

Selected Documents and References

ISIS and ISLAM

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New York City Bar Association

The International Legal Framework and U.S. Law to Combat the Plunder
and Illicit Trade in Conflict Antiquities

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I. INTERNATIONAL LEGAL CONVENTIONS FOR PROTECTING CULTURAL HERITAGE AND THE TRADE IN ILLICIT ANTIQUITIES

- Hague Convention Concerning the Laws and Customs of War on Land, October 8, 1907, 36 Stat. 2277, 15 U.N.T.S. 9. <http://www.icrc.org/ihl.nsf/0/1d1726425f6955aec125641e0038bfd6?OpenDocument>
- Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954, The Hague, 14 May 1954
 - The Hague Convention regulates the conduct of nations during war and military occupation in order to assure the protection of cultural sites, monuments, and repositories, including museums, libraries, and archives. 122 nations have ratified the Convention, the U.S. in 2008.
 - Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflicts, 26 March 1999, 38 I.L.M. 769. http://www.unesco.org/culture/laws/hague/html_eng/protocol2.shtml
The Second Protocol is intended to supplement the provisions of the original 1954 Hague Convention and to reinforce its implementation. It contains general provisions for the safeguarding of cultural property that include taking preparatory measures in times of peace, fostering respect for cultural property, and employing precautionary measures in times of conflict.
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, November 14, 1970, 823 U.N.T.S. 231. ("1970 Convention") http://www.unesco.org/culture/laws/1970/html_eng/page1.shtml
 - The 1970 Convention was conceived as the lynchpin of an international legal framework for controlling traffic in illegally exported or stolen cultural property and is based primarily on an essentially public international law and administrative law model.
 - Among other things, the final version of the 1970 UNESCO requires signatories to take appropriate steps to 'prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned.' The 1970 UNESCO also calls for an embargo on cultural property 'stolen from a museum or a religious or secular public monument or similar institution in another State Party ... provided that such property is documented as appertaining to the inventory of that institution.' In addition, it allows a member state whose cultural property is in jeopardy to request other member states to 'participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned.' The 1970 UNESCO is not retroactive, and enters into force three months after a state's ratification. It is, thus, not available for colonial and World War II claims.
 - Principally, 1970 UNESCO works at the level of government administrations: governments are required to take action at the request of a State party to the convention to seize cultural property which has been stolen. They must also collaborate to prevent major crises in the protection of cultural heritage, such as those now occurring in Iraq and Afghanistan.

- Convention Concerning the Protection of the World Cultural and Natural Heritage, November 23, 1972, 27 U.S.T. 37, 1037 U.N.T.S. 151. Adopted by the General Conference at its seventeenth session Paris, 16 November 1972 http://whc.unesco.org/world_he.htm
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, 34 I.L.M. 1322 (Rome, 24 June 1995)
<http://www.unidroit.org/english/conventions/c-cult.htm>
The convention applies to claims of an international character for (a) the restoration of stolen cultural objects (b) the return of objects removed from the territory of a contracting state, contrary to its law regulating export of cultural objects.
- Convention on the Protection of the Underwater Cultural Heritage, November 6, 2001, 41 I.L.M. 40
http://www.unesco.org/culture/laws/underwater/html_eng/convention.shtml
- Convention for the Safeguarding of the Intangible Cultural Heritage, October 17, 2003
<http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>
- Convention on the Protection and Promotion of the Diversity of Cultural Expression, October 20, 2005, (Syria, Iraq, the European Union and the U.S. have ratified)
<http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>

II. SPECIFIC INTERNATIONAL, AND REGIONAL LEGISLATION RELATED TO THE MIDDLE EAST ANTIQUITIES TRADE AND ISIL

A. United Nations Security Council Resolution 1483

- May 2003, the United Nations Security Council passed Resolution 1483 urging member states to facilitate the safe return to Iraqi institutions of Iraqi cultural property allegedly removed from the Iraq National Museum, the National Library and other locations in Iraq since the adoption of Resolution 661 in 1990. Several nations, including so-called “market-nations” involved in the global art and antiquities market have taken steps to implement the Resolution. On May 28, 2003, the Swiss Federal Council imposed a ban that covers importation, exportation and transit as well as selling, marketing, dealing in, acquiring or otherwise transferring Iraqi cultural assets stolen in Iraq since 2 August 1990, removed against the will of the owner, or taken out of Iraq illegally. It includes cultural assets acquired through illegal excavations. Such assets are presumed to have been exported illegally if they can be proved to have been in the Republic of Iraq after 2 August 1990.^[1]
- In the United Kingdom, the Iraq (United Nations Sanctions) Order 2003^[2] brought these restrictions into effect on June 14, 2003. The Order prohibits the import or export of illegally removed Iraqi cultural property and created a criminal offence with a maximum penalty of seven years imprisonment for “any person who holds or controls any item of illegally removed Iraqi cultural property...unless he proves he did not know and had no

^[1] Ordinance on Economic Measures against the Republic of Iraq of 28 May 2003, SR 946.206, available at: www.kultur-schweiz.admin.ch/arkgt/kgte/e_kgt.htm.

^[2] The Iraq (United Nations Sanctions) Order 2003, Statutory Instrument 2003, No. 1519 (UK, The Stationery Office Limited (TSO) 2003) ©Crown Copyright 2003. The Order inverts the burden of proof which usually applies in criminal prosecutions. Normally, the object is “innocent until proven guilty.” In the case of Iraqi cultural property, the object is presumed guilty unless proven otherwise.

reason to suppose that the item in question was illegally removed Iraqi material.”^[3]

- Initially the United States left existing sanctions in place for illegally removed Iraqi cultural property whilst lifting sanctions for most other commercial goods.
- On October 17, 2003, UNESCO General Conference adopted the Declaration Concerning the Intentional Destruction of the Cultural Heritage.^[5] The text emerged mainly in response to the destruction of the Bamiyan Buddhas, but its language is broad enough to cover the destruction by rampant looting of Iraqi cultural heritage^[6]. The Preamble begins by, “[r]ecalling the tragic destruction of the Buddhas of Bamiyan that affected the international community as a whole,”^[7] The Declaration recognizes the commitment of UNESCO Member States to fight against the intentional destruction of this common heritage in any form so that it may be transmitted to succeeding generations.
- What obligations, if any, do the Hague Convention and the First Protocol place on an occupying force to safeguard antiquities, museums and sites in situations as occurred in Iraq, both before and after the declaration of the end of military operations? Do the principles of the Hague Convention apply once a war has been declared at an end? With the end of hostilities following the end of operations, the greatest threat to Iraq’s cultural heritage is not from the “collateral damage of war,” but from the civil disorder and the ensuing looting and destruction of museums, monuments and sites

B. United Nations Security Council Resolutions 2199 (12 February 2015) and 2253 (17 December 2015)

- Unanimously adopting resolution 2199 under the binding Chapter VII of the United Nations Charter. The Council condemned any trade with the Islamic State in Iraq and the Levant (ISIL, also known as Daesh), the Al-Nusrah Front and other entities designated to be associated with Al-Qaida . The resolution was co-sponsored by more than 35 countries, and it targets the three key areas of revenue for ISIS and other terrorist organizations - oil, antiquities and ransom from kidnappings. On 17 December 2015, concerned with the implementation by Member States, the Security Council issued Resolution 2253. It calls upon Member States to fulfill their existing commitments under Resolution 2199, while reinforcing and expanding these obligations. Resolution 2253 additionally requires that they report any “interdictions of antiquities, as well as the outcome of proceedings brought against individuals and entities as a result of any such activity

(see next pages)

^[3] The Order inverts the burden of proof which usually applies in criminal prosecutions. Normally, the object is “innocent until proven guilty.” In the case of Iraqi cultural property, the object is presumed guilty unless proven otherwise. The British Art Market Federation reported to the House of Commons in 2004, that legitimate trade in Mesopotamian antiquities had collapsed to virtually nothing in the aftermath of the Iraq war and the related establishment of the specific legislation aimed at preventing illicit trade in cultural property sourced in Iraq.

^[5] UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, October 17, 2003. The full text of the Declaration is available on at <http://unesdoc.unesco.org/images/0013/001331/133171e.pdf#page=68>

^[6] The U.S. Department of State through its Bureau of Educational and Cultural Affairs maintains a constantly updated website on Iraqi cultural heritage at <http://exchanges.state.gov/culprop/iraq.html>

^[7] *ibid.* fn. 13



**UNITED
NATIONS**

**MEETINGS COVERAGE AND
PRESS RELEASES**

12 FEBRUARY 2015

SC/11775

Unanimously Adopting Resolution 2199 (2015), Security Council Condemns Trade with Al-Qaida Associated Groups, Threatens Further Targeted Sanctions

7379th Meeting (AM)

SECURITY COUNCIL | MEETINGS COVERAGE

The Security Council this morning underlined the obligations of Member States to take steps to prevent terrorist groups in Iraq and Syria from benefiting from trade in oil, antiquities and hostages, and from receiving donations.

Unanimously adopting resolution 2199 (2015) under the binding Chapter VII of the United Nations Charter, the Council condemned any trade with the Islamic State in Iraq and the Levant (ISIL, also known as Daesh), the Al-Nusrah Front and other entities designated to be associated with Al-Qaida under resolutions 1267 (1999) and 1989 (2011), threatening possible further listings for targeted sanctions under those resolutions.

It affirmed that the direct and indirect trade in oil and refined oil products, modular refineries and related materials was subject to the requirement of resolution 2161 (2014) that countries ensure that their nationals and those in their territories not make assets or economic resources available to ISIL and related terrorist groups.

Condemning the destruction of cultural heritage in Iraq and Syria, particularly by ISIL and the Al-Nusrah Front, it decided that all Member States should take steps, in cooperation with Interpol, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and other international organizations, to prevent the trade in items of cultural, scientific and religious importance illegally removed from either country during periods of conflict.

Expressing its determination to end hostage-taking by the terrorist groups, it said that the provisions of resolution 2161 (2014) also banned the payment of ransom to such groups, regardless of how or by whom the ransom is paid. It reiterated its call on Member States to help secure the safe release of hostages without payments or political concessions. It further emphasized the importance of all Member States in preventing their nationals and others in their territories from making donations to the terrorists.

Finally, it urged States to prevent the terrorist groups from gaining access to international financial institutions and reaffirmed States' obligations to prevent the groups from acquiring arms and related materiel, along with its call to enhance coordination at the national, regional and international level for that purpose.

It called upon Member States to report within 120 days to the Al-Qaida Sanctions Committee on their compliance with the resolution, calling for the United Nations counter-terrorism bodies to also track progress on implementation.

Speaking after the adoption, the representatives of the Russian Federation, United States, United Kingdom, Jordan and China welcomed the action. The Russian representative, Vitaly I. Churkin, thanked the other members of the Security Council for their constructive collaboration on the text, calling it an important step on suppressing the terrorist threat in the Middle East, the effect of which was felt far beyond the region.

The representative of the United States, Samantha Power, agreed that the resolution showed the joint international commitment on countering terrorism and, in particular, defeating ISIL. She said that because of actions of the coalition against ISIL, securing resources had become harder for it and the resolution would help cut off further sources of funds and help end the ongoing brutality of the group. She regretted, however, that the Council had not dealt with a major factor that led to the rise ISIL, the cruelty of the Assad regime.

The representative of the United Kingdom, Mark Lyall Grant, said he looked forward to working on the full and effective implementation of the resolution, and France's representative, François Delattre, said that the recent attacks on his country made it even more resolute to fight the scourge of terrorism.

Jordan's representative, Mahmoud Daifallah Mahmoud Hmoud, said that all the tools of international law must be used to fight terrorism, pledging his country would remain one of the leaders in the battle following the martyrdom of its pilot. Finally, the representative of China, Liu Jieyi, emphasized the importance of avoiding double standards in fighting terrorism and avoiding a linkage with any religion or ethnic group. He called for cooperation on cutting off terrorists' ability to utilize the Internet for their activities.

The meeting opened at 10:05 a.m. and closed at 10:23 a.m.

Resolution

The full text of resolution 2199 (2015) reads as follows:

"The Security Council,

"Reaffirming its primary responsibility for the maintenance of international peace and security, in accordance with the Charter of the United Nations,

"Reaffirming that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed,

"Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations and international law, including applicable international human rights, refugee, and humanitarian law, threats to international peace and security caused by terrorist acts, stressing in this regard the important role the United Nations plays in leading and coordinating this effort,

"Emphasizing that sanctions are an important tool under the Charter of the United Nations in the maintenance and restoration of international peace and security including countering terrorism, and *underlining* the importance of prompt and effective implementation of relevant resolutions, in particular Security Council resolutions 1267 (1999) and 1989 (2011) as key instruments in the fight against terrorism,

"Recalling its Resolutions 1267 (1999), 1989 (2011), 2161 (2014), 2170 (2014), and 2178 (2014) and its Presidential Statements of 28 July 2014 and 19 November 2014, including its stated intention to consider additional measures to disrupt oil trade by Islamic State in Iraq and the Levant (ISIL, also

known as Daesh), Al-Nusrah Front (ANF) and all other individuals, groups, undertakings and entities associated with Al-Qaida, as a source of terrorism financing,

"Recognizing the importance of the role that financial sanctions play in disrupting ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida, and emphasizing also the need for a comprehensive approach to fully disrupt ISIL and ANF that integrates multilateral strategies with national action by Member States,

"Reaffirming the independence, sovereignty, unity and territorial integrity of the Republic of Iraq and the Syrian Arab Republic, and reaffirming further the purposes and principles of the Charter of the United Nations,

"Reaffirming also that terrorism cannot and should not be associated with any religion, nationality, or civilization,

"Stressing that terrorism can only be defeated by a sustained and comprehensive approach involving the active participation and collaboration of all States, and international and regional organizations to impede, impair, isolate and incapacitate the terrorist threat,

"Expressing, in this regard, its deep appreciation for Arab League Resolution 7804 (September 7, 2014), the Paris Statement (September 15, 2014), the FATF statement on countering the financing of ISIL (October 24, 2014) and the Manama declaration on countering terrorist finance (November 9, 2014),

"Reaffirming its resolution 1373 (2001) and in particular its decisions that all States shall prevent and suppress the financing of terrorist acts and refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists,

"Recognizing the significant need to build capacities of Member States to counter terrorism and terrorist finance,

"Reiterating its deep concern that oilfields and their related infrastructure, as well as other infrastructure such as dams and power plants, controlled by ISIL, ANF and potentially other individuals, groups, undertakings and entities associated with Al-Qaida, are generating a significant

portion of the groups' income, alongside extortion, private foreign donations, kidnap ransoms and stolen money from the territory they control, which support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks,

"Condemning in the strongest terms abductions of women and children, *expressing outrage* at their exploitation and abuse, including rape, sexual abuse, forced marriage, committed by ISIL, ANF, and other individuals, groups, undertakings and entities associated with Al-Qaida, and encouraging all state and non-state actors with evidence to bring it to the attention of the Council, along with any information that human trafficking may support the perpetrators financially,

"Reaffirming the obligation of Member States to freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities,

"Expressing its concern that economic resources such as oil, oil products, modular refineries and related material, other natural resources including precious metals such as gold, silver, and copper, diamonds, and any other assets are made available to ISIL, ANF, and other individuals, groups, undertakings and entities associated with Al-Qaida, and noting that direct or indirect trade with ISIL and ANF in such materials could constitute a violation of the obligations imposed by resolution 2161 (2014),

"Reminding all States of their obligation to ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice,

"Reaffirming its decision 2133 (2014) and *noting again* that ransom payments to terrorist groups are one of the sources of income which supports their recruitment efforts, strengthens their operational capability to organize and carry out terrorist attacks, and incentivizes future incidents of kidnapping for ransom,

"Expressing concern at the increased use, in a globalized society, by terrorists and their supporters, of new information and communications technologies, in particular the Internet, to facilitate terrorist acts, as well as their use to incite, recruit, fund or plan terrorist acts,

"Expressing grave concern at the increased incidents of kidnapping and hostage-murdering committed by ISIL, and condemning those heinous and cowardly murders which demonstrate that terrorism is a scourge impacting all of humanity and people from all regions and religions or belief,

"Welcoming the report on ANF and ISIL from the Analytical Support and Sanctions Monitoring Team, published on November 14, 2014, and taking note of its recommendations,

"Noting with concern the continued threat posed to international peace and security by ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida, and reaffirming its resolve to address all aspects of that threat,

"Acting under Chapter VII of the Charter of the United Nations,

Oil Trade

"1. Condemns any engagement in direct or indirect trade, in particular of oil and oil products, and modular refineries and related material, with ISIL, ANF and any other individuals, groups, undertakings and entities designated as associated with Al-Qaida by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011), and reiterates that such engagement would constitute support for such individuals, groups, undertakings and entities and may lead to further listings by the Committee;

"2. Reaffirms that States are required by resolution 2161 (2014) to ensure that their nationals and those in their territory not make assets or economic resources, directly or indirectly, available to ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida, and notes that this obligation applies to the direct and indirect trade in oil and refined oil products, modular refineries and related material;

"3. Reaffirms that States are required by resolution 2161 (2014) to freeze without delay the funds and other financial assets or economic resources of ISIL, ANF, and other individuals, groups, undertakings and entities associated with Al-Qaida, including funds derived from property owned or controlled directly or indirectly, by them or by persons acting on their behalf or at their direction;

"4. Reaffirms that States are required by resolution 2161 (2014) to ensure that no funds, other financial assets or economic resources are made available, directly or indirectly, by their nationals or by persons within their territory for the benefit of ISIL, ANF, and other individuals, groups, undertakings and entities associated with Al-Qaida;

"5. *Recalls* that funds and other financial assets or economic resources made available to or for the benefit of listed individuals or entities are not always held directly by them, and *recalls* in addition that in identifying such funds and benefits, States should be alert to the possibility that property owned or controlled indirectly by the listed party may not be immediately visible;

"6. *Confirms* that economic resources include oil, oil products, modular refineries and related material, other natural resources, and any other assets which are not funds but which potentially may be used to obtain funds, goods or services;

"7. *Emphasizes* therefore that States are required by UN Security Council resolution 2161 (2014) to freeze without delay funds, other financial assets and economic resources of ISIL, ANF, and other individuals, groups, undertakings and entities associated with Al-Qaida, including oil, oil products, modular refineries and related material and other natural resources owned or controlled by them, or persons acting on their behalf or at their direction, as well as any funds or negotiable benefit arising from such economic resources;

"8. *Recognizes* the need to take measures to prevent and suppress the financing of terrorism, individual terrorists, and terrorist organizations, including from the proceeds of organized crime, inter alia, the illicit production and trafficking of drugs and their chemical precursors, and the importance of continued international cooperation to that aim;

"9. *Emphasizes* that States are required to ensure that their nationals and persons in their territory not make available, directly or indirectly, any funds, other financial assets or economic resources, including oil, oil products, modular refineries and related material and other natural resources that are identified as directed to, collected for, or otherwise for the benefit of ISIL, ANF, and other individuals, groups, undertakings and entities associated with Al-Qaida, as well as any funds or negotiable benefit arising from such economic resources;

"10. *Expresses concern* that vehicles, including aircraft, cars and trucks and oil tankers, departing from or going to areas of Syria and Iraq where ISIL, ANF or any other groups, undertakings and entities associated with Al-Qaida operate, could be used to transfer oil and oil products, modular refineries and related material, cash, and other valuable items including natural resources such as precious metals and minerals like gold, silver, copper and diamonds, as well as grain, livestock, machinery, electronics, and cigarettes by or on behalf of such entities for sale on international markets, for barter for arms, or for use in other ways that would result in violations of the asset freeze or arms embargo in paragraph 1 of resolution 2161 (2014) and *encourages* Member States to

take appropriate steps in accordance with international law to prevent and disrupt activity that would result in violations of the asset freeze or targeted arms embargo in paragraph 1 of resolution 2161 (2014);

"11. *Reaffirms* that all States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that such terrorist acts are established as serious criminal offenses in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts, and *emphasizes* that such support may be provided through trade in oil and refined oil products, modular refineries and related material with ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida;

"12. *Decides* that Member States shall inform the 1267/1989 Committee within 30 days of the interdiction in their territory of any oil, oil products, modular refineries, and related material being transferred to or from ISIL or ANF, and *calls upon* Member States to report to the Committee the outcome of proceedings brought against individuals and entities as a result of such activity;

"13. *Encourages* the submission of listing requests to the Committee by Member States of individuals and entities engaged in oil trade-related activities with ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida and directs the 1267/1989 Al-Qaida Sanctions Committee to immediately consider designations of individuals and entities engaged in oil trade-related activities with ISIL, the ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida;

"14. *Calls upon* Member States to improve international, regional, and subregional cooperation, including through increased sharing of information for the purpose of identifying smuggling routes used by ISIL and ANF, and for Member States to consider provision of technical assistance and capacity building to assist other Member States to counter smuggling of oil and oil products, and modular refineries and related material, by ISIL, ANF and any other individual, group, undertaking or entity associated with Al-Qaida;

Cultural Heritage

"15. *Condemns* the destruction of cultural heritage in Iraq and Syria particularly by ISIL and ANF, whether such destruction is incidental or deliberate, including targeted destruction of religious sites and objects;

"16. *Notes with concern* that ISIL, ANF and other individuals, groups, undertakings and entities associated with Al-Qaida, are generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks;

"17. *Reaffirms* its decision in paragraph 7 of resolution 1483 (2003) and *decides* that all Member States shall take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011, including by prohibiting cross-border trade in such items, thereby allowing for their eventual safe return to the Iraqi and Syrian people and *calls upon* the United Nations Educational, Scientific, and Cultural Organization, Interpol, and other international organizations, as appropriate, to assist in the implementation of this paragraph;

Kidnapping for Ransom and External Donations

"18. *Reaffirms its condemnation of* incidents of kidnapping and hostage-taking committed by ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida for any purpose, including with the aim of raising funds or gaining political concessions and *expresses its determination* to prevent kidnapping and hostage-taking committed by terrorist groups and to secure the safe release of hostages without ransom payments or political concessions, in accordance with applicable international law;

"19. *Reaffirms* that the requirements of paragraph 1(a) of resolution 2161 (2014) apply to the payment of ransoms to individuals, groups, undertakings or entities on the Al-Qaida Sanctions List, regardless of how or by whom the ransom is paid, *emphasizes* that this obligation applies to ISIL and ANF, and *calls upon* all Member States to encourage private sector partners to adopt or to follow relevant guidelines and good practices for preventing and responding to terrorist kidnappings without paying ransom;

"20. *Reiterates its call upon* all Member States to prevent terrorists from benefiting directly or indirectly from ransom payments or from political concessions and to secure the safe release of hostages, and *reaffirms* the need for all Member States to cooperate closely during incidents of kidnapping and hostage-taking committed by terrorist groups;

"21. *Expresses its grave concern* of reports that external donations continue to make their way to ISIL, ANF and other individuals, groups, undertakings and entities associated with Al-Qaida, and *recalls the importance* of all Member States complying with their obligation to ensure that their nationals and persons within their territory do not make donations to individuals and entities designated by the Committee or those acting on behalf of or at the direction of designated entities;

"22. *Stresses* that donations from individuals and entities have played a role in developing and sustaining ISIL and ANF, and that Member States have an obligation to ensure that such support is not made available to those terrorist groups and other individuals, groups, undertakings and entities associated with Al-Qaida by their nationals and persons within their territory, and urges Member States to address this directly through enhanced vigilance of the international financial system and by working with their non-profit and charitable organizations to ensure financial flows through charitable giving are not diverted to ISIL, ANF or any other individuals, groups, undertakings and entities associated with Al-Qaida;

Banking

"23. *Urges* Member States to take steps to ensure that financial institutions within their territory prevent ISIL, ANF or other individuals, groups, undertakings or entities associated with Al-Qaida from accessing the international financial system;

Arms and related materiel

"24. *Reaffirms* its decision that States shall prevent the direct or indirect supply, sale, or transfer to ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, and technical advice, assistance or training related to military activities, as well as its calls for States to find ways of intensifying and accelerating the exchange of operational information regarding traffic in arms, and to enhance coordination of efforts on national, subregional, regional and international levels;

"25. *Expresses concern* at the proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, to ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida, and its potential impact on regional and international peace and security and impeding efforts to combat terrorism in some cases;

"26. *Reminds* Member States of their obligation pursuant to paragraph 1 (c) of resolution 2161 (2014), to prevent the direct or indirect supply, sale or transfer of arms and related materiel of all types to listed individuals and entities, including ISIL and ANF;

"27. *Calls upon* all States to consider appropriate measures to prevent the transfer of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, if there is a reasonable suspicion that such arms and related materiel would be obtained by ISIL, the ANF or other individuals, groups, undertakings and entities associated with Al-Qaida;

Asset Freeze

"28. *Reaffirms* that the requirements in paragraph 1 (a) of Security Council resolution 2161 apply to financial and economic resources of every kind, including but not limited to those used for the provision of Internet hosting or related services, used for the support of Al-Qaida and other individuals, groups, undertakings or entities included on the Al-Qaida Sanctions List;

Reporting

"29. *Calls upon* Member States to report to the Committee within 120 days on the measures they have taken to comply with the measures imposed in this resolution;

"30. *Requests* the Analytical Support and Sanctions Monitoring Team, in close cooperation with other United Nations counter-terrorism bodies to conduct an assessment of the impact of these new measures and to report to the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) within 150 days, and thereafter to incorporate reporting on the impact of these new measures into their reports to the Committee in order to track progress on implementation, identify unintended consequences and unexpected challenges, and to help facilitate further adjustments as required, and further requests the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) to update the Security Council on the implementation of this resolution as part of its regular oral reports to the Council on the state of the overall work of the Committee and the Monitoring Team;

"31. *Decides* to remain actively seized of the matter."

 **For information media. Not an official record.**



United Nations
Educational, Scientific and
Cultural Organization

06/03/2015

Ref.: CL/4100

Subject: **United Nations Security Council Resolution 2199**

Sir/Madam,

I wish to call your attention to **the recent United Nations Security Council Resolution 2199, issued on 12 February 2015**, which condemns unanimously the destruction of cultural heritage in Iraq and Syria, and adopts legally-binding measures to combat the illicit trafficking of antiquities and cultural objects from these countries. A copy of the Resolution is attached for easy reference.

The adoption of Resolution 2199 is a milestone in order to increase the protection of cultural heritage in Iraq and Syria, **extending to Syria the prohibition of trade of cultural objects** already in place for Iraq since 2003 (Resolution 1483). It **condemns the destruction of cultural heritage in the two countries**, whether such destruction is accidental or deliberate, including targeted destruction of religious sites and objects.

The Resolution notes, with concern, that *"the looting and trafficking of cultural objects is one of the sources of financing for the Islamic State in Iraq and in the Levant (ISIL), al-Nusra Front (ANF) and other individuals, groups and entities associated with al-Qaida"*. It indicates that *"such funding is being used to support recruitment efforts and to strengthen operational capability to organize and carry out terrorist attacks"*.

Moreover, the Security Council reaffirms its decision, in paragraph 7 of Resolution 1483 (2003), and decides that all Member States shall take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance **illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011, including by prohibiting crossborder trade in such items**, thereby allowing for their eventual safe return to the Iraqi and Syrian people. It goes on to call upon the United Nations Educational, Scientific, and Cultural Organization, Interpol, and other international organizations, as appropriate, to assist in the implementation of this paragraph.

In your capacity as a key partner in the fight against the looting of Syrian and Iraqi cultural property, your cooperation and vigilance is required more than ever, therefore. **By verifying systematically the provenance and title of cultural objects entering your art market or your collections, especially those of an archaeological nature, and by reporting stolen objects, you can help to prevent the alarming destruction of Syrian and Iraqi cultural heritage.**

I wish to draw your specific attention to paragraph 29 of the Resolution, which *“calls upon Member States to report to the Subsidiary Council Committee, within 120 days, on the steps they have taken to comply with the measures imposed by this Resolution, i.e. before 12 June 2015”*. I should be most grateful if you would inform me about the measures implemented in your country, therefore.

Please also find enclosed in this letter, a copy of the United Nations Security Council press statement and two statements which I issued on the destruction of the Mosul Museum.

Finally, allow me to remind you of a number of tools that exist to help in the fight against the illicit trafficking of cultural property, which you may wish to draw upon in your work:

- (i) the first tool is **INTERPOL’s Stolen Works of Art Database**,¹ a highly efficient system for circulating information in the form of a database that is accessible not only to law-enforcement agencies, but also to individuals who have been provided with specific access rights;
- (ii) the second tool is **the UNESCO Database of National Cultural Heritage Laws**,² and,
- (iii) the third tool is the **Emergency Red Lists of Cultural Objects at Risk**,³ which was created by the International Council on Museums (ICOM) with the aim of helping art and heritage professionals and law enforcement officials to identify Syrian and Iraqi objects that are protected by national and international legislations. Several national databases of stolen objects also are most relevant in this regard

UNESCO is taking every opportunity to raise awareness on this matter, and to encourage the competent authorities and key actors in the art market to act in accordance with the international conventions and resolutions adopted by UNESCO and the United Nations.

¹ <http://www.interpol.int/Crime-areas/Works-of-art/Database>

² <http://www.unesco.org/culture/natlaws/>

³ <http://icom.museum/resources/red-lists-database/red-list/syria/>;
<http://icom.museum/resources/red-lists-database/red-list/iraq/>

Please rest assured that we are following closely the evolution of the situation in Syria and Iraq, as well as on the international art market. In this context, I appreciate greatly the concern and actions taken by your country for the implementation of Resolution 2199, which endeavours to safeguard cultural heritage and to fight against illicit trafficking.

Yours sincerely,

Irina Bokova
Director-General

cc: Permanent Delegations to UNESCO
National Commissions for UNESCO

Enc.: S/RES/2199 (2015)
S/RES/1483 (2003)
Press statement of Security Council
Recent Statements

Director-General requests UN Security Council meeting on destruction of heritage in Mosul



"I am deeply shocked by footage released today showing the destruction of statues and other artefacts of the Mosul Museum. I condemn this as a deliberate attack against Iraq's millennial history and culture, and as an inflammatory incitement to violence and hatred," said the Director-General.

"This attack is far more than a cultural tragedy – this is also a security issue as it fuels sectarianism, violent extremism and conflict in Iraq. This stands in direct violation to the most recent United Nations Security Council Resolution 2199 that condemns the destruction of cultural heritage and adopts legally-binding measures to counter illicit trafficking of antiquities and cultural objects from Iraq and Syria. This is why I have immediately seized the President of the Security Council to ask him to convene an emergency meeting of the Security Council on the protection of Iraq's cultural heritage as an integral element for the country's security."

Large statues from the UNESCO world Heritage site of Hatra, as well as unique artefacts from the archeological sites of the governorate of Ninewah have been destroyed or defaced in the Mosul Museum, among many other pieces.

"The systematic destruction of iconic components of Iraq's rich and diverse heritage that we have been witnessing over the past months is intolerable and it must stop immediately", said the Director-General, reiterating her numerous previous statements on this matter."

Source: http://www.unesco.org/new/en/media-services/single-view/news/unesco_director_general_expresses_outrage_following_terrorist_attacks_against_the_mosul_museum/#.VPYGtNHwvGh

Security Council Press Statement on ISIL's Destruction of Religious and Cultural Artefacts in Mosul

- Security Council Press Release

The following Security Council press statement was issued today by Council President Liu Jieyi (China):

The members of the Security Council strongly condemned the ongoing barbaric terrorist acts in Iraq by ISIL [Islamic State in Iraq and the Levant] (Da'esh), including: the abduction of 100 Sunni tribesmen from outside Tikrit on 25 February; the immolation of 45 Iraqis in Baghdadi on 17 February; ongoing daily attacks targeting civilians in Baghdad; and the deliberate destruction of irreplaceable religious and cultural artefacts housed in the Mosul Museum and burning of thousands of books and rare manuscripts from the Mosul Library.

The members of the Security Council reiterated their condemnation of the destruction of cultural heritage in Iraq and Syria, particularly by ISIL, including targeted destruction of religious sites and objects, and noted with concern that ISIL and other individuals, groups, undertakings and entities associated with Al-Qaida are generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks.

The members of the Security Council stressed again that ISIL must be defeated and that the intolerance, violence, and hatred it espouses must be stamped out. The members of the Council further emphasized that such continued acts of barbarism perpetrated by ISIL do not intimidate them, but rather stiffen their resolve and stressed that there has to be a common effort amongst Governments and institutions, including those in the region most affected, to counter ISIL, as the Council resolved in United Nations Security Council resolutions 2161 (2014), 2170 (2014) and 2199 (2015), and underscored the need for their full and immediate implementation by all Member States.

The members of the Security Council reiterated that no act of violence or terrorism can reverse a path towards peace, democracy and reconstruction in Iraq, underpinned by the rule of law and respect for human rights, which is supported by the people and the Government of Iraq and the international community. They reminded States that they must ensure that measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee, and humanitarian law.

Source: <http://www.un.org/press/en/2015/sc11804.doc.htm>

Director-General welcomes UN Security Council statement on destruction of artifacts at Mosul Museum



The Director-General of UNESCO, Irina Bokova, has welcomed the UN Security Council's statement denouncing the attack on the Mosul Museum.

"This statement is a strong testament to the unity of the international community regarding the tragic destruction of irreplaceable heritage for all mankind," said the Director-General. "The members of the Security Council have reaffirmed the deep connection between the destruction of cultural heritage in Mosul and the persecution of people. It is the same strategy of terror and we must continue to fight against it by joining our efforts," she continued.

"The values of tolerance, cultural diversity and respect for human rights are stronger than these barbaric acts. UNESCO remains determined to do everything it can to assist the Iraqi government in preserving its heritage," concluded Ms Bokova.

Source: http://www.unesco.org/new/en/media-services/single-view/news/director_general_welcomes_un_security_council_statement_on_destruction_of_artifacts_at_mosul_museum/#.VPYE0dHwvGh



General Assembly

Distr.: General
9 June 2015Sixty-ninth session
Agenda item 14**Resolution adopted by the General Assembly on 28 May 2015***[without reference to a Main Committee (A/69/L.71 and Add.1)]***69/281. Saving the cultural heritage of Iraq***The General Assembly,*

Recalling its resolutions 66/180 of 19 December 2011 and 68/186 of 18 December 2013 on strengthening crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking, 67/80 of 12 December 2012 on the return or restitution of cultural property to the countries of origin, 69/196 of 18 December 2014 on the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences and 69/197 of 18 December 2014 on strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity, as well as the United Nations Global Counter-Terrorism Strategy¹ and its biennial reviews,²

Recalling also the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land, the Geneva Conventions of 12 August 1949,³ the Convention for the Protection of Cultural Property in the Event of Armed Conflict⁴ and the first⁴ and second Protocols thereto,⁵ the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,⁶ the Convention concerning the Protection of the World Cultural and Natural Heritage,⁷ the Convention on Stolen or Illegally Exported Cultural Objects,⁸ the United Nations Convention against Transnational Organized Crime,⁹ the Convention for the Safeguarding of the Intangible Cultural Heritage,¹⁰ the Convention on the Protection and Promotion of the Diversity of Cultural

¹ Resolution 60/288.

² See resolutions 62/272, 64/297, 66/282 and 68/276.

³ United Nations, *Treaty Series*, vol. 75, Nos. 970–973.

⁴ *Ibid.*, vol. 249, No. 3511.

⁵ *Ibid.*, vol. 2253, No. 3511.

⁶ *Ibid.*, vol. 823, No. 11806.

⁷ *Ibid.*, vol. 1037, No. 15511.

⁸ *Ibid.*, vol. 2421, No. 43718.

⁹ *Ibid.*, vol. 2225, No. 39574.

¹⁰ *Ibid.*, vol. 2368, No. 42671.



Expressions,¹¹ other relevant international legal instruments and customary international law,

Recalling further all relevant Security Council resolutions, including resolutions 1267 (1999) of 15 October 1999, 1373 (2001) of 28 September 2001, 1483 (2003) of 22 May 2003, 2161 (2014) of 17 June 2014, 2170 (2014) of 15 August 2014, 2178 (2014) of 24 September 2014, 2195 (2014) of 19 December 2014 and 2199 (2015) of 12 February 2015,

Mindful of the Universal Declaration on Cultural Diversity,¹² the Declaration concerning the Intentional Destruction of Cultural Heritage¹³ and Executive Board decision 196 EX/29 of 21 April 2015, of the United Nations Educational, Scientific and Cultural Organization, and the World Heritage List of the United Nations Educational, Scientific and Cultural Organization, which contains several sites in Iraq, including Hatra, as well as the Doha Declaration adopted at the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, held from 12 to 19 April 2015,

Appalled by the destruction and looting carried out by the Islamic State in Iraq and the Levant (ISIL), also known as Daesh, of the cultural heritage of Iraq, cradle of the Mesopotamian civilization, found in its museums, libraries, archives and archaeological sites, places of worship, including mosques, shrines and churches, and of religious and cultural artefacts, which are irreparable losses for Iraq and for humanity as a whole,

Alarmed by the increasing number of intentional attacks against and threats to the cultural heritage of countries affected by armed conflict as well as the organized looting of and trafficking in cultural objects, which occurs on an unprecedented scale today,

Deeply concerned about such acts generating income for terrorist groups, which can support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks,

Recognizing the indispensable role of crime prevention and criminal justice responses in combating all forms and aspects of trafficking in cultural property and related offences in a comprehensive and effective manner,

Affirming that the destruction of cultural heritage, which is representative of the diversity of human culture, erases the collective memories of a nation, destabilizes communities and threatens their cultural identity, and emphasizing the importance of cultural diversity and pluralism as well as freedom of religion and belief for achieving peace, stability, reconciliation and social cohesion,

Underlining, therefore, the necessity to take measures to safeguard and protect the tangible and intangible heritage of communities against the effects of armed conflict at all times,

Resolved to stand up against attacks on the cultural heritage of any country as attacks on the common heritage of humanity as a whole,

¹¹ Ibid., vol. 2440, No. 43977.

¹² United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Thirty-first Session, Paris, 15 October–3 November 2001*, vol. 1 and corrigendum, *Resolutions*, sect. V, resolution 25, annex I.

¹³ Ibid., *Thirty-second Session, Paris, 29 September–17 October 2003*, vol. 1, *Resolutions*, sect. IV, resolution 33, annex.

1. *Condemns* the barbaric acts of destruction and looting of the cultural heritage of Iraq carried out by the Islamic State in Iraq and the Levant (ISIL), and deplores the rising incidence of intentional attacks against and threats to the cultural heritage of countries affected by armed conflict as well as damage to cultural property resulting from indiscriminate attacks and the organized looting of and trafficking in cultural objects;
2. *Expresses outrage* that attacks on cultural heritage are used as a tactic of war in order to spread terror and hatred, fan conflict and impose violent extremist ideologies;
3. *Calls for* an immediate halt to the wanton destruction of the cultural heritage of Iraq, including religious sites or objects, emphasizes that no such acts committed by ISIL or other individuals, groups, undertakings and entities associated with Al-Qaida will be tolerated, and also calls for the preservation of the cultural heritage of Iraq by protecting cultural and religious properties and sites consistent with international humanitarian law;
4. *Recalls* that, under the Convention for the Protection of Cultural Property in the Event of Armed Conflict,⁴ all parties to an armed conflict shall refrain from committing any act of hostility directed against cultural property, that the use of cultural property, its immediate surroundings or the appliances in use for its protection, for purposes which are likely to expose it to destruction or damage in the event of armed conflicts, is prohibited and such obligations may be waived only in cases where military necessity imperatively requires such a waiver, and that all parties to an armed conflict shall prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property;
5. *Affirms* that attacks intentionally directed against buildings dedicated to religion, education, art, science or charitable purposes, or historic monuments, may amount to war crimes;
6. *Stresses* the importance of holding accountable perpetrators of attacks intentionally directed against buildings dedicated to religion, education, art, science or charitable purposes, or historic monuments, provided they are not military objectives, and of other violations of international legal instruments on the protection of cultural heritage, and calls upon all States to take appropriate action to this end within their jurisdiction in accordance with applicable international law;
7. *Affirms its support* for the Government of Iraq in protecting the heritage of Iraq, an inseparable and permanent part of its national identity, and safeguarding its rich cultural, religious and ethnic diversity which has an important role to play in its efforts of national reconciliation and reconstruction;
8. *Calls upon* community leaders to stand up and reaffirm unambiguously that there is no justification for the destruction of humanity's cultural heritage, appeals also to cultural institutions, museums, archives, libraries, journalists and scientists to explain the necessity of safeguarding and protecting this heritage, and in this regard welcomes the launch of the sensitization campaign "Unite 4 Heritage" by the Government of Iraq and the United Nations Educational, Scientific and Cultural Organization;
9. *Calls upon* all States to assist the Iraqi authorities in fighting against trafficking in cultural property illegally excavated from archaeological sites and taken from museums, libraries, archives and manuscript collections, as required under Security Council resolutions 1483 (2003) and 2199 (2015), including through

international cooperation regarding the restitution of stolen or illicitly exported cultural property, as appropriate, as well as in criminal justice matters and in meeting the challenge of repairing, restoring and conserving damaged or destroyed cultural heritage when security conditions allow;

10. *Expresses concern* that ISIL and other individuals, groups, undertakings and entities associated with Al-Qaida are generating income from engaging directly or indirectly in the looting of and trafficking in Iraqi cultural heritage items, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks;

11. *Welcomes*, in this regard, the adoption of Security Council resolution 2199 (2015) which aims to counter terrorism financing, in particular the decision in paragraph 17 that all Member States shall take appropriate steps to prevent the trade in Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance illegally removed from Iraq since 6 August 1990, which complements a similar provision for Iraq in place since 2003 contained in paragraph 7 of Council resolution 1483 (2003), calls for full and timely implementation by all Member States of this decision, recalls the obligation of all States to provide the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) with information pertaining to violations of the sanctions regime as well as to provide all other necessary assistance to the Committee, calls upon the United Nations Educational, Scientific and Cultural Organization, the International Criminal Police Organization (INTERPOL) and other international organizations, as appropriate, to assist all Member States in the implementation of Council resolution 2199 (2015), as requested in paragraph 17 of that resolution, and welcomes the actions already undertaken by the United Nations Educational, Scientific and Cultural Organization, INTERPOL and the United Nations Office on Drugs and Crime in this regard;

12. *Urges* all States to take appropriate measures to ensure that all actors involved in the trade in cultural property, including but not limited to auction houses, art dealers, art collectors and museum professionals, are required to provide verifiable documentation of provenance as well as export certificates related to any cultural property imported, exported or offered for sale, including through the Internet;

13. *Encourages* States that are not already parties to consider ratifying or acceding to relevant legal instruments, in particular the Convention for the Protection of Cultural Property in the Event of Armed Conflict and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;⁶

14. *Invites* all States, intergovernmental bodies, the United Nations system, relevant non-governmental organizations and all other stakeholders to support existing national legal frameworks and policies for the protection and preservation of cultural heritage and the return of cultural property, and especially to identify and close any gaps in the national regulations against trafficking in cultural property;

15. *Calls for* the urgent implementation and strengthening of the Emergency Response Action Plan on Iraq of the United Nations Educational, Scientific and Cultural Organization, adopted in July 2014, which provides for close monitoring of the conservation status of Iraqi heritage, training of professional curators and support for staff in place, including by taking emergency measures for the transfer of any cultural property at risk, in particular from museums, libraries, archives and manuscript collections;

16. *Also calls for* intensified efforts by States to protect, preserve, inventory and document items of cultural heritage endangered by armed conflicts, including through close cooperation and exchange among museums, libraries, archives and manuscript collections or other institutions or persons dealing with cultural heritage.

*91st plenary meeting
28 May 2015*



Procedure : 2015/2649(RSP)

Document stages in plenary

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Texts tabled :

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JOINT MOTION FOR A RESOLUTION

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28.4.2015

PE555.149v01-00}	B8-0375/2015}
PE555.164v01-00}	B8-0390/2015}
PE555.165v01-00}	B8-0391/2015}
PE555.167v01-00}	B8-0393/2015}
PE555.177v01-00}	B8-0403/2015}
PE555.179v01-00} RC1	B8-0405/2015} RC1

pursuant to Rules 128(5) and 123(4), of the Rules of Procedure replacing the motions by the following groups:

ALDE (B8-0375/2015)

EFDD (B8-0390/2015)

Verts/ALE (B8-0391/2015)

PPE (B8-0393/2015)

S&D (B8-0403/2015)

GUE/NGL (B8-0405/2015)

on the destruction of cultural sites perpetrated by ISIS/Da'esh (2015/2649(RSP))

Michèle Alliot-Marie, Andrea Bocskor, Daniel Caspary, Lara Comi, Santiago Fisas Ayxelà, Raffaele Fitto, Kinga Gál, Elisabetta Gardini, Marc Joulaud, Giovanni La Via, Barbara Matera, Alessandra Mussolini, Claude Rolin, Tokia Saïfi, Michaela Šojdrová, Davor Ivo Stier, Dubravka Šuica, Pavel Svoboda, Giovanni Toti, Ramón Luis Valcárcel, Sabine Verheyen, Elissavet Vozemberg, Theodoros Zagorakis, Tomáš Zdechovský, Joachim Zeller, Milan Zver on behalf of the PPE Group

Silvia Costa, Petra Kammerevert, Krystyna Łybacka, Eider Gardiazabal Rubial, Luigi Morgano, Julie Ward, Momchil Nekov, Kashetu Kyenge, Alessia Maria Mosca, Doru-Claudian Frunzulică, Sylvie Guillaume, Andi Cristea, Enrico Gasbarra, Viorica Dăncilă, Victor Negrescu, Boris Zala, Ana Gomes, Goffredo Maria Bettini on behalf of the S&D Group

Fernando Maura Barandiarán, Ilhan Kyuchyuk, Juan Carlos Girauta Vidal, Marietje Schaake, Marielle de Sarnez, Urmas Paet, Gérard Deprez, Ivan Jakovčić, Petr Ježek, Filiz Hyusmenova, Frédérique Ries, Mircea Diaconu on behalf of the ALDE Group

Curzio Maltese, Marisa Matias, Luke Ming Flanagan, Marie-Christine Vergiat, Patrick Le Hyaric, Younous Omarjee, Martina Michels, Kostas Chrysogonos on behalf of the GUE/NGL Group

Helga Trüpel, Jordi Sebastià, Ernest Maragall, Jill Evans, Davor Škrlec on behalf of the Verts/ALE Group
Isabella Adinolfi on behalf of the EFDD Group

AMENDMENTS 001-009 010-011

► European Parliament resolution on the destruction of cultural sites perpetrated by

ISIS/Da'esh (2015/2649(RSP))

The European Parliament,

- having regard to the Questions for Oral Answer to the Council and the Commission on the destruction of cultural sites perpetrated by ISIS/Da'esh (O-000031/2015 – B8-0115/2015 and O-000032/2015 – B8-0116/2015),
- having regard to Article 167 of the Treaty on the Functioning of the European Union (TFEU), which provides that 'action by the Union shall be aimed at encouraging cooperation between Member States', notably in the area of 'conservation and safeguarding of cultural heritage of European significance' and that 'the Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture',
- having regard to Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods⁽¹⁾,
- having regard to Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96⁽²⁾,
- having regard to Council Regulation (EU) No 1332/2013 of 13 December 2013 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria⁽³⁾, adopted on the basis of Council Decision 2013/760/CFSP of 13 December 2013 amending Decision 2013/255/CFSP concerning restrictive measures against Syria⁽⁴⁾, and in particular Article 11c thereof concerning import, export or transfer of Syrian cultural property goods,
- having regard to Council Joint Action 2001/555/CFSP of 20 July 2001 on the establishment of a European Union Satellite Centre⁽⁵⁾, amended by Council Joint Action 2009/834/CFSP⁽⁶⁾,
- having regard to the Council Resolution of October 2012 on the creation of an informal network of law enforcement authorities and expertise competent in the field of cultural goods (EU CULTNET),
- having regard to the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, of 1999,
- having regard to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970,
- having regard to the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage of 16 November 1972,
- having regard to the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage of 17 October 2003,
- having regard to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 20 October 2005,
- having regard to the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995,
- having regard to UN Security Council Resolution 2199 of 12 February 2015 on threats to international peace and security caused by terrorist acts by Al-Qaida⁽⁷⁾,
- having regard to the Venice Charter for the Conservation and Restoration of Monuments and Sites of 1964 that provides an international framework for the preservation and restoration of ancient buildings,
- having regard to the Rome Statute of the International Criminal Court adopted on 17 July 1998, and in particular to Article 8(2)(b)(ix) thereof, which recognises the act of 'intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives' as a war crime,
- having regard to its resolution of 12 March 2015 on the Annual Report on Human Rights and Democracy in the World 2013 and the European Union's policy on the matter, paragraph 211 of which states that 'intentional forms of destructions of cultural and artistic heritage, as it is currently occurring in Iraq and in Syria, should be prosecuted as war crimes and as crimes against humanity'⁽⁸⁾,

- having regard to the Joint Communication to the European Parliament and the Council of 6 February 2015, entitled 'Elements for an EU regional strategy for Syria and Iraq as well as the Da'esh threat', JOIN(2015)0002, in which the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy recognised the seriousness of destruction and looting of cultural heritage in tackling the crises in Syria and Iraq and the threat posed by Da'esh,
 - having regard to Rules 128(5) and 123(4) of its Rules of Procedure,
- A. whereas numerous archaeological, religious and cultural sites in Syria and Iraq have recently been subject to targeted destruction perpetrated by groups of extremists linked particularly to the Islamic State in Iraq and Syria (ISIS/Da'esh) and whereas these systematic attacks against cultural heritage were described by UNESCO Director-General Irina Bokova as 'cultural cleansing';
- B. whereas according to UNESCO the term 'cultural cleansing' refers to an intentional strategy that seeks to destroy cultural diversity through the deliberate targeting of individuals identified on the basis of their cultural, ethnic or religious background, combined with deliberate attacks on their places of worship, memory and learning, and whereas the strategy of cultural cleansing that can be witnessed in Iraq and Syria is reflected in attacks against the cultural heritage, i.e. both against physical, tangible and built expressions of culture such as monuments and buildings, and against minorities and intangible expressions of culture such as customs, traditions and beliefs⁽⁹⁾;
- C. whereas some acts of destruction of the cultural heritage have been considered, under certain circumstances, as crimes against humanity⁽¹⁰⁾; whereas, in particular, when directed against members of a religious or ethnic group, they can be assimilated to the crime of persecution, as set out in Article 7(1)(h) of the Statute of the International Criminal Court;
- D. whereas such acts of destruction of cultural and historical sites and objects are not new and are not confined to Iraq and Syria; whereas, according to UNESCO, 'cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights'⁽¹¹⁾; stressing that, as stated by UNESCO and others, the product of looting and smuggling of cultural and religious sites and objects in Iraq and Syria by ISIS/Da'esh, is being used to help fund ISIS/Da'esh terrorist activities, with the result that artistic and cultural goods are becoming 'war weapons';
- E. whereas, on 1 March 2014, thanks to the funding provided by the European Union, UNESCO with other strategic partners launched a three-year project called 'Emergency Safeguarding of the Syrian Heritage', aimed in particular at ensuring emergency protection of the Syrian cultural heritage;
- F. whereas the European Union has ratified the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted on 20 October 2005, the first international instrument to recognise the dual economic and cultural nature of cultural goods, which 'must therefore not be treated as solely having commercial value';
- G. whereas the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted on 17 November 1970, and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, adopted on 24 June 1995, are essential instruments for strengthening protection of the global cultural heritage;
- H. whereas illicit trade in cultural goods is now the third most significant illegal trade after drugs and arms, whereas this illicit trade is dominated by organised criminal networks, and whereas current national and international mechanisms are neither adequately equipped nor supported to tackle the issue⁽¹²⁾,
- I. whereas, although combating the illicit trade in cultural goods is not a specific competence of the European Union, insofar as it is not defined as such in the treaties, it nevertheless comes under several EU fields of competence, such as the internal market, the area of freedom, security and justice (AFSJ), culture and the common foreign and security policy (CFSP);
- J. whereas there is an urgent need to better coordinate the fight against the illicit trade in cultural artefacts and to work closely together in order to promote awareness raising and information sharing and to achieve a strengthening of legal frameworks; recalling in this context that, in December 2011, the Council conclusions on preventing and combating crime against cultural goods recommended, inter alia, that the Member States strengthen cooperation between law enforcement officials, cultural authorities and private organisations;
- K. whereas, in October 2012, a Council resolution created an informal network of law enforcement authorities and expertise competent in the field of cultural goods (EU CULTNET), whose main objective is to improve the exchange of

information related to the prevention of illicit trade in cultural goods and to identify and share information on criminal networks suspected of being involved in illicit trade;

- L. whereas, on Saturday, 28 March 2015, Director-General Irina Bokova launched in Bagdad the campaign #Unite4Heritage, which is aimed at mobilising global support for the protection of cultural heritage, using the power of social networks;
1. Strongly condemns the intentional destruction of cultural, archaeological and religious sites perpetrated by ISIS in Syria and Iraq;
 2. Calls on the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy (VP/HR) to take appropriate action at political level, in accordance with UN Security Council Resolution 2199 of 12 February 2015, in order to put an end to the illegal trade in cultural property from the territories of Syria and Iraq during periods of conflict in those territories, thereby preventing them from being used as a source of financing;
 3. Calls on the VP/HR to use cultural diplomacy and intercultural dialogue as a tool when it comes to reconciling the different communities and rebuilding the destroyed sites;
 4. Calls on the VP/HR, the EU and its Member States to implement security measures at the EU's external borders to prevent cultural goods from Syria and Iraq from being smuggled into the Union and to effectively cooperate in a joint action against the trading of artefacts of Syrian and Iraqi origin in Europe, since a high concentration of the trade in Middle Eastern art is destined for the European market, together with the United States and the Gulf area;
 5. Suggests in this context that the Commission, in line with paragraph 17 of UN Security Council Resolution 2199 of 12 February 2015, focus on the fight against illicit trade in cultural artefacts, specifically as regards items of cultural heritage illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011; calls on the Commission to devise a coordinated approach for combating that illegal trade, working together with those responsible at national level in the investigation services and in close cooperation with UNESCO and other international organisations such as ICOM (International Council of Museums), ICOM's International Committee of the Blue Shield (ICBS), Europol, Interpol, UNIDROIT (International Institute for the Unification of Private Law), the WCO (World Customs Organisation), ICOMOS (International Council on Monuments and Sites) and ICCROM (International Centre for the Study of the Preservation and Restoration of Cultural Property);
 6. Calls on the VP/HR to involve the European Union Satellite Centre in Torrejón, which supports the decision making of the Union in the context of the CFSP by providing material resulting from the analysis of satellite imagery, for the purpose of monitoring and listing archaeological and cultural sites in Syria and Iraq and supporting the activities of Syrian archaeologists, with the aim of preventing further lootings and preserving the lives of civilians;
 7. Calls on the Commission to set up a rapid and secure exchange of information and sharing of best practices between the Member States to effectively combat the illicit trade in cultural artefacts illegally removed from Iraq and Syria and to urge the Member States to use international tools against illicit trafficking in cultural goods for police and custom officers, such as Interpol's dedicated database 'I-24/7' on stolen works of art and the online communication tool of the ARCHEO programme of the World Customs Organisation (WCO);
 8. Calls for consideration to be given to putting in place European training programmes for judges, police and customs officers, government administrations and market players more generally in order to enable those involved in combating illicit trade in cultural goods to develop and improve their expertise and to support initiatives such as the e-learning course for Syrian Heritage Professionals promoted by ICOMOS in January 2013, teaching information on disaster risk management, first aid measures for cultural collections and documentation technique;
 9. Asks the Commission to link up with international projects from civil society on protecting and reporting on cultural goods in danger, such as the AAAS geospatial technologies project, and to continue to support research communities' activities such as Project Mosul, developed by the Initial Training Network for Digital Cultural Heritage (funded by a Marie Skłodowska-Curie actions grant);
 10. Calls on the Commission to provide stronger support to ICOM's International Observatory on Illicit Traffic in Cultural Goods, which has produced an emergency red list of Syrian and Iraqi antiquities at risk, designed as a tool for museums, customs officials, police officers, art dealers and collectors and which plans to use satellite imagery to monitor the situation on the ground, in cooperation with UNITAR;
 11. Calls for the EU and the Member States to develop awareness-raising campaigns in order to discourage the purchase and sale of cultural goods coming from illicit trade from war areas;

12. Calls on the Member States to take the necessary steps to involve universities, research bodies and cultural institutions, inter alia through codes of ethics, in the fight against illicit trade in cultural goods from war areas;
13. Calls on the Commission to support UNESCO's #Unite4Heritage campaign by initiating an information campaign focused on Iraq and Syria, with the aim of raising awareness of the importance of their cultural heritage, of the way the product of looting is used to finance terrorist activities, and of the possible penalties associated with the illegal import of cultural goods coming from these countries, or from other third countries;
14. Calls on the Commission to strengthen and improve the functioning of the informal network of law enforcement authorities and expertise competent in the field of cultural goods (EU CULTNET), created by the Council Resolution (14232/12) of October 2012, whose objective is to improve the exchange of information related to the prevention of illicit trade in cultural goods, and to envisage the creation of an additional instrument to control the import of cultural goods unlawfully removed by Syria and Iraq into the EU;
15. Calls on the Council to strengthen the Eurojust and Europol units devoted to supporting the ongoing investigations, prevention and exchange of intelligence regarding illegal trade in cultural goods;
16. Encourages the relaunching of the actions of ICOM's International Committee of the Blue Shield;
17. Calls on the European Union to take the necessary steps, in collaboration with UNESCO and the International Criminal Court, to extend the international law category of crimes against humanity so that it encompasses acts which wilfully damage or destroy the cultural heritage of mankind on a large scale;
18. Calls on the Member States which have not already done so to ratify the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970, the UNIDROIT Convention of 1995, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and the Second Protocol thereto of 1999;
19. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the UNESCO Director-General, the EU Special Representative for Human Rights and the governments and parliaments of the Member States.

(1) OJ L 39, 10.2.2009, p. 1.

(2) OJ L 169, 8.7.2003, p. 6.

(3) OJ L 335, 14.12.2013, p. 3.

(4) OJ L 335, 14.12.2013, p. 50.

(5) OJ L 200, 25.7.2001, p. 5.

(6) OJ L 297, 13.11.2009, p. 18.

(7) <http://www.refworld.org/docid/54ef1f704.html>

(8) Texts adopted, P8_TA(2015)0076).

(9) http://www.unesco.org/new/en/media-services/single-view/news/conference_report_heritage_and_cultural_diversity_at_risk_in_iraq_and_syria/

(10) International Criminal Tribunal for Yugoslavia, *Kordić & Čerkez*, 26 February 2001, IT-95-14/2; paragraphs 207-8.

(11) UNESCO Declaration on Intentional Destruction of Cultural Heritage, 2003.

(12) <http://www.africa-eu-partnership.org/newsroom/all-news/morocco-africa-eu-workshop-fight-against-illegal-trafficking-cultural-goods>

E. THE CAIRO DECLARATION¹

Released in Cairo, Egypt
May 14, 2015

Recognizing the continuing threat to our economic, cultural well-being and national security as a result of antiquities looting, trafficking, and destruction by criminal networks and extremist groups of our cultural property that is either registered, unregistered or submerged, the Governments of Egypt, Saudi Arabia, United Arab Emirates, Iraq, Jordan, Kuwait, Lebanon, Libya, Sudan and Sultanate of Oman agreed at a Ministerial Conference held in Cairo on the 13th and 14th of May 2015, to launch immediate joint efforts to stand against the above mentioned threats. The Middle East and Northern African region is home to the beginnings of human civilization due to its long and rich history. Criminal networks and terrorists groups have systematically looted historic sites and profited from the sales of these antiquities in international black markets. In addition, as a means to intimidate local populations, these looters have intentionally destroyed historical relics. We deplore their actions, and view this as a crime against human civilization. In light of the above, the participating governments attending this conference have agreed on the necessity of the following actions:

- Launch a Cultural Racketeering Task Force consisting of a senior representative from each country to coordinate regional and international efforts to protect cultural property and prevent smuggling and repatriate stolen artifacts.
- Establish an International Advisory Committee which will provide advice and support for the task force on ways to fight cultural racketeering.
- Initiate an awareness campaign in demand countries to discourage purchases of looted antiquities.
- Consider the possibilities to start negotiations with international partners on a “Regional Cultural Memorandum of Understanding” which would lead to the ban of dealing in looted antiquities.
- Raise awareness campaigns aiming to protect cultural property against illegal digging, smuggling and dealing, while implementing harsher sanctions on those who attempt such illegal activities.
- Study the possibilities of establishing an independent regional Antilaundering Agency that will cooperate with the competent international agencies to help monitor and halt the trade of antiquities. It was agreed on to hold other conferences with the concerned Middle East and Northern African region countries and other governments interested in joining this Initiative against antiquities looting.

¹ <http://theantiquitiescoalition.org/wp-content/uploads/2015/05/Cairo-Declaration-final-version-May-2015.pdf>

III. U.S. LEGISLATION RELATED TO THE PROTECTION OF INTERNATIONAL CULTURAL HERITAGE AND TRAFFIC IN STOLEN OR CONFLICT ANTIQUITIES

A. The Convention on Cultural Property Implementation Act 1983 (Public Law 97-446, 19 U.S.C. 2601 et seq., as amended)

- The Cultural Property Implementation Act, 19 U.S.C. §§260-2613 ("CPIA"), focuses primarily on implementation of Articles 7(b) and 9 of the UNESCO Convention.
- The CPIA embodies a policy of prohibiting the importation of cultural property and returning it a source nation only if (1) it was previously identified and then stolen from an institution or public monument (19 U.S.C. §2607), or (2) pursuant to a request from a foreign country to the extent necessary to prevent pillage (19 U.S.C. §2602-06).
- A country whose cultural patrimony "is in jeopardy from the pillage of archaeological or ethnological" materials must demonstrate, in its request for assistance. Once a request has been submitted, it is reviewed by the Cultural Property Advisory Committee (CPAC), which is composed of members representing the interests of the public, museums, the trade, and archaeology/anthropology. As part of its deliberative process, CPAC invites comments from members of the public and typically holds an open session at which any member of the public may provide relevant comment and interact with CPAC members. The invitation for public comment is a proactive step taken by the Department of State which administers CPAC. Because the Committee itself represents the viewpoints of interested parties, there is no statutory requirement to hold a public session or consider any outside public comment. Four determinations must be made: (1) that the cultural patrimony of the requesting nation is in jeopardy from the pillage of archaeological materials; (2) that the requesting nation has taken measures to protect its cultural patrimony; (3) that 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) import restrictions would promote the interchange of cultural property among nations for scientific, cultural, and educational purposes
- The President only has authority to enter into bilateral or multilateral agreements imposing U.S. import restrictions on archaeological material. If the above four "determinations" are met, and "after request is made."
- To date, the U.S. has signed bilateral agreements with 15 nations, and imposed one emergency action with similar terms for Iraq. These import restrictions for Iraq, along with others for Mali, are the only ones in effect for the Middle East and North Africa. <http://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements>

B. The Hague Convention

- On September 25, 2008, the United States Senate voted to ratify the Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240. http://www.unesco.org/culture/laws/hague/html_eng/page1.shtml
- Although the US signed the convention soon after its writing, the Pentagon objected to ratification because of increasing cold-war tensions. The public attention given to the looting of the Iraq Museum in Baghdad in 2003 and the looting of archaeological

sites in southern Iraq during the ensuing years revived interest in the convention, and the Senate finally voted to give its advice and consent to ratification in 2008. Understandings were established in connection with the ratification, mostly to ensure that the convention does not interfere substantially with the US military's ability to wage war. The final element of the ratification is a "declaration," which states that the treaty, though self-executing: (a) does not require the US government to prosecute anyone who violates the convention (implicitly meaning that such prosecution is required only if a US law is also violated); and (b) does not give individual persons a right of redress in US courts.

C. Applicable U.S. Laws for Prosecuting the Illicit Sale or Possession of Antiquities

The National Stolen Property Act Title 18, U.S.C. §§2314-2315 prohibits the knowing receipt or possession of property that has "crossed a State or United States boundary after being stolen, unlawfully converted, or taken." There are two parts of this law that may be applied when a stolen artifact or cultural property crosses the border into the United States. Under these sections of the NSPA, a federal prosecutor does not need to prove that a criminal defendant actually stole the object at issue. The federal prosecutor only needs to prove that the defendant knew the object was stolen when he received it, possessed it, transported it, or sold/dispensed of it, and that the object had a value that exceeded \$5,000.

Title 18 U.S.C. 545 - Smuggling goods into the United States: "Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law, shall be fined under this title or imprisoned not more than five years, or both. Proof of defendant's possession of such goods, unless explained to the satisfaction of the jury, shall be deemed evidence sufficient to authorize conviction for violation of this section."

A person is only guilty of smuggling if it is illegal to import the item under U.S. law. Therefore, even if a foreign government forbids the export of a piece of cultural property under its laws, smuggling only occurs if it is illegal under U.S. law to import the object in question. Because the act of smuggling occurs at a federal point of entry prior to reaching state jurisdiction, anti-smuggling laws are only prosecuted on the federal level.

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Title 18 U.S.C. 542 Entry of Goods by Means of False Statements: "Whoever enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by any means of any false or fraudulent practice or appliance, or makes any false statement in any declaration without reasonable cause to believe the truth of such statement, or procures the making of any such false statement as to any matter thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of any lawful duties ... shall be fined for each offense under this title or imprisoned not more than two years, or both. Nothing in this section shall be construed to relieve imported merchandise from forfeiture under other provisions of law."

Title 18 U.S.C. 982 - Criminal Forfeiture, when a person is convicted of making false statements under section 542, or smuggling under section 545, the law *mandates* forfeiture of any property related to the crime.

Civil Forfeiture Statutes:

Title 18 U.S.C. 981 - Civil Forfeiture, ("CAFRA") property that is stolen in violation of that nation's laws, or property that is linked to the federal crime of smuggling of false statements is subject to seizure. In general, civil forfeiture is more flexible than criminal forfeiture; under civil forfeiture, a prosecutor does not need to prove that a person

committed a crime beyond a reasonable doubt. Instead, the prosecutor undertakes a civil action to recover the property in a manner that is permitted under Title 18. This type of forfeiture is a civil remedy that a federal prosecutor can use which falls under the federal criminal code.

Title 19 U.S.C. 1595a - Forfeitures and other penalties also provides for forfeiture in cases where an object's entry into the United States is deemed to be illegal. Violation of any of Title 18 statutes are predicate offenses for civil asset forfeiture. The burden of proof is altered and the object presumed guilty. There is no innocent owner defense for a claimant. Several District Courts have held that the "innocent owner defense" is only available under CAFRA

State Laws that Prohibit the Receipt of Stolen Property. All 50 states in the U.S. have laws or statutes similar to the National Stolen Property Act. These state laws are commonly referred to as Receipt of Stolen Property or Possession of Stolen Property laws. Two-thirds of state laws require lower mental states. Where the NSPA requires proof that a criminal defendant had full knowledge that a cultural object was stolen, most state laws only require proof that the offender should know, had reason to know, had reason to believe, or simply believed that the property in a dealer's possession or offered for sale was stolen or probably stolen. A federal prosecutor would need to prove that a dealer actually knew an object was stolen, but a state prosecutor may simply need to prove that a dealer had reason to believe that an artifact had been stolen, which is a much lower legal burden.

More importantly, almost one quarter of the states have a built-in legal assumption that a dealer in goods is *presumed to know* an object was stolen when (a) the dealer did not reasonably gather information about whether the good was lawfully sold or delivered to the dealer, (b) acquired the good far below reasonable value, or (c) purchased or sold the good outside the regular course of business.²

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D. Recent U.S. Efforts to Deal with Cultural Heritage Protection and Conflict Antiquities in Iraq and Syria

- Iraq Stabilization and Insurgency Sanctions Regulations (31 CFR part 576), and more seriously, prosecution under 18 USC 2339A for providing financial support to terrorist organizations. These laws come with penalties of up to a \$1,000,000 fine or life imprisonment for the most severe violations.

Presidential Executive Orders Governing Cultural Property from Iraq (12722, 13290, 13303 and 13315)

- Dating back to August of 1990, the Executive Order states (in part) that: "Unless licensed or otherwise authorized pursuant to this order or otherwise consistent with U.S. law, the trade in or transfer of ownership or possession of Iraqi cultural property or other items of archeological, historical, cultural, rare scientific, and religious importance that were illegally removed, or for which a reasonable suspicion exists that they were illegally removed, from the Iraq National Museum, the National Library, and other locations in Iraq since August 6, 1990, is prohibited."
- On November 19, 2004, the United States Senate passed the "emergency Protection for Iraqi Cultural Antiquities Act of 2004"^[4] which allows the President to impose import restrictions on any cultural materials illegally removed from Iraq. The legislation tracks Resolution 1483. At the time Senator Charles Grassley introduced the bill, he stated, I believe it is very important that we in Congress remain mindful of the need to take steps to protect Iraq's cultural heritage. Our bill will ensure that going forward we continue to adhere to the full spirit of Resolution 1483 and avoid any break in the protections

² <http://www.cemml.colostate.edu/cultural/09476/laws11iraqenl.html>

^[4] "Emergency Protection for Iraqi Cultural Antiquities Act of 2004," The House of Representatives, H.R. 1047, Title III, Iraqi Cultural Antiquities, Sec. 3001.

afforded to Iraqi antiquities. Our bill also provides an important signal of our commitment to preserving Iraq's resources for the benefit of the Iraqi people.

- The most recent extension of this Executive Order, May 18, 2007, remains in effect until May 17, 2008 and remains subject to further extension or modification by the President at a later date. Since property of the type described in this Executive Order is, by definition, illegal to import into the United States, a charge of smuggling may be sustained in federal court for anyone who violates this particular Executive Order.³
- The Protect and Preserve International Cultural Property Act. The Act passed the House as H.R. 1493 on 1 June 2015, and is now pending in the Senate as S. 1887. The bill has only recently left the Foreign Relations Committee. Required to prevent entry at the border of Syrian conflict antiquities and to begin to fulfill the United States' obligations under United Nations Security Council Resolutions 2199 and 2253, its passage is far from assured.

(See Next Page)

³ <https://www.federalregister.gov/articles/2014/05/29/2014-12651/ending-immunities-granted-to-the-development-fund-for-iraq-and-certain-other-iraqi-property-and>

114TH CONGRESS
1ST SESSION

S. 1887

To protect and preserve international cultural property at risk due to political instability, armed conflict, or natural or other disasters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2015

Mr. CASEY (for himself, Mr. GRASSLEY, and Mr. PERDUE) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To protect and preserve international cultural property at risk due to political instability, armed conflict, or natural or other disasters, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protect and Preserve
5 International Cultural Property Act”.

6 **SEC. 2. DEFINITION.**

7 In this Act:

8 (1) APPROPRIATE CONGRESSIONAL COMMIT-
9 TEES.—The term “appropriate congressional com-

mittees” means the Committee on Foreign Affairs,
the Committee on Ways and Means, the Committee
on Armed Services, and the Committee on the Judi-
ciary of the House of Representatives and the Com-
mittee on Foreign Relations, the Committee on Fi-
nance, the Committee on Armed Services, and the
Committee on the Judiciary of the Senate.

(2) CULTURAL PROPERTY.—The term “cultural
property” includes property covered under—

(A) the Hague Convention for the Protec-
tion of Cultural Property in the Event of
Armed Conflict, concluded at The Hague on
May 14, 1954 (Treaty Doc. 106–1(A));

(B) Article 1 of the Convention Concerning
the Protection of the World’s Cultural and Nat-
ural Heritage, adopted by UNESCO on Novem-
ber 23, 1972 (commonly referred to as the
“1972 Convention”); or

(C) Article 1 of the Convention on the
Means of Prohibiting and Preventing the Illicit
Import, Export, and Transfer of Ownership of
Cultural Property, adopted by UNESCO on
November 14, 1970 (commonly referred to as
the “1970 UNESCO Convention”).

1 **SEC. 3. FINDINGS AND STATEMENT OF POLICY.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Over the years, international cultural prop-
4 erty has been looted, trafficked, lost, damaged, or
5 destroyed due to political instability, armed conflict,
6 natural disasters, and other threats.

7 (2) During China's Cultural Revolution, many
8 antiques were destroyed, including a large portion of
9 old Beijing, and Chinese authorities are now at-
10 tempting to rebuild portions of China's lost architec-
11 tural heritage.

12 (3) In 1975, the Khmer Rouge, after seizing
13 power in Cambodia, systematically destroyed
14 mosques and nearly every Catholic church in the
15 country, along with many Buddhist temples, statues,
16 and Buddhist literature.

17 (4) In 2001, the Taliban destroyed the
18 Bamiyan Buddhas, ancient statues carved into a
19 cliffside in central Afghanistan, leading to worldwide
20 condemnation.

21 (5) After the fall of Saddam Hussein, thieves
22 looted the Iraq Museum in Baghdad, resulting in the
23 loss of approximately 15,000 items, including an-
24 cient amulets, sculptures, ivories, and cylinder seals.
25 Many of these items remain unrecovered.

1 (6) The 2004 Indian Ocean earthquake and
2 tsunami not only affected 11 countries, causing mas-
3 sive loss of life, but also damaged or destroyed li-
4 braries, archives, and World Heritage Sites such as
5 the Mahabalipuram in India, the Sun Temple of
6 Koranak on the Bay of Bengal, and the Old Town
7 of Galle and its fortifications in Sri Lanka.

8 (7) In Haiti, the 2010 earthquake destroyed
9 art, artifacts, and archives, and partially destroyed
10 the 17th century Haitian city of Jacmel.

11 (8) In Mali, the Al-Qaeda affiliated terrorist
12 group Ansar Dine destroyed tombs and shrines in
13 the ancient city of Timbuktu—a major center for
14 trade, scholarship, and Islam in the 15th and 16th
15 centuries—and threatened collections of ancient
16 manuscripts.

17 (9) In Egypt, recent political instability has led
18 to the ransacking of museums, resulting in the de-
19 struction of countless ancient artifacts that will for-
20 ever leave gaps in humanity's record of the ancient
21 Egyptian civilization.

22 (10) In Syria, the ongoing civil war has resulted
23 in the shelling of medieval cities, damage to five
24 World Heritage Sites, and the looting of museums
25 containing artifacts that date back more than six

1 millennia and include some of the earliest examples
2 of writing.

3 (11) In Iraq and Syria, the militant group ISIL
4 has destroyed numerous cultural sites and artifacts,
5 such as the Tomb of Jonah in July 2014, in an ef-
6 fort to eradicate ethnic and religious minorities from
7 contested territories. Concurrently, cultural antiq-
8 uities that escape demolition are looted and traf-
9 ficked to help fund ISIL's militant operations.

10 (12) On February 12, 2015, the United Na-
11 tions Security Council unanimously adopted resolu-
12 tion 2199 (2015), which "[r]eaffirms its decision in
13 paragraph 7 of resolution 1483 (2003) and decides
14 that all Member States shall take appropriate steps
15 to prevent the trade in Iraqi and Syrian cultural
16 property and other items of archaeological, histor-
17 ical, cultural, rare scientific, and religious impor-
18 tance illegally removed from Iraq since 6 August
19 1990 and from Syria since 15 March 2011, includ-
20 ing by prohibiting cross-border trade in such items,
21 thereby allowing for their eventual safe return to the
22 Iraqi and Syrian people."

23 (13) United Nations Security Council resolution
24 2199 (2015) also warns that ISIL and other extrem-
25 ist groups are trafficking cultural heritage items

1 from Iraq and Syria to fund their recruitment ef-
2 forts and carry out terrorist attacks.

3 (14) The destruction of cultural property rep-
4 resents an irreparable loss of humanity's common
5 cultural heritage and is therefore a loss for all
6 Americans.

7 (15) Protecting international cultural property
8 is a vital part of United States cultural diplomacy,
9 showing the respect of the United States for other
10 cultures and the common heritage of humanity.

11 (16) The United States Armed Forces have
12 played important roles in preserving and protecting
13 cultural property. In 1943, President Franklin D.
14 Roosevelt established a commission to advise the
15 United States military on the protection of cultural
16 property. The commission formed teams of individ-
17 uals known as the "Monuments Men" who are cred-
18 ited with securing, cataloguing, and returning hun-
19 dreds of thousands of works of art stolen by the
20 Nazis during World War II.

21 (17) The Department of State, in response to
22 the Convention on Cultural Property Implementation
23 Act, noted that "the legislation is important to our
24 foreign relations, including our international cultural
25 relations. The expanding worldwide trade in objects

1 of archaeological and ethnological interest has led to
2 wholesale depredations in some countries, resulting
3 in the mutilation of ceremonial centers and archae-
4 ological complexes of ancient civilizations and the re-
5 moval of stone sculptures and reliefs.”. The Depart-
6 ment further noted that “[t]he United States con-
7 sider that on grounds of principle, good foreign re-
8 lations, and concern for the preservation of the cul-
9 tural heritage of mankind, it should render assist-
10 ance in these situations.”.

11 (18) The U.S. Committee of the Blue Shield
12 was founded in 2006 to support the implementation
13 of the 1954 Hague Convention for the Protection of
14 Cultural Property in the Event of Armed Conflict
15 and to coordinate with the United States military,
16 other branches of the United States Government,
17 and other cultural heritage nongovernmental organi-
18 zations in preserving international cultural property
19 threatened by political instability, armed conflict, or
20 natural or other disasters.

21 (b) STATEMENT OF POLICY.—It shall be the policy
22 of the United States to—

23 (1) protect and preserve international cultural
24 property at risk of looting, trafficking, and destruc-

1 tion due to political instability, armed conflict, or
2 natural or other disasters;

3 (2) protect international cultural property pur-
4 suant to its obligations under international treaties
5 to which the United States is a party;

6 (3) prevent, in accordance with existing laws,
7 importation of cultural property pillaged, looted, sto-
8 len, or trafficked at all times, including during polit-
9 ical instability, armed conflict, or natural or other
10 disasters; and

11 (4) ensure that existing laws and regulations,
12 including import restrictions imposed through the
13 Office of Foreign Asset Control (OFAC) of the De-
14 partment of the Treasury, are fully implemented to
15 prevent trafficking in stolen or looted cultural prop-
16 erty.

17 **SEC. 4. UNITED STATES COORDINATOR FOR INTER-**
18 **NATIONAL CULTURAL PROPERTY PROTEC-**
19 **TION.**

20 The Secretary of State shall designate a Department
21 of State employee at the Assistant Secretary level or above
22 to serve concurrently as the United States Coordinator for
23 International Cultural Property Protection. The Coordi-
24 nator shall—

1 (1) coordinate and promote efforts to protect
2 international cultural property, especially activities
3 that involve multiple Federal agencies;

4 (2) act as Chair of the Coordinating Committee
5 on International Cultural Property Protection estab-
6 lished under section 5;

7 (3) resolve interagency differences;

8 (4) develop strategies to reduce illegal trade
9 and trafficking in international cultural property in
10 the United States and abroad, including by reducing
11 consumer demand for such trade;

12 (5) support activities to assist countries that
13 are the principle sources of trafficked cultural prop-
14 erty to protect cultural heritage sites and to prevent
15 cultural property looting and theft;

16 (6) work with and consult domestic and inter-
17 national actors such as foreign governments, inter-
18 governmental organizations, nongovernmental orga-
19 nizations, museums, educational institutions, and re-
20 search institutions to protect international cultural
21 property; and

22 (7) submit to the appropriate congressional
23 committees the annual report required under section
24 6.

1 **SEC. 5. COORDINATING COMMITTEE ON INTERNATIONAL**
2 **CULTURAL PROPERTY PROTECTION.**

3 (a) **ESTABLISHMENT.**—There is established a Coordi-
4 nating Committee on International Cultural Property Pro-
5 tection (in this section referred to as the “Committee”).

6 (b) **FUNCTIONS.**—The full Committee shall meet not
7 less often than annually to coordinate and inform Federal
8 efforts to protect international cultural property and to
9 facilitate the work of the United States Coordinator for
10 International Cultural Property Protection designated
11 under section 4.

12 (c) **MEMBERSHIP.**—The Committee shall be com-
13 posed of the United States Coordinator for International
14 Cultural Property Protection, who shall act as Chair, and
15 representatives of the following:

16 (1) The Department of State.

17 (2) The Department of Defense.

18 (3) The Department of Homeland Security, in-
19 cluding U.S. Immigration and Customs Enforcement
20 and U.S. Customs and Border Protection.

21 (4) The Department of the Interior.

22 (5) The Department of Justice, including the
23 Federal Bureau of Investigation.

24 (6) The United States Agency for International
25 Development.

26 (7) The Smithsonian Institution.

1 (8) Such other entities as the Chair determines
2 appropriate.

3 (d) SUBCOMMITTEES.—The Committee may include
4 such subcommittees and taskforces as the Chair deter-
5 mines appropriate. Such subcommittees or taskforces may
6 be comprised of a subset of the Committee members or
7 of such other members as the Chair determines appro-
8 priate. At the discretion of the Chair, the provisions of
9 the Federal Advisory Committee Act (5 U.S.C. App.) and
10 section 552b of title 5 of the United States Code (relating
11 to open meetings) shall not apply to activities of such sub-
12 committees or taskforces.

13 (e) CONSULTATION.—The Committee shall consult
14 with governmental and nongovernmental organizations,
15 including the U.S. Committee of the Blue Shield, muse-
16 ums, educational institutions, and research institutions on
17 efforts to promote and protect international cultural prop-
18 erty.

19 **SEC. 6. REPORTS ON ACTIVITIES TO PROTECT INTER-**
20 **NATIONAL CULTURAL PROPERTY.**

21 Not later than 1 year after the date of the enactment
22 of this Act and annually thereafter for the next 6 years,
23 the Secretary of State, acting through the United States
24 Coordinator for International Cultural Property Protec-
25 tion, and in consultation with the Administrator of the

1 United States Agency for International Development, the
2 Secretary of Defense, the Attorney General, and the Sec-
3 retary of Homeland Security, as appropriate, shall submit
4 to the appropriate congressional committees a report that
5 includes information on activities of—

6 (1) the United States Coordinator and the Co-
7 ordinating Committee on International Cultural
8 Property Protection to protect international cultural
9 property;

10 (2) the Department of State to protect inter-
11 national cultural property, including activities under-
12 taken pursuant to the Hague Convention for the
13 Protection of Cultural Property in the Event of
14 Armed Conflict, and other statutes, international
15 agreements, and policies, including—

16 (A) procedures the Department has insti-
17 tuted to protect international cultural property
18 at risk of destruction due to political instability,
19 armed conflict, or natural or other disasters;
20 and

21 (B) actions the Department has taken to
22 protect international cultural property in con-
23 flicts to which the United States is a party;

24 (3) the United States Agency for International
25 Development (USAID) to protect international cul-

1 tural property, including activities and coordination
2 with other Federal agencies, international organiza-
3 tions, and nongovernmental organizations regarding
4 the protection of international cultural property at
5 risk due to political unrest, armed conflict, natural
6 or other disasters, and USAID development pro-
7 grams;

8 (4) the Department of Defense to protect inter-
9 national cultural property, including activities under-
10 taken pursuant to the Hague Convention for the
11 Protection of Cultural Property in the Event of
12 Armed Conflict and other cultural property protec-
13 tion statutes and international agreements, includ-
14 ing—

15 (A) directives, policies, and regulations the
16 Department has instituted to protect inter-
17 national cultural property at risk of destruction
18 due to political instability, armed conflict, or
19 natural or other disasters; and

20 (B) actions the Department has taken to
21 avoid damage to cultural property through con-
22 struction activities abroad; and

23 (5) the Department of Homeland Security and
24 the Department of Justice, including the Federal
25 Bureau of Investigation, to protect both inter-

1 national cultural property abroad and international
2 cultural property located in, or attempted to be im-
3 ported into, the United States, including activities
4 undertaken pursuant to statutes and international
5 agreements, including—

6 (A) statutes and regulations the Depart-
7 ment has employed in criminal, civil, and civil
8 forfeiture actions to prevent and interdict traf-
9 ficking in stolen and smuggled cultural prop-
10 erty, including investigations into transnational
11 organized crime and smuggling networks; and

12 (B) actions the Department has taken in
13 order to ensure the consistent and effective ap-
14 plication of law in cases relating to both inter-
15 national cultural property abroad and inter-
16 national cultural property located in, or at-
17 tempted to be imported into, the United States.

18 **SEC. 7. AUTHORIZATION FOR FEDERAL AGENCIES TO EN-**
19 **GAGE IN INTERNATIONAL CULTURAL PROP-**
20 **ERTY PROTECTION ACTIVITIES WITH THE**
21 **SMITHSONIAN INSTITUTION.**

22 Notwithstanding any other provision of law, any
23 agency that is involved in international cultural property
24 protection activities is authorized to enter into agreements
25 or memoranda of understanding with the Smithsonian In-

stitution to temporarily engage personnel from the Smithsonian Institution for the purposes of furthering such international cultural property protection activities.

SEC. 8. EMERGENCY PROTECTION FOR SYRIAN CULTURAL PROPERTY.

(a) **PRESIDENTIAL DETERMINATION.**—Notwithstanding subsection (b) of section 304 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603) (relating to a Presidential determination that an emergency condition applies with respect to any archaeological or ethnological material of any State Party to the Convention), the President shall apply the import restrictions referred to in such section 304 with respect to any archaeological or ethnological material of Syria, except that subsection (c) of such section 304 shall not apply. Such import restrictions shall take effect not later than 120 days after the date of the enactment of this Act.

(b) **ANNUAL DETERMINATION REGARDING CERTIFICATION.**—

(1) **DETERMINATION.**—

(A) **IN GENERAL.**—The President shall, not less often than annually, determine whether at least one of the conditions specified in subparagraph (B) is met, and shall notify the ap-

1 appropriate congressional committees of such de-
2 termination.

3 (B) CONDITIONS.—The conditions referred
4 to in subparagraph (A) are the following:

5 (i) The Government of Syria is in-
6 capable, at the time a determination under
7 such subparagraph is made, of fulfilling
8 the requirements to request an agreement
9 under section 303 of the Convention on
10 Cultural Property Implementation Act (19
11 U.S.C. 2602).

12 (ii) It would be against the United
13 States national interest to enter into such
14 an agreement.

15 (2) TERMINATION OF RESTRICTIONS.—The im-
16 port restrictions referred to in subsection (a) shall
17 terminate on the date that is 5 years after the date
18 on which the President determines that neither of
19 the conditions specified in paragraph (1)(B) are
20 met, unless before such termination date Syria re-
21 quests to enter into an agreement with the United
22 States pursuant to section 303 of the Convention on
23 Cultural Property Implementation Act, in which case
24 such import restrictions may remain in effect until
25 the earliest of either—

1 (A) the date that is 3 years after the date
2 on which Syria makes such a request; or

3 (B) the date on which the United States
4 and Syria enter into such an agreement.

5 (c) WAIVER.—

6 (1) IN GENERAL.—The President may waive
7 the import restrictions referred to in subsection (a)
8 for specified cultural property if the President cer-
9 tifies to the appropriate congressional committees
10 that the conditions described in paragraph (2) are
11 met.

12 (2) CONDITIONS.—The conditions referred to in
13 paragraph (1) are the following:

14 (A) The foreign owner or custodian of the
15 specified cultural property has requested such
16 property be temporarily located in the United
17 States for protection purposes.

18 (B) Such property shall be returned to the
19 foreign owner or custodian when requested by
20 such foreign owner or custodian.

21 (C) Granting a waiver under this sub-
22 section will not contribute to illegal trafficking
23 in cultural property or financing of criminal or
24 terrorist activities.

1 (3) ACTION.—If the President grants a waiver
2 under this subsection, the specified cultural property
3 that is the subject of such waiver shall be placed in
4 the temporary custody of the United States Govern-
5 ment or in the temporary custody of a cultural or
6 educational institution within the United States for
7 the purpose of protection, restoration, conservation,
8 study, or exhibition, without profit.

9 (4) RULE OF CONSTRUCTION.—Nothing in this
10 Act shall prevent application of the Act to render
11 immune from seizure under judicial process certain
12 objects of cultural significance imported into the
13 United States for temporary display or exhibition,
14 and for other purposes (22 U.S.C. 2459; Public Law
15 89–259) with respect to archaeological or ethno-
16 logical material of Syria.

17 (d) DEFINITIONS.—In this section—

18 (1) the term “archaeological or ethnological ma-
19 terial of Syria” means cultural property of Syria and
20 other items of archaeological, historical, cultural,
21 rare scientific, or religious importance unlawfully re-
22 moved from Syria on or after March 15, 2011; and

23 (2) the term “State Party” has the meaning
24 given such term in section 302 of the Convention on

1 Cultural Property Implementation Act (19 U.S.C.
2 2601).

○

IV. FUTURE INTERNATIONAL PLATFORMS AND MODELS FOR ENFORCEMENT

A. The International Criminal Court (ICC)

The UN General Assembly, Rome Statute of the International Criminal Court (law amended 2010), 17 July 1998, ISBN No. 92-9227-227-6. (Article 8(2)(b)(IX) provides that the term 'war crimes' includes "Internationally Directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives." Article 8(2)(IV) imposes a corresponding liability during internal conflicts, stating that war crimes includes, in conflicts not of an international character, "Internationally directing attacks against buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments..."

The case of individual criminal responsibility for ISIS militants for the destruction in Mosul, Nimrud, and elsewhere, an initial obstacle lies in neither Iraq nor Syria being party to the Rome Statute. However, while the ICC's jurisdiction is limited, states may accept the court's jurisdiction for a particular case. Even in the absence such state acceptance, the ICC has jurisdiction in cases in which the Security Council refers the matter to the prosecutor. Either option, however, faces steep political obstacles.

..

Situation: Mali - General Assembly, Rome Statute of the International Criminal Court (last amended 2010, 17 July 1998, ISBN No. 92-9227-227-6) Ahmad Al Faqi Al Mahdi surrendered to the ICC on charges of war crimes regarding the destruction of historical and religious monuments in Timbuktu

Case: *The Prosecutor v. Ahmad Al Faqi Al Mahdi* ICC-CPI-20150926-PR1154⁴

Today, 26 September 2015, Mr Ahmad Al Mahdi Al Faqi (Abu Tourab), was surrendered to the International Criminal Court (ICC) by the authorities of Niger and arrived at the Court's Detention Centre in the Netherlands. Mr Al Faqi is suspected, according to an ICC arrest warrant issued on 18 September 2015, of war crimes allegedly committed in Timbuktu, Mali, between about 30 June 2012 and 10 July 2012, through intentionally directing attacks against buildings dedicated to religion and/or historical monuments. This is the first case to be brought before the ICC concerning the destruction of buildings dedicated to religion and historical monuments.

The ICC Registrar, Herman von Hebel, thanked the authorities of Niger and of the host State, the Netherlands, for their cooperation in this matter.

According to the warrant of arrest issued by ICC Pre-Trial Chamber I, there are reasonable grounds to believe that an armed conflict of non-international character began in January 2012 and was still ongoing in Mali throughout the period of the alleged facts, which all took place in Timbuktu. Throughout this period, the city would have been under the control of armed groups, Al Qaeda in the Islamic Maghreb ("AQIM") and Ansar Eddine, a mainly Tuareg movement associated with AQIM. Mr Al Faqi, born in Agoune, 100 kilometers west of Timbuktu, Mali, from the Ansar Tuareg tribe, was an active personality in the context of the occupation of Timbuktu. He was a member of Ansar Eddine, working closely with the leaders of the two armed groups and in the context of the structures and institutions established by them. It is alleged that, until September 2012, he was at the head of the "Hesbah" ("Manners' Brigade"), operational from May 2012. He was also associated with the work of the Islamic Court of Timbuktu and has participated in executing its decisions. Specifically, it is alleged that he was involved in the destruction of the buildings mentioned in the charges.

The Chamber found that the evidence presented by the Prosecutor establish reasonable grounds to believe that Mr Al Faqi is criminally responsible for having committed, individually and jointly with others, facilitated or otherwise contributed to the commission of war crimes alleged by the Prosecutor regarding intentionally directing attacks against the following buildings: 1) the mausoleum Sidi Mahmoud Ben Omar Mohamed Aquit, 2) the mausoleum Sheikh Mohamed Mahmoud Al Arawani, 3) the mausoleum Sheikh Sidi Mokhtar Ben Sidi Muhammad Ben Sheikh Alkabir, 4) the mausoleum Alpha Moya, 5) the mausoleum Sheikh Sidi Ahmed Ben Amar Arragadi, 6) the mausoleum Sheikh Muhammad El Micky, 7) the mausoleum Cheick Abdoul Kassim Attouaty, 8) the mausoleum Ahmed Fulane, 9) the mausoleum Bahaber Babadié, and 10) Sidi Yahia mosque. The case *The Prosecutor v. Ahmad Al Faqi Al Mahdi* is the first in the context of the ICC Prosecutor's investigation regarding the situation in Mali. The situation in Mali was referred to the Court by the government of Mali on 13 July 2012. On 16 January 2013, the Prosecutor opened an investigation into alleged crimes committed on the territory of Mali since January 2012.

⁴ https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1154.aspx

B. The Kimberley Process (KP)

- An international, multistakeholder initiative created to increase transparency and oversight in the diamond industry in order to eliminate trade in conflict diamonds, or rough diamonds sold by rebel groups or their allies to fund conflict against legitimate governments. The KP, which became operational in 2003, controls trade in rough diamonds between participating countries through domestic implementation of a certification scheme that makes the trade more transparent and secure; and prohibits trade with nonparticipants. Fiftyfour participants representing 81 countries participate in the KP, with industry and civil society participating as observers. Rough diamonds must be shipped in sealed containers and exported with a Kimberley Process Certificate that certifies that the rough diamonds have not benefited rebel movements.



CONFLICT DIAMONDS AND THE KIMBERLEY PROCESS FACT SHEET

What are 'conflict diamonds'?

'Conflict diamonds' is the term used to describe diamonds which are illegally traded to fund conflicts. In recent times, conflicts in some of the poorest parts of Africa have often focused on rebels controlling their country's natural resources and assets; for example, oil, wood, minerals and also diamonds. The United Nations (UN) defines conflict diamonds as '*...diamonds that originate from areas controlled by forces or factions opposed to legitimate and internationally recognized governments, and are used to fund military action in opposition to those governments, or in contravention of the decisions of the Security Council*'. Conflict diamonds came to the attention of the world media during the extremely brutal conflict in Sierra Leone in the 1990s. While Sierra Leone is now at peace, currently, the Ivory Coast remains under UN Security Council sanctions prohibiting the import and export of diamonds.

How many diamonds are conflict diamonds?

Currently, less than 1% of the world's diamonds are conflict diamonds. In the late 1990s, conflict diamonds represented a very small percentage of the world's diamond production (approximately 4%).

How does the diamond industry ensure conflict diamonds are not in the pipeline?

The brutal conflict in Sierra Leone in the 1990s brought conflict diamonds to the world's attention. The UN, governments, the diamond industry and NGOs (such as Global Witness, Amnesty International and Partnership Africa Canada), recognised the need for a global system to prevent conflict diamonds from entering the legitimate diamond supply chain and thus helping to fund conflict.

A simple process called the Kimberley Process was agreed in which rough diamonds are sealed in tamper-resistant containers and have a forgery resistant conflict free certificate with unique serial numbers each time they cross an international border. This process ring-fences conflict diamonds in order to prevent them from entering the diamond supply so that they do not fund any rebel groups. Governments of the exporting and importing countries are responsible for checking all Kimberley Process certificates.

In addition, the diamond industry has agreed to provide evidence to all purchasers in the chain, from when diamonds are imported with a Kimberley Process certificate to the point of sale to the consumer, that the diamonds being sold are from conflict free sources. This involves a written statement on all invoices declaring that the diamonds are from a conflict free source which is referred to as the 'System of Warranties'.

While, today more than 99% of rough diamonds are certified to be from conflict free sources, the diamond industry has a zero tolerance policy towards conflict diamonds and will not rest until conflict diamonds are completely eradicated.

What is the Kimberley Process?

The Kimberley Process is a unique joint initiative involving governments, the international diamond industry and NGOs to stem the flow of conflict diamonds. Progress to achieve this shared objective began in May 2000 and by December 2000, all 191 members of the United

Nations General Assembly voted unanimously to support the process. This was the first time that a global industry had cooperated with the United Nations, governments and civil society to address an important humanitarian issue.

By the beginning of 2003, 52 Governments had agreed to the Kimberley Process Certification Scheme and adopted it as national law. In essence, participants agreed to only allow the export and import of rough diamonds between other countries in the Kimberley Process and countries in conflict were barred from becoming a member.

Today (as of August 2007), 74 countries, including Sierra Leone, are members of the Kimberley Process, ensuring that more than 99% of the global production of rough diamonds are now certified to be from conflict free sources.

How does the Kimberley Process work?

- The Kimberley process requires that:
 1. Each shipment of rough diamonds crossing an international border must be:
 - a. Transported in a tamper-resistant container
 - b. Accompanied by a government-validated Kimberley Process Certificate
 2. Each certificate must be resistant to forgery, uniquely numbered and describe the shipment's contents
 3. The shipment can only be exported to another Kimberley Process participant country
 4. The importing country's customs have a responsibility to check the contents of the shipment with the Kimberley Process certificate.
- It is illegal for uncertified shipments of rough diamonds to either be imported or exported by a Kimberley Process participant country. Failure to comply with these procedures can lead to confiscation or rejection of parcels and/or criminal sanctions.
- If any concerns arise regarding a country's adherence to the Kimberley Process, they are investigated and dealt with at an intergovernmental level.

What is the System of Warranties?

The World Diamond Council and all its members have agreed to provide evidence to all purchasers until the sale to consumers that the diamonds being sold are from conflict free sources. This involves a written statement on all invoices making a declaration that the diamonds are from a conflict free source which is referred to as the 'System of Warranties'. Under this, 'System of Warranties', the following affirmative statement must be provided on all invoices:

"The diamonds herein invoiced have been purchased from legitimate sources not involved in funding conflict and in compliance with United Nations resolutions. The seller hereby guarantees that these diamonds are conflict free, based on personal knowledge and/or written guarantees provided by the supplier of these diamonds."

All members of the trade who provide such assurances have promised to keep records with this statement on them, therefore providing evidence that their diamonds are from conflict free sources. All warranties, whether from a supplier or a customer must be audited and reconciled on an annual basis by the company's own auditors. If asked for by an authorised government agency, these records must be provided and are proof of compliance with the Kimberley Process.

What benefits do diamonds provide to the countries where they are sourced?

As a major natural resource, diamonds are contributing to the transformation of Southern Africa and the lives of its people. Countries such as Sierra Leone are now in the process of establishing a lasting peace through political and democratic means and diamonds are helping to build that structure.

Additional sources of information

Diamond Facts www.diamondfacts.org

US Media Contact
866-490-8855
usmedia@diamondfacts.org

International Media Contact
44-207-878-3114
intlmedia@diamondfacts.org

September 28, 2015

ASSOCIATION OF ART MUSEUM DIRECTORS

**PROTOCOLS FOR SAFE HAVENS FOR
WORKS OF CULTURAL SIGNIFICANCE FROM
COUNTRIES IN CRISIS**

I. Preamble

Protecting works¹ of cultural significance (“works”) in danger of damage, destruction or looting as a result of war, terrorism or natural disasters is the responsibility of everyone and especially of institutions whose mission is to protect, conserve and study the artistic heritage of human kind. Members of the Association of Art Museum Directors (AAMD)² stand ready with our colleagues around the world to offer whatever help can be provided to museum professionals, international organizations such as the Blue Shield and custodians responsible for safeguarding the cultural heritage of countries in crisis, including facilitating access to refuges in other countries, if feasible.

AAMD supports the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Member museum staff can offer technical assistance and professional advice to protect collections *in situ*. In cases where this is not practical, perhaps the greatest contribution AAMD members and other museums outside the affected area can make is to offer safe havens to those works in danger of damage, destruction or looting until they can be safely returned. While museums in neighboring countries would normally be the most readily accessible safe havens for objects in danger, there are many reasons – political, environmental, societal – that could cause a country in crisis not to seek safe haven in a neighboring country or that make a neighboring country impractical as a safe haven. Additionally, objects that are in danger of being damaged, destroyed or looted might require specialized treatment or care that may be unavailable in museums in a neighboring country. In these situations, museums in North America and around the world can and should offer to preserve and protect threatened cultural property.

Placing works in danger of damage or destruction in museums or other institutions away from the areas of crisis assures that they will be preserved and protected by professional staff until their return. In addition, works that have been looted and brought into a country such as the United States can also be candidates for preservation and protection until they can be returned to their source country; providing that doing so is consistent with the laws of the United States. Providing a safe haven for these works removes them from the marketplace (legal or illegal), preserves their

¹ The term “works” should be broadly interpreted to include works of art, archaeological objects, objects removed from a fixed monument or immovable structure, but must always be limited to objects for which the museum has the knowledge and resources to preserve and protect. For example, zoological or botanical objects would not normally be covered by the Protocols, but could be considered by a particular museum that has the knowledge and resources to accept them.

² The AAMD has over 240 members who are directors of major art museums in the United States, Canada and Mexico.

physical integrity, allows relevant information to be recorded for posterity, and provides a basis for their safe return to the appropriate entities or individuals.

The AAMD has developed the following set of protocols for those interested in a united effort to offer safe havens to works in danger of being destroyed or looted as a result of war, terrorism or natural disasters. The AAMD encourages its members to adopt these protocols, while museums of the world that wish to assist in this effort are urged to use all or relevant parts of these protocols.

II. The Source of Works In Need of Safe Havens

In the event of a terrorism occurrence or during an armed conflict or natural disaster, works may be brought for safe haven in the United States, Canada or Mexico from any depositor, assuming of course compliance with applicable law (see below). Predetermining who may request such assistance in the abstract is not always possible, but may include the legal owner of a work, the agent for the owner, the bailee of a work, the custodian of a work, and a person or entity who comes into possession of the work and the owner is unknown, unavailable or legally constrained (collectively, a “depositor”). Examples of a depositor are:

- Museums in the affected area that hold works;
- Governmental entities of or within the affected areas;
- U.S. government authorities who have seized works on entry to or in the United States; or
- Private individuals, companies or organizations who own or come into possession of works, whether in the affected area or after removal from the area.

Member museums should exercise caution to assure that accepting the request for safe haven will not violate the rights of lawful owners, subject the museum to a claim for return, reflect negatively on the reputation of the museum or cause the museum to be involved in any illegal or unethical activity. Requests for safe haven and agreements to accept such requests should be documented where possible prior to movement of works to be transferred.

III. Immunity

Prior to accepting a work, member museums should consider whether legal protections, such as immunity from seizure, are available in the safe haven country to protect the work and/or the museum from claims.

IV. Inventory and Documentation

Inventorying and documenting the condition of works to be transferred for safe haven should take place prior to movement whenever possible. Copies should be kept at the original location, sent with the works during transit, and forwarded to the proposed safe haven museum. On arrival, a new condition report should be completed.

V. Transport to Safe Havens

To the extent reasonable, works should be transported by the safest, surest method to the closest safe haven possible, with the depositor bearing the cost of transport, unless other arrangements have been made. In some cases, the safe haven museum may pay the transportation costs and will

be eligible for reimbursement from the depositor. Works should be transported in the company of the depositor (or its representative) or a reliable courier whenever possible.

VI. Storage Conditions; Special Care

Works provided safe haven should be stored in conditions suitable for the works in question, consistent with the security, climate and storage protocols applied to similar works in the collection of the museum offering safe haven. Safe haven museums may, but are not required to, take extraordinary measures to safeguard works such as creating special storage facilities, insuring the works or applying for immunity from seizure.

VII. Conservation; Restoration

Works in obvious need of stabilization should be stabilized by professionals in safe haven museums to the extent feasible and practicable. Conservation work should only be undertaken with the consent of the depositor (except in emergencies) and should be done with the same care and professional attention that the safe haven museum would bestow on its own works. In emergency or authorized situations, conservation work may be undertaken without the consent of the depositor, but only to the extent necessary to preserve the work. Conservation work should be documented and, as soon as practical, the depositor should be informed of the work performed.

VIII. Records

All works provided safe haven should be treated as loans, inventoried upon receipt, digitally documented and, if feasible and practicable, a condition report prepared and any immediate conservation needs identified. A copy of the inventory, digital images, and, if prepared, the conservation report and explanation of the conservation needs should be communicated as soon as practicable to the depositor.

IX. Publication

Museums offering safe haven should publish on their own websites, on the AAMD object registry and on appropriate international websites whatever is known about the works provided safe haven. A secure database will be established as a section of the AAMD Object Registry to identify works given safe haven. In rare instances, security concerns may require a delay in the foregoing publication.

X. Scholarly Access

Museums providing a safe haven should make the works available to scholars as they would their own collections, subject to the wishes of the depositor or, if different, the owner.

XI. Exhibition

When appropriate, and with the permission of the depositor, works may be exhibited and all information known made available to the public preferably in conjunction with educational material about the importance of safe guarding a country's cultural heritage.

XII. Education Programs

Education programs that explain to the public the dangers cultural property faces from terrorism, armed conflict, looting and illicit traffic, and natural disasters should be stressed, as well as the danger of purchasing or otherwise acquiring unprovenanced works of cultural property from crisis areas.

XIII. Return of Works

The timing of the return of works will depend on the circumstances existing in the country from which the works were removed, but if possible should be effected as soon as practical after the situation giving rise to the need for a safe haven has passed. Return may be effected in any number of ways that will depend upon the circumstances, but may include as appropriate:

- To the depositor;
- To the then owner;
- To the government of the affected area; or
- To the United States government.

Museums must be cautious to comply with applicable law in returning objects, especially if there are or may be potential ownership disputes.

XIV. Legal Issues

Because the actions of member museums in providing a safe haven may have legal consequences, member museums should consult with legal counsel before accepting or returning a work.



**NEW REPORT ON ACQUISITION OF
ARCHAEOLOGICAL MATERIALS AND ANCIENT ART
ISSUED BY ASSOCIATION OF ART MUSEUM DIRECTORS**

June 4, 2008...As part of the Association of Art Museums Directors' commitment to establishing the highest professional standards for its members, it has published the "2008 Report of the AAMD Subcommittee on the Acquisition of Archaeological Materials and Ancient Art." The new Report:

- Recognizes the 1970 UNESCO Convention as providing the most pertinent threshold date for the application of more rigorous standards to the acquisition of archeological material and ancient art. Widely accepted internationally, the 1970 UNESCO Convention*¹ helps create a unified set of expectations for museums, sellers, and donors.
- States that AAMD members normally should not acquire a work unless research substantiates that the work was outside its country of probable modern discovery before 1970 or was legally exported from its probable country of modern discovery after 1970.
- Provides a specific framework for members to evaluate the circumstances under which a work that does not have a complete ownership history dating to 1970 may be considered for acquisition.
- Announces a new section of the AAMD website where museums will publish images and information on acquisitions of ancient works, in order to make such information readily and publicly accessible.
- Affirms the value of licit markets for the controlled sale of ancient art and archeological materials as an effective means of preventing looting.

"Art museums play a dynamic, central role in the artistic and cultural life of their communities and the nation," said Gail Andrews, President of AAMD and Director of the Birmingham Museum of Art. "Through public exhibitions and a broad spectrum of education, research, publication, and other programs, art museums provide a window into cultures over the span of

* This refers to the November 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property.

human history. Museums evolve their professional practices as the world changes and the new AAMD Report provides our members guidance when considering the acquisition of archaeological materials and ancient art.”

“AAMD’s new Report is guided by the fundamental principle that there is tremendous public benefit in art museums exhibiting, collecting, and preserving works of art,” said Michael Conforti, incoming President of AAMD and Director of the Sterling and Francine Clark Art Institute. “We also believe it is important to go beyond the letter of the law in considering the acquisition of antiquities and ancient art and that the acquisition of these works must be responsible and ethical as well as legal.”

“AAMD’s new Guidelines recognize and respond to complex legal and ethical issues that often surround acquisitions of archaeological material and ancient art, while concurrently adopting a proactive stance toward preservation of archaeological sites and resources,” said Dan Monroe, Chair of the AAMD Subcommittee that authored the new Report, and Director of the Peabody Essex Museum. “With the adoption of these Guidelines, we look forward to bypassing old debates that have divided the cultural community and entering into a new era of collaboration with archaeological and other organizations to devise new, effective ways to safeguard heritage resources worldwide.”

The new Report was developed by more than twenty art museum directors representing a wide variety of art museums nationwide and subsequently endorsed by the Board of AAMD and its membership.

The Association of Art Museum Directors is a membership organization representing 184 directors of major art museums in the United States, Canada, and Mexico. Its purpose is to aid its members in establishing and maintaining the highest standards for themselves and their institutions. AAMD serves as a forum for the exchange of information and the exploration of ideas, and a voice to express the joint concerns and issues facing the museum community.

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Report of the AAMD Task Force on the Acquisition of Archaeological Materials and Ancient Art (revised 2008)

AAMD Mission Statement

The purpose of the Association of Art Museum Directors is to support its members in increasing the contribution of art museums to society. The AAMD accomplishes this mission by establishing and maintaining the highest standards of professional practice; serving as a forum for the exchange of information and ideas to aid its members in their professional roles as art museum directors; acting as an advocate for art museums; and being a leader in shaping public discourse about the arts community and the role of art in society.

Preamble

The AAMD recognizes that the acquisition of archaeological materials and ancient art has in recent years become an increasingly complex task that requires the careful consideration of a number of different and, at times, seemingly contradictory goals. This report is intended to help its members understand the issues they will face when evaluating the purchase or acceptance of a gift of archaeological materials and ancient art and provides a framework for responsible decision-making in the development of their collections. Acknowledging that these subjects are interrelated, it also reaffirms the importance and the possibility of protecting archaeological sites as well as collecting archaeological materials and ancient art. This dual objective can only be accomplished through enhanced cooperation between source countries (i.e., countries of modern discovery of archaeological materials and ancient art) and museums that collect such works as well as the development of a mutual understanding and respect for the rights of these countries to protect their cultural property and those of museums whose work is to enhance – through collecting, research, and exhibition – knowledge and appreciation of the artistic achievements of the past.

I. Statement of Principles

- A. AAMD is committed to the responsible acquisition, whether by purchase, gift, bequest or exchange, of archaeological materials and ancient art. AAMD believes that the artistic achievements of all civilizations should be represented in art museums, which, uniquely, offer the public the opportunity to encounter works of art directly, in the context of their own and other cultures, and where these works may educate, inspire and be enjoyed by all. The interests of the public are served by art museums around the world working to preserve, study and interpret our shared cultural heritage.
- B. AAMD deplores the illicit and unscientific excavation of archaeological materials and ancient art from archaeological sites, the destruction or defacing of ancient monuments, and the theft of works of art from individuals, museums, or other repositories.
- C. AAMD is committed to the principle that acquisitions be made according to the highest standards of ethical and professional practice and in accordance with

applicable law and in such a way that they do not provide a direct and material incentive to looting.

- D. AAMD is committed to the exercise of due diligence in the acquisition process, in particular in the research of proposed acquisitions, transparency in the policy applicable to acquisitions generally, and full and prompt disclosure following acquisition.
- E. The November 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property (the "UNESCO Convention") began a new dialogue about the best ways to protect and preserve archaeological materials and ancient art, although regrettably the looting of sites, destruction of monuments and theft of objects continue to this day. The AAMD, along with others in the international community, including source countries, recognizes the date of the Convention, November 17, 1970 ("1970"), as providing the most pertinent threshold for the application of more rigorous standards to the acquisition of archaeological materials and ancient art as well as for the development of a unified set of expectations for museums, sellers and donors.
- F. Recognizing that a complete recent ownership history may not be obtainable for all archaeological material and every work of ancient art, the AAMD believes that its member museums should have the right to exercise their institutional responsibility to make informed and defensible judgments about the appropriateness of acquiring such an object if, in their opinion, doing so would satisfy the requirements set forth in the Guidelines below and meet the highest standards of due diligence and transparency as articulated in this Statement of Principles.
- G. AAMD reaffirms the value of licit markets for the legal sale and export of works of art as an effective means of deterring the illicit excavation and trafficking of archaeological materials and ancient art
- H. AAMD encourages the creation of licit markets and strongly urges all nations to provide a legal method for the sale and export of art, thereby furthering the goal of deterring the illicit excavation and trafficking of archaeological materials and ancient art.

II. Guidelines

Since its founding in 1916, AAMD has regularly published professional guidelines. Given the increasingly complex set of ethical questions and rapidly evolving legal issues that need to be considered in the acquisition process, AAMD has developed the following guidelines to assist members in revising their acquisition policies. These guidelines apply to acquisitions of archaeological materials and ancient art by purchase, gift, bequest, or exchange.

- A. Member museums should thoroughly research the ownership history of archaeological materials or works of ancient art (individually a "work") prior to their acquisition, including making a rigorous effort to obtain accurate written documentation with respect to their history, including import and export documents.

D. RED LISTS

- Revenue Streams and ISIL Cultural Property Crime • Looting • ISIL hires workmen to loot, licenses looting by others, and taxes looting (there has been a shift toward increased control/organization) • ISIL occasionally engages directly in looting, but most involvement has been indirect • ISIL robs cultural repositories and steals cultural property from its opponents • Trafficking • ISIL taxes smuggling through its territory/border crossings • ISIL caches material for later distribution and sale • Illicit Antiquities Sales • ISIL sells material and taxes the antiquities sales of others • Digital marketing is used to reach global buyers and circumvent vulnerabilities in traditional distribution and marketing . Red Lists may be particularly useful to establish lack of due diligence in the area of digital marketing.
- Red Lists of Antiquities at Risk are compact, illustrated booklets designed for customs officials, police officers, museums, art dealers, and collectors, to help them recognize the general types of archaeological, ethnographic, and ecclesiastical objects that have been looted from cultural sites, stolen from museums and churches, and illicitly trafficked.
- On June 1, 2015, at the Louvre Museum in Paris, France, the United States and the International Council of Museums launched the updated Emergency Red List of Iraqi Cultural Objects at Risk. The event took place just before the Counter-ISIL Coalition Small Group Ministerial, June 2. The list, sponsored by the Cultural Heritage Center, is intended to help identify Iraqi cultural heritage objects that are most at risk of looting, theft, and illicit trafficking.
- The Emergency Red List of Iraqi Cultural Objects at Risk is one of several Red Lists produced and distributed by ICOM with the support of the Cultural Heritage Center. Previously, on September 25, 2013, the Emergency Red List of Syrian Cultural Objects at Risk was released at the Metropolitan Museum of Art in New York.
- Others include Red Lists for Egypt (2011), Haiti (2010), Colombia (2010), China (2010), Central America and Mexico (2010), Cambodia (2009), Peru (2007), and Afghanistan (2007). They are available in English, French, the language(s) of the source country, and other languages.
 - See more at: <http://eca.state.gov/cultural-heritage-center/syria-cultural-heritage-initiative/red-list#sthash.TeJtEAnF.dpuf>

V. ADVOCACY, EDUCATION, AWARENESS AND COLLABORATION

A. Hoffman, Barbara. Art and Cultural Heritage: Law, Policy and practice, Cambridge University Press 2006, paperback 2010

- <http://www.hoffmanlawfirm.org/ArtandCulturalHeritage.pdf>
(see enclosed flyer)

B. Useful Websites

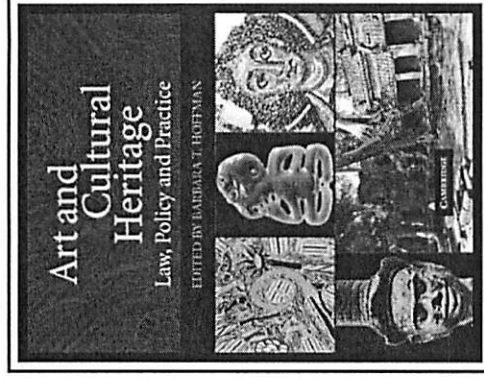
- Antiquities Coalition
<https://theantiquitiescoalition.org/>
- American Association of Museums (AAM) Code of Ethics for Museums
<http://www.aam-us.org/museumresources/ethics/coe.cfm>
- Bureau of Educational and Cultural Affairs
<http://eca.state.gov/cultural-heritage-center/conflict-antiquities>
- United Nations Educational, Scientific and Cultural Organization (UNESCO)
<http://en.unesco.org/>
- UNESCO International Code of Ethics for Dealers in Cultural Property
http://portal.unesco.org/culture/en/ev.php-URL_ID=13095&URL_DO=DO_TOPIC&URL_SECTION=201.html

Art and Cultural Heritage

Law, Policy and Practice

EDITED BY **BARBARA T. HOFFMAN**

Art and Cultural Heritage is appropriately, not solely, about the law-national and international-respecting cultural heritage. It is a bubbling cauldron of law mixed with ethics, philosophy, politics and working principles about how cultural heritage law, policy and practice should be sculpted from the past as the present becomes the future. The authors explore these demanding concerns, untangle basic values, and look critically at the conflicts and contradictions in existing art and cultural heritage law and policy in its diverse sectors. The rich and provocative contributions collectively provide a reasoned discussion of the issues from a multiplicity of views to permit the reader to understand the theoretical and philosophical underpinnings of the cultural heritage debate.



SPONSORED BY THE INTERNATIONAL BAR ASSOCIATION, THE INTERNATIONAL COUNCIL OF MUSEUMS AND THE INTERNATIONAL COUNCIL ON MONUMENTS AND SITES

"It is the IBA's aim to encourage exchange of information throughout the global legal community in accord with its role as the global voice of the legal profession. With this book, Barbara Hoffman has more than achieved this aim and I congratulate her and thank her for the many hours of work she has put into making it a reality"

To order, visit cambridge.org/us

Cover Jacket Photo Credits clockwise from upper left: Maggie Geese and Water Lilies at the Waterhole by Johnny Bulun Bulun; Māori hei-tiki or greenstone neck pendant. Museum of New Zealand Te Papa Tongarewa; One of the Kanakaria Mosaics which was successfully claimed by Cyprus in the case of *Autoccephalous Greek-Orthodox Church of Cyprus and The Republic of Cyprus v. Goldberg & Feldman Fine Arts, Inc.* Photo by Petros Petrides; Preah Khan, a temple within the Angkor Wat complex.; This head was found at the Metropolitan Museum of Art in New York, USA, in March 1994. The museum directors checked with ICOM and immediately made contact with the Cambodian authorities who made an official request for the return of the head. The Metropolitan Museum agreed to return the object in compliance with ICOM's Code of Ethics for Museums. Restitution took place in Phnom Penh on March 17th, 1997.

Contents

Part I. International Legal Tools and Viewpoints Part II. Keeping Culture Alive Part III. International Movement of Art and Cultural Property Part IV. Protecting the World's Heritage Part V. A Consideration of Cultural and Natural Heritage Guidelines Applicable to Infrastructure Projects, Mining Operations and their Financing Part VI. Who Owns the Titanic's Treasures? Protection of the Underwater Archeological/Cultural Heritage Part VII. Who Owns traditional Knowledge? Part VIII. Museums and Cultural Heritage Part IX. Caring and Sharing Part X. Resolving Cultural Heritage Disputes.

Contributors

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Praise For Art and Cultural Heritage: Law, Policy and Practice

“With topics as diverse as illicit traffic in cultural property, developing conservation strategies for national heritage areas, protecting underwater cultural heritage, and the role of museums and their stewardship of cultural property, *Art and Cultural Heritage: Law, Policy and Practice* will be of interest to practitioners working in many areas of law, as well as museum professionals and anyone involved in the management and protection of cultural resources; indeed it will be of great interest to anyone who cares about the world’s natural and cultural resources. Lawyers can and do play an important role, working alongside conservation and cultural heritage professionals, in safeguarding the treasures of the world, especially in today’s international society, where national borders are becoming increasingly ‘open’.”

- Francis Neate, *President, International Bar Association*

"Barbara Hoffman's excellent new book on legal and policy aspects of cultural heritage issues will be directly relevant to a broad range of companies that have an international presence and to governments and international organizations which are trying to think through their national policies on those issues. "Art and Cultural Heritage" is a very thoughtful examination of these complex and critically important topics."

- James Silkenat, *Past President American Bar Association*

“My tenure as President of the Italian *Interministerial Commission for the Recovery of Works of Art* started in 1995 attending the UNIDROIT Conference in Rome and ended in 2003 at the time of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.

In those crucial years, I could witness the development, in both legal and cultural terms, of a better awareness, both by Governments and the general public, of the importance for the whole of mankind of each work of art as part of our common cultural heritage.

The progress made and the state of the art of the connected complicated problems are brilliantly put into focus in the remarkable collection of essays assembled by Barbara Hoffmann in *Art and Cultural Heritage – Law, Policy and Practice*,

I feel encouraged reading the texts. A deep conviction of mine is gaining momentum: each work of art, minor as it could be, has a “personality” of its own and must always be treated with respect on its own merit.

Respect for a work of art means respect for its context, its history, its author. Its “personality” is more important than the rights of its owner.

Each human being, whenever located, is improved culturally, ethically and politically whenever he acquires a better understanding of the significance of an object passed over to us by previous generations.

It is our duty to increase such an understanding and pass it over to the next generations: we have art on loan, not as property.”

- Mario Bondioli Osio, *Ambasciatore Italia a r.*

As we move through the 21st century, it is clear that cultural and natural forms and traditions will change at an unprecedented pace. In this rapidly transforming world with increasing collapse of national borders, what should be the role of our global, national, and local heritage? How do we make a rational sense out of seemingly contradictory claims of national property vs. global heritage? *Art and Cultural Heritage: Law, Policy and Practice* is an invaluable book for all those who want to understand these complexities and envision a shared future of our past.

- Vishakha N. Desai, *President, Asia Society*

As co-Chairman of the “Human Rights Institute” and former President of the International Bar Association I am very glad to present this inspiring and interesting book... Let me take this opportunity to remind that human rights are central among the purposes of the United Nations, as proclaimed in its own Charter, which states that they are “for all without distinction”... They are further of an indivisible, interdependent and interrelated nature. This is to mean that political, cultural, social, economic and civil rights are to be construed as a system, in their entirety.

- Emilio J. Cárdenas, *Co-Chair, Human Rights Institute, International Bar Association*

The museum must prominently post on the AAMD website, to be established, an image and the information about the work as described in Section E above, and all facts relevant to the decision to acquire it, including its known provenance.

- H. If a member museum, as a result of its continuing research, gains information that establishes another party's right to ownership of a work, the museum should bring this information to the attention of the party, and if the case warrants, initiate the return of the work to that party, as has been done in the past. In the event that a third party brings to the attention of a member museum information supporting the party's claim to a work, the museum should respond promptly and responsibly and take whatever steps are necessary to address this claim, including, if warranted, returning the work, as has been done in the past.

III. Acceptance of the Task Force Report

Member museum directors and others responsible for museum governance are urged to accept and be guided by this Task Force Report and to develop acquisition policies and guidelines for provenance research consistent with the Report.

The AAMD will endeavor to keep its members informed of legal developments relevant to these issues. Member museums may, however, need to seek legal advice with regard to specific acquisitions. AAMD members should share pertinent information about legal developments with their boards and staffs.

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