

## International Human Rights Law and Cultural Heritage

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URL: <https://www.getty.edu/publications/cultural-heritage-mass-atrocities/part-4/23-renold-chechi/>

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>.

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PDF GENERATED: April 19, 2022

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## 23

**INTERNATIONAL HUMAN RIGHTS  
LAW AND CULTURAL HERITAGE**

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The tangible dimension of any movable and immovable cultural object is completed and accompanied by an intangible human dimension, which relates to the symbolic, spiritual, or historical values embodied in such objects. Such values—which are independent of any aesthetic or monetary significance—are assigned to cultural heritage by its makers and those who identify with these objects.<sup>1</sup> In other words, culture is understood, protected, and promoted not only for its physical manifestations but for the relationship of culture to people, individually or in groups, and the diversity of the relationships being protected and promoted.<sup>2</sup>

This intrinsic link between cultural objects and human beings explains why mass atrocity crimes committed in the context of contemporary armed conflict are often accompanied by the destruction and looting of the tangible heritage of the enemy—monuments, buildings, sites, archaeological materials, and sacred artifacts connected to the history, literature, art, or science of the target people.<sup>3</sup> Belligerents target cultural heritage for reasons other than the destruction of the object: to destroy the morale of the enemy, annihilate the communal identity of those for whom it has special significance, and undermine their (cultural) survival.<sup>4</sup> It follows that the issue of cultural heritage protection cannot be treated in isolation from human rights.<sup>5</sup>

The aim of this chapter is to explore the interconnections between human rights and cultural heritage.<sup>6</sup> This chapter first examines the ways in which international human rights law has contributed to the growth and maturity of international cultural heritage law as its own distinct field of international law.<sup>7</sup> It then discusses how cultural heritage

has increasingly been integrated into human rights treaties. Finally, it provides an appraisal of the mutual interactions of the two fields.

### **The Human Rights Dimension of UNESCO Instruments**

International cultural heritage law has concerned itself predominantly with the preservation of the integrity of tangible objects. This is not surprising since the development of this branch of law can be connected to the effort to protect cultural heritage items in time of armed conflict, i.e., when damage and destruction of culture's tangible elements can result either from intentional, direct acts of hostility or use for military purposes, or as combat-related collateral damage. Only in recent times have instruments adopted under the auspices of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) recognized the connection between cultural heritage, its makers, and the people who identify with it. By exploring the contribution of international human rights law to the development of international cultural heritage law, this essay demonstrates the distinct human rights approach of UNESCO's instruments, in which human rights are positioned as important elements of cultural heritage protection.

The Convention for the Protection of Cultural Property in the Event of Armed Conflict was adopted by UNESCO in 1954. It introduced for the first time the notion of "cultural property" in an international legal context.<sup>8</sup> According to Article 1, this term includes movable and immovable property "of great importance to the cultural heritage of every people, such as monuments of architecture, art or history ... archaeological sites; groups of buildings ... works of art; manuscripts, books and other objects of artistic, historical or archaeological interest."<sup>9</sup> This new concept was supposed to serve as a category of objects worth protecting because of their inherent value rather than because of their vulnerable character.<sup>10</sup>

However, when applied to objects of cultural value, the term causes significant problems. First, the term "property" is generally used to indicate material things subject to private ownership rights of a predominantly economic nature. Second, it emphasizes control in the form of an ability to alienate, exploit, dispose of, and exclude others from using or benefiting from an object (known as the "right to property" or the "right to destroy," or *jus utendi et abutendi*). Third, it entails an important contradiction between the exclusive owner's rights and the application of specific protective rules that might curtail such rights. And fourth, it clears the way for the "commodification" of cultural objects, i.e., the attribution of market value.<sup>11</sup>

The term "cultural property" has been superseded by the concept of "cultural heritage," which was originally developed with the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (WHC), and later the 2001 Convention on the Protection of the Underwater Cultural Heritage. Specifically, the WHC brings together the safeguarding of the human-made environment of exceptional importance, on the one hand, and of the most extraordinary natural resources, on the

other, as essential elements of the “human environment.” The WHC is thereby one of the signals of the dawn of international environmental law—following the Stockholm Declaration of the United Nations Conference on the Human Environment in 1972—and of the international community’s engagement for preventing the loss or degradation of natural and built heritage. It is for these reasons that the WHC brought about the shift from “cultural property” to the more complex concept of “cultural heritage,” and transformed the protection of cultural heritage items into a collective interest.<sup>12</sup> Accordingly, the term “cultural heritage” is today used in legal parlance to embrace any manifestation of artistic and creative processes having a public or private dimension. As such, cultural heritage conveys an understanding that is broader than that of “cultural property” (or “cultural objects” or “cultural goods”) used to indicate tangible movable assets. In addition, the term “cultural heritage” emphasizes that the values inherent in cultural heritage expressions—which are given to them by the individual or the people who created them, or for whom they were created, or whose particular identity and history they share—must be transmitted from one generation to the next with the duty to preserve.<sup>13</sup>

Furthermore, the introduction of the term “cultural heritage” has increasingly extended international protection to intangible forms of cultural expression through a new generation of UNESCO instruments which explicitly emphasize the relationship between human rights and cultural heritage. These include the 2001 Universal Declaration on Cultural Diversity, the 2003 Declaration Concerning the Intentional Destruction of Cultural Heritage, the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

The Universal Declaration on Cultural Diversity contains multiple references to the imperative of human rights protection. For instance, its preamble affirms a commitment to the “full implementation of human rights” and proclaims that “the defence of cultural diversity is an ethical imperative” (Article 4) and “cultural rights are an integral part of human rights” (Article 5).

The Declaration Concerning the Intentional Destruction of Cultural Heritage was adopted by the UNESCO General Conference as a reaction to the demolition of two Buddha statues in the Bamiyan Valley, Afghanistan, which date from the pre-Islamic era, perpetrated by the Taliban in 2001. As is well known, the Buddhas of Bamiyan were destroyed for ideological reasons.<sup>14</sup> The preamble to the declaration states that “cultural heritage is an important component of the cultural identity of communities, groups and individuals ... so that its intentional destruction may have adverse consequences on human dignity and human rights.” More importantly, Principle 9 of the declaration links human rights to the duty incumbent upon every state to protect the cultural heritage of significant importance for humanity situated within its territory: “States recognize the need to respect international rules related to the criminalization of gross violations of

human rights and international humanitarian law, in particular, when intentional destruction of cultural heritage is linked to those violations.”

The Convention for the Safeguarding of the Intangible Cultural Heritage is the first legally binding international instrument to focus on the intangible cultural heritage of communities, groups, and individuals. It defines “intangible cultural heritage” as “the practices, representations, expressions, knowledge, skills ... that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.” This definition includes music, literature, dance, mythology, rituals, handicrafts, and other cultural manifestations and establishes a direct connection between intangible heritage and the identity of individuals and communities who create and maintain it.

Therefore, the novelty of the intangible heritage regime lies in the protection of cultural objects not as endowed with their own intrinsic value, but because of their association with a community which sees the safeguarding of its living culture as part of its human rights claim to maintain and develop its identity as a social body beyond the biological life of its members. The 2003 convention therefore denotes a confluence of cultural heritage law with human rights law and the law on the protection of minorities and Indigenous peoples.<sup>15</sup>

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions focuses on the plurality of cultures and cultural diversity as constituting the “common heritage of humanity.”<sup>16</sup> But it also emphasizes that protection of cultural diversity hinges on the protection of the rights of each individual, and not merely on the preservation of the tangible manifestations that express their culture.

In sum, the scope of the international legal framework has changed dramatically since the establishment of UNESCO in 1945. Initially, it was concerned with the preservation of the integrity of tangible objects in times of armed conflict. Then, in response to environmental concerns, protection was extended to sites of cultural and natural importance. More recently, intangible heritage was included in the concept of cultural heritage. Accordingly, today the international legal framework covers not only all types of cultural expressions, but also—as demonstrated in the next section—the human rights associated with them.

Finally, the influence of international human rights law is discernible in treaty clauses which proclaim that “harmful traditional practices” (such as female genital mutilation, polygamy, female infanticide, child [forced] marriage, and honor killings)<sup>17</sup> are not worthy of protection under cultural heritage law.<sup>18</sup> For instance, Article 4 of the 2001 declaration states that “no one may invoke cultural diversity to infringe upon human rights guaranteed by international law.” Article 2.1 of the 2003 convention provides that “for the purposes of this Convention, consideration will be given solely to

such intangible cultural heritage as is compatible with existing international human rights instruments.” Similarly, Article 2.1 of the 2005 convention affirms that “no one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms.” All in all, these provisions indicate that the imperative of cultural heritage protection should not be used to uphold violent or discriminatory practices, even if an individual consents to a cultural practice, and even if the group to which that individual belongs believes that such a practice is valid.<sup>19</sup> Put differently, the protection of cultural heritage assumes the observance of human rights values and the repudiation of any violent, abusive, and discriminatory practice.

### **The Cultural Dimension of International Human Rights Law**

Preoccupation with the protection of cultural heritage has progressively influenced the interpretation and implementation of international human rights treaties. The most relevant are the 1965 Convention on the Elimination of All Forms of Racial Discrimination (Article 5.e.vi), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1981 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, Article 13.c), the 1981 African Charter on Human and Peoples’ Rights (Article 17.2), the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Article 14.1.a), and the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Articles 43.1.g and 45.1.d).

Despite the existence of provisions for cultural rights in a wide range of treaties and a number of studies undertaken by UNESCO,<sup>20</sup> the meaning of such rights (and of the corresponding state obligations) have long remained unexplored when compared to civil, political, economic, and social rights in terms of their scope, legal content, enforceability, and justiciability.<sup>21</sup> One reason for this is that culture was frequently addressed in the context of other rights, such as the right to practice religion or freedom of expression.<sup>22</sup> Another reason is that the Committee on Economic, Social and Cultural Rights (CESCR), the body of independent experts that monitors implementation of the ICESCR under the authority of the UN Economic and Social Council (ECOSOC), was established only in 1985—i.e., nearly twenty years after the adoption of the covenant. Moreover, as demonstrated, the existence of the human dimension of cultural heritage has been acknowledged only in recent times.<sup>23</sup> As such, human rights bodies have explored the concepts of culture and cultural heritage from a human rights perspective in recent years. The findings of these bodies are now examined.

In the ICESCR, the most comprehensive treaty on the protection of cultural rights, Part III outlines the substantive rights to be protected: to education (Articles 13–14); to participate in cultural life (Article 15.1.a); to enjoy the benefits of scientific progress and its applications (Article 15.1.b); to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which the person

is the author (Article 15.1.c); and the freedom for scientific research and creative activity (Article 15.3).

Article 15.1.a, on the right to participate in cultural life, contains a very general and vague assertion. Neither a literal interpretation nor the consultation of its *travaux préparatoires*, or drafting history, are of assistance in understanding the exact meaning of the provision.<sup>24</sup> The normative content of this right was fleshed out by the CESCR in General Comment No. 21 of 2009.<sup>25</sup> At the outset, the CESCR affirmed that “cultural rights are an integral part of human rights and, like other rights, are universal, indivisible and interdependent.” It also made clear that cultural rights may be exercised by “a person (a) as an individual, (b) in association with others, or (c) within a community or group.” It follows that the right to participate in cultural life belongs to all individuals, regardless of the bond of citizenship. The committee also confirmed that the rights related to cultural heritage cannot be invoked to infringe upon other human rights,<sup>26</sup> and it elaborated on the terms “culture” and “participation.”

According to the CESCR, the term “culture” reflects “a living process, historical, dynamic and evolving,” one that encompasses “all manifestations of human existence,” such as “ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing ... and the arts, customs and traditions” that are essential to individuals and communities to “express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives.”<sup>27</sup> These statements indicate that: the CESCR considered culture in its broadest form as a dynamic process apart from its material side;<sup>28</sup> individuals and communities are regarded as rights holders; and the right to take part in cultural life is not limited to the enjoyment of what is considered to be of outstanding value to humanity or the “national culture” (i.e., the culture of the dominant group). Rather, such a right is understood as encompassing what is of significance for individuals and communities (their own culture or the “the cultural heritage and the creation of other individuals and communities”).<sup>29</sup>

Also in General Comment No. 21, the notion of participation was interpreted by the committee to include participation in, access to, and contribution to cultural life. From a passive perspective, taking part in cultural life means having access to it (and to information about it) and enjoying its benefits without any form of discrimination. From this perspective, to take part implies that the cultural heritage that is related to cultural life is protected and preserved, and that everyone, including individuals belonging to nondominant groups, has the right to access monuments, cultural spaces, and art objects in museums and similar institutions. From an active perspective, taking part in cultural life means having the right to choose and change a cultural affiliation, and to freely contribute to cultural life by means of creative activities and by participating in the identification, interpretation, protection, and development of

cultural heritage meaningful to them, and in decision-making processes concerning the design and implementation of policies and programs.<sup>30</sup>

General Comment No. 21 also confirmed that states retain the primary responsibility for the promotion of cultural rights and the protection of cultural heritage. The concept of human rights assumes the existence of state duties. Without these obligations human rights would be meaningless. Depending on the situation, ICESCR state parties are under a negative obligation to refrain from interference with the exercise of cultural practices and with access to cultural objects, and under a positive obligation to take measures to guarantee participation in, access to, and enjoyment of cultural heritage. All in all, the CESCR endeavored to articulate the obligation of state parties to ensure the protection of tangible and intangible cultural heritage within their jurisdiction, including the cultural heritage of minorities and Indigenous peoples, and the right to take part in cultural life as a freedom as opposed to mere opportunities to engage in cultural activities.<sup>31</sup> In effect, the preservation of monuments, sites, and artifacts of archaeological, historical, religious, or aesthetic value can be regarded as instrumental in safeguarding the rights and identity of the individuals and communities who created them, or for whom they were created, or whose identity and history they are bound up with. Indeed, it is pointless to pursue the preservation of cultural heritage items for their own sake and not for the sake of the people for whom they have special meaning.

Over the years, the Human Rights Committee (HRC), which is charged with overseeing state compliance with the ICCPR, has developed an important body of practice on the cultural rights of minorities based on ICCPR Article 27, which provides: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”<sup>32</sup> The article’s reach can be delineated as follows.

First, the HRC has endorsed a broad and dynamic interpretation of “culture.” In General Comment No. 23, it defined culture as a dynamic concept, one that includes the way of life of a given community<sup>33</sup> or one through which the group expresses its cultural distinctiveness.<sup>34</sup> This definition allows that, for example, modern equipment or techniques may be used for handicraft, music performances, or traditional activities such as fishing and hunting, without making these activities any less worthy of protection.

Second, the HRC has repeatedly affirmed that the right of Article 27 can only be realized meaningfully when exercised “in community” (though the article also speaks about the rights of “persons” belonging to minorities).<sup>35</sup> In addition, in order to identify the minorities who are the subjects of Article 27 (and the persons belonging to such minorities) a subjective element is required, namely the existence of a connection with a common past and common traditions. This element bears a strong parallel with the purposes of cultural heritage as having meaning for those who identify with it as their



own.<sup>36</sup> Accordingly, the enjoyment of rights under the ICCPR does not depend on a formal bond of citizenship between the members of a group and a state, but on the display of stable characteristics by a group, which distinguishes it from the rest of the population.<sup>37</sup> In this sense it must be stressed that cultural rights and minority rights are different in terms of their application, because while the former are afforded to all, the latter are only afforded to recognized minorities.

Third, although the right contained in Article 27 is negatively conferred (“shall not be denied the right”), in addition to the requirement that states not interfere with the ability of minorities to enjoy their own culture, they are obliged to act proactively on behalf of rights holders to protect their identity as well as the tangible religious or historical property that is indispensable to them. States are also required to take measures to ensure the continued access of minority communities to their heritage along with the ability to create and maintain it.<sup>38</sup>

Although Article 27 does not specifically refer to Indigenous peoples, the HRC has not hesitated to extend to them the protection afforded by this rule.<sup>39</sup> However, today the rights of Indigenous peoples are enshrined in the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It recognizes the legal personality of Indigenous peoples and contains far-reaching guarantees concerning their rights to self-determination (Articles 3–5). But the protection of these prerogatives may be substantially impaired by the very nature of the UNDRIP, which lacks binding force. Concerning the material scope, the UNDRIP is the first human rights instrument to contain explicit references to cultural heritage. This should not be surprising since it was adopted a few years after that of UNESCO’s new generation instruments, namely, the 2001 Universal Declaration on Cultural Diversity and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage. Notably, Article 31 of the UNDRIP reads: “Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.” As such, UNDRIP acknowledges Indigenous peoples’ holistic conceptualization of cultural heritage, which covers land, immovable and movable heritage, and tangible and intangible elements, and assumes a symbiotic relationship between these elements. For Indigenous peoples, cultural heritage includes everything that belongs to their distinct identity, not only the things regarded as the creative production of human thought and craftsmanship (such as songs, stories, and artworks), but also human remains, the natural features of the landscape, and species of plants and animals.<sup>40</sup> This means that the idea of cultural heritage embodied in UNDRIP is

antagonistic to the idea of the public heritage of a nation.<sup>41</sup> More importantly, UNDRIP acknowledges the human dimension of Indigenous cultural heritage.

### **Appraisal**

The legal instruments on cultural heritage adopted by UNESCO display a clear human rights approach, whereby human rights are considered as important elements of cultural heritage protection. By fostering the safeguarding of intangible cultural heritage, cultural identity, and cultural diversity, the most recent UNESCO instruments place human rights issues more directly at the forefront of cultural heritage protection than was previously the case.<sup>42</sup> These legal tools place greater emphasis on the importance of the promotion and protection of cultural heritage as a fundamental element for the construction and expression of the cultural identity of individuals and communities, and for fostering cultural diversity. In other words, a shift has taken place from protecting cultural objects for humankind as a whole to safeguarding cultural heritage for communities. One reason for this evolution resides in the ongoing or dormant interethnic and interreligious conflicts that plague many states where discrimination against, and persecution of, individuals within ethnic or religious communities are common. The international community is engaged in promoting cultural diversity (rather than suppressing cultural, ethnic, or religious differences) in order to address the root causes of such conflicts and to ensure peace and human rights for all.<sup>43</sup>

However, human rights concerns can also be found (albeit sometimes implicitly) in UNESCO conventions on tangible cultural heritage. This is demonstrated by the reference to “people” (and not states) in the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, by the involvement of local communities in the process leading up to the inscription of sites on the World Heritage List under the WHC and in the subsequent management of such sites, and by articles referring to the objects belonging to tribal or Indigenous communities in the 1995 Convention on Stolen or Illegally Exported Cultural Objects.<sup>44</sup> In addition, the latest version of the WHC operational guidelines proclaim for the first time that state parties “are encouraged to adopt a human-rights based approach, and ensure gender-balanced participation of a wide variety of stakeholders and rights-holders, including ... local communities, Indigenous peoples ... and other interested parties and partners in the identification, nomination, management and protection processes of World Heritage properties.”<sup>45</sup> Similarly, the latest version of the operational guidelines for the implementation of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property affirms that the “loss, through theft, damage, clandestine excavations, illicit transfer or trade, of its invaluable and exceptional contents constitutes an impoverishment of the cultural heritage of all nations and peoples of the world and infringes upon the fundamental human rights to culture and development.”<sup>46</sup> The symbiosis between

cultural heritage and human rights is emphasized in order to reiterate the detrimental effects of the illicit trafficking in cultural property (theft, clandestine excavation, illicit export), and to facilitate the restitution of cultural objects.<sup>47</sup>

Furthermore, the above overview also demonstrates that cultural rights are now recognized as forming part of the catalogue of human rights. This is due to the exponential expansion of the understanding of culture and cultural heritage, on the one hand, and to deeper interpretations of human rights norms, on the other.<sup>48</sup>

However, while the link between human rights and cultural heritage is generally recognized today, respect, protection, and the fulfillment of cultural rights are not yet sufficiently achieved. The main reason is that human rights and cultural heritage instruments preserve states' sovereign powers. In particular, the UNESCO treaties remain classical international treaties in the sense that they mainly have a horizontal character as agreements between states creating mutual rights and obligations.<sup>49</sup> As such they do not provide for clear substantive rights to cultural heritage for individuals and communities.<sup>50</sup> As a result, states retain a wide margin of discretion with respect to the fulfillment of the obligations set out in existing treaties regarding the selection, recognition, and protection of the cultural heritage and cultural rights of communities and individuals.

To this must also be added that many ICESCR contracting states not only fail to adopt adequate measures to remove the obstacles inhibiting or limiting access to a community's own and other cultures, but also to preserve and protect the tangible cultural heritage situated on their territory.<sup>51</sup> In addition, the rights of Indigenous peoples set out in the UNDRIP are often curtailed by states. For instance, regarding the "cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs," Article 11.2 affirms that "States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples." Moreover, Article 12 provides that "States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with Indigenous peoples concerned." This means that the restitution of the objects important to Indigenous peoples does not constitute an autonomous right but, rather, one of the outcomes of the negotiation between a state and the community concerned.

Further, human rights enforcement procedures often prove ineffective for individuals and communities.<sup>52</sup> Whether international compliance mechanisms and remedies are available and whether they are directly accessible by individuals and groups will depend on the treaties (or their optional protocols) to which the state in question is party, and on the rule on exhaustion of local remedies (where relevant). The protection of cultural rights also needs transparent and effective accountability mechanisms to ensure that they are respected, protected, and fulfilled, and that victims can obtain redress. Such redress could take several forms, including investigation into

gross and systematic violations, damages to victims, restitution, satisfaction, and guarantees of nonrepetition.<sup>53</sup> In terms of the powers of these institutions, the three regional human rights courts—the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court of Human and Peoples’ Rights—are each vested with jurisdiction authoritatively to determine a state’s breach of the treaty in question and to award or order one or more forms of reparation. In contrast, treaty monitoring bodies such as the HRC and the CESCR have no power to declare a state in breach of treaty, let alone make binding orders for reparation or adopt provisional measures.<sup>54</sup> The monitoring systems of the ICCPR and ICESCR are fully in the hands of states.<sup>55</sup> Nevertheless, it may well be that domestic courts are available to victims. In many states, treaty-based human rights guarantees are self-executing in national law or have been enacted into national law by the legislature. Provided that the applicable rules on standing are satisfied, this enables individuals and groups to enforce these rights through domestic courts.<sup>56</sup>

### **Conclusion**

The synergy between the international legal frameworks developed to ensure the protection of human rights and cultural heritage is essential to prevent the intentional destruction and looting of cultural heritage associated with mass atrocities committed in the context of contemporary armed conflict by belligerents belonging to a state’s armed forces or to nonstate armed groups. In other words, such legal frameworks are mutually supportive to the extent that the protection of cultural heritage and the rights associated with it may indirectly protect human beings. We also argue that the adoption of a human rights approach to cultural heritage is required to address the root causes of the crimes under consideration, namely extremism in its diverse forms. Although essential to the prevention of acts of deliberate destruction of cultural heritage accompanying large-scale killings and other heinous violations, the human rights approach under consideration would also be crucial for the promotion of human rights after the end of hostilities in the context of peacebuilding processes.

Given that fundamentalist ideologies are the cause of attacks against individual rights and freedoms as well as against cultural heritage, education on human rights and the values of tangible and intangible cultural heritage should be deployed to prevent and fight the spread of such dangerous ideas.<sup>57</sup> Efforts in education should be fostered because cultural heritage and human rights can only be protected and fulfilled if they are known and understood by people, from the professionals having responsibilities in the field (lawyers, judges, and law-enforcement officers) to the laymen and laywomen living in the vicinity of the relevant heritage.<sup>58</sup> Through human rights education, cultural rights can become “empowering rights.” As posited by Janusz Symonides, “without their recognition and observance, without implementation of the right to cultural identity, to education, to creativity or to information, neither may human dignity be guaranteed nor other human rights fully implemented. Without the

recognition of cultural rights, cultural plurality and diversity, fully democratic societies cannot function properly.”<sup>59</sup>

The importance of promoting and developing human rights education is underlined in many documents. Apart from UNESCO conventions<sup>60</sup> and human rights treaties,<sup>61</sup> the constitution of UNESCO contains multiple references to the idea of human rights education, as it provides that: “since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed”; “the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern”; and “a peace based exclusively upon the political and economic arrangements of governments would not be a peace which could secure the unanimous, lasting and sincere support of the peoples of the world, and that the peace must therefore be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind.” Arguably, such “intellectual and moral solidarity of [hu]mankind” includes awareness and respect for cultural heritage, the rights associated with it, and for the diversity of its expressions.<sup>62</sup>

#### SUGGESTED READINGS

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#### NOTES

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1. Yvonne Donders, “Cultural Heritage and Human Rights,” in *The Oxford Handbook of International Cultural Heritage Law*, ed. Francesco Francioni and Ana Filipa Vrdoljak (Oxford: Oxford University Press, 2020), 385.
2. Ana F. Vrdoljak, introduction to *The Cultural Dimension of Human Rights*, ed. Ana Filipa Vrdoljak (Oxford: Oxford University Press, 2013), 1. See also Roger O’Keefe, “Tangible Cultural Heritage and International Human Rights Law,” in *Realising Cultural Heritage Law: Festschrift for Patrick O’Keefe*, ed. Lyndel V. Prott, Ruth Redmond-Cooper, and Stephen Urice (Builth Wells, UK: Institute of Art and Law, 2013), 95.
3. This chapter focuses on atrocities committed during armed conflict and their deleterious impact on cultural heritage. However, egregious violations of cultural heritage and cultural rights also occur in time of peace. This is testified by the systematic persecution of Tibetans, Uyghurs, and other Muslim minorities in China, which is accompanied by the destruction of their heritage.
4. Farida Shaheed, *Report of the Independent Expert in the Field of Cultural Rights*, Human Rights Council, UN doc. A/HRC/17/38, 21 March 2001, para. 18.

5. 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): 1221.
6. Sarah Joseph, "Art and Human Rights Law," in *Research Handbook on Art and Law*, ed. Jani McCutcheon and Fiona McGaughey (Cheltenham, UK: Edward Elgar, 2020), 389.
7. On the question of whether international cultural heritage law constitutes a subsection of public international law, see Ana Filipa Vrdoljak and Francesco Francioni, introduction to *Oxford Handbook on International Cultural Heritage Law*, ed. Francioni and Vrdoljak, 9.
8. The term "cultural property" was also used in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.
9. Earlier treaties did not contain a precise term. Movable and immovable cultural objects were identified based on their use. For instance, the Regulations Respecting the Laws and Customs of War on Land Annexed to Hague Convention (IV) Respecting the Laws and Customs of War on Land of 1907, Art. 56 refers to "property of municipalities [and] ... of institutions dedicated to religion, charity and education, the arts and sciences ... historic monuments, works of art and science."
10. Francesco Francioni, "A Dynamic Evolution of Concept and Scope: From Cultural Property to Cultural Heritage," in *Standard-Setting in UNESCO: Normative Action in Education, Science and Culture*, ed. Abdulqawi A. Yusuf (Leiden, Netherlands: Martinus Nijhoff and UNESCO, 2007), 225.
11. Lyndel V. Prott and Patrick O'Keefe, "'Cultural Heritage' or 'Cultural Property?'" *International Journal of Cultural Property* 1, no. 2 (1992): 311.
12. Francesco Francioni, "World Cultural Heritage," in *Oxford Handbook on International Cultural Heritage Law*, ed. Francioni and Vrdoljak, 250–51.
13. Prott and O'Keefe, "'Cultural Heritage' or 'Cultural Property?'" 307, 311.
14. Kristy Campion, "Blast through the Past: Terrorist Attacks on Art and Antiquities as a Reconquest of the Modern Jihadi Identity," *Perspectives on Terrorism* 11, no. 1 (2017): 28.
15. Francesco Francioni, "Public and Private in the International Protection of Global Cultural Goods," *European Journal of International Law* 23, no. 3 (2012): 726.
16. Preamble, para. 2.
17. Harmful traditional practices can be defined as any pattern of conduct that: is regarded by the members of a given community as forming part of their culture; is deeply rooted in the idiosyncratic sociocultural and/or religious customs according to which certain vulnerable groups (i.e., women and girls) are inferior; is perceived as having beneficial effects for the victims of such practices, their families, and the wider community; entails physical or mental harm or suffering, threats of such act, coercion, and other deprivations of liberty, which often reach the threshold of torture or cruel, inhuman, and degrading treatment; is imposed on women and children by family members, traditional and religious leaders, and/or their community, regardless of whether the victim provides, or is able to provide, full, free, and informed consent; or is maintained by social norms, i.e., informal rules that create a sense of obligation that conditions the behavior of community members.
18. See Alessandro Chechi, "When Culture and Human Rights Collide: The Long Road to the Elimination of Gender-Based Harmful Traditional Practices," *Rivista Ordine internazionale e diritti umani* (2020): 839–62.
19. Alexandra Xanthaki, "Multiculturalism and International Law: Discussing Universal Standards," *Human Rights Quarterly* 32, no. 1 (2010): 43.
20. Since 1952, UNESCO has organized several expert meetings on cultural rights.
21. See Janusz Symonides, "Cultural Rights: A Neglected Category of Human Rights," *International Social Science Journal* 50, no. 158 (December 1998): 559–72.

22. Pok Yin S. Chow, "Culture as Collective Memories: An Emerging Concept in International Law and Discourse on Cultural Rights," *Human Rights Law Review* 14, no. 4 (2014): 617.
23. Vanessa Tümsmeyer, "Bridging the Gap between International Human Rights and International Cultural Heritage Law Instruments: A Functions Approach," in *Intersections in International Cultural Heritage Law*, ed. Anne-Marie Carstens and Elizabeth Varner (Oxford: Oxford University Press, 2020), 321.
24. Laura Pineschi, "Cultural Diversity as a Human Right? General Comment No. 21 of the Committee on Economic, Social and Cultural Rights," in *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law*, ed. Silvia Borelli and Federico Lenzerini (Leiden, Netherlands: Martinus Nijhoff, 2012), 29–53.
25. ECOSOC, "General Comment No. 21: Right of Everyone to Take Part in Cultural Life (art. 15, para. 1a, of the International Covenant on Economic, Social and Cultural Rights)," UN doc. E/C.12/GC/21, 21 December 2009, <https://digitallibrary.un.org/record/679354?ln=en>.
26. ECOSOC, "General Comment No. 21," paras. 1, 9, 17–20, 64.
27. ECOSOC, "General Comment No. 21," paras. 11–13.
28. Donders, "Cultural Heritage and Human Rights," 391.
29. ECOSOC, "General Comment No. 21," para. 15b.
30. Donders, "Cultural Heritage and Human Rights," 392.
31. ECOSOC, "General Comment No. 21," paras. 6, 44–59, 54.b.
32. <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.
33. Human Rights Committee, "General Comment No. 23: The Rights of Minorities (Art. 27)," UN doc. CCPR/C/21/Rev.1/Add.5, 26 April 1994, paras. 7, 9.
34. See Chow, "Culture as Collective Memories," 632–35, for discussion of a case decided by the Human Rights Committee, *JGA Diergaardt et al. v. Namibia* (Communication No. 760/1997), UN doc. CCPR/C/69/D/760/1997, 25 July 2000.
35. See the Human Rights Committee cases *Ilmari Länsman and others v. Finland* (Communication No. 511/1992), 14 October 1993, and *Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada* (Communication No. 167/1984), 26 March 1990. See also Human Rights Committee, "General Comment No. 23," para. 6.2.
36. Janet Blake, *International Cultural Heritage Law* (Oxford: Oxford University Press, 2015), 292.
37. Human Rights Committee, "General Comment No. 23," para. 6.2.
38. Human Rights Committee, "General Comment No. 23," paras. 6.1, 6.2. See also Blake, *International Cultural Heritage Law*, 292.
39. Human Rights Committee, "General Comment No. 23," paras. 3.2, 7.
40. Ana F. Vrdoljak, "Human Rights and Cultural Heritage in International Law", in *International Law for Common Goods*, ed. Federico Lenzerini and Ana F. Vrdoljak (Oxford: Hart Publishing, 2014), 158.
41. Francioni, "Public and Private in the International Protection," 722.
42. Blake, *International Cultural Heritage Law*, 271.
43. Vrdoljak, "Human Rights and Cultural Heritage," 139.
44. See Articles 3.8 and 5.3d. The convention was adopted on 24 June 1995 by the International Institute for the Unification of Private Law (UNIDROIT) upon request of UNESCO.
45. UNESCO, *Operational Guidelines for the Implementation of the World Heritage Convention*, doc. no. WHC.19/01, 10 July 2019, para. 12.
46. UNESCO, *Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, Paris, 1970)* (Paris: UNESCO, May 2015).

47. Ana F. Vrdoljak, "Human Rights and Illicit Trade in Cultural Objects", in *Cultural Heritage, Cultural Rights, Cultural Diversity. New Developments in International Law*, ed. Silvia Borelli and Federico Lenzerini (Leiden: Martinus Nijhoff, 2012), 124.
48. Vrdoljak, "Human Rights and Cultural Heritage," 140.
49. Tünsmeier, "Bridging the Gap," 319–20.
50. Donders, "Cultural Heritage and Human Rights," 383; and Tünsmeier, 321.
51. O'Keefe, "Tangible Cultural Heritage," 91.
52. Blake, *International Cultural Heritage Law*, 311.
53. Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (Oxford: Hart, 2009), 403.
54. O'Keefe, "Tangible Cultural Heritage," 88.
55. Donders, "Cultural Heritage and Human Rights," 383.
56. O'Keefe, "Tangible Cultural Heritage," 88–89.
57. The adoption of a human rights approach centered on educational programs has been advocated by UN special rapporteur Karima Bennouna. See *Report of the Special Rapporteur in the Field of Cultural Rights*, Human Rights Council, UN doc. A/HRC/31/59, 3 February 2016; and *Report of the Special Rapporteur in the Field of Cultural Rights*, General Assembly, UN doc. A/71/317, 9 August 2016, paras. 55, 78.
58. Janusz Symonides, "UNESCO's Contribution to the Progressive Development of Human Rights," in *Max Planck Yearbook of United Nations Law* 5, ed. Jochen A. Frowein, Rüdiger Wolfrum, and Christiane E. Philipp (Boston: Brill, 2001), 307–40.
59. Symonides, "UNESCO's Contribution to the Progressive Development of Human Rights," 340.
60. See the 2001 Universal Declaration on Cultural Diversity, Art. 5; the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, Art. 2.3, 14; and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Art. 10.
61. See the 1989 Convention on the Rights of the Child, Art. 28–29; the 1981 CEDAW, Art. 10; the 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Art. 15–16; and the 2011 UN Declaration on Human Rights Education and Training.
62. Ana F. Vrdoljak, "Cultural Heritage, Transitional Justice, and Rule of Law", in *Oxford Handbook on International Cultural Heritage Law*, ed. Francesco Francioni and Ana F. Vrdoljak (Oxford: Oxford University Press, 2020), 173.