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The Cultural and Intellectual Property Interests of the Indigenous Peoples of Turkey and Iraq

Hannibal Travis

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THE CULTURAL AND INTELLECTUAL PROPERTY INTERESTS OF THE INDIGENOUS PEOPLES OF TURKEY AND IRAQ

*Hannibal Travis**

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* Associate Professor of Law, Florida International University College of Law. The author thanks Professor Megan Carpenter and the editors of the *Texas Wesleyan Law Review*, including Zach Burt and James Kiser, for organizing the 2008 symposium on “Indigenous Peoples and Intellectual Property” at which the author presented this Article as an invited contribution. He also thanks Professors Elizabeth Townsend Gard and Glynn Lunney of Tulane Law School for organizing the Sixth Annual Intellectual Property Works in Progress Colloquium, at which the author initially presented a summary of this Article. The author additionally acknowledges the assistance provided by Kimberly Collier and Sharon K. Lowry of the *Texas Wesleyan Law Review*. Copyright Hannibal Travis 2008.

The global enclosure movement in individualistic intellectual property aims at total control over the creations of individuals and corporations, a level of exploitation that brooks few exceptions for human health, freedom of speech, or economic democracy.¹ At the same time, but less remarked upon within the intellectual property field, globalization has deprived countless individuals of not only their physical but also their cultural and intellectual property.² From Burma to Sudan and Guatemala to Mesopotamia, indigenous peoples are seeing their lands, cultural works, and resources stolen or destroyed by local elites acting in concert with multinational corporations and their political allies. In many of these same countries and in countless other hotspots ranging from Tibet and East Timor to Turkey and Cyprus to the Congo, indigenous cultures and languages have been stamped out

1. Peter K. Yu, *The International Enclosure Movement*, 82 IND. L.J. 827 (2007).

2. This study follows international and foreign law in considering cultural and intellectual property as including indigenous peoples' archaeological and historic sites, artifacts, specimens of visual art, and literary works. See Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, art. 11, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), available at <http://www.un.org/esa/socdev/unpfii/en/declaration.html>; U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, Sub-Comm'n on the Promotion and Prot. of Human Rights, Working Group on Indigenous Populations, *Review of the Draft Principles and Guidelines on the Heritage of Indigenous Peoples*, ¶¶ 6, 13, 17–18, U.N. Doc. E/CN.4/Sub.2/AC.4/2005/3, (June 21, 2005) (prepared by Yozo Yokota) (defining as potential intellectual property: “cultural heritage” including cultural materials generated, preserved, and transmitted across generations, that are “[d]istinctively associated with an indigenous people who preserves and transmits them between generations,” and that are “[i]ntegral to the cultural identity of the indigenous people”); The Indigenous Peoples Rights Act of 1997, Rep. Act No. 8371 § 34 (1997) (Phil.) (recognizing indigenous peoples’ “cultural and intellectual rights” over their “cultural manifestations, including human and other genetic resources, . . . traditional medicines . . . , vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, . . . oral traditions, literature, designs, and visual and performing arts”). Although their antiquity makes many of these items unprotectable under most U.S. and E.U.-member intellectual property statutes, scholars are increasingly realizing that this exclusion is an unjustifiable discriminatory practice against indigenous peoples, which collectively developed much of their cultural and intellectual property prior to the rise of modern individualistic copyright and patent law. See Peter-Tobias Stoll & Anja von Hahn, *Indigenous Peoples, Indigenous Knowledge and Indigenous Resources in International Law*, in INDIGENOUS HERITAGE AND INTELLECTUAL PROPERTY: GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE 20 (Silke von Lewinski ed., 2008); Agnes Lucas-Schloetter, *Folklore*, *supra* at 436. Like common-law or statutory restrictions on misappropriation or unfair competition, intellectual property protection for indigenous peoples may extend to material that is not copyrightable, patentable, registrable as a trademark, or protectable as a trade secret. See Antony Taubman & Matthias Leistner, *Traditional Knowledge*, *supra* at 92–179; Lucas-Schloetter, *supra* at 350–441, 453–59. Cultural property is theoretically distinct from but practically overlaps with intellectual property, and includes architecture, artworks, statues, engravings, prints, musical instruments, and furniture. See *id.* at 423 (citing Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Cultural Property of 1970, available at <http://unesdoc.unesco.org/images/0011/001140/114046Eb.pdf>). The notion of cultural property is often traced to the law of armed conflict, while intellectual property emerged as a branch of private law. See *infra* notes 48–72.

or driven away by undemocratic regimes, while international institutions do little but talk.

Intellectual property policy needs to be focused on threatened peoples and cultures. The law has bestowed longer and ever more expansive protection upon categories of works for which there is no shortage, but rather an enormous overproduction, particularly in the English- and French-speaking worlds.³ At the same time, we have witnessed massive epidemics of linguistic extinctions,⁴ the devastation of countless ancient structures and sacred or historic artifacts,⁵ widespread ethnic and sectarian violence, and the flight of millions of people away from the persecution of their cultures and religions in their ancestral lands and communities.⁶

3. Frank Pasquale, *Copyright in an Era of Information Overload: Towards the Privileging of Categorizers*, 60 VAND. L. REV. 135, 166 (2007) (citing James Boyle, *A Theory of Law and Information: Copyright, Spleens, Blackmail and Insider Trading*, 80 CAL. L. REV. 1413, 1537 (1991)).

4. See, for example, DANIEL NETTLE & SUZANNE ROMAINE, VANISHING VOICES: THE EXTINCTION OF THE WORLD'S LANGUAGES 1–10, 39–80, 133–50 (2000); W. Wayt Gibbs, *Saving Dying Languages*, SCI. AM., July 2002, at 62.

5. See, for example, Meline Karakashian & Gevorg Poghosyan, *Armenian Migration and Diaspora: A Way of Life*, in MIGRATION: IMMIGRATION AND EMIGRATION IN INTERNATIONAL PERSPECTIVE 228 (Leonore Loeb Adler et al. eds., 2003) (ruins of Armenian cities that once contained thousands of churches and seminaries dot present-day Turkey, Azerbaijan, Armenia, and Georgia); HISTORIC CITIES AND SACRED SITES: CULTURAL ROOTS FOR URBAN FUTURES 246 (Ismail Serageldin et al. eds., 2001) (describing research finding that 2,000 to 3,000 Jewish synagogues in Germany were destroyed by 1945); Dickran Kouymjian, *The Destruction of Armenian Historical Monuments as a Continuation of the Turkish Policy of Genocide*, in A CRIME OF SILENCE: THE ARMENIAN GENOCIDE 173–85 (1985) (over 1,000 Armenian churches and monasteries were totally destroyed by Ottoman and Turkish forces from 1915 to 1923, and nearly 700 additional Armenian monuments were severely damaged); ANTIQUITIES UNDER SIEGE: CULTURAL HERITAGE PROTECTION AFTER THE IRAQ WAR (Lawrence Rothfield ed., 2008) (destruction of Assyrian and other Mesopotamian artifacts); FERNANDO BAEZ, A UNIVERSAL HISTORY OF THE DESTRUCTION OF BOOKS: FROM ANCIENT SUMER TO MODERN-DAY IRAQ (Alfred MacAdam trans., Atlas 2008) (2004) (destruction of Assyrian and other Mesopotamian manuscripts and books); ROBERT BEVAN, THE DESTRUCTION OF MEMORY: ARCHITECTURE AT WAR (2007); MILBRY POLK & ANGELA M. H. SCHUSTER, THE LOOTING OF THE IRAQ MUSEUM, BAGHDAD: THE LOST LEGACY OF ANCIENT MESOPOTAMIA (2005); ROGER ATWOOD, STEALING HISTORY: TOMB RAIDERS, SMUGGLERS, AND THE LOOTING OF THE ANCIENT WORLD (2004); JAMES RAVEN, LOST LIBRARIES: THE DESTRUCTION OF GREAT BOOK COLLECTIONS SINCE ANTIQUITY (2004); REBECCA KNUTH, LIBRICIDE: THE REGIME-SPONSORED DESTRUCTION OF BOOKS AND LIBRARIES IN THE TWENTIETH CENTURY (2003).

6. See, for example, ADAM JONES, GENOCIDE: A COMPREHENSIVE INTRODUCTION 67–255 (2006) (describing numerous incidents of genocide since nineteenth century of the Common Era [CE]); Hisham Mohammed Ali, *Christians Abandon Iraqi City*, McCLATCHY-TRIB. INFO. SERVICES, Nov. 28, 2008, available at <http://www.ankawa.com/english/?p=2078#more-2078> (an estimated 2,000 families, representing half of Iraqi city of Mosul's remaining Christian population, fled their homes and the city itself in 2008); U.N. High Comm't for Refugees [UNHCR], *The Continuing Needs of Iraq's Displaced*, THE IRAQ SITUATION (2008), <http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=intro> (4.7 million Iraqis were displaced from their homes by 2008 due to "spiraling violence," and are in "dire need of humanitarian care"); UNHCR,

Existing intellectual property doctrine is failing to play its part in saving the world's cultural and intellectual diversity. It provides the most protection to the newest writings and symbols of authors and brand managers creating in a possessively individualistic mode. Lesser protection, if any, is reserved for ancient, dying, collectively-produced, and lovingly-maintained traditions of enduring civilizations and cultures. Oppressive governments and armed militia are more likely to be brought up on charges for allowing software to be copied too often than for wiping out ancient cultures and religions. Ancient artifacts are fair game for governments, looters, dealers, and museums to dismember, smash, sell, barter, repackage, copyright, and claim as their own.⁷

Cultural heritage, the worlds most powerful governments seem to believe, can be preserved adequately by the private market and grant funding for restoration projects. The fact that these same modalities have been rejected by nearly every nation and multiple international treaties as ways of preserving the incentive of possessive individuals to create new works too often goes unremarked.

The political and military dominance of a handful of great monocultures helps explain patterns of global inequality and the mass cultural extinctions.⁸ These eight great monocultures are the cultures of the

Statistical Yearbook 2006: Trends in Displacement, Protection and Solutions 7 (2007), <http://www.unhcr.org/statistics/STATISTICS/478cda572.html> (there were 9.9 million refugees worldwide by 2006, along with 12.8 million internally displaced persons, and 5.8 million "stateless persons"); *1997 in Review—Protection*, REFUGEES MAG., Mar. 1998, <http://www.unhcr.org/publ/PUBL/3b681f657.html> ("The year 1997 was undoubtedly an 'annus horribilis' . . . in the world of refugee protection . . . [with] an increasing number of displaced peoples . . . [and] the largest loss of refugee life in recent history."); Gertrude Samuels, *On the World's Conscience*, N.Y. TIMES, Jan. 16, 1955, at SM13 (there were 15 million refugees from persecution by 1955).

7. See, for example, Patrick J. Boylan, *The Concept of Cultural Protection in Times of Armed Conflict: From the Crusades to the New Millennium*, in *ILLICIT ANTIQUITIES: THE THEFT OF CULTURE AND THE EXTINCTION OF ARCHAEOLOGY* 43-108 (Neil Brodie & Kathryn Walker Tubbs eds., 2002); Neil Brodie, *Introduction*, in *ARCHAEOLOGY, CULTURAL HERITAGE, AND THE ANTIQUITIES TRADE* (Neil Brodie et al., eds. 2006).

8. A monoculture is a culture whose adherents believe is the best or the only valid culture, who therefore often attempt to impose their culture by force on adherents of other cultures. See *infra* notes 9-10, 16. By contrast, a microculture (also known as a micro-tradition) is a culture, like those of indigenous Americans, Africans, or Asians, that struggles to survive despite violence, propaganda directed against it, and attempts to assimilate its adherents involuntarily or by social or economic pressure. See, e.g., JAMES W. NEULIEP, *INTERCULTURAL COMMUNICATION: A CONTEXTUAL APPROACH* 18 (2000) (describing microcultures such as the Navajo of the United States vis-à-vis the English-speaking monoculture); see also AMIN SAIKAL, RAVAN FARHADI & KIRILL NOURZHANOV, *MODERN AFGHANISTAN: A HISTORY OF STRUGGLE AND SURVIVAL* 232 (2006) (describing microsocieties in Afghanistan); Julia Clancy-Smith, *Exemplary Women and Sacred Journeys*, in *WOMEN'S HISTORY IN GLOBAL PERSPECTIVE* 93 (Bonnie G. Smith ed., 2004) (describing micro-traditions that struggle to survive despite attention lavished on "[w]orld religions practiced on a global scale.").

English-speaking, Spanish- and Portuguese-speaking, French-speaking, Russian-speaking, Turkic-speaking, Arabic-speaking, Hindi-speaking, and Chinese-speaking worlds. These cultures have progressively ground down and driven away the microcultures whose indigenous territories fell under foreign occupation and colonization.⁹ Even the names of these present-day microcultures are often left out of the history books and mainstream media reports of the monocultures, but there are thousands of surviving indigenous peoples.¹⁰ Cultural and

9. For sources on the English-, Spanish-, and Portuguese-speaking worlds' suppression of indigenous Celtic and Native American cultures and religions, see *infra* note 10; The American Indian Religious Freedom Act of 1978, Pub. L. 95-341, 92 Stat. 469 (codified at 42 U.S.C. § 1996 (2000)) (acknowledging that "Federal policies and regulations" have denied Native Americans "access to sacred sites required in their religions, including cemeteries"; banned the "possession of sacred objects necessary to the exercise of [their] religious rites and ceremonies"; and "banned" or "interfered with" their ceremonies). For sources on the Arabic- and Turkic-speaking worlds' suppression of Armenian, Assyrian, Greek, Jewish, Mandaean, and Yezidi cultures and religions, see *infra* notes 92–389. For a source on the suppression of indigenous African peoples and religions, see Hannibal Travis, *Genocide in Sudan: The Role of Oil Exploration and the Entitlement of the Victims to Reparations*, 25 ARIZ. J. INT'L & COMP. L. 1, 8–16 (2008) (discussing widespread massacres and enslavement of indigenous Africans by Arabic-speaking rulers of Sudan). For sources on the French- and English-speaking worlds' suppression of indigenous African religions, see RONALD SEGAL, *THE BLACK DIASPORA: FIVE CENTURIES OF THE BLACK EXPERIENCE OUTSIDE AFRICA* 105 (1996) (describing French colonial laws banning new forms of traditional African religion from being practiced by slaves of French subjects); see also Peter G. Danchin, *Of Prophets and Proselytes: Freedom of Religion and the Conflict of Propheis and Proselytes: Freedom of Religion and the Conflict of Rights in International Law*, 49 HARV. INT'L L.J. 249, 282–84 (2008) (discussing how virtually all modern African states adopted policies aimed at suppressing indigenous African religions); Nelson Tebbe, *Witchcraft and Statecraft: Liberal Democracy in Africa*, 96 GEO. L.J. 183, 186–200, 230–35 (2007) (discussing criminalization of indigenous African religious practice in Cameroon, South Africa, Zimbabwe, and elsewhere). For sources on the Sanskrit/Hindi-speaking worlds' suppression of indigenous Austric, Dravidian, and Tamil cultures and religions, see ROMILA THAPAR, *EARLY INDIA: FROM THE ORIGINS TO AD 1300*, at 13–15 (2003) (describing indigenous Indians who claim descent from a Dravidian-speaking people that was relegated to low-caste status by "Indo-Sanskrit-speaking brahmins"); *THE HISTORY AND CULTURE OF THE INDIAN PEOPLE* 148–50, 156 (Ramesh Chandra Majumdar et al. eds., 1962); *Bhangi, in ENCYCLOPAEDIA OF RELIGION AND ETHICS* 551–52 (1910). For sources on the Chinese-speaking worlds' suppression of Tibetan Buddhist and neo-Taoist religious practice in China and Tibet, including new forms of traditional Taoist and *qigong* religious practices such as organized meditation (i.e. Falun Gong), see LAURA S. SMITH, *THE ILLUSTRATED TIMELINE OF RELIGION: A CRASH COURSE IN WORDS & PICTURES* 107 (2007); BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF STATE, 2007 PROFILE OF ASYLUM CLAIMS AND COUNTRY CONDITIONS—CHINA ¶¶ 29–50 (2007) available at http://cdjp.org/gb/fileupload/China_May_2007.pdf (describing severe restrictions on Tibetan Buddhists and neo-Taoist Falun Gong practitioners).

10. See Press Release, U.N. Children's Fund [UNICEF], International Day of the World's Indigenous Peoples (2008), available at http://www.unicef.org/media/media_45117.html.

For descriptions of the indigenous peoples of the United States of America, see, for example, RONALD WRIGHT, *STOLEN CONTINENTS: 500 YEARS OF CONQUEST AND RESISTANCE IN THE AMERICAS* (2005); *INTERCULTURAL COMMUNICATION: A READER* 165 (Larry A. Samovar, Richard E. Porter & Edwin R. McDaniel eds., 11th

ed. 2006); NATIVE AMERICAN TESTIMONY: A CHRONICLE OF INDIAN-WHITE RELATIONS FROM PROPHECY TO THE PRESENT, 1492-2000 (Peter Nabokov rev. ed., 2000).

For descriptions of the indigenous peoples of Canada, see, for example, Natural Res. Can., *The Atlas of Canada: Aboriginal Peoples Circa 1823* (2008), available at <http://atlas.nrcan.gc.ca/site/english/maps/historical/aboriginalpeoples/circa1823/1>; ENCYCLOPEDIA OF NORTH AMERICAN INDIANS (Frederick E. Hoxie ed., 1996); 1 THE CAMBRIDGE HISTORY OF THE NATIVE PEOPLES OF THE AMERICAS (Bruce G. Trigger & Wilcomb E. Washburn eds., 1996); CHRONOLOGY OF NATIVE NORTH AMERICAN HISTORY: FROM PRE-COLUMBIAN TIMES TO THE PRESENT (Duane Champagne ed., 1994).

For descriptions of the indigenous peoples of Mexico and Central and South America, see, for example, WRIGHT, *supra*, at 3–83, 143–99, 241–91; GRACE LIVINGSTONE & JENNY PEARCE, *INSIDE COLOMBIA: DRUGS, DEMOCRACY AND WAR* 90–91 (2004); NAPOLEON A. CHAGNON, *YANOMAMÖ: THE LAST DAYS OF EDEN* (1992); CLARK WISSLER & BELLA WEITZNER, *THE AMERICAN INDIAN: AN INTRODUCTION TO THE ANTHROPOLOGY OF THE NEW WORLD* 21–22, 32, 157–58 (1917); Richard Arens, *Death Camps in Paraguay*, *AM. INDIAN J.*, 1978, at 3.

For descriptions of the indigenous peoples of Morocco, Algeria, Sudan, the Democratic Republic of the Congo, and South Africa, see, for example, KENNETH KATZNER, *THE LANGUAGES OF THE WORLD* 29–31 (rev. ed. 1986).

For descriptions of the indigenous peoples of Spain, the United Kingdom, the Czech Republic, Hungary, Romania, Finland, Sweden, and Russia, see, for example, BARBARA JANE DAVY, *INTRODUCTION TO PAGAN STUDIES* 2–3, 96 (2007); Thomas S. Noonan, *European Russia, c.500-c.1050*, in 3 *THE NEW CAMBRIDGE MEDIEVAL HISTORY: c.900-c.1024*, at 497–98 (Timothy Reuter ed., 1999); SUSAN TEBBUTT, *SINTI AND ROMA: GYPSIES IN GERMAN-SPEAKING SOCIETY AND LITERATURE* 152 (1998); 1 *THE GYPSIES DURING THE SECOND WORLD WAR* 22 (Karola Fings et al. eds., 1997); 2 *id.* at 59–75, 85–89, 131–48, 171–91 (Donald Kenrick ed., 1999); KATZNER, *supra*; WILLIAM FORBES SKENE, *CELTIC SCOTLAND: A HISTORY OF ANCIENT ALBAN* 16–17 (2d ed., Edinburgh, David Douglas 1890).

For descriptions of the indigenous peoples of the former Soviet Union, see, for example, A.A. ZNAMENSKI, *SHAMANISM IN SIBERIA: RUSSIAN RECORDS OF INDIGENOUS SPIRITUALITY* (2003); STEPHEN K. BATALDEN, *THE NEWLY INDEPENDENT STATES OF EURASIA: HANDBOOK OF FORMER SOVIET REPUBLICS* 36–41 (2d ed. 1997).

For descriptions of the indigenous peoples of India, see, for example, Pramod Paraguli, *Coming Home to the Earth Household: Indigenous Communities and Ecological Citizenship in India*, in *INDIGENOUS PEOPLES' WISDOM AND POWER: AFFIRMING OUR KNOWLEDGE THROUGH NARRATIVES* 175, 183 (Julian Kunnie, Maqhudeni Ivy Goduka & Nomalungelo Ivy Goduka eds., 2006); KATZNER, *supra*, at 344; William Garlinton, *Bahá'i Conversion in Malwa, Central India*, in *FROM IRAN EAST AND WEST* 182 (Juan I. Cole & Moojan Momen eds., 1984).

For a description of the Tibetans, one of the indigenous peoples of the People's Republic of China, see, for example, CHINA: *PROFILE OF ASYLUM CLAIMS AND COUNTRY CONDITIONS*, *supra* note 9, at ¶¶ 29–50. For descriptions of the indigenous peoples of Taiwan, see, for example, MURRAY A. RUBINSTEIN, *TAIWAN: A NEW HISTORY* 391–92 (2006).

For descriptions of the indigenous peoples of Indonesia and Malaysia, see, for example, *West Papua*, in *UNREPRESENTED NATIONS AND PEOPLES ORGANIZATION: YEARBOOK* 1996, at 127–29 (Christopher A. Mullen & J. Atticus Ryan eds., 1997); Sean Young, *Borneo's Ancient Tribe Threatened by Loggers*, *THE IRRAWADDY*, July 27, 2007, available at http://www.irrawaddy.org/article.php?art_id=8015.

For descriptions of the indigenous peoples of the Philippines, see Jose Mencio Molintas, *The Philippine Indigenous Peoples' Struggle for Land and Life: Challenging Legal Texts*, 21 *ARIZ. J. INT'L & COMP. L.* 269, 273–74 (2004).

For descriptions of the indigenous peoples of Australia and New Zealand, see, for example, Alan Cornish, *Genocide in Tasmania: The History of an Idea*, in *EMPIRE,*

intellectual property law should protect threatened peoples and cultures, as it does the creations and traditions of the persons educated and employed in the wealthier monocultures of the present or former imperial powers. The U.N. Declaration on the Rights of Indigenous Peoples requires states to provide an effective remedy to indigenous peoples deprived of their cultural, religious, or intellectual property without their free, prior and informed consent.¹¹ The Declaration could prove to be an important safeguard for the indigenous peoples of Iraq and Turkey, the victims for centuries of human rights abuses, assaults on their religious and cultural sites, vandalism and theft of their lands and cultural objects, and forced assimilation. These peoples include the Armenians, Assyrians, Greeks, Jews, Yezidis of Turkey and Turkish-occupied Cyprus, and the Armenians, Assyrians, Jews, Mandaeans, and Yezidis of Iraq. There are at least 115,000 members of these indigenous peoples in Turkey (65,000 Armenians, 23,000 Jews, 18,000 Assyrians—15,000 Syrian Orthodox and 3,000 Chaldeans—5,000 Yezidis, and 4,000 Greek Orthodox),¹² and at least 958,000 members of these indigenous peoples in Iraq (550,000 Assyrians—two-thirds Chaldean and one-third Assyrian or Syrian Orthodox—500,000 Yezidis, 15,000 Armenians, 3,500 Mandaeans, and 10 Jews).¹³

The European Union (“EU”) has probed these violations of indigenous intellectual property rights as part of the process of bringing Turkish laws and policies into compliance with European human rights standards. The United States has investigated violations of the cultural and intellectual property rights of Iraq’s indigenous peoples in reports issued by various executive agencies and legislative committees.

My contribution to this symposium will begin in Part I with an overview of the international law of indigenous peoples’ intellectual prop-

COLONY, GENOCIDE: CONQUEST, OCCUPATION, AND SUBALTERN RESISTANCE IN WORLD HISTORY 229–52 (A. Dirk Moses ed., 2008); Robert Finzsch, “*The Aborigines Were Never Annihilated, and Still They Are Becoming Extinct*,” in *EMPIRE, COLONY, GENOCIDE*, *supra*, at 266 n.11 (collecting sources); GENOCIDE AND SETTLER SOCIETY: FRONTIER VIOLENCE AND STOLEN INDIGENOUS CHILDREN IN AUSTRALIAN HISTORY (A. Dirk Moses ed., 2004); CHADWICK ALLEN, *BLOOD NARRATIVE: INDIGENOUS IDENTITY IN AMERICAN INDIAN AND MAORI LITERARY AND ACTIVIST TEXTS* 2–4 (2002).

11. Declaration on the Rights of Indigenous Peoples, *supra* note 2.

12. See BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP’T OF STATE, 2008 INTERNATIONAL RELIGIOUS FREEDOM REPORT—TURKEY (2008), available at <http://www.state.gov/g/drl/rls/irf/2008/108476.htm> [hereinafter (YEAR) INTERNATIONAL FREEDOM REPORT—(COUNTRY)]. Chaldean Catholic, Assyrian Orthodox, and Syrian Orthodox are religious denominations of the ethnic Assyrians of Iraq and Turkey. See Hannibal Travis, “*Native Christians Massacred*”: *The Ottoman Genocide of the Assyrians during World War I*, 1 GENOCIDE STUD. & PREVENTION 327, 327–28 (2006).

13. See 2008 INTERNATIONAL RELIGIOUS FREEDOM REPORT—IRAQ, available at <http://www.state.gov/g/drl/rls/irf/2008/108483.htm>.

erty interests. Part II will turn to a description of how, over the past millennium and a half, the indigenous peoples of Turkey and Iraq have lost more than two-thirds of their peak populations, most of their cultural and religious sites, and thousands of priceless artifacts and specimens of visual art. Part III will summarize the results of the recent U.S. and EU inquiries into the current deplorable state of the indigenous peoples of Turkey and Iraq. Part IV will propose four legal reforms.¹⁴ First, restitution or compensation should be implemented for the widespread destruction of these indigenous peoples' cultural and intellectual properties by previous regimes, starting at a minimum with destructive campaigns since 1907, a point of transition in international law. Second, autonomous regimes that will promote the security of indigenous peoples' surviving cultural and intellectual patrimony must be adopted. Third, governments and transnational enterprises dealing with them, such as museums, should respect the rights of indigenous peoples to protect, access, and use their property held abroad. Fourth, policies within Turkey and Iraq that restrict the transmission of indigenous cultural and intellectual manifestations should be reformed.

I. DEFINING "INDIGENOUS PEOPLES" AND THEIR PROPERTY INTERESTS

A. *Defining Indigenous Peoples*

Despite attempts to characterize Turkey and Iraq as Turkish or Arab societies,¹⁵ international law provides a basis to challenge such monoculturalist accounts of western Asian history.¹⁶ International law recognizes that distinct "peoples" within states have the "right of

14. I will focus on legal measures that have some precedent in recent diplomacy or international law, rather than reimagining legal and governance structures from the ground up. The deep-seated patterns of suppressing minority cultures require more fundamental change to resolve, but the nature and feasibility of such change is beyond the scope of this paper.

15. Cf. CONST. OF THE TURKISH REPUBLIC § 4, pt. I, art. 54 (1961), <http://www.anayasa.gen.tr/1961constitution-text.pdf> (calling each citizen of Turkey by ethnic term "Turk"); INTERIM CONST. IRAQ (1990), art. 5, *translated in* International Constitutional Law (A. Tschentscher, ed.), http://www.servat.unibe.ch/icl/iz010000_.html (describing Iraq as part of the "Arab Nation"). For uses of the word "Turk" in an ethnic sense, i.e. to refer to Turkic peoples having an origin in Central Asia, especially to the northeast of Persia and in the region of the Oxus river in Central Asia, see Richard N. Frye & Aydin M. Sayili, *Turks in the Middle East before the Saljuqs*, 63 J. AM. ORIENTAL SOC'Y. 194 (1943).

16. Psychologists have defined a "monoculturalist" view, and "monoculturalism" generally, as the "belief in one 'right' culture," and "ethnocentric monoculturalism" as a dominant ethnic group's "invalidation" of other ethnic or cultural norms or worldviews. Jennifer E. Taylor, *Ethnocentric Monoculturalism*, in ENCYCLOPEDIA OF MULTICULTURAL PSYCHOLOGY 203 (Yolanda Kaye Jackson ed., 2006). See also Maria Lugones & Joshua Price, *Dominant Culture: El Deseo por un Alma Pobre*, in MULTICULTURALISM FROM THE MARGINS: NON-DOMINANT VOICES ON DIFFERENCE AND DIVERSITY 117-22 (Deena A. Harris ed., 1995) (defining monoculturalism as

self-determination,” and further specifies that such “peoples” may be ascertained by their cultural, linguistic, religious, and physiological differences from other communities in a given region.¹⁷

Invasion, colonization, and occupation establish indigenous status by throwing into relief the cultural, ethnic, social, legal, and political differences between conquering and conquered peoples. Under international law, a people’s indigenous status derives from living in a given region or country “before [other] settlers moved in as a result of conquest, occupation, colonization, etc.,” endangering the indigenous population’s “livelihoods and very existence.”¹⁸ An important U.N. study of indigenous peoples’ rights stated that indigenous peoples, communities, and nations have

a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, [and] consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present nondominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.¹⁹

Indigenous peoples are therefore the “existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world . . . and, by conquest, settlement or other means, reduced them to a non-dominant or colonial condition. . . .”²⁰ The definition of an “indigenous people” in international law focuses in particular on whether a group regards itself

“the project that there is and ought to be only one culture,” and as the attempt to “bridge[] the gap between is and ought through cultural domination”).

17. Ian Brownlie, *The Rights of Peoples in Modern International Law*, 9 BULL. AUSTL. SOC. LEG. PHIL. 104, 104–08 (1985).

18. ECOSOC, Sub-Comm’n on Prevention of Discrimination and Prot. of Minorities, *Study of the Problem of Discrimination Against Indigenous Populations*, ¶ 379, U.N. Doc. E/CN.4/SUB.2/1986/7/ADD.4 (Jan. 1, 1987) (prepared by Jose R. Martinez Cobo) [hereinafter ECOSOC, *Problem of Discrimination* 1987]; ECOSOC, Sub-Comm’n on the Promotion and Prot. of Human Rights, Working Group on Indigenous Populations, *Working Paper on Globalization and the Economic, Social and Cultural Rights of Indigenous Populations*, ¶ 2, U.N. Doc. E/CN.4/Sub.2/AC.4/2003/14 (June 15, 2003) (prepared by El Hadji Guissé); LUIS RODRÍGUEZ-PIÑERO, *INDIGENOUS PEOPLES, POSTCOLONIALISM, AND INTERNATIONAL LAW: THE ILO REGIME* (1919-1989), at 163 (2005).

19. ECOSOC, Sub-Comm’n on Prevention of Discrimination & Prot. of Minorities, *Study of the Problem of Discrimination Against Indigenous Populations*, ¶ 379, U.N. Doc. E/CN.4/SUB.2/1983/21/ADD.8 (Sep. 30, 1983) (prepared by Jose R. Martinez Cobo). See also ECOSOC, *Problem of Discrimination* 1987, *supra* note 16, ¶ 379.

20. ECOSOC, Sub-Comm’n on Prevention of Discrimination & Prot. of Minorities, *Preliminary Report on Discrimination Against Indigenous Populations*, ¶ 34, U.N. Doc E/CN.4/Sub.2/L.566 (June 29, 1972) (prepared by Jose R. Martinez Cobo).

as different from other groups, whether it shares a common ancestry with the occupants of a given territory prior to its conquest by another group or series of groups, whether it tends to reside in a particular geographic area, and whether it shares a language, culture, and history.²¹ An example of an indigenous people that is recognized internationally is the Sami people residing in Fennoscandinavia and the Kola Peninsula of the Russian Federation.²² Russians conquered the latter starting in the eleventh century CE.²³

B. *The Right of Indigenous Peoples to Maintain Their Culture and Religion*

The right of indigenous peoples to continue enjoying their cultural heritage and practicing their native religions received international legal recognition before most nations guaranteed this right in practice. After World War II, high Nazi officials were convicted of the crime of “extermination,” defined as intentionally, and systematically or on a widespread basis, killing or causing the deaths of people “on a large scale,” although there is no numerical threshold for “large scale” killing.²⁴ The criminality of such efforts to target members of a particular cultural or religious group for violence and massacres was confirmed by the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. The Genocide Convention prohibits not only widespread massacres and rapes but also cultural genocide, which has been defined by the U.N. Human Rights Council’s minority rights bodies as “[a]ny action which has the aim or effect of depriving [indigenous peoples] of their integrity as distinct peoples, or of their cultural values or ethnic identities,” or “[a]ny form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative, or other measures.”²⁵ Cultural genocide not accompanied by physical measures against group members was not made a separate crime by the Genocide Convention, even though its drafter Raphael Lemkin, working as a consultant to the U.N. Secretary General, urged that the Convention include the crime of “systematically destroying

21. Benedict Kingsbury, *Self-Determination and “Indigenous Peoples,”* 86 AM. SOC’Y OF INT’L L. PROC. 383, 386 (1992).

22. ECOSOC, *Draft Principles*, *supra* note 2, ¶¶ 1–2.

23. Thomas S. Noonan, *European Russia, c.500-c.1050*, in 3 THE NEW CAMBRIDGE MEDIEVAL HISTORY: c.900-c.1024, at 487, 497–98 (Timothy Reuter, ed., 1999); *see also* ROGER TOOK, *RUNNING WITH REINDEER: ENCOUNTERS IN RUSSIAN LAPLAND* xi (2004).

24. Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Appeals Chamber, Judgment ¶¶ 255–64 (Mar. 22, 2006), *available at* <http://www.unhcr.org/refworld/docid/47dfb550.html>.

25. United Nations Declaration on the Rights of Indigenous Peoples, *supra* note 2, Annex at ¶¶ 7(a), 7(d), http://www.un.org/esa/socdev/unpfi/documents/ResA_RES_49_178.pdf.

historical or religious monuments.”²⁶ The U.N. General Assembly voted against making cultural genocide a separate crime because its members believed that “culture was already covered to a large extent by the word ‘religious’” in the Genocide Convention.²⁷

Deprivation of indigenous peoples’ right to maintain their cultural heritage also constitutes an internationally unlawful form of racial, ethnic, and/or religious discrimination. In 1969, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), entered into force. CERD defines “racial discrimination” to include distinctions based on “ethnic origin” that tend to impair the full enjoyment of human rights, including in the cultural sphere.²⁸ Article 2(2) of CERD calls for “concrete measures to ensure the adequate [cultural] development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.”²⁹ Iraq and Turkey are parties.³⁰

International human rights law helped achieve the transition from separate notions of religious, cultural, and intellectual property rights to a more unified conception of peoples’ rights to perpetuate their traditions. In 1976, the International Covenant on Civil and Political Rights (ICCPR), entered into force. Turkey and Iraq are parties.³¹ The ICCPR confirms the right of all peoples to retain their cultural and religious heritage and way of life.³² It prohibits discrimination or adverse distinctions based upon, among other things, race, language, religion, political or cultural opinions, national or social origin, or

26. JOHN B. QUIGLEY, *THE GENOCIDE CONVENTION: AN INTERNATIONAL LAW ANALYSIS* 9 (2006); LAWRENCE J. LEBLANC, *THE UNITED STATES AND THE GENOCIDE CONVENTION* 25 (1991).

27. *Summary Record of the 90th Meeting: Draft Code of Offences Against the Peace and Security of Mankind (Part I)*, [1951] 1 Y.B. INT’L L. COMM’N 69, U.N. Doc. A/CN.4/SR.90, http://untreaty.un.org/ilc/documentation/english/a_cn4_sr90.pdf [hereinafter *Offences Against the Peace and Security of Mankind*]. See also *Prosecutor v. Karadžić & Mladić*, Cases Nos. IT-95-5-R61 and IT-95-18-R61, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, ¶ 94 (July 11, 1996), <http://www.un.org/icty/mladic/trialc/rev-ii960716-e.pdf> (collecting evidence of cultural genocide in Bosnia and Herzegovina in support of tribunal’s finding of an intent to destroy non-Serbian groups).

28. International Convention on the Elimination of All Forms of Racial Discrimination (CERD) art. 1(1), *adopted on Dec. 21, 1965*, 660 U.N.T.S. 195.

29. *Id.*, art. 2(2).

30. See *Committee on Elimination of Racial Discrimination to Meet in Geneva from 18 February to 7 March 2008*, KNOW YOUR RIGHTS 2008, Feb. 15, 2008, http://www.knowyourrights2008.org/index.php?nav=news&key_news=2008021510272371.

31. See Kouymjian, *supra* note 5, at 176; Mohammed Mattar, *Unresolved Questions in the Bill of Rights of the New Iraqi Constitution: How Will the Clash Between “Human Rights” and “Islamic Law” be Reconciled in Future Legislative Enactments and Judicial Interpretations?*, 30 *FORDHAM INT’L L.J.* 126, 128, 137–38 (2006).

32. International Covenant on Civil and Political Right, G.A. Res 2200A (XXI), art. 27, 21 U.N. GAOR Supp. (No. 16) at 72, U.N. Doc. A/6316 (Dec. 16, 1966), 993 U.N.T.S. 3 [hereinafter ICCPR].

other status.³³ Such group identity-based discrimination is prohibited by the ICCPR even during a state of emergency such as an internal armed conflict.³⁴ States parties signing onto the ICCPR become obligated to ban incitement to discrimination by religious hatred.³⁵ They must also guarantee, subject to laws “necessary” to protect national security, public health or safety, or morals, the freedom to worship and teach one’s religion and beliefs in theory and practice, both privately and publicly, individually or communally,³⁶ as well as the freedom to speak, hear, and read about all kinds of information and ideas, regardless of borders or medium of expression used.³⁷ International human rights law contained in other treaties and international legal materials also guarantees indigenous peoples the right of cultural and religious self-determination.³⁸

C. *The Right of Indigenous Peoples to Access and Preserve Their Cultural and Intellectual Property*

Intellectual property is a “catch-all term that is used to describe copyrights, patents, trademarks, trade secrets, and other existing or newly-created related rights. . . .”³⁹ It may be true that, as Peter K. Yu points out, “the existing intellectual property regime has [long] ignored the interests of those performing intellectual labor outside the Western model. . . .”⁴⁰ But it is nevertheless true that intellectual property is the domain within the law to deliberate about “the protection of interests in intellectual creations,” including not only “material” but also “moral” interests in such creations.⁴¹ Thus, for example, the 1967 Convention Establishing the World Intellectual Property Organization defines “intellectual property” to include not only traditional copyrights, trademarks, etc., but also “all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”⁴²

Indigenous peoples, including those of Asia, claim their cultural heritage and traditional resources as intellectual property rights.⁴³

33. *Id.* art. 26.

34. *Id.* art. 4.

35. *Id.* art. 20(2).

36. *Id.* art. 18(1).

37. *See id.* art. 19(2).

38. *See* MAIVAN CLECH LÂM, AT THE EDGE OF THE STATE: INDIGENOUS PEOPLES AND SELF-DETERMINATION 51–63, 123–35 (2000).

39. Peter K. Yu, *Ten Common Questions About Intellectual Property and Human Rights*, 23 GA. ST. U. L. REV. 709, 711 (2007).

40. *Id.* at 741.

41. *Id.* at 711.

42. Convention Establishing the World Intellectual Property Organization, art. 2(viii), Jul. 14, (1967), 21 U.S.T. 1749, 828 U.N.T.S. 3.

43. *See, e.g.*, First International Conference on the Cultural & Intellectual Property Rights of Indigenous Peoples, Aotearoa, N.Z., June 12–13, 1993, *Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples* (1993),

The intellectual properties claimed by various indigenous peoples around the world include ways of using and conserving local land, flora, and fauna; intellectual and experiential learning related to nature and social interaction; knowledge handed down orally or in writing across the generations; artistic and cultural works; and intellectual conceptions and depictions of the “supernatural and sacred.”⁴⁴

Indigenous peoples, as their definition presages, have generally been excluded from national governments that have established intellectual property regimes that destroy most of their potential interests. For example, in Turkey and Iraq a majority of the members of indigenous peoples had been massacred, deported, or forcibly assimilated prior to the enactment of copyright legislation in, respectively, 1951 and 1971.⁴⁵ Similarly, in Canada and the United States, the copyright laws still do not provide much help to indigenous peoples because they require individual or entity ownership and fixation, and do not protect ancient works.⁴⁶ This is unsurprising because indigenous peo-

available at http://www.wipo.int/export/sites/www/tk/en/folklore/creative_heritage/docs/mataatua.pdf [hereinafter *Mataatua Declaration*] (representatives of indigenous peoples from present-day Japan, the Philippines, Australia, and other nations declared in 1993 “that Indigenous Peoples of the world have the right to self determination and in exercising that right must be recognised as the exclusive owners of their cultural and intellectual property”); Rosemary Morales-Fernholz, *Indigenous Land Rights: Who Controls the Philippine Public Domain?*, in *SOVEREIGNTY UNDER CHALLENGE: HOW GOVERNMENTS RESPOND* 321, 325 (John Dickey Montgomery & Nathan Glazer eds., 2000) (indigenous peoples of the Philippines have evolved “cultural, political, social and economic systems that contribute to the preservation of their ecosystems so that future generations can survive,” and demand “as part of their cultural heritage” the preservation of their language, social traditions, and means of expression); DARRELL ADDISON POSEY & GRAHAM DUTFIELD, *BEYOND INTELLECTUAL PROPERTY: TOWARD TRADITIONAL RESOURCE RIGHTS FOR INDIGENOUS PEOPLES AND LOCAL COMMUNITIES* 234 (1996) (representatives gathered at the North American Indian Congress argued in 1993 that intellectual property “is essentially a question of religious freedom for indigenous peoples”).

44. Charles Norchi, *Indigenous Knowledge as Intellectual Property*, 33 *POL’Y SCI.* 387–98 (2000), <http://www.springerlink.com/index/U13632R1RK260118.pdf>.

45. *See infra* notes 92–389 and accompanying text; Law No. 5846 on Intellectual and Artistic Works (1951) (Turkey), *available at* http://www.wipo.int/clea/en/text_pdf.jsp?lang=EN&id=3843; Copyright Law No. 3 for the Year 1971 (Iraq), *available at* http://www.agip.com/country_service.aspx?country_key=140&service_key=C&SubService_Order=2&lang=en#.

46. *See, e.g.*, George P. Nicholas & Kelly P. Bannister, *Intellectual Property Rights and Indigenous Cultural Heritage in Archaeology*, in *INDIGENOUS INTELLECTUAL PROPERTY RIGHTS: LEGAL OBSTACLES AND INNOVATIVE SOLUTIONS* 309, 312 (Mary Reilly ed., 2004) (“In Canada and the United States, the protection of archaeological materials is based exclusively on the notion of physical property. While legislation protecting intellectual property is extensive in both countries . . . , and could offer additional protection to archaeological sites, no explicit protection for the intellectual component of the archaeological record exists under any federal, provincial, or state heritage policies.”).

ples did not have full voting rights until the 1960s in the United States and Canada.⁴⁷

Although international law initially distinguished cultural property rather clearly from intellectual property, many international treaties and declarations in recent years have treated these two sets of protections as arising out of common sources and complementing indigenous peoples' other rights. Cultural property is distinguished from intellectual property by being focused on the theft, destruction, or intentional damaging of architectural, religious, and educational institutions or works. Cultural property was initially defined by the law of armed conflict,⁴⁸ although it is currently covered by human rights and indigenous peoples' law as well. Article 56 of both the 1899 Hague Convention with Respect to the Laws and Customs of War on Land, and the 1907 Hague Regulations Respecting the Laws and Customs of War on Land, stated:

The property of . . . religious, charitable, and educational institutions, and those of arts and science, even when State property, shall be treated as private property.

All seizure of, and destruction, or intentional damage done to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of proceedings.⁴⁹

Similarly, the Fourth Geneva Convention of 1949 prohibited discrimination based on religion, race, or "birth" in the event of a civil war on the territory of a signatory like Turkey or Iraq, as well as damage to or the destruction of religious properties or other attacks on civilians' "religious convictions and practices" or distinctive "manners and customs."⁵⁰ It also bans reprisals against civilian property, all

47. See, e.g., Eddie Chuculate, *His Courage Guaranteed NM Indians' Freedom to Vote*, ALBUQUERQUE TRIB., Oct. 13, 2004 (many Native Americans could not vote in federal elections until 1924); David R. Berman & Tanis J. Salant, *Minority Representation, Resistance, and Public Policy: The Navajos and the Counties*, PUBLIUS: J. FEDERALISM, Fall 1998, at 83 (describing effort in 1960s, which Supreme Court of New Mexico rejected, to deny Native Americans on reservations the right to vote); Chief Electoral Officer of Canada, *Report of the Chief Electoral of Canada on the 38th General Election Held on June 28, 2004*, at 74 (2008), available at http://www.elections.ca/gen/rep/re2/statreport2004_e.pdf (indigenous peoples in Canada whose status is governed by treaties could not vote until 1960).

48. After receiving brief endorsements in influential international legal treatises and the decision of at least one British admiralty court, the obligation to protect cultural property from looting or destruction took on legal force with several treaties culminating in the 1899 Convention with Respect to the Laws and Customs of War on Land, and the 1907 Conventions Respecting the Laws and Customs of War on Land and accompanying annex.

49. Convention with Respect to the Laws and Customs of War on Land (Hague II), July 29, 1899, art. 56, 32 Stat. 1803, available at http://avalon.law.yale.edu/19th_century/hague02.asp; Convention Respecting the Laws and Customs of War on Land (Hague IV), Oct. 18, 1907, art. 56, 36 Stat. 2277, available at http://avalon.law.yale.edu/20th_century/hague04.asp.

50. See Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 27, Aug. 12, 1949, 75 U.N.T.S. 973.

forms of collective punishment, deportation or mass population transfers, and permitting the breakdown of order during the military occupation of another country.⁵¹ Another treaty on cultural property obliges States parties to refrain from military or other attacks that could cause damage to cultural property, unless in case of “imperative military necessity.”⁵²

Indigenous peoples have a complex relationship with cultural property. Some treaties on cultural property are state-centric; however, even such treaties mandate that the distinct owners of cultural property be granted restitution and a legal means to recover possession of it in the event of a taking.⁵³ The indigenous peoples’ declaration similarly provides for non-state-centric rights.⁵⁴

International human rights law, since 1948 but with particular force since the late 1970s, has guaranteed indigenous peoples the right to access and preserve their cultural and intellectual property. Article 27 of the ICCPR confirms the human right of members of indigenous groups to preserve their cultural traditions and other components of their ethnic and religious heritage.⁵⁵ The ICCPR, like the CERD and other treaties, calls for victims of violations of this right to be granted an “effective remedy” under the law of whichever nation they find themselves.⁵⁶ Similarly, the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, and the 1969 European Convention on the Protection of the Archaeological Heritage, require effective measures to safeguard cultural monuments and intellectual properties, including those claimed by minority and indigenous peoples.⁵⁷

51. *See id.* arts. 33, 46, 49.

52. Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 4, May 14, 1954, 249 U.N.T.S. 3511. *See also* UNESCO Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, arts. 6–8, 15, Mar. 26, 1999, 2253 U.N.T.S. 3511, *available at*, <http://unesdoc.unesco.org/images/0013/001306/130696eo.pdf> (prohibiting “any form of theft, pillage or misappropriation of, and any act of vandalism directed against, cultural property,” as well as military attacks that could cause damage to cultural property, unless it is occupied by enemy forces and “there is no feasible alternative available to obtain a similar military advantage”).

53. *See* UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, arts. 4, 13(b)–(c), Nov. 14, 1970, 823 U.N.T.S. 231, *available at* <http://unesdoc.unesco.org/images/0011/001140e.pdf#page=130> (States parties agree “to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners”).

54. *See infra* notes 74–79, 432, 467–68.

55. *See* ICCPR, art. 27.

56. *See* Travis, *supra* note 9, at 55 (citing ICCPR, art. 2(3)).

57. *See* UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict and Regulations for the Execution of the said Convention, arts. 1–4, May 14, 1954, 249 U.N.T.S. 215, *available at* <http://unesdoc.unesco.org/images/0008/000824/082464mb.pdf>; European Convention on the Protection of the Archaeo-

In 1989, an important international treaty called for comprehensive protection for the cultural and intellectual heritage of indigenous peoples. In that year, the International Labour Organization promulgated Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. Article 5(a) of the Convention states that “the social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected. . . .”⁵⁸ The Convention also states that governments shall “guarantee effective protection of [indigenous peoples’] rights of ownership and possession” to “lands which the peoples concerned traditionally occupy,”⁵⁹ as well as indigenous peoples’ “right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights.”⁶⁰

The U.N. Conference on Indigenous Peoples and the Environment recommended stronger legal measures to protect indigenous peoples’ cultural and intellectual property from damage or destruction.⁶¹ The resulting Convention on Biodiversity (CBD), signed by 123 heads of state in 1993, protects cultural diversity within the human species⁶² because “different cultures and peoples” represent a diversity of “heritages and experiences.”⁶³ The CBD requires respect for and the preservation of “knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity,” and the equitable distribution (“sharing”) of the profits and other benefits arising from the utilization of their knowledge and works.⁶⁴ Article 8(j) calls for “national legislation” to “respect, preserve, and maintain” indigenous practices, knowledge, and innovations; to promote the “wider applica-

logical Heritage, arts. 1–6, *opened for signature* May 6, 1969, *entered into force* May 1995; Kouymjian, *supra* note 5, at 176.

58. ILO Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, Jun. 27, 1989, 1650 U.N.T.S. 383.

59. *Id.* art. 14(2).

60. *Id.* art. 8(2). See also Lillian Aponte Miranda, *The Hybrid State-Corporate Enterprise and Violations of Indigenous Land Rights: Theorizing Corporate Responsibility and Accountability Under International Law*, 11 LEWIS & CLARK L. REV. 135, 148–49 (2007).

61. See ECOSOC, Sub-Comm’n on Prevention of Discrimination and Protection of Minorities, *Report of Technical Conference on Practical Experience in the Realization of Sustainable and Environmentally Sound Self-Development of Indigenous Peoples*, May 18–22, 1922, Santiago, Chile, U.N. Doc. E/CN.4/Sub.2/1992/31 (June 23, 1992); Darrell A. Posey, *International Agreements and Intellectual Property Right Protection for Indigenous Peoples’ Intellectual Property Rights*, in INTELLECTUAL PROPERTY RIGHTS FOR INDIGENOUS PEOPLES: A SOURCEBOOK 229 (Tom Greaves ed., 1994).

62. See Convention on Biological Diversity, art. 2, June 5, 1992, S. TREATY DOC. No. 103-20, 1760 U.N.T.S. 79 [hereinafter CBD].

63. Klaus Topfer, *Foreword*, in CULTURAL AND SPIRITUAL VALUES OF BIODIVERSITY xi (David Addison Posey ed., 1999).

64. Posey, *supra* note 61, at 232–33.

tion” of such practices and innovations; and to secure the “approval and involvement” of indigenous peoples in any exploitation of their practices, knowledge, and innovations.⁶⁵ Turkey is a party to the CBD; Iraq, along with the United States and Ethiopia, is one of a tiny minority of the world’s nations that is not.⁶⁶

In 2003, the U.N. Economic and Social Council’s Sub-Commission for the Promotion and Protection of Human Rights invited a Special Rapporteur to prepare guidelines for the protection of the cultural heritage of indigenous peoples.⁶⁷ According to their introductory sections, these draft principles state that “most elements of indigenous peoples’ property that conventional intellectual property laws regard as being in the so-called ‘public domain’ have been placed there without the free, prior and informed consent of the relevant indigenous peoples.”⁶⁸ They call for the legal protection of the heritage of indigenous peoples that creates a “distinct category of rights for elements of indigenous peoples’ cultural heritage,” through “*sui generis*” rights that either mirror intellectual property rights or reflect “the relevant customary laws of the indigenous peoples concerned. . . .”⁶⁹

The draft principles define cultural heritage by reference to the traditional method of its preservation and transmission, and its association with and control by an indigenous people.⁷⁰ Cultural heritage, so defined, must be protected by a *sui generis* intellectual property regime providing for fair compensation for commercial uses, and equitable benefit sharing for non-commercial uses.⁷¹ Consent should be secured from indigenous peoples for the commercial exploitation of their intellectual property and cultural heritage, and compensation should be paid by commercializing entities.⁷² Indigenous peoples should be able to preserve their cultural heritage within a framework of control over their “traditional cultural expressions,” adequate “financial resources” to “protect their cultural heritage,” the availability of “prompt, effective and affordable judicial and/or administrative action . . . to prevent and obtain full restitution for the unauthorized acquisition, use or documentation of their cultural heritage,” and “access to prompt, effective and affordable action to obtain just and fair compensation for such usage [of their cultural heritage by others].”⁷³

In 2007, the U.N. General Assembly, by a vote of nearly 90% of U.N. member states in favor, adopted the U.N. Declaration on the

65. CBD, *supra* note 62, art. 8(j).

66. *See* CBD, *supra* note 62, Participants.

67. *See* Draft Principles, *supra* note 2 ¶¶ 1–2.

68. *Id.* at 4–6 ¶ I(n).

69. *Id.* ¶ I(o) & II(h).

70. *Id.* at 9 ¶ 13.

71. *Id.* at 10 ¶¶ 17–18.

72. *Id.* at 10 ¶¶ 17–20.

73. *Id.* at 11 ¶ 29.

Rights of Indigenous Peoples.⁷⁴ For perhaps the first time in a statement of international law, the declaration guarantees indigenous people “their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs,” while including in the notion of “property” archaeological and historic sites, specimens of visual art, and literary works.⁷⁵ More pointedly on the issue of cultural and intellectual property, it prohibits forced assimilation, cultural destruction, dispossession of indigenous lands or properties, forced population movements, and discriminatory propaganda.⁷⁶ Article 12 provides for redress for violations of these rights by effective mechanisms for “access [to] and/or repatriation of ceremonial objects.”⁷⁷ Article 14 provides for indigenous peoples’ control over their own educational systems, which can guarantee an “education in their own culture and provided in their own language.”⁷⁸ Article 15 mandates that indigenous people be allowed to establish media outlets and access those outlets, including state-owned outlets, that are not their own.⁷⁹

II. THE DESTRUCTION OF INDIGENOUS PEOPLES’ CULTURAL AND INTELLECTUAL PROPERTY IN TURKEY AND IRAQ

A. *The Assyrians of Anatolia and Mesopotamia*

1. The Origins of the Mesopotamian and Anatolian Assyrians

In ancient times, present-day Iraq had northern and southern halves: Assyria and Babylonia, also referred to as Akkad and Sumer.⁸⁰ At various points in their history, Assyria and Babylonia led the world in science, law, political development, mathematics, technology, and literature. The Sumerian and Akkadian, and then the Assyrian and Babylonian, peoples developed these achievements of human civilization.⁸¹ The Sumero-Akkadian civilization⁸² had some

74. Declaration on the Rights of Indigenous Peoples, *supra* note 11.

75. *Id.* art. 11. Other international law instruments prohibited deprivations of indigenous cultural and intellectual property, but this declaration is more expansive in referring to “religious and spiritual property,” including historic sites. *See id.* art. 11(2).

76. *Id.* art. 8.

77. *Id.* art. 12.

78. *Id.* art. 14.

79. *Id.* art. 15.

80. *See* JEAN BOTTÉRO, *MESOPOTAMIA: WRITING, REASONING, AND THE GODS* vii, 289–90 (2d ed. 1995); *The Vassal-Treaties of Esarhaddon*, in 2 *THE ANCIENT NEAR EAST* 53–69 (James Pritchard ed., 6th ed. 1992) (referring, in the era of King Esarhaddon in the seventh century BCE, to Assyria and Babylonia, and the gods of Assyria and Babylon, in treaty between Assyrian “king of the world” and vassal prince of Babylonia).

81. *See* Wolfgang Saxon, *Erica Reiner Is Dead at 81: Renowned Assyrian Scholar*, *N.Y. TIMES*, Jan. 22, 2006, at 1–32.

82. The term “Sumero-Akkadian” is used by area experts to refer to the fact that starting in the fourth millennium BCE, the initially non-Semitic Sumerians settled

of the first kings, as well as assemblies of elders (called *abba* or city father) in a form of “Primitive Democracy.”⁸³ The Sumero-Akkadians developed writing, history, philosophy, schools, libraries, poetry, temples, priests, myths of paradise and the underworld, currency, merchants and capital investment, codified laws, contracts, family law, large-scale agriculture, mathematics, and many other fundamentals of civilized life.⁸⁴ They founded cities like Ashur and Babylon that, centuries later, became the capitals of the Assyrian and Babylonian kingdoms and empires.⁸⁵

The Assyrian homeland lies in northern Iraq, and large communities of Assyrians have lived in southeastern Anatolia and northeastern Persia since ancient times.⁸⁶ The Assyrians and Babylonians main-

among, and mated with, the native Semitic Akkadian population of Mesopotamia. See BOTTÉRO, *MESOPOTAMIA*, *supra* note 80, at 46–47, 68. An inscription from approximately 2000 BCE refers to a ruler of present-day Iraq as “king of Sumer and Akkad.” *Id.* at 62.

83. HENRI FRANKFORT, *KINGSHIP AND THE GODS: A STUDY OF ANCIENT NEAR EASTERN RELIGION AS THE INTEGRATION OF SOCIETY AND NATURE* 215, 218–19 (1978). See also MOGENS HERMAN HANSEN, *A COMPARATIVE STUDY OF SIX CITY-STATE CULTURES* 27–32 (2002).

84. See JEAN BOTTÉRO, *ANCESTOR OF THE WEST: WRITING, REASONING, AND RELIGION IN MESOPOTAMIA, ELAM, AND GREECE* 19–27 (2000); ANNIE CAUBET & PATRICK POUYSSEGUR, *THE ANCIENT NEAR EAST: THE ORIGIN OF CIVILIZATION* 149–61 (English ed., 1998). To indicate the scale of Sumerian agriculture, one author notes that just the temple kitchens of Uruk, in Sumeria, could prepare 80,000 liters of beer, 18,000 sheep, 3,300 geese and ducks, 2,580 lambs, 720 cows, etc. See BOTTÉRO, *supra*, at 27. A Sumerian student was trained to account for up to 180,000 liters of barley. See *id.* at 22. To indicate their study of history, one of the oldest literary or library catalogues ever discovered, dating from about 2000 BCE, contains several tablets dedicated to recounting and mourning the fall of cities or regions such as Akkad, Sumer, Nippur, and Ur. See SAMUEL N. KRAMER, *SUMERIAN MYTHOLOGY* 23 (1944). For accounts of Sumerian innovations in the codification of laws, administration of justice, formulation of religious ideas, and creation of schools, see SAMUEL N. KRAMER, *HISTORY BEGINS AT SUMER: THIRTY-NINE FIRSTS IN MAN’S RECORDED HISTORY* (3d rev. ed. 1989). The first code of laws, for the city of Ur, dates to the end of the third millennium BCE. See BOTTÉRO, *MESOPOTAMIA*, *supra* note 80, at 159. The Code of Ur-Nammu provides for fines to be paid in forms of legal currency, the mina or shekel of silver. See J.J. Finkelstein, *The Laws of Ur-Nammu*, 22 *J. CUNEIFORM STUD.* 66 (1968). The old Assyrian laws focused mainly on promoting and regulating trade between central Assyria and the Assyrian inhabitants of ancient Anatolia. See, e.g., Klaas R. Veenhof, “In Accordance with the Words of the Stele”: Evidence for Old Assyrian Legislation, 70 *CHI. KENT L. REV.* 1717, 1724–35 (1995).

85. See C.J. Gadd, *The Cities of Babylonia*, in 1 *THE CAMBRIDGE ANCIENT HISTORY* 72, 98, 122–27 (John Bagnell Bury et al. eds., 1925).

86. See Ann Donkin, *Mapping the Past: An Archaeological Case Study from Southeastern Turkey*, 69 *NEAR E. ARCHAEOLOGY* 12 (2006) (describing the Assyrian city of Ziyaret Tepe in southeastern Anatolia circa the seventh century BCE); Simo Parpola, *International Law in the First Millennium*, in *A HISTORY OF ANCIENT NEAR EASTERN LAW* 1254–55 (Raymond Westbrook ed., 2003) (describing other Assyrian towns in Anatolia circa first millennium BCE); Henri Frankfort, *The Last Predynastic Period in Babylonia*, in 1 *THE CAMBRIDGE ANCIENT HISTORY*, *supra* note 85, at 87, 90, 411 (similar); Veenhof, *supra* note 84, at 1724–35 (similar); R.D. Barnett, *Urartu*, in 3 *THE CAMBRIDGE ANCIENT HISTORY* 352 (John Boardman ed., 1982) (describing ancient Assyrian towns in Persia).

tained distinct cultures under foreign rule, which intermittently penetrated and directly ruled them. Archaeologists and historians have revealed substantial linguistic and religious continuity between the ancient Assyrians and Babylonians on the one hand, and the pagan and Christian inhabitants of Iraq at the time of the Persian conquests of the region, and subsequently the Greek, Arab, Mongol, and Turkish invasions.⁸⁷

The Assyrians initially communicated in Old Assyrian, which diverged in around 2,000 BCE from the language of Old Akkadian.⁸⁸ Eventually the Assyrian Empire used Aramaic, a non-Arabic Semitic language composed of a mixture of ancient Assyrian and ancient Aramaean words and grammatical forms,⁸⁹ for “daily use”⁹⁰ and as an administrative language.⁹¹

The Assyrian tradition is that the Assyrians and Babylonians started to become Christians within the first century CE.⁹² Assyrian (Aramaic) texts refer to bishops of Adiabene, Assyria, and Arbela as of about 100 CE, and the Christian community was so large that in 160 CE the bishop of Adiabene, the name for parts of ancient Assyria after the Persian invasions, unsuccessfully applied to the king of Adiabene for an edict of formal toleration.⁹³ By the early third century CE, there were more than twenty bishops in the region from

87. See Simo Parpola, *National and Ethnic Identity in the Neo-Assyrian Empire and Assyrian Identity in Post-Empire Times*, 18 J. ASSYRIAN ACAD. STUD. 5, 16–22 (2004); 8 ANTE-NICENE FATHERS: THE WRITINGS OF THE FATHERS DOWN TO AD 325, at 671–72 (Hendrickson Publishers, 1994) (1985); cf. E.S. DROWER, WATER INTO WINE: A STUDY OF RITUAL IDIOM IN THE MIDDLE EAST 69 (1956) (“Geographically speaking, the Mandaecans are neighbours to the Nestorians, and there are some remarkable similarities between [their religious] rites. . . .”). The use of ancient Assyrian and Babylonian magic, astrology, festivals, and reverence for nature (including those archetypal sites of polytheistic worship, sacred springs and groves of trees), survived the transition to Persian rule and Christian beliefs. See W.A. WIGRAM, AN INTRODUCTION TO THE HISTORY OF THE ASSYRIAN CHURCH (1909), <http://www.aina.org/books/itthotac/itthotac.htm>.

88. ANDREW DALBY, DICTIONARY OF LANGUAGES: THE DEFINITIVE REFERENCE TO MORE THAN 400 LANGUAGES 12 (2004).

89. See AL KANFEI YONAH: STUDIES OF JONAS C. C. GREENFIELD ON SEMITIC PHILOLOGY 113, 153–56 (Shalom M. Paul et al. eds., 2001) (discussing Old Assyrian/Akkadian influence on Aramaic); S.A. KAUFMAN, THE AKKADIAN INFLUENCE ON ARAMAIC (1974) (similar); YOCHANAN MUFFS, STUDIES IN THE ARAMAIC LEGAL PAPYRI FROM ELEPHANTINE 186 (1969) (similar).

90. BOTTÉRO, MESOPOTAMIA, *supra* note 80, at 289.

91. See MUFFS, *supra* note 89, at 189 (“standard Aramaic was employed all through the Assyrian Empire”); GEORGES ROUX, ANCIENT IRAQ 276–77 (3d ed., 1992); *Aramaic Writing*, in THE BLACKWELL ENCYCLOPEDIA OF WRITING SYSTEMS 23 (Florian Coulmas ed., Blackwell Publishers 1999) (1992).

92. See Christine Chaillot, *The Ancient Oriental Churches*, in THE OXFORD HISTORY OF CHRISTIAN WORSHIP 161 (2006); WILLIAM BAUM & DIETMAR WINKLER, THE CHURCH OF THE EAST: A HISTORY OF THE NESTORIAN CHURCH 7–12 (2000); A.J. Maclean, *Syrian Christians*, in 12 ENCYCLOPÆDIA OF RELIGION & ETHICS 170 (James Hastings ed., 1920).

93. See WIGRAM, *supra* note 87.

Urhay and Nisibis in Anatolia east through Armenia and Assyria to Persia.⁹⁴ In fact, the oldest surviving dated copy of the biblical books of Genesis, Exodus, Numbers and Deuteronomy was written in the fifth century CE in Assyrian by a deacon in Amid, southeastern Anatolia, which was then a part of the Byzantine Empire,⁹⁵ but had been an Assyrian province in ancient times.⁹⁶ The oldest dated Christian manuscript was written in Assyrian in Urhay in 411 BCE.⁹⁷ Starting in the fifth century CE, the Christians of Anatolia and Assyria came to be known as “Nestorians.”⁹⁸ In the fifth and sixth centuries CE, the Patriarch of the Chaldeans headed the bishops of the Persian Empire.⁹⁹ Prior to the Arab conquest, the people of the Nineveh area erected a church on the site of an Assyrian temple.¹⁰⁰ Nineveh be-

94. *Id.*

95. Frances Spiegel, *British Library: Sacred: World Faiths Brought to Book—Exhibition Running from April-Sept* (Apr. 20, 2007), <http://artgalleries.suite101.com/article.cfm/sacred>.

96. See GEORGE SMITH, *THE ASSYRIAN EPONYM CANON* 67 (London, S. Bagster & Sons, 1875); WILLIAM RICKETTS COOPER, *AN ARCHAIC DICTIONARY* 319 (1876); cf. PERCY M. SYKES, *A HISTORY OF PERSIA* 116 (1930).

97. Andrew Johnson, *Found at Last: The World's Oldest Syriac Missing Page*, *THE INDEPENDENT* (London), Feb. 17, 2008, <http://www.platformaram.nl/forum/viewtopic.php?f=9&t=3790>; Martin Bailey, *Fragments of World's Oldest Christian Manuscript Found In Egyptian Monastery*, *THE ART NEWSPAPER* (London), Feb. 18, 2008, <http://www.platformaram.nl/forum/viewtopic.php?f=9&t=3790>.

98. ROBIN E. WATERFIELD, *CHRISTIANS IN PERSIA* 23 (1973) (setting forth a balanced view of the schism); *Nestorius and Nestorianism*, in 10 *THE CATHOLIC ENCYCLOPEDIA* (1911), <http://www.newadvent.org/cathen/10755a.htm> (setting forth the Catholic view).

99. See J.P. FLETCHER, *NOTES FROM NINEVEH & TRAVELS IN MESOPOTAMIA, ASSYRIA, & SYRIA* (1850), available at <http://www.aina.org/books/nfn/nfn.htm>. The terms “Chaldea” and “Chaldean” refer, respectively, to the region and the people of southern and southeastern Babylonia, and are sometimes contrasted with the more northern and northwestern Amorite tribal regions of Babylonia. Some Babylonian kings, for example Hammurabi of the eighteenth century BCE, were of Amorite tribal affiliation, while others were Chaldean, for example Nebuchadnezzar II. See, e.g., ANNIE CAUBET & PATRICK POUYSSEGUR, *THE ANCIENT NEAR EAST: THE ORIGIN OF CIVILIZATION* 101, 135, 137 (English ed. 1998); Ran Zadok, *On the Amorite Material from Mesopotamia*, in *THE TABLET AND THE SCROLL: NEAR EASTERN STUDIES IN HONOR OF WILLIAM H. HALLO* (M.E. Cohen, D.C. Snell & D.B. Weisberg eds., 1993); *Amorite*, in *THE ENCYCLOPEDIA BRITANNICA* (2008), <http://www.britannica.com/EBchecked/topic/21276/Amorite>; Emil Hirsch et al., *Chaldea*, in *THE JEWISH ENCYCLOPEDIA* (1906), <http://www.jewishencyclopedia.com/view.jsp?artid=336&letter=C>.

100. See H.W.F. SAGGS, *THE MIGHT THAT WAS ASSYRIA* 290 (1984).

came the seat of a Nestorian bishop.¹⁰¹ By the sixth century CE, the Assyrian “Nestorians” had spread east to the Pacific Ocean.¹⁰²

2. Efforts to Achieve the Extinction of the Assyrian Culture and Religion

About 1,000 years ago, Turks and Kurds began invading Assyria from Central Asia through Persia.¹⁰³ The progressive destruction of Assyrian culture and religion ensued.¹⁰⁴ By 1900, the Assyrian people

101. See DE LACY O’LEARY, HOW GREEK SCIENCE PASSED TO THE ARABS, ch. 1 (2001), <http://www.aina.org/books/hgsptta.htm>; MICHAEL G. MORONY, IRAQ AFTER THE MUSLIM CONQUEST 345 (1984); AUBREY VINE, THE NESTORIAN CHURCHES (1937); JAMES P. FLETCHER, 2 NARRATIVE OF A TWO YEARS’ RESIDENCE AT NINEVEH AND TRAVELS IN MESOPOTAMIA, ASSYRIA, AND SYRIA 148 (Henry Colburn ed., 1850); 11 EDWARD GIBBON, THE HISTORY OF THE DECLINE AND FALL OF THE ROMAN EMPIRE, ch. LXVII (J.B. Bury, ed., 1906) (1781), http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php&person=4084; Parpola, *supra* note 87.

102. See *infra* note 165 and accompanying text.

103. See Tuner Baykara, *The Early Times of the Turks*, in 1 THE TURKS: EARLY AGES 47–48 (Hasan Celâl Güzel ed., 2002) (“Turkia” was a sixth century CE term for Central Asia, and “Turkestan” was a related term in Arab and Persian ninth and tenth century CE sources); UNREPRESENTED NATIONS AND PEOPLES ORGANIZATION: YEARBOOK 1997, at 92 (J. Mullen ed., 1998) (Turks in Iraq are “originally from central Asia” and “began settling in the northern and middle regions of Iraq over a thousand years ago”); HAKAN ÖZOĞLU, KURDISH NOTABLES AND THE OTTOMAN STATE 25 (2004) (some scholars cite linguistic evidence that shows the “Kurds are one of the original Turkic clans of Central Asia”; although other scholars attempt to connect the Kurds to the ancient Medes, there is an absence of linguistic or cultural evidence for that theory, and a gap of many centuries between last mention of Medes and first mention of Kurds); OFRA BENGIO, SADDAM’S WORD: POLITICAL DISCOURSE IN IRAQ 116 (1998) (term “Kurdistan” was first used by Seljuk Turks for part of eastern Persia); JACK DAVID ELLER, FROM CULTURE TO ETHNICITY TO CONFLICT 154 (1999) (Seljuk Turks “Turkified” some Kurdish tribes that lived in Persia, while some Turkish tribes became “Kurdified”). Various groups present in ancient Anatolia and Assyria in ancient times, from which contemporary Turks and Kurds sometimes claim ancestry, actually had no written language or very little written literature, unlike the Sumero-Akkadians and Assyro-Babylonians, and therefore cannot be connected by means of linguistic or religious influences to present-day Turks or Kurds, the latter of whom have very little written record of their own. These peoples include the Guti, Kassite, Kurti, Khaldi, Qurtie, Manna (Mannaeans), Mards, Medes, and Mushku. See GEORGE RAWLINSON, 2 THE FIVE GREAT MONARCHIES OF THE ANCIENT EASTERN WORLD 73 (2004) (1881) (“the Medes have left us no written monuments”); MORTIMER CHAMBERS ET AL., THE WESTERN EXPERIENCE 26 (1995) (no written documents from Medes have been found); H. M. BURTON, *The Kurds*, 31 J. ROYAL CENT. ASIAN SOC. 64, 67 (1943) (Kurds have very little written record of their history); YONA SABAR, THE FOLK LITERATURE OF THE KURDISTANI JEWS xvi (1982) (“very few” mentions in Babylonian Talmud, written centuries or millennia after time of Medes, to territory sometimes referred to today as “Kurdistan,” and apparently no references at all to Kurds).

104. Under Ottoman Turkish rule, Assyrians suffered frequent attacks and raids by Kurds and Turks, attacks which culminated in massacres of tens of thousands of Assyrians in both the 1840s and the 1890s. See Anahit Khosroeva, *The Assyrian Genocide in the Ottoman Empire and Adjacent Territories, in THE ARMENIAN GENOCIDE: CULTURAL AND ETHICAL LEGACIES* 267–68 (Richard Hovannisian ed., 2007); WILHELM BAUM, THE CHRISTIAN MINORITIES OF TURKEY 99–103 (2006); DAVID WILMSHURST, THE ECCLESIASTICAL ORGANISATION OF THE CHURCH OF THE EAST,

had been reduced from tens of millions to about 150,000 in the mountains between present-day Turkey and Iraq, and a few hundred thousand more in the cities and plains of Iraq, Iran, and Turkey.¹⁰⁵ During and after World War I, the Ottoman Empire and allied Kurdish militia carried out the genocide of 175,000 to 250,000 Assyrians of Anatolia, Mesopotamia, and Persia.¹⁰⁶ Entire districts and Catholic dioceses full of Assyrian villages were destroyed.¹⁰⁷ The Vatican of the Assyrians, the seat of Mar Shimun and the Church of the East in Qudshanis (Kochanes), “was attacked by regular troops and Kurds, destroyed and plundered.”¹⁰⁸ A leader of the Chaldean church reported in 1918 that the Hakkari mountains surrounding Qudshanis were empty of Assyrians, Turks having shelled and burned the villages there.¹⁰⁹ Assyrian authors confirmed the destruction of the Assyrian towns and villages in the Hakkari mountains as well as in the southeastern Anatolian cities of Van, Diyarbekir, Bitlis, Seert, Harput, Mardin, and Urfa, and towns like Jazireh near Syria.¹¹⁰ German, French, and Turk-

1318–1913, *passim* (2000) (recounting numerous attacks and raids by Kurds on Assyrians); RASSAM, *supra* note 101, at 117–18; Emilius Clayton, British Vice-Consul in Van, *Report on Reforms in Van*, in 1 BRITISH DOCUMENTS ON OTTOMAN ARMENIANS 652 (Bilal N. Simsir ed., 1982); J.G. Taylor, *Report on the Social and Political Condition of the Consulate for Koordistan*, in 1 BRITISH DOCUMENTS ON OTTOMAN ARMENIANS, *supra*, at 64, 66–67.

105. See MICHAEL ANGOLD, *EASTERN CHRISTIANITY* 523 (2006). This is down from a peak population in the tens of millions. See Miran Sevasly, *Armenia and Her Claims to Freedom and National Independence*, S. Doc. No. 316, 65th Cong., 3d Sess., at 7 (1918) (30 million); SYDNEY E. AHLSTROM & DAVID D. HALL, *A RELIGIOUS HISTORY OF THE AMERICAN PEOPLE* 995 (2004) (1972) (citing, but casting doubt on, estimate of 80 million).

106. See, e.g., Adam Jones, Press Release, International Genocide Scholars Association Officially Recognizes Assyrian, Greek Genocides (Jan. 4, 2008), <http://www.nowpublic.com/press/recognition-genocide-perpetrated-turkey-against-greeks-and-assyrians-1914-1923>; Khosroeva, *supra* note 104, at 269–74 (130,000 Assyrians killed in Hakkari region of southeastern Anatolia and Assyria, 25,000 in Persia, 10,000 in the Tur Abdin region of Anatolia, etc.); Travis, *supra* note 12, at 337 (collecting sources for 250,000 figure); DAVID GAUNT, *MASSACRES, RESISTANCE, PROTECTORS: MUSLIM-CHRISTIAN RELATIONS IN EASTERN ANATOLIA DURING WORLD WAR I*, *passim* (2006) (Assyro-Chaldean delegation to the Paris Peace Conference estimated that 250,000 Assyrians had been massacred or died defending their towns in Persia and in the Ottoman provinces of Diyarbekir, Van, Bitlis, Mamuret ul-Aziz, Adana, and Urfa).

107. See Travis, *supra* note 12, at 333 (quoting, *inter alia*, H.P. Packard, Letter to the Editor, N.Y. TIMES, Sept. 18, 1916, at 12).

108. See GAUNT, *supra* note 106, at 144–45.

109. See *id.* at 148–49.

110. See Malik Cambar, *Autobiography* (1960) (unpublished manuscript, on file with Juliana Jawaro); MALIK CAMBAR, *VIE ET COUTUMES DES MALIKS* (1924); JOSEPH NAAYEM, *SHALL THIS NATION DIE?* (1921); YONAN H. SHAHBAZ, *THE RAGE OF ISLAM: AN ACCOUNT OF THE MASSACRE OF CHRISTIANS BY THE TURKS IN PERSIA* (1918); ABRAHAM YOHANNAN, *THE DEATH OF A NATION, OR, THE EVER PERSECUTED NESTORIANS OR ASSYRIAN CHRISTIANS* (1916); see also HELGA ANSCHUTZ, *DIE SYRISCHEN CHRISTEN VOM TUR 'ABDIN* (1985); SHLEMOND-MALEK ISMAEL, *THE ASSYRIANS AND THE TWO WORLD WARS 1914-1945, DIARY OF SHLEMON D-MALEK ISMAEL* (Yaqob Ismael ed., 1964), *quoted in* GABRIELE YONAN, *LEST WE PERISH: A*

ish sources documented systematic pillaging of Assyrian cultural property.¹¹¹

In 1919, a post-war Ottoman court-martial convicted wartime leaders of illegal deportations and atrocities, including against Assyrians (“Syrians”).¹¹² The first President of modern Turkey, Mustafa Kemal, confirmed that the Ottoman regime had murdered millions of its Christian subjects and “plunder[ed]” their property.¹¹³ In 1920, the Ottoman government signed the Treaty of Sévres,¹¹⁴ in which it admitted that the Young Turk regime had terrorized its “subjects of non-Turkish race” with massacres and the illegal destruction and theft of their homes and businesses.¹¹⁵

In the twentieth century, racism, ultranationalism, and imperialism would devastate indigenous communities in Europe, Africa, Asia, and Oceania, much as these same tendencies had ravaged the peoples of the Americas, Celtic Scotland and Ireland, and the Ottoman Empire for many centuries.¹¹⁶ Within a decade after 1945, it seemed that the fall of the British, French, German Nazi, and Japanese militarist empires might save many indigenous peoples from ruin.¹¹⁷ The Cold War

FORGOTTEN HOLOCAUST, THE EXTERMINATION OF THE CHRISTIAN ASSYRIANS IN TURKEY AND PERSIA 96–102 (1996); Mar Shimun XXI Benjamin, *Letter on the Flight from the Turks and Kurds to Persia* (1915), in GABRIELE YONAN, EIN VERGESSENER HOLOCAUST: DIE VERNICHTUNG DER CHRISTLICHEN ASSYRER IN DER TÜRKEI [A FORGOTTEN HOLOCAUST: THE EXTERMINATION OF THE CHRISTIAN ASSYRIANS IN TURKEY] 250 (1989) [hereinafter EIN VERGESSENER HOLOCAUST]; William Walker Rockwell, *The Pitiful Plight of the Assyrian Christians in Persia and Kurdistan* (1916), in EIN VERGESSENER HOLOCAUST, *supra*, at 235–243; DEUTSCHLAND UND ARMENIEN: SAMMLUNG DIPLOMATISCHER AKTENSTÜCKE (Johannes Lepsius ed., 1919), in EIN VERGESSENER HOLOCAUST, *supra*, at 269–72; JOSEPH TFINKDJI, THE VICTIMS OF THE CHALDEAN NATION DURING THE MASSACRES IN ARMENIA: REPORT OF A CHALDEAN CLERGYMAN (1918), *quoted in* EIN VERGESSENER HOLOCAUST, *supra*, at 309–12.

111. See Walter Holstein, German Consul in Mosul, *Telegram to the German Embassy in Mosul of May 18, 1915*, in EIN VERGESSENER HOLOCAUST, *supra* note 110, at 276; Prince Ernst zu Hohenlohe-Langenburg, *Telegram to the German Embassy of July 31, 1915*, in Lepsius, *supra* note 110, at 115; EUGÈNE GRISSELLE, SYRIENS ET CHALDÉENS: LEUR MARTYRE—LEURS ESPÉRANCES (1918); GAUNT, *supra* note 106, *passim*.

112. See *Turkey Condemns Its War Leaders: Court-Martial Gives Death Sentence to Enver Pasha, Tallat Bey, and Djemal Pasha*, N.Y. TIMES, July 13, 1919, available at <http://www.cilicia.com/armo10c-nyt19190713.html>.

113. Emile Hildebrand, *Kemal Promises More Hangings of Political Antagonists in Turkey*, L.A. EXAMINER, Aug. 1, 1926, *quoted in* Dennis R. Papazian, “Misplaced Credulity”: *Contemporary Turkish Attempts to Refute the Armenian Genocide*, 45 ARMENIAN REV. 185, 202 (1992).

114. See Travis, *supra* note 12, at 341.

115. See *id.* (citing Treaty of Peace Between the Allied and Associated Powers and Turkey (Treaty of Sévres), August 10, 1920 (unratified), arts. 140–41, 142, 144–45, 147–50, *reprinted in* 15 SUPPLEMENT AM. J. INT’L L. 179, 182–84, 208–09, 211–12 (1921)).

116. See Travis, *supra* note 9, at 6–52; JONES, *supra* note 6, at 23–26, 119–247.

117. Cf. U.N. Charter, pmb. (declaring that “we the peoples of the United Nations [are] determined to save succeeding generations from the scourge of war, . . . and to

and the race to exploit the oil and gas reserves that power modern armies and industries prevented this sort of “peace dividend” from being enjoyed by indigenous peoples.¹¹⁸ Resource wars and super-power-backed dictatorships claimed millions of victims after 1945.¹¹⁹ Turkey and Iraq were no different.

Most of Iraq was Christian at the time of the Arab conquest in 634 CE, but over 90% of the Iraqi population was Muslim by the 1980s.¹²⁰ By 1984 about 1.5 million Christians¹²¹ and 4 to 4.5 million Kurds¹²² lived in Iraq. Many Assyrians fled their ancestral villages in the 1960s

reaffirm faith in fundamental human rights, . . . [and] in the equal rights of men and women and of nations large and small”).

118. See Travis, *supra* note 9, at 6–52 (describing this dynamic in Sudan); HUMAN RIGHTS WATCH, GENOCIDE IN IRAQ: THE ANFAL CAMPAIGN AGAINST THE KURDS 5–15 (1993) (describing this dynamic in Iraq).

119. See Robert Cribb, *Genocide in Indonesia, 1965-1966*, 3 J. GENOCIDE RES. 219 (2001) (genocide in 1960s Indonesia claimed up to a million suspected leftists, ethnic Chinese, and Christians); XXVI FOREIGN RELATIONS OF THE UNITED STATES, 1964-1968: INDONESIA; MALAYSIA-SINGAPORE; PHILIPPINES, 338–40 (Edward C. Keefer & David S. Patterson eds., 2001), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB52/exhibit1.pdf> (similar); 26 U.N. GAOR, 2003rd plen. mtg. at 14 ¶ 156 (Dec. 7, 1971) (genocide occurred during 1970s in Pakistan, as government exterminated over a million people); 26 U.N. SCOR, 1608th mtg. at 27 ¶ 262 (6 Dec. 1971) (same); XI FOREIGN RELATIONS OF THE UNITED STATES, 1969-1976: SOUTH ASIA CRISIS, 1971, at 181 (Louis J. Smith & Edward C. Keefer eds., 2005), available at <http://www.state.gov/documents/organization/45587.pdf> (similar); Telegram from American Consulate Dacca to Secretary of State, Washington, D.C. (Mar. 27, 1971), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB79/BEBB1.pdf> (similar); NEW INDIA MINISTRY OF EXTERNAL AFFAIRS AND COMMONWEALTH RELATIONS, BANGLA DESH DOCUMENTS (1971) (providing more detail); Helen Fein, *Revolutionary and Antirevolutionary Genocides: A Comparison of State Murders in Democratic Kampuchea, 1975 to 1979, and in Indonesia, 1965 to 1966*, in 35 COMP. STUD. SOC'Y & HIST. 796, 810–12 (1993) (genocide occurred in 1960s Indonesia and 1970s Cambodia as nations sponsored by Cold War rivals United States and Soviet Union exterminated political opponents and related ethnic groups).

120. See Mark Lewis, *Historical Setting*, in FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, COUNTRY STUDIES: IRAQ (Helen Chapin Metz ed., 1988), available at <http://memory.loc.gov/frd/cs/cshome.html>.

121. See UNITED KINGDOM, HOME OFFICE, IRAQ COUNTRY ASSESSMENT (Oct. 2001), available at <http://www.unhcr.org/refworld/docid/486a52fc0.html>; U.K., HOME OFFICE, JOINT BRITISH-DANISH FACT FINDING MISSION TO AMMAN AND ANKARA REGARDING IRAQI ASYLUM SEEKERS (June 2002), available at <http://www.unhcr.org/refworld/docid/470264f05a.html>; Patrick J. McDonnell, *After Years of Relative Peace, Christians Live in Fear*, L.A. TIMES, Nov. 14, 2004; Vivienne Walt, *Iraqi Christians Fear Invasion Backlash*, USA TODAY, Dec. 19, 2002; Daniel B. Wood, *U.S. Iraqis: A Will to Oust Hussein*, CHRISTIAN SCI. MONITOR, Dec. 17, 2002.

122. See Human Rights Watch, *supra* note 118, at xiii, 24 (estimating four to 4.5 million Kurds lived in Iraq in early 1990s), available at <http://www.hrw.org/en/reports/1993/07/01/genocide-iraq>. The 1987 Iraqi census revealed only three million Kurds, but there were multiple problems with it including a genocidal government policy against Kurds and an ongoing military draft for a war with Iran, so its reliability is doubted by statisticians. See 9 ENCYCLOPAEDIA OF MUSLIM WORLD 23 (Taru Bahl & M H Syed eds., 2003); Beth Osborne Daponte, Joseph B. Kadane & Lara J. Wolfson, *Bayesian Demography: Projecting the Iraqi Kurdish Population, 1977-1990*, 92 J. AM. STATISTICAL ASSOC. 1256 (1997).

and 1970s for Baghdad and Mosul, as a Kurdish rebellion raged in northern Iraq.¹²³ Around 1,000 Assyrians “disappeared” during the Anfal campaign to destroy the Kurdish independence movement, as did tens of thousands of Kurds living in the northern “prohibited zones.”¹²⁴ Government “Arabization” policies deported about 100,000 Kurds, Assyrians, and Turkmen from their homes and villages by 2001, particularly from around Kirkuk.¹²⁵

After a Kurdish rebellion in 1991, the Saddam Hussein regime ceded control over many areas of northern Iraq inhabited by Assyrians to the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK).¹²⁶ Although Assyrians eventually elected five representatives to the Kurdish parliament, ethnic discrimination against Assyrians continued to occur in the Kurdish-administered territories in the provinces of Nineveh, Arbil, Kirkuk, Diyala, Dohuk, and Sulaimaniya. The civil war between the KDP and PUK, and anti-Assyrian mob violence, killed many Assyrians and displaced tens or even hundreds of thousands of villagers.¹²⁷ Moreover, the KDP invited the Iraqi army to retake the northern city Arbil from PUK forces in 1995, which resulted in the “indiscriminate shelling” by Iraqi artillery of Arbil and other cities and villages in northern Iraq.¹²⁸ Hundreds of thousands of Assyrians left their homes and villages in Iraq between 1979 and 2002,¹²⁹ so that by the mid-1990s, more Assyrians lived outside the Middle East than in Assyria or Anatolia.¹³⁰

123. See Joseph Alichoran, *Assyro-Chaldeans in the 20th Century: From Genocide to Diaspora*, 8 J. ASSYRIAN ACAD. STUD. 45, 72–74 (1994).

124. See United Nations Office for the Coordination of Humanitarian Affairs, *Iraq: Focus on Mass Graves*, Jan. 7, 2004; BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, 1994 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—IRAQ (1995) [hereinafter (year) COUNTRY REPORT ON HUMAN RIGHTS PRACTICES—(COUNTRY)]; INT'L FED'N FOR HUMAN RIGHTS, IRAQ: CONTINUOUS AND “SILENT” ETHNIC CLEANSING 16 (2003) available at <http://www.unhcr.org/refworld/docid/46f146640.html>.

125. See U.K. HOME OFFICE, UK HOME OFFICE IMMIGRATION AND NATIONALITY DIRECTORATE COUNTRY ASSESSMENT—IRAQ (2002), available at <http://www.unhcr.org/refworld/docid/3c2b4e120.html>.

126. 2002 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—IRAQ (2003), available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18277.htm>.

127. See U.K. HOME OFFICE, *supra* note 125; Alastair Bruton, Letter to the Editor, *Christian Sects in Kurdish Lands Dwindle*, N.Y. TIMES, May 24, 1993.

128. *Iraqi Authority to Return to Kurdistan Under Draft Accord*, AGENCE FRANCE-PRESSE, Sept. 26, 1996.

129. See Jonathan Eric Lewis, *Iraqi Assyrians: Barometer of Pluralism*, MIDDLE EAST Q., June 22, 2003, available at <http://www.meforum.org/558/iraqi-assyrians-barometer-of-pluralism>.

130. UNREPRESENTED NATIONS AND PEOPLES ORGANIZATION: YEARBOOK 1997, *supra* note 103, at 44 (3.3 million Assyrians lived in 30 countries outside Middle East by mid-1990s, compared to only 2.5 million in Middle East); Assemb. J. Res. 31 (Cal. 2003), <http://info.sen.ca.gov/cgi-bin/waisgate?WAISdocID=78523227392+0+0+0&WAIAction=retrieve> (350,000 Assyrians live in California, Michigan, and Illinois); NATALIE HENRICH & JOSEPH HENRICH, WHY HUMANS COOPERATE: A CULTURAL AND EVOLUTIONARY EXPLORATION 81 (2007) (similar).

After the 2003 war destroyed the Ba'athist regime, the persecution of Assyrians intensified, rather than abated as is frequently claimed by U.S. media outlets. Over 200 Assyrians were assassinated or otherwise murdered in the first 15 months after the war.¹³¹ The British government has confirmed that the attacks on Iraqi Assyrians and their cultural institutions since the war have been "systematic."¹³² Through 2006, 27 Christian churches were blown up or seriously damaged, and many Christian and other religious minority leaders were murdered.¹³³ About 50,000 Assyrians left Iraq in the 18 months after the war due to persecution,¹³⁴ only to suffer discrimination and detention without charges, even of Assyrian children, in the United States, Europe, Australian territory, and the Middle East. Over 15,000 Assyrians fled Iraq as refugees in a single three-month period after several churches were bombed and over 11 Assyrian worshippers killed in August 2004.¹³⁵ Most Assyrians living in the southern Iraqi city of Basra, where they have had a presence for millennia, fled Iraq entirely as "fundamentalist religious leaders" claimed power under foreign occupation.¹³⁶ The Kurdish majority in northern Iraq intimidated Assyrian residents into abandoning their homes and villages, with Kurds resettled there.¹³⁷ Kurdish attacks prompted the Vice-Chair of the U.S. Commission on International Religious Freedom to warn of an "ethnic-cleansing campaign" against Assyrians.¹³⁸

The new Iraqi constitution enacted after the 2003 war formally requires equality as between the Muslim majority and the Christian,

131. See Michael J. Frank, *Justice for Iraq, Justice for All*, 57 OKLA. L. REV. 303, 310–11 n.44 (2004) (citing Willis Witter, *Iraqi Christians Fear Muslim Wrath*, WASH. TIMES, Apr. 7, 2004, at A14).

132. See U.K. HOME OFFICE, *supra* note 121 ¶ 6.54.

133. *The Plight of Religious Minorities: Can Religious Pluralism Survive?*, Hearing of the Subcomm. on Africa, Global Human Rights & Int'l Operations of the H. Comm. on Int'l Relations, 109th Cong. 121 (2006) (testimony of Rosie Malek-Yonan), available at http://commdocs.house.gov/committees/intlrel/hfa28430.000/hfa28430_0.HTM.

134. Patrick J. McDonnell, *After Years of Relative Peace, Christians Live in Fear*, L.A. TIMES, Nov. 14, 2004; Jim Lobe, *Iraqi Christians Need Protection, Too*, ASIA TIMES, Oct. 22, 2004; Kenneth Chan, *Christians Wish to Stay, Build Future in Iraq*, CHRISTIAN POST, Oct. 20, 2004; Nina Shea, *Canary in a Coal Mine: Iraq's Future as a Tolerant, Democratic Nation Is at Stake*, NAT'L REV. ONLINE, Oct. 14, 2004, <http://www.nationalreview.com/comment/shear200410140830.asp>.

135. *Christians in Iraq Caught in the Crossfire*, ASSOCIATED PRESS, Nov. 11, 2004.

136. See *id.*; U.K. HOME OFFICE, *supra* note 121, at ¶ 6.51.

137. See Jubilee Campaign, *Parliamentary Meeting Calls for Administrative Region for Iraqi Christians*, ASSYRIAN INT'L NEWS AGENCY, Nov. 23, 2004, <http://www.aina.org/news/2004112395921.htm>; *Kurdish Involvement Suspected in Attacks on Assyrians in Mosul*, ASSYRIAN INT'L NEWS AGENCY Oct. 17, 2008, <http://www.aina.org/releases/20081017000537.htm>.

138. Shea, *supra* note 134. Ethnic cleansing includes not simply the extermination of an ethnic group, but also "rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area." U.N. Security Council, Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), ¶ 129, U.N. Doc. S/1994/674 (May 27, 1994).

Yezidi, and Sabeen Mandaean minorities.¹³⁹ The constitution prohibits ethnic cleansing, racism, or other discrimination based on ethnicity, religion, or belief.¹⁴⁰ Any Iraqi law that violates the rights guaranteed by the constitution is void, including any law contrary to the international human rights incorporated into the constitution from the ICCPR, which Iraq has ratified.¹⁴¹ Nevertheless, after the disbandment of the Iraqi security forces, various foreigners, mostly from Saudi Arabia, have exploited Iraq's unsecured borders and weapons stockpiles to wreak havoc upon minority communities, bombing and killing thousands.¹⁴² The impoverishment of the country due to U.N. sanctions, Ba'athist military adventurism, the looting of the major cities in April 2003, and other factors has contributed to virulent extremism and ethno-sectarian conflict that threaten to tear the country apart. These underlying economic realities may preclude even well-intentioned legal reform from being effective, as the population continues to wallow in illiteracy and starvation.¹⁴³

Since the 2003 war, Iraq has experienced "the largest exodus in the history of the Middle East."¹⁴⁴ The Assyrians have witnessed a drop-off in population of up to 250,000 to 400,000 members.¹⁴⁵ Assyrians are a disproportionate number of the refugees because they don't control any governorates or large militias.¹⁴⁶ Three-fourths of a sample of

139. See Mohammed Y. Mattar, *Unresolved Questions in the Bill of Rights of the New Iraqi Constitution*, 30 *FORDHAM INT'L L.J.* 126, 128, 130–31 (2006).

140. See *id.* at 130.

141. See *id.* at 137–38, 151–52.

142. See Frank, *supra* note 131, at 310–11 n.43 (citing newspaper accounts that "Christians are being systematically murdered in Iraq" and are fleeing the country as a result); Jack Fairweather, *Christians Flee Genocide as Fear Sweeps Iraq*, *DAILY TELEGRAPH* (U.K.), Jan. 8, 2005, <http://www.christiansofiraq.com/fear2.html>.

143. See Nusrat Choudhury, *Constrained Spaces for Islamic Feminism: Women's Rights and the 2004 Constitution of Afghanistan*, 19 *YALE J.L. & FEMINISM* 155, 197 (2007) (describing how extreme poverty may frustrate well-intentioned legal reformers).

144. Walter Pincus, *Senators Urge Bush to Appoint Official for Iraq Refugee Policy*, *WASH. POST*, Apr. 8, 2008, at A13 (quoting Syrian Ambassador Imad Moustapha, whose country claims to host over one million Iraqi refugees).

145. See U.S. DEP'T OF STATE, 2008 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES—IRAQ, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119116.htm> (Assyrian population fell from between 800,000 and 1.2 million in 2003 to between 550,000 and 800,000 in 2008). By way of comparison, if the Assyrian population had grown at the same rate as the 90% of the population of Iraq that is Muslim, i.e. by 20% since 2000, it would have gained 120,000 members. Compare CIA, *World Factbook 2000: Iraq*, http://www.photius.com/wfb2000/countries/iraq/iraq_people.html (2000 population of 22.6 million), with CIA, *World Factbook 2008: Iraq*, http://www.theodora.com/wfbcurrent/iraq/iraq_people.html (population of 27.5 million in 2008, a 20% jump).

146. See Allison Hoffman, *U.S. Iraqi Christians Seek Help*, *ASSOCIATED PRESS*, Dec. 15, 2006, http://www.accessmylibrary.com/coms2/summary_0286-28945311_ITM (Christians are 40% of refugees registering with UNHCR). About half of the Assyrians of the Mosul region fled in 2008 as a dozen of them were murdered in a six-week period, in what a local archbishop called "a campaign of cleansing, killing and threatening." Erica Goode & Suadad Al-Salhy, *Violence in Mosul Forces Iraqi Christians*

Iraqi refugees interviewed in Syria by UNHCR reported being personally threatened by aerial bombing, shelling, or rockets, while nearly 90% saw a person be shot at.¹⁴⁷ One-sixth had personally been tortured, so that compared to other refugee populations, Iraqis are one of the most violence-affected populations in the history of the United Nations.¹⁴⁸ Turkey does not even allow the United States to offer asylum to people who are persecuted but have no UNHCR referral document, according to U.S. officials appearing at a 2008 forum.¹⁴⁹

As physical ethnic cleansing ravaged Iraq, Turkey elected the more subtle and postmodern route of “genocide-by-law.”¹⁵⁰ This is the term of Dean Rennard Strickland of the University of Oregon for techniques by which “people are made to disappear legally, through the operation of law.”¹⁵¹ The Assyrians of Anatolia are not recognized as official minorities, so they “confront systematic repression in

to Flee, N.Y. TIMES, Oct. 11, 2008, http://www.genocidewatch.org/images/Iraq_08_10_11_Violence_in_Mosul_Forces_Iraqi_Christians_to_Flee.doc. See *Christians Growing Tense in Iraq*, UPI, Jan. 16, 2009, http://www.metimes.com/Security/2009/01/16/christians_growing_tense_in_iraq/c0c9/; Alissa J. Rubin & Stephen Farrell, *Bombs Hit Mosul, as Christians Are Offered Protection*, N.Y. TIMES, Oct. 12, 2008, <http://www.nytimes.com/2008/10/13/world/middleeast/13iraq.html?ref=world>. Iraqi sources confirmed these accounts:

Over a thousand Christian families have fled Mosul for outlying villages and villages in the Kurdistan region in search of safety, a spokesman for the Ministry of Endowment and Religious Affairs said. . . .

“The Christian families left in Mosul are very few indeed,” said Mariwan Nakshabandee, spokesman for the Ministry of Endowment and Religious Affairs, which oversees Christian communities in Mosul. . . .

The Hammurabi Association for Human Rights released a statement demanding international attention to the assassinations of Christians likening it to “genocide.”

Leila Fadel, *Thousands of Christians Flee Killings in Mosul*, McCLATCHY NEWSPAPERS, <http://www.mcclatchydc.com/255/story/53808.html>.

147. See UNHCR, *Iraq* (2008), *Trauma Survey in Syria Highlights Suffering of Iraqi Refugee*, IRAQ SITUATION, Jan. 22, 2008, www.unhcr.org/cgi-bin/texis/vtx/iraq?page=news&id=479616762.

148. See *1 in 5 Iraqi Refugees in Syria Suffered Torture or Violence Back Home*, UN NEWS SERVICE, Jan. 22, 2008, <http://www.un.org/apps/news/story.asp?NewsID=25366&Cr=iraq&Cr1=syria>.

149. The author personally heard a U.S. representative confirm this fact. See also Human Rights Watch, *Human Rights Watch Background Briefing: Iraqi Refugees, Asylum Seekers, and Displaced Persons: Current Conditions and Concerns in the Event of War*, Feb. 13, 2003, <http://www.hrw.org/backgrounders/mena/iraq021203/4.htm> (“Turkey does not offer asylum seekers a reliable system of determination and protection. Under Turkey’s geographical reservation to the Refugee Convention, . . . Turkey has maintained a geographical limitation to its Convention obligations, pursuant to which it recognizes as refugees only individuals fleeing ‘events occurring in Europe before 1 January 1951.’”).

150. Cf. *Race*, in NEW KEYWORDS: A REVISED VOCABULARY OF CULTURE AND SOCIETY 295 (Raymond Williams et al. eds., 2005) (postmodern racism is justified by reference to preservation of a nation or culture, such as that of the Hindus or Turks).

151. Rennard Strickland, *Things Not Spoken: The Burial of Native American History, Law and Culture*, 13 ST. THOMAS L. REV. 11, 16 (2000).

today's Turkey."¹⁵² They "have faced intense pressure to assimilate," including laws that criminalize expressions of their distinctive language, culture, and history.¹⁵³

In the "genocide-by-law" period, indigenous Armenian, Assyrian, and Greek names for towns and villages have been changed to Turkish names, and even individuals have been forced to use Turkish surnames and abandon their linguistic heritage and other markers of their ethnic identity.¹⁵⁴ Turkey's language laws are among the most anti-minority in the world:

Turkey still rigidly adheres to the concept of a single-language state. . . . State-sponsored schools teach no language aside from Turkish and punish students who speak other languages in the classroom. Particularly in its insistence on teaching only in Turkish, the goal of the government seems to be not only to restrict usage of other languages to the home, but to eradicate other languages completely.¹⁵⁵

Armenian, Assyrian, and Greek language broadcasting was prohibited by law until 2002, and is still de facto prohibited.¹⁵⁶ Non-Turkish

152. Minority Rights Group Int'l, *2008 State of the World's Minorities: Events of 2007*, at 141 (2008).

153. *Id.* Turkey's Constitution of 1982 does not contemplate minorities retaining languages other than Turkish as their mother tongue, or perpetuating minority languages in school. It contemplates only Turkish as a mother tongue and prohibits the teaching of languages that are neither Turkish nor "foreign." CONST. OF THE TURKISH REPUBLIC art. 42 (1982), <http://www.constitution.org/cons/turkey/part2.htm>.

154. See Kouymjian, *supra* note 5, at 173–74 (describing changing of more than 90% of Armenian place-names to Turkish ones between 1915 and 1958); GREAT BRITAIN NAVAL INTELLIGENCE DIVISION, TURKEY 10 (1942) (describing changing of Armenian and Greek place names to Turkish ones in period between World War I and World War II).

155. Kurdish Human Rights Project, Human Dimension Implementation Meeting, Oct. 7–13, 2006, *Human Rights Violations Against Kurds in Turkey*, 73, Report Presented to the Organization for Security and Co-operation in Europe (OSCE), HDIM.NGO/16/07 (Sept. 24, 2007), available at http://www.osce.org/documents/odihr/2007/09/26461_en.pdf.

156. See Human Rights Watch, *Questions and Answers: Freedom of Expression and Language Rights in Turkey*, Apr. 9, 2002, available at <http://www.hrw.org/legacy/press/2002/08/turkeyqa041902.htm> ("Individuals in Turkey face prosecution and prison terms merely for using forbidden minority languages or expressing opinions on certain taboo subjects. . . ."); *id.* (discussing EU challenges to Turkey's prohibitions on minorities use "of their mother tongue in TV and radio broadcasting," and Turkey's refusal to amend its Broadcasting Law); 2003 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—TURKEY (2004), available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27869.htm> (prior to 2003, Turkish government did not "permit[] private media outlets to broadcast in Kurdish and other traditional non-Turkish languages"); Philip Shishkin, *Turkish Vote May Pull at Diversity's Divide*, WALL ST. J., July 23, 2007 ("On a recent visit to his small Sur parish, Turkey's Assyrian Metropolitan Saliba Ozmen said the use of Aramaic is also restricted."); William Dalrymple, *Ignore the Hype*, THE SPECTATOR (U.K.), Oct. 27, 2007, available at http://www.accessmylibrary.com/coms2/summary_0286-33610082_ITM ("[U]ntil very recently, minority languages like the Syrian Christians' Aramaic were banned from broadcasting and teaching, and almost all seminaries had been closed. But cross into Syria at Qamishli, and you find yourself

names are banned, forcing descendents of families massacred or enslaved by Turks to give their children Turkish names.¹⁵⁷ Political parties seeking to preserve regional and ethnic cultures, or to seek autonomy for their members, are prohibited in Turkey, even though they are a mainstay of politics in Iraq, the United Kingdom, and many other countries.¹⁵⁸ While languages other than Turkish are banned from education and the mass media, school textbooks teach Turkish children “negative stereotypes of Armenians and other minorities.”¹⁵⁹

Even the history of Anatolia’s indigenous peoples is frequently banned by law. For example, “Article 301 of the Turkish penal code bans ‘denigrating Turkish identity,’ and . . .” which “. . . often has been used to suppress any discussion or acknowledgement of the 1915 Armenian genocide.”¹⁶⁰ Article 216 of the penal code calls for one to four and a half years in prison for a person who “incites groups of the population to breed enmity or hatred towards one another by, for instance, denigrating [majority] religious values.”¹⁶¹ The legislative history of the provision refers specifically to the Armenian genocide as an exemplar of the type of cultural and historical speech it would prohibit.¹⁶²

3. The Intentional Destruction of Assyrian Cultural and Intellectual Property

By the time of the Arab conquest, the Assyro-Chaldean Church of the East had established bishops and priests in Armenia, the Caucuses, Arabia, Persia, Bactria, India, and China.¹⁶³ As of the

in a town that is 75 per cent Christian, with icons of Christ and his mother filling almost every shop and decorating every other car window—an extraordinary display after the paranoia of Turkey.”).

157. See 2003 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—TURKEY, *supra* note 156 (Turkish law bans “names contrary to the ‘national culture’ or ‘customs and traditions,’” but was amended in 2003 to ban “names contrary to ‘moral norms’ or names that ‘offend the public,’” including those with “letters . . . not found in Turkish” language).

158. Article 58 of Turkey’s Election Law “prohibits the use of languages other than Turkish in propaganda disseminated in radio or television as well as in other election propaganda.” Olgun Akbulut, *The State of Political Participation of Minorities in Turkey – An Analysis under the ECHR and the ICCPR*, 12 INT’L J. MINORITY & GROUP RTS. 375, 388 (2005). Article 81 of the Turkish Law on Political Parties bans all political parties that assert that there are any minorities within Turkey based on race, national origin, language, or religion, or that propose to “promot[e] or disseminat[e] languages or cultures other than Turkish.” *Id.* at 376.

159. MINORITY RIGHTS GROUP INT’L, *supra* note 152.

160. *Id.*

161. Organization for Security and Co-operation in Europe [OSCE] Representative on Freedom of the Media, *Review of the Draft Turkish Penal Code: Freedom of Media Concerns* 3 (May 2005) (prepared by Miklos Haraszti), available at http://www.osce.org/documents/rfm/2005/03/14223_en.pdf.

162. See *id.* at 5.

163. See SUHA RASSAM, *CHRISTIANITY IN IRAQ: ITS ORIGINS AND DEVELOPMENT TO THE PRESENT DAY* 35–45, 80–81 (reprint ed. 2006) (Mesopotamia, Persia, and

tenth century CE, Church of the East bishops, under the jurisdiction of the Patriarch in Baghdad or elsewhere in Mesopotamia,¹⁶⁴ had been established throughout Israel and Palestine, Arabia, Persia, the Persian Gulf, Central Asia, India, Mongolia, Tibet, China, Korea, and Japan.¹⁶⁵

Some Assyrians initially welcomed the Arab conquests of Assyria and Syria as a respite from outbursts of Eastern Roman (Byzantine) and Persian Zoroastrian persecution and oppression.¹⁶⁶ Within several centuries, however, many churches had been destroyed or reduced to ruins as a result of the caliphate's decrees, related discrimination and oppression, the deportation of Assyro-Chaldeans and the theft of their property, and the executions of heretics.¹⁶⁷

Although Assyrian villages and cities suffered greatly in the nineteenth century CE, their devastation on a widespread basis, spanning present-day Turkey, Iraq, Iran, and Syria, culminated in 1915. Over 300 Assyrian villages and 150 churches in Turkey, mostly of the Syrian Orthodox denomination, were destroyed or heavily damaged by Ottoman Turkish and Kurdish forces during World War I.¹⁶⁸ Many more

present-day Afghanistan); AUSTEN HENRY LAYARD, *NINEVEH AND ITS REMAINS: A NARRATIVE OF AN EXPEDITION TO ASSYRIA* 82 (1876) (Chaldea, Persia, Arabia Felix, the Huns, Bactria, India, and China); Nina Garsoian, *The Marzpanate, in* 1 *THE ARMENIAN PEOPLE FROM ANCIENT TO MODERN TIMES* 99–103 (Richard Hovannisian ed., 2004) (locating Huns in Caucasus and east of Persia).

164. See SAMUEL HUGH MOFFETT, *A HISTORY OF CHRISTIANITY IN ASIA: 1500 TO 1900*, at 295 (1998).

165. See RASSAM, *supra* note 163, at 34–45, 76, 87–88 (Church of the East bishops existed in Central Asia [East and West Turkestan], India, and China); JOHN M. L. YOUNG, *BY FOOT TO CHINA: MISSION OF THE CHURCH OF THE EAST, TO 1400*, ch. 3 (Grey Pilgrim Publ'ns 1991) (1984) (the Persian Gulf, Bactria [Afghanistan], India, Tibet, China, Korea, and Japan); RENE GROUSSET, *EMPIRE OF THE STEPPES: A HISTORY OF CENTRAL ASIA* 154–55, 300–06, 369 (1970) (Israel/Palestine, China, Samarkand, and Mongolia); 8 GIBBON, *supra* note 101, at ch. XLVII (Persia, Bactria, India, and China).

166. See RASSAM, *supra* note 163, at 76, 87–88. Similar reactions have been reported in Armenia, Persia, and the Levant. See WATERFIELD, *supra* note 98, at 33; 9 GIBBON, *supra* note 101, at ch. LI.

167. See RASSAM, *supra* note 163, at 88–90; *THE MIDDLE EAST YESTERDAY AND TODAY*, 101 (David W. Miller and Clark D. Moore eds., 1970); JOHN STEWART, *NESTORIAN MISSIONARY ENTERPRISE: THE STORY OF A CHURCH ON FIRE* 215, 218 (1928); ABRAHAM YOHANNAN, *THE DEATH OF A NATION: OR, THE EVER PERSECUTED NESTORIANS OR ASSYRIAN CHRISTIANS* 95–98 (1916).

168. See *Urmia: Statement by the Rev. William A. Shedd*, in *THE TREATMENT OF ARMENIANS IN THE OTTOMAN EMPIRE, 1915–1916*, at 137–39 (James Bryce, Arnold Toynbee & Ara Sarafian eds., Gomidas Institute 2000) (1916); *First Exodus from Urmia, January 1915: Report, Dated 1st March, 1915*, from the Rev. Robert M. Labaree, in *THE TREATMENT OF ARMENIANS, supra*, at 141–45; *Azerbaijan, Behind the Russian Front: Extracts from a Series of Letters by the Rev. Robert Labaree*, in *THE TREATMENT OF ARMENIANS, supra*, at 146–48; *Tabriz: Letter Dated Tabriz, 17th March, 1915*, from the Rev. F.N. Jessup, in *THE TREATMENT OF ARMENIANS, supra*, at 149–53; *Urmia: Letter, Dated Urmia, 25th May, 1915*, from the Rev. Y.M. Nisan, in *THE TREATMENT OF ARMENIANS, supra*, at 187–88; *Urmia: Narrative of Jacob Sargis*, in *THE TREATMENT OF ARMENIANS, supra*, at 189–91; *Hakkari: Statement by Mr.*

villages, including entire districts and dioceses, were wiped out.¹⁶⁹ Many of the razed towns and villages contained architecture, manuscripts, and artifacts of tremendous importance to the Assyrians and their cultural heritage, including the ancient seat of the Church of the East in Qudshanis (Kochanes), and the seat of the Syrian Orthodox church in Mardin, both seats being located in southeastern Anatolia.¹⁷⁰ The Ottomans generally demolished churches and monasteries, including in the ancient Christian center of Seert, which was left smoldering and unrecognizable.¹⁷¹

The modern government of Iraq, even after ratifying such international treaties such as the Genocide Convention of 1948, the Hague Convention of 1954, and the ICCPR,¹⁷² adopted policies of demolishing Assyrian villages and churches and of depriving Assyrians of their cultural and intellectual property. Between 1961 and 1978, the Iraqi government and rebel Kurds destroyed dozens of majority Assyrian villages in the provinces of Nineveh, Dohuk, and Arbil.¹⁷³ Many of these villages housed 100-200 families each.¹⁷⁴ The Iraqi government razed almost 25 churches, monasteries, and religious-run orphanages during this period.¹⁷⁵ The Assyrian families driven from their homes

Paul Shimmon, in THE TREATMENT OF ARMENIANS, supra, at 200-02; Refugees from Hakkari, Letter Dated Diliman, 1st/14th April, 1916, from Surma, in THE TREATMENT OF ARMENIANS, supra, at 208-10; Alpheus N. Andrus, Mardin, in "TURKISH ATROCITIES": STATEMENTS OF AMERICAN MISSIONARIES ON THE DESTRUCTION OF CHRISTIAN COMMUNITIES IN OTTOMAN TURKEY, 1915-1917, at 95, 100-101 (Ara Safarian, ed., Gomidas Institute 1998) (1918); BAUM, supra note 104, at 98-103; GAUNT, supra note 106, at 19, 24, 164, 183-84, 200-494; Travis, supra note 12, at 333-38, 340-44.

169. *See Hakkari: Statement by Mr. Paul Shimmon, in THE TREATMENT OF ARMENIANS, supra, at 200-02 (villages in Hakkari mountains and neighboring plains); Refugees from Hakkari, in THE TREATMENT OF ARMENIANS, supra, at 3-18 (similar); see also GAUNT, supra note 168, at 200-494 (many villages and dioceses in southeastern Anatolia, northwestern Mesopotamia, and northwestern Persia); EUGENE GRISSELLE, SYRIENS ET CHALDÉENS, LEUR MARTYRE, LEURS ESPÉRANCES 19-26 (Paris, 1918) (similar); Basile M. Nikitine, *Une Petite Nation Victime de la Guerre: Les Chaldéens*, 44 REVUE DES SCIENCES POLITIQUES 602 (1921) (similar); Travis, supra note 12, at 333-38 (similar); EIN VERGESSENER HOLOCAUST, supra note 110, at 212-70, 309-12 (villages in Hakkari mountains).*

170. *See GAUNT, supra note 106, at 8 (Qudshanis was seat of Church of the East for most of period from late Middle Ages until 1915); Travis, supra note 12, at 338 (Qudshanis and surrounding towns, villages, and churches destroyed); Surma, supra note 168, at 203-18 (providing further details on destruction of Qudshanis region).*

171. *See GAUNT, supra note 106, at 72, 98.*

172. *See Mattar, supra note 31, at 128, 137-38 (Iraq ratified the ICCPR and the International Covenant on Economic, Social, and Cultural Rights).*

173. *See Majed Eshoo, The Fate of Assyrian Villages Annexed to Dohuk (Mary Challita, trans., Assyrian Int'l News Agency 2004), <http://www.aina.org/reports/avod.htm> (describing massacres and expulsions of Assyrians from northern Mesopotamian villages in 1961 due to Barzani tribal confederation's rebel movement for Kurdish independence); Assyrian Acad. Society, *ChaldoAssyrian Concerns with the Interim Constitution of Iraq 19-23* (2004), <http://www.aina.org/reports/catalog.pdf> (listing villages destroyed by government from 1963 to 1988).*

174. *See Int'l Fed'n of Human Rights, supra note 124, at apps. A, H.*

175. *See id.*

by the Iraqi government have received little or nothing as compensation or assistance with rebuilding.

In the late 1980s, the Iraqi regime conducted an “Anfal” (or “spoils” of war) campaign, which destroyed over 100 Assyrian villages and possibly thousands of Kurdish ones in northern Iraq.¹⁷⁶ Dozens of ancient churches and monasteries were lost, and thousands of Assyrians deported to Baghdad.¹⁷⁷ Possibly hundreds of churches and monasteries fell to ruins under shelling, demolition, and designation as “prohibited zones.”¹⁷⁸ Many Assyrians were “tortured and executed.”¹⁷⁹

Assyrian cultural and intellectual properties in the form of archaeological and artistic works have been destroyed by the thousands due to the 1991 and 2003 wars on Iraq. Five thousand artifacts were destroyed, smuggled out of the country, or otherwise looted in the sack of 13 regional museums in 1991.¹⁸⁰ In the 1990s, “the lack of government control of the southern countryside under UN sanctions allowed industrial-scale pillaging of many sites.”¹⁸¹ U.S. and U.K. museums reaped the benefit of this:

From 1990 to 2003, neither the U.K. nor U.S. government considered the trade in illegally acquired Iraqi antiquities to be problematic. No political incentive to interfere with the trade existed, . . . even in 2006, not all academics regarded the trade of unprovenanced [i.e. often looted] artifacts as something . . . that should be stopped. . . . Where information is available, most dealers offering Iraqi antiquities on the Internet are physically located in the United States, the United Kingdom, or Australia.¹⁸²

In 2000, the antiquities dealer Jonathan Rosen donated nearly 1,700 cuneiform tablets from Ur to Cornell University, “despite reports of

176. See Frank, *supra* note 131, at 310–11 n.43 (citing Annia Ciezadlo, *Iraq’s Christians Consider Fleeing as Attacks on Them Rise*, CHRISTIAN SCI. MONITOR, July 13, 2004, at 7, and Stephen Franklin, *They Dream of Survival*, CHI. TRIB., Apr. 1, 2004, at 1).

177. *Id.*; see also Human Rights Watch, *supra* note 118, at app. D, <http://www.hrw.org/reports/1993/iraqanfal/ANFAL11.htm> (Iraqi forces “burned and bulldozed” specifically “Assyrian villages like Kani Balaf (in the nahya of Berwari Bala), Mezeh (Sarseng) and Gund Kosa (Al-Doski)”).

178. See Human Rights Watch, *Claims in Conflict: Reversing Ethnic Cleansing in Northern Iraq*, Aug. 2, 2004, available at <http://www.hrw.org/en/node/11985/section/1>; Uwe Siemon-Netto, *Attacks Defy the Prophet’s Wish*, UNITED PRESS INT’L, Aug. 10, 2004; Ken Joseph, Jr., *Secret Document Details Ethnic Cleansing in Iraq*, ASSYRIAN CHRISTIAN NEWS, July 5, 2004, http://www.assyrianchristians.com/commentary_secret_report_july_05_04.htm.

179. 1994 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—IRAQ, *supra* note 124.

180. Donny George Youkhana & McGuire Gibson, *Preparations at the Iraq Museum in the Lead-up to War*, in ANTIQUITIES UNDER SIEGE, *supra* note 5, at 27.

181. See *id.* at 29.

182. Neil Brodie, *The Western Market in Iraqi Antiquities*, in ANTIQUITIES UNDER SIEGE, *supra* note 5, at 63, 67–68, 70.

widespread looting at Ur.”¹⁸³ Most institutions do not require “proof that an antiquity was not illegally looted” if a dealer acquired it before 1970; the date of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.¹⁸⁴ Perhaps due to concern about additional looting and exports of antiquities, the Ba’athist regime kept the museum closed for 20 of the 24 years leading up to 2003, although it was opened for the leader’s birthday in 2000.¹⁸⁵ It has been closed since 2003.¹⁸⁶

In 2002, McGuire Gibson of the University of Chicago’s Oriental Institute warned the State Department that “major looting” of Iraq’s National Museum would occur if the United States launched a war on Iraq.¹⁸⁷ The Archaeological Institute of America reiterated the warning in early 2003 and the Society for American Archaeology described “widespread looting of museums and archaeological sites, and other cultural institutions” after the 1991 Gulf War, both to no avail.¹⁸⁸ When the Society for American Archaeology invoked the Hague Convention of 1954, the Department of Defense responded that the United States is not a party to that treaty and only respects those aspects of the Convention that “reflect customary international law.”¹⁸⁹

The looting of the Iraqi National Museum began within days of the taking of Baghdad by the U.S. military.¹⁹⁰ Five days passed after Secretary Rumsfeld’s press conference and the dispatching of U.S. guards to the museum.¹⁹¹ Thousands of items were looted from the museum,

183. Matthew Bogdanos, *Thieves of Baghdad: The Looting of the Iraq Museum*, in ANTIQUITIES UNDER SIEGE, *supra* note 5, at 33, 45.

184. Matthew Bogdanos, *See No Evil: Museums, Art Collectors, and the Black Markets They Adore*, in ANTIQUITIES UNDER SIEGE, *supra* note 5, at 57, 59.

185. *See id.* at 58.

186. *See id.*

187. Lawrence Rothfield, *Preserving Iraq’s Heritage from Looting: What Went Wrong (Within the United States)*, in ANTIQUITIES UNDER SIEGE 11–12.

188. *Id.* at 12, 17.

189. *Id.* at 17.

190. *See id.* at 19. When questioned about the ongoing looting, U.S. Secretary of Defense Donald Rumsfeld claimed never to have been warned about the danger of looting after the war, which reflects an extreme level of ignorance or indifference as to the aftermath of the 1991 Gulf War and of the war in Afghanistan, where Afghan warlords, international smugglers, impoverished civilians, U.S. troops, and British arms dealers had purchased and sold many looted items by 2002. *See id.* at 17; Rory Stewart, *The Looting of Turquoise Mountain*, N.Y. TIMES, Aug. 25, 2002, available at <http://query.nytimes.com/gst/fullpage.html?res=9A0DE0D9103DF936A1575BC0A9649C8B63&sec=&spon=&pagewanted=2>; ‘Mafia’ Gangs Threaten Afghanistan’s Archaeological Treasures, AUSTRALIAN BROAD. CORP., Nov. 3, 2002, <http://www.abc.net.au/news/newsitems/200211/s717558.htm>; Associated Press, *Afghan Poor Look for Buried Treasure in Old Ruins*, ST. LOUIS POST-DISPATCH, Jan. 17, 2002, available at 2002 WLNR 1218125; Dayla Alberge, *Looters Dig into Afghanistan’s Ancient Heritage*, THE TIMES (U.K.), June 9, 2003, available at <http://www.timesonline.co.uk/tol/news/world/article1140333.ece>.

191. *See* Rothfield, *supra* note 187, at 20.

and Sumero-Akkadian and Assyro-Babylonian archaeological sites, left undefended, were looted by hundreds of people at a time.¹⁹² By 2006, Iraq's historic and cultural sites were being pillaged by huge organized operations with "convoys of backhoes."¹⁹³ Dr. Donny George Youkhanna, the Museum's former Director of Antiquities and Research, tried to create a "cultural heritage protection force," but the United States and the Iraqi government failed to fund the plan, so it died.¹⁹⁴ The Ministry of Culture fell under the rule of the political party of the religious fundamentalist Muqtada al-Sadr, and Dr. George emigrated to the United States after receiving death threats.¹⁹⁵ His departure from Iraq represented a loss not only for the museum but for the heritage of the entire country, which lost its most effective advocate both inside and outside Iraq.¹⁹⁶ U.S. and U.K. museums such as the Metropolitan Museum of Art have a "ten-year window" under which they only investigate the last ten years of an artifact's ownership, which will allow them eventually to purchase looted Sumero-Akkadian and Assyro-Babylonian antiquities.¹⁹⁷

Assyrian cultural and intellectual property in Turkey has also been decimated. Although these provinces are now populated by millions of Kurds who conquered and settled Anatolia with the coming of the Turks and Safavid Persians, they originally hosted many Assyrian cities and towns.¹⁹⁸ In the 1990s, Turkey declared a state of emergency in its southeastern provinces of Bitlis, Batman, and Bingol, and dispatched a quarter of a million troops to the area.¹⁹⁹ By the 1990s, over 2,500 villages had been "depopulated," and many were burned, as a result of the government's counterinsurgency operations in the southeast.²⁰⁰ Eventually the eastern border regions of the Anatolia

192. Marsha Walton, *Experts: Looting, Neglect Spoil Iraqi Treasures*, CNN.COM, June 11, 2003, <http://www.cnn.com/2003/TECH/science/06/11/coolsc.iraq.archaeology/index.html> ("300 people had flocked to some sites, making them look like Swiss cheese they were so full of holes. A helicopter survey showed sites . . . were being dug by a gang of up to 200 looters . . .").

193. ANTIQUITIES UNDER SIEGE, *supra* note 5, at 21.

194. *Id.* at 22.

195. *See id.*

196. *See id.*

197. *See* Matthew Bogdanos, *See No Evil, in ANTIQUITIES UNDER SIEGE, supra* note 5, at 58–59.

198. *See* WILMHURST, *supra* note 104, at 38–93; MORONY, *supra* note 101, at 352–53; RASSAM, *supra* note 163, at 92–93, 106, 109, 121, 127; SÉBASTIEN DE COURTOIS, *THE FORGOTTEN GENOCIDE* 9–13 (2004); Eden Naby, *The Assyrian Diaspora: Cultural Survival in the Absence of a State Structure, in CENTRAL ASIA AND THE CAUCASUS: TRANSNATIONALISM AND DIASPORA* 228 (Touraj Atabaki & Sanjyot Mehendale eds., 2005).

199. *See* 1997 UNREPRESENTED NATIONS AND PEOPLES ORGANIZATION YEARBOOK 109 (J. Mullen ed., 1998); HUMAN RIGHTS WATCH, WEAPONS TRANSFERS AND VIOLATIONS OF THE LAWS OF WAR IN TURKEY app. B (1995).

200. HUMAN RIGHTS WATCH, TURKEY: VIOLATIONS OF FREE EXPRESSION IN TURKEY ch. 3, para. 2 (1999), available at http://hrw.org/reports/1999/turkey/turkey993-02.htm#P269_24930 [hereinafter HUMAN RIGHTS WATCH, FREE EXPRESSION] ("The

had nearly a million land mines laid by the government,²⁰¹ and the rural southeast was “a no-go zone.”²⁰²

B. *The Greeks of Anatolia and Cyprus*

1. The Origins of the Anatolian and Cypriot Greeks

Prior to their conquests by Turkic peoples, the ancient Greeks were one of several indigenous peoples living in Anatolia, modern Asian Turkey. They also inhabited the island of Cyprus (off the coast of Anatolia and Greece), northern Epirus (southern Albania), Magna Graecia (Greek settlements of southern Italy), Krimeia (southern Ukraine), and, of course, the present-day country of Greece.²⁰³ Writing two millennia ago, the Greek historian Strabo described Smyrna, present-day Izmir on the western coast of Anatolia, as “the finest city in Asia,” with a temple, library, and gymnasium.²⁰⁴ The Greek cities of Cyprus date at least as far back as 1200 BCE.²⁰⁵

The Greeks historically referred to the Black Sea, which borders Turkey, Russia, Ukraine, and a few smaller countries, as the “Pontus Euxinus” or “hospitable sea.”²⁰⁶ Greeks settled its shores and navigated its expanses starting in about the eighth century BCE.²⁰⁷ The principal Greek cities on the Black Sea were Trebizond (Trabzon), Samsous (Samsun), Sinope (Sinop) and Pontica Heraclea (modern

government intensified a counterinsurgency campaign against the [Kurdish rebels], forcibly evacuating and burning rural villages. The majority of the more than 2,500 villages and hamlets depopulated in the region since 1984 are believed to be the result of this campaign”). In these “prohibited zones,” the government deported Assyrians from their villages, which it then seized. Dexter Filkins, *Kurds Are Finally Heard: Turkey Burned Our Villages*, N.Y. TIMES, Oct. 24, 2003, <http://www.nytimes.com/2003/10/24/world/kurds-are-finally-heard-turkey-burned-our-villages.html>; Landmine Monitor, *LM Report 2005: Turkey*, <http://www.icbl.org/lm/2005/turkey.html> (“Landmines were also laid by government forces in east and southeast Turkey during and after intensive armed conflict in 1984-1999. . . . In the east and southeast of the country . . . some 4,000 villages and smaller rural communities have been evacuated. . . . [In] Hakkari province, close to the borders with Iran and Iraq . . . mines were laid around villages, military installations, border areas, water springs, feeding grounds, pathways and mountain caves. . . .”)

201. Landmine Monitor, *supra* note 200.

202. See Human Rights Watch, *Free Expression*, *supra* note 200.

203. R.A. Crossland, *Linguistic Problems of the Balkan Area in Late Prehistoric and Early Classical Periods*, in 3 THE CAMBRIDGE ANCIENT HISTORY 834-49 (John Boardman et al. eds., 1982); J.B. Hainsworth, *The Greek Language and the Historical Dialects*, in 1 THE CAMBRIDGE ANCIENT HISTORY, *supra*, at 850-63; GEORGE C. IZENOUR, *ROOFED THEATERS OF CLASSICAL ANTIQUITY* (1992).

204. MARJORIE HOUSEPIAN DOBKIN, *SMYRNA 1922: THE DESTRUCTION OF A CITY* 22 (1972).

205. See PRUDENCE JONES & NIGEL PENNICK, *A HISTORY OF PAGAN EUROPE* 21 (1997) (describing Cypriot Greek city containing temple of Aphrodite as of this early date).

206. Heinz Heinen, *Greeks, Iranians and Romans on the Northern Shore of the Black Sea*, in NORTH PONTIC ARCHAEOLOGY: RECENT DISCOVERIES AND STUDIES 1 (Gocha R. Tsetskhladze ed., 2001).

207. *Id.* at 4.

Karadeniz Ereğli). Trebizond was an ancient trading center with a road southeast to Mesopotamia and Persia, and southwest to the Aegean and Mediterranean seas.²⁰⁸ Trade with the Far East reached the Mediterranean via Trebizond by transport over land through Afghanistan, Persia, and Mesopotamia.²⁰⁹ In medieval times, Trebizond remained a commercial metropolis that thrived on the import-export trade between Europe and Persia, India, and China.²¹⁰ Prior to becoming the capital of the Eastern Roman Empire, the port of Constantinople served as a way-station between Europe, Africa, and Asia. As a geopolitical fulcrum, the Black Sea region surrounding Constantinople has witnessed the passage of ancient and modern empires from Xerxes and Alexander to Churchill, Hitler, and Stalin.

2. Efforts to Achieve the Extinction of the Greek Culture and Religion

Arab, Turkic, and Kurdish populations settled the Greek, Assyrian, Jewish, and polytheistic (some later become Yezidi) areas of Anatolia starting in the seventh century CE. Starting in the eleventh century CE, the Seljuk Turks attacked the Eastern Roman Empire (Byzantine Empire) and set about displacing its indigenous Greek and Armenian populations with Turks.²¹¹ Over the next three centuries Smyrna was destroyed three times: first by Seljuk Turks, then by Persians, then by the Turkic-speaking Mongols under Timur Leng.²¹² The Seljuks destroyed the large commercial city of Arzen or Artze, to the east of Erzerum, wiping out a metropolis, once boasting 800 churches, to the extent that its ruins could not even be found.²¹³ The fire at Arzen was one of the largest in history, with 140,000 people burned alive or massacred.²¹⁴ Up to 100,000 slaves, including many women and children, were carted off from Arzen and choked the slave-markets of Asia.²¹⁵ Thus began the devastation of “all the capital accumulated by ages of industry in the mountains of Armenia, and reduced one of the richest and most populous countries in the East to a poor and desolate region.”²¹⁶

208. 7 GIBBON, *supra* note 101, at 17, 237.

209. *Id.* at 69–70.

210. 2 JOHN BUCHAN, *A HISTORY OF THE GREAT WAR* 524 (1921).

211. RICHARD CLOGG, *A SHORT HISTORY OF MODERN GREECE* 2 (1979); 1 RICHARD G. HOVANNISIAN, *THE ARMENIAN PEOPLE FROM ANCIENT TO MODERN TIMES: FROM ANTIQUITY TO THE FOURTEENTH CENTURY* 240–51 (1997); *THE CAMBRIDGE HISTORY OF ISLAM*, 231–35 (Ann K. S. Lambton, Peter Malcolm Holt & Bernard Lewis eds., 1978).

212. *See* DOBKIN, *supra* note 204, at 22.

213. JEROME VAN CROWNINSHIELD SMITH, *TURKEY AND THE TURKS* 229 (1854).

214. Paul A. Blaum, *Diplomacy Gone to Seed: A History of Byzantine Foreign Relations, A.D. 1047–57*, *INT’L J. KURDISH STUD.*, no. 18 (Jan. 2004), available at http://findarticles.com/p/articles/mi_m0SBL/is_1-2_18/?tag=content;col1.

215. *Id.*

216. *Id.*

In the thirteenth century, massive invasions by Mongol and Turkic armies left a “political void” in the Byzantine Empire’s eastern frontier.²¹⁷ The Byzantine Greeks, weakened by Western European Crusaders who looted and destroyed their cities on their way southeast to Jerusalem, lost their independence to Ottoman invasions.²¹⁸ During the fourteenth and fifteenth centuries CE, the Ottoman Turks, originally Central Asian nomads and raiders, conquered northwestern Anatolia and the Balkans, and occupied nearly all Greek cities and islands including the ancient Greco-Roman capital of Constantinople.²¹⁹ Turkish settlers also began to colonize Eastern Europe in large numbers, with “a great deal of massacre, deportation and plunder; Europe became a field for the *ghazis* [infidel-killers] to practice their profession of holy warfare as they had done in Asia.”²²⁰ In the fifteenth century, an army of 258,000 Turks slaughtered many Greek civilians during the three-day sack of Constantinople and mass rape of its women.²²¹ The Ottoman Sultan seized half of the city’s churches, appropriated the Christians’ other properties and religious endowments, and banned Christianity outside private homes and churches.²²²

In the 1820s, the movement for an independent Greece gained momentum. In response to outbursts of Greek rebellion, Turkish forces massacred tens of thousands of Greek civilians living in the city of Smyrna and the island of Chios in 1822, in what has been described as a genocidal attack on an entire community.²²³ Up to 70,000 Greeks died in massacres in 1822-1823 as part of Turkish reprisals for the

217. A descendant of the Mongol invaders continued to rule the traditionally Greek and Byzantine region south of Russia, called the Krimieia, hundreds of years later. See CHARLES KING, *THE BLACK SEA: A HISTORY* 119–120 (2004).

218. See DONALD E. QUELLER & THOMAS F. MADDEN, *THE FOURTH CRUSADE* 77, 103, 156, 185, 192–95 (1997). See also C.P. Howland, *Greece and Her Refugees*, 4 FOREIGN AFF. 613, 619 (1926).

219. See BUCHAN, *supra* note 210, at 8; ARNOLD TOYNBEE, *THE WESTERN QUESTION IN GREECE AND TURKEY* 270 (2d ed. 1970).

220. GEORGE HOLMES, *EUROPE: HIERARCHY AND REVOLT, 1320–1450*, at 172 (2d ed. 2000).

221. NICOLO BARBARO, *THE SIEGE OF CONSTANTINOPLE 122–29* (J.R. Jones trans., 1969) (1453), available at <http://www.deremilitari.org/resources/sources/constantinople3.htm>; ARCHIBALD JOSEPH DUNN, *THE RISE AND DECAY OF THE RULE OF ISLAM* 121–29 (1877); KATE FLEET, *EUROPEAN AND ISLAMIC TRADE IN THE EARLY OTTOMAN STATE: THE MERCHANTS OF GENOA AND TURKEY* 122–26 (2d ed. 1999).

222. See DUNN, *supra* note 221, at 127.

223. See Bryce, *Preface*, in *THE TREATMENT OF ARMENIANS*, *supra* note 168, at 23; VAHAKN DADRAN, *HISTORY OF THE ARMENIAN GENOCIDE: ETHNIC CONFLICT FROM THE BALKANS TO ANATOLIA TO THE CAUCASUS* 12 (2004); THEA HALO, *NOT EVEN MY NAME* 100 (2000); M.M. Mangasarian, *Armenia’s Impending Doom: Our Duty*, in *THE ARMENIAN MASSACRES, 1894-1896*, at 164, 167 (Arman J. Kirakossian ed., 2004); GILLES NÉRET, *DELACROIX: 1798-1863: THE PRINCE OF ROMANTICISM* 16 (2000); *CONSTANTINOPLE AND THE SCENERY OF THE SEVEN CHURCHES OF ASIA* 166 (Thomas Allom et al. eds., 2006).

Greek War of Independence.²²⁴ In World War I and its aftermath, the extermination of the Greek population furthered the Ottomans' plan for "Turkifying" their empire by removing "alien" races of Christians. Before the Ottoman Empire even joined the war, its Interior Minister Talaat Pasha told the American Ambassador to the Ottoman Empire, Henry Morgenthau, of a plan to "get rid of these alien peoples" like the Greeks by large-scale murders and deportations.²²⁵ The Ottoman government organized economic boycotts and large-scale dismissals of Christian employees in cities such as Constantinople and Smyrna.²²⁶ In this way, Talaat intended to "Turkify Smyrna" and other Greek population centers, and establish Turkey as "the land exclusively of the Turks."²²⁷ The government's "passion for Turkifying the nation seemed to demand logically the extermination of all Christians," Morgenthau later wrote.²²⁸

The German general Limon von Sanders encouraged the Ottoman army to "throw[] these infidels [i.e. the Greeks of the Aegean region] into the sea."²²⁹ The declaration of religious warfare incited widespread killings of Greeks and others.²³⁰ In May 1914, Ottoman Interior Minister Talaat dispatched orders to the Prefect of Smyrna that the "Greeks occupying the coastline of Asia Minor be compelled to evacuate their villages and install themselves in the vilayets of Erzerum and Chaldea."²³¹ Talaat's communiqué included orders to obtain certificates from the expelled Greeks falsely representing that they had left "their homes on their own initiative," so that the Ottomans would not face property-related "political complications ensuing from their displacement."²³² The expulsions were far from voluntary, however. Talaat added that: "If [the Greeks] should refuse to be transported to the appointed places, kindly . . . induce the Greeks, through excesses of all sorts, to leave their native places of their own accord."²³³

The month after Talaat's orders were issued, Prime Minister Venizelos of Greece condemned the Ottoman campaign aiming at "the elimination of populations which had been living in those places

224. William Easterly, Roberta Gatti & Sergio Kurlat, *Development, Democracy, and Mass Killings*, 11 J. ECON. GROWTH 129, app. 2 (June 2006), available at <http://www.nyu.edu/fas/institute/dri/DRIWP/DRIWP10.pdf>; R.J. RUMMEL, DEATH BY GOVERNMENT, ch. 10 (1994).

225. HENRY MORGENTHAU, AMBASSADOR MORGENTHAU'S STORY 35 (2004).

226. See *id.* at 35.

227. *Id.* at 93, 196, 201.

228. *Id.* at 200.

229. See TANER AKÇAM, FROM EMPIRE TO REPUBLIC: TURKISH NATIONALISM AND THE ARMENIAN GENOCIDE 146 (2d ed. 2004); Travis, *supra* note 12, at 342.

230. See AKÇAM, *supra* note 229, at 146–47; Travis, *supra* note 12, at 331–32, 341–42.

231. THEA HALO, NOT EVEN MY NAME 127 (2000).

232. *Id.*

233. *Id.*

for several thousand years.”²³⁴ Thousands of refugees had already arrived in Greece from Anatolia, and thousands more were following them, totaling over 100,000 refugees in Greece or on the way by June 1914.²³⁵ Armed bands of Turks accompanied by police officers massacred 100 civilians in Phocaea, a town northwest of Smyrna, prompting nearly 4,000 Greeks from the area to flee for Greece.²³⁶ By October, the Ottomans had deported 1,500 more Greeks from the city of Ereğli, west of Constantinople.²³⁷

The Ottoman leaders in Constantinople began reprisals in August 1914 against local Christians, drawing on public outrage about a British decision not to deliver two battleships under construction for the Ottoman navy. The Ottoman police and secret service began to press-gang all non-Muslims for forced labor as servants to Turkish soldiers.²³⁸ Ambassador Morgenthau wrote in his memoirs that both the Greeks and the Armenians were transferred into labor battalions in which untold thousands died of “cold, hunger and other deprivations.”²³⁹ During the first ten days of this policy, thousands of Greeks fled Constantinople, many for the United States.²⁴⁰ Turkish officers ordered between 300,000 and 500,000 Greeks to be deported from eastern Thrace during the first few months of World War I.²⁴¹ In the process, about half of the deportees were murdered or died from hunger or exposure to the elements.²⁴²

Talcott Williams, director of the Pulitzer School of Journalism at Columbia University, wrote to the *New York Times* that in 1915: “At least one-half of the Greek population has been deported from the cities and hamlets on the coast of Asia Minor from the Black Sea to the eastern end of Cilicia, or around three-fourths of the coast of this peninsula.”²⁴³ He continued: “The deportation of 700,000 Greeks . . . means slavery and death to the deported.”²⁴⁴ In 1918, a Turkish parliamentarian estimated that more than 500,000 Greeks deported from the Black Sea, Aegean, Marmara, and other regions had been “killed

234. *Greece Tells Turks to Stop Expulsions*, N.Y. TIMES, June 13, 1914, at 3.

235. *Id.*

236. *Turks Slay 100 Greeks; Massacre in a Town Near Smyrna—Police Are Accused*, N.Y. TIMES, June 17, 1914, at 6.

237. *Turks Expel 1,500 Greeks*, N.Y. TIMES, Oct. 14, 1914, at 5.

238. *See How Turkey Went to War*, N.Y. TIMES CURRENT HIST., Mar. 1915, available at <http://www.gutenberg.org/files/20521/20521-h/20521-h.htm>.

239. MORGENTHAU, *supra* note 225, at 148, 222, 287; AKÇAM, *supra* note 229, at 146.

240. *How Turkey Went to War*, *supra* note 238.

241. AKÇAM, *supra* note 229, at 147.

242. *See id.*; *Turks Slaughter Greeks, Sell Women to Slavery*, L.A. TIMES, June 9, 1918, at 11.

243. Talcott Williams, *Greek Deportations: The Needs of the Latest Victims of Turkish Cruelty*, N.Y. TIMES, Oct. 8, 1917, at 10; *see also* Shanon Lawson, Biographical Note, in Finding Aid to Talcott Williams Papers 1894–1925, Special Collections Dep’t, U. Del. Libr., http://www.lib.udel.edu/ud/spec/findaids/wllms_ta.htm.

244. Williams, *supra* note 243.

and annihilated.”²⁴⁵ In June 1915 the “Young Turk” leaders at the helm of the Ottoman Empire adopted a resolution directed to “[t]aking the commerce of the East out of Greek hands.”²⁴⁶ The resolution also envisioned “[t]he Turkification of the Greek element by force”²⁴⁷ Large-scale massacres of Greeks followed in 1916 and 1917, carried out by Turkish forces in Constantinople, Adrianople, and Smyrna.²⁴⁸ The Austro-Hungarian consul stationed in the city of Samsun on the Black Sea wrote to the German Foreign Minister that the Greeks in the area were being exterminated (*ausgerottet werden*) by Turkish troops under the pretext of lawful military operations.²⁴⁹ During World War I, “over 500,000 Greeks were deported, of whom comparatively few survived.”²⁵⁰

While France made renewed efforts after the war to protect the indigenous Christians of the former Ottoman Empire, the British and the Italians decided to favor Turkish ultranationalists. On October 30, 1918, Turkey reached an armistice agreement with the Allies.²⁵¹ Imperial and commercial rivalries between Britain and France unraveled the post-war settlement in Turkey and opened the way for ultranationalists under Mustafa Kemal to cleanse most remaining Christians from the country.²⁵² Specifically, Britain blocked French efforts to disarm the former Ottoman armies.²⁵³

In July 1919, the Kemalist Nationalists redoubled their efforts to wage war on the Allies notwithstanding the armistice agreement.²⁵⁴ The Nationalists pardoned violent criminals and recruited them for the gendarmerie, which proceeded to “round[] up” those Christians “still at large.”²⁵⁵ A British admiral reported in late 1919 that:

Every district has its bands of brigands posing as patriots, and even in the vicinity of Constantinople robbery under arms is a daily oc-

245. AKÇAM, *supra* note 229, at 147–48.

246. *Germans Inspired Turkish Atrocities Against Asiatic Greeks*, N.Y. TIMES, Sept. 29, 1918 (Drama, Music, Special Articles), at 74.

247. *Id.*

248. *See Extermination of Greeks in Turkey*, THE TIMES (U.K.), Aug. 23, 1917, at 5, available at <http://www.greek-genocide.org/press/23081917.html>; *Massacres of Greeks in Turkey Reported; Hundreds Killed by Turks and Bulgars in Many Towns*, *London Hears*, N.Y. TIMES, Apr. 20, 1915, at 6.

249. *See* Telegram from Austria’s consul Ernst von Kwiatkowski to Vienna, Nov. 12, 1917, http://www.greek-genocide.org/docs/adp/kwiatkowski_12_november_1917.pdf.

250. G.W. Rendel, Memorandum by Mr. Rendel on Turkish Massacres and Persecutions of Minorities Since the Armistice, British Foreign Office Archives, F.O. 371/7876 (Mar. 20, 1922), at 1, http://www.greek-genocide.org/docs/adp/rendel_20_march_1922.pdf.

251. *See* TOYNBEE, *supra* note 219, at 365.

252. *See* Auguste Gauvain, *Five Years of French Policy in the Near East*, 3 FOREIGN AFF. 277, 277 (1924-1925).

253. *See id.* at 279.

254. *See* TOYNBEE, *supra* note 219, at 366.

255. Rendel, *supra* note 250.

currence, the principal victims being naturally the unprotected Christian villagers. Behind all these elements of disorder stands Mustapha Kemal. . . .²⁵⁶

A Nationalist counterattack in 1921 on the Greek administration of Smyrna routed the Greek army, and Greek civilians fled with them in fear of reprisals by Turkish forces.²⁵⁷ Widespread massacres against the Greek population of Anatolia followed. Arnold Toynbee, an officer in the Political Intelligence Department of the British Foreign Office and part of the British delegation to the Paris peace conference in 1919, wrote that the Angora government of Mustafa Kemal Pasha extended its “war of extermination” against the Greeks from the Smyrna area to the Pontus region.²⁵⁸

In May 1922, the Greek Foreign Minister detailed the massacre of more than 300,000 Anatolian Greeks in the districts of Trabzon, Amasia, Kolenia, New Cesarea, and Rodopolis.²⁵⁹ The head of the Near East Relief Hospital of Harput, Anatolia, declared in June that: “the Turks are planning the extermination of this Christian minority [in Asia Minor].”²⁶⁰

Near the end of 1922, the League of Nations official tasked with formulating policy on Turkey reported that “all Greeks under Turkish sovereignty [must] be got away quickly to save them from starvation or death”²⁶¹ The *New York Times* opined in an editorial later that week:

The great cultured nations of Western Europe which watch calmly the annihilation of some of the oldest stocks of European culture may be calm because they think they will get a bigger share of the business with resident business men out of the way. . . . [T]he killing off of the races that have done the business hitherto will merely widen the field for [them].²⁶²

Eventually over a million Greeks were deported from Turkey to Greece, along with almost 400,000 Turks and other Muslims who fled Greece for Turkey.²⁶³ The Greek refugees found themselves languishing in tents, caves, huts, schools, and the like.²⁶⁴ The demography of

256. *Id.*

257. See Gauvain, *supra* note 252, at 290–91.

258. TOYNBEE, *supra* note 219, at 190.

259. See 303,238 *Massacred*, N.Y. TIMES, June 2, 1922, at 3.

260. *Predicts Greatest Massacre in History: Dr. Ward Says Turks Will Be Restrained Only by Powers' Concerted Action*: N.Y. TIMES, June 4, 1922, at 31.

261. Edwin I. James, *Turks Proclaim Banishment Edict to 1,000,000 Greeks*, N.Y. TIMES, Dec. 2, 1922, at 1.

262. Editorial, *The Statesmanship of Extermination*, N.Y. TIMES, Dec. 4, 1922, at 16.

263. See Howland, *supra* note 218, at 613–16; James, *supra* note 261, at 1.

264. See Howland, *supra* note 218, at 622.

Turkey had changed forever, its Greek, Armenian, and Assyrian communities exterminated or deported *en masse*.²⁶⁵

3. The Intentional Destruction of Greek Cultural and Intellectual Property

From before World War I, Greek cultural and intellectual heritage has been under siege. As one historian describes the devastation of the centuries of labor that built Constantinople:

According to the unanimous indication of the sources, the pillage of the city . . . lasted for three days and three nights. The population was mercilessly murdered. The churches, with St. Sophia at the head, and the monasteries with all their wealth were robbed and polluted; private property was plundered. In these fatal days an innumerable mass of cultural material perished.²⁶⁶

Greek churches were torn down, sacked, desecrated, abandoned, or used as stables or animal menageries.²⁶⁷ Only three churches built before 1453 survived until the eighteenth century.²⁶⁸ Over 120,000 books and manuscripts in the Byzantine libraries were “destroyed or scattered,” including ancient works by Aristotle and Homer that may have been lost forever.²⁶⁹ Turkish cannons weighing 16 tons each, engineered by Hungarians, reduced the double stone walls of the city to rubble.²⁷⁰

In World War I and its aftermath, the destruction of Greek heritage was as bad or worse. Even before the war, the Greeks were deported from their ancestral cities and villages near the Aegean sea.²⁷¹ Stanley E. Hopkins, a leader of the American humanitarian organization Near East Relief, wrote that

the Greeks of Anatolia are suffering the same or a worse fate than did the Armenians in the massacres of the Great War. The deportation of the Greeks . . . is being carried out throughout the whole of the country governed by the Nationalists. Greeks villages are deported entire [accompanied by cruelties of every form] . . . and the

265. See ANDREW MANGO, *ATATÜRK: THE BIOGRAPHY OF THE FOUNDER OF MODERN TURKEY* 332 (2000).

266. PETER BROWN, *POWER AND PERSUASION IN LATE ANTIQUITY: TOWARDS A CHRISTIAN EMPIRE* 653 (1992).

267. See STEVEN RUNCIMAN, *THE GREAT CHURCH IN CAPTIVITY: A STUDY OF THE PATRIARCHATE OF CONSTANTINOPLE FROM THE EVE OF THE TURKISH CONQUEST TO THE GREEK WAR OF INDEPENDENCE 187* (1986).

268. See *id.* at 191.

269. 12 EDWARD GIBBON, *THE HISTORY OF THE DECLINE AND FALL OF THE ROMAN EMPIRE*, ch. LXVIII *supra* note 101, http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1403&chapter=90487&layout=html&Itemid=27.

270. *Id.*

271. See BAUM, *supra* note 104, at 124–26.

villages are burned. The purpose is unquestionably to destroy all Greeks in that territory and to leave Turkey for the Turks.²⁷²

In the Pontus region, more than 100,000 Greeks lost their homes and villages by 1916.²⁷³ In 1918 all the villages around Smyrna had been looted and more than 3,000 Greeks enslaved.²⁷⁴ From 1914 to 1918 an estimated three million Ottoman subjects had been subjected to massacres, while another million were threatened with starvation, the outcome of a campaign to enrich Turkish officials and concentrate the nations' wealth in Turkish hands at the expense of Greeks and other minorities.²⁷⁵

By 1920, the ultranationalist forces had burned alive or otherwise massacred about 12,000 Pontic Greeks throughout at least two dozen towns and villages.²⁷⁶ The Greek towns in the districts of Amisos, Paffra, and Arba had "completely disappeared."²⁷⁷ Fourteen villages surrounding Trabzon were burned down, their male inhabitants killed.²⁷⁸ Turkish forces burned down all the villages in Pontus, whose inhabitants were either killed or driven away, to die on the roads for the most part.²⁷⁹ In 1922, the Christian neighborhoods of Smyrna suffered a "two-day-long inferno" under occupation.²⁸⁰

During the Cold War era and up to the present, the government of Turkey has continued to implement policies of expelling, or at least assimilating, Anatolia's Greek culture. In 1955, the Prime Minister of Turkey ordered an intelligence agent to conduct a covert operation designed to look like a Greek terrorist's bombing of the birthplace of Mustafa Kemal in Thessalonika.²⁸¹ A newspaper in Constantinople reported the story, and a shadowy new organization called for wide-

272. Stanley E. Hopkins, Report on Conditions in the Interior of Anatolia under the Turkish Nationalist Government 2 (1921) [declassified by U.S. Dep't of State May 1, 1961], available at http://www.greek-genocide.org/doc_usfo_rcia_1.html.

273. See BAUM, *supra* note 104, at 122.

274. See *id.* at 126–27.

275. See *Millions Slain by Turks*, N.Y. TIMES, Dec. 6, 1918, at 3.

276. See Great Britain, Foreign Office, A Report on the Condition of the Greeks in Pontus (forwarded by Vice Admiral, Head of British Naval Mission of Athens), at 1–2, F.O. 286/833, Public Record Office (1921).

277. *Id.* at 2.

278. See *id.* at 2–3.

279. See *id.* at 1.

280. BEVAN, *supra* note 5, at 54; DOBKIN, *supra* note 204, at 6–7, 30, 66, 83, 201–02; GEORGE HORTON, THE BLIGHT OF ASIA: AN ACCOUNT OF THE SYSTEMATIC EXTERMINATION OF CHRISTIAN POPULATIONS BY MOHAMMEDANS AND OF THE CULPABILITY OF CERTAIN GREAT POWERS 114–16 (1926), <http://www.hri.org/docs/Horton>; RUMMEL, *supra* note 224, at 233–34; Mark O. Prentiss, *Relief Man Tells Tragedy*, N.Y. TIMES, Sept. 18, 1922, at 1–2.

281. Dogu Ergil, *Past as Present*, TURKISH DAILY NEWS, Sept. 12, 2005, <http://arama.hurriyet.com.tr/arsivnews.aspx?id=-559477>; Steven Stavros Skenderis, *Note & Comment: The Ethnic Greeks of Turkey: The Present Situation of the Greek Minority and Turkey's Human Rights Obligations Under International Law*, 16 ST. THOMAS L. REV. 551, 565 (2004).

spread retaliation against Greek civilians.²⁸² As a result, Turkish mobs killed an undetermined number of Greek civilians, up to 200 Greek women were raped, 39 Greek churches were burned down and dozens more badly damaged, and over 2,000 Greek homes and dozens of Greek schools were thoroughly looted.²⁸³ The American Consul-General in Constantinople reported to the U.S. State Department that the Turkish police “cheered on the mob.”²⁸⁴ A British journalist compared the Greek sections of the city to the neighborhoods in London that suffered aerial bombardment in World War II.²⁸⁵

Turkey invaded the historically Greek island of Cyprus in 1974 and has occupied more than a third of its territory ever since. Four thousand Greek Cypriots were murdered and another 2,000 went missing.²⁸⁶ Cyprus documented Turkey’s acts of “indiscriminate” slaughter, torture, rape, and enslavement and forced labor against ethnic Greeks of all ages and sexes.²⁸⁷ The Turkish military occupation drove out Greek populations and ransacked Greek culture:

The Turks ethnically cleansed the north of the island, village by village, as the Greeks tried to prevent Turkish Cypriots fleeing north (and so reinforcing an ethnic divide) Thousands of Turkish peasants were brought in from mainland Turkey to the new Turkish Republic of North Cyprus to take the place of the displaced Greeks. Attacks on Greek material culture in the North were an early signal of Turkey’s intention to remain in Cyprus permanently The destruction of Greek heritage was an insurance against . . . [an] identifiably Greek . . . zone In the months and years following [the invasion], all but a handful of northern Cyprus’s 502 Greek Orthodox churches, some of Byzantine origin, were vandalized, looted, demolished or put to new uses including as mosques, stables, latrines, stores and a cinema The destruction was methodical “The vandalism and desecration is [sic] so methodical and so widespread that they amount to the institutionalized obliteration of everything sacred to a Greek.”²⁸⁸

282. Ergil, *supra* note 281.

283. See SPEROS VRYONIS, JR., THE MECHANISM OF CATASTROPHE: THE TURKISH POGROM OF SEPTEMBER 1955, AND THE DESTRUCTION OF THE GREEK COMMUNITY IN ISTANBUL 266–68 (2005); Ergil, *supra* note 281; HUMAN RIGHTS WATCH, DENYING HUMAN RIGHTS AND ETHNIC IDENTITY: THE GREEKS OF TURKEY 7–9 (1992), available at <http://www.hrw.org/sites/default/files/reports/TURKEY923.PDF>; Skenderis, *supra* note 281, at 565; Loucas Tsilas, *Greek-Turkish Relations in the Post-Cold War Era*, 20 FORDHAM INT’L L.J. 1589, 1599–1600 (1997).

284. Skenderis, *supra* note 281, at 566.

285. *Id.*

286. Van Coufoudakis, *Cyprus and the European Convention on Human Rights: The Law and Politics of Cyprus v. Turkey, Applications 6780/74 and 6950/75*, 4 HUM. RTS. Q. 450, 451 (1982).

287. *Id.* at 455.

288. BEVAN, *supra* note 5, at 163–64 (citation omitted).

The Turkish colony in Cyprus systematically renamed Greek towns using Turkish names.²⁸⁹

The U.N. General Assembly voted in November 1974, and the U.N. Security Council agreed shortly thereafter, that Turkey must withdraw from Cyprus.²⁹⁰ The European Commission on Human Rights found that Turkey's "large scale" killing of Greek Cypriot civilians violated their human right to life, and that its rapes of civilians and mistreatment of prisoners constituted torture or at least inhuman treatment.²⁹¹ Over 30 years and many U.N. resolutions and diplomatic initiatives later, Turkey remained in Cyprus.²⁹² Nevertheless, the United States has lavished \$14 billion in military aid upon Turkey, NATO member and formerly host to nuclear weapons capable of striking the Soviet Union.²⁹³

C. *The Jews of Anatolia and Mesopotamia*

Judaism spread throughout Mesopotamia and Anatolia before Christianity did,²⁹⁴ and was a contributing factor in the rise of a "well-developed Christian community" in Edessa in the early first millennium CE.²⁹⁵ There is evidence not only of Babylonian Jews in the third century CE, but of their actively seeking converts from among practitioners of indigenous Assyro-Babylonian religions.²⁹⁶ Jews had several academies in Babylon and compiled the 2.5 million or so words of the Babylonian Talmud into an edited form, using a mixture of Hebrew and Assyrian (Aramaic) words, in about 500 CE.²⁹⁷ The Jewish traveler Benjamin of Tudela reported finding 2,500 Jews in Constantinople, 40,000 in Baghdad, 15,000 in Hadara, 7,000 in the

289. See PRESS & INFO. OFFICE, REPUBLIC OF CYPRUS: AN OVERVIEW 27-28 (2007), available at <http://www.moi.gov.cy/moi/pio/pio.nsf/All/3BE35C02B10FFF0FC22573ED003768F2?OpenDocument>.

290. See G.A. Res. 3212 (XXIX), ¶ 2, U.N. Doc. A/9361 (Nov. 1, 1974); S.C. Res. 365, ¶ 1, U.N. Doc. S/RES/365 (Dec. 13, 1974).

291. Coufoudakis, *supra* note 286, at 464-65.

292. HARALAMBOS ATHANASOPOULOS, GREECE, TURKEY AND THE AEGEAN SEA: A CASE STUDY IN INTERNATIONAL LAW 30 (2001).

293. See U.S. DEP'T OF STATE, ELEC. INFO. & PUBL'NS OFFICE, *Background Note: Turkey* (2009), <http://www.state.gov/r/pa/ei/bgn/3432.htm>.

294. See Clyde Haberman, *Where 16 Synagogues Stand Among the Minarets*, N.Y. TIMES, July 30, 1990, at A4 (dating Jewish presence in Anatolia to third century BCE); PHILIP J. KING & LAWRENCE E. STAGER, LIFE IN BIBLICAL ISRAEL 246 (2002); K. Lawson Younger, Jr., *The Deportations of the Israelites*, 117(2) J. BIBLICAL LIT. 201, 201 (1998) (Jews may have been among the thousands of Samaritans deported to Mesopotamia and "counted . . . as Assyrians" by Sargon II in eighth century BCE).

295. ROBERT MURRAY, SYMBOLS OF CHURCH AND KINGDOM: A STUDY IN EARLY SYRIAC TRADITION 6-7 (rev. ed., Continuum Int'l Publ'g Group 2004) (1975).

296. See BERNARD JACOB BAMBERGER, PROSELYTISM IN THE TALMUDIC PERIOD 255 (1968); WILLIAM GORDON BRAUDE, JEWISH PROSELYTING IN THE FIRST FIVE CENTURIES OF THE COMMON ERA: THE AGE OF THE TANNAIM AND AMORAIM 19 (1940). See also MORONY, *supra* note 101, at 306-31.

297. See ALFRED J. KOLATCH, MASTERS OF THE TALMUD: THEIR LIVES AND VIEWS 40, 297 (2003).

“city of Assur” (Mosul), 4,000 in Jezireh ibn Omar, 4,000 in Nihawand, 3,000 in Pumbedita (in the present-day al-Anbar region), 2,000 in Rabbah on the Euphrates, etc.²⁹⁸ By 1947 Jews amounted to 2.6% of Iraq’s population, or 117,000 people.²⁹⁹

The ultranationalist pro-Nazi rulers of Iraq in the 1930s dismissed hundreds of Jews from government jobs and propagandized against Jews as an “enemy” people in the public schools.³⁰⁰ In the early 1940s, as the British and Nazi German empires fought for control of Iraq, Iraqi soldiers and police murdered hundreds of Iraqi Jews.³⁰¹ In the aftermath of a pro-Nazi coup, Iraqi soldiers and pro-army mobs killed or wounded 2,200 Jews and plundered hundreds of shops and houses.³⁰² The pro-Nazi Iraqis lost power, but the government in the 1950s expropriated \$200 million worth of synagogues, schools, homes, and other properties.³⁰³ As conditions worsened, U.S. President Harry Truman and the Israeli government organized the airlift of 120,000 Jews.³⁰⁴ Many of them lived in tents, cabins, or camps in Israel for up to 12 years.³⁰⁵

In the late 1950s, Iraqi President Abdul Karim Qassem abolished many discriminatory Iraqi laws and embraced a provisional constitution that declared the equality of Iraqi minorities.³⁰⁶ Qassem was deposed by the Ba’ath Party in a U.S.-backed coup in 1963.³⁰⁷ The government once again cancelled Jews’ citizenship and confiscated their properties.³⁰⁸ The Jewish population plummeted from 160,000 Jews in the 1940s, to only 1,000 by 1990, and only several dozen by 2003.³⁰⁹

The Jewish population of Anatolia fared somewhat better, although it still suffered from forced emigration. Its numbers fell to 25,000 by

298. See JEWISH TRAVELLERS 41–47 (Elkan Nathan Adler ed., 2004) (1930).

299. See CHARLES TRIPP, A HISTORY OF IRAQ 123 (2d ed. 2003).

300. See Carole Basri, *The Jewish Refugees from Arab Countries: An Examination of Legal Rights—A Case Study of the Human Rights Violations of Iraqi Jews*, 26 *FORDHAM INT’L L.J.* 656, 670 (2002).

301. See Joel Rayburn, *The Last Exit from Iraq*, *FOREIGN AFF.*, Mar.–Apr. 2006, at 29, 37–38.

302. See Basri, *supra* note 300, at 671–73.

303. See *id.* at 677–78, 681, 683–85. The parliament cancelled the citizenship of tens of thousands of Jews, and then expropriated the property of all Jews who had lost their citizenship. See *id.* at 681–85.

304. See *id.* at 684.

305. See *id.*

306. See *id.* at 685.

307. See *id.*

308. See *id.* at 685–86.

309. See *id.* at 659, 667, 692; see also Ron Grossman, *Jewish Refugee Families Press for Equity*, *CHI. TRIB.*, Apr. 12, 2007, available at http://www.accessmylibrary.com/coms2/summary_0286-30297022_ITM (only 52,000 Jews remained by 1952); Julia Magnet, *The Terror Behind Iraq’s Jewish Exodus*, *THE DAILY TELEGRAPH* (U.K.), Apr. 17, 2003, available at <http://www.telegraph.co.uk/news/1427599/The-terror-behind-Iraqs-Jewish-exodus.html> (only dozens left in 2003); 2008 *COUNTRY REPORT ON HUMAN RIGHTS PRACTICES—IRAQ* (only 10 may remain in 2008).

1992, down from over 150,000 in 1948.³¹⁰ Jewish-speaking schools were outlawed in the 1920s, and their writings and manuscripts since then had to be in Latin-Turkish characters, not the Sephardic Hebrew Rashi script dating to at least the fifteenth century CE.³¹¹ The Jews suffered discriminatory taxation during World War II, when Turkey was friendly to Nazi Germany, and most fled in 1948 to Israel, although tens of thousands of those moved on to the United States, Europe, etc.³¹² The taxes were so oppressive that they have been called a “pretext for expropriating most of the country’s profitable [minority-owned] businesses.”³¹³ More Jews fled after government-sponsored anti-minority riots in 1955 claimed many Greek, Armenian, and Jewish homes and shops in Istanbul.³¹⁴

D. *The Mandaean and Yezidis of Mesopotamia*

In 2003, nearly three quarters of a million non-Christian religious minorities lived in Iraq. These included an estimated 600,000 Yazidis, 100,000 Mandaeans, and thousands of Baha’i.³¹⁵ The Mandaean language, Mandaic, has been traced to Babylonian sources.³¹⁶ Both the Mandaean and Yezidi faiths are syncretic, which is to say that they are composed of elements of ancient Assyrian paganism, Judaism, Christianity, and, in the case of the Yezidis, Islam.³¹⁷ The “ancient indigenous Mesopotamian religious traditions survived” the Persian and

310. See Batsheva Tsur, *President Weizman’s Visit Exposes Fears of Turkish Jewry*, JERUSALEM POST, Feb. 4, 1994, at B8; Abraham Rabinovich, *Turkey’s Jewish Community Lives On*, JERUSALEM POST, Mar. 25, 1996, <http://tinyurl.com/n5y5.ud>.

311. See Jon Immanuel, *Turkish Jews Emerge from the Shadows*, JERUSALEM POST, Oct. 13, 1989, at 8.

312. See *id.*; Tsur, *supra* note 310, at 8B; Rabinovich, *supra* note 310.

313. Whit Mason, *Constantinople’s Last Hurrah: Turkey and the Ecumenical Patriarchate*, 18 WORLD POL’Y J. 55–64 (2001), available at <http://www.highbeam.com/doc/1G1-78178136.html>.

314. See Henry Gingers, *Anti-Greek Riots in Turkey Studied by NATO Council*, N.Y. TIMES, Sept 9, 1955; *Anti-Greek Riots in Turkish Cities*, KEESING’S WORLD NEWS ARCHIVES 1, Sept. 1955, http://www.keesings.com/search?kssp_selected_tab=article&kssp_a_id=14424n01grc. The evidence of government sponsorship includes the documented role of aides to Prime Minister Adnan Menderes, the failure of police to intervene to enforce the law, the “obviously well-coached” actions of the rioters, the mysterious absence of many government ministers from Istanbul, and the “controlled nature of the violence [which] soon revealed the hidden hand of the state.” Mason, *supra* note 313.

315. See 2006 INT’L RELIGIOUS FREEDOM REPORT—IRAQ (2006) (figures for Yezidis and Baha’i); Frank, *supra* note 142, at 310–12 (figure for Mandaeans).

316. See Jonas C.C. Greenfield, *Some Reflections on the Vocabulary of Aramaic in Relationship to the Other Semitic Languages*, in AL KANFEI YONAH: STUDIES OF JONAS C. C. GREENFIELD, *supra* note 89, at 158; Jonas C.C. Greenfield, *Aramaic and Its Dialects*, in *id.* at 369.

317. See Frank, *supra* note 242, at 310–12 nn. 45–46 (citing John Daniszewski, *Ancient Faith is a Reminder of Iraq’s Diversity*, L.A. TIMES, Mar. 10, 2003, at A5; Megan K. Stack, *Gnostic Sect in Iraq Lobbies to Protect Its Way of Life*, L.A. TIMES, Feb. 29, 2004, at A12; Susan Taylor Martin, *In Iraq, Ancient Sect Quietly Lives on Faith*, ST. PETERSBURG TIMES, Apr. 26, 2004, at 1A).

Arab conquests, with temples of pagan gods still standing in the sixth and early seventh centuries CE.³¹⁸ Gnostics continued the Assyro-Babylonian faith in enlightenment from a monstrous material world, which requires rituals such as baptism, magic, and “sacred meals” to “purify the soul.”³¹⁹ In Babylonia (Chaldea), local pagans adapted Gnostic ideas and became known as “Sâbians” by Arab historians; they tended to cluster near swamps, used ritual ablutions and washings to purify their bodies and foodstuffs, and continued ancient Assyrian conceptions of the gods, their connection to the Sun and moon, and astrology.³²⁰ In the same part of the country, perhaps a little to the north, the Mandaean proliferated in the seventh century CE, also living near swamps and practicing ritual ablutions, and retaining the ancient Assyrian gods, magical invocations, and amulets.³²¹

At the introduction of Christianity in Iraq, many pagan priests reportedly adopted the new faith and transformed their temples, and others, into churches or monasteries.³²² Christian bishops, for example in sixth-century CE Iraq, tried to ban pagan religious traditions such as astrology, divination, and spell-casting.³²³ Persians, and later Arabs, persecuted paganism as a form of sorcery punishable by death, as the Greeks and Romans, and later the French and English, did in the west.³²⁴

The Mandaean today regard themselves as living on the brink of cultural extinction. Their population inside Iraq has plummeted by 90% since 2003, from 60,000 to fewer than 6,000.³²⁵ Their language, Mandaic Aramaic,³²⁶ is listed on the U.N. Economic, Social, and Cul-

318. MORONY, *supra* note 101, at 384–85.

319. *Id.* at 401.

320. *See id.* at 409; E.S. DROWER, *THE MANDAEANS OF IRAQ AND IRAN: THEIR CULTS, CUSTOMS, MAGIC LEGENDS, AND FOLKLORE* xviii–xxiii, 26, 40, 46, 56, 75–80, 84, 96–98, 117, 121, 229, 271, 275, 305, 318, 342–44, 399, 408, 417 (Gorgias Press 2002) (1937) (describing Mandaean scriptures referring to Assyro-Babylonian gods Shammash the sun-god, Sin the moon-god, Ishtar or Dilbat the goddess identified with Venus, Bel the god identified with Jupiter, Nirgal the god identified with Mars, and Tammuz the mate of Ishtar who descends into the underworld). The basic principle of Mandaeanism is reverence for and baptism in the holy “living water” or the fresh water of rivers, which the ancient Sumerians, Assyrians, and Babylonians also revered as holy water under the name *apsu* or *apsu* to distinguish it from salt water, which they called Tiamat and identified with pollution and destruction because it is not fit to drink. *See id.* at 95, 100–10, 117–25, 142–43, 229–36, 256; JEREMY A. BLACK, ANTHONY GREEN & TESSA RICKARDS, *GODS, DEMONS, AND SYMBOLS OF ANCIENT MESOPOTAMIA: AN ILLUSTRATED DICTIONARY* 27, 177 (1992).

321. *See MORONY, supra* note 101, at 410–15. They also adapted elements of Persian Magianism and Jewish faith in specific angels. *See id.*

322. *See id.* at 394–96.

323. *See id.* at 416.

324. *See id.* at 396–97.

325. 2008 RELIGIOUS FREEDOM REPORT—IRAQ, *supra* note 13. *See also* Nathaniel Deutsch, *Save the Gnostics*, N.Y. TIMES, Oct. 6, 2007, <http://www.nytimes.com/2007/10/06/opinion/06deutsch.html?pagewanted=all> (stating that fewer than 5000 remain).

326. *See Deutsch, supra* note 325.

tural Organization's (UNESCO's) *Atlas of the World's Languages in Danger of Disappearing*.³²⁷ Their religion is in decline because most have had to flee the rivers and marshes in Iraq that are central to their religious practice. In the early 1990s, the Iraqi government engaged in a disproportionate response to rebellious activity emanating from the southern marshes, ordering the "burning and demolition of houses" as well as "poisoning" and "explosives" against residents suspected of "collaborating" with rebels.³²⁸ It cleansed all towns within three kilometers of the marshes of their population, killed hundreds of residents of the marshes, and dumped toxic material into the marshes, which the Babylonians and Mandaeans used for millennia in their religious rituals of washings and baptisms.³²⁹ Persecution since 2003 by former Ba'athists and foreign terrorists has caused most Mandaeans to flee Iraq:

Today, it is estimated that only 5,000 Mandaeans [down from 100,000] remain in Iraq, mostly in Baghdad, and in the area around Basra. Since the US-led invasion of Iraq in 2003, Mandaeans have been the specific targets of violence

The community has suffered the looting and destruction of their homes and businesses. . . . Layla al Roomi, a Mandaean who is based in the UK and is now lobbying for the Iraqi community, said, "In the last months, there have been further killings of Mandaeans in Iraq. Families are being separated, homes are being taken. It is worse than it has been so far. Despite the Bush administration saying that there is more security in Iraq, minorities are continuing to suffer." In fact, she said, "beneath the noses of the British and US troops in southern Iraq, including Basra, there has been a total cleansing of Mandaeans and Christians". . . . The Mandaean culture and language [are] at risk of being totally eradicated from Iraq.³³⁰

Although Mandaeans do not have as many churches or shrines to destroy as the Assyrian Christians did, their ability to practice their traditional religious rites has been impaired by displacement of their homes and communities, and therefore from proximity to the rivers where they are regularly baptized in rituals of "spiritual cleansing" administered by Mandaean priests.³³¹

The Yezidis of Anatolia and Mesopotamia follow a syncretic religion that combines Jewish, Christian, and Muslim accounts of the

327. See Minority Rts. Group Int'l, *supra* note 152.

328. Ibrahim al-Marashi, *Dismantling the "Republic of Fear" Was a Just Cause*, 9 NEXUS 63, 66 (2004).

329. *Humanitarian Situation in Iraq: Hearing on the Future of Humanitarian Assistance in Iraq Before the Int'l Task Force of the H. Select Comm. on Hunger*, 102nd Cong. (1992) (statement of Melinda L. Kimble, Deputy Assistant Sec'y, Int'l Dev. & Technical Specialized Agency Affairs, Bureau of Int'l Org. Affairs, U.S. Dep't of State, in 3 DEP'T OF STATE DISPATCH 223, 224 (1992), available at http://findarticles.com/p/articles/mi_m1584/is_n12_v3/ai_12155077?tag=content;coll).

330. Minority Rts. Group Int'l, *supra* note 152.

331. 2008 *State of the World's Minorities*, *supra* note 152, at 152.

prophets and angels with Assyrian and Zoroastrian rituals like the reverence of fire, statues, towers, animal sacrifice, and religious festivals.³³² Yezidis are divided as to whether or not they are ethnically Kurdish, although they are certainly religiously different.³³³ According to a fifteenth-century CE manuscript, the holy shrine of the Yezidis was an Assyrian (Nestorian) monastery that was devoted to Yezidi rituals by its former steward.³³⁴ The Yezidis were nearly wiped out by massacres carried out by Turks and Kurds in the 1890s and 1910s.³³⁵ Their numbers fell from a quarter of a million to about 50,000.³³⁶ Although the Yezidi population grew dramatically after Iraq's independence from the Ottoman Empire, eventually reaching 600,000,³³⁷ the Ba'athist regime began to misclassify the Yezidis as Arabs, and occasionally "disappeared" Yezidis.³³⁸

Leaders of the Yezidis agree with those of the Mandaean and Assyrians in declaring that an attempted genocide against Iraqi religious

332. See *Yezidis*, in 28 ENCYCLOPEDIA BRITANNICA 919 (11th ed., 1911) (Yezidi religion "has points of connexion with old Iranian and Assyrian beliefs and traces of Manicheism and Nestorianism"); HARRY CHARLES LUKE, *MOSUL AND ITS MINORITIES* 124-28, 136-37 (Gorgias Press 2004) (1925) (discussing syncreticism of Yezidi faith and their use of oil fires, statues, towers, and animal sacrifice); AUSTEN HENRY LAYARD, *A POPULAR ACCOUNT OF DISCOVERIES AT NINEVEH* (New York, Harper & Bros. 1852), available at <http://mcadams.posc.mu.edu/txt/ah/Layard/DiscNineveh02.html> (noting that Yezidis' traditions spoke of a migration north from parts of southern Iraq inhabited by Chaldeans and Mandaean Sabaeans, that their religion is a "mixture of [Mandaean] Sabaeism, Gnosticism, Manicheism, Christianity, and Islam, and that "it is not improbable that the sect may be a remnant of the ancient [Babylonian] Chaldees, who camouflaged their ancient beliefs to stave off "oppression"); LAYARD, *supra* note 163, at 95-109 (describing Yezidi religious practice).

333. See 2002 INTERNATIONAL RELIGIOUS FREEDOM REPORT—IRAQ (2003), available at <http://www.state.gov/g/drl/rls/irf/2002/13996.htm>; LAYARD, *supra* note 332, available at <http://mcadams.posc.mu.edu/txt/ah/Layard/DiscNineveh02.html> (noting that Yezidi temple contained inscription in an unknown language, and that unlike Turks and Kurds, Yezidis were regarded as a people "whose origin can not easily be determined").

334. See LUKE, *supra* note 332, at 130; LAYARD, *supra* note 163.

335. See LUKE, *supra* note 332, at 128, 130, 136 (noting that massacres of Yezidis in 1890s and 1910s reduced population by four-fifths); LAYARD, *supra* note 332 (noting that during Ottoman period, the Bey of Rowandiz massacred Yezidis and destroyed a cherished temple; that Bey of Rowandiz was chief of Kurdish tribal confederation; that massacres by Ottoman Turks and Kurds reduced Yezidi population by three-fourths; and that Yezidis "took refuge in caves, where they were either suffocated by fires lighted at the mouth, or destroyed by discharges of cannon"); LAYARD, *supra* note 163, at 93 (similar).

336. See LUKE, *supra* note 332, at 128 (noting that the massacres in 1890s and 1910s reduced Yezidi population from 250,000 to 50,000).

337. See David Nissman, *First World Congress of Yezidis Held in Germany*, RADIO FREE EUROPE/RADIO LIBERTY, Feb. 4, 2000, <http://www.rferl.org/content/Article/1343241.html>; Cf. *Vision of the Bridge*, TURKISH DAILY NEWS, Mar. 19, 2001, <http://arama.hurriyet.com.tr/arsivnews.aspx?id=-522807> (noting an estimate of one million Iraqi Yezidis in 2001).

338. See 2002 INTERNATIONAL RELIGIOUS FREEDOM REPORT—IRAQ, *supra* note 333.

minorities has been underway.³³⁹ The Yezidis may have lost 100,000 members or more to violence and refugee flight.³⁴⁰ About 500 Yezidis in two villages died due to four truck bombs targeting them in 2007; many others fled Iraq or ceased to practice their religious ceremonies out of fear of persecution.³⁴¹ When a much smaller massacre of Kosovar Albanians occurred in the town of Racak in 1999, the United States, U.K., NATO, Germany, and Turkey declared soon thereafter that a genocide of Albanians in Kosovo was occurring.³⁴²

The Yezidis suffered huge massacres and forced assimilation in early twentieth-century Anatolia.³⁴³ In the 1920s, a leader of the Yezidis told British and German visitors how a half-century of massacres and forced assimilation had depopulated the Yezidi community.³⁴⁴ Since the 1980s, thousands of Yezidis from Turkey and Iraq have fled their villages, so that their community is “dwindling.”³⁴⁵ They “still confront systematic repression in today’s Turkey.”³⁴⁶ Their language, religious institutions, and history are outlawed or limited in many respects, as discussed above.³⁴⁷

339. See Michael Howard, *‘They won’t stop until we are all wiped out.’*, THE GUARDIAN (U.K.), Aug. 18, 2007, <http://www.guardian.co.uk/world/2007/aug/18/iraq.topstories3>.

340. Compare Nissman, *supra* note 337 (estimate of 600,000 Yezidis in Iraq in 2000), with 2008 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES—IRAQ (2008) (estimate of as few as 500,000 in 2008). By way of comparison, if the Yezidi population had grown at the same rate as the 90% of Iraq that is Muslim, i.e. by 20% since 2000, it would have gained 120,000 members. Compare CIA, *World Factbook 2000: Iraq*, http://www.photius.com/wfb2000/countries/iraq/iraq_people.html (2000 population of 22.6 million), with CIA, *World Factbook 2008: Iraq*, http://www.photius.com/wfb2000/countries/iraq/iraq_people.html (population of 27.5 million in 2008, a 20% jump).

341. Minority Rights Group Int’l, *supra* note 152.

342. See, e.g., U.S. Dep’t of State, *Daily Press Briefing*, M2 PRESSWIRE, Mar. 30, 1999, available at Highbeam Research, <http://www.highbeam.com/doc/1G1-54253941.html> (describing January 1999 incident in which “44 innocent civilians were murdered at Racak” as one of the “indicators that genocide is unfolding in Kosovo”); U.S. Sec’y of State Madeleine Albright, Address at the Brookings Institution (Apr. 6, 1999), available at http://www.pbs.org/newshour/bb/europe/jan-june99/albright_4-6.html (designating Serbian “acts of barbarism such as the massacre at Racak earlier this year” as “ethnic cleansing, war crimes, crimes against humanity and the other indicators of genocide that we see”).

343. *Devil Worshipers of Mosul, in Turkey, Are Tortured to Death by the Moslems*, WASH. POST, June 14, 1914, at 13.

344. See JOHN S. GUEST, *THE YEZIDIS: A STUDY IN SURVIVAL* 171–79 (1987).

345. Human Rights Watch, *Displaced and Disregarded: Turkey’s Failing Village Return Program* (2002), available at <http://www.hrw.org/reports/2002/turkey/Turkey1002.pdf>.

346. Minority Rights Group Int’l, *supra* note 152.

347. See *supra* notes 150–162, 311 and accompanying text.

E. *The Armenians of Anatolia and Mesopotamia*

1. The Origins of the Anatolian and Mesopotamian Armenians

The most recent to appear of the principal indigenous populations to be discussed in this article are the Armenians. Their forbears may have populated the Caucasus region between Mesopotamia and Russia since 1,000 BCE,³⁴⁸ but the first specific references to “Arminia” and Armenians are in Persian and Greek texts from about 500 BCE.³⁴⁹ Armenia formed one of the oldest Christian countries, transitioning from paganism to Christianity under Mesopotamian influence starting in the 300s CE.³⁵⁰

2. Efforts to Achieve the Extinction of the Armenian Culture and Religion

In the nineteenth century CE, the Armenian independence movement evolved from a demand for local autonomy and perhaps an Armenian governor, to a nationalist movement similar to that of the Greeks. At the Congress of Berlin in 1878, the Armenian delegation requested local autonomy and an Armenian governor.³⁵¹ The oppression and poverty borne by Christian minority groups in the nineteenth century was ravaging and depopulating the Christian towns and villages of the Empire. The Armenian National Assembly for the Province of Van reported in 1882 that:

Unpunished evils imposed on the population by the authorities and the wild hordes have afflicted so many, that it has arrived at the intimate conviction that the Imperial Government, far from curing

348. See JONES, *supra* note 6, at 102.

349. See UNREPRESENTED NATIONS AND PEOPLES ORGANIZATION: YEARBOOK 1997, at 132 (J. Mullen ed., Martinus Nijhoff Publishers 1998).

350. See Nina Garsoian, *The Aršakuni Dynasty*, in THE ARMENIAN PEOPLE, *supra* note 163, at 80–83; C.L. Sulzberger, *The People God Forgot*, N.Y. TIMES, Nov. 29, 1970. In Mesopotamia, the Urukian predecessors of the Armenians coexisted and contended with their Assyrian and later their Persian neighbors for hundreds of years before the Arab conquest. See GEORGE A. BOURNOUTIAM, A CONCISE HISTORY OF THE ARMENIAN PEOPLE 5–41, 69–77 (5th ed. 2006); James Russell, *The Formation of the Armenian Nation*, in THE ARMENIAN PEOPLE, *supra* note 163, at 20–35; Nina Garsoian, *The Emergence of Armenia*, in THE ARMENIAN PEOPLE, *supra* note 163, at 37–44. Although some Armenians no doubt resided in Mesopotamia from the time of the Assyrian and Persian empires, many of the Armenians of twentieth-century Iraq were deported or fled as refugees to the country during and after World War I. See *Christians*, in HISTORICAL DICTIONARY OF IRAQ 57–58 (Edmund Ghareeb & Beth Dougherty eds., 2004) (noting that most Armenians fled to Mesopotamia from Anatolia as a result of Ottoman persecution); SARAH D. SHIELDS, MOSUL BEFORE IRAQ: LIKE BEES MAKING FIVE-SIDED CELLS 54–55 (2000) (noting Armenian presence in 1830s Iraq). A nineteenth-century traveler to the Mosul region found Armenians living among Assyrians, Jews, and Kurds. See LUKE, *supra* note 332, at 14. About 12,000 Armenians resided in Baghdad alone at the outset of the 2003 war. See RASAM, *supra* note 163, at 180.

351. TANER AKÇAM, A SHAMEFUL ACT: THE ARMENIAN GENOCIDE AND THE QUESTION OF TURKISH RESPONSIBILITY 38 (Paul Bessemer trans., 2006).

her lamentable situation, is animated by an excess of zeal to depopulate Armenia of its own sons, with the intention of decreasing in this way the Christian element.³⁵²

Armenian demands for sovereignty and self-rule resembled claims to aboriginal or tribal sovereignty in the Americas, Australia, New Zealand, or South Africa. Kurdish tribes and leaders behaved towards their indigenous Christian neighbors much like frontiersmen in the Americas, Australia, Tasmania, or South Africa did. Many Kurdish leaders enjoyed official authority and public offices bestowed by the Ottomans, which they utilized to “prey upon and oppress the country people,” and inflict “innumerable oppressions and wrongs” upon the Armenians and Assyrians.³⁵³

In notes written after a meeting with Young Turk leaders in 1914, Max Scheubner-Richter, the commander of a joint German-Turkish military unit, described plans to destroy the Armenians of the Ottoman Empire. He described Armenian revolutionaries as a “pre-text[]” to deport the Armenian population and “exterminate” them.³⁵⁴ These plans were soon carried into practice. “By February 1915 Armenians in the Ottoman army were serving in labor battalions and either worked to death or murdered.”³⁵⁵ During the first half of 1915, Ottoman War Minister Enver Pasha ordered the mass murder of “200,000 or more” Armenian men who had been drafted into the armed forces.³⁵⁶ On April 24, 1915, Interior Minister Talaat ordered the first of thousands of Armenian religious and political leaders to be arrested throughout the Empire; hundreds of leaders imprisoned in Constantinople were later executed.³⁵⁷ The “clearance” of Armenian

352. Memorandum of Armenian Patriarch of Constantinople, Nerses II, to F. Blackwood, the Earl of Dufferin, British Ambassador to the Ottoman Sublime Porte, Apr. 27, 1882, in 2 BRITISH DOCUMENTS ON OTTOMAN ARMENIANS 435 (Bilâl Şimşir ed., 1983) (my translation from original French).

353. *Id.* at 651.

354. Quoted in DEBORAH DWORK & ROBERT JAN VAN PELT, *THE HOLOCAUST: A HISTORY* 38 (2002).

355. Robert Melson, *Responses to the Armenian Genocide: America, the Yishuv, Israel*, 20 HOLOCAUST & GENOCIDE STUD. 103, 107 (2006).

356. RUMMEL, *supra* note 224, at 216–17; see also HOWARD M. SACHAR, *THE EMERGENCE OF THE MIDDLE EAST: 1914–1924*, at 98 (1969); DICKRAN H. BOYAJIAN, *ARMENIA: THE CASE FOR A FORGOTTEN GENOCIDE* 288–89, 333–34 (1972).

357. See PETER BALAKIAN, *THE BURNING TIGRIS: THE ARMENIAN GENOCIDE AND AMERICA’S RESPONSE* 211–15 (2003); DADRAN, *supra* note 223, at 221.

cities and towns throughout the Empire occupied the rest of 1915.³⁵⁸ The genocide soon claimed over a million Armenians.³⁵⁹

In 1918, the Russian Bolsheviks reached a peace treaty with the German, Austrian, and Ottoman Empires that transferred much of Armenia to Turkey.³⁶⁰ The Armenians who had returned to the area after 1915 resisted but were deported from the cities of Trabzon and Erzerum, and murdered *en masse*.³⁶¹ Only 60,000 Armenians remained in the country by the 1990s, down from two million.³⁶²

In recent decades, Turkey has criminally prosecuted Turks, Armenians, and Assyrians who mention the country's history of genocide. Death, persecution, or exile has been the fate of intellectuals who grapple with Ottoman history, including Armenians like Hrant Dink, Assyrians like Yusuf Akbulut, and Turkish anti-racists like Orhan Pamuk and Taner Akçam.³⁶³ After Hrant Dink was murdered for exercising his human right of free expression on the Armenian genocide, Turkey prosecuted his son Arat Dink for "insulting Turkishness" and

358. DADRAN, *supra* note 223, at 219–20; *see also* 12 U.S. DEP'T OF STATE, PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES, 1919: THE PARIS PEACE CONFERENCE 814 (1942-1944), *quoted in* Richard G. Hovannisian, *The Armenian Genocide and US Post-War Commissions, in AMERICA AND THE ARMENIAN GENOCIDE OF 1915*, at 263 (Jay Winter ed., 2003) (describing "the adoption of repeated massacres as a deliberate policy of State"); Melson, *supra* note 355, at 107 (explaining that as the civilians from eastern Anatolia and Cilicia/Armenia were deported, Ottoman death squads and allied Turkish and Kurdish militia attacked them "again and again" in massacres, while survivors largely died "of hunger, dehydration, or exposure on the way," so that one million Armenians perished between 1915 and 1918, and 500,000 more were killed by forces loyal to Mustafa Kemal between 1919 and 1923, leaving up to three quarters of the Armenian population dead).

359. *See* DONALD BLOXHAM, *THE GREAT GAME OF GENOCIDE: IMPERIALISM, NATIONALISM, AND THE DESTRUCTION OF THE OTTOMAN ARMENIANS* 10 (2005); BEVAN, *supra* note 5, at 54; DADRAN, *supra* note 223, at 62, 299, 388; GAUNT, *supra* note 106, at 25, 176–77, 228–30, 250–56, 300–15; MARTIN GILBERT, *THE FIRST WORLD WAR: A COMPLETE HISTORY* 167 (2004); Emile Hilderbrand, *Kemal Promises More Hangings of Political Antagonists in Turkey*, L.A. EXAMINER, Aug. 1, 1926, at 1; RUMMEL, *supra* note 224, at 228–29; Travis, *supra* note 12, at 330–38.

360. *See* GILBERT, *supra* note 359, at 402.

361. *See id.*; Yves Ternon, *Report on the Genocide of the Armenians, in A CRIME OF SILENCE: THE ARMENIAN GENOCIDE: THE PERMANENT PEOPLES' TRIBUNAL* 107–19 (Gerard J. Libaridian, ed., 1985).

362. *See* GILBERT, *supra* note 359, at 402.

363. *See* S. Res. 65, 110th Cong. (2007), available at <http://www.govtrack.us/congress/billtext.xpd?bill=sr110-65>; Amnesty Int'l, *Turkey: Article 301: How the Law on "Denigrating Turkishness" Is an Insult to Free Expression*, AI Index EUR 44/003/2006, Mar. 1, 2006, <http://web.amnesty.org/library/index/engeur440032006>; Nicholas Jubber, *Who Remembers the Armenians?*, CATHOLIC WORLD REPORT, Apr. 2001, available at <http://www.catholiceducation.org/articles/persecution/pch0028.html>; Michelle Pauli, *Pamuk Believed to Be in Exile in US*, THE GUARDIAN (U.K.), Feb. 14, 2007, <http://books.guardian.co.uk/news/articles/0,,2012979,00.html>; Interview by Stephen Sackur with Taner Akcam, Turkish writer and historian (Aug. 30, 2007), BBC NEWS, <http://news.bbc.co.uk/1/hi/programmes/hardtalk/6970332.stm>; *Turkish Priest Arrested After Genocide Claim*, CATHOLIC WORLD NEWS, Oct. 5, 2000; Savannah Waring Walker, *Turkey: Priest on Trial*, N.Y. TIMES, Dec. 22, 2000.

sentenced him to a year in prison.³⁶⁴ These prosecutions defy history. The man who invented the term “genocide,” Holocaust survivor Raphael Lemkin, who also served as a legal adviser to the prosecutors of Nazi war criminals at Nuremberg, described the Armenian genocide as one of history’s “examples of the destruction of entire nations.”³⁶⁵ In 1978, U.S. President Jimmy Carter condemned the Ottoman Empire’s “elimination” of its Armenian population, and Ronald Reagan soon followed suit by using the term “genocide.”³⁶⁶

3. The Intentional Destruction of Armenian Cultural and Intellectual Property

In the eleventh through thirteenth centuries CE, Turkic tribes from Central Asia began to displace and conduct raids into Anatolian communities. The tribes divided Anatolia into zones for raiding and “appropriated the soil” from the inhabitants of Byzantine Anatolia.³⁶⁷ A Seljuk Turkish “land rush” into Anatolia followed the defeat of the Byzantines in Armenia, near Lake Van.³⁶⁸ Large armies of Seljuk Turks invaded from the east and southeast and sacked Vaspurakan, Sivas or Sebastia, and other cities; nevertheless, some anti-Byzantine Armenians joined the Turkish side.³⁶⁹ An Armenian chronicle recorded the results: “Our cities were devastated, our houses and palaces burned, our royal halls were reduced to ruins.”³⁷⁰

After World War I, U.S. Ambassador Morgenthau accused the Ottoman government of having carried out a “devilish scheme to annihi-

364. See Amnesty Int’l, *supra* note 363.

365. See Raphael Lemkin, *Genocide*, 15 AM. SCHOLAR 227 (1946), available at <http://www.preventgenocide.org/lemkin/americanscholar1946.htm> (inventor of term “genocide,” Raphael Lemkin, was outraged and moved to action by massacres of Ottoman Armenians and Iraqi Assyrians); Lemkin, *supra* (in 1933, Raphael Lemkin “introduced a proposal providing for this type of jurisdiction for acts of persecution amounting to what is now called genocide”).

366. President Jimmy Carter, Remarks at a White House Reception Honoring Armenian Americans (May 16, 1978) (transcript available at http://www.armenian-genocide.org/Affirmation.55/current_category.4/affirmation_detail.html); Days of Remembrance of Victims of the Holocaust, Proclamation 4838, 46 Fed. Reg. 23193 (Apr. 22, 1981).

367. GROSSET, *supra* note 165, at 154–55; see also THE GREAT OTTOMAN-TURKISH CIVILISATION 3–5 (2000). The Byzantine Emperors had previously deported Armenian lords and their subjects from eastern Anatolia to either Assyria or Cappadocia, south of the Black Sea. This weakened eastern Anatolia. See Robert Bedrosian, *Armenia During the Seljuk and Mongol Periods*, in THE ARMENIAN PEOPLE, *supra* note 163, at 196, 242–43.

368. RUDI PAUL LINDNER, NOMADS AND OTTOMANS IN MEDIEVAL ANATOLIA 10–11 (1997).

369. See Bedrosian, *supra* note 367, at 244–46.

370. ARISTAKES LASTIVERTSI, MATENAGRUTYAN BANASIRAKAN KNNUTYUN (Gurgen Musheghi Manukyan ed., 1977) (Armenian), quoted in ANTRANIG CHALABIAN, ARMENIA: EMPERORS, TZARS AND COMMISSARS 114 (2nd. rev. ed. 1988).

late the Armenian, Greek and Syrian Christians of Turkey.”³⁷¹ He described the “murdering of hundreds of thousands,” the enslavement of thousands of women, and the “destruction of hundreds of villages and cities.”³⁷² Literally “thousands of Armenian churches, monasteries, and monuments were also destroyed in eastern Turkey.”³⁷³ As a prominent genocide scholar writes, “Armenian monuments and churches were dynamited, graveyards were plowed under and turned into [farmland], and the Armenian quarters of cities were torn down and used for firewood and scrap, or occupied and renamed.”³⁷⁴ After the Ottomans issued orders to exterminate all the adult Armenian men of the city of Van, 600 of them mounted a resistance, and the Ottomans bombarded the city as a whole into ruins.³⁷⁵ A foreign soldier serving as an Ottoman artillery officer wrote:

Our ferocious onslaught and our heavy artillery fire had turned two-thirds of Van into a smouldering, fiery shambles, which was erupting at our feet like a blazing volcano, gushing out enormous puffs of smoke mingled with red tongues of flame and innumerable cascades of crimson sparks. It was a Dantesque scene. . . .

I could not help shuddering every time I looked from the top of the fortress at the burning villages [in the countryside surrounding Van]. . . .

We are credited with having fired over sixteen thousand cannon shots into that city during the first two weeks of the siege. . . .
Wherever our shells exploded buildings collapsed. . . .³⁷⁶

Since World War I, Turkey has actively suppressed Armenian efforts to rebuild the ruins of the churches left over from the genocide.³⁷⁷ It was illegal to build a church prior to 2003, and once this discriminatory law was amended, none received authorization to open until 2006, after an evangelical church made two appeals to a Turkish court for the right to open.³⁷⁸ While banning new construction, the

371. *Morgenthau Calls for Check on Turks*, N.Y. TIMES, Sept. 5, 1922, at 3.

372. *Id.*

373. DONALD E. MILLER & LORNA T. MILLER, *SURVIVORS: AN ORAL HISTORY OF THE ARMENIAN GENOCIDE* 33 (1993).

374. JONES, *supra* note 6, at 107.

375. See BALAKIAN, *supra* note 357, at 208–09.

376. RAFAEL DE NOGALES, *MEMOIRS OF A SOLDIER OF FORTUNE 270* (Kessinger Publishing 2006) (1932).

377. See Kouymjian, *supra* note 5, at 174–75 (noting Turkey’s “willful neglect” and “failure to provide any maintenance” as a contributing factor in elimination of hundreds of Armenian monuments as “witnesses of Armenian national life”).

378. See *Modern Turkey’s First New Church Opens in Istanbul*, TORONTO STAR, Sept. 1, 2006. See also 2007 RELIGIOUS FREEDOM REPORT—TURKEY, available at <http://www.state.gov/g/drl/rls/irf/2007/90204.htm> (“In 1974, amid political tensions over Cyprus, the High Court of Appeals ruled that the minority foundations had no right to acquire properties beyond those listed in the 1936 declarations continuing today.”); 2002 RELIGIOUS FREEDOM REPORT—TURKEY, available at <http://www.state.gov/g/drl/rls/irf/2002> (“Non-Muslim religious foundations legally may not acquire property for any purpose. . . .”).

Turkish government seized many Armenian and Greek churches on the galling rationale that the local population had fallen too low, as might be expected after an extermination of a race.³⁷⁹ The Armenian Patriarch in Constantinople complained in 1978 that: “There are bureaucratic discriminations. . . . We cannot build new churches or repair old ones. . . .”³⁸⁰ An Armenian-American described the result as he saw it in 1995, with “ruined” churches being the “most common type of church” in Turkey,” and the “the physical record of 2,500 years of Armenian civilization” being “erased in only seventy years.”³⁸¹ Turkish law states that Armenian churches and other architecture represent national wealth that can only be repaired after navigating bureaucratic and arbitrary procedures that prevent needed repairs.³⁸²

F. Conclusion

The indigenous Assyrians, Greeks, and Armenians of Iraq and Turkey have had their communal integrity and intellectual heritage shattered by the genocide of World War I and its aftermath, and along with the Yezidis, Mandaeans, and Jews, by smaller-scale and sometimes more subtle but nevertheless destructive pogroms and assimilatory policies since then.³⁸³ The Ottoman and Kemalist Nationalist massacres of the Anatolian Armenians, Assyrians, Greeks, and Yezidis, as well as of the Mesopotamian Assyrians and Yezidis, constituted genocide under the initial definition and international criminal application of the term.³⁸⁴ The widespread attacks by successive gov-

379. 2007 RELIGIOUS FREEDOM REPORT—TURKEY, *supra* note 378 (since the 1970s, Turkey “has seized control of [Armenian and Greek] properties acquired after 1936,” has “expropriate[d] properties in areas where the local ‘non-Muslim’ population drops significantly,” including “numerous” Greek and Armenian Orthodox religious centers).

380. Robert Paul Jordan, *The Proud Armenians*, 153 NAT’L GEOGRAPHIC 851 (1978).

381. Gregory C. Norsigian, *Chasing Ghosts in Turkey*, ARM. REP., Jan. 14, 1995, <http://www.highbeam.com/doc/1P1-2297219.html>.

382. 2005 RELIGIOUS FREEDOM REPORT—TURKEY, *available at* <http://www.state.gov/g/drl/rls/irf/2005/51586.htm>.

383. Prosecutor v. Blagojevic & Jokic, Case No. IT-02-60-T, Trial Judgement, ¶¶ 666, 675 (Jan. 17, 2005). Prosecutor v. Kayishema & Ruzindana, Case No. ICTR-95-1-A, Appeal Judgement (Reasons), ¶ 97 (June 1, 2001); Prosecutor v. Jelisić, Case No. IT-95-10-A, Appeal Judgement, ¶ 82 (July 5, 2001); Prosecutor v. Krstic, Case No. IT-98-33, Trial Judgement, ¶¶ 80–84, 580, 589, 633 (Aug. 2, 2001), *aff’d by* Prosecutor v. Krstic, Case No. IT-98-33-A, Appeal Judgement, ¶ 12 (Apr. 19, 2004); Prosecutor v. Ndinabahizi, Case No. ICTR-2001-71-I, Judgement and Sentence, ¶ 454 (July 15, 2004), *available at* <http://www.unhcr.org/refworld/publisher,ICTR,,,48ABD5150,0.html>.

384. Large massacres of identifiable ethnic or religious groups, especially when accompanied by assaults on their cultural heritage, are the most persuasive evidence that the crime of genocide has occurred. *See, e.g.*, Blagojevic & Jokic, Case No. IT-02-60-A, at ¶¶ 666, 675; Kayishema & Ruzindana, Case No. ICTR-95-1-A, at ¶¶ 40, 97, 159; Jelisić, Case No. IT-95-10-A, at ¶ 82; Krstic, Case No. IT-98-33-A, ¶¶ 80–84, 580, 589, 633; Ndinabahizi, Case No. ICTR-2001-71-I, at ¶ 454. Many adjudicated cases

ernments of Iraq and Turkey on the homes, places of worship, and heritage of minority communities since the 1930s have amounted to cultural genocide, as defined by the framers of the Genocide Convention. Cultural genocide occurs when a government takes “[a]ny action which has the aim or effect of depriving [indigenous peoples] of their integrity as distinct peoples, or of their cultural values or ethnic identities,” or “[a]ny form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative, or other measures.”³⁸⁵ Although cultural genocide not accompanied by physical measures against group members was not made a separate crime by the Genocide Convention, Raphael Lemkin working as a consultant to the U.N. Secretary General on the drafting of the Genocide Convention urged that it include “systematically destroying historical or religious monuments.”³⁸⁶ The U.N. General Assembly voted against making cultural genocide a separate crime because its members believed that “culture was already covered to a large extent by the word ‘religious’” in the Genocide Convention.³⁸⁷ Thus, one U.S. court referred in 2006 to “cultural genocide” as a wrongful policy.³⁸⁸ Massacres, extrajudicial executions, assaults, and seizure without compensation and on ethnic or religious grounds of cities, villages, places of worship, schools, homes, businesses, and personal effects also constitute the crimes against humanity of murder, persecution, extermination, and looting.³⁸⁹

of genocide before international criminal tribunals authorized by the United Nations establish that massacres of members of a distinct ethnic or religious group constitute genocide, because genocidal intent may be inferred from the large scale of the killing and its ethnic or religious targeting of a specific group or set of groups. See, e.g., *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Trial Judgement, § 6.3.1 (Sept. 2, 1998); *Prosecutor v. Tadic*, Case No. IT-94-1-A, Appeal Judgment ¶¶ 255–269 (July 15, 1999); *Kayishema & Ruzindana*, Case No. ICTR-95-1-T, at ¶¶ 40, 97, 159; *Jelisić*, Case No. IT-95-10-A, at ¶ 82; *Prosecutor v. Semanza*, Case No. ICTR-97-20-T, Trial Judgment and Sentence, ¶¶ 476–77 (May 15, 2003); *Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Appeal Judgement (17 Sept. 2003); *Prosecutor v. Krstic*, Case No. IT-98-33-A, Appeal Judgement, ¶¶ 25–38 (Apr. 19, 2004); *Prosecutor v. Milosevic*, Case No. IT-02-54-T, Decision on Motion for Judgement of Acquittal, ¶ 128 (June 16, 2004); *Prosecutor v. Muhimana*, Case No. ICTR-95-1B-T, Judgment and Sentence, ¶¶ 513, 517 (Apr. 25, 2005); *Prosecutor v. Gacumbitsi*, Case No. ICTR-2001-64-A, Appeal Judgement, ¶ 40 (July 7, 2006).

385. Declaration on the Rights of Indigenous Peoples, *supra* note 2, art. 8 ¶¶ 2(a), 2(d).

386. See JOHN B. QUIGLEY, *THE GENOCIDE CONVENTION: AN INTERNATIONAL LAW ANALYSIS* 9 (2006); LEBLANC, *supra* note 26, at 25.

387. *Offences Against the Peace and Security of Mankind*, *supra* note 27, at 69.

388. See *Cobell v. Norton*, No. 05-5269, slip op. at 29 (D.C. Cir. July 11, 2006), available at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200607/05-5269a.pdf>.

389. See, e.g., CHERIF M. BASSIOUNI, *CRIMES AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW* 329 (1999) (“crimes against humanity” include the following acts directed against any civilian population in an international or internal armed conflict: murder, torture, rape, “persecutions on political, racial and religious grounds,” and “other inhumane acts”); ECOSOC Subcomm’n on Prevention of Discrimination

III. RECENT U.S. AND E.U. FINDINGS ON VIOLATIONS OF INDIGENOUS PEOPLES' CULTURAL AND INTELLECTUAL PROPERTY RIGHTS IN TURKEY AND IRAQ

The United States and the EU have confirmed severe, ongoing violations of the cultural and intellectual property rights of indigenous peoples in both Turkey and Iraq. For different but related reasons, these countries have assumed responsibility to inquire into the treatment of minorities in countries to which they give military or economic aid, or with whom they are entangled politically or militarily. The United States does so pursuant to the Foreign Relations Act of 1961 and the International Religious Freedom Act of 1998. The former prohibits U.S. military assistance to countries engaged in a consistent and gross pattern of violating fundamental human rights, unless the President certifies that extraordinary circumstances justify providing military assistance to the human-rights-abusing regime anyway.³⁹⁰ It also requires the U.S. Department of State to submit reports to Congress on the status of all “internationally recognized human rights” in all “foreign countries which are members of the United Nations.”³⁹¹ The latter requires the Department of State to report to Congress on all “violations of religious freedom, including particularly severe violations of religious freedom.”³⁹²

& Prot. of Minorities, *Human Rights and Population Transfer: Final Report of the Special Rapporteur* ¶ 10, E/CN.4/Sub.2/1997/23 (1997), available at [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.1997.23.en?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.Sub.2.1997.23.en?Opendocument) (murder, rape, harassment, and destruction of religious and other civilian cultural buildings constitute ethnic cleansing, persecution, and looting, a pattern of which constitutes a crime against humanity); Statute of the International Criminal Tribunal for the Far East, art. 5(c), quoted in *Tadic*, Case No. IT-94-1, Appeals Chamber, at ¶ 289 n.348 (crimes against humanity include “murder, extermination, enslavement, deportation, and other inhumane acts committed before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated”); see also *Krstic*, Case No. IT-98-33, at ¶ 492 (crime against humanity of extermination occurs when a person kills other persons unlawfully and intentionally as “part of a widespread or systematic attack” on a civilian population); *Akayesu*, Case No. ICTR-96-4-T, at ¶¶ 591–92 (similar).

390. See The Foreign Assistance Act of 1961, 22 U.S.C. § 2304(a)(2) (2006); see also *Crockett v. Reagan*, 720 F.2d 1355 (D.C. Cir. 1983).

391. 22 U.S.C. § 2151n(d)(1).

392. *Id.* § 2151n(d)(7); see also 22 U.S.C. § 6401(11)-(13) (defining religious freedom as including freedom from “arbitrary” prohibitions or restrictions of, or punishment for, religious worship, teaching, non-compliance with registration requirements; “speaking freely about one’s religious beliefs”; changing religions; “possession and distribution of religious literature, including Bibles”; “raising one’s children in the religious teachings and practices of one’s choice”; or murder, torture, mass resettlement, imprisonment, or beatings due to one’s religion or religious practice); The International Religious Freedom Act of 1998, Pub. L. 105-292, 112 Stat. 2787 (codified in scattered sections of 22 U.S.C. and 8 U.S.C.).

A. Expropriations and Forced Assimilation in Turkey

As part of the accession process, the European Parliament investigates the status of human rights and minority rights in applicant states, including, in recent years, those in Turkey. The Treaty on the European Union provides that any “European State” which respects certain principles may apply for EU membership, which shall be decided upon by the Council of Europe after it receives a vote in favor of membership by the European Parliament.³⁹³ The principles required to be respected by the applicant European State are those on which the EU is founded, including “the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. . . .”³⁹⁴ The European Council has identified “respect for and protection of minorities” as a principle with which an applicant should demonstrate compliance.³⁹⁵ Candidates for EU membership must demonstrate “respect for and protection of minorities,” as well as “institutions guaranteeing . . . human rights” during the accession process.³⁹⁶ Turkey is one of three countries currently applying for EU membership, along with Croatia and Macedonia.³⁹⁷

Both the EU and the United States have confirmed that Turkey has criminalized the very history of the Armenians, Assyrians, Greeks, Jews, and other minorities such as the Yezidis who have suffered at the hands of the government or army. Such policies violate principles fundamental to the EU, including the right to maintain minority cultural and educational institutions, to access the media and public life on equal terms, and to practice minority religions in their mother tongues.³⁹⁸ In 2005, the EU’s rapporteur on Turkey, Camiel Eurlings, criticized the Turkish state’s censorship of Armenian and other indige-

393. Treaty on European Union (Maastricht Treaty) art. 49, 92/C 191/01 (1992), available at http://europa.eu/scadplus/treaties/maastricht_en.htm.

394. *Id.* art. 6(1).

395. Copenhagen European Council of 1993, quoted in European Commission, *Progress Towards Meeting the Economic Criteria for Accession* (2009), available at http://ec.europa.eu/economy_finance/int_economic_issues/enlargement196_en.htm.

396. See Max van der Stoep, Organization for Security and Cooperation in Europe (OSCE) High Commissioner on National Minorities, *The Protection of Minorities in the OSCE Region 5–7* (2000).

397. European Commission, *Acceding and Candidate Countries* (2008), http://ec.europa.eu/economy_finance/int_economic_issues/non_eu_economies209_en.htm.

398. See OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension* ¶¶ 31, 32.2 (1990); available at http://www.osce.org/documents/odihr/1990/06/13992_en.pdf; Framework Convention for the Protection of National Minorities, Feb. 1, 1995, 34 I.L.M. 351, ¶ 4(2), ¶ 9(1), ¶ 9(1), ¶ 9(4), available at [http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_H\(1995\)010_FCNM_ExplanReport_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_H(1995)010_FCNM_ExplanReport_en.pdf); OSCE, *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities* (1998), available at http://www.osce.org/documents/hcnm/1998/02/2699_en.pdf; OSCE, *Co-operation in Humanitarian and Other Fields* ¶¶ 32, 45, 59, in *Concluding Document of the 1986 Vienna Meeting of Representatives of the Participating States* (1989), available at <http://www.fas.org/nuke/control/osce/text/VIENN86E.htm>; Max van der Stoep, *supra* note 396.

nous peoples' history, stating that freedom of speech is a "fundamental necessity" to join the EU.³⁹⁹ Article 301 of the Turkish Penal Code (TPC) continued to outlaw attempts by historians or other intellectuals to "'denigrate Turkishness' or the government or the army."⁴⁰⁰ U.S. reports on human rights in Turkey have confirmed this criticism.⁴⁰¹ In 2006, the European Parliament adopted a report confirming discrimination against Christians, requesting: "Confiscated property must be restituted to monasteries and churches and [that] they be allowed to start training clergy once more."⁴⁰²

B. *Bombings and Intimidation in Iraq*

The United States has documented severe and continuing violations of human rights and indigenous peoples' rights in Iraq. In 2004, the State Department reported that terrorist bombings and assassinations occurred daily throughout the society, the government deprived citizens of their lives on an "arbitrary" basis, police torture was common, the judicial system was "dysfunctional," "impunity" for crimes prevailed, large numbers of persons were displaced from their homes and villages, and the rights of Iraq's indigenous peoples were violated on a systematic basis.⁴⁰³ There was little progress by 2006, when the State Department reported that violence and discrimination against Iraq's indigenous peoples remained a problem:

During the year, there were allegations that the [Kurdistan Regional Government or] KRG continued to engage in discriminatory behavior against religious minorities. Minorities living in areas north of Mosul, such as Yazidis and Christians, asserted that the KRG encroached on their property, eventually building Kurdish settlements on the confiscated land. In spite of reputed KRG discrimination against religious minorities, many non-Muslim minorities fled to the Kurdish region to escape violence and religious discrimination in other parts of the country. . . .

Members of the Yazidi community reported that they continued to be targeted by Islamists throughout the year. They complained that the misperception that they were devil-worshippers was behind

399. *Eurlings: Turkey Has Achieved Little Progress in Religious Freedoms*, *TURKISH DAILY NEWS*, Oct. 22, 2005, <http://arama.hurriyet.com.tr/arsivnews.aspx?id=562682>.

400. Sebnem Arsu, *Turkish Court Delays Novelist's Trial EU Observers Keep Watch on Proceedings*, *INT'L HERALD TRIB.*, Dec. 16, 2005, available at <http://www.iht.com/articles/2005/12/16/news/turkey.php>.

401. See 2007 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—TURKEY (2008), available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100589.htm> (reporting "serious restrictions on freedom of expression," including censorship of writing on ethnic or religious "minorities," Armenian history, and other "non-violent opinions").

402. European Union, *Press Release: European Parliament Critical of Slowdown in Turkey*, *SCOOP*, Sept. 28, 2006, <http://www.scoop.co.nz/stories/WO0609/S00552.htm>.

403. 2004 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 1817–18, 1823, 1824–25 (2005), available at http://bulk.resource.org/gpo.gov/prints/109/s_23016.pdf.

some attacks that the community had suffered in the province of Ninawa.

Sabeen Mandaean leaders asserted that there was an increase in threats against and killings of members of their community during the year. . . .⁴⁰⁴

Such attacks continued and spread in 2007 and 2008, according to the State Department's reports. Ten churches and convents were bombed, and terrorist attacks "rendered many mosques, churches, and other holy sites unusable," deterring most worshippers from practicing their respective faiths.⁴⁰⁵ The Assyrian district of Baghdad was ethnically cleansed by such acts.⁴⁰⁶ As "almost all religious denominations" received death threats, such threats caused "large-scale internal displacement based on religious or ethnic affiliation."⁴⁰⁷

IV. REFORMS TO PRESERVE THE CULTURAL AND INTELLECTUAL PROPERTY OF INDIGENOUS WESTERN ASIANS

A. Compensation

The expropriation of the physical and intellectual property of the indigenous peoples of Turkey and Iraq violated multiple international law norms. As noted above, the Ottoman and Kemalist Nationalist massacres of the Armenians, Assyrians, Greeks, and Yezidis, and the Iraqi government's murders and displacement of Jews, Assyrians, Yezidis, and Mandaeans, constituted genocide and/or crimes against humanity. Turkey and Iraq are therefore under an obligation to re-

404. 2006 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—IRAQ (2007), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2006/78853.htm>.

405. 2008 RELIGIOUS FREEDOM REPORT—IRAQ, *available at* <http://2001-2009.state.gov/g/drl/rls/irf/2008/108483.htm> ("On January 6, 2008, coordinated bombings in Baghdad and Mosul struck six churches and three convents; six persons were injured. . . . Christian leaders inside and outside of the country reported that members of their Baghdad community, especially in the district of Doura, received threat letters demanding that Christians leave or be killed. . . . [T]here were numerous reports over the past two reporting periods of places of worship closing due to threats. . . .").

406. *See id.* ("Christian leaders stated in press reports that 500 families left the Doura District between April and May 2007, and the United Nations High Commission for Refugees (UNHCR) reportedly counted at least 100 families fleeing Doura . . . [S]even churches that were operating in Baghdad's Doura neighborhood in 2003 . . . subsequently closed when sectarian violence erupted there, [but two of them] reopened [in 2008] and were holding regular services.".) *See also* Damien McElroy, *Christians Fleeing Iraq After Death Threats*, DAILY TELEGRAPH (U.K.), May 10, 2007, <http://www.telegraph.co.uk/news/worldnews/1550947/Christians-fleeing-Iraq-after-death-threats.html> ("Iraq's Christian community is close to extinction as thousands are forced to flee their traditional strongholds in Baghdad. . . . Priests claim that half Baghdad's pre-2003 Christian population—estimated in the hundreds of thousands—has fled or been killed.").

407. 2007 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—IRAQ (2008), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2007/100596.htm>. Nearly 2.5 million were displaced at year-end 2007. *See id.*

store these peoples to the position they enjoyed prior to the expropriations and massacres of their families and ancestors.⁴⁰⁸

International law and state practice provide increasingly clear support for an obligation under international law to pay compensation for crimes against indigenous people, ethnic minorities, and neighboring countries.⁴⁰⁹ The International Court of Justice has ordered Uganda to pay compensation because its military during an armed conflict in the Democratic Republic of the Congo “destroyed villages and civilian buildings” and breached “human rights and international humanitarian law.”⁴¹⁰ The United States has authorized compensation to Native Americans, in the form of both land and money, for crimes or breaches of trust or treaty obligations against them and their ancestors, such breaches generally having been committed prior to 1900.⁴¹¹ Canada, similarly, distributed more than 200,000 acres of land to indigenous peoples in 1988.⁴¹² After the U.S. Civil War, the federal government also adopted measures that could be described as

408. See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 20 (July 9) (quoting Factory at Chorzow, Merits, Judgment No. 13, 1928 P.C.I.J. (ser. A) No. 17, at 47).

409. In addition to international treaties, state practice has long served as a basis for emerging international law norms. See *United States v. Smith*, 18 U.S. 153, 160–61 (1820) (citing the “general usage and practice of nations” as a source of international law, i.e. the “law of nations”).

410. *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, 2005 I.C.J. ¶ 345 (Dec. 19).

411. See M. Cherif Bassiouni, *International Recognition of Victims' Rights*, 6 HUM. RTS. L. REV. 203, 221 n.79 (2006) (describing remedies for Indian Tribe Land Claims that were provided by U.S. Congress “in 1946 and aimed to address a number of claims raised by Indian tribes, including the loss of lands under treaties entered into under duress. Approximately \$1.65 billion (US) was awarded.”); RAYMOND WINBUSH, *SHOULD AMERICA PAY? SLAVERY AND THE RAGING DEBATE IN REPARATION* xii, 18 (2003) (“[I]n 1971, the United States gave \$1 billion plus 44 million acres of land to honor the Alaska Natives land settlement”); *id.* at 18 (“[I]n 1985, the United States gave \$105 million to the Sioux of South Dakota”); *id.* (“[I]n 1980, the United States gave \$81 million to the Klamaths of Oregon”); 25 U.S.C. § 139 (2006) (providing for monetary appropriations to meet subsistence needs of Native American communities); 25 U.S.C. § 1703 (2006) (providing for \$3.5 million Rhode Island Indian Claims Settlement Fund); 25 U.S.C. § 1724(a) (2006) (providing for \$27 million Maine Indian Claims Settlement Fund); 25 U.S.C. § 1771(a) (2006) (providing for \$2.25 million Massachusetts Wampanoag settlement fund); 25 U.S.C. § 1773d (2006) (providing for more than \$46 million in funds for Washington State Puyallup Indians Land Claims Settlement); 25 U.S.C. § 1774d (2006) (providing for more than \$60 million in federal and state funds for Seneca Nation (New York) Land Claims Settlement); 43 U.S.C. §§ 1601–1629 (2006) (authorizing distribution of 45.6 million acres of land to indigenous peoples of Alaska); 16 U.S.C. § 470dd (2006) (providing for Native American tribes to have control over disposition over “archaeological resources excavated or removed from Indian lands”); 25 U.S.C. § 3005(a)(2) (2006) (providing for expeditious return to Native American tribes of “sacred objects or objects of cultural patrimony” in possession of federal agencies or museums, once objects’ tribal affiliation is established).

412. See WINBUSH, *supra* note 411, at 18.

compensatory, including distributing land to freed slaves.⁴¹³ State and local governments have also paid reparations to victims of anti-African-American riots and massacres in U.S. cities such as Chicago, St. Louis, and Rosewood, Florida.⁴¹⁴ Between 1952 and 2006, “the German government and private corporations have provided over \$104 billion (US) for compensation to victims of Nazi crimes.”⁴¹⁵ Japan provided \$1.3 billion in reparations and more than \$30 billion in development assistance to the many victims of its aggression, massacres, systematic rapes, forced labor, and torture.⁴¹⁶ As recently as 2007, France announced “reparations” for Algerians who fought on its side during its colonial rule over the country.⁴¹⁷

Recent precedents from the U.S. federal courts provide strong support for a right to compensation for victims of violations of international law against multinational corporations that aided or abetted the government committing the violations. In *Khulumani v. Barclay National Bank Ltd.*,⁴¹⁸ victims of crimes against humanity and human rights violations in apartheid-era South Africa sued Shell Oil Co., Exxon Mobil, and other multinational corporations under the Alien Tort Claims Act (ATCA) and the Torture Victims Protection Act (TVPA).

413. See Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence and Community Through Partition Sales of Tenancies in Common*, 95 Nw. U.L. REV. 505, 525–26 (2001). The Bureau of Refugees, Freedmen and Abandoned Lands [BRFAL] assumed jurisdiction over 850,000 acres of land in former Confederate territory, and distributed more than 400,000 acres of it to former slaves by 1866. See *id.* at 525–26. The Southern Homestead Act (SHA) conveyed tracts of land in five former Confederate states to up to 4,000 freed slaves, transferring at least several million acres of land, even assuming that estimates that whites received 77 percent of the 46 million acres of land covered by the SHA are correct. See *id.*; Phylliss Craig-Taylor, *African-American Farmers and the Fight for Survival: The Continuing Examination for Insights Into the Historical Genesis of This Dilemma*, 26 N.C. CENT. L.J. 21, 29 (2003) (4,000 freed slaves received land under SHA). Of course, the fact that the majority of the land distributed by the BRFAL and SHA went not to freed slaves, but to whites and former owners of slaves, casts doubt upon whether these laws should be considered as unequivocally compensatory. Given that estimates of unjust enrichment of slave owners and losses to Africans and African-Americans run into the billions or trillions of dollars, and that the aggregate value of lost lives, limbs, health, and liberty might be assessed at an even higher amount, this is not to suggest that any compensation that there was has been adequate. See WINBUSH, *supra* note 411, at 18, 151, 172, 175, 356.

414. See Alberto B. Lopez, *Focusing the Reparations Debate Beyond 1865*, 69 TENN. L. REV. 653, 676 & n.96 (2002).

415. Bassiouni, *supra* note 411, at 219–20; see also German Embassy to Washington, D.C., German Compensation for National Socialist Crimes (2008), available at <http://www.germany-info.org/relaunch/info/archives/background/nscrimers.html>; The Conference on Jewish Material Claims Against Germany, Compensation Guide: Guide to Worldwide Compensation and Restitution Programs Available for Eligible Jewish Victims of Nazi Persecution (2006), available at http://www.claimscon.org/search/comp_guide_search5.asp.

416. See Travis, *supra* note 9, at 56 n.276.

417. See French ‘Reparation’ for Algerians, BBC NEWS.COM, Dec. 6, 2007, <http://news.bbc.co.uk/2/hi/europe/7130307.stm>.

418. 504 F.3d 254 (2d Cir. 2007) (per curiam).

The plaintiffs alleged in particular that “[w]ithout oil, the police and military could not have functioned and the economy of South Africa would have come to a standstill.”⁴¹⁹ The U.S. Court of Appeals for the Second Circuit ruled that corporations who “aid and abet” violations of customary international law can be sued for damages under the ATCA.⁴²⁰ The court also stated that the corporations could have been sued under the TVPA if they could be linked “to state aid or the conduct of state officials.”⁴²¹ The judges in the court’s majority cited the Zyklon B case arising out of the Holocaust for the idea that knowingly supplying the means to murder thousands of people also renders the supplier guilty of the crime.⁴²² Indigenous peoples deprived of their property in a discriminatory fashion may also have more conventional tort claims against multinational corporations receiving the property. For example, New York law provided Jewish refugees from Egypt with a claim against a corporation that obtained ownership of their property after a discriminatory confiscation many decades in the past.⁴²³

Another compelling international legal precedent for the payment of reparations to the indigenous peoples of Turkey and Iraq is the reparations regime erected for the benefit of Kuwait, Saudi Arabia, Israel, and the United States after the Persian Gulf War of 1991. Since the fall of the Ba’athist regime responsible for the damage to Kuwait and its allies, Iraqis have been forced to pay \$2.5 billion in compensation to Kuwait, Saudi Arabia, Israeli, and Western companies. These funds, it should be noted, were subtracted from Iraq’s oil revenues *after* the fall of the Saddam Hussein regime.⁴²⁴ This was on top of over \$15 billion in compensation paid out mostly to Saudi, Kuwaiti, and American companies before 2003.⁴²⁵ These reparations represent more than 10 times what Japan paid for invading a dozen countries and killing and enslaving millions of Chinese, Koreans, Filipinos, Indonesians, Vietnamese, Americans, British, Dutch, Australians, etc.⁴²⁶ They also exceed what Germany paid out in cash in

419. *Id.* at 294 (Korman, J., concurring in part and dissenting in part).

420. *Id.* at 258–60.

421. *Id.* at 260.

422. *Id.* at 276 n.11 (Katzmann, J., concurring) (citing *Trial of Bruno Tesch and Two Others*, in 1 LAW REPORTS OF TRIALS OF WAR CRIMINALS 93, 95 (1997) (British Military Ct., Hamburg, Mar. 1–8, 1946)); *id.* at 290 (Hall, J., concurring) (citing *Trial of Bruno Tesch*, *supra*, at 93–95).

423. See *Bigio v. Coca-Cola Co.*, 448 F.3d 176 (2d Cir. 2006); *Bigio v. Coca-Cola Co.*, 239 F.3d 440 (2d Cir. 2000); Basri, *supra* note 300, at 714.

424. Justin Alexander, *Saddam’s Debt: The Emerging Conflict over How to Deal With Saddam’s Devastating Economic Legacy*, MULTINAT’L MONITOR, Mar. 2004, at 9.

425. See Stanley Meisler, *U.N. Chief Sets Limit of 30% of Iraqi Oil Revenues for War Reparations*, L.A. TIMES, June 1, 1991, at A4; Paul Lewis, *U.N. Western Powers Plan Seizing Iraq Funds For Relief*, N.Y. TIMES, Sept. 12, 1992, at A3.

426. See Travis, *supra* note 9, at 56 n.276.

the 10 years after 1945 for invading most of Europe and exterminating 35 million Jews, Slavs, and Roma people.⁴²⁷ Iraq's compensation payments are being paid in part by Kurds and Assyrians who would otherwise benefit from the expenditure of these billions inside Iraq.⁴²⁸ In short, Iraq is still paying out compensation payments incurred nearly 20 years ago by a regime that its current leaders loathe, under a different constitution and undemocratic form of government, in amounts that greatly exceed what the Germans and Japanese paid for invading dozens of countries and territories, killing millions of people, and destroying countless buildings including 2,000 to 3,000 synagogues.⁴²⁹ There is no valid reason to deny Iraq's and Turkey's indigenous peoples of compensation given such precedents.

With respect to the exploitation abroad of indigenous cultural and intellectual property that was obtained by museums etc. under the undemocratic and imperial regimes of the Ottomans and the Ba'athists, or as a result of the widespread looting of Iraq's indigenous cultural heritage since 1991, the indigenous peoples of Turkey and Iraq should share in the benefits of such exploitation. Existing law has long been recognized to be inadequate in this regard, so Article 29 of the Declaration on the Rights of Indigenous Peoples requires "special measures" be developed to assist indigenous peoples in vindicating their rights.⁴³⁰ These measures could take the form of an "indigenous knowledge reserve" as a vehicle for promotion of and benefit-sharing for indigenous intellectual property.⁴³¹ Turkey, Iraq, and other nations hosting collections of the cultural heritage of these two countries' indigenous peoples should consider such mechanisms to vindicate the right of these indigenous peoples to preserve their cultures by handing them down intact to future generations,⁴³² and "to obtain just and fair compensation for such usage [of their cultural heritage by others]."⁴³³

427. Germany paid less than \$750 million to Holocaust victims by 1955. See FOREIGN CLAIMS SETTLEMENT COMM'N OF THE U.S. DEP'T OF JUSTICE, U.S. DEP'T OF STATE, GERMAN COMPENSATION FOR NATIONAL SOCIALIST CRIMES (1999), available at <http://www.ushmm.org/assets/frg.htm>; ECOSOC, *Study Concerning the Right To Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*, U.N. Doc. E/CN.4/Sub2/1993/8 (July 2, 1993); *German Holocaust Reparations*, JEWISH VIRTUAL LIBRARY, (1952), <http://www.jewishvirtuallibrary.org/jsource/Holocaust/reparations.html>. Regarding 7.5 million foreign citizens enslaved by the Nazis, post-war Germany took the position "that foreign citizens may not assert direct claims for war-time forced labor against private companies." *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 432-33, 490 (D.N.J. 1999).

428. See Travis, *supra* note 9, at 61-62.

429. See *id.*; see also *supra* note 5.

430. See Norchi, *supra* note 44.

431. *Id.*

432. Declaration of the Rights of Indigenous Peoples, *supra* note 2, art. 13.

433. Draft Principles, *supra* note 2, at 11 ¶ 29.

B. Self-determination

Indigenous peoples have the right to remain in their homeland and not to be driven away as refugees by illegal violence and intimidation. Since World War I, the principle of self-determination has achieved the status of a universal right of peoples to be free from rule by an oppressive ethnic group such as European colonists or Ottoman Turks.⁴³⁴ Independence or at least autonomy has been extended to many peoples once subject to Ottoman imperial rule, including the Armenians, Israelis, Lebanese, Iraqis, Syrians, Jordanians, Saudis, etc., as well as to many peoples living within countries created after World War II, including Bangladeshis from Pakistan, Bosnians and Kosovars from the former Yugoslavia, and East Timorese from Indonesia.⁴³⁵ Other ethnic and religious minorities, such as the Scots, Northern Irish, Québécois, and Basques, enjoy autonomy even though they were adequately represented in the democracies in which they reside and boast high levels of human rights, health, and prosperity, unlike Iraqi religious minorities.⁴³⁶

International law is not a barrier to autonomy for Iraq's religious minorities. Although the laws of belligerent occupation prohibit altering the laws or borders of an occupied country, they are subject to the overriding obligation to prevent and punish genocide, crimes against humanity, and human rights violations. The U.N. Charter and U.N. Security Council Resolutions 1546 and 1723 specifically require actions to protect minority rights, as do the laws of belligerent occupation.⁴³⁷

Preventing the dispossession and exile of the indigenous peoples of Turkey and Iraq requires an acknowledgment of their historical persecution and concrete steps to block its recurrence. As communities dispersed into non-viable pockets by such actions as the 1914-1923 Ottoman genocide, Iraq's 1933-1945 ultranationalist persecutions,⁴³⁸

434. See Thomas M. Franck, *The Emerging Right To Democratic Governance*, 86 AM. J. INTL. L. 46, 53 (1992).

435. See ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 262, 266, 270 n.24 (1995); Russell A. Miller, *Self-Determination in International Law and the Demise of Democracy?*, 41 COLUM. J. TRANSNAT'L L. 601 (2003); Jonathan I. Charney, *Self-Determination: Chechnya, Kosovo, and East Timor*, 34 VAND. J. TRANSNAT'L L. 455, 465-66 (2001); Agreement Between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor (May 5, 1999), available at http://www.usip.org/library/pa/et/east_timor_05051999_toc.html; S.C. Res. 1246, ¶ 1, U.N. Doc. S/RES/1246 (1999) (regarding eventual independence of Kosovo); Nicholas Wood, *For Albanians in Kosovo, Hope for Independence from Serbia*, N.Y. TIMES, June 13, 2006, at A3.

436. See THOMAS D. MUSGRAVE, SELF-DETERMINATION AND NATIONAL MINORITIES 102-03 (1997).

437. See S.C. Res. 1546, ¶ 7, U.N. Doc S/RES/1546 (June 8, 2004); S.C. Res. 1723, ¶ 1, U.N. Doc. S/RES/1723 (Nov. 28, 2006); S.C. Res. 1790, ¶ 1, U.N. Doc. S/RES/1790 (Dec. 18, 2007).

438. See Eden Naby, *The Assyrians of Iran. Reunification of a 'Millet', 1906-1914*, 8 INT'L J. MIDDLE EAST STUDIES 248 (1977).

and the 1980s Anfal campaign, these peoples need a safe haven on their traditional lands from religious persecution.⁴³⁹ The indigenous peoples of Turkey and Iraq who still lack such a safe haven, including in particular the Assyrians, Mandaeans, and Yezidis, need an autonomous region for religious minorities in the Nineveh plains area outside of Mosul where many Assyrians and Yezidis have lived for centuries. Advocates for such an autonomous area included the Vice-Chair of the U.S. Commission on International Religious Freedom, the largest Iraqi Christian political party, the mayor of one of the largest Iraqi Christian towns, the Iraq Sustainable Democracy Project, and the U.S. Conference of Catholic Bishops.⁴⁴⁰ Article 53 (D) of Iraq's Transitional Administrative Law (TAL) provided an adequate legal basis for such a safe haven, stating that Iraq "shall guarantee the administrative, cultural and political rights of the Turcomans, ChaldoAssyrians, and all other citizens."⁴⁴¹ When the TAL was superseded by the Iraqi constitution of 2005, the Assyrians' right to self-determination was reflected in their designation as a one of Iraq's "nationalities," along with the Turkomen and Chaldeans, who are guaranteed "administrative, political, cultural, and educational rights," as well as in the preexisting international law of self-determination.⁴⁴²

A safe haven for religious minorities in Iraq would have several potential benefits. First, it would protect them from persecution. The U.S. Commission on International Religious Freedom told Congress in June 2006 religious minorities "have been forced to fend for them-

439. See Ali, *supra* note 6.

440. See, e.g., Allison Hoffman, *U.S. Iraqi Christian Community Debates How To Help Relatives Facing Sectarian Violence Abroad*, ASSOCIATED PRESS, Dec. 15, 2006, available at <http://www.christiansofiraq.com/helprelativesdec156.html>; Simon Caldwell, *Church Calls for Action Over Gruesome Violence Toward Christians in Iraq*, DAILY MAIL (U.K.), Nov. 2, 2006, available at <http://www.dailymail.co.uk/news/article-413995/Church-calls-action-gruesome-violence-Christians-Iraq.html>; Heather Maher, *Iraq: Christian Minority Seeks Haven from Violence*, RADIO FREE EUROPE / RADIO LIBERTY, Oct 18, 2006, available at <http://www.rferl.org/content/article/1072150.html>.

441. Law of Administration for the State of Iraq for the Transitional Period art 53(D) (2003), available at <http://www.cpa-iraq.org/government/TAL.html>.

442. CONST. OF THE REPUBLIC OF IRAQ, art. 125 (2005), available at http://www.usip.org/ruleoflaw/projects/unami_iraqi_constitution.pdf ("This Constitution shall guarantee the administrative, political, cultural, and educational rights of the various nationalities, such as Turkomen, Chaldeans, Assyrians, and all other constituents, and this shall be regulated by law."). In 1961, the General Assembly of the United Nations declared that "[a]ll peoples have the right to self-determination," including to "freely determine their political status" and develop their culture and society, and that "subjection of peoples to alien subjugation . . . constitutes a denial of fundamental human rights [and] is contrary to the Charter of the United Nations." Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, ¶¶ 1-2, U.N. GAOR, 15th Sess., Supp. No. 16, U.N. Doc. A/4684 (Dec. 14, 1960). Since then, international law has adopted the right of self-determination "as an operative norm." Richard Falk, *Problems and Prospects for the Kurdish Struggle for Self-Determination After the End of the Gulf and Cold Wars*, 15 MICHIGAN J. INT'L L. 598 (1994).

selves in a continuing climate of impunity, and they remain particularly vulnerable given their lack of any tribal or militia structure to provide for their security.”⁴⁴³ The Commission noted that Iraq’s “non-Muslim religious minorities suffer a disproportionate burden of violent attacks and other human rights abuses.”⁴⁴⁴ Local police of indigenous background could help inhibit and investigate cases of persecution, it is argued.⁴⁴⁵ Second, a safe haven for Iraqi Christians and other non-Muslim minorities could help stem the flood of over two million refugees out of Iraq.⁴⁴⁶ The number of people in flight reached 100,000 *per month*.⁴⁴⁷ Third, an autonomous region for Iraqi Christians and other religious minorities would facilitate reconstruction projects benefiting Christian and other non-Muslim areas.⁴⁴⁸ Experts have recognized that such funds are not being equitably spent, and that they “should be proportionally allocated . . . , and their use determined by independent national and town civic representatives.”⁴⁴⁹

443. *The Plight of Religious Minorities: Can Religious Pluralism Survive? Hearing Before the Subcomm. on Africa, Global Human Rights & Int’l Operations of the H. Int’l Relations Comm.*, 109th Cong. (2006) (testimony of Nina Shea, Vice Chair, U.S. Comm’n on Int’l Religious Freedom), available at http://www.uscirf.gov/index2.php?option=com_content&do_pdf=1&id=1998.

444. *Id.*

445. *See id.*

446. *See* Patrick Cockburn, *Unwanted in Syria, hundreds of Iraqi Refugees Return Home*, THE INDEPENDENT (U.K.), Nov. 28, 2007, available at <http://www.independent.co.uk/news/world/middle-east/unwanted-in-syria-hundreds-of-iraqi-refugees-return-home-760734.html>; The Secretary-General, *Report of the Secretary-General Pursuant to Paragraph 30 of Resolution 1546 (2004)*, ¶ 36, U.N. Doc. S/2006/945 (Dec. 5, 2006), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/634/80/PDF/N0663480.pdf?OpenElement>.

447. About 100,000 per month left Iraq in late 2006. *U.N., Iraqi Civilian Death Toll Reaches New Monthly High*, CNN.COM (Nov. 22, 2006).

448. The U.S. Commission on International Religious Freedom noted in its 2005 report on Iraq that “reconstruction funds from the United States . . . were not reaching . . . Christian communities [which] have been uniquely unable to rebuild basic infrastructure in their villages, including water and electrical systems, school facilities, and housing.” U.S. Comm’n on Int’l Religious Freedom, *Annual Report of the United States Commission on Int’l Religious Freedom 13* (2005), available at http://www.uscirf.gov/images/stories/pdf/Annual_Report/2005annualRpt.pdf. A 2004 report by a member of the European Union Parliament documented that “International aid . . . seldom or never reaches the Assyrians.” Ken Joseph, Jr., *Iraq’s Secret Documents*, UNITED PRESS INT’L, July 23, 2004.

449. Reconstruction dollars targeted by the international community for northern Iraq have been spent almost exclusively on Kurdish towns, with Assyrians getting far less than a fair share. The Chairman of the House International Relations Committee declared in 2006 that the United States is “providing significant humanitarian and reconstruction aid, and yet [Iraqi Christians] seem to be left out of that, as well. Not just are they discriminated against by their own government, but by our foreign aid, as well.” *International Religious Freedom Report: Hearing on 2006 International Religious Freedom Report Before the H. Comm. on Int’l Relations*, 109th Cong. (2006).

C. Access to and Control Over Cultural and Intellectual Property

The lack of an identifiable living or recently deceased individual author is the principal objection levied by possessors of indigenous intellectual property to rules or principles that would provide greater protection to the peoples claiming an interest therein. There are many precedents in intellectual property law, however, for bestowing collective rights on favored groups or corporations. The refusal to bestow similar rights upon indigenous peoples therefore creates the appearance of bias.

There are numerous precedents in American and international intellectual property law for collective interests in intellectual property. A prime example from within the domain of intellectual property law is that of geographic indications such as Idaho potatoes. The state and people of Idaho did not invent potatoes, nor did they particularly improve upon their taste or composition.⁴⁵⁰ Nevertheless, the phrase “Idaho potatoes” is subject to intellectual property rights vested in a collective.⁴⁵¹ Another example is the exclusive rights bestowed upon various nations’ Olympic committees. The national Olympic committees did not invent the idea, constituent sports, or terminology and values of the Olympic Games. Yet the Nairobi Treaty on the Protection of the Olympic Symbol obliges States parties to prohibit the commercial use of the symbol.⁴⁵² The law of physical property gave rise to an example of collective property interests in cultural heritage, the example of property in shipwrecks. Nations such as Spain often claim property interests in shipwrecks and the treasures they contain, even though they sank centuries ago, under different regimes, as a result of war or nature’s fury.⁴⁵³

U.S. law has also devised procedures to repatriate cultural and intellectual property. It safeguards the collective interests of Native American tribes in accessing and using lands and artifacts that might

450. The Idaho potato dates to the mid-nineteenth century CE, before Idaho’s statehood in 1890. See U.S. DEP’T OF THE INTERIOR, ANNUAL REPORT OF THE U.S. GEOLOGICAL AND GEOGRAPHICAL SURVEY OF THE TERRITORIES 729 (1875).

451. See *Idaho Potato Comm’n v. M&M Produce Farms & Sales*, 35 F. Supp. 2d 313, 318 (S.D.N.Y. 1999) (claiming rights in phrase “Idaho Potatoes” under federal Lanham Act, 15 U.S.C. §§ 1051–1128, and New York and Idaho statutory and common law); U.S. Patent & Trademark Office, Registration No. 1735559 (filed July 29, 1991) (certification mark for “Grown in Idaho Potatoes”).

452. *Ted Stevens Olympic and Amateur Sports Act*, 36 U.S.C. §§ 220501, 220506 (2006) (names “The United States Olympic Committee” and “International Olympic Committee” are legally protected). One corporation has exclusive right in U.S. to use symbol of five interlocking rings and words “Olympic” and “Olympiad,” and has standing to bring trademark litigation for injunctive relief or damages. *Id.* § 220506.

453. See *UNESCO Convention on the Protection of Underwater Cultural Heritage*, art. 1, 7–18, 11 INT’L J. CULTURAL PROP. 107, 108–19, 112–17 (2002); Sean R. Nicholson, *Mutiny as to the Bounty: International Law’s Failing Preservation Efforts Regarding Shipwrecks and Their Artifacts Located in International Waters*, 66 U. MO. KAN. CITY L. REV. 135 (1997); Norman E. Palmer, *Treasure Trove and Title to Discovered Antiquities*, 2 INT’L J. CULTURAL PROP. 275, 288 (1993).

not otherwise belong to them under “normal” property law.⁴⁵⁴ It has also developed collectivist procedures to ensure restitution for the Holocaust, most of whose victims are dead and cannot reclaim their real or movable properties in person. For this reason, the United States and other nations have devised collectivistic remedies to the injustice of expropriation of individual private property by the Nazis, Italian and Croatian fascists, and other allies of the Nazis.⁴⁵⁵

Other national and international laws also provide for multifarious collective interests in intellectual property. International law has created precedents for “‘collective’ [intellectual property] rights,” e.g. in the U.N. Commission of Human Rights and the CBD.⁴⁵⁶ The law of several African, South American, and Asian countries recognizes collective rights in indigenous intellectual property.⁴⁵⁷ In the United

454. See Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3002(a) (2006) (mandating return of “funerary objects, sacred objects, and objects of cultural patrimony” excavated on federal or tribal lands to lineal descendant of their owners, or if none available to tribe or Native Hawaiian organization with “closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects”); *id.* § 3005(a) (mandating return of “Native American human remains and associated funerary objects” as well as “sacred objects or objects of cultural patrimony” from federally-funded museums to either “a known lineal descendant of the Native American or of the tribe or organization” or to an “Indian tribe or Native Hawaiian organization [that] can show that the object was owned or controlled by the tribe or . . . by a member thereof.”); American Indian Religious Freedom Act of 1978, Pub. L. 95-341, § 1, 92 Stat 469 (1978) (codified at 42 U.S.C. § 1996) (declaring that “henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.”); *id.* § 2 (directing executive branch to “determine appropriate changes [to federal laws and procedures] necessary to protect and preserve Native American religious cultural rights and practices,” and to “report back to the Congress the results of his evaluation, including any changes which were made in administrative policies and procedures, and any recommendations he may have for legislative action.”).

455. See HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY 55–56, 72–78, 85–91 (Michael J. Bazylar & Roger P. Alford eds., 2006); MICHAEL J. BAZYLAR, HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA’S COURTS 10–11, 34–58, 261–63 (2005); German Embassy to Washington, D.C., *supra* note 415; The Conference on Jewish Material Claims Against Germany, *supra* note 415.

456. Posey, *supra* note 61, at 240.

457. See E.S. Nwauche, *The Protection of Expressions of Folklore Through the Bill of Rights in South Africa*, 2:2 SCRIPTed 263, nn. 22–24 and accompanying text (2005), <http://www.law.ed.ac.uk/ahrc/script-ed/vol2-2/folklore.asp> (Tanzanian law requires prior consent for reproduction, distribution, or broadcast of “expressions of folklore” for commercial purposes and outside their traditional contexts) (footnotes omitted); Leyes de Derecho de Autor, arts. 21–23, 58–62 (1992) (Bolivia) (providing for commercial users of indigenous folklore to pay government a royalty of 10%-50% to be spent on cultural projects); The Indigenous Peoples Rights Act of 1997, Republic Act No. 8371, § 7(a) (1997) (Philippines) (stating that Indigenous Cultural Communities/ Indigenous Peoples have the “right to claim ownership over lands, bodies of water [they] traditionally and actually occupied . . . sacred places . . . and all improvements

States, the National Cancer Institute “has developed agreements with indigenous peoples to allow plants to be collected from indigenous lands on condition that a portion of the profits from the eventual manufacture of anti-cancer drugs derived from these plants will be returned to the indigenous peoples.”⁴⁵⁸ The Institute agreed to share the profits from the anti-AIDS drug prostratin with the families of dead traditional Samoan healers, and the village where its source – the mamala tree – was found.⁴⁵⁹ Similarly, South Africa’s Council for Scientific and Industrial Research entered into a profit-sharing agreement with the San peoples of South Africa who used the Hoodia plant from which the appetite suppressant “P57” was derived for traditional healing practices.⁴⁶⁰ Finally, the Canadian Intellectual Property Office registered seven trademarks in “ancient petroglyphs” on behalf of an indigenous people of western Canada.⁴⁶¹

Indigenous peoples argue that their cultural and intellectual property rights supersede those of collectors or exhibitors of indigenous artifacts or sacred objects.⁴⁶² They have long demanded that: “Museums and other institutions . . . provide, to the country and indigenous peoples concerned, an inventory of any indigenous cultural objects still held in their possession . . . [and] offer[] [them] back to their traditional owners.”⁴⁶³ This demand has been officially recognized in the United States by the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 *et seq.*, which provides a sui generis right to members of Native American tribes to obtain repatriation of cultural artifacts in the possession of museums funded or controlled

made by them at any time within the domains”); *id.* § 32 (imposing duty on government to protect indigenous cultures, and ensure “restitution of cultural, intellectual religious, and spiritual property taken without their free and prior informed consent”); *id.* § 33 (rendering it unlawful to damage, remove or destroy “artifacts which are of great importance to the [indigenous peoples] for the preservation of their cultural heritage.”).

458. TONY SIMPSON, *INDIGENOUS HERITAGE AND SELF-DETERMINATION* 135 (1997).

459. *See id.* at 332; *Berkeley Searches for AIDS Cure in a Samoan Indigenous Tree [sic]* (Sept. 30, 2004), http://www.news-medical.net/print_article.asp?id=5196.

460. *See SIMPSON, supra* note 458, at 332.

461. Nicholas & Bannister, *supra* note 46, at 327.

462. *See, e.g., Mataatua Declaration, supra* note 43 (representatives of indigenous peoples from present-day Japan, the Philippines, Australia, and other nations declared in 1993 “that Indigenous Peoples of the world” are “the exclusive owners of their cultural and intellectual property”); Morales-Fernholz, *supra* note 43, at 321, 325 (indigenous peoples of the Philippines demand “‘nothing short of full and legal recognition of their ascendant rights over their ancestral domains’”); POSEY & DUTFIELD, *supra* note 43, at 202, 208 (representatives of indigenous people gathered at First International Conference on the Cultural and Other Intellectual Property Rights of Indigenous People declared: “Indigenous cultural objects held in museums and other institutions must be offered back to their traditional owners.”); *id.* at 213 (indigenous peoples’ representatives gathered at “Voices of the Earth” congress in 1993 declared: “Rights of indigenous peoples to their traditional properties supersede the rights of anyone, including the rights of museums to possess these properties.”).

463. *Mataatua Declaration, supra* note 43.

by the U.S. government.⁴⁶⁴ U.S. law also provides statutory protections for “Indian Arts and Crafts” against misappropriation by the non-indigenous.⁴⁶⁵

There are international, as well as national, precedents for indigenous peoples’ control over intellectual properties to which they claim a close cultural connection. The UNESCO Convention on the Illicit Transfer of Cultural Property of 1970 requires States parties, including Turkey and Iraq as of 1990, to prevent the looting and illicit export of cultural property, and to provide legal procedures for the “recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners.”⁴⁶⁶ The U.N. Declaration on the Rights of Indigenous Peoples guarantees indigenous peoples the return of “their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws . . . and customs,” including archaeological, historic, artistic, and literary property.⁴⁶⁷ It mandates effective remedies including access to and repatriation of ceremonial objects, so as to ensure the preservation of minority languages, literatures, and histories.⁴⁶⁸

464. See Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013 (2006); *San Carlos Apache Tribe v. United States*, 417 F.3d 1091 (9th Cir. 2005); *Bonnichsen v. United States*, 357 F.3d 962 (9th Cir. 2004); *Castro Romero v. Becken*, 256 F.3d 349 (5th Cir. 2001); *Bear Lodge Multiple Use Ass’n v. Babbitt*, 175 F.3d 814 (10th Cir. 1999); *Pueblo of San Ildefonso v. Ridlon*, 103 F.3d 936 (10th Cir. 1996); *Oglala Sioux Tribe v. U.S. Army Corps of Eng’rs*, 537 F. Supp. 2d 161 (D.D.C. 2008); *Quechan Indian Tribe v. United States*, 535 F. Supp. 2d 1072 (S.D. Cal. 2008); *Yankton Sioux Tribe v. U.S. Army Corps of Eng’rs*, 497 F. Supp. 2d 985 (D.S.D. 2007); *Rosales v. United States*, 477 F. Supp. 2d 213 (D.D.C. 2007); *Friends of Yosemite Valley v. Kempthorne*, 464 F. Supp. 2d 993 (E.D. Cal. 2006); *Fallon Paiute-Shoshone Tribe v. U.S. Bureau of Land Mgmt.*, 455 F. Supp. 2d 1207 (D. Nev. 2006); *Van Arnam v. Gen. Servs. Admin.*, 332 F. Supp. 2d 376 (D. Mass. 2004); *Muwekma Tribe v. Babbitt*, 133 F. Supp. 2d 42 (D.D.C. 2001); *W. Mohegan Tribe & Nation v. New York*, 100 F. Supp. 2d 122 (N.D.N.Y. 2000); *Na Iwi O Na Kupuna O Mokapu v. Dalton*, 894 F. Supp. 1397 (D. Haw. 1995).

465. See 1158 U.S.C. § 1158 (imitating or knowingly and willfully copying “any Government trade mark used or devised by the Indian Arts and Crafts Board in the Department of the Interior” is punishable by fines and other sanctions); *id.* § 1159(a) (“It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.”).

466. U.N. Economic, Social, and Cultural Organization [UNESCO], Convention on the Means of Prohibiting Illicit Import, Export and Transfer of Cultural Property 1970, arts. 4, 13(b)-(c), 823 U.N.T.S. 231, available at http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html (States parties agree “to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners”).

467. G.A. Res. 61/295, *supra* note 2, art. 11.

468. See *id.* art. 3, 5, 8, 12–15. These rights include the right to occupy their traditional lands. See *id.* art. 9 (“Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.”); *id.* art. 10 (“Indigenous peoples shall not be

The indigenous peoples of Turkey and Iraq should also be entitled to inventories, and either replicas or the originals, of artifacts, building fragments, and manuscripts held by foreign museums, institutions, and private owners who obtained them as a result of Ottoman imperial or Ba'athist Iraqi looting of their homelands. The draft guidelines on the protection of indigenous cultural heritage contain important provisions on providing indigenous peoples with full inventories of such heritage in the custody of museums or scholarly institutions.⁴⁶⁹ It perhaps goes too far to prohibit, as the draft guidelines do, scholarship about indigenous peoples' intellectual property unless their consent is first obtained.⁴⁷⁰ Both inventories and repatriation are overdue, however, as they were in the Americas.

D. *Non-discrimination in Cultural and Media Policy*

Iraq and Turkey should reform their laws that privilege majority religious and cultural preferences, and that disadvantage and discriminate against minority religions and cultural expressions. The worst offender is Turkey, which still bans the narration of indigenous Anatolian history, a racist policy that may breach international law and amount to incitement to genocide.⁴⁷¹ It is as if Germany won World War II, exterminated three-fourths of Europe's Jews, and then legally banned all reference to or complaints about its wartime extermination policies.⁴⁷² Turkey's policy is in violation of the EU's 2007 ban on crimes committed on the basis of race or religion, which is defined to include "[p]ublicly condoning, denying or grossly trivializing – crimes of genocide, crimes against humanity and war crimes . . . directed against a group of persons or a member of such a group de-

forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.").

469. Draft Principles, *supra* note 2, at 12 ¶ 33.

470. The draft guidelines proscribe researchers, scholarly institutions and museums from publishing "information obtained from indigenous peoples or the results of research conducted on . . . materials discovered through the assistance of indigenous peoples without obtaining their free, prior and informed consent to . . . the publication." *Id.* at 11–12 ¶ 33.

471. An appropriate analogy to Turkey's response to the Armenian, Greek, and Assyrian genocide by its Ottoman predecessors-in-interest could only be made if, instead of acknowledging the Holocaust, making Nazism a crime, and paying billions of dollars in reparations to Holocaust survivors and the state of Israel, postwar Germany denied ever having committed genocide, prohibited giving public speeches that referenced the Holocaust, refused to pay any compensation, and actually blockaded Israel, reducing its residents to extreme poverty. This would undoubtedly be condemned as incitement to genocide. See Susan Benesch, *Inciting Genocide, Pleading Free Speech*, WORLD POL'Y J. No. 2 (2004), available at <http://worldpolicy.org/journal/articles/wpj04-2/Benesch.html>.

472. This scenario is the subject of a horrifying novel and related movie, which eerily parallels in many respects the lived experience of Turkey's Armenians, Assyrians, and Greeks. See ROBERT HARRIS FATHERLAND (Harpertorch ed., 1994) (1992).

fined by reference to race, colour, religion, descent or national or ethnic origin”⁴⁷³

Turkey should also amend its laws prohibiting non-Turkish languages and names, non-Turkish and ethnic minority education and broadcasting, and political parties that acknowledge and seek to reform the government’s suppression of indigenous peoples. International human rights law, including the ICCPR and the CERD, prohibits such discrimination on the basis of race, language, religion, national origin, and culture.⁴⁷⁴ Turkey’s policies towards funding religious and cultural centers are also facially discriminatory, arbitrary, devoid of basic due process, and palpably illegal. These policies involve hiring religious teachers as government employees and funding tens of thousands of places of worship for the benefit of the majority religion, while expropriating minority religion places of worship and prohibiting the repair of minority places of worship and training of minority clergy.⁴⁷⁵

Reform of Iraqi law is needed to accommodate indigenous peoples and religious minorities. The United Nations has repeatedly confirmed that in historic Assyria, now the Kurdistan Regional Government (KRG) federal region of Iraq, expressions of support for ethnic autonomy or opposition political parties carry a real risk of arrest and criminal prosecution.⁴⁷⁶ The Iraqi Constitution explicitly discriminates against members of minority religions with respect to their right to enact laws and to be appointed to the Supreme Court on the basis of their religious knowledge alone.⁴⁷⁷ Iraq’s citizenship law also ex-

473. Council of the European Union, Framework Decision on Racism and Xenophobia (2007), available at <http://www.legislationline.org/documents/id/7391>.

474. ICCPR, art. 26.

475. 2008 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES—TURKEY.

476. See U.N. Assistance Mission in Iraq, *Human Rights Report, 1 April – 30 June 2007*, ¶ 27, available at <http://www.uniraq.org/FileLib/misc/HR%20Report%20Apr%20Jun%202007%20EN.pdf> (noting that, despite “the KRG’s policy of ensuring [a] diversity of media outlets,” some “individual journalists . . . came under pressure by the authorities after reporting on public interest issues, demonstrations and other matters,” which pressure included “the arrest and detention of journalists,” and closure of a radio station); The Secretary-General, *supra* note 446, ¶ 45 (June 5, 2006) (“Media workers in the Kurdish region continue to face intimidation and court prosecution for pursuing freedom of expression.”).

477. See U.N. High Commissioner for Refugees, *UNHCR’s Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers* (Aug. 2007) (arguing that due to differential recognition of majority versus minority religions by the Iraqi constitution, it is “unclear the extent to which non-Muslims are protected under the Constitution against serious discrimination by the Muslim majority”). Article 92 of the constitution calls for “experts in Islamic jurisprudence” to be appointed to the Federal Supreme Court, without mentioning experts in the jurisprudence of Iraq’s indigenous religions, who could inform the resolution of disputes about the legality of their practices (often defined by the majority as illegal “sorcery”) and their claims to coexist as legal and cultural equals. 2008 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES—IRAQ. If the constitution of the United States or Australia set aside seats for experts in Christian jurisprudence without mentioning Native Ameri-

PLICITLY discriminates against Jews desiring to reclaim dual citizenship in order to recover their expropriated properties, which is clearly racist.⁴⁷⁸ The property laws of the KRG remain sufficiently vague that some authorities there have “engaged in discriminatory behavior against religious minorities,” “confiscated [Assyrian] property without compensation and began building settlements on their land,” and “failed to enforce judgments in [Assyrians] favor.”⁴⁷⁹

E. *Addressing Potential Objections to Indigenous Cultural and Intellectual Property*

Although a detailed discussion of the theory of indigenous cultural and intellectual property is beyond the scope of this paper, it will be fruitful to anticipate and attempt to rebut the most obvious criticisms of the proposals for reform outlined above. The first objection might be that it is “cultural imperialism” to export North American models with respect to compensation and repatriation after indigenous cultural and intellectual property has been appropriated and commercialized by the nation-state and its allied cultural institutions.⁴⁸⁰ But Turkey and Iraq participated, prior to any occupation by the United States, in the negotiation, signing, and ratification of treaties guaranteeing indigenous peoples’ rights, from the Genocide Convention to the ICCPR, the CERD, and/or the CPD.⁴⁸¹ Another objection might be that recognizing indigenous cultural and intellectual property will provoke a backlash from majority Turks or Arabs, or other non-indigenous minority populations such as the Kurds. Although responding to this objection will require careful attention to local urban and village politics and economic relations, the precedents of the United States and other American states, Tanzania and other African states, and the Philippines and other Asian states would seem to show that protecting indigenous cultural and intellectual property need not result in severe or systematic attacks on the beneficiaries of such measures. A third possible objection is that, like other overextensions of

can or aboriginal Australian faiths, thereby precluding them from obtaining equal access to the courts in order to give their distinctive moral and ethical insights the force of law, this would surely be recognized as racial and religious persecution.

478. 2008 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES—IRAQ.

479. *Id.*

480. Cultural imperialism is variously defined as the role played by cultural forces and strategies in imperial orders, the imposition of foreign cultural forms and contents on local cultures, the assimilation into an imperial system of local cultures at risk of extinction, and the homogenization of local cultures by an imperial culture. *See Cultural Imperialism*, in *ENCYCLOPEDIA OF POLITICAL COMMUNICATION* 150–51 (Lynda Lee Kaid & Christina Holtz-Bacha eds., Sage Publications, Inc. 2008).

481. Their national constitutions also guaranteed formal recognition of equality of religions, and individual human rights. *See CONST. OF THE REPUBLIC OF TURKEY*, available at <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>; *INTERIM CONST. IRAQ* (1990), translated in *International Constitutional Law* (A. Tschentscher, ed.), <http://www.servat.unibe.ch/icl/iz010000.html>.

intellectual property, recognizing indigenous cultural and intellectual property may deplete the public domain and slow innovation.⁴⁸² As in North America, however, there would be an ample public domain of majority-language works if sensible intellectual property policies were pursued, notwithstanding generous compensation for, and repatriation of, indigenous cultural and intellectual property. Finally, freedom of expression might be at risk if indigenous cultural and intellectual property were construed to prohibit original works relating to or quoting such properties; however, there is no reason why such measures need to extend to derivative works, or abolish fair use rights familiar to copyright and trademark law.

V. CONCLUSION

The cultural and intellectual property of the indigenous peoples of Turkey and Iraq is teetering on the brink of extinction. The peoples themselves are being cleansed from their ancient homelands. Ultranationalists and other extremists have destroyed thousands of years of cultural heritage in these countries, and deterred or prohibited the heirs of this heritage from rebuilding or preserving it.

International law provides ample remedies for this sorry state of affairs. First, the widespread assaults on the cultural and intellectual properties of indigenous peoples in Turkey and Iraq constituted violations of international law for which compensation and restitution are owed. Many treaties prohibit policies aimed at killing and displacing the members of identifiable religious or ethnic groups, and both the treaties themselves and general international law demand compensation for such destructive acts.⁴⁸³ The ICCPR also calls for equal treatment regardless of language, religion, cultural or social identity, or other status.⁴⁸⁴ The law of armed conflict, notably in the Hague and Geneva Conventions, prohibits the seizure or destruction of religious, educational, or artistic institutions, even during time of war.⁴⁸⁵ The CERD proscribes attempts to deny persons of a distinct ethnic origin "the full and equal enjoyment of human rights and fundamental freedoms."⁴⁸⁶

Second, as nations with a long history of violating indigenous peoples' right to preserve and possess their cultural and intellectual heritage, Turkey and Iraq are obligated to implement autonomy regimes to promote the survival and free development of their indigenous civilizations. The international bill of human rights, the ICCPR, guaran-

482. Cf. Carol M. Rose, *The Several Futures of Property: Of Cyberspace and Folk Tales, Emission Trades and Ecosystems*, 83 MINN. L. REV. 129, 150–52, 161–62 (1998).

483. See *infra* notes 484–87 and accompanying text. See also CERD, *supra* note 28, arts. 1(1), 2(2).

484. ICCPR, *supra* note 32, art. 26.

485. See *supra* note 49.

486. CERD, *supra* note 28, arts. 1(1), 2(2).

tees the right of all peoples, including minorities and indigenous peoples, to preserve and enjoy their cultural and religious heritage.⁴⁸⁷ Likewise, ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries mandates “effective protection of [indigenous peoples’] rights of ownership and possession” over traditional lands and distinct beliefs, customs, and institutions.⁴⁸⁸ The CBD requires the preservation of indigenous peoples’ “traditional lifestyles” and the equitable distribution of the benefits arising from the utilization of their cultural heritage.⁴⁸⁹ And the U.N. Declaration on the Rights of Indigenous Peoples reaffirms that indigenous peoples have the rights to determine their own unique social and cultural institutions; educate their young in the indigenous culture and language; own media outlets and access state-owned outlets; and possess their historic lands, antiquities, and other resources.

Third, not only Turkey and Iraq but also other governments and transnational enterprises such as museums owe the indigenous peoples of the region the ability to access, preserve, and use their cultural and intellectual property stored and exploited by persons who obtained such property illicitly. Such access and preservation is mandated by the Genocide Convention, which regards the intentional destruction of cultural or religious sites as evidence of genocide, the U.N. Declaration on the Rights of Indigenous Peoples, which guarantees the return to indigenous peoples of all cultural and intellectual property whose removal from their lands they did not consent to,⁴⁹⁰ and the UNESCO Convention on the Illicit Transfer of Cultural Property, which requires states to allow the rightful owners of lost or stolen artifacts to maintain private court actions for their recovery.⁴⁹¹

Finally, international law demands reform of discriminatory laws and policies within Turkey and Iraq that render indigenous peoples insecure, second-class citizens. As a result of such discrimination, including denial of equal funding to build and repair sacred and historic sites, indigenous cultural and religious institutions in the region are under constant attack, and fall steadily into either dispossession or ruin. This denial of equal opportunities to participate in cultural and intellectual manifestations violates international law.

487. ICCPR, *supra* note 32, art. 27.

488. ILO Convention No. 169, *supra* note 58, arts. 5(a), 7(1), 8(2), 14(2).

489. *See* CBD, *supra* note 62, art. 8(j); Posey, *supra* note 61, at 232–33. Turkey is a party to the CBD; Iraq is not. *See supra* note 66.

490. Declaration on the Rights of Indigenous Peoples, *supra* note 2, art. 11.

491. Convention on Prohibiting Illicit Import, *supra* note 466, art. 13.