

Cultural Property Protection in the Post-Conflict Period: Exploring the Issue through the Example of the U.S. Experience in Iraq

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“One of the things that we try to get across is that the destruction of the cultural property of a particular ethnic group is often sort of a harbinger of ethnic cleansing of a people. Cultural property really does mean something. It’s a weapon of war, just like anything else.”

-Army Reserve Major Corine Wegener, co-author of the 2004 US Army cultural property training manual¹

Introduction

The inherent power art can have over a people is often underestimated. In recent weeks in Bahrain, the government’s destruction of the Pearl Monument was held out as symbolic of the government’s oppression of the protestors. The Pearl Monument stood as the physical center of a gathering point for protestors. Before clearing the protestors, the government destroyed the sculpture in a symbolic display of its strength. The destruction was described in the New York Times as “spiteful...like the brutal work of a desperate autocracy.”² This idea is not new, throughout history regimes have used art, architecture and cultural heritage to express both their goals, and to demonstrate their power and control. The Parthenon was built in Athens in a display of the power and wealth of the city-state of Athens, in a specific endeavor of propaganda Hitler made a studied use of classical Roman themes to echo his dreams of a new Roman empire,

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¹ Quoted in Adam Minter, *Protecting the Priceless: How one retired Army Reserve Major taught soldiers to save artworks and antiquities during wartime*, SMITHSONIAN.COM, Feb, 1, 2008, <http://www.smithsonianmag.com/arts-culture/wegener.html>.

² Ethan Bronner, *Crackdown Was Only Option, Bahrain Sunnis Say*, N.Y. TIMES, March 22, 2011. Though initially described as a traffic remedy, the foreign minister later described it saying, “We did it to remove a bad memory.” *As quoted in* Ethan Bronner, *Bahrain Tears Down Monument as Protestors Seethe*, N.Y. TIMES, March 19, 2011.

as did Mussolini.³ However, just as cultural heritage can be used as a tool of propaganda, it can also be a powerful tool for unification.

Art has enormous symbolic value to a country and to a people. Artifacts, art and cultural property are by their very nature emblematic of a people's history and traditions. A culture's art reflects its values, aesthetics, and ideals, and conveys those to the viewer. A taking of these objects can represent a taking of a core element of a people, a stripping away of what makes them unique. "The battle over ancient treasures is, at its base, a conflict over identity, and over the right to reclaim the objects that are its tangible symbols."⁴ This is what underlies the protection of cultural property and what makes it an important concern.

Conflict poses severe and unique threats to cultural property and in both the conflict and post conflict period, cultural property issues are often overlooked.⁵ Beyond the danger to cultural property posed by war itself, the post-conflict period can foster its own dangers most notably of looters, and accentuate the problems of the antiquities black market.⁶ These dangers are often considered by experts to be more of a threat to a nation's heritage than armies or tanks.⁷ This reality was made shockingly clear in Iraq, with the looting of the Baghdad Museum.⁸ An

³ See Patty Gerstenblith, *From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century*, 37 GEO. J. INT'L L. 245, 249-51 (2006). In his later memoirs, Albert Speer, Hitler's chief architect who was tried and convicted at Nuremberg, wrote; "Hitler liked to say that the purpose of his building was to transmit his time and its spirit to posterity. Ultimately, all that remained to remind men of the great epochs of history was their monumental architecture, he would philosophize.... Our architectural works should also speak to the conscience of a future Germany centuries from now." ALBERT SPEER, *INSIDE THE THIRD REICH: MEMOIRS*, 55-6 (Richard and Clara Winston trans., Macmillan Company 1970).

⁴ SHARON WAXMAN, *LOOT: THE BATTLE OVER THE STOLEN TREASURES OF THE ANCIENT WORLD* 3 (2008).

⁵ Matthew Bogdanos, *Fighting for Iraq's Culture*, N.Y. TIMES, March 6, 2007, at A21 ("With the situation in Iraq growing seemingly graver by the day, Americans are increasingly reluctant to risk American blood to save Iraqi lives. So it's a pretty tough sell to ask people to care about a bunch of old rocks with funny writing.")

⁶ See generally Patty Gerstenblith, *Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past*, 8 CHI. J. INT'L L. 169 (2007); Matthew Bogdanos, *The Casualties of War: The Truth about the Iraq Museum*, 109 AM. J. OF ARCHAEOLOGY 477 (2005).

⁷ *Protecting Ancient History in Iraq: Archeologists Worry Antiquities, Artifacts Will be Lost in War*, NPR, (Feb. 20, 2003), <http://www.npr.org/templates/story/story.php?storyId=978050> ("some art historians and archeologists are more concerned about what will come after a military campaign, when they say social and economic chaos will most likely lead to looting").

⁸ See *infra* Part III.

occupation period can also bring with intentional destruction of cultural property that the occupying power finds offensive or antithetical to their beliefs.⁹ This can also occur in the form of acts of retaliation against opposing groups. This was true in Cyprus, with the destruction of many of the Christian churches, as well as in Afghanistan where the Taliban intentionally destroyed the Bamiyan Buddhas, in defiance of international outcry.¹⁰ In the U.S. efforts have been made to make the Army more aware of cultural property issues they may confront, a cultural property training manual was written in 2004.

The loss of objects in the post-conflict period can be possibly permanent, as objects often resurface only decades later having been sold from the black market into private collections.¹¹ The chaos and confusion that unfortunately often characterize the post-conflict period can enable the rapid loss of a country's prized cultural property to the international black market through insufficient protection and inadequate border security.¹²

In confronting the issue of cultural property protection during the post-conflict period there are significant hurdles for any country, or organization to overcome; the shortcomings of international law, often the lack of centralized knowledge about what is there to be protected, and a lack of an international framework to successfully retrieve items once they leave a country's borders.¹³

There are compelling reasons for international assistance in protecting a nation's cultural heritage and property. There are of course the reasons for protecting objects as part of our world

⁹ See, e.g., Francesco Francioni & Federico Lenzerini, *The Destruction of the Buddhas of Bamiyan and International Law*, 14 EUR. J. INT'L L. 619 (2003)

¹⁰ See *id.*; Press and Information Office of the Republic of Cyprus, THE LOSS OF A CIVILISATION: DESTRUCTION OF CULTURAL HERITAGE IN OCCUPIED CYRUS, (2009), <http://www.moi.gov.cy/pio>.

¹¹ See *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 917 F.2d 278, 281-84 (7th Cir. 1990); Matthew Bogdanos, *The Casualties of War: The Truth about the Iraq Museum*, 109 AM. J. OF ARCHAEOLOGY 477, 515 (2005).

¹² See Bogdanos, *The Casualties of War: The Truth about the Iraq Museum*, *supra* note 11 at 515-16.

¹³ See *infra* Parts III, IV; see generally *id.*.

heritage, the fact that most if not all of these items are irreplaceable and offer perhaps unknown insight into cultures past. The language of the preamble of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict reflects this belief, stating, “that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world...the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection.”¹⁴ More pragmatic reasons include, countries---including the US’s--- commitments the 1954 Hague Convention, commitments under customary international law, and avoidance of the tinge of imperialism that accompanies occupying forces who ransack countries cultural wealth for their own purposes.

This paper will explore the protection of cultural property in the post-conflict era. Part I briefly gives a history of cultural property protections and destruction, as well as the example of a relatively successful response to large scale, organized looting that was seen in the “Monuments Men” of the U.S. Army following World War II. Part II summarizes the relevant international law that can be used to protect cultural property in the post-conflict period. Part III offers a detailed modern study of cultural property protection techniques, as employed by the U.S. during the recent conflict in Iraq, and Part IV attempts to summarize and explore the lessons and concerns for protecting cultural property taken from the example in Iraq, their applicability to future post-conflict situations, and areas where further international guidance is needed.

I. Historical Traditions of the Removal of Cultural Property and the Post-World War II Model

¹⁴ Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240, *available at* http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html#REGISTRATION.

In examining viable forms of cultural protection for modern post-conflict situations it is informative to place wartime cultural property protections historically. Looting and pillaging of cultural property has a long history.¹⁵ In attempting to find workable modern solutions to the issues of cultural property protection it is informative to look to the example of the post-war efforts to address the largest scale looting of the modern era, that of the Nazis in World War II.¹⁶ Though the theft of cultural property during World War II was itself unique in both scale and organization, the post-war response of the Allies is in many ways an exemplary illustration. In attempting to create models for future protection there are lessons to be learned from the work of the so-called “Monuments Men.”

The practice of removing what would now be termed “cultural property,”¹⁷ has historically gone hand in hand with imperialism.¹⁸ Often viewed as the rightful prize of the conquering nation, examples of these takings date back to early history. Indeed, the modern museums of the world have built collections off of this imperial past.¹⁹ The Louvre is filled with the results of Napoleon’s campaigns, Egyptian obelisks stand tall in the streets of Rome, the Metropolitan Museum in New York has been embroiled with controversy over the provenance of some of its most high profile pieces and the Elgin marbles stand as testimony in the British

¹⁵ SHARON WAXMAN, *LOOT: THE BATTLE OVER THE STOLEN TREASURES OF THE ANCIENT WORLD* 4 (2008).

¹⁶ See Robert M. Poole, *Monumental Mission*, SMITHSONIAN, Feb. 2008; Ronald H. Bailey, *Saving Private Rembrandt*, WORLD WAR II, May 2007.

¹⁷ For use this paper “cultural property” will be defined in the broad way it is in the 1954 Hague Convention, “movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above.”

Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 1(a) *supra* note 5.

¹⁸ WAXMAN, *supra* note 15 at 4 -8.

¹⁹ *Id.*

museum of England's complicated history with Greece.²⁰ Cultural riches were viewed as the victor's prize for the taking, properly theirs by virtue of victory, "It is only in our modern age that the notion of 'spoils of war' has taken on a negative connotation; this was once a reasonable outcome in the wake of hostilities."²¹

One of the many unique and absolutely unprecedented aspects of World War II was Hitler and the Nazi's overwhelming and strategic seizing of cultural property from across Europe.²² Not only was the scale of this looting incredible, but it was matched by the carefully crafted planning behind it.²³ Upon entering cities, the Nazis had compiled lists of objects to be taken and seized, along with physical descriptions and specifications of the pieces.²⁴ After taking, German ledgers tracked the shipments of these pieces, often back to Germany where they were either stored or given to high ranking German officers.²⁵ One of the 'Monument Men' later remarked, "The Nazis made our job easier... They said where they got the stuff. They would describe the painting and give its measurements, and they would often say where they had sent the collection."²⁶ Hitler envisioned the creation of an unmatched art collection for Germany, with the greatest of the Old Masters' works from across Europe.²⁷

In order to prevent both German looting, as well as destruction from battles and bombing campaigns, the museums of continental Europe reacted by, in many cases, attempting to ship

²⁰ *Id.*; see also Colonel Matthew Bogdanos, *Thieves of Baghdad: Combating Global Traffic in Stolen Iraqi Antiquities*, 31 FORDHAM INT'L L.J. 725, 725-30 (2008)

²¹ WAXMAN, *supra* note 15 at 7.

²² See Robert M. Poole, *Monumental Mission*, SMITHSONIAN, Feb. 2008, 44; Ronald H. Bailey, *Saving Private Rembrandt*, WORLD WAR II, May 2007, 48.

²³ Robert M. Poole, *Monumental Mission*, SMITHSONIAN, Feb. 2008 at 44.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Lieutenant Bernard Taper, *quoted in* Robert M. Poole, *Monumental Mission*, SMITHSONIAN, Feb. 2008 at 44.

²⁷ Robert M. Poole, *Monumental Mission*, SMITHSONIAN, Feb. 2008 at 44.

prized pieces to safer locations.²⁸ For example, the Mona Lisa, housed in the Louvre, was successfully protected in the war, changing locations six times before being safely returned.²⁹

What makes this history relevant to modern post conflict efforts, are the lessons to be taken from the work of a unit of the Army devoted specifically to cultural property issues. The U.S. Army's Monuments, Fine Arts and Archives section, nicknamed the "Monuments Men" was a group of approximately 350 soldiers, often with prewar civilian training either as art historians, architects, curators or museum personnel, whom the Army utilized both during and after the war to try and confront the enormity of the cultural property problem before them.³⁰ During the war they assisted in removing moveable works to safety, and securing immovable works to withstand attacks—notably including successfully protecting da Vinci's Last Supper from Allied bombing campaigns in Milan.³¹

After the war they began the process of finding, identifying and restoring works to their proper owners. This often involved finding and then sorting through the secret stashes of confiscated art that the German army had stored in places, such as Austrian salt mines, for protection during hostilities. The Monuments Men worked to inventory pieces, research where it could have originated from, and attempt to return the object to its proper home.³² It is estimated that the section assisting in the return of over five million pieces of art.³³

Although the Army section on Monuments, Fine Arts and Archives was comparatively small, and the efforts at times imperfect, their work represents an informative model of protection. On a most basic level, that there was a conscious devotion of resources to the issue

²⁸ Roseann Scott, *Monuments Men*, HUMANITIES, Mar./Apr. 2008, at 22.

²⁹ *Id.*

³⁰ Scott at 22; Robert M. Poole, *Monumental Mission*, SMITHSONIAN, Feb. 2008 at 44; Ronald H. Bailey, *Saving Private Rembrandt*, WORLD WAR II, May 2007 at 48.

³¹ Roseann Scott, *Monuments Men*, HUMANITIES, Mar./Apr. 2008, at 22.

³² *Id.*; Robert M. Poole, *Monumental Mission*, SMITHSONIAN, Feb. 2008 at 44; Ronald H. Bailey, *Saving Private Rembrandt*, WORLD WAR II, May 2007 at 48.

³³ Roseann Scott, *Monuments Men*, HUMANITIES, Mar./Apr. 2008, at 22.

of cultural property was significant. Their efforts were aided and accelerated by members of civilian training in the arts that enabled them to make informed decisions about how to respond.³⁴ That the work the Monuments Men did during World War II presents a solid example of cultural property protection by an occupying power is echoed by the inclusion of a history of their efforts in the 2004 U.S. Army cultural property training manual.³⁵

The experience of the Monuments Men highlights the importance of the participation of art and cultural property experts in post conflict efforts. Having the experts on the ground can assist in identifying work to be protected, assessing priorities for protection given resources, and ensuring proper conservation methods. A lack of expertise in the current Army ranks is one of the current problems, “unlike World War II, we don’t have the expertise to deal with [cultural property]. Meaning, the Army doesn’t have a draft, so you don’t have art historians, and museum curators, architects, and archeologists in the army to whom you can – ‘you, come over here.’ They have to join up. But guess what? They don’t.”³⁶ World War II efforts by the army highlight the need for civilian coordination when dealing with this material.

When examining the successes of the Monuments Men in regard to a model for future projects, it is important to recognize the unique circumstances of World War II. These circumstances in many aspects contributed to the successes of the Monuments Men, and are unlikely to be duplicated in modern situations. These do not diminish the lessons to be taken from the efforts of the Monuments Men, rather, they place the efforts in context. First is the fact that the Men were dealing with predominantly Western art,³⁷ often paintings, with which there is

³⁴ One of the sections leaders went on to become the director of the Metropolitan Museum of Art upon his return after the war. Ronald H. Bailey, *Saving Private Rembrandt*, WORLD WAR II, May 2007 at 48

³⁵ Adam Minter, *Protecting the Priceless: How one retired Army Reserve Major taught soldiers to save artworks and antiquities during wartime*, SMITHSONIAN.COM, Feb, 1, 2008, <http://www.smithsonianmag.com/arts-culture/wegener.html>.

³⁶ Army Reserve Major Corine Wegener, as quoted in *id.*.

³⁷ Roseann Scott, *Monuments Men*, HUMANITIES, Mar./Apr. 2008, at 22.

much greater familiarity with than, for example, early Middle Eastern antiquities. Further, the Nazis unprecedented organization when it came to removal and looting was an enormous aid to later restitution efforts.³⁸ Current post conflict situations are likely to be far more chaotic; state-sponsored looting with a meticulous paper trail is almost unthinkable. While it is extremely unlikely to have such large-scale organization, it turn it is equally unlikely to have transnational, systematic looting.

It seems that the successes of the Monuments Men can and should be tailored to modern post-conflict zones. Their on the ground, often impromptu efforts in many ways echo the more successful elements of the U.S. response to the Baghdad Museum looting, and the efforts of a small group of Marines to try and recover and restore what was previously lost.

II. The International Legal Framework Governing Cultural Property Protection

The issues that arise with trying to use international law to address cultural property issues are two-pronged, and lie both in the absence of international law and the lack of enforcement of the existing framework. Following World War II slow-moving efforts have been made to create international legal protections for cultural property. In 1946, in the wake of the large scale destruction and looting of cultural heritage across Europe the United Nations Educational, Scientific and Cultural Organization (UNESCO) was founded.³⁹ In 1954 the most significant treaty with regard to cultural property protection to date was ratified at the Hague –

³⁸ Robert M. Poole, *Monumental Mission*, SMITHSONIAN, Feb. 2008 at 44.

³⁹ M. Catherine Vernon, *Common Cultural Property: The Search for Rights of Protective Intervention*, 26 CASE W. RES. J. INT'L L. 435, 457 (1994).

the Convention for the Protection of Cultural Property in the Event of Armed Conflict (the 1954 Hague Convention).⁴⁰

The creation of UNESCO and of the 1954 Hague Convention signify the growing recognition, particularly in the wake of the unprecedented destruction to cultural property in World War II, that the importance of cultural property extends beyond territorial boundaries, and that cultural property is an irreplaceable resource that must be preserved.⁴¹ The Hague Convention “recognize[ed] that nations have a duty in the administration of their cultural treasures not only to their own nationals, but to mankind as well”⁴² and “impliedly creates the concept of common cultural property in its preamble by emphasizing that damage to any cultural property is damage to the cultural heritage of mankind.”⁴³ The preamble to the UNESCO constitution speaks directly to the World War II destruction, and the concern for international collaboration to prevent similar atrocities in the future,

“That since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed... That the great and terrible war which has now ended was a war made possible by the denial of the democratic principles of the dignity, equality and mutual respect of men... That the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfill in a spirit of mutual assistance and concern.”⁴⁴

Concerns with the cultural property of *mankind* were present in the 1954 Hague Convention preamble as well, and reflect the greater changes that were occurring in international law

⁴⁰ Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240, available at http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html#REGISTRATION.

⁴¹ See e.g., Captain Joshua E. Kastenber, USAF, *The Legal Regime for Protecting Cultural Property During Armed Conflict*, 42 A.F. L. REV. 277, 289-90 (1997).

⁴² M. Catherine Vernon, *Common Cultural Property: The Search for Rights of Protective Intervention*, 26 CASE W. RES. J. INT'L L. 435, 459 (1994).

⁴³ *Id.* at 458.

⁴⁴ United Nations Educational, Scientific and Cultural Organization, *Constitution*, Preamble (1946).

following World War II, and the increasing acknowledgment of the need for international protections on war.⁴⁵

The 1954 Hague Convention puts an obligation on member parties to avoid causing harm to cultural property both within their own territory, and in that of other parties during times of conflict.⁴⁶ These obligations can be waived in the case of “military necessity”,⁴⁷ and are lifted if the owning nation uses that cultural property for impermissible or military purposes⁴⁸ – meaning that the protection afforded under the Convention cannot be misused to allow protection of designated cultural property housing military equipment. The Convention creates a mechanism under which member parties can compile a list of sites to be protected in the event of conflict,⁴⁹ it also creates an international symbol to be used to designate protected cultural property under the Convention.⁵⁰ The Convention extends parties obligations to peace time, requiring states to adequately prepare for protection of cultural property and also places obligations on occupying powers.⁵¹

Significantly, the U.S. did not ratify the 1954 Hague Convention until 2009, becoming the 122nd country to do so. This recent ratification reflects both that legitimacy of the Hague Convention’s principles is growing internationally, but also the hesitancy of the U.S. to bind itself in such a way. The 2009 ratification date also means that until that point U.S. forces were not bound by the 1954 Hague Convention principles in any armed conflicts, although in the 1991

⁴⁵ See Kastenberg, *supra* note 41 at 289-90.

⁴⁶ Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 4(1). See generally Patty Gerstenblith, *From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century*, 37 GEO. J. INT’L L. 245, 259-65 (2006).

⁴⁷ Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 4(2).

⁴⁸ Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 8(1)(b).

⁴⁹ *Id.*, art. 8(6).

⁵⁰ *Id.*, art. 10.

⁵¹ *Id.*, art. 5 (“[a]ny High Contracting Party in occupation of the whole or part of the territory of another High Contracting Party shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property”).

Gulf War the Department of Defense recognized that the Hague Convention principles did apply as several coalition member states were parties, as was Iraq and Kuwait.⁵²

The major shortcoming of the 1954 Hague Convention, as is often the case with international treaties, is the enforcement mechanism.⁵³ Article 28, which addresses sanctions says only, “The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention.”⁵⁴ This vague article makes the Convention, in many ways, toothless. While there have been calls for more stringent international protection and enforcement of the Convention, cultural property protection is a low priority, both in the U.S. and internationally.⁵⁵

The shortcomings of international law on this issue was made shockingly clear with the 2001 destruction of the Bamiyan Buddhas by the Taliban.⁵⁶ This destruction was made within national territory boundaries, in direct defiance of international outcry to the Taliban’s threats.⁵⁷ The event was highly publicized as a demonstration of lack of international control over the Taliban. This event, “is the first planned and deliberate destruction of cultural heritage of great importance as act of defiance of the United Nations and of the international community”⁵⁸ and represents the failure of international law to protect cultural property, despite mainstream awareness of the danger. Although this act occurred within the Taliban’s national territory at the

⁵² Marion Forsyth, *Casualties of War: The Destruction of Iraq’s Cultural Heritage as a result of U.S. Action During and After the 1991 Gulf War*, 14 DEPAUL-LCA J. ART & ENT. L. & POL’Y 73, 85 (2004).

⁵³ *Id.* at 89-90.

⁵⁴ Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 28.

⁵⁵ *See supra* note 5.

⁵⁶ Francesco Francioni & Federico Lenzerini, *The Destruction of the Buddhas of Bamiyan and International Law*, 14 EUR. J. INT’L L. 619, 620 (2003).

⁵⁷ *Id.*

⁵⁸ *Id.*

time, it has been argued that this still constituted an international wrongdoing and so should be used as a cautionary tale to spur the creation of more stringent methods of international protection.⁵⁹

The second major, international agreement that could be utilized for post-conflict cultural protection is the 1970 UNESCO Convention on the Means of Prohibiting the Illicit Import, Export, and Transfer of Ownership of Cultural Property [UNESCO Convention].⁶⁰ The U.S. ratified the UNESCO Convention in 1983, through the Convention on Cultural Property Implementation Act.⁶¹ However, the result of the legislation is that only Articles 7B and 9 are implemented in the U.S.⁶² The difference between Article 7B and 9 is that 7B provides protection for objects stolen from a museum, “or similar institution”, from being imported into another state party to the convention, requiring that the objects have been “documented” by the institution they were taken from.⁶³ Comparatively, Article 9 protects “archaeological or ethnological materials”, not necessarily documented, when agreed on between State Parties.⁶⁴ Under the implementation legislation in the U.S., parties may do this by requesting the U.S. enforce that particular country’s export restrictions as their own import restrictions.⁶⁵ Currently the U.S. has agreements with fourteen other countries including Iraq, Italy, Cyprus and Peru.⁶⁶

III. Modern Cultural Property Protection Issues in Post-Conflict Iraq

⁵⁹ *Id.*

⁶⁰ UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231 (1972), available at http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html.

⁶¹ 96 Stat. 2329 (1983).

⁶² Marion Forsyth, *Casualties of War: The Destruction of Iraq’s Cultural Heritage as a result of U.S. Action During and After the 1991 Gulf War*, 14 DEPAUL-LCA J. ART & ENT. L. & POL’Y 73, 93 (2004).

⁶³ UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231 (1972) at art. 7B; *see also id.*

⁶⁴ UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property, *supra* note 60, at art. 9; Forsyth, *supra* note 62, at 93-94.

⁶⁵ Forsyth, *supra* note 62, at 93-94.

⁶⁶ *Cultural Heritage Center*, U.S. DEP’T OF STATE, <http://exchanges.state.gov/heritage/culprop.html> (last visited April 21, 2011).

Located in the ‘cradle of civilization’, the area that constitutes Iraq today was part of what has been referred to as ancient Mesopotamia.⁶⁷ Mesopotamia marks one of the earliest human civilizations, a place whose role in the “development of world culture and history cannot be overstated.”⁶⁸ It is where written language and the wheel were first created.⁶⁹ One of the earliest known legal systems, and certainly the best documented, the Code of Hammurabi, comes from this region.⁷⁰ Iraq also contains the ancient sites of Babylon, Ur, and Nimrud amongst many others. Apart from artifacts already uncovered that merit protection, Iraq also holds unknown amounts of other ancient artifacts yet to be excavated.⁷¹ Iraq may hold “as rich and concentrated a cultural heritage of humankind as can be found anywhere.”⁷² Threats to Iraqi cultural property represent a threat to the history of civilization.

While the threats to cultural property in Iraq today has many facets, the event that captured the world’s attention was the 2003 looting of the Iraq Museum in Baghdad. Led by Marine Colonel Matthew Bogdanos, the steps taken in the aftermath to document the damage and recover the pieces reveals an adaptive, multi-pronged approach that was unique both in its breadth and depth. The results reveal both the shortcomings of current cultural property policy as well as successes that should be studied and built upon in the future. This section will examine the recovery efforts in that mission as well as other cultural property concerns facing Iraq, and highlight some of the proposed solutions and lessons to takeaway.

⁶⁷ Forsyth, *supra* note 62, at 73-74.

⁶⁸ Patty Gerstenblith, *From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century*, 37 GEO. J. INT’L L. 245, 274-78 (2006); Forsyth, *supra* note 62, at 73-74.

⁶⁹ Gerstenblith, *supra* note 68 at 274-78.

⁷⁰ *Id.*

⁷¹ *Id.* (estimating that most of the 10,000 archeological sites in Iraq remain unexcavated.)

⁷² Robert McC. Adams, *Iraq’s Cultural Heritage: Collateral Damage*, SCIENCE, July 6, 2001 at 13, *as quoted in* Forsyth at 75.

While this paper is focusing on the most recent Iraq conflict, a brief discussion of the modern history of cultural property protection in Iraq is useful as many of the contemporary problems facing Iraq today stem from this history. This history gives context to both the recent cultural losses, and some of the successes in recovery, and is crucial in determining what lessons should be learned.

a. Cultural Property Issues During and After the Gulf War

Issues with cultural property protection in Iraq began during the first Gulf War. Before the invasion of Kuwait and subsequent international reprisals Iraq had “one of the most successful cultural property protection schemes in the Middle East.”⁷³ In 2001 a U.S. newspaper described Saddam Hussein as “a friend of archeology”, elaborating that “[v]irtually no illegal trade in Iraqi antiquities existed when Saddam first came to power. He not only meant to keep it that way, he also set about ensuring the country’s rich heritage would be accessible to all Iraqis.”⁷⁴ Saddam, similarly to other dictators before him, knew the power objects, and monuments can have as nationalist symbols.⁷⁵ He actively promoted Iraq’s cultural riches as symbols of the country’s past and future glory, frequently referencing them in speeches, “as if to drum into average citizens the fact that their country deserves an exalted spot on the world stage”.⁷⁶

⁷³ Forsyth *supra* note 62 at 76.

⁷⁴ Les Donison, *Iraq’s Past Being Looted for Cash*, PITTSBURGH POST-GAZETTE, April 2, 2001, at A1.

⁷⁵ *Id.*

⁷⁶ Robert Collier, *Treasured Past Once Again At Risk: Many Iraqis convinced the U.S. wants to blunt resurrection of Babylon*, SAN FRANCISCO CHRONICLE, March 19, 2003, at A18; *see also id.*

Hussein established regional museums, that highlighted Iraq's culturally rich past, exposing it to citizens.⁷⁷ His programs were designed to teach Iraqis "to value their rich archaeological heritage both above and below ground, and to safeguard these vestiges of the past."⁷⁸ One of his pet projects was the restoration of Babylon, where large sections were rebuilt under Hussein's regime.⁷⁹ His contribution was not subtle; at Babylon every restored wall had a brick placed at the center that read, "This was built by Saddam Hussein, son of Nebuchadnezzar, to glorify Iraq."⁸⁰ Additionally, the Iraq government had a clear and strict policy regarding excavated artifacts: all antiquities excavated were considered to be property of the state and were required to be reported within a week of discovery; exporting antiquities was illegal, as was breaking or damaging them; and severe criminal punishments were imposed for looters.⁸¹ Because of the creation and enforcement these state sponsored policies there was almost no black market trading of Iraqi antiquities before 1991.⁸²

The effect of the first Gulf War and the subsequent sanctions brought unprecedented destruction to Iraq's many cultural heritage sites.⁸³ During the war damage was done to a number of heritage sites.⁸⁴ Funds that were previously devoted to cultural protection were diverted, and looting became more widespread, as a way to earn money.⁸⁵ Nine of the regional

⁷⁷ Les Donison, *Iraq's Past Being Looted for Cash*, PITTSBURGH POST-GAZETTE, April 2, 2001, at A1; Forsyth, *supra* note 62, at 77.

⁷⁸ Forsyth, *supra* note 62, at 77-78.

⁷⁹ Robert Collier, *Treasured Past Once Again At Risk: Many Iraqis convinced the U.S. wants to blunt resurrection of Babylon*, SAN FRANCISCO CHRONICLE, March 19, 2003, at A18; Forsyth, *supra* note 62, at 77.

⁸⁰ Robert Collier, *Treasured Past Once Again At Risk: Many Iraqis convinced the U.S. wants to blunt resurrection of Babylon*, SAN FRANCISCO CHRONICLE, March 19, 2003, at A18.

⁸¹ Forsyth, *supra* note 62, at 76-77 (internal quotations omitted).

⁸² Forsyth, *supra* note 62, at 78.

⁸³ See Les Donison, *Iraq's Past Being Looted for Cash*, PITTSBURGH POST-GAZETTE, April 2, 2001, at A1.

⁸⁴ Forsyth, *supra* note 62, at 78 (2004). The Iraqi Army has been described as "somewhat reckless" in how they chose and positioned their military bases. Les Donison, *Iraq's Past Being Looted for Cash*, PITTSBURGH POST-GAZETTE, April 2, 2001, at A1. The U.S. accused Iraq of intentionally moving military equipment close to important sites to try and shield it from fire, *Id.*, in clear violation of the Hague Convention.

⁸⁵ Forsyth, *supra* note 62, at 78.

museums, set up by Saddam to highlight Iraqi culture, were looted and several were burned and destroyed.⁸⁶ Significantly for the later conflict, many objects previously stored in regional museums were transferred at this time to the Iraq Museum in Baghdad for storage and safekeeping.⁸⁷ The sanctions imposed on Iraq caused the previously well-funded museums and cultural heritage protection programs to have to greatly reduce their efforts.⁸⁸

The vacuum of protection to archeological sites allowed for widespread looting, “[a]lmost overnight world-famous sites such as Babylon, Hatra, Umma, Ur and Nineveh became targets of looters.”⁸⁹ The archeological world looked on with shock at the complete shift in Iraq from leaders of cultural protection, to the new era of ever-increasing destruction.⁹⁰ The losses felt were not only objects being sold into the black market, but also in the manner of looting at the archeological dig sites.⁹¹ Modern archeology relies on context as much as the object itself, and so when an object is taken from the ground without any record, the loss of knowledge about that ancient civilization is irretrievable.⁹² Further, the methods employed emphasized ease and efficiency, the looters often employing bulldozers, dynamite and hammers to rip the objects out as quickly as possible.⁹³ Iraqi archeologist Dr. Donny George, who later played a crucial role in the recovery of items to the Iraq Museum in Baghdad, lamented in 2001, “They are just

⁸⁶ Robert Collier, *Treasured Past Once Again At Risk: Many Iraqis convinced the U.S. wants to blunt resurrection of Babylon*, SAN FRANCISCO CHRONICLE, March 19, 2003, at A18; Les Donison, *Iraq’s Past Being Looted for Cash*, PITTSBURGH POST-GAZETTE, April 2, 2001, at A1.

⁸⁷ Les Donison, *Iraq’s Past Being Looted for Cash*, PITTSBURGH POST-GAZETTE, April 2, 2001, at A1.

⁸⁸ *See id.* U.S. archaeologists have defended the Iraqi cultural heritage workers efforts during this time, pointing to their “inability to prevent deterioration in the country’s cultural heritage” because of the “economic crisis brought on by the U.N. sanctions.” Robert Collier, *Treasured Past Once Again At Risk: Many Iraqis convinced the U.S. wants to blunt resurrection of Babylon*, SAN FRANCISCO CHRONICLE, March 19, 2003, at A18.

⁸⁹ Les Donison, *Iraq’s Past Being Looted for Cash*, PITTSBURGH POST-GAZETTE, April 2, 2001, at A1.

⁹⁰ *Id.* (“Not only are things being destroyed. . .but the accumulation of knowledge at a breathtaking speed has been replaced by destruction at the same sort of pace”).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

destroying the heritage of mankind....They are crushing it, turning it into this stupid matter called dollars. For me, this has been the worst 10 years of my life.”⁹⁴

Stolen objects did manage to bypass the trade embargo and be sold on the international market.⁹⁵ Over 10,000 objects were seized at the border and Iraqi experts estimated over double that amount made it through.⁹⁶ Furthermore because of the sanctions the Iraqi Antiquities Department had difficulty communicating the losses with the international community. After the war UNESCO requested to enter Iraq to assist with the cultural protection concerns, and the request was denied by the UN.⁹⁷ Marion Forsythe discusses how a request to import photographic paper to make prints of lost objects was denied by the sanctions committee, the Antiquities Department instead provided UNESCO with a four volume list of over 4,000 missing items from the regional museums.⁹⁸ Patty Gerstenblith lists three elements from the first Gulf War that set the stage for the “cultural disaster” that would then follow the second Gulf War.⁹⁹ First, a profession of looters now existed where it did not exist before, second smuggling routes for artifacts out of Iraq had been established, and finally, the sale of several highly valued collections in the US and the UK had established the presence of a lucrative market for Iraqi artifacts.¹⁰⁰

b. Cultural Property Issues Following the Second War in Iraq and the US

Occupation

⁹⁴ As quoted in *id.*

⁹⁵ Forsyth, *supra* note 62, at 84.

⁹⁶ Les Donison, *Iraq's Past Being Looted for Cash*, PITTSBURGH POST-GAZETTE, April 2, 2001, at A1

⁹⁷ *Id.*

⁹⁸ Forsyth, *supra* note 62, at 83-84.

⁹⁹ Patty Gerstenblith, *From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century*, 37 GEO. J. INT'L L. 245, 286 (2006).

¹⁰⁰ *Id.*

In the time period following what has been called the second Gulf War in Iraq, and the American occupation, two major threats to Iraqi cultural property emerged, both of which were heightened versions of the issues seen following the first Gulf War. First, there was the large-scale looting that occurred of the Iraq Museum in Baghdad, echoing the destruction of the regional museums previously. Secondly, there was the increased looting of the archaeological dig sites.¹⁰¹ This section will discuss both occurrences and the solutions that were proposed or implemented for each, focusing more heavily on the looting of the Iraq museum because of the better documentation of attempted solutions and the applicability of some of those solutions to the archeological dig site problems.

As previously discussed, one of the greatest losses that comes from looted archeological sites is that in ripping the object from the ground, the setting and context of the object are forever lost, and with them the story of the ancient civilization that created the object. “If we come to understand the story of looting in its universal aspects—that great volumes of information about our past have been destroyed...that chapters in our understanding of human development will never be written—then we can begin to feel the scope and depth of our loss.”¹⁰² Iraq has 10,000 current archeological sites, with hundreds of thousands potentially undiscovered.¹⁰³ One of the primary problems with attempting to document the cultural property losses that occur due to looting of the archeological digs is that by their very nature, digs are in progress and the artifacts

¹⁰¹ In her article on cultural property concerns during the two Iraq wars Patty Gerstenblith also identifies the military construction and activity that occurred at Babylon and other sites as one of the problem areas of the second Gulf War. Patty Gerstenblith, *From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century*, 37 GEO. J. INT’L L. 245, 295-99 (2006). As this paper focuses on the post-conflict period, and the threat to cultural property from military activity arises primarily, although not solely, during the active conflict period, it does not focus on those aspects of the Iraq conflict.

¹⁰² Micah Garen & Marie-Helene Carleton, *Erasing the Past: Looting of Archeological Sites in Southern Iraq*, in THE LOOTING OF THE IRAQ MUSEUM, BAGHDAD: THE LOST LEGACY OF ANCIENT MESOPOTAMIA 15 (Milbury Polk & Angela M.H. Schuster eds., 2005), *quoted in id.*

¹⁰³ Holland Cotter, *Oldest Human History is at Risk: A Prime Center of Islamic Art and Culture May Be in Harm’s Way*, N.Y. TIMES, Feb. 25, 2003 at E1.

located there have not all been found or located, thus making losses hard to quantify with certainty.¹⁰⁴ It has been estimated that over two years looters removed as much dirt from archaeological dig sites as had been removed in the prior one hundred and eighty years, looting between an estimated 400,000 to 600,000 objects from those sites.¹⁰⁵ Many in the international archeology community proclaimed the loss from the looting of the dig sites to be even greater than the more widely publicized Iraq Museum looting, as the majority of the Iraq Museum objects had previously been studied and documented, and the items taken from the dig sites represent a loss of not only the object but the information to be taken from its surroundings, information which is lost forever.¹⁰⁶ As a result, in 2006, the World Monuments Fund, for the first time, placed the entire country of Iraq on its list of 100 Most Endangered Sites.¹⁰⁷

One of the primary causes of the large scale looting was the lack of substantial security, if any, at most of the sites. In the weeks following the fall of the Hussein government, many of the most important or largest sites gained protection, but at many other sites the looting continued “virtually unabated.”¹⁰⁸ In 2003 security responsibility for the large number of archeological sites in southern Iraq shifted to the Italian carabinieri who have specialized forces in illegal antiquities looting and trafficking.¹⁰⁹ They trained over 1,700 Iraqi police, but the police were not able to deploy due to a lack of equipment.¹¹⁰ The large scale looting was a result of the increased market, and demand for Iraqi antiquities, as well as the established smuggling routes

¹⁰⁴ See Gerstenblith *supra*, note 101, at 292-94.

¹⁰⁵ *Id.* at 293-94.

¹⁰⁶ *Id.* at 291-95.

¹⁰⁷ *Id.* at 294. Select Iraq sites still remain on the list today. 2010 Watch Sites, *World Monuments Fund*, <http://www.wmf.org/watch/project-map> (last visited Apr. 21, 2011).

¹⁰⁸ Gerstenblith *supra*, note 101, at 292-93.

¹⁰⁹ *Id.* at 294; see also Matthew Bogdanos, *The Casualties of War: The Truth about the Iraq Museum*, 109 AM. J. OF ARCHAEOLOGY 477, 501 (2005).

¹¹⁰ Gerstenblith *supra*, note 101, at 294-95.

out of Iraq.¹¹¹ Funding, security and the heavy influence of the black market in antiquities will all be discussed later in this paper as large, significant obstacles that must be in some way dealt with in all post-conflict scenarios when addressing cultural property protections.

The major event that shocked the world, drawing attention to cultural property concerns in Iraq was the looting of the Iraq Museum in Baghdad. In the “power vacuum” as coalition forces took Baghdad in early April 2003, large scale looting occurred across Baghdad.¹¹² Some of the major targets included the Iraq Museum, the National Library, the National Archives and the Religious Library.¹¹³ Between April 8th and April 12th the Iraq Museum was looted by, at its peak, an estimated 300-400 people.¹¹⁴ The Iraq Museum, was truly one of the jewels of Iraq, many of the most prized artifacts had been relocated to the museum for protection from the looting of the regional museums during the first Gulf War and at the time of the looting it was home to the largest collection of Mesopotamian artifacts in the world.¹¹⁵

The international community responded immediately to the initial shock and outrage of the world at the looting, UNESCO convened an emergency meeting of 30 experts and Interpol organized an extraordinary session to establish an “Interpol Task Force for the Tracking of Iraqi Stolen Cultural Property.”¹¹⁶ However, as reported by Colonel Matthew Bogdanos a member of the U.S. Marines who headed the investigation of the looting and then spent the following five years in efforts to track down the artifacts, these initial international meetings provided little

¹¹¹ See *supra* note 100.

¹¹² Matthew Bogdanos, *The Casualties of War: The Truth about the Iraq Museum*, 109 AM. J. OF ARCHAEOLOGY 477, 477 (2005).

¹¹³ Gerstenblith *supra*, note 101, at 288.

¹¹⁴ Bogdanos, *supra* note 112 at 505.

¹¹⁵ Patty Gerstenblith, *From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century*, 37 GEO. J. INT’L L. 245, 288 (2006); Les Donison, *Iraq’s Past Being Looted for Cash*, PITTSBURGH POST-GAZETTE, April 2, 2001, at A1.

¹¹⁶ Bogdanos, *supra* note 112 at 481.

substantively as, none of the investigation team on the ground was invited to participate.¹¹⁷

Bogdanos further criticizes foreign governments and organizations for their failure to take “direct and immediate action to recover any stolen antiquities” and not “look[ing] deeper into that dark episode or tr[ying] to tell the larger, even more complex and disturbing story of how this catastrophe fit into a larger scheme of global criminality.”¹¹⁸ Bogdanos and a team of thirteen other Marines were sent to Baghdad immediately following the looting to investigate and attempt to recover the stolen artifacts.¹¹⁹ Colonel Bogdanos has detailed the efforts of the team in a book, several journal and newspaper articles, and numerous lectures.¹²⁰ His account reveals specific methods taken, and shows an adaptive multi-pronged approach of an on the ground team responding to an unexpected, large scale cultural property disaster. The team was able to attempt a wide variety of tactics, and “were given extraordinarily wide latitude in determining what to do and how best to do it,”¹²¹ thus providing a rich template of techniques in dealing with cultural property. Their efforts were not fully successful, but they provide important lessons and raise new concerns when addressing cultural property matters in a post-conflict setting, particularly of the ever-increasing effects of the influence of the black market in antiquities.

Arriving in the days after the looting concluded,¹²² the first decision the team made was to focus on recovery of the artifacts, and not apprehending and prosecuting the offenders.¹²³ The team broke the efforts down into four components:

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 482.

¹²⁰ See e.g., Matthew Bogdanos, THIEVES OF BAGHDAD: ONE MARINE’S PASSION TO RECOVER THE WORLD’S GREATEST STOLEN TREASURES, (2005); Matthew Bogdanos, *The Casualties of War: The Truth about the Iraq Museum*, 109 AM. J. OF ARCHAEOLOGY 477 (2005); Matthew Bogdanos, *Fighting for Iraq’s Culture*, N.Y. TIMES, March 6, 2007, at A21.

¹²¹ Bogdanos, *supra* note 112 at 488.

¹²² There is a clear, separate issue here of the failure of U.S. coalition forces to provide security to the museum to have prevented the looting from occurring. The need for adequate security is discussed in the following section, as

“(1) identifying what was missing; (2) sending photographs of the missing items to the international law-enforcement and art communities to assist in intercepting the stolen objects in transit; (3) reaching out to religious and community leaders to promote and amnesty program for anyone returning antiquities; and (4) conducting raids based on information developed about stolen artifacts.”¹²⁴

Though the media immediately reported losses of over 170,000 artifacts being stolen, the real figure appears to be closer to 15,000 although exact figures are unknown.¹²⁵ The list of what was taken included some of the most famous objects of Near Eastern archeology and included the Sacred Vase of Warka, the Mask of Warka, the Golden Harp of Ur and the Treasure of Nimrud, which consisted of over 1,000 pieces of gold jewelry from the 8th and 9th century, BCE.¹²⁶ Determining precisely what was taken was an unexpectedly arduous task for several reasons, first much of the museum’s documentation was taken or lost in the looting, second many of the objects had not yet been catalogued so it was impossible to tell what was missing as there was no record of its presence in the museum,¹²⁷ and finally, and perhaps most tellingly of the prior regime, it was initially unknown what of the museum’s famed objects had been removed by the Hussein regime for ‘safekeeping’, the museum having been closed to the public and the press for many years.¹²⁸

here the focus is on examining what happened to extract viable techniques and in this instance – unfortunately - cultural property protection efforts began in the looting aftermath.

¹²³Bogdanos, *supra* note 112 at 488.

¹²⁴ *Id.*

¹²⁵ *Id.* at 491-94. Bogdanos discusses how the initial mis-information harmed the museum as when the true number was revealed the world “breathed a collective sigh of relief that ‘only’ 15,000 objects were stolen.” *Id.* at 494. In condemning the effect the inaccuracies led to he says, “The word ‘only’ should never be used in such a context and never would have been but for the original reporting. The further tragedy was that once the lower numbers became known, many governmental and private organizations quickly moved on to other crises, thereby depriving the international investigation of essential resources and funding.” *Id.*

¹²⁶ *Id.* at 478-79 (describing the full list of what was stolen, referring to it as the “ ‘who’s who’ of Near Eastern archeology”).

¹²⁷ Patty Gerstenblith, *From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century*, 37 GEO. J. INT’L L. 245, 290 (2006).

¹²⁸ Bogdanos, *supra* note 112 at 490.

These issues further affected the second component of the team's work, the efforts to publicize information about the missing objects to international law enforcement agencies.¹²⁹ In addition to sending what information was available about stolen pieces, the team also began attempts to educate authorities on what they should be looking for in attempts to recognize illegal Iraqi antiquities.¹³⁰

Gaining local trust was crucial in attempts to recover looted objects. On the ground U.S. troops had to confront Iraqi fears that Americans were not there to help, but as victorious conquerors, to claim the Iraq's cultural wealth as their own. This idea had been actively fostered by Saddam Hussein, who compared the U.S. troops to the "Mongol hordes" who invaded Baghdad in 1258.¹³¹ Additionally, the U.S. team working on the museum had to navigate the explosive political climate of the post-Saddam period. Many Iraqis saw the administration of the museum as symbols of the previous regime and called for de-Ba'athification efforts to extend to excluding those individuals from the recovery process.¹³² The third component of the U.S. team's efforts, an amnesty program to try and recover objects rested entirely on establishing goodwill with the local community.¹³³ The methods used here reflect the need for outside, international groups, to adapt to the local culture and tailor their methods accordingly. In attempts to build a repertoire with the community as guest protectors of the nation's heritage Bogdanos detailed how the team did such things as choosing to walk the street without helmets, and spent much time drinking tea in local neighborhoods.¹³⁴ Bogdanos' account reveals the need for constant reassurance of the intentions of the US troops, "Their oft-repeated question was

¹²⁹ *Id.* at 494.

¹³⁰ *Id.*

¹³¹ Robert Collier, *Treasured Past Once Again At Risk: Many Iraqis convinced the U.S. wants to blunt resurrection of Babylon*, SAN FRANCISCO CHRONICLE, March 19, 2003, at A18.

¹³² *Id.* at 485.

¹³³ *Id.* at 495.

¹³⁴ *Id.*

‘Will you stay this time?’ The overriding belief of this history-conscious society was that history would repeat itself: that the United States would leave and the former regime would respond with a vengeance.”¹³⁵

The amnesty program could be considered a success: between April and December of 2003, approximately 1,935 objects were returned, including one of the most important pieces in the whole museum, the Sacred Vase of Warka.¹³⁶ The success demonstrates the powerful effect of fostering the trust and goodwill of the local community. Though the individual techniques do not themselves create a blueprint for success, the overall strategy does.

Compared with the work to make the amnesty program a success the fourth prong of the team’s efforts, raids and seizures to try and find objects, is relatively standard. The team employed “classic law-enforcement techniques such as investigative raids and random car-stops at checkpoints throughout Iraq, as well as increased vigilance at international borders.”¹³⁷ In the April – December 2003 time period, the raids resulted in 2,027 objects recovered.¹³⁸

Finally, Bogdanos’ account of the Iraq Museum investigation reveals the need to examine every situation individually and not apply simply a textbook response to looting scenario. In Iraq, investigations by the U.S. team revealed not just random, indiscriminate looting, but three distinct styles of theft that occurred.¹³⁹ The knowledge of those differences allowed the team to shift their investigations accordingly, to account for the different crimes they were attempting to address. The three different styles of theft, identified by Bogdanos are, professional looters who had the knowledge to select only the most valuable pieces in the main public galleries, and not

¹³⁵ *Id.*

¹³⁶ Bogdanos, *supra* note 112 at 496-97.

¹³⁷ *Id.* at 498.

¹³⁸ *Id.*

¹³⁹ *Id.* at 507.

taking display replicas or less valued works.¹⁴⁰ Random looting that occurred in some of the storage rooms, with objects being taken indiscriminately, often with fakes being swept up in lieu of more valuable objects.¹⁴¹ Finally, a taking of a large number of small, but highly valuable objects from a remote storage room, accessible only through several other, untouched rooms, indicated an ‘inside job.’¹⁴² The amnesty program provided a successful model for the return of objects taken by the second group, random indiscriminate looters who perhaps questioned their actions later.¹⁴³ In contrast the majority of objects recovered that were stolen in the inside jobs were seized outside of Iraq.¹⁴⁴ As these small objects are easily smuggled, and high in value Bogdanos argues that the key is to “educate law-enforcement authorities in the identification of illicit antiquities so they can immediately recognize (and legally seize) what they see.”¹⁴⁵ Finally, many of the highly valued pieces, taken by professional looters, remain missing.¹⁴⁶ These items have a selective market, “those able and willing to spend millions of dollars for something they can never publicly exhibit or acknowledge owning”, attempts to retrieve these focus on monitoring the art community.¹⁴⁷

IV. Considerations When Confronting Post Conflict Cultural Property Protection – Lessons from Iraq

This section attempts to compile from the example in Iraq some of the issues that arise in attempts to deal with cultural property in the post conflict context, as well as, solutions and suggestions for where protection needs improve in the future.

¹⁴⁰ *Id.* at 507-08.

¹⁴¹ *Id.* at 508-511.

¹⁴² *Id.* at 511-15.

¹⁴³ Bogdanos, *supra* note 112 at 511 (reporting nearly 2,000 objects returned through the amnesty program from the areas thought to have been looted randomly).

¹⁴⁴ *Id.* at 514.

¹⁴⁵ *Id.* at 516 .

¹⁴⁶ *Id.* at 508.

¹⁴⁷ *Id.* at 515.

The first concern is that which did not occur in Iraq: ensuring the security of major sites of cultural property. One of the major issues that seems to arise in both the conflict and the post conflict period is a lack of information about what needs to be protected. How to efficiently compile and convey that information is a lingering question. Under the 1954 Hague Convention party states can list important sites to be protected,¹⁴⁸ and it seems pre-listed items of importance, along with subsequent coordination with state officials could be a powerful tool. The International Register of sites provided for under the Hague Convention however has been little used by countries. As Marion Forsyth highlights in her article on the destruction of Iraqi cultural heritage during the gulf war, many countries are wary of creating such a list with the fear—perhaps well founded—that they are “authoring their destruction” by providing potential enemies a list of “sites that are most important to their culture.”¹⁴⁹

Once areas in need of protection are clearly identified, security forces can more quickly move in to prevent the widespread looting in the time period immediately following conflict, which was the cause of the majority of the cultural property issues faced in Iraq. This applies to both museums and monuments, as well as sites of future cultural heritage, archeological digs. One of the inevitable questions in international conflict and post-conflict concerns is who would provide the security forces to execute this plan. This is particularly true of the archeological dig sites, as they are typically removed from major cities, and not necessarily in close proximity to active troops. Colonel Bagdanos posits a solution for the dig sites, which is for the international community to turn to countries who had historically been associated with different dig sites, where they had sent scholars and archeologists to work, and have those countries “adopt” the

¹⁴⁸ Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 8(6).

¹⁴⁹ Marion Forsyth, *Casualties of War: The Destruction of Iraq's Cultural Heritage as a result of U.S. Action During and After the 1991 Gulf War*, 14 DEPAUL-LCA J. ART & ENT. L. & POL'Y 73, 90 (2004).

sites, provide the initial troops for protection and then for the training of local troops.¹⁵⁰ In the Iraq context he estimates this could take as little as six months before Iraqi troops were trained to take over.¹⁵¹ He argues that this type of limited scope mission could allow foreign nations to send troops for humanitarian purposes, without indicating their support of the greater war efforts.¹⁵² This approach seems novel, but sadly unlikely, as the underlying necessity to foreign involvement is international acknowledgment not simply of the immense losses that accompany such lootings, but also that an affirmative, international step is warranted and necessary. Given the hesitation to engage over cultural concerns in the past this seems highly unlikely.

A compiled list of objects or locations with significant cultural value would also serve the purpose, post-looting, of identifying what was taken or missing. Had the Iraq Museum had multiple copies, of clear records, losses could have quickly been conveyed to international agencies and border guards. This knowledge would ideally allow swifter communications both to individuals doing export control, and alert agencies of what to monitor potential sales of artifacts abroad for. A system such as this clearly requires carefully documented, previously existing records to work from, in addition to knowledgeable personnel. Later efforts can be made, in national courts and elsewhere to try and recover property, the results take time and are unreliable as legal precedent is erratic.¹⁵³ The better solution is to work with the military and forces who will be on the ground in the immediate days after a conflict to educate, both to the importance of cultural property protection as well as practical steps for conservation efforts.

¹⁵⁰ Matthew Bogdanos, *Fighting for Iraq's Culture*, N.Y. TIMES, March 6, 2007, at A21.

¹⁵¹ Matthew Bogdanos, *Fighting for Iraq's Culture*, N.Y. TIMES, March 6, 2007, at A21.

¹⁵² Matthew Bogdanos, *Fighting for Iraq's Culture*, N.Y. TIMES, March 6, 2007, at A21.

¹⁵³ The Republic of Cyprus is model of utilizing the U.S. court system to regain lost cultural property. *See* *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989) *aff'd sub nom.* *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 917 F.2d 278 (7th Cir. 1990). The Cyprus government has also been very proactive in publicizing the cultural property losses. Press and Information Office of the Republic of Cyprus, *THE LOSS OF A CIVILISATION: DESTRUCTION OF CULTURAL HERITAGE IN OCCUPIED CYPRUS*, (2009), <http://www.moi.gov.cy/pio>. Despite these exemplary efforts, the process is very slow, and significant cultural property losses still persist. *Id.*

As has previously been discussed, in dealing with cultural property protection there is a need for educated personnel. Perhaps more importantly, there is a need for communication between educated personnel and the on the ground groups and troops. Individuals must understand what they need to protect, and for border guards what they need to be searching for to try and keep within the country. This is particularly true in countries where much of the cultural wealth lies in artifacts, where the attributes, unlike a painting, are far less easily discernable as a stolen object to the uneducated eye. This supports the need for incoming occupying forces to coordinate with regional experts. As one American archaeologist highlighted with the case in Iraq, sometimes the role of occupying forces should simply be to strengthen and legitimize cultural heritage policies that may have broken down in the conflict period:

“The absolutely, positively stupidest thing I can think of that the United States could do for archeology in a ... postwar scenario would be to try to take over the operation of the antiquities department or to change Iraq’s state-of-the-art antiquities policies....The smartest thing would be to ask the department what it needs and then make sure they get it.”¹⁵⁴

The new cultural property training manual signifies significant, if small, steps the U.S. Army is taking in confronting the cultural property issue. According to Army Reserve Major Corine Wegener, who co-authored the training manual, basic education on cultural property is one of the most important aspects, teaching Army members, “if you’re on guard duty and you find antiquities sticking out of the ground –which is quite likely [in Iraq] – don’t pick them up and carry them off and try to take them home. Not only is it illegal, it’s just wrong. We try to

¹⁵⁴ Robert Collier, *Treasured Past Once Again At Risk: Many Iraqis convinced the U.S. wants to blunt resurrection of Babylon*, SAN FRANCISCO CHRONICLE, March 19, 2003, at A18 (quoting Massachusetts College of Art archeologist John Russell).

get them to try and think about how we would feel if people came to our country and did it to them.”¹⁵⁵

Rather than attempt to chase down antiquities which may have spread across the globe, or reconstruct permanently damaged monuments, efforts should be made to stem the tide at the source, which is often the chaos in the time immediately following a conflict. The international illegal antiquities trade presents one of the largest, and most difficult aspects of cultural property protection. As exemplified in Iraq, the chaos of the post-conflict setting allows for ample opportunity for objects to be smuggled out and entered into the global market. One of the concerns is the immense wealth of the buyers that engage in the antiquities market, “some of the biggest collectors are also major millionaires, and they’re major contributors to all sorts of political campaigns. They’re movers and shakers. They also happen to collect stolen goods.”¹⁵⁶

Colonel Bogdanos offers a five-point plan for how to confront the black market trade of antiquities.¹⁵⁷ First he argues that there must be a public campaign to create a “climate of universal condemnation, rather than sophisticated indulgence, for trafficking in undocumented antiquities.”¹⁵⁸ Second, he calls for increased funding to organizations policing illegal antiquities trafficking.¹⁵⁹ Third, he calls for greater coordination in the law-enforcement response to illegal antiquities trade, globally.¹⁶⁰ Fourth, he argues that similar to attorneys and doctors, the art world, namely museums, archeologists and dealers should be subject to a code of conduct.¹⁶¹ Finally, he

¹⁵⁵ Quoted in Adam Minter, *Protecting the Priceless: How one retired Army Reserve Major taught soldiers to save artworks and antiquities during wartime*, SMITHSONIAN.COM, Feb, 1, 2008, <http://www.smithsonianmag.com/arts-culture/wegener.html>.

¹⁵⁶ McGuire Gibson, a professor of archeology at University of Chicago, as quoted in Les Donison, *Iraq's Past Being Looted for Cash*, PITTSBURGH POST-GAZETTE, April 2, 2001, at A1.

¹⁵⁷ Colonel Matthew Bogdanos, *Thieves of Baghdad: Combating Global Traffic in Stolen Iraqi Antiquities*, 31 FORDHAM INT’L L.J. 725, 734-38 (2008).

¹⁵⁸ *Id.* at 734-35.

¹⁵⁹ *Id.* at 735.

¹⁶⁰ *Id.* at 736.

¹⁶¹ *Id.* at 737.

calls for increased cooperation between the cultural heritage community and law enforcement bureaus saying that, “education and information exchange should run in both directions.”¹⁶²

Conclusion - Why We Should Care About Protecting Cultural Heritage

The destruction to cultural property that often occurs in the post-conflict period poses a enormous threat to local and world heritage, and knowledge of those who came before us. The severity of the threat to these objects should not be overlooked. Just as its significance to a culture is often indescribable, cultural property is also, inherently, irreplaceable. Additionally, failing to protect important cultural sites in times of crisis can affect broader international relations, giving an impression of cultural superiority. With regard to the situation in Iraq it has been argued that the “continued failure to protect an artistic heritage going back to the dawn of civilization has convinced many in Iraq and the Middle East that we do not care about any culture other than our own.”¹⁶³

If that argument is not salient to some, the practical reality of the illegal antiquities trade should cause even non-art lovers concern. The black market for illegal antiquities is a multi-billion dollar industry.¹⁶⁴ The black market in antiquities is not as “benign” as some wish to view it, but, argues Bogdanos, rather has become a vehicle for terrorists funding.¹⁶⁵ Bogdanos references a June 2005 raid in Iraq by U.S. Marines where five terrorists were arrested in underground bunkers that contained, alongside stockpiles of weapons and ammunition, vases,

¹⁶² *Id.* at 738.

¹⁶³ Matthew Bogdanos, *Fighting for Iraq’s Culture*, N.Y. TIMES, March 6, 2007, at A21.

¹⁶⁴ Les Donison, *Iraq’s Past Being Looted for Cash*, PITTSBURGH POST-GAZETTE, April 2, 2001, at A1.

¹⁶⁵ Matthew Bogdanos, *The Terrorist in the Art Gallery*, N.Y. TIMES, Dec. 10, 2005, at A15.

statuettes and other objects from the Iraq Museum looting.¹⁶⁶ Using impassioned language, Bogdanos refers to the illegal antiquities market as “a modern-day version of the old ‘molasses to rum to slaves’ triangle trade...the cozy cabal of academics, dealers, and collectors who turn a blind eye to the illicit side of the trade is in effect supporting the terrorists killing our troops in Iraq.”¹⁶⁷ It is obvious that the problems caused by the rampant international illegal trade in art and antiquities are not just academic, nor are they limited to the art world. Effective restrictions on the antiquities black market has the potential to have positive repercussions in other areas of international, and post-conflict policy.

In the context of post-conflict reconstruction, protection of national heritage has the potential to play a crucial part in legitimizing a mission, to the local people and as a rallying point around reconstruction. As stated by a UNESCO official,

“We are often asked the question, ‘Why protect monuments when people are dying?’...The reason is, the people who are dying ring us up and say, ‘Please protect our monuments.’ If people feel that strongly about their heritage, we don’t feel the international community can simply stand back and say ‘It’s not important. As long as you’re not dying, that’s all that counts.’”¹⁶⁸

Though attracting attention and resources to protecting ancient, inanimate objects presents a constant challenge to cultural property protection, the importance of these objects and their potential as tools for positive change and community building should not be minimized or overlooked.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Lyndel Prott, as quoted in Les Donison, *Iraq’s Past Being Looted for Cash*, PITTSBURGH POST-GAZETTE, April 2, 2001, at A1.