

THE NEW AMERICAN APPROACH TO CULTURAL HERITAGE
PROTECTION:
GRANTING FOREIGN AID FOR IRAQI CULTURAL HERITAGE

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Introduction

On October 16, 2008, the U.S. Department of State announced its plans to implement the Iraq Cultural Heritage Project (ICHP), an initiative to assist in the preservation of the ancient history of Iraq.¹ Immediately thereafter the U.S. Embassy in Baghdad awarded a grant of nearly \$13 million to International Relief and Development, a non-governmental organization, to begin rebuilding Iraq's cultural past.² The Department of State's Bureau of Educational and Cultural Affairs followed suit by providing an additional \$1 million to the initiative and proclaimed that it would spearhead efforts to secure up to \$6 million in private sector contributions.³ The Iraqi State Board of Antiquities and Heritage responded with plans to enhance funding directly from the Iraqi national parliament to complement American efforts at Iraqi cultural heritage preservation.⁴

The U.S. Department of State's dedication to the preservation of Iraqi cultural heritage seems quite unprecedented. For starters, the general American attitude towards cultural heritage protection is viewed as far below the expectations set by the international community. This is evidenced by the U.S.'s decades long delay in ratifying the 1954 Hague Convention for the Protection of Cultural Property in the Event of Conflict (1954 Hague Convention), which was ratified in March 2009⁵, and the U.S. adopting only two provisions of the 1970 UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention)⁶, adding a disclaimer to their adoption that the

¹ State Dep't Press Release 2008/880, 2008 WLNR 19803295, (released, Oct. 16, 2008).

² State Dep't Press Release 2008/878, 2008 WLNR 19803290, (released, Oct. 16, 2008).

³ *Id.*

⁴ *Id.*

⁵ Corine Wegener, *The 1954 Hague Convention and Preserving Cultural Heritage*, ARCHEOLOGICAL INST. OF AM., Oct. 19, 2010, <http://www.archaeological.org/news/hca/3137>.

⁶ General Conference of the UNESCO, Paris, France, Nov. 14, 1970, 16th Sess.,

“United States reserves the right to determine whether or not to impose export controls over cultural property.”⁷ Moreover, it was only in 2001 that the U.S. began making efforts at international cultural heritage protection by creating a grant program awarding requests for cultural heritage assistance by U.S. ambassadors stationed around the globe.⁸ Even then, in 2001, for example, out of the \$3 million requested for aiding 140 cultural heritage protection projects around the world, the U.S. Department of State only awarded \$1 million total, disbursed amongst those 140 projects.⁹ In 2002, project requests dropped to 129 proposals of which only 50 were honored around the world.¹⁰ The U.S. Departments of Commerce, Justice and State combined allotted \$1 million to be shared amongst the 50 honored requests.¹¹

What the U.S. Department of State is currently doing in Iraq then appears to be more than the typical cultural heritage protection assistance the U.S. provides to other countries around the world. In fact, the financial assistance is probably more accurately described as foreign aid possibly in response to the direct American involvement in the destruction of Iraqi cultural heritage during the U.S.-led invasion of Iraq in 2003. The U.S. government incurred scathing

Recommendation adopted,
http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html#STATE_PARTIES.

⁷ *Id.*

⁸ U.S. Dep’t of State, *The Ambassador’s Fund for Cultural Preservation, Bureau of Educational and Cultural Affairs*, <http://exchanges.state.gov/heritage/afcp.html> (Last visited December 19, 2010).

⁹ U.S. Dep’t of State, *The Ambassador’s Fund for Cultural Preservation 2001 Report*, (2001) http://exchanges.state.gov/uploads/rZ/vv/rZvv7Ob9u_d5DgF-VmvWGA/2001AFCPannual.pdf.

¹⁰ U.S. Dep’t of State, *The Ambassador’s Fund for Cultural Preservation 2002 Report*, (2002) <http://exchanges.state.gov/uploads/Iv/sR/IvsRL9EsyqEDQ32LCWnyCw/2002-3AFCPannual.pdf>.

¹¹ *Id.*

attacks by the international community for its failure to protect the Iraq National Museum from looters and for its destruction of the ancient city of Babylon during their occupation in 2003.¹²

Generally, the U.S. Agency for International Development (USAID), which administers the bulk of international economic assistance, defines foreign aid as financial assistance to promote foreign economic growth, reduce international poverty, and combat the HIV/AIDS pandemic.¹³ However, recent congressional research reports have included promoting democracy, conflict prevention, and even domestic defense in their definition of fostering foreign aid.¹⁴

The question now is, given the situation the U.S. has faced with Iraq in the last seven or so years, is the U.S. Department of State creating a new category of foreign aid by doling out funds for cultural heritage development or are the funds the very same economic growth stimulation and poverty prevention methods the U.S. has used for all nations since at least the end of World War II? Or rather, did the U.S. create the ICHP merely as a response to the sharp criticism received during the 2003 invasion of Iraq where American forces participated in, or passively permitted, the destruction of countless forms of Iraqi cultural heritage? Regardless of what the more narrow answer will be, an important precedent in the American involvement in international cultural heritage protection is about to be set.

In reviewing the actions of the U.S. Department of State in response to the destruction of Iraqi cultural heritage, I will first discuss Iraqi history and the background facts leading up to the

¹² Karin E. Borke, *Searching for a Solution: An Analysis of the Legislative Response to the Iraqi Antiquities Crisis of 2003*, 13 DEPAUL-LCA J.ART & ENT. L. & POL'Y 381, 403 (2003).

¹³ USAID Primer What We Do and How We Do it, USAID, Jan. 2006,
http://www.usaid.gov/about_usaid/PDACG100.pdf

¹⁴ Foreign Aid: An Introductory Overview of U.S. Programs and Policy, Congressional Research Service Report for Congress, Apr. 15, 2004,
<http://fpc.state.gov/documents/organization/31987.pdf>

U.S.-led invasion of Iraq in March 2003. Next, I will discuss two separate events involving U.S. troops and the destruction of Iraqi cultural heritage: first, the initially passive response of U.S. troops to the obliteration of the Iraq National Museum and second, the U.S. occupation of the ancient city of Babylon. When dealing with each section, I will discuss basic facts describing American involvement in these events, American international law (or even domestic law) obligations when dealing with cultural heritage, and whether the U.S. lived up to their obligations. Finally, I will discuss current American operations at rebuilding and restoring Iraqi cultural heritage. I will analyze whether the current American approach falls into the American definition of foreign aid and what, if anything, will foreign aid do for fostering Iraqi identity.

I. Background Information

The story of the Iraqi Cultural Heritage Crisis begins with the fact that Iraq is home to very ancient civilizations. Following the First World War, the Iraqi government began to take steps towards protecting its antiquities and cultural heritage. However, those measures were thwarted by the time of the Gulf War, when Iraqi people, themselves, began to engage in the illegal trading of antiquities. The situation increases in intensity by the time of the American invasion of Iraq in 2003.

A. Early Iraqi History

Nestled between the Tigris and Euphrates rivers, modern day Iraq is the successor of ancient Mesopotamia: the land between two rivers. Mesopotamia has long been heralded as “the place where civilization began.”¹⁵ Historical traditions in Mesopotamia preexist even ancient

¹⁵ McGuire Gibson, *Where Civilization Began*, *ARCHAEOLOGY*, Jul. 2003.

Egyptian traditions so much that Mesopotamia is the “foundation of all ideas of civilizations.”¹⁶ Therefore, it is no surprise that modern day Iraq features a number of the world’s “firsts” and some of the most important and highly regarded archaeological sites.¹⁷ Examples include: Babylon, over 4,000 years old, capital of the world for 1,000 years, and home to the foundations of the Biblical Tower of Babel along with the original remains of the Ishtar gate; Erbil, one of the oldest continually inhabited cities where settlers arrived, and have stayed, for over 8,000 years; and Uruk, the first large city in Mesopotamia and home to some of the earliest-known writings.¹⁸ These cities, among others, are home to over 10,000 registered archaeological sites throughout Iraq.¹⁹

The breadth of available Iraqi antiquities is slim. Despite the yearly discovery of previously unearthed ancient cities in Iraq, excavation of individual treasures has proven difficult.²⁰ Stacks of ancient Mesopotamian civilizations are difficult to separate given that ancient cities were built upon each other.²¹ Moreover, it is difficult to locate individual items of archaeological significance given that the wide array of artifacts and art found in ancient cities are in burial grounds and the ancient Iraqis, unlike their Egyptian counterparts, buried their deceased without any surrounding art, jewelry or other funerary pieces.²²

¹⁶ *Id.*

¹⁷ John Malcom Russell, *Iraq in the Crosshairs, An Uncertain Future for the Past*, ICON MAGAZINE, Spring 2003, available at http://www.wmf.org/sites/default/files/wmf_article/pg_26-29_iraq.pdf. (detailing several of Iraq’s most significant archaeological sites).

¹⁸ *Id.* Other sites include: Hatra, an important ancient religious center; Nineveh, imperial capital to the Biblical King Sennacherib; and Ur, the birthplace of Abraham. *Id.*

¹⁹ Borke, *supra* note 12, at 383.

²⁰ Amy E. Miller, *The Looting of Iraqi Art: Occupiers and Collectors Turn Away Leisurely from the Disaster*, 37 CASE W. RES. J. INT’L L. 49, 52 (2005).

²¹ *Id.*

²² *Id.*

The difficulty in locating and separating Iraqi artifacts leads to their significant draw in international art and antiquities markets.²³ Typically, market prices remain high for antiquities for two key reasons: the supply of antiquities is finite and each antiquity itself is unique.²⁴ The availability of antiquities is solely dependent on further excavation of artifacts rather than by the “traditional process of manufacture in response to consumer demand.”²⁵ Moreover, “uniqueness is inherent in each antiquity.”²⁶ Therefore, when such items reach the international markets, collectors stand to pay anywhere from tens of thousands of dollars to millions for some element of antiquity.²⁷ For example, in 1994, a six-foot long panel, attributed to the Assyrian empire, sold at a US auction for \$11.8 million – the highest price ever paid at that time for an antiquity.²⁸ Therefore, the Iraqi government sought protections both nationally and internationally for items of cultural heritage.

B. *Iraq’s Antiquities Laws*

Iraq’s cultural property and archaeological sites remained well-protected under nationally imposed antiquities law following World War I.²⁹ For example, Iraq’s 1936 Antiquities Law No. 59, amended in 1974 and 1975, considered all antiquities property of the state and prohibited private individuals from acquiring movable antiquities.³⁰ Moreover, the Iraqi government only permitted authorized groups to excavate antiquities, prohibiting private landowners from

²³ *Id.*

²⁴ Borke, *supra* note 12, at 387-388.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Miller, *supra* note 20, at 51.

²⁸ *Id.* at 52.

²⁹ Norman Hammond, *In the Fray: Time to Secure Iraq’s Treasures*, WALL ST. J. EUR., April 17, 2003, stating that “the new antiquities laws put in place by Gertrude Bell after World War I ensured that the new Kingdom if Iraq retained much of its heritage.”

³⁰ Borke, *supra* note 12, at 383-386.

excavating on their own lands without government issued permits.³¹ Antiquities laws also provided for extensive criminal punishments for violations including the use of fines, seizure and confiscation, and imprisonment for violators.³²

Protection of Iraqi artifacts increased with the rise of Saddam Hussein's regime in the 1960s.³³ A great patron of the arts, Saddam Hussein imposed strict exportation regulations on antiquities in an effort to "keep a tight lid on stuff" and allow "very little to get out."³⁴ It was only in the early 1990s, following the Gulf War, that the Iraqi national government began to lose control over the exportation of Iraqi artifacts and over the looting of Iraqi archaeological sites.³⁵

C. *International Cultural Heritage Protection*

Nevertheless, the Iraqi government ensured assistance in the protection of their cultural property from the international community by becoming a state party to the 1954 Hague Convention and the 1970 UNESCO Convention.³⁶ Under the 1954 Hague Convention, two protocols were adopted to protect items newly termed as "cultural property," items considered the "cultural heritage of all mankind;" contributions by the global community to the "culture of the world."³⁷ The first protocol requires an obligation by parties to safeguard cultural property within their own territories in times of peace.³⁸ The second protocol calls on parties to prevent the targeting, theft, misappropriation, or destruction of cultural property during wartime.³⁹

³¹ *Id.* at 384.

³² *Id.* at 383.

³³ Miller, *supra* note 20, at 64.

³⁴ *Id.*

³⁵ *Id.* at 63.

³⁶ Borke, *supra* note 12, at 385.

³⁷ Naomi Mezey, *The Paradoxes of Cultural Property*, 107 COLUM. L. REV. 2004, 2010 (2007).

³⁸ *Id.*

³⁹ *Id.* at 2011.

The Iraqi government guaranteed international cooperation with the illegal removal of cultural property during peacetime when it signed on to the 1970 UNESCO Convention.⁴⁰ The 1970 UNESCO Convention reiterated the goals of the 1954 Hague Convention to protect items of cultural property as “the basic elements of civilization and national culture.”⁴¹ Protection was ensured by the requirement that member states issue export licenses and develop a uniform system of administrative controls to “prevent both illegal import and export of cultural property.”⁴²

D. *Cultural Antiquities Looting in Iraq after the Gulf War*

Despite both international and domestic protections for cultural property, Iraq suffered enormously from the looting of archaeological sites and items of cultural significance following the Gulf War in 1991 and paralleled only by the immense looting of items following the U.S. invasion in 2003. Small-scale digging of artifacts began in the 1990s when the United Nations imposed sanctions on Iraq leading many impoverished farmers into the archaeologically rich southern portion of Iraq.⁴³ The same sanctions led to the general economic downfall of Iraq and a subsequent recession producing mass levels of poverty around the country.⁴⁴ The extreme destitution led to lootings en masse of Iraqi museums and archaeological sites.⁴⁵ Within three years following the Gulf War, ten of Iraq’s regional museums were attacked⁴⁶ and many

⁴⁰ Jodi Patt, *The Need to Revamp Current Domestic Protections For Cultural Property*, 96 NW. U. L. REV. 1207, 1219 (2002).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Ondi Dybowski, *Redefining the Relationship Between Law, Art & Culture: Balancing the Relationship in Iraq*, 37 SYRACUSE J. INT’L. L. & COM. 65, 68 (2009).

⁴⁴ Miller, *supra* note 20, at 64.

⁴⁵ *Id.*

⁴⁶ Borke, *supra* note 12, at 389.

priceless artifacts were funneled outside of the country.⁴⁷ From the end of the Gulf War until the U.S. invasion of Iraq in 2003, “Iraqis established illicit trade networks, identified transport routes, and successfully learned how to smuggle.”⁴⁸ Such skills would prove all too convenient when in 2003 masses stormed the Iraq National Museum to partake in a three day looting spree and significant numbers of Iraqi citizens partook in the destruction of dozens of archaeological sites following the U.S. invasion of Iraq.⁴⁹

II. 2003 U.S. Invasion of Iraq

March 20, 2003 marks the day when the U.S. launched an over five years long invasion of Iraq.⁵⁰ In the months preceding the invasion, the United Nations Security Council unanimously adopted United Nations Security Council Resolution 1441, offering Iraq, under Saddam Hussein, a “final opportunity to comply with its disarmament obligations.”⁵¹ The Iraqi government responded with numerous reports asserting its compliance with the Resolution.⁵² However, the UN Security Council found the reports inaccurate, incomplete or contradictory.⁵³

On March 17, 2003, President George Bush expressed his dismay with the lack of Iraqi compliance of the Resolution 1441 issuing a March 19, 2003 deadline for compliance with the

⁴⁷ Miller, *supra* note 20, at 64.

⁴⁸ Borke, *supra* note 12, at 389.

⁴⁹ *Id.* at 400.

⁵⁰ Operation Iraqi Freedom: A Chronology of the Six-Week Invasion of Iraq, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/invasion/cron/> (last visited Dec. 19, 2010).

⁵¹ S.C. Res. 1441, ¶ 2, U.N. Doc. S/RES/1441 (November 8, 2002).

⁵² Transcript of Chief U.N. Weapons Inspector Hans Blix delivered to the United Nations January 27, 2003, CNN, <http://www.cnn.com/2003/US/01/27/sprj.irq.transcript.blix/> (last visited Dec. 19, 2010).

⁵³ *Id.*

Resolution.⁵⁴ At the same time, President Bush demanded that Saddam Hussein and his sons flee Iraq and that their refusal to do so would result in “military conflict commenced at a time of our choosing.”⁵⁵ When “zero hour” arrived, the U.S., along with UK assistance, began its invasion of Iraq on March 20, 2003, with ground forces under American supervision attacking Baghdad and British forces, with the support of U.S. Marines, storming Basra.⁵⁶ What followed was close to seven years of destruction and devastation to both civilian populations and Iraqi cultural heritage.

III. American Antiquities Protections and their Effects on the Looting of the Iraq National Museum and The Occupation of Babylon

Despite the vast criticism received by the U.S. in response to the Iraq invasion in general⁵⁷, two events stand out in which the U.S. received heavy criticism for disregarding international obligations to protect items of Iraqi cultural heritage. First, the passive response by U.S. troops to the looting of the Iraq National Museum between April 9 and April 12, 2003⁵⁸ and secondly, the yearlong occupation and destruction of the ancient city of Babylon by American military forces.⁵⁹

To begin this discussion, it is important to first detail the American obligations under both international and American laws to items of cultural heritage. Second, I will detail the events of the looting of the Iraq National Museum and the immediate U.S. response to the

⁵⁴ Operation Iraqi Freedom: A Chronology of the Six-Week Invasion of Iraq, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/invasion/cron/> (last visited Dec. 19, 2010).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Chronological Polls of the American People Questioning Appropriateness of U.S. Military Action in Iraq, <http://www.pollingreport.com/iraq.htm> (last visited Dec. 19, 2010).

⁵⁸ Borke, *supra* note 12, at 399.

⁵⁹ U.N. Educ., Scientific and Cultural Org. [UNESCO], Int’l Coordination Comm. for the Safeguarding of the Cultural Heritage of Iraq, *Final Report on Damage Assessment in Babylon*, U.N. Doc. CLT/EO/CIP/2009/RP/114 (June 26, 2009).

looting, specifically whether the American response conformed with international and domestic obligations. Next, it is significant to detail the circumstances of the U.S. occupation and desecration of Babylon. Finally, with respect to Babylon, whether the U.S. obeyed the obligations set forth in their adopted international and domestic laws when occupying Babylon.

A. American Obligations under Domestic and International Cultural Heritage Regulations

1. The Lieber Code of 1863

One of the earliest provisions offering protection for items of cultural heritage, namely classical works of art, libraries, or scientific collections, was codified in the Lieber Code, issued in April 1863 for Union Army soldiers during the American Civil War.⁶⁰ The Lieber Code detailed the conduct of Union soldiers during times of war ordering them to protect art, libraries, scientific collections and instruments “against all avoidable injury” even during times of bombardment or besiege.⁶¹ Moreover, the Lieber Code stated that if such works could be moved without injury to them, they may be seized for the benefit of a conquering nation and their ownership would be settled during negotiations for peace.⁶² In addition to requiring Union soldiers to reconsider attacking areas holding items of cultural significance, the Lieber Code

⁶⁰ Instructions for the Government of Armies of the United States in the Field, prepared by Francis Lieber, LL. D., Originally issued as Orders No. 100, Adjutant General’s Office, 1863, Washington 1898; Government Printing Office at http://www.loc.gov/rr/frd/Military_Law/pdf/Instructions-gov-armies.pdf (last visited Dec. 19, 2010).

⁶¹ *Id.*

⁶² *Id.*

affirmatively required that Union soldiers, “‘acknowledge and protect’ cultural objects and sites in occupied territories.”⁶³

2. The 1899 and 1907 Hague Conventions

The Lieber Code set the stage for the creation of the first international regulations to protect cultural heritage: the 1899 and 1907 Hague Conventions.⁶⁴ With these conventions, signatory parties committed themselves to preserve cultural property and to abandon prior wartime norms of the “victor’s right to plunder.”⁶⁵ The 1907 Hague Convention, in particular, became customary international law and therefore, binding on all nations, even those who were not signatories.⁶⁶ This meant that even those who did not sign on to the 1907 Hague Convention were subject to legal proceedings in the event of the seizure or damage done to cultural property during times of war.⁶⁷

3. The 1954 Hague Convention

Following World War II, and the inadequacies of prior Hague Conventions, the United Nations Educational, Scientific and Cultural Organization (UNESCO), implemented the 1954 Hague Convention.⁶⁸ The 1954 Hague Convention committed signatory nations to “implementing peacetime measures to protect cultural property within its own borders in case of

⁶³ Matthew D. Thurlow, *Protecting Cultural Property in Iraq: How American Military Policy Comports with International Law*, 8 YALE HUM. RTS. & DEV. L.J. 153, 157 (2005).

⁶⁴ Dybowski, *supra* note 43, at 74.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ “All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.” Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, Art. 56. (1907 Hague Convention)

⁶⁸ Dybowski, *supra* note 43, at 78.

war.”⁶⁹ Moreover, parties agreed to foster a sense of respect in their armed forces for the cultures of all people and in doing so prohibit the theft, pillage or vandalism of cultural property, both in a signatory’s own nation and in other nations where armed forces would encounter cultural heritage.⁷⁰ Finally, in an effort to recognize the global interest that members states had in international cultural property, occupying nations were obliged to “. . . take the most necessary measures...” to assist the occupied nation’s authority in preserving cultural property.⁷¹ Unlike the American adherence to the two prior Hague Conventions, the United States failed to ratify the 1954 Hague Convention until March 13, 2009.⁷²

4. The 1970 UNESCO Convention

In 1970, UNESCO picked up where the Hague Convention of 1954 left off and developed the 1970 UNESCO Convention on the Means of Prohibiting the Illicit Import, Export, and Transfer of Ownership of Cultural Property.⁷³ The UNESCO Convention detailed that cultural property serves as an increasing force in the knowledge of the civilization of Man and “enriches the cultural life of all peoples and inspires mutual respect and appreciation among

⁶⁹ David N. Chang, *Stealing Beauty: Stopping the Madness of Illicit Art Trafficking*, 28 HOUS. J. INT’L L. 829, 852 (2006).

⁷⁰ Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954, 249 UN Treaty Ser 215, Art. 1 (1954). (1954 Hague Convention).

⁷¹ *Id.* at art. 5.

⁷² Corine Wegener, *The 1954 Hague Convention and Preserving Cultural Heritage*, ARCHEOLOGICAL INST. OF AM., Oct. 19, 2010, <http://www.archaeological.org/news/hca/3137>.

⁷³ General Conference of the UNESCO, Paris, France, Nov. 14, 1970, 16th Sess., Recommendation adopted, http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html#STATE_PARTIES.

nations.”⁷⁴ Moreover, it reinforced the concept that cultural property “inherently belongs to and is within the exclusive control of the country of origin.”⁷⁵

More specifically, Article 7 of the 1970 UNESCO Convention requires parties to “prohibit the importation of cultural property stolen from a museum or monument in another participating country.”⁷⁶ In addition, Article 9 of the 1970 UNESCO Convention allows for parties threatened with destruction of their cultural heritage to ask other signatory parties for assistance in restricting imports and exports of illegally obtained cultural property.⁷⁷ Articles 7 and 9 of the 1970 UNESCO Convention are the only provisions adopted by the United States.⁷⁸

B. The Looting of the Iraq National Museum and the American Obligations under Domestic and International Law

1. Pre-War Iraq National Museum Looting Warnings

In the months leading up to the Iraq War, scholars and archaeologists warned the U.S. Department of Defense that an invasion of Iraq risked destruction of Iraqi archaeological sites and more specifically, pillaging of the Iraq National Museum in Baghdad.⁷⁹ Mesopotamian archaeological experts like McGuire Gibson of the University of Chicago provided the U.S. Department of Defense with a list of critical sites to avoid when invading Iraq and “explicitly warned [the Department of Defense] about the possibility of the looting of the Iraq Museum.”⁸⁰

⁷⁴ *Id.*

⁷⁵ Dybowski, *supra* note 43, at 80.

⁷⁶ *Id.*

⁷⁷ *Id.* at 81.

⁷⁸ *Id.*

⁷⁹ Michael D. Lemonick, *Baghdad's Treasure: Lost to the Ages*, TIME, Apr. 28, 2003, <http://www.time.com/time/magazine/article/0,9171,1004726-2,00.html> (last visited Dec. 19, 2010).

⁸⁰ *Id.*

Other experts expressed the same concerns to the U.S. Department of Defense of the potential damage to the Iraq National Museum calling the museum “the single most important archaeological location in the country.”⁸¹ Additionally, the Archaeological Institute of America, in a strongly worded letter from President Nancy C. Wilkie, warned of the risk of damage as a result of invasion to such significant archaeological sites such as Uruk, Babylon, and Nineveh.⁸² The same letter urged both the U.S. government and other international entities to work with the public of Iraq and international scholars specializing in Iraqi cultural heritage to protect “monuments, sites, antiquities and cultural institutions.”⁸³ The Archaeological Institute of America expressed a “profound concern” for the potential damage such sites [like Babylon, Nineveh, and Uruk] and pieces would incur upon commencement of the war.⁸⁴

2. The Looting of the Iraq National Museum in April 2003

The looting of Iraq’s National Museum in Baghdad occurred between April 10 and April 12, 2003, as American troops entered Baghdad in the final days of the Iraq War.⁸⁵ Between 150,000 and 200,000 objects representative of 10,000 years of Iraqi heritage filled the National Museum in Baghdad.⁸⁶ The loss of Iraqi artifacts during the looting was severe for Iraqi citizens, but was also a great loss for all of humankind as “global heritage” was “looted, disturbed, and

⁸¹ John Malcom Russell, *Iraq in the Crosshairs, An Uncertain Future for the Past*, ICON MAGAZINE, Spring 2003, available at http://www.wmf.org/sites/default/files/wmf_article/pg_26-29_iraq.pdf. (detailing several of Iraq’s most significant archaeological sites).

⁸² Nancy C. Wilkie, *From the President: In the Shadow of War*, ARCHAEOLOGY, Feb. 2003, <http://www.archaeology.org/0301/etc/president.html> (last visited Dec. 19, 2010).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Andrew Lawler, *Ten Millennia of Culture Pilfered Amid Baghdad Chaos*, SCIENCE, Apr. 18, 2003, at 402.

⁸⁶ *Id.*

smashed” when a series of attacks were launched on the National Museum and priceless artifacts were stolen from it.⁸⁷

In the weeks before the looting, the National Museum staff acted on the looming threat of the American invasion by moving 179 boxes containing over 8,000 artifacts from the public gallery displays to a museum storage area.⁸⁸ In addition, the Ministry of Culture in Iraq ordered the museum to assemble teams of men and women to defend the museum compound in the event of an invasion, dividing groups by their designated tasks: first aid, fire prevention and control, and messengers.⁸⁹ However, all attempts at thwarting an attack on the National Museum were abandoned when, within a matter of days, Americans had invaded Baghdad causing complete chaos and the beginning of the looting of the Iraq National Museum.⁹⁰

Initial reports following the looting noted that at least 170,000 artifacts had been stolen when looters violently took over the Iraq National Museum between April 10 and April 12, 2003.⁹¹ Key pieces looted included the Sacred Vase of Warka (ca. 3100 BC), the Golden Harp of Ur (ca. 2600-2500 BC), the Lioness Attacking a Nubian ivory (ca. 8th Century BC) and the twin copper Ninhursag Bulls (ca. 2475 BC).⁹² Also pillaged from the museum were over 1,000 pieces of gold jewelry and precious stones from 8th and 9th centuries B.C. consisting of the “spectacular” Treasure of Nimrud, excavated in the late 1980s in Iraq and considered one of the greatest finds in archaeological history.⁹³

⁸⁷ Donny George, *The Looting of the Iraq National Museum*, CAA NEWS, May 2008, at 8.

⁸⁸ Matthew Bogdanos, *Casualties of War: The Looting of the Iraq Museum*, MUSEUM NEWS, March 2006, http://www.aam-us.org/pubs/mn/MN_MA06_casualties.cfm.

⁸⁹ George, *supra* note 87, at 8.

⁹⁰ Lawler, *supra* note 85, at 402.

⁹¹ Bogdanos, *supra* note 88.

⁹² *Id.*

⁹³ *Id.*

During the three-day looting, American troops reportedly failed to assist museum staffers when pressed for assistance with fending off looters.⁹⁴ One staff member reported that on morning of April 10, 2003, approximately 400 people had gathered in the streets armed with bayonets, hammers, and crowbars ready to storm the museum grounds.⁹⁵ The same staff member allegedly approached an American tank located on the side of the museum and through an interpreter, “begged the Americans to move their tanks in front of the museum to protect it.”⁹⁶ The American soldiers reportedly radioed for assistance, but were told that they were under orders not to move from their location.⁹⁷

Another account reported that shortly after the start of the looting, the curator of the Iraq National Museum appealed to American forces to assist in stopping the looting.⁹⁸ Several soldiers accompanied the curator back to the museum and fired over the heads of the looters, temporarily preventing looters from destroying the museum.⁹⁹ However, soon after, American soldiers retreated from the area and looters returned to continue their ransacking of the Iraq National Museum.¹⁰⁰

3. The American Response Immediately Following the Looting of the National Museum

Days after the looting, American forces led by Colonel Matthew F. Bogdanos, responded to the Iraq National Museum to investigate the looting.¹⁰¹ Bogdanos, along with his 14-person

⁹⁴ George, *supra* note 87, at 8.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Thurlow, *supra* note 63, at 176.

⁹⁹ *Id.* at 177.

¹⁰⁰ *Id.*

¹⁰¹ ARCHAEOLOGY Interview with Matthew Bogdanos, Oct. 16, 2003, *available at* <http://www.archaeology.org/online/interviews/bogdanos/index.html> (last visited Dec. 19, 2010)

team, reported that he treated the Iraq National Museum as a crime scene, conducting a “physical examination” of the entire premises and documenting “everything [he] saw.”¹⁰² The scene before him was “not promising” as he found Iraqi army uniforms and weapons scattered about the museum grounds.¹⁰³ However, he resolved to establish a relationship with Iraq museum officials in order to begin the immediate return of the antiquities stolen from the museum.¹⁰⁴

Bogdanos reportedly worked alongside a number of Iraqi museum staff to design methods of identification and recovery of items stolen from the museum.¹⁰⁵ One of the more successful parts of Bogdanos’ mission was the amnesty program for the return of stolen Iraqi antiquities, instituted no more than two days after Bogdanos’ arrival in Baghdad.¹⁰⁶ The end of 2003 saw the return of over 1,935 antiquities given back as part of the amnesty program.¹⁰⁷ Some pieces including a 6th millennium BC Hassuna-style pot, the Sacred Vase of Warka, and a 4,000-year old Akkadian tablet, were returned to Bogdanos personally while he was on leave in Manhattan in a crowded coffee shop, wrapped in a brown paper bag.¹⁰⁸

4. Additional American Responses to the Looting

In addition to the immediate U.S. response to the looting of the Iraq National Museum led by Colonel Bogdanos, the U.S. also condemned the looting and spoke to their inability to

¹⁰² *Id.*

¹⁰³ Bogdanos, *supra* note 88.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Bogdanos, *supra* note 88.

protect the Iraq National Museum, and enacted the 2004 Emergency Protection for Iraqi Cultural Antiquities Act.¹⁰⁹

The looting of the Iraq National Museum in April 2003 as American forces stood by and merely watched priceless artifacts smuggled away was arguably one of the worst public relations disasters for the United States in modern times.¹¹⁰ The American forces were “sharply criticized for ignoring the pillagers as they charged through the museum” despite the warnings from the international archaeological community, and more specifically, warnings from acclaimed American archaeologists that the safety of the Iraq National Museum was greatly threatened.¹¹¹ In response, the U.S. Secretary of Defense, Donald Rumsfeld, addressed the public at a Pentagon briefing in mid-April 2003 citing his department’s failure to properly protect Iraqi artifacts:

Looting is an unfortunate thing. Human beings are not perfect. And we’ve seek looting in this country . . . No one likes it. No one allows it. It happens. And it’s unfortunate . . . To the extent that it happens in warzone, it’s difficult to stop. The United States is concerned about the museum in Baghdad, and the president and the secretary of state and I have all talked about it, and we are in the process of offering rewards for people who will bring things back, or to assist in find where those things might be.¹¹²

Nevertheless, the international media demanded “...the United States...take affirmative steps to remedy the Iraqi antiquity situation in order to regain international respect.”¹¹³ The media suggested that the U.S. create some kind of legislation to assist in the recovery of the Iraqi antiquities.¹¹⁴

¹⁰⁹ Borke, *supra* note 12, at 432, and the Emergency Protection for Iraqi Cultural Antiquities Act of 2004 Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108-429, §§ 3001-3003 (2004).

¹¹⁰ Borke, *supra* note 12, at 403.

¹¹¹ *Id.*

¹¹² *Id.* at 404.

¹¹³ *Id.* at 405.

¹¹⁴ *Id.* at 432.

After legislation was proposed in both the Senate and the House of Representatives to begin assisting in the protection of Iraqi cultural heritage¹¹⁵, Congress ultimately passed the Emergency Protection of Iraqi Cultural Antiquities Act of 2004 (the “Iraqi Antiquities Act”) as part of the public law for the Miscellaneous Trade and Technical Corrections Act of 2004.¹¹⁶ The legislation followed on the footsteps of the United Nations Security Council Resolution 1483 (the “UN Resolution 1483”), which required all members of the United Nations to prevent the illegal trade of cultural materials removed from the Iraq National Museum and other sites around Iraq.¹¹⁷

Speaking at the introduction of the legislation to Congress, Senator Charles Grassley, who introduced the bill in June 2003, stated that the Iraqi Antiquities Act was a reflection of Congress’ adherence to the “full spirit” of UN Resolution 1483 and was also an “important signal of our commitment to preserving Iraq’s resources for the benefit of the Iraqi people.”¹¹⁸ The Iraqi Antiquities Act allowed the President to impose import restrictions on any cultural material illegally removed from Iraq.¹¹⁹ In addition, the legislation enabled the President to exercise his authority under the Cultural Property Implementation Act, enacted by the U.S. to conform to the 1970 UNESCO Convention, without the need for an Iraqi formal request for American assistance with reclaiming cultural heritage objects.¹²⁰

¹¹⁵ Borke, *supra* note 12, at 432.

¹¹⁶ Emergency Protection for Iraqi Cultural Antiquities Act of 2004 Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108- 429, §§ 3001-3003 (2004).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Archaeology Institute of America Press Release, <http://www.archaeological.org/news/sitepreservation/143>, (released, Dec. 7, 2004).

¹²⁰ *Id.*

5. U.S. Conformance with Domestic and International Obligations in Responding to the Looting of the Iraq National Museum

As previously noted, the only cultural heritage international obligations the United States had at the time of the invasion of Iraq were two provisions in the 1970 UNESCO Convention.¹²¹ These two provisions required: (1) parties to prohibit the importation of cultural property stolen from a museum or monument in another participating country, and (2) for parties threatened with destruction of their cultural heritage to ask other signatory parties for assistance in restricting imports and exports of illegally obtained cultural property.¹²² The Iraqi Antiquities Act enacted in 2004 satisfies both provisions.¹²³ With respect to the first provision, the Iraqi Antiquities Act allowed the U.S. to prohibit the importation of cultural property stolen from the Iraq National Museum without Iraqi officials even requesting assistance.¹²⁴ By way of conforming to the first provision, the Iraqi Antiquities Act satisfies the second provision since it refers to the ability of Iraqi officials to request assistance.¹²⁵

In addition to satisfying their obligations under the 1970 UNESCO Convention, the U.S. also arguably far exceeded any obligations under the 1954 Hague Convention, despite not being a signatory to the 1954 Hague Convention until 2009.¹²⁶ For example, Article 5, Section 1 of the 1954 Hague Convention requires that an occupying party “support the competent national authorities of the occupied country in safeguarding and preserving its cultural property.”¹²⁷ Even though reports alleged that American forces ignored pleas from the Iraq National Museum staff

¹²¹ Dybowski, *supra* note 43, at 81.

¹²² *Id.* at 80-81.

¹²³ Emergency Protection for Iraqi Cultural Antiquities Act of 2004 Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108- 429, §§ 3001-3003 (2004).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Thurlow, *supra* note 63, 154.

¹²⁷ 1954 Hague Convention, art. 5.

for assistance against looters¹²⁸, which would violate this article, the U.S. appropriately responded when American forces began working with National Museum officials to begin the stolen antiquities recovery process.¹²⁹

C. *The U.S. Occupation of Babylon and American Obligations Under Domestic and International Law*

1. Background Information

On April 21, 2003, American and Polish forces entered the ancient city of Babylon, located approximately 55 miles south of Baghdad.¹³⁰ By September 2, 2003, Babylon had been converted by American and Polish forces into “Camp Alpha,” a military stronghold until the location was surrendered to the Iraqi State Board of Antiquities and Heritage in December of 2004.¹³¹ During their time at “Camp Alpha,” American and Polish forces established a military zone requiring fortification and defensive measures that caused severe direct and indirect damage to the site.¹³²

The city of Babylon is often regarded as one of the most archaeologically significant sites in the entire world.¹³³ For more than 1,000 years Babylon served as a capital city reigned over by rulers like King Hammurabi (1792 – 1750 BC), who introduced one of the earliest law codes,

¹²⁸ George, *supra* note 87, at 8.

¹²⁹ Bogdanos, *supra* note 88.

¹³⁰ U.N. Educ., Scientific and Cultural Org. [UNESCO], Int’l Coordination Comm. for the Safeguarding of the Cultural Heritage of Iraq, *Final Report on Damage Assessment in Babylon*, U.N. Doc. CLT/EO/CIP/2009/RP/114 (June 26, 2009).

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* See also Rory McCarthy, *Babylon Wrecked by War*, guardian.co.uk, Jan. 15, 2005, <http://www.guardian.co.uk/world/2005/jan/15/iraq.arts1>, (last visited Dec. 19, 2010); Sue Leeman, *Damage Seen to Ancient Babylon: Archaeologists Criticize Site’s Use as Coalition Base*, Boston.com, Jan. 16, 2005, http://www.boston.com/news/world/middleeast/articles/2005/01/16/damage_seen_to_ancient_babylon/. (last visited Dec. 19, 2010).

and King Nebuchadnezzar (604 – 562 BC), credited with building one of the Seven Wonders of the World, the Hanging Gardens of Babylon.¹³⁴ However, after a series of enlargements and later failures, Babylon retreated into distant memory and was all but forgotten for hundreds of years.¹³⁵

Over the course of the next hundred years, archaeologists from around the world teamed up with Iraqi government officials to unearth the remains of the city of Babylon and to begin reconstructing ancient buildings to make them accessible to international visitors.¹³⁶ By the 1970s, the work on the city of Babylon was transformed into the building of a new palace for the head of the Iraqi government, Saddam Hussein.¹³⁷ During the 1980s, Hussein used the newly built palace as a summer home and frequently hosted nationalistic festivals on the site.¹³⁸ Hussein also outfitted the palace with modern fortifications and modern amenities such as a helicopter pad.¹³⁹ It was features such as these that attracted Polish and American forces to Babylon in April 2003.¹⁴⁰ The damage that ensued as a result of additional digging, cutting,

¹³⁴ Sue Leeman, *Damage Seen to Ancient Babylon: Archaeologists Criticize Site's Use as Coalition Base*, Boston.com, Jan. 16, 2005, http://www.boston.com/news/world/middleeast/articles/2005/01/16/damage_seen_to_ancient_babylon (last visited Dec. 19, 2010).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ John Noble Winford, *After Years of War and Abuse, New Hope for Ancient Babylon*, THE NEW YORK TIMES, March 22, 2010, http://www.nytimes.com/2010/03/23/science/23babylon.html?_r=1&ref=global-home (last visited Dec. 19, 2010).

¹³⁸ Whitney Lloyd, *War-Zone Archaeologists Saving Babylon*, ABC NEWS, August 10, 2010, <http://abcnews.go.com/Travel/iraq-war-zone-archaeologists-saving-babylon-saddam-hussein/story?id=11336677&page=1>. (last visited Dec. 19, 2010).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

scraping, and leveling by the occupation of Polish and American soldiers has been called one of the “gravest encroachments on this internationally known archaeological site.”¹⁴¹

2. UNESCO’s Response to the American Occupation of Babylon

When U.S. forces transferred hold of Babylon to the Iraq State Board of Antiquities and Heritage, Iraqi officials quickly began studies on the state of the preservation of Babylon.¹⁴² Their findings led them to request that UNESCO conduct a thorough investigation to determine the kind of damage suffered by the site and to prepare a series of measures aimed at developing a management and conservation plan.¹⁴³ When UNESCO’s findings were complete, they compiled a “Final Report on Damage Assessment in Babylon” and detailed their recommendations to the State Board of Antiquities and Heritage in Iraq.¹⁴⁴ Their findings included damage done before the American occupation of Babylon in 2003 and damages directly resulting from the American occupation.¹⁴⁵

Damages resulting from the American occupation starting in 2003 included excavation works to build trenches by removing soil containing ancient fragments of pottery, installation of barbed wire and steel stakes around archaeological grounds including a wall in a “sacred” precinct, and the removal of blocks along the path of “Processional Way” to make room for

¹⁴¹ U.N. Educ., Scientific and Cultural Org. [UNESCO], Int’l Coordination Comm. for the Safeguarding of the Cultural Heritage of Iraq, *Final Report on Damage Assessment in Babylon*, U.N. Doc. CLT/EO/CIP/2009/RP/114 (June 26, 2009).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

paving of a street.¹⁴⁶ The media also reported on the U.S. damage detailing that military vehicles crushed 2,600-year old pavements and that dragons of the Ishtar Gate were marred by the attempted removal of their decorative bricks.¹⁴⁷

3. The U.S. Response to their Destruction of Babylon

Three years after the American departure from Babylon, Colonel John Coleman, former Chief of Staff for the First Marine Expeditionary Force in Iraq, which occupied Babylon, issued an apology to the Iraqi Antiquities Board for the damage American forces did to Babylon.¹⁴⁸ Colonel Coleman argued, however, that the occupation of Babylon provided the ancient city with more protection than it would have seen had forces left the city alone.¹⁴⁹ The Colonel discussed, how, when his forces arrived in Babylon the city's museum as well as other archaeological sites had already been damaged and looted.¹⁵⁰ He felt that the price to pay for military presence was far better than the price the Iraqi people would have paid had the site been left to the masses.¹⁵¹

4. U.S. Conformance with Cultural Heritage Obligations with Respect to the Occupation of Babylon

Because the U.S. was not a signatory to the 1954 Hague Convention, which would have dictated its obligations as an occupying force destroying cultural heritage, until 2009, its

¹⁴⁶ U.N. Educ., Scientific and Cultural Org. [UNESCO], Int'l Coordination Comm. for the Safeguarding of the Cultural Heritage of Iraq, *Final Report on Damage Assessment in Babylon*, U.N. Doc. CLT/EO/CIP/2009/RP/114 (June 26, 2009).

¹⁴⁷ Leeman, *supra* note 133.

¹⁴⁸ Rupert Cornwell, *U.S. Colonel Offers Iraq an Apology of Sorts for Devastation of Babylon*, THE INDEPENDENT (April 15, 2006), <http://www.independent.co.uk/news/world/middle-east/us-colonel-offers-iraq-an-apology-of-sorts-for-devastation-of-babylon-474205.html>.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

obligations to the city of Babylon can only be evaluated in light of the 1907 Hague Convention. According to the 1907 Hague Convention, an occupying force would be subject to legal proceedings in the event of the destruction, seizure, or willful damage done to “historic monuments [and] works of art or science.”¹⁵² In this case, because the U.S. engaged in the destruction of a historic monument, the entire city of Babylon, it would be held accountable in legal proceedings. However, because the 1954 Hague Convention superseded the 1907 Hague Convention, the United States would not be found to violate any international obligations when occupying Babylon.

IV. Current American Efforts at Iraqi Cultural Heritage Protection

On April 29, 2003, the United States State Department announced a contribution of \$2 million to “protect and restore Iraqi antiquities.”¹⁵³ Specifically, the contribution would help to “protect and restore key museums and archaeological sites in Iraq.”¹⁵⁴ The State Department noted the “value and respect” the American people had for Iraq’s cultural heritage in in-depth consultations with Iraqi cultural officials to determine Iraq’s cultural heritage protection needs.¹⁵⁵ Identified needs included the establishment of a U.S. overseas research center in Baghdad, support for the development of an “at risk Iraqi antiquities list,” and a “searchable on-line database of images from the Baghdad museum.”¹⁵⁶ This contribution was the beginning of many similar contributions by the State Department to Iraq for the sole purpose of protecting Iraq’s cultural heritage.

¹⁵² Dybowski, *supra* note 43, at 76.

¹⁵³ State Dep’t Press Release 2003/448, Apr. 29, 2003, *available at* 2003 WLNR 1765541.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

On October 16, 2008, the State Department announced the creation of the Iraq Cultural Heritage Project (IHP), an initiative designed to assist in the preservation of the ancient history of Iraq.¹⁵⁷ IHP's stated goals included cultivating a new generation of Iraqi archaeology professionals, and engaging U.S. cultural institutions as partners to work with the Iraq State Board of Antiquities and Heritage (SBAH) for cultural heritage preservation.¹⁵⁸ One of the IHP's first tasks involved the award of a \$13 million grant to International Relief and Development (IRD), a charitable, non-profit, non-governmental association directly involved in the assistance of "regions of the world that present social, political and technical challenges."¹⁵⁹ IRD, working alongside SABH and the U.S. Embassy in Baghdad, would assist in the creation of the following: (1) the National Training Institute for the Preservation of Iraqi Cultural Heritage in Ebril; (2) improvements to the Iraq National Museum in Baghdad, including redesigning collection displays and storage facilities; and (3) professional training programs for Iraqi archaeology and museum professionals in "collections management, conservation, education and management . . ."¹⁶⁰

In addition, the State Department's Bureau of Educational and Cultural Affairs (ECA) announced that it would provide an additional \$1 million to these efforts and would lead efforts to secure up to \$6 million in private sector contributions for similar projects designed to protect cultural heritage.¹⁶¹

On January 7, 2009, the United States State Department announced the creation of the "Future of Babylon Project," a plan to manage and preserve the archaeological site of

¹⁵⁷ State Dep't Press Release 2008/880, Oct. 16, 2008, *available at* 2008 WLNR 19803295.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

Babylon.¹⁶² The State Department awarded \$700,000 to the World Monuments Fund (WMF) to carry out preservation efforts in Babylon during a two year long project to “identify the purposes for which the site will be conserved and managed, and specify goals and policies to direct, guide, and regulate future uses and interventions at the site.”¹⁶³ The State Department noted that the “Future of Babylon Project” came about as “concerns surfaced about damages done to the ancient site . . . as a result of the use of parts of the site for military installations” back in 2004.¹⁶⁴ The Project would address the concerns raised in 2004 and would provide for future assistance to develop technologically and culturally appropriate conservation solutions to incorporate “holistic preservation approaches embracing environmental, social, and economic factors,” and would even provide for Babylonian “economic self-sufficiency.”¹⁶⁵

In addition, WMF describes the desire to create a “site management plan” that will address issues such as site boundaries in Babylon to define where further excavation may take place.¹⁶⁶ WMF states as one of its goals that the site management plans will assist in addressing boundaries where a Babylon Museum could be created and ways that the site can “accommodate tourists.”¹⁶⁷ Ultimately, WMF seeks to work with Iraqi officials to receive a “World Heritage Nomination” for Babylon.¹⁶⁸

¹⁶² State Dep’t Press Release 2008/015, Jan. 7, 2009, *available at* 2009 WLNR 326906.

¹⁶³ *Id.*

¹⁶⁴ Iraq Cultural Heritage Initiative, *The Future of Babylon*, BUREAU OF EDUCATIONAL AND CULTURAL AFFAIRS, U.S. DEP’T OF STATE, <http://exchanges.state.gov/heritage/iraq.html> (last visited Mar. 19, 2011).

¹⁶⁵ State Dep’t Press Release, *supra* note 162.

¹⁶⁶ The Future of Babylon, *Conserving Iraq’s Cultural Heritage*, WORLD MONUMENTS FUND, <http://www.wmf.org/project/future-babylon> (last visited Mar. 19, 2011).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

V. American Cultural Heritage Contributions to Iraq as a Form of Foreign Aid

In light of the significant contributions provided by the State Department to Iraq for the sole purpose of preserving Iraqi cultural heritage, it appears that the State Department is, in fact, doing more to help the country as a whole than just helping with an isolated issue such as cultural heritage preservation. To illustrate this idea, one may note the vast difference between the contributions given to Iraq and those given to other countries for the purpose of cultural heritage preservation. As of December 2010, the State Department has contributed over \$14 million to Iraqi cultural heritage preservation;¹⁶⁹ it has contributed a total of \$26 million to all countries around the world for cultural heritage projects in the past ten years.¹⁷⁰ Therefore, the State Department has awarded Iraq with more than half of the total of what it has awarded *every other country in the world* for cultural heritage projects.

In addition, a number of the projects the State Department sponsors in Iraq sound of the same foreign aid principals described by U.S. foreign aid programs. For instance, the desire to provide an education system to create homegrown Iraqi archaeologists sounds very much like other education programs created by U.S. government initiatives. In the same vein, providing the SBAH and WMF with funds to help make Babylon into what sounds like a tourist destination, appears very much like the economic and infrastructure projects foreign aid is designed to create.

To analyze whether the U.S. is engaging in distributing foreign aid to Iraq, it is important first, to define what exactly is foreign aid. Then, discuss how for the most part, foreign aid given to Iraq has taken on a special form in that substantial funds are funneled to Iraq yearly with no comparable distributions to other countries. And finally, discuss how efforts of the U.S. State

¹⁶⁹ STATE DEP'T PRESS RELEASE, *supra* note 157.

¹⁷⁰ The Ambassador's Fund for Cultural Preservation, BUREAU OF EDUCATIONAL AND CULTURAL AFFAIRS, U.S. DEP'T OF STATE, <http://exchanges.state.gov/heritage/afcp.html> (last visited Mar. 19, 2011).

Department towards cultural heritage protection are very much foreign aid in the same way other kinds of foreign aid are provided to Iraq.

A. The Definition of Foreign Aid

The concept of U.S. provided foreign aid dates back to at least 1947 with the passage of the Marshall Plan.¹⁷¹ The Marshall Plan heralded a new era in international foreign assistance by providing European countries, ravaged by World War II, with financial and technical help.¹⁷² By 1960, the American approach to foreign assistance was geared towards providing aid to countries “recovering from disaster, trying to escape poverty, and engaging in democratic reform.”¹⁷³ In the 1990s, American foreign aid was expanded to include a “sustainable development” approach.¹⁷⁴ This approach called on countries that needed help to capitalize on their “capacity as a country to improve its own quality of life.”¹⁷⁵

In recent years, foreign aid has been divided into five major categories: economic and social assistance (bilateral development assistance); economic aid supporting U.S. political and security objectives; humanitarian assistance; financing international development projects such as United Nations Children’s Fund (UNICEF); and military assistance.¹⁷⁶ The majority of funds

¹⁷¹ USAID, USAID PRIMER WHAT WE DO AND HOW WE DO IT, (Jan. 2006), http://www.usaid.gov/about_usaid/PDACG100.pdf.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ CONG. RESEARCH SERV., FOREIGN AID: AN INTRODUCTORY OVERVIEW OF U.S. PROGRAMS AND POLICY, (Apr. 15, 2004), *available at* <http://fpc.state.gov/documents/organization/31987.pdf>

expended are directed towards economic and social assistance and economic and political security.¹⁷⁷

Funds are typically distributed by the United States Agency for International Development (USAID), an independent federal government entity.¹⁷⁸ USAID is allotted approximately one-half of one percent of the federal budget to assist developing nations with economic and social improvements.¹⁷⁹ For example, USAID has worked to provide immunization programs, education programs, and small business loans to foster local economic development in nations in which it administers assistance.¹⁸⁰

B. Special Treatment Given to Iraq in the Form of Foreign Aid: Generally

In addition to the U.S. government's numerous financial aid projects around the world, the government has taken special care in expending funds for reconstructing Iraq.¹⁸¹ In a Congressional Research Service (CRS) Report for Congress dated April 15, 2004, writers of the "Foreign Aid: An Introductory Overview of U.S. Programs and Policy" described the U.S. assistance program to Iraq as the largest foreign aid initiative since the 1948 Marshall plan.¹⁸² The report describes how foreign aid has been directed at improving security capabilities of the Iraqi police and military, promoting democracy, and providing funds for infrastructure development throughout Iraq, including electricity, oil, water and sewage projects.¹⁸³ As of

¹⁷⁷ *Id.*

¹⁷⁸ USAID, *supra* note 171.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ CONG. RESEAECH SERV., *supra* note 176.

¹⁸² *Id.*

¹⁸³ *Id.*

2004, nearly \$21 billion were provided to Iraq in foreign assistance, with at least \$1 billion to follow, and funds for Iraq were totaled separately from funds directed at other nations.¹⁸⁴

In addition, as regards to humanitarian aid distributed by USAID, Iraq received \$2.3 billion out of the allotted \$13.3 billion to be distributed by USAID on international projects.¹⁸⁵ The humanitarian efforts include creating local governments in over 600 cities, rehabilitating 2,500 schools, vaccinating 3 million children, and reviving marshlands in southern Iraq.¹⁸⁶

C. *Additional Special Treatment Received by Iraq in the Form of Foreign Aid for Cultural Heritage Preservation*

Judging by the amount of money expended for efforts in Iraq in general and the overall separate treatment in funding for Iraq, it is entirely likely that funds directed at cultural heritage preservation (currently at over \$14 million¹⁸⁷) are the same type of “special assistance” the U.S. is providing Iraq in other arenas. In fact, the funds provided to Iraq for cultural heritage preservation are exactly the same economic and social development assistance foreign aid ordinarily seeks to address.

To illustrate this concept, take the creation of the ICHP. The ICHP seeks collaborations between Iraqi people and highly regarded cultural institutions in order to provide educational opportunities to foster a new line of archaeology specialists in Iraq.¹⁸⁸ This is similar to the educational opportunities USAID seeks to create in countries in which it provides foreign assistance. In fact, USAID already worked to rehabilitate over 2,500 primary and secondary

¹⁸⁴ *Id.*

¹⁸⁵ USAID, *supra* note 171.

¹⁸⁶ *Id.*

¹⁸⁷ STATE DEP’T PRESS RELEASE, *supra* note 157.

¹⁸⁸ BUREAU OF EDUCATIONAL AND CULTURAL AFFAIRS, *supra* note 170.

schools in Iraq.¹⁸⁹ The ICHP is merely supplementing these programs for higher-level education. In this case, it is more specifically targeted at developing Iraqi archaeologists.

Similarly, the attempts at making Babylon a tourist destination¹⁹⁰ is also analogous to the economic assistance USAID hopes to generate in projects dealing with small business funding and infrastructure development.¹⁹¹ Tourist destinations need buildings, roads, running water, and other basic necessities that USAID provides in such initiatives.¹⁹² The tourist destination concept would also foster economic growth by providing employment opportunities to locals, which will lead to the rebuilding of an entirely new city: housing complexes, transportation systems, and utility providers. In fact, this kind of aid is already being provided to Iraq as noted in the Congressional Report of 2004, detailing funding for Iraqi electricity, water, oil and sewage projects.¹⁹³ Therefore, the tourist funding for Babylon is merely the same kind of support the United States already gives Iraq – in this case, it is for cultural heritage preservation.

D. Reasons for the U.S. Providing Foreign Aid Cultural Heritage Protection to Iraq

There is no doubt that Iraq needed financial assistance since the fall of Saddam Hussein's regime. This is clearly evidenced by the separately funded initiatives hovering in the billions of dollars range provided to the country since 2003.¹⁹⁴ However, the fact that some of this aid is coming in the form of cultural heritage preservation is illustrative of an attempt at reputation salvation following the extreme criticism the U.S. faced from the international media in allowing the Iraq National Museum to fall to looters and for the trampling all over the ancient grounds of

¹⁸⁹ USAID, *supra* note 171.

¹⁹⁰ WORLD MONUMENTS FUND, *supra* note 166.

¹⁹¹ USAID, *supra* note 171.

¹⁹² *Id.*

¹⁹³ [CONG. RESEARCH SERV.](#), *supra* note 176.

¹⁹⁴ *Id.*

Babylon.¹⁹⁵ The looting of the Iraq National Museum as U.S. soldiers stood by was considered a “public relations disaster,”¹⁹⁶ especially in light of “the fact that the United States failed to prevent a predictable disaster.”¹⁹⁷

The international community expressed similar sentiments about the damage done by the U.S. occupation of Babylon.¹⁹⁸ The damage assessment prepared by UNESCO called the use of Babylon as a military base “a grave encroachment on this internationally known archaeological site.”¹⁹⁹ Military officials allegedly caused both direct and indirect damage on the site by creating trenches and leveling buildings.²⁰⁰ Damage to the certain monuments such as the Ishtar Temple and the Inner City Wall required “emergency interventions” by the SBAH.²⁰¹

Together, these two incidents directly involving U.S. military forces proved to be a “serious international relations crisis.”²⁰² One commentator noted that in the aftermath of the war in Iraq, the “White House . . . learned . . . [that] art is a mighty weapon in the battle for hearts or minds. Lose or abuse the treasures of ancient civilizations, or fail to prevent others from doing damage, and incur a blast of international disapproval.”²⁰³ That same commentator spoke to the idea that preservation of cultural heritage would be key in “even a foreign invader . . . [gaining]

¹⁹⁵ Borke, *supra* note 12, at 403.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Leeman, *supra* note 133.

¹⁹⁹ U.N. Educ., Scientific and Cultural Org. [UNESCO], Int’l Coordination Comm. for the Safeguarding of the Cultural Heritage of Iraq, *Final Report on Damage Assessment in Babylon*, U.N. Doc. CLT/EO/CIP/2009/RP/114 (June 26, 2009).

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Borke, *supra* note 12, at 404.

²⁰³ *Id.*

respect.”²⁰⁴ The U.S. was required to take “affirmative steps to remedy the Iraqi antiquity situation in order to regain international respect.”²⁰⁵

The affirmative steps the U.S. took to remedy the Iraq situation included enacting the Emergency Protection for Iraqi Cultural Antiquities Act of 2004²⁰⁶ and expending millions of dollars on cultural heritage preservation efforts²⁰⁷, especially in the areas where the U.S. received the most criticism: allowing looters to take the Iraq National Museum and in occupying, and thereby destroying, the ancient city of Babylon.²⁰⁸

VI. Potential Changes to U.S. Cultural Heritage Preservation Efforts in Light of the Extensive Assistance Given to Iraq

Over the past ten years, the United States has taken great strides in proving its dedication to cultural heritage preservation. For example, the United States adopted the 1954 Hague Convention in March 2009.²⁰⁹ Moreover, since 2000 the U.S. State Department has been involved in disbursing millions of dollars towards international cultural heritage through the U.S. Ambassadors Fund for Cultural Heritage Preservation.²¹⁰ The State Department has also engaged in special projects directed at the same goal: cultural heritage preservation efforts in Afghanistan, supporting the UNESCO Database of National Cultural Heritage Laws, and sponsoring regional

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Emergency Protection for Iraqi Cultural Antiquities Act of 2004; Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108- 429, §§ 3001-3003 (2004).

²⁰⁷ STATE DEP’T PRESS RELEASE, *supra* note 157.

²⁰⁸ Borke, *supra* note 12, at 404.

²⁰⁹ Corine Wegener, ARCHEOLOGICAL INST. OF AM, *The 1954 Hague Convention and Preserving Cultural Heritage* (Oct. 19, 2010), <http://www.archaeological.org/news/hca/3137>.

²¹⁰ The Ambassador’s Fund for CULTURAL PRESERVATION, BUREAU OF EDUCATIONAL AND CULTURAL AFFAIRS, U.S. DEP’T OF STATE, <http://exchanges.state.gov/heritage/afcp.html> (last visited Mar.27, 2011)

workshops in Colombia, Honduras, and Cambodia on topics relating to the protection of cultural resources from looting and illicit trafficking.²¹¹

However, the incredible efforts directed at Iraq are simply unprecedented and are unlikely to continue in the future with other countries. That is, unless the U.S. engages in the direct destruction of cultural heritage as a result of invasion. The fact that the U.S. received so much criticism from the international community, surely, proved to be the necessary stimulus in garnering U.S. attention towards efforts at cultural heritage preservation. The overwhelming response to Iraq, in particular, is undeniably a response to the direct involvement in the destruction of Babylon and the passive response to the Iraq National Museum Looting.

The fact that the U.S. engages in yearly efforts at assisting other countries, however, is certainly not insignificant. The U.S. is still involved in donating over \$1 million to international efforts solely for the purpose of cultural heritage preservation.²¹² Yet, as previously stated, these efforts are akin to the foreign aid efforts the U.S. already provides these countries. Together then, this shows a great commitment on part of Americans to helping developing nations in all areas; even areas the U.S. has traditionally ignored like cultural heritage.

VII. How Cultural Heritage Foreign Aid from the U.S. Will Help Iraq: A New Iraqi Identity?

The restoration of the Iraq National Museum and the city of Babylon will undoubtedly assist the Iraqi people in some way. Even if the Iraqi people, themselves, are not so emotionally

²¹¹ Special Projects, BUREAU OF EDUCATIONAL AND CULTURAL AFFAIRS, U.S. DEP'T OF STATE, <http://exchanges.state.gov/heritage/special.html> (last visited Mar. 19, 2011)

²¹² The Ambassador's Fund for Cultural Preservation 2002 Report, <http://exchanges.state.gov/uploads/Iv/sR/IvsRL9EsyqEDQ32LCWnyCw/2002-3AFCPannual.pdf> (last visited Mar. 19, 2011).

invested in the idea of cultural heritage preservation, the infrastructure development with rebuilding these areas will provide economic and social improvements. The rebuilding efforts will lead the way towards better housing in those areas, modern facilities, improvements in transportation, and job opportunities.

Additionally, these efforts may prove to be a stimulus for a new Iraqi identity. Cultural property is generally viewed under two paradigms: cultural nationalism and cultural internationalism.²¹³ Cultural nationalists view cultural property as providing “a citizenry with a historical link to its past.”²¹⁴ Cultural internationalists see cultural property as “belonging to the heritage of the world.”²¹⁵

Even under these paradigms, the foreign assistance provided for cultural heritage preservation will lead to renewed Iraqi identification with cultural heritage. If the country takes rebuilding efforts under a cultural nationalists perspective they will internalize the meaning of certain cultural heritage items and focus on it as a “preservation of national identity.”²¹⁶ If the Iraqi people view rebuilding efforts under a cultural internationalists perspective they will view their cultural property as a “contribution to the culture of the world”²¹⁷ and will be able to engage in viewing themselves as part of a greater international community.

Conclusion

In conclusion, regardless of which view of cultural identity the Iraqi people end up taking, in the greater scheme of things U.S. efforts at cultural heritage preservation will surely

²¹³ Dybowski, *supra* note 43, at 70.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.* at 72.

foster economic and social growth following years of war and devastation. It is unlikely that Iraq will become the tourist destination the WMF hopes any time soon, but the U.S. efforts at cultural heritage preservation will enable the Iraqi people to develop at least some kind of economic growth with just basic assistance in infrastructure in these areas. It would be overly ambitious to accord the U.S. with the credit for creating a “new Iraq identity” in terms of cultural heritage preservation, but the U.S. may have played a role in jumpstarting new efforts at creating an international dialogue for preservation of Iraqi cultural heritage. The artifacts and the appreciation for them have always existed in Iraq, as evidenced by the determination and dedication exhibited by the staff of the Iraq National Museum in response to the looting and by the outcry following the U.S. occupation of Babylon, but now the international community can once again become involved in preserving cultural heritage at large and specifically the heritage of the Iraqi people.