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THE DESTRUCTION OF CULTURAL HERITAGE IN THE YEMEN CONFLICT: LEGAL IMPLICATIONS AND STATE RESPONSIBILITY

*Benjamin Passey*¹

On May 21, 2015, a missile fired from a Saudi fighter plane smashed into the Dhamar museum in Yemen. Within minutes, a second missile struck what remained of the museum, ensuring the destruction of not only the museum, but over 12,000 of the museum's artifacts.² The airstrike on Dhamar was not an isolated incident. Since 2015, systematic airstrikes have targeted and destroyed many of Yemen's most-prized cultural heritage sites. Despite appeals from international organizations to refrain from targeting protected sites, these attacks have persisted.

Per international humanitarian law, States involved in armed conflicts must abide by certain legal obligations. The 1954 Hague Convention, the backbone of heritage-related law, requires States to respect cultural property in times of conflict—the only exception being in cases of imperative military necessity.³ Saudi Arabia has failed in this regard. The majority of airstrikes have not only failed to meet internationally stipulated rules

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2 Lamya Khalidi, *Yemeni Heritage, Saudi Vandalism*, NEW YORK TIMES (Jun. 26, 2016), <https://www.nytimes.com/2015/06/27/opinion/yemeni-heritage-saudi-vandalism.html>.

3 UNESCO, CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT, (1954).

of engagement, but have intentionally targeted sites that are protected under international law. In addition to the destruction of the Dhamar Museum, airstrikes have caused extensive, even irreparable damage to the Ancient City of Sana'a, the Marib Dam, and numerous other sites of significant cultural and historic value.

According to a United Nation report published by a panel of experts who investigated Saudi airstrikes in Yemen,⁴ there is overwhelming evidence that the airstrikes they investigated had no legitimate military objectives. Furthermore, they determined that Saudi Arabia did not meet the necessary requirements of proportionality and precaution in their attacks. The panel concluded that the systematic nature of the attacks qualifies them as war crimes.⁵ Despite blatant violations of international humanitarian law, the international community at large has remained relatively silent in response to Saudi Arabia's destruction of Yemen's cultural heritage.

The United Nations must intervene to prevent further destruction and correctly classify Saudi Arabia's actions as not just war crimes, but crimes against humanity. Intervention in the form of an UN inquiry as well as economic and political sanctions must be imposed to compel the Kingdom of Saudi Arabia to take responsibility for its actions and end the wanton destruction of Yemen's cultural identity.

To demonstrate why these measures are necessary, this article will first provide a more in-depth background on the conflict between Yemen and Saudi Arabia. Then, it will briefly discuss the history and evolution of cultural heritage law as

4 Rep. of the Panel of Experts on Yemen (2017), transmitted by Letter Dated 27 January 2017 from the Panel of Experts Established Pursuant to Resolution 2140 (2014) Concerning the Situation in Yemen addressed to the President of the Security Council. Doc S/2017/81 (2017).

5 ICRC Customary IHL Database, *Rule 156, Definition of War Crimes*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rule156. See also William Boothby and Michael N. Schmitt, *The Law of Targeting* (Oxford University Press, 2012), on some legal aspects relating to bombardments.

part of international law. Next, it will discuss the systematic patterns of cultural destruction by Saudi Arabia. Building off this discussion, the paper will demonstrate why Saudi cultural destruction in Yemen warrants the designation of war crimes, and crimes against humanity. Then, this paper will discuss the culpability of the United States in the Yemen-Saudi conflict

Subsequently, the paper will examine the Responsibility to Protect Doctrine as a potential avenue to combat the situation in Yemen, and possible obstacles to its implementation will be considered. Finally, it will discuss the obligations of the International Community and Non-State Actors under the Responsibility to Protect Doctrine to intervene in the conflict.

I. BACKGROUND OF THE CONFLICT

In 2014, a power struggle broke out in Northern Yemen between the Houthi Movement and President Abd-Rabbu Mansour Hadi. The Houthis aligned with former Yemeni president Ali Abdullah Saleh and his loyalist forces, compelling President Hadi to flee the country. He sought refuge in Saudi Arabia and appealed to the Kingdom for assistance in regaining control of Yemen. In March of 2015, Saudi Arabia joined the conflict, alongside a coalition of nine allied African and Middle Eastern countries. The entrance of Saudi Arabia changed the scope of the conflict in Yemen from an internal power struggle to an international conflict. Soon after entering the war, Saudi Arabia and the coalition commenced a devastating bombing campaign against Northern Yemen.

A twenty-eight-month-long siege of Yemen has left the country in ruins with more than 10,000 civilian casualties,⁶ 600,000 confirmed cases of cholera,⁷ 3,000,000 internally displaced peoples, and over 20,000,000 in need of

6 U.N. HUMAN. RTS. OFF. OF THE HIGH COMM'R, OVER 100 CIVILIANS KILLED IN A MONTH, INCLUDING FISHERMEN, REFUGEES, AS YEMEN CONFLICT REACHES TWO-YEAR MARK, (Mar. 24, 2017).

7 WBG, OVERVIEW OF YEMEN CONFLICT, (Apr. 1, 2017).

humanitarian assistance with the numbers increasing daily. Far less visible than the humanitarian crisis unfolding in Yemen, however, is the systematic degradation of the country's millennia-old cultural property by the kingdom and coalition.

During armed conflicts, there are multiple situations where deliberate damage to cultural heritage is justified. These cases are outlined in various international treaties on the conduct of war and include: the prevention of enemy use, accidental collateral damage, or part of indiscriminate firing at entire areas. However, the attacks by Saudi Arabia do not meet any of these criteria, rather, an alternative explanation for the attacks against Yemen's heritage exists.

Historically, it has been a practice in many armed conflicts to engage in "cultural warfare" (the specific targeting and destruction of cultural property that contributes to the identity of a group of people). Of the fifty-nine recorded sites bombed by Saudi Arabia, over 90% have failed to satisfy the requirement for "military necessity" according to a UN investigation.⁸ Those attacks that failed to meet legal requirements are violations of obligations under The Hague Convention, Hague Regulation, Geneva Convention and United Nations Educational, Scientific and Cultural Organization (UNESCO) Declaration on the Destruction of Cultural Heritage. The violation of these core obligations constitutes a war crime, and, under certain circumstances, their destruction may even amount to crimes against humanity, as explained by the International Criminal Tribunal for the former Yugoslavia. "When perpetrated with the requisite discriminatory intent, [destruction] amounts to an attack on the very religious identity of the people. As such it manifests a nearly pure expression of the notion of 'crimes against humanity'

8 Rep. of the Panel of Experts on Yemen (2017), transmitted by Letter Dated 27 January 2017 from the Panel of Experts Established Pursuant to Resolution 2140 (2014) Concerning the Situation in Yemen addressed to the President of the Security Council. Doc S/2017/81 (2017).

for all of humanity is indeed injured by the destruction.”⁹

II. DEFINITION AND HISTORY OF CULTURAL HERITAGE PROTECTION AND LAW

The United Nations Educational, Scientific and Cultural Organization (UNESCO), defines cultural heritage as “buildings and historic places, monuments, artifacts, etc., which are considered worthy of preservation for the future. These include objects significant to the archaeology, architecture, science or technology of a specific culture.”¹⁰ The preamble of the 2003 UNESCO Declaration stresses, “cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights.”¹¹

Laws governing the preservation and protection of cultural heritage, especially during times of war, have existed for centuries. More formal laws related to cultural heritage began to appear as early as the mid-eighteenth century. Emer de Vattel, an eighteenth century Swiss philosopher and legal expert advocated for the principle of respecting sanctuaries, tombs and other buildings of cultural significance.¹² In his major treatise, *The Law of Nations or the Principles of Natural Law*, he writes:

For whatever reason a belligerent plunders

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- 9 Prosecutor v. Kordić, Case No. IT-95-14/2-A, Appeal Judgment, Int’l Crim. Trib. for the Former Yugoslavia, (Dec. 17, 2004), <http://www.refworld.org/cases,ICTY,47fd53d.html>.
 - 10 UNESCO Office in Cairo, *Tangible Cultural Heritage*, <http://www.unesco.org/new/en/cairo/culture/tangible-cultural-heritage> (last updated 2017).
 - 11 UNESCO, DECLARATION CONCERNING THE INTENTIONAL DESTRUCTION OF CULTURAL HERITAGE, (2003).
 - 12 Emer De Vattel, *THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW* bk. III 139 (Henry Dunant Inst., 1983).

a country, he should spare buildings that are the pride of mankind and do not strengthen the enemy. Only an enemy of mankind can thoughtlessly deprive humanity of those monuments of art, the exemplars of artistry.¹³

During the Napoleonic wars, for example, nations began to sign bilateral reciprocal agreements to ensure the protection of important sites and objects. At the end of the wars, the victors demanded the return of countless works of art pillaged by Napoleon's armies because the removal of works of art was deemed "contrary to every principle of justice and to the usages of modern warfare."¹⁴

Article 17 of the 1874 Brussels Declaration stipulates that if a defended town, fortress or village is bombarded, all necessary steps must be taken to spare, as far as possible, buildings dedicated to worship, art and science. Similarly, the 1907 Hague Convention Respecting the Laws and Customs of War on Land established the principle of immunity for cultural objects, even in case of siege or bombardment.¹⁵ While these provisions existed to protect heritage during times of war, they ultimately failed to prevent widespread damage to cultural objects during the First World War and, on an even greater scale, the Second World War.

The unprecedented destruction of cultural heritage during World War II drove the international community to enact specific laws to protect and preserve cultural heritage. UNESCO was established in 1945 to "contribute to peace and security in the world by promoting collaboration among nations through education, science, and culture...in order to further

13 *Id.*

14 Stanislaw-Edward Nahlik, International Dimensions of Humanitarian Law, 203-215 (Martinus Nijhoff et al. eds.,1988).

15 The Hague Convention (IV), Laws and Customs of War on Land, art. 21, Oct. 18, 1907, 36 Stat. 2277, U.N.T.S. 539.

universal respect for justice, for the rule of law, and for the human rights..."¹⁶ The 1949 Geneva Convention includes multiple articles related to the cultural heritage in times of war. Building off of the principles introduced in the Geneva Convention, a specific convention on the Protection of Cultural Property in the Event of Armed Conflict was signed in May 1954. The 1954 Hague convention became the foundation for future protocols, treaties, and resolutions on the topic of cultural heritage.

III. PATTERNS OF SAUDI DESTRUCTION

The Kingdom of Saudi Arabia is a signatory of the 1907 Hague Convention, 1949 Geneva Convention, 1954 Hague Convention, and its two protocols. As a signatory, it has an obligation under international law to abide by the conventions to protect and preserve cultural heritage. However, it has failed to meet its obligations both domestically and internationally.

Since 1925, the al-Saud royal family has overseen the destruction of historical artifacts, tombs, and mosques in cities across Saudi Arabia. Authorities have also demolished places associated with the Prophet Mohammad and other Islamic leaders, such as the Mu'alla cemetery in Mecca and the Prophet's house.¹⁷ The government has systematically targeted significant Shia sites as part of the widespread, state-sanctioned persecution of the

16 United Nations Educational, Scientific and Cultural Organization, *UNESCO's Mission*, <http://www.unesco.org/new/en/unesco/about-us/who-we-are/introducing-unesco>.

17 Americans for Democracy and Human Rights in Bahrain, *Mapping the Saudi State, Chapter 7: The Destruction of Religious and Cultural Sites*, http://www.adhrb.org/wp-content/uploads/2015/10/2015.09.30_MSS-Ch.-7_Dest.-of-Rel.-Sites.pdf This should be part of the URL (Nov. 12, 2017).

Saudi Shia minority.¹⁸ The disregard of their own cultural heritage serves as further evidence that the Kingdom is guilty of knowingly and intentionally destroying cultural property.

In accordance with international law, “military necessity” can serve as legitimate grounds for attacks on cultural heritage. According to the official list of attacks provided by Muhannad al-Sayani, director of the Yemeni General Organization of Antiquities, Saudi airstrikes have damaged or destroyed fifty-nine cultural sites since joining the Yemen conflict 2015. The following are three specific examples of attacks which establish both a lack of military necessity and a pattern of targeted and systematic destruction by Saudi Arabia, rendering an attempt to argue military necessity as justification for the attacks null and void.

A. *The Old City of Sana’a*

The Old City of Sana’a which has been inhabited continuously for over 2,500 years is comprised of over 6,000 multi-storied earth and brick buildings, and has been a UNESCO World Heritage Site since 1986.

Dozens of airstrikes have targeted homes, mosques, historic fortresses and palaces within the city over the course of the conflict. Due to the residential nature of the Old City, the airstrikes have not only caused extensive damage to cultural property,

18 Since its establishment, the Saudi state has permitted government-appointed religious scholars and clerics to refer to Shia citizens in derogatory terms or demonize them in official documents and religious rulings, which influence government decision-making. International human rights law prohibits “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”

Adam Maida, *Hate Speech by Saudi Officials*, Human Rights Watch, (Sep. 26, 2017), <https://www.hrw.org/report/2017/09/26/they-are-not-our-brothers/hate-speech-saudi-officials>.

but have claimed the lives of thousands of innocent civilians.¹⁹

Any attempts to attribute the attacks to accidental causes are thwarted by the signature “double tap” attack frequently used by Saudi fighters. The double tap consists of an initial target strike with a subsequent circling around and restrike of the same target, thereby maximizing destruction. While a few isolated mistakes are pardonable, evidence for multiple spaced-out attacks on the same site undermines such an argument for innocence.

B. *The Great Marib Dam*

The Great Marib Dam is believed to have been constructed by biblical Queen of Sheba in the eighth century BC. The dam’s 50-foot high, 2,100-foot long mud brick retaining wall—almost twice as long as the Hoover Dam—directed monsoon runoff from the adjacent highlands into a complex irrigation system, providing water to nearly 25,000 acres of farmland. The Great Dam is considered the oldest known dam in the world and is included among the most incredible feats of engineering in the ancient world. According to Iris Gerlach, director of the Sana’a Branch of the German Archaeological Institute (DAI), Saudi airstrikes targeted the better-preserved northern sluice, severely damaging the ancient structure, despite the complete absence of military targets anywhere in the vicinity of the dam.²⁰

C. *The Dhamar Regional Museum*

The Dhamar Regional Museum was built in 2002 as the repository of all archaeological work done in the province of

19 U.N. HUMAN. RTS. OFF. OF THE HIGH COMM’R, YEMEN: AN “ENTIRELY MAN-MADE CATASTROPHE” – UN HUMAN RIGHTS REPORT URGES INTERNATIONAL INVESTIGATION, (SEP. 5, 2017).

20 Adam Taylor, *The world may be ignoring the destruction of cultural treasures in Yemen*, THE WASHINGTON POST (Jun. 5, 2015), https://www.washingtonpost.com/news/worldviews/wp/2015/06/05/the-world-may-be-ignoring-the-destruction-of-cultural-treasures-in-yemen/?utm_term=.bc8d6823d30f.

Dhamar. In total, the museum hosted more than 12,000 artifacts from multiple archeological sites and civilizations in the region. The entire museum complex —including exhibition rooms, artifact storage areas, and outbuildings — were completely destroyed. Like the Marib Dam, the museum was located in a civilian area removed from justified military objectives.²¹

Throughout the conflict, UNESCO, the US State Department, and other organizations have provided no-strike lists of archaeological and other cultural heritage sites, along with their coordinates to the Saudi government. Nonetheless, the Saudi coalition has continued to target and damage numerous heritage sites, including historical monuments in Sirwah, the Kawkaban citadel, the Old City of Saada, and the UNESCO World Heritage Site of Zabid.

These attacks establish a compelling pattern of the deliberate targeting of cultural heritage in Yemen. They serve as evidence that the Kingdom of Saudi Arabia is in blatant violation of its obligations under international law and demonstrate the systematic nature of the attacks. The systematic nature of the attacks escalates Saudi actions the from isolated violations of international law to war crimes.

IV. CULTURAL HERITAGE DESTRUCTION AS WAR CRIMES

There is significant precedent for categorizing the destruction of cultural heritage as a war crime. Under Article 23 of the 1907 Hague Regulations, it is expressly forbidden “to destroy or seize the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war.”²² This provision was restated in Article 6(b) of the 1945 International Military Tribunal Nuremberg Charter, narrowing the scope of war crimes to include “wanton destruction of cities, towns or villages,

21 Lamy Khalidi, *Yemeni Heritage, Saudi Vandalism*, NEW YORK TIMES (Jun. 26, 2016), <https://www.nytimes.com/2015/06/27/opinion/yemeni-heritage-saudi-vandalism.html>.

22 The Hague Convention (IV), *supra* note 14, at 643-653.

or devastation not justified by military necessity” as a war crime.²³

In the *The United States of America v. Wilhelm List* case at Nuremberg in 1948, the accused, high-ranking officers in the German army were charged with war crimes for the wanton destruction of cities, towns and villages and other acts of devastation for which there was no military necessity. In its judgment, the Tribunal stated:

Military necessity has been invoked by the defendants as justifying ... the destruction of villages and towns in the occupied territory. The destruction of property to be lawful must be imperatively demanded by the necessities of war. Destruction as an end in itself is a violation of International Law... it does not admit wanton devastation or the willful infliction of suffering upon its inhabitants for the sake of suffering alone.²⁴

The Kingdom of Saudi Arabia, just as the German officers, invoked military necessity as justification for the attacks on Yemen’s cultural property. However, the aforementioned attacks, in addition to countless others, have the following characteristics which undermine the military necessity argument: (1) The destruction occurred on a large scale, (2) the targets were historic, protected, non-military sites, and (3) the attacks were systematic and conducted with the intent to destroy the property in question. The repeated and systematic nature of the attacks intensifies the nature of the violations.

A more contemporary case adds additional weight to the classification of the Saudi attacks as war crimes. In 2016,

23 Charter of the International Military Tribunal-Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (“London Agreement”), Aug. 8, 1945, 82 U.N.T.C 280.

24 United States v. List, Case No. 47, Judgement, (Jul. 8, 1947), http://www.worldcourts.com/imt/eng/decisions/1948.02.19_United_States_v_List2.pdf.

Ahmad al-Faqi al-Mahdi an Islamic militant was convicted by the International Criminal Court for “intentionally directing” attacks on nine of Timbuktu’s mausoleums and mosques in 2012. Al-Mahdi was convicted of war crimes and sentenced to a 9-year imprisonment.²⁵ This ruling is unprecedented in that it is the first ICC conviction with the sole charge being the destruction of cultural heritage.

V. CULTURAL HERITAGE DESTRUCTION AS A CRIME AGAINST HUMANITY

According to Article 7 of the 1998 Rome Statute, a “crime against humanity” is any one of 11 specified acts consciously committed as part of a widespread or systematic attack against any civilian population.²⁶ Of these 11 acts, two are especially applicable to Saudi actions against Yemen’s cultural property.

(1) Persecution against any identifiable group on...cultural grounds that are universally recognized as impermissible under international law.²⁷

(2) Other inhumane acts...intentionally causing great suffering, or serious injury...to mental or physical health.²⁸

As previously established, the attacks on Yemen and its cultural heritage were conducted systematically in an attempt to force the Houthi rebels to capitulate. The specific sites that have been damaged and destroyed were chosen because of their importance to the history, culture, and identity of the people of Yemen. The cultural warfare waged by Saudi Arabia has resulted in “great suffering to the physical and mental health” of the people

25 Jason Burke, *ICC ruling for Timbuktu destruction ‘should be deterrent for others’*, Mali (Sep. 27, 2016, 6:25 AM), <https://www.theguardian.com/world/2016/sep/27/timbuktu-shrines-icc-sentences-islamic-militant-nine-years-destruction-ahmad-al-faqi-al-mahdi>.

26 U.N. GAOR, U.N. Doc. A/CONF.183/9 at 3-5 (July 7, 1998).

27 *Id.*

28 *Id.*

of Yemen. The devastation of ancient structures and historical monuments is significant because of the place these objects occupy in a Yemen's collective history and identity. For these reasons, it is appropriate to assert that Saudi Arabia's attacks are not only attacks on human dignity but crimes against humanity.

The designation of attacks on cultural heritage as crimes against humanity is rooted in historic precedent. During the wars fought in the former Yugoslavia in the 1990s, hundreds of religious and cultural sites were systematically destroyed in an attempt to eradicate the culture of targeted groups in designated areas. The International Criminal Tribunal on Yugoslavia (ICTY) affirmed, as had the Nuremberg and Tokyo International Military Tribunals, that any destruction of cultural heritage may qualify as a war crime under international law. The ICTY also determined that *systematic* crimes against cultural heritage can amount to crimes against humanity, "for all of humanity is indeed injured by the destruction of a unique religious culture and its concomitant cultural objects." In *Kordić & Čerkez* the ICTY found Kordić guilty of crimes against humanity for the intentional attack and destruction of the Old Town of Dubrovnik, a UNESCO world heritage site, and sentenced him to 15 years imprisonment.²⁹

Unfortunately, unlike the cases of List, al-Mahdi and Kordić, for the airstrikes against Yemen's cultural property, there is no clear perpetrator. Sometime in the future, when the conflict finally comes to an end, it is possible that a tribunal modeled off Nuremberg, Tokyo, or Yugoslavia will be formed to seek criminal responsibility for specific individuals. Despite the lack of criminal prosecution taken against Saudi Arabia, the correct classification of the Kingdom's actions may serve to quell the attacks by putting pressure on other influential conflict participants.

29 Prosecutor v. Dario Kordic, Mario Cerkez (Appeal Judgement), IT-95-14/2-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 17 December 2004, available at: <http://www.refworld.org/cases,ICTY,47fd53d.html>[accessed 16 November 2017]. Prosecutor v. Kordić, Case No. IT-95-14/2-A, Appeal Judgment, Int'l Crim. Trib. for the Former Yugoslavia, (Dec. 17, 2004), <http://www.refworld.org/cases,ICTY,47fd53d.html>.

VI. UNITED STATES INVOLVEMENT

As a close ally of Saudi Arabia, the United States has been providing direct support to the coalition in the form of “intelligence, airborne fuel tankers and thousands of advanced munitions” for over two years.³⁰ Although the United States is not a formal participant in the conflict—in that the United States Congress has not officially declared war on Yemen—according to the definition established in common Article 3 of the Geneva Convention, its contributory actions qualify it as an active participant in the conflict.³¹

In order for international humanitarian law to apply to multinational forces in an Non-International Armed Conflict (NIAC), the following four conditions must be met:

1. There is a pre-existing NIAC ongoing in the territory where multinational forces intervene,
2. Actions related to the conduct of hostilities are undertaken by multinational forces in the context of that pre-existing conflict,
3. The multinational forces’ military operations are carried out in support of a party to that pre-existing conflict,
4. And, the action in question is undertaken pursuant to an official decision by the troop contributing countries (TCC) or international organization in question to support a party

30 Mark Mazzetti and Eric Schmitt, *Quiet Support for Saudis Entangles U.S. in Yemen*, Middle East (Mar. 13, 2016), <https://www.nytimes.com/2016/03/14/world/middleeast/yemen-saudi-us.html>.

31 *The Geneva Conventions of 1949 and their Additional Protocols*, War & Law, (Oct. 29, 2010), <https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>.

involved in that pre-existing conflict.³²

The conflict in Yemen began as a NIAC between the Yemeni Government and the Houthi Movement in 2014. In 2015, when President Hadi fled Yemen and sought refuge in Saudi Arabia, he appealed to assistance from Saudi Arabia who in turn, called upon the Arab coalition. With Saudi Arabia and its coalition backing the exiled President Hadi, the conflict turned from a NIAC to a multinational armed conflict.

In 2015, The United States of America, a longtime ally of Saudi Arabia, began supplying the Kingdom with intelligence, airborne fuel tankers, and thousands of advanced munitions.³³ Although the role of the United States in the conflict is not equivalent in scale to that of other parties, its actions meet the conditions under article 3 of the 1949 Geneva Convention to be considered a belligerent in the conflict. As a belligerent in an undeclared war, the designation of Saudi attacks as war crimes could make the U.S. military and government a party to those crimes, putting U.S. officials in a difficult situation. When asked about Saudi airstrikes against non-military targets, United States official have attributed the attacks to errors of capability or competence, not of intention.³⁴ This response, however, is untrue as demonstrated by the multiple, non-military cultural heritage sites that have been damaged and destroyed by Saudi airstrikes.

VII. UNITED STATES OPPOSITION

32 Tristan Ferraro, *The Applicability and Application of International Humanitarian Law to Multination Forces*, 95 INTL. REV. OF THE RED CROSS 561-612 (2013).

33 Mark Mazzetti and Eric Schmitt, *Quiet Support for Saudis Entangles U.S. in Yemen*, Middle East (Mar. 13, 2016), <https://www.nytimes.com/2016/03/14/world/middleeast/yemen-saudi-us.html>.

34 Priyanka Motaparthi, *US Should Stop Making Excuses for Saudi Violations in Yemen*, DISPATCHES (Oct. 6, 2016, 2:28 PM), <https://www.hrw.org/news/2016/10/06/us-should-stop-making-excuses-saudi-violations-yemen>.

Despite the United States' insistence that the Kingdom of Saudi Arabia and it by extension have committed no wrongs, recent legislation has been proposed in an effort to distance the United States from the conflict.

Congressional Resolution 81 is a bill directing the President to either remove U.S. Armed Forces from hostilities in Yemen or to request from Congress an official declaration of war, legitimizing U.S. involvement in the conflict. The proposal of this bill is further evidence that the actions of Saudi Arabia are beginning to concern the United States. Senators Todd Young (R-Ind.) and Chris Murphy (D-Conn.) are rallying support for an amendment to the 2018 National Defense Authorization Act that would make U.S. military support for Saudi Arabia conditional on American officials guaranteeing that Riyadh is following international humanitarian law.³⁵ If passed, this amendment would give the United States greater influence over the military actions of Saudi Arabia. Resolution 81 and the proposed amendment confirm that government officials desire either the withdrawal of U.S. support or an avenue for curbing Saudi aggression.³⁶

The recognition and classification of Saudi attacks as war crimes and crimes against humanity by the international community will put additional pressure on the United States. This pressure will likely result in either the United States withdrawing support from the Saudi armed forces, or the United States exerting pressure on the Kingdom to put an end to these unjustified attacks.

VIII. RESPONSIBILITY TO PROTECT DOCTRINE

35 Akbar Shahld Ahmed, *Senators Try To Rein In Saudi Arabia's Brutal U.S.-Backed Campaign In Yemen*, Politics, (last updated Sep. 13, 2017, 8:44 PM), https://www.huffingtonpost.com/entry/senate-us-saudi-yemen-war_us_59b9b4eae4b0edff971920fb.

36 H. Con. Res. 81, (Sept. 27, 2017).

Following the tragedies in Rwanda and the Balkans in the 1990s, the international community began to seriously debate how to react effectively when human rights are grossly and systematically violated. The question at the heart of this debate was whether States have unconditional sovereignty over their affairs or whether the international community has the right to intervene in a country for humanitarian purposes.

Responsibility to Protect Doctrine (R2P) arose from this international discussion and was unanimously endorsed by all members of the United Nations in 2005 at a UN World Summit. Based on the 2005 World Summit, a 2009 report by the Secretary-General outlined these three pillars of responsibility for State protection:

1. The State carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement;
2. The international community has a responsibility to encourage and assist States in fulfilling this responsibility;
3. The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the UN Charter.³⁷

As the conflict in Yemen has escalated in the years since Resolution 2014 was passed, the United Nations has taken no direct action, despite the complete fracture of the Yemeni political system, extreme humanitarian situation, and the war crimes and crimes against humanity that have been committed within the conflict. United Nations Resolution 2014 passed in 2011, condemned human rights violations in Yemen and encouraged internal methods to diffuse the conflict in Yemen.³⁸ Yemen, on the other hand, has clearly failed in both its ability and responsibility to protect its own people. Consequently, the responsibility to protect falls squarely on the United Nations and other members of the international community. As stated in (3) of the 2009 report quoted above, “If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the UN Charter.”³⁹ As of yet, the United Nations and the international community have done virtually nothing to “take collective action to protect populations.”⁴⁰

The first step in the right direction occurred in September 2017, when the UN passed a resolution establishing an independent inquiry into alleged human rights violations in Yemen.⁴¹ Although this inquiry is a sign of progress, it will have very little immediate effect on the actions of conflict participants and the victims of those actions. The United

38 *Security Council Condemns Human Rights Violations by Yemeni Authorities, Abuses by ‘Other Actors,’ after Months of Political Strife*, Meetings Coverage (Oct. 21, 2011), <https://www.un.org/press/en/2011/sc10418.doc.htm>.

39 U.N. GAOR, U.N. Doc. A/63/677 at 9 (Jan. 12, 2009).

40 Afrah Nasser, *The Unfolding UN Failure in the Yemen War*, Atlantic Council (Nov. 14, 2017), <http://www.atlanticcouncil.org/blogs/mena-source/the-unfolding-un-failure-in-the-yemen-war>.

41 Patrick Wintour and Julian Borger, *Independent investigation will look into human rights abuses in Yemen*, WORLD NEWS (Sep. 29, 2017), <https://www.theguardian.com/world/2017/sep/29/yemen-un-investigation-human-rights-abuses>.

Nations has at its disposal several methods for intervention in the conflict in Yemen as part of its responsibility to protect. These include verbal demands, sanctions, and military involvement.⁴² The UNSC actions against Libya in 2011 demonstrate the application of these options.⁴³

IX. RESPONSIBILITY TO PROTECT CASE STUDY: LIBYA

In 2011, following widespread and systematic attacks against the civilian population by Muammar Gaddafi, the UN Security Council adopted resolution 1970, making explicit reference to the responsibility to protect.⁴⁴ Deploring “the gross and systematic violation of human rights” in Libya, the Security Council demanded an end to the violence and immediate action by Libyan authorities’ to protect its population. A series of international sanctions including an arms embargo and the freeze of foreign Libyan assets were also imposed.

In Resolution 1973, adopted shortly after Resolution 1970, the Security Council demanded an immediate ceasefire in Libya, including an end to ongoing attacks against civilians—which it said might constitute “crimes against humanity.”⁴⁵ The council authorized Member States to take “all necessary measures” to protect civilians under threat of attack in the country while excluding a foreign occupation force on Libyan territory.

The specific actions taken by the United Nations against Libya in 2011 are viable options to address the ongoing Yemen-Saudi Conflict. R2P is primarily used to justify international intervention against a state government, as was the case in Libya. However, the Saudi involvement

42 *Id.*

43 *Id.*

44 S.C. Res. 1970, (Feb. 26, 2011).

45 S.C. Res. 1973, (Mar. 17, 2011).

in the conflict on the side of the legitimate government of Yemen extends the scope of the United Nations' R2P beyond the Yemeni government to Saudi Arabia. Although the R2P allows international intervention, no significant actions have been taken in an effort to combat human rights violations in Yemen.⁴⁶ There are several possible explanations for the United Nations' and international community's lack of response, namely: fear and entanglement.

X. OBSTACLES TO RESPONSIBILITY TO PROTECT

In June 2016, the UN Secretary-General announced that he was removing the Saudi-led coalition from his "list of shame," an annual list including the individuals, groups, and states in violation of internationally-recognized human rights. The secretary-general officially cited an incomplete "joint review" as the reasoning behind the removal of the Saudi-led coalition.⁴⁷ However, in a statement made by the secretary-general the following week, he suggested that Saudi Arabia, one of the biggest donors to the international organization's humanitarian efforts, had threatened to cancel its funding to UN humanitarian programs unless it was removed from the list of rights violators.⁴⁸ The

46 Fergal Keane, *Yemen conflict: UN official accuses world of ignoring crisis*, BBC NEWS (Dec. 6, 2016), <http://www.bbc.com/news/world-middle-east-38220785>.

47 *Statement attributable to the Spokesman for the Secretary-General on the Annual Report of the Secretary-General on Children and Armed Conflict*, United Nations Secretary-General (Jun. 6, 2016), <http://www.un.org/sg/statements/index.asp?nid=9774>.

48 Tim Walker, *UN chief says he removed Saudi Arabia from damning human rights report under 'undue' financial pressure*, Why the question mark News (Jun. 9, 2016, 12:43 PM), <http://www.independent.co.uk/news/world/politics/un-chief-says-he-removed-saudi-arabia-from-damning-human-rights-report-under-undue-financial-a7073696.html>.

willingness of Saudi Arabia to use humanitarian aid and the thousands of lives that depend on it as a bargaining chip speaks to the character of Saudi Arabia and their concern or lack thereof in preserving international human rights.

Another hindrance to responsibility to protect is the existence of foreign entanglement and the strategic interests of powerful States. In order for R2P to be successfully employed as justification for intervention, the United Nations Security Council (UNSC) must vote on the intervention. UNSC members have the ability to use their veto power on R2P proposals. If veto power is invoked, UN intervention is impossible as unanimous approval of the UNSC is required. Of the five permanent members of the security council, three, The United States, The United Kingdom, and France have a conflict of interest in the issue.

The United States is a *de jure* belligerent in the conflict on the side of Saudi Arabia according to the qualifications for participation outlined in the Geneva Convention.⁴⁹ Additionally, the United States is one of the largest suppliers of munitions to the kingdom, most recently signing a \$1.4 billion dollar arms agreement in June.⁵⁰ The United Kingdom is also a primary supplier of arms to Saudi Arabia, selling an estimated \$1.1 billion in arms in 2017.⁵¹ France too, has sold over \$10 billion in arms to Saudi Arabia and other

49 *The Geneva Conventions of 1949 and their Additional Protocols*, War & Law (Oct. 29, 2010), <https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>.

50 Aria Bendix, *U.S. Approves \$1.4 Billion Military Sale to Saudi Arabia*, News (Jun. 6, 2017), <https://www.theatlantic.com/news/archive/2017/06/us-approves-14-billion-sale-to-saudi-arabia/529257/>.

51 Jessica Elgot, *UK sales of arms and military kit to Saudi Arabia hit £1.1bn in 2017*, World News (Oct. 24, 2017, 10:47 AM), <https://www.theguardian.com/world/2017/oct/24/uk-sales-of-arms-and-military-equipment-to-saudi-arabia-2017>.

coalition members since 2014.⁵² As signatories to the 2005 UN Summit on Responsibility to Protect these countries have a political and legal obligation to protect the human rights of the people of Yemen and vote in favor of UN intervention in the conflict. However, The United States, United Kingdom, and France stand to lose billions in future arms sales if an arms embargo or ceasefire were to occur. Therefore, it is unlikely that if a vote on R2P were proposed one if not all of the involved countries would exercise their veto power.

XI. CONCLUSION

The intentional destruction of Yemen's cultural heritage by the Kingdom of Saudi Arabia cannot go unpunished. It is up to the international community, namely the United Nations, to fulfill its responsibility under the Right to Protect Doctrine and put an end to the wanton destruction. If the entanglement of members of the security council prohibits action on the part of the United Nations, then at the very least, the proper classification of Saudi actions as war crimes and crimes against humanity will be a step in the right direction.

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Arms sales becoming France's new El Dorado, but at what cost?, FRANCE 24 (updated May 4, 2015), <http://www.france24.com/en/20150503-arms-sales-becoming-france-new-el-dorado-but-what-cost-francois-hollande-saudi-arabia-rafale>.