

## Introduction

AUTHOR(S): James Cuno and Thomas G. Weiss

URL: <https://www.getty.edu/publications/cultural-heritage-mass-atrocities/introduction/>

SOURCE: Cuno, James, and Thomas G. Weiss, eds. *Cultural Heritage and Mass Atrocities*. Los Angeles: Getty Publications, 2022. <https://www.getty.edu/publications/cultural-heritage-mass-atrocities>.

ABOUT THE AUTHOR(S):

**James Cuno** is president emeritus of the J. Paul Getty Trust and cochair of its Cultural Heritage at Risk Project. His recent single- and coauthored books include *Museums Matter: In Praise of the Encyclopedic Museum* (2011), *Whose Culture? The Promise of Museums and the Debate over Antiquities* (2009), and *Who Owns Antiquity: Museums and the Battle Over Our Ancient Heritage* (2008).

**Thomas G. Weiss** is cochair of the Cultural Heritage at Risk Project of the J. Paul Getty Trust and Presidential Professor of Political Science at the CUNY Graduate Center; he is also Distinguished Fellow, Global Governance, at the Chicago Council on Global Affairs, and Global Eminence Scholar, Kyung Hee University, Korea. His recent single- and coauthored books include *The "Third" United Nations: How a Knowledge Ecology Helps the UN Think* (2021), *Rethinking Global Governance* (2019), *The United Nations and Changing World Politics* (2019), *Would the World Be Better without the UN?* (2018), and *Humanitarianism, War, and Politics: Solferino to Syria and Beyond* (2018).

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PDF GENERATED: July 13, 2022

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# Introduction

James Cuno

Thomas G. Weiss

The destruction of cultural heritage in times of war, intentional and performative acts of violence, and mass atrocities are not new. However, such destruction has become a familiar aim of state and nonstate actors across a growing portion of the world since the purposeful destruction of the Mostar Bridge (Stari Most) in Bosnia and Herzegovina during the 1993 Croat–Bosniak War; the destruction of the Bamiyan Buddhas in Afghanistan by the Taliban eight years later; the 2012 physical attacks on Sufi shrines in Timbuktu, Mali; the ongoing destruction of cultural sites and monuments throughout China’s Xinjiang Uyghur Autonomous Region; and numerous other attacks in Syria, Yemen, and Iraq. Shocking to specialists and nonspecialists alike was the saber-rattling early in 2020 by then US president Donald Trump, who threatened to destroy Iranian cultural sites after Tehran claimed it would retaliate for the assassination of Major General Qassim Suleimani. Although Trump later backed off, his initial statement as well as the dramatic earlier instances focused attention on the role of cultural heritage in times of political and military turmoil.<sup>1</sup>

Do today’s politics and public sensitivities offer an opportunity to confront and eliminate this ancient, violent tactic? In significant ways, this contested backdrop resembles the moment over two decades ago when the responsibility to protect (R2P) emerged as a demand-driven normative response to mass murder and ethnic cleansing.<sup>2</sup> Long before Trump’s bluster, protecting cultural heritage had become more visible on the international public policy agenda. Perhaps most dramatically, it followed the public beheading by the Islamic State of Iraq and Syria (ISIS, also known as ISIL or Da’esh) of Khaled al-Asaad, a Syrian archaeologist who had refused to reveal where Palmyrene cultural artifacts were hidden for their protection during Syria’s deadly civil war in summer 2015. The media’s treatment of the death of hundreds of thousands and the forced displacement of half the Syrian population had become a tragic but stale story. After four years, the drone of lamentations about the human tragedy no longer seemed newsworthy. But a sudden image that grabbed the attention of the public and policymakers was the large-scale destruction of the ruins of the ancient city of Palmyra, including the performative murder by beheading of al-Asaad and the targeted assault

on the two-thousand-year-old Temple of Baalshamin and other archaeological sites with bulldozers and explosives.

These were spectacular targets, World Heritage Sites identified by the United Nations Educational, Scientific and Cultural Organization (UNESCO). However, there were also examples of immovable cultural heritage of local importance that, while less visible to international viewers, have become targets of destruction: Uyghur mosques and temples in China, Christian cemeteries in Iraq, and Rohingya shrines in Myanmar. In short, as another recent volume makes clear, “cultural heritage has become increasingly ‘conflict prone.’”<sup>3</sup>

Can anything be done? This introduction and the subsequent thirty-two substantive chapters and conclusion argue that the answer to that question is yes. Action is possible on the normative and policy fronts. UNESCO calls such intentional destruction “strategic cultural cleansing”<sup>4</sup>—that is, “the deliberate targeting of individuals and groups on the basis of their cultural, ethnic or religious affiliation . . . combined with the intentional and systematic destruction of cultural heritage, the denial of cultural identity, including books and manuscripts, traditional practices, as well as places of worship, of memory and learning.”<sup>5</sup>

International observers and audiences link images of heritage destruction to mass murder, forced displacement, rape, ethnic cleansing, human trafficking, slavery, and terrorism. Many governments and citizens loudly deplore such destruction but do little to prevent it—tragically, they see little that can be done.

Some observers may recall that an analogous political reaction—symbolically throwing up diplomatic hands—initially greeted the reactions to those who murdered and abused civilians in the wars of the 1990s. Such resignation lasted until ad hoc humanitarian interventions were followed by the International Commission on Intervention and State Sovereignty (ICISS) and the 2001 publication of its report and accompanying research volume.<sup>6</sup> The topics are linked, as Hugh Eakin, a journalist covering both issues, wrote: “While the United Nations has adopted the ‘responsibility to protect’ doctrine, to allow for international intervention to stop imminent crimes of war or genocide, no such parallel principle has been introduced for cultural heritage.”<sup>7</sup>

Why return to ICISS when the politics of the UN General Assembly have evolved significantly since the 2005 World Summit’s agreement about R2P, including the creation of administrative and operational bodies in the UN secretariat as well as in governments and nongovernmental organizations (NGOs)? The original framework and the pertinence of the R2P analogy remain convincing for two reasons. First, the original three-part responsibility for protection—prevention, reaction, and rebuilding—reflects the same conceptual framework that cultural specialists apply to protect heritage; yet typically, they do not interact with R2P’s normative champions. Second, the major constraint impeding robust action to protect immovable heritage is the same as for the

protection of people: the claimed sacrosanct nature of sovereignty for state perpetrators, and the law of the jungle for nonstate actors.

This introduction begins with a counterfactual: what if Raphael Lemkin's original draft of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide had been left intact to include cultural as well as physical genocide? It continues with a discussion of the "value" (for the perpetrators of destruction) of attacking heritage and the tenets of existing international law. It then explores what is new in contemporary debates before applying the conceptual and political lessons of R2P's normative journey to possible efforts to address the destruction of immovable cultural heritage. Finally, it discusses the complications of the dual challenge of protecting immovable heritage and people, and the value added of combining such protection as a central component of concerns to halt atrocity crimes.

### **Lemkin's Logic**

A growing body of scholarship gives only fleeting attention to a largely forgotten emphasis in Lemkin's early work on the question of biological *and* cultural genocide.<sup>8</sup> His 1933 submission to a League of Nations conference included not only "barbarity" but also "vandalism";<sup>9</sup> but the 1948 convention dropped the latter, so that "genocide" encompasses only material, not cultural annihilation. In addition, a shortcoming for the purposes of minimizing or halting the destruction of immovable cultural heritage is that Lemkin's legal remedies have resulted in an emphasis on "punishment" (after the fact) rather than "protection" (before the fact).

As our late colleague Edward Luck pointed out in a Getty Occasional Paper in Cultural Heritage Policy, the politics surrounding the draft convention were a mirror image of the reluctance toward R2P in parts of the Global South today.<sup>10</sup> Opposition to including "vandalism" in the 1948 convention essentially came from the West: former or then colonial powers (Belgium, Denmark, France, the Netherlands, and the United Kingdom) as well as settler countries (the United States, Canada, Brazil, Australia, and New Zealand). Their governments feared accountability for crimes against Indigenous and local populations. Had that debate occurred after decolonization, the politics might have been turned upside down. In the post-Cold War era, the most ardent defenders of humanitarian intervention and R2P have been from the West, whereas the bulk of those most resistant have been from the Global South.

Government delegates in the 1948 negotiations agreed to include the physical and biological aspects of genocide in the convention but eliminated the cultural and social elements from earlier drafts.<sup>11</sup> While counterfactuals are often dismissed as the playthings of social scientists, they can help focus the mind.<sup>12</sup> What if Lemkin's vandalism had been included as part of the 1948 Genocide Convention? Would the prospects for protecting heritage have fared better in the ongoing tragedies in Syria, Yemen, Myanmar, and Xinjiang as well as earlier ones in Afghanistan, Iraq, the Balkans, and Mali?

Lemkin's experience before and during World War II led him to link biological and cultural destruction. His conceptual judgment was correct, but his political perspicacity fell short. The relationship is direct (and often personal) between protecting people and their cultures, whether one stresses the intrinsic or extrinsic value of immovable cultural heritage.<sup>13</sup> Cosmopolitans emphasize the former, the value of cultural heritage in and of itself as well as its direct link to safeguarding life. As early as the fourth century BCE, a school of Greek philosophers known as Cynics coined the expression *cosmopolitanism* to mean "citizen of the cosmos" or the world.<sup>14</sup> We use *humanity* as a synonym because humans benefit from all manifestations of cultural heritage and suffer from their destruction. In contrast, humanitarians emphasize the extrinsic value of cultural heritage because those who commit mass atrocities are cognizant that the annihilation of heritage is often a prelude to or even an integral part of such atrocities. There is no reason for R2P proponents to overlook or downgrade the value and meaning of the destruction of immovable cultural heritage if it almost invariably foreshadows mass atrocities or accompanies them.

The connections between attacks on cultural heritage and assaults on civilian populations vary. They may be iconoclastic, like the ISIS attacks on Palmyra, the Islamist attacks on the mausoleums and tombs of Sufi saints in Timbuktu, and the series of coordinated terrorist suicide bombings on Easter Sunday in Colombo, Sri Lanka. Alternatively, they may result from targeted military attacks, like damage to the Great Umayyad Mosque of Aleppo in Syria.

It is worth revisiting the relationship between protecting people and the cultural heritage with which they identify. While better data and causal links would be helpful for decisionmakers and policymakers, nonetheless it is a fool's errand to split intrinsic from extrinsic perspectives; we argue that just as in the case of protecting people and schools and hospitals, the protection of people and cultural heritage is inseparable, virtually impossible to disentangle.

### **The "Value" of Eliminating Heritage**

State and nonstate actors who destroy immovable cultural heritage—our focus in these pages—are unreasonable thugs, but they are not irrational. Their crude calculations of the costs and benefits associated with mass atrocities and the destruction of tangible cultural heritage differ from ours. These pages address the fate and legacy of tangible and immovable (not intangible or movable) cultural heritage. Language, music, costume, food, and works of art of a certain size and scale are important to any culture; they are movable and thus more easily removed for their protection. Our concern here is focused on immovable cultural heritage: tangible objects that are of a size or physical condition that impedes their movement or are integral to their physical setting and thus more vulnerable to damage and destruction.

Readers will notice that we use the term *heritage* rather than *property*. Many discussions and legal documents refer to *cultural property*. But the title of this volume

consciously favors *cultural heritage*, which is now widespread and refers to *inheritance and identity* rather than *ownership and objecthood*. Views differ about the value of each term, but we prefer the latter. Why? Because *heritage* implies a broader and more cosmopolitan affiliation, a shared human value, the idea that as humans we have obligations to others beyond their particular cultural affiliation.<sup>15</sup> People and political organizations can share a responsibility for protecting cultural heritage. Moreover, many different people can “identify” and thus be moved to want to protect cultural heritage in ways that they may not be moved or even allowed to protect if peoples claim a property to be theirs and only theirs.

The most obvious costs, both direct and indirect, of attacks on cultural heritage are borne by vulnerable populations: lost lives and livelihoods, forced displacement, reduced longevity, and misery. The violent destruction of tangible and intangible heritage often sounds an alarm about forthcoming mass atrocities—the nineteenth-century German poet Heinrich Heine famously said, “First they burn the books, then they burn the bodies.” Targeted destruction of cultural heritage, as experienced during Kristallnacht in Nazi Germany in 1938, almost invariably precedes violence against civilian populations. Museum and cultural workers, recognizing the warning signals, have died while attempting to save heritage in the face of violent attacks.

These brutal human costs are apparent and are our point of departure. But the loss of cultural heritage incorporates a full range of consequences. First, destruction is ruinous for cultural identity and social cohesion. The buildings, museums, cemeteries, libraries, and infrastructure around which societies organize themselves help define a culture and a people. Second, destruction of high-profile sites impedes postcrisis recovery; the negative impact on the economics of post-conflict financing is essential but often downplayed.<sup>16</sup> Third, the destruction of heritage deepens a society’s wounds and intensifies lingering animosities and the accounts to be settled among belligerents. With this reality in mind, for instance, the 1995 Dayton Accords addressed specifically the reconstruction of lost heritage as a crucial component of peace, a necessary prelude to and prerequisite for peacebuilding in the former Yugoslavia.

Moral hazard appears throughout discussions and debates regarding the costs and benefits of all international actions, whether to protect cultural heritage or to intervene on behalf of vulnerable populations. The metaphor of the economics of insurance can be applicable whenever an incentive exists to increase the exposure to risk. For example, when individuals or corporations are insured, they may choose to run risks because they assume the insurer will bear the associated costs. In terms of protecting cultural heritage, disparate political, economic, and military calculations reflect the incentives and disincentives for acting sooner or later or not at all.

Delaying action could lead, for instance, to the kinds of deterioration resulting from refugees seeking shelter from the government of Bashar al-Assad in the World Heritage Site called the Ancient Villages of Northern Syria. Though these sites survived the

ravages of several empires and the weather for centuries, their use as informal camps presented a different kind of war-related threat, as the displaced can often out of necessity weaken or destroy foundations, cart off materials, or make additions to structures.<sup>17</sup> Alternatively, another type of hazard can result when declaring a visible heritage site off-limits for the military. That may attract enemy forces (regular troops or the armed opposition) deploying there specifically because they are more likely to be safe from assault. Weighing the benefits and costs when resources are limited provides a variation on calculations, especially when data is inconclusive or nonexistent. As such, determining what kinds of heritage are worth protecting and downplaying “military necessity” is complicated.

Attacks on cultural heritage for propaganda or performative reasons are another hazard that can result in dramatic and threatening images and results; the presence of outside forces can provide an irresistible target that can justify any action in response, including destroying local manifestations of cultural heritage. Indeed, it is possible that an unintended consequence of elevating the protection of cultural heritage is to instigate damage and destruction. This potential “dark side of cultural heritage protection”<sup>18</sup> may mean, ironically, that the more media and diplomatic coverage are afforded to the protection of a visible monument, the more interesting it becomes for groups to target it. Clearly, states and international organizations need to recognize possible negative side effects and attempt to counterbalance them in future policies and action. Hence, both ISIS and UNESCO “instrumentalize”<sup>19</sup> the protection of world heritage, with different worldviews and for distinctly different purposes.

Finally, when cultural heritage is destroyed, there are costs to all of us. Many observers view culture as a shared endeavor across peoples, time, and place—as evidence of our common humanity. The possibility of identifying with or becoming curious about the cultures of peoples distant in time and place and experiencing their cultures by traveling to cultural sites, visiting museums, and reading primary texts are time-tested paths to learning. When cultural heritage is destroyed, we lose that opportunity. Further, the elimination of artifacts, archives, and sites precludes future study and inhibits the resolution of archaeological, anthropological, and historical questions. “It is as though we lost a close relative,” Haymen Rifai explained as she stood with her two daughters before the heavily damaged Great Umayyad Mosque in Aleppo. “I have always visited to this mosque, its feel, its smell—it is the essence of Aleppo. Zacaria [a prophet and father of John the Baptist in Islamic belief] is the protector of Aleppo. He is within our city.”<sup>20</sup>

We have examined the value of lost cultural heritage from our point of view; but from the perspective of many belligerents, cultural heritage destruction brings distinct benefits. A handful of nonstate armed groups adhere to the principles of international humanitarian law; some have signed deeds of commitment with the NGO Geneva Call.<sup>21</sup> However, most take pleasure and even pride in flouting international law. Pariahs do



not lose but benefit from pillage and publicity. They have used destruction and damage to cultural heritage as a profitable tactic: performative, destructive, and violent theater. Far from hiding acts of vandalism, they celebrate them and even send photos and videos to print and broadcast media. Dismantling ancient infrastructure or targeting the cultural heritage of a particular population makes possible looting and profitable trafficking. It also has enabled “beneficial” public relations for supporters and facilitated outreach via social media to reportedly help recruitment.

### **International Legal Tools**

Public international law, for cultural heritage as for many issues, is not the main problem. Rather, the challenge is the absence of the requisite political will to enforce existing hard and soft law (the latter consisting of such quasi-legal instruments as nonbinding declarations and resolutions). The judgment by Gary Bass in his history of humanitarian intervention is apt: “We are all atrocitarians now—but so far only in words, and not yet in deeds.”<sup>22</sup>

A substantial body of international legal tools have been codified over the last century. And while states are bound by the provisions of public international law, they also provide normative guidance to other actors. A helpful place to begin is with the conventions deposited at UNESCO, such as the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict; the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage.<sup>23</sup> The common feature of these conventions is the “value” or “importance” of cultural heritage as the criterion for determining their status as “cultural property” or “cultural heritage.” The 1972 definition, in particular, outlines the “outstanding universal value” of an artifact or site that elevates it to protected status; the 1954 definition implies this by pointing to “the cultural heritage of every people.” The shared human value of immovable and movable cultural heritage is not limited to those who have inherited it directly or indirectly; this definition contrasts starkly with the more state-centric 1970 convention that makes “cultural property” contingent upon its specific designation by a state.

The 1954 convention aims to protect sites and artifacts during armed conflicts because such cultural heritage benefits humanity. By 1970, however, post-colonial sensitivities and nationalism stressed that heritage should remain within the borders of the state in which it was most recently discovered. This convention focuses more on interdicting trafficking in movable cultural heritage, whereas the earlier 1954 convention is concerned with preventing destruction, primarily of immovable cultural heritage.

The 1970 approach prioritizes the accidents of geography, arbitrary borders, and current political entities over any other value that a cultural heritage object or site may have. The case of the Hagia Sophia illustrates the difficulty in designating only the

current owner because it was built 1,500 years ago as an Orthodox Christian cathedral, subsequently converted into a mosque after the Ottoman conquest in 1453, a secular museum in 1934, and again a mosque in 2020. The state in power has the authority and political right to claim cultural heritage to be what it wants it to be. From such an attitude, the consolidations of Germany and Yemen, or the opposite in the implosion of the Soviet Union and the former Yugoslavia or the division of Sudan, created new “owners” of what national law claims as cultural “property.” Conversely, the 1972 World Heritage Convention returns to a universal emphasis on the value of protecting cultural heritage. It aims less to oblige states to protect heritage within their borders and more to establish principles for UNESCO’s World Heritage Committee, the body that selects sites to be included on the World Heritage List, among other functions.

State-centric views, unsurprisingly, characterize intergovernmental deliberations. But they also present obvious barriers to effective protection of immovable cultural heritage. For example, destroying the Bamiyan Buddhas, over several weeks beginning on 2 March 2001, arguably was a legal act by the then governing political authority: according to the 1970 convention, the Taliban government, as the representative of the Afghan state, was exercising its sovereign authority over the Buddhas. It did not consider the Buddhas valuable—indeed, quite the opposite: their value lay in the political act of their destruction and having it publicly documented and publicized. In addition, the value of the cultural heritage of minority groups—of Rohingya and Uyghur mosques in Myanmar and Xinjiang, churches and synagogues in Syria, Yezidi shrines anywhere, or the Maya heritage in Guatemala—depends on their being designated worth protecting by governments of states that do not value these cultural monuments but instead are often committed to destroying them to advance political agendas.

The lack of enforcement mechanisms is the largest deficit in global governance.<sup>24</sup> Its absence renders immovable cultural heritage especially vulnerable. The universality of cultural heritage in the 1954 and 1972 conventions does more to advance contemporary international protection efforts than the state-based conceptions of cultural property in the 1970 convention. The 1907 Hague Convention (IV) and the 1998 Rome Statute of the International Criminal Court (ICC) make destruction of cultural heritage a war crime.<sup>25</sup> Moreover, the latter’s definition of crimes against humanity contains clauses that the current chief prosecutor and other experts interpret as promising avenues to provide additional legal protection for cultural heritage.

In brief, there are sufficient international legal tools to protect immovable cultural heritage should states decide to do so.

### **Is Anything New?**

We began by stating the obvious: the wanton destruction of cultural heritage is not new. The Roman removal of war booty taken during the Dacian campaigns between 101–106 CE is just one ancient example; it is celebrated as such on the great sculpted column raised by the Emperor Trajan in Rome in 113 CE. “To the victors belong the spoils” is a

proverb that summarizes accurately the sad history of warfare and its aftermath. While recent examples have drawn increased attention, the destruction of cultural heritage has long been the legacy of the victor. The Mosque-Cathedral of Córdoba represents the changes wrought by damage and destruction at the hands of successive victors. It occupies a site that was first a small Visigoth church prior to becoming a mosque in the eighth century. The massive current cathedral is the result of a conversion of the mosque in the thirteenth century, during the Reconquista, with later modifications and additions. Each change erased the traces of the previous culture as an integral part of the campaign to establish a new orthodoxy.

Each destruction and reconstruction systematically serves to assert new masters and rewrite the record. Murdering people is one tactic; eliminating evidence of their history and identity is another. Former UNESCO director-general Irina Bokova, author of the foreword to this volume, used the term *cultural cleansing* to characterize contemporary cases.<sup>26</sup> This designation has an evocative appeal, albeit no legal meaning. Its provocative power resembles that of its cousin, *ethnic cleansing*—coined in the early 1990s to describe forced displacements in the former Yugoslavia—which also has no formal legal definition. Both cultural and ethnic cleansing, however, capture atrocity crimes that shock the human conscience with or without any definitive legal status.

While destroying cultural heritage is not new, neither is the impulse to protect and preserve it. Yet the contemporary convergence of two factors has altered the possibilities for the politics of protection and the feasibility of international action to support it. The first factor was introduced earlier: the destruction of cultural heritage has held the attention not only of curators, archaeologists, historians, and activists but also of major media outlets and popular audiences. Cultural specialists sound a clarion call when heritage is at risk for a variety of reasons—including deterioration due to environmental damage, lack of care and maintenance, and excessive economic development.

However, there is a wider and more immediate international recognition of the scale and significance of contemporary catastrophic assaults on cultural heritage amid mass atrocities. The destruction of the Buddhas, carved into the side of a cliff in the Bamiyan Valley of central Afghanistan between 570 and 618 CE, elicited almost universal condemnation. Other cases in the Balkans, Western Asia, and Africa also attracted media treatments around the world—none more than the televised destruction of the ancient remains of Palmyra.

What appeared to be a promising moment for mobilizing action when we conceived this project in 2017 has seemed less propitious of late. A widespread turning inward accompanied the ugliness of COVID-19, which mixed with the toxic burgeoning of new nationalisms and populisms. The pandemic etched in stark relief the extent of increasing interdependence and the urgent need for global cooperation at a moment when enthusiasm for the latter was in short supply. With a global depression brought on

by the coronavirus, the planet will remain hard-pressed to respond to current and future threats, including those to cultural heritage, without greater collaboration across borders and more robust intergovernmental institutions.

The onslaught against multilateralism is an unfortunate fact of international life. The new nationalisms and populisms appear to be metastasizing, not diminishing—for example, in Putin’s Russia, Erdoğan’s Turkey, Xi’s China, Modi’s India, Bolsonaro’s Brazil, Duterte’s Philippines, López Obrador’s Mexico, el-Sisi’s Egypt, Orbán’s Hungary, Maduro’s Venezuela, and rising right-wing political parties across Europe and elsewhere.

The protection of cultural heritage benefits from its association with the high politics of international security. Given the emotive power and ubiquity of the so-called Global War on Terror, the destruction of remote cultural heritage has become sufficiently politicized to draw the ire of groups ranging from UN member states to domestic political actors, NGOs, and individual consumers of the evening news. Governments frame the destruction of cultural heritage by terrorists as another front in the war on terror. As a result, official resources to protect cultural heritage could be more readily mobilized.

Since 2013, the need to protect cultural heritage under siege has become “a threat to international peace and security,” the trigger in the UN Charter for Security Council decisions. The expansion of the definition of what constitutes a legitimate topic for council decision-making resembles the earlier shift toward vigorous humanitarian action in the 1990s. At the outset of that decade, diplomats viewed as exceptional the military interventions to protect people in northern Iraq and Somalia. Resolutions to protect Kurds followed the first UN enforcement action since Korea in the early 1950s; the resolution approving the Somalia intervention included eighteen mentions of the word “humanitarian” to underline how unusual the case was. The 1995 report by the Commission on Global Governance proposed that humanitarian catastrophes be the subject of a UN Charter amendment so that the Security Council could act—until then, some critics had questioned the legality and legitimacy of such decisions.<sup>27</sup> By the time the commission’s report became publicly available, their recommendation was moot. The Security Council had already decided to respond robustly to other humanitarian catastrophes.

“Securitization” has many detractors, who point to the ease with which governments of all stripes can readily depict any critic as a “terrorist” to be repressed, in addition to creating barriers for humanitarians engaging with nonstate actors. However, advocates for elevating an issue often want it “securitized” because governments then tend to take such issues more seriously than “softer” threats; they devote more resources to addressing them. As such, the protection of immovable cultural heritage clearly has been securitized. In the same way that the Security Council’s consideration of humanitarian disasters became a legitimate basis for action, decisions about the

protection of heritage have recently established precedents that have cleared the way for and could facilitate future decisions about more robust international action to safeguard cultural heritage.

Nonstate actors have attracted special attention in relationship to cultural heritage because of the political vacuums in Afghanistan and Iraq, the Arab Spring, and the expansion of numerous nonstate armed groups. While cultural heritage was previously absent from its deliberations, since 2013 the Security Council has passed four resolutions that address the protection of cultural heritage and the maintenance of international peace and security.

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 was the first—and to date only—time that cultural protection specifically was included in the mandate of a UN peace operation. Protection later disappeared from the mandate’s renewal, yet the successful involvement of local communities in heritage management and rebuilding in Mali was an early investment in a “virtuous circle” of peacebuilding. This precedent suggests the potential value of a more routine use of UN personnel to protect immovable cultural heritage, which could help foster social cohesion after traumatic violence.<sup>28</sup> The complementarity of military and civilian efforts can take the rough edges off “securitization” and foster “stabilization.” Otherwise, as Hugh Eakin has argued in the *New York Times*, a brutal war could in fact be followed by “something that could be even worse: a dangerous peace.”<sup>29</sup>

Passed unanimously in February 2015, Security Council resolution 2199 focused primarily on halting terrorist financing, but also mentioned the role of illicit trade in cultural heritage and the intentional and collateral damage to immovable cultural heritage, in Iraq and Syria, specifically by ISIL and the al-Nusra Front. Resolution 2253, also passed unanimously in December 2015, built on 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 Security Council encouraged public–private partnerships to implement sanctions.

To date, resolution 2347 is the most explicit and focused Security Council decision on protecting cultural heritage. Passed unanimously in March 2017, its operative passage begins with the admonition that the 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.” A half year earlier, in September 2016, the ICC found guilty Ahmad al-Mahdi, a member of an armed extremist group from northern Mali. The judgment against him was for committing a war crime in the deliberate 2012 attack on the UNESCO World Heritage Site of Timbuktu. The council noted the ICC verdict, making clear 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. Resolution 2347 also encourages member states to provide one another with “all necessary assistance.” In listing specific recommendations to facilitate domestic protection of cultural heritage, the resolution identifies two notable tools: for states with endangered cultural heritage, the use of a network of “safe havens” for endangered movable cultural property; and for states committed to the protection of immovable 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 but French-led initiative that began in December 2016 in Abu Dhabi, the United Arab Emirates. The resolution also encourages member states to ratify the 1954 convention as well as other relevant international conventions—reflecting the fact that Mali’s ratification of the ICC’s Rome Statute had permitted the extradition, trial, and conviction of al-Mahdi.

During the opening week of the General Assembly in September 2017, the Global Centre for the Responsibility to Protect, the European Union, 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.” This marked a shift in discourse related to the protection of immovable cultural heritage: it embraced the R2P norm. Advocates will recognize a familiar theme: the onus of protection primarily reflects the responsibility of the state, an approach that builds on the point of departure for the original ICISS report, the 2005 World Summit decision, and UN Secretary-General Ban Ki-moon’s 2009 reformulation of R2P. More significantly, UN member states laid the foundation for moving away from a virtually exclusive preoccupation with the looting of artifacts to finance terrorism to also focusing on the relationship between mass atrocities and cultural heritage.

The possible convergence of a new alliance of analysts and advocates in addition to the greater visibility of immovable cultural heritage on the Security Council’s agenda could be interpreted as a half-full glass. It encourages policy steps to protect both people and cultural heritage because they are so difficult to disentangle. By building on the growing attention to and concern about destruction, norm entrepreneurs can link the once seemingly disparate and remote instances of mass atrocities and destruction of immovable heritage—an atrocity pattern that requires systematic international responses.

The fundamental question underlying this book is whether today's politics can be used to protect cultural heritage. How can we best research and publicize the conundrum? And can we mobilize sufficient political will to act?

### **Learning from R2P's Normative Journey: Conceptual and Political Steps**

The development and emergence of R2P reflected an altered political reality: suddenly, it was no longer taboo to discuss how best to halt mass atrocities. Although specific decisions about when and where to invoke R2P remain controversial, few observers question whether to organize global responses to mass atrocities. Instead, the debate now centers on how to achieve R2P's lofty aims.

We tend to forget how breathtakingly brief the journey has been. Gareth Evans, former head of the International Crisis Group and ICISS cochair, described the period since the release of the ICISS report in December 2001 as “a blink of the eye in the history of ideas.”<sup>30</sup> R2P has moved from the passionate prose of an international commission to being a mainstay of international public policy debates. Edward Luck reminded us that the lifespan of successful norms customarily is “measured in centuries, not decades.”<sup>31</sup> But R2P is already embedded in the values of international society and occasionally in specific policies and responses to crises; it also has the potential to evolve further in customary international law and to contribute to ongoing conversations about the qualifications of states as legitimate, rather than rogue, sovereigns.

It is illustrative to track intergovernmental discourse since the official approval of R2P by the UN General Assembly in October 2005. The Security Council made specific references to R2P on two occasions in the year following the summit: in April, in resolution 1674 on the protection of civilians, and in August, in resolution 1706 on Darfur, which was the first to link R2P to a particular conflict. By 31 December 2021, some eighty-three resolutions and four presidential statements of the Security Council had been informed by R2P, along with sixty referencing the norm from the UN Human Rights Council and twenty-eight from the General Assembly.<sup>32</sup>

Could the destruction of immovable cultural heritage amid mass atrocities elicit not only enhanced international opprobrium but also more vigorous policies and actions? This research project is based on an optimistic reply to this question. Moreover, we believe we can learn conceptual and political lessons from that earlier journey.

#### *Conceptual Steps*

The 2005 World Summit decision to protect people is directly pertinent to the protection of immovable cultural heritage. As mentioned, ICISS's original three-pronged framework to ensure the protection of people—the responsibilities to prevent, to react, and to rebuild—is relevant for the protection of immovable cultural heritage. So too are former UN Secretary-General Ban Ki-moon's 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 fail and mass atrocities occur.

“Military intervention” is typically the contested headline, but according to the original ICISS formulation, “prevention is the single most important dimension of the responsibility to protect.”<sup>33</sup> Addressing both root and direct causes entails measures ranging from early warning to significant investments in political, economic, legal, and military infrastructure to promote human rights and justice. The real goal for the prevention of atrocities, or the protection of people, is to exhaust measures that “make it absolutely unnecessary to employ directly coercive measures against the state concerned” by helping and encouraging states to promote healthy societies. Regardless of whether one is a partisan of universal value or of national ownership, the destruction of immovable cultural heritage is a loss for humanity as well as for a state and its citizens. Prevention of its destruction is clearly the best form of protection and preferable to reconstruction.

The second responsibility, “to react,” includes a range of options, from sanctions to international criminal justice to military intervention. Less intrusive actions should be pursued and exhausted before more intrusive options are taken. Hence, military force should be deployed in rare cases of profound humanitarian distress and, by extension, serious attacks on immovable cultural heritage—for itself and as a precursor for the mass atrocities that undoubtedly follow. Once less coercive means have been exhausted, or seriously considered and found lacking, military intervention presents itself as the remaining tool. At that time, “just cause” for intervention must be evident; the *2005 World Summit Outcome* document specifically enumerated four triggers: “genocide, war crimes, ethnic cleansing and crimes against humanity.” As for just war theory, four precautionary principles also apply to R2P according to the original ICISS formulation: right intention, last resort, proportional means, and reasonable prospects. Both the triggers of the four mass atrocity crimes as well as R2P’s precautionary principles should also govern international reactions to the destruction of immovable cultural heritage.

ICISS’s third responsibility, “to rebuild,” aims to shepherd post-conflict states toward more peaceful societies. Undertaking a military operation entails “a genuine commitment to helping to build a durable peace, and promoting good governance and sustainable development.”<sup>34</sup> Rebuilding requires a consolidation of peace through security, the implementation of robust reconciliation programs, and sustainable economic development. Without these, forceful intervention may be for naught. Libya is a telling example of intervention without follow-up.<sup>35</sup> Despite the benefits of remaining in the country long enough to cultivate the institutions necessary for a durable peace, prolonged occupation also entails liabilities; this double-edged sword also applies to immovable cultural heritage. Large and sudden influxes of external funds into local economies may create harmful dependency and prevent the restoration of a responsible



state. In addition, reconstruction can easily become, but should not be, political—for example, the announced Russian reconstruction of the Great Umayyad Mosque in Aleppo to curry favor with the Assad government, to render it more dependent on the Russians, and to give Putin’s government a larger foothold in Syria.<sup>36</sup>

Although R2P originally had three sequential responsibilities, the norm’s reconceptualization has continued, as will undoubtedly the efforts to counter the destruction of immovable cultural heritage. The formal adoption of R2P by the General Assembly in paragraphs 138–40 of the *2005 World Summit Outcome* document referred not only to the primary responsibility of each state to prevent and react to atrocity crimes, but also to the international responsibility to build that capacity and to react when mass atrocities nonetheless result—two of the three ICISS responsibilities to protect.<sup>37</sup>

However, ICISS’s original three responsibilities have invited criticism, even from advocates of robust human security. Some argue that the implied sequencing of prevention, reaction, and rebuilding is too mechanical and can impede operational plans and implementation. Reluctant states can manipulate the stages to forestall action against mass atrocities—for example, if not every single potential preventive measure has been tried, intervention could be forestalled as “premature” despite demonstrable risks of delaying. Opponents of ICISS’s emphasis on state culpability in crimes and on conditional, instead of absolute, sovereignty reflect familiar and long-standing criticisms from parts of the Global South about the Trojan horse of Western imperialism.

As noted, then UN secretary-general Ban influenced the operational development of R2P by reformulating the original ICISS framework in his 2009 report, *Implementing the Responsibility to Protect*.<sup>38</sup> Subsequent annual follow-up reports provided more details about the three pillars, which emphasized the primary responsibility of a state to its own citizens, along with the responsibility of other states to help build capacities, and the international responsibility to respond in the face of a manifest demonstration of an inability or unwillingness to protect citizens. The three original ICISS responsibilities can be characterized as part of Ban’s second and third pillars—although without specific reference to prevention, reaction, and rebuilding that track the vocabulary of protecting immovable cultural heritage. The pillars do not explicitly mention postintervention rebuilding.<sup>39</sup> They also reflect a renewed sensitivity to sovereignty and an allergy to forcible intervention, especially military. Nonetheless, they have framed conversations about R2P in UN circles ever since 2005, including for the annual General Assembly informal interactive dialogues on R2P, held from 2009 to 2017, and for the assembly’s regular agenda since 2018.

Although the three pillars may be an easier political sell, ICISS’s original three responsibilities provide a more logical starting point to fashion a workable framework for protecting cultural heritage amid mass atrocities. 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 defend other sites nearby. If prevention and intervention fall short, the remaining responsibility is to rebuild both the destroyed sites and monuments and the societies in which they are located.

*Political Will and the R2P Process*

Four features of the effort to formulate, modify, and apply the responsibility to protect furnish guidance about how best to pursue an international framework for the protection of cultural heritage amid mass atrocities. 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), were helpful. Such financial and political backing was essential for the work of the commission itself and for follow-up.

Second, in addition to key states, ICISS enlisted input and support from a diverse range of actors. To ensure that the project had legitimacy among various international audiences and to promote buy-in, the sponsors recruited commissioners from the Global North and 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, ICISS itself held thirteen consultations worldwide to explore the issues and receive a range of feedback from the public and private sectors.

Third, ICISS built R2P on earlier conceptual foundations. The R2P framework's dual responsibility—internal and external—drew substantially on pioneering work by Francis Deng and Roberta Cohen, both then at the Brookings Institution. Their concept of “sovereignty as responsibility,” developed for internally displaced persons (IDPs), was an essential building block.<sup>40</sup> It emphasized the need—indeed, the duty—of the international community of states, embodied by the United Nations and mandated since its creation, to deliver “freedom from fear” by doing everything possible to prevent mass atrocities. Deng and Cohen's advocacy confronted head-on the paradox of sovereignty in the face of massive abuse by a state: the protection of IDPs depended on cooperation from the very state authorities that caused the forced displacement of their citizens in the first place. Ironically, citizens who remained within the boundaries of their own countries and dodged government perpetrators had fewer protections than refugees. At least the latter could call upon international humanitarian law, intergovernmental organizations, and NGOs when crossing borders.

Fourth, tenacity and patience were required. After its initial launch at the 2001 General Assembly, R2P required ongoing promotion, invocation, and support for half a decade before the World Summit decision and a decade before the Security Council applied it to the Libyan crisis. The ICISS report, completed in August 2001, met a temporary setback with the attacks on September 11. The United Nations and its most powerful member state and largest funder were focused almost entirely on counterterrorism. Nevertheless, the ICISS report was presented to the UN Secretary-

General and to the General Assembly in December and received wide acclaim. Canada continued its advocacy—until the Stephen Harper administration in 2006—which relied on the cochairs, Gareth Evans and Mohamed Sahnoun, and two of the commissioners, Ramesh Thakur and Michael Ignatieff. Advocacy and monitoring work continued through two New York-based NGOs, the Global Centre for the Responsibility to Protect and the International Coalition for the Responsibility to Protect. In addition, academic and policy communities grew.

The momentum continued in the lead-up to the September 2005 World Summit on 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, UN Secretary-General Kofi 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 mandate the use of force to prevent and react to crimes of atrocity.<sup>41</sup> Paragraphs 138–40 of the *2005 World Summit Outcome* document cited the primary responsibility of each state to prevent and react to atrocity crimes, as well as the international responsibility to build that capacity and to react when mass atrocities nonetheless resulted. Since then, this language has been the basis for numerous intergovernmental resolutions and for states to create the Joint Office of the Special Advisor on the Prevention of Genocide and on the Responsibility to Protect.

### **The Value Added of Protecting Heritage as Well as People**

This volume considers the destruction of immovable cultural heritage in the face of mass atrocities, wherever they occur, whether during an “armed conflict” (that is, war declared or not, international or non-international) or an internal disturbance.<sup>42</sup> International policy or action that could prevent or attenuate large-scale intentional attacks on immovable cultural heritage reflects R2P's four mass atrocity crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing. The emphasis on protecting heritage and people thus has analytical, legal, and political traction.

This focus examines destruction that arises not only from such interstate and intrastate (or civil) wars as Iraq, Syria, Afghanistan, and Mali, but also from state and nonstate perpetrators no matter the context. It does not distinguish immovable heritage with outstanding universal value (for example, UNESCO's World Heritage Sites) from more common sites, such as places of worship, cemeteries, or libraries. Equally, our emphasis includes rapid (the Rohingya in Myanmar) or slower-motion ethnic cleansing (the Uyghurs in China); decisions by rogue states (the Taliban's destruction of the Bamiyan Buddhas); and actions taken in the contested Global War on Terror by nonstate armed groups (ISIS on Yezidi shrines, and al-Qaeda on Shia and Sufi mosques).

Effectively addressing the deliberate destruction of cultural heritage does not require additional public international law. It necessitates accelerating the ongoing international normative and policy momentum, which builds on the international legal regime. The ways and means by which states and nonstate actors wage war as well as

perpetrate atrocities have changed substantially, and responses by the international community of states should as well. Responsible members of this community view the commission of mass atrocity crimes as a matter of international concern, not only of national jurisdiction. The destruction of immovable cultural heritage should be viewed similarly, given, as we have argued, the close linkage between attacks on cultural objects, structures, and monuments, on the one hand, and attacks on civilian populations, on the other.

The value added for advocates of R2P is the potential to widen support for the norm. It is counterproductive to establish a hierarchy of protection; the choice between either protecting people or protecting heritage is false. In referring to the Middle East and Asia, but with general relevance, we agree with a 2016 succinct judgment from three NGOs: “The fight to protect the peoples of the region and their heritage cannot be separated.”<sup>43</sup>

The wanton destruction of cultural heritage is not another crime to add to the four mass atrocities agreed by the 2005 World Summit. Such destruction is a war crime and, arguably, a crime against humanity. As an underlying offense under two of the four existing mass atrocity crimes, it thus is a fundamental aspect of the responsibility to protect. The R2P norm requires understanding better the connections between vulnerable people and their cultural heritage; the imperative is to protect both.

The attempt to annihilate history, Raphael Lemkin argued, proceeds with “the destruction of the cultural pattern of a group, such as the language, the traditions, monuments, archives, libraries, and churches. In brief,” he summarized, “the shrines of a nation’s soul.”<sup>44</sup> Our book appears at a moment when cultural heritage seems to occupy as prominent a place in private and public space as it did when Lemkin was advocating actively for measures to counteract cultural genocide. Quite simply, murdering people cannot be separated from destroying the cultural artifacts and monuments of their history. Despite the current political moment in which many countries are circling the wagons and looking inward, we nonetheless believe that it is time to begin a longer-term project of constructing an international regime to protect immovable cultural heritage and the peoples who identify with and benefit from it today and into the future.

## NOTES

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