

## Protecting Cultural Heritage: The Ties between People and Places

AUTHOR(S): Patty Gerstenblith

URL: <https://www.getty.edu/publications/cultural-heritage-mass-atrocities/part-4/21-gerstenblith/>

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):

**Patty Gerstenblith** is distinguished research professor of law at DePaul University and faculty director of its Center for Art, Museum & Cultural Heritage Law. In 2011, President Obama appointed her to serve as chair of the President's Cultural Property Advisory Committee in the US Department of State, on which she had previously served as a public representative during the Clinton administration. She is currently the president of the board of directors of the US Committee of the Blue Shield and chairs the Working Group on Illegal Trafficking of Cultural Objects of Blue Shield International. She publishes and lectures widely in the United States and abroad on the international trade in art and antiquities and the protection of cultural heritage during armed conflict. The fourth edition of her casebook, *Art, Cultural Heritage, and the Law*, was published in 2019.

COPYRIGHT: © 2022 Patty Gerstenblith

LICENSE: The text of this work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License. To view a copy of this license, visit [creativecommons.org/licenses/by-nc/4.0/](https://creativecommons.org/licenses/by-nc/4.0/). All images are reproduced with the permission of the rights holders acknowledged in captions and expressly excluded from the CC BY-NC license covering the rest of this publication. These images may not be reproduced, copied, transmitted, or manipulated without consent from the owners, who reserve all rights.

PDF GENERATED: July 13, 2022

Getty

*This page intentionally left blank*

## 21

## Protecting Cultural Heritage: The Ties between People and Places

Patty Gerstenblith

In May 2015, members of the Islamic State of Iraq and Syria (ISIS, also known as ISIL or Da'esh) moved toward the Greco-Roman site of Palmyra, located in central-western Syria. Palmyra was designated a World Heritage Site in 1980 by the UN Educational, Scientific and Cultural Organization (UNESCO) and placed on its List of World Heritage Sites in Danger in 2013, along with Syria's five other World Heritage Sites. The threat to Palmyra's ancient architectural elements was immediately recognized and their subsequent destruction condemned by the world cultural heritage community. ISIS's move against Palmyra was preceded by many atrocities, including murder and rape, as well as destructive activities at other cultural sites, particularly in northwestern Iraq, such as the ruins of the Neo-Assyrian cities of Nineveh, Nimrud, and Khorsabad, and the shrine of Nebi Yunus in Mosul. The outrage and helplessness of the international community seemed only to reinforce the desire of ISIS to inflict as much damage and in as public a way as possible to sites that were recognized for their great historical, cultural, and artistic significance. The largely ineffective outrage of the international heritage community has a venerable history going back to at least the mid-1990s, when it stood by helplessly as Croatian forces destroyed the Stari Most (Old Bridge) in Mostar in 1993 during the Balkan conflict and when the Taliban destroyed the Bamiyan Buddhas in Afghanistan in 2001. The suggestion that troops should be sent to intervene and protect these sites raises numerous and probably insurmountable problems.

This chapter examines the destruction of cultural heritage through the lens of human rights and then turns to the applicability of the responsibility to protect (R2P), analyzing in particular the feasibility of applying its third pillar in the attempt to preserve immovable heritage. The analysis links immovable cultural heritage to the people who live amid that heritage and the different communities to whom the heritage has

meaning and value. The UN's special rapporteur in the field of cultural rights has noted the difficulty of defining community within the context of cultural rights: "The term 'community' is too often assumed to suggest homogeneity, exclusivity, structure and formality. Such a construction is embraced not only by some outside observers not willing to recognize plurality and dynamism within groups, but also by often self-proclaimed 'representatives' of the concerned groups—or presumed groups—themselves."<sup>1</sup>

In the current context, the term "community" can refer to three distinct groups. First is the international or global community, which has an interest in the universal value of heritage. Second is the national or regional community, represented primarily by the state, which often wields the greatest power to determine the fate of heritage. And third is the local community, which consists of the people who live amid the heritage, who may be the descendants of those who produced the heritage, who may have the greatest spiritual, religious, and cultural affinity to the heritage, and who are also often in the best position to protect it.<sup>2</sup> The value of heritage needs to be recognized and heritage itself needs to be protected at four levels: the local, national, regional, and international.

### **Historical Background**

In the 1790s, during the French Revolution, the Catholic priest Henri Grégoire coined the term "vandalism" to describe the destruction of cultural property, explaining that he "created the word to destroy the thing." As Joseph Sax commented, "Grégoire made cultural policy a litmus test of civilized values, and located it in the ideological geography of the French Revolution. The nation decides what it will be as it stands before its artistic, historical, and scientific monuments, hammer in hand."<sup>3</sup>

The Polish lawyer Raphael Lemkin later used the term "vandalism" to describe what we today might refer to as "cultural genocide." In 1933, he included cultural genocide as one of the eight dimensions of the crime of genocide: political, social, cultural, economic, biological, physical, religious, and moral, "each targeting a different aspect of a group's existence."<sup>4</sup> Lemkin described two acts, barbarism and vandalism, to be added to the list of acts against the law of nations. In his work "Acts of Vandalism" he wrote:

An attack targeting a collectivity can also take the form of systematic and organized destruction of the art and cultural heritage in which the unique genius and achievement of a collectivity are revealed in fields of science, arts and literature. The contribution of any particular collectivity to world culture as a whole forms the wealth of all of humanity, even while exhibiting unique characteristics.

Thus, the destruction of a work of art of any nation must be regarded as acts of vandalism directed against world culture. The author [of the crime] causes not only the immediate irrevocable losses of the destroyed work as property and as the culture of the collectivity directly concerned (whose unique genius contributed to the

creation of this work); it is also all humanity which experiences a loss by this act of vandalism.<sup>5</sup>

Cultural genocide was included in the first draft of what became the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Its elements included systematic destruction of historical or religious monuments or their diversion to alien uses and destruction or dispersion of documents and objects of historical, artistic, or religious value, and of objects used in religious worship.<sup>6</sup> Cultural genocide was ultimately omitted from the convention due to the objections of settler states, which were concerned that the granting of cultural rights would undermine their sovereignty.<sup>7</sup>

Nonetheless, the concept has seen a resurgence, particularly where cultural sites are targeted because of their identification with a religious or ethnic minority group. For example, the International Criminal Tribunal for the former Yugoslavia (ICTY) used the intentional targeting of mosques and other structures devoted to religious uses as a basis for establishing the genocidal intent of the Bosnian Serb leadership against the Bosnian Muslim population during the Balkan civil war of the 1990s.<sup>8</sup> In 2016, former US secretary of state John Kerry linked commission of genocide by ISIS with its destruction of religious sites of minority religious and ethnic groups, including Christians, Yezidis, and Shiite Muslims in northern Iraq and Syria, and its attempt “to erase thousands of years of cultural heritage by destroying churches, monasteries and ancient monuments.”<sup>9</sup>

### **Human Rights and the Destruction of Cultural Heritage**

Some commentators and legal scholars, particularly in the United States, consider the preservation of cultural objects or sites as the paramount value to be honored. For example, the late John Henry Merryman centered his work on the object itself and emphasized preservation, integrity, and distribution of (or access to) the physical or tangible embodiments of heritage as the preeminent considerations.<sup>10</sup> This associates the tangible object or site with a universal heritage that is of importance to all people, thereby challenging the idea of a definitive connection between tangible cultural heritage and the people who identify with it, their descendants, and also the people among whom the heritage had been located before its often violent extraction. It also undermines the claims of states and communities to a right of repatriation or restitution, other than in very limited circumstances, such as the object’s use as part of an ongoing religious tradition, as judged from a Western outsider perspective.<sup>11</sup> The value of access in Merryman’s conception seems otherwise limited to the type of access gained through display of cultural objects in museums.<sup>12</sup>

This approach denies a broader and more fundamental connection between living local communities and the heritage in their midst.<sup>13</sup> A human rights approach to cultural heritage requires us to move away from an object-centered cultural property policy and toward a human-centered perspective, recognizing that people and tangible

heritage are inextricably connected. Viewing cultural heritage through the lens of human rights assists us in reaching a more integrated understanding of the role that cultural heritage plays in the lives of human beings—the local community that lives amid the heritage, and the regional and national communities, as well as the world community.

Cultural heritage destruction is a war crime and is sometimes categorized as a crime against humanity when the destruction targets a particular ethnic, racial, or religious group with discriminatory intent.<sup>14</sup> The association of heritage sites with human values, identity, beliefs, and artistic endeavor turns what would simply be a crime against property into a crime against people, whether from a local, regional, or global perspective.<sup>15</sup> Cultural heritage often also serves as a link between diverse religious and ethnic communities, as did the bridge at Mostar, the site of Palmyra, the Mar Elian monastery near al-Qaryatayn, also in Syria, and the shrine of Nebi Yunus in Mosul.<sup>16</sup> Destruction of cultural heritage devastates both the cohesiveness and the diversity of multicultural, multiethnic populations.

The significance and uses of heritage deepen with the human dimension bestowed by local inhabitants over centuries. Salam al-Kuntar, a Syrian refugee scholar, has recounted her grandparents' life amid the ruins of Palmyra, where successive generations lived and where the pagan temple of Bel had evolved first into a Byzantine church, then into a mosque and a center of village life before the local population was expelled to allow Palmyra's reconstruction as an ancient site:<sup>17</sup> "When lamenting the masonry and sculpture destroyed by the Islamic State, we can easily overlook this shifting human story. We too readily consign antiquities to the remote province of the past. But they can remain meaningful in surprising and ordinary ways. 'This is the meaning of heritage,' Ms. Kuntar said. 'It's not only architecture or artifacts that represent history; it's these memories and the ancestral connection to place.'"<sup>18</sup>

Several sources of law now link cultural heritage to human rights. Legal instruments include the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1966 International Covenant on Civil and Political Rights, and the 2007 United Nations Declaration on the Rights of Indigenous People.<sup>19</sup> The former special rapporteur in the field of cultural rights for the UN Human Rights Council, Karima Bennouna, also listed cultural heritage destruction among the threats to cultural rights. As she noted: "Cultural heritage is significant in the present, both as a message from the past and as a pathway to the future. Viewed from a human rights perspective, it is important not only in itself, but also in relation to its human dimension, in particular its significance for individuals and groups and their identity and development processes. Cultural heritage is to be understood as the resources enabling the cultural identification and development processes of individuals and groups which they, implicitly or explicitly, wish to transmit to future generations."<sup>20</sup>

The International Court of Justice (ICJ), for example, linked human rights and cultural heritage in *Cambodia v. Thailand*, a dispute concerning which country had

sovereignty over the Temple of Preah Vihear and sparked in its most recent iteration by inscription of the temple on the World Heritage List.<sup>21</sup> The border dispute had resulted in the loss of human life and endangered the historical structure. The court viewed the temple as having religious and cultural significance for all the people in the region and, as a site of continuing religious significance, the local people had a right of free access. In referring to both the temple's status as a World Heritage Site and as a religious and spiritual center for the local people, the ICJ acknowledged both the local and global significance of the site.<sup>22</sup> Judge Antônio Augusto Cançado Trindade argued, in particular, for the prevention of spiritual damage, drawing together the issues of territoriality, preservation of life, and the cultural and spiritual heritage dimensions. As he later described the ICJ's opinion, the court "encompassed the human rights to life and to personal integrity, as well as cultural and spiritual world heritage. . . . The Court's order went 'well beyond State territorial sovereignty, *bringing territory, people and human values together*,' well in keeping with the *jus gentium* of our times."<sup>23</sup> His opinion that the preservation of cultural heritage plays an important role in the spiritual and cultural lives of the local community who live amid the heritage leads to a melding of human values and cultural heritage preservation.

### **Atrocity Crimes and the Responsibility to Protect**

The term "atrocity crimes" encompasses three legally defined international crimes, genocide, crimes against humanity, and war crimes, as well as a fourth offense, ethnic cleansing.<sup>24</sup> Preventing atrocity crimes protects human life and avoids "psychosocial and psychological damages and trauma."<sup>25</sup> Preventing such crimes also contributes to national, regional, and global peace and stability. Preserving cultural heritage does not directly contribute to preserving human life, although its destruction is often viewed as a precursor to genocide. However, cultural heritage clearly has both psychological and societal benefits through the formation of identity and the connection of people to the historical structures and cultural landscapes through which they access tradition, folklore, and religious experiences.<sup>26</sup> Destruction of cultural heritage is an action that makes ending conflict more difficult, while its protection helps to preserve peace, encourage stability, assist with reconciliation, and reduce tensions among formerly warring factions during post-conflict stabilization.

Articles 4.1 and 4.2 of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict prohibit the intentional targeting of cultural property unless excused by imperative military necessity. Article 19 includes armed conflicts not of an international character in the core obligation to respect cultural property. Based on its wording, this obligation is interpreted to extend to nonstate actors, such as ISIS.<sup>27</sup> Article 15 of its 1999 Second Protocol explicitly requires state parties to criminalize grave violations of the Hague Convention, including intentional destruction. The statute of the ICTY established intentional destruction of cultural heritage as a distinct crime, citing the Hague Convention as evidence of customary

international law. While the 1949 Geneva Conventions do not discuss cultural property protection, the 1977 Additional Protocols prohibit acts of hostility directed against historical monuments, works of art, and places of worship in both international (Protocol I, Article 53) and non-international armed conflict (Protocol II, Article 16), but these provisions are subordinate to the 1954 Hague Convention because the latter law specifically focuses on the issue of cultural heritage.<sup>28</sup> The 1998 Rome Statute of the International Criminal Court (ICC) criminalizes as a war crime the intentional destruction of cultural property in both international and non-international armed conflict.<sup>29</sup> When the destruction of cultural heritage is part of a broader attack on a civilian population or is motivated by a discriminatory intent, it may also constitute a crime against humanity.<sup>30</sup>

According to the UN *Framework of Analysis for Atrocity Crimes* and some commentators, the obligation to ensure respect found in Common Article 1 of the Geneva Conventions imposes on all state parties, including those that are not directly involved in a conflict, “an obligation to prevent violations of international humanitarian law,”<sup>31</sup> thus establishing the basis for R2P, set out in the UN *2005 World Summit Outcome* document.<sup>32</sup> As further formulated in the 2009 report *Implementing the Responsibility to Protect*, the emerging norm encompasses three pillars.<sup>33</sup> In pillar one, each state bears primary responsibility for protecting its population from genocide, war crimes, ethnic cleansing, and crimes against humanity. In pillar two, the international community commits to assist states in fulfilling this responsibility by building capacity and assisting states before crises and conflicts occur. And finally, in pillar three, the international community has a responsibility to respond collectively using diplomatic, humanitarian, and other peaceful means through the United Nations when a state fails to protect its population. If peaceful means are inadequate and national authorities are manifestly failing to fulfill their responsibilities to protect their populations, then collective action may be taken by the Security Council under Chapter VII of the UN Charter, which permits military enforcement. The limitations set by R2P on an individual state’s action outside its own territorial borders restrict what can be done by states to protect or prevent destruction of tangible heritage, particularly immovable heritage, even during times of crisis. While the desire to engage in such interventionist protective activity has a superficial appeal, it would fall outside both the applicable law and applicable norms with respect to cultural heritage protection.

In November 2015, the UNESCO Expert Meeting on the “Responsibility to Protect” as Applied to the Protection of Cultural Heritage in Armed Conflict described R2P as “not a legally binding obligation but a political concept, even if relevant obligations did exist under various bodies of international law.”<sup>34</sup> Nonetheless, given the status of destruction of cultural heritage as a war crime and sometimes a crime against humanity, a consensus has developed that such destruction fits within the R2P norm.<sup>35</sup> Statements in various international legal documents indicate the interests of the international community in the preservation of cultural heritage across territorial



boundaries and that these may supersede some concerns with territorial sovereignty: the 1954 Hague Convention (in the preamble), the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, Additional Protocols I and II to the Geneva Conventions, the statute of the ICTY (Article 3.d), and the 2003 UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage.<sup>36</sup> Whether protection of cultural heritage extends to pillar three of R2P, allowing for interventionist measures, is a different issue and one around which a positive consensus has not yet developed.

In considering the contours of the application of R2P to cultural heritage preservation, the expert group raised the concern of balancing protection of physical structures and sites with the protection of civilians. As their report commented, “the ultimate objective of protecting cultural heritage was the protection of the living culture of populations and humanity, of human rights and dignity, and of the interests of past and future generations.”<sup>37</sup> This specifically links the tangible heritage with the intangible heritage of the populations that utilize or live amid heritage sites, thus emphasizing that the goal is to protect people. The report also reiterated that intentional destruction and misappropriation of cultural heritage can aggravate armed conflict, make achieving peace more difficult, hinder post-conflict reconciliation, and may also be a harbinger of other atrocity crimes including genocide.<sup>38</sup>

### **Incorporating Cultural Heritage Protection into R2P**

In considering the specific ways in which R2P can be brought to bear on cultural heritage preservation, this section will focus on pillar three: the responsibility of the international community to respond collectively when a state fails to protect its population. It presents four proposals that will enable a more robust application of R2P to preserving cultural heritage within pillar three.

There are many actions that a third-party state may take to ensure respect for international humanitarian law. States often engage in protests and may engage in unilateral or collective measures to prevent violations. These include imposing economic sanctions,<sup>39</sup> such as a trade embargo, arms embargo, travel ban, and expulsion of diplomats. Many of these actions were taken by states during the Syrian conflict in an attempt to quell the massive human rights violations,<sup>40</sup> although most were not effective. States, intergovernmental organizations (IGOs) such as UNESCO and the UN more broadly, and nongovernmental organizations (NGOs), such as the Blue Shield and its constituent national committees, engaged in extensive protest against the destructive actions of the parties to the Syrian conflict. But, ironically, it is possible that such protests motivated ISIS to increase its destruction of cultural heritage as a performative act to garner world attention and to demonstrate the impotence of international institutions.<sup>41</sup> In line with UN Security Council resolutions 2199 and 2347, and pursuant to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,

states adopted measures to prevent trade in antiquities looted from Iraq and Syria, as the looting provided funding for the conflict and terrorism while destroying archaeological sites and historical and religious structures.<sup>42</sup> Other measures that can be taken to protect cultural heritage in different forms include documentation of the damage done to cultural property and collections of movable cultural objects.

The first proposal presented here concerns military intervention. The most difficult question in applying R2P to the protection of cultural heritage is whether military intervention, invoking the use of lethal force, would be justified on the grounds that the state has failed in its obligation to prevent the war crime of the intentional destruction of cultural heritage. Some have argued that it would be justified,<sup>43</sup> others that it is not.<sup>44</sup> Military intervention, as a “blue helmet” option of using a UN force, was the first element of James Cuno’s five-point proposal for protecting cultural heritage in Syria and Iraq.<sup>45</sup> Even if the possibility of military intervention to preserve cultural heritage were to be accepted as an application of R2P, such action can only be taken legitimately with Security Council authorization and is unlikely to succeed.<sup>46</sup>

As Helen Frowe and Derek Matravers argue, military intervention should not be undertaken solely to secure protection of cultural heritage, even though we can recognize the intertwined nature of people and heritage.<sup>47</sup> Often such intervention endangers human life, both of the intervenors and of innocent civilians who live amid the heritage. Sometimes we ignore the local populations, such as those living near the ancient site of Palmyra, and thereby discount the collateral harm that may be done to them. Heritage preservation may also not justify the killing of those attacking heritage unless such preservation is deemed likely to avert a greater harm such as genocide, further armed conflict, or terrorism.<sup>48</sup>

From a practical perspective, preservation of immovable heritage would require the long-term stationing of troops at cultural sites, magnifying the threat to life and failing the requirement that such intervention be reasonably likely to succeed.<sup>49</sup> While people and movable cultural objects can be preserved by moving them to safety, it is not possible to move heritage sites without destroying them. This would leave only the option of prolonged military intervention with increased risk of loss of life to save immovable cultural heritage while a political resolution to the armed conflict is found. Military intervention to protect cultural heritage should therefore be undertaken only as part of a larger strategy to take and hold territory or to protect civilian lives; to take territory on a temporary basis, perhaps while movable heritage is moved to a secure location; in conjunction with efforts to preserve human life or prevent serious injury to people where the protection of heritage is instrumental, rather than the only goal; or as part of peacekeeping efforts.

Security Council resolution 2100 condemned the destruction of cultural and historical heritage in Mali and established the Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) for the purposes of peacekeeping and political stabilization. The mission’s mandate included cultural preservation by “assist[ing] the transitional

authorities of Mali, as necessary and feasible, in protecting from attack the cultural and historical sites in Mali, in collaboration with UNESCO.”<sup>50</sup> Cultural heritage preservation was thus put on a par with several other humanitarian and civil protection goals, including humanitarian assistance and promotion and protection of human rights, but clearly within the peacekeeping function of the stabilization force. Unfortunately, this part of the MINUSMA mandate was removed in its 2018 renewal, perhaps due to lack of capacity by the peacekeeping forces.

To be successful, such forces must include those who are knowledgeable about cultural heritage preservation and peacekeepers must be trained in the importance of cultural heritage for local populations, protection and emergency conservation of both movable and immovable heritage, and the need to avoid looting or purchasing looted or stolen cultural objects. Such training would be most appropriately carried out under the auspices of the Blue Shield, which has trained Fijian and Irish armed forces, which only deploy as peacekeepers, and has conducted such training with the UN Interim Force in Lebanon (UNIFIL) in the south of the country.<sup>51</sup> The US Committee of the Blue Shield, the Smithsonian Institution, and the University of Pennsylvania provided pocket guides on international law and heritage preservation to US, Iraqi, and Kurdish troops before the offenses to retake Mosul and later Raqqa from ISIS.<sup>52</sup> There are other examples of intermediary actions that could be taken short of military intervention. UNESCO and Italy entered into an agreement in 2016 to create a task force of experts that could be deployed to assist with conservation of cultural heritage during crises.<sup>53</sup> To some extent similar functions are being undertaken through NGOs such as the International Alliance for the Protection of Heritage in Conflict Areas (ALIPH), the Smithsonian Cultural Rescue Initiative, the International Council of Museums (ICOM), and Blue Shield International.

The second proposal to enable a more effective application of R2P within pillar three involves the criminalization of intentional destruction. While it is too complex a subject to be treated here in detail,<sup>54</sup> the crime of intentional destruction of cultural heritage was incorporated into the Rome Statute,<sup>55</sup> the ICTY statute, the Second Protocol to the 1954 Hague Convention, and the 2001 Cambodian Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Democratic Kampuchea.<sup>56</sup> In 2016, the ICC secured a conviction in its first case for intentional destruction in Mali (that of Ahmad al-Mahdi) and is in the process of prosecuting a second (al-Hassan Ag Abdoul Aziz).<sup>57</sup> However, ICC jurisdiction, like that of other international tribunals, is limited, for the most part, temporally to post-ratification conduct and territorially to ratifying states. In addition, the ICC recently gave the term “attack” that appears in the relevant provisions of the Rome Statute a narrow interpretation in the *Ntaganda* case, which may further limit the applicability of the Rome Statute.<sup>58</sup>

A state’s failure to prosecute cultural heritage destruction could be viewed as another reason for other states or the Security Council to invoke R2P to ensure punishment for such crimes.<sup>59</sup> A more modern understanding of cultural heritage also

needs to be used in formulating the elements of the crime under international law. These elements should encompass tangible and intangible, movable and immovable heritage, and sacred and cultural landscapes, the latter of which would implicate environmental issues. The status of intentional destruction of cultural heritage, when accompanied by the requisite discriminatory or persecutorial intent, as a crime against humanity would allow the prosecution of such destruction outside the context of armed conflict.<sup>60</sup>

The third proposal is the development of a more effective coordination with nonstate armed groups. The NGO Geneva Call concluded, based on a study conducted in Syria, Iraq, and Mali, that IGOs, UNESCO in particular, were reluctant to engage with or provide assistance to even those nonstate actors that expressed willingness to preserve cultural heritage. While it is apparent that ISIS would not have been an appropriate partner, other nonstate armed groups, particularly those affiliated with the Free Syrian Army, undertook measures to protect heritage but were greatly in need of training, education, and supplies to effectuate this goal. These groups found UNESCO to be unresponsive to their requests,<sup>61</sup> even though Articles 19.3 and 19.4 of the 1954 Hague Convention anticipate that UNESCO would render this sort of assistance and explicitly state that this type of cooperation does not change the legal status of nonstate actors.

IGOs such as UNESCO are too beholden to or bound by the wishes of their member states: it is almost certain that a member state will oppose cooperation of any sort with a nonstate armed group operating within its territory even if the goal is observance of international humanitarian law. UNESCO needs to commit in advance of any conflict to working with those nonstate armed groups willing and interested in preserving heritage. Such cooperation is the necessary corollary if international humanitarian law is to hold them to the legal requirements that apply to states, as is increasingly occurring. Examples include the above-referenced ICC prosecutions of Ahmad al-Mahdi and al-Hassan for destruction of cultural heritage in Mali, as well as the unsuccessful 2015–19 prosecution of Bosco Ntaganda for intentional destruction of cultural heritage in the Democratic Republic of the Congo, although he was convicted on other counts. NGOs such as Blue Shield and Geneva Call are alternative intermediaries that can offer assistance to nonstate armed groups in heritage preservation when IGOs cannot or will not do so. But their efforts should be supported, not criticized or hampered.

The fourth and last proposal concerns refuges for heritage protection. Movable heritage can, by its nature, often be moved for safekeeping.<sup>62</sup> Although it is an element of the First Protocol of the 1954 Hague Convention, the notion of safe havens understandably triggers connotations of the “universal” museum. Prominent European museums benefited from the plunder and expropriation of cultural objects, such as the Benin bronzes and ivories, during periods of colonialism and armed conflict. The offer of such museums to serve as safe havens for movable cultural objects might appear to be a reincarnation of the same idea in a new guise. As Thomas G. Weiss and Nina Connelly note, “the use of safe havens will depend on trust,”<sup>63</sup> a sentiment that may be

in short supply based on history, rhetoric, and conduct by many museums. Nonetheless, a more robust international system would, at times, benefit the people and countries to whom the heritage belongs. In addition to the practical difficulties of funding and safe movement of heritage possibly through zones of conflict, the domestic laws of states that might be the recipients and guardians of such heritage are for the most part inadequate, posing obstacles of bureaucracy and concerns with immunity from seizure or legal process.

In 2008, the International Law Association (ILA) proposed “Guidelines for the Establishment and Conduct of Safe Havens for Cultural Materials,” which established standards for legislation to be adopted by individual states.<sup>64</sup> On 24 March 2017, in resolution 2347, Article 16, the Security Council encouraged states to create a network of safe havens within their own territory as another means of protecting cultural heritage. Switzerland enacted legislation in 2014 which, while helpful, poses practical obstacles such as requiring a treaty between Switzerland and the depositor country, something that could likely not be done in a period of crisis.<sup>65</sup> Alessandro Chechi points out that the Swiss legislation departs from the ILA guidelines, in particular by not requiring storage and display in accord with the laws and traditions of the state of origin.<sup>66</sup>

In 2016, the United States enacted legislation to provide refuge with an automatic grant of immunity from seizure for objects entering its territory, but this legislation is limited to cultural property from Syria.<sup>67</sup> At the same time, the Association of Art Museum Directors adopted guidelines which track but do not follow the US legislation, in particular because they are not restricted to cultural property from Syria.<sup>68</sup> A provision in the 2021 US National Defense Authorization Act creates automatic immunity from seizure for cultural objects legally exported from Afghanistan and imported into the United States pursuant to a loan agreement with an educational or other charitable institution. This provision also expands the purposes for which immunity from seizure may be granted.<sup>69</sup>

France,<sup>70</sup> the United Kingdom, Italy, Germany, and China have all considered or enacted legislation to effectuate the idea of refuges, but enacted legislation seems not to be comprehensive or sufficiently responsive to practical impediments.<sup>71</sup> In other states, complying with existing immunity from seizure legislation and return guarantees often poses significant obstacles by limiting the amount of time that an object can be in the country or by requiring that the object be on display. Other questions that need to be answered include: Who may request safe haven? To whom and when should objects be returned, particularly if the identity of the original owner has changed? What event or threat triggers the safe haven provisions? Is a formal agreement or treaty required? May the cultural objects be studied, displayed or conserved? Do the objects receive immunity from seizure? And must UNESCO approve the granting of safe haven or be otherwise involved? Economic sanctions and travel restrictions may pose other obstacles to effective assistance. States that are willing to provide refuges need to develop new and more flexible legislative solutions. The export and corresponding

import of cultural objects may also be hampered by the very provisions of conventions, such as the 1970 UNESCO convention, that require legal export. This may prove to be unpopular or impractical, but countries may also want to consider adding provisions to their domestic legislation that would allow easier export in case of crisis situations.

A hypothetical scenario (based on facts) illustrates some of the challenges.<sup>72</sup> In 2015 and 2016, Syrian government forces attacked the Maarat al-Numan Museum, one of the foremost repositories for late Roman and Byzantine mosaics, in the Idlib region. Museum professionals were trained to protect the mosaics in situ, as well as in aspects of the law of armed conflict for protecting cultural heritage. However, if a faction of the Free Syrian Army or a civilian group had wanted to arrange transport of those mosaics out of the country, would it have been possible to arrange safe haven in another country and would UNESCO or other IGOs, probably over the protest of the Syrian government, have assisted? Under current circumstances, an arrangement for a safe haven would likely not have been feasible. Yet, in the end, government forces repeatedly attacked the museum, and the full extent of damage remains unknown.

### **Conclusion**

Much of the preceding discussion illustrates the limited applicability of R2P to the preservation of immovable cultural heritage during armed conflict. But any actions taken via R2P are more likely to be successful if done with the consent and for the benefit of the local communities that live amid the heritage. Too much of the rhetoric surrounding recent destruction during conflict, as in Syria, Iraq, and Mali, demonstrates a top-down approach by IGOs, while at the same time these organizations have limited the assistance they are willing to provide because of political pressure from member states over the role of nonstate armed groups.

The threats posed by such groups constitute one of the most significant obstacles faced by international humanitarian law. Conflicts are increasingly conducted between different nonstate armed groups or between them and states. The 1899 and 1907 Hague conventions and regulations on the conduct of warfare<sup>73</sup> did not recognize the role of nonstate armed groups for historical and geopolitical reasons. Some of the difficulties posed by legal instruments and their interpretation as applied to non-international armed conflict and nonstate armed groups have remained as “artifacts” of these earlier conventions, in particular with respect to the definition of “occupied territory,” a key term in the 1954 Hague Convention and its two protocols. However, now, more than a hundred years later, there is a growing recognition that nonstate armed groups must be subjected to the same international legal obligations as states and they must be punished when they fail to comply. Most recent conventions, beginning with the 1954 Hague Convention, implicitly recognize the role of nonstate armed groups through the explicit application of their provisions to non-international armed conflict, although perhaps not as extensively as required by current conflicts,<sup>74</sup> and recent prosecutions by the ICC reflect that recognition.

As Fatou Bensouda, the ICC chief prosecutor at the time, stated in the *Al Mahdi* case<sup>75</sup> and was reiterated in the assessment of reparations for the destruction in Timbuktu,<sup>76</sup> the impact of cultural heritage destruction must be evaluated from the local, national, regional, and international perspectives. While international conventions and overarching legal principles benefit the international community and, for the most part, we tend to universalize the value of our shared global heritage, the local community must also participate in and derive benefit from the protection of this heritage if the goal of preservation is to be achieved. Only such a multifaceted approach is likely to succeed.

#### SUGGESTED READINGS

---

Kevin Chamberlain, *War and Cultural Heritage: A Commentary on the Hague Convention 1954 and Its Two Protocols*, 2nd ed. (Builth Wells, UK: Institute of Art and Law, 2013).

Francesco Francioni, "Beyond State Sovereignty: The Protection of Cultural Heritage as a Shared Interest of Humanity," *Michigan Journal of International Law* 25, no. 4 (2004): 1209–28.

Patty Gerstenblith, "The Destruction of Cultural Heritage: A Crime against Property or a Crime against People?," *John Marshall Review of Intellectual Property Law* 15, no. 336 (2016) 336–93.

Federico Lenzerini, "Terrorism, Conflicts and the Responsibility to Protect Cultural Heritage," *International Spectator* 51, no. 2 (2016): 70–85.

Polina Levina Mahnad, "Protecting Cultural Property in Syria: New Opportunities for States to Enhance Compliance with International Law?," *International Review of the Red Cross* 99 (2019): 1037–74.

Stephennie Mulder, "Imagining Localities of Antiquity in Islamic Societies," *International Journal of Islamic Architecture* 6, no. 2 (2017): 229–54.

Joseph L. Sax, "Heritage Preservation as a Public Duty: The Abbé Grégoire and the Origins of an Idea," *Michigan Law Review* 88, no. 5 (1989–90): 1142–69.

#### NOTES

---

1. Karima Bennoune, *Report of the Special Rapporteur in the Field of Cultural Rights*, Human Rights Council, UN doc. A/HRC/31/59, 3 February 2016, Art. 2.A.14, p. 5, <https://digitallibrary.un.org/record/831612?ln=en>.
2. Lucas Lixinski, *International Heritage Law for Communities: Exclusion and Re-imagination* (Oxford: Oxford University Press, 2019), 94–105. A more amorphous fourth set of "communities" at times has a role in preserving cultural heritage. Such communities often consist of a group of experts or scholars. Terms such as the "preservation community," "museum community," "scholarly community," "expert community," and "archaeological community" may be used. Their interests may be seen as transcending national boundaries. In a few instances, they are given a specific role, as with the International Council on Monuments and Sites and the World Conservation Union, which serve as technical advisors to UNESCO's World Heritage Committee in recommending which cultural and natural sites qualify for inscription on the World Heritage List. See UNESCO, "World Heritage List Nominations," para. 3, <http://whc.unesco.org/en/nominations>; and Lixinski, *International Heritage Law for Communities*, 71–75.

3. Joseph L. Sax, "Heritage Preservation as a Public Duty: The Abbé Grégoire and the Origins of an Idea," *Michigan Law Review* 88, no. 5 (1989–90): 1161.
4. David Nersessian, "Rethinking Cultural Genocide under International Law," Human Rights Dialogue: Cultural Rights, Carnegie Council for Ethics in International Affairs, 22 April 2005, [https://www.carnegiecouncil.org/publications/archive/dialogue/2\\_12/section\\_1/5139](https://www.carnegiecouncil.org/publications/archive/dialogue/2_12/section_1/5139); and Elisa Novic, *The Concept of Cultural Genocide* (Oxford: Oxford University Press, 2016), 18–22. See also Edward C. Luck, *Cultural Genocide and the Protection of Cultural Heritage*, Occasional Papers in Cultural Heritage Policy no. 2 (Los Angeles: Getty Publications, 2018), 17–22, <https://www.getty.edu/publications/occasional-papers-2>.
5. Raphael Lemkin, "Acts Constituting a General (Transnational) Danger Considered as Offences against the Law of Nations," Additional Explications to the Special Report Presented to the 5th Conference for the Unification of Penal Law in Madrid, 14–20 October 1933, [www.preventgenocide.org/lemkin/madrid1933-english.htm](http://www.preventgenocide.org/lemkin/madrid1933-english.htm).
6. Hiram Abtahi and Philippa Webb, *The Genocide Convention: The Travaux Préparatoires* (Leiden, the Netherlands: Brill Nijhoff, 2008), 234–36. See also Roger O'Keefe, "Protection of Cultural Property under International Criminal Law," *Melbourne Journal of International Law* 11, no. 2 (2010): 386.
7. Abtahi and Webb, *The Genocide Convention*, 163–67, 726–31; and Lawrence Davidson, *Cultural Genocide* (New Brunswick, NJ: Rutgers University Press, 2012), 127–30.
8. O'Keefe, "Protection of Cultural Property," 388–89.
9. Matthew Rosenberg, "Citing Atrocities, John Kerry Calls ISIS Actions Genocide," *New York Times*, 18 March 2016. See also John Kerry, "Remarks on Daesh and Genocide," US Department of State, 17 March 2016, <https://2009-2017.state.gov/secretary/remarks/2016/03/254782.htm>.
10. John Henry Merryman, "The Nation and the Object," *International Journal of Cultural Property* 3, no. 1 (1994): 64.
11. Merryman, "The Nation and the Object," 69.
12. Merryman, "The Nation and the Object," asserted that the object should be "optimally accessible to scholars (for study) and to the public (for education and enjoyment)" (64). In further considering the question of the relevant public, he concluded that "to the object-oriented person the number of interested viewers, regardless of their nationality, is the significant figure" (74 n. 14). However, this fails to account for the disparities in practical access that result from the ability to travel.
13. See, e.g., Lucas Lixinski, "A Third Way of Thinking about Cultural Property," *Brooklyn Journal of International Law* 44, no. 2 (2019): 564.
14. Karolina Wierczynska and Andrzej Jakubowski, "Individual Responsibility for Deliberate Destruction of Cultural Heritage: Contextualizing the ICC Judgment in the *Al-Mahdi* Case," *Chinese Journal of International Law* 16, no. 4 (2017): 708; and Federico Lenzerini, "Terrorism, Conflicts and the Responsibility to Protect Cultural Heritage," *International Spectator* 51, no. 2 (2016): 74–75.
15. Wierczynska and Jakubowski, "Individual Responsibility for Deliberate Destruction," 711–13.
16. Wendy M. K. Shaw, "In Situ: The Contraindications of World Heritage," *International Journal of Islamic Architecture* 6, no. 2 (2017): 341.
17. Stephennie Mulder, "Imagining Localities of Antiquity in Islamic Societies," *International Journal of Islamic Architecture* 6, no. 2 (2017): 229.
18. Kanishk Tharoor, "Life among the Ruins," *New York Times*, 20 March 2016.
19. Luck, *Cultural Genocide*, 26–27; and Francesco Francioni, "Beyond State Sovereignty: The Protection of Cultural Heritage as a Shared Interest of Humanity," *Michigan Journal of International Law* 25, no. 4 (2004): 1212–13.
20. Bennoune, *Report of the Special Rapporteur*, 11 (internal citations omitted).



21. ICJ, “Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the *Temple of Preah Vihear (Cambodia v. Thailand)* (Cambodia v. Thailand), Summary of the Order of 18 July 2011, Separate Opinion of Judge Cançado Trindade,” paras. 20–26, <https://www.icj-cij.org/en/case/151/orders>; and, in the same case, “Judgment of 11 November 2013, Separate Opinion of Judge Cançado Trindade,” paras. 30–33, <https://www.icj-cij.org/en/case/151/judgments>. See also Alessandro Chechi, “The 2013 Judgment of the ICJ in the *Temple of Preah Vihear* Case and the Protection of World Cultural Heritage Sites in Wartime,” *Asian Journal of International Law* 6 (2016): 358–59.
22. ICJ, “Request for Interpretation, Cambodia v. Thailand, Provisional Measures, Order of 18 July 2011,” para. 106, <https://www.icj-cij.org/en/case/151/provisional-measures>; and Chechi, “The 2013 Judgment of the ICJ,” 368.
23. ICJ, “Request for Interpretation, Cambodia v. Thailand, Judgment of 11 November 2013,” para. 33 (italics in original; omitting internal citations).
24. UN, *Framework of Analysis for Atrocity Crimes: A Tool for Prevention* (New York: United Nations, 2014), 1.
25. UN, *Framework of Analysis for Atrocity Crimes*, 2.
26. Thomas G. Weiss and Nina Connelly, *Cultural Cleansing and Mass Atrocities: Protecting Cultural Heritage in Armed Conflict Zones*, Occasional Papers in Cultural Heritage Policy no. 1 (Los Angeles: Getty Publications, 2017), 13–14, <https://www.getty.edu/publications/occasional-papers-1/>.
27. Kevin Chamberlain, *War and Cultural Heritage: A Commentary on the Hague Convention 1954 and Its Two Protocols*, 2nd ed. (Builth Wells, UK: Institute of Art and Law, 2013), 52–55.
28. See Roger O’Keefe, *The Protection of Cultural Property in Armed Conflict* (Cambridge: Cambridge University Press, 2006), 207–18, 230–32.
29. Rome Statute of the International Criminal Court, circulated as doc. no. A/Conf. 183/9, 17 July 1998, Art. 8.2.b.ix (applying to international armed conflict) and Art. 8.2.e.iv (non-international armed conflict).
30. Polina Levina Mahnad, “Protecting Cultural Property in Syria: New Opportunities for States to Enhance Compliance with International Law?” *International Review of the Red Cross* 99 (2019): 1056–59; and Lenzerini, “Terrorism, Conflicts and the Responsibility to Protect,” 78.
31. UN, *Framework of Analysis*, 3. See also Mahnad, “Protecting Cultural Property in Syria,” 1046–47; and Knut Dörmann and José Serralvo, “Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations,” *International Review of the Red Cross* 96, nos. 895/6 (2014): 707, 708–9, 723–25. The International Court of Justice in *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* held that the Genocide Convention imposes an obligation on third states to prevent genocide, stating that “every State with a ‘capacity to influence effectively the action of persons likely to commit, or already committing genocide,’ even if outside its own borders, is under the obligation to ‘employ all means reasonably available to them, so as to prevent genocide so far as possible.’” See UN, *Framework of Analysis*, 3, quoting ICJ, *Case Concerning Application*, Judgment, 26 February 2007, para. 430, <https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>.
32. UN, *2005 World Summit Outcome*, UN doc. A/RES/60/1, 24 October 2005, paras. 138–39.
33. UN Secretary-General, *Implementing the Responsibility to Protect*, UN doc. A/63/677, 12 January 2009, <https://www.un.org/ruleoflaw/blog/document/report-of-the-secretary-general-implementing-the-responsibility-to-protect/>.
34. UNESCO Expert Meeting on the “‘Responsibility to Protect’ as Applied to the Protection of Cultural Heritage in Armed Conflict,” *Final Report*, 26–27 November 2015, Art. 3.8, p. 2, <https://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/R2P-FinalReport-EN.pdf>.

35. Lenzerini, "Terrorism, Conflicts and the Responsibility to Protect," 80.
36. Chechi, "The 2013 Judgment of the ICJ," 363–65.
37. UNESCO Expert Meeting, *Final Report*, Art. 3.11.a, p. 3.
38. UNESCO Expert Meeting. For more discussion of the role of post-conflict reconstruction in achieving reconciliation, see Patty Gerstenblith, "Toward a Human-Rights Based Approach as an Element in Post-Conflict Cultural Heritage Reconstruction," in *Heritage Destruction, Human Rights and International Law*, ed. Joe Powderly and Amy Strecker (Leiden, the Netherlands: Brill Nijhoff, forthcoming).
39. Francioni, "Beyond State Sovereignty," 1215, discussing that the Second Protocol to the 1954 Hague Convention, Art. 31, envisions the possibility of enforcing state responsibilities through sanctions.
40. Dörmann and Serralvo, "Common Article 1 to the Geneva Conventions," 721.
41. Different motivations have been attributed to ISIS for the destruction of cultural heritage. See Christopher W. Jones, "Understanding ISIS's Destruction of Antiquities as a Rejection of Nationalism," *Journal of Eastern Mediterranean Archaeology and Heritage Studies* 6 (2018): 31; Shaw, "In Situ: The Contraindications of World Heritage," 339; and Miroslav Melcak and Ondrej Beránek, "ISIS's Destruction of Mosul's Historical Monuments: Between Media Spectacle and Religious Doctrine," *International Journal of Islamic Architecture* 6, no. 2 (2017): 389.
42. Mahnad, "Protecting Cultural Property in Syria," 1048.
43. Weiss and Connelly, *Cultural Cleansing and Mass Atrocities*, 38.
44. Helen Frowe and Derek Matravers, *Conflict and Cultural Heritage: A Moral Analysis of the Challenges of Heritage Protection*, Occasional Papers in Cultural Heritage Policy no. 3 (Los Angeles: Getty Publications, 2019), <https://www.getty.edu/publications/occasional-papers-3/>.
45. James Cuno, "The Responsibility to Protect the World's Cultural Heritage," *Brown Journal of World Affairs* 23, no. 1 (2016): 106.
46. Lenzerini, "Terrorism, Conflicts and the Responsibility to Protect," 81–82. But see UN Security Council, French draft resolution, UN doc. S/2014/348, 22 May 2014; and "Recent Draft Resolution," *Harvard Law Review* 128 (2015): 1057–58, which discusses vetoes by Russia and China of a referral of the situation in Syria by the Security Council to the ICC.
47. Frowe and Matravers, *Conflict and Cultural Heritage*, 14–17.
48. Frowe and Matravers, *Conflict and Cultural Heritage*, 11–13.
49. Weiss and Connelly, *Cultural Cleansing and Mass Atrocities*, 38.
50. UN Security Council, UN doc. S/RES/2100, 25 April 2013, para. 16.f, <https://digitallibrary.un.org/record/748429?ln=en>.
51. UN Peacekeeping, "Action Plan to Preserve Heritage Sites during Conflict," 12 April 2019, <https://peacekeeping.un.org/en/action-plan-to-preserve-heritage-sites-during-conflict>.
52. Smithsonian, "Training Aids," <https://culturalrescue.si.edu/what-we-do/resilience/training-aids/>.
53. UNESCO, "Italy Creates a UNESCO Emergency Task Force for Culture," 15 February 2016, <https://en.unesco.org/news/italy-creates-unesco-emergency-task-force-culture-1>.
54. See O'Keefe, *The Protection of Cultural Property*; and Ana Filipa Vrdoljak, "The Criminalisation of the Intentional Destruction of Cultural Heritage," in *Forging a Socio-legal Approach to Environmental Harm: Global Perspectives*, ed. Tiffany Bergin and Emanuela Orlando (New York: Routledge, 2017), 237–67.
55. See Wierczynska and Jakubowski, "Individual Responsibility for Deliberate Destruction," 701–3.
56. Caroline Ehlert, *Prosecuting the Destruction of Cultural Property in International Criminal Law* (Leiden, the Netherlands: Brill Nijhoff, 2013), 180–85, 200; and Jiri Toman, *Cultural Property in War: Improvement in Protection* (Paris: UNESCO, 2009), 795.

57. ICC, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Judgment and Sentence, doc. no. ICC-01/12-01/15-171, 27 September 2016; and ICC, *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, case no. ICC-01/12-01/18.
58. See ICC, *Prosecutor v. Bosco Ntaganda*, Judgment, case no. ICC-01/04-02/06, 8 July 2019, paras. 1145–68. The defendant was acquitted on this charge because the destruction was not part of an attack carried out during the “actual conduct of hostilities” (para. 1142), a required element of the crime under the Rome Statute. His conviction was confirmed on appeal on 30 March 2021.
59. Federico Lenzerini, “Intentional Destruction of Cultural Heritage,” in *The Oxford Handbook of International Cultural Heritage Law*, ed. Federico Lenzerini and Ana Filipa Vrdoljak (Oxford: Oxford University Press, 2020), 96–98.
60. See Novic, *The Concept of Cultural Genocide*, 154–68, for a discussion of the crime of cultural persecution.
61. Marina Lostal, Kristin Hausler, and Pascal Bongard, “Armed Non-state Actors and Cultural Heritage in Armed Conflict,” *International Journal of Cultural Property* 24, no. 4 (2017): 418–22.
62. Nikolaus Thaddäus Paumgartner and Raphael Zingg, “The Rise of Safe Havens for Threatened Cultural Heritage,” *International Journal of Cultural Property* 25, no. 3 (2018): 323–46; and Alessandro Chechi, “Rescuing Cultural Heritage from War and Terrorism: A View from Switzerland,” *Santander Art and Culture Law Review* 2 (2015): 88–91, discussing Swiss implementation of the First Protocol of the 1954 Hague Convention and adoption of procedures for establishing safe havens for cultural property.
63. Weiss and Connelly, *Cultural Cleansing and Mass Atrocities*, 36–37.
64. See International Law Association, Resolution No. 2/2008, Annex: Guidelines for the Establishment and Conduct of Safe Havens as Adopted by the International Law Association at Its 73rd Conference Held in Rio de Janeiro [sic], Brazil, 17–21 August 2008, Art. 4.b and Art. 4.e; and Paumgartner and Zingg, “The Rise of Safe Havens,” 326–27.
65. Swiss Federal Council, *Loi fédérale sur la protection des biens culturels en cas de conflit armé, de catastrophe ou de situation d’urgence (LPBC)*, doc. no. RO 2014 3545, 20 June 2014, Art. 12, [www.admin.ch/opc/fr/official-compilation/2014/3545.pdf](http://www.admin.ch/opc/fr/official-compilation/2014/3545.pdf). See also Chechi, “Rescuing Cultural Heritage,” 86–91.
66. Chechi, “Rescuing Cultural Heritage from War and Terrorism,” 92–93.
67. US Congress, *Protect and Preserve International Cultural Property Act*, Public Law 114–151, 9 May 2016, <https://www.congress.gov/bill/114th-congress/house-bill/1493?r=67>.
68. Association of Art Museum Directors, “AAMD Protocols for Safe Havens for Works of Cultural Significance from Countries in Crisis,” 1 October 2015, <https://aamd.org/document/aamd-protocols-for-safe-havens-for-works-of-cultural-significance-from-countries-in-crisis>.
69. US Congress, *National Defense Authorization Act for Fiscal Year 2021*, Public Law No. 116–283, Section 1216, <https://www.congress.gov/bill/116th-congress/house-bill/6395>.
70. Government of France, *Code du Patrimoine*, Art. L111–11, 7 July 2016, [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000032857167/](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000032857167/). A *décret d’application*, which details the specific procedures, still needs to be issued.
71. Paumgartner and Zingg, “The Rise of Safe Havens,” 327–29.
72. Syrians for Heritage, “A Statement from the Idlib Antiquities Center about the Maarat Al Numan Museum from the End of 2012 to the Beginning of 2020,” 2 February 2020, <https://syriansforheritage.org/?p=3218>; and Salam al-Quntar and Brian I. Daniels, “Responses to the Destruction of Syrian Cultural Heritage: A Critical Review of Current Efforts,” *International Journal of Islamic Architecture* 5, no. 2 (2016): 389–91.
73. Convention (II) with Respect to the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, 29 July 1899, <https://ihl-databases.icrc.org/ihl/INTRO/150>; and Convention (IV) Respecting the Laws and Customs of

War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, <https://ihl-databases.icrc.org/ihl/INTRO/195>.

74. See, e.g., Chamberlain, *War and Cultural Heritage*, 53–54.
75. ICC, “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the Opening of the Confirmation of Charges Hearing in the Case against Mr Ahmad Al-Faqi Al Mahdi,” 1 March 2016, [www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-01-03-16.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-01-03-16.aspx).
76. ICC, *Prosecutor v. Ahmad Al Faqi Al Mahdi*, case no. ICC-01/12-01/15, Reparations Phase, Brief by Ms. Karima Bennoune, 27 April 2017, 14–15, 18–22, [www.icc-cpi.int/RelatedRecords/CR2017\\_05022.pdf](http://www.icc-cpi.int/RelatedRecords/CR2017_05022.pdf).