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KING TUT AND TAHRIR SQUARE: THE EGYPTIAN REVOLUTION OF 2011 AND THE ADVANTAGE OF VIEWING CULTURAL HERITAGE DESTRUCTION THROUGH A RIGHT TO CULTURE LENS

*Zoe Niesel**

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I. INTRODUCTION

On February 18, 2011, the Science Museum in St. Paul, Minnesota became host to some of the world's most iconic antiquities—the artifacts of King Tutankhamun's ancient tomb.¹ Discovered in 1922 by archaeologist and explorer Howard Carter, the tomb of the so-called “King Tut” has attracted international attention and scholarship since its discovery.² To capitalize on this interest and highlight ancient Egyptian civilization, King Tut's mummy and funerary objects have traveled in several international tours, including the most recent “Tutankhamun: The Golden King and the Great Pharaohs.”³ These tours and their incredible popularity have made the King Tut collection one of the most traveled archaeological exhibits in the world.⁴

However, when the King Tut exhibition opened in St. Paul, viewers flocking to see the artifacts were expressing new concerns about the long-term safety of the items.⁵ Just weeks earlier, Egypt had witnessed a major political revolution that resulted in the removal of the Egyptian president and other government officials.⁶ During the course of this revolution, reports of looting and destruction at the Egyptian Museum in Cairo, the permanent home of the King Tut collection, led the world to question Egypt's ability to ensure the safety of its antiquities and archaeological resources.⁷ Such concerns only amplified as additional destruction was reported at other museums and archaeological sites across Egypt.⁸

1. *King Tut: About Exhibition*, SCI. MUSEUM OF MINN., <http://www.smm.org/tut/about> (last visited Mar. 6, 2014).

2. *See History and Chronology of Tours and Exhibitions of Tutankhamun Artifacts in North America and Europe 1961-2012*, TUTANKHAMUN, www.kingtutart.com (last visited Mar. 17, 2014).

3. *Id.*

4. *See id.*

5. *Egyptian Revolution Endangers Antiquities, Entertainment Blogs*, STARTRIBUNE, <http://www.startribune.com/entertainment/blogs/117541158.html> (last updated Mar. 7, 2011).

6. *See* David D. Kirkpatrick, *Egypt Erupts in Jubilation as Mubarak Steps Down*, N.Y. TIMES, Feb. 12, 2011, at A1.

7. *See* Martin Bailey, *Details of Looting of Cairo and Other Egyptian Museums*, ART NEWSPAPER (Jan. 31, 2011), <http://www.vtheartnewspaper.com/articles/Details-of-looting-of-Cairo-and-other-Egyptian-museums/23018>.

8. *About 1,000 Relics Stolen During Egypt Uprising*, DISCOVERY NEWS (Apr. 10, 2011, 3:00 AM ET), <http://news.discovery.com/history/egypt-uprising-looted-artifacts-110410.htm>. The loss

The loss of items from Egypt's archaeological sites and cultural repositories represents a major blow to the nation's cultural heritage. Defined as "the entire corpus of material signs—either artistic or symbolic—handed on by the past,"⁹ cultural heritage, including monuments, artifacts, museums, and libraries, is an integral part of a nation's identity and serves as a foundation for cultural and historical knowledge.¹⁰ In Egypt, items originating from ancient Egyptian society are an especially important part of cultural awareness and pride because of the unique significance of ancient Egyptian civilization to the world's development.¹¹ Thus, in addition to their historic and financial value, the objects in the Egyptian Museum and at Egyptian archaeological sites are significant because they form a cornerstone of modern Egypt's culture and identity.¹²

To address the destruction of cultural heritage during the Egyptian Revolution and the resulting effect on Egyptian culture, this Article examines the various tools available under international law to protect cultural heritage in times of political and social turmoil. Part I examines the loss of cultural heritage items from the Egyptian Museum and other cultural sites during the Egyptian Revolution. Part II explains the two competing regimes that could be used to address this loss under international law: (1) the framework created by the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict; and (2) the human right to culture recognized in various human rights documents. Part III then applies these competing models to the situation in Egypt and concludes that a right to culture approach is a more flexible tool for promoting the conserva-

of cultural resources in Egypt has not been insignificant. Since Spring 2011, over 1,000 items of archeological interest have been looted or destroyed as a result of the political turmoil. *Id.*

9. *Draft Medium Term Plan (1990-1995)*, UNESCO Gen. Conf., 25th Sess., UNESCO Doc. 25 C/4 at 57 (1989), available at <http://unesdoc.unesco.org/images/0008/000825/082539eb.pdf>.

10. See generally Janet Blake, *On Defining the Cultural Heritage*, 49 INT'L & COMP. L.Q. 61 (2000) (using the term "cultural heritage" in lieu of the word "cultural property"). While "cultural heritage" is a broad term that encompasses all physical manifestations of human life, "cultural property" conveys a more limited meaning as provided in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. *Id.* at 66-67. See also Lyndel V. Prott & Patrick J. O'Keefe, 'Cultural Heritage' or 'Cultural Property'?, 1 INT'L J. OF CULTURAL PROP. 307, 312-13 (1992); *infra* Part II.A.

11. See *UNESCO Director-General Launches Heritage and Press Freedom Alert for Egypt*, *The UNESCO Courier*, UNESCO (Feb. 1, 2011), http://www.unesco.org/new/en/unesco-courier/single-view/news/unesco_director_general_launches_heritage_and_press_freedom_alert_for_egypt/#.UyozPJjn_cs. [hereinafter *The UNESCO Courier*].

12. See *id.*; see also *Today Show: Crisis in Egypt: How Many Ancient Artifacts Have Been Ruined?* (NBC television broadcast Jan. 31, 2011), available at <https://www.youtube.com/watch?v=eomOh7FJHAc>.

tion of cultural resources and preventing cultural heritage destruction. As such, this Article seeks not only to convey the importance of cultural heritage items to the realization of cultural rights, but to also cultivate a greater respect for cultural rights in general.

II. LOOTING AND CULTURAL HERITAGE LOSS IN EGYPT DURING THE EGYPTIAN REVOLUTION OF 2011

A. *The Looting of the Egyptian Museum*

1. The Egyptian Museum and its Collection

The Museum of Egyptian Antiquities, commonly known as the Egyptian Museum,¹³ houses one of the world's greatest collections of cultural treasures. Located on Tahrir Square in central Cairo, the museum was built during the reign of Khedive Abbass Helmi II and opened to the public in 1902.¹⁴ The neo-classical building, constructed by the French architect Marcel Dourgnon,¹⁵ contains 107 separate halls¹⁶ that house over 160,000 objects of Egyptian cultural patrimony.¹⁷ The museum's extensive collection includes mummies and funerary objects of Egyptian pharaohs,¹⁸ ancient coins, religious figurines, papyrus scrolls, jewelry, and statutory monuments.¹⁹ Objects from King Tut's tomb, including his mummy and death mask, are also displayed.²⁰ In addition, the museum displays the Palette of Narmer, the world's first hieroglyphic tablet.²¹

13. *The Egyptian Museum of Antiquities: The Largest Museum in Egypt*, TOUR EGYPT, http://www.touregypt.net/egyptmuseum/egyptian_museum.htm (last visited Mar. 17, 2014).

14. *Id.*

15. *The Egyptian Museum, Cairo, Egypt-Overview and Establishment*, TOUR EGYPT, http://www.touregypt.net/egyptmuseum/egyptian_museuma.htm (last visited Mar. 17, 2014).

16. *The Egyptian Museum of Antiquities: The Largest Museum in Egypt*, *supra* note 13.

17. *The Egyptian Museum*, SUPREME COUNCIL OF ANTIQUITIES, http://www.sca-egypt.org/eng/MUS_Egyptian_Museum.htm (last visited Mar. 17, 2014).

18. *The Egyptian Museum, Cairo, Egypt-Overview and Establishment*, *supra* note 15. The mummies housed at the Egyptian Museum represent the bodies of the pharaohs Amenhotep I, Tuthmosis I, Tuthmosis II, Tuthmosis III, Seti I, Ramses II, Ramses III, Amenhotep II, Tuthmosis IV, Amenhotep III, Merenptah, Seti II, Siptah, Ramses IV, Ramses V, and Ramses VI, among others. *Id.*

19. *Cairo Egyptian Museum*, WORLD VISIT GUIDE, <http://worldvisitguide.com/musee/M0011.html> (last visited Mar. 17, 2014).

20. *The Egyptian Museum, Cairo, Egypt-Overview and Establishment*, *supra* note 15. In fact, artifacts from Tutankhamun's tomb account for 1,700 of the objects displayed by the Egyptian Museum. *Id.*

21. *Narmer Palette, Museum of Antiquities*, UNIV. OF SASK., <http://www.usask.ca/antiquities/our-collection/egyptian/sculpture/narmer-palette/index.php> (last visited Mar. 17 2014).

Together, the artifacts housed at the Egyptian Museum represent the world's largest collection of pharaonic antiquities.²² The value of such a collection is beyond estimate—the treasures contained in the Egyptian Museum are literally priceless in terms of financial value.²³ Such objects also have an inestimable cultural value to both Egyptian citizens and the international community. In the words of the United Nations Educational, Scientific and Cultural Organization (“UNESCO”), the Egyptian Museum’s collection is critical to Egypt and the world as common heritage that has been “handed down to us through the ages.”²⁴

2. *The Events of January 28, 2011*

The looting of the Egyptian Museum was ultimately the result of the civil unrest that accompanied Egypt’s entry to the Arab Spring.²⁵ Following a successful political revolution in Tunisia,²⁶ Egyptian political dissident Mohamed ElBaradei²⁷ predicted that a “Tunisia-style explosion” would engulf Egypt in January 2011.²⁸ His prediction was both accurate and timely—on January 25, 2011, thousands of Egyptian citizens filled Tahrir Square²⁹ in Cairo to protest poverty, unemploy-

22. *Museum Secrets: The Egyptian Museum*, HISTORY, <http://museumsecrets.tv/episode.php?ep=4> (last visited Mar. 17, 2014).

23. *The UNESCO Courier*, *supra* note 11.

24. *Id.* (quoting UNESCO’s Director-General Irina Bokova). The British Museum has also expressed its belief that the Egyptian Museum is an important repository for “irreplaceable” objects “of unique importance to world heritage.” Richard Ingham, *Experts Fret Over Egypt’s Treasures*, COSMOS MAG. (Feb. 4, 2011), <http://www.cosmosmagazine.com/news/4011/experts-fret-over-egypts-treasures>.

25. Mike Elkin, *Arab Spring Impacts Archaeology—Libya/Egypt/Tunisia/Syria*, 65 *ARCHAEOLOGY*, 30 (2012).

26. Naseema Noor, *Tunisia: The Revolution That Started It All*, *INT’L AFF. REV.* (Jan. 31, 2011), <http://www.iaar-gwu.org/node/257>. The beginning of the successful Tunisian Revolution was both shocking and unexpected. To protest his treatment at the hands of local authorities, a twenty-six year old street vendor lit himself on fire. *Id.* As a result, protests exploded in his rural hometown and eventually spread across the country. *Id.* After approximately one month of violent riots, the Tunisian autocrat Zine el-Abidine Ben Ali fled the country, setting the stage for the fall of the Egyptian government a few weeks later. *See id.*

27. *Profile: Mohamed ElBaradei*, BBC (Aug. 15, 2013), <http://www.bbc.co.uk/news/104202>

18. Mohamed ElBaradei, the former head of the International Atomic Energy Agency, is a pro-democracy activist that was widely considered to be a potential choice for leading the transitional government following the Egyptian Revolution. *Id.*

28. Jack Shenker, *Warning Egypt Could Follow Tunisia*, *THE AGE* (Jan. 20, 2011), <http://www.theage.com.au/world/warning-egypt-could-follow-tunisia-20110119-19wly.html>.

29. Mona El-Ghobashy, *The Praxis of the Egyptian Revolution*, *MIDDLE EAST RES. AND INFO. PROJECT*, available at <http://www.merip.org/mer/mer258/praxis-egyptian-revolution>.

ment, and government corruption.³⁰ Most of this public outcry was directed at President Hosni Mubarak, an autocrat who had held power in Egypt without serious opposition for over thirty years.³¹

Despite the government's immediate protest bans and deployment of riot police, protests grew over the next several days through the use of the Internet and social media, prompting the government to block text messaging and shut down Internet access.³² Confrontations between protesters and police became increasingly violent, with reports of civilian deaths reaching the international media.³³ With anti-police sentiment growing, the Egyptian military was forced to take over security, and a mandatory curfew was implemented.³⁴

At 6 p.m. on January 28, the beginning of the government's mandatory curfew, government riot police withdrew from the streets of Cairo.³⁵ The withdrawal orders included officers who were guarding the Egyptian Museum in northern Tahrir Square.³⁶ In the space of this one instant, Egypt's greatest cultural treasures suddenly stood abandoned and vulnerable in the face of social unrest. This opportunity was not lost on those in the museum's vicinity. Within moments of the police withdrawal, crowds began to enter the museum.³⁷ An initial wave forced open the museum doors and began raiding the museum's gift shop for jewelry and other valuables.³⁸ However, due to

30. Cara Parks, *What's Going on in Egypt?*, HUFFINGTON POST (Jan. 28, 2011, 11:52 PM ET.), http://www.huffingtonpost.com/2011/01/28/whats-going-on-in-egypt_n_815734.html.

31. *Id.* The Egyptian citizenry's call to action against President Mubarak did not end with a stalemate. Following eighteen days of protests that involved hundreds of thousands of people, Mubarak resigned as president on February 11, 2011 and handed control of the Egyptian government to the military. Yasser Imam, *Mubarak Resigns as Egypt's President; Armed Forces to Take Control*, HUFFINGTON POST (Feb. 11, 2011, 9:14 AM), http://www.huffingtonpost.com/2011/02/11/mubarak-red-sea-egypt_n_821812.html. Following this announcement, tens of thousands gathered outside the presidential palace in Cairo and chanted "The [p]eople ousted the [p]resident." *Id.*

32. See Craig Kanalley, *Egypt's Internet Shuts Down, According to Reports*, HUFFINGTON POST (Jan. 27, 2011, 6:33 PM), http://www.huffingtonpost.com/2011/01/27/egypt-internet-goes-down_n_815156.html; Parks, *supra* note 30.

33. *Timeline: Egypt's Revolution*, AL JAZEERA (Feb. 14, 2011, 3:54 PM), <http://www.aljazeera.com/news/middleeast/2011/01/201112515334871490.html>.

34. Rania Abouzeid, *The Break-In at Cairo's Prized Museum*, TIME (Jan. 30, 2011), <http://www.time.com/time/world/article/0,8599,2045155,00.html>; Parks, *supra* note 30.

35. Abouzeid, *supra* note 34.

36. *Id.* The museum had been closed as a result of the street demonstrations and police had been stationed around the building to block public access during the protests. *Id.*

37. See *id.*

38. *Id.*

the building's design, these individuals remained confined to the souvenir shop and did not enter the museum proper.³⁹

Although the majority of looters were contained in the gift shop, nine individuals separated from the crowd and entered the museum's galleries.⁴⁰ These individuals climbed the museum's fire stairs to the roof, broke a skylight, and used ropes to lower themselves four meters into one of the main museum halls.⁴¹ Once inside, the looters broke into thirteen glass display cases, some of which contained artifacts dating back to 500 B.C.⁴² Next, the looters ascended the museum's stairs to the upper level halls, which contained the King Tut collection.⁴³ Once there, the looters unsuccessfully attempted to enter the room containing King Tut's iconic golden death mask.⁴⁴ In the process of attempting entry, however, the looters damaged funerary statues and figurines, including a famous vessel portraying the pharaoh riding a panther.⁴⁵ Finally, the looters opened and damaged several display cases containing ancient mummies.⁴⁶

While looters were attempting to destroy the museum, ordinary civilians put themselves at risk to protect the nation's cultural heritage. As the alleged looters fled the scene, civilians apprehended and held the suspects and attempted to recover stolen goods.⁴⁷ In addition, concerned citizens and three police officers, who refused to leave their posts, formed a human chain around the museum to prevent further damage.⁴⁸ One man stood outside the gates, shouting to the

39. Bailey, *supra* note 7. Dr. Zahi Hawass, an archaeologist who served as Mubarak's Secretary General of the Supreme Council of Antiquities, had a different theory regarding why the initial crowd did not breach the rest of the museum. Dr. Hawass stated in an interview that "those people were idiots . . . [t]hank God they thought the museum shop was the museum." Abouzeid, *supra* note 34 (emphasis added).

40. Bailey, *supra* note 7.

41. *Id.*

42. Abouzeid, *supra* note 34.

43. Bailey, *supra* note 7.

44. *Id.*

45. *Id.*

46. See Abouzeid, *supra* note 34.

47. *Id.* Dr. Zahi Hawass later corroborated that demonstrators were responsible for apprehending several of the looters and returning the skulls of mummies to the museum. Harriet Alexander, *Egypt Crisis: Looters Destroy Mummies in Cairo Museum*, TELEGRAPH (Jan. 30, 2011, 6:11 PM GMT), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/8291526/Egypt-crisis-Looters-destroy-mummies-in-Cairo-museum.html>.

48. Nick Carbone, *Egypt's Human Chain: The Race to Save the Mummies*, TIME MAG. (Jan. 31, 2011), <http://newsfeed.time.com/2011/01/31/egypts-human-chain-the-race-to-save-the-mummies>; Chris McGreal, *Tutankhamun Statues Among Priceless Items Stolen from Cairo Museum*, GUARDIAN (Feb. 13, 2011, 11:59 AM ET), <http://www.guardian.co.uk/culture/2011/feb/13/tutankhamun-statues-cairo-museum-looted>.

crowd, “We are not like Baghdad!” in reference to the looting of the Baghdad Museum during the American invasion in 2003.⁴⁹ The civilian guards did not abandon their posts until nearly 10 p.m., when Egyptian military forces arrived to take over security at the museum.⁵⁰ These military personnel secured the facility with machine guns and tanks throughout the rest of the eighteen-day uprising.⁵¹

In total, looters at the Egyptian Museum seriously damaged about one hundred objects and ripped the heads off two 2,000 year-old mummies.⁵² While many objects were left discarded and broken on the museum floor, eighteen priceless artifacts from the King Tut collection were stolen.⁵³ These stolen items included two gilded statues of King Tut, a limestone statue of the pharaoh Akhenaten, and a statue of the Egyptian queen Nefertiti.⁵⁴ Egyptologists and scholars have described this damage and loss as “irreplaceable,” “devastating,” and “appalling.”⁵⁵

49. Mara Gay, *Human Shield of Civilians Protect Egypt's Museum*, AOL NEWS (Feb. 1, 2011, 4:05 PM), <http://www.aolnews.com/2011/02/01/human-shield-of-civilians-protects-egypts-museums>. Pictures of the destroyed Baghdad Museum have become emblematic of the vulnerability of cultural heritage in conflict situations. Immediately following the fall of Saddam Hussein, looters overran the Baghdad Museum and removed thousands of objects of Iraqi cultural heritage. See ROGER ATWOOD, *STEALING HISTORY: TOMB RAIDERS, SMUGGLERS AND THE LOOTING OF THE ANCIENT WORLD* 11, 270 (2004). In total, approximately 13,000 Mesopotamian objects were removed from the Baghdad Museum, resulting in a devastating blow to the scientific and cultural patrimony of Iraq. Sasha P. Paroff, *Another Victim of the War in Iraq: The Looting of the National Museum in Baghdad and the Inadequacies of International Protection of Cultural Property*, 53 EMORY L.J. 2021, 2028 (2004).

50. Abouzeid, *supra* note 34.

51. *See id.*

52. *Id.* Since the looting incident, visual illustrations of the extent of the damage have surfaced. Video footage obtained from al-Arabiya in the wake of the break-in showed glass and broken artifacts littering the museum floor while soldiers stood guard over the remaining items. *Id.*; see also *Army Secures Egyptian Museum from Looters*, ASSOCIATED PRESS (Jan. 29, 2011), available at <http://www.youtube.com/watch?v=WTOF0x-eGU0>. In addition, the Associated Press obtained shocking photos of mutilated mummies left abandoned on the museum floor. Alexander, *supra* note 47.

53. McGreal, *supra* note 48.

54. *Id.* Ikram Said Salima Ikram, an Egyptologist at the American University in Cairo, indicated that the thieves appeared to have carefully selected the most valuable works to steal while selectively damaging less valuable pieces. *See id.*

55. *See* Alexander, *supra* note 47. The loss of items from museums results in a significant detriment to scientists and researchers. Dr. Elaine Sullivan, an Egyptologist and professor of Eastern Languages and Cultures at the University of California Los Angeles, has stated that the loss of items from the Egyptian Museum limits the ability of scholars to utilize primary source material. Email from Dr. Elaine Sullivan, Adjunct Assistant Professor, Univ. of Cal. Los Angeles Dep't of Near Eastern Languages & Cultures, to author (Apr. 24, 2012, 7:20 PM EST) (on file with author). Specifically, researchers “lose the ability to use [a looted] object as a piece of data, to question it and re-investigate it in light of new discoveries.” *Id.* This loss is “especially

B. Looting at Other Egyptian Cultural Sites: Museums, Archaeological Sites, and Libraries

In addition to the Egyptian Museum, other valuable cultural sites faced looting and destruction in the wake of the Egyptian Revolution.⁵⁶ For example, reports in January 2011 revealed that a group of armed men looted antiquities belonging to the Egyptian National Museum in Port Said.⁵⁷ Other museums allegedly targeted by looters include the Royal Jewelry Museum in Alexandria, the Coptic Museum in Cairo, and the Manial Palace and Museum in Cairo.⁵⁸

But looters did not target museums exclusively; archaeological sites across Egypt were also the victims of pillage and destruction.⁵⁹ The pyramids at Saqqara, thirty kilometers south of Cairo,⁶⁰ were broken into and looted, as were archeological storage magazines at the nearby necropolis of Abusir.⁶¹ In total, over twenty archaeological sites and storage magazines suffered damage during the fall of Mubarak's government.⁶² Such destruction represents the loss of Egyptian cultural heritage that is irreversible. For example, the 3,000

tragic when we consider these objects survived some 2,000–5,000 years buried in Egypt, only to be mangled by modern people." *Id.*

56. Ursula Lindsey, *Egyptian Scholars Struggle to Protect Country's History Amid New Violence*, THE CHRON. OF HIGHER EDUC. (Jan. 15, 2012), <http://chronicle.com/article/Egyptian-Scholars-Struggle-to/130338>. UNESCO Program Specialist Tamar Teneishvili noted that, after the break-in at the Egyptian Museum, "[t]hreats to [Egyptian] heritage are diversifying." *Id.*

57. Bailey, *supra* note 7.

58. *Id.*

59. See *Protecting Egypt's Cultural Heritage*, ECHO, <http://www.e-c-h-o.org/News/protect.htm> (last visited Apr. 4, 2014). The Egyptian Cultural Heritage Organization has been particularly outspoken regarding the destruction of Egypt's archeological resources. The organization has called the looting of Egyptian archaeological sites the "most destructive of crimes against cultural heritage." See *id.*

60. *Location*, SAQQARA.NL, <http://www.saqqara.nl/saqqara/location> (last visited Apr. 1, 2014). Saqqara is an important Egyptian archaeological site and necropolis. Its vast ruins contain the world's first pyramid, the stepped pyramid of King Djoser (2667-2648 B.C). See *id.*

61. Jo Marchant, *Egypt's Outgoing Antiquities Chief Warns Heritage is at Risk*, NATURE INT'L WKLY. J. OF SCI. (Mar. 7, 2011), <http://www.nature.com/news/2011/110307/full/news.2011.146.html>; Rana Kamaly, *Historians Condemn the Looting and Destruction of Egypt's Treasures post Revolution*, CARAVAN, (Mar. 20, 2011), <http://academic.aucegypt.edu/caravan/story/historians-cn-looting-and-destruction-egypts-treasures-post-revolution>. Abusir, located approximately thirty-five kilometers south of Cairo, is a Fifth Dynasty necropolis that contains multiple pyramid complexes and tombs. *Abusir*, SAQQARA.NL, <http://www.saqqara.nl/context/glossary/abusir> (last visited Apr. 1, 2014). Abusir has suffered more than most Egyptian archaeological sites since the Egyptian Revolution—because of a lack of law enforcement in the region, the site has become a dumping ground for garbage and waste. Steven Viney, *Garbage Dumping and Archaeological Looting in Abu Sir Alarm Residents*, EGYPT INDEP. (Feb. 26, 2012, 11:52), <http://www.egyptindependent.com/node/681041>.

62. See Zahi Hawass, *The Status of Egyptian Antiquities Today*, ZAHY HAWASS (Mar. 3, 2011), <http://www.drhawass.com/blog/status-egyptian-antiquities-today-3-march-2011>.

year-old tomb of the royal scribe Ken-Amun, the only known 19th Dynasty tomb in lower Egypt, was completely destroyed.⁶³ Before its destruction, the tomb was intricately decorated with scenes from the Book of the Dead and was expected to provide valuable information about the relationship between the Nile Delta and Eastern Egypt during the 19th Dynasty.⁶⁴

But even with widespread looting at museums and archaeological sites occurring throughout 2011, the most devastating blow to Egypt's cultural heritage did not come until later. On December 17, 2011, ongoing election protests in Cairo's Tahrir Square erupted into an impromptu street battle with protestors and soldiers hurling rocks and firing bullets at each other.⁶⁵ In the midst of these chaotic exchanges, protestors threw Molotov cocktails at military forces.⁶⁶ As collateral damage of the resulting explosions, the nearby Egyptian Scientific Institute and its library were set ablaze.⁶⁷

The Egyptian Scientific Institute was first created in 1798 by Napoleon Bonaparte during his campaign in Egypt and houses the country's most important archives.⁶⁸ Its library contains 192,000 volumes that span two centuries of Egyptian history and are considered irreplaceable historical records.⁶⁹ Included in this collection is the *Description d'Egypte*, the first work compiled by French explorers on the customs and history of Egypt.⁷⁰

As the collection housed in the Egyptian Scientific Institute burned, ordinary civilians again took center stage in mitigating the damage to Egypt's cultural patrimony. As the building neared collapse, civilians risked injury by rescuing books and carrying them to safety, while others formed a double human chain around the building to prevent looting.⁷¹ During this rescue operation, the volunteers

63. *Id.*

64. *Tomb of Ancient Royal Scribe Unearthed*, TELEGRAPH (Apr. 14, 2010, 7:17 PM BST), <http://www.telegraph.co.uk/news/worldnews/africaandindianocan/egypt/7591124/Tomb-of-ancient-royal-scribe-unearthed.html>. See Email from Dr. Elaine Sullivan, *supra* note 55.

65. See Maha Dahan & Tamim Elyan, *Egyptian Soldiers Battle Protesters, Three Dead*, REUTERS UK (Dec. 16, 2011, 11:21 PM GMT), <http://uk.reuters.com/article/2011/12/16/uk-egypt-protest-idUKTRE7BF0IM20111216>.

66. *Id.*; see Lindsey, *supra* note 56.

67. Lindsey, *supra* note 56.

68. *Id.*

69. Adel Abdel Ghafar, *Burning Our Heritage*, FOREIGN POL'Y (Jan. 10, 2012), http://www.foreignpolicy.com/articles/2012/01/10/burning_our_heritage; see Lindsey, *supra* note 56.

70. Ghafar, *supra* note 69.

71. *Id.*; *Volunteers Race to Save Rare Egypt Books*, NEWS24 (Dec. 12, 2011, 5:37 PM), <http://www.news24.com/Africa/News/Volunteers-race-to-save-rare-Egypt-books-20111220>. The urge of ordinary civilians to save their nation's cultural or scientific patrimony in times of disaster is not

were pelted with rocks and glass by police officers standing on the roof of a neighboring building.⁷² Despite the civilians' best efforts, destruction of the Institute's valuable collection was inevitable. As a result of the violent street fighting, fire fighters were not able to arrive until several hours after the building caught fire.⁷³ It is now estimated that it could take up to ten years to restore what is left of the archives, with many items damaged beyond repair.⁷⁴

C. *A Classic Case of "Who Done It?": Assigning Blame in the Wake of Revolution*

Following the break-in at the Egyptian Museum, UNESCO urged the Egyptian government to immediately take action to prevent further damage to cultural heritage sites.⁷⁵ Director-General Irina Bokova implored that "all necessary measures be taken to safeguard Egypt's treasures in Cairo, Luxor and in all the other cultural and historical sites around the country."⁷⁶ This statement had particular weight and meaning for Egypt, which was one of the founding members of UNESCO and has a history of working closely with the organization on cultural heritage issues.⁷⁷

Although UNESCO directed its initial statements to the Egyptian government, other groups claimed that the government itself was responsible for the destruction of Egypt's cultural heritage. Days after the break-in at the Egyptian Museum, Peter Bouckaert, the Emergencies Director at Human Rights Watch, accused the Egyptian state

a recent phenomenon. For example, following the 1906 San Francisco Earthquake, fires threatened many cultural and scientific establishments throughout the city. See *The Great 1906 San Francisco Earthquake*, U.S. GEOLOGICAL SURV., <http://earthquake.usgs.gov/regional/ncal/1906/18april/index.php> (last modified July 23, 2012). When the fires reached the California Academy of Sciences, a single curator, Alice Eastwood, risked her life to carry over 1,500 scientific specimens to safety. *Botany Department History*, CAL. ACAD. OF SCI., <http://researcharchive.calacademy.org/research/botany/about.php> (last visited Mar. 29, 2014).

72. See Ghafar, *supra* note 69; Doolism, Twitter (Dec. 17, 2011, 12:43 PM), <http://twitter.com/#!/doolism> (stating Ghafar had saved another batch of books from the smoldering Egyptian Scientific Institute in the midst of protests).

73. Lindsey, *supra* note 56.

74. *Id.*; see *Volunteers Race to Save Rare Egypt Books*, *supra* note 71. Zein Abdel-Hady, an Egyptian professor and novelist, stated that the cultural destruction at the Egyptian Scientific Institute was akin to the "burning of Galileo's books." *Volunteers Race to Save Rare Egypt Books*, *supra* note 71.

75. *The UNESCO Courier*, *supra* note 11.

76. *Id.*

77. *Id.* In recent years, the Egyptian government worked closely with UNESCO on a \$220,000,000 renovation of the ancient Library of Alexandria. See Theodore May, *A Library with Great Expectations*, GLOBAL POST (May 10, 2009, 12:27 AM), <http://www.globalpost.com/dispatch/egypt/090508/library-alexandria>.

police of trying to loot and destroy the museum in order to “stoke fear of instability.”⁷⁸ Bouckaert claimed that then-President Mubarak ordered the looting in order to send a message that, without the stability offered by his leadership, the nation was in grave danger.⁷⁹ The Washington Post bolstered this alleged motive by noting that the state television had been reporting “alarmist news” about looting and violence caused by the political demonstrations in order to “discredit the democratic movement.”⁸⁰ Additional evidence surfaced as hospitals that treated looters who had been shot by the military reported that the looters were carrying police identification cards.⁸¹

Evidence has also emerged linking the burning of the Egyptian Scientific Institute to state action. Following the Institute’s destruction, civilian protestors accused the military of using plain-clothed officers to throw petrol bombs and Molotov cocktails at the building.⁸² To corroborate this claim, demonstrators pointed to videos showing that the men who were throwing explosives in the building’s vicinity later appeared dressed in military uniform.⁸³ However, the perpetrator responsible for the Institute’s burning is still unknown, as other sources continue to report that a protestor was responsible for throwing the explosive that ignited the building.⁸⁴

Although it remains unclear who exactly initiated the destruction at the Egyptian Museum and Egyptian Scientific Institute, these incidents revealed the Egyptian government’s failure to employ proper security measures to avert such crises. In fact, Egypt’s lack of diligence in cultural resource protection had already been brought to light little more than a half a year before the start of the Egyptian

78. David Edwards, *Egypt’s Undercover Police Behind Museum Looting, Group Claims*, THE RAW STORY (Feb. 1, 2011, 12:52 PM), <http://www.rawstory.com/rs/2011/02/01/rights-group-confirms-undercover-police-loot-egyptian-museum>.

79. *Id.*

80. Leila Fadel, *Looters Included Undercover Egyptian Police, Hospitals Tell Human Rights Watch*, WASH. POST (Feb. 1, 2011, 8:36 AM), <http://www.washingtonpost.com/wpdyn/content/article/2011/02/01/AR2011020100903.html>.

81. *Id.*

82. Joseph Mayton, *Protestors Accuse Military, Police of Burning Cultural Heritage*, MASRESS (Dec. 20, 2011), <http://www.masress.com/en/bikyamasr/51222>.

83. *Id.*

84. *L’Incendie de l’Institut d’Egypte: Une “Catastrophe Culturelle [The Fire of the Institute of Egypt: a “Cultural Catastrophe”]* RFI (Dec. 19, 2011) (Fr.), <http://www.rfi.fr/afrique/20111219-incendie-institut-egypte-catastrophe-culturelle-frederic-mitterrand-culture-patrimoine-napoleon-bonaparte/>; *L’Institut d’Egypte Fondé par Bonaparte est Parti en Fumée [The Egyptian Institute Founded by Napoleon Went up in Smoke]*, LIBERATION (Dec. 18, 2011) (Fr.), http://www.liberation.fr/monde/2011/12/18/l-institut-d-egypte-fonde-par-bonaparte-est-parti-en-fumee_782702.

Revolution.⁸⁵ In August 2010, a Vincent Van Gogh painting worth fifty million dollars was stolen from the Mahmoud Khalil Museum in Cairo.⁸⁶ In the investigation that followed, Prosecutor Abdel Meguid Mahmud was forced to admit that all the museum's alarms were broken and that over 80% of the facility's security cameras were nonoperational.⁸⁷

Unfortunately, such blatant lack of security was not uncommon. Many museums in Egypt, including the Egyptian Museum, employed few security measures to protect their valuable collections.⁸⁸ Additionally, authorities in Egypt consistently failed to adopt disaster plans to protect museums and cultural resources from natural disasters or civil turmoil.⁸⁹ For example, the historic building housing the Egyptian Scientific Institute was found to be unprepared for disaster situations and lacked appropriate fire-prevention systems.⁹⁰ Because of these failures, commentators noted that the Egyptian government's cultural heritage management reflected a "widespread absence of quality security, storage and protection" that left the nation's cultural artifacts vulnerable to destruction and looting.⁹¹

III. APPLICABLE INTERNATIONAL LAW: THE CULTURAL PROPERTY FRAMEWORK AND THE HUMAN RIGHT TO CULTURE

With cultural heritage destruction still a concern in Egypt, it is imperative to identify the tools that can be used by the international

85. *Faulty Alarms Blamed for Van Gogh Theft in Egypt*, BBC (Aug. 22, 2010, 4:31 PM), <http://www.bbc.co.uk/news/entertainment-arts-11053314>.

86. *Mystery as Museum Officials Admit 'Recovered' \$50M Van Gogh Masterpiece is Still Missing*, *Mail Online*, DAILY MAIL (Aug. 23, 2010, 11:10 AM), <http://www.dailymail.co.uk/news/article-1305047/Cairo-museum-officials-admit-50m-Van-Gogh-Poppy-Flowers-missing.html>.

87. *Id.*

88. Bailey, *supra* note 7.

89. *See id.*

90. *See Ghafar, supra* note 69.

91. *See* Int'l Inst. for Conservation of Historic and Artistic Works, *Under Lock and Key? Collection Readiness and Response in Times of Conflict*, IIC, <https://www.iiconservation.org/sites/default/files/dialogues/under-lock-and-key-en.pdf> (last visited Mar. 29, 2014). The situation regarding museum security and disaster preparedness in Egypt is so bad that UNESCO has been forced to respond. In 2011, UNESCO launched a special project to develop "risk preparedness and security management strategies for Egypt's museums as a tool for the efficient protection of cultural heritage." *Project Launch: Museum Disaster Preparedness and Risk Mitigation in the Event of Man-made Disaster or Conflict*, UNESCO, <http://www.unesco.org/new/en/culture/themes/museums/museum-projects/museum-disaster-preparedness-and-risk-mitigation-in-the-event-of-disaster-or-conflict-course-15-30-december-2013/project-launch-museum-disaster-preparedness-and-risk-mitigation-in-the-event-of-man-made-disaster-or-conflict>. (last visited Apr. 2, 2014). This project included training staff and developing emergency plans for Egypt's museums. *Id.*

community to assess past behavior and prevent future loss. Currently, international law provides two separate frameworks which can be applied to the destruction of Egypt's cultural heritage: (1) the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict ("Hague Convention"),⁹² which protects certain types of cultural heritage in times of armed conflict; and (2) human rights treaties that protect the right to participate in cultural life.

A. *The Hague Convention and its Cultural Property Framework*

For over sixty years, the 1954 Hague Convention has served as the world's only multilateral treaty specifically addressing the destruction of cultural property in times of conflict.⁹³ However, while serving as a valuable tool in some situations, the Hague Convention suffers two major flaws: first, it only protects cultural objects that appeal to the common heritage of humanity; and second, it fails to protect cultural objects that are destroyed pursuant to a State Party's internal political turmoil.

First, under the Hague Convention, objects are seen as deserving of protection only if they meet the definition of "cultural property."⁹⁴

92. Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240, [hereinafter Hague Convention] available at <http://unesdoc.unesco.org/images/0008/000824/082464mb.pdf>. Egypt ratified the Hague Convention in 1955 and is thus bound by the treaty's provisions. *Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, Legal Instruments*, UNESCO, <http://www.unesco.org/eri/la/convention.asp?KO=13637&language=E&order=chrono> (last visited Mar.30, 2014). However, even if Egypt were not a party, it would likely still be held to the treaty's standards as they are illustrative of customary international law. Rep. on the Implementation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Two 1954 and 1999 Protocols, UNESCO, ¶¶ 70–71, UNESCO. Doc. CLT-2005/WS/6 (2005).

93. See Victoria A. Birov, *Prize or Plunder?: The Pillage of Works of Art and the International Law of War*, 30 N.Y.U. J. INT'L L. & POL. 201, 218 (1998). By no means is the Hague Convention the only major multilateral treaty to address cultural property protection. However, it is the only one to do so specifically in the context of armed conflicts. Kevin Chamberlain, *The Protection of Cultural Property in Armed Conflict*, 8 ART, ANTIQUITY, & L. 209, 219 (2003). Other cultural property treaties address this issue only tangentially. For example, Article 11 of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property prohibits the export of cultural property under compulsion during the "occupation of a country by a foreign power." See *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* art. 11, Nov. 14, 1970, 823 U.N.T.S. 231. While this protection is certainly important, it is provided only in the context of preventing the movement of cultural property and does not address a country's obligations regarding the destruction of cultural property within its borders. *Id.*

94. Hague Convention, *supra* note 92, pmb1.

However, “cultural property” is defined exclusively in terms of an item’s importance to the world’s human heritage, not the heritage of an individual nation or group of people.⁹⁵ In the treaty’s preamble, the drafters of the Hague Convention recognize that “damage to cultural property . . . means damage to the *cultural heritage of all mankind*.”⁹⁶ Similarly, Article 1(a) specifically defines cultural property as “property of great importance to the *cultural heritage of every people*.”⁹⁷

While the Hague Convention has the capacity to reach most culturally important items, including “archaeological sites, archives, [and] museums,” objects must still appeal to the world heritage as a whole to be considered “cultural property.”⁹⁸ Scholars have found that this analysis necessitates viewing the worth of heritage items through a westernized lens in a manner that is incompatible with notions of cultural diversity and relativism.⁹⁹ Furthermore, the Hague Convention’s failure to assess cultural property from the perspective of an affected nation will leave items of national patrimony unprotected. Unlike cultural property, objects of national patrimony are those which are culturally valuable to the citizens of a particular nation but do not meet the “universal value” criterion adopted in the Hague Convention.¹⁰⁰

But even if an item meets the definition of cultural property, the Hague Convention will not protect that item from destruction that occurs during an internal riot or political revolution. Under the Hague Convention, full protection is extended to cultural property only (1) in an armed conflict between two or more State Parties; or (2) in cases of “partial or total occupation of the territory” of a State Party by another State Party.¹⁰¹ However, the Hague Convention does provide some protection when conflicts are “not of an international character.”¹⁰² Article 19 states that if a conflict occurring in the

95. *Id.* art. 1(a).

96. *Id.* pmb1.

97. *Id.* art. 1(a) (emphasis added).

98. *See id.*; Juliana V. Campagna, *War or Peace: It Is Time for the United States to Ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflicts*, 17 FLA. J. INT’L L. 271, 323 (2005).

99. *See* THE 1972 WORLD HERITAGE CONVENTION: A COMMENTARY 27 (Francesco Francioni & Federico Lenzerini eds., 2008); Lucas Lixinski, *World Heritage and the Heritage of the World*, 2 J. EUR. LEGAL STUD. 371, 374 (2008).

100. Kanchana Wangkeo, *Monumental Challenges: The Lawfulness of Destroying Cultural Heritage During Peacetime*, 28 YALE J. INT’L L. 183, 188 (2003). National patrimony is often protected in a state’s domestic legislation. *Id.* at 196.

101. Hague Convention, *supra* note 92, art. 18.

102. *Id.* art. 19.

territory of a State Party is not of an international character, “each party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property.”¹⁰³

To assess if Article 19 applies in a given situation, it must be determined what exactly constitutes a non-international conflict. Another major international treaty is critical to this analysis as Article 19’s language was adopted from Common Article 3 of the Geneva Conventions of 1949 (“Geneva Conventions”).¹⁰⁴ Thus, an interpretation of the Geneva Conventions’ Common Article 3 can shed light on the meaning of a non-international conflict and the scope of the Hague Convention’s Article 19.¹⁰⁵

The Geneva Conventions’ Commentaries (“Commentaries”), published by the International Committee of the Red Cross, engage in an extensive discussion of what constitutes a conflict “not of an international character” and provide useful guidance as to the parties that must be involved.¹⁰⁶ Pursuant to the Commentaries’ analysis, a non-international conflict exists where:

- (1) A group in revolt against the de jure government possesses an organized military force, an authority responsible for its acts, and the means of ensuring respect for the Convention;
- (2) Insurgents are organized as a military and are in possession of the national territory such that the de jure government is obliged to use regular military forces;
- (3) The de jure government has recognized the insurgents as belligerents or has claimed for itself the rights of a belligerent; or
- (4) Insurgents are exercising de facto control over a territory, have an organization with the characteristics of a State, and are prepared to observe the provisions of the Convention.¹⁰⁷

103. *Id.* art. 19(1).

104. KEVIN CHAMBERLAIN, WAR AND CULTURAL HERITAGE 70 (2004) [hereinafter WAR AND CULTURAL HERITAGE]. Common Article 3 appears in all four Geneva Conventions and establishes the provisions that will apply in a “conflict not of an international character occurring in the territory of one of the High Contracting Parties.” Fionnuala Ni Aolain, *Hamdan and Common Article 3: Did the Supreme Court Get It Right?*, 91 MINN. L. REV. 1523, 1526 (2007).

105. See WAR AND CULTURAL HERITAGE, *supra* note 104, at 70.

106. See generally INT’L COMM. OF THE RED CROSS, COMMENTARY: III GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS IN WAR 27 (Jean S. Pictet ed., 1960), available at http://www.loc.gov/tr/frd/Military_Law/pdf/GC_1949-III.pdf [hereinafter ICRC COMMENTARY]. The Commentaries are widely considered to be the most authoritative interpretation of the Geneva Conventions. Geoffrey S. Corn, *Hamdan, Lebanon, and the Regulation of Hostilities: The Need to Recognize A Hybrid Category of Armed Conflict*, 40 VAND. J. TRANS-NAT’L L. 295, 302 (2007).

107. ICRC COMMENTARY, *supra* note 106, at 36-37.

While these categories include conflicts with insurgents operating in a military or paramilitary capacity, they purposefully exclude conflicts that are akin to riots or political revolts.¹⁰⁸ Such an observation is further confirmed in the Second Protocol to the Hague Convention (“Second Protocol”), which was designed to clarify State Parties’ obligations under the treaty.¹⁰⁹ With regards to conflicts not of an international character, Article 22 of the Second Protocol specifically states that cultural property obligations do not apply to “situations of internal disturbances and tensions, such as riots . . . and other acts of a similar nature.”¹¹⁰ Thus, while civil wars involving organized military groups occupying national territory will result in cultural property protection, political strife and riots iconic of the Arab Spring will not trigger the obligations of the Hague Convention.

B. The Human Right to Culture and its Application to Cultural Heritage Protection

Because the Hague Convention arose as the direct result of the international community’s experience during World War II,¹¹¹ the treaty is written from the perspective of preventing cultural property destruction during world war scenarios in which nations are engaging one another in military action.¹¹² However, modern events, such as the Egyptian Revolution, have proven that cultural property destruction occurs in a multitude of violent situations, some of which fail to rise to the level of a non-international conflict under the Hague Convention’s Article 19. In the absence of another Hague Protocol expanding State Parties’ obligations, the best protection for cultural property in these situations may instead be provided through the “right to culture” encapsulated in human rights documents.

1. The Universal Declaration of Human Rights

The 1948 Universal Declaration of Human Rights (“Universal Declaration”)¹¹³ was the first United Nations document recognizing

108. Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict art. 22, Mar. 26, 1999, 2253 U.N.T.S. 172 [hereinafter Second Protocol].

109. *Id.* pmb., art. 27.

110. *Id.* art. 22.

111. Blake, *supra* note 10, at 61.

112. *See id.*

113. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., 1st plen. mtg. U.N. Doc. A/810 (Dec. 10, 1948), [hereinafter UDHR]. The UDHR is technically a statement of the United Nations’ human right objectives and is not considered binding international law. Tai-Heng Cheng, *The Universal Declaration of Human Rights at Sixty: Is It Still Right for the United States?*, 41 CORNELL INT’L L.J. 251, 270 (2008). However, the preparatory docu-

cultural rights as an integral part of human rights.¹¹⁴ As such, two articles in the Universal Declaration protect the human right to culture and cultural development. First, Article 22 recognizes that nations must make an effort, consistent with their resources, to ensure that each individual is entitled to the “cultural rights indispensable for his dignity and free development of his personality.”¹¹⁵ Additionally, in Article 27(1), the Universal Declaration provides that “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”¹¹⁶

While the Universal Declaration clearly safeguards some element of a right to culture, it is less facially clear that cultural heritage protection is included within this right. However, other international documents interpreting the scope of the Universal Declaration have found that cultural heritage protection is included. For example, the 1976 UNESCO Recommendation on Participation in Cultural Life¹¹⁷ (“Cultural Life Recommendation”) interprets Article 27(1) of the Universal Declaration to extend protection to cultural heritage objects because “access to culture and participation in cultural life are two complementary aspects of the same thing.”¹¹⁸ Thus, the right to cultural life requires access to, and protection of, the “heritage of the past, . . . particularly ancient monuments and traditions which may contribute to the essential equilibrium of societies.”¹¹⁹

The UNESCO Universal Declaration on Cultural Diversity (“Cultural Diversity Declaration”)¹²⁰ also provides insight into the scope of Article 27 of the Universal Declaration. Article 5 of the Cul-

ments and preamble indicate that at least some states intended for the document to evolve into a set of “soft norms” that would ensure compliance with human rights goals. *Id.* Furthermore, the provisions of the UDHR may be valuable in applying diplomatic pressure on states that are failing to adequately recognize human rights. See Tai-Heng Cheng, *Power, Norms, and International Intellectual Property Law*, 28 MICH. J. INT’L L. 109, 121–23 (2006).

114. Kimberly L. Alderman, *The Human Right to Cultural Property*, 20 MICH. ST. INT’L L. REV. 69, 73 (2011).

115. UDHR, *supra* note 113, art. 22.

116. *Id.* art. 27.

117. Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to it, UNESCO, 19th Sess. (Nov. 26, 1976) [hereinafter UNESCO Cultural Life Recommendation]. Although not legally binding, the UNESCO Cultural Life Recommendation encourages states to come into compliance with the document’s provisions as part of their general human rights obligations. See *id.* pmb1. To further this end, it is recommended that states submit reports to UNESCO concerning the steps they have taken to ensure such compliance. *Id.*

118. *Id.* pmb1.

119. *Id.* art. 4(q)(i).

120. See Universal Declaration of Cultural Diversity, UNESCO Doc. 31C/RES/25 (Nov. 2, 2001). Like the UNESCO Recommendation on Cultural Life, the Universal Declaration on

tural Diversity Declaration establishes that, as a component of the right to cultural life enshrined in the Universal Declaration, “heritage in all its forms must be preserved, enhanced and handed on to future generations”¹²¹ This interpretation has been further corroborated by the Council of Europe.¹²² In 2005, the Council of Europe established a pan-European agreement on the importance of cultural heritage by adopting the Framework Convention on the Value of Cultural Heritage for Society (“Framework Convention”).¹²³ In Article 1, the Framework Convention recognizes that “rights relating to cultural heritage are inherent in the right to participate in cultural life, as defined in the Universal Declaration of Human Rights.”¹²⁴ This statement thus confirms the interpretation of the Universal Declaration promulgated by UNESCO in the Cultural Life Recommendation and Cultural Diversity Declaration—that a human right to culture necessarily implicates protection of cultural heritage objects.¹²⁵

2. The International Covenant on Economic, Social, and Cultural Rights

In addition to being included in the Universal Declaration, a human right to culture has been enshrined in several other major multilateral treaty agreements.¹²⁶ Of these, the International Covenant on Economic, Social, and Cultural Rights¹²⁷ (“ICESCR”) is recognized as the most prominent treaty to exclusively protect cultural

Cultural Diversity is aspirational and not legally binding. See Laurence R. Helfer, *Toward A Human Rights Framework for Intellectual Property*, 40 U.C. DAVIS L. REV. 971, 1002 (2007).

121. Universal Declaration on Cultural Diversity, *supra* note 120, art. 7.

122. Currently, forty-seven European nations are members of the Council of Europe. The Council is responsible for promoting cooperation in Europe regarding legal standards, human rights, and the rule of law. *What We Do*, COUNCIL OF EUR., <http://www.coe.int/aboutCoe/index.asp?page=nosObjectifs&l=en> (last visited Apr. 2, 2014).

123. Council of Europe Framework Convention on the Value of Cultural Heritage for Society art. 8, Oct. 27, 2005, C.E.T.S. No. 199 [hereinafter Europe Framework Convention].

124. *Id.* art. 1.

125. Universal Declaration on Cultural Diversity, *supra* note 120, pmbl.; UNESCO Cultural Life Recommendation, *supra* note 117, pmbl.

126. See Convention on the Rights of the Child, 1577 U.N.T.S. 3, art. 31 (Nov. 20, 1989) (providing children the right to “participate fully in cultural and artistic life”); Convention on the Elimination of All Forms of Discrimination Against Women, 1249 U.N.T.S. 13, art. 13 (Mar. 1, 1980) (guaranteeing women the right to participate in cultural life); International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, art. 27 (Dec. 19, 1966) (guaranteeing ethnic and religious minorities the right to “enjoy their own culture”) [hereinafter ICCPR].

127. International Covenant on Economic, Social, and Cultural Rights, 993 U.N.T.S. 3 (Dec. 19, 1966) [hereinafter ICESCR]. Egypt has been a state party to the ICESCR since 1982 and is therefore bound by the treaty’s provisions. *International Covenant on Economic, Social, and Cultural Rights*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty (last visited Mar. 27, 2014).

rights.¹²⁸ Pursuant to the ICESCR's goal of promoting a global "infrastructure of culture,"¹²⁹ Article 15(1)(a) requires that State Parties recognize the right of individuals to "take part in cultural life."¹³⁰

The Committee on Economic, Social, and Cultural Rights ("CESCR"), the body of independent experts charged with overseeing the implementation of the ICESCR,¹³¹ has recognized that the right to cultural life encompassed in Article 15(1)(a) includes aspects of cultural heritage protection. First, in the reports that State Parties must submit for review to the CESCR, nations are required to report on the steps they have taken to ensure the "enjoyment of the *cultural heritage* of national ethnic groups and minorities"¹³² Additionally, in its General Comment Twenty-One, the CESCR noted that Article 15(1)(a) requires states to both respect *and* protect cultural heritage in all its forms.¹³³ This obligation necessitates that states enact legislation to ensure that cultural heritage is preserved and restored.¹³⁴ Further, states must ensure the safety of facilities such as "museums, libraries . . . monuments and heritage sites"¹³⁵ and make certain that cultural heritage items are not destroyed, vandalized, or stolen.¹³⁶

Together, both the ICESCR and the Universal Declaration provide ground for finding that cultural heritage can be protected as an aspect of human rights. By protecting a right to "cultural life," these documents frame the importance of cultural heritage objects in terms of cultural identity and realization. Such an approach has been lauded by the Fribourg Group, a working group of human rights observers and analysts from UNESCO and the Observatory of Diversity and

128. Katja Ziegler, *Cultural Heritage and Human Rights* 10 (Univ. of Oxford Faculty of Law Legal Studies Research Paper Series, Working Paper No. 26, 2007).

129. See ICESCR, *supra* note 127, pmb1.

130. *Id.* art. 15(1)(a).

131. Kerry Boyne, *U.N. Women: Jumping the Hurdles to Overcoming Gender Inequality, or Falling Short of Expectations?*, 17 *CARDOZO J.L. & GENDER* 683, 696 (2011).

132. Comm. on Econ., Soc. & Cultural Rights, *Revised General Guidelines Regarding the Form and Contents of Reports to be Submitted by States Parties Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, Art. 15, U.N. Doc. E/C.12/1991/1, annex at 15 (June 17, 1991).

133. Comm. on Econ., Social, & Cultural Rights, *General Comment Number Twenty-One: Right of Everyone to Take Part in Cultural Life* ¶ 50, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009) [hereinafter *General Comment No. 21*].

134. *Id.* ¶¶ 50(a), 54(a), 54(b).

135. *Id.* ¶ 70.

136. Roger O'Keefe, Note, *The "Right to Take Part in Cultural Life" Under Article 15 of the ICESCR*, 47 *INT'L & COMP. L.Q.* 904, 909 (1998).

Cultural Rights.¹³⁷ In 2007, the Fribourg Group released the Fribourg Declaration to explain the cultural rights already recognized by the Universal Declaration, International Covenant on Civil and Political Rights, ICESCR, and Cultural Diversity Declaration.¹³⁸ In Article 3, entitled “Identity and Cultural Heritage,” the Fribourg Group noted that these existing human rights documents recognized a right to access cultural heritage items constituting the expression of different cultures as “resources for both present and future generations.”¹³⁹ Statements such as these have helped to refine the international community’s perception of cultural rights and recognized the importance of cultural heritage protection in a human rights context.¹⁴⁰

IV. THE EGYPTIAN REVOLUTION AND THE SUPERIORITY OF A RIGHT TO CULTURE APPROACH TO CULTURAL HERITAGE PROTECTION

A. *Applying the Hague Convention*

The destruction of Egypt’s cultural heritage during the Egyptian Revolution serves as a useful case study in analyzing the distinction between the Hague Convention’s cultural property framework and the right to culture recognized in the Universal Declaration and ICESCR. Such an analysis illustrates major gaps in the Hague Convention’s protective mechanisms and bespeaks of the need to view cultural heritage violations through a human rights lens. First, the Hague Convention’s limited definition of cultural property may fail to reach the entire spectrum of cultural heritage destruction. The Hague Convention only extends protection to items that are judged through a “universal value” criterion to be worthy of safeguard.¹⁴¹ Thus, if items do not appeal to the world heritage as a whole, they do not receive Hague Convention protection.¹⁴²

Many of the items destroyed in Egypt would, however, appeal to the world heritage as a whole and satisfy the traditional universal

137. FRIBOURG DECLARATION ON CULTURAL RIGHTS art. 5 (Fribourg Grp. 2007).

138. *Id.* art 3.

139. *Id.*

140. See Janusz Symonides, *Cultural Rights: A Neglected Category of Human Rights*, 50 INT’L SOC. SCI. J. 559, 559 (1998).

141. See Mehmet Komurcu, *Cultural Heritage Endangered by Large Dams and Its Protection Under International Law*, 20 WIS. INT’L L.J. 233, 258 (2002) (noting that the Hague Convention “views cultural property as the cultural heritage of all humankind and establishes a system for the universal protection of cultural property rather than leaving it to the individual nation states.”).

142. *See id.*

value criterion. Ancient Egypt is one of the most studied societies in the world, and the artifacts associated with it have mass appeal and popularity. In 1976, during “The Treasures of Tutankhamun” museum tour, more than 1.6 million visitors flocked to the British Museum to catch a glimpse of the pharaoh’s death mask.¹⁴³ The exhibit stills holds the record for the most popular exhibit in the museum’s history and is representative of the excitement and awe with which most people regard Egypt’s cultural treasures.¹⁴⁴ Additionally, ancient Egypt represents a valuable part of human history because of its influence on modern medicine, mathematics, religion, and architecture.¹⁴⁵ Therefore, because of their world heritage appeal, ancient Egyptian artifacts, like those in the Egyptian Museum, would likely be classified as cultural property under the Hague Convention.

However, it is less clear that the archives of the Egyptian Scientific Institute would qualify for the same treatment as ancient Egyptian artifacts. These archives offer little in the way of mass international appeal and desirability, especially because duplicates of the most important manuscripts exist in the collections of other nations.¹⁴⁶ It is also unclear that 19th century Egyptian manuscripts would be considered a critical part of humanity’s common heritage. Thus, if these archives only constitute national patrimony, the Hague Convention will not protect them, even though Egyptian citizens were willing to risk death or injury to save the collection.¹⁴⁷

In addition to providing inadequate protection for objects of national patrimony, the Hague Convention may not even apply to the types of Egyptian heritage that *do* meet the treaty’s definition of cultural property. Because of its focus on armed conflicts involving multiple State Parties, the Hague Convention does not address situations where cultural property is destroyed in an internal riot.¹⁴⁸ While the treaty does make mention of non-international conflicts, an assessment of this language using the Geneva Convention’s Common Article 3 reveals that such events must still involve organized insurgents

143. *Treasures of Tutankhamun*, THE BRITISH MUSEUM, http://www.britishmuseum.org/the_museum/museum_in_london/london_exhibition_archive/archive_tutankhamun.aspx (last visited Mar. 7, 2014).

144. *See id.*

145. *See* Joyce Tyldesley, *Ancient Egypt and the Modern World*, BBC HIST., http://www.bbc.co.uk/history/ancient/egyptians/egypt_importance_01.shtml (last visited Mar. 7, 2014).

146. *See* Didier Rykner, *Eyewitness Reports from Cairo After the Fire at the Institut d’Egypte*, ART TRIB. (Jan. 2, 2012), <http://www.thearttribune.com/Eyewitness-Reports-from-Cairo.html> (stating that eleven other copies of the *Description d’Egypte* exist worldwide).

147. Ghafar, *supra* note 69.

148. *See supra* Part II.A.

acting in a military or paramilitary capacity.¹⁴⁹ The Egyptian Revolution fails to meet this qualification. At no point in the eighteen-day uprising were pro-democracy protestors operating at a paramilitary level or occupying national territory against the will of the de jure government.¹⁵⁰ Protestors were instead focused on using mass demonstrations to catalyze political change, and at no time did protestors take up arms in a centrally organized attempt to overthrow Mubarak's government.¹⁵¹ Thus, because the Second Protocol to the Hague Convention makes clear that cultural property protection does not apply during such "riots," the treaty leaves cultural property unprotected during political uprisings that do not amount to a civil war.¹⁵²

Finally, the Hague Convention has proven impotent in cases where governments intentionally destroy the cultural heritage of their own nation.¹⁵³ This failure was brought into particularly harsh focus with the destruction of Afghanistan's Bamiyan Buddhas.¹⁵⁴ In March 2001, Taliban forces intentionally destroyed two giant Buddha statues that had been carved into the Bamiyan Valley cliffs in the 3rd and 5th centuries.¹⁵⁵ These actions occurred during a time in which Afghanistan was involved in civil war that likely would have qualified as a non-international conflict under the Hague Convention.¹⁵⁶ However, the destruction of the Buddhas did not occur as a result of hostilities; instead, it was intentionally ordered by an insurgent group operating as the de facto government in the region.¹⁵⁷ Therefore, because the

149. See WAR AND CULTURAL HERITAGE, *supra* note 104, at 70; ICRC COMMENTARY, *supra* note 106, at 32.

150. See *Timeline: Egypt's Revolution*, *supra* note 33.

151. See Xiaolin Zhuo et al., *Egypt: The First Internet Revolt?*, 27 PEACE MAG., Jul.-Sep. 2011, at 6.

152. Second Protocol, *supra* note 108, art. 22(2).

153. See, e.g., Victoria A. Biróv, *Prize or Plunder?: The Pillage of Works of Art and the International Law of War*, 30 N.Y.U. J. INT'L L. & POL. 201, 236 (1997-1998) (discussing the inapplicability of the Hague Convention when the government of Yugoslavia intentionally destroyed the medieval city of Dubrovnik).

154. See Francesco Francioni & Federico Lenzerini, *The Destruction of the Buddhas of Bamiyan and International Law*, 14 EUR. J. INT'L L. 619, 632 (2003).

155. Corrine Brenner, Note, *Cultural Property Law: Reflecting on the Bamiyan Buddhas' Destruction*, 29 SUFFOLK TRANSNAT'L L. REV. 237, 237, 251 (2006).

156. *Id.* at 258.

157. *Id.* Even though the Taliban were not a State Party, they still would have been obligated to recognize some level of cultural property protection under the Hague Convention. According to Article 19(1), "each party to [a non-international] conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property." Hague Convention, *supra* note 92, art. 19(1) (emphasis added). The use of the word "party" in this article makes clear that cultural property protection applies even if all actors are not State Parties to the treaty. Zoe Howe, Note, *Can the 1954 Hague Convention Apply to Non-State Actors?: A Study of Iraq and Libya*, 47 TEX. INT'L L.J. 403, 422 (2012).

destruction did not occur in an exchange of hostilities between actors in an armed conflict, the Taliban's actions in destroying the Buddhas were non-cognizable under the Hague Convention.¹⁵⁸

The case of the Bamiyan Buddhas makes clear that if the Egyptian government intentionally destroyed antiquities during the Revolution, such actions would not be Hague Convention violations. The ultimate aim of the Hague Convention is to ensure that governments do not use cultural property destruction as leverage in armed conflicts with other states or organized actors.¹⁵⁹ The treaty was not designed to reach situations where government agents destroy cultural property in their own nation pursuant to some political or religious aim.¹⁶⁰ Unfortunately, the latter situation may be what was at work during the Egyptian Revolution. At least some evidence is available indicating that the looting of the Egyptian Museum, and perhaps the burning of the Egyptian Scientific Institute, were conducted by the Egyptian government in order to discredit pro-democracy protestors and create an image of civil instability.¹⁶¹ If this situation is in fact the truth, the Hague Convention is not implicated because the cultural heritage destruction at issue involved a State government acting within its own territory. Such a limitation is critical, as the action of a State's government against cultural resources can be just as destructive as the actions of an enemy state in times of war.

B. The Human Rights Approach Applied

As threats to cultural heritage expand beyond those present in the state-on-state warfare envisioned by the Hague Convention, a human rights approach can adequately rise to fill gaps in the cultural property framework. The desirability of a human rights approach is especially apparent in situations with the characteristics of the Egyptian Revolution: a (1) widespread political revolution; (2) that does not rise to the level of a non-international conflict under the Hague Convention; and (3) in which objects of both universal value and national patrimony are targeted for destruction.

First, thinking about cultural heritage destruction in the context of human rights leads to the protection of a wider range of cultural objects than recognized under the Hague Convention. Specifically, the CESCR's General Comment Twenty-One notes that Article

158. Brenner, *supra* note 155, at 258.

159. Wangkeo, *supra* note 100, at 197.

160. See Brenner, *supra* note 155, at 258.

161. Mayton, *supra* note 82.

15(a)(1) of the ICESCR requires the protection of “cultural heritage in all of its forms.”¹⁶² This phrasing contains no requirement that the objects relate to the universal heritage of all mankind. Further, the use of the term “cultural heritage” is not insignificant, as this term has the potential to include a wide variety of objects, including national patrimony, that would be ineligible for protection under the Hague Convention. In the abstract, cultural heritage has been defined as tangible or intangible creations which, by virtue of use or history, become an important expression of cultural life.¹⁶³ This definition can be expanded to reach almost any item which has contributed to a modern society’s cultural development.

Additionally, cultural heritage relates to a collective group’s shared cultural identity, and is thus focused on a group’s self-determination and cultural realization. The very term “heritage” has come to suggest a subjective focus. For example, the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage notes that cultural heritage is determined by the cultural value assigned to it by a community in establishing a group identity.¹⁶⁴ This notion—that cultural heritage is a subjective, pluralistic concept—has also been recognized by United Nations Special Rapporteur Erica Daes, who wrote in her *Protection of the Heritage of Indigenous Peoples* that the cultural heritage of indigenous peoples should be based on principles of self-determination.¹⁶⁵

If the human right to culture protects a group’s cultural heritage, then that group has the ability to define its collective heritage subjectively, rather than relying on an objective concept such as universal value. Accordingly, items of national patrimony are encompassed by the term cultural heritage—national patrimony is, after all, items sub-

162. *General Comment No. 21*, *supra* note 133, ¶ 50(a).

163. Sarah Harding, *Value, Obligation and Cultural Heritage*, 31 *ARIZ. ST. L.J.* 291, 303 (1999). There are many definitions of the term “cultural heritage,” and no clear winner when considering which is most appropriate. This Article chooses to utilize a broad definition of the term, especially since the ICESCR does not limit the term through a universal value criterion. Another international treaty does define cultural heritage in terms of universal value; specifically, the Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, T.I.A.S. No. 8226, 27 *U.N.T.S.* 37. However, that convention also limits its definition of cultural heritage to monuments, sites, and groups of buildings. *Id.* Most other definitions of cultural heritage are far more liberal and extend protection to a variety of tangible cultural items and intangible cultural expressions. *See, e.g.*, Erica-Irene Daes, *Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples*, U.N. Sub-Commission on Prevention of Discrimination of Minorities, U.N. Doc. E/CN.4/Sub.2/1993/28 (1993).

164. Convention for the Safeguarding of the Intangible Cultural Heritage, Oct. 17, 2003, 2368 *U.N.T.S.* 35, available at <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>.

165. Daes, *supra* note 163.

jectively viewed by a national community as relevant to its group identity and cultural development.¹⁶⁶ The Hague Convention, and its universal value criterion, do not have the luxury of this self-deterministic approach and are limited by westernized concepts of what is culturally relevant to the global community. This is especially clear when using the Egyptian Revolution as a case study. Both the Hague Convention's universal value criterion and the human right to culture would encompass objects contained in the Egyptian Museum, as these objects are considered important to both human heritage as a whole and Egypt's own cultural development and realization. However, the historic manuscripts contained in the Egyptian Scientific Institute may fall through the cracks in the Hague Convention if they do not meet the universal value criterion. A right to culture approach would not suffer this oversight and would provide protection to cultural resources like those contained in the Egyptian Scientific Institute, which are subjectively valuable to Egyptian society because of their role in the nation's cultural and scientific development. This makes a human rights approach a superior mechanism for protecting cultural heritage.

Additionally, a human right to culture embodied in the ICESCR and Universal Declaration is not subject to the Hague Convention's requirement that conflicts reach a certain magnitude before cultural heritage is protected. While the Hague Convention's Second Protocol explicitly excludes cultural property protection during riots or internal turmoil,¹⁶⁷ the ICESCR and Universal Declaration apply regardless of whether a State Party is embroiled in internal or external conflict. Unlike other treaties that address human rights, the Universal Declaration and ICESCR do not contain derogation clauses that permit a State Party to suspend treaty obligations in times of public emergency.¹⁶⁸ Therefore, State Parties are obligated to recognize rights under the ICESCR and Universal Declaration in times of conflict, peace, and internal revolution,¹⁶⁹ thus allowing right to culture provisions, and attendant cultural heritage protection, to extend to situations beyond the limitations contained in the Hague Convention.

166. See ANASTASIA STRATI, *THE PROTECTION OF THE UNDERWATER CULTURAL HERITAGE: AN EMERGING OBJECTIVE ON THE CONTEMPORARY LAW OF THE SEA* 9 n.17 (1995) (noting that General Assembly Resolutions have recognized that the term "cultural heritage" encompasses both the common heritage of mankind and national patrimony).

167. Second Protocol, *supra* note 108, art. 22(2).

168. ICCPR, *supra* note 126, art. 4 (allowing states to derogate their treaty obligations in times of "public emergency which threaten[] the life of the nation"). However, no such exception is provided in the ICESCR or the Universal Declaration. See generally ICESCR, *supra* note 127; UDHR, *supra* note 113.

169. See ICCPR, *supra* note 126. pmb1.

Finally, cultural heritage protection through a human right to culture has the capacity to reach both negligence in cultural heritage protection and actual cultural heritage destruction by an acting government. The ICESCR and Universal Declaration both seek to address the role of a State's government in the realization of cultural rights, including the protection of cultural heritage, within its own territory.¹⁷⁰ As such, the UNESCO Cultural Life Recommendation has stated that the right to cultural life embodied in the Universal Declaration requires a State to take steps to enhance and protect antiquities and cultural heritage.¹⁷¹ Similarly, the CESCR, likely in considering the obligations of a State under Article 15(2) of the ICESCR, has stated that State Parties must preserve, restore, and protect cultural heritage in times of war and peace.¹⁷² These interpretations make good sense—the human right to cultural heritage cannot be realized without a government taking steps to preserve heritage and prevent its destruction.

Turning to the situation in Egypt, it is easy to see that the State failed to meet its cultural heritage obligations during the 2011 Revolution. First, if the reports linking Egyptian state actors to the looting of the Egyptian Museum are true, such actions are wholly inconsistent with Egypt's obligations to conserve cultural resources in order to promote the human right to culture. The ICESCR and Universal Declaration place an affirmative duty on a State like Egypt to protect cultural heritage, and this affirmative obligation could not be achieved if the Egyptian government was not prevented from destroying cultural resources itself.

Additionally, Egypt failed to protect a human right to culture by failing to have disaster plans in place to prevent cultural heritage loss in times of turmoil.¹⁷³ A simple proactive evaluation could have iden-

170. In the preamble to the Universal Declaration, the General Assembly requires States to "promote respect for these rights and freedoms . . . among the people of territories under their jurisdiction." UDHR, *supra* note 113, pmbl; see also *Questions and Answers About the Universal Declaration of Human Rights*, U.N. ASSOC. IN CANADA, <http://web.archive.org/web/20130704085612/http://www.unac.org/rights/question.html> (accessed by searching U.N. ASSOC. IN CANADA in the Internet Archive index) (stating that states may not violate the rights contained in the Declaration). Additionally, the ICESCR requires that State Parties take steps to realize the full rights available under the treaty. See, e.g., ICESCR, *supra* note 127, art. 15.

171. UNESCO Cultural Life Recommendation, *supra* note 117, art. 27.

172. *General Comment No. 21*, *supra* note 133, ¶ 50.

173. Bailey, *supra* note 7. It is worth noting that Egypt's failure to prepare a disaster plan for its antiquities also runs afoul of the Hague Convention. Specifically, Article 3 of the Hague Convention requires that State Parties "undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict." Hague Convention, *supra* note 92, art. 3. The Second Protocol further elabo-

tified likely targets for looters and ensured mechanisms to get cultural heritage items to safety. In this vein, the International Council of Museums (“ICOM”), in conjunction with UNESCO, mandates as part of its professional standards that museums conduct a disaster preparedness assessment to “obtain an evaluation of building and installation vulnerability to emergencies stemming from social unrest” and correct any deficiencies identified.¹⁷⁴ Meeting this professional standard is not only good practice, but would also likely satisfy a state’s duties to protect cultural heritage. Simply put, utilizing internationally recognized standards for cultural resource stewardship should satisfy human rights obligations to conserve cultural resources. If such simple steps had been taken by the Egyptian government before January 2011, many cultural resources now lost might have been preserved for the enjoyment of future generations.

V. CONCLUSION

Almost one month after the looting of the Egyptian Museum in Cairo, Egyptian citizens noticed peace was returning to the museum complex. On his Twitter account, Sharif Kouddous, a journalist and senior producer from Democracy Now!, noted that it was “[s]trange to see traffic flow smoothly by the museum, a former battle zone.”¹⁷⁵ In fact, the museum, while cautiously reopening to tourists, remained under heavy guard by military forces to ensure its continued safety.¹⁷⁶ Sadly, elsewhere in Cairo and throughout Egypt, other artifacts and cultural resources remained under attack as looters and thieves attempted to profit from the political instability.¹⁷⁷

To date, the loss of cultural heritage at sites in Egypt has been astronomical. For example, only 15% of the archives formerly housed in the Egyptian Scientific Institute have survived, and volunteers are

rates that such measures should include “reparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property.” Second Protocol, *supra* note 108, art. 5.

174. *Guidelines for Disaster Preparedness in Museums*, ICOM 4, http://icom.museum/fileadmin/user_upload/pdf/Guidelines/guidelinesdisasters_eng.pdf (last visited Mar. 7, 2014).

175. Sharif Kouddous, TWITTER, (Feb. 14, 2011, 4:52 PM), <http://twitter.com/#!/sharifkouddous>.

176. Christopher Torchia, *Egyptian Tourism Struggling to Survive*, CHARLESTON GAZETTE & DAILY MAIL, Feb. 21, 2011, available at [https://a.next.westlaw.com/Document/I19e2b1e03ed811e0b31b865470bd9f49/View/FullText.html?transitionType=uniqueDocItem&contextData=\(Sc.Default\)](https://a.next.westlaw.com/Document/I19e2b1e03ed811e0b31b865470bd9f49/View/FullText.html?transitionType=uniqueDocItem&contextData=(Sc.Default)).

177. *Id.*

struggling to gather the necessary equipment to preserve them.¹⁷⁸ In addition, archaeological sites continue to be targeted and items are now reaching the black market, thus preventing researchers from using the context of such items to draw conclusions about the past.¹⁷⁹ Such losses have caused ICOM to publish an Emergency Red List detailing the cultural objects in Egypt that are most at risk for additional destruction.¹⁸⁰

Since the devastation in Egypt may be non-cognizable under the Hague Convention, other mechanisms must be found to protect Egypt's cultural heritage during this time of instability. To fill this gap, the world should turn to existing human rights obligations enshrined in the Universal Declaration and ICESCR to protect objects of cultural heritage. These documents have the requisite flexibility to reach a wide range of cultural items in a myriad of situations, thus increasing cultural heritage protection beyond the scope of the Hague Convention.

In addition, protecting cultural heritage as a human right may be a vehicle to ensure more protection for human rights in general. Governments that are inclined to destroy cultural resources are more likely to show such disrespect for other aspects of human identity.¹⁸¹ Requiring cultural heritage protection forces governments to recognize the value of the individual in both his cultural and natural life, thereby promoting greater respect for the entire spectrum of human

178. Nuria Teson, *Un Incendio Durante Los Disturbios de el Cairo Destruye el Original de la "Descripcion de Egipto" Encaragada por Napoleon* [A Fire During the Riots in Cairo Destroys the Original 'Description of Egypt' Commissioned by Napoleon], EL PAIS [THE COUNTRY] (Dec. 18, 2011, 9:59 PM), http://cultura.elpais.com/cultura/2011/12/18/actualidad/1324162801_850215.html.

179. See Derek R. Kelly, *Illegal Tender: Antiquities Protection and U.S. Import Restrictions on Cypriot Coinage*, 34 BROOK. J. INT'L L. 491, 498 (2009); *The UNESCO Mission to Egypt and Updates on Abusir, Saqqara, Dahshur and Lisht*, ECHO, <http://www.e-c-h-o.org/News/unesc.commission.htm> (last visited Apr. 30, 2014). For archaeologists, the value of a site is based primarily on the ability to use the original context of items to draw meaningful conclusions about the past. Because the very process of conducting an archaeological dig removes this context, scientists keep "incredibly detailed records of excavations, including written and photographic documentation, not to mention maps, plans, GIS databases, etc." Email from Dr. Elaine Sullivan, *supra* note 55. Looters are unconcerned with keeping such careful records, and their careless digging destroys the scientific potential of a site. *Id.* Once items are removed and sold on the black market, the scientific damage is irreversible and permanent. *Id.*

180. Press Release, Int'l Council of Museums, ICOM Publishes a New Emergency Red List: The Emergency Red List of Egyptian Cultural Objects at Risk (Feb. 6, 2012), available at <http://icom.museum/press-releases/press-release/article/icom-publishes-a-new-emergency-red-list-the-emergency-red-list-of-egyptian-cultural-objects-at-risk-1.html>.

181. Ziegler, *supra* note 128, at 1.

rights.¹⁸² This recognition is especially important for governments in transition, as respect for cultural heritage is a “driver of future development and cohesion. Destroying or neglecting this asset today diminishes the chances of building a strong democratic society tomorrow.”¹⁸³

182. *See id.*

183. *Egypt: UNESCO Chief Voices Concern Over Fire Damage at Historic Research Centre*, U.N. NEWS CENTRE, <http://www.un.org/apps/news/story.asp?NewsID=40803&Cr=egypt&Cr1=> (quoting Irina Bokova, the Director-General of UNESCO) (last visited Mar. 9, 2014).