

# PROTECTION NOT PREVENTION

## The failure of public policy to prevent the looting and illegal trade of cultural property from the MENA region (1990–2015)

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### **Introduction**

The Soviet Union's withdrawal from Afghanistan in 1989 and its dissolution two years later in 1991 opened a power vacuum across the Middle East–North Africa (MENA) region that was filled by a tangled mess of international, proxy and civil wars still continuing in 2015. From Afghanistan in the east to Libya in the west, from Yemen in the south to Syria in the north, the fighting triggered a wave of looting, theft and destruction of cultural property that swept across the region. As country after country fell victim to civil disturbance and conflict, images of ransacked museums and cratered archaeological sites became an ever-present reality of news reporting. International public policy, designed in and intended for the pre-globalized world of the 1960s, failed utterly to achieve any kind of hold on the problem. By April 2015, when members of Daesh posted on the Internet a video of themselves using explosives to demolish part of the ninth-to eighth-century BC Neo-Assyrian site of Nimrud, the international community had been reduced to doing little more than uttering a collective wail of despair, seemingly faced with a choice of doing nothing or sending in the troops.

Throughout the period in question, cultural property was damaged and destroyed intentionally and unintentionally by military action, for reasons of religious or ethnic sectarianism, and perhaps even as propaganda. A large if not the major cause of damage, however, was theft from cultural institutions and illegal digging of archaeological sites to feed the voracious demand of the international market in cultural objects. The cultural and socioeconomic harms of this market and the illegal trade that feeds it are well known (Gill and Chippindale 1993; Mackenzie 2005; Brodie 2012). But the illegal trade is not something driven by the military necessity of armies or the fanaticism of ideologues. It is a commercial construct. Of all causes of damage to cultural property, it is to all appearances the one most open to control. And yet, during the period in question, it flourished. By the 2010s, the looting and theft of cultural objects in the MENA region had become entirely predictable – as each country in turn fell victim to conflict, its cultural property would be targeted for monetary profit. This very predictability of events encouraged a belief that international public policy was not

working (Brodie 2015a; 2015b). It could not stop the illegal trade nor could it minimize the damage the trade was causing. Nothing had been learned from the experiences of Iraq, Jordan and Afghanistan in the 1990s and 2000s that could help prevent or ameliorate damage to cultural property in Syria, Egypt and Libya in the 2010s. Policy had become entrenched and was unresponsive. Policy makers seemed unable to adapt to changing circumstances.

This chapter shows how from 1990 to 2015 international public policy aimed at cultural property protection (CPP) proved inadequate because of its primary reliance on *protecting* cultural property from theft and looting at source, and its corresponding lack of any measures aimed at *preventing* theft and looting by reducing demand on the destination market. First, the chapter looks at how the principles of CPP developed through international law and its implementations. Next it examines how CPP also became subject to policy measures aimed at crime control and maintaining international security, producing an operational convergence that strengthened strategies and actions aimed at *in situ* protection. The eruption of Daesh onto the world stage in 2014 brutally exposed the shortcomings of CPP and the ongoing inability of policy makers to prevent the looting and theft of cultural property. Thus the chapter concludes with a brief consideration of policy making itself, showing how it is shaped by special interest groups (SIGs) with different though coinciding agendas aimed at the *in situ* protection of cultural sites and away from prevention through demand reduction.

### **Cultural property protection policy failure**

International CPP policy derives legitimacy and direction from two international conventions: the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (including its First and Second Protocols) and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (as augmented by the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects). Operational policy constructed from principles and recommendations enshrined within these conventions aims at cultural site protection at source (broadly defined to include physical *in situ* protection alongside the necessary infra-structural support, together with trade control to prevent illegal export) and the recovery and return of stolen or otherwise illegally traded cultural objects (Hladik 2013: 17; Manacorda 2011: 17, 40–41; Planche 2013). This policy approach has been characterized summarily as one of ‘protection and recovery’ (Brodie 2015a; 2015b). But it is a product of the 1950s and 1960s. It could not have foreseen and was ill-prepared for the globalizing revolution in transport and communication that enabled the episodes of massive conflict-associated looting that came to afflict the MENA region from 1990 onwards.

There are two very practical reasons for the failure of the protection and recovery approach to CPP when faced by these changing global circumstances. First, the policy emphasis on protection at source is unrealistic. Because of the demands they place on available resources, protective measures can never offer long-term, comprehensive protection to cultural sites. Furthermore, they dissipate when needed most during periods of conflict, civil disturbance or economic recession or collapse. Second, the emphasis on recovery and return of a policy that is used if not intentionally designed to protect the cultural contexts of cultural objects is dubious. By the time a looted object is recovered, its historical or aesthetic value has been lessened, perhaps severely so, by the destruction of context caused by its theft, clandestine excavation and illegal trade. And while it is possible to understand the symbolic, emotional and moral importance attached to the repatriation of significant works of art, such as that of the Shiva Nataraja returned to India from the National Gallery of Australia in 2014

(Chan 2014), most returned objects are not of that quality and do not occasion the same reception.

The illegal trade in cultural objects, like any other illegal trade, is the product of demand on the destination market (Elia 1993; Naylor 2002: 11; Polk 2009: 14). There would be no illegal trade in cultural objects if there were no collectors, museums and scholars willing to engage with stolen and illegally traded material. Yet the protection and recovery approach to CPP makes no real provision for initiatives aimed at preventing trade by subduing demand or diminishing the attractive pull of the destination market. What is missing is an interrelated set of pragmatic initiatives aimed at creating a more inhospitable commercial environment by increasing levels of risk for all market participants (Polk 2009; Chappell and Polk 2011; Mackenzie 2011). The precise configuration of a demand reduction approach would depend upon the legal and political realities of individual jurisdictions. It might include practical advice and help for law enforcement or look towards more extensive campaigns of public education. But a central component would be the creation of an administrative or regulatory environment that would incentivize legal trade while at the same time penalizing activities that encourage illegal trade – a strategy of ‘punishment and persuasion’ (Braithwaite 1985). Working together with the already established CPP approach of protection and recovery, trade prevention through demand reduction would offer long-term, proactive relief from looting and illegal trade.

In view of the practical shortcomings of the protection and recovery approach to CPP, the following section examines more closely its genesis and operational modes. It describes the principles of protection and recovery as founded in international law, looking at the strengths and weaknesses of relevant international conventions and the operational priorities they have birthed, and suggests how implemented actions have struggled to achieve their required end of protecting cultural property from looting and theft.

## **Cultural property protection policy instruments and actions**

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

The starting point for any discussion of CPP is the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (which popularized use of the term ‘cultural property’) and its 1954 First and 1999 Second Protocols. They are the end product of a centuries-long succession of soft and hard international laws and conventions concerned to protect cultural property from damage, destruction and plunder in times of armed conflict (O’Keefe 2006). The Hague Convention was conceived from the start as an instrument to safeguard cultural property from the damaging effects of military action and therefore places unilateral obligations on States Parties to protect and refrain from damaging cultural property during armed conflict. In the aftermath of World War Two, however, with the example of Nazi misappropriations of art and cultural property still fresh in mind, it was also designed to prevent the belligerent sponsored or condoned theft and looting of cultural objects. Since 1996, implementation of the Hague Convention has been in the hands of the Blue Shield organizations.

The applicability of the Hague Convention to recent conflicts in the MENA region has been limited because major military powers such as the US and the UK have not been States Parties.<sup>1</sup> Even so, if these powers had acted in accordance with the Convention, it is doubtful whether its provisions would have done much to staunch illegal trade and discourage theft

and looting. The main thrust of the Hague Convention is to protect cultural property from intentional or unintentional damage during military action. Although the Convention does require action to protect cultural property against looting and illegal trade, it is questionable as to what extent its protection is intended to extend outside any immediate area of military occupation. Thus Article 4(3) of the Convention places a duty on States Parties 'to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property.' Article 4(3) is elaborated and reinforced by Article 1(1) of the First Protocol, which requires States Parties 'to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property', but then Article 1(2–3) extends obligations beyond active belligerents, requiring each State Party 'to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory', and 'to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory'. Not surprisingly, as a founding legal text of CPP, the Hague Convention is a clear expression of protection and recovery demanding *in situ* protection of cultural sites, indirect protection of cultural sites through trade control, and the recovery and return of illegally traded cultural objects.

No matter what its beneficial effect for protecting cultural sites from damage caused directly or indirectly by military action, as regards illegal trade, the Hague Convention and its Protocols are weakened fatally by their overly restrictive focus on ground warfare between States Parties, which by the twenty-first century was anachronistic. The provisions against illegal trade do not apply to occupied territory where the occupying power is a non-state actor, such as the Taliban or Daesh (O'Keefe 2006: 98–99, 299–300). Nor is there any provision for suppressing looting and illegal trade consequent to aerial bombardment. Bombing campaigns aimed at degrading economic infrastructure cause massive disruption to civil society and have become a common feature of warfare in the MENA region, leading impoverished and displaced civilians to engage in theft and looting.

The Hague Convention and its Protocols apply only to situations of overt armed conflict, though much of the looting and illegal trade since 1990 has occurred in countries that were not openly at war but still suffering economically from its effects. Jordan, for example, though conducting airstrikes against Daesh in 2015, has otherwise successfully avoided being drawn into any other military action. Nevertheless, archaeological sites throughout Jordan have been badly damaged by illegal digging. Thus throughout most of the period in question, the MENA region could be considered in broad terms as a conflict zone, with its countries suffering to a greater or lesser extent from the economic dislocation, refugee migration, and political and religious violence set in motion by international wars in Iraq and Afghanistan and civil wars in Syria, Libya and Yemen. For countries not directly engaged in armed conflict, however, the Hague Convention would not apply. For these reasons of limited subscription and heavily circumscribed applicability, the Hague Convention and its Protocols have had in practical terms only limited material impact. Their main contribution has been in shaping CPP by their early promulgation of the protection and recovery approach.

### ***The Blue Shield organizations***

In 1996, practical implementation of the 1954 Hague Convention and its Protocols was placed in the hands of the newly constituted International Committee of the Blue Shield (ICBS), founded with the support of UNESCO and participation of its five associated NGOs as 'pillar organizations' – the International Council on Archives (ICA), the International

Council of Museums (ICOM), the International Federation of Library Associations and Institutions (IFLA), the International Council on Monuments and Sites (ICOMOS) and the Coordinating Council of Audiovisual Archives Associations (CCAAA). The ICBS was supplemented in 2006 by the Association of National Committees of Blue Shield (ANCBS), which was established to coordinate the work of newly established national committees. The mission of the Blue Shield organizations is ‘to promote the protection of cultural property ... against threats of all kinds and to intervene strategically with decision makers and relevant international organizations to prevent and to respond to natural and man made disasters’ (Blue Shield n.d.)

The inclusion of ‘natural disasters’ in this mission statement is surprising. There is no requirement in the Hague Convention to offer CPP against natural disasters, and it seems likely that this mission extension reflects the overall mandate of the pillar organizations and the professional expertise and interests of their members to protect the fabric and integrity of cultural property placed in their charge. It keys in well with military imperatives to avoid damaging cultural property during combat. It also serves to highlight the fact that the Blue Shield organizations are not constrained by the actual text of the 1954 Hague Convention and its Protocols. In practice, however, this coincidence of concern about natural and man-made disasters means that Blue Shield has placed operational emphasis on *in situ* protection and post-disaster restoration of cultural sites (Wegener 2008: 171). Strategies aimed at preventing looting and theft focus upon offering cultural sites physical protection, by military forces or other means, even though the practical limitations of such protection are recognized (Kila 2015: 200–202). The Blue Shield mission makes no provision for taking preventative action by subduing demand and reducing the size of the destination market. Members of the Blue Shield organizations defend this decision not to engage in strategies aimed at demand reduction by claiming that looting and the illegal trade are not a concern of Blue Shield as they fall under the scope of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.<sup>2</sup>

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

Members of the Blue Shield organizations look towards policy grown out of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property for controlling the illegal trade in cultural objects out of the conflict-wrought MENA region. Their view is understandable. The UNESCO Convention was conceived and drafted with the problems of illegal trade in mind. Principles enshrined within the 1970 UNESCO Convention have, together with those of the 1954 Hague Convention’s First Protocol, shaped the CPP policy approach of protection and recovery.

The Convention places a wide-ranging set of obligations on States Parties (O’Keefe 2007). Articles 5 and 6 are concerned with ensuring the appropriate legal, administrative, technical and other professional expertise to secure the *in situ* protection of cultural property and control over the export of cultural objects. In other words, they are concerned to establish an institutional regime of CPP within the national jurisdiction of each State Party. But the effective functioning of the envisaged institutions requires a healthy economy, secure government control of territory and a strong jurisdiction. Many of the MENA countries have in the past possessed or continue to possess the necessary institutions, but their effectiveness has been reduced, often severely, during periods of conflict or civil disturbance when economies are

degraded and central government control of territory becomes withdrawn or contested. In Iraq, for example, a well-resourced Department of Antiquities was able to fulfil the requirements of Articles 5 and 6 until after the 1991 Gulf War when the imposition of UN sanctions and infliction of sporadic bombing campaigns compromised its integrity and operation. The damage caused to the country's economy was accompanied by a rash of museum thefts and an upturn in illegal digging of archaeological sites (Gibson 1997).

Articles 7 and 9 establish the requirements among States Parties for the recovery and return of illegally exported cultural objects. Article 7(b)(ii) formalizes recovery and return as a fundamental component of CPP. Articles 7(b)(i) and 9 emphasize the conceptualization of protection to include trade control. Article (9) requires diplomatic action and envisages bilateral or multilateral cooperative agreements between States Parties. Such bilateral agreements form the central operational action of the US implementation of the 1970 Convention with the 1983 Convention on Cultural Property Implementation Act. But in the absence of functioning diplomatic relations such actions are not possible in wartime. Normal intergovernmental communication does not always endure and will not extend to *de facto* though not internationally recognized regimes such as the Taliban and Daesh. (Nevertheless, in August 2016, the US acted unilaterally to place emergency import controls on Syrian cultural property.)

Article 10 is concerned with demand reduction, largely by means of public education, though by not specifying any exact measures the Article is vulnerable to minimal or evasive compliance. The UK government, for example, has never systematically engaged in raising public awareness of the problems attendant upon buying cultural objects from the MENA region. Article 10(a) requires each State Party to 'oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject.' Again though, the requirement is weak, offering no guidance about appropriate oversight or inspection. In the UK, dealers in cultural objects have successfully argued that the requirement is met by the transactions register they must by law already maintain for Value Added Tax (sales tax) accounting purposes. These tax registers are open for inspection by tax officials with no expertise in CPP.

Thus the main body of the 1970 UNESCO Convention is primarily concerned to protect cultural property at source by developing the necessary institutional capacity and by discouraging illegal export through trade control, and also to encourage the recovery and return of stolen and illegally exported objects. The provisions of the Convention cannot be guaranteed in wartime or during longer periods of peacetime 'cold' political confrontation. During the period in question domestic and diplomatic actions conducted within the framework of the 1970 Convention aimed at protecting cultural property and preventing illegal trade of cultural objects were not always viable for the MENA region. In view of the ongoing cultural destruction, UNESCO was forced into adopting an international coordinating role, advising and enabling a series of targeted 'emergency actions'.

### ***UNESCO emergency actions***

The work of UNESCO since its foundation in 1946 has been fundamental in establishing and promoting the legal and normative contexts of CPP. But as a peacetime organization, it has neither the financial resources nor the institutional capacity to offer effective solutions to 'emergency' threats to cultural property such as those posed by the extreme 'spikes' of looting and illegal trade that have been seen in the MENA region since 1990. UNESCO

itself has said as much. On 4 June 2015, the UNESCO programme specialist for CPP was quoted as saying ‘We lack adequate technical and financial means. This is an emergency situation which is new for UNESCO, which is not a humanitarian agency and is not designed to respond to emergency crisis situations, so we are redefining our goals and strategy’ (Reinl 2015).

Up until then, the response had been made through a series of emergency actions. Emergency actions are structured by the protection and recovery approach to CPP and are planned, organized and implemented to a lesser or greater extent under UNESCO guidance and with the facilitation of UNESCO offices (UNESCO 2014). They mobilize teams of experts to advise upon damage mitigation through such actions as documentation, capacity building and awareness raising in countries whose cultural sites are being damaged by direct action or by theft and illegal trade. Emergency actions have met with limited success because they are usually reactive, arriving too late to prevent serious damage, and continue to struggle in hostile circumstances with the implementation of measures aimed at protection and recovery. Another problem is that an emergency action’s targeting of international assistance at cultural site protection in one country also leaves sites of other countries vulnerable.

On 21 October 2011, for example, UNESCO announced it had convened a meeting of experts to discuss strategies for safeguarding the cultural property of Libya in the ‘aftermath of conflict’ (UNESCO 2011). (The conflict in question was the one fought between February and October 2011 that resulted in the overthrow and death of Muammar Gaddafi.) In line with the protection and recovery approach to CPP, the main recommendations were aimed at securing Libyan cultural sites through physical protection and infrastructural support. As regards illegal trade, the only recommendation was ‘To collect information on missing cultural objects from catalogues, archives, inventories, and disseminating it among concerned institutions (INTERPOL, etc.) and auction houses with a view to stopping their further illicit circulation and favoring their return.’ The emphasis was placed on recovery, with no real provision for preventing looting and theft by reducing demand. By January 2015, with Libya again in the grip of civil war, the implementation of this UNESCO action plan had stalled and the country’s cultural property was facing the threat of illegal trade and other causes of destruction (di Lernia 2015: 548–549). The weakness of a policy initiative aimed at achieving *in situ* protection was once more exposed, unable to function when needed most during conflict. The Libyan emergency action also wasted resources that might have been better spent on demand reduction, and in so doing have reduced the incentive to loot and trade cultural property from Libya, and from other countries in the MENA region, including Syria.

In March 2011, the civilian population of Syria started demonstrations against the governing regime of Bashar al-Assad that subsequently degenerated into civil war. It was not until 10–13 February 2013, nearly two years later, that UNESCO held a meeting in Amman specifically to address ‘the issue of illicit trafficking’ in Syria (UNESCO 2013). The plan agreed was for *in situ* protection. Physical protection was clearly not possible in this case, and so protection was to be achieved through awareness raising and capacity building. The only provision made for demand reduction was for UNESCO and ‘other international organizations’ to ‘foster cooperation with countries where the market for illegal works of art is more active, and launch preventive actions in collaboration with their authorities.’ This recommendation was hopelessly vague and compares unfavourably with the level of detail included in other recommendations. The UNESCO action plan was implemented on 1 March 2014 as the Emergency Safeguarding of the Syrian Heritage Project (ESSHP), supported for three years by \$2.46 million of European Union (EU) funding. Again, the plan was reactive, established three years after the onset of civil unrest and war. It failed to bring the situation under

control, and the appearance of Daesh as an international actor worsened the situation and embroiled Iraq, necessitating another emergency action. The funding allocated to the ESSHP was not available for CPP in other countries, for example Libya in 2015 when the political situation there started to deteriorate once more.

In view of the demonstrable shortcomings of established CPP policy, it was surprising that throughout the MENA region policy makers continued to support emergency actions aimed at protection and recovery, and did not consider alternative strategies aimed at demand reduction. One explanation is that, during the period in question, CPP had fallen within the scope of crime control and international security policy making. The preferred operational goals of these policies were broadly concordant with those already existing for CPP. There was no challenge to the protection and recovery approach and no inducement to search out new solutions.

### **The criminalization of the illegal trade in cultural property**

In the globalized and deregulated world of transnational flows of money, people and goods, the organization and control of illegal trade and markets have become major sources of criminal profit (Aas 2007; Naím 2007; Naylor 2002; Shelley 2014). Transnational illegal trades are socially harmful and the illegal trade in cultural objects is no exception. Bribes, extortion payments and other illegal disbursements are unavailable for taxation. Consumer spending on illicit commodities diverts money away from the legal economy and reduces taxable income. State agencies are corrupted and fiscally compromised, causing a deterioration of social provision that impacts negatively upon the integrity of civil society and government legitimacy. Unaccountable 'dirty' money is made available for other illegal enterprises. Concern that globalization has allowed the transnational expansion of illegal trades prompted the adoption by the UN in November 2000 of the Convention Against Transnational Organized Crime. Article 2(a) of the convention defines an 'organized criminal group' as a

structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

By this definition, the illegal trade in cultural objects is an organized crime (Manacorda 2011; Campbell 2013; Dietzler 2013; Mackenzie and Davis 2014). Thus the problems caused by the trade can be and have been recast as a crime control issue. Cultural sites could be protected by preventing the organized criminal trade that damages them.

International policy for controlling organized crime has focused upon strengthening criminal justice deterrence, first by increasing the range of investigative tools and powers available for use by police and other law enforcement agencies in apprehending criminals, and second by diversifying the kind of punitive sanctions that might reduce incentives to commit crimes (Scherrer 2010: 59–65; Finckenauer 2011). Money laundering laws and offences in particular have been developed to stop offenders profiting from the proceeds of crime (Naylor 2002: 18; Levi 2003: 219–222). There has been a growing move towards forfeiture or confiscation of criminal proceeds and assets.

For the illegal trade in cultural objects, stronger law enforcement has been confounded by the secrecy of the trade, the evidential requirement of proving a crime committed in a



foreign conflict zone, and the difficulty of securing effective police collaboration in countries suffering from conflict or civil disturbance. A fall-back option has been to seize material because of customs violations. In the USA, Immigration and Customs Enforcement (ICE) in the New York area has been particularly effective in this regard, recovering and returning quantities of material from several MENA countries, and convicting two dealers for offences relating to the smuggling of material out of MENA through Dubai (Bruer and Rosen 2016).<sup>3</sup>

Crime control through strong law enforcement should have an important part to play in dismantling the destination market and thus preventing damage to cultural property through diminishment of looting and illegal trade. But for reasons already described, its material impact is questionable. Convictions are rare, and it remains to be established whether the conviction and removal of criminals from the destination market actually reduces the volume of illegal trade, or whether trade simply reconfigures and continues undiminished. Neither of the two dealers convicted by ICE received a custodial sentence, and by 2015 both were back in business. The recourse to customs seizures brings crime control policy into close alignment with the return and recovery strand of CPP. The recovery and return of an illegally traded cultural object is also an exercise in asset forfeiture. But the criticisms of the return and recovery strand of CPP still apply. The material recovered is often (though not always) of variable quality, and the quantities seized are probably not enough to constitute a financial deterrent.<sup>4</sup> Monetary losses incurred through confiscations are likely to be factored into pricing and accepted as a cost of doing business. There is a developing understanding for illegal trades generally (Finckenauer 2011: 310; Scherrer 2010: 65), including the illegal trade in cultural objects (Chappell and Polk 2011: 106–111), that while strong law enforcement should be a necessary component of a successful crime control policy, by itself it is not enough – there needs to be a complementary strategy of crime prevention through demand reduction.

### **The securitization of the illegal trade in cultural objects**

The 1989–1991 collapse of the Soviet bloc is generally believed to have opened new horizons for transnational organized crime. As borders opened, funds of previously Soviet-controlled capital passed out of public into private hands and then across the borders of newly post-Soviet countries, with a consequent weakening of governance and public order at home and a flow of dirty money abroad for investment in other criminal enterprises, especially ones in areas not subject to effective rule of law (Makarenko 2012: 15–16). Thus during the 1990s the threats posed by organized crime to civil society in the USA and Europe became ‘othered’, perceived as emanating from an alien criminal conspiracy aimed at subverting consumer markets in the developed world (Edwards and Gill 2003: 268). Organized crime was presented as a threat to national and international security (Woodiwiss 2003: 20). Working within this narrative, the operational goals of US-led international crime control policy started shifting towards suppressing the production of illegal commodities at source and interrupting their supply to the destination market.

The situation grew worse after the 9/11 attacks on the USA. The activities of transnational crime and terror groups became increasingly entangled with the appearance of ‘hybrid’ organizations and the creation of a global ‘crime–terror nexus’ (Makarenko 2012; Shelley 2014). Like criminals, ‘terrorists’ and insurgent militias are known to raise money through the organization and control of illegal trades, and to rely upon corrupt public and private actors to facilitate the movement and laundering of goods and money. The idea of a crime–terror nexus reaffirms the view that crime control is an issue of national or international security

(Edwards and Gill 2003: 269; Naylor 2002: 42). Such is the case with the illegal trade in cultural objects, because of the increasingly visible link with criminal and militia funding. As early as 1996 it was being reported in Afghanistan that Mujahideen and Taliban militia groups were actively digging up artifacts for sale or levying a tax on the sale of artifacts (Brodie 2009: 50–51). Similar though largely unconfirmed reports were made from Iraq after the 2003 Coalition invasion (Brodie 2011). By 2013 militia groups in Syria were said to be selling artifacts to buy weapons and the issue came to more broad public attention in 2014 with extensive reporting of the profits that Daesh was reputedly making from the trade (Al-Azm et al. 2014).

For the international community, the narrative of threatened security informed Security Council Resolution (UNSCR) 2199, which in February 2015 placed trade controls on Syrian cultural objects and reaffirmed trade controls on Iraqi cultural objects. Aimed primarily at degrading economic support for Daesh and Jabhat al-Nusra (JAN), for cultural property it ‘noted with concern’ in Article 16:

that ISIL [Daesh], ANF [JAN] and other individuals, groups, undertakings and entities associated with Al-Qaida, are generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks.

(UN Security Council 2015)

Its proposed remedy in Article 17 was:

that all Member States shall take appropriate steps to prevent the trade in Iraqi and Syrian cultural property . . . illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011, including by prohibiting cross-border trade in such items, thereby allowing for their eventual safe return to the Iraqi and Syrian people.

(UN Security Council 2015)

Again, the intention was to offer protection at source by means of trade control and secure the recovery and ‘eventual safe return’ of illegally traded objects.

The UNSCR 2199 trade controls reflected CPP policy, but were enacted within a broader security-related initiative to reduce the economies of the terrorist organizations Daesh and JAN. Their effectiveness is questionable. They are open to the same set of criticisms as UNESCO emergency actions. They are reactive, coming too late to prevent serious damage. There is no recognition of the practical problems of discriminating between material illegally exported before or after the stated date thresholds.<sup>5</sup> They are country-specific and thus difficult to enforce when archaeological cultures spread across the borders of more than one modern state. Trade controls generally have enjoyed limited success because of porous borders. Within the MENA region itself, the many long land and sea frontiers are difficult to police, particularly during times of conflict or civil disturbance. Outside the MENA region, things are not much better. With only limited customs inspections of shipping containers, airline luggage and mailed parcels, it is only occasionally that any illegally traded cultural objects are intercepted. In the general celebration that greeted the announcement of UNSCR 2199, no one stopped to reflect why the trade in Iraqi objects was still a problem in 2015 when trade controls had first been introduced by UNSCR 661 in August 1990.

Thus by 2015 there was operational convergence between CPP, crime control and international security policies. Customs seizures and trade controls were intended to interrupt supply to the destination market, thereby reducing the incentive to loot and steal at source. There was no operational imperative or practical provision in any of the policies to reduce destination market demand. There was no understanding that emergency actions and trade controls always arrive too late and are constrained by their focus on a single country. For protection to be proactive, it requires prevention that is global in application. The trade needs to be diminished and the incentive to steal or loot already reduced before any episode of conflict or civil disturbance, whenever and wherever it may occur in the world. Demand reduction is key.

### **The endgame: Daesh and the destruction of cultural property**

In March 2013, Daesh seized control of the regional capital of Raqqa in eastern Syria. Reports began to leak out of the theft of objects from Raqqa museum and of ‘large scale’ (Cockburn 2014) or ‘massive’ (Lamb 2014) looting of archaeological sites. Then, in June 2014, Daesh burst into media prominence with the rout of the Iraqi army at Mosul and the occupation of a large part of western Iraq. A newspaper article reported on the capture and analysis by Iraqi intelligence of computer memory sticks containing information about Daesh finances. It seemed to make the alarming claim that Daesh had made \$36 million from the sale of cultural objects from one area of Syria alone (Chulov 2014). From what is known of the financial structure of the trade in cultural objects, the claim is not a very likely one. Prices multiply many times over as objects pass from source to the destination market (Brodie 2014: 34–35). For Daesh to be making \$36 million from the sale of objects obtained from one area of Syria would have implied a destination market for Syrian cultural property valued in billions of dollars. In July 2014, the \$36 million figure was rendered even less believable by news that Daesh profits were derived from taxing the excavation and trade of cultural objects (Al-Azm et al. 2014). That being the case, then the \$36 million taken by Daesh as tax would be only a small part of the total value of what by extrapolation would then be a totally unbelievable multi-billion-dollar trade.

This figure of \$36 million was never corroborated (or discounted) by independent examination of the memory sticks (Hardy 2014), and so should be considered questionable at best.<sup>6</sup> Nevertheless, despite the uncertainties and unrealities surrounding the figure, traditional and social media and increasingly the political establishment seized upon the idea that Daesh was profiting from the looting and trade of cultural objects to the tune of millions of dollars annually (e.g. Abhyankar 2014; Drennan 2014; Howard et al 2014; FATF 2015: 16, 37). These speculative and probably inflated assessments of the monetary value of the trade to Daesh were not being made by uninformed reporters in newspapers, but by respected members of the political, military and cultural heritage establishments – the kind of people who have the ear of the policy makers. They seemed to be overlooking the fact that on 23 October 2014 the US Treasury Department had published the text of a speech made by David Cohn about the financing of Daesh (Cohen 2014). He believed Daesh was largely self-financing, raising money through oil sales, kidnapping for ransom, and extortion or taxation of businesses in areas under its control. He made no mention of cultural property. By this time, however, the media coverage was writing itself. The story was ‘trade makes millions for ISIS’ (e.g. Hall 2015; Crowcroft 2015), and the millions were being used to further human suffering. The illegal trade in cultural objects had passed from being a crime against culture to a crime against humanity.

On 14 May 2014, the US Department of State announced that it had designated Daesh and JAN as Foreign Terrorist Organizations (USA 2014). A few months later, on 22 November 2014, working with this new terrorist ordering of the Syrian conflict and media perceptions of a multi-million-dollar trade, US Secretary of State John Kerry spoke on the issue of threats to Syrian and Iraqi cultural property at the Metropolitan Museum of Art in New York City (Kerry 2014). After declaring that ‘Ancient treasures in Iraq and in Syria have now become the casualties of continuing warfare and looting. And no one group has done more to put our shared cultural heritage in the gun sights than ISIL,’ he went on to describe the US response. The US was providing or increasing funding for the American Schools of Oriental Research to document the condition of cultural sites in Syria and Iraq, for the training in Iraq of Iraqi conservation experts, and for the National Science Foundation in partnership with the American Association for the Advancement of Science to monitor the destruction of cultural sites in Syria. Thus by May 2015, for the US government, the illegal trade in cultural objects from Iraq and Syria had become well entrenched as an issue of national security and in consequence substantial funding was being made available for initiatives aimed at documenting and tackling the problem at source. Kerry signally failed to consider or acknowledge that demand on the destination market might be exerting a causal attraction or to announce federal funding for any project that might look towards prevention by reducing market demand.

While privately doubting the exaggerated reporting of Daesh profits, some cultural heritage and law enforcement professionals thought the securitization of CPP to be a positive step forward as it attracted political attention and increased funding for countermeasures.<sup>7</sup> Unfortunately, the funding was for source-directed projects of a type that had been shown in the past to be inappropriate for the task at hand. Funding was also supplied only for projects concerning Iraq and Syria. Nothing was offered for other countries whose cultural property was being stolen or destroyed by groups not officially categorized as posing a terrorist threat. In May 2015, despite the UNESCO emergency actions and UNSCR 2199, it was reported that the looting of cultural sites in Syria was on the increase (Al-Azm 2015; Casana 2015). By then, too, Daesh was looking towards cultural property not as something to be sold, but as something to be destroyed.

Daesh had been systematically destroying Shia and Sufi shrines in occupied areas of Syria and Iraq without much international reaction until in March 2015 social and conventional media lit up with outrage at the Internet release of a video showing Daesh personnel destroying exhibits in Mosul museum, Iraq. Another barrage of condemnation followed when on 4 April 2015 Daesh posted a video showing men using pickaxes and hammers to attack statues and architectural reliefs at the first- to third-century AD site of Hatra in Iraq. On 11 April 2015, another Daesh video showed the explosive demolition of the Northwest Palace of the ninth- to eighth-century BC Neo-Assyrian site of Nimrud in Iraq. For a brief moment in time, CPP teetered on the edge of militarization. Iraq’s minister of culture asked for US-led airstrikes on Daesh militia seen approaching other cultural sites (Barnard 2015). Italy’s minister of culture called for the creation of a UN peacekeeping force that would be able to intervene and defend cultural sites (Scammell 2015). These calls for military action were repeated more widely through social media. Though resisted by the US and other powers with operational forces in the region, the move for militarization of CPP formed the logical endpoint of a policy momentum developing through criminalization and then securitization.

The motives and motivations of Daesh for their markedly visual destructions of ancient, pre-Islamic cultural sites became the subject of much speculation. Perhaps the destructions were associated with a larger campaign of commercial looting, whereby smaller objects were

sold on the market and larger objects and structures were destroyed (Chulov 2015). Perhaps they were part of a strategy of cultural cleansing, designed to eradicate the identity and memory of non-Sunni communities and to weaken their historical attachments to territory (Jiyad 2015). They might have been intended to draw in foreign forces for a prophesied apocalyptic military showdown (Chulov 2015). But perhaps in reality they were expressions of iconoclasm. The attributions of universal cultural value to ancient remains by the 1954 Hague Convention and the 1970 UNESCO Convention may have prompted the Daesh destructions as an iconoclastic reaction to the perceived ‘worship’ of false idols in their secular temples (museums), perhaps enabling Daesh to argue also that the international community values cultural property more than human life (Colla 2015). Daesh itself, through its English-language mouthpiece magazine *Dabiq*, claimed to have destroyed the ‘idols’ because of the admiration shown to them by unbelievers, and celebrated the ‘rage’ of the unbelievers occasioned by their destruction. The article in *Dabiq* was written after the damaging attacks on the Mosul museum and associated media coverage but before the demolition of Nimrud. Perhaps the media outcry that followed the March Mosul video prompted the later destructions (Jones 2015).

The possibility that Daesh might make ideological, propaganda or psychological use of cultural property was not unexpected. Scholars and officials inside Iraq had been warning anybody who would listen as early as October 2013 about the likely danger of publicizing any link between Daesh and cultural property.<sup>8</sup> In Libya, a senior scholar argued likewise, asking for the media to keep ‘a lower profile’ (Kingsley 2015). Their warnings fell on deaf ears. The security narrative had politicized cultural property. The failure to control illegal trade before 2014 had left fertile ground for media sensationalism and loud, strident and factually aberrant assertions of the monetary and cultural value of cultural property. These hysterical and impotent outbursts may only have helped convince Daesh of the cultural, emotional or political importance of cultural property to the international community, and thus of the potential use of violent and declarative destruction as a psychological weapon of terror, aimed either at those it wished to confront, those it wished to subdue or those it wished to recruit (Stern and Berger 2015: 198–218).

### **Conclusion: Policy and policy making**

By 2015, CPP had become entwined with crime control and international security, yet it had still failed to achieve any kind of decisive hold on the problem of looting and theft of cultural property. Policy makers had been unable to go beyond protection and recovery to offer anything new, and policy making itself seemed locked in a vicious cycle of repetition. Policy making, rather than policy, looked to be at issue, unreflecting and seemingly incapable of learning from past experience. Yet policy making in this field is a poorly understood process. The route from looting and theft in Syria to UNSCR 2199, for example, is a difficult one to follow. Doubtless there were back-channel representations, consultations and negotiations, and a concern on the part of policy makers to be seen to be doing something in response to heightened public concern. The people involved must know what happened. But there is no full and detailed description of the process that is open to critical analysis.

What is more open to consideration is the constitution and role of special interest groups (SIGs) in policy formation. Each SIG comprises a community with a commonality of interest and purpose, held together discursively by a shared conceptual vocabulary. A SIG is a source of expert advice but also of advocacy. Members of SIGs are often called upon in an advisory capacity by UNESCO, the UN Security Council and national governments. They are

expected to provide objective advice from the standpoint of their professional expertise, but such advice is inevitably directed by their concerns and the nature of their expertise. Thus SIGs are biased towards offering preferred solutions to discursively framed problems. In many domains this is a healthy process, as multiple viewpoints allow for more fertile policy making. For CPP, however, this looks not to be happening. Instead, there are at least five different SIGs working in unintended synergy to drive policy in an unproductive direction, away from anything that might promote prevention and towards more interventions aimed at protection and recovery. The SIGs in question are the military, cultural heritage experts, security experts, domestic and expatriate actors of individual MENA countries, and the ‘demand community’ – the collectors, dealers, museum curators and university academics that constitute demand on the destination market.

### ***The military***

Since the public outcry that greeted the plunder of the Iraq National Museum and other cultural institutions in 2003 and the accompanying looting of archaeological sites, the armed forces of NATO and maybe other countries have become sensitized to the issue of CPP. In the first place, it is simply bad publicity for the armed forces of a country and by extension the country itself to be portrayed as ‘cultural barbarians’ when damaging or failing to protect cultural sites in conflict areas. But military planners have begun to recognize that avoiding damage to cultural sites during active combat can act as a ‘force-multiplier’ by not unnecessarily antagonizing the local population (Stone 2013: 170). Thus military planners have come to appreciate the political and strategic benefits of securing *in situ* protection of cultural property during wartime. They have no reason, however, to take account of the destination market, which is a civilian domain outside their competence and remit.

### ***Cultural heritage experts***

This SIG comprises a large and diverse community of conservators, architects, art historians, archaeologists, lawyers, museum curators and university academics. They act on their own behalf or through the agency of their professional organizations or NGOs. For its emergency actions, UNESCO seeks partnerships and consultations with appropriate cultural heritage experts and leans heavily for advice and support upon the UNESCO associated NGOs (ICA, ICOM, IFLA, ICOMOS, CCAAA). The expertise available within these NGOs and among cultural heritage experts more generally is relevant largely for the protection, documentation, conservation, restoration and reconstruction of cultural property. ICOM is the only organization with any active expertise as regards the illegal trade in cultural objects. When individual cultural heritage experts are consulted for emergency actions, they are invariably selected for their experience of working in the country in question. Cultural heritage experts are not usually interested or even aware of what is happening on the destination market and have no understanding of its organization and operation.

### ***Security experts***

This SIG comprises a small and poorly defined community of academics, retired military personnel and other commentators who are primarily concerned with issues of national or global security. They are only concerned with CPP insofar as it is regarded as a security issue, and aimed at denial of support for terrorist groups.

### ***Domestic and expatriate actors***

The government agents and private citizens of countries engaged in conflict usually have a vested interest in protecting the cultural property of their home countries, as well as in securing more general humanitarian assistance. They are politically, personally and emotionally committed to the wellbeing of their home countries. They act through diplomatic channels, the offices of UNESCO, or through their own personal and professional networks to mobilize private, public and political support for intervention in their home countries. Arguing for policies that would divert material support away from source towards measures aimed at reducing destination demand would be incompatible with their domestic commitment.

### ***Demand community***

This SIG comprises wealthy collectors allied with senior academics and museum curators and directors. They deny any functional relationship between demand and supply. Together, they form a powerful constituency that is able to rebuff criticism of their actions and deflect policy interventions away from what they consider to be unwarranted interference with their own interests and practice in constituting demand, and towards tackling the problem at source.

There is a very real possibility that UNESCO emergency actions and associated initiatives such as UNSCR trade controls conform in intent and content to the interests of these SIGs, each with its own reasons for directing policy towards offering protection and recovery. These SIGs possess neither the inclination nor the expertise to offer anything different.

The inflexibility of CPP in the hands of SIGs provides a good example of path-dependency (Klein and Marmor 2006: 902), where policy making is constrained by the limitations of long-vested, structuring interests and an inherited operational toolkit. Working against that unforgiving grain, it is difficult to create space for more creative rethinks of what might be possible, desirable or productive. By 2015 however, UNESCO was beginning to show an interest in market reduction (Prott 2011). Paragraphs 50 and 51 of the 2015 operational guidelines for the implementation of the 1970 Convention offered a way forward when they expanded upon Article 5(e) of the Convention which states that each State Party should establish ‘for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules.’ Paragraphs 50 and 51 of the guidelines suggested that these rules should be developed regionally, nationally and internationally, and apply to a broader range of actors than originally specified, including additionally anthropologists, archaeologists, conservators, restorers and other relevant professional staff. They also recommended elements of compulsion and incentive, very much in line with the market reduction approach of punishment and persuasion, though absent from the original text of the Convention (UNESCO 2015: 13). It remains to be seen how the broader policy making community and its SIGs will react to this potentially productive departure for CPP.

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## Notes

- 1 The US ratified the Convention but not its protocols in 2009.
- 2 Several Blue Shield members have made this claim independently in private conversations with the author. The Director of Programs and Partnerships of ICOM, one of the five pillar organizations, made the claim publicly in December 2014 at a conference where the author was in attendance.
- 3 ICE showed the application of strong law enforcement to best effect in its pursuit of Asian art dealer Subhash Kapoor. By 2015, Operation Hidden Idol had achieved three convictions and recovered 2,622 south and southeast Asian cultural objects from Kapoor's business premises in the New York area (Mashberg 2015). Kapoor himself was under arrest in India.
- 4 It is not well reported, but transit countries in the MENA region such as Turkey, Jordan and Lebanon have been seizing large quantities of material, much more than the countries of the destination market. Lebanon, for example, reported 46 seizures of material from Syria during the three years 2012–2014 (Seif 2015).
- 5 The UNSCR date thresholds ignored export controls established by Iraqi national law in 1936 and Syrian national law in 1963.
- 6 In May 2015 US special forces recovered documents showing that between 6 December 2014 and 26 March 2015 Daesh collected \$265,000 through a 20 per cent tax on the trade in cultural objects, suggesting a total monetary value for the taxed trade of approximately \$1.3 million for four months (Keller 2015).
- 7 Observations made by several individuals in conversation with the author.
- 8 An Iraqi culture ministry official warned the author about the possibility at a conference in September 2013, and again in 2014. A similar view was reported in the press (Bowley 2014).

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