

# CULTURAL HERITAGE AND MASS ATROCITIES

Edited by James Cuno and Thomas G. Weiss

Foreword — *Irina Bokova*

Preface and Acknowledgments — *James Cuno and Thomas G. Weiss*

List of Abbreviations

Introduction — *James Cuno and Thomas G. Weiss*

Worldwide outcries have greeted recognized but often ignored atrocities with the strategic targeting of immovable cultural heritage. History shows that it is virtually impossible to disentangle attacks on cultural heritage and attacks on people.

**Abstract:** In January 2020, then US president Donald Trump threatened to attack cultural sites among fifty-two targets if Iran retaliated for the targeted killing of Iranian commander General Qassim Suleimani, one of its top generals. Trump said that the United States had identified the targets as being “at a very high level and important to Iran and the Iranian culture.” The statement led to a worldwide outcry, with UN, UNESCO, and US officials pointing out that Washington had signed the 1954 convention protecting cultural property in the event of armed conflict. Targeting cultural heritage has a long history, with recent examples including the Mostar Bridge in Bosnia and Herzegovina, the Bamiyan Buddhas in Afghanistan, mausoleums in Timbuktu, Mali, and Greco-Roman remains in Palmyra, Syria. This Introduction asks, What if Raphael Lemkin’s draft of the 1948 Genocide Convention had left intact its original proposal to include cultural as well as human genocide? It discusses the “value” of cultural heritage, why it is often targeted, the humanitarian consequences of such onslaughts, and the tenets of existing international law. The Introduction applies the conceptual and political lessons of the responsibility to protect (R2P). The premise underlying this book is that attacks on cultural heritage are almost invariably linked to attacks on targeted populations as integral to military campaigns and violent performative acts against ethnic and religious groups. Both are intentional and virtually impossible to disentangle. Both seek in the end to eliminate a people and the cultural heritage with which they identify.

**Part 1. Cultural Heritage and Values**

## Introduction — James Cuno and Thomas G. Weiss

### 1. Who Are We? Identity and Cultural Heritage — Kwame Anthony

Appiah

In an excerpt from *The Lies That Bind*, Kwame Anthony Appiah demonstrates how the concept of “Western” identity has formed the basis of hierarchies, status, and structures of power. The idea of Western culture, he writes, is a modern construction, a grand “Plato-to-NATO” narrative that belies the complexity of all cultural practices and objects.

**Abstract:** What is the realm called “the West”? What does it mean to identify with “Western culture”? In an excerpt from his book *The Lies That Bind*, Kwame Anthony Appiah demonstrates how the notion of Western identity has formed the basis of hierarchies, status, and structures of power. The idea of Western culture represents a modern construction, a grand “Plato-to-NATO” narrative arc with its precursors in concepts of Christendom and Europe. Although this volume focuses on the protection of immovable cultural heritage, Appiah reminds us that all cultural practices and objects must be regarded as mobile, mutable, infinitely complex, and ultimately resistant to ownership by any single group.

### 2. Why Do We Value Cultural Heritage? — Neil MacGregor

We may best be able to understand why people value cultural heritage if we consider why they so often choose to destroy it. Presenting examples from England, Poland, Lithuania, and Germany, this chapter examines how recent instances of creation and destruction at cultural heritage sites in modern Europe may illuminate paths to prevent or mitigate future losses.

**Abstract:** We may best be able to understand why people value cultural heritage if we consider why they so often choose to destroy it. Presenting examples from England, Poland, Lithuania, and Germany, this chapter examines how recent instances of creation and destruction at cultural heritage sites in modern Europe may illuminate paths to prevent or mitigate future losses. Cultural heritage provides communities with communal narratives that allow them to survive and flourish. While all cultural heritage is in large measure intangible, an important aspect of physical cultural heritage is usually less the thing itself than the narratives which communities, local or global, choose to attach to it. That explains why cultural heritage is most in danger when that community narrative changes, or when one object becomes the focus of conflicting narratives. Encouragingly, this essay demonstrates that destruction is not necessarily the end of the story.

### 3. Cultural Heritage under Attack: Learning from History — Hermann

Parzinger

Intentional destruction of cultural heritage has occurred throughout history. While motivations may have differed, economic factors have usually been part of the mix, with political motives paramount in antiquity. More recently, cultural genocide has accompanied mass

atrocities in European colonial contexts, and also seems common in most cases of the twentieth and early twenty-first centuries, when people and their cultural identity have become key targets.

**Abstract:** This chapter explores the history of the intentional destruction of cultural heritage from ancient times to the present. It analyzes the political, religious, social, ethnic, and other conditions and motivations that feed the obliteration of cultural artifacts and cultural heritage. Of particular interest are the links to war crimes, crimes against humanity, and other atrocities perpetrated against civilian populations. These connections are explored in cases from antiquity to the Byzantine iconoclastic controversy, the iconoclasm of the Protestant Reformation, the European colonial age, the French and Russian Revolutions, and the Nazi era, when the systematized obliteration of culture and humanity reached new levels. Next, the crimes of the Khmer Rouge in Cambodia and the ethnic and cultural cleansings of the Balkan Wars are highlighted. Finally, another dimension of ruthlessness is reached with the annihilation of cultural heritage and humanity that the so-called Islamic State in Iraq and Syria exploited for propaganda purposes before the eyes of a global audience.

#### 4. The Cultural Heritage of Late Antiquity — *Glen W. Bowersock*

Late antiquity provides a case study for heritage destruction and atrocities. While dramatic examples of such horrors were common in antiquity, including the leveling of ancient Corinth, few atrocities occurred in the subsequent historical period. When, after horrendous destruction of heritage and mass killings, such events no longer or rarely occur for a period of time we must ask why.

**Abstract:** Late antiquity provides a case study for heritage destruction and atrocities. This historical period follows that of antiquity, in which there had been dramatic examples of both, including the leveling of ancient Corinth and the killing of eighty thousand people in one day in Anatolia. Yet after the destruction of Jerusalem there was not much more horror of this kind in the Roman Empire, despite a few instances of fanaticism (such as the murder of Hypatia). We have to ask what caused this conspicuous change? What provoked such violence as actually occurred? The plague in the third and sixth centuries AD diminished destruction and atrocity, whereas religion, principally Christianity, caused outbreaks of both when they occurred.

#### 5. The Written Heritage of the Muslim World — *Sabine Schmidtke*

Islamic manuscript heritage is threatened in many ways—improper handling, theft, inclement climatic conditions, and willful destruction. Over the past several decades there have been repeated cases of deliberate destruction of Islamic manuscripts, and Islamic manuscripts of uncertain provenance continue to be auctioned off into private hands. The destruction of the cultural heritage of the Muslim world is a calamity beyond reckoning, with books and manuscript libraries among the hardest hit cultural forms and institutions.

**Abstract:** The written heritage of the Muslim world constitutes a cultural heritage beyond reckoning, with much of the written culture of the Islamic world still today preserved in manuscript form. This manuscript heritage continues to be threatened in many ways—improper handling, exposure, theft, inclement climatic conditions, and willful destruction. Over the past several decades there have been repeated cases of deliberate destruction of Islamic manuscripts. These include the bombing of libraries and museums in Kosovo and Bosnia by Serbian nationalists in 1992, and the looting and destruction of major manuscript libraries in Iraq in the aftermath of the 1991 Gulf War and again with invasion and occupation from 2003. Sectarianism poses another threat to aspects of Islamic cultural heritage: libraries holding manuscripts that are seen as containing deviant views are targeted for destruction, and the same holds for historical monuments, which have been destroyed over the past few decades by Muslim extremists in an attempt to “purify” Islam.

#### 6. Valuing the Legacy of our Cultural Heritage — *Ismail Serageldin*

Tangible and immovable heritage, like monuments and historical districts, has important innate value that can be calculated. We have rigorous methodologies that can help us quantify how valuable our cultural heritage is, further underlining how serious hostile attacks against cultural heritage are, and how much the world should guard against them.

**Abstract:** Societies and individuals are attached to their cultural heritage, which helps define their identity and contributes to their self-esteem. The purposeful actions of nonstate armed groups, militias, despotic governments, or invading armies in attacking tangible and intangible cultural heritage inflict losses that far exceed their physical destruction. Such actions are akin to cultural and social genocide. An effort to quantify the economic value of cultural heritage becomes instructive in appreciating the enormous cost of its destruction. We have techniques well suited to capture both use and nonuse values as well as tangible and intangible values. This will help us appreciate the importance of our cultural heritage, which strengthens our self-confidence and pride, for those with strong and living links to their past are in the best position to design their future.

## **Part 2. Cultural Heritage under Siege: Recent Cases**

### Introduction — *James Cuno and Thomas G. Weiss*

#### 7. Uyghur Heritage under China’s “Anti-Religious Extremism” Campaigns

— *Rachel Harris*

China’s large-scale destruction of Uyghur religious heritage is presented to the outside world as a necessary part of its counterterrorism campaigns. Instead it represents a fundamental attack on Uyghur culture and identity, part of a push to fully pacify the Xinjiang region in pursuit of wider economic and geopolitical goals.

**Abstract:** Over the past few years, the Xinjiang Uyghur Autonomous Region has been transformed into a high security police state, with an estimated 1.5 million

Turkic Muslim citizens incarcerated and subjected to abusive regimes of indoctrination and forced labor. China explains its actions as a necessary response to extremist terror, while international observers and governments have designated its policies as genocide. However, China's approach to heritage in this region is fully subsumed within the state's political and economic goals. Uyghur religious heritage—mosques, cemeteries, and shrines—has been demolished; places whose principal value lies in the complex of historical meanings, forms of community, and religious and cultural expression which surround them. Their destruction represents a fundamental attack on Uyghur culture and identity, and is integral to a push to assimilate and pacify the region in pursuit of the economic and strategic goals of the Belt and Road Initiative.

## 8. When Peace is Defeat, Reconstruction is Damage: “Rebuilding”

### Heritage in Post-Conflict Sri Lanka and Afghanistan — *Kavita Singh*

Post-conflict cultural reconstruction can become a tool through which the powerful consolidate their hold over a country and deepen the marginalization of its minorities. This phenomenon is examined here in relation to Jaffna in Sri Lanka and Bamiyan in Afghanistan.

**Abstract:** Cultural reconstruction in the “post-conflict” period in Sri Lanka and Afghanistan has taken a disturbing shape in regions dominated by religious or ethnic minorities. In Sri Lanka this is explored in relation to the northern Jaffna Peninsula, which is home to most of the country's Hindu Tamils; in Afghanistan, the Bamiyan Valley, where the Hazara Shia minority live. Here, the very processes of reconstruction and heritage conservation meant to repair a society become instruments through which one side continues its domination over the other. In Sri Lanka, a majoritarian government uses all the tools at its disposal to effect a “recovery” of heritage that underlines the disempowerment of the Tamil minority; and in Afghanistan the international organizations that have come to assist in the aftermath of the Taliban era unwittingly contribute to a subtler power play between the central government and an ethnic minority that has long been at the margins of Afghan life.

## 9. Performative Destruction: Da'esh (ISIS) Ideology and the War on

### Heritage in Iraq — *Gil Stein*

From 2013 to 2019, Da'esh (ISIS) waged a violent campaign across much of Syria and Iraq in a dangerous new paradigm of “performative destruction”—a choreographed combination of cultural and physical genocide, publicized globally through the Internet. Da'esh framed its actions as a religious duty targeting people and cultural heritage monuments.

**Abstract:** The rise of Da'esh (ISIS) and its expansion across Syria and Iraq were characterized by well-publicized attacks on both religious groups and cultural heritage, disseminated through a dangerous new paradigm of “performative destruction.” The performative destruction of monuments and sites was a carefully choreographed, Internet-propagated, public strategy of cultural genocide combined with acts of physical genocide. Da'esh's war on people and things was effective

because it was embedded in an integrated system combining religious ideology, a political agenda, and extreme violence, amplified and intensified through the Internet. Political actions were recast as religious acts consistent with Da'esh's jihadist interpretation of Salafi Islam and its mission of returning to an idealized vision of Islam in its earliest, purest form. Although the Da'esh caliphate was destroyed as a polity, its paradigm for viral violence is a highly adaptable model that risks being emulated by other nonstate armed groups worldwide.

#### 10. The Destruction of Aleppo: The Impact of the Syrian War on a World Heritage City — *Francesco Bandarin*

Aleppo suffered massive destruction during the 2012–16 Syrian war, when the city was at the center of major clashes between Syrian government forces and the opposition. The chapter provides an account of the evolution of the military campaign and assesses both the devastation produced by the conflict and the limitations of the international system of heritage protection.

**Abstract:** Syrian cities and sites suffered devastating destruction during the ten-years' war of 2011–20. The worst situation is found in Aleppo, a city all but destroyed during the conflict from 2012 to 2016. The population has been heavily affected, with two million leaving and over twenty-five thousand casualties. All areas of the city and its major monuments, souks, khans, and mosques suffered severe damage. The housing stock was also badly damaged, while the population was deprived of water, power, health, and educational services. This chapter examines the development of the conflict, its impact on the social and physical structures of the city, the destruction of its important cultural heritage, and the role played by national and international actors during the war. Finally, it assesses the current situation and the limitations of the international system of heritage protection during conflict.

#### 11. The Lost Heritage of Homs: The Impact of the Syrian War on a World Heritage City — *Marwa Al-Sabouni*

It was only because of war that my low-profile city made it into the international news. But Homs was not always covered in the dust of destruction. It had its share of glory as an ancient city that gave birth to a queen who ruled from Rome. There is a mystery behind its decline, which resides in the very destruction of its buildings.

**Abstract:** Behind every creation there is an underlying meaning that led to its existence. Hence, the physical destruction of buildings involves an invisible destruction too, that of their meaning. This chapter addresses those meanings, which tend to be overlooked in the processes of restoration and preservation, arguing that the answer to the question of how to preserve sites and built heritage inevitably relates to what is preserved and why. This is surely a question of values, a matter that could easily be oversimplified (into purely a matter of religious identity) or overcomplicated (into a debate around historical significance). This chapter seeks to find common ground in understanding the value of heritage through an examination of the case of Homs, the third major city in Syria and its

central province, which sustained enormous damage during the Syrian war. By revisiting the historical genesis of this city in relation to its geography, typology, and cultural and religious values, the process of its rebuilding and the preservation of its endangered heritage may have a chance in its otherwise dim future.

## 12. Reconstruction, Who Decides? — *Frederick Deknatel*

As of 2021, Syria's reconstruction had already begun, even though its civil war had not ended, and despite a severe lack of funding to rebuild the shattered country. President Bashar al-Assad's government was seizing on reconstruction to consolidate its authority and project an image of triumph that masked its underlying weaknesses after more than a decade of war.

**Abstract:** How will reconstruction unfold in Syria, given the staggering scale of destruction from its long civil war, and the limited resources and narrow, authoritarian interests of President Bashar al-Assad's government? A few token rebuilding projects already underway in Aleppo, Homs, and Damascus provide an initial answer. Heavily promoted by Syrian authorities and partly paid for by foreign patrons, they reflect how the Assad government sees reconstruction as a propaganda tool and vehicle for elite corruption. It is quickly prioritizing what to rebuild, and what not to—projecting an exclusionary vision of “victor's justice” on Assad's terms, while neglecting vast residential neighborhoods once held by opposition forces. The government's reconstruction agenda relies on co-opting Syria's cultural heritage, as hastily rebuilt or restored sites such as historical mosques in Aleppo and Homs have become stages for its propaganda campaign. Nascent reconstruction in Syria echoes the troubled post-civil war rebuilding of neighboring Lebanon, with dire implications for future reconstruction in other countries emerging from civil war and conflict.

## 13. Yemen's Manuscript Culture under Attack — *Sabine Schmidtke*

The Yemeni-Zaydi literary tradition is among the richest and most variegated traditions within Islamic civilization. This precious cultural heritage is under imminent threat. Protecting and preserving an important part of Yemen's cultural legacy, its rich manuscript tradition, will be key to providing future generations of Yemenis with a firm sense of identity and belonging.

**Abstract:** The Zaydi literary tradition is among the richest and most variegated traditions within Islamic civilization. The most significant and by far largest collections of Zaydi manuscripts are housed by the many public and private libraries of Yemen. Of great importance are also holdings of Yemeni manuscripts that are kept elsewhere, especially in Egypt, Saudi Arabia, Turkey, Iran, and Iraq, as well as in Europe and the United States. In view of the poor state of scholarship in the area of Zaydi studies, the challenges that result from the significant dispersal of the material and the disastrous situation in present-day Yemen are manifold. To make matters worse, the manuscript libraries in Yemen itself are under imminent threat. Over the past several decades Yemeni authorities have constantly fought the illicit trafficking of manuscripts, and many of the country's private libraries have

been severely damaged, looted, or even destroyed as a result of political turmoil and war: continued conflict constitutes an imminent threat not only to the local population but also to its cultural heritage, including its many libraries. Protecting and preserving an important part of Yemen's cultural legacy, its rich manuscript tradition, will be key to providing future generations of Yemenis with a firm sense of identity and belonging.

#### 14. Cultural Heritage at Risk in Mali: The Destruction of Timbuktu's Mausoleums of Saints — *Lazare Eloundou Assomo*

In Timbuktu, Mali, from January to December 2012, fourteen of the sixteen mausoleums of the saints inscribed on the UNESCO World Heritage List were completely destroyed by extremist groups who then occupied the city. This chapter examines the entire process, beginning with the destruction of Timbuktu's cultural heritage to the reconstruction strategy.

**Abstract:** From January to December 2012, Mali experienced serious threats to its rich cultural heritage. In Timbuktu, fourteen of the sixteen mausoleums of the saints inscribed on the UNESCO World Heritage List were completely destroyed, three mosques were severely damaged, and 4,203 manuscripts were burned by the extremist groups who then occupied the city. In response to the Malian government's call for the international community to stop these deliberate acts of destruction, UNESCO launched an awareness-raising campaign on the cultural significance of the mausoleums that structure the social and religious life of the local communities. UNESCO also contributed to the adoption of a resolution by the UN Security Council strongly condemning the destruction of Malian cultural and religious sites and recognizing the important role of local communities in resolving the Malian conflict. UNESCO was equally instrumental in the International Criminal Court's decision to recognize, for the first time in the history of international criminal justice, the intentional destruction of cultural heritage as a war crime. This chapter examines the entire process, beginning with the destruction of Timbuktu's cultural heritage from the perspective of local communities to the adopted reconstruction strategy. It also analyzes the reasons behind such mass destruction, considered by local communities an atrocity in the name of ideology, and examines the extremist groups' strategy of spreading terror by manipulating people's consciences and turning them into human weapons. Finally, this chapter explains why UNESCO's reconstruction of the mausoleums would not have succeeded without considering the perspectives of local communities.

#### 15. Indigenous Threatened Heritage in Guatemala — *Victor Montejo*

The Maya people have suffered throughout the centuries a violent process of conquest, colonization, and neocolonial forms of domination by the ruling elite of Guatemala, as demonstrated during the recent armed conflict. The international community must apply pressure on states to comply with existing laws aimed at the protection of cultural heritage, and indigenous scholars must be trained and supported to



participate in ongoing debates concerning archaeological investigations of Maya sites.

**Abstract:** The Guatemalan civil war of 1960–96 had a devastating impact on the Maya people and their heritage, building on a legacy of “Mayacide” begun over five centuries ago with the Spanish conquest and colonization. This chapter surveys the historical terrain and articulates the ongoing risks to this ancient heritage from the distinctive perspective of the living Maya, for whom nearly every aspect of their cultural tradition remains unprotected. It emphasizes the need to train and support indigenous scholars to protect Maya cultural heritage and to ensure that Maya voices participate in ongoing debates concerning archaeological investigations. Further, it argues that the international community must apply pressure on nations to comply with existing laws aimed at the protection of cultural heritage.

### **Part 3. Cultural Heritage and Populations at Risk**

Introduction — James Cuno and Thomas G. Weiss

16. Cultural Cleansing and Mass Atrocities — Simon Adams

In conflict zones around the world, various nonstate armed groups and governments are attacking cultural heritage sites and targeting minority communities. Threatened by what UNESCO’s director-general described as “cultural cleansing,” the international community has a responsibility to protect vulnerable populations from those seeking to destroy them.

**Abstract:** In various conflict zones around the world today both nonstate armed groups and governments continue to violate international law with deliberate attacks on cultural heritage sites and the targeting of minority communities. Enduring what former UNESCO director-general Irina Bokova described as a policy of “cultural cleansing,” these populations face the threat of potential war crimes, crimes against humanity, and genocide. This chapter focuses on three examples: the 2001 destruction of the Bamiyan Buddhas and attacks on the ethnic Hazara population in Afghanistan; the 2014–17 campaign by the Islamic State of Iraq and the Levant to destroy minority cultures in northern Iraq; and the Chinese government’s ongoing efforts to demolish Uyghur culture in Xinjiang Province. In response to intentional assaults on humanity’s cultural heritage, the international community has a responsibility to protect vulnerable populations from those seeking to destroy them.

17. Choosing between Human Life and Cultural Heritage in War — Hugo Slim

The lives of civilians and friendly combatants should be prioritized over cultural heritage in war, despite a profound ontological value in cultural heritage that is integral to being human. This is because in human life there is always the potential for cultural renewal.

**Abstract:** This chapter examines the ethical values involved in making hard battlefield choices between saving human life and cultural heritage. It looks first at why cultural heritage matters at all, and so why these are hard choices, suggesting

this is because cultural heritage is not just a means to human flourishing but has actual ontological value in being human, explained in terms of dependency, identity, and universality. The ontological dimension of cultural heritage is then assumed to ask whether civilians and military forces should prioritize life or heritage, arguing that human life should always trump cultural heritage in extremis because in human life there is always the potential for cultural renewal. However, this trump should be played with three qualifications to mitigate cultural loss: to recalculate proportionality of force against enemy combatants who directly threaten cultural heritage; to let individuals stay with their cultural heritage if they wish, even if staying means their death; and trying very hard to save remnants of peoples' heritage while prioritizing human life.

#### 18. Saving Stones and Saving Lives: A Humanitarian Perspective on Protecting Cultural Heritage in War — Paul Wise

The relationship between the destruction of heritage and of people is more empirically complex than has been traditionally proposed and demands a more detailed, transdisciplinary examination.

**Abstract:** This chapter addresses the relationship between the destruction of cultural heritage and the destruction of people in war. While this connection helps justify heritage protection, the discussion assesses the evidence base supporting this linkage. Five empirical mechanisms are observed: *prelude*, when heritage destruction foreshadows subsequent attacks on vulnerable populations; *provocation*, attacks on heritage to incite or intensify violent conflict; *parallelism*, when the destruction of heritage occurs simultaneously with attacks on people; *protraction*, the prolongation of conflict in order to maintain illicit trafficking in heritage objects; and *propaganda*, using the destruction of heritage to undermine international norms that also protect people. Each of these mechanisms varies in prevalence and ability to influence the direct risk of violence to people and the reverberating, indirect effects on human health. The relationship between the destruction of heritage and of people is complex and demands more detailed, transdisciplinary examination.

#### 19. Engaging Nonstate Armed Groups in the Protection of Cultural Heritage — Jennifer Welsh

This chapter examines nonstate armed groups (NSAGs) as both a threat to and potential protector of cultural heritage. It establishes the legal obligations of these entities, and suggests strategies for encouraging restraint in NSAGs' behavior that are based on both a clear understanding of their goals, structure, and community ties, as well as greater willingness to engage with their members.

**Abstract:** Nonstate armed groups (NSAGs) should be considered a critical part of any strategy to enhance the protection of cultural heritage in contemporary situations of violent conflict. The chapter begins by distinguishing these groups according to their goals, structure, and behavior, and goes on to show that while some of these groups pose a serious threat to cultural heritage, others have proven pivotal to its protection and preservation. It also emphasizes that NSAGs do not

operate in a legal vacuum, but are bound in meaningful ways by a range of obligations under international humanitarian law and their individual members subject to international criminal law. Nevertheless, the primary challenge in protecting cultural heritage is less the creation of new rules to regulate the behavior of NSAGs, and more the need to ensure compliance with already existing obligations. The chapter therefore moves on to examine recent political science literature on belligerent conduct, as well as the ICRC's "Roots of Restraint" project, to suggest potential ways in which the behavior of NSAGs can be directed or changed to enhance respect for laws and norms relating to the protection of cultural heritage. These efforts will necessitate a deeper understanding of not only the inner workings of NSAGs—in order to identify sources of authority, beliefs, and influence—but also the local communities in which many of these groups are embedded. As the chapter concludes, however, there are formidable challenges confronting efforts to engage with NSAGs. These include the effects of counterterrorism policies that have constrained the capacity and willingness to enter into dialogue with such entities as well as the longstanding reluctance of states and state-based organizations to undertake actions or commitments that they believe might legitimize NSAGs.

#### 20. After the Dust Settles: Transitional Justice and Identity in the Aftermath of Cultural Destruction — *Philippe Sands and Ashrutha Rai*

There are various approaches taken by international law to questions of cultural identity and ownership in societies transitioning out of mass atrocities. While none alone can address the full spectrum of affected cultural rights, together they may offer a more holistic understanding of the link between cultural heritage and identity.

**Abstract:** To whom does cultural heritage belong? The continuum of ownership—from an individual to a distinct group to all humankind—is a matter that raises essential questions of identity and the responsibility to protect and promote such heritage, at the same time as engaging a spectrum of related rights. From the hyperlocal and regional to the national and international, concentric and overlapping (and sometimes conflicting) circles of interest sustain a range of simultaneous claims. This chapter traces different claims to cultural heritage in the aftermath of atrocities through the lens of public international law. While international cultural heritage law emphasizes the decontextualized protection of cultural sites and property, the concept of transitional justice often skirts around fractious questions of ownership in favor of practical solutions for embedded communities. Each approach is capable of prioritizing or delegitimizing the claims of certain stakeholders. From these varied efforts at reconciling complex notions of cultural identity with the damage wrought by mass atrocities, a broader narrative emerges of the enduring, multilayered, and complex connections between cultural heritage and identity.

### **Part 4. Cultural Heritage and International Law**

#### Introduction — *James Cuno and Thomas G. Weiss*

## 21. Protecting Cultural Heritage: The Ties between People and Places — Patty Gerstenblith

The chapter addresses the destruction of immovable cultural heritage during armed conflict and the possible applicability of the emerging norm of the responsibility to protect. As immovable tangible heritage is linked to local communities, involving them as well as nonstate actors in preservation and protection efforts is likely to be more successful than a top-down approach that focuses primarily on the interests of states and intergovernmental organizations.

**Abstract:** The chapter examines the destruction of immovable cultural heritage through the lens of human rights and argues that the meaning of cultural heritage must be evaluated from the perspectives of the international, national, and local communities. It briefly summarizes applicable international legal instruments and the categorization of cultural heritage destruction within the rubric of mass atrocity crimes: genocide, crimes against humanity, and war crimes. The discussion then turns to the emerging norm of the responsibility to protect (R2P), analyzing in particular the potential applicability of R2P's third pillar to the preservation of immovable heritage. Four elements are evaluated from the perspective of legitimacy and feasibility: military intervention, criminal responsibility, involvement of nonstate actors, and the safeguarding of cultural heritage. The chapter concludes that involving local communities and nonstate actors in preservation and protection efforts is likely to be more successful than a top-down approach that focuses primarily on the interests of states and intergovernmental organizations.

## 22. International Humanitarian Law and the Protection of Cultural Property — Benjamin Charlier Charlier and Tural Mustafayev

A comprehensive international legal framework has been developed to protect tangible cultural property during situations of armed conflict. It is now time to shift the focus from debating the review of the law to its implementation.

**Abstract:** With tangible cultural property becoming a deliberate target, subject to collateral damage in recent armed conflicts, academic scrutiny of rules of international humanitarian law governing its protection has increased. Building on this debate, this chapter argues that a comprehensive framework exists under international law, both treaty and customary, regulating the protection of cultural property. Existing law not only regulates the conduct of hostilities vis-à-vis cultural property and the peacetime measures that states must put in place to adequately protect it, it also establishes normative and institutional mechanisms to support the implementation of the law. Consequently, giving effect to the protective nature of the law and strengthening compliance necessarily entails focusing on ways to support these mechanisms. In other words, the international legal framework protecting cultural property in armed conflict cannot be effective unless the action of implementing these mechanisms is reinforced.

23. International Human Rights Law and Cultural Heritage — *Marc-André Renold and Alessandro Chechi*

Human beings are not the only victims of armed conflict. Movable and immovable cultural objects are also targeted. This occurs especially when belligerents seek to annihilate the identity of their enemies and hence to undermine their (cultural) survival. This chapter explores this problem by examining the interconnection between international human rights law and international cultural heritage law.

**Abstract:** The tangible dimension of movable and immovable cultural objects is accompanied by an intangible human dimension, which derives from the symbolic, spiritual, or historical values embodied in such objects. Such values are assigned to the object by its makers and those who identify with it. This explains why mass atrocity crimes committed during armed conflict are often accompanied by the destruction and looting of the tangible cultural heritage of the enemy: belligerents target cultural heritage to annihilate the identity of their enemies and even their very existence. This chapter explores this link by examining the ways in which international human rights law has contributed to the growth of international cultural heritage law, and by discussing how cultural heritage has increasingly been integrated into human rights treaties.

24. Customs, General Principles, and the Intentional Destruction of Cultural Property — *Francesco Francioni*

While certain customary rules have emerged with regard to the prohibition of intentional destruction and looting of cultural heritage, they are applicable only in the contexts of armed conflict and terrorism. Nonetheless, a number of general principles of law can provide direct and indirect protection against intentional destruction in peacetime.

**Abstract:** This chapter examines the practice of states, international bodies, international judicial organs, and domestic courts in order to verify whether certain legal obligations exist in the field of cultural heritage protection which are binding upon states as a matter of customary international law and general principles of law. The conclusion is that certain customary rules have emerged with regard to the prohibition of intentional destruction and looting of cultural property, but they are applicable only in the contexts of armed conflict, international and non-international, and of terrorism. No compelling evidence exists today that such customary rules are applicable to peacetime activities. This does not mean that international law is indifferent to peacetime destruction of cultural heritage—a number of general principles of law, within the meaning of Article 38.1.c of the Statute of the International Court of Justice, can provide direct and indirect protection against the intentional destruction of cultural heritage and related mass atrocities.

25. Prosecuting Heritage Destruction — *Joseph Powderly*

This chapter offers an account of the history of international criminal law's efforts to prosecute cultural heritage destruction; it looks toward the possible future development of accountability for such attacks.

**Abstract:** Over the course of the past century, international criminal justice mechanisms have played a pivotal role in securing individual criminal accountability for the deliberate destruction of cultural heritage, whether inside or outside the context of armed conflict. This chapter explores the manner in which international criminal law has evolved in order to pursue accountability for the deliberate destruction of cultural heritage. The chapter begins with an overview of the prehistory of individual criminal responsibility for heritage destruction as an international crime, looking at the oft-neglected efforts undertaken in the aftermath of World War I and World War II. Close consideration is given to key jurisprudential milestones identifiable at Nuremberg, and then later at the International Criminal Tribunal for the former Yugoslavia. Finally, the chapter reflects on contemporary developments before the International Criminal Court and the future trajectory of accountability for cultural heritage destruction.

#### 26. Fighting Terrorist Attacks against World Heritage and Global Cultural Heritage Governance — Sabine von Schorlemer

Global cultural heritage governance may support international efforts to fight terrorist attacks against cultural heritage, thereby improving cultural heritage protection and developing its legal regime.

**Abstract:** In the last two decades, cultural heritage has increasingly become a target for terrorist attacks. Considering the wanton and deliberate devastation of monuments and archaeological sites, and a new range of terrorist attacks, this chapter examines global cultural heritage governance as a means for combating such attacks. With conviction growing that improved global governance can play an essential role in sustaining peace and security, the participation of local communities, populations, and stakeholders can be a crucial element in strengthening the universal defense of cultural heritage. The chapter demonstrates that efforts by the international community are indeed shifting from a rather state-centered toward a more “people-centered” approach.

### **Part 5. Cultural Heritage and Military Perspectives**

#### Introduction — James Cuno and Thomas G. Weiss

#### 27. Protecting Cultural Heritage on the Battlefield: The Hard Case of Religion — Ron E. Hassner

Combatants are particularly likely to protect sites of religious heritage when they are of importance to a large international audience of believers and in wars that involve a “hearts-and-minds” component. Opponents are likely to take advantage of that restraint.

**Abstract:** Sacred sites are a hard case for exploring the broader question of protecting cultural artifacts. This chapter explores US decisions regarding the protection of Christian heritage sites in Europe during World War II. Even in this

decisive and brutal conflict, military planners went to great lengths to identify, protect, or repair structures of cultural value. The broader effort at protecting cultural monuments and religious structures in Europe is analyzed, as well as the difficult Allied decision to bomb the abbey of Monte Cassino in Italy. I conclude that combatants are particularly likely to protect sites of religious heritage when these are of importance to a large international audience of believers; more so in wars that involve a “hearts and minds” component. Conversely, sacred sites are likely to suffer if opponents take advantage of that restraint and utilize sacred places as centers of operation.

## 28. From Kyoto to Baghdad to Tehran: Leadership, Law, and the Protection of Cultural Heritage — *Scott D. Sagan*

How does the law of armed conflict protect cultural heritage? The history of US military plans and operations in 1945, 1991, 2003, and 2020 demonstrates how strategic, ethical, and legal logics interact in a complex manner. Laws create obligations and entailments that constrain decisionmakers in unexpected ways.

**Abstract:** How does the law of armed conflict protect cultural heritage? The history of President Harry Truman’s decision to spare Kyoto from atomic destruction in 1945, US targeting decisions in the 1991 Gulf War, the 2003 looting of the Iraq Museum in Baghdad, and President Donald Trump’s threats in 2020 to attack Iranian cultural sites demonstrate how strategic logic and ethical or legal logic interact in complex ways. The international legal principles of proportionality and precaution must always be followed so that soldiers take risks and properly weigh the harm of cultural heritage destruction against the importance of destroying a legitimate target. Unfortunately, this complex balancing act is made more difficult when an adversary’s military forces hide near or within cultural heritage sites. Fortunately, the history also illuminates how legal constraints can take on a life of their own, influencing operational decisions even when individual political leaders themselves are not particularly concerned about following international law.

## 29. Practicing the Art of War While Protecting Cultural Heritage: A Military Perspective — *Ruth Margolies Beitler and Dexter W. Dugan*

This chapter explores the modern challenges of protecting cultural heritage sites during military operations and assesses the US Army’s current practices and capabilities in this endeavor. It concludes with a discussion of various means that the military can employ to ensure the priority of cultural heritage protection.

**Abstract:** Significant twenty-first century challenges have complicated cultural heritage protection during military operations. The increased use of social media provides instantaneous viewing and propagandizing of cultural heritage destruction, while precision munitions heighten the expectation that cultural heritage sites will be spared during conflict. This expectation often leads to increased resentment and frustration when sites are not protected or become collateral damage. This chapter explores the modern challenges of protecting cultural heritage sites during military operations and assesses the US Army’s

current practices by investigating its formal doctrine, roles, and the capabilities recently developed to preserve cultural heritage during military operations. It concludes with a discussion of various means that the military can employ to ensure that its forces are perceived as protecting—or at least not harming—local cultural heritage. This includes increased training and education, partnerships with subject matter experts, and expanded information operations.

### 30. Peace Operations and the Protection of Cultural Heritage — *Richard Gowan*

International peacekeepers have protected cultural heritage in conflicts from the Balkans to West Africa. While peace operations can provide some physical security for heritage sites, they should focus on political conflict resolution and engagement with local communities to build consensus on the need to preserve cultural heritage among former foes.

**Abstract:** International peacekeepers have a long history of addressing threats to cultural heritage. In 2017 the UN Security Council passed a resolution endorsing the role of peace operations in protecting heritage sites. But there are still doubts about whether this is a real priority for peacekeepers, and advocates for heritage protection need to demonstrate that this promotes other priorities, including protecting civilians from violence, enabling political settlements after conflict, and facilitating community-level reconciliation. While military peacekeepers have a crucial role to play in safeguarding heritage sites, most peace operations are not strong enough to do this throughout their areas of operation at all times. Peace operations should instead focus on the political and civilian aspects of heritage protection, emphasizing heritage issues in mediation processes and local outreach initiatives. The Security Council should renew its support to this work, having failed to follow up on its 2017 resolution in depth for five years.

### 31. Protecting Cultural Property in Armed Conflict: The Necessity for Dialogue and Action Integrating the Heritage, Military, and Humanitarian Sectors — *Peter G. Stone*

In war we must always prioritize the protection of civilians. An indivisibly intertwined aspect of this is the protection of their cultural property, which gives tangible and intangible links to the past, helping provide their identity and wellbeing, and the achievement of healthy, peaceful, secure, and sustainable communities.

**Abstract:** This chapter addresses five interrelated issues. First, it outlines the role, mission, and aspirations of the Blue Shield organization, an advisory body to UNESCO on cultural property protection (CPP) in the event of armed conflict, which emphasizes the need for partnership between the heritage, humanitarian, and uniformed sectors. Second, it sketches the perhaps unexpectedly long history of CPP as a concept with practical implications for those involved in armed conflict. Third, it discusses why the uniformed and humanitarian sectors should be interested in CPP and what the heritage sector needs to do to gain traction with these, at first glance, perhaps unlikely bedfellows. Fourth, it outlines some of the key threats to



cultural property in the event of armed conflict. Finally, it looks to the future role of CPP in armed conflict.

### 32. When Peace Breaks Out: The Perils and Promise of “Afterwar” —

*Hugh Eakin*

In recent years the protection of cultural monuments during armed conflict has become an urgent international priority. But the long-term survival of threatened heritage sites may depend as much on what happens when the fighting stops.

**Abstract:** Over the past quarter century, much of the talk around human conflict and heritage destruction has focused on the twin problems of war and terrorism. Driven by global outrage over the intentional targeting of sites and monuments, Western nations and international organizations have developed important new tools for addressing attacks by combatants and militant groups. But if the goal is preservation, history suggests that such an approach can only go so far. In “hot war” settings, it may be impossible to mount an effective response until the damage is done. Meanwhile, destruction often occurs in times of “peace,” when sovereign governments are in control and international actors may be reluctant to intervene. In fact, the long-term survival of heritage sites has almost always depended on the actions of local communities and governments. Drawing on these insights, this essay takes up the gray area of the post-conflict environment, when international forces, organizations, and funds are typically present alongside a new governing order, and direct measures can be taken *before* attacks happen. In recent cases from Kosovo and Syria to Cyprus and Azerbaijan this phase emerges as both a time of heightened threats and a window of opportunity, in which international involvement can help convert short-term protection to long-term preservation.

Conclusion: Toward Research, Policy, and Action Agendas — *James Cuno and Thomas G. Weiss*

Suggested Readings

Key Treaties and Documents

Contributors

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