

**PREVENTING CULTURAL GENOCIDE:
COUNTERING THE PLUNDER AND
SALE OF PRICELESS CULTURAL
ANTIQUITIES BY ISIS**

HEARING
BEFORE THE
TASK FORCE TO INVESTIGATE
TERRORISM FINANCING
OF THE
COMMITTEE ON FINANCIAL SERVICES
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**PREVENTING CULTURAL GENOCIDE:
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SALE OF PRICELESS CULTURAL
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Tuesday, April 19, 2016

U.S. HOUSE OF REPRESENTATIVES,
TASK FORCE TO INVESTIGATE
TERRORISM FINANCING,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The task force met, pursuant to notice, at 10:10 a.m., in room 2128, Rayburn House Office Building, Hon. Michael G. Fitzpatrick [chairman of the task force] presiding.

Members present: Representatives Fitzpatrick, Pittenger, Stivers, Ross, Wagner, Barr, Rothfus, Schweikert, Williams, Poliquin, Hill; Lynch, Himes, Foster, Kildee, and Sinema.

Ex officio present: Representative Hensarling.

Also present: Representative Royce.

Chairman FITZPATRICK. The Task Force to Investigate Terrorism Financing will come to order.

The title of today's task force hearing is, "Preventing Cultural Genocide: Countering the Plunder and Sale of Priceless Cultural Antiquities by ISIS."

Without objection, the Chair is authorized to declare a recess of the task force at any time.

Also, without objection, members of the full Financial Services Committee who are not members of the task force may participate in today's hearing for the purposes of making an opening statement and questioning the witnesses.

The Chair now recognizes himself for 3 minutes for an opening statement.

I want to thank everyone for joining us today for the eighth hearing of the House Financial Services Committee's Task Force to Investigate Terrorism Financing. I would again like to thank Chairman Hensarling and Ranking Member Waters, as well as my colleagues here, for their unwavering support as we continue to investigate the threat of terror finance.

Since it has surfaced, ISIS has remained substantially different than many terror organizations in its ability to self-finance due to its diversified revenue streams, pulling in funds from ransoms to oil production. One of the most discussed methods has been the exploitation of art and antiquities from Syria and Iraq. While not as lucrative as oil or extortion, Iraqi officials believe that ISIS could

be generating as much as \$100 million from the sale and trafficking of antiquities alone.

Recent events have attributed this illicit practice exclusively to IS, but make no mistake: The plunder of art and antiquities has regularly been utilized by transnational groups operating around the world. It has been estimated that the profit of the traffic and sale of these cultural properties may range anywhere from \$3.4 billion and \$6.3 billion annually.

This crime has and will continue to be a global problem, which requires a coordinated international effort to combat.

Furthermore, this issue hits close to home. The FBI has credible reports that U.S. persons have been offered cultural property that has appeared to have been removed from Syria.

The United States must do its part in curbing the demand for these cultural and artistic pieces by taking another look at customer due diligence and improving coordination with our international partners. This is a revenue stream exploited by illicit actors around the world, and it cannot continue unabated.

I believe that today's hearing, with the expert panel of witnesses, will help illustrate the scale and severity of this issue as well as offer measures to best combat and diminish this despicable practice.

At this time, I would like to recognize this task force's ranking member, my colleague, Mr. Lynch from Massachusetts, for 4 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

I also want to thank Chairman Hensarling and Ranking Member Waters, as well as Vice Chairman Pittenger, for holding today's hearing.

And I would like to welcome and thank our distinguished panel of experts this morning for helping our task force with this important work.

Today's hearing will focus on how the United States can counter the plunder and sale of priceless cultural antiquities by the Islamic State and others. The relevant themes of today's hearing, while focused on antiquities, are analogous to what we have seen throughout our task force hearings, especially those concerns related to trade-based money laundering.

To cut off the flow of financing to terrorist organizations, we need better information-sharing on all fronts, and this includes improvements in information-sharing between government agencies, between countries, and with the private sector.

We also need to be able to track the true owners of property, whether that property is an ancient artifact or a high-rise apartment building. We need to cut off trade routes that terrorist organizations use to funnel illicit goods, and we need a network of trade transparency units for proper Customs enforcement.

Thus, the same strategies we need to combat antiquities trafficking can be used in a broader strategy to combat ISIS.

For example, in a previous hearing on trade-based money laundering, this task force discussed the routes that ISIS used to smuggle cash in and out of the territory it controls. We learned that many of these routes run through Turkey and Jordan.

In his prepared remarks for today's hearing, Yaya Fanusie indicated that ISIS is using similar routes to smuggle antiquities out of its territory. In addition, he notes that Lebanon as well as the Balkan route, through Greece and Bulgaria, are being used to smuggle antiquities and other illicit commodities.

Currently there is ample opportunity for terrorist groups to exploit these routes with low risk of being caught. We need to do a better job policing these routes so that ISIS can no longer smuggle antiquities and other contraband out of the territory that it controls.

Furthermore, we must curtail the laundering of antiquities that make it out of the ISIS-controlled territory so these goods cannot be integrated in legitimate markets. As Lawrence Shindell and Dr. Patty Gerstenblith mention in their prepared remarks as well, ISIS' ability to profit from the sale of antiquities is only possible because of a systematic problem of trade-based money laundering in the art industry.

We need to bring together greater rules of transparency to this industry so that antiquities trafficking is no longer profitable for terrorist organizations. And as Dr. Gerstenblith suggests, to better track art and antiquities that enter the United States we should require export declarations for art and antiquities worth more than \$10,000, and also consider a tariff on imports of these items.

I look forward to hearing the testimony from our witnesses so we can further examine this issue in greater detail.

And I yield back the balance of my time.

Chairman FITZPATRICK. I now recognize for an opening statement the vice chairman of the task force, Mr. Pittenger of North Carolina, for 2 minutes.

Mr. PITTENGER. Thank you, Mr. Chairman. And thank you for your dedication and hard work on these important issues.

I would like to also thank Ranking Member Lynch, Chairman Hensarling, Ranking Member Waters, and as well as our professional staff, Joe Pinder, for assembling for such an esteemed group of witnesses we have here today.

Over the last year we have gained important insight into the threats facing our Nation, how they are funded, and the many obstacles we face to intercepting these funds. Recently, I had the opportunity to travel to South America to witness firsthand the problems they face with regard to illicit financing operations and the emerging presence of Iran Hezbollah and other terror financiers.

While the problems are great, I was inspired by the dedicated officials in Argentina, Panama, Colombia, and Paraguay, who are tasked with a heavy burden of combating sophisticated criminal financial networks. We must continue working with these countries and sharing our own resources and expertise to ensure these countries do not become overrun by well-financed criminal and terror organizations.

Today, we address ISIS financing through illegal antiquities sales. ISIS remains the world's most dominant and barbaric terror organization.

According to our Government's National Security Strategy, it is the objective of the United States to degrade and defeat ISIS. While this Administration's overall strategy remains questionable,

both parties can agree that preventing the flow of dollars to fund ISIS and its caliphate must remain a top priority of our government.

With this hearing, Congress is signaling the importance of identifying and combating each element of ISIS financing, whether it be extortion, cross-border cash smuggling, trade-based money laundering, or, in this case, antiquities sales.

Thank you, Mr. Chairman, for holding this important hearing on such a pertinent issue, and I yield back.

Chairman FITZPATRICK. I now recognize the gentlelady from Arizona, Ms. Sinema, for 1 minute.

Ms. SINEMA. Thank you, Chairman Fitzpatrick and Ranking Member Lynch.

Terrorism is an undeniable threat to our country's security and global stability. Terrorist networks constantly develop new ways to finance their deadly operations and threaten America.

The Islamic State is one of the world's most violent, dangerous, and well-financed terrorist groups.

Within the past year, amid greater pressure on its other financial resources, IS has ratcheted up the extraction and sale of antiquities to fund its militant violence. In 2015, IS generated millions of dollars from trafficking in antiquities. Funds are raised from direct looting as well as through imposing taxes and requiring permits for criminal smugglers who operate in IS-controlled territory.

The impact of these actions goes beyond the financing of terrorism. The destruction or sale of these antiquities is also part of IS's apocalyptic worldview in which anything outside of its perverse and disgusting vision of Islam must be destroyed.

The loss of these historical treasures is a tragedy. To keep our country safe we must be one step ahead of IS, cutting off its funding and stopping its efforts.

I appreciate hearing from our witnesses about addressing this threat and defeating ISIS.

I yield back.

Chairman FITZPATRICK. We now welcome our witnesses.

Mr. Robert Edsel is our first witness today. Mr. Edsel is the author of several nonfiction books, including, "Rescuing Da Vinci," "The Monuments Men: Allied Heroes, Nazi Thieves, and the Greatest Treasure Hunt in History," as well as "Saving Italy: The Race to Rescue a Nation's Treasures from the Nazis."

He is co-producer of the documentary film, "The Rape of Europa," and the founder and chairman of the Monuments Men Foundation for the Preservation of Art. Most famously, Academy Award-winner George Clooney directed and starred in a film based on Mr. Edsel's book, "The Monuments Men," which was released on February 7, 2014.

Raised in Dallas, Texas, Mr. Edsel graduated from St. Mark's School of Texas and Southern Methodist University. He has been awarded the Texas Medal of Arts Award, the President's Call to Service Award, and the Hope for Humanity Award, presented by the Dallas Holocaust Museum.

In 2014, he was presented with the Records of Achievement Award from the Foundation for the National Archives, which recognizes an individual whose work has fostered a broader national

awareness of the history and identity of the United States through the use of original records. He serves as trustee of the National World War II Museum in New Orleans.

Mr. Yaya Fanusie is the director of analysis at the Center on Sanctions and Illicit Finance at the Foundation for Defense of Democracies. Yaya spent 7 years as both an economic and counterterrorism analyst in the CIA, where he regularly briefed White House-level policymakers, U.S. military personnel, and Federal law enforcement.

After government service, Yaya worked in a small consulting firm where he led a team of analysts working on a multibillion-dollar recovery effort involving a global corruption ring. He then operated his own consulting practice training firm, specializing in strategic analysis and business due diligence.

Yaya received an M.A. in International Affairs from Columbia University's School of International and Public Affairs, and a B.A. in Economics from U.C. Berkeley.

Dr. Patty Gerstenblith is a distinguished research professor at the DePaul University School of Law. She is also director of its Center for Art, Museum, and Cultural Heritage Law. She is also the founding president of the Lawyers' Committee for Cultural Heritage Preservation, a director of the U.S. Committee of the Blue Shield, and a senior advisor to the ABA's Art and Cultural Heritage Law Committee.

In 2011, she was appointed by President Obama to serve as the Chair of the President's Cultural Property Advisory Committee at the U.S. Department of State. Previously, she was editor-in-chief of the International Journal of Cultural Property.

Dr. Gerstenblith received her bachelor's degree from Bryn Mawr College, a Ph.D. in Art History and Anthropology from Harvard University, and a J.D. from Northwestern University.

Dr. Amr Al-Azm is an associate professor at Shawnee State University in Ohio. He was educated in the U.K., reading Archeology of Western Asiatics at the University College London, and graduated with a doctoral degree in 1991.

He was the director of scientific and conservation laboratories at the General Department of Antiquities and Museums in Syria, and taught at the University of Damascus until 2006. From 2006 until 2009, he was visiting assistant professor at Brigham Young University.

Dr. Al-Azm is an active member of the Syrian opposition and serves on the executive committee of The Day After project.

Mr. Lawrence Shindell is executive chairman of the U.S. New York-headquartered ARIS Title Insurance Corporation, a division of the NASDAQ-traded Argo Group, an international insurance company. ARIS Title Insurance Corporation is the world leader in securing legal ownership to non-real-estate property assets for multiple industry sectors.

Mr. Shindell regularly advises, speaks, and writes internationally on the legal title risks inherent in the global art and collectibles market for a range of industry stakeholders and participants.

Mr. Shindell holds a bachelor's degree from the University of Wisconsin-Madison, and a juris doctorate from Emory University School of Law.

The witnesses will now be recognized for 5 minutes each to give an oral presentation of your written remarks. And without objection, each of your written statements will be made a part of the record.

Once each of the witnesses have finished presenting their testimony, the members of the task force will have 5 minutes within which to ask questions.

On your table, there are three lights: green; yellow; and red. Yellow means that you have 1 minute remaining, and red means your time is up.

And with that, Mr. Edsel, you are recognized for 5 minutes. Thank you, sir.

STATEMENTS OF ROBERT M. EDSSEL, FOUNDER AND CHAIRMAN, MONUMENTS MEN FOUNDATION FOR THE PRESERVATION OF ART

Mr. EDSSEL. I would like to extend my thanks to Chairman Fitzpatrick, Ranking Member Lynch, and the members and staff of the task force, for including me in these important deliberations.

Evidence that ISIS has sanctioned the looting and sale of antiquities to generate revenue for terrorism is a game-changer. It compels us to think about the ownership of art, the responsibility of the art trade and collectors, and the role of the Federal Government differently than ever before.

We cannot say we weren't warned. As recently as 1981, Monuments Man Mason Hammond, the only Monuments Officer to see duty in Italy and Germany, and an important advisor to General Eisenhower's staff, urged all those willing to listen that, "Planners for future hostilities tend to think in terms of the last conflict, but any consideration of the different ways in which the First and Second World Wars were fought demonstrates the fallacy of such an approach. If this generation wishes to leave to its children the cultural treasures that it has enjoyed, such planning should be encouraged."

Hammond's warning went unheeded. But as events in Iraq in 2003, and more recently in Syria, have painfully demonstrated, he was right.

The Monuments Men saw firsthand that the destruction of cherished artistic and religious treasures is the starter gun that precedes genocide and the human suffering that follows. It proved true in Nazi Germany, in Bosnia-Herzegovina, in Al Qaeda-controlled areas of Afghanistan and Mali, and now in ISIS-administered portions of Syria and Iraq.

Ignoring this early warning sign denies our Nation the chance to act; we can only react. Organizations that are charged with preserving our cultural heritage are instead relegated to bearing witness to its destruction.

Steps we as a Nation have taken to protect our homeland following September 11th have not kept pace with developments in the art world. Nowhere near.

Today, art is synonymous with money. The global explosion of wealth these past 20 years has created more buyers with greater resources chasing prized objects.

Prices have skyrocketed. Consider that a painting by Picasso that sold for less than \$200,000 in 1956 recently sold for \$180 million, a sculpture by Giacometti for \$141 million, and a drawing by Raphael for \$50 million.

The sums are staggering, and yet regulatory authorities have not created and applied the same level of control procedures in the art market as we have in other areas of commerce involving similar sums of money. This creates a weakness that ISIS and others—tax cheats, those in possession of looted paintings and objects, and smugglers—can exploit.

The very profitability of art and antiques and sometimes their relatively small size facilitates movement, sometimes into hiding places out of view by tax authorities, Nazi-looted claimants, and other victims of theft. For example, just last week the Panama Papers leak revealed that a Nazi-looted painting by Modigliani worth upwards of \$25 million was among thousands of works of art stored in special tax zones known as free ports.

While this art netherworld does provide privacy for the honest, the lack of transparency also cloaks tax cheats, thieves, and those aiding ISIS' business operation of converting cultural treasures to cash to fund terrorism.

The art trade is a largely self-regulated, antiquated business model operating in a digitized, near-invisible world. Until the advent of the Internet in the late 1990s, few in the art world paid attention to provenance—a fancy word for who owned something in the past—unless it enhanced the value of the object. Looted art traded hands, some of it openly.

Although there has been improvement in the scrutiny of objects sold at public auction, there remains a high degree of willful ignorance by some collectors eager to add to their collections. Worse still is their lack of knowledge about the history of what they already own. Some don't want to know.

Who can be against infusing the opaque system of the art world with increased transparency? Tax cheats? Those who possess stolen works of art? Smugglers? Terrorism networks? Because privacy alone cannot be an argument for doing nothing when the stakes for the common good are so high.

In closing, the policy of the Western Allies and the work of the Monuments Men established the high bar for the protection of cultural treasures during times of conflict. It was a source of pride for General Eisenhower, who said, "It is our privilege to pass on to the coming centuries treasures of past ages."

What, then, will be our legacy?

[The prepared statement of Mr. Edsel can be found on page 63 of the appendix.]

Chairman FITZPATRICK. Mr. Fanusie, you are now recognized for 5 minutes.

**STATEMENT OF YAYA J. FANUSIE, DIRECTOR OF ANALYSIS,
CENTER ON SANCTIONS AND ILLICIT FINANCE, FOUNDATION
FOR DEFENSE OF DEMOCRACIES**

Mr. FANUSIE. Thank you. Good morning.

Chairman Fitzpatrick, Ranking Member Lynch, and members of the task force, on behalf of the Foundation for Defense of Democ-

racies and its Center on Sanctions and Illicit Finance, thank you for the opportunity to testify.

Before delving into the issue of Islamic State antiquities trafficking, it is important first to clarify how the trade fits into ISIS' overall economic goals. One way to understand these goals is to look at some of the strategies guiding the group's actions.

Now, one of ISIS' aims is to win over locals who may be on the fence regarding submitting to jihadist rule. This approach gives context to the antiquities trade in ISIS territory.

Although exactly how much ISIS earns from looting ancient artifacts is difficult to assess, the group clearly encourages and facilitates the trade. This facilitation appears to be part of ISIS' economic strategy, not just for funding the group itself, but for creating ways to bring funds to its subjected population, whose hearts and minds the Islamic State is trying to win.

ISIS has been dubbed the world's richest terrorist army, and the illegal antiquities trade is one income stream which gives the group significant strategic advantage against existing counter-terror finance efforts. The trade's main target buyers are, ironically, history enthusiasts and art aficionados in the United States and Europe—representatives of the societies which ISIS has pledged to destroy. This poses several challenges to policymakers, but there may be opportunities for us as well.

Now, ISIS has access to roughly 5,000 archaeological sites and probably has earned several million dollars from antiquities trafficking. And some of the looting appears to be conducted by local populations who sell amid an economically devastated environment where ISIS already taxes and confiscates other earnings and possessions.

The importance of this trade for ISIS lies not just in the funding, but in the market's strategic and operational benefits. The illegal trade of artifacts generally doesn't risk provoking outside military attacks—it is not likely that the excavation sites are going to be bombed; or provoking local rebellion.

The pipelines that move antiquities to market invariably transit states bordering Syria and Iraq. Turkey and Lebanon are the best-documented among these. European border states also play an important role.

These pipelines are well-known for other illicit commodities but less understood in the context of antiquities. The Balkan route into Europe through Greece and Bulgaria is a known path for drugs and migrants and probably plays a role in antiquities trafficking.

So the global annual trade in illicit art and antiquities is hard to stop. Looted objects are hidden away for long periods, false documentation on their provenance is routine, and transactions have proven difficult to track through traditional Customs enforcement and financial intelligence.

The challenges are great, necessitating new means to counter them. The following are some recommendations that may help policymakers address this trade.

One, imposing terrorism sanctions on artifact smugglers and dealers. Even a handful of strategic terror financing designations by OFAC, the E.U., and the U.N. imposed on the worst offenders

would likely have a chilling effect on both sellers and buyers, given the financial risks and fines associated with sanctions.

Two, making antiquities looting an intelligence and law enforcement priority. At present, it is unclear who in the U.S. Government is even responsible for countering antiquities trafficking. Reform can only come about by declaring this issue a national security priority. The U.S. Government must designate a lead organization and provide adequate authorization and resources.

Three, incorporating cultural property crime awareness into the intelligence community and U.S. Special Operation—Special Forces training. Threat finance is already emphasized in courses taught at the Joint Special Operations University, but such courses do not appear to highlight antiquities despite their role in terror finance. Antiquities trafficking should be included in future coursework.

Four, expanding registries of art and antiquities. Now, registries of stolen art and antiquities are commonplace, but new technologies make it possible for art and artifacts to be tagged and tracked in real time, even using DNA markers. So over time, by tagging a large number of objects with unique identifiers, a better chain of custody can be created.

These recommendations are just a few of the steps in what will undoubtedly be a long, complex, and multifaceted battle.

Law enforcement and intelligence officials should pay close attention to the antiquities trade emanating from Syria and Iraq, not just because they need to know precisely how much money ISIS brings in. What is important is that the trade itself reveals something about Islamic State's operational infrastructure, its links with partners and middlemen, and how the group is exploiting the local civilian population. All of this is critical to understanding how the United States and its allies may defeat the group militarily, financially, and ideologically.

Thank you.

[The prepared statement of Mr. Fanusie can be found on page 71 of the appendix.]

Chairman FITZPATRICK. Dr. Gerstenblith, you are now recognized for 5 minutes.

STATEMENT OF PATTY GERSTENBLITH, DISTINGUISHED RESEARCH PROFESSOR, DEPAUL UNIVERSITY COLLEGE OF LAW

Ms. GERSTENBLITH. Chairman Fitzpatrick, Ranking Member Lynch, and members of the task force, thank you for this opportunity to speak with you.

As was mentioned, I serve as the Chair of the Cultural Property Advisory Committee in the State Department. However, I am speaking to you today both in my personal capacity and on behalf of the U.S. Committee of the Blue Shield.

The Blue Shield is the cultural equivalent of the Red Cross and is used to mark protected cultural sites. Among the current activities of our organization is the creation of no-strike lists of cultural sites and repositories, and we liaise with the Department of Defense to assist in fulfilling our international obligations to protect cultural heritage during armed conflict.

Syria and Northern Iraq are rich in historic remains stretching over many millennia. This is where the Akkadian King Hammurabi ruled at the beginning of the second millennium BCE, and where the Hebrew prophet Jonah successfully preached repentance to the Assyrian Ninevites 1,000 years later.

Historic remains represent the successive cultures of the Greeks, the Romans, the Byzantines, and the Islamic and Ottoman periods; as well as many faiths, including Judaism, Christianity, and Islam; and minority groups such as the Yazidis, Zoroastrians, and Druze. Syria is home to 6 world heritage sites and 12 tentative world heritage sites.

When an archaeological site is looted, the contextual relationship among the artifacts and other remains is destroyed, thereby permanently preventing us from fully understanding and reconstructing our past. Unfortunately, the looting of archaeological sites is big business, often carried out on an organized, industrialized scale, and in response to market demands. And many of these sites are unknown before they are looted.

As cultural objects move from source, transit, and destination countries, different legal systems create obstacles to interdiction of objects and prosecution of crimes, and they allow the laundering of title to these artifacts.

The United States is the single largest market for art in the world, with 43 percent of market share. Because of the availability of the charitable tax deduction, the ability to import works of art and artifacts without payment of tariffs, and because of artistic preference, the United States is the largest ultimate market for antiquities, particularly those from the Mediterranean and the Middle East.

Antiquities freshly looted from the ground have no established value and no documented history. They can be mined from the ground as new commodities. Therefore, they are the perfect vehicle for moving funds and value around the world and for supporting illegal activities such as trade-based money laundering, purchase of drugs and weapons, organized crime, and terrorism.

Because of the unknown nature of recently looted antiquities, databases of stolen art are for the most part useless for regulating the antiquities trade. And technologies that would tag cultural objects would, in my opinion, be similarly ineffective.

Both ISIL and the Assad regime are participating in looting and are realizing income from the sale of antiquities. Diachronic studies of satellite images of archaeological sites reveal historic patterns of looting pre-conflict.

For example, in this image of the site of Mari, which is located in eastern Syria and fell under ISIL control in the summer of 2014, pre-conflict you can see some looters' pits, but not many. And in the fall of 2014, I hope you can see the large numbers of looters' pits, many of which are marked with the red circles around them, but there are additional ones as well.

We know that ISIL earns income at several points of intersection with the channels through which these artifacts move. We also know that for propaganda purposes, ISIL destroys on a large and public stage immovable structures, such as ancient temples, churches, and shrines. They also destroy artifacts that are docu-

mented in museum collections and that are too well-known to sell or too large to move.

But away from public view, it orchestrates the looting of antiquities, charging for licenses, taxing the smugglers, and selling the artifacts or taxing their sale. You will hear more about this from Dr. Al-Azm.

Yet, there are steps that the United States can take that impose little cost and no risk to American citizens because these are steps that we can take here in the United States but that would also reduce the economic reward to ISIL.

First of all, returning to the House next week, I hope, will be H.R. 1493, which will impose import restrictions on cultural materials illegally removed from Syria after the beginning of the rebellion in March of 2011. Second, take up H.R. 2285, to improve Customs enforcement of existing law.

Third, encourage law enforcement to refocus attention away from forfeiture and repatriation of objects and toward criminal prosecutions so that criminal networks can be dismantled and higher-level actors reached. Fourth, foster greater transparency and accountability in the market by, among other things, requiring documentation of ownership history upon sale or donation to charitable institutions.

And finally, we should be looking prospectively towards places where ISIL is moving, such as Libya, which is also home to many archaeological sites. We need to develop a proactive, rather than reactive, way of dealing with the problem of antiquities looting and marketing.

Thank you for this opportunity to address the task force. I look forward to answering your questions.

[The prepared statement of Dr. Gerstenblith can be found on page 82 of the appendix.]

Chairman FITZPATRICK. Thank you, Doctor.

Dr. Al-Azm is now recognized for 5 minutes.

**STATEMENT OF AMR AL-AZM, ASSOCIATE PROFESSOR,
SHAWNEE STATE UNIVERSITY**

Mr. AL-AZM. I would like to begin by thanking the Financial Services Committee and its task force for inviting me to testify on such an important subject.

I will focus my remarks on three key points.

One, when ISIS took over large swaths of territory back in 2014 it essentially took over a preexisting situation of looting. ISIS did not start the looting; it just carried it on. Moreover, it actually institutionalized the process and intensified it to a great degree.

In fact, what we can say is that ISIS sees cultural heritage as a resource to be exploited like any other. And we know this because ISIS has a dedicated department for the administration of the looting of antiquities.

You can see here, for example, this is one of their offices in the city of Manbij, and it is placed under the Diwan Al-Rikaz. Diwan Al-Rikaz means the Office of Resources, which also manages oil revenue, taxation, and any other source of revenue that ISIS cares to use.

Through this office, licenses like this one are issued to looters, which are then given—which allow the looters, gives them permission to go out and loot archaeological sites. In fact, the purchase of a looting license is a source of revenue, as are extensions, as you see in this case here. This looter, having dug up the site, decided he needed an extension, so he purchased an extension, and then needed to use heavy machinery, so in the second image on the right you can see that he purchased an actual extension to his license to allow him to use heavy machinery. The heavy machinery—you can see it here—are now being used to gouge chunks of earth out of the site.

And if you don't think that this is producing good material, here are some of the finds that came out of this one licensed site that was being looted: not only these pieces of pottery, but also, as you can see, these bronze and metal items, all coming from a Bronze Age tomb complex.

We also know that when ISIS licenses these sites, it also then requires the looter to sell the items. If he fails to sell them, then ISIS will take them back and they will use their major main auction in the city of Raqqa. We know that there is a major auction in Raqqa. It operates on a regular basis, sometimes as often as 3 times a week, when necessary.

These two items there were recently looted from the city of Palmyra just before ISIS was forced out of the city, and they were sold about 3 weeks ago in the Raqqa auction. I believe the asking price was \$150,000. I cannot confirm whether that was the price that was achieved, but that was the asking price.

ISIS, as Patty mentioned, also destroys cultural heritage. It does so, however, for propaganda purposes. It loots what it can sell; it destroys what it cannot.

Large monuments like these end up being destroyed because they allow ISIS to demonstrate its ability to act with impunity and the impotence of the international community to do anything about it. It is a powerful propaganda tool. ISIS exploits it and uses it to great effect.

Also, just to point out to you that it is not just ISIS that loots; looting was also done by the regime. These two items were looted from Palmyra, but this was when it was under regime control, and they are currently also on sale in Syria and about to be exported to Turkey by the dealer who has them. And he purchased them from an army officer 1 year before ISIS took control of the site.

What can we do about this? Efforts are being made to protect cultural heritage inside Syria. Seventy percent of Syria's cultural heritage is actually outside regime-controlled areas and outside the reach of its government institutions. Therefore, it falls on non-state actors—local activists, museum curators, archaeologists—to try and do something—and NGOs like The Day After, with its Heritage Protection Initiative.

We try to do what we can. We try to monitor this damage; we try to monitor this destruction; we try to document any activity that occurs related to this.

But at the end of the day, we are just civilians. We don't have the institutional support.

We do get some help from organizations here in the United States like the American School of Oriental Research (ASOR); Penn Cultural Heritage Center has supported us; as does the Antiquities Coalition, and others. But this support is actually limited, and this hardly addresses the scale of the catastrophe that we are facing.

I would also touch upon the importance of why it is necessary to save this cultural heritage. I am out of time, so I would be happy to answer that during questions.

Thank you.

[The prepared statement of Dr. Al-Azm can be found on page 47 of the appendix.]

Chairman FITZPATRICK. Thank you, Dr. Al-Azm.

Mr. Shindell, you are recognized for 5 minutes.

**STATEMENT OF LAWRENCE M. SHINDELL, EXECUTIVE
CHAIRMAN, ARIS TITLE INSURANCE CORPORATION**

Mr. SHINDELL. Chairman Fitzpatrick, Ranking Member Lynch, and members of the committee and the task force, thank you for inviting me to testify.

I also would like to thank the task force itself for its work to highlight the complex nature of terrorism financing, including the weekly news clips e-mailed to interested stakeholders on the subject.

I submitted my more detailed written testimony for the record, so I will focus on two points.

One, the problem with terrorism financing through conflict-zone looting of cultural objects relates to the broader problem of money laundering of the global art industry, as Representative Lynch accurately pointed out.

The need is for improved AML compliance in connection with art and cultural objects as an asset class, which can only happen at the intersection of the art and financial industries. If we remove the ability of terrorists to launder stolen and looted art and cultural objects, then we remove the economic motive to loot these objects, cut off a key source of terrorism financing, and make great strides toward protecting important parts of the world's cultural legacy.

Two, effective solutions are now within reach. ARIS has been reviewing, with the trade and financial regulators in the U.S., U.K., Switzerland, Luxembourg, and Belgium, information-based technology solutions to bring transparency to global art and antiquities transactions.

At home, ARIS believes that FinCEN has the ability to use its authority to bring greater transparency and information-sharing to the art and antiquities market through partnering approaches with the U.S. Treasury and FinCEN, which I will discuss in a moment, to detect and share information on anomalous patterns of behavior in art industry financial sector transactions. These patterns, if identified, can signal terrorism financing through looted art and cultural objects as well as trade-based money laundering in the art industry generally.

ARIS' lens on these issues stems from its role as the leading title insurer in the industry, servicing the broad range of stakeholders, from the financial markets lending against the asset class, capital

markets investing in the asset class, and the nonprofit museum community as well as the trade.

The problem is, of course, the unregulated nature of the industry, as you have heard, combined with a lack of recordkeeping for transactions in source and market nations, all of which obscures legal status and beneficial ownership. In the AML context, this prevents market participants from identifying patterns in illegal schemes, when identifying patterns is the core of the AML enforcement and compliance.

Compounding the problem is the prevalence of free ports, as you heard alluded to, which are tax-free zones designed to serve as a way station in valid transactions so that the tax ultimately assigned is levied at the final destination of the object. But in fact, these become locations to store works indefinitely that adds to the obfuscation in the art industry. The Financial Action Task Force on Money Laundering identified this problem as early as 2010.

And to be sure, good-faith, well-intended, responsible operators of free ports in the market as a whole, as well as regulators, seek better systemic means to close the gap between AML's compliance regulations and practical barriers to enforcing them.

So simply put, attacking terrorism financing using cultural objects and art is impeded by the current inability to cross-reference independently reported and organized pieces of information to identify anomalies and suspicious activity. Comptroller of the Currency Curry commented in March of 2015 that the need is for more accurate and timely information and the use of technology to close information gaps. We believe FinCEN has the authority to place art title insurance companies under the BSA for information-sharing with safe harbor protection to ignite this kind of solution in the industry that would enable detecting effective patterns.

Lastly, I mentioned technology solutions which are now underway to address the lack of accurate information reliably linked to artistic and cultural objects. Currently, at the State University of New York's campus at Albany, through a nonprofit organization called the Global Center of Innovation for i2M Standards, standards-based solutions similar to NIST, ISO, ANSI, to enable technologies, the equivalent of a nanoscale vehicle identification number for artistic objects and cultural objects, is now within reach to anchor objects so that this information can be generated in the industry and provide reliable information.

Thank you.

[The prepared statement of Mr. Shindell can be found on page 96 of the appendix.]

Chairman FITZPATRICK. Thank you, Mr. Shindell.

And I thank all the witnesses for their testimony here today.

We are now going to move to the Members' questions. First, I am going to recognize the gentlelady from Missouri, Representative Ann Wagner, who had previously served as ambassador to Luxembourg, which gives her a unique perspective on this particular subject.

The gentlelady is recognized for 5 minutes.

Mrs. WAGNER. Thank you. And I thank the chairman for his courtesy in letting me jump ahead here.

Thank you all for appearing before the task force today to discuss key elements that terrorists abroad are using in order to obtain illicit financing.

Antiquity smuggling and the sale of cultural artifacts has, frankly, been occurring since the 1980s and 1990s under the regime of Saddam Hussein, as you well know, in order to avoid international sanctions. And today the Islamic State is using it to raise financing to fuel their operations and expand terrorism worldwide. Understanding the prominence of this activity and how it intersects with our financial institutions and markets is critical to cutting off this source of funding for terrorists and aiding in our efforts to eliminate ISIS.

Mr. Shindell, it is great to see you again.

Mr. Shindell came to meet with me in my office back, I guess, in the beginning of 2015, and we have been exploring this issue ever since.

In your testimony you note that anti-money laundering and counter-terrorism financing laws are limited when it comes to the trade of cultural property because they are not explicitly covered in those laws' standards. How can we best address money laundering through the art trade, sir?

Mr. SHINDELL. It really comes back to organizing the information. So we have heard a lot of testimony, which is important, about on-the-ground means to prevent the looting of the object specifically; but once it leaves the ground and enters the trade, it is the lack of a systemic system to monitor what is happening to that object.

And so between gaps in information, unreliability of information because of the lack of means to verify that an export document may be a forged document. And so what happens is there is a specific strategy in many circles of the industry to move up the ladder from less important trade sources to more important ones, and each step of the way creates a veneer of credibility so that when the object gets to the good-faith market, everything is out of control.

So a means that anchors information every step of the way would shut down the problem.

Mrs. WAGNER. Right. And I am sure you are keeping up with current events. Was there an issue with stolen art involved in the recent Panama Papers issue? And could you please briefly discuss the details of that?

Mr. SHINDELL. The Panama Papers situation highlights what effectively becomes the black hole in the industry because of lack of transparency. So while none of us knows more than what has been reported in the media so far, on many objects that are implicated in that the real problem is what one doesn't know because of the lack of transparency.

So yes, stolen objects may end up in tax-driven facilities anchored in Panama, which enables hiding that kind of information.

Mrs. WAGNER. So a uniform system that all can be a part of and buy into across-the-board is what is, I am assuming, necessary in this space.

You mentioned briefly, Mr. Shindell, that your company submitted a request to FinCEN, I believe in 2014, that art title insur-

ance be subject to the Bank Secrecy Act. Could you please explain why you made that request, sir?

Mr. SHINDELL. It is a means to create information-sharing in the financial sector. So let's suppose one of the large banks in the United States is offered a basket of art objects, whether cultural heritage objects or art as we might normally think of it, for a loan transaction for \$50 million.

Right now, because of the lack of information-sharing, that financial institution would have no way of knowing whether that same basket of assets was presented to 6 banks around the world in the last 30 days, each of which on different information, none of which is accurate, because their lens is limited to the transaction that is in front of them. And because of a title insurer's role, which is the keystone to asset integrity and beneficial ownership information, it becomes, in effect, the vortex to organize its information and take what would be fractured noise to any individual institution and turn it into reliable, curated, privacy-protected information that could be deployed back to then generate suspicious activity reports and so forth as the banks are trying to comply.

Mrs. WAGNER. Thank you, Mr. Shindell.

Dr. Gerstenblith, the Financial Action Task Force in February 2015 recommended that financial institutions and the private sector should improve efforts to prevent suspicious transactions. What progress has been made and what additional steps—oh, I believe I have run out of time—can the private sector take to improve these efforts?

Ms. GERSTENBLITH. I would like to start by pointing out that at the moment it is not illegal—or not necessarily clearly illegal—to bring antiquities from Syria into the United States. They have not been included in the OFAC sanctions and there is no general legal principle—

Mrs. WAGNER. That is a huge hole, yes.

Ms. GERSTENBLITH. Yes.

Sorry. Yes, which would be, we hope, plugged very soon. And that is not even the criminal provision; that is only going to be something that leads to civil forfeiture. So before we go to more advanced things, we need to do that.

Mrs. WAGNER. I thank you.

And I yield back the remainder of none of my time that is left and hope that my colleagues will explore that further. Thank you very much.

Thank you, Mr. Chairman.

Chairman FITZPATRICK. The ranking member of the task force, Mr. Lynch, is recognized for 5 minutes.

Mr. LYNCH. Thank you.

And just following up on Mrs. Wagner's line of questioning, it might be profitable for us to look at the Panama Papers side of this, as well. And some suggested legislation, I know, in the past on the issue of terrorist financing. We have gone to Jordan, to Morocco, other places, where we have asked their legislatures and their leadership to adopt anti-money laundering or anti-terrorist financing legislation in those countries so that we do have a means of enforcement.

Mr. Fanusie and also Mr. Shindell, I have a question. The committee regularly travels to Iraq; we just came back last week from Anbar Province and we spent some time—many of us, numerous times—in Southern Turkey on the Syrian border. And we have had an opportunity to meet with rebel groups operating in Syria against Bashar Al-Assad.

A lot of those groups there, including ISIL, are using the social media platform WhatsApp. And just going back to Mr. Shindell's question about the chain of custody on some of these artifacts, what is coming out of Syria and Iraq, and the source of origin, that whole issue, is there a way for us to interdict—I know they are marketing and selling these antiquities in many cases on WhatsApp—the social media platform. Is there any way for us to interdict that—

Mr. FANUSIE. Maybe I will say something and then Dr. Al-Azm, I know—

Mr. LYNCH. Dr. Al-Azm, as well? Please, anybody who feels—

Mr. FANUSIE. Go ahead, because I know you have been dealing with—

Mr. AL-AZM. Let me just say at the outset, this is what we do on a daily basis.

Mr. LYNCH. Yes.

Mr. AL-AZM. We track these sales. We have people on the ground who actually meet with these dealers. On my WhatsApp, I receive dozens of these photos every day.

Mr. LYNCH. Okay.

Mr. AL-AZM. The problem, however, is we receive this information. What happens to it next, that is the big hole, and I quite agree with Mr. Shindell. We have no means of then moving this information on to be acted upon in any meaningful way; it is just information that gets stacked up, and then it goes down the rabbit hole and it disappears, never to be seen again.

So there is a complete breakdown in terms of how this information is used.

I can collect a lot of—I collect a lot of information every day. This was collected by people on the ground who are standing there photographing and then passing that information on to us, and then what happens to that information afterwards is really the big question—

Mr. LYNCH. I see.

Mr. AL-AZM. —and how it is used effectively.

Mr. LYNCH. Mr. Shindell?

Mr. SHINDELL. There are three ingredients to make these solutions work: one is the means to anchor the object so everyone knows this is the exact object we are talking about; two, to then anchor verified information to that exact object so one knows the image actually belongs to the object that is moving in the market, and often there can be a disconnect around that; and three, is a means to organize that information to identify the anomalies—in the technology world today we speak of it in terms of predictive analytics and other things that can instantly say, through information generated at a different timeline in a different part of the world, the object that just came up on WhatsApp is at issue. So those are the three ingredients.

Mr. LYNCH. Okay.

Mr. FANUSIE, anything to add?

Mr. FANUSIE. And I will just add that there is an opportunity there, too, because, as we know from law enforcement that social media can be used to go after criminals and to go after smugglers outside of antiquities. So there actually are—if WhatsApp, eBay, Facebook—as these platforms are being used to market the antiquities, the interdiction can come from law enforcement getting involved on those platforms.

Mr. LYNCH. Right. We have had some issues with the encryption piece of that, and that is probably why it is a platform of choice, I think, right now.

And I probably should have said this at the beginning. Thank you. Thank you, each of you, for your work on this issue. We have really benefited greatly by your expertise and your willingness to work with the committee. Thank you.

I yield back.

Chairman FITZPATRICK. Thank you.

I now will yield 5 minutes to the chairman of the House Committee on Foreign Affairs, Mr. Royce.

Mr. ROYCE. Thank you, Mr. Chairman. I want to thank you, and I also want to thank Mr. Lynch, as well, for your work on this issue.

I just returned from the Middle East, where I was honored to speak at the Iraq Museum in Baghdad about the need to counter ISIS' trafficking of priceless antiquities. And one of the great shocks when you are in that part of the world is to realize, just as the Third Reich in Germany tried to destroy so much history with the book-burning and the history of the German tribes, just tried to restart everything by destroying evidence that went before it, here you have ISIS and you have the Taliban and groups like that which are united in their concept of just trying to destroy all evidence of Assyrian civilization, Babylonian, any Christian examples of churches or art in that region.

And I think the appalling aspect of it, when you consider that you see some of these ISIS spokesmen and other Islamists talk about taking the pyramids down brick by brick, you begin to realize—from what we saw in Afghanistan, as well—when they talk about wiping out evidence of Buddhist civilization, they mean it. They really are committed to this goal. Palmyra would be a case in point. But at the same time, for the smaller antiquities that they can sell for the hard currency, they are not beyond engaging in that kind of criminal activity.

And I was going to ask Dr. Gerstenblith, we have—Doctor, I know how much we have worked on this over the years, and we have the bill that Eliot Engel and I have introduced, H.R. 1493, to try to address this. This is coming back from the Senate this week. Could you speak maybe about this concept of protecting and preserving cultural property through this kind of legislation?

Ms. GERSTENBLITH. Certainly. Thank you, Mr. Royce. And thank you, of course, for your leadership on H.R. 1493.

As I mentioned before, currently there is no legal mechanism clearly in place that would prohibit the import of antiquities from Syria into the United States. And I will say prospectively that

same situation applies to Libya, where ISIL seems to be moving next.

So in order to prevent these objects from coming to the United States, but, perhaps more importantly, to convince the middlemen and the dealers and the looters along the way that they will not eventually be able to sell these things in the United States, it is important that they understand that the United States will not ultimately be a market for these looted objects. And only by cutting down on market demand can we convince those middlemen that they will earn less money or no money, and it works its way back the chain to the people on the ground. And in that way, if these objects are not saleable, then ISIL will also earn less money from the antiquities looting.

Mr. ROYCE. And we also were in North Africa, in Tunisia, and we saw the results of the attack there on the museum in Tunisia. This is ISIS now in Libya that comes over the border and carries out attacks specifically against museums. And, of course, in Libya also they are destroying these cultural artifacts that date back to the Carthaginian period, or Roman and Hellenic periods.

Maybe I could ask Mr. Fanusie, can you expand on why terrorists and criminal groups like ISIS are so attracted to antiquities smuggling as a means of getting that revenue, that hard currency? And can we approach this in the same way as we did on the legislation that we had authored on blood diamonds, some methodology to try to shut down the ability to traffic in this?

Mr. FANUSIE. Yes. I think there are some parallels.

For the first part of your question, it is a unique strategic resource, right? If you look at ISIL's—all of the revenue that they get, much of what they have gotten early on was from taking over territory and dispossessing the people that they took over.

But antiquities provides this opportunity for them to consistently continue to get new resources. There are so many sites. So you have almost—it is maybe not a renewable resource, but a flowing resource of revenue, and you have willing partners or willing people who are there to loot.

So that is a real strategic benefit, something that they can do. As someone said earlier, they institutionalized it and have sort of intensified it.

In terms of blood diamonds, I think the parallel is we have the ability to change the conversation to sort of shift the perception in the public that you should understand how diamonds are—where they were produced. I think we can, one, learn from some of that approach; but two, with the blood diamonds issue, there were some concerns about credibility and accountability.

We could learn from—there are lessons learned from ways that maybe didn't work well enough. So there are definitely some parallels.

Mr. ROYCE. Mr. Chairman, the bill will be coming back this week. We will have a chance to vote on the bill that Mr. Engel and I authored. And I appreciate this forum to discuss the need for us to act quickly.

Thank you very much.

Chairman FITZPATRICK. We look forward to it. And thank you, as well, for your leadership on that important issue.

The gentleman from Michigan, Mr. Kildee, is recognized for 5 minutes.

Mr. KILDEE. Thank you, Mr. Chairman.

And thank you, to the panel, for a very interesting and important set of presentations.

I wonder if I could ask Mr. Shindell if you would spend a minute or 2 expanding a bit on your comments on free ports, the use of free ports as it relates to antiquities. I guess the concern that I have is that it appears that—first of all, I guess the main question would be to what extent are we seeing free ports used as a method to sort of cloak the transactions related to antiquities?

Are we seeing multiple transactions taking place in the dark that make it more difficult to track the chain of title? And what other difficulties do you see in terms of the way free ports might be used in the context of this question?

Mr. SHINDELL. So within the category of free ports there are also free zones, and in our written testimony there are several thousand free zones around the world as well as art industry-recognized free ports. And they are all way stations, if you will, in the movement of these assets. And, of course, most of the industry is using those facilities for correct and legitimate purposes.

The problem is the nature of the industry and the rapidity with which things move in the industry make it very difficult for Customs and border officials around the world to know whether the information that is being provided in the paperwork as works go in and leave is valid. So it becomes a blanket that obscures accurate information, which then drives trade-based money laundering in general and the movement of cultural artifacts, as well.

I would estimate that the use of free ports right now is less for cultural artifacts than art in general, but it is also on the rise as people sort of listen to the beating drums in the industry, because they become challenging and, as a result, holes of lack of clarity, and that enables the movement of the asset.

Mr. KILDEE. Would you be able to suggest any potential changes that would mitigate against the use of free ports or other tax havens in order to execute transactions related to antiquities—for example, extending safe harbor protections to brokers, dealers, other individuals involved in these forms of transactions in order to provide information that could be helpful to law enforcement authorities?

Mr. SHINDELL. The real problem is no one of those parties has enough information to associate it with anything else, so it becomes noise. And that is why we have been focusing so much, and the State University of New York's global initiative has been creating ways to organize that information.

So they are good pieces of a strategy, but until you create a means to organize the information holistically, a very complex amalgam of information, driven by the high mobility and international nature of the market, becomes the ultimate obstacle that has to be overcome.

Mr. KILDEE. And I guess one last question, and I would direct it to Dr. Gerstenblith, although others may comment, and that is the question as to what extent is satellite imagery available to those in academia in order to evaluate existing sites—sites that

might be currently under the control of ISIS or others sort of before and after? Are you able to gain access to satellite imagery in order to make evaluations as to the extent of the work that is being done there?

Ms. GERSTENBLITH. Right. Several groups—private groups, some in partnership with the State Department, the American Association for the Advancement of Science—have had access, through the government, to satellite imagery. One question is, however, there are some gaps.

And we don't have some satellite imagery that would be very useful—or they have not been made public, I should say, or made available to researchers so far—for example, what the condition of Palmyra was just before the offensive was taken over. So it has been difficult to assess how much damage was actually done by the Russians and perhaps the Assad regime as they retook the site, as opposed to what was done earlier by ISIL.

But the satellite images that have, at least to some extent, been made available have been very important because obviously people can't go in on the ground to find out what is happening. It is not a perfect tool, but it is the tool that we have accessible to us.

And from that, there is a group at the University of Chicago that is working to actually quantify not only numbers of holes in the ground, which, of course, there are many—thousands and thousands—but also to determine, based on excavation reports of those sites, how many objects are coming out, and again, by using algorithms spread out over periods of time and large quantities of data, to come up with an actual assessment of how many and what types of artifacts have been looted under ISIL control. In another phase, this group is conducting in-depth market study, also over a large quantity of data, to try to come up with a realistic number of—a dollar figure of how much money are we talking about.

Mr. KILDEE. Thank you.

Mr. Chairman, I see my time has expired. I thank you and the ranking member for holding this hearing and I thank the panel for your really important testimony.

With that, I yield back.

Chairman FITZPATRICK. Thank you, Mr. Kildee.

The Chair now recognizes the vice chairman of the task force, the gentleman from North Carolina, Mr. Pittenger, for 5 minutes.

Mr. PITTENGER. Thank you, Mr. Chairman.

Mr. Shindell or Dr. Al-Azm, what are the legal privacy laws that would impede us in our ability to deal with the art dealers, the financial institutions, auction houses, insurance companies, in transfer of information on suspicious activity? What can we do in that regard?

Mr. SHINDELL. I don't think the problem is the current state of the privacy laws, but rather getting the core information to then provide what the industry would refer to as curated, privacy-protected information. So if we go back to the example I used a minute ago of the bank loan scenario, were there now a means to associate a series of transactions around the world that were the same assets to provide a response back to the current financial institution, that would then trigger the AML suspicious activity reporting regime and all the privacy issues around that with law enforcement.

So what would then happen is the system would know there is suspicious activity around these particular objects that are being used potentially for some problem or another, whether it is trade-based money laundering or terrorist financing. And then the system we have in place would trigger under its existing rules and regulations.

So I don't think we need a change in what is private or not, but organizing the information to provide curated, privacy-protected but effective information for intervening.

Mr. PITTEMBER. Thank you. So this deals mostly with just the transfer of information that would be compatible, that would have access to certain data?

Mr. SHINDELL. Correct, from a high level. So you would know—the bank would know, for example, the objects are at risk. They would then have the information they—

Mr. PITTEMBER. —access to the same data. Thank you.

Targeted sanctions. Give me some insight into that, how we would address that, considering the middlemen and private collectors. They don't have anything to do with ISIS, but how would we impose sanctions?

Ms. GERSTENBLITH. I think sanctions could be imposed on the import. In other words, the antiquities from Syria should be listed on the sanctions list. OFAC has been asked twice that I know of to do that and has so far refused to do so.

If I could go back for just a moment to the last question also?

Mr. PITTEMBER. Certainly.

Ms. GERSTENBLITH. There is a great deal of secrecy. The name of a seller is never made public when sold through an auction house. There are agency and fiduciary agreements with an auction house. Those names are not public. It would require a court order and a court process to get the name of a seller.

The buyers frequently are also not made public. Things are sold through the Internet without names at all.

So I think there is a huge amount of secrecy. Maybe I am looking at it on a more micro scale than Mr. Shindell is.

Mr. PITTEMBER. It is a real scale. I appreciate hearing that.

Ms. GERSTENBLITH. But I think there is a lot that could be done that would require that kind of information.

Mr. PITTEMBER. Thank you.

Mr. AL-AZM. I would just add that most of the material coming on—actually coming out of the ground right now is not even making the market; it is just being sold, transacted between dealers, and it never sees the main market. So most of this is actually academic when it comes to currently—material currently being looted.

Mr. SHINDELL. If you wish, I could clarify the privacy item—

Mr. PITTEMBER. Yes, sir. Please do.

Mr. SHINDELL. —a bit further.

Mr. PITTEMBER. We would like to know if it is necessary for it to be public for law enforcement to be engaged in it.

Mr. SHINDELL. As a title insurance company, we function as the safe haven or safe harbor where the information that is kept secret market-wide is disclosed to us under confidentiality provisions because we need to have that transparency to do our job. And that information only becomes relevant if there, in fact, is a problem or

suspicious activity. And that becomes the information-sharing element under the BSA, for example.

We would agree the industry in many respects operates for privacy reasons, many of which are legitimate, many of which are not, and that can be managed. But it is not as though the industry, from our standpoint—

Mr. PITTENGER. Thank you very, very much.

Talk to me some more about money laundering and the art trade, and what is—what could be done there to address that issue.

Mr. AL-AZM. I believe that this is something like a bridge. Militarily, to take a bridge you have to take it from both ends. So obviously there is the buying end or the demand end, but there is also the supply end.

And I can really only speak to you on the supply side because that is the side I speak to and that is the side I work with. Really, the best thing we can do right now is to try and document as much as possible what is coming out of the ground, and that is really a huge task and that is what we are focused on.

Our problem, then, is how do we then manage to pass this information on? What mechanisms are available to us in terms of being able to share this information? And, more importantly, how that information is then used to pursue or retrieve at some point, or even interject to prevent further transactions.

Mr. PITTENGER. Thank you.

My time has expired. Thank you.

Chairman FITZPATRICK. The gentleman from Pennsylvania, Mr. Rothfus, is recognized for 5 minutes.

Mr. ROTHFUS. Thank you, Mr. Chairman, and I thank the panel for a very informative discussion.

I am wondering if Dr. Gerstenblith can answer this question, or if not Dr. Gerstenblith, then perhaps another panelist: Can we have—is there an estimate at all of the number of Americans who may have purchased illicit artifacts or antiquities over the last 10 years from the Middle East? Can we quantify that in any way?

Ms. GERSTENBLITH. I think that would be very difficult, partly because—again, with antiquities, because they are unknown and undocumented, proving what is legal and what is illegal is extremely difficult. And so you have to go object by object and make a determination first of what is legal or illegal.

But I would certainly say—you are including purchased in any way, including the Internet?

Mr. ROTHFUS. We have estimates of the total value of the transactions. Somehow we are getting those estimates. And so I am trying to get some of the data behind those estimates.

Ms. GERSTENBLITH. I would only say the United States is the largest market for these kinds of antiquities. And my guess would be we are probably—if you include everything for antiquities, you are at least talking about tens of thousands of people, but not—it is not a huge, huge—

Mr. ROTHFUS. And the value for the American purchasers?

Ms. GERSTENBLITH. Do you have an answer to that?

Mr. ROTHFUS. Versus European. What is the bifurcation between American and European—

Ms. GERSTENBLITH. Oh, of the art market overall, the United States is 43 percent; England is the second—U.K. is the second-largest at 22 percent. So we are double the next-largest single market for art overall.

And the dollar value of art—fine art—is much higher than the dollar value of the antiquities. But the contours are probably similar, and it is also a function of taste and tradition that in the United States what collectors collect is Mediterranean and Middle Eastern antiquities.

But I think Mr. Fanusie wants to add to that.

Mr. FANUSIE. I wasn't sure if you wanted to touch on Customs data, which doesn't specifically get at the question of who, but one of the things that we have done is to look at changes in Customs data around artifacts or antiques. But again, that data is for legal purchases—or at least ostensibly legal purchases that have come in from elsewhere. But that is data just coming into the United States that might have transited through various countries.

You can look at that data to get a sense of how the tide has risen with certain categories of items and antiques. But again, that is what we know and that is what people say legitimately—what they are legitimately importing into the country, but not for an individual assessment.

Mr. ROTHFUS. And I imagine there—in the industry there is a separation in dealers: there are legitimate ones who are looking at whether these artifacts are provenanced, and others.

Are there any obligations that a dealer has now to know the seller, who the seller is? Even though it is a private transaction—we may not know who the seller is; we may not know who the buyer is—but is there any obligation on the part of the dealer who will be conducting the transaction to know who the seller is?

Ms. GERSTENBLITH. There is no legal obligation on the part of the dealer to know who either the seller or the buyer is, as long as the dealer is getting whatever finances they want to get out of the arrangement.

And I would say even at the top end of the market, just in the past month at Christie's—a top-end public auction—several pieces were picked up by law enforcement that came from Southeast Asia, and a couple of pieces were picked up that were classical antiquities. So even from the people that you would think would be doing the most provenance research, where the fault lies is another question perhaps, but clearly illegal antiquities surface even at the top end as well as all the way through the market.

Mr. ROTHFUS. What can we be doing to prevent that from happening?

Ms. GERSTENBLITH. I had several suggestions in my written comments, but I think we need better tracking of objects, both, perhaps, by tracking better what is coming into the country, certainly there is no tracking of what is leaving the country.

I think we could require that these kinds of documents be maintained and made available to law enforcement. Right now, law enforcement needs a search warrant before they can get information about who is selling what and what is the provenance information for that.

There are a number of things about making this a higher priority overall. The number of packages that are searched coming into the country through Customs is really minimal, and it depends on which port they are coming through. Some don't know anything about antiquities trafficking; some, like New York, have so much that comes in that only if something has a declared value above a certain amount will Customs even look at it.

So overall, this is just not considered a high priority by law enforcement, especially on Customs' side. And there are far too few prosecutions connected with violations of Customs law.

Customs in general is happy if they can seize, forfeit, and repatriate something. They have a beautiful repatriation ceremony. It does nothing to stop the illegal trade.

People are happy to give an object back. Only if the government pursues criminal prosecutions—the threat of criminal enforcement and the possibility of jail time—will the government really start to reach the market.

Mr. ROTHFUS. I see my time has expired. I yield back.

Chairman FITZPATRICK. The gentleman from Texas, Mr. Williams, is recognized for 5 minutes.

Mr. WILLIAMS. Thank you, Mr. Chairman.

And thanks, to the panel.

I first of all want to say hello to my good friend and fellow Texan, Mr. Edsel, and state to all here that you are a Texas treasure. We appreciate you.

Now, Mr. Edsel, I was glad to see that the Monuments Men received a Congressional Gold Medal for their contributions in protecting artifacts during World War II last year. Your contribution cannot be understated, and personally, I felt like it was long overdue and I was proud to support that effort.

My first question is, you have said that a major benefit of the Monuments Men effort was that noncombatants in Europe were grateful to Allied forces not only for liberating them but for preserving the cultural history of the continent. Would you elaborate on that? And do you believe the same would be true if we were better able to save antiques and other cultural objects in the Middle East today?

Mr. EDSSEL. Thank you for your kind remarks, and thank you for—you and all of your colleagues—for the support of the legislation to award the Monuments Men with the Congressional Gold Medal. It was quite a moment.

Yes, I believe that the United States would be looked upon favorably by nations of good will throughout the world, and I think the evidence is irrefutable, because look at what happened in 2003 in the aftermath of the American-led invasion of Iraq. Not getting into the issue of whether we should or shouldn't have been there, but it raises the issue of what is the responsibility of the United States or any force when they are in a foreign country concerning the protection of cultural assets? And our failure to plan and take care of those assets caused enormous damage to the country's reputation around the world.

I know from experience in interviewing Monuments Men, that during World War II, there was a great deal of skepticism because so much of the damage that took place in Europe was a result of

allied bombing and artillery to soften up landing beaches. But time and time again the people expressed appreciation for the fact that you had to get rid of the bad guys, you had to get troops on the ground, and when they saw efforts to affect temporary repairs and then at the end of the war, in a break with civilization, return some of the 4 million objects—4 million—that these 100 or 200 men and women, without any technology, no computers, managed to get back to the countries from which they were taken.

So I think there is no question. Yes.

Mr. WILLIAMS. Are we doing enough as a nation—and I think you have kind of touched on this—to safeguard the cultural heritage in these regions of the world? And what more can we do?

Mr. EDSEL. This is a great question and it is a challenge of our time. Look, it makes no sense for us to be sending modern-day Monuments Men, people with Blue Shield and Patty's organization, which are doing great work, into harm's way without force protection. It worked in World War II because we had 3 million troops in Europe.

But to say that because we can't put troops on the ground, we can't do anything, is ridiculous. The United States is a leader in technology and we are not using all the tools necessary to try and put an end to a lot of these things.

We have discussed—and there have been some good questions here of the panel—steps that can be taken going forward. There are two realities about collectors that are inarguable: They love to show people what they have—that is a problem if it is hot; they hate losing money—that is a problem if you demonetize illegally owned works of art.

And I am not talking just about objects that come from these war zones, but going back to Nazi-looted art, works of art that were stolen from the Isabella Stewart Gardner Museum from Mr. Lynch's part of the world, objects that are stolen from churches in Italy, all over the world. These things don't get stolen unless there is someone to buy them. They don't get stored in these tax-free zones unless something thinks eventually the spotlight is going to move away and there will be collectors that can buy them.

So if we have some process to register works of art—perhaps there should be a threshold there where there is a clean bill of sale—you have this, your things—your work of art, whatever it is, a small object, a painting—is known, there is no chance to—there is not concern about it being something that was smuggled, it is going to be a disincentive for people out there with lots of money to be out there buying these things knowing that, "Where is your piece of paper? I don't want to buy this thing unless it has been cleared."

Is it a huge challenge for us from a technology standpoint? Sure. It is work.

But 100 to 200 Monuments Officers in the face of a war that claimed 65 million lives with no tools of technology found and returned 5 million objects. So I am not really interested in hearing someone tell me all the difficulties or why something can't be done today when we can read a credit card from space.

So the technology is there. The question is, is the will there? And in the process of addressing the diminution or termination of the

sale of looted antiquities, and in this kind of increased reporting, bring transparency because who is against transparency?

If we bring that into the arena, we are not only going to be cutting down on trafficking and sources for organized crime, for ISIS and other terrorist organizations, but the Internal Revenue Service is going to be getting more of the revenue that is—that it is due, which is going to take a burden off of taxpayers who are having to carry the share of people who are trying to duck the system; it is going to return works of art to the places from which they were stolen.

There is no downside to doing this. It is just a matter of the will.

Mr. WILLIAMS. Thank you for your testimony. You sound like a guy from SMU.

I yield my time back, Mr. Chairman.

Chairman FITZPATRICK. The gentleman from Arkansas, Mr. Hill, is recognized for 5 minutes.

Mr. HILL. Thank you, Mr. Chairman.

And I thank the ranking member for your work on this important topic.

Mr. Edsel, I was at the ceremony for the Congressional Gold Medal and it was touching. It was great to see some of the remaining Monuments Men and their families there, and it was really touching.

I want to start out and talk about motivation here, and isn't ISIS or other motivations and the destruction and marketing of these cultural items really an issue of trying to establish cultural superiority? Isn't that what drives people when they do this sometimes?

If you look back at your experience and looking at Europe in World War II, didn't Hitler want to demonstrate cultural superiority in capturing all this art, and having it and possessing it?

Mr. EDSEL. Yes, that is a significant factor. There is no question that if you look over the 20th Century and we do a little bit of study of history here, the genocides that end up happening, the Holocaust during World War II—Jews weren't incarcerated and murdered immediately because there is a key component of the theft and destruction of these objects, and that is the process of humiliation.

We are going to detain you. We are going to put you in concentration camps. But while you are alive, we are going to steal the things and destroy the things which define you as a civilization. And, yes, we are going to kill you later on, but we are not going to do it yet.

And we saw this in Bosnia-Herzegovina; we have seen this in Mali, the destruction in Timbuktu of Islamic treasures by people who are purporting to be followers of Islam. But these are treasured relics that defined that civilization, and the process begins by destroying them.

And now we have—it is not really a modern twist. I think when you look back over Nazi Germany, if you want to talk about institutionalizing the looting, the Nazis wrote the book on it. The amount of resources that were dedicated in an organized way—troops, trucks, planes, trains—to move around all of the cultural treasures of Western civilization, from butterfly collections, to the

church bells in the cathedrals, to paintings, to drawings, to statues, was extraordinary and a distraction to the war.

Okay, ISIS may not have quite those resources at this point in time or that degree of organization. But there is a strong incentive for them to do it, and I think certainly the things that are immovable are at great risk of being destroyed. We saw that in Palmyra, and Bamiyan Buddhas with Al Qaeda in 2001.

We see it now evolving to things that can be sold. Why destroy them when we can sell them and convert them to cash?

Mr. HILL. Yes. I think this is a cultural genocide, just like we are experiencing religious and human genocide in the Middle East. And it is a great tragedy and it is one that I think our Administration has been behind the curve on now for multiple years, and others in Europe and Russia, as well.

I am also interested in H.R. 1493. Why limit this to—Dr. Gerstenblith, why limit this to Syria? For example, why don't we ban the importation of cultural treasures from other countries?

How do we determine that these are recent versus something that actually has provenance and is out in the marketplace? Aren't we hurting a legitimate antiquities trade potentially?

And finally, aren't we enabling the Assad regime, which you have testified here today is just as destructive of these cultural treasures as ISIS ever was? And why are we, therefore, institutionalizing their control of these icons? They may sell them themselves, right?

Ms. GERSTENBLITH. Right. I am not sure how we are institutionalizing or helping the Assad regime. Those objects would also be unsaleable in the United States if they were seized and forfeited at the border. Maybe that is what you are thinking of?

Mr. HILL. They go back to Syria, do they not?

Ms. GERSTENBLITH. They would not go back—first of all, title gets transferred to the United States Government, and then the U.S. Government would decide when to return them. And I don't think that will happen as long as Assad is in power.

So who knows what government is going to emerge at the end of the day, but I would imagine this would be at a point when relations are normalized with whatever government is in Syria. So I don't see this as helping out the Assad regime. And I agree that they are doing lots of bad things, too.

What we call the normal—there is a normal process in place under the Convention on Cultural Property Implementation Act for imposing import restrictions on cultural materials from countries that ask for our assistance—U.S. assistance. That has to start with a request from the country.

Syria had not done that in the past. Libya, Tunisia, Morocco—none of them have done that. They are all at risk at this point in time, and any number of other countries in the Middle East are at risk.

So that is the reason why H.R. 1493 is needed, to bypass primarily just that requirement of a request. And H.R. 1493 is written so that at the point when relations are normalized between the United States and a Syrian government in the future, that government is expected to bring a request under the normal process.

Now, how this helps is that it changes the burden of proof and what needs to be proven at the border. So if I show up at the bor-

der with an object that may have recently come from Syria, once it matches what is called the designated list that State Department and Homeland Security promulgate, now I, the importer, have to show that it left Syria before March of 2011.

That helps law enforcement significantly, but at the same time does not really impose a huge burden on the importer or the industry because showing where it was just 4 or 5 years ago shouldn't really be that difficult, if it really was out of the country before that point in time.

So that documentation needs to be offered. There are a couple of other ways of showing documentation. But basically, at that point, the object would be importable into the United States.

So I think this presents the best of both worlds: an attempt to not overly burden the trade; but at the same time to prevent those recently looted objects, from which essentially both ISIL and the Assad government may be receiving funding—prevent those from coming to the United States now and into the future.

Mr. HILL. Thank you.

I yield back, Mr. Chairman.

Chairman FITZPATRICK. Thank you.

The gentleman from Kentucky, Mr. Barr, is recognized for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman, and Ranking Member Lynch. Thanks for your leadership on this important hearing.

There is nothing that to me is more disgraceful about what these terrorist organizations are doing than what we are hearing about here today.

The International Council of Museums describes the situation as the largest-scale mass destruction of cultural heritage since the Second World War. The United Nations Educational Scientific and Cultural Organization director considers the Islamic State's destruction of cultural heritage sites in Iraq and Syria to be an international war crime. The Global Financial Integrity Group conservatively averaged and aggregated existing figures to estimate that the value of the illicit trade of cultural property may range between \$3.4 and \$6.3 billion annually.

And so, Mr. Edsel, my question to you, and following up Mr. Hill's line of questioning is, in reading the statistics about the individual Islamic State looters, one estimate is that the looters themselves, the Islamic State fighters who are actually pillaging these historical and cultural antiquities sites, really they are only taking about 1 percent off the top and that most of the profits from this illicit trade of antiquities is coming to inure to the benefit of the middlemen who are engaged in this.

So my question is, obviously, this is some source of revenue for the Islamic State, but is it more a matter of wiping out the cultural and religious artifacts that are inconsistent with the twisted ideology of these terrorist organizations? Are they equal motives, or is one predominant?

Mr. EDSSEL. I am sure it is a slippery slope trying to be an analyst for ISIS and what is going on inside their heads. I think what we can say is that the—if we can find a way to disincent by eliminating or reducing the revenue-making opportunities of stealing

these things, we at least are cutting down on one of the main reasons that it is happening.

Now, there is little we can do about addressing the ideological motivations for stealing or destroying things. Again, I emphasize I have people all the time say, "Well, why don't we have Monuments Men, or why don't we have Blue Shield people there?" It would be a suicide mission to send the troops into harm's way without having force protection.

But the world has changed, as Monuments Man Mason Hammond pointed out, and we have all sorts of weapons—non-military weapons—that we are not using that are, I should say, are evolving—this use of aerial photography to see developments on the ground, as Patty talked about, and others that we are really pioneering the use of—3D technology to do imagery of these non-moveable objects so that if they are damaged or destroyed they can be rebuilt.

People are thinking about these things now. This is a positive step.

Mr. BARR. To Mr. Fanusie and Dr. Gerstenblith, you both mention in your testimony potential ways to disrupt the illicit trade of antiquities: applying additional tariff sanctions by the Treasury Office of Foreign Asset Control against antiquities smugglers and buyers; also, the Royce-Engel bill on import restrictions on Syrian antiquities. What is the best approach to diminishing the demand for these looted antiquities? An all-of-the-above approach?

Mr. FANUSIE. I think all of the above in the sense that we have made quite a few recommendations that can be used from different angles. I think when you talk about sanctions, what we are trying to get at is, is there is a difference between the threat of prosecution and the threat of having your assets seized, or the assets of people close to you?

And so sanctions, even though being a bit of a bold move, provide a potentially greater incentive. It is a tool that we use. And you can debate how effective it is, but it is a tool that we use—

Mr. BARR. In my remaining time, if I could just editorialize a little bit here, I appreciate the advocacy for sanctions and I agree with you. I support the Royce legislation.

But because the motivation is not entirely profit-driven and financing-driven, and because it is an evil, toxic ideology we are talking about here, ultimately the only way that we are going to be able to protect these antiquities is to take back the territory that these radical jihadists control. And ultimately, that is going to have to happen in order for us to, in the long run, preserve and protect these sacred sites.

And with that, I yield back.

Chairman FITZPATRICK. The gentleman from Maine, Mr. Poliquin, is recognized for 5 minutes.

Mr. POLIQUIN. Thank you, Mr. Chairman, very much. I appreciate it.

Thank you all very much for being here.

Mr. Edsel, let me ask you, if I may, sir: As more and more pressure is put on ISIS, hopefully, from the Western world to stop this horrible pillaging of our human history, do you think there are

going to be different avenues that these folks will use to loot and to sell the antiquities?

Mr. EDSEL. Different than what they are doing now?

Mr. POLIQUIN. Yes. Can you look down the road and extrapolate for us here, as more pressure is put on the combatants in this part of the world, what their reaction will be when it comes to funding their terrorist activities using this source of funding?

Mr. EDSEL. If we are successful in Syria and Iraq, I think—I agree with Patty, our focus shouldn't be on what to do now, because we already ceded that opportunity away once ISIS gained control of these areas. To ask what we should do about Palmyra is the wrong question.

What we should be doing is thinking about what are we going to do about where they are going next, whether it is Libya or some other area? They will go; they will take this same type operation.

If there is oil revenue—I was in the oil and gas exploration business for 15 years—that is a simple, fungible, immediately profitable way to generate revenue. But that doesn't mean that we, because it is the majority of revenue that may go to ISIS, that we shouldn't be concerned about these cultural treasures, in particular for this reason: We are 5 percent of the people in the world in the United States. We are trying to figure out how to get along with 95 percent of the people in the world.

The currency that connects people around the world are cultural treasures: sports; music; works of art. We don't necessarily look at the world that way here. It is not wrong; we are just a much younger country.

But if we want to curry favor and do ambassadorial work in building up the esteem of the United States in the eyes of the world, showing respect for cultural treasures of other countries, which is the hallmark policy of President Roosevelt and General Eisenhower during World War II, will do more than all of the foreign aid we are giving away, in my opinion.

Mr. POLIQUIN. Do you think that ISIS, as it spreads its ideology, for example, now, over to Libya, becoming much more active there, have you seen the same sort of illicit activity in that part of the Middle East?

Mr. EDSEL. That's not a question I am qualified to answer. But I know we have four people here that are, or three for sure.

Mr. POLIQUIN. Doctor?

Ms. GERSTENBLITH. We do know that they have taken control of several major archaeological sites in their territory in Libya. And there has been some anecdotal information. We don't have the satellite imagery yet of things being looted and stolen from Libya.

If I could add quickly also, there is one big difference. If you have an oil—for instance, if you are getting revenue from oil, we can bomb it. The problem with an archaeological site is the last thing we want to do is bomb it. So that is why we need to control it through the market.

Mr. POLIQUIN. I would guess that—

Mr. EDSEL. One other thing—let me just add quickly—you want to talk about the war going around, the areas that are of concern in Libya are the very areas that the very first Monuments Men

started work in 1943 in North Africa in Leptis Magnum and other areas. So we are right back to where we began some 70 years ago.

Mr. POLIQUIN. Mr. Edsel, do you think that purchasers of this artwork, these antiquities—these pieces, in America, are they aware—let me rephrase that, sir. Do you know of illicit artifacts having been purchased by Americans?

Mr. EDSEL. Of illicit artifacts not necessarily from this area, yes. From the area that we are talking about in a contemporary sense of antiquities, I don't have any personal knowledge, no.

Mr. POLIQUIN. Can anybody else on the panel answer that question? What I am specifically looking to find is when folks purchase this type of three-dimensional artwork here in America, what is the probability of them knowing that, in fact, it has not been obtained through illegal activities?

Mr. SHINDELL. I can comment on the good-faith market, and clearly there is a good-faith market and a not-good-faith market, like in any other sector. The good-faith market is trying as hard as they can to avoid acquiring or selling or taking as gifts implicated assets today. There have been different eras in the art world as the world has matured around these issues.

There is no question, at the same time, that things fall through the cracks, despite the good-faith efforts.

Mr. POLIQUIN. Now, are you talking about good-faith efforts of Americans and dealers here in this—

Mr. SHINDELL. In the European market, as well, correct. So everyone who is acting in good faith, the credible sectors of the market, are doing their best to ferret out problematic assets in an environment where the information is limited and often inaccurate.

Mr. POLIQUIN. Can you think of another way where we can avoid the heavy hand of the U.S. Government getting involved to help in some way these folks make sure that their good-faith effort is supported?

Mr. SHINDELL. The analogy I would use—and I know you are hearing a constant theme in my comments because I really think it is the answer—if we look to the pharmaceutical industry, for example, which 20 years ago had enormous problems of adulterated drugs—it's still somewhat of a problem today, but it is far better than it was. And it wasn't until the entire supply and distribution chain, as we would use different words in the art world, came together and created systemic solutions that enabled assuring the integrity of the object.

So here we have the same dynamic in certain ways. We have ideological motivations that are trying to eradicate identity. And I suppose at the same time they are saying, "Well, as long as we have torn it down instead of burning it or destroying it, let's go sell it to get some money to further our terrorism." And that then takes it into the trade.

And so a lot of the ideas are multidimensional and good ones on how do we, boots-on-the-ground, so to speak, or at the site, prevent the ideological destruction, and then how do we create lots of different barriers that ultimately deinceivize everyone in the trade, in the sequence, from monetizing around that asset?

Mr. POLIQUIN. Thank you very much. I appreciate it.

Thank you, Mr. Chairman.

Chairman FITZPATRICK. The gentleman from Ohio, Mr. Stivers, is recognized for 5 minutes.

Mr. STIVERS. Thank you.

A lot of great questions have already been asked, and I would like to follow up on some of those questions. And I have a question for Mr. Fanusie.

You asked—or you said in your statement that if we could make declaring antiquities looting and cultural property crime a national security priority, we could really start to reform things, and that we need to make it an intelligence and law enforcement priority. How would we go about—is that just an executive action? Do you think there is a law that is required to make that happen? How could we make that happen quickly?

Mr. FANUSIE. One of the key things is where we put our resources to lead the effort. We already have institutions and agencies who are operating and dealing with this issue, but we should have probably greater resources towards some of those elements.

So, for example, the State Department has a huge role in this. The issue of sort of cultural diplomacy is something that we could—the institutions for cultural diplomacy we could leverage more.

A lot of what we have talked about goes to public perception. So there is the potential for us to emphasize and highlight in our diplomacy this issue—the cultural issue, the cultural property issue.

If you think about—someone mentioned earlier blood diamonds, and you could also think about wildlife trafficking and the fur industry, right? These are industries where there is some—you can think about you have a cozy—an animal, or you have something that people are very familiar with because they deal with them every day—diamonds. But we don't have that in the same sense with antiquities. So I think we really need to raise the level, and State has the potential to do that.

I would also say in DHS, within Customs, within ICE, you already have units which are dedicated to finding out if individuals coming into the country are involved in human rights abuses. So that is a structure that we could elevate for due diligence on—for people who may be dealing with maybe bring antiquities into the country.

Wwe have within our government, I think, a lot of the arteries that could do this. At the NSC, and the National Security Council, there is the opportunity there to have greater coordination.

I know we have already spoken a little bit about the legislation, but as someone who is a former government person who has seen how the NSC operates, there is definitely opportunity there within that body to help coordinate some of these efforts.

Mr. STIVERS. We have talked a little bit with other members earlier about the legislation that is pending that would ban importation of certain Syrian antiquities. From the perspective of the panel, what other legislative proposals—you talked about pedigree earlier, for lack of a better word, or getting the recent ownership of some antiquities in art trading. What other legislative proposals should be pursued if we are going to get at this problem?

Ms. GERSTENBLITH. H.R. 2285 is already—I think it has already been reported out of Homeland Security. It is no new law, but it

would streamline the way Customs operates and would actually require the two parts of Homeland Security—the Customs and Border Protection and the Immigration and Customs Enforcement Agencies—to work together, which they don't do terribly well, in this field at least.

For instance, they have not rewritten the Customs directive since 1990—

Mr. STIVERS. Wow.

Ms. GERSTENBLITH. —which is out of date. And so there are, in fact, several steps that could be taken.

Beyond H.R. 2285 but not legislatively, for example, the number of ports through which art antiquities could be imported could be restricted so that the expertise would develop amongst Customs agents—

Mr. STIVERS. Interesting idea.

Ms. GERSTENBLITH. —to recognize things and to know the laws. I am the first to admit this is a very obscure and narrow area of the law, and the number of people who can be trained either as agents or among assistant United States attorneys should be limited, and we can concentrate the expertise and, therefore, have better outcomes of lawsuits, criminal prosecutions, and the like.

Mr. STIVERS. Are there any ports today that have some more expertise than others? Is there a port that is more active?

Ms. GERSTENBLITH. New York, of course, is the most active, but because of that I have been told anecdotally, for example, that until you declare something is worth at least \$250,000, at least in the past they don't inspect it. And there are a couple of other ports in particular. In the South, there are a couple that mostly have things coming from Central and South America, like Houston, Santa Fe; the west coast, things from Asia come to, say, San Francisco, L.A.

Sometimes people route things, though, through ports that don't have a lot of antiquities. For example, a group of Chinese antiquities were picked up through Alaska, where they probably don't have—geographically it makes sense that they probably don't have the expertise and they are not accustomed to it.

So I think we could concentrate and thereby build, both in the U.S. attorneys' offices, to have trained experts at main Justice who would take on these cases. We have a very effective FBI art crime team that could use more resources and higher priority.

But I don't think we have that same level of expertise within Customs.

Mr. STIVERS. Sure.

Ms. GERSTENBLITH. And we don't have it within the U.S. attorneys' offices, other than probably the Southern District of New York.

I also think that both Federal prosecutors and judges should understand that when there is a criminal conviction, there is the possibility of jail time. There is a special cultural heritage resource sentencing guideline that has been in place for 12 years. It is not used enough.

So there is a lot that can be done with education, consolidation of resources, which will produce more effective law enforcement and better criminal sentencing outcomes in appropriate circumstances.

Mr. STIVERS. Thank you. Thank you, Dr. Gerstenblith.

And thank you all for everything that you have worked for and testified for before today.

I know my time has expired. I yield back my nonexistent balance of time, Mr. Chairman.

Chairman FITZPATRICK. Thank you, Mr. Stivers.

I am going to yield myself 5 minutes.

I am going to ask the staff to put up that slide, Dr. Gerstenblith—your original slide, which was Mari, I think it was after, so you—went through in your opening statement what we were looking at. In a moment I am going to ask you maybe in a little more detail if you can explain that slide in some more detail what we are looking at.

Ms. GERSTENBLITH. This is the second one. Do you—

Chairman FITZPATRICK. This is the second one, yes. This is the after slide.

First, I want to ask Mr. Fanusie a really quick question. The FBI issued a warning back in 2015 that those who were involved in the trafficking of Islamic State antiquities could be investigated and prosecuted under material support for terrorism provisions. To your knowledge, has the FBI ever applied those types of charges?

Mr. FANUSIE. I haven't heard of anything since, not publicly, for antiquities coming out of—I have not heard of anything.

Chairman FITZPATRICK. You haven't heard of prosecution or charges. How about investigations? Any anecdotal evidence that these things are actually being investigated?

Mr. FANUSIE. I don't have anecdotal evidence except for—I know in the bulletin it states that the FBI is aware that people have been approached—buyers have been approached. So I would assume that there should be investigations going on, but publicly I haven't seen anything.

Chairman FITZPATRICK. Do you have an opinion as to what the obstacles are to investigation?

Mr. FANUSIE. I'm sorry?

Chairman FITZPATRICK. The obstacles that prosecutors would have in an investigation.

Mr. FANUSIE. Someone just mentioned the U.S. Attorney's Office. I think in general, cultural property is not the most well-known topic for investigators, so even though the bureau does have a good team, if you think about all of the agents all over the country and if not the world, cultural property is not something that is probably the most—we don't have necessarily the most expertise in—around—in all of our offices with all of our agents.

Chairman FITZPATRICK. Dr. Gerstenblith, in your testimony you had mentioned when these artifacts are intercepted at, say, the southern border of the United States that they are identified with some sort of asset forfeiture process that goes on, returned to their owners, but no prosecution. I assume that is because of lack of authority?

Ms. GERSTENBLITH. In some cases, for instance the Syria import restrictions, if they go into effect under H.R. 1493, is not a criminal provision; it is only a forfeiture. So in a lot of cases, that is correct.

But I would say the biggest obstacle to criminal enforcement is that if this is my ancient Syrian antiquity, by looking at it you can-

not tell whether it is legal or illegal. That means that if I buy it—first, it is an obstacle to law enforcement to determine whether it is legal or illegal.

But for criminal prosecution they have to prove whether I knew that it was legal or illegal, and that is very difficult to do. You can only do that, so far as we know—in the cases that we have—either through undercover investigation or through somebody who flips, my bookkeeper, whatever, then reports me.

So I think one thing that could be done is to encourage undercover investigations. That requires some authority and some finance support for that because it takes time to develop the personas and everything for the undercover investigations. So I think that is the biggest problem.

I would like to see more criminal options under import restrictions. One way of getting the criminal option is through the sanctions, because those would be criminal if you violate them. But the knowledge factor is still the problem.

Did you have another question for me?

Chairman FITZPATRICK. Yes. Looking at that slide, can you just go into a little more detail exactly what we are looking at? And then I am going to ask Mr. Edsel, because in response to a question Mr. Edsel—are we doing enough in the United States—yes, if—want to go to the first slide? Is the first slide easier? Would that be better—

Ms. GERSTENBLITH. The second one shows the looting; this one does not show much in the way—yes.

Chairman FITZPATRICK. Okay.

Ms. GERSTENBLITH. So the white structure is a palace of Zimri-Lim, from the early part of the second millennium BCE, and to the left of it are some excavated areas, the lines that you see.

And then all of the pits around it are looters' pits. And some are marked with a red circle, but some are not. The ones with the red circles were only in the 2 or 3 months before the image was taken.

Now, this fell under ISIL control I think in the spring of 2014, so this is about 6 months or so. So if you want to compare it, we could go back to the first slide and you will see the difference.

Okay? Dr. Al-Azm could also add to that, if you would like.

Mr. AL-AZM. Basically, the site of Mari, there is a very well-known local village close by, and they traditionally have always been the looters of that site long before any of the conflict started. So obviously when things went pear-shaped in Syria, and even before ISIS took over, when the regime was pulling back from the rural areas back into the cities, there was no longer any sort of oversight or scrutiny of what was going on at the site of Mari as well as many other sites, and it became a looters' haven.

And we know that in Mari as well as in Dura Europos and several other of these sites, sectors were being sold by the local, let's say organized mafia, controlled by this one local village, to the highest bidder to come and loot the site. Now, when ISIS took over, they came upon this preexisting situation.

They just said, "Right. Now we are in charge, so you have to now work through us. So now we are the ones who issue the licenses. You can continue looting, but now everything has to funnel through

us and we have to take our cut on every step of the process.” And this has really been repeated in site after site after site after site.

Chairman FITZPATRICK. And this is a combat zone. Does anybody want to predict, without holding you to it, what the next potential site would be of this kind of destruction or looting, combat or non-combat? Are there other sites that we should be looking at?

Mr. AL-AZM. Are you thinking in Syria or outside?

Chairman FITZPATRICK. The whole world.

Ms. GERSTENBLITH. Libya, without question.

Mr. AL-AZM. I would concur. We already know that it is happening. I have spoken to a Libyan colleague of mine who works—essentially does the same thing I do, and he says that they are already experiencing very similar pattern of behavior in Libya.

Chairman FITZPATRICK. I think my time has expired.

There has been a request for a second round. Is there any objection?

Without objection, Mr. Pittenger is recognized for 5 minutes.

Mr. PITTEMBER. Thank you, Mr. Chairman.

And I thank each of you for being with us today. We have 5 minutes here on my part, and I would really like to get your action points: what you would do if you were in our seat; what policy changes, legislation—you have mentioned some; what work with our international community. What would you do to prevent the utilization of antiquities in the market and plundering them and the use by ISIS?

Mr. Edsel, please begin, and I will give each of you a little less than a minute.

Mr. EDSEL. We need more transparency. I think Mr. Shindell’s comments about establishing standards for disclosure are absolutely correct.

There is something horribly wrong, from my perspective as a citizen coming back into the country with requirements to declare any cash or fungible currency \$10,000 or less, and yet we can ship works of art around the world out of the eye of the system. So I think there is a lot of work to be done in that area.

I certainly think the art looting group at the FBI, Customs, ICE, needs more funding. They have a very, very difficult situation.

We have to get people who are collecting to understand there is a responsibility on their part to know what these objects are and where they came from and that there is a consequence to willful ignorance.

Mr. PITTEMBER. Thank you.

Mr. Fanusie?

Mr. FANUSIE. Yes. I would like to echo the idea of giving our law enforcement more tools to work with through the use of sanctions. That would, again, bring more authority that would allow us to go after folks who are really involved and the worst offenders of this issue.

And then I would say—this may be a bit outside of the box, but we need to sort of bring a face to this issue. There should be more coverage, I think, culturally in the State Department.

This issue should be raised more so that the public has a sense, right? We have all viewed, “Raiders of the Lost Ark.” We all sort

of have this—“Monuments Men”, the power of media, of culture could play into this, so we should really leverage that.

Mr. PITTENGER. Thank you very much.

Ms. Gerstenblith?

Ms. GERSTENBLITH. In addition to everything I have said already, a few other things. One on perhaps the microscale is to modify the Harmonized Tariff Schedule and to require importers to declare more precisely what it is they are bringing into the country. And I can go into more detail on that if you should want to.

But I think in terms of market transparency, one thing that we haven't talked about is that when objects are donated to U.S. institutions, cultural institutions, and the donor receives a tax deduction, at the moment there is, under the IRS rules, whatever the museum may do is one thing—and I am not discounting what museums themselves do and their requirements—but when the donation is reviewed by the IRS Art Advisory Panel, it is reviewed only for the market value of the object and not for the provenance information and the title, and I think that would be an important addition.

Mr. PITTENGER. Thank you very much.

Dr. Al-Azm?

Mr. AL-AZM. On the supply end I would say increase support to organizations that are on the ground in Syria in the areas outside regime support to help prevent looting. Remember that when an object leaves Syria, ISIS has already collected its money, so everything else is academic after that, in terms of how ISIS makes its money.

On the demand end, I would suggest maybe, like when you buy a car there is a VIN number on the car and there is a logbook; you can't sell it without that. Why can't we do the same for objects?

It is very simple. Just make sure that you have that, and the onus is on the buyer and the seller to make sure that information matches. You are not relieved or absolved of responsibility under the law currently, as I understand it.

Mr. PITTENGER. Thank you very much.

And, Mr. Shindell?

Mr. SHINDELL. There is a need for both short-term solutions and long-term solutions, and many of the great ones that have been suggested are short-term focused, as they should be.

The long-term issue goes back to what we keep saying: transparency and accurate information. So Patty's example, how do we know when the artifact bottle of water that is coming through Customs is real or fake, the object someone says they are referring to, and the information associated with the object is accurate?

A clear way to intervene today is through the financial industry and sector, because of the intersection of money and these objects; technology solutions, which can put VIN numbers, in effect, on objects, although that is a very complex issue for sensitive objects where the integrity must be in place for decades if not centuries, but technology can do that today.

And all of that, then, adds to the transparency that can make the specific intervention tactics meaningful. Otherwise we aren't achieving enough scale to solve the problem holistically.

Mr. PITTENGER. Thank you very much. This has been extremely helpful. We really appreciate your being here today.

Chairman FITZPATRICK. With that, we would like to thank, again, our witnesses for their testimony today. We found the testimony and these action items to be extremely helpful to our work.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

Without objection, this hearing is adjourned. Thank you.
[Whereupon, at 12:08 p.m., the hearing was adjourned.]

A P P E N D I X

April 19, 2016

**CMW Opening Statement
Taskforce to Investigate Terrorist Financing
Hearing Entitled “Preventing Cultural
Genocide: Countering the Plunder and Sale of
Priceless Cultural Antiquities by ISIS”
April 19, 2016, 10:00 AM**

Thank you Chairman Fitzpatrick and Ranking Member Lynch for convening this important hearing on the exploitation of priceless cultural antiquities by Daesh – also known as ISIS.

We are fortunate to have an impressive panel of expert witnesses here with us whose collective, expansive knowledge will help us understand how

Daesh traffics antiquities to fund its operations and what we can do to stop them.

While the destruction of cultural heritage is of grave concern in its own right, the fact that Daesh is successfully raising millions of dollars through the sale of ancient objects demands that we address this problem as quickly as possible.

To do so, we must first immediately join the international community in blocking the importation of antiquities from Iraq and Syria.

Second, we must curtail Western demand for the treasures that fuel Daesh's operations by raising public awareness and punishing those who purchase high-risk objects with willful blindness.

Third, we must take strides to enhance transparency in art and antiquities transactions. We can do so by requiring a credible legal record of provenance, disclosure of beneficial ownership information, and reporting on objects stashed in anonymous warehouses known as "freeports" around the globe.

Finally, we must extend basic anti-money laundering and counter terrorism obligations to art market participants and create incentives for them to report and share information on suspicious activity.

As the world leader in the demand for antiquities, the United States is uniquely positioned to curtail the market for the treasures that fuel ISIS's heinous activities, and we should do so without delay.

Thank you, I yield back.

Testimony before the Task Force to Investigate Terrorism
Financing on “Preventing Cultural Genocide: Countering the
Plunder and Sale of Priceless Cultural Antiquities by ISIS April
19, 2016.

I would like to begin by thanking the Task Force Investigating Terrorism Finance for inviting me to testify before it on a matter of such importance.

My name is Amr Al-Azm and I am an associate professor of Middle East history and anthropology at Shawnee State University in Ohio. I was educated in the UK, reading Archaeology of Western Asiatics at University College, London graduating with a doctoral degree in 1991. From 1999-2004, I was an official in the Syrian government’s antiquities department as Director of Science and Conservation Laboratories. I am currently actively involved with “The Day After Heritage Protection Initiative,” a collaborative effort to protect cultural property in Syria.

Since March 2011 Syria has gone through a traumatic and destabilizing process that has strained the ethnic, sectarian, and social fabric of the country—almost all that makes Syria a unified state with a people who share a common history, goals, and aspirations—to beyond the breaking point. Much of the country lies in ruins today, and its cultural heritage has been a deliberate casualty of the conflict from its earliest days.

The changing nature of the conflict in 2012 to one of armed confrontation between regime and opposition resulted in a power vacuum and breakdown of law and order in many parts of the country. This situation, coupled with the collapse of many basic services traditionally provided by the state, helped facilitate damage to Syria’s cultural heritage. A local population desperate for sources of income intensified looting at such sites as Apamea, Dura-Europos, and Mari, particularly early in the conflict. This has been clearly demonstrated in the before-and-after satellite imagery taken of the sites. The fighting has also damaged archaeological sites and monuments; ongoing military operations from both sides have left many in ruins. Much of the old city of Aleppo and the Crusader castle of the Krak des Chevaliers, UNESCO designated world heritage sites, have suffered severe damage.

Then there are the documented instances of deliberate, punitive destruction and looting of sites and monuments. This latest threat to Syria’s cultural heritage comes from the extremist group ISIS, which is iconoclastic in its approach to cultural heritage. Yet the picture emerging today from areas controlled by ISIS is far more complex than the simple narrative often portrayed in the media, as ISIS has a clear evolution in its approach to looting and destruction of antiquities.

When ISIS began to occupy the large swathes of territory it currently controls in Syria and Iraq in the latter half of 2013 and early 2014, it came upon an already-thriving trade in looted antiquities. Recognizing its potential value as a source of income, it initially permitted locals to continue looting these sites and imposed a 20 percent sales tax, also known as *khums*, on any transactions. Shortly afterward, ISIS began to increasingly take control of the process by regulating access to sites and threatening to impose penalties for non-payment of *khums*. By the summer of 2014 ISIS was issuing

digging permits or licenses and hiring contractors to loot sites in areas under its control.

In the fall of 2014, as part of ISIS's aggressive expansion into the illicit antiquities trade, the group established the Archaeological Administration (AA) under the Office of Resources, *Diwan Al-Rikaz*, to manage and organize the systematic looting of archaeological sites in the region. Through the AA, ISIS intensified its activities and became increasingly engaged directly in the looting, as opposed to earlier reliance on locals and contractors. The AA now organizes the sale and transfer of artifacts it acquires directly through its own digging operations and has established a network of approved dealers to whom the looted antiquities are sold, with middlemen facilitating the sales. They also routinely use earth-moving machinery, including bulldozers and trucks, to accelerate the digging and recovery process, which intensifies the amount and rate of destruction to archaeological sites. Many sites have been deeply scarred as a result of this highly aggressive practice.

In addition ISIS through *Diwan Al-Rikaz*, run a regular auction in the city of Raqqa dedicated to the sale of antiquities. Items, which are not sold within the agreed time, stipulated by the licenses issued to looters and those acquired by ISIS cadres are sold at the auction. Buyers of the antiquities include local dealers and representatives of foreign ones who regularly acquire material through the auction. In November 2015 operating procedures of the sale of antiquities at the Raqqa auction were reported to have changed due to the current air bombardments in Raqqa, and ISIS's uncertainty of battlefield developments. The catalyst for these developments had been the international response to the terrorist attacks in Paris. The changes included holding auctions up to three times a week. Concern over aerial bombardments has led to a concerted effort to empty ISIS warehouses in Raqqa of antiquities as quickly as possible.

This evidence indicates that the control and sale of looted antiquities is extremely lucrative, well worth the time and financial investment by ISIS. ISIS is clearly involved and profiting at every level from the illicit trade of antiquities—from their initial extraction from the ground to their final sale and exit from ISIS-controlled territory.

2015 heralded a darker and more sinister manifestation of ISIS's control and exploitation of cultural heritage, but this time in Mosul in neighboring Iraq. In what can only be described as cultural atrocities, ISIS very publicly set out to destroy the contents of the Mosul Museum and the archaeological sites of Nineveh and Hatra (most likely extensively looting them as well). These atrocities shocked the world, allowing ISIS to demonstrate its ability to act with impunity and illustrating the impotence of the international community to prevent the atrocities.

So when ISIS occupied the UNESCO-designated World Heritage site city of Palmyra in Syria May 2015, fears were raised as to what fate awaits these majestic ruins. Will they be pillaged for profit, fall victim to another cultural atrocity, or both?

The world did not have long to wait for its answer; in just ten days between the last week of August and the first week of September, two months after the ISIS seizes control of the city, the smaller temple of Baal Shamin, the grand temple of Bel and

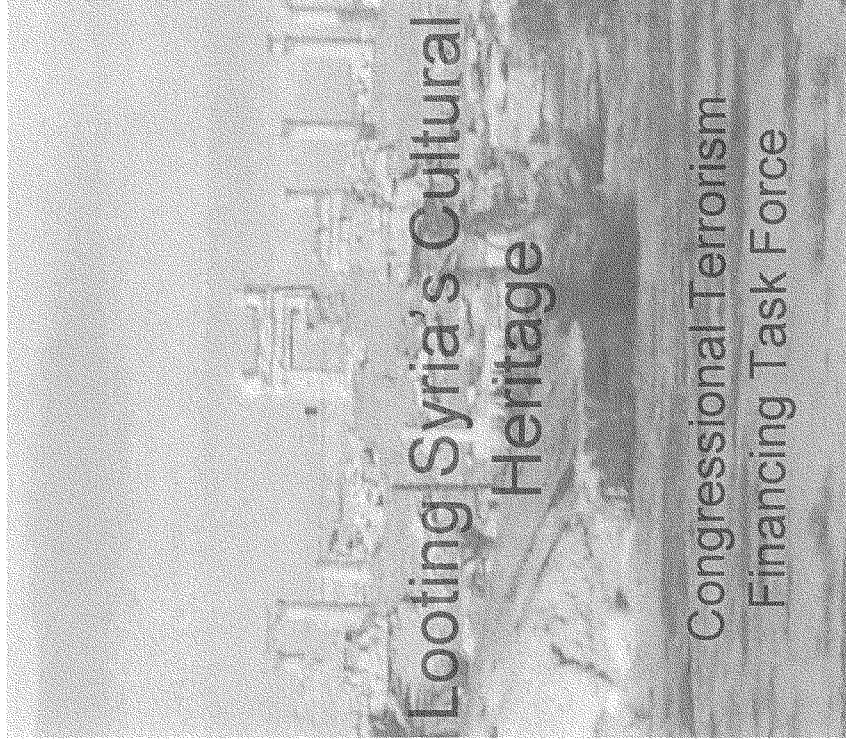
three funerary towers from the necropolis were blown up in what has become the hallmark signature of ISIS's destruction of cultural heritage sites. All of which attracted enormous publicity waves of outrage and condemnation from the international community. This was followed shortly after by the destruction of another iconic landmark of Palmyra. The monumental arch, also known as the Arch of Triumph that stands at the entrance to the Grand Colonnade was blown up. The main arch with its two smaller arches flanking it was originally built in the second century by the Roman emperor Septimius Severus to commemorate his victory against the Parthians. From images secretly filmed by local activists, the top left side of the arch and the smaller arch associated with it have been completely destroyed. All that remains standing is the right half of the main arch and the smaller arch to its right. The colonnade fortunately was undamaged.

The question that looms large is why ISIS destroyed Palmyra's major cultural heritage landmarks. The answer lies beyond the simplistic narrative of an extremist Islamist group with an iconoclastic approach to cultural heritage generally portrayed in the media. ISIS commits cultural heritage atrocities to shock the world, allowing ISIS to demonstrate its ability to act with impunity and illustrating the impotence of the international community to prevent them. These atrocities along with others such as the very well orchestrated and public executions of Westerners in orange jumpsuits are part of a carefully crafted propaganda campaign by ISIS. The propaganda resonates well with ISIS's narrow base of supporters and help bolster morale by reinforcing the ability to act with impunity whilst shocking the world at large and drawing attention to ISIS's actions.

The atrocities are often committed as a response to challenges and or setbacks suffered by ISIS. So within the context of the explanation set out above, ISIS's accelerated destruction of the site of Palmyra should be seen through the wider lens of events taking place in Syria today and the need for ISIS to respond to them. In the fall of 2015, Russia launched its much vaunted air campaign in Syria and whilst most of its firepower has not been directed against ISIS targets, publicly the avowed objective of Russian intervention is to destroy ISIS. In turn ISIS feels compelled to respond to this and other challenges by destroying cultural heritage at sites like Palmyra.

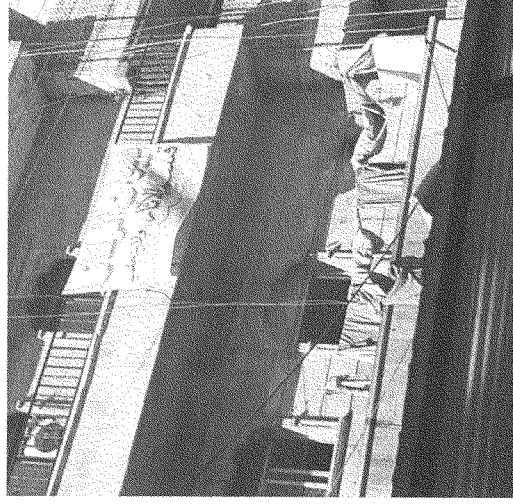
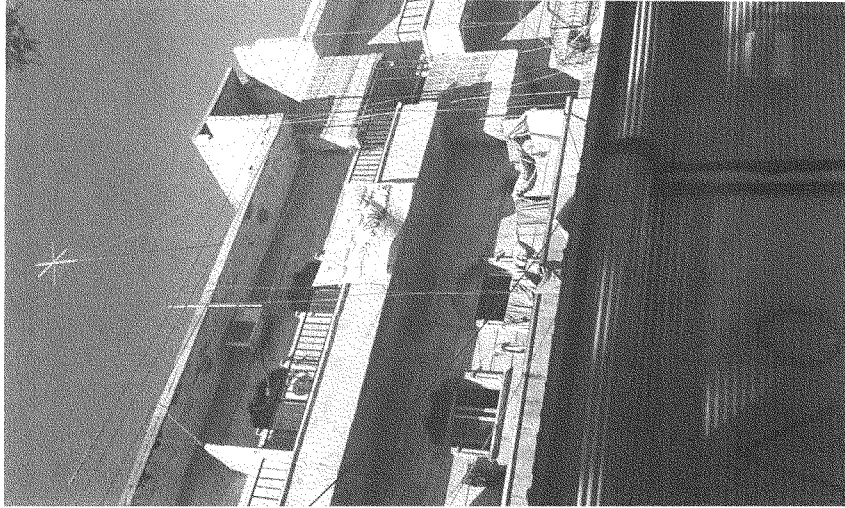
ISIS is likely the wealthiest radical terrorist organization in contemporary history, with widely diversified sources of income. Stopping the highly lucrative illicit trade in antiquities is imperative not only because it is a major source of income for terrorist organizations like ISIS, but also due to the irreparable damage it is causing to Syria's cultural heritage.

The importance of this cultural heritage is clear when it comes to the issue of national identity, that is, what makes a Syrian a Syrian. Syria has a resilient sense of identity based on the concept of a shared citizenship around a common history, supported by a celebrated culture. Once the current violence ends, the people of Syria will need to find ways to reconnect with symbols that once united them across religious and political lines. The country's ancient past, represented in its rich cultural heritage, is key to this. Protecting and preserving Syria's history and heritage is thus also about safeguarding its future.



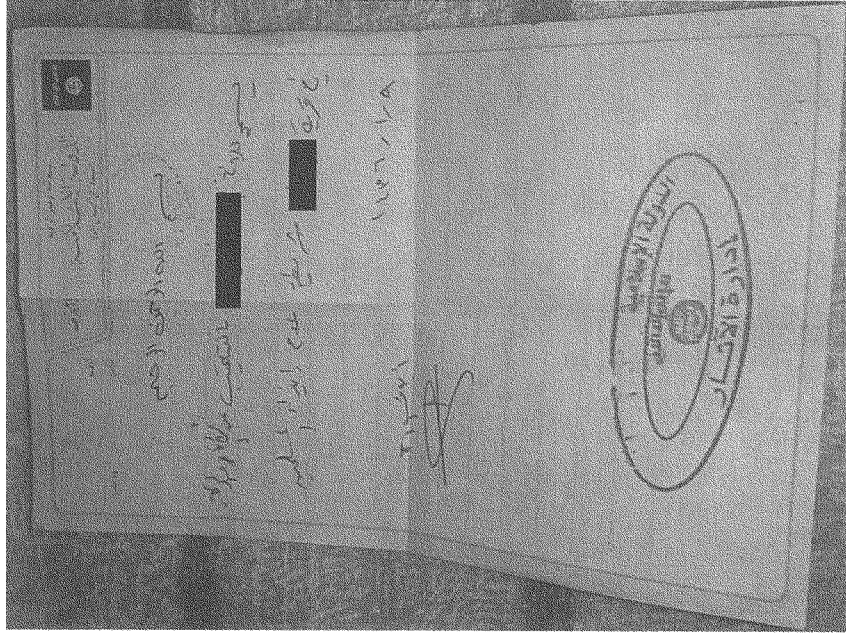
Track Looting: Diwan Al Rikaz in Manbej

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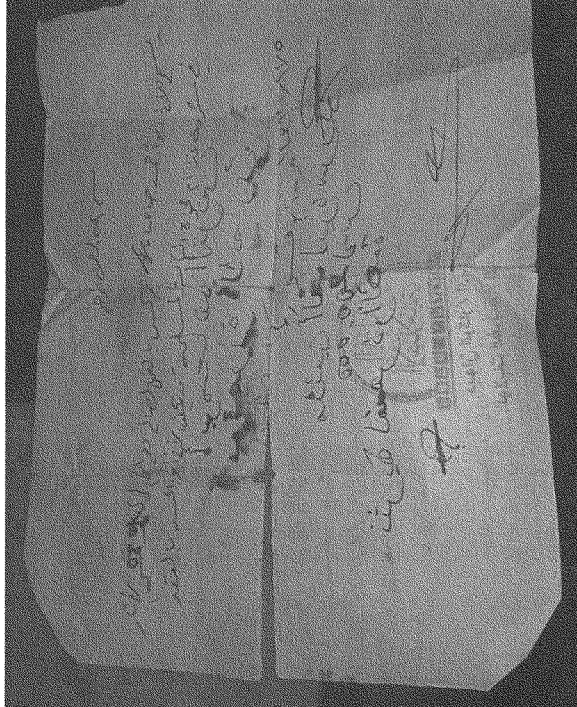
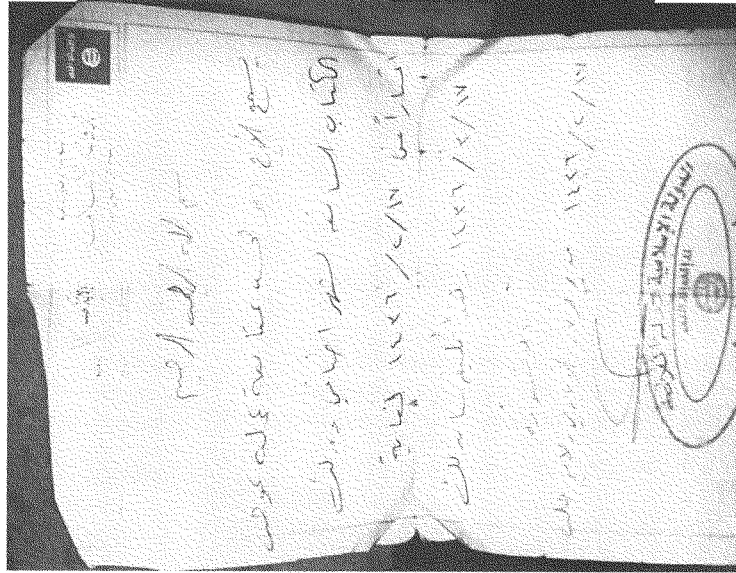


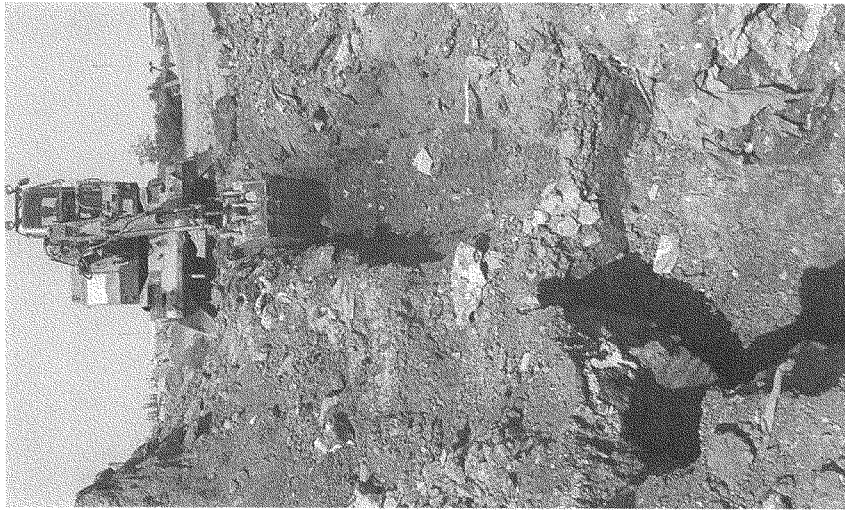
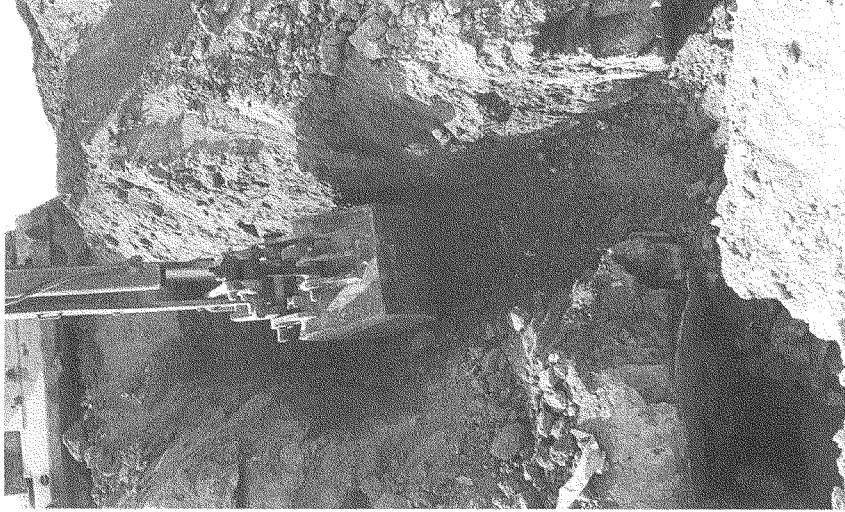
ISIS AA Looting License

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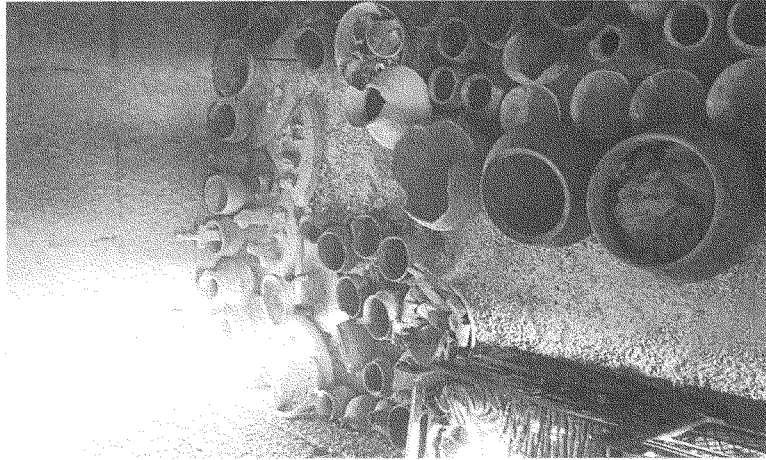
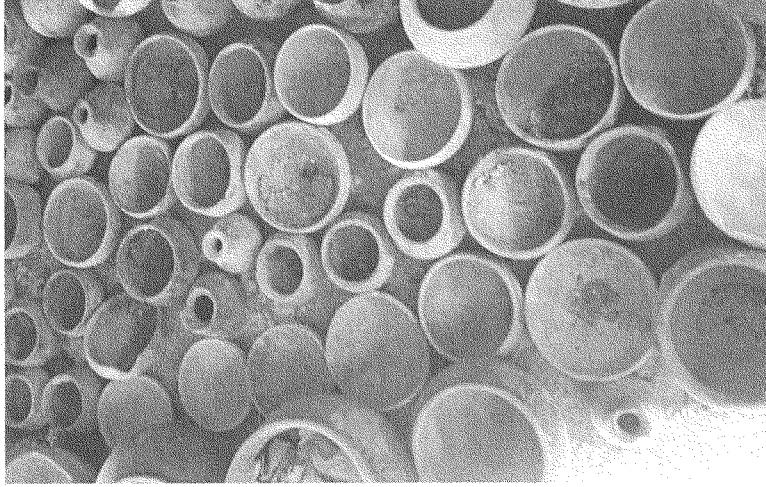


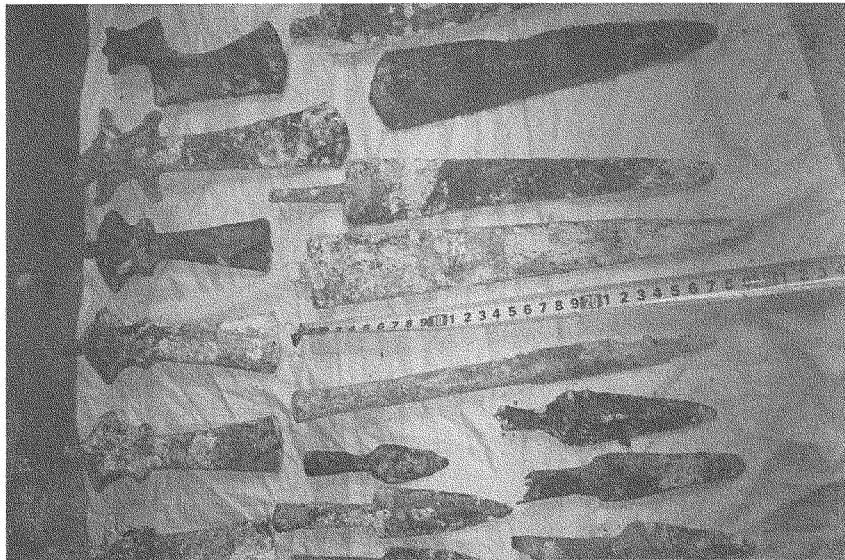
Case 1: Permits



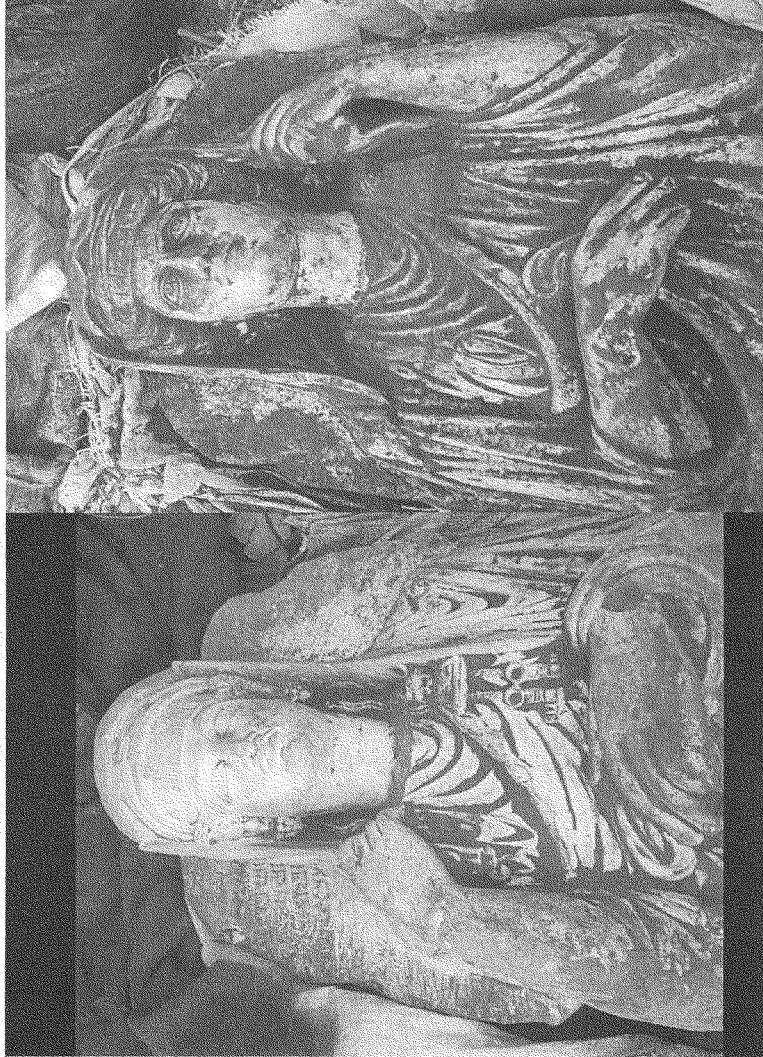


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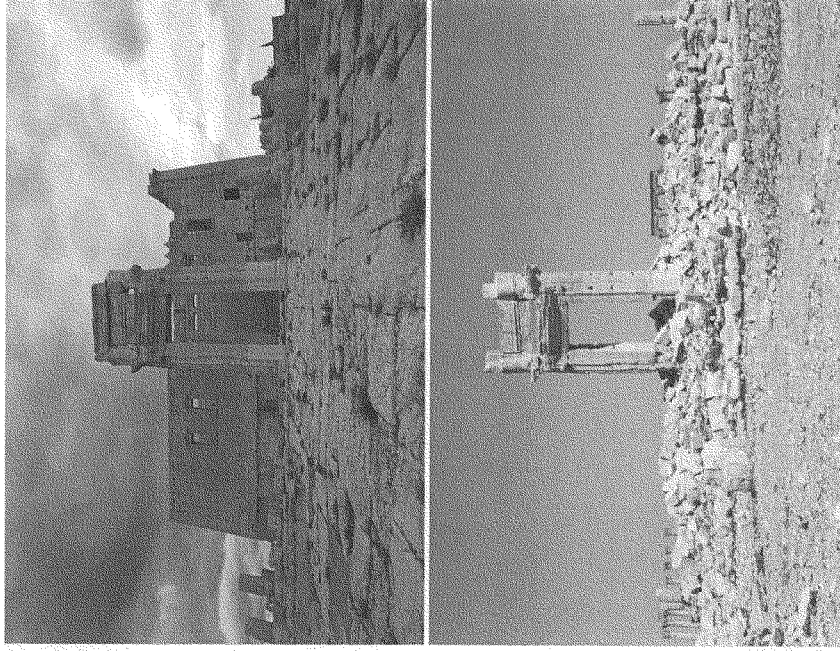


Case 2: Raqqa Auction



Temple of Bel

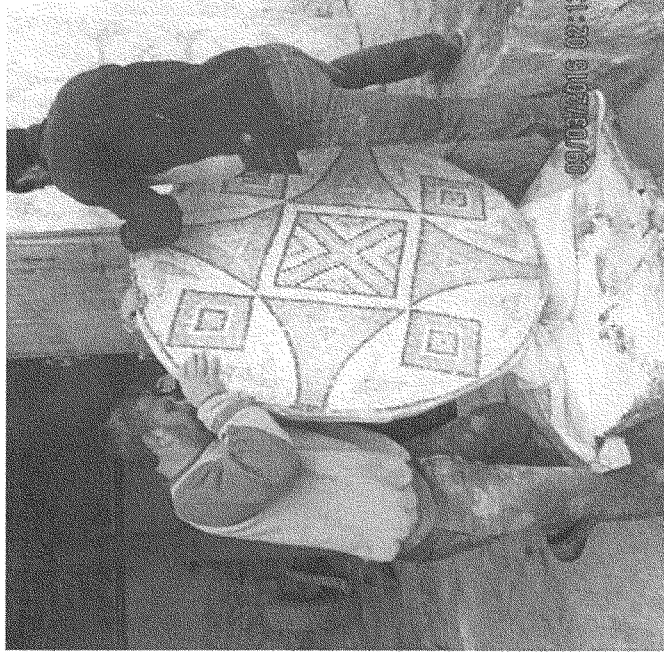
- A word on the Destruction of cultural heritage by ISIS.
- Propaganda: Impotence and Impunity.
- Destruction of Islamic Shrines and place of worship different.



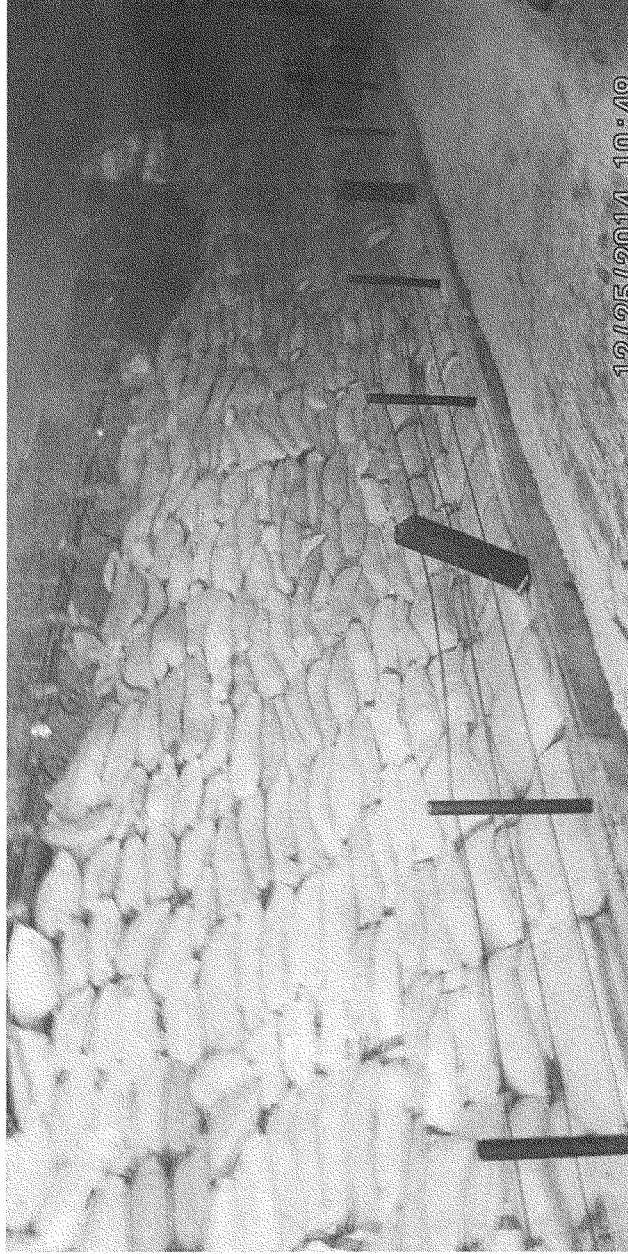
Case 3: Looted by Regime Forces



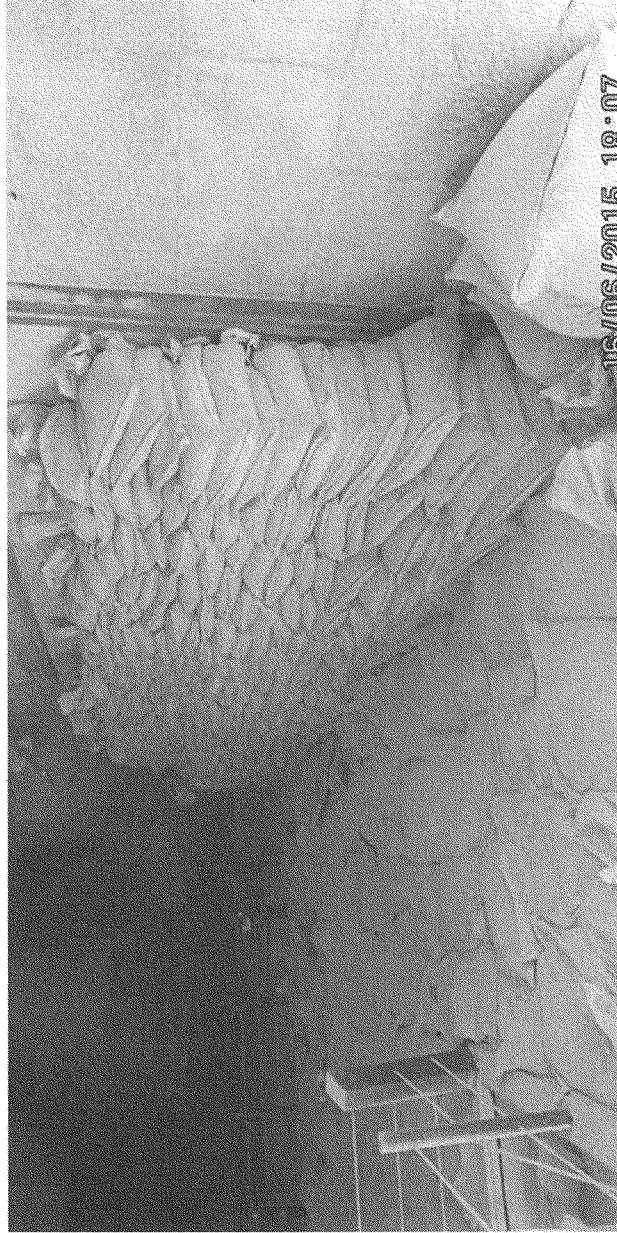
Protect Museums



Sandbagging Mosaics



Sandbagged Mosaics



**PRESERVING THE PAST:
WHAT WILL BE OUR LEGACY?**

**By Robert M. Edsel
Founder and Chairman, Monuments Men Foundation
For the Preservation of Art**

World War II, the most destructive conflict in history, proved an unprecedented test of mankind's desire to preserve its most venerated artistic and cultural treasures for future generations. What then will be said seventy years from now about how we responded to the challenge of protecting our artistic and cultural inheritance today? Will future generations reflect on our efforts with pride, as we do those who preserved civilization's cultural heritage during World War II, or will they wonder what we were thinking as we watched ISIS, Al Qaeda, and others systematically loot and pulverize treasures of our ancient world?

Let's begin by opening the report card on preservation efforts of the past. The first leader to make the wartime protection of works of art a priority was President Lincoln. Precisely eighty years later, another American president, Franklin Delano Roosevelt, went even further by approving plans that lead to the creation of the Monuments, Fine Arts, and Archives section and a group of soldier-scholars known as the Monuments Men. But no leader demonstrated greater concern and respect for cultural treasures during war, and after, than General Dwight D. Eisenhower.

In December 1943, when the effort of a handful of Monuments officers to protect the enumerable cultural treasures of Sicily and southern Italy was failing, Eisenhower issued an order that would change the face of war. Consider the words of this soldier, schooled in the science of destruction:

“Today we are fighting in a country which has contributed a great deal to our cultural inheritance, a country rich in monuments which by their creation helped and now in their old age illustrate the growth of civilization which is ours. We are bound to respect those monuments so far as war allows.”

Eisenhower’s order not only endorsed the Monuments Men and their mission, it created a shared burden for the protection of cultural treasures among his commanders and troops. Eisenhower issued a similar order in England two weeks before the D-Day landings at Normandy.

At war’s end, in a break with conquerors past, the policy of the Western Allied nations stated that all looted objects would be returned to the countries from which they had been taken. The discovery of thousands of mines and castles filled with works of art and other cultural treasures underscored the magnitude of the challenge that lay ahead. Having inspected one of these mines, Eisenhower knew that the Monuments Men would need time to sort through the hundreds of thousands of items. He began by ordering the immediate restitution of the most high profile object taken from each of the lead alliance nations. Delivery of the Ghent Altarpiece to Belgium began what would be an ongoing rotation of returned masterpieces. Eisenhower’s order bought much needed time for the Monuments Men to identify and return what in the end totaled nearly four million stolen objects. Less well known is their custodial role safeguarding almost one million works of art that belonged to German museums and individuals, all of which was returned or turned over to the newly formed Federal Republic of Germany in 1951.

In the years that followed the end of the war, General Eisenhower received many awards including an Honorary Fellowship from the trustees of the Metropolitan Museum of Art. Eisenhower gave a remarkable speech on that 2nd day of April in 1946, stating, *“It is our privilege to pass on to the coming*

centuries treasures of past ages.” He could have used the word “duty,” or “obligation,” and while those words certainly describe one reason for Eisenhower’s attention to cultural treasures during World War II, they fall short of capturing the fullness of his feelings. Eisenhower instead chose the word “privilege,” which is commonly defined as “a special opportunity to do something that makes you proud.”

390,000 American men and women lost their lives during World War II. 8,301 are buried at the Netherlands-American Cemetery in Margraten, Holland. I want to focus on just one: Monuments Man Walter Huchthausen. W.H. Auden once wrote, “To save your world, you asked this man to die. Would this man, could he see you now, ask why?” Does Huchthausen rest in peace, or would he be, given the lip service that has been paid to the preservation of cultural treasures since the end of World War II, the poetic figure in Auden’s speech, asking, “Why?”

Walter Huchthausen enlisted for military service in 1942 at the age of 37. His career as an architect made him an ideal candidate to serve Allied Military Government as a Monuments Man. But severe injuries he suffered during a V-1 bombing attack on London delayed his initial assignment. In late 1944 Captain Huchthausen reported for duty as Monuments officer for U.S. Ninth Army in Aachen, Germany, repairing its world-famous Gothic cathedral. Interviewed about his work several months later, he told a reporter that “Aachen Cathedral belongs to the world and if we can prevent it from falling in ruins...we are doing a service to the world.” The article appeared in print on April 4th, but Huchthausen wasn’t alive to see it. Two days earlier, he had been killed in action by German machine-gunners while in transit to check out a report of a looted altarpiece.

The death of Huchthausen, like that of British Monuments officer Ronald Balfour, underscores the ultimate cost of protecting

works of art and other cultural treasures during war. Is art worth a life? It is a question that not only goes to the very soul of the work of the Monuments Men during World War II, but also frames the debate about how we as a society today respond to the protection of monuments and works of art in Syria, Iraq, Afghanistan, Mali, and other conflict areas, and the even greater concern of making our homeland as safe as possible from those who use works of art and antiquities to generate revenue to finance terrorism operations, or any other nefarious purpose.

Eisenhower believed that the answer must be “no,” stating that a human life counts “infinitely” more. Monuments Man Captain Deane Keller, a 42 year-old professor of art at Yale University and an artist himself, agreed. Keller, whose three-year long military service in Italy included a year and a half in or near combat, once wrote, “no work of art is worth the life of a single American boy.” But Keller made a critical distinction between risking one’s life to save a work of art versus risking one’s life fighting for a cause. Like his fellow Monuments Men, Keller considered it a privilege to represent his country to preserve the freedom of creative expression by artists just as he did preserving the greatest examples of what artists before him had created. General Eisenhower spoke of this during a 1946 speech when he referred to the “ideals for which [war] is fought.” The Monuments Men’s service, like Huchthausen’s death, reminds us that freedom was not then, nor will it ever be, free. Preservation of cultural treasures, like our freedom, also comes at a cost. Walter Huchthausen and his fellow Monuments Men knew that all too well before volunteering; still, they wanted to serve.

Our history defines us. Works of art, monuments, and other cultural treasures belong to all of us, regardless of the country or museum in which they reside. They are a gift to us from previous generations that serve as a source of learning, enjoyment, and inspiration. These gifts come with an inherent responsibility to do

everything prudently possible to preserve them for future generations. No one person had a better understanding of that responsibility than the founder of the Monuments Men, Lt. Commander George Stout. In making his case for cultural preservation officers to President Roosevelt in 1943, Stout said it clearly and dispassionately: “To safeguard these things will show respect for the beliefs and customs of all men and will bear witness that these things belong not only to a particular people but also to the heritage of mankind. To safeguard these things is part of the responsibility that lies on the governments of the United Nations.”

As recently as 1981, Monuments Man Mason Hammond, the only Monuments Officer to see duty in Italy and Germany, and an important advisor to General Eisenhower’s staff, urged all those willing to listen: “Planners for future hostilities tend to think in terms of the last conflict, but any consideration of the different ways in which the First and Second World Wars were fought demonstrates the fallacy of such an approach...If this generation wishes to leave to its children the cultural treasures that it has enjoyed, such planning should be encouraged.” Hammond’s warning went unheeded, but as events in Iraq in 2003, and more recently in Syria, have painfully demonstrated, he was right.

We must acknowledge certain truths. In a war as complex, uncongealed, and ideologically driven as that in Syria, reason and appeal are unlikely to find a welcome audience among those in power. We will not defeat the Islamic State and its followers with “expressions of outrage.” Only advance planning of the sort mentioned by Monuments Man Mason Hammond 36 years ago could have prevented some of the destruction we have witnessed these past few years. Because that did not happen, organizations charged with preserving our shared cultural heritage are instead bearing witness to its destruction. The name of Khaled al-Assad, an 83-year-old retired Syrian archaeologist known admirably as “Mr. Palmyra” for his extraordinary knowledge of that revered

2,000 year-old Roman era city, has joined that of Monuments Men Huchthausen and Balfour, killed in service to the arts.

The Monuments Men saw firsthand that the destruction of cherished artistic and religious treasures is the starter gun that precedes genocide and the human suffering that follows. It proved true in Nazi Germany, in Bosnia-Herzegovina, in Al Qaeda controlled areas of Afghanistan and Mali, and now in ISIS administered portions of Syria and Iraq. Ignoring this early warning sign denies our nation the chance to act; we can only react.

Now comes evidence that ISIS is sanctioning the looting and sale of antiquities to generate revenue for terrorism. This is a game changer that compels us to think about the ownership of art, the responsibility of the art trade and collectors, and the role of the federal government differently than ever before.

Steps we as a nation have taken to protect our homeland following September 11 have not kept pace with developments in the art world; nowhere near. Today art is synonymous with money. The global explosion of wealth these past thirty years has created more buyers with greater resources chasing prized objects. Prices have skyrocketed. Consider that a painting by Picasso that sold for less than \$200,000 in 1956 recently sold for \$180 million; a sculpture by Giacometti for \$141 million; a drawing by Raphael for \$50 million. The sums are staggering, and yet regulatory authorities have not created and applied the same level of control procedures in the art market as we have in other areas of commerce involving similar sums of money. This creates a weakness that ISIS and others---tax cheats, those in possession of looted paintings and objects, and smugglers---can exploit.

The very portability of art and antiquities and oftentimes their relatively small size facilitates movement, sometimes into hiding

places out of view by tax authorities, Nazi-looted claimants, and other victims of theft. For example, just last week the Panama Papers leak revealed that a Nazi-looted painting by Modigliani worth upwards of \$25 million was among thousands of works of art stored in special tax zones known as free ports. While this art netherworld does provide privacy for the honest, the lack of transparency also cloaks tax cheats, thieves, and those aiding ISIS' business operation of converting cultural treasures to cash to fund terrorism.

The art trade is a largely self-regulated antiquated business model operating in a digitized near-invisible world. Until the advent of the Internet in the late 1990's, few in the art world paid much attention to provenance---a fancy word for who owned something in the past---unless it enhanced the value of the object. Looted art traded hands, on occasion openly. Although there has been improvement in the scrutiny of objects sold at public auction and among some dealers, more progress is needed. There also remains a high degree of willful ignorance about the prior ownership of an object by some collectors eager to add to their collections. Worse still is their lack of knowledge about the history of what they already own. Some don't want to know. This must change.

After all, who can be against infusing the opaque system of the art world with increased transparency? Tax cheats? Those who possess stolen works of art? Smugglers? Because privacy alone cannot be an argument for doing nothing when the stakes for common good are so high.

During the greatest conflict in history the United States set the standard for the respect and protection of the world's shared cultural heritage. We as a nation have inherited a rich and hard fought legacy. We are now at a crossroads that will determine

whether we uphold this great tradition, or allow it to become part of our past.

Congressional Testimony

**Preventing Cultural Genocide: Countering
the Plunder and Sale of Priceless Cultural
Antiquities by ISIS**

Yaya J. Fanusie
Director of Analysis
Center on Sanctions and Illicit Finance, FDD

**Hearing before the
Task Force to Investigate Terrorist Financing
Committee on Financial Services**

Washington, DC
April 19, 2016



1800 M Street NW • Suite 800 South Tower • Washington, DC

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Chairman Fitzpatrick, Ranking Member Lynch, members of the Task Force to Investigate Terrorist Financing, on behalf of the Foundation for Defense of Democracies and its Center on Sanctions and Illicit Finance, thank you for the opportunity to testify.

COUNTERING THE ISLAMIC STATE'S ANTIQUITIES TRAFFICKING

Before delving into the issue of Islamic State (IS) antiquities trafficking, it is important first to clarify how the trade fits into IS's overall economic goals. One way to understand these goals is to look at some of the philosophical underpinnings guiding the group's actions.

One document which many experts¹ argue may have ideologically influenced IS's strategy for violence, brutality, and territorial control is an online book called *The Management of Savagery*.² Posted online in 2004 under the author's pseudonym Abu Bakr Naji, the book argues that Sunni jihadist groups must enter a period where they wreak immense violence within contested territories in order to facilitate the transition to a caliphate. IS's tactics today reflect this approach. The final chapter in the book deals with the role of wealth in this transition.

In that chapter, the author argues for jihadist groups to use wealth as a way to "unite the hearts" of target populations. The aim is to win over locals who may be on the fence regarding submitting to jihadist rule. This approach gives context to the antiquities trade in IS territory. Although exactly how much IS earns from looting ancient artifacts is difficult to assess, the group clearly encourages and facilitates the illicit trade within its territory. This appears to be part of IS's economic strategy; not just for funding the group itself, but for creating ways to bring funds to its subjected population, whose hearts and minds Islamic State is trying win.

¹ David Jones and M.L.R. Smith, "The Strategy of Savagery: Explaining the Islamic State," *War on the Rocks*, February 24, 2015. (<http://warontherocks.com/2015/02/the-strategy-of-savagery-explaining-the-islamic-state/>)

² Abu Bakr Naji, "The Management of Savagery: The Most Critical Stage Through Which the Umma Will Pass," Trans. William McCants, (Institute for Strategic Studies at Harvard University, 2006). (<https://azelin.files.wordpress.com/2010/08/abu-bakr-naji-the-management-of-savagery-the-most-critical-stage-through-which-the-umma-will-pass.pdf>)

Islamic State has been dubbed the world's richest terror army.³ And the illegal antiquities trade is one income stream which gives the group significant strategic advantage against existing counter-terror finance efforts. The trade's main target buyers are, ironically, history enthusiasts and art aficionados in the United States and Europe – representatives of the Western societies which IS has pledged to destroy. This poses several challenges to policy makers, as well as opportunities. This testimony explores how IS exploits this trade and offers suggestions as to how Washington and its partners may stem the flow of this important financial stream to the world's most dangerous terrorist organization.

A STRATEGIC REVENUE SOURCE

IS, in the midst of the collapse of state authority in Syria and much of Iraq, has made headlines through its destruction of heritage sites. While a casual observer might conclude that IS takes sledgehammers to every non-Islamic artifact, the group is in fact deeply involved in antiquities looting. IS has access to roughly 5,000 archaeological sites and probably has earned several millions of dollars from antiquities trafficking.⁴ Some of the looting appears to be conducted by local populations, who amid the economic devastation of war resort to combing archaeological sites for materials they can sell. Since gaining control of more territory in the region, however, IS has leveraged this black market and become a key facilitator in the looting, taxing, and marketing of antiquities.

The importance of the antiquities trade for IS lies not just in the funding it generates, but in the market's strategic and operational benefits. The illegal trade of artifacts does not generally risk provoking outside military disruption or a local rebellion. Unlike oil facilities, excavation sites are not likely to be targeted by missile strikes. Moreover, criminal and financial methods such as extortion, kidnapping, taxing, or the outright takeover of private and public establishments embitter locals in ways that antiquities looting typically does not.

³ "The World's Richest Terror Army," *BBC Two* (UK), April 22, 2015.
(<http://www.bbc.co.uk/programmes/b05s4ytp>)

⁴ U.S. Department of State, "Documenting ISIL's Antiquities Trafficking: The Looting and Trafficking of Iraqi and Syrian Cultural Heritage: What We Know and What Can Be Done," September 29, 2015.
(<http://www.state.gov/e/eb/rls/rm/2015/247610.htm>)

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Antiquities trafficking is now more important to Islamic State, particularly as some of its other revenue sources have become more difficult to manage. For example, U.S.-led airstrikes have significantly squeezed IS oil profits since 2014.⁵

Although the earnings from antiquities are less robust than those from oil revenue, looting represents a stable, less capital-intensive revenue stream. With plenty of local knowledge and no shortage of civilians to dig for artifacts, the trade is rampant in the region. Even in non-IS-held territory, many unemployed locals excavate and sell antiquities to earn income.⁶

IS AND THE ECONOMICS OF ANTIQUITIES LOOTING

IS involvement in antiquities looting has evolved considerably since the outbreak of the Syrian civil war. What was once primarily local, ad-hoc activity has increasingly come under the group's direct control. A growing body of evidence shows IS now uses four main methods to raise money from antiquities: licenses, taxation, direct looting, and direct marketing.⁷

Licenses

Islamic State administers its bureaucracy under various *diwans* (departments), one of which is the *Diwan* for Natural Resources. Documents recovered by U.S. Special Forces during a May 2015 raid on senior IS leader Abu Sayyaf reveal the existence of a formal antiquities division within that *diwan*,⁸ and sales receipts included the division's official seal. According to the documents, in late 2014, IS designated Abu Sayyaf as head of the antiquities division and prohibited anyone within the group's territory from excavating without a stamped permit.

⁵ Howard LaFranchi, "What Syrian antiquities reveal about Islamic State's billion-dollar economy," *Christian Science Monitor*, August 25, 2015. (<http://www.csmonitor.com/USA/Foreign-Policy/2015/0825/What-Syrian-antiquities-reveal-about-Islamic-State-s-billion-dollar-economy>)

⁶ Wassim Basseem, "Unemployed Iraqis join in looting of antiquities," *Al Monitor*, March 28, 2016. (<http://www.al-monitor.com/pulse/originals/2016/03/iraq-archeological-sites-looting-protection.html?#>)

⁷ Kathryn Tully, "How to buy antiquities," *Financial Times* (UK), September 4, 2015. (<http://www.ft.com/intl/cms/s/0/d0784c78-50b0-11e5-b029-b9d50a74fd14.html>)

⁸ U.S. Department of State, "Documenting ISIL's Antiquities Trafficking," September 29, 2015. (https://eca.state.gov/files/bureau/final_presentation_to_met_on_isil_antiquities_trafficking_for_das_keller_9.29.2015.pdf)

Other reports show *diwan* management of antiquities revenue. In one example, the so-called *Diwan* of Bureaucracy issued a free excavation license to an individual who lived near the archaeological site of Mari on the Euphrates River. However, as part of the deal, he was required to give 60 percent of the proceeds to the department.⁹ A license or permit system also likely exists in Raqqa, the de facto IS capital, and IS “inspectors” monitor excavations, destroy human figurines which they consider idolatrous, and take a “tax” from what they do not demolish.¹⁰

Taxation and Antiquities Revenue

The most significant way that IS secures its stake in the illegal antiquities trade is through taxation. Taxing sales of illicit goods is a time-honored means for organized crime, and reports indicate that IS typically applies a tax known as a *khums* on the value of recovered goods. *Khums* means “fifth” in Arabic, but the tax can reach as high as 50 percent.¹¹

This tax probably offers Islamic State a significant stream of funding. An article from early 2015 quotes a middleman based in southern Turkey who claimed to have had a single item sold for \$1.1 million.¹² A 20-percent tax on a \$1.1-million sale would represent \$220,000 in passive revenue for IS, although it is unclear if the quoted price was the wholesale amount or retail.

Direct Looting

It is difficult to distinguish between looting that is licensed, taxed, and facilitated by IS and activity undertaken directly by the organization itself. Several reports suggest the organization is involved directly in some archeology sites, organizing equipment, and directing operations.¹³ A number of reports indicate that IS looted materials from Nimrud prior to blowing up portions of

⁹ “Al-Rikaz Department of ISIS Licenses Excavation Works in Exchange for Monetary Percentage,” *APSA*, accessed April 14, 2016. (<http://apsa2011.com/apsanew/al-rikaz-department-of-isis-licenses-excavation-works-in-exchange-for-monetary-percentage/>)

¹⁰ Simon Cox, “The men who smuggle the loot that funds IS,” *BBC Magazine* (UK), February 17, 2015. (<http://www.bbc.com/news/magazine-31485439>)

¹¹ Amr al-Azm, Salam al-Kuntar, and Brian Daniels, “ISIS’ Antiquities Sideline,” *The New York Times* September 2, 2014. (http://www.nytimes.com/2014/09/03/opinion/isis-antiquities-sideline.html?_r=0)

¹² Simon Cox, “The men who smuggle the loot that funds IS,” *BBC Magazine* (UK), February 17, 2015. (<http://www.bbc.com/news/magazine-31485439>)

¹³ Sangwon Yoon, “Islamic State Is Selling Looted Art Online for Needed Cash,” *Bloomberg*, July 28, 2015. (<http://www.bloomberg.com/news/articles/2015-06-28/isis-has-new-cash-cow-art-loot-it-s-peddling-on-ebay-facebook>)

the site.¹⁴ It increasingly appears that the Islamic State does not haphazardly loot and sell artifacts at random, but prioritizes acquisitions according to worth. This indicates that the group's ranks likely include individuals with archaeological expertise who consult with the group willingly or under duress.

The scale of IS physical destruction of antiquities is subject to dispute. Some reports point to industrial-scale destruction including bulldozing archaeological sites.¹⁵ When the group released video footage of its destruction of statues in the Mosul Museum from the Hatra archeological site, however, observers noted that many were plaster replicas and that the group had stolen most of the originals with the intent to sell them.

Direct Marketing

A recent report indicates that IS is itself marketing stolen antiquities by organizing public auctions within its territory to sell antiquities.¹⁶ Several accounts suggest that IS may also be using social media applications such as Whatsapp to coordinate.¹⁷ Looters, smugglers, and middlemen use such platforms to exchange photographs of artifacts,¹⁸ and occasionally even sell them to journalists. It is unclear, however, whether official members of IS are themselves marketing, much less transporting, looted antiquities directly to dealers in the West.

¹⁴ "Islamic State B-movie of attack on Nimrud," *Conflict Antiquities*, April 12, 2015. (<https://conflictantiquities.wordpress.com/2015/04/12/iraq-nimrud-buildings-destroyed-site-not-bulldozed-islamic-state/>); "Isis extremists bulldoze ancient Assyrian site near Mosul," *Reuters*, March 6, 2015. (<http://www.theguardian.com/world/2015/mar/05/islamic-state-isis-extremists-bulldoze-ancient-nimrud-site-mosul-iraq>)

¹⁵ Charlene Gubash, "ISIS Looting Syrian Sites 'Into Oblivion'; Fear Mounts for Palmyra," *NBC*, May 16, 2015. (<http://www.nbcnews.com/storyline/isis-terror/isis-looting-destroying-ancient-syrian-sites-industrial-scale-n359461>)

¹⁶ Richard Engel, Agelos Petropoulos, and Cheikh Omar, "Smuggler of Stolen Artifacts from Palmyra Speaks Out About ISIS' Illicit Operation," *NBC*, April 6, 2016. (<http://www.nbcnews.com/storyline/isis-terror/smuggler-stolen-artifacts-palmyra-speaks-out-about-isis-illicit-operation-n551806>)

¹⁷ Joe Parkinson, Ayla Albayrak, and Duncan Mavin, "Syrian 'Monuments Men' Race to Protect Antiquities as Looting Bankrolls Terror," *The Wall Street Journal*, February 10, 2015. (<http://www.wsj.com/articles/syrian-monuments-men-race-to-protect-antiquities-as-looting-bankrolls-terror-1423615241>)

¹⁸ Mike Giglio and Munther Al-Awad, "13 Exclusive Photos of Looted (And Fake) Syrian Artifacts for Sale," *BuzzFeed*, August 5, 2015. (<http://www.buzzfeed.com/mikegiglio/13-exclusive-photos-of-looted-and-fake-syrian-artifacts-for#.laGMKbxld>)

IS Favors Artifacts from Particular Time Periods

Satellite imagery indicates IS looting has been heaviest at Ancient- and Islamic-period sites.¹⁹ Certain classes of artifacts found in Syria during the Ancient (roughly the fourth century BCE to the sixth century CE) and early Islamic periods (seventh to 11th centuries CE) are easily mistaken to originate from elsewhere. They share stylistic or artistic features with other regions of the Middle East and the Mediterranean away from the conflict. Misidentifying artifacts or attributing to them a generic origin lessens the scrutiny on the part of middlemen and buyers who want to avoid purchasing artifacts from IS-controlled territory.

Coins formed a significant portion of the collection of artifacts U.S. Special Forces recovered in the May 2015 raid on IS leader Abu Sayyaf.²⁰ They have also been featured in caches shown to journalists by middlemen.²¹ At least one scholarly book on classical coins was captured from an IS group by a Kurdish militia.²² Moreover, several coins have been offered for sale on eBay that are alleged to have recently come from Syria or Iraq,²³ although IS responsibility for them has been disputed.²⁴

Buyers and Smuggling Routes Still Poorly Understood

Numerous reports indicate that recently looted antiquities from Syria are appearing in art centers, including London²⁵ and Geneva.²⁶ Other reports suggest a rise in buyers in Persian Gulf states²⁷

¹⁹ Jesse Casana and Mitra Panahipor, "Satellite-Based Monitoring of Looting and Damage to Archaeological Sites in Syria," *Journal of Eastern Mediterranean Archaeology and Heritage Studies*, November 2, 2014. (<https://muse.jhu.edu/article/548047/pdf>)

²⁰ U.S. Department of State, "ISIL Leader's Loot," accessed April 14, 2016. (<http://eca.state.gov/cultural-heritage-center/iraq-cultural-heritage-initiative/isil-leaders-loot>)

²¹ Mike Giglio and Munther Al-Awad, "13 Exclusive Photos of Looted (And Fake) Syrian Artifacts for Sale," *Buzzfeed.com*, August 5, 2015. (<http://www.buzzfeed.com/mikegiglio/13-exclusive-photos-of-looted-and-fake-syrian-artifacts-for#.JaGMKbxld>)

²² "YPG confiscated a numismatic book from Turkish Islamic State fighters in Syria. Do you recognise it?" *Conflict Antiquities*, June 4, 2015. (<https://conflictantiquities.wordpress.com/2015/06/04/ypg-confiscated-a-numismatic-book-from-turkish-islamic-state-fighters-in-syria-do-you-recognise-it/>)

²³ Jack Crone, "2,000-year-old artefacts looted by ISIS from ancient sites in Iraq and Syria are being sold on EBAY," *Daily Mail* (UK), March 14, 2015. (<http://www.dailymail.co.uk/news/article-2994538/2-000-year-old-artefacts-looted-ISIS-ancient-sites-Iraq-Syria-sold-EBAY.html>)

²⁴ "Conflict antiquities from Apamea do not finance the Islamic State – they finance the Assad regime," *Conflict Antiquities*, March 18, 2015. (<https://conflictantiquities.wordpress.com/2015/03/18/syria-apamea-ebay-islamic-state-assad-regime/>)

²⁵ Rachel Shabi, "Looted in Syria – and sold in London: the British antiques shops dealing in artefacts smuggled by Isis," *The Guardian* (UK), July 3, 2015. (<http://www.theguardian.com/world/2015/jul/03/antiquities-looted-by-isis-end-up-in-london-shops>); Daniela Deane, "Islamic State is selling looted Syrian art in London to fund its fight," *The*

and the Far East.²⁸ The pipelines that move antiquities to market invariably transit states bordering Syria and Iraq. Turkey and Lebanon are the best documented among these,²⁹ but Jordan has also served as an important conduit.³⁰

European border states also likely play an important role. These pipelines are well understood with regard to other illicit commodities, but less so in the context of antiquities. The “Balkan route” into Europe through Greece and Bulgaria is a known path for drugs and migrants.³¹ Press reporting shows that authorities have raided smuggling houses in Bulgaria and recovered ancient artifacts, some of which might have originated from Iraq.³²

RECOMMENDATIONS

The global annual trade in illicit art and antiquities is hard to stop. Unscrupulous antiquities collectors are dogged and markets are highly adaptive to crises. Looted objects are hidden away for long periods, false documentation on their provenance is routine, and transactions have proven difficult to track through traditional customs enforcement and financial intelligence. The challenges are great, necessitating new means to counter them. The following recommendations may help policy makers better address the illicit antiquities trade:

Washington Post, February 25, 2015. (https://www.washingtonpost.com/world/is-looted-syrian-art-showing-up-in-london-to-fund-activities/2015/02/25/785ab630-bcd0-11e4-b274-e5209a3bc9a9_story.html)

²⁶ “Following the trail of Syria’s looted history,” *CBS*, September 9, 2015. (<http://www.cbsnews.com/news/isis-looted-syrian-ancient-artifacts-black-market-us-and-europe/>)

²⁷ Nigel Morris, “Call for UK to take tougher action to save antiquities from Isis,” *The Independent* (UK), February 11, 2015. (<http://www.independent.co.uk/news/science/archaeology/call-for-uk-to-take-tougher-action-to-save-antiquities-from-isis-10039793.html>)

²⁸ Joe Parkinson, Ayla Albayrak, and Duncan Mavin, “Syrian ‘Monuments Men’ Race to Protect Antiquities as Looting Bankrolls Terror,” *The Wall Street Journal*, February 10, 2015. (<http://www.wsj.com/articles/syrian-monuments-men-race-to-protect-antiquities-as-looting-bankrolls-terror-1423615241>)

²⁹ Simon Cox, “The men who smuggle the loot that funds IS,” *BBC* (UK), February 17, 2015. (<http://www.bbc.com/news/magazine-31485439>)

May Abboud Abi Akl, “Looters find path to export antiquities via Lebanon,” *Al Monitor*, July 30, 2015. (<http://www.al-monitor.com/pulse/security/2015/07/middle-east-smuggling-antiquities-lebanon.html>)

³⁰ Taylor Luck, “Syrian rebels loot artifacts to raise money for fight against Assad,” *The Washington Post*, February 12, 2013. (https://www.washingtonpost.com/world/middle_east/syrian-rebels-loot-artifacts-to-raise-money-for-fight-against-assad/2013/02/12/ae0cf01e-6ede-11e2-8b8d-e0b59a1b8e2a_story.html)

³¹ United Nations Office on Drugs and Crime, “Drug trafficking,” accessed April 14, 2016.

(<https://www.unodc.org/unodc/en/drug-trafficking/>); “Western Balkan Route,” *Frontex*, accessed April 14, 2016. (<http://frontex.europa.eu/trends-and-routes/western-balkan-route/>)

³² Steven Myers and Nicholas Kulish, “‘Broken System’ Allows ISIS to Profit from Looted Antiquities,” *The New York Times*, January 6, 2016. (http://www.nytimes.com/2016/01/10/world/europe/iraq-syria-antiquities-islamic-state.html?_r=1)

1. Impose terrorism sanctions on artifact smugglers and buyers

Despite the proliferation of artifact watch lists, highly publicized seizures, and the repatriation of looted objects, few sanctions have been applied to smugglers and buyers. The connection between antiquities looting and terrorism calls for stiffer penalties.

Applying terror sanctions by the U.S. Treasury's Office of Foreign Asset Control, the European Union, and the United Nations against antiquities smugglers and buyers is long overdue. The museums and collectors who benefit from the market's opacity would undoubtedly oppose such moves. But even a handful of strategic designations imposed on the worst offenders would likely have a chilling effect on both sellers and buyers given the financial risks and fines associated with these sanctions.

2. Make antiquities looting an intelligence and law-enforcement priority

Despite the rise in antiquities looting, U.S. federal law enforcement has yet to indict anyone for supporting IS through the illicit trade. At present, it is unclear who in the U.S. government is even responsible for antiquities trafficking. To be sure, the State Department and FBI are involved, along with components of the Department of Homeland Security such as Immigration and Customs Enforcement. However, policymaking seems to be ad hoc, and coordination and intelligence sharing is lacking.

Reform can only come about by declaring antiquities looting and cultural property crime a national security priority. For the issue to avoid being lost in an interagency void or turf war, the White House must designate a lead organization, and provide adequate authorization and resources.

3. *Incorporate cultural-property crime awareness into intelligence community and U.S. Special Forces training*

Threat finance is already emphasized in courses taught at the Joint Special Operations University.³³ Despite the relevance of antiquities to the funding of jihadist groups, such courses do not appear to emphasize their financing role. The U.S. Joint Forces Command has a handbook specifically on integrated financial operations, highlighting the need to coordinate across agencies as well with nongovernmental and international partners, but it lacks any reference to antiquities.³⁴ Cultural-property crime has only begun to appear in the literature on counterinsurgency, but does not appear to have reached stability-operations doctrine.³⁵

A similar focus needs to be introduced within the intelligence community, where awareness of threat finance has grown exponentially over the last decade. Antiquities must be the next frontier.

4. *Elevate antiquities trafficking as a focus in international AML/CTF monitoring*

The Financial Action Task Force (FATF) – an intergovernmental body that sets anti-money laundering and counter-terrorist financing standards – has acknowledged that IS uses antiquities trafficking for part of its funding.³⁶ However, FATF has not emphasized the illicit trade as a typology for terror finance to combat through effective legislation and enforcement tools.

FATF should be urged to research and highlight the global problem of antiquities trafficking, taking advantage of case studies which the organization's member states can provide. Such research will allow FATF to set appropriate standards and effectively monitor the countries that play a role in the antiquity smuggling pipeline.

³³ "Counter Threat Finance Course," *Joint Special Operations University*, May 25, 2015.

(<http://jsou.socom.mil/Pages/CourseInformation.aspx?courseName=Counter%20Threat%20Finance%20Course>)

³⁴ Defense Technical Information Center, *Integrated Financial Operations Commander's Handbook*, November 2, 2010. (http://www.dtic.mil/doctrine/doctrine/jwfc/ifo_hbk.pdf)

³⁵ Christopher Jaspardo, "The Case for Cultural Heritage Protection as an Element of COIN," *The Future of Counterinsurgency: Contemporary Debates in Internal Security Strategy*, Eds. Lawrence E. Cline and Paul Shemella, (New York: Praeger Security International, 2015), pages 91-120.

³⁶ Financial Action Task Force, "Financing of the Terrorist Organization Islamic State in Syria and the Levant (ISIL)," February 2015, page 16. (<http://www.fatf-gafi.org/media/fatf/documents/reports/Financing-of-the-terrorist-organisation-ISIL.pdf>)

5. Expand registries of art and antiquities

Registries of stolen art and antiquities are commonplace. But new technologies make it possible for art and artifacts to be tagged and tracked in real time. Molecular markers attached to artifacts, for example, can be scanned in real-time to determine the identity of an item.³⁷ An expanded registry initiative, unfortunately, will do little to halt current antiquities trafficking in Syria and Iraq. Over time, however, by tagging large numbers of objects with unique identifiers, a chain of custody will be created that will enable stolen or forged artifacts to be identified when sold or seized.

Tagging and registering objects is likely to be an expensive undertaking. But technological standards for markers are at early stages of development, as are credentials management for accessing databases. The endeavor should become more manageable as more countries participate.

These recommendations represent the first steps in what will undoubtedly be a long, complex, and multifaceted battle. Success will mean not only defeating a brutal and nefarious force, but preserving the past for humanity's benefit well into the future.

Law enforcement and intelligence officials should pay close attention to the antiquities trade emanating from Syria and Iraq, but not because they need to know precisely how much money IS brings in. What is important is that the trade itself reveals something about Islamic State's operational infrastructure, its links with partners and middlemen, and how the group is exploiting the local civilian population. All of this is critical to understanding how the U.S. and its allies may defeat the group militarily, financially, and ideologically.

³⁷ "What is i2M," *i2M Standards*, accessed April 14, 2016. (<https://www.i2mstandards.org/i2m/>)



Testimony of Dr. Patty Gerstenblith
On Behalf of Herself and the U.S. Committee of the Blue Shield

“Preventing Cultural Genocide:
Countering the Plunder and Sale of Priceless Cultural Antiquities by ISIS”

Task Force to Investigate Terrorism Financing
U.S. House Financial Services Committee
April 19, 2016

Chairman Fitzpatrick and Ranking Member Lynch:

Thank you for the opportunity to present this testimony and to address the Members of the Task Force to Investigate Terrorism Financing on the subject of “Preventing Cultural Genocide: Countering the Plunder and Sale of Priceless Cultural Antiquities by ISIS”. I am submitting this testimony both in my personal capacity¹ and on behalf of the United States Committee of the Blue Shield (USCBS).²

The United States Committee of the Blue Shield was formed in 2006. The name, Blue Shield, comes from the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which specifies a blue shield as the symbol for marking protected cultural property and is the cultural equivalent of the Red Cross. Among the current activities of the USCBS is the creation of “no-strike” lists or inventories of cultural sites (including historic and religious structures, archaeological sites and repositories such as museums, archives and libraries) in parts of the world where the United States is engaged in armed conflict. Through working with the Department of Defense, USCBS helps the United States fulfill its obligations to protect cultural heritage during armed conflict.

The looting³ of archaeological sites is a world-wide phenomenon, driven to a considerable extent by demand from the international market in art works and antiquities.

¹ Distinguished Research Professor, DePaul University College of Law and Director of the Center for Art, Museum and Cultural Heritage Law. I also serve as the Chair of the Cultural Property Advisory Committee in the Bureau of Educational and Cultural Affairs, the U.S. Department of State. I am submitting this testimony in my personal capacity. All opinions expressed here are my personal views and those of the U.S. Committee of the Blue Shield. They are not necessarily those of the U.S. Government or of the Department of State.

² I serve as the Secretary of the Board of USCBS. See also uscbs.org.

³ I use the term “looting” to mean the uncontrolled recovery of artifacts from archaeological sites. While in most cases a looted object is illegal in the country of origin, because of variances among national laws, such an object is not always considered illegal, especially after it appears in a market nation.

However, the theft and destruction of cultural heritage sites, defined to include archaeological sites and historic and religious structures as well as repositories of cultural objects such as museums, libraries and archives, have attained a new dimension with the current conflict in the Middle East. All parties to that conflict, including both the Islamic State in Iraq and the Levant (ISIL) and the Assad regime, are participating in this destruction and are utilizing the sale of cultural objects through international channels to support their operations. While there is still much that is uncertain about the details of the looting and trafficking in such objects, enough is known to conclude that the sale of cultural objects is providing a significant income stream to ISIL and other actors in the region.

The United States government can take steps to regulate the trade in recently looted artifacts. These steps pose no risk to American lives because they do not involve actions taken in the conflict zone. They impose little cost because greater transparency and more efficient regulation of the trade can be achieved through consolidation of government expertise, enactment of laws tailored to regulating the trade in recently looted artifacts, and greater cooperation among law enforcement. Better regulation of the trade in antiquities would reduce demand for recently looted artifacts and thereby reduce the economic reward to both the looters and the conflict participants in the Middle East region.

This hearing is aptly titled “Preventing Cultural Genocide”. Based on the experiences of the Holocaust during the Second World War and the conflicts in the Balkans in the 1990s, we now understand that destruction of cultural heritage is an element of genocide. Destruction and expropriation of cultural heritage demonstrate genocidal intent and deprive a population of its means of existence and of its identity. The House in Concurrent Resolution 75, Secretary of State Kerry,⁴ and a recent Federal court decision⁵ are bringing a better understanding of the relationship between genocide and the theft and destruction of cultural heritage as we are now witnessing in the Middle East.

I. Background

The archaeological heritage of Syria and northern Iraq spans from the earliest time periods of human settlement through to the Bronze Age with the advent of agriculture, irrigation, writing and urban development during the fourth and third millennia BCE. Correspondence in cuneiform tablets from Mari documents the thriving trade from northern Mesopotamia into central Anatolia (modern Turkey) in the early second millennium BCE, the time that the law code

⁴ Secretary Kerry stated that “[t]he militants ... have tried to slaughter whole communities, enslaved captive women and girls for sex, and sought to erase thousands of years of cultural heritage by destroying churches, monasteries and ancient monuments Matthew Rosenberg, *Citing Atrocities, John Kerry Calls ISIS Actions Genocide*, N.Y. TIMES, March 18, 2016, at A12. Kerry further stated “We know that in areas under its control, Daesh has made a systematic effort to destroy the cultural heritage of ancient communities—destroying Armenian, Syrian Orthodox, and Roman Catholic churches; blowing up monasteries and the tombs of prophets; desecrating cemeteries; and in Palmyra, even beheading the 83-year-old scholar who had spent a lifetime preserving antiquities there.” Remarks on Daesh and Genocide (March 17), available at <http://www.state.gov/secretary/remarks/2016/03/254782.htm>.

⁵ See *De Csepel v. Republic of Hungary*, 2016 U.S. Dist. LEXIS 32111, at 49 (D.D.C. 2016) (recognizing that during the Second World War, the theft of property from Jews, including the expropriation of works of art, constituted acts of genocide) (citing *Simon v. Republic of Hungary*, 812 F.3d 127, 142-43 (D.C. Cir. 2016); *Abelesz v. Magyar Nemzeti Bank*, 692 F.3d 661, 675 (7th Cir. 2012)).

of Hammurabi was written. A thousand years later, the reluctant Hebrew prophet Jonah in an act of tolerance and universalism successfully preached repentance to the Assyrian Ninevites, whose capital was located in what is today the modern Iraqi city of Mosul. This is the region to which the Israelites of the Northern Kingdom were exiled in 700 BCE with the Assyrian conquest. Later historic remains represent the successive Greek, Roman and Byzantine cultures of the later first millennium BCE and early first millennium CE and the Islamic and Ottoman periods. Significant architectural remains are found from the Hellenistic, Roman, Byzantine and Umayyad periods at such sites as Palmyra, Dura-Europos and the Umayyad mosque complex in Aleppo.

Parts of Syria and northern Iraq have been home for centuries to the Jewish, Christian and Islamic faiths. Different branches and minority sects of these faiths, as well as smaller religious groups, such as the Yazidis, Druze and Zoroastrians, endured over the centuries in a multi-cultural atmosphere. Extensive collections of artifacts, manuscripts and sacred architecture, decorations and ritual implements of the Jewish, Christian and Islamic faiths were extant. Ancient languages, such as Aramaic, and religious practices survived for over two millennia. The significance of Syria's cultural heritage has been recognized with the listing of six sites on the World Heritage List and twelve sites on the Tentative World Heritage List. The six World Heritage Sites are: the ancient city of Damascus, the Roman site of Palmyra, the ancient city of Bosra, the ancient city of Aleppo, the Crusader period castles of Crac des Chevaliers and Qal-at Salah el-Din, and the Byzantine villages of Northern Syria (the "Dead Cities").

Destruction of cultural heritage in Syria has come in many different forms—the bombing of and fighting in urban centers, attacks on religious structures and archaeological remains as part of the ever-increasing sectarian violence, the use of archaeological sites as strategic vantage points or militarily useful locations, and the looting of sites and museums for objects to be sold on the international market to raise funds. ISIL has focused on the destruction of shrines belonging to various sects of Islam and other religious groups, such as Christians and Yazidis, as well as pre-Islamic ancient structures, out of a stated desire to "purify" the region of what ISIL considers to be heretical depictions and faith. General media sources now routinely report incidents of bombing of historic and religious structures and looting of sites. Several academic and research groups are using various forms of remote sensing and satellite imagery to document the ongoing destruction in Syria and northwestern Iraq.⁶

⁶ The first of these groups was the Safeguarding the Heritage of Syria and Iraq, a consortium of the Smithsonian, the University of Pennsylvania Cultural Heritage Center and the American Association for the Advancement of Science. Salam al Quntar, et al., *Responding to a Cultural Heritage Crisis: The Example of the Safeguarding the Heritage of Syria and Iraq Project*, 78:3 NEAR EASTERN ARCHAEOLOGY 154 (2015). It released two reports in the fall of 2014, the first of which documented the damage and destruction at the six World Heritage Sites located in Syria and the second of which documented damage and destruction at the six Tentative World Heritage Sites in Syria. Susan Wolfenbarger et al., *Ancient History, Modern Destruction: Assessing the Status of Syria's World Heritage Sites Using High-Resolution Satellite Imagery* (2014), available at <http://www.aaas.org/page/ancient-history-modern-destruction-assessing-current-status-syria-s-world-heritage-sites-using>; Susan Wolfenbarger et al., *Ancient History, Modern Destruction: Assessing the Status of Syria's Tentative World Heritage Sites Using High-Resolution Satellite Imagery* (2014), available at <http://www.aaas.org/page/ancient-history-modern-destruction-assessing-status-syria-s-tentative-world-heritage-sites-7>. The Cultural Heritage Initiative of the American Schools of Oriental Research releases weekly reports on the status of cultural heritage in Syria. Jesse Casana, *Satellite Imagery-Based Analysis of Archaeological Looting in Syria*, 78:3 NEAR EASTERN ARCHAEOLOGY 142 (2015). For an index of these reports, see <http://www.asor-syrianheritage.org/index-weekly-reports/>. For a review of responses to the current situation in the

When an archaeological site is looted, the context and stratigraphic relationship of the objects, faunal and floral remains, and architectural elements are lost. It is only through scientific recovery of these remains that we can gain a complete understanding of the human past. Although archaeological sites in the Middle East have been looted over past decades, ISIL has taken this activity to a new level. The looting of sites is itself destruction of cultural heritage because the information contained in a site is lost forever. ISIL publicly destroys immovable heritage structures and antiquities that are too large or too well known to sell on the market, but, away from public view, ISIL is looting from the ground and removing from museums, mosques and monasteries smaller objects for sale on the international market.

While the full extent of the damage and destruction cannot be recounted here, I will summarize a few of the more disastrous examples. Among the sites suffering damage or destruction, the worst example is probably Aleppo, where the complex of the Great Mosque of Aleppo was shelled and much of the historic Ottoman core of the city has been destroyed or severely damaged in the ongoing fighting for control of the largest city in Syria. The site of Tell Mardikh, the ancient city of Ebla where large numbers of ancient texts from the second millennium BCE have been excavated, has suffered from both looting and use of the site as a strategic military base. Refugees inhabit abandoned villages of the Byzantine period, known as the “Dead Cities,” and may be removing artifacts to sell on the international market. The medieval castle of Craq des Chevaliers, the best preserved castle of European medieval design, was bombed by Assad forces between 2012 and 2014 when rebel factions took refuge there.

The situation became dramatically worse when ISIL swept into northwestern Iraq from eastern Syria in the summer of 2014 and captured Mosul, the second largest city in Iraq and the location of the ancient Assyrian capital of Nineveh. Since that time, videos placed on the internet have shown the intentional destruction of artifacts stored and on display in the museum of modern Mosul, the intentional destruction of Nineveh and surrounding ancient cities, and the leveling of numerous religious sites, particularly Sufi and Shi’a shrines such as that of Nebi Yunus (the Prophet Jonah) in Mosul and Christian monasteries throughout ISIL-controlled territory. In Syria, ISIL has intentionally detonated standing structures of the Roman period at Palmyra, including the Temple of Baalshamin and the Temple of Bel, as well as murdered members of the civilian population in nearby Tadmor and the long-time guardian of the site of Palmyra, Dr. Khaled al-Asaad. Syrian regime forces, with the assistance of Russian air power, recaptured Palmyra at the end of March 2016 and assessment of the full damage to the site is now being conducted.

II. Looting of Archaeological Sites and The Funding of Terrorism

From the beginning of the rebellion against the Assad regime in March 2011, archaeological sites have been looted in Syria on an organized and industrial scale. Diachronic study of satellite images of a few of the major archaeological sites, particularly Mari and Dura-Europos, which are both located near the modern border between Syria and Iraq, reveal historic patterns of looting at these sites pre-conflict. But these studies also demonstrate that the numbers

Middle East, see Salam Al Quntar and Brian I. Daniels, *Responses to the Destruction of Syrian Cultural Heritage: A Critical Review of Current Efforts*, INT’L J. ISLAMIC ARCHITECTURE (2016)(in press).

of looters' pits increased dramatically when these sites fell under ISIL control in the summer of 2014.

ISIL earns income at several points of intersection with the stream through which artifacts move from their initial looting to their sale and ultimate smuggling out of Syria. Early reports in the summer of 2014 from Syrians in Syria revealed that ISIL takes a financial cut from the looting of these sites by charging a 20% tax on the looters⁷ and takes an additional cut by taxing the smugglers who move the artifacts across the Syrian border. Information gained from a raid carried out by U.S. special forces on the compound of Abu Sayyaf, informally described as the chief financial officer of ISIL, in the spring of 2015⁸ indicates that ISIL tightly controls and organizes the looting of sites and the smuggling of antiquities.

Direct evidence of ISIL's motives and methods of operation concerning antiquities looting also comes from the Abu Sayyaf raid. The Abu Sayyaf records and other anecdotal evidence indicate that ISIL operates a "department" that directly licenses the looting of sites and the sale of objects. Their stated reason for destroying remains of the pre-Islamic period, non-Islamic sites and structures, and certain Islamic structures is that these remains do not conform to their orthodox beliefs and therefore pollute their version of Islam. However, found among Abu Sayyaf's records was an image of a pagan deity, something that surely should have offended their religious precepts. Other objects include a Christian manuscript, a large number of ancient coins of different time periods, ceramics and a Neo-Assyrian ivory plaque, which presumably would also have been offensive.⁹ If objects are thought to have market value, then they are not destroyed. From this evidence, we can conclude that ISIL destroys on a large and public stage immovable structures, such as temples and shrines, and artifacts documented in museum collections for propaganda purposes. Out of public view, however, it orchestrates the looting of non-Islamic materials, preserves them, and sells them directly or taxes their sale.

While varying estimates have appeared in the media, at this point in time, the question of how much revenue ISIL is realizing from the trade in looted and stolen artifacts is ultimately a known "unknown". We can gain some sense of the significant extent of the looting, at least that which is being carried out at the major sites that have been documented through satellite imagery. However, at this point no scholar or researcher has systematically studied the questions of the types of artifacts that are likely coming out of the looters' pits, the numbers of such artifacts, or the price at which these artifacts are being sold. U.S. government officials estimate that the receipts found in the Abu Sayyaf raid represent an income to ISIL of several million dollars.¹⁰ However, it is not known how long a period of time or how large a territory these receipts represent. The scholar, Dr. Neil Brodie, has pointed out that the receipts all relate to Deir

⁷ This was first reported by Amr al-Azm, Salam al-Kuntar and Brian I. Daniels, *ISIS' Antiquities Sideline*, Op-Ed, N.Y. TIMES, Sept. 2, 2014, http://www.nytimes.com/2014/09/03/opinion/isis-antiquities-sideline.html?_r=0. The exact amount of the tax apparently varies depending on circumstances and the types of artifacts discovered.

⁸ See <http://eca.state.gov/cultural-heritage-center/iraq-cultural-heritage-initiative/isil-leaders-loot>.

⁹ Some of these objects had Iraq Museum numbers. It is not known whether ISIL looted these from the Mosul Museum, where they had perhaps been sent at some time in the past, or whether they came from the initial looting of the Iraq Museum in 2003 and had been warehoused somewhere in Iraq or Syria that subsequently came under ISIL control.

¹⁰ Remarks of Andrew Keller, Deputy Assistant Secretary Bureau of Economic Affairs, U.S. Department of State, Sept. 29, 2015, available at <http://eca.state.gov/video/conflict-antiquities-panel-1-video/transcript>.

ez-Zor province, one of Syria's poorer archaeological regions.¹¹ It is also not clear whether these receipts represent all stages of antiquities transactions at which ISIL earns a cut or only some particular stage. Brodie also points out that the most effective method of reducing this income stream to ISIL and of protecting cultural heritage is to approach the problem from the demand side. Other government estimates of ISIL's income range up to \$100 million.

The few things that we do know is that ISIL is taking its cuts upfront at the points of looting, initial sale and smuggling, regardless of whether these objects are being sold directly onto the international market or are being warehoused in different parts of the world, awaiting a time when the world's attention is less focused on undocumented artifacts coming from the Middle East. Some objects apparently of Syrian origin that are appearing on the market, particularly on internet sites, have been identified as forgeries. To the extent that forgeries originate within Syria, it is likely that ISIL is making a profit from their manufacture and sale as well. It is often assumed that the initial sale that takes place under ISIL auspices is deeply discounted from the ultimate price at which objects are offered for sale on the market in New York and London. Yet that may not be an accurate assumption. Given the internet savvy and sophistication of ISIL, they are likely well aware of the prices at which cultural objects ultimately sell and therefore the initial sale price may be considerably higher than what has been demonstrated through earlier studies of artifact sales at the source at archaeological sites. Thus, while we have a sense of the percentage that ISIL realizes, we do not know on what figure that percentage is calculated.

III. The Market in Antiquities

The looting of archaeological sites is big business often carried out on an organized, industrial scale, in most circumstances to respond to market demand or perceived market demand. The art market today is a truly global phenomenon. Artworks can be sent around the world in short periods of time. Purchasers acquire works in person, through telephonic and online bidding at brick-and-mortar auction houses and through internet-only dealers and auctions. As works move through different parts of the world (source, transit and destination countries) and buyers, sellers and intermediaries are located in different countries, the laws of different national jurisdictions and questions of jurisdiction create obstacles to the interdiction of looted or stolen objects and prosecution of related crimes.

It is difficult to determine the extent to which objects recently looted in Syria and Iraq are currently appearing on the Western market, in part because provenance (the history of ownership) of an object may be forged and in part because segments of the market accept objects with no provenance documentation at all. Artifacts and cultural objects may be "warehoused" for long periods of time in transit countries in the Middle East and elsewhere. The use of storage facilities in transit zones at major airports in Europe and elsewhere allows such objects to remain out of public scrutiny. A raid on a warehouse in the Geneva free transit zone in 1995 revealed that objects and documentation of their looting had been stored there for more than twenty years, while a few objects were gradually sold onto the market.

¹¹ Neil Brodie, *Thinking on Policies*, European Union National Institute for Culture, available at <http://washington-dc.eunic-online.eu/?q=content/thinking-policies-0>.

The European Fine Arts Fair (TEFAF) market report issued in March on the global trade in art works for 2015 reports that the United States is home to 43% of the global art trade determined by value, double that of the second largest trade, which is in the United Kingdom.¹² While these statistics reflect the trade in all types of art and not specifically antiquities, it is a fair indication of the contours of the international art market. In addition to being home to some of the wealthiest art collectors in the world, two financial advantages make the United States a particularly attractive venue for art market transactions. One is the availability of the individual and corporate income tax deduction for donations of art works and other cultural objects to museums and cultural institutions. The second is that original art works more than 100 years old may be imported into the United States without payment of a Customs duty, a factor that also adds to the difficulty of establishing tracking statistics for the import of art works. These two factors reduce the cost to American collectors of purchasing on the international market or allow them to recoup some of the purchase price so that they may be willing to pay higher prices for acquisitions. Preference and artistic taste among American collectors for antiquities from the Mediterranean and Middle East contribute to making the United States likely the largest ultimate destination country for such artifacts.

Antiquities freshly looted from the ground are the perfect vehicle for those who wish to engage in a variety of illegal activities, including trade-based money laundering, smuggling of drugs and weapons, and organized crime. Smuggling routes established to move one type of contraband are easily adapted to other forms of smuggling. The reason that antiquities are such a suitable vehicle for illegal activity is that a freshly looted antiquity has no established value and no documented history. Therefore, they can be "mined" from the ground as a new "commodity." With no documentation or paper trail, antiquities can be traded throughout the world.

The laws applicable to trading in antiquities vary significantly from one jurisdiction to another. An antiquity that is illegal in one country may be traded through another country that allows a good faith purchaser to acquire title. In this way, title to the antiquity is laundered and the object may be considered legal when it enters a third country such as the United States. In the U.S., with a few exceptions, the burden is on law enforcement to prove that a particular object is illegal, yet there is no requirement that those who trade in artifacts maintain records or a paper trail of who owned the object before and how the object was acquired. Some market participants even at the higher end of the market accept the word of consignors and sellers that they can convey title, without requiring independent, objective evidence of legality. All too often, some segments of the market still operate with no documentation of legitimacy at all. Furthermore, a donor may receive a deduction from income when donating such cultural objects to a museum or other cultural institution without any legal requirement to provide proof of legality or title.

Even to the extent that a market participant may offer paperwork, such documentation is easily forged and requires expertise to determine its legitimacy. The extent of forgery of provenance documentation is well illustrated in the conviction of the prominent antiquities dealer, Fred Schultz. He and his co-conspirator created fake documents, which were artificially

¹² Eileen Kinsella, What Does TEFAF 2016 Art Market Report Tell Us About The Global Art Trade, Artnet News, Mar. 9, 2016, available at <https://news.artnet.com/market/tefaf-2016-art-market-report-443615>.

aged, to verify the existence of a fake collection of Egyptian artifacts, purportedly dating to the 1920s and 1930s, although the objects were looted in the 1980s and 1990s.¹³

Because of the unknown and undocumented nature of recently looted antiquities, databases of stolen art, such as the Art Loss Register or Art Claim (the database maintained by Art Loss International), are incapable of helping to regulate the trade in antiquities. While some market participants would like to have such a database available to fulfill any obligation of due diligence, such databases will never list a recently looted artifact. Nonetheless, some databases may issue certificates verifying that the object is not listed as a reported stolen object. This gives the purchaser a false sense of security and, more important, becomes a fig leaf of due diligence that helps the purchaser establish a lack of criminal knowledge or intent. Similarly, recent efforts to develop technologies that would “tag” art works and antiquities may be helpful in cases where objects are stolen from known collections, but such measures would be ineffective in tracking the trade in archaeological objects.

In sum, looted antiquities may first become known when they appear at the border, on the market, or on display. Without any established value and no requirement to demonstrate the history of ownership, such antiquities become an easy way to move value and funds around the world, potentially concealing money laundering and other illegal activity and becoming a means of financing terrorist activities and armed conflict.

IV. What We Can Do

Two detrimental consequences result from the looting and sale of archaeological artifacts. One is the loss of the cultural heritage of the Middle East and of the world, in which we all share, both through the destruction of objects and through loss of their associated context from which we reconstruct and understand the past. Second is that ISIL clearly earns an income stream and why would we want ISIL to earn any profit that can fund its genocidal and terrorist activities. Some of these activities, such as the terrorist attacks in Paris and Brussels, are relatively low cost and could easily be funded through the income earned from antiquities looting.

Unlike other actions that the United States has taken to reduce ISIL’s income stream, such as the bombing of oil facilities in Syria, reduction in market demand requires no risk to American lives in the Middle East, as these actions are taken within the United States. Reduction in market demand also requires little cost because much can be achieved through consolidation and greater expertise of law enforcement efforts. Carefully tailored legislation imposes little burden to the legitimate trade in antiquities as market participants need only establish the recent history of an artifact and greater transparency requires only the documentation that any sensible businessperson maintains in order to have adequate records of inventory.

A. Enact H.R. 1493, the Protect and Preserve International Cultural Property Act

In June of 2015, the House unanimously passed H.R. 1493, which Congressman Eliot Engel introduced with strong bipartisan support from Congressman Ed Royce. The bill, with some amendments, passed the Senate on April 13 and will soon be returning to the House. This

¹³ United States v. Schultz, 333 F.3d 393 (2d Cir. 2003).

legislation will restrict the import into the United States of cultural objects that left Syria after March 2011.

While it does not include criminal provisions, when enacted, it will become a strong barrier to the import of objects that may be funding armed conflict and terrorism in Syria. Because it will operate under Title 19, once the government meets its initial burden of proof, the procedure for civil forfeiture will require the importer to document when objects were removed from Syria, thereby preventing recently looted objects from entering the United States.

The Convention on Cultural Property Implementation Act (CPIA), 19 U.S.C. §§ 2601-13, establishes a procedure by which the United States can enter into bilateral agreements with other States to restrict the import into the United States of undocumented archaeological objects. However, this procedure is not available in the case of Syria because the process must begin with a request from Syria, something that is not feasible at this time. H.R. 1493 will impose comparable import restrictions under the CPIA but without the need for an initial request. When relations between the United States and whatever government emerges from the current conflict are normalized, the Syria-specific import restrictions will transition into the normal process for bilateral agreements under the CPIA. The prospect of a seamless transition process sends a strong signal to ISIL, looters and middlemen that their ability to sell undocumented antiquities will continue to be restricted into the indefinite future. This in turn will make any “investment” in the warehousing of antiquities less profitable and thereby reduce market demand and ISIL’s profits from looting and trafficking.

H.R. 1493 also expresses the sense of Congress that the White House should create a coordinating committee that will coordinate all United States efforts abroad to protect cultural heritage. This international coordination would mirror the response mechanism for cultural disasters within the United States. In the case of international heritage disaster, coordination among federal agencies and with the private sector would encourage greater efficiency of government efforts and better deployment of existing expertise. For example, US AID will have humanitarian resources on the ground; the Library of Congress will have information from its colleagues in affected areas, while the Smithsonian and the International Council of Museums-US will have comparable information from museum colleagues and the National Archives and Records Administration from archivists.

B. Improve Law Enforcement Effectiveness

Government in general and law enforcement in particular need to recognize the criminal elements that exist within the international art market and treat them as such. Primary enforcement typically comes through the Department of Homeland Security (Customs and Border Protection and Investigation and Customs Enforcement). Far too often when an illegal cultural object is intercepted at the border or located within the United States following an import violation, the object is seized, forfeited civilly and returned to its proper owner, often a foreign country. This makes for good foreign relations and repatriation ceremony. However, this practice of “catch and release”, as attorney Ricardo St. Hilaire has termed it, does little to dismantle the criminal networks. Importers may be willing to forfeit a particular object and lose its value as the cost of doing business, perhaps to avoid further investigation into their business

practices. Only a refocus on criminal prosecutions against individuals who are engaged in criminal activity offers the opportunity to effectively interdict the trade and dismantle networks.

Many of the objectives for better law enforcement through Customs could be achieved if the House were to pass H.R. 2285, the Prevent Trafficking in Cultural Property Act, which was reported out of the Committee on Homeland Security in December 2015. This legislation states that it is the policy of the United States that the Department of Homeland Security “enhance and unify efforts to— ... disrupt and dismantle smuggling and trafficking networks engaged in, conspiring to engage in, or facilitating illegal trade in cultural property, including stolen antiquities used to finance terrorism.” More specifically, the legislation calls for better coordination within the Department of Homeland Security and calls on the Department to “emphasize investigating, and providing support for investigations and prosecutions, of persons engaged in, conspiring to engage in, or facilitating the illegal importation of cultural property, including smugglers, dealers, buyers, money launderers, and any other appropriate parties.”

Similar efforts should be carried out within the Department of Justice, including the F.B.I.’s Art Crime Team, for which greater resources should be allocated. These resources are needed to encourage undercover investigations in appropriate circumstances so as to reach higher-level market participants and to be able to establish criminal knowledge or intent on the part of participants. Consolidation of expertise among Assistant U.S. Attorneys and Department of Homeland Security agents would provide greater effectiveness in policing the border and bringing criminal prosecutions, as appropriate. Such consolidation could be achieved by restricting imports of cultural objects to certain designated ports; clarifying the Harmonized Tariff Schedule codes for declaration of archaeological artifacts and requiring importers to use those codes; and clarifying that the requirement to declare the country of origin for import documents means declaring the country of modern discovery of the archaeological object. Consolidation of expertise within the Department of Justice and U.S. Attorneys’ offices also means maintaining qualified attorneys within the Department who can offer expertise to AUSAs in the field and, when necessary, directly handle prosecutions themselves. While some of these steps may fall outside of the Committee on Financial Services’ purview and some of these steps are in the beginning stages of realization, these are all worthy of consideration by the Task Force.

C. Increase Transparency and Ease of Tracking Movement of Art and Antiquities

More focused steps to address trade-based money laundering would entail measures to more effectively track the movement of cultural objects and the funds that are used to purchase them. These steps would be based on bringing greater transparency to the market for art works and cultural objects. Examples include requiring the declaration of art and antiquities worth more than \$10,000 upon export from the United States and imposing a tariff on the import of art works and antiquities, which would facilitate the tracking of objects that enter the country. While such a tariff might be counter to tradition in the United States, which has in the past tried to facilitate the import of as much art as possible, the current system assists in the secrecy and opacity of the market.

Other measures would require sellers to provide to buyers documentation of the provenance (or history of title) of artworks and antiquities at the time of sale. The Internal

Revenue Service should require documentation of art works and antiquities that are donated to cultural institutions for a charitable tax deduction to support not only the value but also proof that the donor can convey title to the institution. At this time, the I.R.S. Art Advisory Panel reviews only a small number of donations, dealers conduct the reviews, and a review is conducted only to determine whether the declared value of the donation fits with market prices. If the review were expanded to include questions of title, this would provide an incentive for buyers to obtain documentation of legitimacy when they purchase an antiquity and this would, in turn, be an incentive for sellers to deal only in objects for which they can provide such documentation.

While the market in antiquities has existed for centuries, its role in facilitating criminal activity on this scale is a new one. The legal and law enforcement toolkit available to curtail the criminal aspects of the international trade is relatively limited and it seems that we are frequently in a reactive, rather than pro-active, mode. As a result, the looters, smugglers and middlemen seem to always be a step ahead. What is needed is a broad view that attempts to analyze the market from a higher order perspective so that the efforts are focused on the networks of criminal activity, rather than on the individual, mostly lower level, actors, as is currently often the case. We also should be looking ahead to the regions of the world where ISIL is becoming more active and gaining ground. In particular, we should be watching Libya where ISIL is a growing threat and a large number of major archaeological sites embodying thousands of years of civilization reside. We should therefore consider taking pro-active steps to reduce demand for archaeological objects that will likely be looted from Libya.

Thank you again for the opportunity to testify on this important issue.

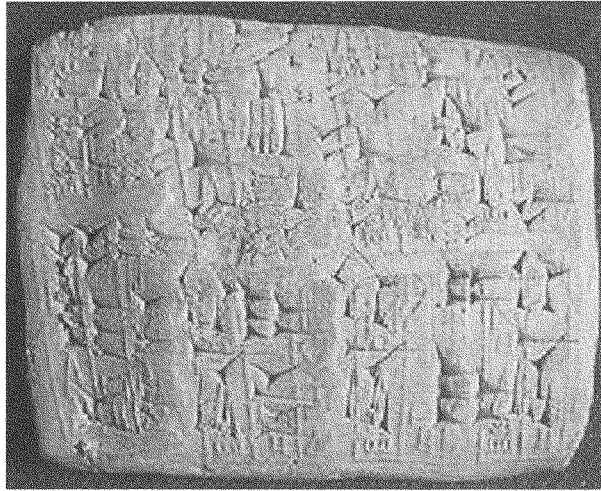
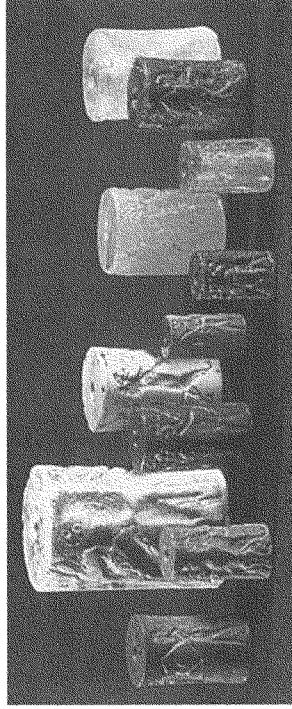
Mari (Aug 2011)



Mari (Nov 2014)



Cylinder Seals



Cuneiform Tablet

Testimony on “Terrorism Financing in the Global Art Industry”

Lawrence M. Shindell, J.D.
Executive Chairman, ARIS Title Insurance Corporation
Member, Argo Group International Holdings, Ltd. (NASDAQ: AGII)

**Before the Committee on Financial Services
Task Force to Investigate Terrorism Financing
United States House of Representatives
Washington, D.C.**

Apr. 19, 2016

Chairman Fitzpatrick, Ranking Member Lynch, and Members of the Committee and Task Force:

Thank you for inviting me to testify regarding the problem of terrorism financing through conflict-zone looting of cultural objects. You will hear from other witnesses about the prevalence of this problem, which relates to a broader problem of money laundering in the global art industry. I have been asked to address the attributes of the art industry that enable these problems. If we remove the ability of terrorists to launder stolen and looted objects, then we will remove the economic motive to loot them, cut off a key source of terrorism financing and make great strides toward protecting our global cultural legacy.

ARIS’s lens on these issues stems from its role as the leading title insurer to the art industry. ARIS underwrites the same kind of insurance, which the real estate industry relies on to assure beneficial ownership of real estate property, for financial institutions lending against art as collateral; capital markets investing in art through various investment structures; the consuming public; the trade comprised of dealers and auction houses; not-for-profit museums and foundations; and government stakeholders, for instance, U.S. Bankruptcy Courts overseeing the liquidation of art assets as part of their managing art industry financial collapses.

With respect to the issues described in more detail below, over the past two years ARIS has been actively reviewing these issues with trade and financial regulators in the U.S., U.K., Switzerland, Luxembourg and Belgium at the EU Commission including regulators specifically charged to oversee art industry tax-free Freeports and Free Trade Zones.

I will conclude by commenting on industry solutions now underway to address these problems at the core of the market.

The Root of the Problem

Terrorism financing by the Islamic State of Iraq and al-Sham/the Levant (ISIS/ISL) and other groups through the plundering of cultural objects and selling these illicit objects for funding is made possible because of an overall systemic problem of traditional and trade-based money laundering in the global art industry. Cultural and archeological objects are part of this broader tangible property asset class.

At over \$60B in annual sales worldwide¹, the art industry is the single largest, lawful, unregulated industry in the world. It is a fully globalized yet opaque industry in which objects for a given transaction can move across multiple international borders, often several times, before the transaction concludes.

Artwork is a high-value highly portable asset traded in a market defined by discretion. Protecting the identity of art market participants is customary, which makes money laundering in the art industry both possible and ubiquitous. As a result, for years the multi-billion-dollar illicit trade in fine art and antiquities has provided a lucrative scheme for organized criminal enterprises. A lack of record-keeping for transactions in both source and market nations as well as the private nature of many of the transactions obscures the legal status and beneficial ownership of the sourcing of the antiquity and often results in an unverifiable ownership history.

These regulatory difficulties, combined with the spread of economic and political conflict in regions rich with ancient treasures and the market demand for such artifacts, will make it highly likely that more terrorist groups will engage in illicit antiquities trafficking.

One court has summarized that the core of these problems is the art industry's ubiquitous lack of transparency which prevents anyone from discerning *patterns* in illegal schemes.² Identifying patterns is the *de rigueur* of AML enforcement and compliance, whether to combat terrorism or other trade regulation problems. This common core exists for each subsector of the art industry as further illustrated by the illegal trade of artifacts made from ivory. As a 2014 report of the International Fund for Animal Welfare (IFAW) issued during a then-wave of attention to this trade-based problem explained: "American customers . . . have no way of knowing [the] origin [of what are contraband ivory objects]; [there is a lack of] industry documentation showing that the ivory . . . was legal, with the industry standard response, 'You don't need that.'"³

The Intersection of Money Laundering in the Art Industry

According to the United Nations Office on Drugs and Crime, 2%-5% of the global GDP takes the form of laundered money – \$800 billion to \$2 trillion. In the art market or art industry a staggering amount of this criminal activity takes place – where "dirty" money obtained from illegal activity is laundered into clean currency and where trade-based assets are directly laundered as a more complex and growing form of international money laundering.⁴

The problem of money laundering in the art world has garnered attention from the economics field as well. At the 2015 World Economic Forum meeting in Davos, Switzerland, acclaimed economist and NYU Stern School Professor Nouriel Roubini explained: "Whether we like it or not, art is used for tax

avoidance and evasion. It can be used for money laundering. You can buy something for half a million, not show a passport, and ship it. Plenty of people are using it for laundering," Roubini said.⁵

Worldwide cases of money laundering and illegal activity conducted through the purchase and sale of artwork – equally applicable to the laundering of stolen or looted cultural objects – are common with examples ranging from high profile figures such as Edemar Cid Ferreira, the Brazilian ex-banker who laundered millions of dollars through a collection of 12,000 works, to the art dealer Helly Nahmad of the international art world family of the same name, who was arrested for similar activities undertaken alongside a gambling ring.

In Monaco last year, Swiss businessman Yves Bouvier, who owns tax-free zones (Freeports) for storing art and other high value property based in Switzerland, Singapore and Luxembourg (and another similar facility then in planning for Paris), was detained on Monaco government-investigated initial findings of art "price-fixing" and money laundering. Freeport facilities are large, maximum security storage facilities that allow individuals to store valuables while avoiding customs duty and sales tax for the intermediate stage (staging-storing) of a final purchase or sale transaction.

Many artworks find their way to Freeport facilities, often attached to international airports. These units are intended as temporary storage for goods in transit, but in practice valuables are often kept in these facilities for years. Keeping artwork in duty-free limbo raises thorny questions for governments anxious to squash money laundering and tax dodging. The Financial Action Task Force on money laundering has been concerned about the integrity of Freeport facilities since 2010,⁶ and money laundering is one of the charges alleged against Bouvier, who, in addition to owning these facilities, also deals in the trade of art. In February 2015, a client paid Bouvier \$118 million for a piece of art, more than \$22 million above the market value.⁷ Scrutiny of Bouvier's network of duty-free, high-security bonded warehouses has reignited to international levels not seen before the debate over why the global art business escapes any form of regulation.

To be sure, responsible operators of Freeports and Free Trade Zones and regulators alike welcome better, systemic means to close the gap between enforcement protocols and practicalities – a gap which can be closed only by access to accurate, comprehensive and cohesive information.

Swiss regulators, for example, have commented in meetings with ARIS that even with Switzerland's recent changes in its regulations to require enhanced disclosures for objects entering Swiss Freeports having a value as low as 100,000 CHF, these regulatory changes do little when, as can be readily accomplished in the art industry, a transaction is broken into fractional ownership pieces each having a declared value below the enhanced threshold, or when a deflated price is recorded in customs papers for an entire object only to be restated after the object leaves a Freeport or Free Trade Zone.⁸ Other regulators comment on the inability to know whether any of the information reported by market participants for Freeport or Free Trade Zone compliance purposes is accurate even if made in good faith by intermediaries, because there is not an ability to cross-reference independently reported and organized pieces of information to identify anomalies and suspicious activity, as is the norm in the global financial markets.

In point of fact, under- and over-invoicing is one of the key methods utilized in trade-based money laundering typically through misrepresentation of price, quantity or quality. FATF has recognized that “the more complex the good being traded, the greater the difficulty that customs agencies will have in identifying over- and under-invoicing and correctly assessing duties or taxes” because in part “many customs agencies do not have access to data and resources to establish the ‘fair market’ price of many goods.”⁹ FATF’s example was “[h]igh-value goods, such as *works of art*, which have limited markets and highly “speculative” values” and therefore “present significant valuation difficulties.”¹⁰

Appendix A to this testimony offers a simple schematic illustration of how trade-based money laundering can occur in art industry in its current information environment.

Money laundering through the art trade is of course not limited to art collectors and art dealers as participants in a larger supply-distribution chain.

Evidence now tells us that ISIS as with the other parties to the Syrian civil war are looting and trafficking antiquities as a source to fund its fighting.¹¹ ISIS is directing much of its destructive activity towards cultural heritage targets in Iraq and damage extending to museums, libraries and universities across its occupied territory. Several governmental bodies and organizations including the United States have announced efforts to spare cultural heritage sites in the fight against ISIS. The UN Security Council has adopted a resolution to curb traffic of illicit antiquities from the region and in turn to prevent ISIS from profiting off the sale of stolen art works.¹²

Such measures, while helpful, standing alone are not likely to stop looted art from entering the market. Anti-money laundering as well as counter-terrorism financing laws are limited when it comes to the trade of cultural property because the cultural property markets in art and antiquities are not explicitly covered by AML and counter-terrorism financing standards. Although the laws of some countries cover art, antiquities and antiques dealers directly such as Argentina, Brazil, Japan and Lithuania, most do not.¹³

The private sector yields further important information on these issues. A January 2015 PricewaterhouseCoopers report highlights the significant rise in global trade-based money laundering and the regulatory shift in focus from traditional money-laundering compliance oversight to assessing the ability to spot trade-based money laundering, e.g., money laundering executed through international trade of legitimate goods through nefarious means (one of the key methods of money laundering of art and cultural objects in the global art industry).¹⁴ PricewaterhouseCoopers cites lack of data-sharing among relevant stakeholders as among the factors exacerbating trade-based money laundering in particular.

An earlier 2014 report released by the auditing firm KPMG finds that financial market stakeholders are achieving limited or no improvement in the efficacy of their AML compliance efforts even though they are spending increasingly significant portions of annual operating budgets on AML compliance, with the same conclusion necessarily applicable to art industry assets and transactions.¹⁵

Compounding the Problem

There is a relative under-recognition of the kind of information that is needed in the art industry to solve the problems detailed above including specifically terrorism financing through the movement of these objects.

In March 2015, Comptroller of the Currency Thomas J. Curry commented on the critical role of information-sharing in the financial sector, emphasizing the need for “more accurate and timely information” and the use of technology to close “the [information] gaps” that can be exploited to fund terrorist operations.¹⁶ In February 2015, New York’s Department of Financial Services then-Commissioner Benjamin Lawsky in a speech given at Columbia Law School highlighted the ever-advancing need for improved AML compliance in one of the world’s major financial centers, adding that “[m]oney is the oxygen feeding the fire that is terrorism. Without moving massive amounts of money around the globe, international terrorism cannot thrive.”¹⁷ In February 2016 UK Home Secretary Theresa May echoed the same need for improved information and information-sharing in addressing the Security Alliance Partners in Washington, D.C., at the same time FATF was meeting on more robust, global, interlinked AML strategies.¹⁸

Improved Art-Financial Industry Information Sharing for AML and Anti-Terrorism-Financing Purposes

In a different vernacular, solving the problem of terrorism financing through conflict-zone looting of cultural objects and the broader problem of money laundering in the global art industry will turn on moving from “Big Data” to “Smart Data” to identify suspicious activity in art industry transactions. It is the difference between information that is otherwise “noise” to the art and financial industries and meaningful data on which industry stakeholders can rely to identify suspicious patterns of activity in global art industry transactions.

Consider the following example of a major U.S. financial institution “A” being asked to lend \$50 million dollars against a pool of art or cultural objects offered as collateral by offshore owner “XYZ Holding Company.” The borrower’s intermediary provides to the financial institution certain information that ostensibly accurately details the transfer of legal ownership of the assets (for example, submitted copies of bills of sale) and beneficial ownership. Put aside the already familiar market challenges of piercing beneficial ownership disclosures and information to test the integrity of this information as a stand-alone AML compliance inquiry. Today’s most vexing data problem at the intersection of the global art and financial industries is that financial institution A will have no way to know whether the same transaction was presented to financial institutions “B,” “C,” “D” and “E” in different countries each time under different beneficial owner names and through use of different bills of sale documentation (which itself can be forged), or that before the putative beneficial owner presented the collateral to financial institution “A” for financing the objects were sold – or “flipped” as the art industry coins the term – from one party to another six times in four countries in the prior sixty days.

ARIS has been actively discussing with the U.S. Treasury and FinCEN improved ways to address this current inability of financial institutions to detect anomalous *patterns* of behavior in art industry-financial sector transactions which can signal trade-based money laundering in general and terrorism financing through looted art and cultural objects in particular.

This includes a request that ARIS submitted to FinCEN in September 2014 and supplemented in July 2015, following after a number of meetings with senior officials in FinCEN and U.S. Treasury, to place ARIS and other art title insurance entities under the Bank Secrecy Act (“BSA”) for improved information-sharing with financial institutions in art and cultural-object related transactions with the same safe-harbor protections established under 31 C.F.R. § 1010.540 pursuant to Section 314b of the BSA. One avenue to accomplish this is through FinCEN’s exception authority pursuant to Section 1010.970 of the BSA Regulations to determine narrowly that providers of title insurance for art and similar high value collectibles can rely on the information-sharing and safe harbor protections of the BSA.

Such an approach will enable financial institutions to share art and cultural object-specific and beneficial-ownership-specific information with ARIS as a regulated title insurance company. ARIS already maintains privacy-protected information in compliance with the industry’s rigorous data privacy and protection requirements.¹⁹ This in turn will enable ARIS to take each participating institution’s limited and incomplete information that is otherwise noise to the institutions and turn it into actionable information. ARIS can then provide privacy-protected, curated responsive information back to all financial institutions as a single cohort for systemic AML compliance purposes specific to art-asset art industry-financing transactions. The net effect would be to make substantial strides in detecting patterns of suspicious activity and countering terrorism financing through conflict-zone looting of cultural objects.

Through such a form of U.S. leadership – U.S. Treasury and FinCEN and interfacing with law enforcement such as Homeland Security and U.S. Customs and Border Protection – the same kind of financial-sector information linking and sharing in relation to art and cultural heritage objects can be implemented in other sectors of the financial industry. ARIS’s discussions with trade and financial regulators in the U.K., Switzerland, Luxembourg and Belgium at the EU Commission level have set the stage for this purpose.

Related Art Industry Solutions Which Are Now Underway

As detailed earlier, the lack of accurate and reliable information in the art industry impacts all art industry stakeholders in multiple ways. This includes the world’s living artists whose artistic legacy during each generation becomes the accumulated record of our society’s culture.²⁰ These problems take the form, among other forms, of the now significant industry-wide problem of faked and forged artworks. This problem not only impacts our cultural legacy it financially impacts the industry from a fundamental asset valuation standpoint and industry-wide friction cost. The problem is rising at alarming rates as values of objects increase, as technologies advance enabling at ever lower cost replication of artistic and cultural objects in ways that leave them virtually indistinguishable from their

authentic counterparts and as forensic examination of objects each time objects change hands becomes untenable because of the cost.²¹

At the State University of New York and its flagship campus at Albany an initiative is underway – the Global Center of Innovation for the i2M Standards²² – whose purpose is to develop industry standards comparable those more broadly promulgated by NIST, ANSI and ISO that will support technology-based, object-identification solutions. Initially anchored in bio-engineered DNA, nanotechnology and forensic informatics, these solutions will enable the art industry to mark or identify artworks when the artworks are created by a living artist or at defined later point of intervention for artworks which already exist and which were not marked when created – including ancient cultural objects – and link accurately, conclusively, safely and permanently the verified information about an object to an exact, unique, identified object. This form of solution is a nanoscale equivalent to VIN (vehicle identification) numbers used in the global automotive industry.

This is a global initiative with both academic and scientific partners in the U.S. and EU. The solutions of this initiative, which are in development, can be applied to cultural objects that are located in conflict zones which are at-risk and before the looting occurs.

This kind of accurate physical identification of art and cultural heritage *objects* and the conclusive linkage of accurate *information* to the objects, combined with the kind of regulated, privacy-protected information-sharing protocols I have outlined above, can become a key means to combat terrorism financing through conflict-zone looting of cultural objects and the broader global art and financial industry problem of trade-based money laundering.

[Testimony End]

[Endnotes]

¹ See Clare McAndrew, *TEFAF Art Market Report 2016*. Helvoirt: TEFAF; available at <http://www.tefaf.com/DesktopDefault.aspx?tabid=281>.

² Patricia Cohen, *Selling a Fake Painting Takes More Than a Good Artist*, N.Y. TIMES, (May 2, 2014), http://mobile.nytimes.com/2014/05/03/arts/design/selling-a-fake-painting-takes-more-than-a-good-artist.html?_r=0&referrer=, citing J. Shorter in *Porter v. Wertz*, 1978 WL 23505 (1978) (N.Y. Sup. Ct. Mar. 13, 1978).

³ *The Elephant Poaching Crisis and the Role of Auctions in the U.S. Ivory Market*, THE INTERNATIONAL FUND FOR ANIMAL WELFARE [IFAW] (Aug. 12, 2014), http://www.ifaw.org/sites/default/files/IFAW-Ivory-Auctions-bidding-against-survival-aug-2014_0.pdf. The report addressing the market before and after changes in U.S. laws banning trade in commercial elephant ivory in the U.S., see generally <https://www.whitehouse.gov/the-press-office/2014/02/11/fact-sheet-national-strategy-combating-wildlife-trafficking-commercial-b>, which details the global multi-million dollar problem of illegally imported and transacted ivory (under the jurisdiction of the U.S. Fish and Wildlife Service), and cites the State of New York as the largest U.S. market for ivory objects. *Id.* at 26. “[There is a lack of] industry documentation showing that the ivory . . . was legal, with the industry standard response, ‘You don’t need that;’ [indeed one] prestigious auction house investigated indicated that it [simply] trusted what its sellers saw about the provenance and legality of their ivory, rather than requiring paperwork or any proof of provenance or age.” *Id.* at 20; see also *Ivory and Insecurity: The Global Implications of Poaching in Africa: Testimony before the Subcomm. on Foreign Relations, 112th Cong. (2012)* (statement of Tom Cardamone, Managing Director, Global Financial Integrity, Center for International Policy), available at <http://www.ciponline.org/research/entry/ivory-insecurity-poaching-africa> (“organized crime syndicates, militias, and even terrorist elements have taken notice of the profits that can be made in the illegal trafficking of wildlife, generating an alarming up-tick in the scale of the industry and posing serious national security concerns”); *The Illicit Trafficking of Counterfeit Goods and Transnational Organized Crime*, UNITED NATIONS OFFICE ON DRUGS AND CRIME [UNODC] (Jan. 13, 2014), www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf (discussing counterfeit goods broadly). As of Director’s Order 210, the U.S. Fish and Wildlife Service employees must now strictly implement and enforce all criteria under the Endangered Species Act (“ESA”) antique exception (16 U.S.C. 1539 (h)). The ESA requires that any person claiming the benefit of a statutory exemption has the burden of proving that the exemption is applicable (16 U.S.C. 1539 (g)) so the burden of proof is on the importer, exporter, or seller to definitively show that an item meets all of the criteria under the exception. The burden of proof standard is high to ensure that items that people claim are antiques under the ESA exception are authentic and qualify for the exception.

⁴ *Money-Laundering and Globalization*, UNODC, <http://www.unodc.org/unodc/en/money-laundering/globalization.html> (last visited Apr. 14, 2016).

⁵ John Gapper & Peter Aspden, *Davos 2015: Nouriel Roubini says art market needs regulation*, FINANCIAL TIMES (Jan. 22, 2015), <http://www.ft.com/intl/cms/s/0/992dcf86-a250-11e4-aba2-00144feab7de.html#axzz45oz431IN>.

⁶ *Money Laundering vulnerabilities of Free Trade Zones*, FINANCIAL ACTION TASK FORCE [FATF] (Mar. 2010), <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf>; see also *Best Practices on Trade Based Money Laundering*, FATF (June 20, 2008), <http://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP%20Trade%20Based%20Money%20Laundering%202012%20COVER.pdf>.

⁷ Cynthia O'Murchu, *Swiss businessman arrested in art market probe*, FINANCIAL TIMES (Feb. 26, 2015), <http://www.ft.com/intl/cms/s/0/bd248468-bde7-11e4-8cf3-00144feab7de.html#axzz45oz431lN>; Agustino Fontevvecchia, *Steve Cohen's Modigliani In The Middle Of An Art Market War: Billionaire Rybolovlev vs Yves Bouvier*, FORBES (Mar. 12, 2015), <http://www.forbes.com/sites/afontevvecchia/2015/03/12/steve-cohens-modigliani-in-the-middle-of-an-art-market-war-billionaire-rybolovlev-vs-yves-bouvier/#482e43fc179a>.

⁸ Announced in mid-2015, and effective January 2016, Switzerland's new laws to address money laundering in Freeports represent a significant advancement. See Isabelle Eichenberger, *Art: the new frontier in the fight against money laundering*, SWISSINFO.CH (Jun. 1, 2015), <http://www.swissinfo.ch/eng/culture/opaque-art-art-the-new-frontier-in-the-fight-against-money-laundering/41461526>; see also Henri Neuendorf, *Switzerland's Tough New Stance on Freeports Will Shake the Art World*, ARTNET.COM (Nov. 19, 2015), <https://news.artnet.com/market/switzerland-freeport-regulations-367361>. Luxembourg has enacted similar legislation. See Recueil de Legislation 29 juillet 2015 (Lux.), available at <http://www.legilux.public.lu/leg/a/archives/2015/0145/a145.pdf> (extending Luxembourg AML regulatory requirements to the Luxembourg Freeport).

⁹ *Trade Based Money Laundering*, FATF 5 (JUNE 23, 2006), <http://www.fatf-gafi.org/media/fatf/documents/reports/Trade%20Based%20Money%20Laundering.pdf>.

¹⁰ *Id.* at n.7.

¹¹ Amr Al-Azm, Salam Al-Kuntar & Brian I. Daniels, *ISIS' Antiquities Sideline*, N.Y. TIMES (Sept. 2, 2014), <http://www.nytimes.com/2014/09/03/opinion/isis-antiquities-sideline.html>; Justine Drennan, *The Black-Market Battleground: Degrading and destroying ISIS could take place in the halls of auctions houses, not the Pentagon*, FOREIGN POLICY (Oct. 17, 2014), <http://foreignpolicy.com/2014/10/17/the-black-market-battleground/>.

¹² United Nations Security Council [SCOR], *Russian Federation: draft resolution*, SCOR Res. S/2015/100 (Feb. 10, 2015), available at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/UN_SC_RESOLUTION_2199_EN.pdf.

¹³ See 2013 *International Narcotics Control Strategy Report (INCSR)—Volume II: Money Laundering and Financial Crimes Country Database—Comoros through India*, U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs (July 1, 2013), <http://www.state.gov/j/inl/rls/nrcrpt/2013/database/211181.htm>; *Global Anti-Money Laundering Research Tool*, KNOWYOURCOUNTRY.COM, <http://www.knowyourcountry.com/index.html> (last visited Apr. 14, 2016). The risks become acute in Free Trade Zones and Freeports. The 2010 FATF report found that Freeports were "a unique money-laundering and terrorist-financing threat." Free Trade Zones have proliferated from approximately 3,000 located in 135 countries worldwide in 2010 to an estimated 4,300 in 2013. Although Freeport and Free Trade Zone users benefit from confidentiality, exemption from duties/taxes and simplified administrative procedures as well as decreased scrutiny, these facilities are systemically vulnerable to abuse and highly attractive places for illicit activities including money laundering and terrorism financing especially through over- and underpricing. See FATF 2010 Report, *supra* note 6; see also Angela Shah, *Free Trade Zones Attract Criminals*, N.Y. TIMES (Nov. 10, 2010), <http://www.nytimes.com/2010/11/11/world/middleeast/11iht-m11trade.html>; *Special economic zones: Not so special*, THE ECONOMIST (Apr. 4, 2015), <http://www.economist.com/news/leaders/21647615-world-awash-free-trade-zones-and-their-offshoots-many-are-not-worth-effort-not>; *Über-warehouses for the ultra-rich*, THE ECONOMIST (Nov. 23, 2013), <http://www.economist.com/news/briefing/21590353-ever-more-wealth-being-parked-fancy-storage-facilities-some-customers-they-are>.

Because of the opaque nature of Freeports and Free Trade Zones, the exact valuation figure for art stored in in these facilities by country or globally is unknown but is estimated to be in the hundreds of billions of dollars. The ECONOMIST, *supra* 2013 article. The main building of the Freeport Geneva is estimated to hold art worth \$100 billion. Connassances des Arts in 2013 estimated that the Geneva Freeport held around 1.2 million artworks. Simon Bradley, *The discreet bunkers of the super-rich*, SWISSINFO.CH (Jul. 9, 2014), http://www.swissinfo.ch/eng/free-ports_the-discreet-bunkers-of-the-super-rich/40474208. In the global art industry many dealers, galleries and art lenders have offices at Freeports so that clients can conveniently view, buy, lend and sell their art all within the Free Trade Zones without the art moving. Cynthia O'Murchu, *Art: A market laid bare*, FINANCIAL TIMES (Apr. 7, 2015), <http://www.ft.com/intl/cms/s/2/a91a1608-d887-11e4-8a23-00144feab7de.html#axzz45oz431IN>.

The development of anti-money laundering and counter-terrorism finance compliance standards, oversight and regulations governing Free Trade Zones worldwide has not kept pace with the legal, regulatory and technological advances in AML and counter-terrorism financing compliance in other sectors, for instance, the global financial sector. AML and counter-terrorism finance compliance standards in Free Trade Zones are inconsistent across jurisdictions, non-existent in some jurisdictions and, where applicable standards apply, largely ineffective for art and cultural property assets. FATF 2006 Report, *supra* note 9; *Goods gone bad: Addressing money-laundering risk in the trade finance system*, PRICEWATERHOUSECOOPERS (Jan. 2015), <http://www.pwc.com/us/en/risk-assurance-services/publications/trade-finance-money-laundering.jhtml>; see also Rachel Louise Ensign, *The Morning Risk Report: Trade-Based Money Laundering Proves Tricky*, THE WALL STREET JOURNAL (Jan. 9, 2015), <http://blogs.wsj.com/riskandcompliance/2015/01/09/the-morning-risk-report-trade-based-money-laundering-proves-tricky/> (discussing the PwC report and citing U.S. and U.K. regulatory authorities).

¹⁴ See PRICEWATERHOUSECOOPERS, *supra* note 13; see also Ensign, *supra* note 13.

¹⁵ See *Global Anti-Money Laundering Survey 2014*, KPMG (Feb. 2014), <https://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Documents/Global-Anti-Money-Laundering-Survey-Q-201402.pdf>.

¹⁶ Thomas J. Curry, Comptroller of the Currency, Remarks at the Institute of International Bankers 3, 5 (Mar. 2, 2015), available at <http://www.occ.gov/news-issuances/news-releases/2015/nr-occ-2015-32.html>.

¹⁷ See Kaja Whitehouse, *Regulator warns of 'Armageddon' cyber attack on banks*, USA TODAY (Feb. 25, 2015), <http://www.usatoday.com/story/money/business/2015/02/25/lawsky-goldman-sachs-banks/23995979/>, quoting Ben Lawsky, Superintendent of Financial Services, New York Department of Financial Services (DFS), Address at Columbia Law School (Feb. 25, 2015).

¹⁸ See Kinglsey Napley, *Fifth Money Laundering Directive on the horizon?*, LEXOLOGY (Feb. 18, 2016), <http://www.lexology.com/library/detail.aspx?g=b52f2693-2b55-4137-8a36-168a09970558>.

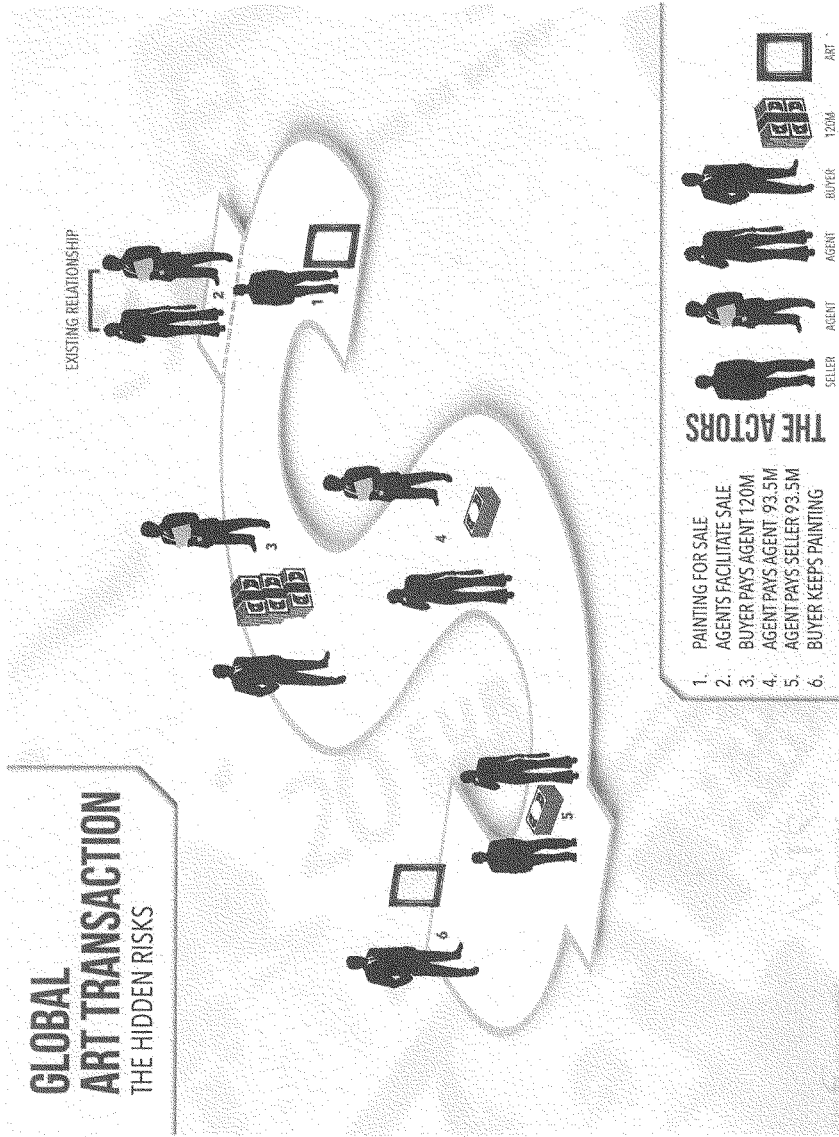
¹⁹ Under U.S. insurance laws, title insurance companies must maintain regulated "title plants" or databases on beneficial ownership and risk information for underwriting purposes under strict data privacy laws. In the case of ARIS and similar art title insurers, the title plant is art-asset versus real estate property-related and is comprised of global information versus geographic specific information given the global nature of the art industry and the high portability of art assets compared to non-movable real estate property of the real estate title insurance industry.

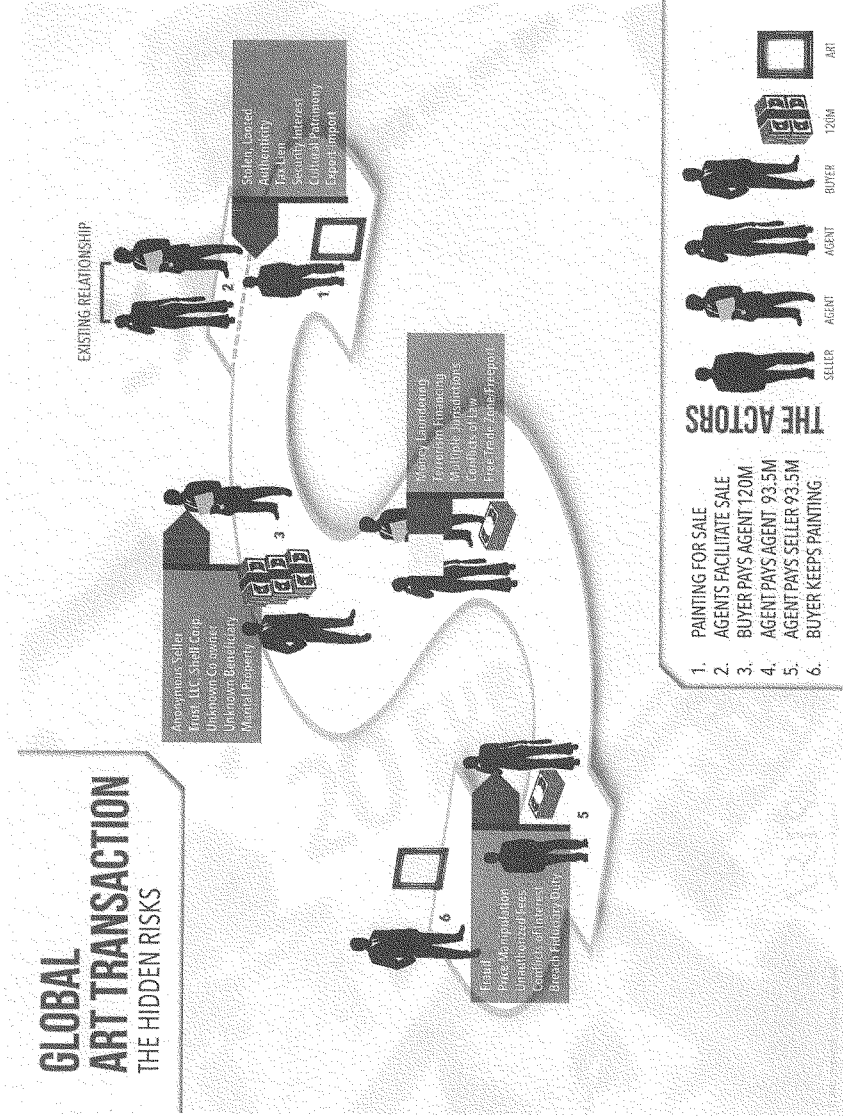
²⁰ The comments of President John F. Kennedy echoed fifty years ago, when building support for a national foundation on arts and humanities and emphasizing the need for a nation to represent itself not only through its strength but also through its art (two years later President Lyndon Johnson signed the National Foundation on the Arts and the Humanities Act creating the National Endowment for the Arts), are instructive: *[T]he nation which disdains the mission of art invites the fate of Robert Frost's hired man, the fate of having 'nothing to look backward to with pride, and nothing to look forward to with hope.'*" President John F. Kennedy, United States, Convocation Address at Amherst College (Oct. 26, 1963). Other world leaders have echoed the same. See Interview with André Malraux, First Minister of Culture, France, in *Promenades imaginaires dans Floence* ("in a world in which everything is subject to the passing of time, art alone is both subject to time and yet victorious over it."); and *Culture and Local Development* 2005 report published by Organization for Economic Co-operation and Development (member countries including Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, etc.) (measurable and beneficial impact that creativity, art and culture have on societies and economies), http://www.paca-online.org/cop/docs/OECD_Culture_and_Local_Development.pdf); see also Monika Grütters, Federal Commissioner for Culture and the Media, Germany, Address at *Cultural Heritage in Danger: Illicit excavations and trade* (Dec. 11-12, 2014) ("[art is] the cultural heritage of all humanity") (addressing plundering of museums, graves and other archaeological sites and illegal export of stolen objects at Berlin).

²¹ Many of these technological advances are being developed for entirely non-nefarious purposes. However, the same technologies become readily available to nefarious actors, who are always less than a step behind the good faith market, to create and distribute fake and forged art. See, e.g., Alessandra Potenza, *This 3d-printed Rembrandt is the new frontier in forgery*, THE VERGE (Apr. 5, 2016), <http://www.theverge.com/2016/4/5/11371566/the-next-rembrandt-3d-printed-painting-ing-microsoft> (discussing the sophistication of art-replicating technology).

²² See *Global Center of Innovation on Standards and Solutions for Object Identification Technologies in the Global Art and Collectibles Industry*, UNIVERSITY AT ALBANY, <http://www.albany.edu/centerofinnovation/> (last visited Apr. 14, 2016); *i2M Standards*, I2MSTANDARDS.ORG, <https://www.i2mstandards.org/> (last visited Apr. 14, 2016); *i2M Standards: Governments' Regulatory Aid*, I2MSTANDARDS.ORG, https://cdn.i2mstandards.org/wp-content/uploads/20151013130037/Governments_Regulatory_Aid.pdf.

[Endnotes End]

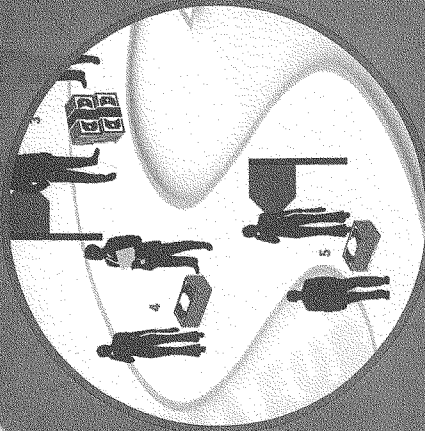




GLOBAL ART TRANSACTION

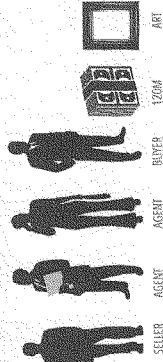
THE HIDDEN RISKS

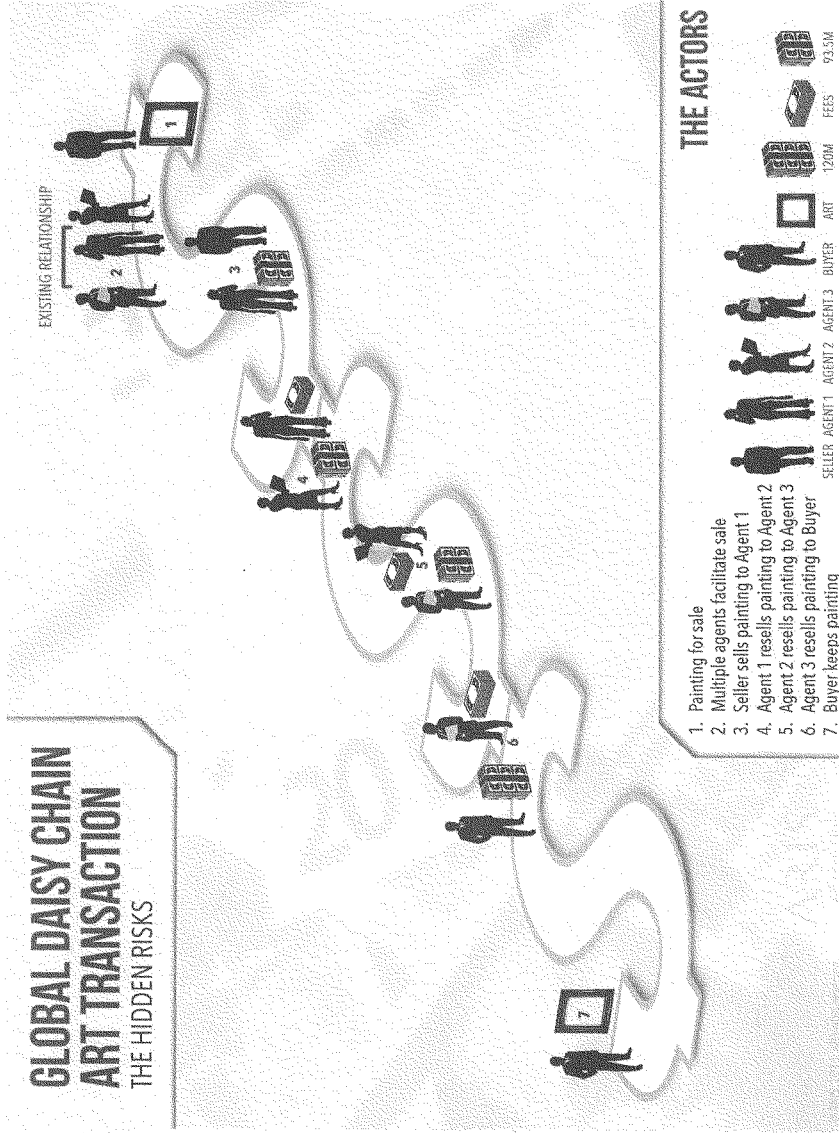
A REGULATED, NEUTRAL, INDEPENDENT THIRD-PARTY TITLE INSURANCE COMPANY WITH A 360° VIEW OF THE ART INDUSTRY CAN ADDRESS THE HIDDEN RISKS IN THE GLOBAL ART TRANSACTION.

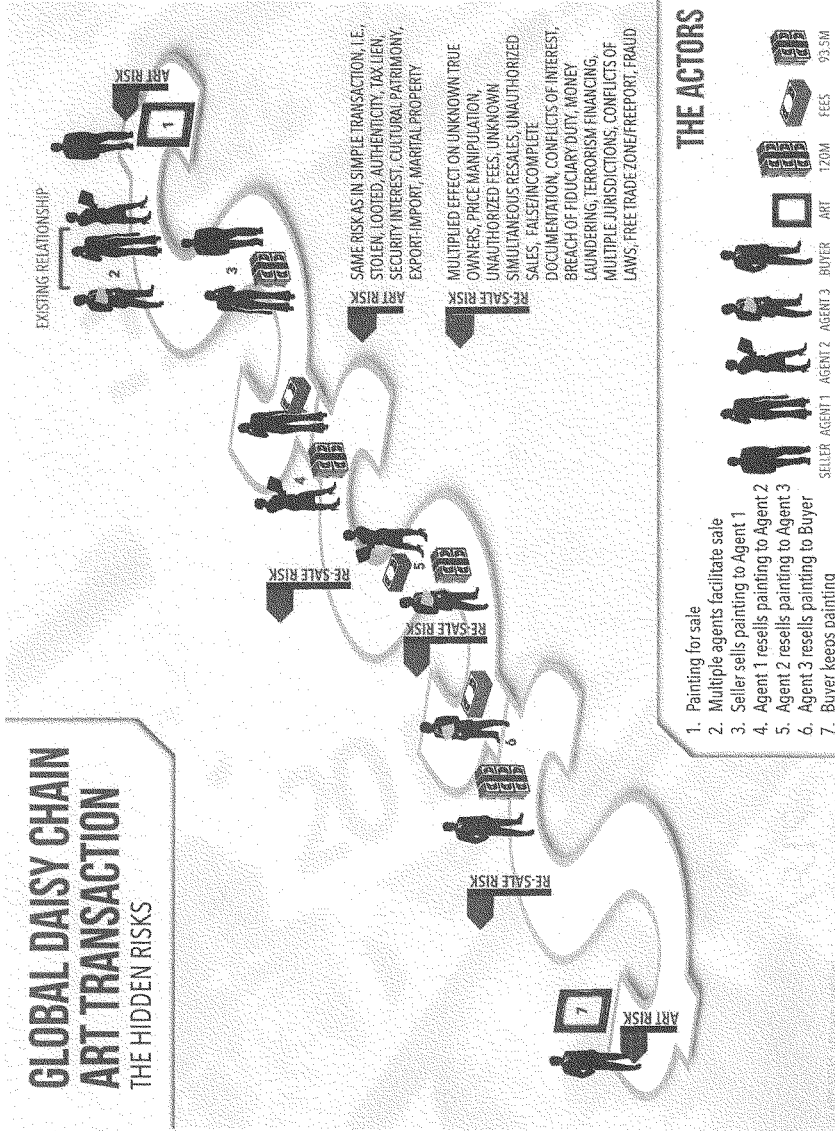


THE ACTORS

1. PAINTING FOR SALE
2. AGENTS FACILITATE SALE
3. BUYER PAYS AGENT 120M
4. AGENT PAYS AGENT 93.5M
5. AGENT PAYS SELLER 93.5M
6. BUYER KEEPS PAINTING







Responses to Questions for the Record Submitted by Ranking Member Maxine Waters for the Task Force to Investigate Terrorism Financing Hearing Entitled “Preventing Cultural Genocide: Countering the Plunder and Sale of Priceless Cultural Antiquities by ISIS”

Question #1: In your testimony you wrote that the main buyers of the Islamic State’s illegal antiquities trade are history enthusiasts and art aficionados in the U.S. and Europe. What recommendations do you have to curb the demand for looted antiquities in the West?

Heightened USG Engagement Should Curb Demand

Although the main target buyers of Islamic State’s illegal antiquities appear to be history enthusiasts and art aficionados in the U.S. and Europe, the U.S. government can help counter this demand by taking a more active role in three areas: Showing the public the legal consequences of buying looted antiquities from IS-controlled areas, facilitating a public media campaign that makes dealing in looted art more socially unacceptable, and encouraging long-term private sector efforts to improve transparency and provenance verification for antiquities. These recommendations are elaborated below.

Showing Consequences

American art buyers are likely to take notice if federal law enforcement arrests illegal art dealers and highlights the types of illicit methods and networks uncovered during prosecutions. The FBI in August 2015 advised it knew of U.S. persons offered antiquities apparently looted from Syria and Iraq and warned that individuals could be prosecuted for buying such items. This, along with sustained media and Congressional attention on IS antiquities trafficking has likely hampered the market for looted antiquities in the United States. Some illicit artifacts probably are being “cooled” in foreign warehouses instead of winding up in the hands of buyers in the U.S., according to antiquities experts. These items may come to market after a sufficient time has past to remove suspicion. Therefore, it is critical that the U.S. government study the role which freeports around the world may have in storing illicit antiquities

Despite threatening to prosecute U.S. buyers of IS’s looted artifacts last year, federal law enforcement officials have yet to make any arrests for IS antiquities trafficking. Some art collectors may view this lack of arrests as a lack of enforcement. In order to ensure that potential buyers remain vigilant about the risks of purchasing illegal antiquities from Syria and Iraq, the Justice Department should communicate more to the public about its actions in combatting antiquities trafficking.

The U.S. government can also learn lessons from early efforts to fight other types of terror finance. Specifically, efforts to inform the public about law enforcement activity to neutralize terrorist funding networks were key to generating early wins in counter-terror finance, according to the FBI. Similar outreach and public engagement could help strengthen the art market’s resolve to self-police and self-report illicit activity.

The USG should also highlight the consequences of art transactions which fund terrorists, as it has with other terror finance cases. For example, post-9/11, the Justice Department issued press

releases about the investigation into the Holy Land Foundation's support for Hamas, as well as cases where U.S. persons were arrested for conspiring to fund al-Qaeda and al-Shabaab. In 2010, then-Attorney General Eric Holder declared that the purpose of the publicity surrounding indictments for materially supporting terrorism was to discourage others from contributing to terrorist groups. Even in the absence of arrests, the Justice Department could update bulletins similar to the FBI's advisory last summer. Surprisingly, it appears that Justice has issued no official public statements about the threat of IS antiquities trafficking in 2016.

Also, while it is understandable that the Bureau can not disclose many details about ongoing antiquities trafficking investigations, it could provide better guidance on ways for art market leaders to undertake more "robust due diligence" to prevent transacting in looted artifacts as it recommended without elaboration last year. The U.S. government should identify recommended best practices and models for effective due diligence. The antiquities market--opaque for decades--would benefit from U.S. government outreach which not only warns, but also educates.

Making Looted Antiquities Socially Unacceptable

In addition to outreach through the criminal justice system, the U.S. government should encourage mass media campaigns that raise international awareness about the illicit antiquities trade. Lessons learned from the fight against wildlife trafficking should be emulated. The illicit trade in wildlife has broad similarities with antiquities looting: the intersection of trafficking and terrorism, shifting global tastes and markets, international regulation (the 1975 UN Convention on International Trade in Endangered Species of Wild Fauna and Flora), and the emergence of the Internet as a primary means for criminal networks to organize. Still, despite trade regulations and some outright bans, wildlife trafficking has been challenging to tackle. One note of optimism, however, is rising public awareness of the issue, including a recent documentary on the connection between elephant poaching and terrorism. A similar exposé of antiquities looting and trafficking, with funding from the U.S. government, could be equally effective.

One challenge for a public awareness campaign about looted artifacts, however, is that inanimate objects might have less emotional resonance than wildlife. But this hurdle could be overcome by involving celebrity spokespersons to speak to the issue.

Leveraging Technology Solutions for Art Provenance

Technology is needed to fight antiquities trafficking in the long term. As Mr. Larry Shindell noted in his testimony, private sector partnerships are developing new technologies to authenticate artwork provenance. This includes technology that applies DNA markers within art pieces to maintain ownership history. Because this technology also makes counterfeiting more difficult, it is likely to receive broad support in the art industry. Private sector entities like banks and insurers may be inclined to spearhead the deployment of these tools because they help authenticate wealth assets.

State-of-the-art nanotechnology is unlikely to be deployed soon or widely enough to hinder the antiquities smuggling currently happening in Syria and Iraq. But if the art market around the world starts relying on provenance standards using such technology, it will make it harder to transact in looted artifacts and eventually help decrease the illicit trade. Congress should be aware of these private sector efforts so that future government activity, whether legislation or law enforcement, considers these tools and leverages them, as appropriate.

Question #2: Given that FATF has indeed recognized that the Islamic State uses antiquities to raise funds, why do you think it has not emphasized antiquities trafficking as an area that national authorities should target through legislation and enforcement?

Because FATF is not an enforcement body and simply sets standards which member nations should follow to combat illicit finance, it puts most attention on money laundering and terror finance typologies with substantial data that can be measured and assessed across countries. The opacity of even the legal art market makes it very difficult to track and distinguish between legal antiquities, looted antiquities, and counterfeit antiquities - although the implementation of the recommendations above may begin to change this dynamic. Even [art crime experts](#) concede that most antiquities sold at legal auctions probably come from illegal excavation or export. And tangible data is scarce as [most cultural property thefts](#) are unreported or are recorded without enough specificity to track.

It is important also to understand that FATF focuses especially on encouraging best practices within the banking sector and law enforcement, whose policies and operations it can review easily. Targeting antiquities trafficking requires closely engaging and cooperating with art industries which currently operate with relatively light scrutiny. Given the current state of the art industry, it would be difficult for FATF to set standards for transparency which most countries' enforcement officials could reasonably enforce.

FATF might decide to emphasize antiquities trafficking as an anti-money laundering/counter-terror finance threat if its member states have the will to raise the issue by providing more case study data. FATF will need to review cases to identify common methods used by looters, smugglers, and dealers in the illegal artifacts trade. The organization has produced reports raising awareness about other money laundering typologies, such as the [illicit tobacco trade](#), which member nations recently identified as a concern and provided substantial data to evaluate. FATF probably needs more input from the jurisdictions which make up the main suppliers and the key buyers of looted artifacts in order to produce a relevant study of global antiquities trafficking.

Question #3: Apart from ISIS, which other major terrorist or organized criminal groups use antiquities trafficking to raise funds for illicit activity?

Unfortunately, antiquities trafficking occurs in most places where military conflict or instability exist near ancient cultural property. Militant groups and organized crime networks often take advantage of such turmoil to secure funding.

- During Cambodia's civil war from the 1970s to 1990s, members of the [Khmer Rouge](#) [profited](#) by looting ancient temples and other cultural sites. Khmer Rouge looters would smuggle artifacts such as figurines, drums, and statues to an organized crime group near the border with Thailand. One former looter explained that a single statue might sell for \$1,250 on the high end and that, one year, he and members of his network sold over 90 statues.

- Afghanistan's cultural heritage often is used to fund extremist groups. In 1999, the ringleader of the September 11th attacks, Mohammed Atta inquired with a professor in Germany about how to sell antiquities from Afghanistan. During Operation Enduring Freedom, Taliban fighters dug for artifacts to fund their offensive against the International Security Assistance Force. And Pakistan's Haqqani terrorist network smuggles antiquities out of Afghanistan, which also get taxed by the Taliban.
- Egypt's Antiquities Minister in 2014 noted that a government raid recovered 1,500 artifacts which had been looted by armed gangs. The country's current political volatility, coupled with its rich ancient cultural property tradition makes it highly vulnerable to antiquities trafficking.
- In Peru, drugs and arms traffickers in recent decades have used the antiquities trade to launder money. The U.S. Immigration and Customs Enforcement has discovered multiple pre-Colombian artifacts stolen from Peru.

Even when not looting, militant groups sometimes eke out funding from the movement of artifacts in contested territory. This occurred in 2013 after al-Qaeda forces took over Timbuktu, Mali, threatening much of the ancient city's cultural heritage. In one instance, when many locals mobilized to transport rare ancient Islamic manuscripts out of harm's way, jihadist soldiers did not destroy the artifacts, but extorted money for passage out of the area.

Questions for the Record Submitted by Ranking Member Maxine Waters for the Task Force to Investigate Terrorism Financing Hearing Entitled “Preventing Cultural Genocide: Countering the Plunder and Sale of Priceless Cultural Antiquities by ISIS”
Tuesday, April 19, 2016, 10:00 A.M

Questions for Mr. Lawrence Shindell, Chairman, ARIS Title Insurance Corporation
Responses: Dated July 28, 2016

Question No. 1. You note that cultural property markets in art and antiquities are not explicitly covered by AML and counter-terrorism financing standards. Which standards should apply, in your view, and to whom should they apply? For example, should all art dealers be required to meet certain due diligence requirements, or only dealers engaged in the sale of certain types of art from certain periods and/or regions?

Response:

Basic KYC and customer due diligence (collectively “AML Compliance”) requirements should apply ultimately to individual buyers, sellers, dealers, auction houses and not-for-profit museums. In the short-term, however, we propose that AML Compliance should apply to institutional investors using art as a commodity (and to art title insurance companies; compliance which ARIS already undertakes). In addition, we propose that AML Compliance should not be limited to artworks and cultural heritage objects only from certain regions. Rather, AML Compliance should apply to all types of art, regions of origination or trade and transacting parties. Although the current focus of the Task Force is on antiquities (“cultural heritage objects”) and those emanating from the Middle East given ISIS’s activities, the conditions which permit money laundering through art and cultural heritage objects are systemic and exist in what is today a globalized art industry. These enabling conditions span all types of art and cultural heritage objects and enable both general trade-based money laundering (TBML) and money laundering through stolen art and cultural heritage objects. The illicit trade of these objects and the resulting illicit conversion of them into licit funds depend on the ability of each party in the art industry’s supply-distribution chain to trade these objects downstream. Consequently, to address a systemic and international problem requires creating a systemic and international solution.

Second, to implement standardized AML due diligence requirements in the art industry can only occur in incremental steps.

Effective AML Compliance requires verified and relational data curated to a level by which stakeholders can share privacy-protected data with a custodian and reliably access higher-level information in a privacy-protected and regulatory-compliant way. In the current opaque and non-centralized nature of the art industry, buyers cannot learn the identity of counterparty sellers, which is the necessary starting point for any meaningful AML Compliance.

The Genesis of Privacy in the Art World and How it has Become a Means by Which to Launder Proceeds

The opaque nature of the art industry arguably has its genesis in some legitimate privacy interests. Historically, one royal family did not want another royal family to know about its art world dealings. In more modern times, good faith parties seek privacy around their art industry activities, for instance, to reduce the threat of burglary, kidnap and ransom risk when significant wealth or wealth events become publicly-known and to reduce the risk of intrusive behavior by some parts of the trade, as agents seek to access (to buy or to represent in the sale) art holdings of collectors if and when the collection or collecting activities of the party become exposed. Thus, the art industry has a long tradition of selling and buying art and cultural heritage objects through intermediaries who maintain these confidences. Unfortunately,

this same opacity today allows improper activity ranging from general tax-avoidance to terrorism financing. These conditions also restrict capital markets from participating in this industry sector, prevent significant legitimate economic growth around a \$65B to \$1.25T annual primary transaction sales industry and create significant government and private sector cost.

Because of this history and the fact that to date there has been no safe, regulatory-compliant, privacy-protected means of organizing and allowing need-to-know access to curated and protected information, good faith tax-compliant citizens have been unwilling to yield to pressures for better disclosure of the occurrence of and other information surrounding their transactions including accurately recording the true identity of the buyer or seller. In our testimony on April 19, 2016, we mentioned technology and informatics-based solutions now under development to create an environment of privacy-protected, vital information including through information-sharing among BSA-safe-harbored entities (also discussed below).

Due Diligence in Today's Market

Against this backdrop, today's art industry AML Compliance takes the following form in commercial contexts. The following is pulled from program language ARIS strongly encourages/requires institutional-grade alternative asset investment funds and art-collateralized financing structures to include in their market-facing purchase-sale contracts.

The improved compliance of these stakeholders, combined with ARIS's underwriting protocols, enhances the ability of title insurance – which guarantees that the new beneficial owner (the purchasing alternative asset investment fund) or contingent beneficial owner (holder of the security interest in the art collateral in the event of a default by the borrower in a financing structure) has clear legal title to the asset – to serve as “best evidence” of AML Compliance.

Individual buyers, sellers, dealers, auction houses and not-for-profit museums (each of which follow various but in some cases limited AML Compliance steps) are expected in time to follow suit.

As illustrated by the title insurance structure for an ARIS-insured institutional-grade alternative asset investment fund (AIF) domiciled in Luxembourg,¹ the AIF:

1. Must undertake a “commercially reasonable investigation” and certify that the AIF has no actual knowledge or reason to suspect (within the meaning of the term “suspicious activity” applicable to financial institutions regulated under financial crimes reporting laws) that the buyer (or if the AIF knows that the stated buyer is acting as the agent for an actual buyer, then the actual buyer if the AIF also knows the identity of the actual buyer) is:
 - i. A “specially designated national” or a “person” otherwise “blocked” under the asset control laws of any jurisdiction; or
 - ii. Transacting the art as part of a scheme of money-laundering under the financial integrity laws of any jurisdiction.
2. “Commercially reasonable investigation” in this context includes that the AIF has asked the intermediary such as auction house, dealer or other intermediary acting on behalf of a seller (when the AIF is buying) or on behalf of a buyer (when the

¹ A commercial platform falling under the Alternative Investment Fund Managers Directive (AIFMD) applicable throughout the EU including U.S.-based investors investing in an EU-regulated AIF including funds which invest (for returns to qualified investors) in fine art.

AIF is selling) for the identity of the actual buyer or owner, and this party refuses to provide the information citing client confidentiality reasons, and this party certifies in writing to the AIF the same information that the AIF would have to give directly if the identity of the buyer or owner were provided.

3. Where the seller to or the buyer from the AIF provides the disclosure, the AIF's "commercially reasonable investigation" includes making the appropriate checks through the Office of Foreign Assets Control (OFAC) SDN list (Blocked Persons (Specially Designated Individual Status)), the Foreign Sanctions Evaders (FSE) list, the UN consolidated list of persons, groups and entities subject to EU financial sanctions, the EU consolidated list, local lists, FinCEN's 311 list, Interpol, correlation to FATF high risk jurisdictions (as amended from time to time) and with respect to other kinds of "red flag" industry information.

In any underwriting context, ARIS independently cross-correlates all of the transaction and object-specific information against information ARIS that maintains in its proprietary databases including correlating against data held in a host of public databases.

Measured against financial industry AML standards, AML-related protocols in the art industry are currently nascent. But what is outlined above represents a significant advance and first-step forward in this industry incorporating institutional-quality AML due diligence standards.²

Further advances can only occur once an adequate amount of data is organized – verified, privacy-protected, curated and relational across a global market of data that can create meaningful "big data" or "smart data." Collecting this data will require that beneficial owners/sellers of artworks and cultural heritage objects be sufficiently confident that their personally-identifying information will be used for AML Compliance purposes and no other.

Question No. 2. You wrote in your testimony that there is an under-recognition of the kind of information that is needed in the art industry to curtail terrorism financing through the movement of art and antiquities. Please expand on this further. What type of information is needed to curtail both the supply and demand for objects that may be used to launder money and finance terrorism?

Response:

This under-recognition does not relate to specific pieces of needed information but to the need for a holistic approach that can move the industry away from its current state of fractured and inadequate information to meaningful information. We discussed above some of the historical legitimate reasons for privacy in the art industry and the resulting abuse today in the context of terrorist financing and other contexts. In crafting a solution, we must take into account the legitimate need for continued privacy, but we must also focus on collecting the right type of data and hosting this data in the right way. This distinction is partly illustrated by the industry's movement away from the concept of "big data," which in many cases has turned out to mean only more data in the form of non-useful data or only "noise;" and the newer concept of "smart data."

In our testimony, we gave the hypothetical of a bad actor pledging the same stolen art or cultural objects as loan collateral multiple times to multiple financial institutions on an international basis as a means to garner funds for terrorism financing, and without any one financial institution having enough information

² ARIS has incorporated sanctions screening into its AML due diligence. The sanctions programs administered by the United States, European Union and EU Member States also apply to insurance companies, financial institutions, brokers, collectors, dealers and auction houses. These entities are expected to maintain risk-based compliance programs to ensure that they are protecting the EU and U.S. financial systems from exposure to prohibited parties.

to see the pattern. We explain further.

AML Compliance for any asset starts with verifying *beneficial ownership* (at least that the information has been collected and appears to be reasonable). This is just as true for the art and cultural heritage asset class in particular and represents what a title insurance company more broadly regards as *clear legal title* or *legal ownership*. Because of the portable nature of art and cultural heritage objects, the concept of legal title is more complex than it is with, for instance, non-movable real estate property or a privately held corporation.

Legal title is the full and absolute legal and equitable ownership of property unencumbered by any interest in or to the property by any other person in the world. Having clear legal title to property means that one has the unrestricted right to hold, use, sell, gift, exhibit, *pledge as financial collateral* or otherwise transact the property.

Of course, those who steal art or cultural objects do not gain clear legal title to these objects. Particularly in the context of terrorism financing but also true for the art industry in any other respect, from the standpoint of a *global* art industry supply-distribution chain, each transactional link or physical movement of the stolen object also is illegal (*e.g.*, export, import, customs, shipment, storage, sale, etc.).

The thief's first transformation of the object into funds (sale or pledge for funds for terrorism) is illegal. This first transformation requires the involvement of either another bad actor, or an innocent intermediary or purchaser, that is, who is acting in good faith, without knowledge (despite due diligence), who unknowingly facilitates the conversion of the asset into funds, and acquires void or voidable legal title to the object (depending on the application of host of complex local and sometimes international laws).

What typically happens before a good faith party becomes ensnared in the illicit facilitation is the object successively moves from a local transaction, to a small regional transaction, to a larger regional transaction and eventually into the traditional sectors of the art industry. Because little information is known *holistically, i.e.*, about each prior transaction (see response to Question No. 1), the work acquires a veneer of credibility. The creation of this veneer depends on the ability of each bad actor to pass the object downstream in a daisy chain-like fashion without any one party being able to see the complete picture and to know whether any given piece of information is true or false – the information is typically recorded (effectively supported by the privacy reasons and traditions in the art industry discussed above) as simply “private collection, [a, b, c] of [location x, y, z].”

This physical movement creates what the global art industry regards as the *provenance* of the object (the history of the whereabouts of an artwork from the day it was created in the artist's studio to the present day) or its *provenience* in the case of cultural heritage objects (the start point of which is where the object was first unearthed and found).

Traditionally, the art world has incorrectly equated legal title (or beneficial ownership), and the ability to transfer the object to another party, with provenance or provenience. However, information on the prior location and possession of artworks or cultural heritage objects, when accurate and complete, can help to shed light on legal title.

Finally, it is important to understand what the art industry calls a *gap in provenance* and how this is a misnomer. Often considered in the context of artworks extant and potentially present in Europe during World War II, a gap in the provenance of an artwork during these war years generally considered to be between 1933 and 1945 is taken as a sign that the artwork may have been acquired illegally and has questionable legal title.

The art industry has never systematically recorded both sides of each transfer of possession or ownership of art or cultural heritage objects. As a consequence, any given provenance can be incomplete and thus inaccurate even if one assumes that the partial information is true. Furthermore, provenance documentation itself can be faked and forged.

The foregoing is aptly illustrated by the 2015 seizure by Italian and Swiss police of more than 5,000 antiquities (worth an estimated \$52 million) from Swiss warehouses. The investigation showed that a smuggling ring took artifacts from illegal excavations in Italy, sent them to Switzerland for restoration, and finally moved the objects across borders for sale with fake provenance and other documentation to Germany, Britain, the United States, Japan and Australia. No government authority in the checks-and-balances of the industry's supply-distribution chain had enough information to detect in real time the large scale, global, cross-border movement of these objects, a state of affairs largely compounded by the undetected fake documentation – in other words in adequate and fractured information in data and AML Compliance terms.

Although this instance was not associated with terrorism financing, it illustrates the complexity of asset integrity and risk in the global art industry and the need for verified, organized, privacy-protected, holistic information. See http://www.businessinsider.com/afp-italy-seizes-more-than-5000-looted-antiquities-in-record-haul-2015-1?utm_source=feedburner&utm_medium=feedburner.³

Question No. 3. Before a given financial institution should be able to lend against a pool of art or cultural objects offered as collateral, what information should that financial institution be required to obtain? Would you agree that the institution should at least know the provenance of the art and the beneficial owner of the artwork?

Response:

In concept, yes, a financial institution needs to know beneficial ownership and provenance. In practice, collecting and verifying that information is not simple largely because information needed to verify the representations of any client of the financial institution is not centrally located. The difficulty, as indicated, is in the ability for any individual financial institution to access the type and quantity of information which is needed to answer these ultimate issues of fact and the reliability of the information. Each good faith stakeholder in the global art industry faces the same problem when making the necessary representations of fact to the financial institution.

The Problem

An innocent purchaser who buys at auction will not know who the seller is; the auction house often does not know who the consignor is, that is, who the real owner is that may be behind the consignor. Many artworks are “flipped” or, as the *Panama Papers* highlight, are traded through special-purpose or shell entities. See also n. 3. Artworks often move rapidly and multiple times cross-border and globally before coming to rest in the final geography of sale and the final hands of a good faith purchaser. When such a good faith party then goes to a financial institution to pledge the asset as collateral for a loan, the financial institution will ask about the provenance and beneficial ownership. Ordinarily the borrower actually knows very little to nothing first-hand about the beneficial ownership, only that the borrower paid

³ It is noteworthy that Financial Crimes Enforcement Network (FinCEN) just announced (July 27, 2016) additional Geographic Targeting Orders (GTO) requiring U.S. real property title insurance companies to identify the natural persons behind shell companies used to pay “all cash” for high-end residential real estate in six additional major metropolitan areas, expanding the industry scope beyond similar GTO’s issued earlier this year covering transactions in Manhattan, New York and Miami-Dade County, Florida, all in an effort to get behind limited liability companies and other opaque structures for AML Compliance purposes in this asset class and to add more accurate and reliable data to the AML Compliance efforts. See https://www.fincen.gov/news_room/ur/pdf/20160727.pdf?curator=BSA%20News%20Now.

money and ostensibly owns the object because the borrower was told that the provenance of the asset is “ok” when the borrower purchased the object. To conclude that the financial institution now knows the provenance of the object and the beneficial owner from an AML compliance standpoint begs the question.

We cited during our testimony the example of a bad actor re-pledging the same collateral multiple times. This happens in the art industry more often than one might imagine, because no single institution has the means to know (other than through the representations of the borrower) whether the collateral is already pledged. For example, consider the case of the €52 million loan with ABN AMRO alongside over \$340 million in loans from Credit Suisse and JPMorgan Chase & Co. against the same artwork collateral, http://vorige.nrc.nl/international/article2225388.ece/ABN_Amro_secures_Reijtenbagh_art_collection.⁴

A Solution

A single ombudsman having a role in the global art industry similar to the role of Markit (a global single-source of financial information in the financial industry, <http://www.markit.com>.) would enable the art industry to correlate, reliably, the object-identification of artworks and cultural heritage objects presented to any participating bank in the world; the identity of the presenting owner-borrower; and information provided by other stakeholders at each point of movement (e.g., customs authorities, shipping firms, free-ports/free-zones and other storage facilities, and property insurers). This combined information would enable forming a relational data picture of the physical objects, each transaction (purchase, sale, transport, pledging), all linked to reported beneficial ownership information (and provenance) and all related data which could then be cross-correlated against public domain data to identify suspicious anomalies or false data. The end result is that it would be very difficult for bad actors to buy and sell illicit art or cultural heritage objects or to use these assets (or licit assets) as collateral for illicit purposes within the traditional financial system.

Question No. 4. Currently under section 314(b) of the USA Patriot Act, financial institutions, and other entities not typically considered to be financial institutions -- such as dealers in precious metals, stones or jewels -- are provided a safe harbor that offers protections from liability when they share information with one another in order to help better identify and report potential money laundering or terrorist activities. Do you think extending this kind of safe harbor protection for information sharing to art title insurance companies, art dealers, brokers and auction houses, and possibly others would aid efforts help curtail terrorist financing through the looting of cultural antiquities?

Response:

Yes; however, the caveat to our response is that we believe in earnest, and with all respect to other stakeholders including the concept of government-public or non-profit-public alternatives, that the only entity which has the correct legal and market position to serve in the necessary centralized role (including information-sharing with financial institutions) is a regulated, industry-neutral, art title insurance company. The reasoning is several-fold.

If one accepts that organized, accurate and secure information managed by a single party is necessary to develop a holistic and accurate picture and to provide curated, privacy-protected information to other counterparties such as financial institutions, then the question analytically becomes in what kind of entity

⁴ The unfolding Malaysian Jho Low AML case further highlights (i) the complexities when art and cultural heritage assets intersect with the financial industry, further exacerbated by the fact that this form of lending threads to non-regulated financing entities (some AML responsibility) supported by capacity from regulated financial institutions (with strict reporting AML Compliance obligations); and (ii) the consolidation of information and BSA-safe-harbor protected information-sharing in the manner discussed in later sections of this summary. See <http://www.bloomberg.com/news/articles/2016-07-28/art-of-shadow-banking-how-an-auction-house-got-into-the-picture>.

the art industry and its stakeholders will be most confident to assume this role. It is inherently natural that industry stakeholders will have the greatest confidence if the information will be aggregated, curated and held (not owned) under the custody of an entity that is already and fundamentally in the business of data veracity (*i.e.*, a title insurance company).

Stakeholders will also have confidence to share (consistent with client authorizations and institutional compliance obligations) client privacy-protected information and their own competitive information (*e.g.*, information relating to which clients are pledging what art to a financial institution or are transferring art into a foundation or other tax-driven entity for the which financial institution will serve as the independent trustee-fiduciary) with a regulated title insurance company. As suggested, Markit is a comparable example, in which each of the leading banks of the world shares their own proprietary information with a single entity because of the confidence of Markit's market-neutrality, the regulated environment and the benefit to each stakeholder of receiving, by contributing its own pieces of the data, broader, holistic, privacy-protected information in return.

Other relevant stakeholders which would benefit from sharing competitive data with a single, non-competitive ombudsman include property insurers: the information shared would include (a) which property insurer is insuring which artwork or cultural heritage object under what beneficial owner name; (b) in what location in the global art market the property is held; (c) in which Free Port or other storage company the property is located; (d) what beneficial owner name has been reported to each of these stakeholders; and (e) which shipping firm is moving, or moved, which object and on what date, under what beneficial ownership name, to what destination, and insured by what property insurer, etc.).

Title insurance companies by virtue of their regulated, mono-line status⁵ are market-agnostic and focus exclusively on one issue: asset ownership (which includes both direct and indirect beneficial ownership information and its veracity). Industry stakeholders will find it logical for an art title insurance company to make the necessary and substantial on-going data-technology and investments to support such a role, because an art title insurance company must already maintain the same kind of technology infrastructure to organize and manage confidential, privacy-protected legal title (ownership) information.

In addition to fostering confidence on market-neutrality and data privacy, protection and integrity, an insurance company offers institutional longevity. Insurance companies including art title insurance companies are highly regulated entities which cannot simply shut down or disappear in the industry. Entities holding sensitive data such as banks, insurance companies and governments operate under comparable regulatory schemes with shared and full understanding of the civil and criminal protective legal requirements, making each of these stakeholders most willing to share privacy-protected data with other government-regulated entities.

Simply put, the data management requirements that are necessary to solve the issues of AML Compliance in the global art and cultural artifacts industry are complex. A viable solution will require an entity or entities to organize, curate and break down data into its smallest parts to enable relational association of data elements. This includes data of all types coming from a large range of industry sources - the art trade, financial institutions, governments and other stakeholders to public domain information.

Question No. 5 Although freeports – massive storage facilities that allow individuals to store goods while avoiding customs duties and sales tax – were originally used to house commodities and manufactured goods on the move, in recent decades they have increasingly catered to high net-worth individuals seeking security and confidentiality, and efforts in the U.S. and Europe to clamp

⁵ The mono-line nature of title insurers means that, by law, only a title insurance company may underwrite title insurance and a title insurance company may only write title insurance to the exclusion of all other forms of insurance. A title insurer cannot write property (physical loss or damage) insurance and therefore it is not competitive with the property insurance industry.

down on tax evasion through off shore bank accounts have only increased their appeal.

- o How many freeports are in operation today, where are they generally located, and to what extent do national authorities provide sufficient oversight and require disclosure of the items stored in these facilities?

Response:

As Representative Ann Wagner indicated in her opening comments during the April 19, 2016, hearing, ARIS had been working with and continues to work with Representative Wagner and her office on the issues we presented in our testimony.

For ease of your review of our response to this question, we attach copies of informational materials we prepared for and provided to Representative Wagner and her office in March and April 2015.

An AML Issue with Free Zones and Free Ports

As the attached materials indicate, there are a large number of both Free Zones and Free Ports all of which have the same core purpose of imposing a *final* tax on assets once they stop transiting but of course were never intended to enable ultimate tax avoidance. A number of Free Ports cater specifically to the global art industry.⁶ Industry insiders report that individuals in some countries are finding ways to secure government approval of “individual” Freeports.

We believe the money laundering risk in the art world is not the existence and valid purpose of Free Ports or Free Zones, *i.e.*, a waystation to a final transaction to be taxed in the final-transaction jurisdiction.

Rather, from our discussions with customs authorities in the U.S. and EU, the risk profile lies with the inability of customs and other government officials to be able to access accurate and reliable information on the movement and beneficial ownership information of the objects as they move in and out of these facilities, in conjunction with information organized from other stakeholders as discussed above.

A Solution

A holistic approach as discussed above will facilitate the interests of all stakeholders – government and private sector alike – and will create substantial systemic efficiencies through verified, curated, privacy-protected, relational, information.

The kinds of solutions mentioned in our testimony – for example, the Global Center of Innovation for the i2M Standards headquartered in the United States at the State University of New York at Albany – illustrate the means that are on the horizon to link accurate information to the exact physical object for all of the above-described purposes.

For example, properly identified shipping crates would no longer need to be opened as they move in and out of these facilities and cross-border to verify contents. For good faith stakeholders including the property insurance industry, the current means of inspection create significant expense and risk of physical damage. Under such a system, governments could interdict improperly-identified crates and objects more effectively. Overall government cost could be significantly reduced and government resources could be deployed in a more targeted way to high risk objects and locations.

⁶ They are based in Switzerland, Singapore, Luxembourg and most recently Delaware in the United States. See <http://geneva-freeports.ch/en>, www.singaporefreeport.com, www.lcfreeport.com and www.delawarefreeport.com.



**ARIS TITLE INSURANCE CORPORATION BRIFING DOCUMENT
 SUBMITTED FOR USE IN TERRORIST FINANCING WORK GROUP
 MARCH 25, 2015
 CONGRESSIONAL HOUSE COMMITTEE ON FINANCIAL SERVICES
 U.S. REPESENTATIVE ANN WAGNER (R-MO)**

***"MONEY LAUNDERING-TERRORIST FINANCING
 IN THE GLOBAL ART MARKET"***

Current levels of terrorist financing by ISIS and other groups through plundering cultural objects and selling these illicit objects for funding (a form of illicit "trade-based" money laundering) is made possible because of the overall systemic problem of traditional and trade-based money laundering in the global art and collectibles industry (cultural and archeological objects being part of this tangible property asset class).

Artwork is a high-value appreciating asset that is easy to transport and that is traded in a market defined by discretion. Since protecting the identity of art market participants is customary, money laundering in today's global art industry is not only possible, it is ubiquitous. For years, the multi-billion-dollar illicit trade in fine art and antiquities has provided a lucrative scheme for organized criminal enterprises. A lack of record-keeping for transactions in both source and market nations as well as the private nature of many of the transactions obscures the legal status of the sourcing of the antiquity and often results in an unverifiable ownership history. These regulatory difficulties, combined with the spread of economic-political conflict in regions rich with ancient treasures and the market demand for such artifacts, make it highly likely that more terrorist groups will engage in illicit antiquities trafficking. This will most likely continue to transpire in areas where three factors converge: (1) the antiquities present are in high demand on the market; (2) the region is experiencing some type of political conflict; and (3) some criminal networks are already present.

According to the United Nations Office on Drugs and Crime, 2%-5% of the global GDP takes the form of laundered money – \$800 million to \$2 trillion. The art market or art industry, which is notoriously opaque and unregulated, is one in which a staggering amount of this criminal activity takes place – where "dirty" money obtained from illegal activity is laundered into clean currency and where trade-based assets are directly laundered as a more complex and growing form of international money laundering.¹

The problem of money laundering in the art world has garnered attention from the economics field as well. At the 2015 World Economic Forum meeting in Davos, Switzerland, acclaimed economist and NYU Stern School Professor Nouriel Roubini explained why the art market is in serious need of either self- or external-regulation: Whether we like it or not, art is used for tax

¹ <http://www.unodc.org/unodc/en/money-laundering/globalization.html>.

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avoidance and evasion. It can be used for money laundering. You can buy something for half a million, not show a passport, and ship it. Plenty of people are using it for laundering,” Roubini said. He added that leveraging or trading with or against “insider” or proprietary information is the norm for the art market when the same or similar activities would be illegal in any other market.²

Worldwide cases of money laundering and illegal activity conducted through the purchase and sale of artwork are common with examples ranging from high profile figures such as Edemar Cid Ferreira, the Brazilian ex-banker who laundered millions of dollars through a collection of 12,000 works, to the art dealer Helly Nahmad of the international art world family of the same name, who was arrested for similar activities undertaken alongside a gambling ring.

Most recently, in Monaco, Swiss businessman Yves Bouvier, who owns tax-free zones (Freeports) for storing art and other high value property based in Switzerland, Singapore and Luxembourg (and another similar facility in planning for Paris), was detained on Monaco government-investigated initial findings of art “price-fixing” and money laundering. Freeport facilities are large, maximum security storage facilities that allow individuals to store valuables while avoiding customs duty and sales tax for the intermediate stage (staging-storing) of a final purchase or sale transaction. Many artworks find their way to Freeport facilities, often attached to international airports. These units are intended as temporary storage for goods in transit, but in practice valuables are often kept in these facilities for years. Keeping artwork in duty-free limbo raises thorny questions for governments anxious to squash money laundering and tax dodging. The Financial Action Task Force on money laundering has been concerned about the integrity of Freeport facilities since 2010,³ and money laundering is one of the charges alleged against Bouvier, who, in addition to owning these facilities, also deals in the trade of art. In February 2015, a client paid Bouvier \$118 million for a piece of art, more than \$22 million above the market value.⁴ Scrutiny of Bouvier’s network of duty-free, high-security bonded warehouses has reignited to levels not seen before the debate over why the global art business escapes any form of regulation.

Money laundering through the art trade is not limited to art collectors and art dealers. There is evidence that, as with the other parties to the Syrian civil war, the Islamic State of Iraq and al-Sham/the Levant (ISIS/ISIL) is looting and trafficking antiquities in order to fund its fighting.⁵ ISIS has recently directed much of its destructive activity towards cultural heritage targets in Iraq. The terrorist group is responsible for ransacking Mosul’s Central Library and burning about 100,000 books and manuscripts in addition to destroying statues and other works with sledgehammers and power tools before moving on to destroy ruins at the ancient city of Hatra. The damage is said to extend to museums, libraries and universities across Mosul and other

² “Davos 2015: Nouriel Roubini says art market needs regulation,” January 22, 2015, *Financial Times*.

³ <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf>

⁴ “Swiss businessman arrested in art market probe,” February 26, 2015, *Financial Times*; “Steve Cohen’s Modigliani in the Middle of an Art Market War: Billionaire Rybolovlev vs Yves Bouvier,” March 12, 2015, *Forbes*.

⁵ “ISIS’ Antiquities Sideline,” September 2, 2014, *NY Times*; “The Black-Market Battleground,” October 17, 2014 *Foreign Policy Magazine*.

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areas. Several governmental bodies and organizations including the United States have announced efforts to spare cultural heritage sites in the fight against ISIS. The UN Security Council has adopted a resolution to curb traffic of illicit antiquities from the region and in turn to prevent ISIS from profiting off the sale of stolen art works.⁶

Such measures, while helpful, standing alone are not likely to stop looted art from entering the market. Anti-money laundering as well as counter-terrorism financing laws (AML/CTF) are limited when it comes to the trade of cultural property because the cultural property markets in art and antiquities are not explicitly covered by AML/CTFs. The laws of some countries cover art, antiquities and antiques dealers directly such as Argentina, Brazil, Japan and Lithuania.⁷

Identifying and targeting money laundering and terror financing entangled within the legitimate cultural property trade may well require a revision of federal AML/CTFs.

In addition, a standards-based technology approach that can link verified information to licit objects (and in turn identify, remove from the trade and return to their lawful owners illicitly traded objects) on an industry-systemic basis as artifacts and other objects move and trade hands legally in the global art and collectibles industry may be required for museums, archaeologists, auction houses and dealers and other aspects of the trade along with associated involvement of international trade/customs and financial markets regulatory authorities.

⁶ http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/UN_SC_RESOLUTION_2199_EN.pdf.

⁷ AML/CTF laws can be found <http://www.state.gov/j/inl/rjs/nrcrpt/2013/database/211181.htm> and <http://www.knowyourcountry.com/index.html>

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SUPPLEMENTAL INFORMATION

I. Art World Money Laundering

The Financial Action Task Force (“FATF”) (intergovernmental body set up in 1989 to combat terrorism financing and money laundering) report, *FATF Guidance, National Money Laundering and Terrorist Financing Risk Assessment, February 2013*, identifying art and antique dealers and auction houses as vulnerable to money laundering and terrorism financing, <http://pdf-save.rhcloud.com/tag/national-money-laundering-and-terrorist-financing-risk/> (at page 48).

A January 2015 PricewaterhouseCoopers report highlights the rise in global trade-based money laundering (TBML) and the regulatory shift in focus from traditional money-laundering compliance oversight to assessing the ability to spot TBML, e.g., money laundering executed through international trade of legitimate goods through nefarious means (one of the key methods of money laundering in the global art and collectibles industry). See *Goods gone bad: Addressing money-laundering risk in the trade finance system* available at <http://www.pwc.com/us/en/risk-assurance-services/publications/trade-finance-money-laundering.jhtml>; see also *The Wall Street Journal, Risk and Compliance Journal*, January 9, 2015, “The Morning Risk Report: Trade-Based Money Laundering Proves Tricky” discussing the PwC report and citing U.S. and U.K. regulatory authorities.

II. Selected Global, Direct Efforts to Combat Terrorist Financing Underway

Germany

Plans to Tighten Regulation of Art and Antiquities Trade, <http://artsbeat.blogs.nytimes.com/2014/12/11/germany-plans-to-tighten-regulation-of-art-and-antiquities-trade/> (“Cultural Heritage in Danger: Illicit excavations and trade,” conference, Berlin, December 11/12, 2014)

Australia

Revamping laws regulating the import and export of important cultural objects, <http://www.theguardian.com/australia-news/2014/dec/23/import-export-cultural-objects-acquisition-scandals-shiva>;

United States

HR 1493 introduced by representatives Eliot Engel (D-NY) of the House Committee on Foreign Affairs; Chris Smith (R-NJ); Ed Royce (R-CA); and William Keating (D-MA) (ranking member of the Subcommittee on Terrorism, Nonproliferation, and Trade) to attempt to “strengthen our ability to stop history’s looters from profiting off their crimes.” <http://observer.com/2015/03/bill-in-congress-seeks-to-reign-in-trade-by-isis-in-looted-antiquities/> (initial version of bill to appoint a Cultural Protection Czar, <http://news.artnet.com/art-world/could-us-cultural-protection-czar-stop-rampant-isis-looting-173972>)

United Kingdom

Artnet news, “British Parliament Considers Action on ISIS’s Trafficking of Antiquities,” February 10, 2015, <http://news.artnet.com/in-brief/british-parliament-considers-action-on-isis-traffic-of-antiquities-249501>

Internationally

UN Security Council Resolution 2199 (February 12, 2015) (looting of cultural objects and related crimes in Islamic State in Iraq (ISIS), Levant (ISIL), Al Nusra Front (ANF) and other groups associated with Al-Qaida (AQ); <http://usun.state.gov/briefing/statements/237432.htm> (following UN Security Council Resolution 2170 (2014) (ISIL threat as of August 2014).

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III. Systemic Indications

Current, global multi-million dollar problem of illegally imported and transacted ivory: See August 2014 report, International Fund for Animal Welfare (IFAW), *The Elephant Poaching Crisis and the Role of Auctions in the U.S. Ivory Market*; see also Center for International Policy (*Global Financial Integrity*, May 24, 2012, presentation (“organized crime syndicates, militias, and even terrorist elements have taken notice of the profits that can be made in the illegal trafficking of wildlife, generating an alarming up-tick in the scale of the industry and posing serious national security concerns” (illicit trade of ivory and other wildlife); <http://www.ciponline.org/research/entry/ivory-insecurity-poaching-africa>; United Nations Office on Drugs and rim (“UNODC”) and *The Illicit Trafficking of Counterfeit Goods and Transnational Organized Crime*, www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf (counterfeit goods broadly).

IV. International AML Compliance in the Art Trade

In the United States AML requirements do not comprehensively include the art industry or its actors – art dealers, other members of the trade and insurance companies not offering covered products versus “financial institutions” have no AML requirements under the BSA aside from reporting cash transactions over \$10,000.

Current Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Text with EEA relevance) applies to credit and financial institutions, independent legal professions, notaries, accountants, auditors, tax advisors, real estate agents, casinos, trust and company service providers and to all providers of goods when payments to this providers are made in cash in excess of €15,000.

Some European Union Member States have sought to address the AML risk in the art industry at least in part. In Austria and Poland dealers in high-value goods including art and auctioneers are covered by these Member States’ AML rules. OECD, *Access for Tax Authorities to Information Gathered by Anti-Money Laundering Authorities*, at ¶ 8, available at <http://www.oecd.org/tax/exchange-of-tax-information/2389989.pdf>.

Spain requires those trading in works of art to submit Suspicious Activity Reports (“SARs”) and Hungary subjects high-value traders including in works of art to the same requirements as financial institutions. Id. at ¶¶ 9-10. Outside the European Union, Brazil’s Council for Financial Activities Control (“COAF”) has enacted a separate resolution extending AML requirements to “any individual or legal entity that engages, either on a permanent or a temporary basis, together or separately, and as their principal or secondary activity, in trading, importing, exporting, or mediating the purchase or sale of works of art and antiques.” COAF, Resolution No. 008 (Sept. 15, 1999), Art. 1, Sole. The resolution requires KYC and CIP procedures as well as reporting of suspicious transactions.

The United States Department of State indicates that its training program to implement the FATF standards highlights the reporting obligations of those outside the financial sector including art dealers. <http://www.state.gov/j/inl/c/crime/c44634.htm>.

The auditing firm KPMG finds that financial market stakeholders are spending increasingly significant portions of annual operating budgets on AML compliance with limited or no improvement in efficacy generally (let alone in connection with art industry assets and transactions). See “[PDF]” at *Global Anti-Money Laundering Survey 2014* <http://www.kpmg-institutes.com/institutes/advisory-institute/articles/2014/02/anti-money-laundering-survey-2014.html> (log-in to KPMG website required).

PriceWaterhouseCoopers cites lack of data-sharing among relevant stakeholders as among the factors exacerbating trade-based money laundering (TBML) in particular. See report cited in Section I above.



NEW YORK LONDON PARIS ZURICH SÃO PAULO DUBAI

**ARIS TITLE INSURANCE CORPORATION
SUPPLEMENTAL INFORMATION
APRIL 22, 2015**

“MONEYLAUNDERING-TERRORIST FINANCING IN THE GLOBAL ART MARKET”

Money Laundering and Terrorist Financing Risk Surrounding Art and Cultural Property in Free Trade Zones (and Freeports)

The gap in money laundering (ML) and terrorism financing (TF) oversight in Free Trade Zones (FTZs), and in particular Freeports, for art and cultural objects raise serious concerns and issues internationally and the time is ripe for governments to address these risks. Freeports, a sub-category of FTZs, which have broad suspended tax benefits (customs, VAT, capital gains, sales) and administrative incentives and are commonly used by collectors and dealers to store high-valued art, are particularly vulnerable to ML/TF abuse. These weaknesses are exacerbated for the opaque, unregulated global art industry.

FATF on FTZs (and Freeports)

In March 2010, the Financial Action Task Force (FATF) issued a report on “Money Laundering Vulnerabilities of Free Trade Zones” indicating the rising threats of trade based money laundering (TBML): FATF’s previous work on TBML had identified it as one of the three main methods by which illicit funds are transferred through the formal economy.¹ Under- and over-invoicing is one of the key methods utilized in TBML typically through misrepresentation of price, quantity or quality. As FATF has recognized, “the more complex the good being traded, the greater the difficulty that customs agencies will have in identifying over- and under-invoicing and correctly assessing duties or taxes” because in part “many customs agencies do not have access to data and resources to establish the “fair market” price of many goods.”² FATF’s example was “[h]igh-value goods, such as works of art, which have limited markets and highly “speculative” values” and therefore “present significant valuation difficulties.”³

¹ FATF is an independent, inter-governmental body that develops and promotes policies to protect the global financial system against money laundering and terrorism financing. FATF is based at the headquarters of the Organization for Economic Co-operation and Development (OECD) in Paris, France.

² <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf> (FATF 2010). FATF’s work on ML/TF vulnerabilities in FTZs originated in the work of its Caribbean regional body, the Caribbean Financial Action Task Force (CFATF) and Aruba. CFATF first began to look at this issue in 2000. See <https://www.cfatf-gafic.org/index.php/documents/other-documentation/22-free-trade-zone-recommendations-english>. Its recommendations were originally issued in 2002 and were subsequently modified in 2012 and 2014.

³ See *Trade Based Money Laundering* (June 23, 2006) available at <http://www.fatf-gafi.org/media/fatf/documents/reports/Trade%20Based%20Money%20Laundering.pdf> (FATF 2006); and *Best Practices on Trade Based Money Laundering* (June 20, 2008) available at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP%20Trade%20Based%20Money%20Laundering%202012%20COVER.pdf> (FATF 2008).

⁴ FATF 2006, at 5 (citations omitted).

⁵ *Id* (emphasis added).

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These risks become ever more acute in FTZs and Freeports. In a 2010 report, FATF found that Freeports were "a unique money-laundering and terrorist-financing threat."⁶

FTZs have proliferated rapidly in recent years. In 2010, there were approximately 3,000 FTZs located in 135 countries worldwide and today there are an estimated 4,300 FTZs.⁷ Although Freeport-users benefit from confidentiality, exemption from duties/taxes and simplified administrative procedures as well as decreased scrutiny,⁸ Freeports are systemically vulnerable to abuse and are highly attractive places for illicit activities including ML and TF, particularly through over- and underpricing, as indicated above.

The development of anti-money laundering (AML)/counter-terrorism financing (CFT) standards, oversight and regulations governing FTZs worldwide has not kept pace with the legal, regulatory and technological advances in AML/CFT compliance in other sectors, for instance, most notably, the global financial sector. AML/CFT compliance standards in FTZs are inconsistent across jurisdictions, non-existent in some jurisdictions and, where applicable standards apply, largely ineffective for art and cultural property assets.⁹

Art and Cultural Property in Freeports

Art and cultural property is increasingly housed on a long-term basis in Freeports. Although intended as temporary facilities (technically in transit), there is no time limit on how long property may reside in the Freeport. Because of the opaque nature of Freeports, the exact valuation figure for art stored in FTZs by country or globally is unknown.¹⁰ It is estimated to be in the range of hundreds of billions of dollars. Freeports, especially those outfitted for art with high security, temperature/humidity controls, etc., have evolved to meet the market's demand for a safe, secure, confidential place to store fine art, which is treated as an investment. Many dealers, galleries and art lenders have offices at Freeports so that clients can conveniently view, buy, lend and sell their art all within the FTZ without the art moving.¹¹

⁶ The Economist, November 23, 2013, "Über-warehouses for the ultra-rich." <http://www.economist.com/news/briefing/21590353-ever-more-wealth-being-parked-fancy-storage-facilities-some-customers-they-are> (Economist 2013); FATF 2010, at 6.

⁷ The New York Times, November 10, 2010 "Free Trade Zones Attract Criminals." <http://www.nytimes.com/2010/11/11/world/middleeast/11iht-m11trade.html>; FATF 2010, at 12; The Economist, April 4, 2015 "Special economic zones, Not so special" <http://www.economist.com/news/leaders/21647615-world-awash-free-trade-zones-and-their-offshoots-many-are-not-worth-effort-not> (Economist 2015).

⁸ Economist 2013.

⁹ *Id.* at 5.; Price Waterhouse Cooper, January 2015, "Goods gone bad, Addressing money-laundering risk in the trade finance system", <http://www.pwc.com/us/en/risk-assurance-services/publications/trade-finance-money-laundering.html>; see also The Wall Street Journal, Risk and Compliance Journal, January 9, 2015, "The Morning Risk Report: Trade-Based Money Laundering Proves Tricky" discussing the PwC report and citing U.S. and U.K. regulatory authorities. <http://blogs.wsj.com/riskandcompliance/2015/01/09/the-morning-risk-report-trade-based-money-laundering-proves-tricky/>

¹⁰ Economist 2013. The main building of the Freeport Geneva is estimated to hold art worth \$100 billion. Connassances des Arts in 2013 estimated that the Geneva Freeport held around 1.2 million artworks. Swissinfo, July 9, 2014, "the discreet bunkers of the super-rich." http://www.swissinfo.ch/eng/free-ports_the-discreet-bunkers-of-the-super-rich/40474208.

¹¹ The Financial Times, April 7, 2015, "Art: A market laid bare" (Financial Times, 2015).

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The ML/TF risk for art and cultural property is increasingly acknowledged in the industry and more recently acknowledged as a heightened risk in Freeports. The art industry is an unregulated market, opaque (buyers and sellers are often listed as “private collection”) and a market in which many transactions settle in cash or in-kind trades.¹² Art and cultural property is portable and easily shipped across borders. Art is often owned by offshore entities for secrecy and to save taxes or structure inheritance planning. Sharon Cohen Levin, head of the money laundering and asset forfeiture unit at the U.S. Attorney’s office for the Southern District of New York, has stated “[t]here is not a lot of transparency on who is buying or selling art.”¹³ The head of a European country’s financial-intelligence agency has stated that Freeports are an interesting part of the “dirty-money landscape” though a “black hole.”¹⁴ Case in point, in the 1990s, hundreds of Roman and Greek objects illegally excavated and exported from Italy were housed in a Geneva Freeport along with paperwork documenting the plundering and laundering (through auction sales straw buyers).

Gap in AML/CFT Compliance for Art and Cultural Property at Freeports

Even when Freeports apply AML/CFT standards, such standards are often ineffective for art and cultural property.¹⁵ Advisors, dealers and auction houses are not regulated or covered by AML/CFT compliance like banks and other financial institutions. End-user companies operating in the Freeport often claim to be exempt from ML/TF investigation.

Customs is normally charged with registering handling agents and the end-customers, who are typically a third-party, authorized to dispose of the property on behalf of the owner. Customs officials are primarily focused on ensuring that items in the FTZ do not enter the country’s borders. Where customs is tasked with inventorying goods including ownership, origin and value (as is the case in Luxembourg to the best of our knowledge) in Freeports, it does not necessarily verify disclosed information as it is not tasked with tracking the legality of ownership, source of funds or changes in ownership and even to the extent it is or would be tasked with such duties, customs is normally hardly equipped to deal efficiently with the issues at stake.¹⁶

Proposed Measures

It is prudent for governments to take proactive measures to combat ML/TF use of art and cultural property in FTZs for national reputational reasons and to avoid further FATF scrutiny.¹⁷ The FATF

¹² Financial Secrecy Media Monitor, September 22, 2015, “Luxembourg Freeport opens; officials deny it is ‘no-man’s land.’”

¹³ Financial Times 2015.

¹⁴ *Id.*

¹⁵ Financial Secrecy Media Monitor, September 22, 2015, “Luxembourg Freeport opens; officials deny it is ‘no-man’s land.’”

¹⁶ ARTPORT, July 9, 2014, “Geneva’s free ports used to stash priceless works of art.” Some have criticized the ineffectiveness of customs officials at the Freeport, whose checks (at least in Switzerland) are carried out on the basis of risk analyses with allocated resources. http://www.swissinfo.ch/eng/free-ports_the-discreet-bunkers-of-the-super-rich/40474208.

¹⁷ *Id.* Eric Serge Jeannot, Deputy Director of the Audit Office of Switzerland, has noted FTZs present potential reputational risks. He said “[o]bviously you can’t suspect everyone, but you cannot deny that the possibility of avoiding paying taxes and of earning profits is part and parcel of these places.” In 2012, the Basel Institute of Governance proposed self-regulation guidelines for the art world, which focused on the provenance of objects but also the provenance of funds to assess ML/TF risk. Basel Institute on

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has said that "[t]he adoption and enforcement of *AML/CFT regulations in the zones is an area which needs to be further clarified and addressed.*"¹⁸ "Possible actions to do so should be examined from two different viewpoints, namely, i) maintenance of appropriate levels of Customs control over the admissibility of goods and the business operations carried out, and ii) *appropriate assessment of the risk associated with goods arriving from free zones. . . . Many zone authorities request little or no ownership information of the companies interested in setting up in the zone. As a result, it is simpler for legal entities to set up FTZs and hide the name(s) of the true beneficial owners.*"¹⁹

Future practices aimed at curbing ML/TF of art and cultural property in Freeports should address the idiosyncratic nature of the art transaction and the art industry with an aim to prevent and detect money laundering, commercial and criminal fraud, price manipulation, sale/cross-border movement of stolen art or antiquities looted by terrorist groups, tax evasion, etc. Customs traditionally lacks the resources and art market expertise to perform the requisite research and analysis to address these issues effectively. Only a neutral, third-party, who is not servicing the client (as is Freeport management), can verify and stress-test disclosed information about the objects and parties as well as determine beneficial ownership, as recommended by FATF in its 2010 report²⁰; in effect creating an unprecedented level of transparency in the Freeport to deter and eradicate the ML/TF risk.

Governance, Dr. Thomas Christ, Claudia von Selle, 2012 "Working Paper 12: Governance of Art Trade." <https://www.baselgovernance.org/publications/372>.

¹⁸ FATF 2010, at 28.

¹⁹ *Id.* at 16 (emphasis added).

²⁰ *Id.* at Appendix B.