

**Safeguarding Cultural Heritage: The Protection of Cultural Property From
Looting and Illicit Trafficking Under International and U.S. Law.**

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Introduction:

The looting and illicit trafficking of artifacts and historical goods continues to threaten the preservation of cultural heritage. Cultural property holds not only sentimental value for the communities from which they originate from but also for humanity as whole. As armed conflict continues to erupt in numerous parts of the world, coupled with political instability and an increased demand for black market antiquities, there has been a growing need to strengthen both international and domestic legal frameworks to counter these challenges.

This article highlights the historical role of international law in the protection of cultural property from illicit trafficking and its impact on the U.S domestic legal framework. This short in-depth analysis aims to identify the strengths, continued challenges, and ongoing efforts to ensure the preservation of cultural property for future generations. It also analyzes the effectiveness of those frameworks, treaties and enforcement mechanisms that have been put in place to combat the illegal trade in cultural goods.

Illicit trafficking of cultural property under international law.

As a response to increased looting and trafficking of cultural property, states came together to form the 1970 UNESCO Convention of the Means of Prohibiting & Preventing the Illicit Import, Export and Transfer of Ownership & Cultural Property.¹ The main aim of the UNESCO convention is to not only prevent transfer of cultural property in illicit trade but also allow states to recover the property that has been illegally traded in.² Most cultural property in the illicit trade market derives from

¹ *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, Nov. 14, 1970, <https://unesdoc.unesco.org/ark:/48223/pf0000133378> (last visited Mar. 6, 2025).

² Eric Posner, *The International Protection of Cultural Property: Some Skeptical the International Protection of Cultural Property: Some Skeptical Observations*, 8 U. Chi. L. Sch. 213, 228-29 (2007).

countries in Africa, the Middle East, and Latin America. The Convention encourages recipient states to enact legislations to prohibit the property that violates export restrictions of the origin state from entering the recipient state.³ Often the origin states don't have the adequate facilities and legislations in place to protect from illegal exports and therefore place the obligations on the wealthier recipient state to confiscate the goods.⁴ In the context of Syria and Iraq, the Convention plays an important role since both countries are signatories to the treaties.⁵

However, there are numerous flaws in the 1970 Convention. This is because the scope of the treaty only covers items stolen from museums or comparable establishments and fails to mention objects that are illegally excavated.⁶ Even if the Convention was interpreted to comprise of such objects, it would still be difficult to enforce since the effectiveness of the convention is heavily contingent on the obligation of all states.⁷ The United Nations Security Council, one of the six main UN organs responsible in maintaining international peace and security, passed several binding Resolutions that require states to prohibit illicit trade of Iraqi and Syrian artifacts.⁸ By bypassing the need for state consent requirements, which are necessary for treaty obligations, the Resolution strengthens the laws governing protection of cultural property.⁹

³ *Id.*

⁴ *Id.*

⁵ *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, Unesco, <https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural?hub=416#item-2> (last visited Mar. 10, 2025)

⁶ Louise Arimatsu & Mohbuba Choudhury, *Protecting Cultural Property in Non-International Armed Conflicts: Syria and Iraq*, 91 *Stockton Ctr. for Int'l L.* 641, 693-94 (2015).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

In 2017, the Security Council adopted the groundbreaking resolution 2347 which requested member states to adopt punitive measures to counter the illicit trafficking of cultural goods particularly from Syria and Iraq.¹⁰ As explained in my previous article, the resolution was drafted in a manner that reaffirmed the international community commitment in countering the financing of terrorism through the illegal trade of stolen cultural goods.¹¹ Additionally, in 2024 the General Assembly adopted a resolution that requested all member states to ensure that the laws pertaining to the protection of cultural property are upheld through their domestic legal framework.¹²

Despite the recent developments in the international legal framework, further reforms are needed to address some significant shortcomings in the law. For example, some state parties to the 1970 Convention have rarely delegated resources to combat the illicit trade of artifacts.¹³ Whilst some countries like the US have created agencies to enforce their treaty obligations, other state parties have not.¹⁴ The lack of enforcement mechanisms poses another major issue.¹⁵ UNESCO powers remain very limited and the committee established by the Convention doesn't always receive compliance reports from all state parties.¹⁶ Although the convention has been ratified by 147 states as of 2025, the committee only received 93 reports in 2023.¹⁷ The

¹⁰ S.C. Res. 2347, U.N. Doc. S/RES/2347 (Mar. 24, 2017).

¹¹ Yousef Fakhro, Reinterpreting International Law: Is the Destruction of Cultural Properties Considered the 'New' War Crime? 9-11 (Feb. 13, 2025) (unpublished manuscript) (on file with Wisconsin International Law Journal).

¹² *Gravely Concerned by Rise in Theft, Trafficking of Cultural Artefacts, General Assembly Adopts Resolution Calling for Creation of Suitable Legal Protection Frameworks*, United Nations: Meetings Coverage and Press Releases (Dec. 6, 2024), <https://press.un.org/en/2024/ga12664.doc.htm>

¹³ Posner, *supra* note 2, at 219

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *National Reports of the 1970 Convention*, Unesco, <https://www.unesco.org/en/fight-illicit-trafficking/national-reports> (last visited Mar. 6, 2025)

International Criminal Court (ICC) might also be reluctant to divert their limited resources in prosecuting looters and might prefer to focus on more serious crimes.¹⁸ Already facing sanctions from the United States over the ICC's investigation into possible war crimes committed by Israel, the court also received only \$195 million for its 2025 budget, far below the \$213 million it had requested.¹⁹ The treaty also fails to consider that some countries simply cannot afford to protect cultural property either in wartime or peacetime.²⁰ This was especially the case during the Covid-19 pandemic, when many countries reduced their expenditure on cultural heritage preservation as a cost-cutting measure to address the impact of the pandemic on the economy.²¹

Critics such as Professor Eric A. Posner of the University of Chicago Law School suggests a complete overhaul of the current legal system in response to the current international approach to illicit trade under the 1970 UNESCO convention.²² Posner called for a legal market of trade in artifacts as opposed to a blanket ban.²³ He suggested that origin states should decriminalize the trading of valuable antiquities in order to create a more regulated, legal trade market.²⁴ This way scholars would be able to track down the artifacts more easily for study and items could be legally and carefully extracted in broad daylight as opposed to the dark which many looters do in order to avoid being caught and therefore risking further damage to the artifacts.²⁵ Professional services would properly handle the artifacts rather than looters

¹⁸ Posner, *supra* note 2, at 219-20

¹⁹ Molly Quell, *ICC Faces Slimmed-Down Budget, Sanction Threats*, Courthouse News Service (Dec. 9, 2024), <https://www.courthousenews.com/icc-faces-slimmed-down-budget-sanction-threats/>

²⁰ Posner, *supra* note 2, at 220

²¹ UNESCO Institute for Statistics, *Shaping Investments to Safeguard Cultural and Natural Heritage Across the World: Results of the UIS Survey of Expenditure on Cultural and Natural Heritage (SDG Indicator 11.4.1)* 7 (2022)

²² Posner, *supra* note 2, at 229-30

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

smuggling the items out in a risky manner.²⁶ Posner further suggests that origin states could heavily tax the exporters given that many origin states are struggling financially and are looking for a source of revenue.²⁷

Another controversial argument is that origin states suffering from poverty and political instability don't have the resources or the ability to safeguard their own cultural property and therefore it is best to transfer them to more secure states.²⁸

Posner used the Iraq War as an example where he argued that had the artifacts been located to London or New York during the invasion, they would have not been destroyed.²⁹ However, this proposal might not sit well with the origin states themselves, who have recently begun to call on their former colonizers to return artifacts taken from them during the colonial period.³⁰ Several European countries have already responded to these requests, with the Netherlands recently agreeing to return 119 artifacts to Nigeria.³¹ Therefore, Posner's approach reiterates the notion that only Western countries are capable of protecting cultural heritage, even when it doesn't belong to them.

Following the shortcomings of the 1970 UNESCO Convention, the International Institute for the Unification of Private Law (UNIDROIT) was commissioned by UNESCO to draft a new "more efficient" treaty to address the weaknesses in the current law.³² In 1995, the UNIDROIT Convention³³ was created

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Molly Quell, *The Netherlands Agrees to Return More Than 100 Artifacts to Nigeria Looted During Colonial Times.*, AP News (Feb. 19, 2025), <https://apnews.com/article/netherlands-nigeria-benin-bronzes-art-restitution-9075dc135bc2a207f9b22e8762e620d1>

³¹ *Id.*

³² Alexandra Love Levine, *The Need for Uniform Legal Protection Against Cultural Property Theft: A Final Cry for the 1995 UNIDROIT Convention*, 36 Brook. J. Int'l L. 751, 767 (2011).

³³ UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, Rome, June 24, 1995, available at <https://www.unidroit.org/instruments/cultural-property/1995-convention/>.

with the main goal of facilitating “the return of cultural property to its rightful owners” and minimalizing the financial gains from illegal art trafficking.³⁴ Under the treaty, all member states are required to adopt a “uniform body of cultural property law”.³⁵ Parties could later resort to this legal text to determine whether any breach has occurred during such transactions.³⁶ Unlike the UNESCO convention, UNIDROIT differentiates between “stolen objects” and “cultural objects illegally removed.”³⁷ It also lists all objects that can be deemed as cultural property in the Annex to the Convention.³⁸ This prevents any narrow or general definitions of cultural property.³⁹ By allowing this broad definition of cultural property, states are unable to determine what qualifies as “items of cultural significance” within their national framework, which helps maintain consistency in the law.⁴⁰ Finally, the treaty under Chapter IV extends the right to private parties along with member states to reclaim properties that have been stolen or illegally exported.⁴¹

Despite the UNIDROIT Convention being praised as “glimmer of hope for increased regulation of a market that has become a virtual free-for-all”⁴², it has been adopted by only fifty-six states.⁴³ Many major market countries such as the United States are still not party to the Convention.⁴⁴ One major obstacle preventing countries from ratifying the treaty lies in Article 18 which prohibits reservations “except those expressly authorized” in the Convention.⁴⁵ Whilst this strict condition might deter

³⁴ Levine, *supra* note 30, at 767.

³⁵ *Id.*

³⁶ *Id.* at 769

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 770

⁴⁰ *Id.*

⁴¹ *Id.* at 772

⁴² *Id.* at 779

⁴³ *States Parties*, UNIDROIT, <https://www.unidroit.org/instruments/cultural-property/1995-convention/status/> (last visited Mar. 6, 2025).

⁴⁴ *Id.*

⁴⁵ Levine, *supra* note 30, at 772

some countries from joining the treaty, it is seen as essential in addressing one major flaw in the UNESCO Convention.⁴⁶ By requiring member states to adopt laws that are consistent with those of other countries that have ratified the Convention, they are contributing to the “creation of uniform law” aimed at safeguarding cultural property and reducing theft.⁴⁷ To appease these concerns, UNIDROIT included provisions that allow for judicial discretion, demonstrating that the treaty rules are not rigidly enforced and leave room for flexibility.⁴⁸ However, resistance to “a more uniform, international system of regulation” remains as countries are wary of adopting new laws that could impact their domestic legal framework.⁴⁹

US patrimony laws and its role in preserving international cultural heritage.

As a signatory party to the 1970 UNESCO convention, The United States passed the Convention on Cultural Property Implementation Act in 1983 (CPIA) to bring the convention provisions into the domestic legal framework of the US.⁵⁰ One major reason the US sought to implement the convention is because of its status as a major economy.⁵¹ Eventually illegally obtained cultural property will find its way into the US trade market which could be a source of tension between the US and origin states.⁵² The main aim of the Act is to prohibit imports of illegally obtained cultural artifacts from states that are parties to the 1970 convention.⁵³ Any violations will result in the seizure of the objects and return to the rightful owners in the origin

⁴⁶ *Id.* at 772-73

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 779-80

⁵⁰ 19 U.S.C. §§ 2601–2613.

⁵¹ Katherine D. Vitale, *The War on Antiquities: United States Law and Foreign Cultural Property*, 84 NOTRE DAME L. REV. 1835, 1843 (2009).

⁵² *Id.*

⁵³ *Id.* at 1845

state.⁵⁴ Section 303 of the Act allows the United States to enter into bilateral agreements with the source countries to impose their foreign cultural property laws.⁵⁵ In order to enter into those agreements, the President needs to make determinations according to the criteria established in the Act, including whether the foreign state had made attempts to protect their own cultural property and whether import controls are consistent with “general interest of the international community.”⁵⁶ It is important to note that only cultural property from states that have ratified, accepted or acceded to the 1970 UNESCO Convention are protected under this Act..⁵⁷

Whilst the CPIA provides countries with civil remedies, the National Stolen Property Act (NSPA) creates criminal sanctions.⁵⁸ Enacted long before the 1970 UNESCO convention in 1948, the act has been interpreted by US courts to also protect international cultural property that has been illegally imported onto US soil.⁵⁹ In order to assert jurisdiction, US courts are required to analyze the provisions of the foreign state patrimony laws that makes it clear that the state own the artifacts and therefore is considered stolen.⁶⁰ To violate the Act, the defendant must have knowledge that he is violating the foreign state patrimony law by dealing or selling the artifact.⁶¹ The mens rea of “knowledge” of the foreign state patrimony law is often seen as an obstacle by the prosecution and the source country pursuing the return of the artifact.⁶²

⁵⁴ *Id.* at 1846

⁵⁵ *Id.* at 1845

⁵⁶ *Id.* at 1846

⁵⁷ *Id.* at 1845

⁵⁸ 18 U.S.C. §§ 2314–2315

⁵⁹ Jessica Eve Morrow, *The National Stolen Property Act and the Return of Stolen Cultural Property to Its Rightful Foreign Owners*, 30 B.C. Int’l & Compar. L. Rev. 249, 254-55 (2007)

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

The case of *United States v. McClain* established the elements of conviction under the NSPA. In this case, prosecution had to prove that the defendants knew ancient artifacts were being obtained in violation of Mexican law and were indeed owned by the government.⁶³ During trial, evidence such as forged documents was presented to show that the mens rea element of knowledge was satisfied.⁶⁴ On appeal, the court upheld the conviction and made it clear that they would apply foreign patrimony laws if they were “clear and unambiguous”.⁶⁵ Whilst in this case the court acknowledged that some Mexican patrimony laws were indeed “vague”, the newer ones obviously vested the ownership of the artifacts to the Mexican government.⁶⁶

In another case, *United States v. Schultz*, a New York art dealer was convicted for selling smuggled Egyptian artifacts in the US in clear violation of Egyptian patrimony laws.⁶⁷ The courts affirmed the US commitment to enforcing foreign patrimony laws of any nation by finding that Schulz was guilty because the 1983 Egyptian patrimony law clearly stated Egypt owned all artifacts found post 1983.⁶⁸ Like *McClain*, forged documents were presented as evidence to prove “knowledge.”⁶⁹ Whilst this Act expands US power beyond the scope of UNESCO convention obligations, origin states seeking return of the artifacts will face a tremendous burden in proving the defendant was aware of the national patrimony laws.⁷⁰

Although patrimony laws are often welcomed, many critics argue that these two simultaneous legislations contain conflicting provisions.⁷¹ Firstly, CPIA only

⁶³ *Id.* at 257

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 258

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Vitale, *supra* note 49, at 1858

applies to states who are party to the 1970 Convention, whilst NSPA protects any foreign state cultural property as long as that state have enacted a valid patrimony law.⁷² Whilst CPIA contains provisions that require Executive evaluation of the source state patrimony law, no such procedure exists under NSPA.⁷³ Furthermore, the category of cultural property protected under CPIA is limited to objects obtained from a “museum or similar institution” and only after the US and that state have become parties to the 1970 UNESCO convention.⁷⁴ On the other hand, no such requirements are needed under NSPA, which recognizes foreign patrimony laws of the foreign state prior to 1970.⁷⁵ Whilst the CPIA limits protections to cultural property stolen from “museums or similar institutions” NSPA protects any cultural property regardless the source so long as the foreign state enacted a patrimony law declaring ownership of such artifact and it was imported to the US after the enactment as seen in *Schultz*.⁷⁶ Therefore, the NSPA is often seen more desirable than the CPIA due to its broader powers.⁷⁷

However, many critics believe these differences could undermine international efforts to protect cultural property. Firstly, museums may stop acquiring artifacts out of fear they will be held criminally liable under the NSPA further fueling the black market of illegally obtained cultural property.⁷⁸ As witnessed in *Schultz*, an individual’s expertise in his/her field and knowledge of foreign patrimony laws will be assessed to determine liability.⁷⁹ Secondly, states will have little incentive to join international treaties such as the 1970 UNESCO convention, effectively relying on

⁷² *Id.* at 1859

⁷³ *Id.* at 1860

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 1861

⁷⁷ *Id.*

⁷⁸ *Id.* at 1866-67

⁷⁹ *Id.* at 1868

the United States to protect their own cultural property without the need to go through the official channels established by the convention.⁸⁰ Lastly, much energy, time and resources will be diverted towards proving the existence of foreign patrimony laws and analyzing their effectiveness in addition to meeting the burden of proof needed to prove the mens rea of ‘knowledge’.⁸¹ Therefore, it could be best to apply CPIA especially in cases involving museums and other institutions since they are most likely not involved in dealing stolen goods.⁸² It is important to note that unlike NSPA, CPIA was enacted as result of a treaty, which places an international obligation on the United States to protect cultural property in conjunction with the international community.⁸³

Therefore, any attempts to undermine or ignore such obligations could hamper efforts to protect cultural property. Instead, efforts should be made to strengthen provisions of the CIPA. This includes amending CPIA to incorporate other provisions from the 1970 Convention as the current law implements only Article 7 and 9 of the Convention.⁸⁴ Whilst both these provisions are important, it could potentially create issues between states who might choose to implement other provisions of the Convention.⁸⁵ It is possible that countries non-UNESCO provisions might conflict with UNESCO-compliant provisions, thereby hampering international cooperation.⁸⁶ Another way to strengthen the CPIA is by offering protections to countries that have not ratified the Convention. .⁸⁷ Whilst treaty ratification should always be encouraged, countries that could benefit from CPIA protections should not be penalized because

⁸⁰ *Id.* at 1870

⁸¹ *Id.* at 1871

⁸² *Id.* at 1874

⁸³ *Id.* at 1874-75.

⁸⁴ Levine, *supra* note 30, at 765-66

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

they have not ratified the treaty.⁸⁸ Finally, there are concerns that the language used in CPIA could lead to unfair application of the law as state-museums are punished, whilst private institutions avoid any criticism.⁸⁹

These inconsistencies within the U.S. domestic legal framework have led to calls for the U.S. to join the UNIDROIT Convention which promotes a “uniform body of cultural property law.”⁹⁰ As discussed previously, the convention calls on member states to follow the uniform law laid out in the treaty.⁹¹ This requires that all provisions of the treaty be implemented by member states with no exceptions.⁹² By harmonizing the private laws of the states, the treaty aims to prevent conflict arising between the laws of different states.⁹³ Uniform law governing cultural property could help bridge differences arising between countries with different legal systems.⁹⁴ The Convention strikes a fair balance between both common and civil legal systems as well as market and source markets.⁹⁵

On the other hand, Chapter II of the Convention lays out specific guideline’s states should follow regarding stolen cultural property, restitution as well as compensation to “good faith buyers.”⁹⁶ Article 3(1) requires that a “possessor of a cultural object which has been stolen shall return it.”⁹⁷ However, the original owner is “subject to a three-year statute of limitations for bringing a claim for restitution.”⁹⁸ This provision helps guarantee “some security” for the possessor whilst providing an

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 767

⁹¹ *Id.*

⁹² *Id.* at 768

⁹³ *Id.*

⁹⁴ *Id.* at 777

⁹⁵ *Id.* at 777-78

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

opportunity for the original owners to reclaim their properties within a suitable period.⁹⁹ Article 4(1) also grants the possessor the right to claim, “fair and reasonable compensation provided that the [possessor] neither knew nor ought reasonably to have known that object was stolen.”¹⁰⁰ This particular provision is significant as the civil legal systems allow the “good faith purchaser” to keep the stolen item, whilst the common law system offers no protection to the “good faith purchaser.”¹⁰¹ Therefore, the compensation element included in the convention is seen as a fair compromise between the two different legal systems.¹⁰² Additionally, the vague language in Article 4 leaves room for judicial discretion in determining the extent of “due diligence” and what counts as “fair and reasonable compensation.”¹⁰³ With the U.S.’s robust legal mechanisms against the illicit trafficking of cultural property, it is accurate to state that the provisions of the UNIDROIT Convention, specifically Articles 3 and 4, are “consistent with existing international law and U.S. law.”¹⁰⁴ However, given that Congress took over twelve years to implement the provisions of the 1970 UNESCO convention into domestic law, it seems unlikely that the U.S. will ratify the UNIDROIT convention anytime soon.¹⁰⁵

Lastly, in the context of Syria, the United States had made great efforts to impose restrictions on Syrian artifacts especially during the outbreak of the civil war. Numerous reports suggest as much as \$11 million worth of Syrian artifacts have been

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Marilyn E. Phelan, *The Unidroit Convention on Stolen or Illegally Exported Cultural Objects Confirms a Separate Property Status for Cultural Treasures*, 5 Jeffrey S. Moorad Sports L.J. 31, 50 (1998).

smuggled into the United States since the civil war, up from \$2.2 million in 2009.¹⁰⁶ The Protect and Preserve International Cultural Property Act was passed and signed by President Obama in May 2016 in response to the rise of illegally smuggled Syrian artefacts.¹⁰⁷ Although the act prohibits any artifacts from coming into US territory, there are some exceptions.¹⁰⁸ Under the ‘safe harbor’ rule, the U.S. can waive restrictions if the foreign owner requested that objects be “temporarily located in the United States for protection purposes.”¹⁰⁹ The Act also includes a ‘sunsetting’ provision, whereby the President is required annually to determine if the Syrian government is not capable of entering into bilateral agreements with the U.S. under the CPIA (Syria is a party to the 1970 UNESCO convention) and that is not in the U.S. national interest to enter with such agreements with the Syrian government.¹¹⁰ Restrictions will expire after five years from when the President makes such determination.¹¹¹

This legislation bears resemblance to the Emergency Protection for Iraqi Cultural Antiquities Act passed by Congress in the wake of the Iraq war.¹¹² The Act gave the President authorization to impose import restrictions on “archeological or ethnological material of Iraq”, without a formal request from the Iraqi government.¹¹³ Whilst Congress could bypass the statutory mechanisms required to prevent the illegal smuggling of cultural goods, as seen with Iraq and Syria, there are calls to abandon

¹⁰⁶ Dan Duray, *Us Senate Blocks the Import of Art and Artefacts from Syria*, The Art Newspaper (Apr. 14, 2016), <https://www.theartnewspaper.com/2016/04/14/us-senate-blocks-the-import-of-art-and-artefacts-from-syria>

¹⁰⁷ Pub. L. No. 114-151, 130 Stat. 369 (2016).

¹⁰⁸ Kevin P. Ray, *House Passes Bill to Coordinate U.S. Cultural Property Protection*, National Law Review (June 26, 2015), <https://natlawreview.com/article/house-passes-bill-to-coordinate-us-cultural-property-protection>

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Pub. L. No. 108-429, 118 Stat. 2599.

¹¹³ *Id.* § 3002.

the bilateral agreement system entirely, which is required under the CPIA.¹¹⁴ The bureaucratic nature of negotiations could lead to a breakdown and, ultimately, a stalemate, as seen in the cases with Turkey and Egypt.¹¹⁵ Other countries suffering from instability or war might not prioritize patrimony laws, as they are mostly concerned with managing their domestic situation.¹¹⁶ Thus, leaving them vulnerable to perpetrators seeking to exploit the lack of legal protection.¹¹⁷ Instead, the U.S. could adopt the European approach by imposing a blanket ban on the import of stolen cultural properties.¹¹⁸ For example, Germany requires all cultural property imported from other countries to be accompanied by a valid export permit, whilst the United Kingdom criminalizes the importation and dealing of “tainted cultural objects.”¹¹⁹ The European Union also passed a regulation in April 2019 that prohibits “the introduction of cultural goods . . . which were removed from the territory of the country where they were created or discovered in breach of the laws and regulations of that country.”¹²⁰ This contradicts the U.S. approach, that requires a bilateral agreement with the source country before any action is taken.¹²¹ The number of these bilateral agreements remains low, as the U.S. is more concerned with addressing other serious matters, such as climate change, terrorism and nuclear nonproliferation, in its diplomatic engagements .¹²²

¹¹⁴ Nikita Lalwani, *State of the Art: How Cultural Property Became a National-Security Priority*, 130 Yale L.J. 78, 100 (2020)

¹¹⁵ *Id.* at 102

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 106-07

¹¹⁸ *Id.* at 101

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 100, 103

Conclusion; The US model?

It is accurate to state that the international and U.S. legal framework are still in dire need of reform. Whilst it is promising to see some countries take incentive to combat the illegal trade of cultural goods, the vague language of the UNESCO Convention and lax enforcement has made it difficult to ensure that cultural property is adequately protected. Although wealthier countries, such as the United States, have the resources to ensure such protection, many poorer countries, where most of the cultural properties usually originate, may not share the same priorities. This is especially the case for those suffering from war and political instability such as Syria. Nevertheless, countries such as the United States have demonstrated firsthand their desire to safeguard the cultural property of many foreign nations by establishing a series of legislations and mechanisms that many see as a trailblazer in the world of cultural property, and which can easily be replicated by other states.

Through the creation of a uniform body of international law governing cultural property as promoted by the UNIDROIT Convention, states can avoid any inconsistencies that might arise with the application of the law. Given the United States posture within the international community, the ratification of the treaty by the U.S. will give legitimacy to the UNIDROIT Convention and encourage other reluctant countries to reconsider their decision to ratify the treaty.