



## The Role of International Treaties in the Protection of Cultural Properties in Iraq

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### ABSTRACT

The present study aims to explore the three primary international treaties on the protection of cultural property: the 1954 Hague convention for the protection of cultural property in the event of armed conflict, the 1970 UNESCO convention on the means of prohibiting and preventing the illegal import, export and transfer of ownership of cultural property and the 1995 UNIDROIT convention on stolen or illicitly exported cultural property. After the U.S occupation in 2003, Iraq undergone difficult times and has been subjected to uncontrolled looting and illegal trade of antiquities, despite the existence of international conventions and Iraqi laws on this matter. This study concluded that while enforcement methods and legal frameworks exist, more work needs to be done to strengthen international law enforcement cooperation. In particular, there is a need to increase the exchange of information and experiences so that competent authorities can function more effectively.

### Introduction

Heritage is a representative of the creativity and genius of humanity. While World Heritage belongs to everyone, and people share the responsibility to protect it since each site embodies the history, values, beliefs and skills of the people. Whenever a cultural site is destroyed, it is a particularly devastating loss for those who hold the site as a reflection of their history, culture and identity. The deliberate destruction of cultural heritage, such as the one witnessed in Iraq, is more than that of buildings or sculptures. It is a cul-

tural cleansing – aiming to destroy the dignity of the people who view this heritage as a reflection of their true identity<sup>(1)</sup>.

The illicit and destructive excavation practices are posing a threat to the global archeological heritage. No nation is immune to this kind of criminality: cultural artifacts are smuggled into the worldwide black market and marketed as pieces of unknown provenance to museums, galleries, or individual collectors<sup>(2)</sup>. Iraq, sometimes referred to as the “Cradle of Civilization,” is home to numerous land-



marks that are significant to culture<sup>(3)</sup>. Throughout the ages, the area has also served as a hotbed of religious tensions as tribes have warred. Many of Iraq's historic landmarks are now in a hazardous position due to the ongoing collision of civilizations, while ongoing hostilities jeopardize the security and preservation of cultural property<sup>(4)</sup>.

Mesopotamia, or “the land between two rivers,” is the plain where modern-day Iraq is situated, and located between the Tigris and Euphrates rivers. Beginning with the first recorded towns, written language, organized warfare, codified religion, and organized warfare, Mesopotamia is credited with numerous inventions in the history of human civilization. Numerous significant global archeological sites, including Babylon Ashur, Hatra, Khorsabad, Nineveh Nimrud, Samarra, Ur, and Uruk, are located in Iraq. With over 10,000 known archeological sites spread across Iraq, these well-known locations are but a few among the still undiscovered archeological sites. Strict national antiquities legislation from the aftermath of World War I to the Gulf War in 1991 provided comparatively good protection for Iraq's cultural property. Still, looters swarmed the Iraq National Museum's antiquities following the 2003 U.S.-led invasion of the country. The Coalition Provisional Authority estimated that over ten thousand pieces were either taken or destroyed<sup>(5)</sup>. The severity of the deprivation prompted the Security Council to insert provisions in Resolution 1483 prohibiting nations from engaging in the



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trade of Iraq's looted antiquities, and the Emergency Protection of Iraqi Cultural Antiquities Act of 2004 was approved by the US Congress to put the restrictions into effect<sup>(6)</sup>.

### The illicit trafficking of Cultural Property — Definitions & Overview

Cultural property refers to movable or immovable property, regardless of origin or ownership, which is “of great importance to the cultural heritage of every people.”<sup>(7)</sup> It can be physical objects such as monuments, paintings, manuscripts, sculptures, books, works of art, or scientific collections. It can also be paleontological objects such as “rare collections and specimens of fauna, flora, minerals and anatomy.”<sup>(8)</sup> It can be places such as a building or a group of buildings, buildings and places of worship, libraries, archives, or archaeological sites<sup>(9)</sup>. This property holds important historical and cultural information that can be used to understand the past and present. It also contributes to the diversity and richness of cultural heritage around the world.

On the other hand, the “illicit trafficking” of cultural property is an umbrella term that encompasses the theft, looting, and illicit trade of cultural property. The “theft” of cultural property is the unauthorized removal of cultural goods from their owners. It can also be the deprivation of the national cultural heritage of a *specific* nation or the deprivation of common human culture, disregarding the origin of such property. “Looting” of cultural property is the illegal excavation and



“removal of ancient relics from archaeological sites, old buildings, museums, and graves”<sup>(10)</sup>.

Lastly, the “illicit trade” of cultural property is the illegal importing and exporting of such objects regardless of whether they were “stolen from a museum, illegally excavated, or smuggled across the border”<sup>(11)</sup>. It also includes the illicit transfer of ownership of cultural property, including the displacement of artifacts during war time. The illicit trade of cultural property is also closely related to the theft of and looting of cultural property. As such, the illicit trade of cultural property is an almost inevitable result of theft or looting of cultural property<sup>(12)</sup>.

### **The illicit trafficking of cultural property in Iraq**

Illegal cultural property trade is nothing new. Large amounts of cultural heritage, the majority of which comes from developing nations in South America, Africa, the Middle East, and Asia, are still in high demand in the developed world’s art and antiquities markets. Even if laws pertaining to the ownership of all cultural assets are present in many of these source states, or at the very least, forbid export without a license, these states find it exceedingly difficult to enforce the laws. Illegal excavations and trafficking are encouraged by a number of factors, including corruption, bad management, underfunded cultural organizations and law enforcement, and—most importantly—the scarcity of other profitable assets available to the impoverished<sup>(13)</sup>.

Iraqi cultural heritage has been trafficked illegally since the 1990 Gulf War ended. Prior to the First World War, Iraq had among of the world’s toughest and most successful protection laws, and very few people of Iraqi descent left the nation, either legitimately or illegally. Nevertheless, the museums in Kirkuk, Mosul, and Basra were plundered following US victory in 1991. Cultural heritage was seen as the only hard cash left after the implementation of sanctions and the ensuing collapse of the economy, and illicit excavations of ancient sites quickly started. The 2003 invasion dramatically accelerated the loss of Iraq’s cultural heritage<sup>(14)</sup>. After the 1991 museum theft, it was unexpected that the Coalition forces in Baghdad did not offer any protection to the city’s institutions of cultural heritage. Because of this, there was significant looting at both the Mosul Museum and Library and the National Museum and Library in Baghdad. Iraqi archeological monuments have been the focus of widespread devastation and illicit excavation since this first disaster. New York and Rome’s art markets are now home to the first stolen antiques from the National Museum<sup>(15)</sup>.

The United Nations Security Council adopted Resolution 1483 in May 2003 as a first response to the looting. This resolution replaced the sanctions imposed on Iraq during the Gulf War in 1990. According to the resolution, member states must:

“take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi

cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since the adoption of resolution 661 (1990) of 6 August 1990, including by establishing a prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed, 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.”<sup>(16)</sup>.

The coalition states’ reactions to this resolution have been varied, mostly because of their individual policies toward the implementation of the 1970 Convention and foreign cultural heritage<sup>(17)</sup>.

### **International Efforts in the Protection of Cultural Property during and after War**

The 1970 UNESCO convention on the means of prohibiting and preventing the illegal import, export, and transfer of ownership of cultural property, the 1995 UNIDROIT convention on stolen or illegally exported cultural property, and the 1954 Hague convention for the protection of cultural property in the event of armed conflict are three international conventions that address the protection of cultural property. The purpose of UNESCO’s declaration concerning the intentional destruction of cultural properties is to provide additional protection for



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cultural properties following wartime, in response to the terrorist attacks during the time of peace and the Arab Springs. The definition of cultural property in Article 1 of the Hague Convention includes both movable and immovable items of significant value to the cultural heritage, as well as collections of historical or artistically significant buildings, artwork, manuscripts, books, and other items of artistic, historical, or archaeological significance, as well as scientific collections and archives. It also includes “centers containing monuments,” or structures whose primary and practical function is to display or preserve transportable cultural property<sup>(18)</sup>. The following sections explore the objectives and concerns pertaining to the safeguarding of cultural heritage under these conventions

### **The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954**

It was necessary to establish a convention to save the material remnants of both ancient and modern cultures because of the widespread devastation and looting that occurred during World War II. In order to safeguard cultural properties in nations devastated by conflict, UNESCO enacted the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict in 1954. The Hague Convention was specifically designed to stop the kinds of cultural material theft and damage that are now frequent in modern warfare. Its foundation was the idea that cultural property is valu-



able to all of humanity and should be valued and safeguarded as such. The Hague Convention was exceptional because it established a minimum standard of regard for cultural property on state territory as well as on the territory of other parties. It was also the first international agreement to define the phrase “cultural property.” The primary obligation placed on the parties is to forbid and stop any kind of theft, vandalism, embezzlement, or robbery of cultural property<sup>(19)</sup>. The duty of military troops to protect cultural property belonging to other regions is the central tenet of the Hague Convention. Whether the occupied nation has ratified the convention or not, an occupying force is nonetheless required to protect cultural property and stop illicit trafficking. Furthermore, an occupying nation is nonetheless obligated to take all necessary steps to protect its cultural property, even if it has not taken the appropriate precautions to do so as mandated by Article 3<sup>(20)</sup>.

This pledge highlights not only the relationship between a state and its property but also the global responsibility for cultural property. While the Convention successfully raises awareness and fosters respect for cultural property during wartime, it falls short in addressing the illicit trafficking of these things in times of peace and offers no mechanisms for their recovery. The absence of effective enforcement mechanisms is another issue. This is demonstrated by the fact that while State Parties are free to enact their own rules and penalties, they will be required to prosecute and punish violators. As a re-

sult, there are disparities in the domestic legal frameworks and legal systems that punish cultural property damage and trafficking. Conventions that followed have made an effort to address these shortcomings<sup>(21)</sup>. Despite having 114 state parties as of right now, the United States and the United Kingdom have not ratified the Hague Convention.

In an effort to address perceived shortcomings in its response to savage crimes against cultural property during armed situations, UNESCO began reviewing the Hague Convention. The Second Protocol to the Hague Convention was enacted as a result of this assessment, which started in 1991. By eliminating the geographical restrictions of the 1954 Hague Convention and allowing the protection of cultural property situated close to industrial centers, the Second Protocol establishes a new type of “enhanced protection” for cultural property. Additionally, it creates a common fund to give State Parties financial support for the defense of cultural property in both peacetime and armed conflict. Because many impoverished governments lack the financial resources to conserve their cultural property, this provision has the potential to significantly reduce the loss of cultural material. The fund established by the Second Protocol can be used by these states. The Second Protocol lays out what constitutes dangerous violations, outlines the circumstances in which criminal liability for an individual will apply, and requires State Parties to take the required steps to make these violations illegal under their

national legal systems. Still, it does not establish any unified legislation against the illicit trafficking of cultural property; rather, it leaves it up to the States to enact their own<sup>(22)</sup>. As a result, it is still ineffectual in preventing and ending the illicit trafficking of cultural property. Despite twenty ratifications, the Second Protocol has likewise faced difficulties, and the US has chosen not to sign it.

### **The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illegal Import, Export and Transfer of Ownership of Cultural Property**

In reaction to the surge in thefts of antiquities, UNESCO established the Convention on the Means of Prohibiting and Preventing the Illegal Import, Export, and Transfer of Ownership of Cultural Property in 1970. It offers a framework for states to work together to lessen the motivation for cultural and archaeological material theft. It is the primary international convention for the protection of cultural property and was created to lessen the trafficking of national assets on a global scale. Its goals are to preserve ethnographic material that is still within its social context and to safeguard the knowledge that may be gained from archaeological material that is scientifically unearthed. A deeper awareness of our shared history is the main outcome of the international cooperation inside the Convention. Since it also requires parties to list the objects they regard to be cultural property, it is comparable to the Hague Convention in that it acknowledges the



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value of cultural property and heritage. The UNESCO Convention gives the parties the freedom to choose what property qualifies as cultural property, provided that the Hague Convention appropriately identifies the types of cultural property that may be granted increased protection. However, the UNESCO Convention deals nearly exclusively with private behavior, generally during peacetime, in contrast to The Hague Convention, which focuses primarily on armed conflict<sup>(23)</sup>.

There are situations when The Hague and UNESCO Conventions overlap, especially when states are required to return stolen antiquities to their place of origin following an armed conflict. Significant steps are taken by the UNESCO Convention to stop the illicit trade in cultural property. The importation of cultural property that has been stolen or illegally exported from another country is expressly forbidden by the Convention. Free market nations feel that the Convention does not provide enough protection for honest purchasers, which makes them hesitant to ratify it<sup>(24)</sup>.

The convention stipulates that during armed situations, antiquities must be protected and returned. While the Hague Convention stipulates that antiquities must be returned or protected during armed situations, the UNESCO Convention puts particular obligations for the export and import of cultural property. Exporting countries are required by the Convention to provide authorized certificates attesting to the fact that the exported



goods were duly approved. The UNESCO Convention's Article 7(a) mandates that State Parties make sure museums on their soil do not purchase cultural property that has been illegally exported from another State Party, while Article 7(b) prohibits the importation of artifacts that have been stolen from public monuments, museums, and other institutions in another State Party. Article 9 deals specifically with archaeological materials and provides for increased collaboration between State Parties in the event that a State Party's archaeological materials are at risk of being looted. The property might not be covered by the Convention's protections if a deal cannot be reached. The UNESCO Convention is a noteworthy attempt to prevent the illicit trafficking of cultural property, but because state parties are free to implement their own substantive laws pertaining to cultural property, its overall efficacy is limited. The UNESCO Convention is useless in addressing the issue of unlawful trafficking because of its inconsistent structure<sup>(25)</sup>.

### **The 1995 Unidroit Convention on Stolen or Illicitly Exported Culture Property**

The UNIDROIT convention on stolen or illegally exported cultural property of 1995 is the third major international agreement in this area. Its goal is to create uniform legal guidelines for the return and restitution of cultural property amongst State Parties to the Convention. The UNIDROIT Convention's core principle is that the person in possession of a

stolen property is required to give it back to its rightful owner<sup>(26)</sup>. Rather than relying on developing countries to monitor their borders, the UNIDROIT Convention aims to address the shortcomings of the UNESCO Convention by concentrating on receivers in wealthier governments. In order to do this, the UNIDROIT Convention established a single, harmonized provenance rule that mandates the return of any artifact that is considered to be a piece of cultural property, even in cases where theft cannot be demonstrated<sup>(27)</sup>. As previously said, only State Parties may request the return of stolen or illegally exported property; nevertheless, private individuals may initiate the restitution process under the UNIDROIT Convention. The trafficking of ancient relics is another area where the UNIDROIT Convention supersedes the UNESCO Convention.

Cultural property that has been unlawfully removed or lawfully removed but illegally retained is covered by the UNIDROIT Convention. It does not require museum certification from the nation of origin, in contrast to the UNESCO Convention. Moreover, good title is not granted to a legitimate purchaser of stolen goods, according to the agreement. Rather, the buyer must return it in accordance with the Convention, and upon doing so, he is entitled to "payment of fair and reasonable restitution"<sup>(28)</sup>. Given that, he exercised due diligence when purchasing the item and had no information that it was stolen. Thus, purchasing cultural property requires good faith. Good faith is supposed to gradually discourage

the illicit trafficking of cultural property because, in the case that the owner is compelled to surrender it, he will not get payment. Therefore, because it creates a uniform set of legal guidelines and expands its application to privately owned goods, the UNIDROIT Convention may be the most effective way to stop unlawful trafficking<sup>(29)</sup>.

### **The applicability of International treaties into the situation in Iraq**

The American military faced harsh criticism for their role in allowing the looting of the Iraqi National Museum to occur. The 1907 Hague Convention, to which the United States is a signatory, stipulates that military operations shall prevent harm to cultural or historic property. This convention absolves the United States of liability because it did not directly cause any damage to any of the Museums. Sadly, neither the United States nor the United Kingdom was signatories to the 1954 Hague Convention at that time. Nonetheless, the Hague Convention of 1954 has been incorporated into international customary law. One observer contends that Article 4(3) of the 1954 Hague Convention has become customary because, as stated in Article 43 of the 1907 Hague Regulations, it essentially elaborates the general obligation under international law for an occupying force to uphold law and order in the territory it occupies<sup>(30)</sup>.

Regardless of whether the 1954 Hague Convention has gained customary status, the United States would not be in breach of international law. According to Colo-



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nel Bogdanos' report, American soldiers "became engaged in intense combat with Iraqi forces fighting from the museum grounds and from a nearby Special Republican Guard compound," which prevented them from securing the museum. The fact that American forces were being fired upon from the vicinity of the Museum validates their purported delay in stopping the looting<sup>(31)</sup>.

Although the United States has subsequently ratified the 1954 Convention, it was not a signatory at the time of the Iraq War of 2003 and as such, it was not subject to its provisions. The 1954 Hague Convention was adopted by the US Senate in 2009, marking fifty-five years after the formation of this significant treaty. This action allowed the US to join the international community in preventing the destruction of cultural heritage during times of armed conflict. The United States Military did not set itself apart as an advocate for cultural property protection until 2009. Despite the widely accepted heroic Hollywood portrayal of the "Monuments Men" during World War II, it actually had a questionable track record. The most illustrious Army commander in U.S. history, President Eisenhower, blocked the 1954 Hague Convention's ratification. The U.S. military's doctrine of combat did not align with the convention. An Army major from the Vietnam War once said, "It became necessary to destroy the town to save it," which perfectly captures the essence of the American military's urban battle doctrine, according to John Spencer, co-director of the Urban War-





fare Project at the Modern War Institute, U.S. Military Academy<sup>(32)</sup>.

The use of the Malwiyah tower, also known as the spiral minaret of Samarra, which was constructed in the ninth century by the Caliph al-Mutawakil, by the American military in Iraq is arguably the most heinous deed committed by the United States in the past 20 years. The 52 m (162 ft) tower was destroyed in 2005 because American soldiers were using it as a lookout post. The Malwiyah Tower was destroyed by insurgents, but American forces were blamed for inciting them by utilizing the landmark for combat. This example indicates that, even with the potential military ramifications, it makes sense to prioritize protecting such sites in risk preparation plans. The transformation of the ancient Babylon site into “Camp Alpha” by the US military caused significant damage to archeological places across the World Heritage Site, although not being as violent an act of combat<sup>(33)</sup>.

The most useful tool for recovering the stolen Iraqi antiquities, other from the Hague Convention, would be the UNESCO Convention, which provides for the return of stolen cultural property both during and after armed conflict. The UNESCO Convention is frequently used by states and organizations as a way to get Iraq’s cultural heritage back. Restitution of cultural property is not thought to be a component of customary international law, which is why more nations need to ratify the UNESCO Convention. Due to

their reluctance to restore various items they have taken from states they have conquered or occupied, Western states have been hesitant to include such compensation in customary law. Thus, unless a country is a State Party to the UNESCO Convention, it cannot be required that it take part in the restoration process. Iraq, the United States, and the United Kingdom are all signatories to the UNESCO Convention. Following early reluctance, the United States and the United Kingdom became State Parties to the UNESCO Convention in 1983 and 2002, respectively, with the enactment of the Convention on Cultural Property Implementation Act (CPIA)<sup>(34)</sup>.

Due to the late ratification, British art dealers were not required to see a legitimate exportation certificate, making the UK an extremely alluring location for smugglers to sell stolen art goods. Nevertheless, Iraq ratified the UNESCO Convention in 1973, becoming a State Party relatively early on. Regrettably, the UNESCO Convention is unable to adequately address the current Iraqi problem, regardless of membership. The Convention itself has restrictions that make it difficult to apply in this situation<sup>(35)</sup>. The biggest issue is figuring how to identify the unmarked artifacts that were taken from other archaeological sites. According to UNESCO Convention Article 7(b), State Parties are required to forbid the importation of cultural property that has been stolen from museums in other State Parties, as long as the stolen object is officially recognized as belonging to that par-

ticular institution. As a result, recovering the thousands of unrecorded objects that were taken from the Museum's storage rooms and the cultural property that was taken from the archeological sites will be extremely difficult.

### Conclusion

This study assessed international efforts to safeguard Iraq's cultural property in accordance with international treaties and conventions that safeguard antiquities. The study concludes that while enforcement methods and legal frameworks exist, they are not enough to adequately safeguard cultural property and prevent its unlawful trafficking. Even though the 1954 Hague Convention was established about 70 years ago, there is still a significant amount of legislation that protects intellectual property today. However, the legal framework is still limited. The preservation of cultural property is an attempt beset with serious limitations because agreements are only enforceable with the approval and backing of individual member states. The current state of affairs will persist until a more efficacious authority is found to implement and enforce legal frameworks and specialized enforcement mechanisms that do not rely on state participation voluntarily. In other words, current legal frameworks and enforcement mechanisms are essentially symbolic of the actual authorities, which are individual states. In order to protect the cultural property, and to combat the trafficking of cultural property, more work needs to be done to strengthen interna-



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tional law enforcement cooperation. In particular, there is a need to increase the exchange of information and experiences so that competent authorities can function more effectively. In addition, state parties to international conventions must support education, initiate media campaigns, and disseminate information on cultural property theft and looting. This information should include mapping and inventorying cultural property, putting in place sufficient security measures, and building the capacity and manpower of monitoring organizations like the police, customs services, and the tourism industry.

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