

Burden-Shifting: Amending United States Trade Regulations to Protect International Cultural Heritage Property During Armed Conflict

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INTRODUCTION

“I have seen many destroyed buildings in my city. But the worst pain I felt after seeing all the destruction was when I stood on the ruins of our ancient monuments. I felt as if a piece of my body had been destroyed, a piece of my soul had been damaged.”

—Testimony from a Syrian citizen interviewed by the International Committee of the Red Cross.¹

The Syrian Civil War has taken a piece of the nation’s soul. The conflict has killed over half a million Syrians and displaced over eleven million more.² Another casualty of the conflict is Syria’s rich cultural history. All six of Syria’s UNESCO World Heritage Sites have been destroyed or damaged.³ Important religious sites such as the Temple of Bel-Shamin were intentionally destroyed by ISIS.⁴ Countless archaeological sites in Syria were quickly ravaged by looters.⁵ Despite the scale of destruction of cultural property, the international community’s response was weak at best.

Cultural property protection is not often the first priority during armed conflict. A nation embroiled in violent warfare will undoubtedly focus its attention on protecting the lives of its citizens, as well as fending off aggressive forces. Bomb shelters take precedence over museum galleries. Military planning is more important than finding escape routes for precious artifacts. The lives of humans are more important than the historic and cultural art that they have created. While this hierarchy is certainly understandable, the result is that cultural property remains unprotected until it is often too late to be recovered.

The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Ownership of Cultural Property (“1970 Convention”) defines cultural property as “property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science.”⁶ While this definition paints cultural

1. *Attacks on Our Cultural Property Are Attacks on Our Humanity*, INT'L COMM. OF THE RED CROSS (Oct. 30, 2017), <https://www.icrc.org/en/document/attacks-our-cultural-property-are-attacks-our-humanity> [https://web.archive.org/web/20251012223736/https://www.icrc.org/en/document/attacks-our-cultural-property-are-attacks-our-humanity].

2. Francesco Bandarin, *The Destruction of Aleppo: The Impact of the Syrian War on a World Heritage City*, GETTY (July 13, 2022), <https://www.getty.edu/publications/cultural-heritage-mass-atrocities/part-2/10-bandarin/> [https://web.archive.org/web/2025110191707/https://www.getty.edu/publications/cultural-heritage-mass-atrocities/part-2/10-bandarin/].

3. *History Lost Amid the Destruction of These Syrian UNESCO World Heritage Sites*, ABC NEWS (Mar. 15, 2016), <https://abcnews.go.com/International/history-lost-destruction-syrian-unesco-world-heritage-sites/story?id=37654762> [https://web.archive.org/web/2025110191816/https://abcnews.go.com/International/history-lost-destruction-syrian-unesco-world-heritage-sites/story?id=37654762].

4. Bandarin, *supra* note 2.

5. *Id.*

6. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property Nov. 14, 1970 [hereinafter the “1970 Convention”], art. 1, 823 U.N.T.S. 231.

property as holding significance within the confines of academic fields, its real significance is much broader. Cultural property is crucial to the identity of a nation and its citizens.⁷ Archaeological sites uncover the collective memories of a nation's past. Landscape paintings speak to the way of life preserved by a nation's citizens. Physical monuments capture religious traditions that go to the heart of a nation, far beyond academic pursuits.

Perpetrators of armed conflict have long recognized the importance of cultural property to nations under attack. Cultural property is attacked on two fronts. First, aggressors target culturally significant sites and works as a secondary means of warfare.⁸ Second, looting forces cultural property into illicit streams of global trade. Looters are individuals or criminal networks that destroy archaeological sites and steal from "religions and cultural institutions" to profit off tragedy.⁹ Armed conflict provides the perfect cover for looters to excavate previously protected sites and invade museums.¹⁰

The international community has an important role to play, both in punishing the perpetrators of armed conflict for their targeting of cultural property and deterring the unofficial pillage and sale of these artifacts in the global market. Each of these threats to cultural property dilutes the identity of a nation and its citizens. However, the existing international law framework focuses on only the first threat. The 1954 Hague Convention ("Hague Convention") is the major international law treaty governing the protection of cultural property during armed conflict. The Hague Convention focuses on punishing those who target the cultural property of another nation during war and instructs nations to take measures during peacetime to safeguard their property.¹¹ While this addresses the first problem of how to punish perpetrators, the second major threat to cultural property—the unofficial looting of important objects—is overlooked.

7. Several scholars have argued that cultural property is so significant to a nation that the intentional destruction of said property should be framed as a violation of human rights. *See* Human Rights Council, Report of the Special Rapporteur in the Field of Cultural Rights on Her Visit to Botswana, U.N. Doc. A/HRC/31/59, at 3 (Jan. 12, 2016).

8. For instance, the Nazi-backed destruction of German synagogues on Kristallnacht in 1938 was intended to dehumanize Jewish citizens. *See* ROBERT BEVAN, THE DESTRUCTION OF MEMORY: ARCHITECTURE AT WAR 7 (2006). In addition, Serbian nationalists intentionally bombed Bosnia's National and University Library, an institution dedicated to preserving a written record of Bosnia's past. *See* András Riedlmayer, *Erasing the Past: The Destruction of Libraries and Archives in Bosnia-Herzegovina*, 29 MIDDLE EAST STUD. ASS'N BULL. 7 (1995).

9. U.S. IMMIGR. & CUSTOMS ENFT, *Cultural Property, Art, and Antiquities Smuggling*, <https://www.ice.gov/about-ice/hsi/investigate/cpaa-smuggling> [<https://web.archive.org/web/2025110192742/https://www.ice.gov/about-ice/hsi/investigate/cpaa-smuggling>] (last visited Nov. 10, 2025).

10. For instance, social media revealed videos of masked looters hoisting priceless paintings from the Kuindzhi Art Museum in Ukraine into trucks following the Russian invasion in 2022. This important cultural property was then sold to art collectors around the world, including the United States. *See* Anna Neplii, *Stolen Culture: Arkhip Kuindzhi, the Mariupol Artist Who Painted Ukraine*, KYIV POST (Jan. 7, 2023), <https://www.kyivpost.com/post/6471>.. [<https://web.archive.org/web/20251012224451/https://www.kyivpost.com/post/6471>].

11. Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention [hereinafter the "Hague Convention"], art. 3, May 14, 1954, 249 U.N.T.S. 215.

This Note argues that the illicit trade of cultural property during armed conflict can be mitigated through amending domestic trade laws. In particular, this Note suggests amendments to the United States Cultural Property Implementation Act (“CPIA”) to deter the illicit trade of cultural property. The CPIA is a United States Customs regulation which permits the United States to enter into bilateral agreements to restrict the imports of another nation’s cultural property in danger of pillage, subject to a set of criteria.¹² The CPIA has allowed for the United States to enter into several bilateral agreements, but the current framework is not calibrated for the needs of nations dealing with armed conflict. Specifically, the CPIA places too heavy a burden on the nation seeking import restrictions, which is typically (and rightfully) more concerned with protecting the lives of its citizens and fending off attacks than preventing the illegal trade of its cultural artifacts.

Part I of this Note will provide an overview of current United States and international efforts to protect cultural property during periods of armed conflict. Part I will also demonstrate that the United States is a particularly key player in preventing the illegal sale of cultural property. Part II of this Note will propose amendments to the CPIA’s emergency provision, which will reduce delays for nations requesting import restrictions. Part III of this Note will argue that the CPIA’s renewal provision should be amended to remove the high burden on nations under the control of hostile forces.

I. INTERNATIONAL AND DOMESTIC LEGISLATION DO NOT PREVENT THE ILLICIT TRAFFICKING OF CULTURAL PROPERTY DURING ARMED CONFLICT

A. THE HAGUE CONVENTION: AMERICAN HESITANCE AND FAILURE TO PREVENT EXPORTATION OF CULTURAL PROPERTY DURING ARMED CONFLICT.

The United States has long harbored an interest in protecting cultural heritage property during armed conflict, dating back to the Civil War. In 1863, President Abraham Lincoln requested the development of what eventually became the Lieber Code, a set of general orders issued to the Government of the Armies of the United States.¹³ Article 35 of the Lieber Code provided that “classic works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes . . . must be secured against all avoidable injury.”¹⁴ The United States recognized early on that the law of armed conflict must include special provisions for preserving cultural property.

12. See 19 U.S.C. §§ 2601–2613.

13. Jenny Gesley, The “Lieber ‘Code’”—the First Modern Codification of the Laws of War, lib. of congress blog (Apr. 24, 2018), <https://blogs.loc.gov/law/2018/04/the-lieber-code-the-first-modern-codification-of-the-laws-of-war/> [<https://web.archive.org/web/20260105152025/https://blogs.loc.gov/law/2018/04/the-lieber-code-the-first-modern-codification-of-the-laws-of-war/>].

14. U.S. War Dep’t, Instructions for the Government of Armies of the United States in the Field (Gen. Orders No. 100, Apr. 24, 1863) [the “Lieber Code”], § II, art. 35.

The first concerted international effort to protect cultural heritage property during armed conflict did not arise until nearly a century later. The 1954 Hague Convention was the first international treaty focused solely on the protection of cultural heritage.¹⁵ The Hague Convention was a response to the widespread destruction and looting of cultural property brought about by World War I and World War II.¹⁶ The treaty encouraged nations to take preventative measures to protect cultural heritage at risk of destruction, such as creating national registers of important works and planning emergency procedures.¹⁷ The United States was heavily involved in the negotiation and drafting of the Hague Convention. Indeed, the guiding principles of the Hague Convention aligned with President Dwight Eisenhower's commands to Allied troops during World War II that they mitigate damage to cultural artifacts.¹⁸ However, the United States did not ratify the Convention (thus codifying the goals of the international agreement into its own domestic legal obligations) until 2009.¹⁹ This 2009 ratification notably did not include Section I of the accompanying First Protocol to the Hague Convention, which aimed to prevent the exportation of cultural property from a territory occupied by armed conflict.²⁰ The United States did not ratify the First Protocol because of "concerns about the acceptability" of the mandate to prevent exportation of cultural property.²¹ In particular, the United States worried that the term "export" was ambiguous and that being forced to abide by Section I of the First Protocol would be too burdensome on the U.S. legal system.²²

The delay in ratifying the Hague Convention, and the refusal to ratify Section I of the First Protocol, demonstrates the reluctance of the United States to clamp down on exports of cultural property during armed conflict. Although the United States had expressed a longstanding commitment to protecting cultural property during wartime, the government was unwilling to use domestic trade restrictions to address the root of

15. *Cultural Heritage and Armed Conflicts*, UNESCO, <https://www.unesco.org/en/heritage-armed-conflicts/convention-and-protocols/1954-convention> [<https://web.archive.org/web/20251114125945/https://www.unesco.org/en/heritage-armed-conflicts/1954-convention>] (last visited Nov. 14, 2025)..

16. See S. EXEC. DOC. NO. 110-26, at 3 (2008).

17. See Patty Gerstenblith, *Beyond the 1954 Hague Convention*, in CULTURAL AWARENESS IN THE MILITARY: DEVELOPMENTS AND IMPLICATIONS FOR FUTURE HUMANITARIAN COOPERATION 89-90 (Robert Albro & Bill Ivey eds., 2014).

18. See Letter from General Eisenhower, Commander-in-Chief of the U.S. Army, to All Commanders (Dec. 29, 1943) (on file with the Records of the War Department General and Special Staffs, National Archives); S. EXEC. DOC. NO. 110-26, at 3 (2008).

19. Corine Wegener, *The 1954 Hague Convention and Preserving Cultural Heritage*, ARCHAEOLOGICAL INST. OF AM. (Oct. 19, 2010), <https://www.archaeological.org/the-1954-hague-convention-and-preserving-cultural-heritage/> [<https://web.archive.org/web/20251114131835/https://www.archaeological.org/the-1954-hague-convention-and-preserving-cultural-heritage/>].

20. Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 20 U.N.T.S. 215, art. 2.

21. S. Treaty Doc. No. 106-1, at 4 (1999). These suspicions about the First Protocol were expressly addressed in a 1999 Senate report and remained in place when the treaty was finally implemented in 2009. The First Protocol was absent in the finalized text of the statute. See 19 U.S.C. §§ 2601-2613.

22. S. Treaty Doc. No. 106-1, at 9 (1999).

the issue. New international efforts would be needed to halt the illicit trafficking of cultural property in the wake of war.

B. THE 1970 CONVENTION: IMPLEMENTATION IN THE UNITED STATES ADDS ADDITIONAL BURDENS TO PROTECTING CULTURAL PROPERTY.

Nearly two decades after the Hague Convention, the international community addressed the illegal trade of cultural property. While the Hague Convention focused on encouraging countries to proactively protect their cultural property during armed conflict, the 1970 Convention focused on stemming the illicit trafficking of cultural property, both during peacetime and wartime.²³ The 1970 Convention has been ratified by 149 nations, many of which have also ratified the Hague Convention.²⁴

However, the 1970 Convention was not easily implemented in the U.S. domestic framework. After over a decade of intense debate, the United States passed the CPIA, which is comparatively limited in scope.²⁵ The CPIA adopts only Articles 7(b)(2) and Article 9 of the 1970 Convention.²⁶ Article 7(b)(2) prohibits importing cultural property taken from museums or other significant areas.²⁷ Article 9 creates a mechanism for nations to request assistance from other powers to control the exports and imports of its cultural property in jeopardy.²⁸ The other articles of the 1970 Convention were not adopted by the United States.

The CPIA created a procedure by which a nation can ask the United States to block the exportation of its cultural heritage property under Article 9 of the 1970 Convention.²⁹ The CPIA requires the President of the United States to make four determinations before taking any action to restrict trade.³⁰ First, the President must find the cultural property of the requesting nation is in danger of pillage.³¹ Second, the President must find that the nation has “taken measures consistent with the [1970] Convention to protect its cultural patrimony.”³² Third, the President must determine that import restrictions would actually deter pillage of cultural materials from the requesting nation, and that less “drastic” remedies would be ineffective.³³ Fourth, the President must find that the rest of the international community has taken similar steps

23. 1970 Convention, *supra* note 6.

24. *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property: States Parties*, UNESCO, <https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural> [https://web.archive.org/web/20251114133744/https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural] (last visited Nov. 14, 2025).

25. 19 U.S.C. §§ 2601–2613.

26. 19 U.S.C. § 2606; 19 U.S.C. § 2602.

27. 1970 Convention, 823 U.N.T.S. 231 at art. 7(b)(2).

28. *Id.* at art. 9.

29. 19 U.S.C. §§ 2602.

30. *Id.*

31. 19 U.S.C. § 2602(a)(1)(a).

32. 19 U.S.C. § 2602(a)(1)(b).

33. 19 U.S.C. § 2602(a)(1)(c).

to protect against the illicit trafficking of the requesting nation's cultural heritage property.³⁴ If all four criteria are met, the President may form a bilateral agreement with the requesting nation and apply the requisite import restrictions.³⁵

The CPIA does provide for a limited emergency implementation of import restrictions. The cultural property seeking protection must meet a specific set of requirements in order to receive emergency protection: The cultural property must be a "newly discovered type of material," originate from a significant site in jeopardy of pillage or a from a particular culture at risk of dispersal, and import restrictions would be effective at protecting the cultural property.³⁶ In addition, the nation seeking emergency assistance must make a request to the United States and supply the information needed to determine that an emergency condition exists in the first place. Finally, the President must also consider the advice of the Cultural Property Advisory Committee ("advisory committee"), which makes recommendations on every bilateral agreement.³⁷

C. THE CPIA: A COMPROMISE BETWEEN THE PRIVATE ART MARKET AND CULTURAL HERITAGE PROTECTION ADVOCATES

The United States took over ten years to (partially) implement the 1970 Convention through the passage of the CPIA. This delay was due to disagreements between the private art market, whose advocates favored fewer trade restrictions to increase the circulation of artwork, and cultural heritage property protection groups, who favored stronger import restrictions.³⁸ The resulting CPIA is a weak framework for restricting the illicit trafficking of cultural heritage items in the United States.

Legislative history demonstrates intense debate between the private art market and cultural heritage protectionists in the build-up to the passage of the CPIA. In a 1977 hearing, the Subcommittee on Trade of the Committee on Ways and Means considered testimony from Douglas Ewing, the president of the American Association of Dealers in Ancient, Oriental, and Primitive Art. Mr. Ewing argued that adopting the proposed CPIA would be a "cultural disaster" to the United States.³⁹ Mr. Ewing further posited that the President would use the CPIA to impose an "embargo" on art trade into the United States, thereby depriving the American public of access to important pieces of

34. 19 U.S.C. § 2602(a)(1)(d).

35. 19 U.S.C. § 2602(f)(3).

36. 19 U.S.C. § 2603(a).

37. The special committee is comprised of eleven members appointed by the President with a diverse set of interests. Two members must represent the interests of museums, three must be experts in archaeology, anthropology, or ethnology, another three must be experts in the sale of cultural property, and the last three represent the public interest. *See* 19 U.S.C. § 2605(b).

38. *See* Lawrence J. Persick, *The Continuing Development of United States Policy Concerning the International Movement of Cultural Property*, 4 PENN STATE INT'L L. REV. 89, 92–95 (1985).

39. *Legislative Proposals on Miscellaneous Tariff and Trade Matters: Hearing on H.R. 5643 Before the Subcomm. on Trade of the H. Comm. on Ways & Means*, 95th Cong. 31 (1977) [hereinafter the "1977 Hearing"] (statement of Douglas Ewing, President, Am. Ass'n of Dealers in Ancient, Oriental, & Primitive Art).

artwork.⁴⁰ Other dealers in artwork testified to the danger of returning cultural and historical artifacts back to nations who were neglectful or lacked the resources to properly care for these artifacts.⁴¹

On the other side of the aisle, Clemency Coggins, a legal scholar at the Archaeological Institute of America, testified in a 1979 hearing that the livelihood and aesthetic pleasures of art dealers do not outweigh the destruction and plundering of important archaeological sites.⁴² Ms. Coggins argued further that cultural property relies entirely on protection, as there is no alternative for “repopulating” important historical and cultural artifacts.⁴³ Several other archaeological scholars echoed these sentiments in other statements heard by the Subcommittee. In a 1978 hearing, Congress acknowledged the impact of these voices over the past four years of debates between art dealers and archaeological preservationists.⁴⁴ It took another three years for Congress to finally pass a much-modified version of the CPIA.

Even after the debates concluded and the legislation was passed, criticism continued to plague the CPIA. Archaeological scholars argued that the law created more problems than solutions because other major art-import hubs were not imposing similar restrictions.⁴⁵ Museums supported the bill but expressed concern about the ability of requesting nations to properly care for the items returned to them.⁴⁶ American dealers worried that other countries would have free-range to export cultural property, and American art dealers would lose out on profits.⁴⁷

The result of the constant back-and-forth was a greatly weakened mechanism for controlling the illicit trade of cultural property items. Those favoring stronger import restrictions made many concessions to push the CPIA through Congress. For instance, art dealers successfully modified earlier drafts of the CPIA that would have permitted unilateral Presidential action without a showing of concerted international effort.⁴⁸ The final version of the CPIA, which requires a determination of concerted international efforts to restrict importations of a requesting nation’s cultural heritage,

40. *Id.*

41. See H.R. Rep. No. 95-615, at 4 (1977).

42. *To Implement the UNESCO Convention on Cultural Property: Hearing on H.R. 3403 Before the Subcomm. On Trade of the H. Comm. on Ways & Means*, 96th Cong. 30 (1979) [hereinafter the “1979 Hearing”] (statement of Clemency Coggins, Chairperson, Subcomm. on the Preservation of Archaeological Res., Archaeological Inst. of Am.).

43. *Id.*

44. *Convention on Cultural Property Implementation Act: Hearing on H.R. 5643 and S. 2261 Before the Subcomm. of Int. Trade of the S. Comm. on Finance*, 95th Cong. 218 (1978) [hereinafter the “1978 Hearing”] (statement of Mark. B. Feldman, Deputy Legal Adviser, Dep’t of State).

45. Linda Charlton, *Senate Weighs Bill to Control Imports of Major Cultural Property*, N.Y. TIMES (Mar. 12, 1978), <https://www.nytimes.com/1978/03/12/archives/senate-weighs-bill-to-control-imports-of-major-cultural-property-a.html>. [https://web.archive.org/web/20251124183451/https://www.nytimes.com/1978/03/12/archives/senate-weighs-bill-to-control-imports-of-major-cultural-property-a.html].

46. *Id.*

47. *Id.*

48. 1977 Hearing, *supra* note 39, at 33.

is one of many concessions made by archaeological preservationists to pass the legislation over the dissent of the private art market.

Another concession concerned the formation of an advisory committee of experts representing the perspectives of museums, art dealers, and academia.⁴⁹ Cultural property protectionists opposed this change because instead of permitting broader discretion to act, the law requires the President to consider the points of views of those opposed to the goals of the CPIA before creating a bilateral agreement with the requesting nation. The private art market influence won out, and the CPIA requires the President to consider the recommendations of the advisory committee.

The result of a decades-long debate over the implementation of the 1970 Convention resulted in a piecemeal framework for preventing the illicit trafficking of cultural property.

D. THE CPIA SHOULD BE LEVERAGED TO PREVENT ILLICIT TRAFFICKING DURING ARMED CONFLICT

Importantly, the CPIA is a trade agreement passed under the supervision of the Subcommittee on Trade of the House Committee on Ways and Means. U.S. Customs acts as the enforcement agency of import restrictions at the U.S. borders.⁵⁰ While the CPIA is not explicitly grounded in international human rights or wartime law, it still plays an important role in protecting the cultural property of nations during armed conflict.

Import restrictions on cultural heritage items are most necessary during armed conflict, when looting and trafficking of said items reach all-time highs. Armed conflict has long facilitated the looting and destruction of important cultural heritage items. For example, after the fall of Saddam Hussein's regime in Iraq, 170,000 antiquities were stolen from the National Museum in Baghdad amid renewed violence in the nation.⁵¹ During the Syrian civil war, over 40,000 artifacts were smuggled from Syrian archaeological sites.⁵² After the Taliban took power in Afghanistan in 2021, reports showed widespread bulldozing of archaeological regions to facilitate easier looting.⁵³

49. H.R. Rep. No. 95-615, at 2 (1977).

50. 19 U.S.C. § 2609(a).

51. Karin E. Borke, *Searching for a Solution: An Analysis of the Legislative Response to the Iraqi Antiquities Crisis of 2003*, 13 DEPAUL J. ART & ENT. L. 381, 385 (2003).

52. *Report Documents Severe Damage to Syrian Heritage and Museums*, AL JAZEERA (June 8, 2020), <https://www.aljazeera.com/features/2020/6/8/report-documents-severe-damage-to-syrian-heritage-and-museums> [https://web.archive.org/web/20251108040729/https://www.aljazeera.com/features/2020/6/8/report-documents-severe-damage-to-syrian-heritage-and-museums].

53. Kawoon Khamoosh, *Afghanistan: Archaeological Sites “Bulldozed for Looting,”* BBC (Feb. 21, 2024), <https://www.bbc.com/news/world-asia-68311913> [https://web.archive.org/web/20251108041320/https://www.bbc.com/news/world-asia-68311913].

While existing laws, namely the Hague Convention, can deter this behavior, the CPIA can be used as a tool to stem the illicit trafficking of cultural property after it has already begun. The United States is a major player in the trafficking of cultural items. The demand for cultural items is high in the United States, where there is a concentration of private art dealers who have the resources and desire to purchase looted items.⁵⁴ Thus, the United States' implementation of trade restrictions can protect cultural property during times of armed conflict at home and abroad.

Additionally, the Hague Convention is alone not sufficient to protect cultural property during war. While the Hague Convention is largely seen as the governing legislation for cultural property during armed conflict, it does not provide a concrete framework for dealing with the inevitable aftermath of armed conflict. There must also be decisive action reactive to wartime. The CPIA (ideally) allows for a nation to place immediate import restrictions on cultural property at risk. Meanwhile, the Hague Convention's recommendations might take years to implement. Marking cultural property items and creating emergency plans requires coordination across a nation and lots of planning. The CPIA can react quicker to armed conflict.

Finally, legislative history suggests Congress intended for the CPIA to apply during armed conflict. Specifically, the CPIA was needed to address the destruction of important cultural sites because of armed conflict. Testimony from a 1979 hearing suggests that import restrictions are necessary to disincentivize the "destruction of archaeological sites . . . by the most violent means" due to the "depredation of war and neglect."⁵⁵ A 1977 Congressional report emphasized the role of import restrictions in deterring pillage, a common consequence of armed conflict.⁵⁶ Congressional intent did not distinguish between peacetime and wartime. Instead, the CPIA was designed to apply to times of armed conflict.

Even though the CPIA is a trade regulation, it is a significant means to protect cultural heritage property during armed conflict. Its focus on halting and deterring illicit trafficking after armed conflict has broken out, rather than before conflict has begun, and its mechanism for forming bilateral agreements with nations at risk of pillage closes large gaps in the existing international framework. Instead of trying to amend the Hague Convention, the CPIA should be amended to effectively react to armed conflict and protect cultural heritage property when the chaos has already ensued.

II. REMOVING STATUTORY OBSTACLES IN THE CPIA'S EMERGENCY PROVISION WILL SHIFT THE BURDEN FROM A REQUESTING NATION

54. Predita C. Rostomian, *Looted Art in the U.S. Market*, 55 RUTGERS L. REV. 271, 272 (2002).

55. 1979 Hearing, *supra* note 42, at 92 (statement of Paul N. Perrot, Vice President of the Int'l Council of Museums).

56. H.R. Rep. No. 95-615, at 9-10 (1977).

AND MORE EFFICIENTLY PROTECT CULTURAL PROPERTY

The CPIA allows for the emergency implementation of import restrictions. Under 19 U.S.C. § 2603, an emergency condition is triggered when: (1) the material seeking trade protection is coming from a site in jeopardy of pillage, dispersal, dismantling, or fragmentation and (2) applying import restrictions would reduce the incentive for continued behavior.⁵⁷ This emergency provision has been utilized in several instances to support nations in crisis, including Yemen, Peru, Cambodia, and Libya.⁵⁸

However, the CPIA's emergency provision is cabined by limitations set forth in 19 U.S.C. § 2603(c). Specifically, the President cannot use the emergency provision to implement trade restrictions until the nation seeking protection has made a formal request to the United States and supplied the necessary information to determine that an emergency condition is in effect.⁵⁹ In addition, the President must still consider the opinions of the advisory committee, which may take months to meet and present findings to the President.⁶⁰ As a result, the CPIA emergency provision is often bogged down by statutory delays, leaving the nation in need of assistance without recourse.

This Section will utilize Ukraine as a case study to illustrate that nations at war do not have the ability to jump through all the hoops set up by the CPIA to form a bilateral agreement with the United States. Lessening the logistical requirements of the CPIA's emergency provision would have permitted nations like Ukraine to receive import restrictions before the damage became irreversible.

A. UKRAINIAN CULTURAL PROPERTY IS AT RISK OF LOOTING FOLLOWING RUSSIA'S INVASION.

Ukraine's cultural property has been at increased risk since Russia's invasion in 2022. Ukrainian cultural property has been targeted by the Russian government as a part of a larger campaign to erase Ukrainian cultural history.⁶¹ This campaign fits with President Vladimir Putin's image of Russia and Ukraine as a "single whole"; by targeting Ukrainian art and history, Russia can erase Ukraine's individual culture and claim that Russia and Ukraine were one nation to begin with.⁶² Ukraine's Ministry of Culture and

57. 19 U.S.C. § 2603(a).

58. *Current Agreements and Import Restrictions*, U.S. DEPT OF STATE, <https://www.state.gov/current-agreements-and-import-restrictions> [<https://web.archive.org/web/20251114151339/https://www.state.gov/current-agreements-and-import-restrictions>] (last visited Nov. 14, 2025).

59. 19 U.S.C. § 2603(c)(1).

60. 19 U.S.C. § 2603(c)(2).

61. See Richard Kurin, *How Ukrainians Are Defending Their Cultural Heritage from Russian Destruction*, SMITHSONIAN MAG. (Feb. 22, 2023), <https://www.smithsonianmag.com/smithsonian-institution/ukrainians-defend-their-cultural-heritage-russian-destruction-180981661/> [<https://web.archive.org/web/20251108042929/https://www.smithsonianmag.com/smithsonian-institution/ukrainians-defend-their-cultural-heritage-russian-destruction-180981661/>].

62. Vladimir Putin, *On the Historical Unity of Russians and Ukrainians*, KREMLIN (July 12, 2021), <http://en.kremlin.ru/events/president/news/66181> [<https://web.archive.org/web/20251108043147/http://en.kremlin.ru/events/president/news/66181>].

Information Policy reported 353 Russian crimes against Ukrainian cultural heritage in May of 2022, just a few months after Russia's invasion began.⁶³ As of January 2024, the Ukrainian Ministry of Culture and Strategic Communications documented the destruction or damage of over 2,000 pieces of cultural infrastructure, including Ukrainian libraries, museums, galleries, and theaters housing important cultural heritage property.⁶⁴

The large-scale targeting of Ukrainian cultural heritage has been accompanied by unprecedented levels of looting and pillaging.⁶⁵ Tourists, Russian soldiers, police officers, and border guards have all been participants in Ukrainian site lootings.⁶⁶ A study examining the link between looting in Eastern Europe and Western markets found that several significant cultural items had been taken out of Ukraine and entered the international market, including coins, adornments, instruments, and ceramic vessels.⁶⁷ Several of the looters examined in the study were based in the United States.⁶⁸ The pillaging of Ukrainian sites was so commonplace that looters complained openly online that there were not enough sites left un-looted.⁶⁹

The illicit trafficking of Ukrainian cultural items quickly reached American shores. In 2022, looters attempted to smuggle twenty shipments of Ukrainian archaeological items, which included weaponry dating back to the Neolithic Period, into the United States.⁷⁰ The aforementioned study found that one United States dealer alone had

63. *MCIP Recorded More Than 350 Russian War Crimes Against Ukraine's Cultural Heritage*, MINISTRY OF CULTURE & STRATEGIC COMM'CNS OF UKRAINE (May 20, 2022), <https://mcsc.gov.ua/en/news/mcip-recorded-more-than-350-russian-war-crimes-against-ukraines-cultural-heritage/> [https://web.archive.org/web/20251108043115/https://mcsc.gov.ua/en/news/mcip-recorded-more-than-350-russian-war-crimes-against-ukraines-cultural-heritage/].

64. *2,156 Cultural Infrastructure Objects Damaged or Destroyed Due to Russian Aggression*, MINISTRY OF CULTURE & STRATEGIC COMM'CNS OF UKRAINE (Jan. 7, 2024), <https://mcsc.gov.ua/en/news/2156-cultural-infrastructure-objects-damaged-or-destroyed-due-to-russian-aggression/> [https://web.archive.org/web/20251108043150/https://mcsc.gov.ua/en/news/2156-cultural-infrastructure-objects-damaged-or-destroyed-due-to-russian-aggression/].

65. Bill Whitaker, *Ukraine Accuses Russia of Looting Museums, Destroying Churches as Part of Heritage War*, CBS NEWS (June 30, 2024), <https://www.cbsnews.com/news/ukraine-accuses-russia-museum-looting-church-destruction-60-minutes-transcript/> [https://web.archive.org/web/20251108043423/https://www.cbsnews.com/news/ukraine-accuses-russia-museum-looting-church-destruction-60-minutes-transcript/].

66. See Letter from Patty Gerstenblith, President, U.S. Comm. of the Blue Shield, to Dr. Alexandra Jones, Chair, Cultural Property Advisory Comm. (May 28, 2024), <https://uscbs.org/wp-content/uploads/2024/05/USCBS-Comments-on-Ukraine-Request.pdf> [https://web.archive.org/web/20250322180727/https://uscbs.org/wp-content/uploads/2024/05/USCBS-Comments-on-Ukraine-Request.pdf].

67. Sam Hardy & Serhii Telizhenko, *Russia Was "Doomed to Expand [Its] Aggression" Against Ukraine: Cultural Property Criminals' Responses to the Invasion and Occupation of the Donbas Since 20th February 2014*, 14 HISTORIC ENV'T: POL'Y & PRAC. 286, 295 (2023).

68. *Id.* at 286–287.

69. See Letter from Gerstenblith, *supra* note 66.

70. *Fourteen Historical Artifacts, Stolen by Russians, Have Been Returned to Ukraine*, MINISTRY OF CULTURE & STRATEGIC COMM'CNS OF UKRAINE (Oct. 20, 2023), <https://mcsc.gov.ua/en/news/14-historical-artifacts-stolen-by-russians-have-been-returned-to-ukraine/> [https://web.archive.org/web/20251108043447/https://mcsc.gov.ua/en/news/14-historical-artifacts-stolen-by-russians-have-been-returned-to-ukraine/]. Note that this shipment was caught before it entered

managed to traffic hundreds of Ukrainian (and Russian) antiquities over fifteen years, both preceding and during the invasion.⁷¹

In April 2022, UNESCO called for action against the illicit trafficking of Ukrainian cultural property.⁷² It became clear that the United States had to act to prevent the further illegal sale of archaeological objects and protect Ukrainian culture and history against Russian forces. United States officials were made aware of this need early on into the invasion. However, the CPIA proved to be a difficult tool to rely on.

B. IMPLEMENTATION OF IMPORT RESTRICTIONS FOR UKRAINIAN CULTURAL HERITAGE PROPERTY WAS DELAYED BY THE STATUTORY REQUIREMENTS OF THE CPIA EMERGENCY PROVISION.

Although reports of illegal shipment of Ukrainian cultural property into the United States had been widespread since the invasion began, the United States did not finalize a bilateral agreement under the CPIA emergency provision with Ukraine until September 2024, nearly two years later.⁷³ This delay was caused by Ukraine's inability to submit an official request for a bilateral agreement, a requirement to receive emergency import restrictions.⁷⁴

The CPIA emergency provision creates several obstacles for nations like Ukraine seeking import restrictions, including the lengthy process of formulating a request and the need to wait for the advisory committee to meet. These statutory requirements put too much burden on the nation requesting assistance, while that nation is simultaneously focused on protecting the lives of its citizens and avoiding continued aggression from an invading nation. As a result, cultural heritage property import restrictions are not implemented until it is far too late, which counteracts the purpose of the CPIA emergency provision.

The Ukrainian government was unable to submit an official request for a bilateral agreement because it understandably prioritized protecting the lives of its citizens and

the United States. A bilateral agreement under the CPIA would allow for countries to catch shipments at the border.

71. Hardy & Telizhenko, *supra* note 67, at 297.

72. *Call by UNESCO and Partners Concerning the Risk of Illicit Trafficking of Ukrainian Cultural Property*, UNESCO (Apr. 1, 2022), <https://www.unesco.org/en/articles/call-unesco-and-partners-concerning-risk-illicit-trafficking-ukrainian-cultural-property> [https://web.archive.org/web/20251114155343/https://www.unesco.org/en/articles/call-unesco-and-partners-concerning-risk-illicit-trafficking-ukrainian-cultural-property].

73. Emergency Import Restrictions Imposed on Categories of Archaeological and Ethnological Material of Ukraine, 89 Fed. Reg. 73280 (Sep. 10, 2024).

74. Notice of Receipt of Request From the Government of Ukraine Under the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 89 Fed. Reg. 31247 (Apr. 24, 2024).

outsourced cultural property protection to other nations. Ukrainian President Volodymyr Zelenskyy emphasized in a 2022 speech to the United Nations Generally Assembly the death toll brought on by the Russian invasion, stating “we must protect life. . . . [T]his is a war for life.”⁷⁵ In a more recent speech, President Zelenskyy again stated the “full pain” of the invasion is felt by the Ukrainian people and cited instances of family separation due to occupation, threats to home energy systems, and the potential for nuclear disaster.⁷⁶ When faced with such threats, it is certainly logical that cultural property protection would not be the first priority for the Ukrainian government.

Because the Ukrainian government was occupied during the onset of the invasion, the work of protecting Ukrainian cultural heritage fell to museums and the broader international community. Local museum directors hid Ukrainian archival material, created shelter spaces in the basement of galleries, and continued to raise funds and awareness after fleeing their homes.⁷⁷ Ukraine also turned to other European countries for assistance. The Ukrainian Minister of Culture and Information Policy, Oleksandr Tkachenko, requested that European Union countries allocate 1% of their culture budget to support Ukrainian culture and media.⁷⁸

While these efforts are admirable, only the Ukrainian government itself was eligible to file a request for a bilateral agreement with the United States, even on an emergency basis.⁷⁹ With the Ukrainian government focused on ending Russian aggression and protecting the lives of its citizens, cultural property protection was offloaded onto other parties who plainly could not file the necessary paperwork to receive import restrictions. The fact that Ukraine, a country which deeply values its cultural property and has had relatively functional campaigns to protect its cultural history, was unable to put together the dossier for a bilateral agreement demonstrates the impossibly high burden of the CPIA.

In addition to the procedural hassle, it would also be extremely costly for the Ukrainian government to funnel its own money into programs that would protect cultural heritage. President Zelenskyy and other officials have stated that it will take

75. Volodymyr Zelenskyy, President of Ukraine, Address at the General Debate of the 77th Session of the U.N. General Assembly (Sep. 21, 2022).

76. Volodymyr Zelenskyy, President of Ukraine, Address at the General Debate of the 79th Session of the U.N. General Assembly (Sep. 25, 2024).

77. See, e.g., Masha Gessen, *The Museum Director Who Stayed Behind to Defend Ukrainian Literature*, NEW YORKER (Mar. 16, 2023), <https://www.newyorker.com/news/dispatch/the-museum-director-who-stayed-behind-to-defend-ukrainian-literature> [https://web.archive.org/web/20251108043648/https://www.newyorker.com/news/dispatch/the-museum-director-who-stayed-behind-to-defend-ukrainian-literature]; Malcolm Gay, *After Fleeing to Salem, a Ukrainian Museum Director Leads a Global Effort to Preserve Her Country's Heritage*, BOSTON GLOBE (May 7, 2022), <https://www.bostonglobe.com/2022/05/07/arts/fleeing-russian-aggression-ukrainian-museum-director-lands-salem/> [https://web.archive.org/web/20251108043722/https://www.bostonglobe.com/2022/05/07/arts/fleeing-russian-aggression-ukrainian-museum-director-lands-salem/].

78. Oleksandr Tkachenko, Minister of Culture & Info. Pol'y of Ukraine, Speech at the Council of Ministers of Education, Youth, Culture & Sports of the Eur. Union (Nov. 29, 2022).

79. 19 U.S.C. § 2603(c)(1).

\$6.9 billion of investment in the cultural sector of Ukraine over the next ten years to rebuild the damage from the war.⁸⁰ Instead, the Ukrainian government must continue to focus its on budgetary plans on defense and internal security.⁸¹

The Ukrainian government finally had the bandwidth to begin filing a request for a bilateral agreement in early 2024, but there were still more statutory obstacles in its path. First, compiling a request is a time and labor-intensive process. The CPIA mandates that the request be accompanied by a written statement of facts which relate to the four criteria under 19 U.S.C. § 2602, including showing that the cultural patrimony is in jeopardy of pillage, that Ukraine has taken measures to protect its cultural patrimony, that applying import restrictions would aid the problem and less drastic measures aren't available, and that the international community has taken concerted action to address the issue as well.⁸²

Under the CPIA emergency provision, the Ukrainian government needed to supply information that an emergency condition exists under 19 U.S.C. § 2603.⁸³ The Ukrainian government also needed to request protection for highly-specified categories of material, which undoubtedly required more research to narrow down which materials were most at risk of looting and should be protected under the CPIA.⁸⁴ Whilst balancing competing priorities, the Ukrainian government had to spend a significant amount of time drafting a request for a bilateral agreement.

Further exacerbating the delay, the advisory committee did not meet until June 2024 regarding Ukraine's emergency request.⁸⁵ As mentioned previously, the President is required under the CPIA to consider the opinions of the advisory committee so long as the committee's report is submitted within ninety days of the President submitting information to the committee about the request.⁸⁶ The United States could not properly consider the Ukrainian request for several months while it waited for the advisory committee to discuss and make recommendations to the President. A bilateral agreement under the emergency provision was finally entered into in September 2024, two years after the invasion first began.⁸⁷

80. *Ukraine: A. Azoulay and V. Zelensky Together to Rebuild the Cultural Sector*, UNESCO (Apr. 25, 2023), <https://www.unesco.org/en/articles/ukraine-azoulay-and-v-zelensky-together-rebuild-cultural-sector> [<https://web.archive.org/web/20251009220449/https://www.unesco.org/en/articles/ukraine-azoulay-and-v-zelensky-together-rebuild-cultural-sector>].

81. Vladyslava Kovalenko, *Ukraine's Cabinet of Ministers Submits 2025 State Budget Draft to Verkhovna Rada*, RBC-UKRANE (Sep. 14, 2024), <https://newsukraine.rbc.ua/news/ukraine-s-cabinet-of-ministers-submits-2025-1726314318.html> [<https://perma.cc/MND8-2AWC>].

82. 19 U.S.C. § 2602(a)(1).

83. 19 U.S.C. § 2603(c)(1).

84. See Emergency Import Restrictions Imposed on Categories of Archaeological and Ethnological Material of Ukraine, 89 Fed. Reg. 73280 (Sep. 10, 2024) (to be codified at 19 C.F.R. pt. 12).

85. *Id.*

86. 19 U.S.C. § 2603(c)(2).

87. U.S. EMBASSY & CONSULATES IN ITALY, *United States Announces New Support for Protection of Ukrainian Cultural Heritage*, (Sep. 26, 2024), <https://it.usembassy.gov/united-states-announces-new-support-for-protection-of-ukrainian-cultural-heritage/> [<https://web.archive.org/web/20251009222659/https://it.usembassy.gov/united-states-announces-new-support-for-protection-of-ukrainian-cultural-heritage/>].

During this two-year delay, countless Ukrainian cultural artifacts and artworks were pillaged and entered the illicit global market. In just one year after the invasion began, Russian forces looted artifacts from almost forty different Ukrainian museums.⁸⁸

The situation in Ukraine demonstrates that the framework of the CPIA emergency provision is ill-suited for decisive and efficient action. The hoops that nations must jump through create unreasonable time lags, especially for nations embroiled in intense conflict and have other, pressing priorities. The CPIA emergency provision does not act fast enough to prevent cultural heritage property entering the illegal global market.

C. THE CPIA EMERGENCY PROVISION SHOULD BE AMENDED TO EASE THE BURDEN ON A REQUESTING NATION, WHICH WILL FACILITATE QUICKER RESPONSES TO CRISES.

Several amendments should be made to the CPIA emergency provision to prevent delays and allow for the United States to implement import restrictions immediately after armed conflict has broken out in a nation needing assistance. Unilateral action by the President would reduce delays caused by waiting for a request from the nation seeking assistance or a report from the advisory committee.

The emergency provision should be amended to permit unilateral action without a formal request from the nation at war. The section of the CPIA emergency provision which denotes the requirement for a nation seeking assistance to compile an official request, 19 U.S.C. §2603(c)(1), should be removed in its entirety. This would allow the President to instate a bilateral agreement absent a specific request. A less dramatic, and perhaps more palatable, alternative would be to amend the language of 19 U.S.C. §2603(c)(1) to lessen the burden on the nation seeking import restrictions. Existing language requires nations seeking import restrictions to make a request according to the parameters set by the non-emergency provision of the CPIA under 19 U.S.C. §2602(a), with an additional set of information supporting a determination that an emergency condition exists.⁸⁹ To reduce delays caused by compiling a laborious request, a nation would submit a modified request in an emergency situation, requiring only a shorter statement of facts rather than a lengthy statement detailing all the criteria of the CPIA.

Unilateral action would also be facilitated by amending 19 U.S.C. §2603(c)(2), which requires the President to consider the recommendations of the advisory committee so long as the report is submitted within ninety days.⁹⁰ This prong of the CPIA should be

88. Andriy Kostin, Prosecutor General of Ukraine, *The Russian Assault on Ukraine's Heritage*, INT'L BAR ASS'N (Feb. 28, 2024), <https://www.ibanet.org/The-Russian-assault-on-Ukraines-heritage> [https://web.archive.org/web/20251009223144/https://www.ibanet.org/The-Russian-assault-on-Ukraines-heritage].

89. 19 U.S.C. § 2603(c)(1).

90. 19 U.S.C. § 2603(c)(2).

eliminated, thereby permitting the President to act without having to wait for a report from the advisory committee. Alternatively, the language should be amended to shorten the ninety-day period to urge the advisory committee to submit recommendations earlier and make the process of establishing a bilateral agreement more efficient.

It is true that critics of the CPIA, including early dissenting voices from the private art market, are wary of the President possessing unilateral power to restrict trade. Indeed, the creation of the advisory committee was intended to address the concerns of art dealers that bilateral agreements would only be formed to strengthen political relationships.⁹¹ However, the unprecedented scale of destruction and looting in Ukraine mandates a stronger approach to import restrictions. Further, the United States will have likely already formed a strong relationship with the nation seeking assistance if that nation is in the midst of armed conflict, as is the case with the Ukraine. As of the first quarter of 2025, the United States had already disbursed more than \$80 billion to support Ukraine during the invasion.⁹² Clearly, a strong relationship between the United States and Ukraine has already been established. Implementing import restrictions for Ukrainian cultural heritage items would not add much to the already-fortified relationship between American and Ukrainian officials. Unilateral action to implement restrictions for nations enduring armed conflict does not necessarily bring about the same concerns of Presidential ingratiation that early critics of the CPIA raised.

If unilateral action to impose import restrictions had been permitted, rather than waiting for a nation at war to gather the sufficient materials for a bilateral agreement request, Ukraine's cultural property could have been protected earlier and without significant expense.

III. THE CPIA'S RENEWAL PROVISION SHOULD BE ADJUSTED TO ADDRESS THE ISSUES FACED BY NATIONS UNDER THE CONTROL OF HOSTILE FORCES

The CPIA places a time limit on the duration of bilateral agreements with other nations. Under 19 U.S.C. §2602(b), the President is not permitted to enter into any agreements with an "effective period" of longer than five years from the time at which the initial agreement was entered into force.⁹³ However, the CPIA does lay out a framework for extending or renewing agreements. Under 19 U.S.C. §2602(e), the President can extend an agreement for additional periods of time if it can be shown that

91. See H.R. Rep. No. 95-615, at 12 (1977).

92. U.S. AGENCY FOR INT'L DEV. SPECIAL INSPECTOR GENERAL, OPERATION ATLANTIC RESOLVE (Oct. 1, 2024-Dec. 31, 2024), https://oig.usaid.gov/sites/default/files/2025-02/Special_IG_OAR_Q1_FY25_Final.pdf [https://web.archive.org/web/20250306103212/https://oig.usaid.gov/sites/default/files/2025-02/Special_IG_OAR_Q1_FY25_Final.pdf].

93. 19 U.S.C. § 2602(b).

the four criteria under §2602(a) are met.⁹⁴ One of the four criteria that must be examined for renewal of a bilateral agreement is that “the [requesting nation] has taken measures consistent with the [1970] Convention to protect its cultural patrimony.”⁹⁵

However, the path to renewing a bilateral agreement is entirely unclear when the nation seeking renewal is occupied by hostile forces. Hostile forces include new governments who ousted previous powers, foreign invaders, or any other form of leadership that will not prioritize the cultural history of the nation they occupy. If a nation cannot demonstrate that they are trying to protect their cultural patrimony per the statutory requirement, an existing bilateral agreement cannot be renewed.

This disconnect between nations led by hostile forces and the text of the CPIA may prove to be disastrous in Afghanistan, a nation currently led by a group unwilling to protect Afghan culture.⁹⁶ By once again shifting the burden onto the shoulders of nations to meet specific criteria, the CPIA is ineffective at protecting cultural heritage property when a nation is under the force of a hostile government. This Section will demonstrate that the Taliban will be unable to meet the requirements under the CPIA to extend current import restriction agreements or create new agreements with the United States. Before the current agreement expires, the CPIA should be amended to provide for the automatic renewal of bilateral agreements and take into account a country’s hostile government when deciding if a new agreement should be instated.

A. AFGHAN CULTURAL HERITAGE PROPERTY IS AT RISK FOLLOWING THE TALIBAN TAKEOVER.

Afghan cultural heritage items have been at increased risk since the Taliban takeover in 2021. Reports from cultural heritage experts on the ground confirm that the Taliban’s occupation of Afghanistan puts a significant number of objects and sites at risk.⁹⁷ A report from early 2024 indicates that several well-known archaeological sites in Afghanistan have been bulldozed over, which allows for easier and systematic looting.⁹⁸ Relatedly, dozens of the 29,000 archaeological sites in Afghanistan have been bulldozed over, then spotted with “pits dug by looters.”⁹⁹ Professional international smugglers are suspected to have engaged in large-scale excavations at the Bamiyan Valley, an important archaeological site, after the Taliban takeover ended protective regulations.¹⁰⁰ Cultural heritage experts in Afghanistan also found that rural-based

94. 19 U.S.C. § 2602(e).

95. 19 U.S.C. § 2602(a)(1)(B).

96. Khamoosh, *supra* note 53.

97. *Id.*

98. *Id.*

99. *Id.*

100. The previous Afghan government had been in the process of buying property around the Bamiyan Valley and instating flood prevention measures. However, these efforts had to be abandoned when the Taliban took over. As a result, the land around the Bamiyan Valley is now in the hands of private citizens who began using their property to build coal stores and residential properties. Not only have these commercial endeavors damaged the Bamiyan Valley site, but the lack of government oversight has created the opportunity for looting. *See* Sarvy Geranpayeh, *Afghanistan’s Bamiyan Valley Will Collapse in the Next Ten*

groups began looting artifacts and outsourcing them to international art markets as soon as the Taliban takeover began.¹⁰¹

In February 2022, the United States imposed trade restrictions on material from Afghanistan following a seizure of thirty-three Afghan artifacts from a New York art dealer.¹⁰² The import restrictions were intended to disincentivize the pillaging of Afghan cultural items.¹⁰³ Importantly, the bilateral agreement was enacted with an expiration date in April 2026, despite the unlikelihood that turmoil in Afghanistan will abate by this date such that import restrictions are no longer necessary. American and North Atlantic Treaty Organization (NATO) forces withdrew in 2023, and the Taliban face no other immediate challenges to their regime.¹⁰⁴ Taliban authorities have further entrenched themselves into their positions of power through suspending the previous government's constitution and issuing legally vague edicts to affirm their religious extremist views.¹⁰⁵ The cultural heritage property of Afghanistan will undoubtedly still be at risk beyond the timeline of the current bilateral agreement.

B. THE CPIA'S RENEWAL PROVISION IS INCOMPATIBLE WITH THE INTERESTS OF A NATION UNDER HOSTILE LEADERSHIP.

As the active period of the bilateral agreement between Afghanistan and the United States shrinks, the path to renewing import restrictions on Afghan cultural property is statutorily unclear. To extend the current agreement or create a new agreement under the CPIA's plain text, the Taliban government would have to take measures to protect the cultural patrimony of Afghanistan, which is an unlikely possibility. As an

Years of Looting and Neglect Continue, Former UNESCO Representative Warns, ART NEWSPAPER (Feb. 10, 2022), <https://www.theartnewspaper.com/2022/02/10/afghanistans-bamiyan-valley-will-collapse-in-the-next-ten-years> [https://web.archive.org/web/20251009232159/https://www.theartnewspaper.com/2022/02/10/afghanistans-bamiyan-valley-will-collapse-in-the-next-ten-years?ref=hir.harvard.edu].

101. Brianne Seaberg, Note, *Statutes Saving Statutes: A Proposal to Reform U.S. Customs Laws to Better Protect Cultural Property*, 57 VAND. J. TRANSNAT'L L. 955, 965 (May 2024).

102. Emergency Import Restrictions Imposed on Archaeological and Ethnological Material of Afghanistan, 87 Fed. Reg. 9439 (Feb. 22, 2022); Ben Fox, *Relics Seized from Smugglers Are Returning to Afghanistan*, ASSOCIATED PRESS (Apr. 22, 2021), <https://apnews.com/article/joe-biden-arts-and-entertainment-afghanistan-f11225cd218f1997827469840b33ab95> [https://web.archive.org/web/20251114191936/https://apnews.com/article/joe-biden-arts-and-entertainment-afghanistan-f11225cd218f1997827469840b33ab95]. This art dealer is allegedly one of the most prolific smugglers of international antiquities, according to authorities. Note that these artifacts were seized after they entered into the United States. A CPIA agreement would have prevented the artifacts from passing through the U.S. border.

103. Emergency Import Restrictions, 87 Fed. Reg. at 9439.

104. Riazat Butt, *The Taliban Are Entrenched in Afghanistan After Two Years of Rule*, ASSOCIATED PRESS (Aug. 14, 2023), <https://apnews.com/article/afghanistan-taliban-takeover-anniversary-explainer-1071lb53a73638f46f2eb534b15b1a63> [https://web.archive.org/web/20251010174356/https://apnews.com/article/afghanistan-taliban-takeover-anniversary-explainer-1071lb53a73638f46f2eb534b15b1a63].

105. Richard Bennett, Special Rapporteur on Afghanistan, *Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan*, U.N. Doc. A/79/330, at ¶ 60 (Aug. 30, 2024).

alternative, the U.S. President would either be forced to hope the Taliban government shows effort to protect their patrimony by the time the agreement expires, or bend the language of the CPIA beyond recognition to continue restrictions. Both of these options are unsuited in the case of Afghanistan.

The Taliban government will not be able to demonstrate attempts to protect cultural patrimony by the time the current agreement expires. It is true that Taliban leadership has made public attempts to assure the public that they are committed to preserving Afghan cultural property. The Taliban released a statement requiring political and military officials to “take into consideration . . . ancient artifacts found around the country.”¹⁰⁶ However, these assurances are difficult to believe. The Taliban has a long history of mistreating cultural objects in Afghanistan. Most notably, Taliban forces infamously destroyed the thousand-year-old “Bamiyan Buddhas,” an impressive structure carved into a cliff.¹⁰⁷ Additionally, it has taken the National Museum in Kabul years to piece together the wooden and stone sculptures that Taliban forces intentionally broke in early 2001.¹⁰⁸

International reactions to the Taliban’s new interest in cultural property protection confirm the validity of this skepticism. In January 2022, the Taliban-controlled Afghan government submitted an application to UNESCO to designate the Bagh-e Babur Gardens a World Heritage Site.¹⁰⁹ However, UNESCO never responded to this application.¹¹⁰ Other international groups dedicated to protecting Afghan cultural heritage ceased funding efforts for fear of going against domestic policies that restrict aid to Afghanistan. For instance, the French Archaeological Delegation in Afghanistan (“DAFA”), one of the more prominent international organizations working on the ground in Afghanistan, ceased all operations.¹¹¹ DAFA stopped its work to remain compliant with French policy, limiting all aid to Afghanistan except for emergency humanitarian support.¹¹²

106. ISLAMIC EMIRATE OF AFGHANISTAN, Statement Regarding Protection and Preservation of Ancient Artifacts (Feb. 20, 2021), <https://www.alemarahenglish.af/statement-of-islamic-emirate-regarding-protection-and-preservation-of-ancient-artifacts/> [<https://web.archive.org/web/20221126185945/https://www.alemarahenglish.af/statement-of-islamic-emirate-regarding-protection-and-preservation-of-ancient-artifacts/>].

107. Barbara Crossette, *Taliban Explains Buddha Demolition*, N.Y. TIMES (Mar. 19, 2001), <https://www.nytimes.com/2001/03/19/world/taliban-explains-buddha-demolition.html> [<https://web.archive.org/web/20251010180335/https://www.nytimes.com/2001/03/19/world/taliban-explains-buddha-demolition.html>].

108. Andrew Lawler, *As the Taliban Rises, Uncertainty Looms for Afghanistan’s Historic Treasures*, NAT'L GEOGRAPHIC (May 20, 2021), <https://www.nationalgeographic.com/history/article/as-taliban-rises-uncertainty-looks-afghanistan-historic-treasures> [<https://web.archive.org/web/20251010182127/https://www.nationalgeographic.com/history/article/as-taliban-rises-uncertainty-looks-afghanistan-historic-treasures>].

109. Melissa Gronlund, *New Threats to Heritage in the Taliban’s Afghanistan*, NEW LINES MAG. (Dec. 6, 2022), <https://newlinesmag.com/reportage/new-threats-to-heritage-in-the-talibans-afghanistan> [<https://web.archive.org/web/20251010182331/https://newlinesmag.com/reportage/new-threats-to-heritage-in-the-talibans-afghanistan/?ref=hir.harvard.edu>].

110. *Id.*

111. *Id.*

112. *Id.*

The international community has not taken the Taliban's assurances at face value. Instead, the international community has withdrawn support or ignored requests. If international actors have not yet been able to believe that the Taliban can protect their own heritage sites, then it is difficult to imagine a U.S. President finding the contrary (i.e., that the Taliban government has "taken measures" to protect their cultural patrimony under the CPIA).

The second hypothetical option—skirting the language in the CPIA to re-impose import restrictions—poses its own issues. The requirement that a requesting nation highlight its own efforts to preserve cultural patrimony was intended to be strict. The current language of the CPIA requires the President to determine the nation has "taken measures consistent with the Convention to protect its cultural patrimony."¹¹³ This stands in contrast to the 1970 Convention, which requires only that nations "undertake to oppose [the impoverishment of cultural heritage] with the means at their disposal."¹¹⁴ While international guidelines create more leniency by contextualizing cultural preservation efforts in the "means" available to each nation, the CPIA does not do so.

In addition, early drafts of the CPIA used softer language when discussing the responsibilities of nations requesting import restrictions. An earlier draft simply stated that the "President should endeavor to obtain the commitment of the [nation] concerned."¹¹⁵ Advocates for the current language of the CPIA argued that this earlier language "water[ed] down drastically the insistence that the Executive branch, in return for helping other countries by adopting import embargoes, bargain for reciprocal concessions."¹¹⁶ The final version of the CPIA leans more restrictive, expecting partner nations to take on their own responsibilities instead of relying on the United States to do all the work for them. The explicit modification of less demanding language from both international texts and earlier drafts of the CPIA demonstrates congressional intent that lack of effort from the nation is a substantive barrier for import restrictions. It would be difficult to overlook the Taliban government's inability to show effort to protect their own cultural heritage.

C. THE CPIA'S RENEWAL PROVISION SHOULD BE AMENDED TO LESSEN THE BURDEN ON THE REQUESTING NATION, WHICH WILL BETTER ADDRESS THE PREDICAMENT OF NATIONS UNDER THE CONTROL OF HOSTILE FORCES.

The CPIA should be modified to better accommodate the interests of countries under the rule of hostile forces, like Afghanistan. Several amendments should be made to the text of the statute to continue upholding import restrictions on illicitly trafficked cultural property beyond the limited time frame of the bilateral agreements.

113. 19 U.S.C. §2602(a)(1)(b).

114. 1970 Convention, *supra* note 6, at art. 2.

115. 1979 Hearing, *supra* note 42, at 22 (Statement of Prof. Paul M. Bator).

116. *Id.*

First, the CPIA should provide for the automatic renewal of bilateral agreements. The provision of the CPIA requiring that the President examine the efforts of a nation to preserve its own cultural patrimony (19 U.S.C. §2602(e)(1)) should be removed. Removing this provision would allow for the President to renew bilateral agreements without conducting another analysis of the four criteria under the CPIA, which might have altered determinations if a hostile government has taken over.

Alternatively, the CPIA should borrow from existing language in international law. As stated previously, Article 10 of the 1970 Convention implicitly reviews the efforts shown by a nation to protect its property in relation to the “means” available to that nation.¹¹⁷ The CPIA should include this qualifier in 19 U.S.C. §2602(a)(1)(b). The President would then engage in a more holistic review of a nation’s attempts to protect its culture when deciding whether to form or extend a bilateral agreement with that nation. In this way, countries under the rule of hostile forces would not be penalized for the failures of antagonistic leadership to demonstrate commitment to protecting their patrimony. Either of these amendments will reduce the burden on the nation to prove they have earned extended import restrictions.

It is true that the United States chose not to adopt Article 10 of the 1970 Convention when the CPIA was passed in 1983. Incorporating language from Article 10 of the 1970 Convention into the CPIA would appear to go against this legislative intent. However, attitudes towards the 1970 Convention have changed since 1983. Action from Congress over the past several years indicates that the United States has prioritized cultural property more so than in the past. For instance, the United States passed the Protect and Preserve International Cultural Property Act in 2016, which instructed the President to apply import restrictions to all ethnological and archaeological material from Syria regardless of whether an emergency condition under the CPIA applies.¹¹⁸ The passage of this Act demonstrates that Congress is now willing to weaken what were originally strong stances on the CPIA, including the requirements under the emergency provision, to meet the demands of nations in need. Further, Congress passed the Emergency Protection for Iraqi Cultural Antiquities Act in 2004, which similarly bypassed the strict requirements of the CPIA to instate import restrictions on Iraqi cultural property, even though Iraq wasn’t a state party.¹¹⁹

The CPIA had to be overlooked to pass both of these Acts. However, both Acts would be allowed under the 1970 Convention. These slight shifts away from the strict requirements of the CPIA towards the broader goals of the 1970 Convention demonstrates that Congress is now more open to incorporating language from the 1970 Convention in its domestic policies.

117. 1970 Convention, *supra* note 6, at art. 10.

118. Pub. L. No. 114-151, 130 Stat. 369 (2016).

119. Pub. L. No. 108-429, 118 Stat. 2434 (2004).

IV. CONCLUSION

Protecting cultural property is akin to protecting the heart of a nation. Armed conflict around the world provides the perfect opportunity for attacking nations to target cultural property, and for unofficial looters to profit off tragedy. While both threats pose significant risks to the strength of a nation's historical and artistic memory, only the first receives adequate attention in existing international law.

Leveraging domestic policy steps in where international law falls short. The United States' CPIA can be an effective tool to protect the cultural property looted from nations embroiled in warfare. As one of the largest buyers of illicitly trafficked cultural material, the United States can deter pillaging and return cultural items to where they belong. However, the CPIA is mismatched to the needs of the current state of the world. Specifically, the CPIA puts too much of the burden on the nation requesting import restrictions. Nations fighting for the lives of their citizens do not have the time or capabilities to fulfill the necessary requirements under the CPIA to receive, or extend, import restrictions.

If steps had been taken to remove logistical barriers in the CPIA's emergency provision for Ukraine, more of Ukraine's rich cultural heritage could have been protected from looting. Meanwhile, the current situation in Afghanistan highlights the pressing need to reform the CPIA's renewal policies to extend import restrictions, even if the occupying leadership is hostile to the goals of the 1970 Convention.