



# U.S. Committee of the Blue Shield

*Committed to the protection of cultural property worldwide during armed conflict*

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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 capacity<sup>1</sup> and on behalf of the United States Committee of the Blue Shield (USCBS).<sup>2</sup>

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 looting<sup>3</sup> of archaeological sites is a world-wide phenomenon, driven to a considerable extent by demand from the international market in art works and antiquities.

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<sup>1</sup> 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.

<sup>2</sup> I serve as the Secretary of the Board of USCBS. See also [uscbs.org](http://uscbs.org).

<sup>3</sup> 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,<sup>4</sup> and a recent Federal court decision<sup>5</sup> 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

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<sup>4</sup> 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>.

<sup>5</sup> 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 (7<sup>th</sup> 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.<sup>6</sup>

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<sup>6</sup> 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

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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 looters<sup>7</sup> 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 2015<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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

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<sup>7</sup> 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](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.

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

<sup>9</sup> 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.

<sup>10</sup> 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.<sup>11</sup> 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.

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<sup>11</sup> 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.<sup>12</sup> 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

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<sup>12</sup> 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.<sup>13</sup>

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

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<sup>13</sup> 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.