

Legal means to protect the cultural heritage in the middle east thesis proposals ...

[Law](#), [Criminal Justice](#)



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\n[toc title="Table of Contents"]\n

\n \t

1. [Introduction](#) \n \t
2. [Problem Statement](#) \n \t
3. [Objectives](#) \n \t
4. [Why It's Important](#) \n \t
5. [Methodology](#) \n \t
6. [References](#) \n

\n[/toc]\n \n

Introduction

Cultural heritage refers to the sites, tangible objects, knowledge, stories and other manifestations that are handed down from generation to generation and regarded as a constituent part of a particular group of people (UNESCO, 1972). In 1972, the World Heritage Convention was adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) with the aim of facilitating cooperation between nations to protect heritage, wherever it exists in the world, that is of “such outstanding and universal value that its conservation is important for current and future generations” (UNESCO, 1972). Accordingly, signatory states are required to identify, protect and conserve World Heritage properties (UNESCO, 1972). Intellectual property refers to creations of the mind such as artistic works and cultural antiques. Over the last two decades the importance of protecting intellectual property has received widespread attention, most notably as a result of the information technology revolution and globalization. In regards to cultural

heritage, intellectual property focuses on researching and finding the best ways to protect or safeguard those intangible cultural manifestations of a people or nation that are much more difficult to protect than a specific site. In 2003 UNESCO adopted the Convention on the Safeguarding of Intangible Cultural Heritage. The Convention, in essence, is UNESCO's effort to update its focus on preserving cultural heritage for the information age. The aim of the Convention, like the World Heritage Convention before it, is to safeguard and protect among other things, "instruments, objects and artifacts" that are of outstanding and universal value (UNESCO, 2003). Accordingly, signatories are required to take necessary measures to ensure the protection of intangible cultural heritage within its territory (UNESCO, 2003). To date over 100 states have become party to the Convention.

Problem Statement

The Middle East has a long and rich cultural heritage dating back to ancient times. To be sure, The United Nations, through UNSECO, has declared over 50 sites across the region as World Heritage sites including some of the world's most famous places including the Old City of Jerusalem, the ancient city of Aleppo in Syria and the ancient Church of the Nativity in Palestine. As mentioned above, there are a number of laws and declarations that have been established to provide for the protection of intangible cultural heritage in the Middle East.

Despite these measures, however, the region losing its intangible cultural heritage at an alarming rate. In 2011, for instance, law enforcement officials in the US broke up what was then one of the largest cultural heritage

trafficking rings ever (Johnson, 2011). It included a network of people in Egypt and the US who would “ circumvented international and national customs regulation to move artifacts, including one over 2, 000 years old, from Egypt to Dubai to New York (Johnson, 2011). Intangible cultural heritage trafficking is especially so in the region’s more volatile nations including Iraq, Syria and Palestine. For example, the civil war in Syria is estimated to have led not only to the destruction of a number of archaeological sites but the looting of countless cultural artifacts and antiques. To be sure, according to David Cohen, the Under-Secretary of Terrorism and Financial Intelligence, antiques trafficking are one of the primary sources of funding for a number of terrorist organizations such as ISIS (Cohen, 2014). Naturally, antique trafficking is not simply a result of the supply-side activity; there is a huge demand-side market of willing buyers that energize the looting effort. For instance, there is no doubt that many well-known European museums, art galleries as well as private collectors have displayed cultural artifacts and antiquities taken from other countries. These museums are benefited by these valuable pieces through their ability to attract museum visitors. While they gain financially, the countries of origin are deprived of significant national revenue.

Objectives

The purpose of this project is to research and analyze the legal means to deter cultural heritage trafficking. Specifically, this project will seek to: identify existing national regulations and legal regimes against cultural heritage trafficking; analyze whether those regimes are effective (why or why

not); identify new legal regimes that might increase deterrence.

Two particular areas of interest I would like to investigate is the ability and effectiveness of intellectual property law as well compensation as a deterrence. For example, in 2001, the World Intellectual Property Organization established the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore to develop regulations that would provide the effective protection intangible cultural heritage. Similarly, there is precedent for artists to sue museums that have exhibited their work without their knowledge or authorization (Cohen, 2011).

As a case study, the focus of the project will be on cultural heritage trafficking from Iraq, Syria and Palestine. The three nations not only are three of the more volatile countries in the region with a vast source of cultural property but collectively they have become one of the largest markets for the cultural heritage trafficking in the world (Lamb, 2014).

Why It's Important

As mentioned, the Middle East is home to nearly a quarter of the current World Heritage Sites that contain heritage that is valuable to the local people and the world. But it is clear that the current international framework is “woefully inadequate to prevent the illicit traffic in looted antiquities or effectuate the return of stolen works to their country of origin” (Lamb, 2014; Wallace & Martin-Ortega, 2013). Moreover, UNSECO has called the illicit trade in cultural heritage from the region to be a “part of a strategy of deliberate cultural cleansing” (PressTv, 2014). Understanding how the trend

in trafficking can be limited, stopped or reversed is essential to academics, lawyers and students interested in cultural heritage, intellectual property, comparative civil law and socio-legal studies of the Middle East (Francioni & Gordley, 2013).

I believe this research will help those academic and legal communities in understanding key issues in intangible cultural heritage protection such as: (1) what will the effects of intellectual property law will have in increasing the deterrence of cultural heritage trafficking; (2) whether the clear trend toward protecting cultural heritage at the international level can be integrated into the practices of local police, prosecutors and judges well also be reflected in the domestic practices and legal traditions; (3) whether international and regional cooperation will result in the development of a norm in intangible cultural heritage protection that will serve as a model for the development of European norms.

Methodology

Based on the nature of this study, a mixed method of research design will be applied. Both primary data and secondary data will be used. In the primary data, focus will be raw data which will be collected from the field from the respondents using questionnaires. The secondary data will be collected from the statistical records; and. The instruments that will be used in collecting these data include questionnaires, and interviews.

My research methodology will begin by first obtaining a solid background in the legal protection of intangible cultural heritage. I will accomplish this by reviewing existing studies, reports, books, law review articles, news

coverage, expert reports, statistical reports and information from organizations working in the protection and safeguarding of intangible cultural heritage. I have already begun to collect and review material for this portion of the project from various governmental departments and UNESCO and will continue the review process in the coming months.

After a thorough review of these resources and materials, I plan to conduct interviews with lawyers, experts and other key criminal justice personnel such as judges and criminal law scholars to get an understanding of: (1) the work of protecting cultural heritage ; (2) how lawyers and experts go about protecting cultural heritage; (3) the perceived strengths and weaknesses of the system in regards to the legal protections of intangible cultural heritage and (4) the similarities or contrasts in the protections, if any, that already exist.

While the number of people I will be able to personally interview will naturally be limited by the time frame of the project, I plan supplement the interviews with a survey/questionnaire of other experts and lawyers working in the field. The surveys will seek input and information on their practices. Finally, I will draft a report documenting the findings of my research. The report will provide an introduction and comprehensive analysis of legal protections of intangible cultural heritage followed recommended further course of action.

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