Convention art. 2.

¹⁰² *Id.* art. 5.

¹⁰³ *Id.* art. 6.

¹⁰⁴ *Id.* art. 7.

concerned”; moreover, those asked should take “measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.”¹⁰⁵

Even though the 1970 UNESCO Convention only applies proactively and does not cover artifacts trafficked before its enforcement in 1972, the Convention created “diplomatic channels and domestic legislation” that allow countries which are markets for the trafficked goods to communicate effectively and to work together with antiquity source countries to prevent illicit trade.¹⁰⁶ While its regulatory regime has created a promising system for protecting against cultural racketeering, the success of the 1970 UNESCO Convention ultimately depends on the number of countries that ratify or accept the treaty and are thereby bound to enforce its protective principles.¹⁰⁷ The United States signed the 1970 UNESCO Convention but did not implement legislation for its adoption until thirteen years later in 1983 in the Convention on Cultural Property Implementation Act, as discussed above in Part II.¹⁰⁸

C. 2000 United Nations Convention Against Transnational Organized Crime (The Palermo Convention)

In December 2000, the United Nations Convention against Transnational Organized Crime (The Palermo Convention) was signed in Palermo, Italy, and entered into force in September 2003.¹⁰⁹ The Palermo Convention was developed to combat international organized criminal activity. The Palermo Convention is supplemented by three Protocols—(1) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (2) the Protocol against the Smuggling of Migrants by Land, Sea, and Air, and (3) the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, its Parts and Components and Ammunition.¹¹⁰ However, these supplements do not concern cultural racketeering. Provisions that affect cultural racketeering are found in the Convention’s original text. Article 5 requires State Parties to the Convention to criminalize the planning of a serious crime involving an organized group, any criminal

¹⁰⁵ *Id.* art. 9.

¹⁰⁶ See Katherine D. Vitale, *The War on Antiquities: U.S. Law and Foreign Cultural Property*, 84 NOTRE DAME L. REV. 1835, 1842 (2009).

¹⁰⁷ *See id.*

¹⁰⁸ *See id.*

¹⁰⁹ *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC), <http://www.unodc.org/unodc/treaties/CTOC/> (last visited Oct. 18, 2017).

¹¹⁰ *Id.*

activities of an organized crime group, and the “organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized crime group.”¹¹¹ Article 6 requires State Parties to criminalize the laundering of proceeds from crimes.¹¹² Article 7 requires State Parties to take measures to combat money-laundering, and Articles 8 and 9 require the criminalization of corruption and require measures to be taken to prevent its occurrence, respectively.¹¹³

IV. THE UNITED STATES ONLY PARTIALLY COMPLIES WITH ITS OBLIGATIONS TO COMBAT CULTURAL PROPERTY TRAFFICKING

Although the United States complies mostly with its international legal obligations, it can do more to implement those obligations. Part IV of this Note discusses U.S. compliance and implementation of the 1954 Hague Convention, the 1970 UNESCO Convention, and the Palermo Convention. It concludes with recommendations for improvement.

A. U.S. Compliance and Implementation: The 1954 Hague Convention

Although the United States helped draft the 1954 Hague Convention and subsequently signed it, the United States did not ratify the treaty at that time.¹¹⁴ The Executive Branch waited until the Cold War subsided to give the treaty to the Senate to ratify, due to ongoing military concerns.¹¹⁵ When the Cold War ended in 1995, the Joint Chiefs of Staff recommended unanimously that the Senate finally ratify the Convention.¹¹⁶ President Bill Clinton presented the 1954 Hague Convention and a portion of the First Protocol to the Senate for ratification.¹¹⁷ The Senate Committee on Foreign Relations, however, took no action upon President Clinton’s recommendation that the overdue ratification should take place until looters stole irreplaceable artifacts worth millions of dollars from the Iraq Museum in Baghdad in 2003 and other archaeological sites in southern Iraq were looted in the following years.¹¹⁸

¹¹¹ United Nations Convention Against Transnational Organized Crime, art. 5.

¹¹² *Id.* art. 6.

¹¹³ *Id.* arts. 7–9.

¹¹⁴ *The 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict*, U.S. COMMITTEE OF THE BLUE SHIELD, <http://uscbs.org/1954-hague-convention.html> (last visited Oct. 19, 2017).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *See id.*

In 2006, the U.S. Committee of the Blue Shield was incorporated in Minnesota as one of the various national committees created under the provisions of the 1954 Hague Convention.¹¹⁹ Its founding signified the United States' support of the 1954 Hague Convention by joining the pillar organizations of the International Committee of the Blue Shield. Thus, the United States finally received official recognition as a party to the 1954 Hague Convention.

The Senate Foreign Relations Committee held a hearing regarding the ratification of the 1954 Hague Convention in 2008, and the Senate voted to consent to ratification three months later.¹²⁰ On March 13, 2009, the United States became the 123rd state to become a Party to the Convention, signifying its late, but official commitment to the cultural property preservation goals.¹²¹ The United States did not, however, ratify the First Protocol to the Convention when it went into force in 1956, nor did it sign or ratify the Second Protocol when it was created in 1970 to supplement and strengthen the protective provisions of the original 1970 Convention.

While it is certainly commendable that the United States ratified the 1954 Hague Convention, Congress and the President should strongly consider ratifying the Second Protocol, since the supplementary document clarifies provisions in the original treaty and strengthens the protection requirements for cultural property in parties to the Convention.¹²² The Antiquities Coalition #CultureUnderThreat Task Force recommended the "Department of Defense, in conjunction with the Department of State, . . . conduct an interagency review of the [Second] Protocol with the goal of ratification," in order to initiate the legislation adoption process.¹²³ Nancy Wilkie, President of the U.S. Committee of the Blue Shield, stated the following regarding the need for the United States to adopt the Second Protocol:

Ratification of the Second Protocol would allow the United States to be a leader in the field of cultural property protection by being the first major military power to do so. The Second Protocol will help carry cultural property protection into the

¹¹⁹ See *Founding of the U.S. Committee of the Blue Shield*, U.S. COMMITTEE OF THE BLUE SHIELD, <http://uscbs.org/founding-of-uscbs.html> (last visited Oct. 19, 2017).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² See Paul, *supra* note 37.

¹²³ *Id.*

twenty-first century and is a step that the United States should initiate as soon as possible.¹²⁴

Thus, both officials of the 1954 Hague Convention committees and research and protection advocacy leaders in cultural racketeering have declared the United States could highly contribute to the fall of the cultural racketeering phenomenon by ratifying the Second Protocol. These expert opinions favoring the bolstering of the 1954 Hague Convention by the United States should not be dismissed without due consideration.

In sharp contrast to the 1954 Hague Convention's 126 State Parties, only sixty-seven nations are State Parties to the Second Protocol.¹²⁵ The United States is clearly not alone in its failure to implement the additional legislation bolstering and strengthening the wartime cultural protection treaty.¹²⁶ As the world's largest potential art market for cultural antiquities looted during wartimes, the United States must discuss with other nations the positive effects of signing the Second Protocol in light of the current conflicts in the Middle East and North Africa region.¹²⁷ Ultimately, signing the Second Protocol would update international cultural property protection to meet proactively future wartime crises with a full toolkit of policy options, rather than relying on the initial Convention's dated provisions.¹²⁸

1. Effects of New & Pending Legislation on Satisfying Obligations under Hague Convention

In this section the Protect & Preserve International Cultural Property Act, S. 1887, and the STORM Act are analyzed in relation to the 1954 Hague Convention.

a. Protect and Preserve International Cultural Property Act

The passing of the Protect and Preserve International Cultural Property Act advances the 1954 Hague Convention's goal of "protect[ing] cultural heritage in the event of armed conflict" by forming a high-level executive committee whose *sole* purpose is to fight against cultural racketeering.¹²⁹

¹²⁴ *Second Protocol on the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict*, U.S. COMMITTEE OF THE BLUE SHIELD, <http://uscbs.org/1979-second-protocol.html> (last visited Oct. 19, 2017).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Paul, *supra* note 37.

¹²⁸ *See id.*

¹²⁹ Second Protocol to the Hague Convention, *supra* note 90.

Because cultural racketeering occurs most often and most heavily during war times, this Act serves the mission of the 1954 Hague Convention.¹³⁰

Even more specific to protection and prevention of wartime crime against cultural property is the progress that the Department of Homeland Security made over the summer of 2016 in “implement[ing] emergency import restrictions that prevent Syrian archeological and ethnological material from illegally entering the United States.”¹³¹ The use of such restrictions has the potential to decrease effectively the U.S. demand for trafficked cultural artifacts from Syria during the current political unrest in the Middle East and North Africa region by strengthening border restrictions. Actual reports of confiscations made in accordance with the restrictions required under the Protect & Preserve Cultural Property Act will relay a more detailed account of exactly how many artifacts the new regulations are able to save at the U.S. border from entering the black market. Thus, the true effects of how this new legislation will satisfy obligations under the 1954 Hague Convention’s effort to reduce cultural destruction during wartime will only be made known when future data is gathered.

b. Protect and Preserve International Cultural Property Act, S. 1887

While most provisions of the Protect and Preserve International Cultural Property Act will affect obligations under the 1954 Hague Convention discussed in the above section, mandating the appointment of a U.S. Coordinator for International Cultural Property Protection of a Department employee at the Assistant Secretary Level or above could not only relay the message to foreign nations that the United States is serious about combatting cultural racketeering, but it would also further the 1954 Hague Convention’s requirement of its Parties to adopt peacetime safeguarding measures such as the preparation of inventories; the planning of emergency measures for protection against fire or structural collapse; and the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property by unifying the government’s efforts in an official Department head.¹³²

¹³⁰ Jennifer O. Mollick, *The Fate of Cultural Property in Wartime: Why it Matters and What Should Be Done*, CARNEGIE COUNCIL FOR ETHICS IN FOREIGN AFF. (Sept. 7, 2013), https://www.carnegiecouncil.org/publications/ethics_online/0085.

¹³¹ U.S. Department of State Announces New Cultural Heritage Initiatives, *supra* note 64.

¹³² BLUE SHIELD INTERNATIONAL, *supra* note 83.

c. STORM Act

The STORM Act would primarily increase the Executive Branch's leverage with countries not protecting cultural property from racketeering and destruction. The STORM Act does not directly affect the protection of cultural property during wartimes, but it still should be passed in order to give the President additional tools to protect cultural property from racketeering and from reaching the illegal market within U.S. borders. The STORM Act also would aid in satisfying the Palermo Convention obligations and the 1970 UNESCO Convention obligations, since those treaties deal directly with the general protection of cultural property and dismantling organized criminal networks, rather than specifically protecting cultural property during wartimes.

B. U.S. Compliance and Implementation: 1970 UNESCO Convention

The 1970 UNESCO Convention's long-term goal is to "protect the knowledge that can be derived from the careful, scientifically-informed retrieval and study of archaeological material, and to preserve ethnological material in its societal context."¹³³ In analyzing whether the United States has done its part to meet this goal, both the specific laws it has enacted in relation to the Convention and its actions taken to carry out the long-term goal of the 1970 UNESCO Convention must be examined.

When implementing the CPIA, the Department of State commented not only on the United States' obligation to preserve international cultural property by strengthening regulations on cultural property passing U.S. borders, but also on the importance of aiding neighboring nations in preserving its cultural property through the passage of the Bill. Specifically, the Department of State said the following:

The legislation is important to our foreign relations, including our international cultural relations . . . the appearance in the United States of [racketeered cultural] objects has often given rise to outcries and urgent requests for return by other countries. The United States considers that on grounds of principle, good foreign relations, and concern for the

¹³³ Bureau of Educ. and Cultural Affairs, *supra* note 39.

preservation of the cultural heritage of mankind, it should render assistance in these situations.¹³⁴

These words indicated that the government does view the preservation of cultural property and the prevention of cultural racketeering as a critical responsibility of the United States. The implementation of the CPIA and the organized execution of its provisions are also evidence that the United States took the necessary initial steps in acting as a compliant State Party to the 1970 UNESCO Convention by implementing its most important concepts into U.S. law.

The United States is able to create bilateral agreements with other State Parties to protect cultural property that crosses U.S. borders. But the nation has yet to negotiate one of the bilateral agreements with a country in the Middle East and North Africa region, even though this is precisely where the cultural racketeering devastation is currently occurring.¹³⁵ While it is impossible at the current time to negotiate such peaceful agreements with countries like Syria, the United States should discuss the possibility of entering into these agreements with countries in this area, where public and political sentiment has not yet risen to the level of negating any chance of peaceful preservation of cultural artifacts. This could facilitate the strengthening of regulations targeting looting and cultural racketeering.

The Antiquities Coalition #CultureUnderThreat Task Force is a group of experts from diverse backgrounds who have studied the current cultural property destruction and racketeering crisis in the Middle East and North Africa region.¹³⁶ They have presented an array of recommendations to the U.S. government on how to effectively combat the current crisis. Their recommendations have included signing international treaties, implementing new U.S. legislation, and educating other countries on cooperative options under treaties to rally support in protecting its cultural artifacts from entering black markets.¹³⁷

As such, one of the #CultureUnderThreat Task Force's key recommendations to the United States is to advise the governments of countries without full understanding of how and why to negotiate bilateral protection agreements under the 1970 UNESCO Convention on how working with the United States and other countries that provide markets for

¹³⁴ *Id.*

¹³⁵ See Paul, *supra* note 37, at 28.

¹³⁶ THE ANTIQUITIES COALITION, #CultureUnderThreat Task Force (Oct. 19, 2017, 12:00 PM), <http://taskforce.theantiquitiescoalition.org/>.

¹³⁷ For a full report of the Task Force's recommendations, see *Recommendations Overview*, ANTIQUITIES COALITION, <http://taskforce.theantiquitiescoalition.org> (last visited Oct. 19, 2017).

looted goods can deter the criminal racketeering networks and in turn protect their own cultural property.¹³⁸ The United States has the requisite system in place to create and execute bilateral protection agreements, thus upholding its duties under the 1970 UNESCO Convention.¹³⁹ Regardless, the United States could further contribute to the decline of cultural racketeering and promote transparency of the Convention's provisions by educating other State Parties on the value and legal necessity of implementing bilateral property protection agreements under the Convention.

1. Effects of New & Pending Legislation on Satisfying Obligations Under 1970 UNESCO Convention

Below, the Protect & Preserve International Cultural Property Act, S. 1887, and the STORM Act are analyzed in relation to the 1970 UNESCO Convention.

a. Protect & Preserve International Cultural Property Act

The United States' progress in appointing an interagency coordinating committee to regulate the Executive Branch's efforts to protect and preserve cultural property of other nations constitutes a step toward the 1970 UNESCO Convention's goal of reducing impoverishment of cultural heritage of countries and preserving ethnological material. By bringing together governmental leaders, cultural experts, and art experts from the world's largest art market to strategize a way to effectively reduce the U.S. demand for stolen cultural property, the United States is showing commitment to carrying out its duties under the 1970 UNESCO Convention. Furthermore, by implementing emergency restrictions on artifacts imported from Syria, the United States is attempting to cut off the route for cultural artifacts looted during the current Middle East and North Africa political crisis from entering the United States. By increasing border regulations, the United States has made it more difficult for even the transfer of objects on the black market to be as relatively successful as it has been in the past.

While these are admirable steps toward ending the current cultural racketeering crisis, the United States will be the most effective advocate for cultural preservation only if it is able to negotiate an agreement with Syria and the other war-ridden Middle East and North Africa countries in order to further aid in controlling the international commerce for the cultural artifacts.

¹³⁸ See Paul, *supra* note 37, at 28.

¹³⁹ See Bureau of Educ. and Cultural Affairs, *supra* note 39.

b. Protect and Preserve International Cultural Property Act, S. 1887

While the creation of an interagency coordination committee is already under way after the passage of the Protect and Preserve International Cultural Property Act in May 2016, the appointment of a U.S. Coordinator for International Cultural Property Protection of a Department employees at the Assistant Secretary Level or above, mandated under S.1887, would further add legitimacy to the protection of cultural property cause by showing that the issue is one that the government cares about and is willing to designate one of its high-ranking officials to lead.

While the rest of the substantive provisions under S. 1887 are covered under the Protect and Preserve International Cultural Property Act passed in the May 2016, Congress's show of progress toward meeting the miscellaneous provisions in the Act, such as reporting findings to Congress and creating reports, will further substantiate the United States' full accomplishment of its obligations under the 1970 UNESCO Convention. Specifically, it will keep lawmakers up to date on how adequately the current laws are addressing the cultural racketeering crisis so that revisions and supplemental legislation can be implemented as needed.

c. STORM Act

While implementation of the STORM Act would not affect obligations to protect and preserve international cultural property at risk under Article 7(b)(1) or Article 9 of the 1970 UNESCO Convention, the President's ability to penalize foreign nations either abetting or allowing terrorism under the Act would further the Convention's long-term goal of protecting "the knowledge that can be derived from the careful, scientifically informed retrieval and study of archaeological material and to preserve ethnological material in its societal context."¹⁴⁰ This would prove that the world's largest art market will not tolerate the lax behavior of other countries, who through lack of adequate regulation and legislation, allow its countries' cultural artifacts to leave and enter the United States through the black market.

Implementation of the STORM ACT would allow for the punishment of passive countries who choose not to implement effective laws and strategies to safeguard its cultural property through refusing exports worth more than \$5 million under any statutes requiring prior review of the U.S. government as a condition for the export or through withdrawing development or security

¹⁴⁰ *Id.*

assistance to the offending governments.¹⁴¹ Thus, the United States would have the authority to take drastic civil measures to motivate offending State Parties for its ineffective protection of cultural property in violation of its duties under the 1970 UNESCO Convention.

The STORM Act's requirement that the United States enforce punishment against countries failing to protect the cultural property within the countries' borders ultimately furthers the goals of the STORM Act by showing intolerance to anything but the utmost following of the 1970 UNESCO Convention's commitment to protection ideals.¹⁴²

C. U.S. Compliance and Implementation: United Nations Convention Against Transnational Organized Crime (The Palermo Convention)

On November 3, 2005, President Bush signed the Palermo Convention and presented it to the United Nations for formal ratification.¹⁴³ President Bush commented that the Treaty and its Protocols would be "effective tools to assist in the global effort to combat transnational organized crime in its many forms . . . [by] provid[ing] for a broader range of cooperation, . . . mutual legal assistance, and measures regarding property, in relation to serious crimes committed by an organized group that has a transnational element."¹⁴⁴ Subject to a few clarifications and modifications, the United States did not have to implement legislation to adopt the Palermo Convention.¹⁴⁵ The Palermo Convention primarily entails provisions criminalizing systematic criminal behavior, and the United States had existing federal and state law that satisfied the requirements for legislation.¹⁴⁶ Most of the provisions of the Convention, however, are administered at the national, rather than state level, which is orthodox in international agreements.¹⁴⁷ This complicated the manner in which the United States could ratify the establishment of criminal offense provisions, since the "existing U.S. federal criminal law has limited scope, generally covering conduct involving interstate or foreign commerce or

¹⁴¹ Stop Terrorists Operational Resources and Money Act, Section 4(c)(2)(A).

¹⁴² United Nations Educational, Scientific and Cultural Organization, *supra* note 97.

¹⁴³ See U.N. Secretariat, Status of Ratification of the United Nations Convention against Transnational Organized Crime and the Protocols thereto as at 1 October 2012, Table B, U.N. Doc. CTOC/COP/2012/CRP. 1 (Oct. 1, 2012).

¹⁴⁴ U.N. CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, S. TREATY DOC. 108-16 at III, Congress.gov, <https://www.congress.gov/treaty-document/108th-congress/16/document-text>.

¹⁴⁵ See *id.* at XXII.

¹⁴⁶ See *id.* at V.

¹⁴⁷ See *id.* at VI.

another important federal interest.”¹⁴⁸ Therefore, the United States included the following language as reservation in its instrument of ratification:

The Government of the United States . . . reserves the right to assume obligations under this convention in a manner consistent with its fundamental principles of federalism, pursuant to which both federal and state criminal laws must be considered in relation to the conduct addressed in the Convention . . . Federal criminal law does not apply in the rare case where such criminal conduct does not so involve interstate or foreign commerce, or another federal interest.¹⁴⁹

Unlike the 1970 UNESCO Convention and the 1954 Hague Convention, the Palermo Convention does not exclusively address cultural trafficking, although the framers of the Treaty foresaw its use in preventing the looting of cultural property and included in the Treaty’s preamble language that it would “constitute an effective tool for international cooperation in combating . . . offences against cultural property, and growing links between transnational organized crime and terrorist crimes.”¹⁵⁰ In fact, its use in combatting the trafficking of cultural property was ignored by State Parties until 2010, when the State Parties discussed types of “emerging crimes” that the Treaty could address and decided to include trafficking of cultural property, in addition to “cybercrime, piracy, environmental crime, and others” as avenues that State Parties should consider themselves bound to addressing as obligated by the Palermo Convention.¹⁵¹

One reason that the Palermo Convention had not been used robustly in combatting cultural racketeering was the criteria for the Palermo Convention’s application. Requirements for Palermo Convention provisions to apply in a given situation involves the commitment of a “serious crime,” defined as “conduct constituting an offense punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.”¹⁵² While the crime of trafficking itself is considered a serious crime, other

¹⁴⁸ *Id.* at VII.

¹⁴⁹ *Id.*

¹⁵⁰ UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, at preamble, https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THEREO.pdf.

¹⁵¹ Greg Borgstede, *Cultural Property, the Palermo Convention, and Transnational Organized Crime*, INT’L J. CULTURAL PROP. 281, 284 (2014).

¹⁵² U.N. CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, *supra* note 144, art. 2(b).

crimes intrinsic in art and cultural property smuggling, like failure to register the objects, do not meet the criteria for Palermo Convention application.¹⁵³ Thus, these crimes could be addressed more fully through other means.¹⁵⁴ The United Nations Office on Drugs and Crime (UNODC) responded to this concern by laying out a framework for activities relating to cultural racketeering that the Palermo Convention could aptly address: effective criminalization, jurisdictional concerns, prosecution, adjudication, and sanctions, cooperation with law enforcement, seizure of property, special investigative techniques and units, international investigations, extradition, mutual legal assistance, recovery of illicit assets, and prevention.¹⁵⁵

1. Effects of New & Pending Legislation on Satisfying Obligations Under The Palermo Convention

The following section analyzes the Protect & Preserve International Cultural Property Act, S. 1887, and the STORM Act in relation to the Palermo Convention.

a. Protect & Preserve International Cultural Property Act

The Palermo Convention is primarily concerned with dismantling organized criminal activity by way of criminalizing money-laundering, corruption, and the planning of serious crimes. Nonetheless, the establishment of an interagency coordinating committee to rally efforts in protecting and preserving international cultural property could advance the accomplishment of the Palermo Convention's goal if the committee considers dismantling organized criminal activity facilitating cultural racketeering to be one of its prerogatives. Because the committee is new, the range of strategies it plans to discuss and implement are unclear. If the group of Smithsonian representatives, art, cultural property, and trade experts were to include the dismantling of illegal art smuggling networks in its planning, this would work toward satisfying the United States' obligations under the Palermo Convention. Conversely, since the United States did not need to implement any legislation to ratify the Convention, this shows that the nation already had measures in place to meet the Convention's demands of criminalization of organized crime.

¹⁵³ Borstede, *supra* note 151, at 282.

¹⁵⁴ U.N. CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, *supra* note 144, at 288.

¹⁵⁵ Borstede, *supra* note 151, at 283.

b. Protect & Preserve International Cultural Property Act, S. 1887

Similar to the furthering of the 1970 UNESCO Convention, the mandated appointment of a U.S. Coordinator for International Cultural Property Protection of a Department employees at the Assistant Secretary Level or above would further add legitimacy to the protection of cultural property cause by way of dismantling the organized criminal networks that transfer the property to the United States by showing that the issue is one that the government cares about and is willing to designate one of its high-ranking officials to lead. While the rest of the provisions under S. 1887 are covered under the Protect and Preserve International Cultural Property Act passed in 2016, the government's show of progress toward meeting the miscellaneous provisions in the Act, such as reporting findings to Congress and creating reports, would indirectly satisfy obligations under the Palermo Convention by organizing and planning for the U.S. response to the current cultural racketeering crisis.

c. STORM Act

While sanctioning countries that fail to protect cultural property could work in conjunction with dismantling criminal networks by motivating foreign countries to protect better its cultural property, the President's option to "enter into an agreement with a foreign government that obligates the foreign government to counter more effectively activities that finance the operations of, or acts of international terrorism by, foreign terrorist organizations" could also effectively motivate the countries to take legislative steps to protect better its cultural property by preventing criminal networks from accessing the property sites.¹⁵⁶

The STORM Act's third option of withdrawing or suspending development or security assistance to a non-cooperative government is a harsh penalty that the United States would likely be hesitant to adopt; however, if a State Party to the Palermo Convention fails to address effectively a highly problematic organized criminal network within its control, the United States could and should use one of the three available penalties under the STORM Act to motivate the country to protect its cultural property. Thus, passing the STORM Act would give the U.S. government far reaching tools to combat organized criminal networks in countries that abet cultural racketeering. Congress should accept the

¹⁵⁶ Stop Terrorist Operational Resources and Money Act, *supra* note 141.

STORM Act as a viable piece of legislation, enabling the fight toward ending the funding of terrorism through cultural racketeering.

d. U.S. Private Participation and International Cooperation in Preserving and Protecting Against Cultural Racketeering

Although the United States has been slow to implement legislation to address proactively cultural racketeering and has been no quicker to ratify international treaties and conventions aimed at protecting and preserving the world's cultural property, active nongovernmental groups within the United States have been working in partnership with other countries to strategize and lobby for increased international cultural preservation.¹⁵⁷

As briefly mentioned above, the Antiquities Coalition has been a nonpartisan, nongovernmental driving force for political reform for international cultural property recognition and has increased awareness of the problem. In September 2016, the Antiquities Coalition partnered with the Middle East Institute and the Hashemite Kingdom of Jordan to host its second annual #CultureUnderThreat Regional Conference.¹⁵⁸ This Conference's purpose is to bring business leaders, former military officials, archaeologists, experts in counterterrorism, and lawyers from around the world together to discuss current and potential cultural protection strategies.¹⁵⁹ The group gathered to "finalize an action plan for 2016–2017 on specific actions to be taken" within the next year, while building on the progress made in the wake of the group's 2015 Cairo Conference.¹⁶⁰ By continuing to advocate for the protection of cultural property against looting and destruction, the Antiquities Coalition furthers the United States' goal of being a leader in the fight against cultural racketeering.¹⁶¹

¹⁵⁷ THE ANTIQUITIES COALITION, *supra* note 1.

¹⁵⁸ See #CultureUnderThreat Regional Conference, THE ANTIQUITIES COALITION, <https://theantiquitiescoalition.org/Jordan2016/>.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ For more information on programs and solutions of the Antiquities Coalition or to view its databases and documentation of cultural artifacts, see its work creating public-private partnerships to preserve cultural heritage, or to view its research on cultural racketeering and its proposed policy solutions, please see THE ANTIQUITIES COALITION website at <https://theantiquitiescoalition.org/problems-and-solutions/>.

V. CONCLUSION

Mark John of *Reuters World News* aptly captured the dilemma to be overcome if an effective system to preserve the world's heritage is to be created and implemented, by stating the following:

No fewer than six international conventions have been drawn up over the years to protect cultural heritage. Alarm bells have been sounded in U.N. Security Council resolutions and in declarations by heads of state, top museums and the art world. But, despite some successes in recovering objects, the effort is hamstrung by the patchwork approach of national authorities, a failure to tackle smuggling networks head-on and a lack of even basic information about the market they trade in.¹⁶²

Conventions and treaties have been created, nations have ratified them, but not enough countries are implementing the provisions and satisfying their obligations under the international requirements. Namely, the United States and Switzerland are the only countries who have implemented directly the 1970 UNESCO Convention, even though 130 of 195 State Parties have ratified it.¹⁶³ These numbers are unacceptable, and the United States should feel an obligation as the world's largest art market and also as a leader in the international political realm to educate other countries on the importance of making use of international conventions aimed at protecting and preserving cultural property, in addition to implementing its own national legislation to protect objects originating within its borders.

While John's critique rings true overall, the United States has made significant steps in the last year toward owning its role in the international scheme of protecting and preserving cultural property by passing the Protect and Preserve International Cultural Property Act and planning for the creation of an interagency coordinating committee. The Antiquities Coalition and other private actors continue to raise awareness for the devastation occurring in the Middle East and North Africa region and have found success in swaying Congress and other governmental leaders to support the cause. They have arranged international meetings to discuss strategies for cultural property protection and to educate nations on their options under international treaties. It is now on the U.S. government to

¹⁶² Mark John, *Blood Antiquities: A Wound the World Struggles to Staunch*, REUTERS WORLD NEWS (June 10, 2015), <http://www.reuters.com/article/us-mideast-crisis-antiquities-analysis-idUSKBN00Q16320150610>.

¹⁶³ *See id.*

gather data regarding players in the international black market for art and regarding how and where artifacts are entering the United States. Furthermore, the Executive Branch should continue enforcing the emergency import restrictions from Syria that were implemented this summer and take detailed lists of what is confiscated.

In sum, the United States should strongly consider implementing the supplement Act to the Protect and Preserve Cultural Property Act in order to mandate the appointment of a U.S. Coordinator for International Cultural Property. This would substantiate the United States' participation in the global cause, while also finally designating a government official to fight proactively against cultural racketeering and destruction, rather than continuing to pay mind to the problem during wartime when it is rampant. The United States should strongly consider implementing the STORM Act—its penalties would only be used against countries blatantly failing to protect its cultural property from harm or theft, and the trade and security restrictions would provide strong motivation, in most cases, to preserve cultural property within its borders.

The United States should be commended for its ratification of the 1970 UNESCO Convention, the 1954 Hague Convention, and the Palermo Convention, but it can and should implement the Second Protocol to the 1954 Hague Convention, work toward negotiating more bilateral agreements with countries to prevent antiquities from illegally entering U.S. borders, and take every opportunity to educate citizens of all affected nations on the importance of preserving cultural property, for the “Cradle of Civilization” is increasingly at risk of being siphoned of all its cultural history. In the words of American author Steve Berry, “A concerted effort to preserve our heritage is a vital link to our cultural, educational, aesthetic, inspirational, and economic legacies—all of the things that quite literally make us who we are.”¹⁶⁴ A very important effort, indeed.

¹⁶⁴ Steve Berry, *Why Preserving History Matters*, HUFFINGTON POST (Apr. 23, 2012), https://www.huffingtonpost.com/steve-berry/why-preserving-history-matters_b_1446631.html.