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Michael P. Goodyear  
*University of Michigan Law School*

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# KEEPING THE BARBARIANS AT THE GATES: THE PROMISE OF THE UNESCO AND UNIDROIT CONVENTIONS FOR DEVELOPING COUNTRIES

Michael P. Goodyear\*

## I. INTRODUCTION

Videos of Islamic State militants brutally smashing ancient statues and carvings at ruins and museums across Iraq and Syria made headlines around the world.<sup>1</sup> But while this active, iconoclastic destruction made front-page news, another form of cultural property destruction has remained in the shadows: the illicit trade in cultural property.<sup>2</sup> This trade removes cultural property from its country of origin to be hidden in private collections, removing parts of a country's history and destroying the public's ability to enjoy and benefit from that property.

Although the danger of trafficking in cultural property can be quite extreme even in highly industrialized countries,<sup>3</sup> the problem is more acute in developing countries that are rich in cultural property but poor economically.<sup>4</sup> With fewer resources to dedicate to patrolling the movement of cultural

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\* J.D., University of Michigan Law School (2020); A.B., University of Chicago (2016). I would like to express my sincere thanks to Professor Walter E. Kaegi for nurturing my interest in the study of Byzantine history and to the Oriental Institute at the University of Chicago, and especially Gil Stein, for introducing me to the world of cultural heritage protection. Thank you also to my parents for entertaining and encouraging my interest in and passion for studying history and culture, as well as their enduring support throughout my law school career. Additional thanks is due to Farshad Rahimi Dizgovin, Chloe Roddy, Annemarie Smith-Morris, and Lindsay Bernsen Wardlaw for their invaluable suggestions and comments.

1. E.g., A. R. Williams, *ISIS Smashes Priceless, Ancient Statues in Iraq*, NAT'L GEOGRAPHIC (Feb. 27, 2015), <https://www.nationalgeographic.com/news/2015/2/150227-islamic-militants-destroy-statues-mosul-iraq-video-archaeology>.

2. See Benoit Faucon, Georgi Kantchev & Alistair MacDonald, *The Men Who Trade ISIS Loot*, WALL ST. J. (Aug. 6, 2017, 7:28 PM), <https://www.wsj.com/articles/the-men-who-trade-isis-loot-1502017200>.

3. See, e.g., Sue J. Park, Note, *The Cultural Property Regime in Italy: An Industrialized Source Nation's Difficulties in Retaining and Recovering Its Antiquities*, 23 U. PA. J. INT'L ECON. L. 931, 935 (1994).

4. See PERNILLE ASKERUD & ETIENNE CLÉMENT, PREVENTING THE ILLICIT TRAFFIC IN CULTURAL PROPERTY: A RESOURCE HANDBOOK FOR THE IMPLEMENTATION FOR THE 1970 UNESCO CONVENTION 10, 14, 44 (1997); Brigitta Hauser-Schäublin & Sophorn Kim, *Faked Biographies: The Remake of Antiquities and Their Sale on the Art Market*, in CULTURAL PROPERTY AND CONTESTED OWNERSHIP: THE TRAFFICKING OF ARTEFACTS AND THE QUEST FOR RESTITUTION 108, 111 (Brigitta Hauser-Schäublin and Lyndel V. Prott eds.,

property inside their borders, developing countries are at a greater risk of losing that property.<sup>5</sup> In addition, criminal and terrorist networks such as the Islamic State have stolen or unearthed cultural property and then used it to fund their activities.<sup>6</sup> Therefore the illicit cultural property trade is an especially dangerous problem for developing countries since they often have both large amounts of cultural property and a lack of resources to protect them.<sup>7</sup> While some legal scholars have suggested creating a new treaty to protect cultural property in developing countries,<sup>8</sup> this note instead argues that we should first look to two existing, but underutilized, treaties on cultural property protection to create a cooperative international defense of global cultural property.

This note proceeds as follows. After this introduction, Part II enumerates the benefits of keeping cultural property in its home state, including developing the home state's tourism industry, preserving its national identity, and countering criminal groups that take advantage of the illicit cultural property trade. It then evaluates how poor economic conditions in developing countries set up a dichotomy between state and non-state actors using cultural property for cash or development: The allure of cash is a potent force, especially when developing countries may lack the resources at present to patrol their own borders, but, once sold, the future value of cultural property to the local economy is lost.

Part III evaluates alternatives proposed in the literature to deal with trafficking in cultural property. Part IV then looks at how ratification of existing conventions on cultural property, namely the United Nations Educational, Scientific and Cultural Organization ("UNESCO")<sup>9</sup> and the United Nations International Institute for the Unification of Private Law ("UNIDROIT")<sup>10</sup> Conventions, could offer ready solutions for protecting

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2016); John Henry Merryman, *What Do Matisse, Van Gogh, and Hitler Have in Common?*, U.B.C. L. REV. 273, 274 (1995).

5. See Donna Yates, *Reality and Practicality: Challenges to Effective Cultural Property Policy on the Ground in Latin America*, 22 INT'L J. CULT. PROP. 337, 350 (2015).

6. See Faucon, Kantchev & MacDonald, *supra* note 2.

7. ASKERUD & CLÉMENT, *supra* note 4, at 9.

8. See, e.g., Edward Cottrell, Note, *Keeping the Barbarians Outside the Gate: Toward a Comprehensive International Agreement Protecting Cultural Property*, 9 CHI. J. INT'L L. 627, 648 (2009); Zsuzsanna Veres, Note, *The Fight Against Illicit Trafficking of Cultural Property: The 1970 UNESCO Convention and the 1995 UNIDROIT Convention*, 12 SANTA CLARA J. INT'L L. 91, 111–13 (2014).

9. United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231 [hereinafter UNESCO Convention].

10. United Nations International Institute for the Unification of Private Law ["UNIDROIT"] Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, 2421 U.N.T.S. 457 [hereinafter UNIDROIT Convention].

the interests of developing countries by establishing market country<sup>11</sup> protection obligations while limiting source country financial obligations. It reviews the Conventions' mechanics, their benefits, and their shortcomings, ultimately determining that the advantages of invoking the Conventions outweigh the detriments of doing so. Part V concludes that while other alternatives do exist, the Conventions are underappreciated existing remedies that are calibrated to help developing countries—and therefore may be a more efficient solution to trafficking in cultural property than the invention of a new treaty. Greater state ratification of the UNESCO and UNIDROIT Conventions is a promising and underutilized option for developing countries to better protect their cultural property.

## II. WHAT IS THE ILLICIT CULTURAL PROPERTY TRADE?

In general, cultural property refers to all “movable or immovable property of great importance to the cultural heritage of every people.”<sup>12</sup> It can include a wide range of objects, including art or artifacts, or even architecture.<sup>13</sup> For example, Roman floor mosaics are a form of cultural property that has been sold extensively on the black market,<sup>14</sup> as are the decorative gold leaves stolen from an iconic roof.<sup>15</sup> The illicit trade in cultural property is the global phenomenon of selling cultural property through smuggling and black markets.<sup>16</sup>

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11. Market countries are those countries with the most purchasers of cultural property, compared to source countries that are the net exporters of cultural property. The United States is a prime example of the former and Greece and Egypt of the latter. See Carol A. Roehrenbeck, *Repatriation of Cultural Property—Who Owns the Past? An Introduction to Approaches and to Selected Statutory Instruments*, 38 INT'L J. LEGAL INFO. 185, 189 (2010).

12. Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954 art. 1, May 14, 1954, 249 U.N.T.S. 215 [hereinafter Hague Convention]. The Hague Convention predates the UNESCO Convention and does not provide as broad of a definition for cultural property, but it is helpful for understanding the core spirit of the term. The full definition used by the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) can be found in article 1 of the UNESCO Convention, *supra* note 9.

13. Hague Convention, *supra* note 12.

14. Steve Swann, *Antiquities Looted in Syria and Iraq Are Sold on Facebook*, BBC NEWS (May 2, 2019), <https://www.bbc.com/news/world-middle-east-47628369>.

15. *Golden Leaves Stolen from the Dome of Vienna's Succession Building*, ARTFORUM (Apr. 27, 2018, 6:30 AM), <https://www.artforum.com/news/golden-leaves-stolen-from-the-dome-of-vienna-s-secession-building-75159>.

16. See generally Peter B. Campbell, *The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage*, 20 INT'L J. CULT. PROP. 113 (2013) (describing the illicit antiquities market).

### A. *How Has the Illicit Trade in Cultural Property Developed?*

Technology and globalization have significantly contributed to the expansion of the illicit antiquities trade over the past forty years.<sup>17</sup> A century ago, international collectors were limited by financial and geographic access to property and by merchants' interest in selling such things.<sup>18</sup> Today, the scope of the cultural property trade is global, both in terms of the buyers for and origins of targeted acquisitions,<sup>19</sup> with complex smuggling trains allowing illicit cultural property to travel far and wide.<sup>20</sup> The scale of cultural property crime is one of the greatest among criminal activities worldwide.<sup>21</sup> Whether it is their symbolism, history, exoticism, or simply their rarity, articles of cultural property are valued commodities and have a ready market.<sup>22</sup> The art and cultural property market is valued at billions of dollars a year.<sup>23</sup>

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17. Neil Brodie, *An Archaeologist's View of the Trade in Unprovenanced Antiquities*, in ART AND CULTURAL HERITAGE: LAW, POLICY AND PRACTICE 52, 52 (Barbara Hoffman ed., 2006).

18. See, e.g., Louise Tythacott, *Curiosities, Antiquities, Art Treasure, Commodities: Collecting Chinese Deity Figures in Mid-Nineteenth-Century England*, 23 J. MUSEUM ETHNOGRAPHY 56, 65 (2010). As an additional example, around the turn of the twentieth century, elite Europeans tended to gravitate toward antiquities from classical Europe and the ancient Middle East. See Jean Sorabella, *The Grand Tour*, MET. MUSEUM (Oct. 2003), [https://www.metmuseum.org/toah/hd/grtr/hd\\_grtr.htm](https://www.metmuseum.org/toah/hd/grtr/hd_grtr.htm) (describing the fascination of young European gentlemen with classical antiquities during the Grand Tour from the sixteenth to the nineteenth centuries); Geoff Emberling, *Passport to Antiquity*, ARCHEOLOGY (July 1, 2010), <https://archive.archaeology.org/online/features/breasted> (describing the Middle East collecting tour of the United States' first Egyptologist, James Henry Breasted, from 1919 to 1920).

19. See, e.g., Benjamin W. Kankpeyeng & Christopher R. DeCorse, *Ghana's Vanishing Past: Development, Antiquities, and the Destruction of the Archaeological Record*, 21 AFR. ARCHAEOLOGICAL REV. 89, 92 (2004) (citing the increased sale of antiquities to tourists, which in turn has triggered more local looting of archaeological sites); Ralph Blumenthal & Tom Mashberg, *Officials Are Set to Seize Antiquity*, N.Y. TIMES (Apr. 4, 2012), <http://www.nytimes.com/2012/04/05/arts/design/ancient-cambodian-statue-is-seized-from-sothebys.html> (describing the seizure of a stolen Cambodian statute from Sotheby's, valued at \$2 to \$3 million USD).

20. See Campbell, *supra* note 16, at 116–20 (explaining that the illicit antiquities trade involves a variety of ever-changing actors, from local diggers to sophisticated end-dealers). See generally Donna Yates, *The Global Traffic in Looted Cultural Objects*, in OXFORD RESEARCH ENCYCLOPEDIA OF CRIMINOLOGY (2016) (analyzing the illicit cultural trafficking chain).

21. UNESCO Press Release, *40 Years of Fighting the Illicit Trafficking of Cultural Goods* (Oct. 3, 2011), [http://www.unesco.org/new/en/media-services/single-view/news/40\\_years\\_of\\_fighting\\_the\\_illicit\\_trafficking\\_of\\_cultural\\_goo](http://www.unesco.org/new/en/media-services/single-view/news/40_years_of_fighting_the_illicit_trafficking_of_cultural_goo).

22. See Arjo Klamer, *Cultural Goods Are Good for More than Their Economic Value*, in CULTURE AND PUBLIC ACTION 138, 155–56 (Vijayendra Rao & Michael Walton eds., 2004).

23. See Valentina Vadi & Hildegard Schneider, *Art, Cultural Heritage and the Market: Legal and Ethical Issues*, in ART, CULTURAL HERITAGE AND THE MARKET: ETHICAL AND LEGAL ISSUES 1, 8–9 (Valentina Vadi & Hildegard Schneider eds., 2014); see also UNESCO Inst. for Statistics, *International Flows of Selected Cultural Goods and Services, 1994–2003*:

And where there is a market, there are incentives to those with access to sell.

Especially in developing countries where cultural property is not secured in guarded institutions, cultural property is readily accessible to locals, some of whom know that they can sell these artifacts and make enough money to eke out a living or provide food for their families.<sup>24</sup> These “subsistence diggers” typically find and sell antiquities because they see few other avenues by which to improve their standard of living.<sup>25</sup>

Like their citizens, states can also play a role in the loss of cultural property: They can turn a blind eye to the sale of cultural property, be complicit in its sale, or simply not have the resources to properly protect it. Domestic regulation of cultural property sales can vary wildly,<sup>26</sup> although the UNESCO Convention does require its signatories to have baseline protec-

Defining and Capturing the Flows of Global Cultural Trade 19–22 (2005) (describing the increase in global trade in cultural goods from \$38 to \$60 billion USD between 1994 and 2003).

24. See Janet Ulph, *The Trade in Art and Antiquities*, in *THE ILLICIT TRADE IN ART AND ANTIQUITIES: INTERNATIONAL RECOVERY AND CRIMINAL AND CIVIL LIABILITY* 1, 11 (Janet Ulph & Ian Smith eds., 2012); see, e.g., Simon Mackenzie & Tess Davis, *Temple Looting in Cambodia: Anatomy of a Statue Trafficking Network*, 54 *BRIT. J. CRIMINOL.* 722, 729, 732 (2014) (describing the creation of military and non-military gangs inside Cambodia centered on trading Khmer artifacts); Joshua Hammer, *Looting Mali's History*, *SMITHSONIAN* (Nov. 2009), <https://www.smithsonianmag.com/travel/looting-malis-history-144953243> (discussing the relationship between the robust sale of antiquities in Mali—despite Malian antiquities regulations—and endemic poverty in the region).

25. See Morag Kersel, *From the Ground to the Buyer: A Market Analysis of the Trade in Illegal Antiquities*, in *ARCHAEOLOGY, CULTURAL HERITAGE AND THE ANTIQUITIES TRADE* 188, 190, 199 (Neil Brodie et al. eds., 2006). For example, in Greece, until recently wracked by a severe economic crisis, some people took to stealing and selling antiquities for quick cash. Nick Romeo, *Strapped for Cash, Some Greeks Turn to Ancient Source of Wealth*, *NAT'L GEOGRAPHIC* (Aug. 17, 2015), <https://news.nationalgeographic.com/2015/08/150817-greece-looting-artifacts-financial-crisis-archaeology>. Impoverished peasants in Peru have looted sites to afford food. Nathaniel C. Nash, *Poor Peru Stands By as Its Rich Past Is Plundered*, *N.Y. TIMES* (Aug. 25, 1993), <https://www.nytimes.com/1993/08/25/world/poor-peru-stands-by-as-its-rich-past-is-plundered.html>. Likewise, by selling antiquities, poor farmers in Nigeria make double what they do farming yams. See Aisha Labi & Simon Robinson, *Looting Africa: Theft, Illicit Sales, Poverty and War Are Conspiring to Rob a Continent of Its Rich Artistic Heritage*, *TIME* (Aug. 6, 2001), <http://content.time.com/time/world/article/0,8599,2056125,00.html>.

And although the phrase “subsistence diggers” suggests that all looting of this kind happens on land, some happens at sea. Underwater cultural heritage is covered by the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage rather than the 1970 UNESCO Convention, but the same economic incentives apply. See, e.g., Mai Lin Tjoa-Bonatz, *Struggles Over Historic Shipwrecks in Indonesia: Economic Versus Preservation Interests*, in *CULTURAL PROPERTY AND CONTESTED OWNERSHIP: THE TRAFFICKING OF ARTEFACTS AND THE QUEST FOR RESTITUTION* 85, 87 (Brigitta Hauser-Schäublin & Lyndel V. Prott eds., 2016) (discussing how Indonesian fishermen have strong economic incentives to recover and sell cultural heritage recovered from shipwrecks).

26. For example, Europe is considered to have less stringent requirements for proving provenance than the United States. See William G. Pearlstein, *Buying and Selling Antiquities in Today's Market*, *SPENCER'S ART L.J.*, Spring 2012.

tions in their domestic regulations.<sup>27</sup> But because the crime of selling cultural property usually requires the property to leave its home country, it is necessary to not just have domestic regulation, but international regulation that can lead to the recovery of cultural property once it has left its home country. Some regulatory protections of this kind can be found in bilateral agreements<sup>28</sup> and the restrictions of importing countries.<sup>29</sup> Additional forms of international protection will be addressed in Part IV.

### B. *Why Should a Country Protect Its Cultural Property?*

Although state and non-state actors in source countries might benefit from selling pieces of their cultural property, these benefits tend to be short-term and superficial. The local community as a whole barely benefits from the sale of a state's cultural property. In fact, in many cases, the local seller of an artifact only receives less than one percent of its retail value, with most of the profit going to middlemen in the trade.<sup>30</sup> Moreover, the antiquities market is not sustainable. Unlike other aspects of cultural heritage, such as traditional craftsmanship techniques that can be preserved and furthered through the creation of cultural heritage-based industries,<sup>31</sup> once physical properties are gone, their home countries are left without that resource for future economic development. Lastly, the cash generated by the sale of cultural property often goes to criminals or military warlords, rather than into the local economy.<sup>32</sup>

In contrast, the retention of cultural property can spur economic growth through tourism, provide a sense of cultural identity, and dry up a funding source for extremists and criminal groups.

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27. See UNESCO Convention, *supra* note 9, arts. 5–10, 13–14.

28. See, e.g., Agreement for the Recovery and Return of Stolen Archaeological, Historical and Cultural Property, May 21, 1984, U.S.-Guatemala, T.I.A.S. No. 11077 (the parties agreed, *inter alia*, “to deter illicit excavations of archaeological sites and the theft of archaeological, historical or cultural properties”); Treaty of Cooperation Providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties, July 17, 1970, U.S.-Mexico, 22 U.S.T. 494, T.I.A.S. No. 7088 (using the same language).

29. See Pearlstein, *supra* note 26 (noting differing restriction standards in, for example, the United States and Europe).

30. Lisa J. Borodkin, Note, *The Economics of Antiquities Looting and a Proposed Legal Alternative*, 95 COLUM. L. REV. 377, 378 (1995).

31. See generally Ummu Hani et al., *Preserving Cultural Heritage Through Creative Industry: A Lesson from Saung Angklung*, 4 PROCEEDIA ECON. & FIN. 193 (2012) (analyzing the Saung Angklung Udjo, a one-stop cultural workshop that includes handicrafts from local craftsman, as an example of a successful creative industry preserving Sudanese cultural heritage).

32. See, e.g., Heather Pringle, *ISIS Cashing in on Looted Antiquities to Fuel Iraq Insurgency*, NAT'L GEOGRAPHIC (June 27, 2014), <https://www.nationalgeographic.com/news/2014/6/140626-isis-insurgents-syria-iraq-looting-antiquities-archaeology>; *ISIL and Antiquities Trafficking*, F.B.I. (Aug. 26, 2015), <https://www.fbi.gov/news/stories/isil-and-antiquities-trafficking>.

## 1. Sustainable Economic Development

Cultural property can be the key for developing countries to break into one of the largest global economic sectors: tourism. Tourism is a major component of economies around the world, generating over \$7.6 trillion USD in 2016 (10.2% of the global GDP).<sup>33</sup> To get a share of that wealth, towns across the globe, from major tourist destinations<sup>34</sup> to unfamiliar locales,<sup>35</sup> are adopting new strategies to increase their appeal to tourists. Tourism has proved particularly critical to a number of emerging economies. For example, in 2016 tourism contributed \$152.2 billion USD to the Brazilian economy (8.5% of the GDP),<sup>36</sup> \$12.5 billion USD to the Croatian economy (24.7%),<sup>37</sup> and \$19 billion USD to the Moroccan economy (18.5%).<sup>38</sup> In all three countries, the tourism industry provides hundreds of thousands of jobs.<sup>39</sup>

Selling off cultural property would undermine the future of such tourism in many developing countries. Cultural heritage is a significant draw for tourists,<sup>40</sup> and “cultural tours” have become an increasingly formalized selling point for travelers.<sup>41</sup> If cultural artifacts are on display at a museum or archaeological site inside the country, they can and do attract tourists and help to build a tourism economy.<sup>42</sup> Indeed, cultural and heritage tourists tend to stay in a host country longer and spend more money there than other

33. WORLD TRAVEL & TOURISM COUNCIL, TRAVEL & TOURISM: ECONOMIC IMPACT & ISSUES 2017, 1 (2017).

34. See, e.g., LONDON & PARTNERS, *A Tourism Vision for London* (2017), [http://files.londonandpartners.com/l-and-p/assets/london\\_tourism\\_vision\\_aug\\_2017.pdf](http://files.londonandpartners.com/l-and-p/assets/london_tourism_vision_aug_2017.pdf) (describing recent developments in London’s tourism economy).

35. See, e.g., Maylis Bellocq, *Le Patrimoine Culturel Comme Resource Touristique: Le Bourg Ancien de Tongli, Province du Jiangsu*, 46 L’ESPACE GÉOGRAPHIQUE 346 (2017) (describing the developments in the tourism economy of the Chinese town of Tongli since the 1980s).

36. WORLD TRAVEL & TOURISM COUNCIL, TRAVEL & TOURISM: ECONOMIC IMPACT 2017 BRAZIL, 1 (2017), <https://www.wttc.org/-/media/files/reports/economic-impact-research/countries-2017/brazil2017.pdf> [hereinafter TRAVEL & TOURISM: BRAZIL].

37. WORLD TRAVEL & TOURISM COUNCIL, TRAVEL & TOURISM: ECONOMIC IMPACT 2017 CROATIA, 1 (2017), <https://www.wttc.org/-/media/files/reports/economic-impact-research/countries-2017/croatia2017.pdf> [hereinafter TRAVEL & TOURISM: CROATIA].

38. WORLD TRAVEL & TOURISM COUNCIL, TRAVEL & TOURISM: ECONOMIC IMPACT 2017 MOROCCO, 1 (2017), <https://www.wttc.org/-/media/files/reports/economic-impact-research/countries-2017/morocco2017.pdf> [hereinafter TRAVEL & TOURISM: MOROCCO].

39. TRAVEL & TOURISM: BRAZIL, *supra* note 36, at 1; TRAVEL & TOURISM: CROATIA, *supra* note 37, at 1; TRAVEL & TOURISM: MOROCCO, *supra* note 38, at 1.

40. DALLEN J. TIMOTHY, CULTURAL HERITAGE AND TOURISM: AN INTRODUCTION 1–2 (2011); Ismaiel Naser Abuamoud et al., *Factors Affecting the Willingness of Tourists to Visit Cultural Heritage Sites in Jordan*, 9 J. HERITAGE TOURISM 148, 149 (2014).

41. See, e.g., Niall Finneran, *Lucy to Lalibela: Heritage and Identity in Ethiopia in the Twenty-First Century*, 19 INT’L J. HERITAGE STUDIES 41, 45 (2013).

42. NEIL BRODIE ET AL., STEALING HISTORY: THE ILLICIT TRADE IN CULTURAL MATERIAL 14 (2000).



types of tourists.<sup>43</sup> As it brings money into countries, the tourism industry also creates a significant number of jobs.<sup>44</sup> Tourism, and cultural property as a driver of tourism, can thus serve as a significant economic vehicle for development.

Although many developing countries lack the internal resources to properly preserve and display their cultural property,<sup>45</sup> international funding and expertise tend to be available for these purposes across the globe.<sup>46</sup> While the total amount of funds available is still less than may be optimal,<sup>47</sup> there are a variety of financial resources developing countries can engage to fund cultural property preservation, including intergovernmental funds,<sup>48</sup> philanthropic foundations,<sup>49</sup> and individual donors that have often not yet been fully tapped.<sup>50</sup> For example, Cambodia received between \$10 and \$20 million USD in international investment and management consulting from the United Nations Development Programme (“UNDP”) and UNESCO.<sup>51</sup> These funds helped Cambodia preserve the historic ruins of Angkor and develop a cultural tourism industry that now generates over one billion dollars

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43. See PACIFIC ASIA TRAVEL ASSOCIATION, *THE ROLE OF CULTURE AND HERITAGE TOURISM IN BUILDING THE VISITOR ECONOMY—AND BEYOND* 1 (Apr. 2015).

44. See WORLD TRAVEL & TOURISM COUNCIL, *supra* note 33, at 2.

45. See MICHAEL M. AMES, *CANNIBAL TOURS AND GLASS BOXES: THE ANTHROPOLOGY OF MUSEUMS* xv (1992) (stating that some developing countries like India may not be able to afford as many museums as is desirable to accommodate their growing populations and extensive histories).

46. See *e.g.*, THE WORLD BANK: URBAN DEV. SERIES, *THE ECONOMICS OF UNIQUENESS: INVESTING IN HISTORIC CITY CORES AND CULTURAL HERITAGE ASSETS FOR SUSTAINABLE DEVELOPMENT* xxvii (Guido Licciardi & Rana Amirtahmasebi eds., 2012); David Throsby, *Investment in Urban Heritage: Economic Impacts of Cultural Heritage Projects in Macedonia and Georgia*, 16 *WORLD BANK* 15, 20–21 (2012), [http://siteresources.worldbank.org/INTURBANDEVELOPMENT/Resources/336387-1169585750379/UDS16\\_Investment+in+Urban+Heritage.pdf](http://siteresources.worldbank.org/INTURBANDEVELOPMENT/Resources/336387-1169585750379/UDS16_Investment+in+Urban+Heritage.pdf) (discussing the variety of outside investments utilized in restoring sections of old Skopje, Macedonia).

47. Guy Clause, *Funding Sources for Preserving Cultural Heritage Monuments and Sites*, EUR. INV. BANK INST. (Nov. 25, 2013).

48. See, *e.g.*, *International Funds Supporting Culture*, UNESCO, <https://en.unesco.org/protecting-pour-heritage-and-fostering-creativity/international/funds/supporting/culture> (last visited Apr. 24, 2020).

49. See, *e.g.*, *Grants Database: University of Pretoria Arts and Cultural Heritage Program*, MELLON FOUNDATION, <https://mellon.org/grants/grants-database/grants/university-of-pretoria/31700645> (last visited Apr. 24, 2020).

50. See, *e.g.*, *About Donors*, INT’L CTR. FOR THE STUDY OF THE PRESERVATION AND RESTORATION OF CULT. PROP., <https://www.icrom.org/about/funding/donors> (last visited Apr. 24, 2020).

51. GLOBAL HERITAGE FUND, *SAVING OUR VANISHING HERITAGE: SAFEGUARDING ENDANGERED CULTURAL HERITAGE SITES IN THE DEVELOPING WORLD* 37 (2010).

USD in revenue annually.<sup>52</sup> The World Bank also regularly provides financial assistance for protecting cultural property,<sup>53</sup> as do non-profits.<sup>54</sup>

## 2. National Identity

The loss of cultural property can inflict a much deeper wound to a country than just to its economy. A country's cultural property embodies the physical manifestation of its identity, history, and culture.<sup>55</sup> As such, it forms an essential element of the country's national and historic identity. The loss of archaeological remains leads to the loss of a people's heritage and history.<sup>56</sup> For example, the loss of the Elgin Marbles, friezes that originally adorned the Parthenon in Athens but which were transported to Britain and placed in the British museum in the early 1800s, continues to be widely mourned by Greeks as a loss of national identity.<sup>57</sup>

It follows that cultural property can be a key component of education about one's heritage.<sup>58</sup> Making this connection, Irina Bokova, the former Director-General of UNESCO, has opined that the illicit trade in cultural property is "seriously detrimental, and often irreversibly so, to the collective memory, social cohesion, and mutual enrichment [of a nation]."<sup>59</sup> Cultural property can also be critical in unifying a nation and creating political and

52. *Id.*

53. *See, e.g., LB—Cultural Heritage Add. Financing*, WORLD BANK, <http://projects.worldbank.org/P116197/lb-cultural-heritage-add-financing?lang=en> (last visited Apr. 24, 2020) (providing funding for the preservation of Lebanon's built cultural heritage); *Cultural Heritage Pilot Program*, WORLD BANK, <http://projects.worldbank.org/P059763/cultural-heritage-pilot-project?lang=en> (last visited Apr. 24, 2020) (providing funding for the reconstruction of Old Mostar Bridge and the historic district of Mostar in Bosnia and Herzegovina); *Cultural Heritage Preservation Project*, WORLD BANK, <http://projects.worldbank.org/P058969/cultural-heritage-preservation-project?lang=en> (last visited Apr. 24, 2020) (providing funding for the conservation of four priority cultural heritage sites in Azerbaijan and for training restoration workers).

54. *See, e.g., Projects and Programs*, GLOBAL HERITAGE FUND, <https://globalheritagefund.org/what-we-do/projects-and-programs> (last visited Apr. 24, 2020).

55. Patty Gerstenblith, *Identity and Cultural Property: The Protection of Cultural Property in the United States*, 75 B.U. L. REV. 559, 562–65 (1995).

56. BRODIE, DOOLE & WATSON, *supra* note 42, at 12–13.

57. As Melina Mercouri, former Greek Minister of Culture, put it, "This is our history, this is our soul." S.F. CHRON. (May 26, 1983), at 26 (speaking about the Elgin Marbles).

58. *See, e.g., Nicole Gesche-Koning, Research for CULT Committee—Education in Cultural Heritage*, POLICY DEPT. FOR STRUCTURAL & COHESION POLICIES, EUR. PARLIAMENT 15–16 (2018), [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/617486/IPOL\\_STU\(2018\)617486\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/617486/IPOL_STU(2018)617486_EN.pdf) (describing the importance of heritage education in the context of Europe).

59. Irina Bokova, Director-General of UNESCO, 40th Anniversary of the 1970 Convention (Mar. 15, 2011) (transcript available in the UNESDOC Digital Library).

social bonds among its peoples through a shared understanding of their collective past.<sup>60</sup>

Accordingly, maintaining cultural property inside a country may help that country craft its own historical narrative.<sup>61</sup> Across the globe, cultural heritage preservation has been an essential tool in maintaining a nation's internal image. For example, Balkan countries used surviving historical narratives and remnants of cultural property from medieval times to craft a national narrative of independence based on the opposition of their former medieval kingdoms to the yoke of the Ottoman Empire in the nineteenth century.<sup>62</sup> To reinforce a sense of continuity with its longstanding Christian tradition, Ethiopia promoted the churches of Lalibela, perhaps the most iconic of Ethiopia's medieval churches, through media and political rhetoric.<sup>63</sup> Meanwhile, Mexico has long used protective policies such as preservation of its cultural sites (*e.g.*, Chichen Itza and Monte Albán) and the commission of monuments to its indigenous cultural heritage (*e.g.*, the Monument to Cuauhtémoc in Mexico City) to encourage connections with its pre-Hispanic past and its indigenous peoples, such as the Aztecs, Mayans, and Zapotecs.<sup>64</sup>

In contrast, a lack of connection to cultural identity can be harmful on a personal<sup>65</sup> and societal level,<sup>66</sup> and the lack of a cohesive cultural narrative can be especially powerful in post-colonial contexts.<sup>67</sup> For example, the cultures of the Maasai of Kenya and the Himbas of Namibia have often been portrayed in a distorted colonized context, which can be determinative of how Kenyans and Namibians, as well as the outside world, see these peoples.<sup>68</sup> As education professors Ladislaus Semali and Tutalni Asino put it,

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60. See Gustavo de las Casas, *Is Nationalism Good for You?*, FOREIGN POL'Y (Oct. 8, 2009), <http://foreignpolicy.com/2009/10/08/is-nationalism-good-for-you>.

61. This is especially true when a country's cultural property was inaccessible for a long period of its history and has only recently been rediscovered.

62. RYAN GINGERAS, *FALL OF THE SULTANATE: THE GREAT WAR AND THE END OF THE OTTOMAN EMPIRE 75–76* (2016).

63. Finneran, *supra* note 41, at 43–44, 53–54.

64. See *Aztec and Maya Revival: Gallery Guide*, MEXIC-ARTE MUSEUM (2008), [http://www.mexic-artemuseum.org/images/uploads/education/Aztec\\_and\\_Maya\\_Revival\\_Guide.pdf](http://www.mexic-artemuseum.org/images/uploads/education/Aztec_and_Maya_Revival_Guide.pdf).

65. See FARAH IBRAHIM & JIANNA HEUER, *CULTURAL AND SOCIAL JUSTICE COUNSELING 15* (Anthony Marsella ed., 2016).

66. See, *e.g.*, E. O. Wahab et al., *Causes and Consequences of Rapid Erosion of Cultural Values in a Traditional African Society*, 2012 J. ANTHROPOLOGY 6 (Feb. 2012) (study of the Awori people of Ado-Odo).

67. See Finneran, *supra* note 41, at 43.

68. Ladislaus M. Semali & Tutalni I. Asino, *Decolonizing Cultural Heritage of Indigenous People's Knowledge from Images in Global Films*, 2 DECOLONIZATION: INDIGENITY, EDUC. & SOC'Y 25, 26–27, 32–33 (2013).

anthropologists' interest in developing their portrayals of these peoples "was in the 'other,' not the 'self.'"<sup>69</sup>

The disappearance of a country's cultural property, or the assignment of an otherized meaning to it,<sup>70</sup> only contributes to the fracturing or loss of a people's narrative. Instead, cultural property can and should be harnessed to create local counter narratives, as it has been in the Balkans, Ethiopia, and Mexico.<sup>71</sup>

On the other hand, before those narratives are embedded in the local psyche, a major reason for the looting of cultural property is the fact that local residents often feel no real connection with the antiquities that surround them,<sup>72</sup> which contributes to a willingness to sell off cultural property as a living.<sup>73</sup> Yet cultural property is essential in "tell[ing] us who we are and where we came from."<sup>74</sup> It is the memory of a society.<sup>75</sup> And the cultural identity it creates can also be essential in connecting disparate peoples, in turn helping to generate wealth, maintain political stability, and lower crime.<sup>76</sup>

### 3. Countering Extremist Groups and Crime

The sale of cultural property usually lines criminals' pockets,<sup>77</sup> and a state's maintenance of its cultural property can therefore help to dry up a funding source for criminals and terrorists. Although the exact relationship between the illicit trade in cultural property and terrorism is still being debated, the sale of cultural property provides clear opportunities for extremist

69. *Id.* at 35.

70. See John Henry Merryman, *The Public Interest in Cultural Property*, 77 CAL. L. REV. 339, 342–43 (1989).

71. See Semali & Asino, *supra* note 68, at 28.

72. See, e.g., ROGER ATWOOD, *STEALING HISTORY: TOMB RAIDERS, SMUGGLERS, AND THE LOOTING OF THE ANCIENT WORLD* 57–58 (2004) (describing how the historical movements of people in Peru led to current locals having no connection to the historical inhabitants of those areas); SHARON WAXMAN, *LOOT: THE BATTLE OVER STOLEN TREASURES OF THE ANCIENT WORLD* 142 (2008) (explaining that the modern residents of Turkey have no direct link with the ancient civilizations that once existed there); Tom Mueller, *How Tomb Raiders Are Stealing Our History*, NAT'L GEOGRAPHIC (June 2016), <https://www.nationalgeographic.com/magazine/2016/06/looting-ancient-blood-antiquities> (discussing how local Egyptian populations often feel no connection to the ancient artifacts they sell).

73. See, e.g., Mueller, *supra* note 72.

74. Albert Elsen, *Introduction: Why Do We Care About Art?*, 27 HASTINGS L.J. 951, 952 (1976).

75. Merryman, *supra* note 70.

76. See de las Casas, *supra* note 60.

77. See generally Jessica Dietzler, *On 'Organized Crime' in Illicit Antiquities Trade: Moving Beyond the Definitional Debate*, 16 TRENDS IN ORGANIZED CRIME 329 (2013).

groups to exploit.<sup>78</sup> For example, the Islamic State made millions of dollars from the illicit sale of antiquities to fuel its insurgency in Syria and Iraq.<sup>79</sup> It took full advantage of the global demand for cultural property—both on the black market and on online platforms such as eBay and Facebook—to fund not only its caliphate, but also devastating terrorist attacks across the globe.<sup>80</sup> The sale and destruction of cultural property has also been used as propaganda by terrorist groups such as the Ansar Dine in Mali and the Taliban in Afghanistan.<sup>81</sup>

Even where the cultural property trade has not been linked to an outright insurgency, it has frequently been linked to organized criminal networks such as gangs and local warlords.<sup>82</sup> Indeed, there is often a connection between the illicit cultural property trade and organized crime.<sup>83</sup> Although media has tended to misleadingly focus on the illicit antiquities trade within international criminal networks, the presence of organized domestic crime, such as armed paramilitary groups in Cambodia in the last decades of the twentieth century,<sup>84</sup> is almost always a factor.<sup>85</sup> Even when some aspect of the cultural property trade is legal, its lucrative nature tends to drive a lack of accountability between the government and the people, an

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78. See RUSSELL D. HOWARD, MARC D. ELLIOTT & JONATHAN R. PROHOV, *IS AND CULTURAL GENOCIDE: ANTIQUITIES TRAFFICKING IN THE TERRORIST STATE* 14–16 (2016).

79. Pringle, *supra* note 32; see also *ISIL and Antiquities Trafficking*, *supra* note 32.

80. Fiona Rose-Greenland, *How Much Money Has ISIS Made Selling Antiquities? More Than Enough to Fund Its Attacks*, WASH. POST (June 3, 2016), <https://www.washingtonpost.com/posteverything/wp/2016/06/03/how-much-money-has-isis-made-selling-antiquities-more-than-enough-to-fund-its-attacks/>; see also Sangwon Yoon, *Islamic State Is Selling Looted Art Online for Needed Cash*, BLOOMBERG (June 28, 2015), <https://www.bloomberg.com/news/articles/2015-06-28/isis-has-new-cash-cow-art-loot-it-s-peddling-on-ebay-facebook>.

81. Irina Bokova, *Timbuktu Tomb Attack Is an Attack on Our Humanity*, CNN (July 4, 2012), <http://www.cnn.com/2012/07/02/opinion/unesco-mali-opinion/>; Luke Harding, *Taliban Blow Apart 2,000 Years of Buddhist History*, GUARDIAN (Mar. 3, 2001), <https://www.theguardian.com/world/2001/mar/03/afghanistan.lukeharding>; Lydia Polgreen, *As Extremists Invaded, Timbuktu Hid Artifacts of a Golden Age*, N.Y. TIMES (Feb. 3, 2013), <https://www.nytimes.com/2013/02/04/world/africa/saving-timbuktus-priceless-artifacts-from-militants-clutches.html>.

82. See, e.g., Mackenzie & Davis, *supra* note 24, at 729, 732 (discussing the northwest smuggling channel out of Cambodia, including the regional brokers and organized criminals who purchased from the brokers).

83. Greg Borgstede, *Cultural Property, the Palermo Convention, and Transnational Organized Crime*, 20 INT'L J. CULTURAL PROP. 281, 285 (2014).

84. These groups actively looted cultural property complexes. Mackenzie & Davis, *supra* note 24, at 730.

85. Blythe Bowman Proulx, *Organized Criminal Involvement in the Illicit Antiquities Trade*, 14 TRENDS IN ORGANIZED CRIME 1, 17, 24 (Oct. 2010). That is, organized domestic criminals can and do sell cultural property internationally, too.

exacerbation of disparities in wealth, and even wars over access to cultural property.<sup>86</sup>

Terrorism and related acts undermine democratic rule.<sup>87</sup> Organized crime kills just as many people as armed conflicts each year.<sup>88</sup> The profitable existence of terrorist, insurgent, and criminal groups is starkly opposed to a country's interest in rule of law and stability. Therefore, it is in countries' security interests to prevent the use of cultural property as a vehicle for funding extremist groups and local criminal organizations.

### *C. Reasons for a Country's Inability or Unwillingness to Protect Its Cultural Property*

There are clear benefits to preserving a country's cultural property. Yet the major problem for many developing countries is not a lack of willpower, but a lack of the finances necessary to prevent cultural property from leaving.

Other, more pressing crimes often draw scant resources away from the protection of cultural property,<sup>89</sup> and there is a general lack of funds to protect archaeological sites.<sup>90</sup> Developing countries frequently do not have the budget to enforce cultural property laws or protect existing treasures,<sup>91</sup> let alone to prevent the smuggling of newly unearthed artifacts.<sup>92</sup> For example, India spends less than 1% of its budget on culture, much less than countries such as France and the United Kingdom, resulting in poor maintenance of its existing museums.<sup>93</sup>

86. See Stewart M. Patrick, *Why Natural Resources Are a Curse on Developing Countries and How to Fix It*, ATLANTIC (Apr. 30, 2012), <https://www.theatlantic.com/international/archive/2012/04/why-natural-resources-are-a-curse-on-developing-countries-and-how-to-fix-it/256508> (noting these issues for countries rich in natural resources, whose trade raises issues similar issues to those in the trade of cultural property).

87. Daniel L. Byman, *How Terrorism Undermines Democracy*, BROOKINGS (Mar. 5, 2019), <https://www.brookings.edu/blog/order-from-chaos/2019/03/05/how-terrorism-undermines-democracy>.

88. United Nations Office on Drugs and Crime, *Global Study on Homicide: Executive Summary*, at 12 (2019), <https://www.unodc.org/documents/data-and-analysis/gsh/Booklet1.pdf>.

89. Borodkin, *supra* note 30, at 384.

90. See MICHAEL M. AMES, *CANNIBAL TOURS AND GLASS BOXES: THE ANTHROPOLOGY OF MUSEUMS* xv (1992) (stating that some developing countries like India may not be able to afford as many museums as is desirable to accommodate their growing populations and extensive histories); see also Borodkin, *supra* note 30, at 384.

91. See James Ede, *Ethics, the Antiquities Trade, and Archaeology*, 7 INT'L J. CULTURAL PROPERTY 128, 128 (1998) ("[L]ess money is available in artifact-rich nations, many of which are developing countries, for the conservation and security of national collections.").

92. See Park, *supra* note 3, at 934 (speaking generally about developing countries).

93. Maria Thomas, *A Fading Taj and Shabby Museums*, QUARTZ INDIA (Jan. 29, 2017), <https://qz.com/india/897228/a-fading-taj-and-shabby-museums-india-spends-less-than-1-of-its-annual-budget-on-culture-and-it-shows>.

The lack of funds to staff guards, in particular, has led to thefts of artifacts from museums and archaeological sites in developing countries. For example, in the wake of the Arab Spring, the number of guards provided by the Egyptian government to protect archaeological sites plummeted, as did the pay, which was not even enough to support a single person.<sup>94</sup> Looting followed.<sup>95</sup>

A related issue is the lack of a skilled workforce and of the technological capabilities to implement modern security measures. Modern collections should, as a best practice, be electronically documented to facilitate audits of their contents, which is difficult if there is not proper technical expertise.<sup>96</sup> Other best practices adopted by the Cultural Properties Council of ASIS International and the American Alliance of Museums for museum security include electronic key card access and electronic intrusion detection systems,<sup>97</sup> which, in addition to their cost, also require expertise to install and maintain.

It is, naturally, even more difficult to have effective security measures in the case of yet undiscovered cultural property. Since this cultural property has not been discovered, it has no chance to be electronically documented as national cultural property, which makes it more difficult for countries to determine whether a loss has occurred or to find the property in the future.<sup>98</sup> There is also an enforcement problem among importing countries, at least in the United States, since to prevent an import the government must prove that the cultural property was stolen, which is near impossible for a recent discovery with no documentation.<sup>99</sup> The Islamic State has used this dilemma to great effect, encouraging subsistence digging to uncover new artifacts that it can sell more easily with no available documentation on the black market.<sup>100</sup>

Note, however, that even if the funding and expertise did exist to better guard museums and archaeological sites from casual theft, crime networks

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94. Salima Ikram, *The Loss and Looting of Egyptian Antiquities*, MIDDLE EAST INST. (Apr. 28, 2014), <https://www.mei.edu/publications/loss-and-looting-egyptian-antiquities>.

95. *Id.*

96. See Davison Chiwara, *Documentation: A Security Tool for the Identification and Repatriation of Illicitly Trafficked Objects from Museums with Particular Reference to the National Gallery of Zimbabwe*, 2 HERITAGE 390, 398 (2019).

97. CULTURAL PROPERTIES COUNCIL OF ASIS INTERNATIONAL, *Suggested Practices for Museum Collections Space Security (2013)*, <https://www.aam-us.org/wp-content/uploads/2018/01/suggested-practices-for-museum-collections-space-security.pdf>.

98. See Rachel Shabi, *Looted in Syria—and Sold in London: The British Antiques Shops Dealing in Artefacts Smuggled by ISIS*, GUARDIAN (July 3, 2015), <https://www.theguardian.com/world/2015/jul/03/antiquities-looted-by-isis-end-up-in-london-shops>.

99. See Patty Gerstenblith, *Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past*, 8 CHI. J. INT'L L. 169, 179 (2007).

100. Shabi, *supra* note 98.

and semi-autonomous groups often have the power to resist enforcement.<sup>101</sup> Likewise, while a museum may be secure in a stable country, during periods of civil unrest, the ability for cultural property to leave the country increases.<sup>102</sup> When security forces have their attention drawn to protests or uprisings or outright war, there is often lower cultural property protection, as in Syria due to its ongoing civil war.<sup>103</sup> Perhaps the best-known example of this phenomenon is the looting of the Iraq Museum in the wake of the U.S. invasion of Iraq in 2003, which resulted in thousands of artifacts disappearing, including the famous Warka vase of ancient Sumer.<sup>104</sup>

### III. ALTERNATIVES FOR PROTECTING CULTURAL PROPERTY

Currently, there are two primary peacetime multilateral agreements on cultural property, detailed in more depth in Part IV: the UNESCO Convention and the UNIDROIT Convention.<sup>105</sup> Nevertheless, cultural property theft is still a large problem, and both Conventions have faced criticisms for their shortcomings.<sup>106</sup> Consequently, to rectify the international legal system's apparently inadequate cultural property protections, scholars have suggested abolition of the Conventions, creation of a third convention to overcome these shortcomings, or other alternatives.<sup>107</sup> But while these proposals may have some merit, they ignore the benefits the existing Conventions would provide if they achieved greater ratification. As a result, this note suggests that the international community's primary focus should be on securing broader ratification of those agreements.

#### A. *Destruction of the Two Conventions or a New Convention*

Two suggestions that have gained traction for better protecting cultural property are to abolish the UNESCO and UNIDROIT Conventions or to institute a third cultural property convention that supplements the current two.

101. See Borgstede, *supra* note 83, at 285; see also Mackenzie & Davis, *supra* note 24, at 729, 732 (describing the workings of one criminal smuggling network in Cambodia).

102. See, e.g., Clemens D. Reichel, *Lost Treasures from Iraq*, in *ORIENTAL INSTITUTE ANNUAL REPORT: 2004–05* 74 (Gil J. Stein ed., 2005).

103. See Christina Steenkamp, *The Crime-Conflict Nexus and the Civil War in Syria*, 6 *STABILITY: INT'L J. SECURITY & DEV.* 1, 8 (2017).

104. See generally CATASTROPHE! THE LOOTING AND DESTRUCTION OF IRAQ'S PAST (Geoff Emberling & Katharyn Hanson eds., 2008).

105. Veres, *supra* note 8, at 93. There is also the Hague Convention, which covers the protection of cultural property during international war. It has 133 States Parties but only restricts the actions of state signatories (and only when they are at war with each other). Hague Convention, *supra* note 12, at 254. Non-state actors such as Al-Qaeda or the Islamic State cannot be signatories and are not covered by it. See *id.*

106. See, e.g., John Alan Cohan, *An Examination of Archaeological Ethics and the Repatriation Movement Respecting Cultural Property (Part Two)*, 28 *ENVIRONS* 1, 8 (2004).

107. See *infra* Part III.A and III.B.



It is indeed true that the UNESCO and UNIDROIT Conventions are fallible. But are they flawed enough to pass over entirely? Furthermore, would it even be possible to create a new treaty?

Jeanette Greenfield's criticisms of the UNESCO Convention in 1996 still largely hold true: The Convention only covers recorded cultural property, the scope of its protection is unclear, restitution under the Convention can take years, and there are no formal means to resolve disputes between States Parties.<sup>108</sup> Eric Posner has argued that the UNESCO Convention has failed to erode the black market in illicit antiquities, and the entire regime should be abolished.<sup>109</sup> Yet there have been successful returns of cultural property under the UNESCO Convention.<sup>110</sup> Indeed, the UNESCO Convention was the primary vehicle used to recover hundreds of stolen artifacts in the last two years.<sup>111</sup> Hence, even though enforcement is not perfect, the UNESCO Convention has had, as will be detailed below, some positive effects.<sup>112</sup> Even some effect is better than none.

Other articles have advocated instead for the creation of a third agreement that would solve the shortcomings of the UNESCO and UNIDROIT Conventions. Zsuzsanna Veres advocates for an agreement that better compromises between the needs of source and market countries,<sup>113</sup> and Edward Cottrell argues for an agreement that creates a specialized dispute resolution body.<sup>114</sup> But creating a new cultural property convention would require exactly the kind of compromise that these critics believe renders the existing treaties insufficient: To gain market country signatories, a new convention will have to pander to their interests, just as, in a compromise with market country signatories over the creation of a restitution mechanism lacking in the UNESCO Convention, the UNIDROIT Convention places more of the burdens and costs of litigation on source countries, as discussed below.

It is also important to note that many of the weaknesses of the UNESCO Convention were meant to be countered by the UNIDROIT Convention. Posner disregards the important fact that the UNIDROIT Convention operates in conjunction with the UNESCO Convention. Veres and Edward Cottrell do address the UNIDROIT Convention but move on to their

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108. JEANETTE GREENFIELD, *THE RETURN OF CULTURAL TREASURES* 258–60 (2d ed. 1996).

109. See Eric A. Posner, *The International Protection of Cultural Property: Some Skeptical Observations*, 8 CHI. J. INT'L L. 213, 214–15, 218, 228–30 (2007).

110. See *Recent Restitution Cases of Cultural Objects Using the 1970 Convention*, UNESCO, <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/recent-restitution-cases-of-cultural-objects-using-the-1970-convention> (last visited Apr. 24, 2020).

111. See *e.g., id.* (indicating that in seven instances, parties acquired restitution for a total of hundreds of cultural objects in 2018 and 2019).

112. See *infra* Part IV.B.

113. Veres, *supra* note 8, at 111–13.

114. Cottrell, *supra* note 8, at 653–55.

proposed additions rather than analyzing the particular benefits the Convention already has for developing countries.<sup>115</sup> Unlike these earlier scholars, this note suggests that an adequate protection of cultural property depends upon states adhering to both Conventions, as the UNIDROIT Convention was meant to rectify many of the shortcomings of the UNESCO Convention.

This is not to say that the combination of the two Conventions is a perfect solution. The UNIDROIT Convention does place more burdens and costs on source countries to litigate their claims, as discussed below,<sup>116</sup> and it is severely undermined by the low number of signatories.<sup>117</sup> However, to get market countries to agree to the UNIDROIT Convention, it was necessary to split the costs to some degree. A compromise was necessary to create a proper restitution mechanism, which the UNESCO Convention lacked.

Creating a new cultural property convention would require a similar compromise. In contrast, it is a remarkably good deal for source countries that practically every major market country has already signed onto the UNESCO Convention and that a number of them, including China, France, and Spain, have signed onto the UNIDROIT Convention as well.<sup>118</sup> It is possible to draft a new cultural property treaty that creates an international arbitration process for the restitution of cultural property, one that places greater obligations on market countries, and that establishes penalties for not complying with the articles of the convention,<sup>119</sup> but the odds of such a convention being accepted by the community of nations are low without significant compromises from source countries.<sup>120</sup>

In any case, important as these suggestions may be, they skip the question of whether the UNESCO and UNIDROIT Conventions, as they currently stand, offer enough benefits for developing countries to become States Parties.<sup>121</sup> Indeed, there is no reason why a third convention, if it could be adopted, could not work in coordination with the already existing UNESCO and UNIDROIT Conventions, which are readily available for ratification now. The prospect of an even better convention does not remove the availa-

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115. See Veres, *supra* note 8, at 100–02; Cottrell, *supra* note 8, at 631–39.

116. See *infra* Part IV.F.

117. *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995)*—Status, UNIDROIT, <https://www.unidroit.org/status-cp> (last updated Dec. 2, 2019) (fifty-eight states have signed the Convention and only forty-eight have implemented it).

118. *Id.*

119. See, e.g., Cottrell, *supra* note 8, at 648; Veres, *supra* note 8, at 111–13 (both suggesting new international treaties to protect cultural property).

120. See Cottrell, *supra* note 8, at 657.

121. Though Veres and Cottrell do address the UNIDROIT Convention, they do not do so in any analytical depth; they move directly on to their proposed additions rather than analyze the particular benefits for developing countries. See Veres, *supra* note 8, at 100–02; Cottrell, *supra* note 8, at 631–39.

bility of using currently available ones, especially since they provide significant benefits to developing countries.

### B. *Other Alternatives*

Instead of crafting a new convention, one scholar has suggested using another existing international treaty, the United Nations Convention Against Transnational Organized Crime (“UNTOC”), to fill gaps in the UNESCO and UNIDROIT Conventions.<sup>122</sup> Some others have even proposed that source countries sell off their cultural property through a state auction system.<sup>123</sup>

Greg Borgstede describes how UNTOC could be used to protect cultural property.<sup>124</sup> Notably, though UNTOC can help enforce the protection of cultural property, it does not explicitly address cultural property in the same detail as the UNESCO and UNIDROIT Conventions. Its lack of specificity allows for varying interpretations by different states. Borgstede explains that one of the best reasons to use UNTOC as a tool for cultural property protection is this convention’s broad membership network.<sup>125</sup> Yet one may achieve the same advantage by increasing ratification of the UNESCO and UNIDROIT Conventions. Of course, fully employing the UNESCO and UNIDROIT Conventions does not mean that UNTOC cannot be used too.<sup>126</sup> Instead, they could be used as complementary methods; but moving straight to UNTOC while ignoring UNESCO and UNIDROIT leaves substantial benefits for developing countries on the table.

Alternatively, Lisa Borodkin has suggested that countries publicly auction off their cultural property and create a regulated market instead of an illicit one.<sup>127</sup> This solution would offer the benefit of directly undercutting the illicit market and its associated ills by creating a new, legally regulated market,<sup>128</sup> and it has been suggested for other illegal activities that have connections to associated crime, such as the sale and consumption of marijuana.<sup>129</sup> This solution is problematic, however, in that it only addresses the state’s desire to cut off the criminal funding provided by theft of cultural

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122. Cf. Borgstede, *supra* note 83, at 284.

123. Borodkin, *supra* note 30, at 411–16.

124. Borgstede, *supra* note 83, at 285.

125. *Id.*

126. *Id.* at 286. (acknowledging that the focus on the United Nations Convention Against Transnational Organized Crime may detract from the UNESCO and UNIDROIT Conventions).

127. See e.g., Borodkin, *supra* note 30, at 411–16.

128. *Id.* at 412.

129. See, e.g., Tamar Todd, *The Benefits of Marijuana Legalization and Regulation*, 23 BERKELEY J. CRIM. L. 99, 111–14 (2018).

property, disregarding the benefits a state receives from maintaining its cultural property, as discussed above.<sup>130</sup>

#### IV. INTERNATIONAL LAW PROTECTIONS: UNESCO CONVENTION AND UNIDROIT CONVENTION

In sum, the existing scholarship provides creative solutions, but it has overlooked the benefits provided by the existing UNESCO and UNIDROIT Conventions. Increasing the number of parties to the UNESCO and UNIDROIT Conventions could bring untapped international support to countries trying to maintain their cultural property. This part will discuss the legal requirements and remedies, benefits for developing countries, and shortcomings of the UNESCO and the UNIDROIT Conventions. While the UNESCO and UNIDROIT Conventions are undersubscribed by source countries and there are valid shortcomings in both treaties, this part concludes that they provide substantial benefits to developing countries and therefore suggests that international protection of cultural property would be enhanced if developing countries sign onto the UNESCO and UNIDROIT Conventions as they currently stand.

##### A. UNESCO Convention Overview

UNESCO established the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in 1970.<sup>131</sup> The States Parties to the UNESCO Convention recognize that the illicit transfer of cultural property from countries impoverishes their cultural heritage and that international cooperation is the best defense against such losses.<sup>132</sup>

By agreeing to the UNESCO Convention, States Parties undertake to oppose the illicit trade of cultural property.<sup>133</sup> This obligation cuts both ways: States Parties must take steps both to prevent the exportation of their own cultural property and to prevent the importation of cultural property from other countries.<sup>134</sup> The obligation to prevent unlawful exportation requires a State Party to set up a national service dedicated to the protection of cultural heritage.<sup>135</sup> This national service drafts laws and regulations to protect cultural property, maintains a list of known national cultural property,

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130. See *supra* Part II.B.

131. UNESCO Convention, *supra* note 9.

132. *Id.* art. 2(1).

133. *Id.* art. 2(2). A State Party to a treaty “is a country that has ratified or acceded to that particular treaty, and is therefore legally bound by the provisions in the instrument.” *Introduction to the Convention of the Rights of the Child: Definition of Key Terms Used in the UN Treaty Collection*, UNICEF, <https://www.unicef.org/french/crc/files/Definitions.pdf> (last visited Apr. 24, 2020).

134. See UNESCO Convention, *supra* note 9, art. 3.

135. *Id.* art. 5

and promotes the institutional preservation and presentation of cultural property.<sup>136</sup> It also is responsible for organizing excavations, establishing ethical rules for dealers and curators in accordance with the Convention, taking steps to develop respect for all cultural heritages, and publicizing the disappearance of any cultural property.<sup>137</sup> To prevent unlawful exportation a State Party is obliged to certify lawful exportations of cultural property.<sup>138</sup>

States Parties also have a duty to prevent the importation of illegal cultural property from other States Parties,<sup>139</sup> particularly cultural property stolen from another State Party's museums, religious or secular monuments, and similar sites.<sup>140</sup> Notably, this duty only applies to imports from other States Parties, not from all countries.<sup>141</sup> As part of this requirement, a State Party must ban its museums and similar institutions from acquiring new cultural property illicitly taken from another State Party and must inform the country of origin if such property is recovered.<sup>142</sup> A State Party may also request that another State Party take steps to recover and return improperly-acquired cultural property imported after the Convention was implemented in both States.<sup>143</sup> A State Party may even send a general request to other States Parties to protect its cultural property if that property is in jeopardy of being pillaged, and responding countries must act in concert with the requesting nation to "determine and carry out concrete measures," including taking provisional measures to prevent irreparable damage to the cultural property in question.<sup>144</sup> Moreover, a State Party must comply with another State Party's classification of its cultural property as inalienable for import purposes.<sup>145</sup> This means that a State Party can declare what constitutes cultural property under the ambit of the Convention's protections and declare that any, or even all, of its cultural property cannot be legally removed from within its borders, and importing countries must refuse to admit that property in response.<sup>146</sup>

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136. *Id.*

137. *Id.*

138. *Id.* art. 6.

139. *Id.* art. 7.

140. *Id.* art. 7(b)(i).

141. *See id.*

142. *Id.* art. 7(a).

143. *Id.* art. 7(b)(ii).

144. *Id.* art. 9.

145. *Id.* art. 13(d). States Parties may list their protected cultural property under article 5(b).

146. *Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, UNESCO, ¶¶ 33–38, [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/OPERATIONAL\\_GUIDELINES\\_EN\\_FINAL\\_FINAL.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/OPERATIONAL_GUIDELINES_EN_FINAL_FINAL.pdf) (last visited Apr. 24, 2020). For example, Greece's antiquities law protects all ancient moveable and immoveable monuments and other cultural objects that date to prehistoric, ancient, Byzantine, and Post-Byzantine times, if they are listed in the National Archive of Monuments. Nomos (3028:2002)

The UNESCO Convention also has several procedures to protect the cultural property of countries and territories that are under a temporary or permanent occupation. The Convention explicitly provides that a State Party is obligated not only to protect its own cultural property but also to protect the property of any territories that are under that country's political leadership.<sup>147</sup> At the time of accession to the Convention, States Parties must consult with the local authorities in territories they occupy with the specific goal of having the Convention apply in these territories.<sup>148</sup> Additionally, the Convention prohibits the transfer of ownership of cultural property "under compulsion arising directly or indirectly from the occupation of a country by a foreign power."<sup>149</sup>

Under the Convention, UNESCO also has a consulting and dispute resolution role. Any State Party may call on UNESCO to help offer information, education, expert advice, and coordination on cultural property identification and protection.<sup>150</sup> If two States Parties in a cultural property dispute agree, UNESCO may also serve as an arbitrator in the dispute.<sup>151</sup>

In sum, the UNESCO Convention primarily restricts the importation of one State Party's cultural property by another,<sup>152</sup> and this framework has been effective. The Convention's import restrictions have led to the restitution of hundreds of pieces of stolen cultural property that have been detained upon importation.<sup>153</sup> It has also led museums and collectors to change their policies to be more cautious toward acquiring cultural property.<sup>154</sup>

### B. *Benefits of the UNESCO Convention for Developing Countries*

For source countries, which are often developing countries, the UNESCO Convention provides significant advantages. First, the UNESCO Convention improves international responses to cultural property theft by fighting against illicit trade through forced transparency and codified legal obligations for States Parties. Additionally, the Convention is particularly devised to benefit source countries, and it sets enforcement obligations in accordance with each country's economic means. Finally, the Convention's strength grows with its number of States Parties. Although more universal

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Gia tin prostasia ton Archaioiton kai en genei tis Polistikis Klironomiás [On the Protection of Antiquities And Cultural Heritage in General], EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 2002, A:153 (Greece).

147. UNESCO Convention, *supra* note 9, arts. 12, 22.

148. *Id.*

149. *Id.* art. 11.

150. *Id.* art. 17(1).

151. *Id.* art. 17(5). *See generally* *Restitution of Cultural Property: Mediation and Conciliation*, UNESCO, <http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/mediation-and-conciliation> (last visited Apr. 24, 2020).

152. *Id.* arts. 1, 3, 5(a), 7, 13(a); Veres, *supra* note 8, at 99.

153. *See infra* notes 168–169 and accompanying text.

154. *See* Cohan, *supra* note 106, at 48.

accession would not completely eliminate licit or illicit trade in cultural property,<sup>155</sup> increased Convention membership would help limit the scope and extent of the trade and impose legal investigatory obligations on States Parties.

First, the UNESCO Convention improves transparency for the trade in cultural properties among its signatories. To understand why, look to the mechanics of the broader art market, which contribute to the illicit trade in cultural properties. The art auction system, for example, operates on anonymity and opaqueness; at an auction, it is incredibly hard to know what is for sale and who owns what.<sup>156</sup> Moreover, the antiquities black market is a complex system of middlemen and obfuscation.<sup>157</sup> This opacity, coupled with the frequency of sales transactions, can make identifying that any particular object has been illegally moved from its source country impossible for the final purchaser.<sup>158</sup> The UNESCO Convention seeks to ameliorate this problem by requiring antique dealers to maintain a register of the price, provenance (or path of origin), and description of traded cultural property.<sup>159</sup>

Second, the Convention, by obliging States Parties to prevent the illicit import of cultural property into their territories and the illicit trade of cultural property inside their territories,<sup>160</sup> prompts active monitoring of the trade in cultural property.<sup>161</sup> For example, the United States passed the Cultural Property Implementation Act (“CPIA”) to implement and enforce its UNESCO Convention obligations.<sup>162</sup> Under the CPIA, U.S. Customs and Border Protection (“CBP”) and U.S. Immigration and Customs Enforcement (“ICE”) are responsible for stopping illicit cultural property trade at the bor-

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155. Alexander A. Bauer, *New Ways of Thinking About Cultural Property: A Critical Appraisal of the Antiquities Trade Debates*, 31 *FORDHAM INT’L L.J.* 690, 696 (2007).

156. See Borodkin, *supra* note 30, at 386; Carl Schneider, Lecture at University of Michigan Law School: An Art Collector Looks at Art Law (Mar. 7, 2018).

157. See Faucon, Kantchev & MacDonald, *supra* note 2.

158. *Id.*

159. UNESCO Convention, *supra* note 9, art. 10(a).

160. *Id.* art. 12.

161. See, e.g., *Questions and Answers on the Illegal Import of Cultural Goods Used to Finance Terrorism*, EUROPEAN COMM’N (July 13, 2017), [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_17\\_1954](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_17_1954) (describing recent attempts to reinforce monitoring of free ports and free zones); *Boosting National Responses to the Illicit Trade in Cultural Property*, INTERPOL (Aug. 22, 2018), <https://www.interpol.int/en/News-and-Events/News/2018/Boosting-national-responses-to-the-illicit-trade-in-cultural-property> (explaining new monitoring initiatives by countries in Southern Africa); U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-17-716, IRAQI AND SYRIAN CULTURAL PROPERTY: U.S. GOVERNMENT COMMITTEE SHOULD INCORPORATE ADDITIONAL COLLABORATION PRACTICES 14 (2017) (describing increased U.S. monitoring of imports to find stolen Iraqi and Syrian cultural property).

162. Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601–2613 (current through P.L. 115–72).

der.<sup>163</sup> CBP is effectively the front line, with the ability to search, detain, and seize suspect property.<sup>164</sup> ICE handles investigations, including looking into whether individuals or institutions are illegally importing cultural property into the United States.<sup>165</sup> This system has been effective at catching cultural property theft. A high profile example is the 2017 case against Hobby Lobby for attempting to import stolen Iraqi cultural property.<sup>166</sup> The violation was uncovered by CBP, investigated by ICE, and then litigated by the Justice Department.<sup>167</sup>

The United States is not alone in successfully finding illicitly-traded cultural property and returning it to its country of origin. UNESCO maintains a lengthy tab of Convention success stories.<sup>168</sup> Recent returns include the Netherlands repatriating a mosaic to Cyprus; Kuwait returning a coffin lid to Egypt; and Germany, Italy, and Switzerland collectively repatriating pre-Colombian archaeological objects to Guatemala.<sup>169</sup> While non-Convention member countries are of course also capable of repatriating stolen property when they find it, the Convention provides source countries with actual commitments rather than the mere goodwill of a market country.

Another benefit for developing countries is that accession to the UNESCO Convention does not impose substantial new costs on them. Article 2 of the UNESCO Convention simply mandates that States Parties “undertake to oppose such practices with the means at their disposal.”<sup>170</sup> While the ambiguity of the term “means” might allow some States Parties to shirk their duties, UNESCO’s long list of Convention-brokered success stories suggests that many states are treating their commitments solemnly. At the same time, the phrasing of article 2 reflects the reality of the developed-developing country dichotomy: Developing countries often do not have the

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163. *Id.*

164. U.S. CUSTOMS AND BORDER PROTECTION, WHAT EVERY MEMBER OF THE TRADE COMMUNITY SHOULD KNOW ABOUT: WORKS OF ART, COLLECTOR’S PIECES, ANTIQUITIES, AND OTHER CULTURAL PROPERTY (May 2006), <https://www.hsdl.org/?view&did=714809>.

165. *Cultural Property, Art and Antiquities Investigations*, U.S. IMMIGRATION AND CUSTOMS ENF’T, <https://www.ice.gov/cultural-art-investigations> (last visited Apr. 24, 2020).

166. Complaint, *United States v. Four Hundred Fifty Ancient Cuneiform Tablets*, CV 17-3980 (E.D.N.Y. July 5, 2017), <https://www.justice.gov/usao-edny/press-release/file/978096/download>.

167. *Id.*; see also Michael Goodyear, *Hobby Lobby Goes From Arts and Crafts to Illegal Antiquities*, CULTURAL HERITAGE CRISIS (July 8, 2017), <https://culturalpropertylawblog.wordpress.com/2017/07/08/hobby-lobby-goes-from-arts-and-crafts-to-illegal-antiquities>.

168. *Other Cases of Return or Restitution of Cultural Objects*, UNESCO, <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/other-cases-of-return-or-restitution-of-cultural-objects> (last visited Apr. 24, 2020).

169. *Id.*

170. UNESCO Convention, *supra* note 9, art. 2.



resources to actively patrol their borders,<sup>171</sup> which is one of the reasons for the existence of the illicit cultural property trade in the first place. The UNESCO Convention, by calibrating expenses to each party's economic "means," purposefully encourages developing countries to take advantage of its protections by placing a higher burden on wealthier countries.

In addition, it is a sound policy choice to invest in some level of cultural property protection, for the reasons detailed above in Part II.B, so the UNESCO Convention requirement just codifies what is in practice beneficial for developing countries.<sup>172</sup> And while there are certainly costs associated with maintaining a cultural property database,<sup>173</sup> monitoring trade and illicit activities,<sup>174</sup> and establishing ethical rules and educational initiatives,<sup>175</sup> these requirements are relatively inexpensive compared to the amount developed countries spend on protecting cultural property.<sup>176</sup>

Finally, the goal of the UNESCO Convention is that collective action by all the signatories will help solve the problem.<sup>177</sup> There are 140 States Parties to the UNESCO Convention as of December 2019.<sup>178</sup> This leaves over fifty countries recognized by the United Nations that are not parties to the Convention. Surprisingly, while there are a few wealthy countries such as Ireland and Israel that have not accepted the Convention, the vast majority of non-signatories are from the developing world, particularly in the Caribbean, the Pacific, and Africa.<sup>179</sup> As these countries are more likely to be

171. Susan E. Rice, Speech at University of Michigan Law School: The National Security Implications of Global Poverty (Jan. 30, 2006).

172. See generally STOP HERITAGE CRIMES. GOOD PRACTICES AND RECOMMENDATIONS (2011).

173. UNESCO Convention, *supra* note 9, art. 5.

174. *Id.* art. 10.

175. *Id.* art. 5.

176. For example, Hungary spent the most out of any country in the European Union on the much larger category of "recreation, culture, and religion" in 2016, and this was 3.3% of its annual GDP. The costs of a database and a set of rules would likely be substantially less. *Government Expenditure on Recreation, Culture and Religion*, EUROSTAT (Mar. 12, 2018), [https://ec.europa.eu/eurostat/statistics-explained/index.php/Government\\_expenditure\\_on\\_recreation,\\_culture\\_and\\_religion](https://ec.europa.eu/eurostat/statistics-explained/index.php/Government_expenditure_on_recreation,_culture_and_religion).

177. Marilyn E. Phelan, *The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects Confirms a Separate Property Status for Cultural Treasures*, 5 JEFFREY S. MOORAD SPORTS L.J. 31, 36 (1998).

178. *1970 Convention States Parties*, UNESCO, <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/states-parties> (last visited Apr. 24, 2020).

179. The UN Member States that have not accepted the UNESCO Convention are Andorra, Antigua and Barbuda, Aruba, Brunei, Burundi, Cabo Verde, Comoros, Congo, Dominica, Eritrea, Fiji, Gambia, Guinea-Bissau, Guyana, Indonesia, Ireland, Israel, Jamaica, Kenya, Kiribati, Liberia, Malawi, Malaysia, Maldives, Malta, Marshall Islands, Micronesia, Moldova, Mozambique, Namibia, Nauru, Palau, Papua New Guinea, Philippines, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Sierra Leone, Singapore, Solomon Islands, Somalia, South Sudan, Sudan, Suriname, Thai-

the source of illicitly traded properties than their market, they actually have the most to gain from signing onto the UNESCO Convention.

### C. Shortcomings of the UNESCO Convention for Developing Countries

Because the Convention imposes more stringent obligations on market countries, it is understandable that some would reject the Convention,<sup>180</sup> but it is less clear why source countries would reject it. However, while the UNESCO Convention does provide benefits for cultural property protection, particularly for developing countries, it is not without its problems. The Convention does not have any enforcement or recovery mechanisms outside of those its member states choose to implement, it allows state reservations, and it is not retroactive. These shortcomings could help explain the reluctance of some countries to sign onto the UNESCO Convention, as could economic reasons and a lack of awareness of the full range of the Convention's benefits.

Perhaps the greatest weakness of the UNESCO Convention is that it does not create any domestic or international procedures for enforcing its obligations.<sup>181</sup> It does not stipulate a domestic court remedy for cultural property theft, nor does it create an international enforcement and dispute resolution system akin to that of other international treaties such as the WTO.<sup>182</sup> However, it is worth considering why a country would sign on to the UNESCO Convention if it had no desire to intervene in the illicit cultural property trade. Likely, it would not. Indeed, the fact that most major market countries have ratified the UNESCO Convention and have enforced their Convention obligations<sup>183</sup> shows that it has some vitality even without mandatory enforcement mechanisms.<sup>184</sup>

An additional weakness is that States Parties can register reservations to the Convention at the time of their acceptance, which can create a patch-

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land, Timor-Leste, Tonga, Trinidad and Tobago, Turkmenistan, Tuvalu, Uganda, and Vanuatu. *Compare Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property—States*, UNESCO, <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E> (last visited Apr. 24, 2020) with *Member States*, UNITED NATIONS, <https://www.un.org/en/member-states> (last visited May 13, 2020).

180. Veres, *supra* note 8, at 108.

181. Nina R. Lenzner, Note, *The Illicit International Trade in Cultural Property: Does the UNIDROIT Convention Provide an Effective Remedy for the Shortcomings of the UNESCO Convention?*, 15 U. PA. J. INT'L L. 469, 477–78 (1994).

182. *See id.* at 479; *see also* Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401.

183. *See, e.g.*, Patty Gerstenblith, *Implementation of the 1970 UNESCO Convention by the United States and Other Market Nations* 17 (2017), <https://www.law.upenn.edu/live/files/6423-gerstenblith-patty-2017-implementation-of-the-1970> (last visited Apr. 24, 2020).

184. *See* Gerstenblith, *supra* note 99, at 175.

work of varying obligations from state to state.<sup>185</sup> For example, Australia took a reservation to article 10 of the Convention, which requires states to oblige antique dealers to maintain registers of their items.<sup>186</sup> But while the ability to register reservations *could* weaken the protections of the Convention, all reservations to date place limitations only at the outer bounds of the treaty, like Australia's reservation, instead of declining to follow its core commitments.<sup>187</sup> Furthermore, treaty reservations are permitted by the Vienna Convention on the Law of Treaties precisely to allow the international community to maximize the number of signatories to a multilateral treaty without gutting the core of that treaty.<sup>188</sup>

Another reason why source countries have been reluctant to sign onto the UNESCO Convention is because it does not apply retroactively.<sup>189</sup> While non-retroactivity is standard with international treaties, it is problematic in the context of cultural property because it does not provide any recovery for the large amount of cultural property taken from countries in the nineteenth and twentieth centuries under the aegis of colonialism and imperialism.<sup>190</sup> Still, this does not nullify the benefits of at least having restitution going forward.

Economics may also factor in. Even though the Convention limits implementation to what is within a country's economic "means,"<sup>191</sup> costs could still be a deterrent. Furthermore, the UNESCO Convention does require States Parties to pay "just compensation" to innocent purchasers, which creates a financial burden on States Parties who are only recovering what was illicitly removed from their territories.<sup>192</sup> While the Convention does provide assistance from other States Parties to monitor imports and catch illicit

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185. States Parties may, at the time of signing, declare reservations to any treaty that does not prohibit reservations. Vienna Convention on the Law of Treaties art. 19, May 23, 1969, 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969) [hereinafter VCLT]; *see also* Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Jan. 10, 1990, 823 U.N.T.S. 23; *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970*, UNESCO, [http://portal.unesco.org/en/ev.php-URL\\_ID=13039&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html#RESERVES](http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html#RESERVES) (last visited Apr. 24, 2020) (listing all reservations and declarations made by States Parties to the UNESCO Convention).

186. Australian Reservations to Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Jan. 10, 1990, 823 U.N.T.S. 231.

187. *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, *supra* note 185.

188. Marko Milanovic & Linos-Alexander Sicilianos, *Reservations to Treaties: An Introduction*, 24 EURO. J. INT'L L. 1055, 1056 (2013); *see also* VCLT, *supra* note 185, at 336–38.

189. Gerstenblith, *supra* note 183, at 26.

190. *Id.*

191. UNESCO Convention, *supra* note 9, art. 2.

192. Cohan, *supra* note 106, at 44.

movements of cultural property, there is undoubtedly still a cost for developing countries.<sup>193</sup>

It is also possible that it is not a fault in the Convention, but rather its entire purpose, with which a country takes issue. A country's government may favor selling cultural property, even knowing that it is not in the long-term interests of the country. For example, in the midst of the ongoing civil war in Syria, the Assad government is suspected of taking bribes to facilitate the exportation of cultural property, if not actively supporting such exportation.<sup>194</sup> India has also suggested eliminating government-issued licenses for antiquities dealers, although it should be noted that this is highly controversial.<sup>195</sup>

Finally, a lack of awareness of the extent of the benefits provided by the UNESCO Convention or apathy towards cultural property protection could also explain some countries' reluctance to sign onto the Convention, especially if other, more pressing socioeconomic concerns are considered. In developing countries, cultural property protection may not be competitive with more pressing issues such as food security, ecological problems due to climate change, financial weakness,<sup>196</sup> or the need for sustainable development.<sup>197</sup> Even developed countries often do not prioritize cultural property protection, as shown by the United States-led coalition's treatment of cultural property in Iraq during the 2003 invasion and its aftermath.<sup>198</sup> Countries could also simply not be aware of how the benefits of the UNESCO Convention militate in favor of accession.

#### D. UNIDROIT Convention Overview

While the UNESCO Convention laid the groundwork for the protection of designated cultural property by instituting rules that would mitigate its flow to market countries, the UNIDROIT Convention, adopted in 1995, supplements the UNESCO Convention by contemplating rules for the return

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193. See *id.*

194. Neil Brodie & Isber Sabrine, *The Illegal Excavation and Trade of Syrian Cultural Objects: A View from the Ground*, 43 J. FIELD ARCHAEOLOGY 74, 79 (2017).

195. Kate Fitz Gibbon, *New Art Law for India?*, CULT. PROP. NEWS (Oct. 27, 2017), <https://culturalpropertynews.org/new-art-law-for-india>.

196. See Rosamond Hutt, *What Are the 10 Biggest Global Challenges?*, WORLD ECON. F. (Jan. 21, 2016), <https://www.weforum.org/agenda/2016/01/what-are-the-10-biggest-global-challenges>.

197. See, e.g., *Priorities of Developing Nations Must Be Centre of Attention, Says India*, ECON. TIMES (Jan. 13, 2016), <https://economictimes.indiatimes.com/news/politics-and-nation/priorities-of-developing-nations-must-be-centre-of-attention-says-india/articleshow/50556262.cms>.

198. See *The Protection of Cultural Property in the Event of Armed Conflict: Unnecessary Distraction or Mission-Relevant Priority?*, 2 NATO OPEN PUBLICATIONS 1, 5 (2018).

of any cultural property that unlawfully leaves a source country.<sup>199</sup> The obligation to return cultural property is particularly important to developing countries.<sup>200</sup> The UNIDROIT Convention requires owners to return any cultural property, however obtained, to its country of origin if the law of that country considers the ownership invalid and that country is a State Party to the Convention.<sup>201</sup> Moreover, the source country is not required to have previously specified the object as cultural property, as it must under the UNESCO Convention.<sup>202</sup> This expansion is crucial, as cultural property is often privately owned or previously unexcavated,<sup>203</sup> which makes it particularly difficult to repatriate under the UNESCO Convention alone.

The UNIDROIT Convention homes in on cultural property that a market country has failed to stop at the border and return as required under the country's UNESCO Convention obligations. In these situations, the UNIDROIT Convention permits a State Party to request that the importing state's domestic courts—or, if the states agree, another court or arbitral panel<sup>204</sup>—order the return of any cultural property that was illegally exported.<sup>205</sup> To succeed, the state claimant must prove a violation of its laws “regulating the export of cultural objects for the purpose of protecting its cultural heritage.”<sup>206</sup>

The UNIDROIT Convention thus expands the scope of cultural property that is protected and provides for judicial recovery of stolen property not present in the UNESCO Convention.<sup>207</sup> This recovery mechanism gives the

199. UNIDROIT Convention, *supra* note 10. The UNIDROIT Convention uses the term “cultural objects” instead of “cultural property,” but its definition is similar to the definition of the term cultural property that is used in the UNESCO Convention. *Id.* art. 1 & annex. Cultural objects are defined in the UNIDROIT Convention as “those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention.” *Id.* art. 2. The Annex incorporates the language used by the UNESCO Convention to define cultural property. *Id.* annex.

200. *Id.*

201. *Id.* art. 3; *see also* art. 1 (stating that the Convention applies to claims regarding the “return of cultural objects removed from the territory of a Contracting State”).

202. The UNESCO Convention explicitly requires that the cultural property “is specifically designated by each State.” UNESCO Convention, *supra* note 9, art. 1. The UNIDROIT Convention does not list any such requirement.

203. *See e.g.*, Ralph Blumenthal & Tom Mashberg, *The Curse of the Outcast Artifact*, N.Y. TIMES (July 12, 2012), <https://www.nytimes.com/2012/07/15/arts/design/antiquity-market-grapples-with-stricter-guidelines-for-gifts.html> (noting that 100,000 privately owned ancient Greek and Roman artifacts lacked adequate provenance, suggesting that the works were unrecorded or possibly from unexcavated sites).

204. UNIDROIT Convention, *supra* note 10, art. 8.

205. *Id.* art. 3.

206. *Id.* art. 1.

207. *See* UNIDROIT Secretariat, *UNIDROIT Activities*, 6 UNIFORM L. REV. 476, 564 (2001).

UNIDROIT Convention teeth the UNESCO Convention lacks, rather than just relying on States Parties' own compliance or lack thereof.<sup>208</sup>

#### E. *Benefits of the UNIDROIT Convention for Developing Countries*

While the UNESCO Convention focuses primarily on monitoring, the UNIDROIT Convention is directed at the restitution process. While repatriations have been successfully achieved under the UNESCO Convention, as detailed above,<sup>209</sup> the UNIDROIT Convention attempts to fill gaps left by the UNESCO Convention by “reduc[ing] illicit traffic in cultural objects by expanding the rights upon which return of such objects can be sought, and by widening the scope of objects subject to its provisions.”<sup>210</sup> The UNIDROIT Convention establishes a restitution procedure in domestic courts, one with a low burden of proof for countries of origin, and without reservations, creating a uniform system.

Although the UNIDROIT Convention is not costless, it does attempt to create processes that will benefit developing countries more than the default domestic court procedures that would exist without it. Like the UNESCO Convention, the UNIDROIT Convention does not create an international dispute resolution body, but, as mentioned above, the UNIDROIT Convention does explicitly authorize member states to petition the courts of other States Parties for the return of cultural property, and it establishes procedures for this.<sup>211</sup> As discussed more below, if an object is found to be of significant cultural importance to the requesting state, the courts of the recipient State Party must order its return.<sup>212</sup>

There are no examples of UNIDROIT, or domestic implementing legislation, being directly invoked to successfully recover cultural property. However, there are examples of UNIDROIT-like procedures being successfully utilized in cultural property recovery. While the United States is not a State Party to the UNIDROIT Convention, it does have a similar cultural property protection regime through a series of bilateral agreements.<sup>213</sup> The domestic court procedures established by that system have successfully re-

208. See Folarin Shyllon, *The Recovery of Cultural Objects by African States Through the UNESCO and UNIDROIT Conventions and the Role of Arbitration*, 5 UNIFORM L. REV. 219, 225–26 (2000).

209. See *supra* notes 168–169 and accompanying text.

210. Harold S. Burman, *International Institute for the Unification of Private Law (UNIDROIT): Final Act of the Diplomatic Conference for the Adoption of the Draft UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects*, 34 I.L.M. 1322, 1322 (1995).

211. UNIDROIT Convention, *supra* note 10, art. 5(3).

212. *Id.* Article 5 also includes other cases in which a court shall return the stolen cultural property, but the “significant cultural importance” clause is the broadest category.

213. See generally Howard N. Spiegler & Yael Weitz, *The Ancient World Meets the Modern World: A Primer on the Restitution of Looted Antiquities*, 1 CULTURAL HERITAGE & ARTS REV. 43 (2010).

turned cultural property or prompted out of court settlements,<sup>214</sup> highlighting the potential benefit of the UNIDROIT Convention's domestic court procedures.

Another benefit of the UNIDROIT Convention is that the burden of proof in UNIDROIT restitution cases is low. A State Party source country can require return of an object if its removal is found to significantly impair

the physical preservation of the object or its context . . . the integrity of a complex object . . . the preservation of information of, for example, a scientific or historical character . . . the traditional or ritual use of the object by a tribal or indigenous community, or [if the State Party] establishes that the object is of significant cultural importance for the requesting state.<sup>215</sup>

What constitutes a "significant" impairment is left undefined by the UNIDROIT Convention,<sup>216</sup> creating a flexible standard to be liberally invoked by source countries. Once this standard is met, the UNIDROIT Convention places a duty on the courts of the state where the possessor is located to obtain custody of the object and send it back to its home country.<sup>217</sup> Thus, the UNIDROIT Convention attempts to diminish the costs for the country of origin to regain the lost object. In the absence of these UNIDROIT provisions, some recoveries would be even more costly or even impossible. By extending the source country's reach to the possessor's courts, the UNIDROIT Convention creates a greater benefit to developing countries.

The UNIDROIT Convention also prohibits reservations, creating the possibility for a uniform set of cultural property protection rules across the globe.<sup>218</sup> Though the black market in cultural property is global,<sup>219</sup> since most cultural property is sold to wealthier countries, poorer nations are the prime beneficiaries of these Convention commitments. Naturally, the strength of this international policing system grows as more countries sign on and accede to the Conventions. With a more uniform international sys-

214. Prominent examples include the Lydian hoard case and the Elmali hoard case. *Republic of Turkey v. Metro. Museum of Art*, 762 F. Supp. 44 (S.D.N.Y. 1990); *Republic of Turkey v. OKS Partners*, No. 89-3061-WJS, 1994 U.S. Dist. LEXIS 17032 (D. Mass. June 8, 1994).

215. UNIDROIT Convention, *supra* note 10, art. 5(3).

216. *See id.*

217. *See id.* art. 5.

218. *See* Alexandra Levine, Note, *The Need for Uniform Legal Protection Against Cultural Property Theft: A Final Cry for the 1995 UNIDROIT Convention*, 36 *BROOK. J. INT'L L.* 751, 753 (2011).

219. Ashleigh Tilley, *ISIS, Blood Antiquities, and the International Black Market*, *HUMAN SECURITY CTR.* 1, (Feb. 1, 2016), <http://www.hscentre.org/policy-unit/isis-blood-antiquities-international-black-market>.

tem of restitution, deterrence will increase, and the illicit cultural property market will suffer.<sup>220</sup>

F. *Shortcomings of the UNIDROIT Convention for  
Developing Countries*

Although the UNIDROIT Convention does address and correct for some of the shortcomings of the UNESCO Convention, it is still far from perfect. Like the UNESCO Convention, the UNIDROIT Convention does not apply retroactively. Moreover, its statute of limitations restricts recovery, and unknowing possessors of cultural objects are entitled to compensation for returning the objects to their rightful state owners. Its low number of signatories also undermines its effectiveness.

First, the UNIDROIT Convention, like the UNESCO Convention, is not retroactive. It applies only to cultural objects that are illegally exported after a state signs onto the Convention.<sup>221</sup> While non-retroactivity is the norm in international treaties, the inability to recover, or to seek recovery for, the large amount of cultural property taken through colonialism and imperialism is problematic.<sup>222</sup> But, just as under the UNESCO Convention, this problem does not nullify the benefits of at least having restitution procedures going forward.

In addition, there are time limits on when claims can be established under the UNIDROIT Convention framework. First, and least objectionable, is the Convention's primary statute of limitations, which creates a three-year window for a claim, starting when the country of origin knows the location of the cultural property and the identity of its possessor.<sup>223</sup> While this statute of limitations may not be unusual or necessarily overly problematic, the UNIDROIT Convention also states that claims can (almost) never be brought fifty years after a theft.<sup>224</sup> Thus, if an illicit purchaser successfully hides the cultural object for this fifty year period, it is no longer recoverable. The UNIDROIT Convention does carve out an exception for cultural objects that are an "integral part" of an identified monument or archaeological site, for which only the three-year knowledge statute of limitations applies,<sup>225</sup> but this is subject to a further carveout that still allows recipient countries to opt-in to imposing a seventy-five year post-theft limit on

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220. See Eur. Parl. Ass., *Report of the Comm. on Culture and Educ.* art. I, ¶¶ 3–4, 3d Sess., Doc. No. 8001 (1998) ("The UNIDROIT Convention can however only develop its full effect, when the same number of states producing cultural property accede to it as states importing cultural property.").

221. UNIDROIT Convention, *supra* note 10, art. 10.

222. *Id.*

223. *Id.* art. 3.

224. *Id.* art. 3(3).

225. *Id.* art. 3(4).



claims.<sup>226</sup> Furthermore, if an object was exported in the fifty years following the death of its creator, it is not protected unless an indigenous community created it for traditional or ritual use.<sup>227</sup> This range of limitations on recovery shrinks the breadth of restitution available under the UNIDROIT Convention.

Perhaps the greatest issue, however, is that if the possessor should not reasonably have known that the object was stolen cultural property, he is entitled to the court-determined “fair and reasonable compensation” from the requesting state.<sup>228</sup> While not necessarily rising to the object’s purchase price, this compensation may include the costs of returning the object to its home country.<sup>229</sup> Placing this cost on source countries could dissuade them from pursuing claims.<sup>230</sup>

Still, this language is self-limiting; the amount to be paid in exchange for the cultural object is only that which is “fair and reasonable,” and this compensation must only be paid if the possessor did not know or should not have reasonably known that the object was stolen.<sup>231</sup> Courts can also choose to include a due diligence standard for any award of compensation, which would heighten the possessor’s burden.<sup>232</sup> There is also an alternative to providing any compensation at all: Allowing the possessor to retain ownership of the re-housed object or to transfer the ownership to someone residing in the object’s home country pursuant to an agreement with the requesting country.<sup>233</sup> While this does provide an alternative if countries cannot afford “fair and reasonable” compensation, it is not primed for cultural property protection, which makes it controversial.<sup>234</sup>

Furthermore, though source countries benefit from the ability to bring suits, the UNIDROIT Convention does not adequately address the potentially high costs of litigation or arbitration,<sup>235</sup> which may still be prohibitive if courts allocate even what might be considered a reasonable portion of the expenses to source countries.

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226. *Id.* art. 3(5).

227. *Id.* art. 7.

228. *Id.* art. 6.

229. *Id.* art. 6(4).

230. *See, e.g.,* Lenzner, *supra* note 181, at 470 n.11 (stating that Lebanon backed out of a cultural property dispute due to litigation costs) (citing Sarah Jane Checkland & Andrew Pierce, *Sevso Silver: Peer’s Win Leaves Rivals Smarting*, *TIMES (LONDON)* 6 (Nov. 5, 1993)); *The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects—An Overview*, UNIDROIT (June 9, 2014), <https://www.unidroit.org/overviewcp/english> [hereinafter *1995 UNIDROIT Convention—An Overview*].

231. UNIDROIT Convention, *supra* note 10, arts. 4(1), 6(1).

232. IRINI A. STAMATOUDI, *CULTURAL PROPERTY LAW AND RESTITUTION: A COMMENTARY TO INTERNATIONAL CONVENTIONS AND EUROPEAN UNION LAW* 100 (2011).

233. UNIDROIT Convention, *supra* note 10, art. 6(3); *see also* STAMATOUDI, *supra* note 232, at 100–01.

234. STAMATOUDI, *supra* note 232, at 101.

235. *See, e.g.,* Lenzner, *supra* note 181, at 470 n.11.

At present, the UNIDROIT Convention's strength is severely undercut by its low number of signatories. Unlike the UNESCO Convention, the UNIDROIT Convention has not been adopted by most of the world. As of December 2019, only fifty-eight states had signed the Convention, and only forty-eight had implemented it.<sup>236</sup> Both major markets for the cultural property trade, such as the United States and the United Kingdom, and source countries, such as Egypt and Turkey, have not signed.<sup>237</sup> But despite this limitation, the UNIDROIT Convention is a step toward better regulating the cultural property market.<sup>238</sup>

## V. CONCLUSION

This note was an attempt to show the problems arising from the illicit trade in cultural property and to offer the best available solution. While developing countries' accession to the UNESCO and UNIDROIT Conventions alone will not solve the problem of the illicit cultural property trade entirely, and options for improved future multilateral agreements remain, the protections provided by the Conventions remain an accessible and underutilized option. Signing onto these Conventions can help states build their tourism industries, preserve their cultural heritage, and combat crime.

In particular, in the absence of another instrument with stronger protections or another mechanism for the restitution of cultural property, increased ratification of the UNESCO and UNIDROIT Conventions would grant source country States Parties the enforcement benefits of the import regulations and domestic court systems of market country States Parties. Furthermore, these Conventions would be better able to combat the illicit trade in cultural property if their memberships increase. Moreover, accession to these Conventions does not impose substantial costs on the potential members and the provisions of the Conventions are indeed made to benefit developing countries specifically in many ways. In addition, since the Conventions are not retroactive, there is an incentive for States Parties to sign onto them sooner rather than later.

Finally, it is worth restating that signing these agreements would not constrain member states from contemplating alternative mechanisms with greater protections. Member states could still enter into bilateral treaties

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236. *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995)*—*Status*, *supra* note 117. The signatories are Afghanistan, Algeria, Angola, Argentina, Azerbaijan, Bolivia, Bosnia-Herzegovina, Botswana, Brazil, Burkina Faso, Cambodia, China, Colombia, Côte d'Ivoire, Croatia, Cyprus, Denmark, Ecuador, El Salvador, Finland, France, Gabon, Georgia, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, Iran, Italy, Laos, Latvia, Lithuania, Montenegro, Myanmar, Netherlands, New Zealand, Nigeria, North Macedonia, Norway, Pakistan, Panama, Paraguay, Peru, Portugal, Romania, Russia, Senegal, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Syria, Tunisia, and Zambia.

237. *See id.*

238. *See* Lenzner, *supra* note 181.

with more stringent commitments and protection mechanisms.<sup>239</sup> Moreover, countries could still adopt stricter domestic regulations. For example, Turkey adopted a complete ban on the exportation of any antiquities from the country.<sup>240</sup> And a future or additional international agreement, as contemplated above,<sup>241</sup> could be applied in combination with the UNESCO and UNIDROIT Conventions. Indeed, when it was drafted, the UNIDROIT Convention was meant to extend the scope of the existing UNESCO Convention,<sup>242</sup> suggesting that future improvements are not outside of the spirit of these two Conventions. Therefore, accession to these Conventions is a ready, underutilized option for developing countries to better protect their cultural property.

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239. For example, the implementing legislation for the UNESCO Convention in the United States, the Cultural Property Implementation Act (“CPIA”), enforces the limits that appear in the UNESCO Convention, such as on artifacts taken from museums. Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601–2613 (2018). But it also states that no cultural property listed in bilateral agreements between the United States and another country can be imported into the United States. *Id.* § 2604.

240. Law on the Conservation of Cultural and Natural Property, Law No. 2863 arts. 13, 23, 32, Resmi Gazete [R.G.] 23 July, 1983, No. 18113 (Turk.).

241. See *supra* notes 113–120 and accompanying text.

242. 1995 UNIDROIT Convention—*An Overview*, *supra* note 230.