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THOMAS G. WEISS AND NINA CONNELLY

Cultural Cleansing and Mass Atrocities

Protecting Cultural Heritage in Armed Conflict Zones



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Edited by James Cuno and Thomas G. Weiss

Cover: The Umayyad, or Great Mosque, of Aleppo, Syria, March 10, 2017. Photo: Alfred Yaghobzadeh / Sipa USA (Sipa via AP Images) / © 2017 The Associated Press

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FOREWORD

In December 2016, with the American Academy of Arts and Sciences, the J. Paul Getty Trust convened a meeting at the British Academy, London, to discuss an international framework for the protection of cultural heritage in zones of armed conflict. Our timing was compelled by the purposeful destruction of cultural heritage in Syria and Iraq, and by the recent conviction of Ahmad al-Faqi al-Mahdi by the International Criminal Court for the war crime of attacking historic and religious buildings in Timbuktu.

Three months later, in March 2017, the United Nations Security Council passed resolution 2347, which condemned the “unlawful destruction of cultural heritage, and the looting of cultural property in the event of armed conflicts, notably by terrorist groups and the attempt to deny historical roots and cultural diversity in this context can fuel and exacerbate conflict and hamper post-conflict national reconciliation.” The resolution gave formal, international attention to the protection of cultural heritage and its links to cultural cleansing.

Then, in October 2017, with Thomas G. Weiss and at the invitation of Simon Adams, executive director of the Global Centre for the Responsibility to Protect, I spoke at a meeting at UN headquarters in New York on the issue of “Protecting Cultural Heritage from Terrorism and Mass Atrocities: Links and Common Responsibilities.” The meeting was hosted by, among others, Angelino Alfano, minister of foreign affairs and international cooperation, Italy; Frederica Mogherini, high representative from the European Union; Irina Bokova, director-general of UNESCO; and Simon Adams. The consensus of the meeting was that cultural heritage is worthy of protection, not only because it represents the rich and diverse legacy of human artistic and engineering ingenuity, but also because it is intertwined with the very survival of a people as a source of collective identity and the revitalization of civil society and economic vitality postconflict.

All of this inspired the launch of the *J. Paul Getty Trust Occasional Papers in Cultural Heritage Policy*. This paper, the first in the series, addresses the threats to cultural heritage in armed conflict zones and the connection between cultural heritage and cultural cleansing, mass atrocities, and the destruction of cultural heritage.

This publication has been funded by the President's International Council, J. Paul Getty Trust. Our thanks go to the authors, Thomas G. Weiss and Nina Connelly, and to the working group with whom we have been discussing these questions for more than a year, especially Simon Adams, Lloyd Axworthy, Vishakha Desai, Hugh Eakin, Karl Eikenberry, Jonathan Fanton, Richard Goldstone, Sunil Khilnani, Edward C. Luck, Luis Monreal, and Tim Whalen.

James Cuno
President and CEO
J. Paul Getty Trust

INTRODUCTION

The call for protecting cultural heritage in zones of armed conflict has become increasingly visible on the international public policy agenda, yet governments and citizens have typically limited their responses to deploring such destruction while doing little to prevent it from happening. Some observers see this inaction as playing into the hands of those extremists who are benefiting most directly from the destruction. Something analogous applied to those who murdered and abused civilians in the armed conflicts of the 1990s, until the sea change resulting from a series of humanitarian interventions, the work of the International Commission on Intervention and State Sovereignty (ICISS), and its 2001 report and accompanying research volume.¹

A thoughtful journalist working on these issues, Hugh Eakin, wrote in 2015, “While the United Nations has adopted the ‘responsibility to protect’ [R2P] doctrine, to allow for international intervention to stop imminent crimes of war or genocide, no such parallel principle has been introduced for cultural heritage.”² The R2P analogy intuitively makes sense for four reasons. First, the original three-part conceptual framework for the responsibility for human protection formulated by ICISS—prevention, reaction, rebuilding—employs the same standard vocabulary frequently applied to concerns about the protection of cultural heritage in war zones. Second, the reformulation of the R2P framework after the UN’s 2005 World Summit can also be applied to the protection of cultural heritage. It relies on three pillars put forward by then secretary-general Ban Ki-moon: the primary responsibility of the state for protection, the international responsibility to fortify that state capacity, and the international responsibility to respond in cases of egregious failure.³ Third, the major obstacle facing action for the protection of people and heritage is familiar to all students of world politics: state sovereignty. Fourth, the protection of people and the protection of culture are inseparable; cultural heritage plays an important role in the restoration of civil society and the revitalization of local economies postconflict. In any case, there is no need for a hierarchy of protection because the choice between the two is false, just as a choice between people and the natural environment is false. Air, water, and culture are essential for life.

Based on these factors, the J. Paul Getty Trust joined forces with the American Academy of Arts and Sciences to organize a brainstorming discussion in London in December 2016.

Since then, the Getty Trust has convened several working sessions to refine further the results of the London meeting. This document attempts to pull together the various threads from those conversations and subsequent research in order to spell out succinctly the issues that affect either pursuing a new norm or building on existing international legal and normative tools. The terrain is fraught and complex, the political and institutional perspectives wide-ranging and conflicted. This publication is an initial foray and not a final attack on the topic. Its five chapters try to do the impossible in a brief space: summarize the problem; outline new and old elements in the current debate; map the key debates in the politics of cultural protection; spell out options for international public policy with lessons drawn from the R2P process; and indicate a possible way to advance the consideration of the challenge of protecting cultural heritage in armed conflicts.

1

THE PROBLEM

When the Islamic State of Iraq and the Levant (ISIL, or sometimes ISIS or Da’esh) took the city of Palmyra in the summer of 2015, major media outlets aired and popularized the widespread concerns of archaeologists, historians, curators, and other specialists who long had warned that the ancient ruins in the city were at risk. Within weeks, their fears were realized when ISIL directed large-scale attacks on the ruins of the ancient city, including exploding the 2,000-year-old Temple of Baalshamin. For international audiences, the dramatic images of the destruction were linked to the ongoing murder, human trafficking, slavery, and terror that ISIL regularly inflicted on populations whose views, both religious and secular, differed from their own. ISIL’s destruction of cultural heritage has stretched across Syria and Iraq, and other Al-Qaida-affiliated groups have wrought similar destruction in Africa.

These cases have captured international attention, but the destruction of cultural heritage is not limited to terrorist groups or even nonstate actors, although other dramatic destruction took place by insurgents who deliberately shelled the Mostar Bridge in 1993 and the fabled mosques, mausoleums, and libraries of Timbuktu in 2012. Afghan government forces, controlled by the Taliban at the time, dynamited the fourth- and fifth-century Buddhas of Bamiyan in 2001. Saudi Arabian bombing continues to wreak havoc on cultural heritage sites in Yemen.

Such wanton destruction is not new. The post-Cold War cases have riveted attention on certain battles or militant groups, but the destruction of cultural heritage has long characterized behavior by belligerents in many wars and by victors following them—“to the victors go the spoils” is an accurate description for domestic and foreign battles. For example, the site of the Great Mosque of Córdoba—now a Catholic cathedral—originally hosted a small Visigoth church, which was replaced by the mosque in the eighth century, which was subsequently supplanted by the massive cathedral built during the *Reconquista*. In some cases of empire, destruction and replacement of cultural heritage were systematic practices across broad territories as part of an effort to assert the new

orthodoxy and erase history and culture—what the UN Educational, Scientific and Cultural Organization’s (UNESCO) outgoing director-general Irina Bokova repeatedly has called “cultural cleansing.”⁴ This expression is not a legal term, but UNESCO applies it routinely to connote cultural removal akin to “ethnic cleansing”—a term coined in the early 1990s to describe mass atrocities in the former in the former Yugoslavia, which also has no formal legal definition. Cultural cleansing and ethnic cleansing are evocative; both capture dramatic crimes that shock the human conscience.

This chapter seeks to clarify the nature of the problem of protecting cultural heritage in wars by examining definitions of commonly used terms; the various categories of destruction; the costs and benefits of such damage; and options going forward.

Cultural Heritage

This report employs the term “cultural heritage,” which is now widespread, although earlier legal instruments use the term “cultural property.” There is no agreed distinction between the two, and they are used interchangeably. However, some observers see the former as being broader in scope and implying less personal and more widespread “ownership”; in any case, “cultural heritage” is now more widely used, including here.

“Cultural heritage” has many definitions, and a helpful place to start are those enumerated in UNESCO conventions that have garnered a degree of international consensus. The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict defines “cultural property” as:

- a. movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- b. buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a);
- c. centres containing a large amount of cultural property as defined in subparagraphs (a) and (b), to be known as ‘centers containing monuments.’ (Chapter 1, Article 1)

The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 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. (Article 1)

Finally, the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage defines “cultural property” in terms of three categories:

monuments: architectural works, works of monumental sculpture and painting, elements of structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view. (Section I, Article 1)

The unifying feature of these three definitions is the identification of the “value” or “importance” of an item as the criterion in determining its status as “cultural property,” or for us “cultural heritage.” The 1972 definition, in particular, repeats under each category the “outstanding universal value” of an artifact or site that elevates it to protected status; the 1954 definition implies the same by pointing to “the cultural heritage of every people.” That effort to signal the shared human value of immovable and movable cultural heritage, not just of those who have inherited directly or indirectly its influence, stands in stark contrast to the 1970 state-centric definition that makes “cultural property” contingent on a self-proclaimed designation by a state.

These differences reflect the historical contexts in which the documents were drafted and the prevailing political logics at the time. The 1954 convention aims to establish certain protections for cultural heritage sites and artifacts in war zones for the benefit of all humanity. By 1970, however, postcolonial sensitivities and accompanying nationalist sentiments placed more emphasis on policies to protect the cultural artifacts remaining in the territory of newly independent states as the property of the state. This latter convention is concerned more with interdiction of trafficking, whereas the 1954 convention focuses on prevention of destruction. From our vantage point, the 1970 approach prioritizes the accidents of geography and the shape of arbitrarily drawn borders and contemporary political configurations—such as the consolidations of Germany and Yemen, the implosion of the Soviet Union and the former Yugoslavia, and the division of Sudan—over any intrinsic value of cultural heritage for humanity as a whole.

More than one observer has pointed to the irony: as the world grows smaller and more connected through the forces of globalization, modern states claim exclusive ownership over shared cultural heritage. Cosmopolitan perspectives, or cultural internationalism, become politically incorrect as cultural nationalism comes to the fore.

State-centric views predictably still characterize intergovernmental deliberations, but they also present obvious barriers to effective protection when what is required clashes with what a state decides to do. For example, the destruction of the Bamiyan Buddhas may not have constituted a loss of cultural heritage according to the 1970 convention, because the Taliban government representing the Afghan state did not view them as such. In addition, the protection of the cultural heritage of minority groups—of Rohingya and Uyghur mosques in Myanmar and China’s Xinjiang province, or churches and synagogues in Syria, or Yazidi shrines anywhere—depends on the designation by and request from a government that may or may not value them and in many cases is committed to destroying them. Inadequate international and national laws and the absence of enforcement mechanisms render immovable heritage especially vulnerable. Consequently, the universality of the value of cultural heritage enshrined in the 1954 convention does more to advance contemporary international efforts to protect cultural heritage in zones of armed conflict than state-based conceptions of cultural property.

Building on the criterion of the universal value of cultural heritage, but rejecting the logic that states alone are empowered to recognize or deny that value, James Cuno’s straightforward definition of “cultural heritage” is used here: “movable and immovable artifacts and immovable structures of historical and cultural significance to humanity.”⁵ It is broad enough to capture the range of cases at stake, yet narrow enough to serve as a guide for policy- and decision-making.

This circumscribed definition has three features that provide guidance. First, it is limited to tangible heritage to the exclusion of intangible heritage (e.g., language, cuisine, and dance). Intangible heritage is not less worthy of protection—quite the contrary, as the destruction or disruption of any culture is damaging to the health of societies and makes turning the page after armed conflicts and peacebuilding problematic. However, in terms of political mobilization, international consensus and action are more feasible around narrowly defined threshold conditions. Such an approach does not preclude subsequent efforts to protect “softer” values claimed for cultural heritage, but it is important to start somewhere. The possibility for and viability of any new international framework for the protection of cultural heritage will be bolstered if what is to be protected is visible, measurable, and tangible.

Second, the definition excludes natural heritage because its value is different. While armed conflicts cause the deterioration or even destruction of the natural environment, it is important to distinguish it from the artifacts and sites that are significant expressions of human creativity, experience, and aspirations.

Third, the definition and the analysis should not be limited to UNESCO World Heritage Sites. Countless endangered sites of worship, cemeteries, and local monuments are of significance to local populations; they merit protection on these grounds with or without international recognition. Moreover, their destruction almost always provides early warning about a forthcoming genocide or war crimes, disrupts social stability, and

impedes or destroys the basis for postconflict peacebuilding and economic development. In addition, international actions, including intervention, that protect only the most visible and well-recognized heritage will inevitably raise questions about the motives and legitimacy of those coming to the rescue.

Destruction of Cultural Heritage

UNESCO identifies four causes of destruction related to armed conflicts: intentional damage, collateral damage, forced neglect, and organized looting and illicit trafficking.⁶ Each entails different motives or conditions, and thus each merits tailored responses.

Intentional, or strategic, damage results from attacks on cultural heritage as a weapon of war, specifically targeted in order to gain advantage in an armed conflict. Such damage may include attacks on culture by virtue of their inherent value to a population (such as places of worship or cemeteries), or attacks on strategic infrastructure that has cultural value (such as a historic and architecturally unique bridge).

Deliberate attacks on culture for culture's sake in wars consist of two categories, and both constitute a strategic cultural cleansing.⁷ The first, attacks on the cultural institutions of current populations, are indicative of the intention to commit genocide or ethnic cleansing—in fact, they are tools to accomplish both. Raphael Lemkin—both the motivating spirit behind as well as drafter of important language in the 1948 Convention of the Prevention and Punishment of the Crime of Genocide—originally had included the destruction of culture in the draft convention as a component of genocide. The governmental delegates in the final negotiations of the convention decided to focus on the concrete physical and biological aspects of genocide rather than on the arguably vaguer cultural and social elements found in earlier drafts.⁸ The second group, attacks on antiquity, are not an attempt to erase the contributions or existence of any living people or peoples. However, they are a form of cultural erasure, usually in the service of a competing historical narrative and as part of a strategic calculation, once again to solidify the postbattle position of the victors.

Collateral damage occurs when armed conflict rages near immovable cultural heritage and artifacts; it results from a battle, training, or military presence. Indeed, the leveling of infrastructure, and of cultural heritage, has always been an inevitable part of war. Today it has become worse as the destructive power of weaponry has increased. The damaged heritage is not a target in itself. For example, since 2011, the Crusaders' Crac des Chevaliers, Syria's most important medieval castle and a UNESCO World Heritage Site, has suffered severely during the civil war. Civilians and rebel fighters barricaded themselves in the fortress for months, using it as shelter and exploiting its value as an ancient military stronghold after the Syrian Arab Army blockaded their village. Government forces eventually launched a series of airstrikes as they closed in on the villagers, inflicting structural damage to the walls and one of the towers, in addition to widespread damage to the overall appearance. Syria's Qal'at Salah El-Din, another medieval fortress, has suffered

a similar fate. As the violence was not designed specifically to target the castle but rather the opposition inside, the damage can be classified as “collateral” or incidental. The damage, of course, is not necessarily less devastating than it would have been from strategic targeting.

Forced neglect describes a broad category of destruction to and deterioration of cultural heritage that results from armed conflicts. Such damage may occur because the local populations have left the region, war has made access impossible, or maintenance budgets and equipment have been reallocated to meet wartime needs. The damage thus is an indirect consequence of armed conflict but, again, may be substantial.

Finally, organized looting and illicit trafficking serve primarily as a fundraising device in territories rich in archaeological sites; groups raid them and use the pillage to finance the armed conflict. In March 2016, Russia estimated that ISIL derives between \$150 and \$200 million per year in revenue from the trafficking of antiquities.⁹ This figure has been disputed and cannot be verified, but that pillaged cultural heritage has been sold by ISIL to help finance its widespread territorial acquisitions has not.¹⁰

Costs and Benefits

Many costs and benefits are associated with the destruction of cultural heritage in armed conflicts. Parsing them is important when designing cost-effective and logical policy responses.

The most obvious costs of war are borne by vulnerable populations, which can be measured in loss of lives and livelihoods, reduced longevity, infant stunting—and the list goes on. In terms of cultural heritage, the destruction of tangible and intangible heritage sounds an alarm bell for a forthcoming genocide or ethnic cleansing; targeted destruction of cultural heritage, as experienced during Kristallnacht in 1938, has occurred regularly. Curators and archivists, recognizing the warning signals, have died while attempting to save heritage in the face of early violent attacks.

While these human costs are apparent, often lost in the conversation are other consequences. First, the destruction of cultural heritage is ruinous for cultural identity and social cohesion. The buildings, museums, libraries, and infrastructure around which societies organize themselves in part help define a people. Second, especially in cases of high-profile sites, destruction can severely impair postcrisis economic recovery and remove investment opportunities. The economics of postconflict investment are often overlooked.¹¹ With the loss of tourist attractions comes the concomitant loss of investment opportunities as well as the loss of jobs related to care and upkeep, and revenue derived from a healthy tourism industry. Third, the destruction of heritage during war deepens the wounds and intensifies lingering animosities and the accounts to be settled afterward. For this reason, the Dayton Accords addressed the reconstruction of lost heritage as an essential component of the peace agreement, as a prelude to the next steps in peacebuilding in the Balkans.

In addition, when cultural heritage is destroyed, there are costs to us all, to humanity as a whole. Many observers view culture as a shared endeavor across peoples and time, or as evidence of a shared humanity. There exists the possibility of connecting to long-lost or faraway peoples, and experiencing their cultures—through travel to cultural sites, visiting a museum, or reading primary texts—is a time-tested way of doing so. When we lose culture, we lose this opportunity. Further, the loss of cultural artifacts and sites precludes any future study and possibly forecloses the resolution of open archaeological, anthropological, and historical questions.

One might compare such losses to the disappearance of species and biodiversity. Exact costs are difficult to calculate, but wars and destruction of cultural heritage are dramatic deviations from healthy, vibrant communities with a strong sense of identity and stable grounding. In them, the conditions for the full functioning of society, including peace and security, are deeply compromised.

However, there are also “benefits” from the destruction of cultural heritage enjoyed by pariah groups that profit from pillage and publicity. Armed groups have recently been in a position to use cultural destruction as a profitable war tactic. Dismantling ancient infrastructure or targeting the cultural heritage of a particular population makes possible looting and trafficking. It also has enabled “beneficial” public relations and outreach via social media that apparently have been helpful for recruitment.

Going Forward

Efforts to build international consensus around a more effective framework for the protection of cultural heritage may take one of two forms: the formulation of a new norm; or building on the existing consensus enshrined in disparate international legal instruments. The pluses and minuses of each merit our attention.

The cultivation of a new norm holds promise because it could formulate more precise expectations around notions of “ownership” and the meaning of “the protection of cultural heritage in armed conflicts.” Although necessarily building on the agreement that such destruction is illicit—found in peace treaties and numerous conventions—a new framework could synthesize a more visible and recognizable set of rules that could publicize and be tailored to a specific set of definitions and thresholds, and incorporate directly the reality of nonstate actors. Effective enforcement mechanisms, perhaps under UN Charter Chapter VII, would be part of the assignment. Any new framework, however, requires lobbying and coalition-building ahead of any formal adoption and buy-in by UN member states. Such an effort is no small task when “intervention” of any variety is under consideration, and when so many competing crises—from climate change to pandemics and proliferation—are vying for public and private attention and resources. However, the R2P case suggests that norm entrepreneurship not only is possible but also can be beneficial.

In contrast, building on consensus leverages the political capital that already exists. Forms of destruction of cultural heritage are already considered war crimes—confirmed by the 2016 decision of the International Criminal Court (ICC) against Ahmad al-Faqi al-Mahdi—and, by implication, crimes against humanity. Thus, it may be possible to bolster the efficacy of such law through more protocols and additional signatories to existing instruments. This strategy lacks the energy-mobilizing potential and excitement of a concerted new campaign, but it could prove attractive in an international arena with many other crises and priorities crowding governmental and intergovernmental agendas and vying for their attention.

2

MAPPING PROTECTION—WHAT'S OLD AND WHAT'S “NEW”

Destruction of cultural heritage in armed conflicts is not new, but the current political context presents a new opportunity to counter it. While twentieth-century legal instruments have included its protection, the contemporary convergence of two factors has dramatically altered the politics of protection.

First, the destruction of cultural heritage has captured the attention not just of curators, archaeologists, historians, and activists but also of major media outlets and popular audiences. Specialists sound a clarion call when heritage is at risk, but there is a new and wider international recognition of the scale and significance of contemporary damage. The Buddhas of Bamiyan were among the first cases to draw the widespread attention of international popular audiences, and the issue has remained in the media limelight and in the public's awareness due to continued Al-Qaida and ISIL attacks on cultural heritage.

Second, the destruction of cultural heritage has become strongly associated in the public's mind and in government policy with widely reviled terrorist groups; protection of cultural heritage thus benefits from association with the high politics of international security. Given the emotive power of the Global War on Terror (GWOT) in the post-9/11 landscape, the destruction of remote antiquities has become sufficiently politicized to draw the ire of many groups, ranging from UN member states to domestic political actors, from nongovernmental organizations (NGOs) to individual consumers of the news. Governments frame the destruction of cultural heritage by terrorists as another front in the GWOT, and they interpret intervention on behalf of culture as a way to hamper terrorist financing and the advancement of terrorist groups. Political actors thus appear increasingly amenable to dedicating resources to protection of cultural heritage.

The convergence of these two factors provides the political backdrop to generalize about the destruction of cultural heritage in wars and possible steps forward. By building

on the growing attention to and concern about destruction by terrorist groups, political entrepreneurs may now describe once seemingly disparate and remote instances of damage as part of a pattern of abuses that requires a systematic response.

Indeed, since 2013 the protection of cultural heritage has become a component of “a threat to international peace and security,” the trigger for UN Security Council decisions. This shift is analogous to the one for humanitarian action and the protection of war victims in the 1990s. At the outset of that decade, diplomats viewed humanitarian interventions in northern Iraq and Somalia as exceptional. Resolutions to protect Kurds followed the first UN enforcement action since Korea, and then the resolutions approving the Somalia intervention used the word “humanitarian” eighteen times to suggest that no precedent was being set. The 1995 report by the Commission on Global Governance proposed that humanitarian catastrophes be the subject of a Charter amendment in order to permit the Security Council to act.¹² By the time their report was available, however, that recommendation was moot as the council had already so decided and acted in several additional humanitarian catastrophes.

Mass atrocities were not new in the 1990s, but robust action to come to the rescue suddenly was possible. The development and emergence of the R2P norm reflected a new political reality that had led to muscular international action in humanitarian emergencies. The destruction of cultural heritage in wars is also not new, but it may now elicit international action in light of the changing political landscape. The question is how best to take advantage of what appears a propitious moment, and how to publicize it in a manner to mobilize sufficient political will to do something about it.

What's Old

The protection of cultural heritage has been codified in international law for more than a century. However, the language in the legal instruments buries cultural heritage in a lengthy consideration of crimes, and the UNESCO conventions address only facets of protecting cultural heritage in wars. Moreover, the existing texts largely concern destruction in interstate wars, not in civil wars or in transboundary attacks by terrorists. Moreover, the main body active in this arena is UNESCO, which is an intergovernmental organization under duress.

The 1907 Hague Convention Concerning the Laws and Customs of War on Land (Hague IV) prohibits the destruction and seizure of an enemy's property unless it is “imperatively demanded by the necessities of war” (Article 23). It requires that “all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes” (Article 27). Its final words resonate powerfully:

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private

property. 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. (Article 56)

These clauses address some (but not all) of the types of destruction with which this report is concerned, but cultural heritage is not the focal point of the convention. Further, as with all international law, only modest expectations for compliance are applied to States Parties, and even then gaps in coverage exist. Hague IV has only thirty-eight States Parties, but they include the Security Council's permanent members. For present purposes, notable nonsignatories include Afghanistan, Iraq, Israel, Libya, Mali, Syria, and Saudi Arabia. Italy and Turkey have signed but not ratified. The 1899 Hague Convention with Respect to the Laws of Customs of War on Land and its annex, Regulations Concerning the Laws and Customs of War on Land, contain the same provisions as the 1907 convention, but the nearly identical wording has thirteen more States Parties. Regardless of the number of States Parties, many countries as well as legal experts consider their provisions to be part of international customary law; hence, the Hague Conventions have implications for all states and nonstate actors regardless of whether they have formally become party to the documents.

The 2002 Rome Statute of the ICC makes destruction of cultural heritage a war crime. Article 8's paragraph b defines "war crimes" and includes several pertinent items:

Intentionally directing attacks against civilian objects, that is, objects which are not military objectives (item ii); . . .

Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives (item v); . . . [and]

Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives (item ix).

The statute's definition of crimes against humanity contains two points that could readily be interpreted to include the destruction of cultural heritage:

Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, . . . or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court (Article 7, paragraph 1, item h); . . . [and]

Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health (Article 7, paragraph 1, item k).

The Rome Statute has considerably more States Parties: 124 in November 2017. However, non–States Parties include Libya, whose five World Heritage Sites were added to the World Heritage in Danger list in 2016, and Syria, whose extensive destruction has been described. Consequently, neither of these countries would be empowered to bring a case of cultural heritage destruction before the ICC.

UNESCO conventions do a better job of specifically attending to the protection of heritage, but they are still subject to the limitations of international law and the absence of meaningful international enforcement mechanisms. The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict calls on States Parties to implement preventive safeguards for cultural heritage within their borders, and to refrain from damaging cultural heritage in other states. It further specifies:

The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property. (Article 4, paragraph 1)

Although the convention acknowledges the existence of intrastate wars—or “conflicts not of an international character” (Article 19), which is the preferred vocabulary of international humanitarian law—the extent to which nonstate belligerents are bound by the provision of the convention is contested. Article 19 continues and specifies that all belligerents in a civil war on the territory of a State Party are obligated to show “respect for cultural property.” Yet at least three thorny questions remain unanswered: whether States Parties intended nonstates to be covered; whether nonstate actors can be expected to honor the provisions of a convention that they had no part in advancing; and, if so, what violations would entail for a convention with weak enforcement mechanisms.¹³ In late 2017, this convention had a total of 129 States Parties, which do not include Afghanistan and Syria.

The 1970 Convention for the Protection of Cultural Property and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property enjoins States Parties to create infrastructure dedicated to the protection of cultural heritage by passing domestic legislation, maintaining current inventories of protected property, promoting cultural institutions for preserving and presenting heritage, protecting archaeological sites, promoting best practices for the treatment of cultural heritage, publicizing any disappearance, and using educational programs to promote popular respect for heritage. States are also obliged to prevent illicit importation of heritage and assist with repatriation and prosecution when illicit transfers occur. As of November 2017, its 134 States Parties include the Security Council’s permanent members along with Afghanistan, Iraq, Libya, Mali, and Syria.

The Preamble to the 1972 Convention Concerning the Protection of World Cultural and Natural Heritage calls on “the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value.” This convention built on momentum from the 1972 Stockholm Conference on the Human Environment; it created the World Heritage Committee (WHC) and the World Heritage Fund, established the responsibilities of states to protect their national heritage and to provide regular reporting to the WHC, and outlined the types of protection that the WHC could provide to states. It stands out from the other legal instruments by virtue of its 193 States Parties.

What’s “New”

The “securitization” of an issue is often a goal for proponents of decisive action because governments then are supposed to take such an issue more seriously than “softer” threats. The protection of cultural heritage has recently benefited from its association with threats to international peace and security.

Nonstate actors, and terrorist groups specifically, have attracted increasing attention as a result of the political vacuum created by the wars in Iraq and Afghanistan and the Arab Spring. These groups have exploited destruction of cultural heritage as a fundraising mechanism and a war tactic, and the Security Council has paid more attention to the issue as a result. Since 2013, the council has passed four resolutions that address the protection of cultural heritage; they clearly link it to the maintenance of international peace and security, thereby signaling an evolution in the council’s reasoning and resulting in the securitization of protecting cultural heritage. Although what is “new” is invariably in the eyes of the beholder, those who follow the Security Council’s deliberations cannot help but notice the significance of these resolutions as precedents to constitute the basis for further decisions and perhaps more robust international action.

In April 2013, the Security Council unanimously passed resolution 2100, creating the Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). This force comprised some twelve thousand peacekeepers whose mandate included a special provision for support of cultural preservation: “to assist the transnational authorities of Mali, as necessary and feasible, in protecting from attack the cultural and historical sites in Mali, in collaboration with UNESCO.” This mandate was the first to include cultural protection as part of a UN peace operation. This precedent was important not merely for UNESCO and the issue itself but also for the expansion of the possible scope of future peace operations and wider involvement in them by other parts of the UN system.

Passed unanimously in February 2015, resolution 2199 focuses primarily on halting terrorist financing, but also attends to the role of illicit trade in cultural heritage items. It condemns the destruction of cultural heritage, both intentional and collateral, in Iraq and Syria, and specifically by ISIL and the Al-Nusrah Front. It calls on states to prevent illicit trade in Iraqi and Syrian cultural objects.

Resolution 2253, passed unanimously in December 2015, built on the provisions of resolution 2199 and expanded the jurisdiction of the Al-Qaida Sanctions Committee, renaming it the ISIL (Da'esh) and Al-Qaida Sanctions Committee. Noting specifically the role of illicit trafficking of cultural heritage in terrorist financing, the resolution encourages member states to engage in public-private partnerships to implement sanctions effectively.

Resolution 2347 is the most explicit and focused for the purposes of protecting cultural heritage. Passed unanimously in March 2017, its operative passage begins with the admonition that the Security Council

deplores and condemns the unlawful destruction of cultural heritage, inter alia destruction of religious sites and artefacts, as well as the looting and smuggling of cultural property from archaeological sites, museums, libraries, archives, and other sites, in the context of armed conflicts, notably by terrorist groups.

It notes that states have the primary responsibility for protecting their cultural heritage, specifically calling attention to the threats of illegal excavation, illicit trade, and direct attacks on sites. It also encourages member states to provide one another with “all necessary assistance” upon request. In listing specific recommendations to facilitate domestic protection of cultural heritage, the resolution points to two notable tools: for states with endangered cultural heritage, the use of a network of “safe havens” to protect potentially endangered cultural property; and for states committed to protection of cultural heritage, contributions to multilateral funds dedicated to preventive and emergency operations. Specifically, it cites UNESCO’s Heritage Emergency Fund and the International Alliance for the Protection of Heritage in Conflict Areas (ALIPH), a multilateral fund established in Abu Dhabi in December 2016. The resolution also encourages member states to ratify the 1954 convention as well as other relevant international conventions.

During opening week of the General Assembly in September 2017, the Global Centre for the Responsibility to Protect, the European Union (EU), the Permanent Mission of Italy to the United Nations, UNESCO, and the UN Office on Drugs and Crime (UNODC) hosted a High-level Meeting on Protecting Cultural Heritage from Terrorism and Mass Atrocities: Links and Common Responsibilities. The meeting marked a shift in international discourse related to the protection of cultural heritage; it embraced, rather than kept at a distance, the logic of R2P in two ways. First, the onus of protection is primarily the responsibility of the state, an approach that builds on the point of departure for the original ICISS report, the World Summit decision, and Secretary-General Ban Ki-moon’s reformulation of R2P. It thus reflects the provisions of Security Council resolution 2347. Second, the link between cultural heritage and mass atrocities moves beyond terrorism, which had been the main stimulus for Security Council deliberations—especially resolution 2347, which had confined itself to destruction resulting from terrorists in Syria and Iraq. During the

meeting, Irina Bokova employed the term “cultural cleansing,” as she had since 2014, to link human security more broadly to the protection of heritage in armed conflicts. However, major UN member states have only recently moved away from a virtually exclusive preoccupation with terrorism to consider more generally the relationship between mass atrocities and cultural heritage.

Some Important Players

UNESCO is the most visible international institution working on protecting cultural heritage in zones of armed conflict. In November 2015, the Paris-based secretariat hosted an “Expert Meeting on ‘Responsibility to Protect’ as Applied to the Protection of Cultural Heritage in Armed Conflict.” Participants recognized that the destruction of cultural heritage “could fall within the existing scope of the ‘responsibility to protect’ as enunciated in paragraphs 138 and 139 of General Assembly resolution 60/1.”¹⁴

Earlier in that month, UNESCO released an essential document for its 38th Session, “Reinforcement of UNESCO’s Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict.”¹⁵ This strategy cites two main goals: “strengthen the ability of Member States to prevent, mitigate and recover the loss of cultural heritage and diversity as a result of conflict”; and “incorporate the protection of culture into humanitarian action, security strategies and peacebuilding processes by engaging with relevant stakeholders outside the culture domain.” These two objectives have subsequently been clarified within thirty-two action plans for the organization’s work.¹⁶

Additionally, UNESCO has two operational campaigns related to the protection of cultural heritage in zones of armed conflict. The first relates specifically to protecting Syrian heritage. With funding from the EU, “Emergency Safeguarding of the Syrian Cultural Heritage” was launched in 2014, the goal being to “contribute to restoring social cohesion, stability and sustainable development through the protection and safeguarding of cultural heritage.” To that end, it takes a three-pronged approach: monitoring of heritage and damage on the Observatory of Syrian Cultural Heritage platform; national and international awareness-raising efforts; and provision of enhanced technical assistance and capacity-building for national stakeholders and beneficiaries. A two-year progress report showed that, by May 2016, the campaign had organized multiple training events and workshops and also delivered seven tons of French and Swiss “museum material” to Syria.

“Unite for Heritage” and “#Unite4Heritage” are other relevant UNESCO projects also launched in 2015. The former provides a framework for establishing coalitions of stakeholders in heritage protection, which aims to include police; customs officials; museums; governments; actors from the cultural, humanitarian, and security sectors; civil society; and the media. The latter is a social media campaign. It is difficult to determine the extent to which these efforts currently go beyond public relations, although some

potentially valuable initiatives have resulted. For instance, a partnership agreement allows the organization to call on Italy's newly formed UNESCO Emergency Task Force for Culture. This is a group of cultural heritage experts and members of the Carabinieri force ready for deployment to places of need. A forceful military action would require a Security Council authorization or a request from a host government, although training or expert advice would not. UNESCO also has signed a Memorandum of Understanding with the International Committee of the Red Cross (ICRC) to promote cooperative programming to protect cultural heritage as an integral component of the latter's operations in armed conflicts.

Despite its proposed strategy and campaigns, UNESCO continues to suffer from dramatic cutbacks in funding. The discontinuation of US assessed payments to the regular budget since 2010—resulting from the board's decision to admit Palestine as a full member in 2011—has entailed a 22 percent decrease in UNESCO's regular budget and additional shortfalls in voluntary funding. As we write, the Trump administration announced the US intention to withdraw from UNESCO at the end of 2017. Other major donors are also unpredictable: Japan is not paying its share because of a dispute over what is included in the "memory of the world" project; the United Kingdom only pays when it approves the results; and Brazil is short of funds. As a result, UNESCO has cut its staff and other expenditures by one-third over the last half-decade.

The November 2015 strategy notes that an additional \$25 million would be required to implement its provisions, representing almost a 125 percent increase over UNESCO's anticipated budget for conflict responses. A year later, only four of the thirty-two activities outlined in the strategy had secured full funding; seventeen had received no funding at all.

In 2015, UNESCO established the Heritage Emergency Fund to pool discretionary contributions from member states, international organizations, and private donors. It has mobilized very modest resources of about \$2.5 million (\$2 million from Qatar), which is dispersed in small amounts (maximum of \$100,000) for projects such as rapid-reaction training, the provision of experts, and seminars.

As hinted earlier, there is widespread skepticism about the ability of this large international bureaucracy—established at the outset of the Cold War and riven with political disputes between the North and the Global South—to lead effectively the operational charge to protect cultural heritage in zones of armed conflict. It is logical for an intergovernmental organization's deliberations to emphasize the state. However, does catering to member states not help but rather hinder the protection of cultural heritage in wars? How could UNESCO act effectively in Libya or Syria to help in non-regime-held parts of these countries without the permission of the central government? Is UNESCO not, in fact, impotent when what effective protection of cultural heritage necessitates is not consistent with what some governments have decided? These questions have become even more awkward following the State Department's October announcement of the US withdrawal from the organization to occupy a position of nonmember observer state.

A promising new funding source may be ALIPH. France and the United Arab Emirates established the fund, with some background assistance from UNESCO. ALIPH resulted from the December 2016 Abu Dhabi Conference on Safeguarding Endangered Heritage, which some forty countries attended. The conference had two objectives: the creation of ALIPH and the implementation of an international network of safe havens for endangered cultural property. The Abu Dhabi Declaration¹⁷ provides a statement of commitment by the attendees to pursue the two goals over the long term.

A decision by UNESCO's Executive Board in June 2017¹⁸ empowers the director-general to appoint a UNESCO representative as a nonvoting member of ALIPH's executive board, but no bylaws for the fund yet exist. Headquarters are to be in Geneva, financed by Switzerland, but also do not exist at present. Of an initial fundraising goal of \$100 million, donors pledged some \$75 million at a March 2017 conference.

ALIPH's stated purpose is to support "prevention (training, implementation of emergency safeguarding plans, compiling inventories, digitizing collections), intervention which is possible during the conflicts (financing the transfer of cultural property to safe havens, raising awareness of the fight against illicit trafficking), and projects to restore the damaged heritage following conflicts."¹⁹ It is noteworthy that these three elements mirror exactly the three "responsibilities" articulated in the original ICISS concept of R2P.

France was a penholder of Security Council resolution 2347 (along with Italy) and successfully incorporated references to both sets of goals of the Abu Dhabi conference into the resolution. Paragraph 15 calls for member states to contribute to ALIPH, and paragraph 16 encourages them to consider the use of safe havens for endangered cultural property. The latter item remains controversial in light of sensitivity to encyclopedic museums, largely located in the West, whose collections include so many antiquities from countries of the Global South. Building on a central point of departure for R2P—in both ICISS's original version and Ban Ki-moon's "first pillar" as well as the World Summit outcome document—the resolution reiterates the principle that states have the primary responsibility for protecting cultural heritage within their borders. Initial drafts of the resolution considered the endangerment of cultural heritage beyond the context of terrorism in Syria and Iraq. However, Russia and Egypt objected to this broader scope, which meant that the wider scope was eliminated from the language of the final resolution.²⁰

The politics of protecting cultural heritage reflect a distinct mixture from those of the North-South divide that many observers customarily, although erroneously, use to characterize the debate about R2P.²¹ It is to these politics and to a range of possible policy options that we turn.

3

INTERNATIONAL ACTION TO PROTECT CULTURAL HERITAGE: KEY DEBATES

As momentum builds around protection for cultural heritage in armed conflicts, so too does the urgency to seize the present political moment. Cultivating international consensus around a possible comprehensive framework will require navigating the shoals of political and bureaucratic differences. This chapter outlines issues raised by the process of protecting people and cultural heritage, which should be addressed before meaningful consensus on a new international framework can be garnered. Advocates for a new framework for protection will have to avoid at least three political fault lines: the limits of sovereignty, the role of nonstate actors, and the nature of cultural property.

Sovereignty

As agreement grows about the necessity to protect threatened cultural heritage, it becomes apparent that any effort to advance new norms or customary international law will confront the common claim of sacrosanct sovereignty. In particular, proposals involving any possible forceful intervention against the expressed wishes of political authorities are invariably contested. The responsibility to protect has encountered such controversy, as had humanitarian intervention in the 1990s, and so too will the protection of cultural heritage in armed conflicts.

Sovereignty undergirds the international system; it figures in UN Charter Article 2 and in the equivalent documents of other international intergovernmental organizations. States—major, middle, or minor powers; rich or poor; from the North or Global South—pursue self-defined vital interests in such bodies and seek to preserve sovereignty's normative and legal primacy. Analysts often view the developing countries of the Global South as places where sensitivity to outside meddling is justifiably high, but encroachments on sovereignty are anathema for developed countries as well. The

sovereignty of pariah states can be set aside with international approval in the form of Security Council decisions, but that abrogation is temporary.

At the same time, sovereignty traditionally has provided cover for state actors who may commit all manner of sins with reasonable assumptions of immunity. Deliberations about the nature of international human rights essentially revolve around where domestic and international jurisdictions begin and end. One relatively unknown example helps to illustrate this dynamic with reference to cultural heritage. Carrying out the will of the government, Azerbaijani officials destroyed an Armenian cemetery in Julfa, demolishing thousands of medieval Armenian tombstones.²² Using its sovereign powers, Azerbaijan has asserted that Armenians never existed in this particular territory and effectively denied access to EU and Council of Europe investigators; it also denied access to the site to the US ambassador to Azerbaijan in 2011. Along with sovereign authority comes the sovereign power to deny investigations into what the state claims are internal affairs.

Responding to gross human rights abuses in the 1990s, then UN secretary-general Kofi Annan put forward the notion of conditional rather than absolute sovereignty. Increased attention to individual sovereignty, he wrote, affirms states' obligation to act in the service of their populations: "When we read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them."²³ In arguing for the creation of a systematic framework for coming to the rescue of victims caught in the crosshairs of state and nonstate violence, he contested the limits of sovereignty as traditionally conceived.

Annan was hardly the first to call for a better balance between the sovereignty of individuals and states, but his plea fell on more receptive diplomatic ears than had earlier pronouncements. In particular, ICISS built on the momentum, and R2P codified the principle of conditional sovereignty—at least mass atrocity crimes were no longer a purely domestic issue. It established guidelines about the circumstances under which conditional sovereignty applies; it also spelled out what constitutes humanitarian need, proper authority of the intervening actors, and precautionary principles. Since its adoption by the General Assembly in 2005, and its application by the Security Council in Libya in 2011 and in a host of other resolutions since, R2P has perhaps paved the way for the further expansion of human *and* cultural protection.

Nonstate Actors

The changing relationship between nonstate actors and international law is crucial. International law, by definition, is signed and ratified by states; and state practice, especially by major powers, is the most important criterion in establishing international customary law. Substate actors such as corporations and NGOs, as subjects of the state, are accountable to the agreements into which states enter, pending state enforcement. However, such rogue actors as terrorists do not acknowledge—in fact, quite the opposite, they deny—the authority or jurisdiction of the states in which they operate. Terrorist

groups are ill-suited subjects for international law. In addition, the United Nations has no agreed definition of “terrorism.” Countries pursuing the GWOT have identified such groups as targets, but agreement about the groups’ pariah status says little about the possibilities for enforcing more broadly what hardly reflects an international consensus.

For the purposes of this essay, gaining access to zones of armed conflict in order to secure endangered cultural heritage would certainly be necessary. Without the ability to negotiate access, and especially in cases where the state no longer has effective control over the territory in question or is actively attacking it, ensuring access and protection of cultural heritage will require either some deft diplomacy or willingness to proceed without the consent of political authorities, or both.

It is important to recall that the United Nations, until the late 1980s, was poorly equipped to work with nonstate actors. Intergovernmental organizations relate to the governments of their member states, which make decisions and sometimes pay the bills. Any relationships with the armed opposition were supposed to convey recognition and thus to be avoided. NGOs, not the UN system, pioneered cross-border operations. However, a turning point for the world organization came with Operation Lifeline Sudan,²⁴ when UNICEF effectively negotiated access with the government of Sudan *and* with South Sudanese rebels to deliver humanitarian aid to victims of famine and civil war, wherever they were located. An essential element of the negotiations was that they explicitly denied conveying legitimacy for or implying any official recognition of the Sudan Liberation Army. Since then, negotiations with nonstate actors and assistance for them have become standard operating practice for the UN; but sensitivities to official reactions from capitals still by far carry the most weight.

In terms of cultural heritage, UNESCO has the lead role within the UN system and sets essential standards but has become operational in any meaningful sense only in recent years. It has relationships with a range of civil society actors, including universities, museums, and heritage organizations. It signed a Memorandum of Understanding with the ICRC to leverage the latter’s unparalleled access and sterling reputation in zones of armed conflict, and thus to elevate the protection of cultural heritage and reinforce the connection between protecting it and protecting people. UNESCO’s Unite for Heritage campaign specifically aims to promote such partnerships, although it is doubtful that these arrangements will suffice to guarantee the access required.

Further, appropriate access may not lie exclusively in the ability of international organizations to negotiate with nonstate actors. Outside military force—except of the Chapter VII variety—is dependent on state consent. In the destruction of cultural heritage in Timbuktu, Mali requested military intervention from the UN to regain control of its territories and protect cultural heritage. Syria has made no such overture. Obviously, no such request was forthcoming in Afghanistan ahead of or in response to the Taliban’s destruction of museums and monuments.

Claims to Cultural Property

Perhaps the most impassioned debates will concern notions of cultural value and culture as property, because the “universal value of cultural heritage” is not universally accepted. John Merryman helpfully laid out the contours of this debate by contrasting cultural internationalism with cultural nationalism.²⁵ The former posits a shared heritage to which all peoples have contributed across time. It envisions a common humanity as the basis for a shared cultural heritage that is not dependent on the accidents of geography (contemporary national borders) or of political change (separations over time). According to this view, significant examples of immovable and movable cultural heritage have value to all people, who have an interest in preserving and guaranteeing access. Kwame Anthony Appiah articulates a critical distinction: “It is the value of the cultural property to people and not to peoples that matters. It isn’t peoples who experience and value art; it’s men and women.”²⁶ Encyclopedic museums are a project of cultural internationalism: in presenting artifacts from diverse times and geographic origins, they allow visitors to draw observable comparisons and make connections to things they may otherwise have ignored. The cultural internationalist view is typically associated with a cosmopolitan preference for the free flow of art and artifacts because all people have a claim to them and can learn from exposure.²⁷

In contrast, cultural nationalism attributes a national quality to objects that originated in the country whose borders and government are currently recognized and where the heritage was created. Greek claims to the Elgin Marbles in the British Museum are probably the best-known example. Cultural nationalism posits a special relationship between the actual location and the local environment in which an item was created, the people who created it, and their descendants who have inherited it in the same place. According to this view, artifacts lose meaning and value outside of their place of origin, or can really only be appreciated in their original context and alongside other items from the same location.

Countries with high concentrations of antiquities—or “source countries,” as they are often called—tend to promote the nationalist approach; they seek to establish a legitimate claim on all cultural heritage items produced within their current national jurisdictions. Indeed, they sometimes even claim ownership over items that originated in former parts of a country or empire, or that were acquired by other countries or individuals (legally or not). China and Egypt, for instance, make a claim to all objects created within their historic and current borders but now located anywhere in the world. The value of repatriation is seldom questioned. Turkey today claims ownership over objects originating in or transported to the Ottoman Empire, and even objects originating within the Roman Empire in lands that later became part of the Ottoman Empire.

The two perspectives thus answer very differently the following question: “Is cultural heritage important to all of us or only to the governments (and their citizens) of the countries that claim jurisdiction?” The opposing answers—the former an Enlightenment-

driven cosmopolitanism, the latter a proud and committed nationalism—are enshrined in various legal instruments, although often in fuzzy diplomatic language that obfuscates the differences. The most prominent legal embodiment of the internationalist view is the 1954 UNESCO Convention. Its Preamble posits “that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.” This instrument is concerned with the protection of cultural heritage, both movable and immovable, and advances the position that all states are responsible for stewardship.

In contrast, the Preamble to the 1970 UNESCO Convention attributes cultural heritage to the source country. It identifies culture as one of a country’s great assets: “cultural property constitutes one of the basic elements of civilization and national culture, and . . . its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting.” Further, States Parties recognize that “the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property” (Article 2). The 1970 UNESCO Convention aims to protect national treasures from illicit trade and, as noted, gives the government of a current state the ultimate authority to declare what cultural heritage is worth protecting.

The difference between these two approaches and UNESCO’s two conventions reflects a historic political shift. A wave of post–World War II nationalism shifted the balance of numbers in intergovernmental organizations toward postcolonial countries. Given the large overlap between source and developing countries, there were strong claims of abuse and the need for repatriation of cultural heritage that had been removed under the banner of empire or because of market forces and sales. Thus and as noted, a dramatic change in language and conception of ownership occurred between 1954 and 1970. Nonetheless, some industrialized countries—notably, Italy and Greece—also have large concentrations of antiquities, which have been widely dispersed in former parts of an empire or in encyclopedic museums. Thus, they are sometimes on the same page as countries from the Global South on this issue.

Much of the recent debate has taken place in litigation concerning ownership. Museums are compelled to return artifacts acquired decades ago under different legal regimes if evidence exists that they were removed illegally from the jurisdiction of their owners. Countries of transit are asked to interdict trafficked goods and repatriate them to the source country. Because there are not always clear agreements about who owns an artifact, disputes frequently arise about who is the rightful claimant. While both perspectives provide powerful arguments about the rightful claims to heritage, Merryman proposes an object-oriented approach that emphasizes less the state and ownership and more the intrinsic value of cultural heritage.²⁸ Rather than considering who has the strongest claim to an object, he proposes three criteria to make a judgment about policy options: preservation, truth, and access. Which outcomes promote the best preservation of

an object, the greatest scholarly utility, and the greatest degree of public and specialist access? These are the questions, he argues, that should guide discussions of where an object should end up. Consequentialism, not ideology, could provide more objective and defensible answers.

Applying the object-oriented perspective suggests that “stewardship” rather than “ownership” would be a preferable term and approach for effectively protecting cultural heritage in armed conflicts and more generally. Neil MacGregor suggests the notion of “trusteeship” as the way to frame the issue, because it “brings with it the notion of an obligation to hold the object for the benefit of others, the whole world, natives as well as foreign, those living now and not yet born.”²⁹ For those who dismiss as biased the remarks from the former head of the British Museum, it is harder to discount Kwame Anthony Appiah’s use of the same term and of universal “belonging” as the metaphor for “ownership” of cultural heritage because it is “of potential value to all human beings.”³⁰

Looking to Political Precedents

This chapter has provided an overview of anticipated debates related to the formulation of an international framework for the protection of cultural heritage. ICISS confronted similar debates but managed to forge political innovations and compromises that paved the way for the consensus now surrounding the responsibility to protect. It is to that process we now turn.

4

THE POLITICS OF R2P

Understanding the politics of the protection of cultural heritage in armed conflicts warrants consideration of the dynamics of the protection of people in R2P's original formulation, evolution, and implementation. In response to the visible shortcomings of humanitarian interventions in the 1990s and of the blowback from Annan's call to reexamine the dual imperatives of honoring individual and state sovereignty, Canada sponsored the International Commission on Intervention and State Sovereignty. The opening sentence of the foreword to its 2001 report, *The Responsibility to Protect*, described its main objective as trying to provide answers to the question of "when, if ever, it is appropriate for states to take coercive—and in particular military—action, against another state for the purpose of protecting people at risk in that other state" (p. vii). The ICISS process,³¹ its two 2001 publications,³² and their reception and the subsequent normative itinerary have been analyzed by several participants and observers.³³

This chapter examines the development and implementation to date of R2P in order to identify lessons applicable to the politics of cultural protection. It concludes with the application of these lessons to a possible workable framework for the protection of cultural heritage in armed conflicts.

Lessons from the ICISS Process

It is worth underlining four features that may provide guidance about how best to pursue an international framework for the protection of cultural heritage in wars. First, major states backed ICISS. Canada did the heavy lifting both financially and politically, but Norway, Switzerland, and Sweden, along with foundations (especially the MacArthur Foundation), also were helpful. Such financial and political backing was essential for the work of the commission itself and for follow-up.

Second, in addition to major powers, ICISS enlisted input and support from a diverse range of actors. In order to ensure that the project had legitimacy among various international audiences and to promote widespread buy-in, the sponsors recruited

commissioners from the North and Global South (including one of each as cochairs) and from major regions. The countries represented by the commissioners included Australia, Algeria, Canada, Germany, Guatemala, India, the Philippines, Russia, South Africa, Switzerland, and the United States. In addition, the ICISS itself held thirteen consultations worldwide to explore the issues and receive a range of feedback from the public and private sectors.

Third, R2P was able to build on important conceptual precedents. The process for designing a viable framework for human protection purposes did not begin with ICISS. The R2P framework's dual responsibility—internal and external—drew substantially upon pioneering work by Francis Deng and Roberta Cohen at the Brookings Institution. Their concept of “sovereignty as responsibility” developed for internally displaced persons (IDPs) was an essential building block.³⁴ It emphasized the need—indeed, the duty—for the international community of states, embodied by the United Nations and mandated since its creation to deliver “freedom from fear” and do everything possible to prevent mass atrocities. In particular, Deng and Cohen's analyses and advocacy confronted head-on the paradox of sovereignty in the face of massive abuse by a state: the protection of IDPs depended on the cooperation of the state authorities that caused the forced displacement of their citizens in the first place. Ironically, citizens who remained within their own countries had fewer protections than refugees, who in crossing a border could call upon international humanitarian law, IGOs, and NGOs for help, whereas IDPs could not. The scene was set for a normative breakthrough building on the responsible exercise of sovereignty. The commissioners explicitly drew upon Deng and Cohen's “sovereignty as responsibility” and situated it with respect to three responsibilities of the international community of states.

Fourth, after its initial launch at the 2001 General Assembly, R2P required ongoing promotion, invocation, and support for a decade before the Security Council applied the norm operationally in resolutions on Libya. The ICISS report, completed in August 2001, met a temporary setback with the attacks on September 11. The United Nations, along with its most powerful member state and funder, focused almost entirely on counterterrorism. Nevertheless, the ICISS report was presented to the General Assembly in December and received significant acclaim. Canada continued its advocacy—until the Stephen Harper administration in 2006—which relied in particular on the cochairs, Gareth Evans and Mohammed Sahnoun, and two of the commissioners, Ramesh Thakur and Michael Ignatieff. A small academic cottage industry grew, including the quarterly academic journal *Global R2P*. Advocacy and monitoring work continued afterward with two New York-based NGOs, the Global Centre for the Responsibility to Protect and the International Coalition for the Responsibility to Protect.

The momentum continued in the lead-up to the September 2005 World Summit for the UN's sixtieth anniversary. The UN High-level Panel on Threats, Challenges and Change published *A More Secure World: Our Shared Responsibility*, which affirmed R2P. The

following year Annan's five-year progress report on the Millennium Declaration, *In Larger Freedom*, called on the Security Council to adopt a set of principles that would affirm its authority to authorize the use of force to prevent and react to crimes of atrocity.³⁵ Paragraphs 138–40 of the 2005 World Summit outcome document adopted by the General Assembly cited the primary responsibility of each state to prevent and react to crimes of atrocity as well as the international responsibility to build that capacity and to react when mass atrocities nonetheless resulted—two of the three ICISS responsibilities to protect.³⁶ Over the next decade, the language was referenced in Security Council and Human Rights Council resolutions, and the General Assembly created the Joint Office of the Special Advisor on the Prevention of Genocide and on the Responsibility to Protect.

As noted, then UN secretary-general Ban Ki-moon influenced the operational development of R2P by reformulating the original ICISS concept in his 2009 report, *Implementing the Responsibility to Protect*.³⁷ His subsequent annual follow-up reports maintained this new conceptualization. Instead of the three responsibilities enshrined in the 2001 ICISS report, Ban proposed three pillars: the primary responsibility of states to protect their own heritage, the responsibility of others to help build that capacity, and the international responsibility to respond in a timely and decisive manner if the first two pillars were inadequate and mass atrocities took place. The three original ICISS responsibilities can be interpreted to be part of the second and third pillars—although without reference to the three specific notions (prevention, reaction, rebuilding) that track so well with the vocabulary of protecting cultural heritage. Because the pillars are not sequential, they have proved helpful to define political conversations about R2P in UN circles, including in the annual General Assembly Interactive Dialogues on R2P, held from 2009 to 2017. The pillars undoubtedly will remain as R2P becomes a regular item on the assembly's agenda.

The most visible application of R2P came in 2011 with Security Council resolution 1970, which recalled Libya's responsibility to protect its population and called for the immediate cessation of violence in the country. Resolution 1973 followed and authorized the use of force to protect civilians in Libya. The subsequent intervention was successful in ending state violence against Libya's vulnerable population. However, it also exposed the liabilities of mission creep (regime change) and of failing to commit to rebuilding after the bombing halted—arguably, an essential element omitted, or at least downplayed, in the World Summit's outcome document.³⁸

The Responsibility to Protect

Article 1 of the UN Charter is worth citing because the protection of people and cultural heritage is an essential part of the UN's primary purpose:

to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by

peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

As indicated throughout, the ICISS's original conceptual formulation of a three-pronged framework to ensure the rescue of people—the responsibility to prevent, the responsibility to react, and the responsibility to rebuild—is pertinent for the protection of cultural heritage in armed conflicts. While “military intervention” usually is the contested headline, “Prevention is the single most important dimension of the responsibility to protect,” according to the original ICISS report (p. ix). This first component of R2P is framed in terms of both the root and direct causes of wars, and the report points to the failure of states to live up to the rhetoric of prevention:

Very often, those with the means to act prefer to play the odds, sometimes betting that the situation will somehow resolve itself, or that it will simmer without reaching a boil, or that the resulting conflict will prove less dire than predicted, or that conflict if it does break out can be quickly contained. (p. 20)

For ICISS, addressing both root and direct causes entails measures from early-warning systems to significant investments in political, economic, legal, and military infrastructure to promote human rights and political and economic equality. The real goal for prevention, as the word suggests, is to exhaust measures to “make it absolutely unnecessary to employ directly coercive measures against the state concerned” (p. 23) by helping and encouraging states to promote healthy societies. Whether one is a partisan of universal or national ownership, the total destruction of cultural heritage is a loss for either humanity or a state and its citizens; prevention is clearly preferable to any reconstruction, no matter how authentic and accurate.

The second responsibility, to react, includes a range of options escalating from sanctions, to international criminal justice, and finally to military intervention. Less intrusive options should be considered before more intrusive ones. Hence, military force should be deployed only in cases of profound humanitarian distress and, by extension, serious attacks on cultural heritage—for itself and as a precursor for the mass atrocities that almost certainly will follow.

Once less coercive means have been exhausted or at least seriously engaged, and military intervention presents itself as the only remaining tool for mitigating excessive human risk, “just cause” for intervention must first be demonstrated. According to ICISS, the threshold for just cause is either

Large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or

Large scale ‘ethnic cleansing’, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape. (p. xii)

The World Summit’s outcome document specifically enumerated four triggers: “genocide, war crimes, ethnic cleansing and crimes against humanity” (paragraph 139).

Four other precautionary principles apply to R2P according to the original ICISS formulation. The first is right intention: the purpose of interventions must be primarily about humanitarian objectives. Conflating humanitarian missions with other political aims undermines the legitimacy of a humanitarian-motivated intervention. Best practices suggest the use of multilateral coalitions; guarantees that the beneficiaries actually support an intervention; and consideration of the opinions of neighboring countries. The second principle, last resort, requires that other means for securing a peaceful resolution of an armed conflict be thoroughly exhausted prior to the use of military force. The third, proportional means, calls for the minimal scale, duration, and intensity of military force required to accomplish the goal. The fourth, reasonable prospects, requires that the negative consequences do not outweigh the benefits. These precautionary principles should also apply to international reactions to the destruction of cultural heritage.

The third and final responsibility identified by ICISS, to rebuild, aims to shepherd postconflict states away from being war-torn societies toward more peaceful ones. Undertaking a military operation entails “a genuine commitment to helping to build a durable peace, and promoting good governance and sustainable development” (p. 39). Rebuilding requires a consolidation of peace through attention to ongoing security concerns, the implementation of robust reconciliation programs, and sustainable economic development. Without these elements, forceful intervention may be for naught. Libya is a telling example of intervention without such a commitment. Despite the imperative to stay in the country long enough to cultivate the institutions necessary for a durable peace, prolonged occupation has attendant liabilities that cannot be minimized. It is essential to promote legitimate sovereignty of the state that has suffered an intervention, since the end goal is a self-sufficient and accountable state. A second risk involves large and sudden influxes of external funds into local economies that may create harmful dependencies and disruptions. Finally, reconstruction ideally should not be politicized by outsiders—for example, the announced Russian reconstruction of the medieval Umayyad, or Great Mosque, in Aleppo to curry favor with the Syrian population for the Assad regime that it has propped up. It thus should not occur at the expense of local ownership to ensure that the eventual transfer of responsibility back to local populations is not destabilizing. These considerations are valuable as well when applied to efforts to rebuild immovable cultural heritage after an armed conflict.

ICISS’s three responsibilities have invited criticism, even from advocates of robust human security. Some argue that the implied sequencing of prevention, reaction, and rebuilding can be too mechanical and impede operational plans and implementation.

Reluctant states also can manipulate them to forestall action against mass atrocity crimes—for example, if not all potential preventive measures have been exhausted, reaction could be seen as inappropriate. For opponents, the ICISS report's emphasis on state culpability in such crimes and the conditional nature of sovereignty fuels long-standing criticisms from the Global South, and skeptical member states may have been unnecessarily alienated.

Nevertheless, we believe that ICISS's original three responsibilities provide the most logical starting point to fashion a workable conceptual framework for the protection of cultural heritage in armed conflicts. While numerous actions to protect cultural heritage can occur simultaneously, for immovable heritage the original three R2P responsibilities can be interpreted as discrete and sequential. If a site is partially or totally destroyed (that is, no effective prevention has occurred), the next option is to intervene to protect what remains or other sites nearby; and eventually to rebuild the compromised one. Hence, the chronology actually is accurate: to prevent; and if that fails, to react; and if those two fail, to rebuild.

Toward a Draft Framework to Guide International Action

Given the similarities between the R2P framework enshrined in the ICISS report and the politics and logistics underlying the prospects for international action to protect cultural heritage in war zones, the original three-part responsibility guides our analysis. The first, the responsibility to prevent damage and preserve cultural heritage, would represent a collection of conservation efforts, aimed at not only averting destruction but also preparing for the worst. Action should occur when it matters most—before the damage occurs or is extensive. As Raphael Lemkin noted, “Burning books is not the same as burning bodies . . . but when one intervenes . . . against mass destruction of churches and books one arrives just in time to prevent the burning of bodies.”³⁹ If taken seriously, the imperative to prevent damage also requires massive investment in international development to alleviate poverty, income and wealth inequalities, a lack of democratic representation, and other root causes that feed into political instability, conflict, and eventually the destruction of cultural heritage. Protection of such heritage should also be included in the terms of reference for development projects.

Shorter-term and more direct strategies might include education aimed at promoting appreciation for cultural heritage and additional normative prohibitions against its destruction. UNESCO, among other organizations, is already engaged in this work but is underfunded. In contrast to its universally respected role as a standard setter and norm entrepreneur, UNESCO has been criticized for being among the least effective of the UN's operational organizations.

As promoted through the Abu Dhabi Conference and Security Council resolution 2347, the creation of a network of temporary safe havens for movable cultural heritage provides a backup if a particular area is imminently at risk. Such safe-haven networks should be

organized to promote ample availability in every region so that states have the freedom to choose where they want to store their heritage. Given the contentious debates about ownership, some states undoubtedly may be wary of engaging distant safe havens but more amenable to accepting help from neighboring countries, assuming that they are not facing violence and have adequate facilities. Alternatively, small and neutral Western countries—for instance, Switzerland and Sweden—that do not have major encyclopedic museums may also be seen as less threatening temporary shelters than industrialized countries with them, such as France, Germany, the United Kingdom, and the United States. Nonetheless, Switzerland's agreement to harbor temporarily Afghanistan's heritage was rejected by UNESCO because of the 1970 convention's strictures against moving objects from the country of origin. Ultimately, the use of safe havens will depend on trust.

In places on the cusp of armed conflict or where it has already erupted, the application of existing anti-looting legislation is essential, not only because funds raised from the illicit trade in looted antiquities augment the capacity for violence but also because looting destroys cultural heritage. The mandates for preventive peacekeeping operations could also include provisions for the protection of cultural heritage. Macedonia during the Balkan wars was the first and last attempt at the preventive deployment of UN blue helmets, but the experience could provide lessons for future cultural protection deployments. In preparation for such actions, best practices for protecting heritage in wars as well as in peacebuilding should be developed and disseminated. Clearly, resilient societies can become vibrant after armed conflicts, but an essential and often overlooked building block is cultural heritage.

Finally, in preparation for the possibility that destruction does occur, states and their partners—including museums and university archaeological departments—should ensure more adequate and systematic cataloguing of all cultural heritage. Teams should include partners within their territories as well as from outside. Common reporting standards and mechanisms for international sharing of information as part of a comprehensive prevention strategy would also improve the possibilities for postconflict rebuilding.

The second responsibility, to react, would seem to have as narrow a scope when applied to cultural heritage as to people. Moreover, the experience to date with Chapter VII reactions to mass atrocity crimes hardly bodes well for deploying military force to protect immovable cultural heritage. R2P entails an escalating list of nonconsensual interventions—including sanctions, international criminal pursuit, and military force. It is doubtful that sanctions or international prosecutions would be appropriate strategies for mitigating or averting damage to cultural heritage. At best, they seem better suited as post hoc punitive measures that, if effectively implemented, might deter additional destruction or deter the next would-be destroyer of cultural heritage.

For this reason, and although it is an unlikely last resort, our discussion of urgent reactions is limited to military interventions. The exact impact of the creation in 2016 by the Italian government of a brigade of "Blue Helmets of Culture," followed by the 2017

commitment of Carabinieri forces dedicated to that purpose, is unclear as of this writing. Since 1969, a special emphasis of the Carabinieri has aimed to combat trafficking of and recover Italian heritage. As part of that effort, the return of illegal heritage from other countries and advice and training for their officials have been by-products. MINUSMA's mandate of military protection of cultural heritage establishes an important precedent, upon which Italy and other states might build. Depending on the timing of military deployments, they could be an element of prevention.

The original ICISS formulation of a just-cause threshold maps onto the protection of cultural heritage. We suggest the following adaptation of what the ICISS might have called "military force for cultural protection purposes": "Large-scale loss of cultural heritage, actual or apprehended, with genocidal intent or not, which is the product of deliberate action by a state or a nonstate actor, or of neglect or inability to act, or of a failed-state situation; or large-scale cultural cleansing, actual or apprehended." This threshold would allow preemptive intervention when a group announces its intention or has previously demonstrated a willingness to destroy cultural heritage and approaches a new territory. In addition to the just-cause threshold, any consideration of military intervention should also include, as did the ICISS report, the elements of Just War Doctrine as guidance: right intention, last resort, proportional means, and reasonable prospects.

An additional imperative for military intervention to protect immovable cultural heritage in armed conflicts is a close working relationship with local populations, civil society organizations, and some nonstate actors (for example, the Kurds) that share an interest in the protection of cultural heritage. Beyond general concerns about the optics of intervening on behalf of tangible or intangible heritage while human beings are also at risk, the risk of backlash from locals who feel alienated by the process could also undermine interventions. In addition to the most widely acclaimed sites identified by UNESCO, it is essential to protect the everyday cultural sites and artifacts valued by the people who are in zones of armed conflict.

Bolstered by local knowledge, outsiders are more likely to be seen as legitimate and effective in protecting the interests of the people at risk. In fact, there have been numerous recent illustrations of heroic efforts by local professionals and citizens in Syria and Mali to shelter heritage. Residents of communities under fire and living near cultural heritage are often the first, and perhaps the most important, line of defense.

The third responsibility, to rebuild, will require substantial resources as part of comprehensive peacebuilding efforts, including reconciliation tailored specifically to address cultural destruction. Heritage can be a resource not only for identity but also for social cohesion and for economic growth. It is worth repeating the precedent from the Dayton Accords, namely the provision for a Commission to Preserve National Monuments to identify important sites going forward. Part of peacebuilding may also include the restoration or re-creation of damaged heritage, although this will depend on adequate documentation having occurred prior to any extensive damage. There are ample

examples of other successful rebuilding projects, including the Mostar Bridge and the Babur Gardens in Kabul.

Given the three responsibilities, which should be the priority? “Preservation” has long been the goal for defenders of cultural heritage, and it is a synonym for “prevention,” one of UN secretary-general António Guterres’s top three priorities. Also, donor states are relatively generous with resources for high-profile rebuilding after a crisis has effectively unfolded, particularly in comparison with their reluctance to deploy military force. It thus seems sensible to emphasize prevention and rebuilding, even if all three responsibilities remain central for a comprehensive conceptual framework. In fact, the three pillars of Ban Ki-moon’s formulation of R2P—the primary responsibility of states to protect their own heritage; the responsibility of others to help build that capacity; and the international responsibility to respond if the first two pillars are inadequate—also can be applied to operations to protect cultural heritage.

Next Steps

The preceding draft framework for international protection of cultural heritage has explored some of the possibilities by building on previous work by ICISS on R2P and on subsequent UN debates, decisions, and operations. As for any effort in largely uncharted waters, more questions than answers appear. A desirable next step could be the composition of an independent international commission.

5

ASSEMBLING A COMMISSION?

One of the authors of the present report was the research director for ICISS, so readers may wish to discount enthusiasm about its deliberations, products, and impact. An “independent” commission provides a preferable mechanism to an official UN panel for a topic as fraught as the protection of cultural heritage. This chapter examines the lessons from the ICISS experience as a possible model for the proposed Independent Commission on Protecting Cultural Heritage in Armed Conflicts; it then explains such efforts in general as a way to lay out the parameters of such an endeavor. However, no pronounceable acronym—always a help in international deliberations—is readily apparent.

Four features of ICISS’s composition and work facilitated its ultimate success: having the support of major players, ensuring diverse representation of various stakeholders in its membership, building on legal and conceptual precedents, and leveraging momentum. These features appeared already but are repeated here because they are relevant in considering how best to proceed toward advancing a framework for the protection of cultural heritage.

First, some major powers have already demonstrated their interest in protecting cultural heritage. France took the lead for the December 2016 Abu Dhabi Conference on Safeguarding Endangered Heritage, although it is difficult to discern whether then French President François Hollande’s enthusiasm will be matched by his successor, Emmanuel Macron. The conference’s two objectives—the establishment of networks of safe havens and the establishment of a multidonor fund—both align with the thrust of this report. A follow-up donors’ conference took place in Paris to secure funding. France contributed \$30 million to the announced goal of \$100 million, and currently the fund has received \$75 million in pledged contributions—the UAE is the next largest donor with \$15 million—and Switzerland has agreed to finance the Geneva-based secretariat. In addition, the new fund has attracted its first private contribution, \$1 million from US philanthropist Thomas Kaplan, who chairs the ALIPH board. He is joined by other museum and foundation officials as well as a former French minister of culture and a UNESCO representative.

France, along with Italy, was also a penholder for Security Council resolution 2347, which stressed that states have the primary responsibility for protecting their own heritage—the primary point of departure in documents from ICISS, the World Summit, and the last secretary-general—and requests all member states to provide assistance when states are unable to protect their own heritage. It also recommends that states consider the use of safe havens for heritage at risk and contribute to either UNESCO's Emergency Fund or ALIPH. The initial draft of the resolution also expanded the scope of concern to include all cases in which cultural heritage is endangered by armed conflict, and not just those in Iraq and Syria subject to destruction by terrorists. France and Italy, respectively, preside over the Security Council in October and November 2017. The issue will remain on the council's agenda.

Italy also has approved a UNESCO Emergency Task Force for Culture, which is composed of cultural heritage experts and Carabinieri; UNESCO may call upon it as needed to provide technical assistance and protect cultural heritage. There were also some forty states present at the Abu Dhabi conference; while the attendance list is not readily available, most of them are presumably prepared to play a role. For instance, the United Kingdom recently established a \$40 million fund to improve training for personnel devoted to protecting cultural heritage.

Other institutions are also moving ahead. Important museums worldwide are already on board with the need to act. The EU has placed the protection of cultural heritage at the heart of its common foreign policy, including a decision to deploy cultural protection officers in their field missions, beginning with Iraq in October 2017. The ICC, building on the precedent of the first conviction and damages for the destruction of cultural heritage, will be outlining further policy developments to build on existing international law, in particular the relevance of crimes against humanity.

Second, international political backing will require a diverse range of partners. The dominant cleavage that usually dictates representation is the divide between the North and Global South; these distinctions still characterize most UN debates, even if the categories bear little relationship to the actual interests of countries on particular issues. Of interest for deliberations about cultural heritage, there are source countries among the wealthiest—Italy, Greece, and increasingly China—and former empires in poorer countries such as Turkey and Peru whose museums have objects from former imperial holdings just as France and the United Kingdom do.

For cultural heritage, regional balance and diversity is essential, but each region has partisans of national and universal ownership; each also has museums that aspire to be encyclopedic; and each has consumers and producers of antiquities. In addition, this issue necessitates a wide range of expertise beyond the political and diplomatic backgrounds that usually predominate in international commissions: historians, anthropologists, archaeologists, criminal and law enforcement officials, international lawyers, and museum curators.

Third, it will be essential not to duplicate existing work but to build on existing conceptual precedents and a growing legal and normative consensus. The preceding chapters have examined such important steps as the evolution of sovereignty, the use of cultural cleansing to link destruction of cultural heritage to mass atrocity crimes, and the “object-oriented” approach to the treatment of cultural artifacts. In addition to building on these intellectual and political developments, it will also be essential to expand ratifications of existing legal mechanisms. The Hague Conventions of 1899, 1907, and 1954; the First and Second Protocols of 1954 and 1999, respectively; and the ICC’s Rome Statute have identified destruction of cultural heritage as a war crime and, by implication, as a crime against humanity. The relevance of UNESCO’s conventions of 1970 and 1972 are also key building blocks.

Fourth, the ongoing momentum augurs well for continuing to move ahead on this issue in 2018. The growing attention to cultural heritage in the context of the GWOT, the engagement of the Security Council on the issue, and the rhetorical linking of cultural destruction to the four mass atrocities agreed by the 2005 World Summit as justifying R2P action are promising. While 9/11 temporarily disrupted the path of R2P, the GWOT and other political developments (in particular the emphasis on nonstate actors) add to the momentum because so much of the recent and ongoing destruction of cultural heritage is the product of attacks and looting by what are widely recognized as terrorists. Finally, there is a widespread public interest in the dramatic destruction of cultural heritage along with a new openness among UN member states in the way that they frame the issue in intergovernmental conversations.

In short, the moment seems propitious to harness the ongoing interest and build on substantial momentum. However, a consolidated conceptualization of the protection of cultural heritage is required that is not only for terrorists; that considers all types of destruction related to armed conflicts (intentional destruction, collateral destruction, forced neglect, and looting); that has high visibility; and whose findings will be viewed as legitimate. In short, a robust and well-supported independent commission could explore options for an international framework for the protection of cultural heritage in wars. With the right composition and adequate financial and political backing, such a commission could raise awareness and effectively pave the way for a new norm, reinforcing as appropriate existing international law. It would spell out the issues as well as the pluses and minuses of possible future actions.

A short history of such mechanisms would perhaps help those skeptics who dismiss all such international endeavors as gabfests and junkets. Some of the loudest and most challenging voices in what one of the authors has called “the Third UN”⁴⁰ come from “eminent persons”—in juxtaposition to the First UN of member states and the Second UN of international civil servants. For example, as part of the lead-up to the UN’s sixtieth anniversary, then UN secretary-general Kofi Annan convened the High-level Panel on Threats, Challenges and Change. As part of the follow-up to the September 2005 World

Summit, he also pulled together the High-level Panel on UN System-wide Coherence in the Areas of Development, Humanitarian Aid and the Environment. Ban Ki-moon did the same toward the end of his second term, and 2015 was a banner year for UN reform proposals with three blockbuster reviews of UN peace operations and architecture: the High-level Independent Panel on UN Peace Operations (HIPPO), the Advisory Group of Experts on Peacebuilding (AGE), and the UN Global Study on Women, Peace and Security. There were also two independent and comprehensive reviews from the Independent Commission on Multilateralism and the Commission on Global Security, Justice and Governance.

ICISS was an “independent” commission, a preferable model for a subject as politically sensitive as the protection of cultural heritage in armed conflicts. This tradition goes back to the late 1960s and the panel headed by former Canadian prime minister and foreign minister Lester B. Pearson, which produced *Partners in Development* (1969). The so-called Pearson Commission was followed by a host of others also usually referred to by the last names of their chairs: on development issues, chaired by former German chancellor Willy Brandt (1980 and 1983); on common security, by former Swedish prime minister Olof Palme (1982); on environment and development, by then Norwegian prime minister Gro Harlem Brundtland (1987); on humanitarian problems, by Iranian and Jordanian princes Sadruddin Aga Khan and Hassan bin Talal (1988); on South-South cooperation, by then Tanzanian president Julius Nyerere (1990); on global governance, by former Swedish prime minister Ingvar Carlsson and then Commonwealth secretary-general Shridath Ramphal (1995); on humanitarian intervention and state sovereignty, by former Australian minister of external affairs Gareth Evans and former Algerian ambassador to the UN Mohamed Sahnoun (2001); on human security, by former UN high commissioner for refugees Sadako Ogata and Nobel economics laureate Amartya Sen (2003); and on civil society, by former Brazilian president Fernando Henrique Cardoso (2004). There are also commissions that are recalled more by their sponsors’ names than by those of their chairs—for example, the first report to the Club of Rome (1972) and the report of the Carnegie Commission on Preventing Deadly Conflict (1997).

Independent experts—combining knowledge with political punch and access to decision makers—have been influential in nourishing ideas and their dissemination. Commissioners speak in their individual capacities and can move beyond what passes for received wisdom in governments and secretariats. The reports are normally presented to the UN secretary-general, who can point to multinational composition and a variety of perspectives behind a consensus and thus use the findings and recommendations more easily than ideas emanating from inside the United Nations, which too many governments believe should not venture beyond their well-established positions enunciated in intergovernmental forums. Research teams are often led by scholars and policy analysts; they are usually located “outside” the UN but sometimes temporarily employed by the UN. The researchers play an important role not only by supporting the commissioners’

deliberations with necessary documentation, but also by providing an entry point for outside-the-box ideas that eventually get carried forward by the commissioners and the published reports.

Such commissions have varying degrees of accomplishment, but there are sufficient successes among them to demonstrate their utility for advancing international public policy. They pull together visible individuals who have made careers as senior governmental, intergovernmental, or nongovernmental officials. The emphasis on diversity of national origins, especially for the topic of heritage, should be far less salient than the inclusion of independent voices ranging from cultural specialists, former civil servants, academics, and civil society members with firsthand familiarity on the ground. They should also have previously demonstrated a willingness to run risks and voice criticisms at higher decibel levels and make more controversial recommendations than when they occupied official positions.

The ideal composition of such a commission would be about fifteen members, representing the world's major geographical regions—with consideration given to gender and cultural diversity—and with the collective expertise required. Ideally, two or three major states would provide funding and political backing as well as administrative support, which would be supplemented by private funders to keep the governments at a distance and honest. An autonomous research directorate would need a similar range of expertise.

The work of the commission undoubtedly would require more time than the one-year, forced-pace march of ICISS, which was able to rely on so much recent research produced after the crises of the 1990s. Thus, the new commission would resemble others whose byproducts were new knowledge and ideas generated over three or so years in parallel with deliberations by commissioners. Among possible topics for a future research agenda would be the following:

- ◆ What are best practices for protection of cultural heritage, including possible preventive peacekeeping operations?
- ◆ What would be necessary to establish a standard international catalogue for information sharing about sites and artifacts? How could locals in rural locales be enlisted?
- ◆ Safe havens seem to be a priority for some Western countries; how could they be organized to address postcolonial sensitivities?
- ◆ What policies would work best for the various types of destruction (intentional, collateral, forced neglect, and looting)?
- ◆ What types of military intervention could be relevant to different types of sites or artifacts? What kinds of changes in military doctrine would be necessary?
- ◆ What relevant cataloguing and restoration techniques could be applied? In which cases would certain techniques be most cost-effective?
- ◆ In light of UNESCO's financial and political difficulties, should it concentrate on its

comparative advantage in universal norm and standard setting? What are the pluses and minuses of other intergovernmental or nongovernmental operational alternatives?

- ◆ Are there better strategies to increase ratifications of the relevant conventions and their protocols?
- ◆ What is the unrealized potential for the ICC's prosecution of those who attack cultural heritage under international law?

For proponents of R2P and the protection of civilians who are wary about a competing priority, it is worth considering that the protection of cultural heritage in armed conflicts is not a distraction. It is not a fifth and additional crime for the list of four mass atrocities agreed by the 2005 World Summit. Rather, it is a fundamental aspect of R2P with the potential to widen support for that norm and not detract from it.

Attempting to establish a hierarchy for protecting people and heritage is counterproductive. In referring to the Middle East and Asia but with general relevance, a 2016 report from three NGOs put it succinctly: "The fight to protect the peoples of the region and their heritage cannot be separated."⁴¹ Cultural cleansing and mass atrocities are intertwined.

NOTES

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4. She used the term in December 2014 in UNESCO, *Heritage and Cultural Diversity at Risk in Iraq and Syria*, 3 December 2014, available at <https://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/CLT/pdf/IraqSyriaReport-en.pdf>.
5. Memo from James Cuno to the authors, 11 May 2017.
6. UNESCO, "Reinforcement of UNESCO's Action for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict," document number C38/49, November 2015, paragraph 5, available at <http://unesdoc.unesco.org/images/0023/002351/235186e.pdf>.
7. For a theoretical discussion of why such destruction can be interpreted in strategic terms, see Matthew Clapperton, David Martin Jones, and M. L. R. Smith, "Iconoclasm and Strategic Thought: Islamic State and Cultural Heritage in Iraq and Syria," *International Affairs* 93, no. 5 (2017): 1205–31.
8. A. Dirk Moses, "Raphael Lemkin, Culture, and the Concept of Genocide," in *The Oxford Handbook of Genocide Studies*, ed. Donald Bloxham and A. Dirk Moses (Oxford: Oxford University Press, 2010), 19–41.
9. "Letter dated 31 March 2016 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council," UN document S/2016/296, available at https://www.un.org/ga/search/view_doc.asp?symbol=S/2016/296.
10. A research project under the auspices of the University of Chicago's Oriental Institute, titled "Modeling the Antiquities Trade in Iraq and Syria" (MANTIS), is working to accurately determine the value and purpose of the international trade in looted antiquities from Iraq and Syria. See <https://oi.uchicago.edu/research/projects/mantis/our-work>.
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12. Commission on Global Governance, *Our Global Neighbourhood* (Oxford: Oxford University Press, 1995), 90.
13. For ongoing legal debates about whether or not nonstate actors are bound to the terms of the 1954 Convention and its Second Protocol, see Zoë Howe, "Can the 1954 Hague Convention Apply to Non-State Actors? A Study of Iraq and Syria," *Texas International Law Journal* 47, no. 2 (2012): 403–25; Kristin Hausler, "Culture under Attack: The Destruction of Cultural Heritage by Non-State Armed Groups," *Santander Art and Culture Law Review* 2, no. 1 (2015): 117–45; and Patty Gerstenblith, "Beyond the 1954 Hague Convention," in *Cultural Awareness in the Military:*

Developments and Implications for Future Humanitarian Cooperation, ed. Robert Albrow and Bill Ivey (New York: Palgrave Macmillan, 2014), 83–99.

14. UNESCO, “Expert Meeting on the ‘Responsibility to Protect’ as Applied to the Protection of Cultural Heritage in Armed Conflict, Final Report,” Paris, 26–27 November 2015, available at <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/governance-and-meetings/conferences/november-expert-meeting-responsibility-to-protect>. For a summary, see Sabine von Schorlemer, “The Usefulness of the ‘Responsibility to Protect’ as Applied to the Protection of Cultural Heritage in Armed Conflict,” in *Cultural Heritage Law and Ethics: Mapping the Recent Developments* (Geneva: Art-Law Centre, 2017), 71–93. For a recent overview of UNESCO’s work in this arena, see Mounir Bouchenaki, *Patrimoines mutilés: Ces trésors de l’humanité défigurés par la folie des hommes* (Paris: Erickbonnier, 2016).
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