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ABSTRACT

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Iraq is home to many of the large archaeological sites of the world like Babylon Ashur, Nineveh, Nimrud, and Samarra. Due to the great quantity and quality of Iraq's cultural resources, it is known as one of the great source countries for international antiquities market and is inherently at risk of looting and pillage of its vast cultural property resources. There are three international agreements on the protection of cultural property whereby Iraq is a party; 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. However, after the U.S occupation in 2003, Iraq has become very unstable and has given way to uncontrolled looting and illegal trade of antiquities, despite the existence of international conventions and Iraqi laws on this matter. This study aims to analyse the legal protection for antiquities, in accordance with international and domestic laws and to recommend legal improvement on this matter. Towards these ends, this study employs the traditional legal method through document analysis. The study concluded that the conventions to safeguard cultural property are inadequate to deal with the situation in Iraq due to lack of commitment from the United States and the United Kingdom to be part of these conventions and make serious efforts to safeguard cultural property in Iraq.

1. INTRODUCTION

Heritage is our legacy from the past, what we live with today and what we pass on to future generations. The cultural and natural heritage represents an irreplaceable source of life and inspiration. The world archaeological heritage is under threat, due to illegal and destructive excavations. Cultural objects are smuggled into the global black market, where they are sold to museums, galleries or private collectors as objects of unknown provenance and there is no country that is immune to this type of criminality (Cunning, 2003). Iraq which has been called the "Cradle of Civilization," is home to countless sites of cultural importance (Adams, 2001). The region has also been a focal point for religious-based conflicts over the centuries, as tribes clashed, Crusaders marched to the Holy Land, and the Jewish people sought refuge. This ongoing clash between cultures has culminated in a precarious position for many historic sites in Iraq, as current conflicts threaten the safety and protection of cultural property.

The present day Iraq is located in a plain nestled between the Tigris and Euphrates rivers known as Mesopotamia: the land between two rivers. Mesopotamia marks a beginning in the history of human civilization and claims many firsts like the first cities, codified religion, organized warfare, temples and writing. The country of Iraq is home to many of the large archaeological sites of the world like Babylon Ashur, Hatra, Khorsabad, Nineveh,

Nimrud, Samarra, Ur and Uruk. These famous sites are only a few among the more than 10,000 recorded archaeological sites throughout Iraq. Iraq's cultural property remained relatively well protected under strict national antiquities laws from post-World War I until the Persian Gulf War in 1991. Nevertheless, after the U.S.-led attack on Iraq in 2003, looters descended on the artifacts in the Iraq National Museum. Over ten thousand pieces were assumed destroyed or stolen, and the Coalition Provisional Authority estimated the losses at 12 billion (Dobbins *et al.*, 2009). The gravity of the privation led the Security Council to include language in Resolution 1483 to restrict countries from trading in Iraq's pillaged antiquities, and the U.S. Congress passed the Emergency Protection of Iraqi Cultural Antiquities Act of 2004 to enforce the measures. Several thousand pieces were recovered, but thousands remain missing, and the situation became worst after the Islamic State or ISIS attack (Brusasco, 2016).

2. METHODOLOGY

This paper explores the protection offered to these historic sites by international law and will recommend new rules of engagement to protect these sites for future generations. This research is mainly conducted through traditional legal research method which employs specific approaches in legal research to ascertain and analyze the essence of protection of antiquities and whether existing laws support its implementation. The main method of enquiry employed the doctrinal approach. It involves an in-depth content analysis of the primary and secondary sources relevant to the protection of antiquities in the event of war. The doctrinal method will be employed to explain, examine and analyze in a systematic form the concept of protection of antiquities under the international conventions.

3. INTERNATIONAL EFFORTS IN THE PROTECTION OF CULTURAL HERITAGE DURING AND AFTER WAR

There are three international conventions on the protection of cultural property, such as 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. Pursuant to the Arab Springs and terrorist attack during the time of peace, UNESCO published the Declaration Concerning the Intentional Destruction of Cultural Heritage which aim to give extra protection to cultural heritage after the war. Article 1 of the Hague Convention defines cultural property as either a movable or immovable property of great importance to the cultural heritage, groups of buildings which are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical, or archaeological interest; scientific collections and archives. It also includes buildings whose main and effective purpose is to preserve or exhibit the movable cultural property or "centers containing monuments." The discussion below elaborates on the aims and issues surrounding the protection of cultural heritage under these conventions

4. THE HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT 1954

The large scale destruction and plundering during World War II prompted a need for a protective convention for the tangible remains of both modern and ancient cultures. The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was implemented by UNESCO in 1954 to protect cultural heritage in war-torn states. The express purpose of the Hague Convention was to prevent the kinds of destruction and stealing of cultural material that have become common in modern warfare. It was based on the premise that cultural property is important to all human kind and is therefore meriting of appreciation and protection. The Hague Convention was unique in that it was the first international document to define the term "cultural property" and imposes upon states

a minimum standard of esteem for cultural property both in their territory and the territory of others. The main commitment imposed on parties is to prohibit and prevent any form of robbery, plunder, vandalism, or embezzlement of cultural property (Brodie and Renfrew, 2005). The most important part of the Hague Convention concerns the responsibility of armed forces to safeguard the cultural property of other regions. An occupying power's duty to safeguard cultural property and prevent illegal trade applies whether or not the occupied country has signed the convention. Moreover, even if an occupied country has failed to safeguard its own cultural property as required under Article 3, the occupier must still take all necessary measures to protect that property.

This commitment emphasizes the international responsibility for cultural property, not just the relation between a certain state and its property. Although the Convention effectively enhances consciousness and respect for cultural property during military conflicts, it does not adequately address the illegal trafficking of such items during peacetime nor does it provide any remedies for their return. Another problem is the lack of any true enforcement measures. This is illustrated by the fact that State Parties will be called on to prosecute and impose penal punishments for violators, are left to create their own laws and sanctions. This leads to an inconsistency of domestic laws and systems that prosecute the trafficking and damaging of cultural property. Subsequent conventions have attempted to solve these insufficiencies (Broke, 2003). Although the Hague Convention currently has 114 state parties, the United States and the United Kingdom have not ratified the convention.

UNESCO started to review the Hague Convention to improve its perceived deficiencies in response to barbaric acts against cultural property during armed conflicts. This review which began in 1991 was resulted in the promulgation of the Second Protocol to the Hague Convention. The Second Protocol creates a new form of “enhanced protection” for cultural property by removing the geographical limitations of the 1954 Hague Convention and permitting the protection of cultural property located near industrial centers. It also establishes a common fund to provide financial assistance to State Parties for the protection of cultural property during both times of peace and armed conflicts. This provision has tremendous potential to combat the destruction of cultural heritage because many poor states that lack the fiscal resources to safeguard their cultural property can draw upon the fund established by the Second Protocol. The Second Protocol specifies what constitutes dangerous violations, defines the conditions under which individual criminal responsibility shall apply and imposes on State Parties the commitment to adopt necessary measures to establish these violations as criminal offenses under domestic law. However, it still fails to make any uniform laws regarding the illegal trafficking of cultural property, instead requiring States to create their own such laws (Lehman, 1997). Thus it remains ineffective as a means to prevent and stop illegal trafficking of cultural property. The Second Protocol has also struggled with twenty ratifications, and the United States has not sign it.

5. THE 1970 UNESCO CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLEGAL IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

UNESCO instituted the Convention on the Means of Prohibiting and Preventing the Illegal Import, Export, and Transfer of Ownership of Cultural Property in 1970 in response to the rush of antiquities thefts. It provides a framework for states to cooperate to reduce the incentive for plunder of archaeological and cultural material. It was designed to reduce international trafficking of national treasures and is the main international convention for the protection of cultural property. It aims to protect the knowledge that can be derived from archaeological material that is scientifically excavated and to preserve ethnographic material that remains in its societal context. The overall benefit of the international cooperation within the Convention is a greater understanding of our common heritage. Thus it is similar to the Hague Convention in recognizing the significance of cultural property and heritage as it also require that parties list the items which they believe fall under the definition of cultural property. If the Hague Convention accurately defines the forms of cultural property that may receive enhanced protection, the

UNESCO Convention leaves it within the discretion of the parties to determine what property falls within the definition of cultural property. Unlike The Hague Convention, however, which focuses primarily on armed conflict, the UNESCO Convention deals almost entirely with private conduct, mostly during peacetime.

The Hague and UNESCO Conventions overlap at times, particularly at the conclusion of an armed conflict by obligation the states to retain the stolen antiquities to the source country. The UNESCO Convention takes important measures to prevent the illegal trafficking of cultural property. The Convention explicitly prohibits the importation of cultural property illicitly exported or stolen from a foreign state. Free market countries are somewhat reluctant to join the Convention because they believe that it lacks adequate protection for good faith buyers. The UNESCO Convention has specific commitments with regards to exporting and importing cultural property, while the Hague Convention states on protect and return the antiquities during armed conflicts.

The Convention imposes upon exporting nations the commitment to issue authorized certificates to show that the exported property was fully sanctioned. Article 7(a) of the UNESCO Convention requires State Parties to ensure that museums within their territory do not acquire cultural property illicitly exported from another State Party; while Article 7(b) forbids the importation of cultural property stolen from museums and other public monuments and institutions in another State Party. Archaeological materials are dealt with separately in Article 9 and it envisages enhanced cooperation between State Parties should a State Party's archaeological materials be in danger of being plundered. If an agreement is not reached, the property may not be protected under the Convention. Although the UNESCO Convention represents a significant attempt to curtail illegal trafficking of cultural property, it falls short in its overall effectiveness since state parties may apply their own substantive law regarding cultural property. This lack of uniform structure renders the UNESCO Convention ineffective as a means of solving the problem of illegal trafficking (Keane, 2004).

6. THE 1995 UNIDROIT CONVENTION ON STOLEN OR ILLICITLY EXPORTED CULTURE PROPERTY

The third primarily international agreement in this field, the UNIDROIT Convention on Stolen or Illicitly Exported Cultural property of 1995 aims to establish common lawful rules for the restitution and return of cultural property between State Parties to the Convention. The fundamental tenet of the UNIDROIT Convention is that the possessor of stolen property must return it to the original private owner. The UNIDROIT Convention seeks to correct the failings of the UNESCO Convention by shifting the focus onto recipients in wealthy states rather than counting on developing nations to police their own borders. The UNIDROIT Convention does this by creating a single harmonized provenance of law which requires any form of artifact deemed a piece of cultural property to be returned even if theft cannot be proven (Lehman, 1997). As aforesaid the UNESCO Convention allows only State Parties to request restitution of stolen or illicitly exported property however, the UNIDROIT Convention allows private individuals to start restitution procedures. Another area covered by the UNIDROIT Convention which improves upon the UNESCO Convention concerns the trafficking of archaeological artifacts.

The UNIDROIT Convention covers illegally excavated, or legally excavated but illegally retained cultural property. Unlike the UNESCO Convention, it does not require museum certification from the country of source. Furthermore, the convention provides that a bona fide buyer of stolen items does not receive good title. Instead, the Convention requires that the buyer return it, and upon return is entitled to "payment of fair and reasonable restitution," provided that he had no knowledge of it being stolen and he exercised due diligence upon acquiring the object. Thus, there is a good faith requirement in buying cultural property. It is argued that good faith will eventually deter illegal trafficking of cultural property because without an act of good faith the proprietor will not be compensated when he is required to return it. Therefore, the UNIDROIT Convention could be the most effective means of curtailing illegal trafficking because it establishes a common set of legal rules and extends its reach to privately owned property (Lehman, 1997).

7. UNESCO DECLARATION CONCERNING THE INTENTIONAL DESTRUCTION OF CULTURAL HERITAGE

The UNESCO Declaration on the Intentional Destruction of Cultural Heritage was made to ensure that States must, during peacetime, take all appropriate measures to conduct them in such a manner as to protect cultural heritage. Thus, States must observe the principles and objectives of the 1972 Convention for the Protection of the World Cultural and Natural Heritage, of the 1956 Recommendation on International Principles Applicable to Archaeological Excavations, the 1968 Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works, the 1972 Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage and the 1976 Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas. Pursuant to this Declaration, States obligation to protect cultural heritage extends beyond conflict.

8. PROTECTION OF IRAQ'S CULTURAL HERITAGE AND THE EFFECT OF THE GULF WAR

Before 1991, Iraq had one of the most successful cultural property protection schemes in the Middle East. Iraqi national law has considered all movable and immovable antiquities to be owned by the state. The trade in antiquities has been illicit, and it has also been illicit to break, mutilate, destroy and damage antiquities whether immovable or movable. The Iraqi government outlawed the export of antiquities and established strict criminal punishments for the pillaging of archaeological sites. The government required that antiquities be reported within one week of discovery, and no excavations were allowed without permits from the national government. Before the invasion of Kuwait in 1990, Saddam Hussein's regime directed healthy sums to the Iraqi Antiquities Department, guarded archaeological sites and encouraged scientific excavation by international and local teams of archaeologists (Lawler, 2001).

It is likely that Saddam's interest in the cultural heritage of Iraq was motivated by nationalist intents and a desire for self-promotion. For example, Saddam had a special interest in the location of Babylon, where he sponsored restoration projects and had every new brick stamped with his name. Saddam also established as part of this museum system educational programs that taught Iraqi citizens to value their rich archaeological heritage both above and below ground, and to safeguard these vestiges of the past. As a result of these policies, there was virtually no illegal trade in Iraqi antiquities before 1991. The Gulf War and its aftermath destroyed this cultural heritage protection scheme. Funds that had previously gone to the Ministry of Antiquities were diverted to the war effort, and the conservation of archaeological sites took on a low priority in comparison to defense (Cunning, 2003).

While some objects were entirely destroyed in the riots, many of the objects were robbed and have found their way to the art market in Europe, Britain and the United States. In an attempt to understand the variety and degree of damage done to cultural property in Iraq during the war and its aftermath UNESCO requested permission from the United Nations Security Council to send a mission of scholars to the country. This request was rejected by the United States and Britain. The Antiquities Department in Iraq moved quickly to get information out about the looted objects from its regional museums, for fear that the objects would be offered for sale in the U.S and Europe. Their fears were well founded, and several Mesopotamian antiquities surfaced on the art market, especially in Britain and United States after the war. The Antiquities Department possessed photographic negatives of many of the pieces in their collection, and in 1995 requested that the punishments committee allow them to import photographic paper in order to make prints from the negatives (Lawler, 2001).

Such photographs would be pivotal to the recovery effort and would help antiquities dealers and auction houses, also INTERPOL and other law enforcement agencies, to identify the looted objects. These requests were also denied by the punishments committee. The lack of information was mitigated to some extent by the work of concerned archaeologists and academics to document the looted antiquities through their own records and

observations from their work on Iraq. While the Antiquities Department was unable to make photographic prints, they were able to provide four volumes listing 4,000 cultural properties missing from their provincial museums to UNESCO, which made copies and distributed the volumes worldwide. The punishments should stop all trade out of and into Iraq, yet a large number of relics were able to pierce the embargo and are finding their way into American and European collections (Russell, 1998).

After the U.S occupation in 2003, thieves looted and destroyed Iraq's archaeological treasures. Important sites remain unguarded and the country has lost priceless historic artifacts. Large scale plundering occurred at major museums, libraries, archives and other archaeological centers when the United States invaded Iraq in April 2003. A prominent warning was issued by the Archaeological Institute of America, urging the government to observe international treaties on cultural property, to work to minimize damage to archaeological sites and artifacts, to prevent plundering, and to facilitate the preservation of Iraqi cultural heritage since the United States did little to protect cultural property in Iraq.

The National Museum in Baghdad, an archaeological museum, was for eighty years a depository for thousands of artifacts and manuscripts. Several archeological objects were kept in five storerooms in the Museum, three of which were subject to significant looting. The items in these rooms are among those missing, and because they were not previously catalogued, it is extremely difficult to know exactly what has been lost. The more high profile objects that were looted from the Museum were the Warka Vase and the accompanying marble face of a woman, a sacred limestone piece from Uruk, a marble head of Poseidon, and an Assyrian ivory carving. The looting was described by United Nations Secretary General Kofi Annan as a wound inflicted to all mankind. The United States' first response was to issue an amnesty program which allowed the return of any items looted. By September 2003, the United States military reported that 3,411 items were recovered, 1,700 of which were returned under the amnesty program. Nevertheless, 10,000 items were still missing. Although it was later discovered that first numbers of looted objects from the National Museum were inflated, an even greater tragedy occurred in southern Iraq, where countless archaeological sites were looted (Cunning, 2003).

9. APPLICATION OF INTERNATIONAL CONVENTIONS ON PROTECTION OF CULTURAL PROPERTY DURING THE US OCCUPATION

Following the plundering of the Iraqi National Museum, the United States forces were heavily criticized for failing to prevent the pillaging incident. The United States is a party to the 1907 Hague Convention which provides that damage to cultural or historic property must be avoided during military campaigns. Since the United States did not damage any of the Museums directly, it cannot be held responsible under this convention. Unfortunately, the US, along with the United Kingdom, are not parties to the 1954 Hague Convention. However the 1954 Hague Convention has become a part of international customary law. One commentator argues that Article 4 (3) of the 1954 Hague Convention has reached customary status because it is essentially an elaboration of the general commitment under international law for an occupying force to maintain law and order in the territory it occupies, as provided in Article 43 of the 1907 Hague Regulations.

The most important indicator that at least part of the 1954 Hague Convention may be a part of customary international law came out of the International Criminal Tribunal for the Former Yugoslavia (ICTY), which explicitly ruled that Article 19 of the 1954 Hague Convention had been incorporated into the customary law of war. The United States, nevertheless, would not be in violation of international law regardless of whether the 1954 Hague Convention has attained customary status. Colonel Bogdanos' report reveals that United States troops were unable to secure the Museum because these troops "became engaged in intense combat with Iraqi forces fighting from the museum grounds and from a nearby Special Republican Guard compound." That U.S. troops were under fire from the Museum vicinity justifies their alleged inaction with regard to the prevention of pillaging. Additionally, since Iraq is a party to the 1954 Hague Convention, its military was under an obligation not to use the

Museum or any other culturally important site for military purposes. The United States, also the United Kingdom and other allies, should sign and become parties to the 1954 Hague Convention and its Second Protocol.

Although it is clear from past actions that United States military forces generally follow the provisions of the Convention, it will still be beneficial to both the United States and the world if the United States was to ratify it. Unfortunately, it is unlikely that the invasion of Iraq will be the last military intervention exercised by the United State and its allies. The United States may bring further military action in the Middle East, where virtually all states have a large amount of ancient cultural property. Ratifying the 1954 Hague Convention and complying with its provisions will go a long way in preventing future accidents of damage to cultural property and help the United States win bronchial support for its actions.

Besides the Hague Convention, the UNESCO Convention which provide for the restitution of stolen cultural property not only during armed conflict but also during times of peace, would be the most applicable instrument for the recovery of the stolen Iraqi items. Many states and organizations cite the UNESCO Convention as a means of recovering the cultural property from Iraq. The need for more countries to join the UNESCO Convention is based on the premise that restitution of cultural property is not considered to be a part of customary international law. Western states have been reluctant to incorporate such compensation into customary law because these countries have removed several items from states which they have colonized or occupied and do not want to return them. Therefore, the only way to require countries to participate in the restitution process is if they are State Parties to the UNESCO Convention. The United States, United Kingdom, and Iraq are all parties to the UNESCO Convention. After initial reservations, the United States became a State Party to the UNESCO Convention in 1983 with the adoption of the Convention on Cultural Property Implementation Act (CPIA) while the United Kingdom became a State Party only in 2002.

The late ratification allowed the United Kingdom to become a very attractive place for smugglers to sell stolen art items because there was no requirement for a British art dealer to see a valid exportation certificate. Iraq, nevertheless, became a State Party very early on, ratifying the UNESCO Convention in 1973. Unfortunately, regardless of membership, the UNESCO Convention is inadequate to properly deal with the current crisis on Iraq. The Convention may have been helpful considering Iraq is a State party. Nevertheless, there is confusion over whether the Coalition Provisional Authority had power to act under that ability or whether the newly installed Iraqi government is still able to act as a State Party. A determination of the new government's status with relation to international treaties and conventions must be made. Even assuming that the Iraqi government could act as a State Party to the Convention, there are limits and glaring deficiencies within the Convention itself that make its application here problematic. The most significant problem involves the identification of the items that were stolen from the National Museum, and the further difficulties of identifying those unmarked items taken from countless archaeological sites.

Article 7 (b) of the UNESCO Convention provides that State Parties must prohibit the importation of cultural property stolen from museums in other State Parties provided that such cultural property is documented as belonging to that institution. Therefore, it will be difficult to recover the thousands of undocumented items that were stolen from the storage rooms in the Museum, and virtually impossible to recover the cultural property taken from the archaeological sites. The enormous procedural steps imposed by the Convention makes it difficult for the new government of Iraq to implement.

10. UNITED NATIONS SECURITY COUNCIL RESOLUTION (UNSCR) 1483

The United Nations Security Council Resolution 1483, passed on May 22, 2003, may be the most hopeful prospect for the restitution of Iraqi cultural property. The Resolution states that “all Member Countries shall take appropriate steps to facilitate the safe return of Iraqi cultural property” which includes “establishing a prohibition on trade in or transfer of such items.” Resolution 1483 essentially requires all Member States to implement

legislation in order to curb the illegal trade of stolen cultural property from Iraq. In the United Kingdom, the Iraq order 2003, adopted to implement Resolution 1483, prohibits the import or export of any item unlawfully removed from Iraq. Switzerland, a market for illegal sales of artifacts, feeling pressured by Resolution 1483, finally ratified the UNESCO Convention in 2003.

The current conventions to safeguard cultural property are inadequate to deal with the situation in Iraq. This inadequacy stems from a lack of commitment from countries to become part of these conventions and make serious efforts to safeguard cultural property. States such as the United States and United Kingdom should sign and become State Parties to the 1954 Hague Convention because they are, unfortunately, likely to engage in future military interventions. These military operations may occur in the Middle East where, similar to Iraq, are places of early civilization and rich in cultural property. Sadly, armed conflicts require military commanders to place a premium on lives above property.

Minimum standards can still be observed during armed conflict; ratifying the 1954 Hague Convention and acting within its provisions will help to ensure that future incidents do not occur. Showing the world that they are serious about the protection of cultural property and sensitive to cultural heritage overall will help the United States and United Kingdom gain much needed global support. The end of pillaging in Iraq and the return of plundered goods will take time. Fortunately, UNESCO, Interpol, and most countries throughout the world have recognized the problem and are doing all they can to return the items and develop ways to prevent future incidents. The most important thing that must be done is to ensure that all States implement the necessary domestic legislation to comply with Security Council Resolution 1483.

The clear trend in international law confirms and expands protections for cultural property. International agreements enunciate the common interest of international society in preserving historic, architectural, and artistic treasures. A substantial body of treaty law applies specially to the protection of cultural property in war: the 1907 Hague Convention (IV), the 1954 Hague Convention and its Protocols. The foundation for that protection has also expanded. Cultural treasures enjoy privileged status, meriting protective measures, not just because they are vital to the heritage of specific peoples and states, but because in the words of the 1954 Convention "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind".

11. RECOMMENDATIONS FOR STRENGTHENING LEGAL PROTECTION OF ANTIQUITIES IN IRAQ

After identifying the findings of this research, there are some recommendations to be made so that some of the identified weaknesses can be eradicated and resolved to ensure Iraq interest on protecting the antiquities from looting and destruction and can protected ensuring that all States to accede the international conventions on the protection of antiquities such as 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. The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was implemented by UNESCO in 1954 to protect cultural heritage in war-torn states. The express purpose of The Hague Convention was to prevent the kinds of destruction and stealing of cultural material that have become common in modern warfare.

The most important part of The Hague Convention concerns the responsibility of armed forces to safeguard the cultural property of other regions. An occupying power's duty to safeguard cultural property and prevent illegal trade applies whether or not the occupied country has signed the convention. Moreover, even if an occupied country has failed to safeguard its own cultural property under Article 3, the occupier must still take all necessary measures to protect that property. Although The Hague Convention currently has 114 State Parties, the United

States and the United Kingdom are both conspicuously absent. The United Kingdom and United States have both rejected to ratify the convention since 1954 because The Hague Convention would limit their capacity to use nuclear weapons; also UNESCO instituted the Convention on the Means of Prohibiting and Preventing the Illegal Import, Export, and Transfer of Ownership of Cultural Property in 1970 in response to a rush of antiquities thefts. The UNESCO Convention provides a framework for states to cooperate to reduce the incentive for plunder of archaeological and cultural material. As of March 2005, 107 states have signed the Convention. The UNESCO Convention was designed to reduce international trafficking of national treasures and is the main convention for the protection of cultural property. The third international convention in this field, the UNIDROIT Convention on Stolen or Illicitly Exported Cultural property of 1995 aims to establish common lawful rules for the restitution and return of cultural property between State Parties to the Convention, these agreements failed to protect the Iraqi Antiquities during the US occupation of Iraq in 2003, in spite of Iraq is party in this conventions.

The current conventions to safeguard cultural property are inadequate to deal with the situation in Iraq. This inadequacy stems from a lack of commitment from countries to become part of these conventions and make serious efforts to safeguard cultural property. After the fall of Saddam Hussein's regime in Iraq in April 2003, Iraqi citizens engaged in widespread pillaging. The lawlessness in the aftermath led thieves to raid government buildings, archaeological sites, libraries, cultural institutions. The most publicized and controversial pillaging occurred at the Iraqi National Museum. While initial reports estimated that over 170,000 pieces were missing from the national Museum. US troops did not protect the National Museum while the laws of war clearly forbid intentional damage to or destruction of cultural treasures. They also prohibit belligerents from removing or seizing cultural property of the enemy. Article 5 of The Hague Convention of 1954 states "Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the occupying Power shall, as far as possible, and in close cooperation with such authorities, take the most necessary measures of preservation."

This is the duty of the occupying power to protect archaeological sites during the war if the local forces cannot protect archaeological sites. The United States did not protect archaeological sites in Iraq and The United States and United Kingdom are not parties to The Hague Convention thus are not obliged to protect archaeological sites during the war. It is important that they become parties to The Hague Convention because they are, unfortunately, likely to engage in future military interventions, also all countries must cooperate in the protection of cultural property through acceding to these conventions, especially those countries that have not signed on these conventions to help in recover the stolen Iraqi antiquities during the US occupation in 2003, therefore hope that all States will become parties to these conventions. The problem is not in these agreements but in the accession of some states to these conventions.

12. CONCLUSION

The continued pillaging and destruction of cultural property in Iraq is an all too common tragedy. Although the effects of armed struggle have destroyed cultural property for centuries, the international community has not been successful in preventing such accidents. The current conventions to safeguard cultural property are inadequate to deal with the situation in Iraq. This inadequacy stems from a lack of commitment from countries to become part of these conventions and make serious efforts to safeguard cultural property. States such as the United States and United Kingdom should sign and become State Parties to the 1954 Hague Convention because they are, unfortunately, likely to engage in future military interventions. These military operations may occur in the Middle East where, similar to Iraq, are places of early civilization and rich in cultural property. Minimum standards can still be observed during armed conflict; ratifying the 1954 Hague Convention and acting within its provisions will help to ensure that future accidents do not occur. This study evaluated the international efforts for the protection of cultural property in Iraq under the international conventions and treaties that provides protection of antiquities. It

concludes that the current conventions to safeguard cultural property are inadequate to deal with the situation in Iraq. This inadequacy stems from a lack of commitment from countries like the United States and the United Kingdom to become part of these conventions and make serious efforts to safeguard cultural property. Thus future research may compare the laws on the protection of antiquities of these countries with the Iraqi and Egyptian laws in determining whether these laws suffice to protect world heritage. In addition, the Iraqi law did not address the state of retrieving antiquities from countries, so reference must be made to the legislation of a law specialized in the recovery of stolen antiquities in the event of peace and war.

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