Heritage, Conservation and Good Governance
Enhancing the heritage law framework in Saudi Arabia

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This thesis is presented for the degree of Doctor of Philosophy in Law

School of Law

THE UNIVERSITY OF WESTERN AUSTRALIA

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Abstract

This thesis examines the international and domestic regimes for heritage protection. The thesis includes an historical and contemporary analysis of the World Heritage Convention, a comparative analysis of Western and Middle Eastern domestic regimes, and a focused exploration and analysis of the regime for heritage protection in Saudi Arabia. These analyses reveal that countries with strong civic institutions and processes have developed correlatively strong heritage protection regimes in governance and the law. The importance of pluralistic civil society is clear, as it produces research expertise in academia and non-profit organizations, in addition to engaging communities and people in interest group lobbying for heritage protection. The analysis also reveals the importance of representative government, which responds to civil society, interest groups and influence. As predicted, heritage protection is strongest in industrialised countries with pluralistic institutions and actors and representative government.

The World Heritage Convention has catalyzed and facilitated heritage protection in countries without the same level of civil society engagement and representative government by raising the awareness of authoritarian regimes about the necessity and benefits of heritage protection. In this way, the Convention has served as a type of international civic actor. However, as the analysis of Saudi Arabia reveals, heritage protection in authoritarian regimes occurs at the discretion of the leadership. This leads to lower levels of protection than in countries with higher levels of civil society influence and representative government.

In Saudi Arabia, heritage protection has suffered as a result of religious, commercial, and nationalistic interests that have determined the value of heritage, sometimes contrary to the Convention’s definition of outstanding universal value. However, there is evidence of fledgling norms of heritage protection emerging in Saudi Arabia, manifest in the recent passage of a new domestic legislation.

The thesis contains recommendations for improvements to the Saudi regime of heritage protection include the building of partnerships with international experts to serve as technical consultants and mentors to Saudi scholars. In addition, the Saudi regime must construct new governance and procedural structures that establish autonomy for the heritage system from commercial, religious, and state interference. Transparency in governance is also necessary to ensure decisions are made based on considerations of outstanding universal value. Saudi Arabia has a wealth of pre-Islamic heritage, as well as contemporary lived heritage, that deserves protection and will benefit from these recommendations.
Statement of Candidate

This thesis contains only sole-authored work, some of which has been published and/or prepared for publication under sole authorship. The bibliographical details of the work and where it appears in the thesis are outlined below.

Student Signature: Damna Alzahrani  [21063225]
Publications

The following papers, arising out of this thesis, have been presented and published:

Chapter 1 and 2


Chapter 3 and 4

- Damna Alzahrani, ‘International Heritage Law: Opportunities and Challenges for Saudi Arabia’ (paper presented at The Seventh World Archaeological Congress, 13th- 18th January 2013 at King Hussein Convention Centre in the Dead Sea, Jordan)

Chapter 6

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All praise is due to Allah, most Gracious, most Merciful, for His help, blessing and guidance, which gave me the patience and endurance to accomplish this task.

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Thirdly, Sincere thanks to the president of Saudi Commission for Tourism & Antiquities, HRH Prince Sultan Bin Salman Bin Abdulaziz Al-Saud and to the staff at all levels especially to the Legal Department.

Finally, I owe much to all members of my family, especially my husband Saleh Aiaf and my two children, Noura, Jasir and my Mother for their support and encouragement, with devotion, throughout my studies.
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<td>AHC</td>
<td>Australian Heritage Council Act 2003</td>
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<tr>
<td>CSIRO</td>
<td>Commonwealth Scientific and Industrial Research Organisation</td>
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<tr>
<td>EPBC</td>
<td>The Environment Protection and Biodiversity Conservation Act</td>
</tr>
<tr>
<td>EPBC</td>
<td>Environmental Protection and Biodiversity Conservation Act 1999</td>
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<td>FA</td>
<td>Finance Act 1946</td>
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<td>HBAM</td>
<td>Historical Buildings and Ancient Monuments Act 1953</td>
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<td>ICH</td>
<td>Intangible Heritage Convention</td>
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<td>ICCROM</td>
<td>The Preservation and Restoration of Cultural Property</td>
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<tr>
<td>ICOMOS</td>
<td>The International Council on Monuments and Sites</td>
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<tr>
<td>IUCN</td>
<td>The International Union for Conservation of Nature</td>
</tr>
<tr>
<td>LAMBH</td>
<td>Law of Antiquities, Museums and Built Heritage</td>
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<tr>
<td>NGOs</td>
<td>Non-governmental organisations</td>
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<td>NHA</td>
<td>National Heritage Act 1980</td>
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<td>NHA</td>
<td>National Land Fund</td>
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<tr>
<td>RCORB</td>
<td>Redundant Churches and Other Religious Buildings Act 1969</td>
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<tr>
<td>SCT</td>
<td>The Supreme Council of Tourism</td>
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<tr>
<td>SCTA</td>
<td>Saudi Commission for Tourism and Antiquities</td>
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<tr>
<td>SPAB</td>
<td>The Protection of Ancient Buildings</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNESCO</td>
<td>United Nations Education, Scientific and Communications</td>
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<tr>
<td>WHC</td>
<td>World Heritage Convention</td>
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<td>WIPO</td>
<td>The World International Property Organisation</td>
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Chapter 1

Introduction and Background

1. Introduction

The Kingdom of Saudi Arabia stands at the crossroads, having a rich heritage of early civilization on Earth, combined with modern architectural towers. Unfortunately, in its effort to modernize economically, the Kingdom is threatened by the loss of heritage that possesses extraordinary value to Arabic culture and the world. The protection of heritage in Saudi Arabia is primarily based on the international world heritage system that was enacted in 1972, yet since then there have been only slight improvements in domestic law and policy. A revised legal regime, lacking at the domestic level, is necessary to protect Arabic heritage.

The 1972 World Heritage Convention (WHC) seeks to protect heritage sites of specific importance, yet without domestic support the Convention is relatively powerless. Heritage needs to be protected for its unique importance to domestic and international communities. National heritage possesses meaning for the domestic audience, and it can rise to the level of world heritage if it contributes to the broader value of human civilization. The link between national and world heritage is emphasized in the Convention, which requires world heritage sites to have

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2 Mohammed Alsaleh ‘Call for Development of a System Acting as the Architectural Heritage’ (Paper presented at the discussion forum on Architectural Heritage and ways to maintain and develop tourism, Riyadh-Saudi Arabia, 12 October 2003).
4 Convention for the Protection of the World Cultural and Natural Heritage (Paris), opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975).
‘outstanding universal value’ that should also relate to the cultural tradition of the land. At a time when Arabic and Islamic culture is grossly misunderstood for its contributions to human civilization, particularly in the West, protection of Saudi Arabia’s heritage sites is paramount.

Western countries possess powerful legal regimes that contribute to preserving heritage. These systems have improved the overall protection of heritage and have lessons for other jurisdictions. A comparative study will help establish new laws and systems in Saudi Arabia to protect its heritage sites. The Kingdom of Saudi Arabia is rich in many historical monuments dating back to the pre-Islamic era such as Eksa city and Taima city. In addition, Diraiyah, and Al-Aasda, are ancient towns dating back to the middle of the 18th century. These historic sites together with the monuments are important as they give a distinctive character to the country. Yet today these sites are at risk, as will be discussed below, and improved legal measures are needed to protect them.

Based on WHC criteria, Saudi Arabia has four World Heritage Sites in the cultural category; Mada’in Saleh, Turaif Quarter in Al-Diriyyah, Historic Jeddah, the Gate


6 Both cities located in the south-eastern region of Saudi Arabia, but there is no information about. ‘The importance of literature and ancient inscriptions source of the history of the Arabian Peninsula in the era before Islam’ (2009) 12, ALFALAQ Journal, 222.


8 Al-A’asda village, located in north Mecca and it is consists of many houses that are built of one to many rooms, in addition to the wide spaces and yards. The houses were constructed with stones without using the mortar. SCTA, Urban Heritage Sites (2009) (20 March 2015)<http://www.scta.gov.sa/en/AntiquitiesMuseums/SitesList/Pages/AntiquitySites.aspx>.

9 Ibid.

10 Mada’in Saleh, is located in north-west of Saudi Arabia, built in the first century BC, consisting of rock-cut monumental tombs that have been protected since 1972 for tourism potential and its intrinsic cultural benefits to Middle East history. It was the first site registered for registration in the UNESCO World Heritage List. UNESCO, World Heritage, Saudi Arabia (2010) Properties inscribed on the World Heritage List (1 March 2015)<http://whc.unesco.org/en/list/1329>.
Chapter 1

to Makka, and the Rock Drawings area in the Hail Region. In June 2015 Saudi Arabia submitted properties for inclusion on the Tentative List which are Darb Zubayda (Pilgrim Road from Kufa to Makkah), Hejaz Railway (2015), Syrian Hajj Road (2015), Egyptian Hajj Road, Al-Faw Pre-Islamic City in Central Arabia (Qariah), Rijal Almaa Heritage Village in Assir Region, Zee Ain Heritage Village in Al-Baha Region, Al-Ahsa Oasis Cultural Heritage Landscape, Hima a rock art site in Najran and Dûmat Al-Jandal Historical Oasis in Al-Jawf Region.

Mada’in Saleh was declared by United Nations Education, Scientific and Communications (UNESCO) as a World Heritage Site in 2008 following an analysis of the historical importance of the site and its cultural impact, making it Saudi Arabia’s first protected site. These sites are nevertheless threatened by the lack of a robust and comprehensive legal regime in the Saudi system.

On 31st July 2010 the WHC inscribed the site Turaif Quarter in Al-Diriyah as a world heritage site. The Saudi Commission for Tourism and Antiquities (SCTA) realised the need for more aggression in preserving other national heritage sites and sought support from different agencies to help conserve national monuments in the country. In addition, new concerns, such as environmental protection and showcasing national treasures to boost tourism, made preservation a higher priority.

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11 Turaif Quarter in Al-Diriyah was founded in the 15th century. Located in the central of Arabian Peninsula, north-west region of Riyadh. It was the first capital of the Saudi royal family, as well as the political and religious centre for Saudi royal family. SCTA, above n 7; Alzahrani, above n 1. Exell and Rico, above n 1, 145.
12 The Historic Jeddah, the Gate to Makka is known for its unique architectural pattern of the residential buildings, mosques and palaces. This unique Arab architectural fabric, seen throughout in the market places, paths, alleys etc, has withstood the test of time and weather and gives a distinctive flavour of Islamic Art. SCTH, above n 7; Alzahrani, above n 1.
13 The criteria for selection Mada’in Saleh on the World Heritage List was criteria (ii) which is “outstanding universal value” and met also criteria (iii) which is also “a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared”. UNESCO, Examination of nomination of natural, mixed and cultural properties to the World Heritage List - Al-Hijr Archaeological Site (Madain Sâlih), (Saudi Arabia) 32COM 8B.19 (31 March 2009).
14 Interview with Saad Alhasan, tourist guide in Madain Salih (personal communication as a participant in field work, 5th December 2014).
15 UNESCO, Examination of nomination of natural, mixed and cultural properties to the World Heritage List At-Turaif District in ad-Dir'iyyah (Saudi Arabia) 35COM 8B.60 (19-29 June 2011).
16 Urban Heritage Sites, above n 8.
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Table 1: Saudi Properties inscribed on the World Heritage List. 17

<table>
<thead>
<tr>
<th>Name of World Heritage Site</th>
<th>Year of inscription</th>
<th>Type of WHS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Al-Hijr Archaeological Site (Madain Saleh)</td>
<td>2008</td>
<td>Cultural</td>
</tr>
<tr>
<td>2. At-Turaif District in ad-Dir'iyah</td>
<td>2010</td>
<td>Cultural</td>
</tr>
<tr>
<td>3. Historic Jeddah, the Gate to Makka</td>
<td>2014</td>
<td>Cultural</td>
</tr>
<tr>
<td>4. Rock Drawings in the Hail Region</td>
<td>2015</td>
<td>Cultural</td>
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</tbody>
</table>

Table 2: Saudi Properties submitted on the Tentative List. 18

<table>
<thead>
<tr>
<th>Name of World Heritage Site</th>
<th>Year of Submission</th>
<th>Type of WHS</th>
</tr>
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<tbody>
<tr>
<td>1. Darb Zubayda (Pilgrim Road from Kufa to Makkah)</td>
<td>2015</td>
<td>Cultural</td>
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<td>2. Hejaz Railway</td>
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<tr>
<td>3. Syrian Hajj Road</td>
<td>2015</td>
<td>Cultural</td>
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<td>4. Egyptian Hajj Road</td>
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<td>5. Al-Faw Pre-Islamic City in Central Arabia (Qariah)</td>
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<td>8. Al-Ahsa Oasis Cultural Heritage Landscape</td>
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<td>10. Dûmat Al-Jandal Historical Oasis in Al-Jawf Region</td>
<td>2015</td>
<td>Cultural</td>
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</table>

Even though Saudi Arabia ratified the WHC in 1978, 19 the presence of only four monuments on the World Heritage List, out of a thousand archaeological sites in the Kingdom, raises a significant concern. 20 There are several reasons that can be attributed to this failure. Firstly, the Kingdom does not have a specialist agency that can look into the issues. There exists the SCTH, but a clear legal regime has not been

18 Ibid.
devise to protect the cultural qualities of heritage sites rather than just their physical structures. The cultural protection regulations are still in a state of infancy and as a result do not lay down rules and regulations with regards to the protection of the monuments.21

Secondly, monuments need protection not only in terms of their preservation due to natural decay, but also from criminal elements that tend to destroy and sabotage these structures. To further this purpose, the deterrent function of the criminal law can help to maintain the heritage monuments. Stronger criminal penalties can prohibit the outright damage or destruction to the property. Also in the case of archaeological sites, there is a need to protect movable objects from being stolen, illegally removed or transferred.

In order to protect national monuments, it is necessary to create a new heritage protection system. Protecting national heritage monuments is vital as they advance an understanding of the culture and the people of the place.22 Heritage is an essential resource that needs to be protected both for the present generation as well as future ones.23 This research will explore the protection of heritage sites in Saudi Arabia with the potential for World Heritage listing, and identify flaws in the current legal system that has not been subject to any amendment since 1972. These flaws have become increasingly apparent as perceptions of the historic environment have evolved and as heritage conservation practices have changed over the past several decades. The present legislation has proved to be ineffective for protecting complex historic entities and an inflexible regulatory regime.24 One of the main concerns is that the policies to preserve and safeguard the heritage monuments are not transparent and accessible to stakeholders who can monitor the Kingdom’s progress in heritage protection.

In comparison for example, Australia possesses a powerful legal regime that contributes to preserving heritage for the future. This system has helped to improve the overall environment for the protection of the monuments. This comparative study

24 Alsaleh, above n 2.
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will assist by recommending new laws and systems for Saudi Arabia to protect its heritage sites.

2. The meaning of Culture and Heritage

For the purpose of this thesis, culture is very difficult to define as it means different things to different people all around the world. Culture is defined as the values, beliefs, customs, traditions, behaviours and institutions that distinguish a human population. Culture is reflected in tangible and intangible forms, consisting of everything from common attitudes shared by a population about reality to the material production of various physical items. Music, food, literature, rituals, social arrangements, dress, and religious values all constitute culture. The anthropological perspective of culture holds that anything produced by humans that distinguishes them from other animals, whether expressed in immaterial or material form, constitutes culture. By this standard, the most primitive tool created by ancient humans constitutes culture, and the most advanced nuclear technology constitutes culture.

Heritage constitutes those elements of culture that are considered of significant value and thus worthy of preserving and promoting. Just as culture possesses tangible and intangible forms, so does heritage, and this duality constitutes one of the central dilemmas in defining heritage. Early heritage protection Conventions, such as the Venice Charter of 1964, focused on built heritage. For example, the Venice Charter led to the development of the International Council on Monuments and Sites, adopted by ICOMOS in 1965 and published in 1966.

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27 Davison, above n 25.
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recognition of the physical conceptualization of heritage in the formative years.\textsuperscript{29} In addition, the WHC of 1972 sought to define heritage for the purposes of securing legal protection on the international stage.\textsuperscript{30} The definition was narrowly constructed, however, to include only tangible culture. Indeed, the title of the WHC, the Convention Concerning the Protection of the World Cultural and Natural Heritage, reflects the emphasis on tangible culture.

Heritage scholars have emphasized the importance of avoiding strict delineations between tangible and intangible culture.\textsuperscript{31} From this perspective, tangible and intangible culture are interrelated as the former represents and continues to inform the latter. The World Heritage sites related to the Holocaust, for example, are described as intangible culture as they reference the atrocities of genocide committed by the Nazi regime. Obviously, the memory of these atrocities reflects intangible culture related to the physical remnants of the concentration camps at Auschwitz-Birkenau in Poland. Likewise, the Hiroshima Peace Memorial, commemorating the nuclear bombing of the city, was listed for the purpose of reminding humanity of the toll of war. Heritage scholars emphasize the point of avoiding the listing of tangible heritage without reference to the intangible qualities associated with physical sites.\textsuperscript{32} Indeed, the true value of heritage sites includes their capacity for informing contemporary sensibilities about intangible qualities associated with the sites.

Indeed, the notion of outstanding universal value to humanity inherently implies an intangible value to physical heritage sites.\textsuperscript{33} Even though ownership and maintenance of a site might fall primarily within the legal domains and processes of the Member States and their partners in the international community, the intangible value of listed sites makes them relevant to all of humanity. Some scholars have even drawn attention to the problems that might emerge as sovereign states maintain control over

\textsuperscript{29} Fekri Hassan, Aloisia de Trafford, Mohsen Youssef (ed), Cultural heritage and development in the Arab world (foreword Ismail Serageldin, 2008), 256.
\textsuperscript{32} Ibid.
\textsuperscript{33} Ibid.
heritage sites that by definition are of outstanding universal value to humanity. The definition of heritage under the Convention demands that universal access be provided to both host country nationals and visitors. Likewise, the definition of heritage under the Convention means that international parties, including the Committee and the advisory bodies to the Committee that evaluate nominated sites, will introduce their own conceptions of intangible heritage value to the physical site. The definition of heritage must inevitably integrate both tangible and intangible traits of the considered and nominated sites as the physical site continues to deliver relevance to contemporary parties as they consider the site’s contribution to humanity overall. Thus, a broad conceptualization of cultural heritage is presented under the Convention that begins with tangible culture but expands into the intangible phenomena of this heritage as it relates not only to the past but also to the contemporary experience.

The history of international laws protecting culture and heritage reflect this broad definition as well as the interrelated nature of tangible and intangible heritage. The Convention on the Protection of the Diversity of Cultural Expression identified living cultural expression as necessary for protection.\(^{34}\) The Convention on the Protection of the Underwater Cultural Heritage emphasized the need to protect physical heritage from anthropogenic damage and ocean inundation. These conventions recognized distinctions between contemporary experiences of culture and physical remnants of heritage from the ancient past. Similarly, national heritage protection regimes present numerous understandings and classifications of heritage. New frameworks for heritage laws since the passage of the World Heritage Convention seek to consider heritage in a more inclusive manner in terms of tangible and intangible elements, as well as consider heritage in light of environmental threats, such as global warming. The distinctions between tangible and intangible heritage under the World Heritage Convention are increasingly being dismantled in the scholarship in favour of a more integrated definition that recognizes the intangible relevance of even ancient physical heritage sites.

\(^{34}\) Ibid.
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Indeed, there is a reason for the emphasis on tangible heritage in formal definitions of heritage, particularly from a legal perspective. Heritage that takes physical form is particularly at risk from physical activities, and thus it makes sense that the WHC would focus on what could be conceptualized in material form. Foremost in heritage law is protection of artefacts, sites, buildings, ruins, art, monumental heritage and other physical items. However, the concept of heritage must also be expanded to include intangible heritage, defined as those crucial elements of culture that are retained in the thoughts, attitudes, beliefs, skills, talents and capacities of peoples. Protection of intangible culture is necessary because of threats from industrial modernization, while in other cases such heritage is threatened from genocide, ethnic cleansing, and other forms of aggression by a dominant culture.

Culture and heritage reflect the universal contributions of humanity from ancient civilizations to contemporary societies. Western civilization developed the concept that all cultures have valuable heritage that should be protected through legal regimens, not just the culture and heritage valued for the purposes of Western supremacy or pride. Indeed, one of the ironies of international culture and heritage protections is that they were promoted and designed initially by Western institutions associated with the socioeconomic exploitation of many cultures whose heritage is now designated for protection. The Western perspective of culture and heritage is the most universal and all-encompassing.

From the Arabic perspective, heritage protection is highly associated with national, religious and cultural pride. In particular Arabic culture and heritage is associated with the emergence of human civilization, and this stands as a great source of pride, particularly given the subordinate position of Arabic culture on the international stage today. At the same time, conservative Muslim elements in Arabic culture can be relatively indifferent to the heritage of pre-Islamic cultures. In addition, there are

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35 Kuruk above n 30; also see Graeme Aplin, Heritage Identification, Conservation, and Management (Oxford University Press, 2002) 15,16.
36 Blake, above n 26.
37 Bell Catherine, Protection of First Nations Cultural Heritage (UBC Press, 2009).
38 Arabic perspective means authentic Arabic culture such as Middle East countries Saudi, Jordan, Iraq and Egypt etc.
39 Rothfield Lawrence, Antiquities under siege: Cultural Heritage Protection after the Iraq War (Rowman Altamira, 2008); see also Diab Abdulmajid, Achieving: the Arabic Heritage: development approach (Almarifah House, 1993) 33.
commercial interests in Arabic culture that are indifferent to heritage protection, and consider it a demand imposed by modern secular Western elites and heathens.\textsuperscript{40}

From an Eastern perspective,\textsuperscript{41} heritage protection is both threatened by commercial and industrial development, while at the same time emerging elites in Asian societies, particularly India and China, are beginning to protest the destruction of heritage.\textsuperscript{42} For example, China’s destruction of ancient heritage sites to build the Three Gorges Dam and reservoir was considered essential for its commercial and industrial development, but it also created a new generation of environmental, legal and archaeological activists involved in heritage protection.\textsuperscript{43}

The values of heritage are global, and not necessarily exclusive to the culture from which the heritage originates. Indeed, the WHC of 1972 and subsequent heritage conventions at the international level recognize the universal value of heritage.\textsuperscript{44} There would be no reason to adopt international heritage Conventions if the only value of heritage was domestic. If that were the case, then domestic statute and policy would be sufficient. The universal value of heritage demands its international protection, particularly when States fail to enact adequate measures. Heritage can be of such importance that it is deemed proper to adopt international Conventions that can protect the heritage against those who claim to represent it at the state level by setting standards, creating rights and obligations and establishing an environment which facilitates capacity building.

3. Justification

Heritage reflects tangible and intangible culture that has proven to be lasting and influential in humanity’s development. The key to human progress is to understand and learn from the past, and protection of heritage is paramount in this undertaking. Globalization is reshaping human society, reflecting interconnectedness between

\textsuperscript{40} Rothfield, above n 39.
\textsuperscript{41} Eastern perspective means countries such as China, Japan and Korea.
\textsuperscript{42} Logan William, Craith Mairead Nic, Cultural Diversity, Heritage and Human Rights: Intersections in Theory and Practice (Taylor & Francis, 2010).
\textsuperscript{43} Ibid.
\textsuperscript{44} Davison, above n 25.
cultures and peoples. The need for different peoples and cultures to learn from each other is instrumental in achieving the goals of peaceful and productive global development. Moreover, global systems, particularly in relation to economic development, threaten valuable heritage that may be lost to infrastructure development, modernization and natural resource destruction.

Saudi Arabia reflects the challenges and opportunities of heritage protection. Saudi Arabia has a rich cultural heritage that could contribute to improving its reputation and relations with the rest of the world. However, Saudi Arabia is currently on the path to economic modernization, and valuable heritage is threatened by development. Legal regimes to protect Saudi heritage have never been more necessary than they are today.

Heritage protection can be a nationalistic or a humanistic concern, depending on the nature of the heritage and the way it is utilized by those who seek to protect it. In *The Heritage Crusade and the Spoils of History*, David Lowenthal notes how heritage can bind people to a common past. Lowenthal suggests that heritage worship might divide peoples more than unite them, since some will claim their heritage is superior to another peoples’. The current emphasis on World Heritage as defined by the United Nations, which is heritage of outstanding universal value, suggests that a common human heritage is valuable for its ability to inform disparate populations around the globe of their interconnectedness, particularly for culture that reflects significant stepping stones in human civilization.

UNESCO recognizes that “the protection of cultural heritage is incumbent on States owing to the importance which it holds for all of Mankind and as a means of encouraging international cooperation and thus prevention of international conflict.” Specifically, UNESCO recognizes that the mere act of preserving heritage that is believed to be instrumental in the development of human civilization can foster goodwill between peoples. “Study of works of the past do much to foster mutual

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46 Blake, above n 26.
understanding between nations,” and the “international community as a whole is nevertheless the richer for such discoveries”\textsuperscript{47}.

For example, consider the World Heritage sites in Egypt that are the source of admiration by all people around the world and the subject of significant visitation by individuals who would likely never travel to the Middle East if these sites did not exist. Egypt cooperates closely with Western archaeologists in preserving and discovering heritage, and these efforts cultivate a shared sense of identity between Egyptians and the international community as the heritage of ancient Egypt is associated with major developments in human civilization. Not only is this heritage the origin of nationalistic pride among Egyptians, this heritage manifests in improved relations between Egypt and the rest of the world, particularly the West, which might otherwise neglect Egypt as a backwater of the developing world.

International legal regimes have attempted to broaden the scope of heritage to include tangible and intangible culture, as well as environments that surround, protect and are relevant to culture. While scholars such as Yahaya Ahmad believe these efforts have not gone far enough to standardize a universal definition of heritage, the scope of heritage today reflects a wide range of culture and environments, and legal scholarship is growing in relation to concern about the need to protect heritage.\textsuperscript{48} Despite this, heritage protection in Saudi Arabia is threatened by modernization, indifference to heritage by government leaders, the lack of a modern legal regime, and the absence of a pluralistic, representative political system.

Saudi Arabia is the birthplace of Islam, and this heritage alone should implore Saudi Arabia to embrace significant heritage protection in law and in practice. However, the Arabian Peninsula is also the site of pre-Islamic culture essential to an understanding of nomadic history, ancient trade routes, and the emergence of human civilization in the Middle East.\textsuperscript{49} Pre-Islamic and Islamic heritage are both deserving of special protection by Saudi Arabia. Unfortunately, there is strong evidence that such protections are lacking in the Saudi legal regime and in practice.

\textsuperscript{47} Ibid.
\textsuperscript{49} Maisel Sebastian, Shoup John, A Saudi Arabia and the Gulf Arab States Today (Greenwood, 2009).
Perhaps the most glaring example is the government’s approval of massive development adjacent to holy sites in Mecca. Mecca is the destination for millions of pilgrims whose Islamic faith instructs them to try to make the pilgrimage at least once during their lifetimes. In order to capitalize on the pilgrimage industry, Saudi Arabia has approved skyscraper developments right next to crucial sites, including the Grand Mosque and the Kaaba.\textsuperscript{50} While this development does not physically damage these sites, the broad definition of heritage to include the surrounding environment, as identified by UNESCO, suggests that these constructions do, in fact, compromise the value of this heritage. The skyscraper developments overwhelm these heritage sites and thus diminishes their value, not just to the appreciation of pilgrims but also for the appreciation of non-Islamic populations. Non-Islamic individuals are less likely to look upon Mecca’s holy sites with the deserving wonder this heritage demands as a result of surrounding development. Not only is Saudi Arabia threatening its Islamic heritage for pilgrims, it is diminishing the value of such heritage to foster cooperation and goodwill with the non-Islamic world.

Fortunately, there is some evidence that Saudi Arabia is recognizing the importance of heritage sites’ protection outside of Muslim culture. The Supreme Council of Tourism (SCT), the Deputy Ministry of Antiquities and Museums and the National Guard are charged with heritage protection, though most scholars agree that their efforts lack cooperation and are subject to simple neglect or rejection by the Saudi leadership.\textsuperscript{51} Scholars recognize the growing importance of Saudi media in reporting on the need for heritage protection.\textsuperscript{52} Of course, media is also subject to censorship as a result of the authoritarian Saudi political system, and the full benefits of heritage protection are not likely to be realized until political and legal reforms successfully modernize the country. The introduction of legal protection, though hampered by the authoritarian Saudi political system, represents a first step only and much more work

\textsuperscript{50} Exell and Rico, above n1, 19, 20; Daniel Howden, Saudi Arabia: Wahhabis Destroy Heritage of Mecca independent (online), December 19 April 2006 <http://www.independent.co.uk/news/world/middle-east/shame-of-the-house-of-saud-shadows-over-mecca-474736.html>.

\textsuperscript{51} Maisel & Shoup, above n 49.

\textsuperscript{52} Ibid.
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needs to be done. Until then, heritage protection will remain a desirable but unrealized dream in Saudi Arabia.

4. The aim

As the Kingdom of Saudi Arabia aspires to become a developed country by the year 2025, which it plans to achieve in 15 years through a set of three 5-year strategic plans, it is important for Saudi Arabia to transform itself into a knowledgeable and sustainable society. Saudi Arabia intends to take bold steps to develop and reform its current law of Antiquities.\(^{53}\) This research examines the protection of national heritage sites in the Kingdom of Saudi Arabia that possess the qualities of, or have already been classified as, world heritage sites. This research looks into the current scope of protection that is accorded to heritage by drawing a comparison with the protection of heritage sites in different countries such as the United Kingdom, Australia, Jordan, and Egypt.

This study identifies the drawbacks of the current Saudi system and suggests changes that would strengthen it. Heritage in the comparative countries includes historic places of many kinds and indigenous sites of cultural significance. Many of these sites are preserved as they contain significant cultural values, and in a number of cases they contain heritage unfamiliar to others. Also, these sites are considered to be scientifically valuable. They are conserved for future generations and for the world as outstanding examples of heritage. This research examines the differences in the legal regimes in Saudi Arabia and the United Kingdom, Australia, Jordan, Egypt as models of improvement for the deficient Saudi regime.

This research seeks to explore legislation through a desk-based analysis complemented by conducting interviews and questionnaires. The research seeks to understand the integration aspects of heritage law, as well as the degree of community involvement that is necessary in the protection of heritage.

\(^{53}\) Law of Antiquities 1972 (The Kingdom of Saudi Arabia) Royal Decree [No. M/26].
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5. Literature Review

Literature relating to the specific topic of this thesis, being Saudi Arabian heritage law, is extremely limited and almost non-existent in English. Set out below is an analysis of the literature relating to legal protection of heritage and is divided into three sections focusing on Saudi literature, the body of work relating to the World Heritage Convention (WHC) and implementation in other domestic jurisdictions.

5.1 Saudi literature

There is a considerable body of literature on the history and heritage of Saudi Arabia, much of which has been referred to in Chapter 2.54 Conducting research on Saudi Arabia’s legal heritage regime, however, has been problematic. There is a dearth of existing primary materials, and only a small amount of writing exists in the secondary literature on the subject. The most extensive source on the Saudi protection regime and heritage inventory is Research & Heritage: Research Papers on Architectural Heritage, published in 2011, 2012, 2013, 2014 by the Supreme Commission for Antiquities and Heritage.55 Other sources include those compiled by the World Heritage Centre as part of the governance and protection activities of the World Heritage Committee.56 Further complicating research on Saudi Arabia’s legal heritage regime is the fact that those sources of information that do exist are difficult, indeed in some cases almost impossible, to obtain. There are almost no legal studies addressing Saudi heritage legislation in Arabic or English. There are a few studies that focus on Saudi Arabian legal practice in protecting heritage sites but those that do exist deal

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with isolated issues such as the protection of museums, cultural heritage, the historical identity, the management of sites, and some other issues.57

Fortunately, legal analyses of cultural heritage protection in Saudi Arabia and elsewhere on the Arabian Peninsula have been greatly facilitated by the recent publication of Cultural Heritage in the Arabian Peninsula: Debates, Discourses, and Practices by Trinidad Rico and Karen Exell.58 This source documents the integration of Western legal protection regimes in non-Western legal systems in Saudi Arabia and other Muslim states. Further complications have arisen due to the lack of coherent national cultural identities and expressions in these states. Indigenous and national heritage phenomena have been the point of conflict among parties in Arab states. Nevertheless, there is no doubt that the integration of Western heritage legal frameworks in Arab states has made inroads to increasing protections for heritage that was formerly discounted and threatened.

Another attempt previously made to explore relevant Saudi law was undertaken by Hassam Ahmad in the 2002, in his work, Legal protection of the archaeology at national and international level.59 However, this study focused particularly on the political dimension and was concerned with the existing Saudi heritage policy. It did not cover all the legal developments that have occurred in the law of the heritage since 1972, whether internationally or at the national level in Saudi Arabia. Most of the research conducted by Saudi researchers focuses on the history of the sites and answering practical problems related to site management or theoretical issues of ownership of the past.60

58Exell and Rico, above n1.
59 H Ahmad, ‘Legal protection of the archaeology at national and international level’ (paper presented at Archaeology Symposium, Saudi Arabia, 24 October 1999) 443-462.
60 Saad Al-Rashed, Ahmed ZaylaI, Nasser al-Maliki, Heritage in Saudi Arabia, (KFNL, 2003); Literature will be considered in Chapter 6 in more details.
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Even though Saudi Arabia signed the WHC in 1972, the literature reveals that efforts to protect heritage outside of commercial or Muslim interests have been relatively weak, reflecting an ideology of neglect toward heritage defined as of outstanding universal value. Numerous accounts exist of non-Muslim heritage being targeted for intentional destruction by fundamentalist Muslim parties or neglected for the interests of commercial development, but this has not been the subject of legal analysis.

There have been recent efforts in the Kingdom to reform heritage protection law and promote heritage protection norms in the public and civil society institutions. These efforts most recently resulted in the passage of a revised heritage protection law, the Law of Antiquities, Museums and Built Heritage (LAMBH) approved in June 2014 by the SCTA. The LAMBH is so new that it has not yet been analysed by legal scholars.

The Kingdom has listed its first sites on the World Heritage List, reflecting an interest to protect even heritage that does not fall within the interests of fundamentalist religious interests and among the important features of the new law are new governance structures, funding for the promotion of civil society institutions, such as a museums network, and development of research expertise in heritage protection in the Saudi higher education system; as well as a framework for the protection of intangible heritage, which is living heritage currently practiced by ethnic minorities in the Kingdom. Members of the royal family have recently expressed public opinions in support of protecting heritage in the Kingdom, and the first publications for heritage protection by Saudi scholars were produced in 2013, most notably by Prince Sultan bin Salman, the president of the SCTA.

At the same time, however, the authoritarian system of governance in Saudi Arabia means that protection occurs upon the sanction of the monarchy and its various

64 Aygen, above n 61, 152.
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interest groups, including fundamentalist Islamic and commercial actors.\(^5\) Pluralism and secularism in Saudi society are fledgling, reflecting an ambiguous nature of heritage protection in the Kingdom. For example, the monarchy has called for legal reforms that encourage more secularism and the development of legal professionals, but these reforms still remain in the early stages.\(^6\)

The question remains whether commercial development and fundamentalist institutions will continue to promote their interests above those of secular norms that value heritage for its outstanding universal value. There is an inherent contradiction between heritage norms that meet this basic criterion for world heritage and the interests of parties that claim absolute supremacy in the cultural environment. Incremental protection of heritage in Saudi Arabia is likely to be characterized by increased heritage protection in some areas while heritage in other areas continues to be diminished or destroyed. For example, the literature reveals that the state has approved the demolition of ancient heritage in Mecca to facilitate tourism development for Muslim pilgrims, justifying this demolition on religious grounds.\(^7\) At the same time, the state recently won nomination for a pre-Islamic site on the World Heritage List.\(^8\) There is, however, no literature which explores these seemingly contradictory approaches.

5.2 World Heritage Convention and literature

International law as manifested in Conventions ratified by members of the United Nations (UN) has been the primary vehicle for encouraging and facilitating heritage protection in countries without strong domestic regimes.\(^9\) The WHC was passed by

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\(^5\) Maisel & Shoup, above n 49.

\(^6\) Interview with Hassan Al Hasan, Researcher, Saudi Commission for Tourism and Antiquities (personal communication in a participation in field work, 24\(^\text{th}\) January 2014).


\(^9\) Kuruk, above n 30, 134.
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the General Assembly of the UN in 1972, and currently lists more than 1,500 sites designated as World Heritage Sites in 162 countries. Industrialization, commercial development, neglect, looting, and civil conflict have been identified in the literature as particular threats to world heritage when the WHC was passed, and the same factors are referred to as the most significant threats to heritage today. The WHC is widely reported in the literature as successful in its efforts to create a universal norm to protect heritage, even if it does not explicitly support various state or social interests of governments and institutions.

There is extensive literature on world heritage and on the UNESCO program, the Resolutions and decisions of the Conference of the Parties, as well as the Operational Guidelines. Primary records include the WHC itself as well as Resolutions and the Operational Guidelines. Other materials produced by UNESCO and the WHC Secretariat include those documents, papers, and publications published and inventoried by the World Heritage Centre. In addition, various international bodies involved in heritage protection have published extensively on the challenges and successes of the Convention, such as the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), and International Council on Monuments and Sites (ICOMOS). The secondary literature also includes books and scholarly journals published on the development of the Convention, its

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73 Fisch above n 67; Kuruk above n 30; Roger, above n 70; Stubbs above n 71.
77 See ICCROM, Resources (4 April 2015) <www.iccrom.org/resources>; See also Isabelle Vinson, ‘ICCROM’s Contribution to the Ethics of Heritage’ (2009) Museum International 94.
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drafting, definitional issues, and analysis of the Convention text.\textsuperscript{79} This literature is dealt with in detail in Chapter 4 where the WHC is explored in detail.

5.3 Legal Protection in Other Domestic Regimes

This research has involved an analysis of the heritage law regimes in four different states. There is relevant primary and secondary literature in relation to each and this is explore in detail in Chapter 5 which covers the United Kingdom,\textsuperscript{80} Australia,\textsuperscript{81} Jordan \textsuperscript{82} and Egypt.\textsuperscript{83} The literature indicates that United Kingdom’s unique combination of governance, professional bureaucracy, civil society and widely accepted social norms about the need for heritage protection contributed to the advent of a robust heritage protection regime at the domestic level.\textsuperscript{84} The analyses show that the United Kingdom established a domestic heritage regime as a result of commonly held appreciation for the various manifestations of British culture,\textsuperscript{85} and civil society actors\textsuperscript{86} as well as a professional bureaucracy developed relatively early.\textsuperscript{87} In contrast,

\textsuperscript{79} Blake, above n 26; Bruno, S, Frey and Steiner, Lasse, ‘World Heritage List: does it make sense?’ (2011) 17 International Journal of Cultural Policy 5, 555; Fisch, above n 76; Kuruk, above n 30; Roger, above n 70; Myra Shackley, Visitor Management: Case Studies from World Heritage Sites 2006 (Butterworth-Heinemann: Oxford) 85; Stubbs, above n 73.


\textsuperscript{81} Ben Boer and Graeme Wiffen, Heritage law in Australia (Oxford University Press, 2006); Gareth Grainger, Kerry Jones, Australians for Constitutional Monarchy (ACM Publishing, 1994); Brian McNamara, Alan Fitzgerald, How Australia is governed: a simple guide to Australia's system of parliamentary democracy (CanPrint, 1999); Ross Curnow, Minuscule Paper?: Australian Art, Culture, and Heritage, National Approaches to Governance of Historical Heritage Over Time: A Comparative Report (Fairfax, VA: IOS Press, 2008).


\textsuperscript{84} National Heritage Memorial Fund, About the NHMF (2 March 2015) [http://www.nhmf.org.uk/AboutUs/Pages/default.aspx]; also see chapter 3 and 4 for more information.

\textsuperscript{85} Fisch above n 76; Roger, above n 70; Bertacchini Enrico, Saccone Donatella, Santagata Walter, Embracing diversity, correcting inequalities: towards a new global governance for the UNESCO World Heritage (2011) 17 International Journal of Cultural Policy 3, 278.

\textsuperscript{86} Ibid.

\textsuperscript{87} Ibid.
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heritage protection in developing countries often occurred after the advent of the industrial era, by which time much of the valuable heritage had already been lost to commercial development or looting. The United Kingdom developed expertise in various fields of study relevant to heritage law, such as archaeology, architectural history, and anthropology, and that expertise and the literature that was produced by key scholars provided further motivation and resources to protect valuable heritage.

Australian literature makes it clear that it developed heritage norms relatively late compared to the United Kingdom. However, Australia’s implementation of a domestic heritage protection regime and ratification of the WHC reflect its newfound readiness to embrace heritage protection. The National Heritage List in Australia is notable for its inclusion of various natural features and indigenous features, both of which reflect the fact that European settlement only arrived in Australia in the 19th Century. Australia’s heritage assessment processes have resulted in the selection of sites that are particularly oriented toward the biological, ecological, and environmental criteria of the Convention, and this in turn has effected the expertise that developed and thus the literature that has been published.

Yet Australia’s heritage protection regime also remains embedded within political processes, notably the influence of the Prime Minister in approving recommendations of the Australian Heritage Council. This stands in contrast to the relatively autonomous role of the Council’s counterpart in the United Kingdom, which is capable of protecting heritage without political processes or sanctions. Certainly, both

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89 Key heritage law scholars in this area include Isabelle Vinson, Stefan Fisch, Enrico Bertacchini, Myra Shackley, John Stubbs, Ndoro Webber, Albert Mumma, George Abungu, B. Frey, P. Pamini, Francesco Francioni, A. Leask, A. Fyall, Barry Flamm, Janet Friedman, Luisa Blanchfield, P.J. O’Keefe, L.V. Prott, Janet Blake, Barbara Hoffman, Wendy Shaw, Eric Mumford, Lasse Steiner, Rob Pickar, Donatella Sacco, Walter Santagata, Kristina Getty, Meg Martin, Katrena Porter, and Rafael Corral.
91 Ibid.
94 Ibid; Also see Environment Protection and Biodiversity Conservation Act 1999 (Cth).
bodies in the United Kingdom and Australia are politically appointed, but the Australian Heritage Council serves only in an advisory position, while the United Kingdom’s counterpart is able to issue final approval to recommended sites and buildings. Key books and articles have been written on the heritage framework in Australia and other publications include chapters on Australia as one of the countries reviewed. Some Australian authors have focused on particular issues such as native title and Indigenous heritage or state heritage law for example in New South Wales (NSW).

Jordan’s monarchical system gives complete control over heritage protection to the King, though outside influence is increasing as a result of emerging norms and institutions in Jordanian society, particularly in academia. Jordanian law, such as the 1929 Ordinance on Antiquities and the 1966 Jordanian Law of Antiquities, predated Jordan’s ratification of the Convention in 1975. Yet these domestic laws are interpreted through the interests of the State as manifested in the monarchy. The King receives counsel on heritage protection matters from the Jordan National Commission for Education, Culture, and Science, and thus his decisions about heritage protection are informed by civil society actors.

The key texts and authors in heritage protection are limited compared with long history of the place. The Commission has a budget for heritage protection, but significant technical assistance is requested through Convention mechanisms and collaborations between Jordanian academic actors and experts from other countries. Heritage protection is inherently integrated with the state’s interest in tourism, which

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95 Key books and articles written on the heritage framework in Australia include Ben Boer and Graeme Wiffen, Heritage Law in Australia (2008). Some other publications include chapters on Australia as one of the countries reviewed Barbara Hoffman’s Art and Cultural Heritage: Law, Policy, and Practice, and Stefan Fisch’s National Approaches to the Governance of Historical Heritage Over Time: A Comparative Report; Teinberg’s ‘Conservation and Rehabilitation of Urban Heritage in Developing Countries,’ John Stubbs’ Time Honored: A Global View of Architectural Conservation, Gareth Grainger and Kerry Jones’ Australians for Constitutional Monarchy, and Brian McNamara and Alan Fitzgerald’s How Australia is Governed.


97 Bawab, above n 81; also see Jordan National Commission.

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is a major source of revenue for the country. The University of Jordan is collaborating with experts from other countries, as well as the European Union, to improve its domestic capital in the field of heritage protection, excavation, and archaeology.\textsuperscript{99} Unfortunately, the literature on Jordanian heritage law, both primary and secondary, is limited to only a few sources. The reason for that is it is a monarchy country and there is less analysis by scholars than in other countries such as the UK. The international funds could help improving the outcome of the research especially if it is lead by western universities.

Due to its extraordinary wealth of heritage from the ancient Egyptian and other ancient civilizations of the Middle East, Egypt has one of the most advanced domestic heritage regimes in the developing world.\textsuperscript{100} This has resulted in more literature than in Jordan including valuable secondary sources.\textsuperscript{101} At the same time, heritage protection in Egypt has advanced to its current position as a result of the state’s recognition of the tourism value of protecting heritage.\textsuperscript{102} Regardless of the origins, Egypt represents one of the models for heritage protection that can be used by other developing countries that lack domestic expertise in heritage protection; although the law and professional bureaucracy are fledgling they are relatively advanced compared to other Middle Eastern regimes.\textsuperscript{103} Egypt has partnered with international actors and experts from other countries, notably Europe and the United States, to protect and discover existing and new heritage, respectively. The literature in these areas is explored in detail in Chapter 3 and 5.\textsuperscript{104} Heritage protection in Egypt is heavily oriented toward protecting heritage from looting and trafficking, both of which result from the high value placed on ancient Egyptian heritage on the black market and this is reflected in the literature.

\textsuperscript{99} Bawab, above n 81.
\textsuperscript{102} A Brief History, above n 100.
\textsuperscript{103} Ibid.
\textsuperscript{104} Frey & Lasse, above n 79, 555; Frey & Pamini, above n 5, 2; Also see Nubian Monuments from Abu Simbel to Philae, World heritage list (21 March 2015) <http://whc.unesco.org/en/list/88>; see, eg, J. Turtinen, Globalising heritage: On UNESCO and the transnational construction of a world heritage (2000) SCORE-working paper 12.
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6. Research Questions

This study seeks to answer the following questions:

1. What is the current law that protects heritage in Saudi Arabia?
2. What are the international obligations under the World Heritage Convention and Saudi Arabia’s commitment to heritage Conventions?
3. What is deficient in the Kingdom’s current legal regime in protecting heritage?
4. What threat does this deficiency pose to heritage?
5. What legal regime exists in Australia, the UK, Egypt and Jordan, and what lessons can be learnt for Saudi Arabia?
6. What is a model heritage framework for the Kingdom?
7. What are the barriers to implementation that exist in the Kingdom for such a model of heritage protection?

7. Methodology

This study involves desk-based research and empirical research gained through field work. The research includes a review of the scholarly literature, an analysis of government documents and consultation with government decision-makers, families who own some of the old buildings that fall under world heritage protection in Saudi Arabia and experts in heritage protection as part of a comparative analysis of conservation policies, practices and legal regimes in Saudi Arabia, Australia, the United Kingdom, Jordan, and Egypt. Elements of the legal regimes in these countries and international law that are examined include Saudi Arabia’s Article 24 of its Environmental Guidelines, which protects holy places, Article 29, which protects cultural heritage, and the Antiquities Law of 1972 and Law of Antiquities, Museums and Built Heritage (LAMBH) 2014; 2014 and UNESCO’s WHC and Operational Guidelines. Also the research looked on the following legal regimes: 105

105 Chapter 4, 5 covers heritage protection regimes in more details.
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- The *Environment Protection and Biodiversity Conservation in Australia Act 1999* (Cth). 106
- The *Australian Heritage Council Act 2003* (Cth) (AHC)
- The United Kingdom *National Heritage Act 1980* (NHA). 107
- The *1966 Jordanian Law of Antiquities*. 108
- The *Egyptian Antiquities Protection Law of 1983*. 109

The fieldwork component involved consultation with participants in Saudi Arabia. Initial contact was made by email and/or telephone. Participants were invited to take part in this project and were provided with a list of questions and participated by email and/or telephone or in personal meetings. The questions used to obtain information related to current heritage protections, strengths and weaknesses of legal protection and the areas in need of development and reform. The responses indicated the current level of the protection that the local and national government can provide and ways to improve it. The study included field visits to heritage sites to observe how the applications of laws and policies have been implemented.

Through the consultation process, with officials in the SCTA as well as heritage experts and local communities at the heritage sites, the study incorporates the opinions of the bodies that have the decision-making powers, individuals with heritage expertise and the communities involved.

8. Synopsis

This research is divided into seven chapters:

Chapter One shows that culture and heritage have emerged as objects of protection as a result of norms, practices, and domestic and international legal developments, but there is significant variation in the types and levels of protection among countries. Overall, international agreements have little impact on heritage protection unless they
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are bolstered by strong domestic protections, reflecting the general futility of international law. Countries without the capacity or motivation to protect their heritage can sign international heritage Conventions just as easily as human rights abusers can sign United Nations human rights Conventions.

Chapter Two examines the history and background of Saudi Arabia within the context of heritage protection. Saudi Arabia’s monarchical and religious systems of governance and law present significant challenges to heritage protection. However, Saudi Arabia is in the nascent stage of heritage protection, with few significant reforms in the law emerging since ratification of the WHC until very recently. Most importantly, Saudi Arabia has won approval for its first listed World Heritage Site. Heritage challenges in Saudi Arabia relate to an overall preference for economic development rather than heritage protection, unless such protection facilitates nationalistic, religious, or touristic interests.

Chapter Three examines national efforts outside Saudi Arabia to protect heritage before the passage of the WHC. These efforts in the United States, United Kingdom, Australia, and the Ottoman Empire reflect the nationalistic origins of heritage protection, with most heritage protected because of its advancement of nationalistic or cultural supremacy interests. This chapter also reveals how heritage protection tends to only occur after the emergence of strong regulatory and bureaucratic systems in the nation-state.

Chapter Four examines the role of the WHC in protecting heritage. The WHC has been important in assisting developing countries as they improve their systems of governance of and the law on heritage protection. The Convention provides funding and expertise for countries that have exhibited an interest in domestic heritage protection. However, like other systems of international law, even those countries that ratify the Convention can ignore the spirit and letter of the law if intrinsic motivation to protect their heritage is lacking.

Chapter Five examines national implementations of heritage protection in Australia, the United Kingdom, Jordan, and Egypt. This analysis reveals the high level of
Chapter 1

variation in heritage protection based on motivation and capacities. The United Kingdom led heritage protection as one of the first nation-states to institute formal regulatory and bureaucratic functions. Australia developed heritage protection much later as a result of historical indifference by Euro-Australians to heritage protection, particularly indigenous heritage. Egypt’s extraordinary amount of heritage has resulted in a more sophisticated heritage protection regime than would be predicted for a developing country, while Jordan’s heritage protection remains at the nascent stage, with protection diminished by lack of motivation and capacity.

Chapter Six examines the heritage protection regime in Saudi Arabia. The monarchical system of governance and religious law have proven to be significant barriers toward heritage protection. Nevertheless, the regulatory and legal structures to protect heritage have been significantly improved as a result of passage of the new antiquities law and the listing of the first World Heritage Site. The question remains whether heritage protection in Saudi Arabia will be adequate in the absence of a pluralistic civil society and representative government, which combine to diminish heritage protection given the high interest in economic development in the Kingdom.

The final chapter of this research study identifies a possible framework for heritage protection in Saudi Arabia. Best practice legal regimes for heritage protection identified in other domestic and international regimes can serve as the framework in Saudi Arabia, even in the absence of a pluralistic civil society and representative government. However, heritage protection in the Kingdom will never achieve optimal standards until norms, practices, and values emerge in Saudi Arabia that are secular and multicultural. Until then, heritage protection in Saudi Arabia will occur at the whim of the royal family and will be diminished by nationalistic, religious, and economic interests.
Chapter 2

History and background of Saudi Arabia

1. Introduction

The Arabian Peninsula is rich in diversity of early civilizations such as Sheba, the Himyarite Kingdom, Kingdom of Awsan, Kingdom of Main and Sabaean Kingdom, which date back to 20,000 years ago. Most of these civilizations existed in the Southern Arabian Peninsula; however, Eastern Arabia was home to the Dilmun civilization that considers one of the most creative societies. More than 3000 historic sites have been discovered in the last ten years, during the investigation by the Saudi Commission for Tourism and Antiquities (SCTA), and most of them are now under the management of the SCTA.

This chapter includes a brief history of the Arabian Peninsula in general, and Saudi Arabia in particular, as well as Saudi Arabia’s cultural heritage sites and the threats facing them as a result of decades of unimpeded industrial expansion and human activities. The analysis reveals a complex and contradictory environment of heritage protection in Saudi Arabia. Significant gains have been made in improving the statutes and regulatory regime for heritage protection in recent years. Simultaneously, commercial development and nationalistic/religious ideologies continue to present threats to heritage. Not only does Saudi Arabia stand at the crossroads of modernization, the Kingdom also stands at the crossroads for heritage protection. The question remains whether the Kingdom will continue to make progress toward expanded heritage protection or whether heritage in the Kingdom will continue to be threatened by commercial, state, and religious actors.

Chapter 2

2. History and Background of Arabian Peninsula

2.1 Pre-Islamic History of Arabian Peninsula

One of the most important factors in heritage protection in Saudi Arabia involves whether to protect pre-Islamic heritage. The Arabian Peninsula has a rich history of pre-Islamic civilizations as a result of its proximity to the first human civilizations of the Near East. Historically, religious fundamentalism in Saudi Arabia as a result of the state religious branch of orthodox Islam has been hostile to protecting heritage of pre-Islamic or non-Islamic origins. Heritage destruction has occurred as formal policy of the state. Moreover, heritage destruction of sites considered contrary to state interests of national identity have also been destroyed, most infamously in the 2002 demolition of a site related to the Ottoman Empire. Fortunately, the listing of a pre-Islamic site on the World Heritage List reflects a hopeful shift away from such destructive practices of the state. This section details the rich pre-Islamic history of the Arabian Peninsula worthy of heritage protection.

The history of the Arabian Peninsula includes rich and deeply-rooted cultural and natural heritage dating back to the pre-Islamic era. Historic sites and monuments are important as they give a distinctive character to the area. Around 1000 B.C. civilization developed in the southern area of the Arabian Peninsula. This civilization was able to develop primarily because of profitable trade routes along the rivers on both sides of the Arabian Peninsula. These trade routes provided easy entrée to the neighbouring river-valley Nile and Tigris-Euphrates civilizations (Figure 1). Once contact was made between the two civilizations, trading ensued. Both civilizations were wealthy, making it easy to trade many goods between them.

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2 Arabian Peninsula located in Southwest Asia at the junction of Africa and Asia, and it plays a critically important role politically and geographically as the source of oil and natural gas. It is includes Saudi Arabia, Yemen, Qatar, Bahrain, Oman, and the United Arab Emirates. A. S Alsharhan, *Hydrogeology of an arid region: the Arabian Gulf and adjoining areas*, 2001, ELSEVIER, 7.


4 Exell, Rico, above n1, 152.


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The people who lived on the coast of the Arabian Peninsula, including those around present-day Oman and Bahrain, where much of the trading took place, as well as those who lived in the southern area of the peninsula, namely present-day Yemen and Saudi Arabia, were all in a good position to benefit from trading. Another reason trading was profitable for both sides of the coast was the geography and climate of the area. The topography and weather allowed for greater agricultural development compared to that on the Persian Gulf coast. For example, exports of frankincense and myrrh gave wealth to the southern part of the Arabian Peninsula and plentiful rainfall ensured the people had the ability to feed themselves. Thus, civilization was able to develop substantially in the area as early as 1000 B.C. The peoples of this region lived in what were called city states, and small kingdoms, the most well-known of which was Saba, called Sheba in the Old Testament. Yemen was so prosperous that the Romans referred to the area as the Arabia Felix.

Figure 1: Trade Routes between Europe and Asia Antiquity

8 Lewis Bernard, *The Middle East: a brief history of the last 2,000 years* (SCRIBNER, 1995).
10 Metz, above n 7.
11 The meaning of City States as it is called in Arabic languages, is the heart of the Empire. It was common across the Kingdom of Arabia Peninsula to build a new city in the beginning of each era to show neighbours around that they were independent from any power before them.
12 The kingdom of Saba or Sheba is the oldest civilizations built in the 8th century B.C. It is located in the southwestern of Yemen, the capital of Saba was Ma'rib. It had a huge influence on the design of heritage city around the peninsula. Klaus Schippmann, *Ancient South Arabia: from the Queen of Sheba to the advent of Islam* (Markus Wiener, 2001) 4, 57, 56.
Chapter 2

Outside of the coastal region, however, and in certain areas of Hijaz, the topography (which included mainly desert and mountain) as well as the tough climate, limited agricultural development, thus making trading in the interior of the peninsula more arduous than on the coast. Most likely the population in this area was nomadic, and survived on a combination of herding and oasis gardening. Nonetheless, around 1000 B.C. the peoples of the interior had developed a way for camels to carry large loads of goods, making the conditions under which the Arabs in this region lived better. With the help of camels, the Arabs were able to benefit from the trade that had previously eluded them.

There were two results of the trans-Arabian trade. First, there was a rise in the number of cities, the most flourishing being Petra in Jordan, and Palmyra in Syria, that could service the camels passing through the desert areas. Petra and Palmyra were the most prosperous cities because they were relatively near to markets in the Mediterranean area. However, small cities that conducted caravan trade also developed in the interior region of the Arabian Peninsula. Mecca, was the most significant of these caravan cities, which was also prosperous because of its shrines which Arab people from all over the peninsula came to visit.

The second result of the trans-Arabian trade was the communication it gave them with the larger outside world. For example, before the beginning of Islam, the Arabs and Romans, as the two largest powers controlling the near East and the Arab tribes bordering their cities were inevitably brought into political matters. After 400 A.D. the Romans and Arabs paid the

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14 Metz, above n 7.
15 Petra is one of the worlds richest and largest archaeological sites set in a dominating red sandstone landscape, located in Jordan between the Red Sea and the Dead Sea, it were built in prehistoric, and it is well known as the rock-cut capital city of the Nabateans, a major route during Hellenistic and Roman times a major caravan centre for the incense of Arabia, the silks of China and the spices of India, a crossroads between Arabia, Egypt and Syria-Phoenicia. Jane Taylor, *Petra and lost Kingdom of the Nabataeans*, (Cambridge, Mass. Harvard University Press, 2002) 15-145; For more information about this site see UNESCO, World Heritage List (10 December 2014) <http://whc.unesco.org/en/list/326/>; Also see Exell, Rico, above n1, 148.
16 Palmyra located on the north-east of Damascus, it was built on the 1st to the 2nd century, the art and architecture of Palmyra, standing at the crossroads of several civilizations, such as married Graeco-Roman techniques with local traditions and Persian influences. Richard Stoneman, *Palmyra and its empire: Zenobia's revolt against Rome* (Library of Congress, 2003) 18-32; For more information see UNESCO, World Heritage List (10 December 2014) <http://whc.unesco.org/en/list/23/>.
17 Mecca located on the western mountains of Saudi Arabia. It is the place were Prophet Muhammad born, as well as the holiest city in Islamic religion. More than 2.5 million pilgrims visit this city every year to perform Hajj as obligation upon all able Muslims. Ghaz' Abd Al-Wahid Makkt, Mecca, the pilgrimage city: a study of pilgrim accommodation (Hajj Research Center, 1978) 21; Exell, Rico, above n1, 19, 20.
18 Wayne, above n 9.
19 Metz, above n 7.
Chapter 2

Arab tribes to protect their borders in the southern region. They also paid them to harass the borders of their enemies.20

In the long term, though, it was actually the tribes from the interior of the Arabian Peninsula that were most influential. By 500 A.D., the traditional religious Arab beliefs and worship were not the only kind. In addition, there were followers of pagan beliefs throughout the Peninsula and a group referred to as Hanifs in the Qaran, followers of an indigenous monotheistic religion. Well-established communities of Jews and Christians emerged, especially in the areas of Yemen and Medina.

This overview of the Pre-Islamic history of the region is important, to give a clear understanding about the history of the land, the establishment of the earliest civilizations in the Arabian Peninsula, and the importance of the protection of this heritage, as it links with the past and is a reminder of significant events and history or culture. These are described below:21

**Al-Faw Pre-Islamic City** in Central Arabia (Qariah) is located in the north-western region of Saudi Arabia near Tuwaiq Mountains. This site was the ancient capital of a pre-Islamic kingdom that ruled for three hundred years beginning 2,000 years ago.22 The site illustrates the Saudi peninsula civilization of the age. Features include homes, wells, roads, market places, temples, and graves (figure 2). These features are still intact and are under the

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20 On this period of time, the power of Arabic Tribes rose and the power of Romans was limited on border of Arabic peninsula. As Arabic Tribes keep attacking the routes, Roma decided to build a relationship with them by allowing them to protect the routes and paid them back. For more information about this relationship see Bernard, above n 8.

21 Some of the most well known archaeological sites were found during the oil search in 1940s by some official workers of the Saudi Aramco Oil Company The Arabian American Oil Company (ARAMCO): is an oil Company founded by the Standard Oil Co of California (Chevron) in 1933, when the government of Saudi Arabia granted it a concession. In 1938, oil was found near Dhahran and many U.S. companies joined in to explore it. In 1951 ARAMCO found the first offshore oil field in the Middle East. In the 1970s and '80s, control gradually passed to the Saudi Arabian government, which eventually took over ARAMCO and renamed it Saudi ARAMCO in 1988. Saudi ARAMCO, History of Saudi ARAMCO (2 December 2014) <http://www.aramco.eu/51/about-saudi-aramco/history-of-saudi-aramco.htm>.

management of SCTA. In 2015, this property was nominated for inscription on the tentative list.

**Figure 2: Al-Faw Pre-Islamic City in Central Arabia, Saudi Arabia.**

**Al-Akhdood Archaeological Area** in the Southern region of Saudi Arabia (Figure 3) is located in the city of Najran, and is the focus of past and present archaeological study. The site’s features include a fortress, roads, residences and other structures that illustrate life on the Arab peninsula from ancient to Islamic times. A large trench where a massacre occurred as a result of religious conflict can be seen. The site includes a museum that accompanies the archaeological sites that are under excavation. These features are still intact and are under the management the SCTA as a listed Antiquity Site.

**Figure 3: Al-Akhdood Archaeological Area, Saudi Arabia.**

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23 Alzahrani, above n 6.
25 Al-Ansar, above n 21; Alzahrani, above n 6.
27 Ibid; Alzahrani, above n 6.
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**Jubbah** includes archaeological sites located northwest of Hail (Figure 4). It contains some of the oldest known features of human civilization. The site is being studied for its stone circles, rock drawings, and stone tools, created during the Palaeolithic Period. The sites cover an area of the remote desert of approximately 39 square kilometres. These features are still intact and are under the management of SCTA as a listed Antiquity Site.

![Figure 4: Jubbah archaeological sites, Saudi Arabia.](image)

**Tarut** is an island in the Persian Gulf linked to the mainland by a natural bridge (Figure 5). A town on the island has features from ancient Mesopotamian civilization. In addition, there are sites from ancient Persian civilization and Indus Valley civilizations. Thus, the site illustrates the nexus of the region in the sweep of civilizations across the Middle East. The site is under the management of SCTA as a listed Antiquity Site.

![Figure 5: Tarut archaeological sites Saudi Arabia.](image)

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28 Ibid. For more details Hasson Rachel, *Early Islamic Jewelry* (Institute of Islamic Art, 1987).
29 Ibid.
30 Ibid.
31 Ibid.
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The Thaj site is located on the northwest of Saudi Arabia. The features are evidence of an ancient city believed to be part of the ancient Greek empire (Figure 6). It is possible the site was constructed after the conquest by Alexander the Great. Stones with inscriptions dating to 1000 B.C. were also found at the site. The site is under the management of SCTA as a listed Antiquity Site.32

Figure 6: Thaj site, Saudi Arabia.33

Al Shohtiah site includes features of one of the earliest known examples of human civilization.34 This site is located in the north of Saudi Arabia about 1300 km north of the capital of Saudi Arabia in the Al-Jawf region. Some scholars claim this is the oldest evidence of a human city. The site includes buildings, streets and is the on-going focus of archaeological study. The site is under the management of SCTA as a listed Antiquity Site.35

Kaaba and Black Stone located in Mecca, is mentioned in the Holy Quran as the first house constructed on Earth for religious purposes by Abraham and his son between the third millennium B.C. and the second millennium B.C. (Figure 7). Since the time of Abraham, Arabs from all parts of the Arabian Peninsula performed pilgrimages to Mecca once a year. Soon enough, Mecca became the region’s intellectual, cultural, and commercial centre. It was also famous for annual winter and summer time trading trips to the Levant and Yemen. This site continues to be the most sacred site in Islam, for all Muslims. This is the focus of the pilgrimage to Mecca,36 and where Muslims face during prayers. The site has been significantly altered over the years as a result of its management for pilgrimage visits.

32 SCTA, above n 24; Alzahrani, above n6.
33 Ibid.
34 SCTA, above n 24; Alzahrani, above n6.
35 Ibid.
36 The Jurhom tribe was able to take leadership of Makkah from the Garhm of Ismail, until the Khuzaa tribe
There are many more ancient towns in Saudi Arabia (Table 3) but unfortunately there is currently no information available on them. In fact, there is a significant shortage of specialists in heritage law in Saudi Arabia. The most significant archaeological sites in Saudi Arabia are the focus of discovery by Western experts such as British, German and French archaeologists.

Table 3: Protected Sites in Saudi under SCTA.

<table>
<thead>
<tr>
<th>Saudi Sites</th>
<th>Arabic Sites</th>
<th>English Sites</th>
<th>Arabic Sites</th>
<th>English Sites</th>
</tr>
</thead>
<tbody>
<tr>
<td>Al-Hajar &quot;Madain Saleh&quot;</td>
<td>Saggafa</td>
<td>Jabal Baidatain</td>
<td>Jabal Baraga</td>
<td></td>
</tr>
<tr>
<td>Jabal Qanoofah</td>
<td>Thumamah</td>
<td>Kahaf Burmah</td>
<td>Al Bajadiyah Site</td>
<td></td>
</tr>
<tr>
<td>Al-Jawf Pre-Islamic City in Central Arabia (Qariah)</td>
<td>Al-Aflaj</td>
<td>Jabal Al-A'arfa</td>
<td>Caravan Road</td>
<td></td>
</tr>
<tr>
<td>Wadi Fatimah</td>
<td>Jabal Al-Rediah</td>
<td>Souq Okaz</td>
<td>Shuaiba Port</td>
<td></td>
</tr>
<tr>
<td>Mina Al-Sarin</td>
<td>Al-Ma'adan Village</td>
<td>Al-Lasab Dam</td>
<td>Thalbah Dam</td>
<td></td>
</tr>
</tbody>
</table>

resumed control of the city. Despite the long history of Makkah, urban settlement there dates only to the Quraish period, when Qusai gathered his family and they agreed to build their homes with stones and mud around the Kaaba in the form of a pie, so as not to resemble the Kaaba. At the same time, there were other Arab tribes settling in Makkah, but none were as influential as the Quraish, which was concerned with protecting the religious shrine of the Kaaba, in addition to ensuring that the annual pilgrimage of tribes to the holy place would continue as a source of revenue for the merchants of the city. Makkah had been created by an order of God to Abraham and his son Ismail. With the passage of centuries, the worshiping of various pagan elements and idols became prevalent in Makkah. Alzahrani, above n6, 79; also see David E. Long, *Culture and Customs of Saudi Arabia*. eBook Collection (EBSCOhos, Greenwood Publishing, 2005) 73, 122; Wahbi Al-Hariri, Mokhlis Al-Hariri, *The Heritage of the Kingdom of Saudi Arabia* (GDC Publications, 1990) 40; Saleh Al-Otaibi, ‘Ancient pilgrimage routes: Seven Ways’ Al-offeg News (online) 12 December 2014 <www.aloffegnews.com/articles.php?action=show&id=56>.

37 SCTA, above n 24; Alzahrani, above n6.
38 Long, above n 36, 108.
39 The information in the table collected during the filed work 2014, most of these sites under special protection program under SCTA.
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<table>
<thead>
<tr>
<th>Sadd Samlagi</th>
<th>Sesid Dam</th>
<th>Taroot Island</th>
<th>Al Baraka Kharaba</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aqeeq Pond</td>
<td>Um Al-Dameeran</td>
<td>Huzam Palace</td>
<td>Al-Kheraibah</td>
</tr>
<tr>
<td>Islamic Mabiat Site</td>
<td>Khaif Al-Zahra Site</td>
<td>The Town of Garash</td>
<td>Ein Ganas</td>
</tr>
<tr>
<td>Thajj Archeological Site</td>
<td>Ibrahim Palace</td>
<td>Al-Hayyan Village complex</td>
<td>Al-Ogair Seaport</td>
</tr>
<tr>
<td>Aldoor Archeological Site</td>
<td>Joatha Mosque</td>
<td>Badiya Bani Umru</td>
<td>Tathleeth Valley</td>
</tr>
<tr>
<td>Shamsan Castle</td>
<td>Al Makhsmah Site</td>
<td>Dhariya Towers at Shiqa</td>
<td>Sarba'al Site</td>
</tr>
<tr>
<td>A'ia Valley</td>
<td>Al-Jahawa City</td>
<td>A'asham</td>
<td>Marid Palace</td>
</tr>
<tr>
<td>Al Dr'iyah</td>
<td>Zubaidah Site</td>
<td>Al-Eikhdood</td>
<td>Shanana Tower</td>
</tr>
<tr>
<td>Al-Entriyyat at Qusaiba</td>
<td>Alkhalaif</td>
<td>Feid / Ruins of Khrash Palace</td>
<td>Al-A'ablah Site</td>
</tr>
<tr>
<td>Zi Ein</td>
<td>Al-Eikhdood (The Ditch) Site</td>
<td>Al-Rajajeel Archeological Site</td>
<td>Hima Well</td>
</tr>
<tr>
<td>Old trade rout of Drab Al Bakhoor</td>
<td>Jibbah Basin / Sandy Desert</td>
<td>Al-Sarhan Valley</td>
<td>Mount Al Meliheyah</td>
</tr>
<tr>
<td>Al-Sufun Palace</td>
<td>Hatim Al-Tae's Palace</td>
<td>Al Hamra Palace</td>
<td>Jabal Barnes</td>
</tr>
<tr>
<td>Beer Sesir</td>
<td>Al-Garah Site</td>
<td>Tel Al-Hadiqah</td>
<td>Al-Sharrah</td>
</tr>
<tr>
<td>Tema</td>
<td>Great Wall of Tema</td>
<td>Al-Badie (Shaib's Cave)</td>
<td>Al-Radm Palace</td>
</tr>
<tr>
<td>Beer Hadaj</td>
<td>Al-Ablaq Palace</td>
<td>Al Ozlam Castle</td>
<td>Al-Madafen</td>
</tr>
<tr>
<td>Qariyah Site</td>
<td>Rawafah Temple</td>
<td>Tabuk Castle</td>
<td>Dûmat Al-Jandal Historical Oasis</td>
</tr>
<tr>
<td>Deeseh Site</td>
<td>Hisma Area (Jabl AlLouz)</td>
<td>Al-Muwaileh Castle</td>
<td>Bade Archaeological Site</td>
</tr>
<tr>
<td>Al-Wajeh Castle</td>
<td>Al Aerb Castle</td>
<td>Al-Moazam Castle</td>
<td>Uyenonah Oasis</td>
</tr>
</tbody>
</table>

2.2 Islamic History of Arabian Peninsula

The Islamic history of the Arabian Peninsula is inherently linked to the formation of its state identity. Most notably, the branch of Islam practiced by the state religion and the founder of the Saudi nation, both emerged from the same region of the country.\(^{40}\) The reconstructed city of Ad Diriyah shows how nationalist and religious ideologies and identities, aligned with

\(^{40}\) Aygen, above n 5.
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state interests, are promoted through heritage protection. At the same time, reconstruction along these lines often involves practices contrary to heritage protection, since reconstruction differs from restoration in its methodologies and motivations. This section covers the intersect of nationalist and religious identities in the Islamic history of Saudi Arabia.

Many Saudis, Arabs and Muslims trace their beginnings back to the early Islamic period, and to the birth of the Prophet Muhammad in 570 A.D. Before this time, the period was referred to as the time of ignorance, most likely because Islam had not yet been introduced to a Prophet. Muhammad was born into the Quraysh tribe of Mecca, the principal tribe in the city because of its participation with the water rights for the pilgrimage.41 By the time of Prophet Muhammad’s birth, Mecca was a major trading centre and the Quraysh had developed trading ties with tribes from all over the Arabian Peninsula. These relationships had allowed the Quraysh to send their convoys to interior areas of the peninsula, including Syria and Yemen.42

Prophet Muhammad came from a respectable clan called the Sons of Hashim.43 Prophet Muhammad lacked a protector as his father, Abd Allah, had died before he was born. Fortunately, however, his uncle, Abu Talib, was a leader of the Hashimite clan and provided him with protection. Prophet Muhammad worked in the caravan trade, which gave him the opportunity to travel beyond the Arabian Peninsula, and to meet Christians and Jews in Arabia. Through this contact he learned about monotheism.44

At 25 years of age, Prophet Muhammad would sometimes travel to the mountains surrounding Mecca by himself. According to Muslim belief, it was there that the Prophet encountered the angel Gabriel who told Muhammad to recite verses that would later make up part of the Quran, which translated literally means "the recitation". Muslim belief states that Muhammad continued to receive revelations throughout his life from God and the angel Gabriel. In 613, much to the chagrin of the Qurasyh, whose beliefs in the worship of idols made the pilgrimage traffic to Mecca profitable for them, Muhammad began to preach a

44 Al-Tabari, Ibid, above n 42; Al-Hariri, above n 36, 38, 252.
spiritual order that attacked traditional Arab customs and espoused the belief in a single God.  

By 618 Prophet Muhammad had enough followers to worry the Qurasyh who attacked some of his followers. In 619, after his uncle’s death, the Prophet left Mecca to go to Yathrib, to follow his mission. Though the Qurasyh did not want to leave him in Yathrib, Muhammad prevailed and returned to Mecca in 630 where he met with no resistance. He continued his mission in At Taif and Khaybar. By his death in 632, most of Arabia was loyal to him, though the entire peninsula was not Muslim. After his death Abu Bakr became the authority and persons who had previously followed polytheism were forced to convert to Islam.

Because Prophet Muhammad was the only one to receive God’s revelations, his successors were not of a spiritual type so much as a ruling sequential authority, called caliphs. For the first 30 years, caliphs ruled the growing empire from the city of Yathrib, which was known more commonly as Medina. Within a short period of time, the caliphs had conquered a large empire and at the end of the Apostasy wars, the Arab tribes had sided with Islam and opposed the Roman and Persian empires. Arabia quickly controlled present day areas from Spain to Pakistan. Caliphs reigned over the Islamic world until 1258 when the last caliph and his heirs were murdered by the Mongols; and by the later part of this century, Arabia had lost much of its political importance in the Islamic world.

After the 9th century, the political powers of Islam moved away from the Arabian Peninsula and into Egypt and India and the Turkish and Central Asian republics. As a result, the Islamic civilization was no longer centred in Medina and Mecca in the Hijaz region as they had been during the time of the Prophet Muhammad and for some time after. For instance, after Prophet Muhammad’s death, in the 7th and 8th centuries, Medina became a literary and intellectual centre where legal discussions took place and eventually led to the organization of Islamic law into four distinct schools.

45 Ibid.
46 Before the advent of Islam, the city was known as Yathrib, it was renamed by Prophet Muhammad to Medina after the Hijrah. It is called a city of the Prophet, located on the western of Saudi Arabia in Hejaz region. It is the second holiest city in Islam, and the burial place of the Prophet Muhammad. Al-Tabari, vole 2, 40.
47 Ibid.
48 Ibid.
49 Al-Tabari above n 40; See also Wayne, above n9.
50 Most of Sunni Muslims follow four recognized schools, Hanafi, Maliki, Shafi’i, and Hanbali. The
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Arabia also became the site of conflicts through which current divisions arose, namely the Shia, and the Sunni sects. The rituals of Twelver Shia, which included a pilgrimage to the shrines of Ali and his relatives were distinct from and opposed to by the Sunni. According to Wahhabi Sunni interpretations of Islam, the pilgrimage to Ali’s shrine, for instance, resembled the pagan rituals Muhammad had attacked, accounting for some part of the sectoral division between the Saudi Sunni and the Shia in the Eastern Province.

Normally, Muslims went to Mecca every year on their pilgrimage. They expected the caliph to not only protect the routes to Mecca but to maintain control over Mecca and Medina and the Red Sea Ports that provided them access to the cities. During the 7th and 8th century, the caliph was powerful but with the decline in power after the 9th century, the Hijaz region became a target for any ruler wanting to control the Islamic world. Indeed, in 1000 A.D., the Ismailia dynasty controlled the Hijaz from Cairo.

During this period of time the political situation was unstable in the Arabian Peninsula. Excavations across the kingdom revealed many cities and archaeological sites dating to the early Islamic period. The most important Islamic sites were located in the holy cities of

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51 Shia is “party of Ali,” and one Shia denomination called the Kharijite movement began as a result of the assassination of the third caliph, Uthman and his replacement, Ali. For instance, some Shiites opposed Uthman’s authority because they believed Ali was the real successor. On the other hand, the Muawiyah in Syria, the first Caliph of the Umayyad Dynasty, disagreed with Ali’s election and a battle ensued between the two sides. One of the primary features of the Kharijite movement was opposition to the ruling caliph and his representatives, particularly to Muawiyah who succeeded Ali. The Kharijites’ were fanatical in their beliefs, stating that anyone who was lax about following the rules of the Prophet should be ostracized and even killed. This fervor assisted the Kharijite’s in conquering large amounts of territory in the seventh century. The more orthodox Shia sect believed that Ali should have succeeded right after Muhammad’s death. By the time Ali had succeeded, the Shia refused to accept other caliphs, including Muawiyah. The tensions between Ali and Muawiyah followers were never resolved. Eventually, the Shia would split into several different sects based on differing opinions as to which of Ali’s male descendants was the legitimate successor. The majority of Shia, who would come to be called the “Twelvers,” believed in a line of 12 male descendants, also known as Imams, beginning with Ali and ending with Muhammad al Muntazar, also called Muhammad, the awaited one. The Twelvers believed that the 12th Imam did not die, but instead simply disappeared in 874, but would return as the legitimate leader and begin a new and ordered world. Metz, above n 7; Also see William Watt, Montgomery, Islam and the integration of society (British Library Cataloguing, 2001) 94.

52 The Shia minority in Saudi Arabia, like the one in southern Iraq, also emerged from the time of Ali, and another group of Shia’s, called the Seveners or the Ismailis, believe in a line of seven Imams, but challenge the seventh Imam, and in his place believe in a younger brother, Ismail. The Ismaili line of leaders remains to this day, with the present Imam leader named Sadr ad Din Agha Khan. Metz, above n 7.

53 Al-Hariri, above 36, 252.
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Medina\textsuperscript{54} and Mecca, such as historic mosques, buildings, and homes. The most popular Mosque is Al-Imam Ali Al-Aridhi, named after the grandson of Al-mam Ali bin Abi Taleb in the holy city of Medina. Great controversy surrounded this event as Abi Taleb was buried underneath the Mosque. Also, the famous Bani Qoreyza Mosque located in Medina.\textsuperscript{55}

Islamic urban centres in the southwest of the peninsula were also found around the mining sites in the mountains. Moreover, there are hundreds of historical relics and architectural monuments including wells, forts, castles, and dams that date back to the early Islamic period. Some important sites include the Mawiyah dam in Madinah, the Saysad dam in Taif, and the Al-Benet dam in Khaybar. There are also hundreds of early Islamic sites along the trade and pilgrimage routes, including darb Zubaydah,\textsuperscript{56} the Rabadha site, the Al-Mabiyat site, Fad, Wadi Hanifa near Riyadh, the Al-Dour site in Al-Ahsa, and the Al-Jar port on the Red Sea near Yanbu.\textsuperscript{57} However the most well known sites dating back to Islamic era and managed by SCTA are:

\textbf{Al Mabiyat} in the south of Al-Ula, near the city of Moghaira dates back to the Umayyad and Abbasid eras. In 1984, the SCTA conducted archaeological excavations at the site, which revealed the remains of an Islamic city surrounded by a winding wall.\textsuperscript{58}

\textbf{Dûmat Al-Jandal Historical Oasis} site located in Al-Jawf region in the Northwest of Saudi Arabia includes ancient ruins believed to be associated with one of the tribes of Ishmael, thus carrying extraordinary importance for Islamic heritage (figure 8). Features include residences, streets and relics. The site is under the management of the SCTA as a listed Antiquity Site and the property was included on the Tentative List in 2015.\textsuperscript{59}

\textsuperscript{54} Before Islam, it was named Yathrib. It was a large oasis, with forts and farms, but it lacked a central city. The migration of Prophet Muhammad from Makka to Medina signaled a great change in the character of the city. The Mosque of the Prophet in occupies a special position among the mosques in the world. It is the mosque built by the Prophet and is the Islamic second sacred site. Muhammad Ali, \textit{The Religion of Islam} (Dublin,2011) 35.

\textsuperscript{55} Metz, above n 7.

\textsuperscript{56} It is one of largest water reservoirs created during the first Abbasid era. Built with trimmed stones in the eastern part of the city, near one of the valleys, the pool supplied water to caravans.

\textsuperscript{57} All of the areas management by SCTA as a listed Antiquity Site. Alzahrani, above n 6, 89, 90.

\textsuperscript{58} The College of Tourism and Antiquities at King Saud University is currently undertaking further archaeological work at the site, as part of the training program for the students of Islamic Archaeology.

The Jawatha Mosque is located northeast of Hofuf and about three kilometres northeast of the Kallabah village, in the middle of Jawatha National Park. The mosque was built in 886 AD. The mosque was built by Bani Abdul Qais tribe, which lived there during the early Islamic period (figure 9). It was found by chance under the foundations of Al-Alawi Mosque, which was also known as the Jawatha Mosque. The older mosque covers three construction stages.

Al Rabadhah city is located in the east of Medina, which prospered during the Umayyad and Abbasid periods. It includes a big Mosque, and cemetery. There is another mosque compound connected to a small residential neighbourhood surrounded by a wall. The houses are crowded in Al Rabadhah on both sides of the narrow path. Old houses had tanks under

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60 Ibid.
61 Jawatha is the oldest mosque in eastern Arabia and people still pray every day there.
62 The second phase is the most prominent, as the elements of construction were clear. The main building is rectangular, measuring 11 meters by 3.2 meters and includes a courtyard called the mosque courtyard, which measures 9.25 meters by 13.2 meters, with four doors.
63 SCTA, above n 22; Alzahrani, above n6.
64 Al Rabadhah is well known as Hanakia.
their floors to collect the rainwater. The city is full of old palaces, large pathways, walls, and towers.\textsuperscript{65}

**Faid** is also one of the important heritage sites in Saudi Arabia. It is located about 110 kilometres east of Hail and consists of the ruins of Khrash Palace, which is believed to be the site of an ancient city that dates back to pre-Islamic times. It was a main station on the pilgrims’ route to Mecca, as it is located along the road between Kufa and Makkah. A team from SCTA has been working to excavate the site since 2005.\textsuperscript{66}

### 2.3 History of Saudi Arabia

Heritage protection and destruction in Saudi Arabia is closely aligned with the history of the state and nationalist ideologies and interests promoted by the Kingdom.\textsuperscript{67} In some cases, this association has resulted in the protection of sites valuable for their heritage. But the fact that heritage value must be aligned with nationalistic identity rather than for outstanding universal value, the metric used by the World Heritage Commission, shows the need for progress in this area in terms of norms and values of heritage protection in Saudi Arabia.

The Al Saud family began in Ad Diriyah, in the center of Najd, which is close to what is today the capital of Riyadh. The ancestors of the Saud ibn Muhammad Saud family settled there around the 1500s when they took over some date groves, one of the only types of agriculture the area could support. Over time the region became a small town and the Al Saud family, its leaders. Their rise to power is closely associated with Muhammad ibn Abd al Wahhab, a Muslim scholar whose ideas form the basis of the Wahhabi movement. He was

\textsuperscript{65} Saad Al-Rashed, Bin Abdul-Aziz Al Rabadhah, *A picture of the early Islamic civilization in Medina* (Department of Archaeology and Museums, King Saud University, 1986).

\textsuperscript{66} Findings suggest the people of Faid were advanced in architecture, construction, and city planning. Khrash Palace, for instance, was rectangular in shape and had a square castle to the northeast, in addition to large rooms and courtyards to the north. To the southeast of the Kharash palace, there are two pools: The western and eastern, each separated by a narrow channel. The western was built in a square shape, while the eastern was built in a rectangular shape. Faid contains many other wells and water channels. SCTA, above n 22; Alzahrani, above n6.

\textsuperscript{67} Joseph A. Kechichian, Reforming the Judiciary in Saudi Arabia, *Middle East Institute* (1 December 2014) <http://www.mei.edu/content/reforming-judiciary-saudi-arabia>.
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from Uyaynah in southern Najd, and studied in one of the strictest Muslim legal schools, Hanbali Islamic law.68

One of the Shia beliefs and practices involved visiting shrines of the Imams, as well as continued worship of the Imams after their death. Some of the Arabian tribes, however, came to attribute the same type of power the Shia gave to the shrine of an Imam to natural objects, and these beliefs deeply perturbed Muhammad ibn Abd al Wahhab who believed in the Muslim principle that there is only one God, and that God was neither an Imam nor a rock or tree. In the 1730’s, he returned to the town of Huraymila in Najd to preach against the Shia and their religious practices. His followers came to refer to themselves as “Unitarians”, and their enemies as “Wahhabi’s”.69

Muhammad ibn Abd al Wahhab, unable to find support, attached political importance to the Muslim ideology of a single God, and as such, sought out local leaders to persuade them that the idea was a matter of Islamic law. Unable to find political support in Huraymila, Muhammad ibn Abd al Wahhab returned to Uyaynah, where he won over some leaders. The anti-Shia message, however, alarmed the people and leaders of Uyaynah, and he left the area, heading instead to then Ad Diriyah where he had already made contact with its leader, Muhammad ibn Saud.70 In fact, two of its family members had accompanied him to Uyaynah where they destroyed tomb shrines. When he arrived, therefore, the Saud family was ready to support him. In 1744, the two made a pact to work together to create a state run on Islamic principles.71 Muhammad ibn Saud started by leading armies into Najdi towns and villages to stop Shia practices. By 1765, Muhammad ibn Saud’s and his forces had gained political authority and established Wahhabism over most of Najd.

After Muhammad ibn Saud died in 1765, his son Abd al Aziz went on to capture Karbala and in 1803 continued to take other sunni towns, destroying monuments used to pray to Muslim saints, which the Wahhabi’s believed to be polytheistic. By destroying the objects of Shia worship, the Wahhabis hoped to mimic the Prophet Muhammad’s demolition of pagan idols

69 Alalogi, Al-Hariri, above n 36, 27,28,29
70 The first Saudi state was established in Diriyah by Imam Muhammad bin Saud in the beginning of the 18th century AD. He came to power in 1726 AD and succeeded in establishing a stable and prosperous political rule. Ibid.
71 Ibid; Al-Hariri, above n 36, 29
when he re-entered Mecca in 628.\textsuperscript{72} In the January 14, 1902 King Abdul-Aziz recaptured Riyadh in a daring battle, an event that marks the beginning of the formation of the modern state of Saudi Arabia. After establishing Riyadh as his headquarters, Abdul-Aziz proceeded, over the following decades, to unite the different regions into one nation.

Taking control of the Hijaz region put the Al Saud family in battle with the rest of the Islamic world, many of whom were Shia Muslims who believed their religious practices to be correct.\textsuperscript{73} Also, rule over the Hijaz was symbolic. The most significant political force at the time, the Ottoman Turks, refused to give control over the Hijaz to local leaders. Because the Ottoman Empire had been in decline for over two centuries, they were unable to regain control over the Hijaz in the early nineteenth century. The Ottomans therefore gave the task of recapturing the Hijaz over to Muhammad Ali, their commander in Egypt, and with his son, Ali led a force to the Hijaz in 1816. However, in the end, the Wahhabi’s and the Saud family was no match for the Egyptian army, and their empire fell in 1818.\textsuperscript{74}

\section{Heritage sites in Saudi Arabia}

There are hundreds of historical relics and architectural monuments including castles, wells and forts that date back to this period. Nowadays, the old Kings’ and princes’ ancient palaces have been turned into museums which display antiquities and heritage of the modern period of the Saudi dynasty. Moreover, all of these buildings and sites are managed by the SCTA such as Masmak Castle,\textsuperscript{75} which received important renovation in the 1980s and became a museum in 1995. It displays many antique guns, costumes and agriculture artefacts. Another site is Al Murabba’a Palace which is situated outside the original city walls. The SCTA turned the palace into a Research Centre which conducts exhibitions on aspects of Islamic art or culture.\textsuperscript{76}

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{72} Metz, above n 7.
\item\textsuperscript{73} Ibid.
\item\textsuperscript{74} Alalogi, above n 66.
\item Masmak Castle (Qasr al-Masmak) is located in the center of the old quarters in Riyadh considered as one of the most famous. It was built in 1865 under the reign of Mohammed bin Abdullah bin Rasheed. Masmak is the site associated with the foundation of Saudi Arabian kingdom. Today the castle is one among several buildings that form the King Abd al-Aziz Historical Center, a series of restored buildings in Riyadh. Michael Rice, \textit{The archaeology of the Arabian Gulf}, c. 5000-323 BC (Routledge, 2002)
\item Al Murabba’a Palace built in 1946 by King Abdul Aziz as a home and seat of government, the palace has been preserved as a living example of Arabian royal life. Yasser Elsheshtawy, \textit{The evolving Arab city: tradition, modernity and urban development} (Routledge, 2008)
\end{enumerate}
\end{footnotesize}
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Under Saudi national heritage protected list, heritage sites are classified as a specific areas or sites such as a feature or building (Figure 10), which is valued by people for its natural or cultural heritage significance. The graph illustrates the number of heritage sites, which have met the national standard. Asir and Riyadh have the largest number of heritage sites as they represent traditional Islamic, Arabic culture and a variety of cultural groups. Comparing these with the long history of human settlement at Najran and Jizan, relatively few sites have been recognized there. Moreover, Mecca is the oldest city in the Arabic Peninsula and has many sites but, as discussed below, few sites are left after the demolition of the city.

Saudi Arabia has ratified the World Heritage Convention, and it cooperates with the World Heritage Centre, as well as other foreign consultants and experts, in the protection of sites listed as World Heritage Sites. There are sites currently being protected as a result of cooperation from the Kingdom, yet there is significant room for improvement. The successes and challenges of the recognition of world heritage sites in Saudi Arabia detailed below illustrate the relative weakness of international heritage law due to the fact that cooperation from state parties is necessary for enforcement.

As mentioned above, history ties to heritage as illustrated by the Saudi nation’s rich history and cultural heritage, dating back to the pre-Islamic era. In addition, Dir'aiyah, and Al-

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77 The numbers of sites have been mentioned in the SCTA Report 2009 in each region, the number of recognizable changes regularly as much as they add and remove sites.
78 More details about the world heritage list will be covered in chapter six.
79 Most of this information has been collected during the fieldwork 2014. The national list still under construction and the information not available for public until now.
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A’asda, are ancient towns dating back to the middle of the 18th century. These historic sites together with monuments are important as they give a distinctive character to the country. Al-Hijr Archaeological Sites (2008), At-Turaif District in ad-Dir’iyah (2010), Historic Jeddah, the Gate to Makkah (2014) and Rock Drawings in the Hail Region (2015), which will be explored further below, are properties inscribed on the World Heritage List under the cultural categories. Upon the King’s approval for the registration of several Saudi archeological and heritage sites, on 15th of May 2015 Saudi Arabia nominated ten sites for inscription on the Tentative List, which are:

1- Darb Zubayda (Pilgrim Road from Kufa to Makkah) (2015)
2- Hejaz Railway (2015)
3- Syrian Hajj Road (2015)
4- Egyptian Hajj Road (2015)
5- Al-Faw Pre-Islamic City in Central Arabia (Qariah)(2015)
6- Rijal Almaa Heritage Village in Assir Region (2015)
7- Zee Ain Heritage Village in Al-Baha Region (2015)
8- Al-Ahsa Oasis Cultural Heritage Landscape (2015)
9- Hima a rock art site in Najran (2015)
10- Dûmat Al-Jandal Historical Oasis in Al-Jawf Region (2015)

3.1 World Heritage List in Saudi Arabia

3.1.1 The Al-Hijr Archaeological Site

The Al-Hijr Archaeological Site (Madân Sâlih), formerly known as Hegra, is the largest conserved site of the civilization of the Nabataeans south of Petra in Jordan. A well-preserved archaeological site, it features 111 monumental tombs, 94 of which are decorated facades, some cave art, 50 inscriptions of the pre-Nabataean period, also known as the pre-Islamic period, and water wells constructed between the 2nd and 3rd centuries B.C. and the pre-Islamic period, particularly in the 1st century A.D. Most of the monuments date from between the 1st

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century B.C. and the 1st century A.D. The site bears witness to several elements of the Nabataean civilization, including their architecture and hydraulic knowledge.\(^{81}\)

The ancient city of Al-Hijr, for example, bears witness to an international caravan trade.\(^{82}\) The site is located at a centre of the trade route between the Arabian Peninsula, Asia and the Mediterranean, where different civilizations of antiquity crossed. For two centuries the Nabataean kingdom extended from southern Syria, the Negev and Hedjaz and the Roman world to the west. It evidences a number of significant cultural exchanges, including architecture, decoration, the caravan trade and language. For instance, as Al-Hijr, or Hedra, was the major point on the north-south trade route, it was also secondarily linked to the port of Egra Kome according to a Greek-language source.\(^{83}\)

Figure 11: The Al-Hijr Archaeological Site, Saudi Arabia.\(^{84}\)

In addition, in 106 A.D the Hedjaz region was integrated into the Roman province of Arabia. In fact, a Roman epigraph was discovered at Al-Hijr that dated back to 175-177 AD. At that time, the Hedjaz region became integrated with Roman history and then Byzantine history until the 7th century. The site also includes well-preserved monuments cut into the rocks and different cultural artistic influences in their decoration, including Assyrian, Egyptian,

\(^{81}\) Bernard, above n 8.
\(^{82}\) Taylor, above n 15, 45-101.
\(^{84}\) Saudi Commission for Tourism and Antiquities official website.
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Phoenician, and Hellenistic. In addition to the Nabataean language, the cave art at Al-Hijr shows the presence of several different languages, including Lihyanite, Talmudic, Greek and Latin.\textsuperscript{85}

Al-Hijr is the first world heritage site to be recognized by UNESCO in Saudi Arabia.\textsuperscript{86} Al-Hijr is also protected under Saudi national law through a listing for protection by SCTA. The process to be listed nationally is not transparent to the public or systematic but, based on documents released by the Commission, and involves coordination with local, regional and national authorities and government archaeologists.\textsuperscript{87}

Unlike with Jeddah discussed below, Saudi Arabia provided UNESCO with a detailed petition to list Al-Hijr as a world heritage site. This included the provision of planning documents, maps of the site’s features, and a management plan for visits.\textsuperscript{88} A systematic process was followed by government archaeologists and officials from the Commission.

Most likely, the difference between Jeddah and Al-Hijr is based on the fact that Al-Hijr is a bounded archaeological site, whereas Jeddah is a city that includes archaeological sites within a contemporary functioning community. Saudi Arabia’s petition for a significant portion of Jeddah to be protected was too broad. By contrast, the petition and process to list Al-Hijr as a world heritage site was detailed and specific.\textsuperscript{89}

3.1.2 At-Turaif District in ad-Dir'iyyah

The At-Turaif District in ad-Dir'iyyah was founded in the 15\textsuperscript{th} century and was the first capital of the Saudi Dynasty. It is in the centre of the Arabian Peninsula, near Riyadh.\textsuperscript{90} The district displays the Najdi architectural style that was specific to this part of the Arabian Peninsula. In the 18\textsuperscript{th} and 19\textsuperscript{th} centuries, the region’s political and religious role increased. At the same time, its citadel became the centre of power for the House of Saud, (the Al Saud family), and

\textsuperscript{85} Taylor, above n 15.
\textsuperscript{89} Alzahrani, above n 6.
\textsuperscript{90} Alalogi, above n 6; Exell and Rico, above n1, 145.
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the place of Wahhabi reform within the Muslim religion. The district houses the remains of palaces, among others, built on the ad-Dir’iyah’s edge.91

The presence of humans in the Wadi Hanifah area, which includes ad-Dir’yah, dates back 80,000 years as evidenced by remains. Because of its harsh conditions, the area first attracted only nomads and hunters. Just north of Riyadh the remains of a village dates back to the fifth century B.C. In the third and second centuries B.C., agriculture appears to have developed along with the domestication of camels. Arabia played an important part in the caravan trade route that went through the Indian Ocean, the Mediterranean Sea, and the Fertile Crescent, with settlements developing along the route during the first century B.C.92 However, trade and settlements declined in the Arabian Peninsula with the rise of Christianity and the Roman Empire. Instead, nomads took shelter in these areas.93 The central part of the peninsula was controlled by the Yemenite Himyarite tribes. In the 5th century A.D., the Christian Banu Hanifah tribe restarted agricultural practices but was conquered in 634. Nonetheless, it appears that the Banu Hanifah Christian tribe rebelled against the Caliph in the 6th and 7th centuries and did not give in to the Abbasid power until the 9th century. In the 9th and 10th centuries, agricultural development in the central area of Arabia was slow and the population significantly decreased.94

![Figure 12: At-Turaif District in ad-Dir’iyah Saudi Arabia.](image)

91 Clifford Edmund Bosworth, Historic cities of the Islamic world (BRILL, 2007) 134.
92 Metz, above n 7.
93 Wayne, above n 9.
95 Saudi Commission for Tourism and Antiquities official website.
In the 15th century, better climatic conditions in the region allowed for resettlement. It was at this time that Ad-Dir'iyah appears to have developed and became an important centre of trade. As such, the power of the Banu Hanifah families was challenged. During the 17th century, only Ad-Dir’iyah and two other oases were still under their control. In 1720 Saud Bin Muhammad took control of Ad-Dir’iyah and the House of Saud emerged.

In the 18th century, the successors of the Saud family continued to rule and instigate in the region. Sheikh Mohammad Bin Abdul Wahhab espoused a Reform, based on the Muslim tradition, namely the oneness of God, which the second Imam, Muhammad Bin Saud, established in 1745 as the moral principle of the state. Ad-Dir’iyah became the centre of this reform. 96 In the 18th and 19th centuries, ad-Dir’iyah became the centre of a powerful Islamic legal organization, and the political and military power of the House of Saud. 97 The success of the Sunnah Reform and the growing military and political power of the House of Saud was a concern for the Ottoman Caliphate who wanted to take control of the Hijaz region and tensions remained for over thirty years. Initially, the House of Saud was victorious and influenced the Hijaz region, but the Ottomans reconquered the Hijaz in 1813 and ultimately ad-Dir’iyah in 1818. However, in 1824, the Imam Turke re-established the power of the House of Saud, driving the Ottomans out. 98

The site is the second of two listed as a world heritage site by UNESCO. In its justification for accepting the site for listing, UNESCO noted the intervention of the Saudi government in protecting its heritage integrity. 99 This included being protected by the national Antiquities Act, passed in 1972, and receiving specific attention by the Commission and the Ministry of Education and Council of Antiquities. The site, like Saudi Arabia’s other protected site, Al-Hijr, is located in a remote area away from urban development. UNESCO cites this fact as a reason for its integrity, since it has not been subjected to “modern development.” 100 Similar to Al-Hijr, At-Tarif is an archaeological site subjected to expert and government management. The At-Tarif site also illustrates the fact that listing as a world heritage site is an on-going

96 Mark Weston, Prophets and princes: Saudi Arabia from Muhammad to the present (library of Congress, 2008) 91-102; Center for Heritage and Museum, Center of Historic Cities in the Kingdom of Saudi Arabia (SCTA, 2010). Arabic version.
97 Bosworth, above n 89.
99 UNESCO, WHS, Decisions 34 COM 8B. 15 ; Cultural Properties - At- Turaif District in ad- Dir'iyyah (Saudi Arabia (1 May 2014)<http://whc.unesco.org/en/decisions/3994>
100 At-Tarif District, above n 86.
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process. According to UNESCO, Saudi processes of protection, restoration and management are systematically reviewed. UNESCO lauds Saudi Arabia for developing a global management plan for the site to protect it from urban encroachment and tourist visitation.

3.1.3 Historic Jeddah, the Gate to Makka

One of the most valuable, and threatened, heritage sites in Saudi Arabia is the Historic Jeddah, the Gate to Makka known as Al Balad, located in the centre of Jeddah city. Some sources date the city of Jeddah back to the time before Islam, and thus the site possesses significant pre-Islamic relevance in the history of the Saudi peninsula. Jeddah underwent the most historical change in the year 647 AD. At this time, the city was turned into a harbour which pilgrims could come through to reach Makkah for Hajj. At that point, Jeddah was called Balad Al-Qanasil, or the country of consuls. To this day, Jeddah remains the main route for sea and air access and land transportation to Makkah for pilgrims. Jeddah has always remained under the influence of the next successive Khalifat.

Figure 13: Al Balad, Jeddah, Saudi Arabia.

101 Ibid.
102 Ibid.
103 Jeddah is on the western coast of Saudi Arabia, on the Red Sea. It has come a long way from a small fishing village to a modern cosmopolitan city over a period of 2500 years. More than 90% of Jeddah was developed after 1948 as a response to the expanding Saudi economy; hence its housing stock and infrastructure are relatively new. Saleh Al-Hathloul, Muhammad Aslam Mughal, Jeddah, Cities,elsevier, Volume 8, Issue 4, November 1991, 267–273. Also see James Buchan, Jeddah, Old and New (Stacey International, 1991) 143; Bosworth, above n 89, 222–227.
104 Abdul Latif Alhjami, Protection and Development of the historic city of Jeddah, a report on the development proposals (2004), the Ministry of Tourism and Antiquities.
105 Michael Petzet et al, Heritage at Risk, Merchant Mansions in the Historic Centre of Jeddah, 2008–2010, ICOMOS.
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Jeddah’s historical area is considered to be one of the city’s most significant areas because of its one-of-a-kind architecture, authenticity and unique planning. Some of its historical buildings include the Old Jeddah Wall and Gates, the old quarters “Al-Mazloom Quarter, Al-Sham Quarter, Al-Yaman Quarter, and Al-Bahar Quarters”, and a number of historical mosques, such as the Uthman Ibn Affan Mosque, Al-Shafeey Mosque, Al-Basha Mosque, Ukash Mosque, Al-Meamar Mosque, and Al-Hanafi Mosque. The old area of the city is also home to many heritage buildings that are all still in use, as well as old Souqs, or marketplaces, such as Al-Nada Souq, Al-Khasequiyah Souq, Al-Alaweey Souq, Al-Saghah “Jewelry” and Bab-Macca.

The historical area of Jeddah is noted for its architecture which is unique in the entire Red Sea zone, including its historic palaces and residential buildings (Figure 12). The urban part of the historical area of Jeddah is noted for its planning. For instance, streets have quadrangles and piazzas at their ends, allowing people to see far down each street, and also providing the residents with a place to engage in activities with one another, such as religious holidays, evening celebrations and other social gatherings. In some cases, local cafes and shops were located in each quarter for the residents’ convenience and needs. Mosques located in the various quarters offered another traditional gathering place.

Figure 14: Bait Al Balab, Jeddah, Saudi Arabia.

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107 Petzet, above n 103.
108 Alhjami, above n 102.
110 Bait Al-Balad, Jeddah, Google Earth(11 May 2014) <http://www.panoramio.com/photo/64569473>
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The historical quarters of Jeddah are also noted for their narrow alleys and streets, which help keep out the sun’s heat by providing shade. The quarters are also shaded from the sun by the way the streets and alleys are situated and the way the houses are connected. In Old Jeddah, almost all homes were decorated with Roashan, and trimmed stones, a style which became a distinguished form of art of the Islamic civilization. The architecture and decoration offered a certain level of privacy for the residents because it allowed them to see other people in streets, alleys, and quads without compromising their own privacy. This linked structure served to tighten the social links between resident neighbours, encouraging social gatherings, and in turn, creating a sense of security and safety from outsiders.

In all of the ways described above, Jeddah is a living example of an authentic Arabic Islamic city with pre-Islamic origins. In fact, the historical area of Jeddah is the oldest urban area from which the modern metropolitan space has developed. Currently the modern urban area’s authenticity is enriched by traditional elements including the heritage buildings, some of which are still in use today. These old buildings show elements of the various aspects of the Islamic civilization, including Andalusia and Ottoman art as well as the Arabesque architectural and decorative formations of mosques and houses.

As a result of these traditional, unique and authentic elements of an ancient Arabic city, the historical area of Jeddah has received a great amount of attention from the government and visitors from around the world, including high profile state guests such as kings, presidents, and ministers. The historical area of Jeddah has become the centre of attention for those who come to visit the region and an inspiration for professional writers, photographers, and other artists.

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112 Roshan is a type of heritage windows wood attached to houses, it is a Persian word mean light, Roshan allow sun and air to the house. It was brought to Mecca in the early fourteenth century AH from Malaya. Yamani, Ahmed Zaki, Tashkandi, Abbas Ibn Saleh, Mawsuat Makkah Al-Mukarramah Wa-Al-Madinah Al-Munawwarah ( Furqan Foundation for Islamic heritage, 2007 ) 2-3; Exell, Rico, above n1, 198-151.
114 Petzet, above n 103.
115 Alhjami above n 102.
Despite its historical and cultural significance, in June 2011, UNESCO rejected Saudi Arabia’s application to place Jeddah on the list of world heritage sites.\footnote{UNESCO refuses to consider Old Jeddah a world heritage site’ Arab News (online) June 12, 2011 <http://arabnews.com/saudiarabia/article453265.ece>; Exell and Rico, above n1, 151.198.} Ironically, UNESCO’s justification for refusing to list Jeddah as a world heritage site was the fact that Jeddah had been “subjected to negligence and misuse from people who did not recognize its value.”\footnote{Arab News above n115.} In other words, if Saudi Arabia had better protected Jeddah, it would have had a better chance of being listed.

Jeddah is protected under Saudi national law.\footnote{All the pictures in this chapter has been taken by me.} It is listed on the SCTA list of protected heritage sites.\footnote{Chapter six will cover the protection system in Saudi.} The process to be listed under national law, however, is not transparent. Based on a review of government documents and media sources, Jeddah gained national protection because of coordinated efforts by individuals at the local, regional and national levels, not through a systematic process. This is an obvious flaw in heritage protection in Saudi Arabia.

In its rejection of Saudi Arabia’s petition to list Jeddah as a world heritage site, UNESCO cited a distinct process that Saudi Arabia should follow to gain listing. First, local, regional and national authorities needed to restore the site in a way that emphasizes and protects its heritage, including mapping specific sites that are in need of protection.\footnote{Alhjami, above n 102.} Second, Saudi Arabia needed to present a management plan as to how the site would be protected and featured for tourist visits. The fact that Saudi Arabia failed to undergo these steps shows a lack of systematic heritage protection in the country.

\footnote{Arab News above n115.}
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On the 25th of June 2014 twenty-six new properties were added to World Heritage List. Historic Jeddah, the Gate to Makkah under article (ii)(iv)(vi) was declared a World Heritage site by UNESCO.

3.1.4 Rock Drawings in the Hail Region

Jabal Umm Sinman, Jubbah and Jabal Manjor/Jabal Ra’at Shuwaymis, are considered among the magnificent earliest ancient Arabian civilizations in the north of the Arabian Peninsula and one of largest rock art sites of the world. These examples of marvellous authentic Neolithic rock art sites that date back 12000 to 9000 years still remain in good condition. The sites are located at sea sand of the Great Nafud desert in the Hail region. Jubbah is located in the northwest of the city of Ha’il and Shuwaymis is in the southwest of Ha’il and near the town of al-Hayit. Reviewing the world heritage nomination file of the sites gives us a clear understanding about the history of the region and the settlements established by the earliest civilizations in the Arabic Peninsula, as it links this generation to a unique rich cultural heritage period of humanity. Moreover, by registering these sites in the World Heritage List play a substantial role in the protection of the sites. Therefore, National and international conservation are both necessary for the proper protection of such extraordinary heritage sites.

4. Other Sites

Saudi Arabia has a special geographic location, bridging civilizations between continents. In ancient times the Arabian Peninsula served as a corridor for trade; therefore, it saw the beginning of many civilizations, the relics of which are still evident today. As noted above, thirteen ancient (pre-Islamic) towns have been discovered in Saudi Arabia. There are still more ancient towns in Saudi Arabia but unfortunately there is currently no information available on them. In fact, there is a significant shortage of specialists in archaeology, heritage conservation and heritage law in Saudi Arabia.

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Most significant archaeological sites are the focus of discovery by Western experts from the UK, USA, and France etcetera. Many specialists in heritage in Saudi Arabia are focused on historical work, not conservation. The most well known Saudi expert is Professor Dr Abdul-Aziz bin Saud Gazan, professor of archaeology and ancient history. He is also a specialist in studies of ancient monuments at King Saud University. Other scholars include Professor Dr. Salim bin Ahmed Al Tauer, professor of ancient inscriptions at King Saud University and Mr. Abdul Aziz Al-Hammad specialist in archaeological excavations, and Gaz Al Harbe expert archaeological survey from the General Authority for Tourism and Antiquities, the archaeological sites and museums.

The lack of heritage laws and experiences in Saudi Arabia is the result of the fact that the government’s interests are closely aligned with archaeological and historical studies in Saudi Arabia. An independent academic community of heritage experts is fledgling but it still lacks the ability to provide a strong voice against modernization and government policy that might threaten heritage.

5. Heritage Issues in Saudi Arabia

Saudi Arabia is the birthplace of Islam, and this heritage alone should implore Saudi Arabia to embrace significant heritage protection laws and practices. Furthermore, the Arabian Peninsula is also the site of pre-Islamic society essential to an understanding of nomadic culture, ancient trade routes, and the emergence of human civilization in the Middle East. Pre-Islamic and Islamic heritage are both deserving of special protection by Saudi Arabia. Unfortunately, there is strong evidence that such protections are lacking in the Saudi legal regime and in practice.

Perhaps the most glaring example is the government’s approval of massive development adjacent to holy sites in Mecca. Mecca is the destination for millions of pilgrims whose Islamic faith instructs them to try to make the pilgrimage at least once during their lifetimes. In order to capitalize on the pilgrimage industry, Saudi Arabia has approved skyscraper

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124 For more information and pictures about western experts planning work see SCTA, (1 Feb 2015) <http://www.scta.gov.sa/Antiquities-Museums/Researches/Pages/Reports.aspx>
125 Sebastian, above n 3.
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development right next to crucial sites, including the Grand Mosque and the Kaaba. While this development does not physically damage these sites, the broad definition of heritage to include the buffer zones, as identified by UNESCO, suggests that this development does, in fact, compromise the value of this heritage. The skyscraper development physically overwhelms these heritage sites and thus diminishes their value, not just to the appreciation of pilgrims but also non-Islamic populations. Non-Islamic individuals are less likely to look upon Mecca’s holy sites with the deserving wonder this heritage demands as a result of the surrounding development. Therefore, not only is Saudi Arabia threatening its Islamic heritage for pilgrims, it is diminishing the value of such heritage and thus its capacity to foster understanding, cooperation and goodwill with the non-Islamic world.

The elimination of a site from the World Heritage List illustrates the dangers where heritage is not valued by domestic parties, particularly where sites are under development pressures. In Germany’s Dresden Elba Valley, a variety of sites including palaces, monuments and parks from the 16th Century represented heritage of outstanding universal value that was diminished as a result of roads and bridges through the region. Germany’s development activities, sanctioned by the state, resulted in this site being placed on the List of World Heritage in Danger in 2006 and its eventual elimination from the World Heritage List in 2009. Germany considered the value of the heritage site in terms of both economic and cultural protection perspectives and concluded that its transportation needs were greater than the value of the site as listed under the Convention. It should be noted that Germany maintains still values the cultural heritage of the Dresden Elba Valley and continues to include it within a domestic protection framework. Saudi Arabia might thus consider implementing strong domestic protections for heritage that the World Heritage Committee considers threatened under its definition of outstanding universal value because of development and other pressures.

Indeed, the dualistic nature of heritage protection as either destroyed or preserved need not be the only manner in which to view protection. Some states have maintained protection of their sites under domestic regimes even as development has occurred around the sites, while they

have also sought consultation from the World Heritage Centre and its advisory bodies on ways to protect sites under pressure from development, vandalism, theft, and other forms of potential degradation. Development activities in the Kathmandu Valley were integrated in the heritage protection plan for this site in consultation with the World Heritage Centre. The Kathmandu Valley has urbanized to an extraordinary extent in recent decades, but the site has been able to maintain its listing.

Of significant concern, Saudi Arabia is currently in the process of destroying its heritage by demolishing historical and sacred sites, including historic mosques and buildings, homes and important Islamic sites in the holy cities of Medina and Makkah in order to make way for new real estate developments. For instance, few years ago, the historic and sacred Mosque of Al-Imam Ali Al-Aridhi, grandson of Al-mam Ali bin Abi Taleb was destroyed in the holy city of Medina. Great controversy surrounded this event as Abi Taleb was buried underneath the Mosque. Also, the famous Bani Qoreyza Mosque was destroyed even though it had, to the Islamists and Muslims, great religious, historic and cultural importance as well as sacred status because the Mosque was built during the period of the Prophet Muhammad.

Tarek Fatah, a Pakistani-Canadian Muslim activist and broadcaster, called the destruction of these historic and sacred sites a cultural massacre of Islamic heritage. Perhaps most importantly, the home of the Holy Prophet Muhammad, where Muhammad’s daughter was born and where his wife lived, were demolished in the name of an expansion project. Fatah remarked on the lack of response from Muslims regarding this demolition, calling it “incomprehensible” and that what was to replace Muhammad’s home was a real estate project including a parking lot, two 50-storey hotel towers and seven 35-storey apartment blocks, all very close to the Grand Mosque.

Fatah states that the demolition of sacred buildings is not a new event. For example, in the early 1920’s, the Saudis destroyed the Cemetery of Al-Baqee, which was a sacred cemetery where the bodies and shrines of the holy Prophet Muhammad, his daughter Fatimah Az-Zahraa, his grandsons Imam Hasan Al-Mojtaba, Imam Zein-ol Abideen, Imam Baqer, Imam

130 Ibid.
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Jafar As-Sadeq, and his companions were housed. Another cemetery, called the Jannatul Moalla in the holy city of Makkah, was also demolished by the Saudis. This cemetery housed holy shrines of the holy Prophet, his wife Sayyedah Khadija Al-Kobra, his grandfather and uncle Abdul-Mottaleb and Abu Taleb.

In 2005, the media reported that some of Saudi Arabia’s most historic sites in Holy Makka were going to be destroyed by Saudi real estate developers, including, and most importantly, the Prophet Muhammad’s home. Sami Angawi, an expert on Islamic architecture, stated that 1400-year old sacred and historic buildings were being demolished in order to make room for high rise towers and hotels, as a way to provide housing and ease entry restrictions for at least twenty million Muslims who were making their annual pilgrimage to Makka. Indeed, Angawi was cited as stating that at least 300 historical buildings had been destroyed in Medina and Makka over a period of 50 years.

In addition to the threat from Saudi real estate developers, these sacred buildings are also under threat from an influential Muslim group called the Wahhabis. This group feared that other Muslims, who considered the buildings to be sacred, especially those associated with Muhammad, would turn to polytheism and idolatry. In fact, a decree was given by the Kingdom’s senior council of religious scholars in 1994, which ruled that preserving historical buildings might lead to polytheism. According to the Islamic Institute in Washington, the Kingdom’s senior council’s influence has affected and increased the destruction of most Islamic sites since Saudi Arabia was discovered in 1932.

Critics of the demolition of Islamic historical sites, like Geoffrey King, Islamic art and archaeology specialist at the School of Oriental and African Studies, say that the religious authorities have not taken into consideration the importance of these buildings to the Muslims and to scholars all over the world. Also, Angari opposes the housing of new pilgrims in these types of accommodation, stating that Makka, “the house of God, is being commercialized and these developments are disrespectful and totally out of proportion”.

On the other hand, there are some supporters, such as one real estate agency, that cited

131 Ibid.
133 Alzahrani, above n 6.
134 Ali, above n132.
135 Alzahrani, above n6.
136 Ali, above n 132.
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Makka’s poor infrastructure as proof of its need for new apartments and other high rises. In addition, the Jabal Omar Development Company, which is in charge of the major project, stated that the firm was changing Makka for the better, especially by destroying a number of poorly built homes on the hillside.\footnote{61}{Alzahrani, above n 6.}

In an article by Muhammad Humaidan in the Arab News in 2011, the writer states that there are 8,000 buildings about to collapse in Jeddah.\footnote{138}{M Humaidan, ‘8,000 buildings in Jeddah on the verge of collapse’, Arab News (online) 16 February 2011 <http://arabnews.com/saudiarabia/article263842.ece>}. In addition, he reports that a fire in February, 2011, caused Jeddah to lose two other historic buildings, which brought the total number of historic buildings destroyed to date by fires to 200. Humaidan cites an informed source from the municipality who suggested that the fire may have been deliberately set. This possibility would not be far-fetched, given the attitude towards historic sites in Saudi Arabia, many of which have been destroyed in order to make way for new real estate investments. Therefore, the same sources state that these buildings, including non-historic ones, which are on the verge of collapse, are testament to the neglect of what they refer to as their “historic legacy”.\footnote{139}{Humaidan, above n138.}

![Figure 16: The collapse of old Jeddah buildings.\footnote{140}{Ibid.}](image)

According to the Civil Defense, the fire started in an apartment on the second floor in one of the historic buildings.\footnote{141}{Ibid.} However, there were no injuries or deaths, as the residents had been evacuated before the fire had completely engulfed the two buildings. Also, the fire did not reach the historic Bait Naseef. The Civil Defense stated that the fire spread rapidly due, in part, to the wood windows of the buildings. Municipal sources add that of the 8,000 buildings

\begin{itemize}
\item \footnote{137}{Alzahrani, above n 6.}
\item \footnote{138}{M Humaidan, ‘8,000 buildings in Jeddah on the verge of collapse’, Arab News (online) 16 February 2011 <http://arabnews.com/saudiarabia/article263842.ece>.}
\item \footnote{139}{Humaidan, above n138.}
\item \footnote{140}{Ibid.}
\item \footnote{141}{Ibid.}
\end{itemize}
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about to collapse in Jeddah, not counting historic buildings, 3,000 of those are houses that have been classified as dangerous and their tenants have been told to contact the municipality immediately. Also, according to expert sources, the Saudi Electricity Company has warned the owners of about 6,000 buildings in Makkah for which they will shut down power in order to force occupants to find safer homes.142

Representatives from the International Council on Monuments and Sites, UNESCO and ICOMOS, visited the historical district of Jeddah on November 17, 2011.143 The group consisted of specialists in archaeological repair and restoration, and was given a tour of some of the most important historical sites by Ali Al-Ghabban, vice chair of the SCTA, at the same time Jeddah authorities were looking to have the site listed on the United Nations (UN) World Heritage List. In addition, UNESCO and ICOMOS participated in a two-day workshop with such prominent bodies as SCTA, the Makkah Emir’s Office, the Jeddah Mayoralty and Civil Defense.

In an effort to preserve the historical buildings that are left after the destruction over the last three centuries, Prince Khaled Al-Faisal, Emir of Makkah and the Chairman of the High Committee for the Development of Historical Jeddah, have issued orders to meet the requirements provided by UNESCO for including Jeddah in its list of World Heritage Sites. Al-Ghabban stated that their goal goes beyond simply getting Jeddah on the List.144 In addition, they want to make sure the area is turned into a place of cultural and economic activity and interest, and in the process, ensure its preservation and safety. Sami Nawwar, President of the Historical District Municipality, praised the effort, saying that the visit shows that the Emir of Makkah and the Governor of Jeddah are concerned with the development of the zone.145

The threats to Saudi heritage sites illustrate the shortage of specialists, as well as philosophical, legal, and institutional resources. As an authoritarian regime ruled by a monarch, Saudi Arabia lacks the pluralistic institutions of civil society that could ensure that

142 Ibid.
144 Interview with Ali Al-Ghaban, Vice President for Antiquities and Museums Affairs Saudi Commission for Tourism and (personal communication in a participation in field work, 24th January 2014).
145 Tour around old Jeddah with Sami Nawwar, President of the Historical District Municipality (personal communication in a participation in field work, 1st January 2014).
official pronouncements of heritage preservation are more than just words. The government has carte blanche authority to determine heritage protection or destruction on its own merits without fear of a political or legal backlash. There are currently no environmental groups, preservation groups, impartial justice system, or political process that exact pressure on the Kingdom to protect heritage.

For example, the Kingdom currently promotes heritage in some areas, such as limited areas of Jeddah, while destroying heritage in other areas, namely Mecca. This shows that heritage protection in Saudi Arabia occurs at the whims of the regime and is not subject to any external pressures. It also shows a lack of planning and management. UNESCO heritage protections thus fall within the same category as UN human rights laws, valuable in principle but only as good as the State regime that decides to implement them.

However, the Kingdom’s violations of sites holy to Islam, in the pursuit of economic development that is intended to improve the reputation and practice of Islam, raises confounding issues of whether the Kingdom is, in fact, simply creating new heritage that is more relevant to contemporary practitioners. If the development projects in Mecca, for example, improve the reputation and practice of Islam, then is this not a more desirable end for the Kingdom and Islamic culture than the preservation of the Prophet’s dwelling, which is desirable to non-Islam preservationists and secular Muslims?

In addition, as a promoter of Islamic culture in Saudi Arabia, does the Kingdom enjoy the same rights some Western scholars believe should be bestowed upon indigenous peoples? The Kingdom represents traditional Islamic and Arabic culture much like indigenous cultures represent their heritage, and if the expansive notion of heritage includes allowing participants to decide what is valued heritage and what is not, then perhaps criticisms of the regime’s activities are unfair and reflective of Western bias toward self-determination of traditional culture. The question revolves around how one distinguishes the commercial motivations of the Kingdom from religious/cultural motivations. Critics claim the Kingdom’s neglect of heritage is in the service of commerce, but if development around Mecca is intended to increase visitation as part of holy pilgrimages, this criticism becomes ever more problematic.
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Obviously, the notion of Western and/or secular critics lambasting Saudi Arabia for failure to protect Islamic sites is quite ironic. Certainly, the Kingdom believes that it knows best what should be protected, and there is substantial resentment against the West and secular critics for trying to interfere in policies that impact upon Islamic heritage. The lessons from Saudi Arabia illustrate the many problems and complications of enforcing heritage protection in a country that lacks pluralism, distinguishes its heritage from the modern world, and has a history of self-determination.

Fortunately, there is some evidence that Saudi Arabia is recognizing the importance of heritage protection. The Supreme Council of Tourism, the Deputy Ministry of Antiquities and Museums and the National Guard are charged with heritage protection, though most scholars agree that their efforts lack cooperation and are subject to simple neglect or rejection by the Saudi leadership.146 In addition, scholars recognize the growing importance of Saudi media in reporting on the need for heritage protection.147 Of course, media is also subject to censorship as a result of the authoritarian Saudi political system. The full benefits of heritage protection are not likely to be realized until political and legal reforms successfully modernize the country. The introduction of legal protection, though hampered by the authoritarian Saudi political system, represents a first step. Until then, heritage protection will remain a desirable but unrealized dream in Saudi Arabia.

6. Conclusion

Heritage law is only as good as the culture that decides its heritage is of value and that possesses the necessary resources to enact protection mechanisms. Resources include financial, institutional, philosophical, legal, expert and academic elements. Any deficiency in these resources leaves heritage protection unrealized. Lacking a pluralistic society that can exact political, legal and social pressure, means protection of the heritage of the Kingdom is at the whim of the regime.

146 For more information about the Deputy Ministry of Antiquities and Museums and the National Guard are charged with heritage protection see (24 June 2014)<http://www.scta.gov.sa/AboutSCTA/Pages/10YearsAchievements.aspx>
147 Sebastian, above n 3.
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However, heritage law scholarship questions the entire premise of heritage protection as a Western-imposed system. If the Kingdom can be considered a primary promoter and cultivator of Islamic and Arabic culture, then an expansive definition of heritage allows for subjective and evolving definitions that allow for the destruction of some sites for other cultural purposes. It remains to be seen whether commercial or cultural values motivate the Kingdom in its future heritage decisions.

The literature reveals positive and negative elements of heritage protection and practices in the Kingdom of Saudi Arabia. Positively, the Kingdom approved a new Antiquities law in June 2014 that significantly expands the previous statute, which was a royal decree that mostly reflected the general aspects of the 1972 Convention.\(^{148}\) The new statute strengthens heritage protection by expanding and detailing the various aspects of heritage protection, such as what sites are to be protected, how they are to be protected, as well as the protection of movable heritage, notably artefacts. The new law also strengthens the regulatory framework through the inclusion of new bureaucracies, commissions, and approval processes beneath the ministerial level. The role of outside experts serving as consultants to the new bureaucracy of heritage protection is also established under the new law. Lastly, the new law expands private and public institutions, notably museums, involved in showcasing heritage to the public. This will hopefully reinforce nascent norms and values of heritage protection in Saudi society. This law will be considered in details in chapter six.

However, the new law still reflects the fact that the Kingdom is an absolute monarchy, and all decisions can be overturned and influenced by the ministers and the king. The best-written law in an absolute monarchy is only as good in practice as the willingness of the royal family to live up to the spirit of the law. The question remains whether the Kingdom will take the path at the crossroads that leads toward greater heritage protection, particularly of pre- and non-Islamic heritage of outstanding universal value rather than those sites that reinforce nationalistic, commercial, and religious interests.

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Chapter 3 explores early legal efforts to protect heritage in a range of jurisdictions such as Europe, Australia and North America. The link between national and world heritage is emphasized in the WHC, which will be examined in Chapter 4.
Efforts to Protect Heritage before the World Heritage Convention

1. Introduction

Cultural and natural heritage is of value to all people but is vulnerable and at risk from forces, development, neglect and looting. Until the passage of the World Heritage Convention (WHC),1 the protection of ancient sites and artifacts considered of value to all of humanity were entirely subject to the whims of domestic authorities. Globally significant sites were protected, or unprotected, depending on the varying levels of concern by domestic authorities. This resulted in the degradation of some heritage sites resulting from development, neglect and looting. The WHC sought to establish international norms and resources for the protection of heritage sites, particularly for those sites that were vulnerable because of the inability, or indifference, of domestic authorities to secure their protection. This chapter explores international legal protection of heritage sites before the WHC and early domestic protection efforts.

2. Background

The goal of creating an international movement to protect heritage pre-existed the WHC as various stakeholders recognized the threat to heritage from development, warfare, looting, natural elements, and trade. National legal protection of heritage did not emerge until the establishment of a philosophy that supported intervention by government in private property rights,2 and this did not emerge in Britain until the middle of the 18th Century. By the late 19th Century, laws for heritage protection were

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1 Convention for the Protection of the World Cultural and Natural Heritage (Paris), opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975).
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part of national legal frameworks, but these laws were limited in their impact due to a lack of administration and funding. Most domestic efforts toward heritage protection in Europe, Australia and North America lacked strong governance until the 20th Century.

While the WHC represented the first international codification of heritage protection, numerous examples of heritage protection existed before the ratification of the Convention. These efforts can be characterized as relatively arbitrary and motivated by factors beyond any notion of outstanding universal value. Rather, efforts to protect heritage before the nation-state era (19th Century) occurred as private and public parties sought to protect heritage that supported nationalistic, institutional, and ideological interests. The aristocracy in the United Kingdom sought to protect heritage that supported and reinforced its claim to rule. Religious institutions sought to protect heritage that supported theological doctrine, institutional authority, and provided places of worship for the faithful. In those instances where ancient heritage was the focus of protection, private parties with interests in historical artifacts and architecture tended to lead heritage protection efforts. All of these efforts can be characterized as the nascent formation of a notion that certain products of culture deserve protection, albeit for reasons often different than the outstanding universal notion of the Convention.

In the modern era, the goal of creating an international movement to protect heritage pre-existed the WHC as the nation-state applied its systems of law, regulatory authority, and bureaucratic management to the effort. These efforts achieved

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significant gains for heritage protection, but they can also be characterized as reflective of the same motivations noted previously related to bolstering institutional authority, supporting ideological aims of the powerful, and reflecting private party interest in historical heritage, usually in the context of nationalistic or cultural pride.

Shortly after the nation-state period of heritage protection, various stakeholders from international organizations, academia, domestic governments and UNESCO Partnerships,\(^6\) recognized the threat to heritage from development, warfare, looting, natural elements, and trade. The chief distinction in this effort was that heritage value was associated with artifacts, culture, ruins, and architecture beyond the domestic scope. Mostly Western interests recognized the threat to non-Western heritage, mostly of ancient origins, from criminality and development. These stakeholders also recognized the limitations of domestic laws to protect heritage, particularly among those colonial or developing states with limited resources or indifferent governments.\(^7\) This awareness led to efforts to better protect sites considered to be of universal value, not merely in support of nationalistic, institutional, or ideological designs.

### 3. Early Domestic Efforts

The first known efforts to protect heritage emerged from the elites of an imperial system, primarily as a reflection of the interest by elites to protect heritage that reinforced their claim to power. Concern for the protection of heritage can be traced to China more than 1,000 years ago. The Northern Song dynasty of the 10\(^{th}\) and 11\(^{th}\) centuries began to develop a distinct interest in the preservation of ancient Chinese relics and monuments.\(^8\) The Northern Song recognized their interests in asserting their right to rule by linking their culture to ancient Chinese heritage. While there are examples of heritage protection from the ancient world, such as Mesopotamia, earlier

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conservation efforts traced to ancient civilizations were primarily maintenance of buildings associated with the current civilization.\textsuperscript{9} By contrast, the Northern Song dynasty sought to preserve ancient relics and monuments associated with previous civilizations, which were considered foundational to the Northern Song dynasty.\textsuperscript{10} Thus, this effort can be characterized as a formative event in the cultivation of a notion of heritage value that is still linked to institutional interests and ideologies but also looks outside the immediate culture for heritage value.

In the West, a similar dynamic can be identified among the philosophers, artists, and writers of an age that also looked toward the past for justification of contemporary pursuits. Concerns about heritage protection can also be traced to the Renaissance in Europe, when interest grew in the cultural production of the Western Classical Age.\textsuperscript{11} Monuments and buildings that formed the basis of Western Civilization from the ancient Greek and Roman eras became the focus of conservation by monarchs, nobility, wealthy merchants, and in some cases the Roman Catholic Church.\textsuperscript{12} These efforts lacked formal administration and funding sources, as well as a legal framework.\textsuperscript{13} However, like the Northern Song, these Renaissance-era efforts to protect Classical heritage reflected a turn of the cultural gaze beyond contemporary production. Another interesting aspect of the Renaissance value of classical heritage related to design and aesthetic preferences. The heritage targeted for protection was just as important for its artistic and architectural value, not simply to justify claims of institutional power.

The first national heritage protection policy emerged in the United Kingdom in the middle of the 17\textsuperscript{th} Century, primarily to protect monuments of royal heritage.\textsuperscript{14} However, most domestic efforts toward heritage protection in Europe, Australia and

\textsuperscript{9} Ibid; for more See, eg, Kuo Cheng, The Chinese heritage (Crown, 1982).
\textsuperscript{10} Stubbs, above n 8.
\textsuperscript{11} Ibid, 25, 35, 57, 58.
\textsuperscript{13} Stubbs, above n 8, 91.
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North America lacked strong governance until the 20\textsuperscript{th} Century.\textsuperscript{15} Early domestic efforts, before 1900 were characterized by poor administration, underfunding, and unwillingness by governments to intervene in private property rights.\textsuperscript{16} These features reflected the early period of regulatory and bureaucratic development in the Western nation-states. Only the establishment of government bureaucracies and an emerging philosophy of intervention would pave the way toward modern heritage protection. Heritage protection was limited by the prevailing ideology that private efforts and monarchic decrees were all that was necessary to protect heritage. These early efforts demonstrate interest in heritage protection even though the legal regimen had not yet developed. The following countries lead the world:

\textbf{3.1 United States}

Heritage protection in the United States has been influenced by the distinct qualities of American culture, history and governance, particularly the lack of Euro-American heritage and prevalence of indigenous heritage. Indeed, the United States’ western cultural heritage is relatively scant given the fact that European settlers only arrived in North America in the late 16\textsuperscript{th} Century.\textsuperscript{17} Unlike Europe, the United States lacked ancient buildings monuments and other forms of historical heritage that are commonly the focus of heritage protection. The Euro-American heritage that referenced ideological, institutional, and nation-state interests remained in Europe, particularly the United Kingdom. Moreover, immigration to America, before and after state formation, introduced assimilation in which a new cultural identity was formed. Ethnic culture remained in the form of intangible heritage, such as in cuisine, festivals, rituals, and dress. Much of the cultural heritage of North America was Native American in its origins, and before 1900 Euro-Americans did not value this,

\textsuperscript{15} Fisch, above n 14, 10; Angela Dimery, Heritage Regulation and Property Rights (2013) 17 \textit{New Zealand Journal of Environmental Law}, 195-236.
\textsuperscript{16} Fisch, above n 14, 10.
resulting in a widespread loss of heritage that accompanied the extermination, whether intentional or unintentional, of indigenous peoples.18

The lack of Euro-American heritage and the devaluation of Native American culture meant that the United States engaged in very little heritage protection before 1900. ‘During the nineteenth century the United States national government took few actions to preserve sites and objects of historical heritage. It was not until the twentieth century that the national government paid heed to places associated with the Revolutionary Era’.19 As predicted by the claim that early heritage efforts are often motivated by nationalistic ideologies and interests, the formation of heritage protection in the United States only emerged well after the establishment of independence. Reflecting trends observed in the United Kingdom, the early movement of heritage protection occurred via private efforts, mostly due to the lack of regulatory and bureaucratic influence at the federal level. For example, private efforts by civic and business leaders in Philadelphia helped protect Independence Hall from being demolished in 1816.20 This building was the site where the Declaration of independence was signed and the U.S. Constitution was written. After the Civil War, battlefield sites became the focus of heritage protection by veterans organizations.21 These private organizations, in some cases, pressured the federal government in the 1890s to protect sites such as Antietam, Chickamauga, Gettysburg, Shiloh and Vicksburg. However, federal protection of these sites was not part of a comprehensive plan to protect other sites of national heritage, nor was protection undertaken within the context of a bureaucratic regulatory system.

One of the distinct elements of heritage protection in the United States in the 19th Century was the emphasis on natural heritage.22 Perhaps due to the extraordinary landscape of North America, particularly the Western frontier, following settlement of

19 Fisch, above n 14, 201.
20 Ibid.
21 Ibid, 204.
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the Western portion of the country protection of extraordinary features of the natural environment became the focus of conservation efforts. Initially, these were led by private parties but eventually adopted by the national government. The General Land Office was created in the 19th Century to supervise the national parks created in Yellowstone, Yosemite and other areas. 23

Manmade heritage became the focus of protection in the 20th Century as the regulatory bureaucracy became entrenched. In addition, the advent of heritage protection in the 20th Century was likely a response to economic development pressure that threatened heritage that now had historical value to Americans. 24 The National Historic Preservation Act of 1966 created a partnership among federal, state and local governments in the United States to protect heritage. 25 The National Register of Historical Places contains various designations and processes that qualify a site for protection. Once the site is listed, the heritage becomes the focus of further protection and preservation efforts by various states, local or federal agencies, depending on the nature and locale of the site. In most cases, protection is the responsibility of local jurisdictions, which have the police power necessary to protect property. The U.S. law has been considered influential in the development of the WHC.26

However, similar to federal protection of the battlefields, protection of these natural sites was not part of a broader heritage protection legal regime nor did it lead to comprehensive funding for conservation. ‘A peculiarity of American nineteenth century national park and battlefield park development was that it was policy lacking

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committed appropriations or coordinated administration’. 27 Funding and more intensive administration only came in the 20th Century after complaints by parks officials of mismanagement and underfunding. 28

Thus, an analysis of early domestic efforts in the United States to protect heritage reveals a piecemeal system that ignored Native American heritage, was motivated by private parties, and focused primarily on Civil War battlefields and natural regions. These efforts lacked funding and coordination under an established heritage protection framework. As a result, much of the Native American and Euro-American heritage was likely damaged or destroyed as a result of rapid economic development, neglect, warfare, vandalism and looting. Comprehensive and cohesive heritage protection regimens did not emerge until the 20th Century in America. Domestic laws and regional agreements emerged throughout the world in the 20th Century, including in North America and the Middle East.

3.2 United Kingdom

Numerous private architectural and historical bodies in Europe were involved in preservation beginning as early as the 18th Century, with Great Britain playing a central role in heritage protection. 29 These efforts mostly included conservation by professional associations, such as the Society for the Protection of Ancient Buildings (SPAB) Manifesto, published in 1877. 30

27 Fisch, above n 14, 204.
28 Ibid.
30 SPAB was founded by William Morris ‘to counteract the highly destructive ‘restoration’ of medieval buildings being practiced by many Victorian architects’. Nowadays it is the largest, oldest and most technically expert national pressure group fighting to save old buildings from decay, demolition and damage. SPAB is offering advice, education and encouraging excellent in new design to enrich and complement the historic environment. The Society for the Protection of Ancient Buildings, Principles and Philosophy, (12 March 2015) <http://www.spabfim.org.uk/data/files/pages/spab_principles.pdf> ; Also see SPAB, What is SPAB (12 March 2015) <http://www.spab.org.uk/what-is-spab-/the-manifesto/>; Lowenthal, above n 3, 104.
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Heritage protection emerged in the United Kingdom as a result of efforts led by private parties, but these were successful at instituting legal protections for monuments in legislation passed in 1882.\(^{31}\) Beginning in the 17th Century, the nobility began calling for the protection of ancient monuments and historical buildings, which were increasingly threatened by economic development, notably industrialization. Gentlemen scholars such as John Ruskin expressed the philosophy of heritage protection. “It is again no question of expediency of feeling whether we shall preserve the buildings of past times or not. We have no right whatever to touch them. They are not ours. They belong partly to those who built them, and partly to all generations of mankind.”\(^{32}\) This sentiment clearly expresses a nascent notion of outstanding universal value beyond the nationalistic or aristocratic perspective. However, national legal protection of heritage did not emerge until the establishment of a philosophy that supported intervention by government in private property rights, and this did not emerge in the United Kingdom until the middle of the 19th Century.\(^{33}\) Until then, heritage protection was initiated by private parties, including historical associations, as owners of heritage sites and properties. Similar to the United States, the establishment of administrative bodies and funding for heritage protection did not fully emerge until the 20th Century.

However, heritage protection in the United Kingdom did predate heritage protection in the United States and many Western European countries. The Office of Works was established in the 17th Century to protect and maintain royal buildings, and this body lasted in various forms until the 20th Century.\(^{34}\) The Office of Works, later called the Works Department, became the primary protector of heritage in the United Kingdom, including sites from the Viking, Roman and pre-Christian eras. In some cases, this heritage reflected institutional authority, but in other cases it reflected a nascent ideology of universal heritage value.\(^{35}\) However, some scholars also claim that the protection of heritage unrelated to British aristocracy nevertheless supported

\(^{31}\) Fisch, above n 13, 183; also see Robert Hewison, *The Heritage Industry: Britain in a Climate of Decline* (Methuen London, 1987).
\(^{32}\) Ibid.
\(^{33}\) Ibid; also see L Pressouyre, *The world heritage convention, twenty years later* (UNESCO Publishing, 1993).
\(^{34}\) Ibid.
\(^{35}\) Ibid.
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in institutional authority. Roman ruins, for example, were symbolic representations of institutional authority, which the British monarchy sought to reinforce in the public sensibility.36

By the late 19th Century, laws for heritage protection were part of national legal frameworks, but there was a lack of administration and funding.37 Public-private partnerships were initiated throughout the United Kingdom. The government legally protected heritage, but private parties were often the primary financiers and administrators of heritage protection of specific sites. Therefore, this period represented a transition between the private and aristocratic efforts that characterized the early period of heritage protection in the United Kingdom and the nation-state period of heritage protection that occurred after regulatory bureaucracies developed as a legitimate facilitator of heritage protection. Greater concern for heritage protection was integrated into the law, but the nation-state did not develop regulatory bureaucracies capable of protection heritage until the early 20th Century.

3.3 Australia

Heritage protection in Australia reflects similar qualities as heritage protection in the United States and many other countries that formed part of the British Empire. The late immigration of European settlers to Australia means that there are no ancient monuments or buildings reflecting European history. At the same time, Australia has historically neglected or even maligned the heritage of native peoples and cultures.38 Similar to the United States, destruction of Aboriginal heritage accompanied the intentional and unintentional extermination of Aboriginal people and culture as European settlers expanded throughout the continent.39 It would take the emergence

36 Ibid.
37 Ibid; see, eg, C.R. Munro, Studies in Constitutional Law (London, 2nd ed, 1999); A. King, Does the United Kingdom Still Have a Constitution? (London, 2000); Ombres, above n 12.
of humanitarian concerns for Aboriginal people in the Euro-Australian intellect before protection of Aboriginal heritage could become codified and enforced.40

In addition, government intervention in Australia to protect heritage before 1900,41 suffered from the lack of administrative bureaucracies and a general philosophy of non-intervention in private property rights. In many ways, this dynamic reflected trends similar to those in the settlement of the west in the United States. Australian notions of the right to settle the entire continent recognized private property rights of the settlors and the autonomy of the individual property owner more than heritage protection, particularly when the only heritage to protect was from Aboriginal culture, which was considered antagonistic to settlement of the frontier.42 Given these factors, heritage protection in Australia before 1900 was almost non-existent and entirely private. Similar to trends in the United Kingdom, nascent efforts of heritage protection in Australia were mostly led by private parties interested in the preservation of historic buildings and sites related to nationalistic heritage.43 Of all the Western states, Australia has been the last to codify and enforce heritage protection reflecting European and Indigenous culture.44

Ironically, early Australian interest in Aboriginal culture correlated with the theft, destruction, and removal of such heritage. Interest in Aboriginal heritage in the 19th Century cultivated the commercial trade of artifacts, similar to the interest in Native American heritage in the United States.45 Some Australians began to appreciate Aboriginal culture, and they recognized its value as a symbolic representation of culture pre-dating European settlement.46 However, this same appreciation did not accompany a recognition of the rights of Indigenous peoples to retain ownership and use of their heritage. Nor did this early appreciation of Aboriginal heritage facilitate

40 Fisch, above n 13; see, eg, Justice R Sackville, Legal protection of indigenous culture in Australia (Symposium: Traditional Knowledge, Intellectual Property, and Indigenous Culture 2003) 713,714.
41 Before 1901 Australia did not exist as a nation. It was six British colonies which were partly self-governing but under the law-making power of the British Parliament.
42 Ibid, above n 13.
43 Ibid.
44 Sackville, above n 40, 738.
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such heritage remaining in its original location and state. Ironically, an acknowledgment of the value of Aboriginal heritage did not, at first, involve an appreciation for the protection of Aboriginal heritage except within the context of private property ownership for collectors and traders.\(^{47}\)

In addition to neglect of Aboriginal heritage, looting of Indigenous artifacts also failed to be addressed by heritage protection efforts before 1900 in Australia. While Euro-Australian heritage, notably buildings, remained privately protected until the emergence of national trusts at the state and federal levels after World War II, the commercial trade of Aboriginal heritage was ignored by the law.\(^{48}\) Most likely, this reflected a continued belief in the supremacy of Euro-Australian interests. The value of Aboriginal heritage could only be conceived within a framework that placed value within the context of trade and privately owned collections by Euro-Australians.

While the United States and the United Kingdom constructed relatively strong domestic frameworks for national heritage protection, such an event did not occur in Australia until the 20\(^{th}\) Century. This failure cannot be attributed merely to the lack of a regulatory bureaucracy. Rather, this failure might be attributed to an overall lack of concern for Aboriginal heritage well into the 20\(^{th}\) Century, reflecting weaker norms in Australia in relation to the rights of Indigenous peoples.\(^{49}\) While the United States and the British were beginning to codify and enforce the rights of Indigenous peoples in relation to protection and use of their heritage, Australia lagged behind its Western counterparts. The domestic framework before the WHC was not effective, with the major impetus for protection only occurring after Australia became a signatory to the WHC.\(^{50}\) Compared to European nations and the United States, Australia failed to take legal measures to protect its heritage. The conservation of heritage items was bolstered under the Burra Charter in 1979, formally known as the Australia

\(^{47}\) Fisch, above n 13.
\(^{48}\) Ibid; Sackville, above n 40, 720.
\(^{49}\) Ibid.
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Two decades later, heritage protection laws were further bolstered by the *Environment Protection and Biodiversity Conservation Act (Cth) 1999* (EPBC),^52 which has become the ‘primary national heritage legislative instrument for the protection and conservation of heritage items’.^53 Therefore, a trend similar to that in the United States related to natural heritage can be identified in Australia. Perhaps due to the lack of Euro-Australian heritage in immovable structures, Australia turned towards its natural sites as sources of nationalistic pride. The link between natural and human heritage in Australia reflects the close relationship between national culture and the landscape. In addition, the construction of strong protections for natural heritage also reflects growing concerns in Australia about the heritage value of natural features to Aboriginal peoples.

3.4 Ottoman Empire

Most regions of the Middle East before 1900 were under European colonial rule, and they lacked national governments that could enforce heritage protection. However, the Ottoman Empire was an exception to this political reality of the Middle East, and the Empire in fact passed an antiquities law in 1884 to protect ancient relics and monuments in its territory.^54 Previously, protection of heritage was motivated by a desire to ensure the Empire could gain possession of artifacts to be traded to Europeans. Gradually, however, a philosophy of protection as a value unto itself emerged in the Empire.^^55

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^51 ICOMOS - International Council on Monuments and Sites- is an international organisation of people concerned with the conservation and study of places of cultural significance. It is a non-government professional organisation and has national committees in more than 60 countries, including Australia. ICOMOS (3 March 2015) <http://www.icomos.org/en/> ; For further details see chapters 4.

^52 *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

^53 Hoffman, above n 50, 271. Also see Boer & Wiffen, above n 5, 105.


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As the political and economic strength of the Empire diminished in the 19th Century, antiquities ceased to serve as an appropriate bargaining chip with which to make deals and placate European allies. Their symbolic value, not only as ties to a shared heritage, but also as markers of continued sovereignty, began to take precedence over their value as gifts.56

The antiquities legislation of 1884 reflected the emergence of the rule of law in the Ottoman Empire that challenged the dictatorial edicts of the sultan.57 Similar to trends in Europe, the antiquities law also reflected the emergence of an administrative bureaucracy that could enforce the law. However, also similar to European systems, this bureaucracy before 1900 was fledgling and relatively weak. Only after 1900 did the Ottoman Empire establish a more functional administration under the Ministry of Education and the Imperial Museum that more adequately protected heritage.58 These institutions and legal frameworks established the foundation for heritage protection by the Turkish republic.

4. Analysis

Heritage protection has existed as a philosophical and functional practice by rulers of kingdoms and civilizations interested in protecting heritage that reinforced their claim to power. In most cases, these practices were intended to bolster the authority of the rulers. By preserving heritage from the past, contemporary rulers legitimized their authority. By the Renaissance, admiration for ancient civilizations, notably the Classical Age of Western Civilization, expanded its philosophical justification. The Renaissance valued the aesthetics of the Classical Age. Heritage protection during this period was undertaken, not just by rulers, but also by artists, traders and others who valued Classical era relics and monuments for their intrinsic value.

56 Shaw, above n 54, 124; also see Kersel, above n 55, 86.
57 Ibid.
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Domestic efforts before 1900 by national states required the formation of states, government bureaucracies and a philosophical interest in preservation that interfered with private property rights. By the late 19th Century, many Western European countries, Australia, the United States and the Ottoman Empire had established legislation and fledgling bureaucracies to protect national heritage. However, these efforts typically relied upon private parties to provide administration and funding.

In addition, heritage related to Indigenous non-European civilizations, particularly in the United States and Australia, were not subjected to heritage protection until the 20th Century. Looting and neglect certainly diminished the preservation of heritage from these native cultures. These forms of heritage lacked interest to private parties that had the financial means to protect them from neglect and looting.

5. Early Global Development

One of the first global efforts to protect heritage occurred during peace conferences at the Hague in 1899 and 1907,\(^5\) which lead to the Hague Conventions. The provisions of these heritage protections related to the harm that was being done to cultural heritage during warfare. Article 27 of the 1907 Convention stated:

\[\text{[A]}ll\text{ necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science or charitable purposes, historical monuments...... provided they are not being used at the time for military purposes.}\(^6\)

This provision included a definition of valuable heritage worth protecting. Heritage was defined broadly, ranging from contemporary aspects of heritage (religion, art,

\(^5\)The first conference was on May 18, 1899 and The Second Hague Conference was on June 15 to October 18, 1907. Twenty-six countries attended. The conference called the world to discuss and resolve the problems of maintaining universal peace, reducing armaments, and ameliorating the conditions of warfare.

\(^6\)The Hague Conventions were two international treaties negotiated at international peace conferences at The Hague in the Netherlands. The Hague Convention of 1899 opened for signature May 18, 1899, (entered into force on September 4, 1900). Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague of 1907, opened for signature 18 October 1907, 36 stat. 2277, T.S539 (entered into force on January 26, 1910) Section II, chap I, art 27.
science, charity) to older heritage (historic monuments). However, this definition also reflected the limitations of the conception of heritage to architectural monuments (buildings). This reflected the fact that most heritages in Europe at the time existed in architectural form. ‘A drawback of the 1899 and 1907 texts is that they did not protect cultural property, as such, other than historical documents’. This omission would be addressed in later conventions.

The 1907 Hague Convention also protected heritage from the threat of pillage when an enemy force occupied foreign territory. The occupied inhabitants were responsible for identifying heritage monuments and buildings and indicating their presence to the enemy forces ‘by distinctive or visible signs’. Thus, heritage protection included a preventative protective element incumbent on the holder of the heritage.

However, responsibility for protection of heritage under these conventions relied on domestic governments and enemy forces, not on an international body. The idea of creating an international institution to monitor and facilitate the protection of heritage emerged only after World War I, when the failure of the previous conventions was made obvious by rampant destruction. The Athens Charter for the Restoration of Historic Monuments adopted at the First International Congress of Architects and Technicians of Historic Monuments, Athens, was written by Swiss architect, Le Corbusier. It originated from a European architectural body in 1904 and communicated to member states by the League of Nations in 1931. The Charter is important because it focused on built heritage and emphasized the spiritual, cultural and economic value of the architectural heritage. However, the League of Nations was notorious for its inability to influence domestic activities. Heritage sites remained

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61 The Hague of 1907, Section II, chap I, art 27. Boothby, above n28, 216.
62 Boothby, Ibid.
63 Ibid; Kastenberg, above n 25.
64 The Hague Convention of 1907, Section II, chap I, art 27.
66 Stubbs, above n 8, 135.
67 Mumford, above n 65, 155.
the focus of looting, illicit trade, erosion and overall deterioration through World War II.68

The first major international effort to protect world heritage arguably emerged under the legal framework of the United Nations after World War II.69 The United Nations Educational, Scientific, and Cultural Organization (UNESCO),70 established in 1945,71 began drafting a variety of conventions aimed at protecting heritage.72

In addition to the protection of physical culture, a Convention was adopted in 2003 to include intangible culture.73 The Convention for the Safeguarding of the Intangible Cultural Heritage recognizes the fact that living culture, represented in human behaviours, customs, rituals and other contemporary displays, was threatened by the forces of development and forced assimilation into modern culture. Since intangible culture often exists in the context of controversial issues of social and political dynamics, it has been considered much more resistant to protection under international frameworks. Scholars have noted the fact that it is easier to protect ancient ruins than it is to protect living human culture that often exists in a subordinate relationship to mainstream and modern cultures.74

68 Blake, above n 29, 61-62; Stubbs, above n 8, 34.
71 See Boer & Wiffen, above n 5, 34; Also see UNESCO’s History (10 March 2013) <http://www.unesco.org/new/en/unesco/about-us/who-we-are/history/>.
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The 2001 Convention on the Protection of the Underwater Cultural Heritage protects “all traces of human existence that lie or were lying under water and have a cultural or historical character.” Such sites have been particularly vulnerable to erosion and looting by profiteers. More than a decade after the Convention, however, significant mechanisms for protection are mostly theoretical, and the Convention consists primarily of a guidelines document, “36 Rules of the Annex,” that are intended to assist state parties in protecting their underwater heritage remains and sites.

The creation of UNESCO reflected a general international concern for the cultivation and preservation of culture, including heritage. The founding mission statement of UNESCO cited the possibility of peace and security by promoting collaboration among nations through education, science and culture in order to further universal respect for justice. The WHC goals incorporate the concepts of an international legal framework that will overcome domestic barriers and disputes. UNESCO immediately embarked upon an effort to protect heritage in states with weak governments and insufficient resources for protection. For example, one of the first efforts occurred in 1959 as UNESCO began a successful international campaign to protect the Abu Simbel temples in Egypt’s Nile Valley, followed by another campaign in 1966 to protect Venice from flooding. These efforts occurred as the WHC was being developed for consideration.

Other international organizations also attempted to create an international movement toward heritage protection, including the World Intellectual Property Organization (WIPO) founded in 1883, to define cultural heritage for the purposes of designing mechanisms to protect it. It was supported by the Paris Convention for the Protection of Literary and Artistic Works and the Berne Convention for the Protection of Literary and Artistic Works. The UNESCO Convention on the Protection of the Underwater Cultural Heritage was adopted in 2001 to address the preservation of underwater cultural heritage.

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76 Safeguarding the Underwater Cultural Heritage.
78 Frey & Lasse, above n 68, 34.
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of Industrial Property.\(^{80}\) This was the first major international treaty designed to help the people of one country obtain protection in other countries for their intellectual creations in the form of industrial property rights, such as inventions (patents), trademarks and industrial designs. These mechanisms were envisioned to eventually occur at the state level, but of course the very fact that the United Nations and other international organizations had to intervene suggested that state-level mechanisms were inadequate.\(^{81}\)

The International Union for Conservation of Nature (IUCN) was founded in 1948,\(^{82}\) to coordinate activities of governments, non-governmental organizations, and scientists.\(^{83}\) The body’s mission includes “influencing, encouraging and assisting global efforts to conserve natural resources and natural diversity, to ensure equitable distribution of natural resources and to ensure sustainable use of natural resources”.\(^{84}\)

The roles of the body under WHC as it will be explained in more details in the next chapter include evaluation of nominations, monitoring of sites, reviewing requests for financial assistance, and providing counsel of capacity-building activities.\(^{85}\)

UNESCO established the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) in 1956, to conduct research, documentation, technical assistance, training and public awareness programs.\(^{86}\) ICCROM is also responsible for reviewing requests for international assistance, providing counsel on capacity-building activities, and training others in the identification and protection of heritage. These organizations often cooperate with UNESCO in establishing the parameters and nature of an international legal


\(^{81}\) For more information about this Organization see WIPO (10 March 2013) <http://www.wipo.int/about-wipo/en/history.html>.


\(^{83}\) World Heritage Convention art 8(3) & 13(7); Operational Guidelines, pt I.G sch 36, 37; Also see IUCN official website for more information (1st March 2015) <http://www.iucn.org>.

\(^{84}\) Annual report 1998: IUCN - The World Conservation Union, 12.

\(^{85}\) World Heritage Convention art 14(2); Also see UNESCO, Operational Guidelines, pt I.G sch 37.

framework to protect heritage and emphasizing the need for protection. UNESCO also worked in cooperation with the ICOMOS which is comprised of heritage experts in archeology, anthropology, engineering, art history, and architecture who provide assistance to the UNESCO and state parties. ICOMOS was established in 1965 as a non-governmental organization. The role of the body is to promote theoretical application, scientific techniques, and methodologies that can conserve architectural and archeological heritage. Under the convention the body evaluates nominated properties, monitoring listed sites, reviewing requests for financial assistance, and providing counsel on capacity-building activities.

6. World Heritage Convention

The WHC emerged as a result of international norms that valued heritage for its universal value, not merely as a means to supporting nationalistic or institutional authority and ideologies. Simultaneously, industrialized countries recognized the lack of resources, including organizational expertise and a regulatory framework among the developing nations where ancient heritage was particularly at risk. UNESCO notes that ‘the protection of cultural heritage is incumbent on States owing to the importance which it holds for all of Mankind and as a means of encouraging international cooperation and thus prevention of international conflict’. The norm of heritage protection also reflects a humanitarian goal of international relations. Specifically, UNESCO recognizes that the mere act of preserving heritage that is believed to be instrumental in the development of human civilization can foster

87 Operational Guidelines, pt IG sch 30, 32,33.
89 World Heritage Convention art 8(3); Also see Anila Naeem, 17th ICOMOS General Assembly (2012) 19 International Journal of Cultural Property 4, 545-547; Nafziger, Paterson, Renteln, above n 4, 291.
90 World Heritage Convention art 8(3) & 13(7); Operational Guidelines, pt IG sch 34, 35.
91 Naeem, above n 84; Nafziger, Paterson, Renteln, above n 4, 290, 291; also see J Musitelli, ‘World heritage, between universalism and globalization’ (2003) 11 International journal of cultural property 2, 323-336; Lowenthal, above n 3.
92 Rob Pickar (ed), Policy and Law in Heritage Conservation (Spon Press, 2001); Blake, above n 29; Also see Myra Shackley, Visitor Management: Case Studies from World Heritage Sites (Butterworth-Heinemann: Oxford, 2006) 85.
goodwill between peoples. ‘Study of works of the past do much to foster mutual understanding between nations,’ and the ‘international community as a whole is nevertheless the richer for such discoveries’. The concept of universal value has evolved considerably since the early formation of heritage protection as a culturally-centric enterprise.

In November 1972, the General Conference of UNESCO adopted the WHC concerning the protection of the world cultural and natural heritage at its 17th session in Paris. The WHC ‘seeks to encourage the identification, protection, and preservation of cultural and natural heritage around the world considered to be of outstanding value to humanity’. Also recognizing the need for an international framework to protect cultural sites vulnerable to development, neglect and looting under deficient domestic legal frameworks, the WHC addressed the resource deficiencies among potential signatories in the developing world. Such resources included expertise in evaluating sites for their heritage value, as well as expertise and financing for protecting those sites selected for the World Heritage List.

The WHC came into force in 1977 and was ratified by 20 nations. The WHC now includes 190 countries and involves 745 cultural, 188 natural and 29 mixed properties in 157 States Parties. The integration of cultural organizations with States Parties has been essential given the lack of resources by developing countries, as well as the fact that expertise in the industrial world often lies outside of government but rather in academic and research institutions.

The WHC has been subject to numerous refinements over the following decades. The legal framework for heritage protection is constantly evolving as a result of trial and error, as well as new protection features and emerging threats to heritage.

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94 World Heritage Convention, art 2.
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7. The Goal of WHC

The most obvious goal of the WHC is to protect sites that meet the criteria for listing. Sites that qualify for listing receive the full protections, most notably resources, of the World Heritage Committee and its partners in the nonprofit, academic, and research sectors of the international community. The goal of the Convention is to identify and protect those sites and artifacts worthy of protection and then place them within the fold of the Convention’s protective framework. If applied internationally, this goal of the Convention will result in the protection of all outstanding heritage that has universal value that merits protection in and of itself, not merely as a means to domestic ends. The Convention thus reflects the fruition of international norms of heritage as representative of a universal culture, even as the heritage references existing cultures.

The development of an international norm of universal heritage protection in part reflects the nature of the majority of heritage listed by the World Heritage Committee. In most instances, the heritage represents ancient cultures that reflect the birth of human civilization or the pre-civilization cultures that are also considered central to greater understanding of the human experience. This stands in contrast to the domestic considerations of heritage that initially targeted architectural and historical sites for protection. Heritage protected under the Convention, when meeting the universal standard, lacks an explicit reference to an existing culture in the majority of listed sites, with some exceptions for Indigenous heritage that continues to reference contemporary Indigenous peoples. For the most part, the Convention’s goal of protecting heritage of outstanding universal value results in the protection of heritage that pre-dates and lacks a reference to contemporary cultures. In a way, such heritage is thus believed to be the originator of all human culture since it gave rise to civilization or references the earliest human condition.


Secondary goals of the Convention are just as vital in protecting heritage. For example, goals related to site selection and site protection are essential for heritage conservation. The systems, processes and procedures that determine site selection and site protection have the most significant impact on conservation. Identifying sites for listing is a complicated and sophisticated process that requires the resources and expertise of a variety of stakeholders. For example, one of the goals of the Convention is to establish global norms for heritage protection that encourage State Parties to identify potential sites and collaborate with the Convention in their listing and protection. In order to achieve this goal, State Parties must often consult with experts outside their domestic region. There is often debate among the experts about the nature of a heritage site as well as whether it qualifies for outstanding universal value. Once the site is listed, protection requires an ongoing effort that involves archeologists, excavators, and other experts, as well as consultation with adjacent parties, such as businesses and local communities.

This goal is achieved as the Convention encourages State Parties to honour their pledges to both world and national heritage. At the same time, the goal is complicated by the influence of antagonistic interests, notably economic interests, that object to heritage protection that intrudes on their commercial interests. The Convention has the goal of encouraging State Parties to provide staff, public-awareness programs, research and other measures to facilitate protection as a way to confront the influence of antagonistic parties. This goal is achieved as State Parties are required to make regular reports to the World Heritage Committee about the state of conservation efforts. The reports are an explicit requirement that recognizes the potential for listed sites to continue to be threatened after inclusion in the Convention framework. Economic development is likely to occur around many of the heritage sites, and the reports on conservation to the World Heritage Committee are intended to demonstrate how existing and potential threats are being eliminated or mitigated.

99 Ibid.
100 Getty& Martin, above n 97.
Another goal of the Convention is to encourage non-member countries to ratify the Convention. Historically, ratification has been complicated by the interests of developing countries to pursue economic development that is considered complicated by heritage protection. Indeed, the history of heritage protection in developing countries shows that interest in heritage evolves in a way similar to the industrial world. For example, heritage unrelated to the existing culture is often neglected in favor of heritage that is supportive of national, religious, and other interests and ideologies. In some cases, economic interests align with an interest in heritage protection in developing countries, particularly the potential for tourist exploitation of the site. At the same time, norms in developing countries about the universal conceptualization of heritage are also often at a nascent or even non-existent stage, similar to the industrial world before the 20th Century. This results in overall indifference to the aims of the Convention. Lastly, regulatory enforcement is often weak in the developing world, making reliance on international organizations and other State Parties a necessity for developing countries. In many cases, cooperation with these stakeholders is undesirable for regimes that might be hostile to foreign intervention. Indeed, the Convention is often perceived by many developing countries as a Western or industrial effort to infringe on the autonomy of the regime being targeted for ratification.

Once resistance to ratification is overcome, more practical concerns of developing countries must be addressed. Developing countries in particular are reminded that their ratification will make them eligible for financing for protection efforts from the World Heritage Fund. These funds are applicable to state efforts to identify, list and conserve heritage sites. Emergency assistance is also possible for sites that face urgent risks from human or natural damage. In addition to providing financing, the Convention facilitates the goal of encouraging new members by maintaining the List of World Heritage in Danger, which seeks to apply pressure on non-member states to ratify. Thus, this goal is facilitated by a carrot and stick strategy that offers...
resources to potential State Parties that ratify while also alerting the international community to the failure of State Parties to ratify. This strategy has worked relatively well at encouraging even resistant State Parties to at least pay some level of credence to the aims of the Convention. In the current international atmosphere, even resistant parties must make public comments in support of ratification even as they note their concerns about specific details of ratification on their autonomy and economic development.

8. Conclusion

Before the WHC, the history of heritage conservation contained several distinct components. First, the initial movement to protect heritage emerged from elite institutions and professional bodies. In most instances, these elites were interested in protecting culture that referenced their existing culture and thus played a role in reinforcing cultural interests and ideologies including those of ruling elites. Without a doubt, Europe took the lead in the effort by private bodies to protect built heritage, with the United Kingdom playing a particularly influential role in early domestic heritage protection. Second, the impetus for heritage protection was bolstered by the loss of heritage due to warfare, looting, and overall deterioration, particularly as a result of conflict in Europe. Heritage protection laws at the domestic, regional and international levels have always been reactionary, reflecting the failure to prevent heritage loss in the first place. Just as Europe was witnessing the large-scale destruction of its heritage, European nation-states were also developing the bureaucratic regulatory infrastructure necessary to enforce heritage laws. Lastly, the history of global heritage protection before the WHC reveals the incremental support for an international legal framework that intrudes upon domestic authority.

The legal framework of the Convention is accepted by domestic parties because it is seen as assisting in heritage protection rather than intruding on domestic sovereignty, particularly economic development. Essential in the acceptance of an international framework for heritage protection has been the cultivation of an international norm of

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104 Bertacchini, above n 93, 278.
universal heritage value. Rather than conceive of heritage value as something linked to existing culture, this emergent norm recognizes ancient and indigenous cultures as universal to all peoples because of their primordial qualities. From these examples of universal heritage, the heritage of all the cultures of the world can trace their origins.

Given the lack of resources and willingness on the part of some countries to protect heritage considered of universal value, UNESCO has the most significant part to play in the protection of such heritage and it is responsible for a number of heritage treaties. The WHC was adopted in 1972 and is the most well-known international legal instrument in this regard.

One of the goals of the WHC is to protect world heritage sites, which are of value to all humanity, yet without domestic support the Convention would be ineffective. Thus, the secondary goal of building resources at the domestic and international levels has been essential in facilitating the primary goal of heritage protection. Heritage needs to be protected for its unique importance to both domestic and international communities. National heritage possesses meaning for the domestic audience, and it can be elevated to the level of world heritage if it contributes to the broader value of human civilization. Heritage value norms have been recently adopted by developing countries as they embrace international norms, succumb to international pressure to conform, and recognize the benefits of heritage to their tourist industries. The link between national and world heritage is emphasized in the WHC which lists sites that have ‘outstanding universal value’ and also those that relate to cultural traditions of the land.

In many instances, particularly in the Middle East, ancient heritage that does not explicitly reference existing culture nevertheless plays a role in signifying nationalistic and cultural pride. Of course, Egypt is an example of this phenomenon, but other countries, such as Saudi Arabia, are also recognizing the potential for protection of universal heritage to play an important role in domestic interests, whether economic or ideological. The next Chapter examines the role of the WHC in protecting heritage sites. The obligations on states and the global community’ are explained in detail in the next chapter.
Chapter 4

World Heritage Convention Regime

1. Introduction

International law plays an important role in improving global governance. International heritage law, however, has received much less attention than other areas of international law. Protecting cultural heritage is vital as it facilitates understanding about the culture and the people of different places. It can also provide a clearer appreciation of the rich history of civilizations on Earth. As part of the United Nations, the United Nations Education, Scientific and Communications (UNESCO) has the most significant part to play in the protection of such heritage and it is responsible for a number of heritage treaties. The World Heritage Convention (WHC) was adopted in 1972,¹ and is the most well-known international legal instrument in this regard. Today, there are over 1031 Properties on the World Heritage and Tentative Lists representing around 191 States Parties.² But the challenges for heritage protection are different than they were in 1972. Population growth, environmental degradation and even globalization are increasingly putting pressure on heritage sites. More than 40 years since the adoption of the WHC, it is timely to reconsider this treaty.

This chapter explores and critically analyses the impact of the Convention and other relevant international law on the protection of heritage sites, including opportunities and challenges for heritage protection. The findings suggest that the Convention and international law are only successful in protecting heritage sites when there is adequate cooperation from domestic authorities. Due to high levels of

¹ Convention for the Protection of the World Cultural and Natural Heritage (Paris), opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975).
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Authoritarianism, the weakness of environmental interest groups, and the lack of an impartial and independent legal system, heritage protection around the world is inadequate. The Convention and other forms of international law are only as successful as the willingness of domestic authorities to implement them. There is promising evidence that some domestic authorities are interested in heritage protection, but there is also evidence that economic forces maintain paramount influence. The forces of economic development are stronger than the forces of heritage protection, and this is the result of the close alignment between political and economic interests. Until states reform politically and legally, heritage will be inadequately protected.

Figure 16: World Heritage Lists. 3

2. Definition of World Heritage

The Convention identified two areas for specific definition: cultural heritage and natural heritage. Only cultural heritage is examined in this thesis. Cultural heritage consisted of the following as set out in article 1: 4

Monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave

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4 World Heritage Convention, art 1.
dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; Groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

Sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

Cultural heritage can be the basis for identifying, defining and proposing protections for various heritage sites. Cultural heritage is defined as architecture, sculpture, monuments, paintings, inscriptions, cave dwellings, and other human-made features that ‘are of outstanding universal value from the point of view of history, art or science’. Of course, what amounts to outstanding universal value is subjective, and there is always the potential for disagreement on this concept between UNESCO experts and domestic authorities and interest groups that might be resistant to protection. Essentially, heritage frameworks protect the products of human creation and engineering.

In 1996 additional language was added to the Convention’s Operational Guidelines, that defined a World Heritage Site as a ‘masterpiece of human creative genius’, a term that might be considered even more exclusive than ‘outstanding universal value’.

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8 UNESCO, Operational Guidelines for the Implementation of the World Heritage Convention 2013 para 3 (b) 4, 8.
Sites to be added to the World Heritage List must meet a variety of criteria that establish the site and its various elements as consisting of outstanding universal human value. The three modifiers of value implicit in the Convention’s criteria of World Heritage illustrate a value that is cross-cultural, the product of human achievement, and exceptional. The criteria used to determine World Heritage have evolved since 1972, and since 2010 they currently include 10 specific features, paraphrased below:\(^9\)

1. The site must represent a masterpiece of human creative genius.\(^{10}\)

2. The site must exhibit an important interchange of human values in architecture, technology, monumental arts, town-planning or landscape design.\(^{11}\)

3. The site must possess unique or exceptional testimony to a cultural tradition or civilization that is living or disappeared.\(^{12}\)

4. The site must be an outstanding example of a building, architectural or technological ensemble or landscape that illustrates a significant stage in human history.\(^{13}\)

5. The site must be an outstanding example of a traditional human settlement or use that is representative of a culture or human interaction with the environment especially when it has become vulnerable under the impact of change.\(^{14}\)

6. The site must be directly or tangibly associated with events or living traditions, or with ideas or beliefs with artistic or literary works of outstanding universal significance.\(^{15}\)

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10 UNESCO, Operational Guidelines, para 77 (i).
11 UNESCO, Operational Guidelines, para 77 (ii).
12 UNESCO, Operational Guidelines, para 77 (iii).
13 UNESCO, Operational Guidelines, para 77 (iv).
14 UNESCO, Operational Guidelines, para 77 (v).
15 UNESCO, Operational Guidelines, para 77 (vi).
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7. The site must contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance.\textsuperscript{16}

8. The site must be an outstanding example representing major stages of earth history, processes, landforms, geomorphic or physiographic features.\textsuperscript{17}

9. The site must be an outstanding example representing on-going ecological and biological processes in the evolution of land, water, marine, or coastal ecosystems.\textsuperscript{18}

10. The site must contain the most important natural habitats for in-situ conservation.\textsuperscript{19}

3. World Heritage List

The process for listing heritage sites is subject to three stages. First, the World Heritage Centre, a staffing body, based on advice from academic, non-governmental and staff, proposes nominated sites for listing to the World Heritage Committee, the governing body. A report on the necessity of protecting the site is created by Centre staff, and this report considers several factors, including the criteria of outstanding universal value and human masterpiece noted earlier, as well as eight other criteria based on cultural and natural factors. The Committee is responsible for approving a listing, and it can decide to defer a decision or reject a listing. Most often, the Committee refuses to reject a listing but rather categorizes it as tentative pending additional information.\textsuperscript{20}

The protection regime for those sites that are eventually listed is subject to the limited jurisdiction of international law on domestic authority. Much like human-rights and

\textsuperscript{16} UNESCO, Operational Guidelines, para 77 (vii).
\textsuperscript{17} UNESCO, Operational Guidelines, para 77 (viii).
\textsuperscript{18} UNESCO, Operational Guidelines, para 77 (ix).
\textsuperscript{19} UNESCO, Operational Guidelines, para 77 (ix).
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international environmental frameworks, international heritage protection is only as successful as domestic authorities desire. The primary leverage that UNESCO has to pressure State Parties to act is international awareness that the state might not be abiding by the terms of protection agreed upon when the site was listed. Of course, there is no actual legal enforcement that UNESCO can initiate against a lagging state party that intrudes on the jurisdiction of the state. In most cases, states only agree to a listing if they are committed to its protection. Therefore, there is no international protection regime for those sites that are not listed, and the protection regime for listed sites is subject to state cooperation.

The protection regime includes the provision of resources to State Parties whose domestic institutions will typically coordinate with Centre staff, academic experts and non-governmental consultants in the protection of the site. Reports to the Centre and the Committee must be prepared on a regular basis that detail how the site is being protected. Since states only agree to a listing that they intend to protect, the failure of the protection regime relates more to the listing process rather than the framework implemented after a site is listed, and this is certainly the case in Saudi Arabia. Indeed, the Centre’s Heritage in Danger List and the Tentative List prepared by non-governmental organizations (NGOs) detail many sites that are deserving of heritage protection but have been rejected for listing by the Committee.

If a site is designated as a World Heritage Site, domestic authorities are responsible for its protection. This subjects the site and surrounding area to significant restrictions on development that might impair economic growth. Since many of these sites exist in developing countries, social and political norms for economic development often outweigh those for heritage protection. The more exclusive term is intended to ensure that only the most unique sites are protected, but this might in fact exclude worthy sites as well from listing.

22 Ibid, 86.
23 When a site is not listed on the WH List it does not mean that it is not protected. The protection given is up to the national government. But the WHC the state is agreeing to abide by the terms of the Convention. Secondly the WHC sets out state obligations and international cooperation provisions.
24 Kuruk, above n5.
The process for registering world heritage sites starts with the Member State submitting a site for nomination. Only Member States, meaning those countries that have ratified the World Heritage Convention, can submit sites for nomination. The nomination process must involve an inventory that results in a Tentative List of nominated sites. The site must be included on the Member State’s Tentative List of protected sites. The World Heritage Centre cooperates with the Member State in how to properly nominate the site and prepare the Tentative List of sites for nomination and protection. After nomination, advisory bodies, specifically the International Council on Monuments and Sites and the World Conservation Union to the World Heritage Committee conduct evaluations of the nominated site. The World Heritage Committee gives the final approval for listing.

The process for removing sites from the World Heritage List has led to the removal of only two sites. These sites were removed after it was determined they no longer met the criterion for outstanding universal value as a result of development activities surrounding or intruding on the sites. In these instances, the same advisory bodies engaged in evaluation of nominated sites and recommended removal of the sites after evaluating heritage protection issues that compromised outstanding universal human value. The Member States were allowed to provide counter-arguments against delisting.

4. Operational Guidelines

The Convention focuses on the concepts of nature conservation and the preservation of cultural properties. The Convention recognizes the way in which people interact with nature, culture and the fundamental need to preserve the balance between two. The Convention sets out the duties for State Parties in identifying potential sites and their role in protecting and preserving them. The Convention supported by the ‘Operational Guidelines for Implementation of the World Heritage Convention’

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26 Ibid.
28 UNESCO, Operational Guidelines.
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outline the various systems, processes, procedures and bodies responsible for achieving the mission of the Convention. Procedures to facilitate heritage conservation include inclusion of site on the World Heritage List and List of World Heritage in Danger, protection and conservation of sites, provision of financial assistance and promotion of the Convention at the national and international levels.29

The Operational Guidelines determine the key users which facilitate and implement these procedures.30 State Parties represent the primary users of the Guidelines. In addition, other bodies to use the Guidelines include the Committee, the Centre, and Advisory Bodies. In addition, other personnel and bodies that are expected to be key users of the Operational Guidelines include site managers, stakeholders, and partners in the protection of sites, such as research organizations, nonprofit organizations, and domestic actors in government.

The Operational Guidelines establish the obligations of State Parties.31 These include harnessing domestic and international personnel and resources to provide expertise in protection. State Parties are responsible for providing the Committee with the names and addresses of contacts responsible for protection. Other obligations include funding the World Heritage Fund, promoting awareness of protection through media and public relations efforts, and attending sessions of the Committee and subordinate bodies, such as the General Assembly of State Parties to the Convention.

The Operational Guidelines also establish the features, responsibilities and authority of the World Heritage Committee.32 The Committee has 21 members, meets once a year, and establishes a Bureau that meets as frequently as considered necessary. Committee members serve for six years, and State Parties are encouraged to reduce terms to four years and avoid consecutive terms to encourage diverse representation.33 Members are elected by the General Assembly based on recommendations from State Parties. The Committee is required to make decisions about listing, funding, use of resources, reports, and other protection measures based on objective and expert

30 UNESCO, Operational Guidelines 2013, para 143.
33 UNESCO, Operational Guidelines 2013, para 19.
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scientific and cultural counsel. A report to the General Assembly is required every two years, and Strategic Objectives are reviewed and revised to respond to changing conditions.\textsuperscript{34}

The features, responsibilities and authority of the Secretariat, the executive director of the Committee, are outlined in the Operational Guidelines.\textsuperscript{35} The Secretariat is appointed by the Director-General of UNESCO and is intended to assist the World Heritage Committee. The Secretariat also is responsible for working with State Parties, Advisory Bodies, and other sectors and field offices in UNESCO. The Secretariat organizes meetings of the Committee and the General Assembly, implements decisions of the Committee and resolutions of the Assembly, reports back to these bodies on the implementation of these decisions and resolutions, communicates nominations to the List to the Advisory Bodies, and performs other administration tasks that support the Convention and the Committee’s Strategic Objectives.

The Operational Guidelines also set forth the need for cooperation and support from other organizations, partners, conventions, recommendations and programs.\textsuperscript{36} The Operational Guidelines call for the Committee to use international organizations, non-governmental organizations, private groups, individuals, communities, property owners, and other experts and stakeholders to facilitate heritage protection. The Operational Guidelines emphasize the need for these partnerships to improve the processes and outcomes in the nomination, management and monitoring of sites.

The elements of the World Heritage List are also established in the guidelines.\textsuperscript{37} The definitions of heritage are noted, including elements related to cultural, natural, landscapes, and moveable heritage. A global strategy to create a representative, balanced and credible list are outlined. The procedures, formats, and uses of tentative lists are provided. Protection and management issues involving legislative, regulatory

\textsuperscript{34} UNESCO, Operational Guidelines 2013 para 24. 
\textsuperscript{35} UNESCO, Operational Guidelines 2013, para 27, 29. 
\textsuperscript{36} UNESCO, Operational Guidelines 2013, para 12, 32. 
\textsuperscript{37} Operational Guidelines 2012, para 1.
and contractual measures are noted. Issues related to buffer zones, boundaries, management systems and sustainable use are also noted.

The Operational Guidelines also set out the processes related to site nominations, site monitoring, reporting on implementation, promoting support for the Convention, and financial assistance.  

Guidelines related to nomination include preparation, format and content, requirements for different types of properties, registration, evaluation by advisory bodies, withdrawal, Committee decisions, emergency nominations, modifications, and timetables. Operational Guidelines related to monitoring include reactive monitoring, the danger list, and procedures to delete properties. Operational Guidelines related to reporting include objectives, procedure and format, and evaluation and follow-up. Operational Guidelines related to encouraging support include objectives, capacity building, research, awareness raising, and education. Guidelines related to financial assistance include the World Heritage Fund, mobilization of other resources through partnerships, international assistance, procedure and format, contractual arrangements, and evaluation and follow-up.

5. Key Actors

One key player established under the Convention is the World Heritage Committee, which consists of elected representatives from the 21 State Parties. The Committee meets once a year and is responsible for implementation of the Convention. Final approval of sites for listing falls under the Committee’s authority. The Committee also has the authority to defer listings and to request more information about sites. The Committee receives reports on heritage protection, and it encourages states to better protect those sites deemed vulnerable because of state neglect. The Committee

38 Operational Guidelines 2012, para 201,126,144,109.
39 Committee shell increased States members to ‘21 and following the entry into force of this Convention for at least 40 States’. World Heritage Convention, art 8 (1); Also see Boer & Wiffen, above n25, 36.
40 UNESCO General Conference took place every year until 1952, and every two years thereafter.
41 World Heritage Convention art 13(7).
42 World Heritage Convention art 13(1).
also compiles the List of World Heritage in Danger, including both adding and removing sites from the list.\textsuperscript{43}

The World Heritage Centre represents the bureaucracy of the Convention, serving the Committee in its decision-making by preparing reports and facilitating the protection of sites with state cooperation.\textsuperscript{44} The Centre is also responsible for organizing the annual meeting of the Convention, preparing sites for nomination to lists, organizing financial assistance from the World Heritage Fund, and taking emergency action when a site is believed to be particularly threatened. The Centre is also responsible for public relations and publicity, including international awareness of heritage protection.\textsuperscript{45} The Centre was established in 1992,\textsuperscript{46} more than two decades after passage of the Convention. This which reflects the initial relative indifference by the WHC to the need for heritage protection to be facilitated by support staff rather than the sole obligation of State Parties.\textsuperscript{47}

6. Advisory Bodies

In addition to the U.N. framework, there are also non-governmental organizations that play a role in heritage awareness and protection.\textsuperscript{48} ICOMOS is comprised of heritage experts in archeology, anthropology, engineering, art history, and architecture who provide assistance to the U.N. and State Parties.\textsuperscript{49} Other non-governmental organizations, including research bodies in academia and nonprofit organizations, coordinate with ICOMOS.\textsuperscript{50} These non-governmental organizations provide counsel to UNESCO and State Parties and lack any legal authority. However, these organizations have worked closely with the Centre in proposing sites for protection,

\begin{itemize}
\item \textsuperscript{43}World Heritage Convention art 11(4) &11(5); As it explained in the Operational Guidelines 2013, s24.
\item \textsuperscript{44}World Heritage Convention art 13(7).
\item \textsuperscript{45}For more information see <http://whc.unesco.org/en/world-heritage-centre/>.
\item \textsuperscript{46}Operational Guidelines 2013, s25.
\item \textsuperscript{47}Kuruk, above n 5, 127; Nafziger, Paterson, Renteln, above n 2, 220, 221, 222.
\item \textsuperscript{48}World Heritage Convention art 8 (7).
\item \textsuperscript{50}World Heritage Convention art 8 (3).
\end{itemize}
including the preparation of a Tentative List that is highly regarded by Centre staff and often becomes the basis for listing recommendations by the Centre.\textsuperscript{51}

The guidelines also establish the features, responsibilities and authorities of Advisory Bodies to the World Heritage Committee. The roles of these bodies are to advise the Committee in their areas of expertise. They are also required to assist the Secretariat in the preparation of documents, setting of agendas, and implementation of Committee decisions. The Advisory Bodies assist in development and implementation of strategy, monitor the state of conservation, evaluate properties nominated, and attend meetings of the Committee.\textsuperscript{52}

\section*{6.1 ICCROM}

The International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) was established by UNESCO in 1956,\textsuperscript{53} to provide research, documentation, technical assistance, training and public awareness programs.\textsuperscript{54} The ICCROM is also responsible for reviewing requests for international assistance, providing counsel on capacity-building activities, and training others in the identification and protection of heritage.\textsuperscript{55} The ICCROM has headquarters in Rome, where it provides education, internships, and research activities. The ICCROM’s origins in the aftermath of World War II illustrate its emphasis on restoration, since the war destroyed much of Europe’s built heritage.

The ICCROM has since expanded to include a vast array of program areas.\textsuperscript{56} The ICCROM’s current priorities include disaster and risk management, materials and technology, world heritage, living heritage, and sound and image collections. Current efforts are underway in Africa, the Arab Region, Asia, the Pacific Islands, Latin

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{51} World Heritage Convention art 14 (1-2); also see World Heritage Committee, \textit{The Objectives of the Global Strategy} (21 August 2012) <http://whc.unesco.org/en/globalstrategy>; Boer & Wiffen, above n25, 36.
\item \textsuperscript{52} World Heritage Convention art 13(4).
\item \textsuperscript{53}Isabelle Vinson, ICCROM’s Contribution to the Ethics of Heritage (2009) 61 \textit{Museum International} 3, 90, 94; UNESCO, \textit{Operational Guidelines} pt I.G sch 32; Also fore more see ICCROM official website (1st March 2013) <http://www.iccrom.org>.
\item \textsuperscript{54} Marc Laenen, Jukka Jokilehto, ICCROM and Conservation Trends (1998) 17 \textit{Museum Management and Curatorship} 2, 197.
\item \textsuperscript{55} Operational Guidelines, pt I.G sch 30, 32,33.
\item \textsuperscript{56} Laenen & Jokilehto, above n 52, 197.
\end{itemize}
\end{footnotesize}
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America, the Caribbean, and the Southern and Eastern Mediterranean areas. These efforts are integrated with the ICCROM’s program of education. For example, ICCROM staff and consultants lead restoration and preservation programs in these regions of the world, and they always try to partner with domestic actors, either through internship programs or formal courses. Education is integrated with practical fieldwork.

Efforts to build heritage protection capacity in the developing world occur through several ICCROM programs. The Technical Assistance Service provides literature to scholars and experts engaged in heritage protection, allowing them to learn and build upon prior research and successful protection programs. The Training Directory is a database of conservation courses and training programs that are led around the world by ICCROM personnel and consultants. Libraries and tools managed by ICCROM are available to researchers and curators involved in museums, excavations, and other heritage protection efforts.

6.2 ICOMOS

The International Council on Monuments and Sites (ICOMOS) was established in 1965 as a non-governmental organization. The role of the body is to promote theoretical application, scientific techniques, and methodologies that can conserve architectural and archeological heritage. Under the Convention the body evaluates nominated properties, monitoring listed sites, reviewing requests for financial assistance, and providing counsel on capacity-building activities.

The ICOMOS is involved in the dissemination of knowledge, participates in international conventions, alerts the international community to risks and harm to heritage, and conducts education and training. The Heritage at Risk program reflects the orientation of ICOMOS toward alerting the international community to heritage

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57 Ibid.
58 Ibid.
59 Ibid.
60 World Heritage Convention art 8(3); Also see Anila Naeeem, 17th ICOMOS General Assembly (2012) 19 International Journal of Cultural Property 4, 545-547.
61 World Heritage Convention art 8(3) & 13(7); Operational Guidelines, pt I.G sch 34, 35.
62 World Heritage Convention art 8(3) & 13(7); Operational Guidelines, pt I.G sch 34, 35.
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threats. Established in 1999, this program identifies monuments and sites at risk from commercial, conflict, or intentional acts of destruction. The goal is to encourage action by domestic and international actors to protect heritage. This program reflects the principle of transparency as a necessary component of heritage protection. Those engaged in neglect of or intentional threats to heritage are more likely to be the targets of protection efforts by domestic or international actors.

ICOMOS is also involved in acting as a professional network for scientific committees, governments, and non-profit organizations to share their knowledge of threats to heritage and heritage protection. ICOMOS also partners with other international bodies, such as UNESCO, the International Council of Museums, and ICCROM. These collaborations are intended to construct and disseminate knowledge about heritage protection, as well as to construct a lobbying influence that can pressure governments to protect heritage.

ICOMOS engages in extensive publication of potential heritage protection efforts. This function is intended to provide guidance to States Parties of the Convention in specific heritage protection. For example, a publication released in 2014 identified sites along the Silk Road as potentially worthy of inclusion on the World Heritage List.

6.3 IUCN

The International Union for Conservation of Nature was founded in 1948, and coordinates activities of governments, non-governmental organizations, and

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63 World Heritage Convention art 8(3) & 13(7).
64 World Heritage Convention art 8(3) & 13(7).
65 World Heritage Convention art 8(3) & 13(7).
66 World Heritage Convention art 8(3) & 13(7); Operational Guidelines, pt I.G sch 36.
67 Ibid.
68 Operational Guidelines, pt I.G sch 36.
scientists.69 The body’s mission includes influencing, encouraging and assisting global efforts to conserve natural resources and natural diversity, to ensure equitable distribution of natural resources and to ensure sustainable use of natural resources.70 The roles of the body under the Convention include evaluation of nominations, monitoring of sites, reviewing requests for financial assistance, and providing counsel of capacity-building activities.71

The IUCN is considered the world’s first global environmental organization, predating domestic environmental organizations by at least two decades.72 Member organizations include more than 200 governmental bodies and more than 900 non-governmental organizations. IUCN’s staff includes more than 1,000 personnel operating in 45 public and private sector organizations around the world. IUCN is currently engaged in several thousand field projects and activities around the world. Funding is received through corporate and foundation grants, government assistance, and international bodies.73

Biodiversity conservation is the primary focus of the IUCN.74 This function occurs in scientific studies, conservation projects, and government lobbying. The Global Programme, a IUCN’s strategy for heritage protection, is developed and approved every four years and outlines the studies, projects, and lobbying that will be conducted by IUCN personnel. It should be noted that the biodiversity conservation focus is defined very broadly, including social policy as well as environmental policy. For example, social policies believed to have an influence on biodiversity conservation include treatment of Indigenous peoples in environmentally threatened areas. Indigenous empowerment is believed to be conducive to biodiversity conservation as traditional ways of life are protected from commercial development.

69 World Heritage Convention art 8(3) & 13(7); Operational Guidelines, pt I.G sch 36, 37; Also see IUCN official website for more information (1st March 2013) <http://www.iucn.org>
71 World Heritage Convention art 14(2); Operational Guidelines, pt I.G sch 37.
72 Ibid.
73 Ibid.
74 Ibid.
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7. Treaty Obligations

The Convention Concerning the Protection of the World Cultural and Natural Heritage places certain obligations on states that ratify the Convention. Under Article 4, each state party must identify, protect, conserve, present, and communicate heritage value. The state must use as much of its own resources to achieve these goals. The state must seek other resources if it cannot secure enough of its own resources to achieve these goals, including financial and expertise resources.

States have an obligation to develop a general policy that integrates heritage protection into the life of communities through programs and policies. Services must be established that protect, conserve and present heritage. Scientific and technical studies must be undertaken to identify dangers to heritage and to facilitate its identification, protection, conservation and presentation. For example, states are advised to create national or regional centres to conduct training in these areas of protection.

Another state obligation involves recognizing the fact that their heritage represents universal human heritage, and conservation occurs in an international context. States are advised to cooperate with other states and international organizations, either by accepting assistance or providing assistance. Of course, this obligation under Article 6 of the Convention requires the state to avoid any deliberate measures that could harm or degrade the heritage once it is designated.

States also have an obligation to participate in the Committee through the selection of representatives on the Committee. These representatives are expected to be experts in the field of conservation. The representatives must serve for a specified term, and they must attend meetings of the Committee, engage in deliberations and participate in decisions related to programs and policies. Representatives are also responsible for

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75 World Heritage Convention art 4.
76 World Heritage Convention art 4.
77 World Heritage Convention art 4.
78 World Heritage Convention art 6.
79 Operational Guidelines, para 10.16.
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assisting their state in the submission of inventories of heritage to the Committee that might be worthy of conservation, including details of location and significance. These inventories must also include legislative and administrative actions taken to protect the heritage at the domestic level, not including Convention actions.

The Convention requires under Article 16 that states contribute to the World Heritage Fund, but in fact states can opt out of this requirement. However, certain conditions must be met. Notably, states that do not contribute must notify the Director-General of UNESCO. States that are in arrears in their payments will not be eligible for election to the World Heritage Committee. Specific provisions also exist for states that seek to denounce the Convention. States of denouncement must be in writing and submitted to the Director-General. The denunciation takes effect one year after its submission. The state still must meet its financial obligation.

The Operational Guidelines for the implementation of the Convention specify additional obligations of State Parties related to the general obligations listed in the articles of the Convention. For example, the Secretariat must be provided with specific names and contact information of those responsible for conservation. States are required to create a large and varied stakeholder community of those interested in conservation and assisting in conservation. States are advised to organize their experts at regular times to collaborate on conservation issues.

As members of the Committee, states have obligations related to the administration of the Convention. For example, representatives on the Committee are required to assist in setting rules of procedure, determine uniform percentage of contributions, and determine possible representation by non-member states. As members of the Committee, representatives of states are expected to make decisions based on the best available knowledge presented by qualified experts.

80 World Heritage Convention art 16.
81 World Heritage Convention art 16
82 Operational Guidelines.
83 Operational Guidelines, para 10, 16.
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Of course, the primary obligation of state representatives on the Committee is to cooperate with State Parties in the construction and management of the World Heritage List. This involves identifying new areas of protection, identifying areas to be deleted from the list, examining the quality of conservation measures by states and the Centre, define procedures for improved conservation, and determine ways to increase resources for heritage protection. State representatives on the Committee are required to submit reports every two years to the General Assembly of States Parties and the UNESCO General Conference on progress in these areas.

8. Analysis & Challenges

An analysis of the criteria and definition of cultural heritage outlined in the Convention reveals several key problems. Specifically, the words ‘outstanding universal value’ subjects this definition to a considerable range of opinion about how this standard should be defined. These are subjective words that are highly vulnerable to differences of opinion. Some experts, for example, might consider any cave drawing of outstanding universal value, while others might consider some more valuable than others. If there are differences of degree in the value of cultural heritage, then governments or industry interests that want to avoid protective laws against development around a cultural heritage site will seek to devalue these sites as less than ‘outstanding universal value’.

For example, imagine the discovery of a single cave drawing of a single animal in a region that has been selected by tourism developers for a resort. Archeologists and other defenders of a broad definition of cultural heritage might certainly want to protect this area for further exploration, and this will lead them to conclude that this single cave drawing represents cultural heritage of ‘outstanding universal value’. However, in comparison to other sites with numerous cave drawings that are more elaborate and detailed, this site with a single cave drawing might be deemed as less than ‘outstanding universal value’. Indeed, the word ‘outstanding’ implies that not all sites with cultural heritage deserve to be protected. Some sites with cultural heritage

84 Operational Guidelines, para 108, 118.
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must be less than ‘outstanding’ based on this definition and thus unworthy of protection under an international legal framework.

Indeed, further efforts to clarify what is meant by this term has only narrowed the definition of what might be included as cultural heritage and deserving of protecting under an international framework. The Convention established a World Heritage List, and in 1996 the Operational Guidelines for inclusion in this list required a site to possess ‘a masterpiece of human creative genius’. Obviously, this definition sets a much higher threshold for inclusion as cultural heritage. A site that is a ‘masterpiece of human creative genius’ is far rarer than a site that is of ‘outstanding universal value’.

Some scholars have questioned the efficacy of the Convention in adequately protecting all of the world’s valuable heritage. The World Heritage List has been deemed insufficient not only because it lacks a complete listing of all sites worthy of heritage but also because of a bias in favour of protecting sites in certain regions. The World Heritage List is supposed to protect global heritage, but in fact it is biased toward protecting the heritage of certain cultures over others. Europe has many more cultural sites on the List per capita than any other continent, with Africa represented second-most.

Moreover, an analysis of the imbalance of World Heritage sites shows that Arab countries and Asia have far fewer sites on a per capita basis. Europe and Africa have more than twice as many sites per capita as Arab and Asian countries. When one compares the World Heritage category of cultural sites, the differences are even greater. Europe has 46 cultural sites, while Arab countries only have 21.

85 UNESCO, Operational Guidelines; Also see Kuruk, above n 5, 116.
86 See Kuruk, above n 5, 116.
87 Frey, Pamini, above n6.
88 Ibid, 553.
89 In 2012, Middle East Countries such as United Arab Emirates there is only one site, Jordan 4 sites, Lebanon 5sites, Yemen 4 sites, Saudi Arabia 2 sites and Oman 4sites. Comparing to European countries such as United Kingdom of Great Britain and Northern Ireland 28 sites and Sweden 15. For more see <http://whc.unesco.org/en/list/>.
While the researchers do not speculate on the causes of this imbalance in World Heritage site listings, several obvious possibilities come to mind: First, the World Heritage selection process might be influenced by scholars, academics and other experts from the West. These individuals might have cultural biases that favor listing European sites. Second, Western influence as a result of the greater expertise of Western scholarship and expertise might simply be the result of greater knowledge about Western sites and lesser knowledge about sites in other countries. In addition, lack of access to Arab countries might prevent knowledge of worthy sites for listing. If most scholars and experts that recommend listings are from the West, their travel to various Arab countries might be limited by political, social, economic or legal barriers. Indeed, the higher rate of authoritarianism among Arab countries, combined with some hostility toward the West, might preclude access.

A related factor that might contribute to the imbalance of listing on the World Heritage List involves the lack of expertise in Arab countries in heritage identification and protection. Arab countries are relatively undeveloped in academia and scholarship in cultural studies compared to the West, and thus there are fewer experts to identify and promote certain sites for protection on the World Heritage List. This lack of domestic human capital in cultural studies makes Arab countries reliant on Western experts, which in turn activates the above barriers to listing.

Lastly, the lack of Arab listings on the World Heritage List might be the result of resistance to listing by Arab regimes. Economic development might be a higher priority for Arab governments than heritage protection, and there is often a conflict between these two emphases. Another cause of resistance might be lack of concern about an ancient site that is not supported by existing ideologies, particularly Islam. For example, in Saudi Arabia there is much less concern about pre-Islamic cultural sites than Islamic sites in terms of heritage identification and protection.

Indeed, analyses of World Heritage sites have found that sites are more likely to be protected when they are less likely to be the focus of resistance by domestic
stakeholders, including economic interests and government. Heritage sites that are generally unconnected to government and economic interests are more likely to be listed because these lack commercial value, natural resources, and political control. Essentially, the World Heritage List works well for sites that are “undetected, disregarded by national decision-makers” and where “technical knowledge for conservation are inadequate.”

Saudi Arabia has been specifically identified as a country that is resistant to World Heritage listing because of Western antagonism. Saudi Arabia has refused to nominate sites in Medina and Mecca, “because they are reluctant to conform to a set of Western regulations.” This suggests that the World Heritage framework is the focus of real or perceived perspectives of Western bias by Saudi Arabian officials, and in fact this might explain the low per-capita representation of Arab sites on the World Heritage List.

There are other alternatives for protection other than listing on the World Heritage List, and some scholars believe these are preferable when resistance exists by domestic stakeholders. Protection by domestic frameworks is ideal to solve the problem of Western antagonism and commercial development, for example. However, these frameworks are only ideal when the sites are not subject to degradation because of the lack of technical expertise by domestic institutions and personnel or from commercial development. In other words, the domestic alternative is only ideal when the characteristics of the site are relatively resistant to degradation and thus do not require utmost protection efforts.

Unintended consequences of listing on the World Heritage List have been identified by scholars. For example, some sites actually are at greater risk of degradation after listing when they are subject to increased tourist activity and targeting for terrorist

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91 Ibid, 555.
93 Ibid.
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strikes. In some cases, it might be desirable to avoid listing and choose a lower profile through a domestic protection framework.

In addition, listing of certain sites on the World Heritage List might prevent other sites from being considered for protection. This is particularly true when the domestic government relies upon the World Heritage framework, including preservation expertise, in the absence of domestic support. Over-reliance on the World Heritage framework might prevent countries from developing their own preservation framework. They might deem the World Heritage site as the only site worthy or capable of protection.

Certain external factors might make listing unnecessary because protection is possible through other means. For example, very popular sites, such as the Taj Mahal, the Colloseum, and Stonehenge, enjoy significant tourist activity that produces revenue and does not threaten these sites with degradation. These external factors that make listing unnecessary thus raise the issue that nomination for the World Heritage List should not simply be based on the value of the site to global heritage. In addition, nomination should not be based solely on the need for the site to be preserved. Rather, nomination should be based on the value of the site to global heritage, the need for preservation, and the absence of other protection mechanisms that might protect the site better than listing. In other words, use of the World Heritage framework is conceived as a final solution to the problem of protection for specific sites where a combination of site-specific and external factors is present.

Factors other than cultural resistance and human capital have been determined to influence the imbalance of sites on the World Heritage List. This imbalance has been addressed by UNESCO since 1994, but the effort has failed, and this is attributed in part to the Euro-centric interest in designating sites for tourist purposes. “The impact on tourism and prestige gained from site nomination are factors that incentivize applications, potentially distort the process of designation, and contribute to the

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94 Ibid.
95 Ibid.
96 Ibid.
imbalance.” Even more disturbing is the fact that these interests appear to be influential in not only nominating sites for consideration on the list but for actual approval on the list. “Political and economic factors unrelated to the value of heritage have an impact on the composition of the list.” Tourist interests in European countries are more sophisticated and capable of presenting the argument for inclusion on the World Heritage List, reflective of a commercial heritage industry in Europe.

An impact of the imbalance is to leave other sites around the world unprotected. This occurs in several ways. First, World Heritage resources are finite, and they can only process a finite number of applications. The greater the number of European applications, the more resources the Committee must devote to processing these requests rather than focusing on promoting site nominations from less-represented regions of the world, including the Middle East.

Another factor within the World Heritage bureaucracy that might contribute to the imbalance is the fact that relationships are built between regular European nominators and selection staff. Since Europe has received so many sites, the experts and other personnel involved in nominating sites have gained credibility with the World Heritage bureaucracy. These relationships might preclude the cultivation of relationships with experts and other nominating personnel in less-developed regions of the world. Indeed, one scholar claims that “the striking imbalance of the list reflects a biased nomination process.”

In order to address the imbalance that favors European sites on the World Heritage List, UNESCO has adopted several, to date unsuccessful. In July 2012, the new
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Operational Guidelines for implementation advocated the construction of a Tentative List prepared by staff and consultants. This solution to the problem of European predominance sought to address potential bias in the selection process as well as the lack of technical expertise in underdeveloped countries.

However, this proposal requires State Parties to the Convention to present a list of potential sites from which the World Heritage selection staff will prepare the Tentative List. Thus, there must be domestic willingness and capability in the construction of the lists put forward for consideration for inclusion on the Tentative List. Even though this effort does not require significant sophistication, it does require willingness by the State Party. This measure fails to address resistance.

This measure would be significantly improved in addressing resistance if the Tentative List was prepared entirely by World Heritage staff and consultants, rather than relying on State Parties to present sites for consideration on the Tentative List. The Tentative List could be the basis for a proactive effort by the Committee to address resistance by State Parties. For example, the Tentative List could be publicized by the Committee to place pressure on the reluctant State Party to nominate the site, representing the stick in a carrot-stick strategy. The carrot element of this strategy could encourage the State Party to recognize benefits of nomination. Meanwhile, this relationship would familiarize reluctant State Parties with the World Heritage bureaucracy, building trust and reducing resistance.

Such a strategy might work particularly well with resistant parties such as Saudi Arabia. As noted, scholars have documented an anti-Western sentiment in the regime that prevents Saudi Arabia from nominating sites in Medina and Mecca, which are holy sites in Islam. The Committee most likely lacks bias toward Islam or the cultural identity of Saudi Arabia, and thus this antagonism is unwarranted. Improved relations between World Heritage staff and Saudi officials would build trust and goodwill.

Indeed, Saudi Arabia has a track record of good relations with other Western interests, notably the United States and the United Kingdom and corporations from these

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103 Operational Guidelines, para 24.
countries. Cooperation between the Kingdom and these interests in the development of the oil and natural gas industry has been intensive and productive, despite the significant cultural and political differences among these countries. Saudi Arabia is not intrinsically and irrevocably hostile to the West, and there is significant potential for the cultivation of relations between the Kingdom and World Heritage staff and consultants. Indeed, the World Heritage staff likely has much less of a Western-centric culture than the American and British interests with which the Kingdom successfully interacts on matters much more problematic and crucial to Saudi interests than heritage protection.

Since the Convention of 1972, problems in the implementation of heritage law have plagued heritage protection and left much of humanity’s heritage under threat from destruction. Initially, heritage protection sought to encourage protection at the state level. UNESCO, as mentioned before, worked in cooperation with WIPO to define cultural heritage for the purposes of designing mechanisms to protect it. These mechanisms were envisioned to eventually occur at the state level, but of course the very fact that the United Nations and other international organizations had to intervene suggested that state-level mechanisms were inadequate.

There are several causes of the failure of state-level law and policy to protect cultural heritage. First, states with cultural heritage often lack the resources to protect their heritage. Resources include financial, institutional, philosophical and technical. Developing and underdeveloped countries, for example, often lack the financial resources to invest in heritage protection. Government revenue must be spent on essential services to provide basic amenities to the population. On the other hand, perhaps the regime suffers from corruption that limits the availability of financial resources for heritage protection.

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104 Kuruk, above n 5, 111; also see WIPO (1ST March 2015) <http://www.wipo.int/about-wipo/en/history.html>.
In other instances, the lack of philosophical awareness and belief that heritage protection is valuable, plagues developing and underdeveloped countries.\textsuperscript{106} Some states decide that economic progress is more valuable than heritage protection, and thus they facilitate projects that destroy valuable sites. In other cases, the regime decides that financial resources should be spent on other priorities, including military and warfare, even though there is capital available for heritage protection. In yet other cases, the regime is hostile to heritage protection, perceiving it to be a burden placed on the state by Western interests that have no place deciding the fate of another culture’s heritage, or what the West deems to be heritage.

Institutional resources including legal, political, public-sector, non-governmental, and/or non-profit institutions play an important role in heritage protection in the modern industrial world.\textsuperscript{107} For example, in democratic, pluralistic societies, civil society includes environmental and preservation groups that can pressure lawmakers to enact heritage protection laws and policies. If lawmakers are resistant, these groups can litigate in a justice system that is impartial and objective. If successfully legislated or litigated, heritage-protection laws and policies can be promoted through the expertise of personnel from the disciplines of archaeology, anthropology, the social sciences, and other disciplines reflective of an advanced industrial society.

Deficiencies in institutional and personnel resources can create problems for heritage protection. For example, a society with a justice system beholden to the government will rarely promote heritage protection that is opposed by the government. A society without expert personnel to carry out the well-meaning laws and policies of the government to protect heritage will also fail in this mandate.

All of the resources must be available for states to enact meaningful and effective heritage protection. Financial resources must be available. Institutional resources must be available. Personnel must be available. And, most important of all, the philosophical value of heritage protection must be present. The history of heritage protection efforts illustrates the deficiency in all of these resource areas.

\textsuperscript{106} Kurin, above n 103, 69,72,73.
The neglect of tangible cultural heritage led to its destruction through a variety of processes, often working in tandem.\(^\text{108}\) Social factors included attitudes that failed to value cultural heritage and thus tolerated or even promoted its destruction. Economic factors included development pressures that sought to industrialize and modernize through infrastructure, residential and commercial development. Other economic factors included the commercial value of cultural heritage that had value on the black market among collectors. Lastly, physical forces, namely degradation through erosion, presented a considerable threat to heritage resources.

One of the first problems that emerged from the Convention was the narrow focus of the definition of protected heritage, a problem that has since been rectified in the expansion of what constitutes heritage. Only tangible heritage was identified for protection, thus leaving natural and intangible heritage unprotected.\(^\text{109}\) This narrow conceptualization of heritage cultivates a paradoxically contradictory notion of heritage protection that is self-defeating. Defining heritage only by its tangible elements defeats the philosophy of a holistic appreciation of heritage as it manifests in intangible elements as well. This threatens to disassociate tangible heritage from its more comprehensive implications – the intangible and universal value of heritage.

Another problem relates to the high standards established for valuable heritage. In 1996, the Convention established a World Heritage List, which required acceptable heritage to meet the standard of a ‘masterpiece of human creative genius’.\(^\text{110}\) This standard is so high that only wonders of the world can meet the criteria, while the vast amount of heritage considered less than masterpieces remains threatened. Moreover, this standard establishes a philosophical perspective of heritage that is exclusive and


\(^{110}\) UNESCO, Operational Guidelines para 77; also see Kuruk, above n 5, 115.
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elitist, ensuring that heritage protection covers less rather than more of the world’s universal heritage.\footnote{111 For more information see J Blake, Developing a New Standard Setting Instrument for the Safeguarding of Intangible Cultural Heritage: Elements for Consideration (2001) CLT-WS/8 73-75; Kuruk, above n 5,115.}

In order to address the deficiencies of the Convention of 1972, the Convention for the Safeguarding of the Intangible Cultural Heritage of 2003 introduced important philosophical concepts to the discussion.\footnote{112 S Millar, ‘Stakeholders and community participation’, A. Leask and A. Fyall, (eds), Managing world heritage sites (Butterworth-Heinemann, 2006) 37–54.} Foremost among these, as the title of the convention makes explicit, is the inclusion of intangible heritage. As opposed to the relics, artifacts, ruins, and monuments identified in tangible heritage, the concept of intangible heritage recognizes the fact heritage is part of living human experience. The intangible heritage Convention sought to protect heritage practices that continue to exist in the world today, and inevitably expanded the concept of heritage in a way that has presented considerable challenges.

One of the primary challenges of expanding the definition of heritage to include intangible culture is the subjective nature of this concept. Intangible heritage operates within the human sensibility and manifests in human practice, and thus defining intangible heritage requires at least some consideration of the practitioner’s opinion about the value of the culture and whether it meets the standards for heritage.\footnote{113 G Aplin, The Nature of Heritage, Heritage – Identification, Conservation and Management (Oxford Uni Press, 2002) 13-27.} This directly contradicts, justifiably, the objective standard set by the 1996 operational guidelines whereby heritage must represent ‘a masterpiece of human creative genius’ to qualify.\footnote{114 Kuruk, above n 5,115.} Living intangible heritage primarily exists among cultures that do not create sophisticated cultural products, whether tangible or intangible, characteristic of a masterpiece standard established by the West.

In addition, the intangible heritage Convention (ICH),\footnote{115 Convention for the Safeguarding of Intangible Cultural Heritage, opened for signature 17 October 2003 CLT/CH/14 (entered into force 20 April 2006).} noted how previous determinations of heritage were made.\footnote{116 Kurin, above n 103.} Inevitably, this involved commissioning
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experts, typically from the West, to visit the culture in question and determine whether their intangible culture met the standards of the previous conventions. This methodology was modified dramatically by allowing participants in the culture to determine what constitutes their own heritage. This also expands the potential definition of valuable heritage.

If producers of intangible heritage are able to determine whether their culture is worth defining as heritage, then the masterpiece standard must be recast for tangible culture. Currently, two contradictory standards to exist, one for tangible heritage that is exclusive and elite, constructed subjectively by experts, and one for intangible heritage that is inclusive and subjective from the participants’ perspective. As long as disparate definitions of different types of heritage exist, the potential for debate over what heritage is worth protecting exists.

The more comprehensive definition of intangible culture established by the ICH Convention recognizes that heritage continues to be practiced rather than exists in the form of ancient ruins and relics. This inevitably challenges social, political and economic processes that threaten intangible culture. Threats from industrialization, primarily economic development, are particular threats against intangible culture, which inherently defies the advancement of modernity.

Of course, an expansive definition of intangible heritage raises as many problems as opportunities. For example, the subjective nature of what is valuable in heritage might change according to who in the culture is being asked their opinion of valued heritage. External and internal processes might influence the subjective perception of valued heritage, including the provision of economic and political incentives from the dominant cultural group that sees heritage protection as a threat to development or other economic interests. Ultimately, an external agent must evaluate the participant perspectives of valued heritage, and this can actually ensure that improper incentives or pressures are identified and weighed against participant claims.

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This fact raises the issue of paternalism in the determination of valued heritage. The modern industrial world informs other cultures of what its experts determine to be valued culture, and the modern industrial world takes it upon itself to protect the culture of others, whether tangible or intangible. Paternalism values only what the dominant group values, and this ultimately places the hands of heritage protection in the dominant global groups that have established heritage protection regimes.118 In some cases, practitioners of intangible culture or holders of tangible culture might have different interests than those of the dominant heritage protection regime, and these interests cannot necessarily be considered philosophically inferior, though they are often dismissed.

For example, consider the case of an underdeveloped country that seeks to pursue economic development at the expense of some heritage losses. The country has valued this heritage and determined that the needs of economic development, which can result in significant improvements in quality of life for many, are worth sacrificing the heritage of a few, particularly the few from the advanced industrial countries who are most aggressive in promoting heritage protection. There might also be instances where Indigenous peoples want to pursue economic development at the cost of their traditional heritage, but heritage protection regimes might prevent this act of self-determination.119

Ironically, critics such as Stobbs and Godden raise significant philosophical issues about whether international and domestic law based on Western norms essentially takes power away from Indigenous peoples engaged in acts of living, intangible culture. Such culture necessarily evolves, adapts and changes in response to a variety of factors, and this means that trying to capture such heritage in a legal regime is actually contrary to the notion of evolving, living heritage. Based on this paradoxical understanding of heritage, the best approach to heritage protection might promote self-determination of Indigenous peoples rather than the imposition of legal norms constructed by outside parties. Under self-determination, intangible heritage

protection would be abandoned in favour of cultural conservation, much like a wilderness area is left to adapt and evolve as ecological pressures warrant.

These problems with heritage protection illustrate the problems that emerge when charters and principles attempt to define, capture and protect cultural elements that are inherently ambiguous, elusive and transitory, particularly in relation to intangible culture. However, identifying and protecting tangible culture, particularly that defined by the high standard of ‘masterpieces of human genius’, allows for a more coherent standard to emerge. When there is widespread agreement about the heritage value of a physical item, charters and principles can provide important protective mechanisms. Such mechanisms are inevitably unable to protect all heritages, since opinions will vary, but at least a basic foundation of universal heritage can be identified and protected under such charters and principles.

Charters and principles can initiate the beginning of specific protection measures, and this is the primary benefit of international law involved in heritage protection. They can provide general guidelines that allow for the identification of specific items and practices, but their value only lies in whether their mechanisms ensure specific protection measures.

Heritage issues around the world do not simply involve developing and underdeveloped countries. Heritage protection also occurs in advanced industrial nations, including protections for the tangible and intangible heritage of Indigenous peoples in North America, and these heritage protections reflect many of the issues of paternalism and self-determination raised by critics of traditional heritage protection regimes.

In the United States, the U.S. Bureau of Indian Affairs manages Indigenous peoples’ affairs, engaging in a combination of heritage protection and self-determination that allows Indigenous peoples to make many of their own decisions about the nature and importance of their cultural life. For example, Indigenous peoples in the United

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120 K Frantz, Indian Reservations in the United States: Territory, Sovereignty and Socioeconomic Change (University of Chicago Press, 1999).
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States are allowed to commercialize their tangible culture and intangible culture for the tourist markets, and they are allowed to build casinos to raise revenue, dramatically threatening traditional heritage in the quest for financial self-determination.

The Indian Gaming Regulatory Act of 1988 (IGRA) sought to ensure that traditional heritage was not corrupted by the advent of casinos on reservations and other lands acquired by Native American or Indian tribes in the United States.\textsuperscript{121} Advocates of casinos as a solution to the socio-economic suffering of Indians on the reservations recognized the potential for corruption, and the IGRA attempts to protect against corruption and ensure the fair and just distribution of gaming proceeds, which are designated for academic scholarships, cultural activities and the transmission of cultural knowledge. Protection of tangible culture is also provided for in those reservations where sensitive heritage sites exist.

However, in most cases in the United States, valuable tangible cultural heritage of Indigenous peoples is not managed by tribal governance but rather by federal agencies such as the National Park Service.\textsuperscript{122} In some cases, where heritage sites fall within existing tribal boundaries, joint cooperation between tribal authorities and the federal government is undertaken. For example, ancient ruins in Taos, New Mexico that lie within a reservation are managed by the Park Service but tribal authorities are allowed to deny access during tribal holidays and ceremonies.\textsuperscript{123} Tribal authorities are required to provide access to federal experts, such as archaeologists, to ensure adequate protection and preservation of the ruins.

9. Conclusion

Protecting cultural heritage is vital as it facilitates understanding about the culture and the people of different places. The WHC was adopted in 1972 and is the most well-known international legal instrument in this regard. However, population growth,

\textsuperscript{122} Frantz, above n 119.
\textsuperscript{123} Ibid.
environmental degradation and even globalization are increasingly putting pressure on heritage sites. 40 years since the adoption of the WHC, it is timely to re-consider this treaty. This chapter explored and critically analyzed the impact of the Convention and other relevant international law on the protection of heritage sites. The findings suggest that the Convention and international law are only successful in protecting heritage sites when there is adequate cooperation from domestic authorities. Due to high levels of authoritarianism, the weakness of environmental interest groups, and the lack of an impartial and independent legal system, heritage protection around the world is inadequate. The lack of Arab listings on the World Heritage List might be the result of resistance to listing by Arab regimes. Economic development might be a higher priority for Arab governments than heritage protection, and there is often a conflict between these two emphases.

There are several causes of the failure of state-level law and policy to protect cultural heritage. First, states with cultural heritage often lack the resources to protect their heritage. In other instances, the lack of philosophical awareness, namely the belief that heritage protection is valuable, plagues developing and underdeveloped countries. All of the resources must be available for states to enact meaningful and effective heritage protection. Charters and principles can initiate the beginning of specific protection measures, and this is the primary benefit of international law involved in heritage protection. International law can deliver resources and motivation to countries that have previously shown a pattern of neglect, indifference, or even hostility toward heritage protection, particularly for heritage that does not explicitly support commercial or state interests. In addition, the same threats to built heritage also present threats to intangible heritage, addressed in the 2003 Convention, which has deficiencies that are similarly related to the insufficiency of international law to address indifference, lack of resources, and resistance by domestic actors.
National Implementation

1. Introduction

As explored in Chapter 4, the Convention was preceded and influenced by the emergence of national heritage systems in several countries, including those in the industrial and developing worlds. In addition, the 190 States Parties to the Convention have established national heritage frameworks intended to support and supplement their obligations under the Convention.

Heritage management systems, until the mid-20th Century, lacked significant legal authority to protect heritage from economic development, vandalism, erosion, and trafficking. Meanwhile, heritage in colonies and, later, independent developing countries, suffered from a lack of legal norms, resources, and expertise. Even though international law requires voluntary action on the part of State Parties in the implementation of domestic law and governance systems, the legal framework constructed by the Convention under the purview of the United Nations has led to significant success in heritage protection in both the industrial and developing worlds. The Convention has encouraged States Parties to reinforce their domestic frameworks toward heritage protection by providing a model that is generally more comprehensive than pre-existing domestic law. This success relates, therefore, to the fact that stronger national regimes, particularly in the developing world, have been installed as a result of participation in the international regime. The Convention has

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also led to the strengthening of national laws and provided expanded resources to countries without adequate funding, personnel and expertise.

This chapter examines the national heritage frameworks in the United Kingdom, Australia, Jordan, and Egypt, noting the similarities and differences that result from the varying approaches taken and the levels of social and legal norms, civic society, legal systems, governing structures, and corruption existing in each jurisdiction. This examination of national heritage frameworks is essential given the influence of domestic law, social norms, and governance systems in fulfilling the mandates of international and domestic heritage protection laws.

The analysis in this chapter reveals the United Kingdom to have the longest history of heritage protection in western civilization and arguably the most influential legal framework. This framework can be understood in the context of entrenched social norms favouring heritage protection as an end unto itself dating back hundreds of years. These norms have led to the establishment of a legal framework that benefits from a rich civic society, representative government, and a professional and impartial government bureaucracy and legal system. Fortunately, these elements all exist, to some degree, in the other countries analyzed in this chapter. However, for reasons specific to each country, these factors do not exist to the same degree as they do in the United Kingdom.

The first section of this chapter examines the emergence of domestic heritage frameworks from ancient times to the Convention. The next section explores one aspect of the Convention framework - its influence on the establishment of national frameworks. This section on national heritage frameworks explores the similarities and differences of the national regulations in the examined countries, followed by a country-by-country analysis.
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2. Background

2.1 States Parties Obligations

Under the Convention States Parties are required to enact systems and legal regimes to protect listed heritage sites of universal value. Article 4 describes the obligation owed by the endowed state to its heritage sites:

“Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to the State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain”

Less-affluent State Parties are able to draw upon the resources of the World Heritage Fund created through contributions from more affluent State Parties. Scientific and technical assistance is also provided to account for the deficiency in expertise among developing countries. Most of the expertise in heritage conservation has been developed by academic and research institutions in industrial nations. States Parties that are best able to protect their heritage tend to have working relationships between these civic institutions, policymakers, regulators, and legislators, such as the role of architectural preservation societies in the nascent period of heritage protection in the United Kingdom.

Sites selected by the Committee for inclusion on the World Heritage List are designated for protection and assistance under Articles 5 and 6 of the Convention. Sites are recommended by State Parties. The selection process ensures that only those

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3 World Heritage Convention, art 4.
5 Ibid.
6 World Heritage Convention, art 5, 6.
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sites of significant heritage value are accepted. This gives ultimate authority to States Parties to decide not only what heritage to protect but also what heritage to neglect.

2.2 World Heritage Membership

States Parties are those countries that have adopted the Convention, a number that currently equals 190 countries. States Parties are required to identify and nominate sites within their borders that should be considered for inclusion on the World Heritage List. The State Party is also required to provide details of how the site is and can be further protected, notably with a management plan. The State Party is required to submit periodic reports on the status of protection. Wealthy and/or industrial countries are capable of applying civic and government resources to this effort, while the obligation is markedly more burdensome on less wealthy and/or developing countries.

If the State Party does not have the necessary resources to properly protect the site, the State Party must seek the resources of other groups, including the World Heritage Fund. Under Article 6 of the Convention, highlighting the international value of heritage sites within the borders of a State Party will result in the cooperation and provision of resources to less affluent countries or those without expertise. Likewise, wealthier countries and those with more expertise are required to provide assistance to countries in need of technical, scientific, and other assistance. Unfortunately, the history of international assistance funding to less wealthy countries shows substantial fluctuation, with the most recent trend being historic lows in funding through this program. As Table 1 illustrates, international assistance funding

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8 World Heritage Convention, art 3, 4.
9 World Heritage Convention, art 4.
11 World Heritage Convention, art 22.
12 World Heritage Convention, art 6.
reached a peak of nearly $170 million in 1998 and has since plummeted to $22 million in 2014 (dollars adjusted for inflation).\textsuperscript{13}

\section*{Table 4 – International Assistance Funding}

\begin{table}[h]
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\begin{tabular}{|c|c|c|c|}
\hline
Year & Funding & Year & Funding \\
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1979 & $31$ million & 2000 & $79$ million \\
1981 & $52$ million & 2001 & $132$ million \\
1983 & $41$ million & 2002 & $94$ million \\
1985 & $41$ million & 2004 & $59$ million \\
1987 & $68$ million & 2005 & $38$ million \\
1989 & $68$ million & 2006 & $20$ million \\
1991 & $53$ million & 2007 & $40$ million \\
1993 & $61$ million & 2008 & $15$ million \\
1995 & $59$ million & 2010 & $28$ million \\
1997 & $88$ million & 2011 & $19$ million \\
1998 & $167$ million & 2012 & $18$ million \\
1998 & $153$ million & 2013 & $11$ million \\
\hline
& & 2014 & $22$ million \\
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\end{tabular}
\end{table}

Ratification also allows States Parties to influence the policies, programs, and governance of the Convention. States Parties elect representatives of the Committee, which provide expertise in the selection of sites and their protection.\textsuperscript{14} In addition to managing sites on the List, representatives are engaged in developing inventories of heritage sites that might not be included on the List but in the meantime are still worthy of protection efforts. These efforts require significant technical and financial resources that are often unavailable to less wealthy countries without international assistance funding.

Significantly for the purposes of this thesis, ratification also places responsibilities on State Parties under Article 5 to institute national regimes to protect the heritage sites selected for the List.\textsuperscript{15} Legal capacity building at the national level is encouraged under section (d) of Article 5. However, this section is also broad enough to account for the variance in legal regimes among State Parties. In addition to or in lieu of


\textsuperscript{14} World Heritage Convention, art 19.

\textsuperscript{15} World Heritage Convention, art 5.
adequate domestic resources, this section encourages State Parties under Article 13 to make requests for international assistance. This aspect of the framework recognizes variation in domestic law and government, allowing each State Party to implement international law in a manner that suits national distinctions. Thus, for certain states with legal and governance systems outside Western constructs, the Convention recognizes that protection might be more likely to occur as a State Party takes advantage of assistance programs rather than through the institution of a legal regime that abides by Western frameworks.

2.3 Legal Framework of Heritage Systems

National heritage systems contain a legal framework that differs somewhat from the framework of the Convention, most notably because of the different legal traditions and governing structures of nation-states versus the United Nations. National heritage systems emerge from the legislative bodies in individual countries, but the law is also influenced by the activities and interests of various stakeholders, including nonprofit groups, industry, and community groups. For example, the emergence of the heritage system in the United Kingdom was strongly influenced by the interests of the Crown in preserving its heritage, as well as by non-profit groups interested in architectural preservation.

These interests determine the nature and extent of the legal framework, which is further influenced by the existing structures in the bureaucracy. For example, heritage systems before the emergence of professional bureaucracies in Western nation-states were notable for their weak enforcement and regulation. In the United States, for example, heritage protection only emerged as a mature legal system after the major expansion of federal bureaucracies in the 1930s. These bureaucracies, in the United States and other nations with mature legal frameworks for heritage protection, were

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16 World Heritage Convention, art 13.
17 Fisch, above n 1, 212 213.
18 Ibid, above n 1, 8; Also see chapter 3 for more details.
20 Ibid; Fisch, above 1, 207, 208, 216.
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necessary to provide the regulatory and technical functions needed to support the framework.

A mature legal framework for a national heritage system is characterized by several key features.\(^{21}\) In addition to a functional and professional regulatory bureaucracy that oversees the laws for heritage protection, the legal framework is characterized by a constantly evolving environment where various stakeholders continue to exact influence over the interpretation of the law and the formulation of new laws.\(^{22}\) These interest groups vary from industry groups that want to diminish the capacity of heritage protection to hinder development, such as the construction industry, to heritage groups that want to increase limitations on development, such as preservation societies. Professional and impartial judiciaries preside over legal disputes, while representative legislative bodies facilitate and moderate the interests of various groups through the law reform process.

2.4 Role of Heritage Council

Most nation-states with mature legal frameworks for heritage protection appoint a heritage council or commission charged with the responsibility of advising legislatures and the executive in heritage policies and programs that support the law, such as the Heritage Council in Australia.\(^{23}\) The heritage councils or commissions often include stakeholders, including representatives from non-profit groups, industry, and community groups. Typically, their appointment is through the executive branch, notably the Prime Minister in parliamentary systems. The national councils or commissions vary in terms of their independence from the executive and legislative branches. However, in most cases, the council or commission is a political body that includes diverse viewpoints from competing interest groups, including industry, and

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\(^{22}\) Fisch, Ibid, 2, 8-10.

\(^{23}\) Ibid, 10.
the level of protection often varies according to the political ideology of the executive and/or legislative body.24

The political nature of the heritage council or commission is paradoxical in the legal framework for heritage protection. Critics point to the fact that industry representatives on the councils or commissions actually serve to diminish heritage protection.25 Indeed, the explicit mission statement and underlying legal framework for heritage councils in many countries, such as the United States and Australia, emphasize the importance of balancing heritage protection with economic interests.26 In the United States, for example, the Secretary of the Interior is responsible for identifying and nominating American sites to the World Heritage List.27 The Secretary of the Interior is a member of the President’s Cabinet and is subject to the prevailing political ideology of the administration. Heritage councils in some countries also include a strong emphasis on representing the tourist industry for the purposes of marketing heritage to domestic and international visitors for the purpose of economic development. This can lead to the implementation of a heritage regime that is more suited to commercial interests rather than achieving the goal of protecting heritage of universal outstanding value.

2.5 National Heritage List

Similar to the World Heritage List, national heritage lists are intended to identify and protect sites selected for their significant contribution to national heritage.28 Heritage councils are the primary bodies in national governments responsible for accepting and approving nominations for inclusion on the list. After a site is accepted, it becomes eligible for a full range of resources necessary for its protection, including funding for

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25 Fisch, above n 1, Ibid.
26 Yorke and Baram, above n 24,14,15.
28 Fisch, 184; Rowan, above n 24, 5; also see <http://whc.unesco.org/en/list/>. 
technical assistance and legal measures to mitigate the impact of nearby development projects, such as environmental impact reports.29

The criteria used for environmental impact study, required under Article 4, is quite broad and varies depending on the legal and administrative framework of the country, as well as its level of expertise and knowledge. Article 4 only sets out that each State Party “will do all it can to [protect heritage] to the utmost of its own resources and, where appropriate, with any international assistance and co-operation.” 30 Environmental impact reports in industrial countries will be completed under a formal legal regime that likely already exists to review development proposals outside of the heritage parameters.31 By contrast, a less-developed country, such as Jordan, might rely on environmental studies by academic institutions or international organizations outside of a formal legal regime.32

2.6 National Heritage Management Principles

Management principles vary considerably from nation to nation based on the availability of resources, legal and governance systems, the origins of the heritage movement, and the nature of the heritage.33 For example, heritage management principles in the United Kingdom have emerged in response to a strong emphasis on architectural preservation, while heritage management principles in the United States have emerged with an emphasis on Native American heritage protection. In both cases, heritage management principles are reinforced by a professional and impartial legal system that is countered by a representative government subject to interest group influence. This is illustrated by conservation efforts to protect natural and indigenous features in what became Yellowstone National Park which were led by the nascent environmentalist movement of the late 19th Century, which found support in the progressive political ideology of the Republican Party.34 This effort was countered by industrial interests of the time that wanted to protect their timber, mining, and other

29 Ibid.
30 World Heritage Convention, art 4.
31 Rowan above n 24.
32 Fisch, above n 1, 7.
33 Ibid, 4-8; Rowan, above n 24; Stubbs, above n1.
34 Ibid.
commercial interests related to natural resource utilization. The Secretary of the Interior is responsible for managing all of these varying interests under the conservation framework. The role of the Secretary illustrates the pluralistic and even contradictory nature of heritage protection in the United States, which is guided by conservation, commercial, and environmental interests.

Other nations, such as those of the developing world, develop heritage management principles largely as a response to international pressure but have more recently transformed due to an interest in tourist development. For example, Egypt’s heritage management principles were contested by the country in the 1950s as the government pursued development projects such as the Aswan Dam. Likewise, more recently, China’s heritage management principles were subordinate to economic development interests in the Three Gorges Dam Project. However, over time, countries such as Egypt have recognized the economic value of heritage protection, which has led to the emergence of principles that generally support heritage protection, albeit often for economic (namely tourist) rather than intrinsic value.

The following section provides country case studies that examine the varying types of legal and administrative frameworks that guide heritage protection in the industrial and developing countries. These studies reveal how variance in systems of governance, legal frameworks, institutional pluralism, and human capital shape the regimes of heritage protection.

35 National Park Service, above n27.
36 Ibid; Florian, 466.
37 Ibid
39 Ibid.
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3. Australia

3.1 Framework

Australia’s heritage regime generally follows the approach of other industrial countries in adopting laws and policies managed by a national council appointed by the Executive. Australia is a constitutional monarchy that follows the bicameral parliamentary system. The electoral system includes universal suffrage for adult citizens. Unfortunately, Australia developed a legal framework for heritage protection relatively late compared to other industrial countries, reflecting both a lack of concern about heritage and, perhaps, a lack of historical architecture compared to what existed in Europe. As a result, much of the Aboriginal and natural heritage was lost due to rampant development in the 1800s and early to mid-20th Century. The current regime represents an improvement on early efforts though significant improvements could be made to lessen the influence of commercial actors. Australia’s world heritage sites are protected under the Environment Protection and Biodiversity Conservation Act 1999 (Cth), reflecting the origins of natural and heritage protection that guided the Convention in its formative years.

3.2 Early Efforts, Current Laws and Policy Framework

Early efforts and laws in heritage protection in Australia reflected an interest in the history of European settlement and neglect of Indigenous culture. Early efforts were largely organized by private-sector bodies, such as architectural and historical organizations, which selected buildings of early European settlement for preservation.

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43 Ibid.
Meanwhile, early efforts neglected the impact of development on the heritage of Indigenous peoples. Enforcement of national heritage law occurs primarily under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC). The Act defines matters of national heritage to fall within nine categories of national environmental significance. These include:

1. World heritage properties
2. National heritage places
3. Wetlands
4. Migratory species
5. Threatened ecological communities
6. Commonwealth marine areas
7. The Great Barrier Reef
8. Nuclear actions, including uranium mining
9. Water resources, including those related to coal mining development.

Under the EPBC, no party can engage in an activity that will have an impact on any one or more of these categories of national environmental significance without approval from the Department of Minister or other regulatory bodies. The EPBC establishes criminal and civil penalties for any party that engages in any activity without approval, even if no harm occurs. Activities are defined as projects, developments, undertakings, a specific activity, or a series of activities. Parties engaged in any activity that will have an impact must notify the Australian environment minister, who will decide whether further assessment is required and if necessary approval under the EPBC is required as well.

The objectives of the EPBC include environmental protection, which is further defined as conservation of Australian biodiversity. The EPBC is intended to

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45 EPBC Act (No146).
46 EPBC Act (No146) s 481.
47 EPBC Act (No146) ch 6. Prt 7. s 475 (6)b.
48 EPBC Act (No146), ch4. pt 7. s 68 (1).
49 EPBC Act (No146), ch 5. Pt 12.s171.
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streamline environmental assessment and approval processes. Heritage objectives of the EPBC include enhancing the protection and management of cultural places.

The EPBC was amended significantly in 2004 when a new Commonwealth heritage system was introduced. In addition, the Australian Heritage Council Act 2003 (Cth) (AHC) established the Australian Heritage Council (the Council) to support the Minister’s listing and assessment decisions. The Council is the Australian Government’s independent expert advisory body on heritage matters, though it is subordinate to the Minister.50

The EBPC defines Australia’s national heritage as those places, both natural and cultural, that are exceptionally related to Australia’s national identity.51 National heritage is central to the notions of development and thus reflect historical events, particularly those related to national achievements. However, the definition of heritage provided by the EBPC also reflects the fact that Australia’s historical heritage contains evidence of abuse, particularly of Indigenous peoples, resulting in a definition of heritage that includes both “joys and sorrows in the lives of Australians.”52 The EBPC also defines natural features and systems as central to national heritage.53

The National Heritage List has been established in Australia to identify specific places of national heritage and support their protection.54 The National Heritage List categorizes places of heritage as Indigenous, natural, or historic, the latter term referring specifically to Euro-centric national development.

52 Ibid.
53 Ibid.
54 EPBC Act s 3(ca).
The Australian Natural Heritage Assessment Tool (the Tool) has been created to determine whether natural places should be placed on the National Heritage List.\(^5\) The Tool is a map-supported database that identifies and prioritizes areas based on their “outstanding heritage value to the nation.”\(^6\) A comparison is made of the place’s relative value with other sites. Biodiversity is another metric used to determine whether a natural place has national heritage value.

The goal of sustaining Australia’s biodiversity is considered essential for national cultural and natural enrichment. In this way, one can see how Australia conceptualizes the integration of cultural and natural heritage. A review of Australia’s National Heritage List reveals how this integration has occurred in a framework that protects both cultural and natural heritage, conceiving of both as essential to Australian national identity and development.\(^7\) The National Heritage List includes buildings and other physical monuments related to national development. The National Heritage List also includes numerous parks, reserves, fossil sites, rainforests, and the Great Barrier Reef. In addition, Indigenous sites are listed, particularly those with significant archeological value and value to present-day Indigenous peoples.

The National Heritage listing process allows anyone to recommend a site for listing, but only the Minister for the Environment (the Minister) can make a formal recommendation to the Council.\(^8\) Under the EPBC, the Council has oversight over the process of selection. Recommendations by the Council are made to the Minister. The Minister makes the final listing decision, which allows for significant variation in heritage protection depending on the ideology of, and interest-group representation to, the government.

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Guidelines for the Assessment of Places for the National Heritage List (the Guidelines) were first published in 2009 by the Department of the Environment, Water, Heritage, and the Arts. The Guidelines provide the criteria by which sites might be nominated, considered for selection, and selected as heritage sites. The Minister has significant influence over every element of the process and selection. For example, the Guidelines give the Minister authority to start the 12-month assessment cycle on a specific date. The Minister has the authority to determine themes that should be given priority during the assessment period. The Minister has the authority to reject nominations considered frivolous, vexatious, lacking good faith, or failing to meet regulatory requirements. The Minister has the authority to approve or reject requests for assessment review, which is common given the fact that the assessment cycle is only 12 months yet 5-year extensions can be granted.

The Guidelines clearly establish the advisory role of the Council to the Minister. The Council receives all nominations provided to the Minister after 30 days, and within 40 days the Council must provide the Minister with a proposed priority assessment list, with a statement for each proposed site to be assessed. The Council may also nominate places not nominated by other parties. After this period, the Minister has the ability to add or remove any place from the assessment list.

The criteria by which places are assessed for their heritage value are inherently qualitative and subjective. The Guidelines state, “The fundamental question that must be asked … is whether the place satisfies the statutory threshold of ‘outstanding heritage value to the nation.’” Both evidence and reasoned analysis of the evidence are cited by the Council as the basis by which outstanding heritage is determined.

60 Ibid.
61 Ibid.
62 Ibid.
63 Ibid.
64 Ibid.
65 Ibid, 9.
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Thus, it is likely that the Council might arrive at a different conclusion than the Minister.

Enforcement of a heritage site, after placement on the National Heritage List, requires a Management Plan (the Plan) overseen by the Minister. The Plan determines which elements of the site are to be protected and how they will be protected. Underlying the Plan are the National Heritage Management Principles (the Principles). The Principles are promoted both by the national government and the state or territory government.

The Principles list seven items.

1. Identify, protect, conserve, present and transmit National Heritage values to all generations.
2. Use best available knowledge, skills, and standards to protect heritage sites, including those provided by technical and community feedback.
3. Respect all heritage values and integrate them with state, territory and local governments.
4. Ensure that use and presentation is consistent with National Heritage values.
5. Provide community involvement, particularly by parties with an interest or association with the place and who will be impacted by the management of the place.
6. Indigenous people must be central to the management of indigenous sites.
7. Regular monitoring, review, and reporting of site management should be conducted.

All of the members of the Council are appointed by the Minister. The Chairman of the Council must have substantial heritage experience and expertise. Two of the eight members must have natural heritage experience and expertise, two must have cultural heritage experience and expertise, and two must be Indigenous persons with experience and expertise in Indigenous heritage. One of these members must

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67 Ibid.  
68 Ibid.
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represent the interests of Indigenous peoples. Lastly, an associate member must have expertise in any of these areas.\(^{69}\)

The roles of the Council relates to assessment, advice, and policy formulation.\(^{70}\) Main responsibilities include assessing places for inclusion on both the National Heritage List. The Council nominates places for inclusion on the National Heritage List as well. The Council is responsible for promoting identification, assessment, conservation, and monitoring of heritage. The Council advises the Minister on heritage matters, strategies, and management plans for national and Commonwealth places.\(^{71}\) The advisory function of the Council ensures that heritage concerns are part of a transparent process whereby heritage protection issues are voiced by various stakeholders. However, this process gives ultimate authority for heritage protection to a political actor, the Minister. As a result, the personal ideology of, and interest-group representation to, the Minister might reflect commercial or other concerns besides protection of heritage of outstanding universal value.

In addition to the EPBC, there are other statutes in Australia that address specific elements of heritage protection.\(^{72}\) These both preceded and anteceded the EPBC. They were typically a response to the specific threats to certain types of heritage presented by commercial or natural forces.

The lack of built heritage (constructed monuments) before the arrival of European immigrants to Australia has influenced the nature of heritage protection.\(^{73}\) Australia’s heritage efforts have focused primarily on the culture of the Indigenous peoples and on the conservative of natural features.

More recently, buildings, monuments, and other artifacts related to the emergence of European civilization in Australia have been the focus of heritage protection.\(^{74}\)

\(^{69}\) Ibid.
\(^{70}\) Ibid.
\(^{71}\) Ibid.
\(^{73}\) Fisch, above n 1.
\(^{74}\) Ibid.
property rights have been challenged to prevent the destruction of these sites and objects of heritage, while in other cases tax incentives and subsidies have been provided to the private sector to facilitate the protection of heritage.\textsuperscript{75} For example, the Sydney Harbour Foreshore Authority is responsible for development activities on the waterfront, emphasizing mitigation of development on historical features.\textsuperscript{76} National museums and research institutions, including the National Museum and the Commonwealth Scientific and Industrial Research Organisation (CSIRO), have played a significant role in identifying and preserving Euro-Australian and Aboriginal heritage.\textsuperscript{77} It should be noted, however, that much of the Euro-Australian heritage that is the focus of preservation exists as objects such as art, literature, and documents, rather than sites, and is thus the focus of preservation ex situ by institutions. Most of the sites that have become the focus of heritage protection are Aboriginal and natural.\textsuperscript{78} A National Native Title Tribunal conducts hearings and submits determinations to the Federal Court. This process is notable for negotiation and compromise between parties. In other words, Aboriginal interests accommodate the interests of developers, ranchers, public agencies, and other economic interests whose projects threaten Aboriginal heritage.

3.3 Reflection

Australia meets its obligations under the Convention by providing structural processes that guide the selection and protection of heritage sites. Though commercial interests influence selection and protection decisions, Australia abides by a transparent and pluralistic system that allows multiple stakeholders with varying interests to participate in heritage protection processes. These stakeholders include Indigenous peoples, environmentalists, conservationists, the tourist and recreation industries, developers, and property owners. Disagreement exists about the value of Indigenous and natural features relative to development and property rights concerns. However, these disagreements are subject to a transparent process that allows the debate over

\textsuperscript{75} Ibid.
\textsuperscript{76} Ibid, 49.
\textsuperscript{77} Ibid.
\textsuperscript{78} Ibid; also see James Nafziger, Robert Paterson, Alison Renteln, \textit{cultural law international comparative and indigenous heritage law} (Cambridge, 2010).
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heritage protection to be known to the public, if not always resolved in a manner that pleases those who argue for the highest levels of heritage protection.

4. United Kingdom

The United Kingdom is a constitutional monarchy with a bicameral parliamentary system. The electoral system includes universal suffrage for adult citizens. Heritage law in the United Kingdom falls under the legislative framework of the National Heritage Act 1980 (NHA), most recently amended in 2007. The primary goal of the NHA was to provide funding for the National Heritage Memorial Fund (the Fund), which is responsible for acquiring, maintaining, and preserving lands, buildings, and objects of outstanding historic and other interest. In addition, the Fund is intended to establish arrangements by which estates of the current and former nobility would transfer property considered of heritage value to the government.

4.1 Early Efforts, Current Laws, and Policy Framework

The emergence of the Fund reflects the fact that many of the estates of the nobility were appropriated by the government in settlement of overwhelming tax debts that could not be paid by the debtors. This resulted in a significant influx of properties and objects of potential heritage value that had to be inventoried. The Fund, which operates as a governance body and a funding mechanism, essentially operates in a manner similar to the Australian Heritage Council. The Fund’s trustees, of which there are 14, are appointed by the Prime Minister under Part 1, Section 1(2) of the National Heritage Act NHA. These members are expected to have knowledge, experience, and interests relevant to heritage protection under Part 1, Section 1(3) of the NHA. However, the United Kingdom’s heritage law appears to provide the Fund

80 National Heritage Act 1980 (UK).
81 National Heritage Act 1980 (UK).
83 National Heritage Act 1980 (UK).
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with significantly more authority than the Australian Heritage Council. For example, the Fund’s trustees have the power to distribute financial assistance for heritage preservation under Part 3. This section of the NHA further defines what constitutes ‘outstanding heritage value’. Such heritage consists of those things with scenic, historic, archeological, aesthetic, architectural, artistic, scientific, or engineering interest. In addition, similar to the Australian legal framework, the United Kingdom’s NHA integrates some natural features into cultural heritage: animals and plants of zoological or botanical interest are specified as being of heritage value under Part 1, Section 3(2).

Trustees of the Fund serve terms of no more than three years. Although the trustees have significant authority over the administration of the Fund finances and activities, the legal framework of the NHA provides for some oversight by the Prime Minister. The Prime Minister may terminate an appointment if a trustee has failed to attend meetings, undergoes bankruptcy, suffers illness or injury, or has been convicted of a crime that the Prime Minister believes makes the trustee unfit for service.

Trustees of the Fund have significant latitude to manage the Fund’s administrative activities. For example, trustees have the authority to appoint officers and servants to support the activities of national heritage identification and management. Compensation for these subordinates also falls within the purview of the trustees. It is assumed that the trustees will be responsible managers of their budget. They are provided with a budget that gives them significant discretion in the use of funds. This represents a significant level of authority in the trustees in heritage protection. Funding is less subject to political interference by the Prime Minister or members of the government.

Trustees are also given the authority to organize committees comprised of three or more trustees with the discretion to oversee a specific area of heritage protection and

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84 National Heritage Act 1980 (UK).
86 National Heritage Act 1980 (UK).
87 National Heritage Act 1980 (UK).
management. Interestingly, the decisions of these committees must not necessarily be approved by a majority vote of the Fund’s trustees. Rather, the NHA makes it possible for the trustees to create committees that have the authority to make final decisions without further approval from the other trustees.

In addition, the Fund’s trustees have primary discretion to determine which places should be listed on the national heritage list and how they will be managed. The NHA allows the trustees to secure the preservation and enhancement of items of heritage value. In addition, the NHA gives the trustees authority to secure the preservation and enhancement of items of heritage value that are not listed by requiring the trustees to provide financial support to items “of importance to the national heritage.”

Although the trustees of the Fund have significant discretion as to how to use funds for the protection of national heritage, they lack authority over their budget. Rather, this authority is given to the Secretary of State, with the consent of the Treasury, after Parliament budgets for money specified for the Fund.

The trustees of the Fund are responsible for filing annual reports with the Secretary of State that detail their expenditure and their activities related to heritage protection. The Comptroller and the Auditor General are required to examine, certify and report on every statement made by the trustees in their report. Copies of the report are required to be submitted annually to all members of Parliament.

Prior legal frameworks that laid the foundation for the NHA include the Finance Act 1946 (FA). The FA established the National Land Fund, which was a response to the appropriation of properties held by the nobility, which became indebted as a result of

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89 National Heritage Act 1980 (UK) Proceedings 7 (1) a, b.
90 National Heritage Act 1980 (UK).
91 Ibid.
92 Ibid.
93 Ibid.
94 Ibid.
95 Ibid.
tax debts.\textsuperscript{96} The National Land Fund was abolished by the NHA and all proceeds incorporated in the Fund. In addition, the \textit{Historical Buildings and Ancient Monuments Act 1953} (HBAM), which also contributed financial assistance to the National Land Fund, contributed all of its funds to the Fund after the passage of the NHA in 1980.\textsuperscript{97} In addition, the NHA was preceded by the \textit{Redundant Churches and Other Religious Buildings Act 1969} (RCORB), which sought to protect religious structures no longer in use. The funds and functions of the RCORB were also incorporated into the NHA.

These prior laws reflected the similar pattern in Australia of the emergence of specified heritage protection laws that were much narrower in scope than later national heritage laws. For example, the FA and the HBAM addressed specific issues related to appropriation of property and natural and human-caused harm to physical structures. These legal frameworks lacked a broader focus on the variety of heritage phenomena to be protected under the NHA, which includes both cultural and natural elements.

Funding for the Fund comes from the Heritage Lottery Fund as well as grants from Parliament.\textsuperscript{98} The 2013 Annual Report of the Fund details the various activities of heritage protection and management undertaken by the trustees. Much of the activity involves identifying works of art considered of heritage value and acquiring them using finances distributed to the Fund from Parliament and the Lottery. The National Lottery of the United Kingdom generates gambling revenue for various public services.\textsuperscript{99} The Fund acquires artwork on behalf of museums that make requests for financial assistance with proceeds from lottery revenue. Management of this heritage is the responsibility of the museums.\textsuperscript{100}

\textsuperscript{96} Ibid.
\textsuperscript{97} National Heritage Act 1980 (UK).
\textsuperscript{98} National Heritage Memorial Fund, \textit{About the NHMF} (2 May 2014) <http://www.nhmf.org.uk/AboutUs/Pages/default.aspx>.
\textsuperscript{99} National Lottery, About Us (2 May 2014) <http://www.national-lottery.co.uk/player/p/home.ftl>.
\textsuperscript{100} National Heritage Memorial Fund, \textit{About the NHMF} (2 May 2014) <http://www.nhmf.org.uk/AboutUs/Pages/default.aspx>.
Other examples of Fund activities include providing funding for the recovery of World War II relics found in the Egyptian desert. At the request of the Royal Air Force Museum, the Fund provided funds that allowed for the protection of the relics and their transport back to the United Kingdom for preservation and display at the Museum. This act of heritage management is supported by the Fund’s origins as an institution intended to support the memory heritage related to the service of World War I and World War II veterans.

Thus, unlike the National Heritage List of Australia, the United Kingdom’s legal framework takes advantage of the numerous public and private museums and institutions that have been engaged in heritage identification, preservation, and management for many decades. The Fund functions similarly to the Australian Heritage Council, but with important distinctions. Most notably, the United Kingdom does not have a National Heritage List overseen by the Fund. However, Scotland, England, Wales, and Northern Ireland have informal “national heritage lists” that are established by private and public institutions.

Heritage protection in the United Kingdom emerged as a result of two primary groups seeking to facilitate their interests through preservation frameworks. First, the Crown sought to protect sites related to the royal history of the United Kingdom as a way to strengthen its waning influence over the centuries which began with the Magna Carta and culminated with the primacy of representative government over the monarchy. Second, architectural and historical groups in the private sector sought to protect British buildings and monuments from destruction by developers.

Heritage protection emerged primarily through the cooperation of the private and public sector rather than through the establishment of a legal framework. Private architectural and historical groups raised funds to purchase buildings desired for protection, and the Crown established private societies charged with protecting royal

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101 Ibid.
102 Ibid.
103 Stubbs, above n1.
104 Ibid.
105 Ibid.
106 Ibid.
heritage. One notable exception is the Office of Works, which was formed in the 1600s to maintain royal buildings in need of preservation.\textsuperscript{107}

By the late 19\textsuperscript{th} Century, the emergence of an expanded and professional bureaucracy established through civil service laws and policies, emboldened by the expansion of a private sector philosophical interest in all types of heritage, significantly increased the size and scope of heritage protection in the United Kingdom.\textsuperscript{108} For example, the target of heritage protection under the Ancient Monuments Act of 1882 included Viking, Roman, and pagan sites that predated British civilization. The law and the bureaucracy became more intensively focused on protecting heritage for its primary value of cultural heritage, particularly from commercial interests.

Government circulars, which are the equivalent of policy directives, serve to enforce and interpret the law of heritage protection in the United Kingdom, and they are influenced by new laws, judicial rulings, and executive decisions.\textsuperscript{109} For example, a circular on what changes can be made to existing heritage buildings was revised in 1994 to recognize that principles of selection can change over time in response to architectural tastes, scholarship, and perceptions of heritage. In most cases, however, disputes over heritage decisions are resolved at the ministerial rather than judicial level in the United Kingdom.\textsuperscript{110}

\section*{4.2 Reflection}

The United Kingdom is perhaps best equipped in its norms, laws, and systems of governance to protect heritage of outstanding universal value. This progress most likely reflects the fact that national identity is strongly linked to ancient ruins and royal architecture. Public and policymaker interest in protecting heritage is considered of national benefit rather than a burden on commercial development. These norms are ingrained into the governance structure, notably through the strong autonomy of the

\begin{thebibliography}{11}
\bibitem{107} Ibid.
\bibitem{108} Ibid.
\bibitem{110} Ibid; Nafziger, Paterson, Renteln, above n 78, 422.
\end{thebibliography}
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Fund’s trustees. Moreover, the United Kingdom has significant technical expertise and resources to conduct excavations and studies of potential heritage sites.

5. Jordan

Jordan is a constitutional monarchy in which the legislature has two houses, one elected through universal suffrage and one in which members are appointed by the king.\textsuperscript{111} However, the king has the authority to dissolve Parliament or discharge any representatives. The monarchical system means that heritage protection is largely influenced by the king and lacks a strong component containing influence from other stakeholders.

5.1 Early Efforts, Current Laws, and Policy Framework

The legal framework for heritage protection in Jordan is guided by the 1966 Jordanian Law of Antiquities, which is essentially a reproduction of the 1929 Ordinance on Antiquities established during the British Mandate with amendments added to reflect Jordan’s ratification of the Convention in 1975.\textsuperscript{112} The legal framework for heritage protection in Jordan falls under the oversight of the Jordan National Commission for Education, Culture and Science (the Commission).\textsuperscript{113} The analysis that follows is limited by the availability of translated versions of Jordanian heritage law.

The legislative process provides for the potential for an override of the king’s veto.\textsuperscript{114} This occurs if two-thirds of both houses pass a bill vetoed by the king. However, since the king has the authority to discharge any representative or dissolve Parliament, his authority over the legislative process is firmly established. For example, even if the

\textsuperscript{111} Kingdom of Jordan, The Legislative Branch (2\textsuperscript{nd} March 2015) <http://www.kinghussein.gov.jo/government3.html#The Legislative Branch>.
\textsuperscript{113} Ibid.
\textsuperscript{114} Ibid.
king’s veto was overridden, the king could simply dissolve Parliament. The king could also use the threat of dissolution to discourage an override.

Jordan’s constitutional monarchy gives the king authority to appoint the cabinet, which oversees the various ministries, including the Ministry of Tourism and Antiquities. A democratically elected Parliament passes laws that are interpreted by a judiciary with origins in Napoleonic Code and Sharia.\(^{115}\) Civil courts are responsible for issues related to heritage protection under national law. The king has authority to appoint and dismiss judges.

Thus, the legal framework of national heritage reflects the interests of the monarchy. Funding for the Commission tends to occur on a site-specific basis rather than on the basis of a broader legislative framework.\(^ {116}\) The Commission serves within the Ministry of Education, which has a small bureaucracy dedicated to heritage protection. The Commission works closely with UNESCO and the University of Jordan in heritage protection. Funding for heritage protection projects occurs through UNESCO and the kingdom’s general fund.

As a signatory to the Convention, Jordan’s legal framework supports cooperation with UNESCO by partnering Jordanian and foreign academic researchers and international non-governmental organizations in heritage protection.\(^ {117}\) Projects and sites designated as worthy of heritage protection and management are submitted to the World Heritage Fund or designated for protection under public-private partnerships. For example, Jordan’s university researchers partner with foreign counterparts from non-profit research organizations and academia to conduct excavations of potential and existing heritage sites.

\(^{116}\) Helaine, above n 115.
\(^{117}\) Ibid.
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Jordan lacks the bureaucratic expertise to establish a vigorous implementation and enforcement legal framework. However, efforts are being made by the University of Jordan, a state institution, to increase the human capital in Jordan dedicated to heritage protection and management. The Jordan Conservation of Cultural Heritage is financed by the University of Jordan and the European Union to increase the research capacities of Jordanian scientists in heritage protection. This national policy attempts to fulfill the Convention’s call for such partnerships and has led to significant protection of heritage sites such as Petra.

The process of designating sites for heritage protection and management occurs through the Commission. Projects and sites are nominated by the Commissioner and subject to approval of the Minister of Education, who has sole authority to determine selection and funding. In addition, the Minister of Education can take nominations from other parties or make them at his own discretion. There is no national heritage council. Similar to the United States, nominations for heritage are the responsibility of ministers appointed by the executive.

The legal framework for heritage protection in Jordan reflects the contesting interests of commercialism and heritage protection. The heritage site of Petra, which is on the World Heritage List, reflects this paradox. Jordanian national law places responsibility for antiquities sites under the Department of Antiquities, which serves under the Ministry for Tourism and Antiquities. In addition, the Petra Regional Authority oversees planning and development around the site, and the focus of the Authority is to promote the social and economic interests of local communities.

119 Ibid.
122 Ibid.
123 Bawab, above n 118.
124 UNESCO, Petra, above n 120.
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5.2 Reflection

Translated and publicly accessible versions of Jordanian heritage law would significantly improve future analyses of domestic protection efforts in the country. However, third party examinations of these areas show room for improvement. The World Heritage Committee recommends an improved framework for the preservation of Petra and other antiquities sites in Jordan. The Committee recommends the implementation of a sustainable development plan for Petra that improves the balance of interests around the site. The Committee accepts the fact that revenues from tourism are necessary for local communities.

Indeed, Jordan’s legal framework reflects the growing interest in antiquities as an element of an expanded tourism industry in the Middle East. “In the early 1990s, the multinational architects of the New Middle East drew maps depicting how tourist circuits and investment flows would propel a regional tourism economy no longer fragmented by militarized frontiers and security concerns.” This dream has faltered somewhat as a result of regional and civil conflict, though conditions in Jordan remain relatively stable socially, politically, and economically compared to conditions in neighboring states, such as Israel, Lebanon, Syria and Egypt.

As a result of the governing structure for heritage protection, significant influence over the enforcement and interpretation of heritage protection lies in the Ministry of Tourism and Antiquities rather than the judiciary. In general, the current king and his late father have been considered relatively friendly to international conventions, including the Convention, though concerns remain in the World Heritage Committee that Jordan goes too far in accommodating local and commercial interests.

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125 Ibid.
126 Hazbun, above n 15.
127 Hazbun, above n 126; ziger, Paterson, Renteln, above n 78, 502.
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6. Egypt

Egypt’s legal framework for heritage protection is much more advanced than Jordan’s, reflecting both the larger size and resources of Egypt as well as its proximate role in antiquities preservation and management. However, the Ministry of State for Antiquities, which is a Cabinet-level position, also works significantly with international organizations as a result of a human capital and bureaucratic deficiency in Egypt. These deficiencies have become particularly pronounced as a result of recent political and social strife.

6.1 Early Efforts, Current Laws, and Policy Framework

The Antiquities Service, the predecessor of the current regime, was established after independence from the United Kingdom in 1953.\(^{128}\) The service was under the direction of the Ministry of Education, similar to the system in Jordan, and later transferred to the Ministry of Culture. The Supreme Council of Antiquities (Council) became an independent ministry, the Ministry of State for Antiquities, in 2011, but this status has been reversed in light of recent events and the status remains in limbo given the fact that Egypt is currently under the rule of the military rather than civilian government.\(^{129}\)

However, the structure of the Ministry of State for Antiquities remains functional. This structure divides the Ministry of State for Antiquities into six sectors. These sectors fall under the following categories related to specific areas of heritage protection and management and other functional areas:

1. Pharaonic antiquities
2. Islamic and Coptic antiquities
3. Prehistoric antiquities
4. Museum sector
5. Project sector
6. Funding sector\(^{130}\)

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\(^{129}\) Ibid.

\(^{130}\) Ibid.
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The passage of the *Antiquities Protection Law of 1983* established structures, processes, and funding for heritage protection and management in Egypt.\(^ {131}\) However, the legal framework languished for decades under the dictatorship. In 2010, following the revolution, a major amendment was passed, *Law No. 3 Promulgating the Antiquities Protection Law* (Law No. 3). The amendments were intended to improve the bureaucratic structures for protection as well as address issues related to trafficking and copyright.\(^ {132}\)

For example, Law No. 3 abolished the agreement that allowed foreign archeologists and research missions to keep 10 percent of their discoveries.\(^ {133}\) Law No. 3 expanded efforts to criminalize trafficking.\(^ {134}\) However, Law No. 3 failed to provide penalties considered by Dr. Hawass to be adequate for deterrence.\(^ {135}\)

Law No. 3 gives significant authority to the Council to oversee the protection and management of heritage it defines as of significance to the national heritage of Egypt and preceding civilizations within Egyptian borders.\(^ {136}\) This authority includes the ability to appropriate property owned by others if valuable heritage for the purpose of exploration and excavation, though the property remains non-transferable without compensation under Law No. 3.

The Council is overseen by a Board of Directors that serves in a similar position as the trustees of the United Kingdom’s National Heritage Memorial Fund.\(^ {137}\) The Minister of the Ministry of State for Antiquities makes final decisions based on the Board of Directors’ recommendations. The Board of Director engages in the

\(^{131}\) Ibid.
\(^{132}\) Ibid; also see Florian Stinberg, Conservation and Rehabilitation of Urban Heritage in Developing countries (1996) Elsevier Science Ltd, 463.
\(^{134}\) Law No. 3 of 2010 Promulgating the Antiquities Protection Act of 1983.
\(^{135}\) Law No. 3 of 2010 Promulgating the Antiquities Protection Act of 1983.
\(^{136}\) Law No. 3 of 2010 Promulgating the Antiquities Protection Act of 1983.
\(^{137}\) Law No. 3 of 2010 Promulgating the Antiquities Protection Act of 1983.
assessment and nomination of antiquities believed to represent national heritage, with final approval by the Minister.\textsuperscript{138}

Much of the legal framework’s implementation and enforcement provisions relate to the specific nature of heritage in Egypt that is related to archeological research. For example, Law No. 3 sets out considerable detail on the various issues related to allowing researchers access to archeological resources on private property.\textsuperscript{139} The Council has extraordinary authority to intrude upon the private property rights of individuals where heritage might be located. The Council can seize land against the wishes of the property owner for excavation and exploration, and the land can be seized with fair compensation if the heritage remains fixed.

The law also prohibits development around heritage areas that might intrude upon their heritage value.\textsuperscript{140} The Minister has the authority to issue resolutions that establish beautifying lines, which are defined as borders around the heritage area. Any activity that diminishes the heritage value is prohibited, and Law No. 3 provides numerous detailed activities relating to development, landscaping, or transportation.

Law No. 3 also prohibits the government from engaging in activities related to urban development or infrastructure that intrudes upon or diminishes the heritage value of a site.\textsuperscript{141} The Minister maintains authority to block such government activities if the heritage value of the site is determined through resolution. In some cases, the Board of Directors might act to block such activity.\textsuperscript{142}

Law No. 3 also increases the registration notices for individuals and organizations that discover movable antiquities.\textsuperscript{143} Notice must be given within 48 hours of the time of finding to the nearest government agency. The agency must immediately notify the

\textsuperscript{138} Law No. 3 of 2010 Promulgating the Antiquities Protection Act of 1983.
\textsuperscript{139} Law No. 3 of 2010 Promulgating the Antiquities Protection Act of 1983.
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\textsuperscript{142} Law No. 3 of 2010 Promulgating the Antiquities Protection Act of 1983.
\textsuperscript{143} Law No. 3 of 2010 Promulgating the Antiquities Protection Act of 1983.
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Council of the find and relinquish the object. The individual or institution that found the item will be subject to compensation determined by a committee of the Council.144

The Council is also charged with heritage management. However, Law No. 3 recognizes that the Egyptian bureaucracy for heritage protection is minimal. Rather, Law No. 3 envisions the Council coordinating with museums and universities.145 Movable and fixed heritage is under the supervision of the Council’s stores and museums, Egyptian public universities, and private museums. The Council has the authority to appoint law enforcement to protect heritage from theft and damage.

The Council is entirely responsible for the quality of restoration and preservation work. However, the Council can contract with competent government authorities, international organizations, and private institutions with greater expertise or resources if necessary. Law No. 3 provides details about the licensing terms for such contracts as they relate to various issues of restoration, preservation, and exploration with outside parties.146

Law No. 3 also set penalties for theft or harm to heritage.147 Smugglers of antiquities are subject to intensive though unspecified lengths of imprisonment and a fine of up to 100,000 Egyptian pounds. Theft of antiquities is subject to criminal penalties of one to seven years and fines of up to 100,000 Egyptian pounds. Criminal penalties are also levied for individuals who engage in unauthorized excavations, intentional damage to an antiquity, serving as a broker of stolen property, counterfeiting of heritage, or graffiti on a heritage item.

Egypt represented the focal point of heritage protection and the development of the Convention as a result of its wealth of antiquities, mostly related to the ancient Egyptian Civilization, and the threat from development in the 20th Century.148 Egypt stands as a role model for heritage protection in the developing world as it has been

144 Law No. 3 of 2010 Promulgating the Antiquities Protection Act of 1983.
145 Law No. 3 of 2010 Promulgating the Antiquities Protection Act of 1983.
146 Law No. 3 of 2010 Promulgating the Antiquities Protection Act of 1983.
147 Law No. 3 of 2010 Promulgating the Antiquities Protection Act of 1983.
able to develop a mature legal and technical framework for protection that promotes a tourist economy and protects heritage simultaneously. However, natural heritage has been less aggressively protected by the Egyptian heritage framework.

The Antiquities Protection Law serves as the primary legal framework for heritage protection in Egypt. The Ministry of State for Antiquities gives significant powers to a Secretary General, which is currently the internationally renowned Dr. Zahi Hawass. Under his leadership, the Antiquities Protection Law was amended in 2014 for the first time in more than 20 years, emphasizing greater sentences for those who damage, steal, or traffic in antiquities. In addition, Hawass has led efforts to secure Egypt’s heritage from other countries that have received antiquities through smuggling or colonial appropriation.

Egypt’s antiquities bureaucracy is reinforced by relatively high levels of domestic expertise in technical areas and scholarship compared to Jordan. For example, domestic and international conferences are held in Egypt every year, often hosted by the Ministry of State for Antiquities. Unlike other developing nations, Egypt has considerable domestic expertise to identify and protect its heritage. This level of expertise is primarily a result of the large commercial revenues this heritage produces from tourism, as well as the strong foundation of heritage expertise and resources due to Egypt’s ample heritage sites.

6.2 Reflection

Despite having a mature domestic heritage protection framework, Egypt’s antiquities have been subject to significant levels of loss, primarily from smuggling. The Mubarak regime was notable for high levels of corruption, and high level officials responsible for the maintenance of antiquities and the enforcement of anti-smuggling

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150 Sowers, above n 148.
151 Ibid.
152 Ibid.
laws were often subject to bribery. In addition, Mubarak often appointed officials known for their ties to commercial exploitation of antiquities in return for political and economic support. Lastly, Egypt’s antiquities losses have resulted from high levels of corruption in law enforcement.

Egypt’s emerging civic society, responsible in part for overturning the Mubarak regime, also plays a relatively strong role in promoting heritage protection. Activists have a growing role in how the state enacts and facilitates various policies and programs. Academic institutions, private societies, and government research institutions have professional staff that lobby the government for improved protection regulations and more funding resources for technical support and mitigation.

Egypt might be considered a transitional state between developing countries with fledgling legal frameworks for heritage protection and industrial countries with mature legal frameworks for heritage protection. However, significant concerns have been raised about the failure of the state and the law to protect heritage given the recent political and social instability in Egypt. Social norms favouring protection of Egypt’s heritage appear unwavering despite this instability.

7. Conclusion

The above analysis of heritage protection regimes and practices in the United Kingdom, Australia, Jordan, and Egypt reflect similarities and differences in how frameworks and practices emerge and are supported in different countries. Heritage protection is guided by a universal interest in the intrinsic value of heritage and its contribution to national and cultural identities. However, heritage protection is also guided by commercial interests, notably those related to the tourist industry. Moreover, heritage protection is universally mitigated by private-sector development interests. In some cases, of course, there is evidence that tourism interests can support

\[\text{References:} \]

153 Ibid.
154 Ibid.
155 Ibid.
156 Sowers, above n 148.
157 Ibid.
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heritage protection, but only if visitors and other tourism activities are the focus of a vigorous protection management plan.

The highest level of heritage protection appears to exist as a result of several factors that exist only at fledgling levels in some countries. Foremost, heritage protection emanates from a social norm that values the intrinsic value of heritage as it relates to cultural, national, and human identity, including culture that predates the existing society. Second, a rich civic society provides a number of interest groups that have non-commercial motives to protect heritage. Third, a representative government is responsive to these interest groups. Lastly, the systems of government and the law are impartial, professional, ethical, and competent.

All of these factors exist to varying degrees in some countries, most notably Australia. However, these facilitators of heritage protection are less influential in other countries for one or more of the following: less prominent social norms valuing the intrinsic value of heritage, a hierarchical form of government, political corruption, institutional diversity and professionalism, and a fledgling legal system responsible for resolving civil disputes. For example, judges in Jordan act in concert with the monarchy to deliver decisions that support the royal family’s interests.\(^{158}\) This dynamic prevents the influence of other stakeholders that are more likely to reflect the highest levels of heritage protection, such as non-profit groups, environmentalists, conservationists, and academia.

In order to improve heritage protection in the developing world, reinforcement of the legal and human capital dimensions must be addressed. Foremost, societies and governments that are representative, pluralistic, and economically developed are most likely to produce strong levels of heritage protection. This occurs as governments respond to the interests of all stakeholders and the expertise for heritage protection expands as a result of high levels of economic development. Institutions in academia and non-profit research have greatly expanded the knowledge resources available in the industrial world.

\(^{158}\) Silverman, above n 116.
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These resources are most likely to manifest in heritage protection as a pluralistic society with a representative government attempts to balance commercial with conservation efforts. Thus, less than ideal heritage frameworks in Egypt and Jordan are the result of deficiencies in levels of economic development and unresponsive governments. At the same time, the development of social norms for heritage protection in less developed countries is likely to be limited. The general population is more likely to be focused on issues relating to basic needs rather than what might be perceived as the luxury of heritage protection. The Convention’s symbolic enforcement power over State Parties means that an overlying heritage framework in a country without a representative government, a high level of economic development, and social norms of heritage protection is likely to be inadequate.

Chapter 6 examines the heritage framework in Saudi Arabia, which reflects the challenges of heritage protection in a society without a professional and impartial legal system, influence from civic society actors, and representative government.
Chapter 6

Saudi Heritage Framework

1. Introduction

This chapter focuses on the heritage framework of the Kingdom of Saudi Arabia. Special emphasis is placed on the role of the national government in preservation, management, and the nomination system. This chapter also examines the Saudi legal system in the context of its effectiveness for the protection of heritage sites. Relatively meagre attempts to improve the heritage framework have been undertaken since Saudi Arabia signed the Convention in 1978. The Convention represented the origins of heritage law in Saudi Arabia given the lack of a significant pre-existing domestic framework. Previously, heritage was undertaken not through legal protection frameworks but rather through archeological institutions and policies.

The ratification in June 2014 of a strengthened statutory framework heralds a new era of heritage protection in Saudi Arabia. At the same time, heritage protection in Saudi Arabia is still in the early stage wherein norms and values remain contested by various interest groups, notably the state and commercial actors. Thus, heritage is still threatened even as heritage statutes and institutions are being expanded in the Kingdom. This contradictory dynamic is the great paradox of contemporary heritage protection in Saudi Arabia. The question remains whether the existing Saudi heritage framework and system in general fulfills its responsibilities under the Convention, particularly the Convention’s emphasis on the necessity of strengthened statutes, governance mechanisms, and civic institutions.

This chapter begins with a review of the literature. Next, the focus turns toward the general Saudi legal system and the role of Sharia law. The following sections include a detailed analysis of the primary institutional authority responsible for enforcing heritage protection law, the Supreme Commission for Tourism & Antiquities, as well
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as other supporting agencies, analyses of the former Law of Antiquities, the newly enacted Antiquities and Museums Law, legal and administrative perspectives drawn from other national case studies, protection measures for sites and monuments, and enforcement of heritage law for protection.

2. Saudi Heritage Literature

Perhaps the most important literature on heritage protection in the Kingdom of Saudi Arabia is *Research & Heritage: Research Papers on Architectural Heritage*, published in 2013 by the Supreme Commission for Antiquities and Heritage. This selection of research papers is notable because the authors are Saudi legal and heritage scholars. This collection represents the first significant collection of Saudi-created heritage law literature. Most of the literature until recently on Saudi heritage protection has been authored by non-Saudis, mostly Western academics in heritage law from the United Kingdom and the United States.

This 2013 collection reflects the unique position of Saudi scholarship in heritage protection and the law. As the editor of the collection notes, the literature on Saudi heritage protection is more conceptual than technical or scientific. This reflects two aspects of Saudi heritage protection as it exists in the law and institutions. First, Saudi heritage protection relies significantly on outside technical expertise. Secondly, Saudi heritage protection is in a relatively nascent stage and is still undergoing an existential debate about necessity among some stakeholders in Saudi society, notably those with

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1 As recommended by the first Conference of the Urban Heritage in Islamic countries in 2010, SACT started the annual Forum of the Urban Heritage in 2011. It is an occasion to shed light on issues of national urban heritage, especially as it will be held in a different area each year. The Forum is always focused on the urgent and updated issues around Saudi. Although the Forum is interested in maintaining the national urban heritage and its investment economically, it contributes to the development of sustainable tourism. For more details about UHIC see SCTA, The Fifth National Built Heritage Forum (1 March 2015) <http://www.nbhf.org.sa/english/Introduction.aspx>.


3 For more details see SCTA, Tourism Information and Research, MAS (1 March 2015) <http://www.mas.gov.sa>.
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primarily economic interests. This collection “aims first at reaching all categories of society in order to introduce the concept of heritage into the hearts of all people.”

One of the concepts presented in the Saudi literature on heritage protection involves an appreciation of the aesthetic experience provided by heritage. Professor Mashary A. Al-Naim, Supervisor General of the National Architecture Heritage Center, notes the relationship between the site and the surrounding environment. “One of the deep secrets of the Arab aesthetical arts is that the aesthetical theme is not meant to fill the emptiness in which it is located, but is rather shaped to be part of the place it occupies.” This sentiment expresses an ancient value in Saudi culture that can support heritage protection even as it is threatened by recent trends in commercial development.

Heritage can be used to reveal broader cultural meanings through archeological study, which can only be achieved through heritage protection. In “The Sociolinguistic Meanings of Traditional Architecture: A Study of Qatari Traditional Architecture,” a multidisciplinary team of undergraduate students conducted research of monuments from the traditional society of Qatar. The team included sociology, archeology, and linguistics students who brought different perspectives to their study of the monuments. Their research called for heritage conservation efforts to “be addressed from a multidisciplinary perspective taking into consideration multiple values of built heritage from the physical to the experiential.” This effort was notable because it involved Saudi students who represent the next generation of domestic experts capable of strengthening heritage protection.

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5 The National Architecture Heritage Center functions as a de facto nonprofit research and preservation society, though it is incorporated into the government through funding and appointment of directors and managers. For more see SACT, NBHC (1 Jan 2015) <http://www.nbhf.org.sa/english/NBHCenter.aspx>.
6 Mashary Al-Naim, Genius loci in the Saudi Built Heritage (NHBF, 2013) 11.
7 Ibid, 10.
8 Yasser Mahgoub, T Irene, the Sociolinguistic Meanings of Traditional Architecture: A Study of Qatari Traditional Architecture (NHBF, 2013) 44-45.
9 Ibid, 44.
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The Saudi literature on heritage protection also calls for public outreach to encourage the emerging social norm of conservation. In some cases, other Arab experts involved in Saudi heritage protection are provided access to the heritage regime. In “Invigorating Public Engagement with Cultural Heritage Using Pervasive Computing: A Potential Application to the Holy City of Madinah,” Professor Rabee Mohamed Reffat of Assiut University in Egypt calls for a virtual experience of this site by creating a website that online users can access. This will help in fostering public engagement with cultural heritage assets through better utilization of interactive and intelligence technologies. Such technology is particularly important due to the inability of most Saudi citizens to visit heritage sites due to their distance from most urban centers.

Tourism and heritage are intertwined in Saudi Arabia as a result of the Kingdom’s revered place in the holy pilgrimage. Heritage protection can build upon this special place of the Kingdom by providing expanded pilgrimage opportunities beyond Mecca. In “Revival of Historical Hajj Transportation Networks: Potential Impact on Tourism Development and Cultural Resources Preservation,” Muslim scholars from the United States and Egypt note the numerous heritage resources located on traditional pilgrimage land routes in the pre-industrial age. Their paper calls for “reviving some of these historical Hajj transportation networks and the renovation and/or rebuilding of historical and cultural sites surrounding them.” Tourism is seen as an opportunity for heritage appreciation and conservation, even though, in some cases, the heritage would be artificial.

Given the monarchic system of governance in Saudi Arabia, there is a dearth of case law that guides heritage protection. Rather, heritage protection in the Kingdom has emerged from Saudi involvement in regional and international efforts, notably the 1972 Convention. Moreover, a cultural interest in heritage protection has been

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11 Ibid, 66.
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complicated by the existence of fundamentalist religious views that have been intolerant of non-Islamic heritage. Such views resulted in the significant destruction of many ancient heritage sites and artefacts since the 19th Century. “[S]ome religious scholars in Saudi Arabia ... are afraid that these sites could be used for idolatry or the veneration for other worldly things such as tombs, shrines, or locations related to famous Muslims of the past.”¹⁴ As recently as 2002, the Saudi state ordered the destruction of the Ottoman Ecyad Castle in Mecca, which Turkish authorities condemned as the equivalent of “the destruction of the Bamiyan Buddhas.”¹⁵ The Castle was replaced with a high-rise luxury hotel.

The paradox of such activities of disregard for heritage is that, in the past two decades there has been a simultaneous expansion in the cultural value of heritage protection in the statutes and institutions in Saudi Arabia. “Public and private museums have emerged all over the area with large collections of material culture and other ethnographic and archaeological evidence.”¹⁶

While religious fundamentalism represented the primary threat to heritage in years past, today commercial development is identified by Saudi and non-Saudi heritage experts writing in the scholarly literature as the most significant threat.¹⁷ In addition, the government and business elites have been identified in the scholarship as being highly selective in the heritage identified for protection. Some critics of the regime claim that only those sites consistent with a tourist potential and national/religious/cultural identity have been selected for protection. “[The Kingdom] places large funds aside to invest in heritage industry, large theme parks, festivals, or museums ... This all contributes to the building of an environment that is an image of what the ruling elites want it to be.”¹⁸

¹⁶ Ibid.
¹⁷ Ibid.
¹⁸ Ibid.
For example, heritage protection in the ruined city of Dir‘iyyah is intended to support nationalist and religious identity and governance claims in Saudi society. This city is associated with the Wahabi religious movement, which continues to be the official state branch of Islam. Dir‘iyyah is also associated with the founder of the Saudi dynasty, Mohammed Ibn Saud. “The reconstruction of the ruined city of Dir‘iyyah has been described as ... the chief archaeological symbol of Saudi Arabian nationhood.” In addition, claims of heritage protection are complicated at this site, as in others, by the fact that conservation occurs in tandem with reconstruction. Reconstruction motivated by nationalist, religious, or commercial factors might ironically place a contemporary interpretation on the heritage site.

The emergence of a greater emphasis on the value of heritage in Saudi Arabia is thus complicated by its integration with commercial motivations. For example, Saudi Arabia in the past decade has funded and promoted heritage villages, which are artificial illustrations of the past. “It was prescribed that they should look like ‘traditional old Arabian townships featuring regional architecture, craft, costume, and cuisine.’ Such government-financed villages have been duplicated in the private sector. The Dammam Heritage Village is located on a cruise route and features themed rooms representing the different regions of the country.

Simultaneously, conservation of authentic villages is also occurring in Saudi Arabia. The Rijal Alma project is financed as a result of personal interest by Prince Sultan bin Salman, the president of the Saudi Commission for Tourism and Antiquities (SCTA), who has also led conservation efforts in other regions of the country. The prince’s public comments about heritage protection appear to reflect a belief in the value of heritage unto itself, not merely as an expression of religious identity or for commercial purposes. “According to the prince, heritage villages and towns are not only economic assets but also ‘vivid locations in which the present youth could live side by side with this national history.’ Of course, this statement might also suggest

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19 Ibid, 152.
20 Ibid.
21 Ibid 146.
22 Ibid 148.
23 Ibid.
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a conceptualization of heritage value in the context of nationalistic ideology and identity.

In conclusion, the complicated and contradictory nature of heritage protection in Saudi Arabia is illustrated in the fact that statutory strengthening, institution building, and domestic expertise are occurring in tandem with heritage destruction and conceptualizations of heritage value limited to commercial, religious, and nationalistic relevance. These contradictions can be explained by the fact that heritage protection is in the nascent stage in Saudi society. It might be predicted that some stakeholders in Saudi society, notably religious, government, and economic elites, will seek to limit heritage protection to those manifestations that are in their interests. At the same time, liberalization trends in Saudi culture, notably the introduction of internationalist values brought by the tens of thousands of Saudis who study abroad, attempts to strengthen heritage protection according to norms espoused by the Convention. Further detail on statute strengthening and institution building are provided in the sections below.

3. Political Context

Saudi Arabia became an independent country on 18th of September 1932.24 Under the Constitution of the Kingdom of Saudi Arabia Islam is the state religion and Arabic is the official language. 25 While the monarchy’s authority, 26 remains unchallenged and supreme in the Kingdom of Saudi Arabia, recent efforts to modernize and reform the political system present the possibility for significant change. 27 These reforms have included municipal elections and greater rights and educational opportunities for women. 28

24 Om Al-Qura is official newspaper in Saudi Arabia, issue 406 in September 23, 1932.
26 Basic Law of Government, pt 2, art 5, s (a).
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There are no political parties in Saudi Arabia. The King serves as Prime Minister, and he selects his own cabinet called the Council of Ministers. The King approves all decisions made by the Council. The Council of Ministers is the primary legislative body in the Kingdom. In addition, a body within the Council of Ministers, the Consultative Council, is authorized to make legislative resolutions. However, it should be noted that either council only makes resolutions, and they must be ratified by royal decree. The laws are subject to judicial review by a system of religious courts that apply Shari’a law. The court system is relatively independent in Saudi Arabia. Formerly, the Ministry of Justice had the authority to establish and abolish courts and name judges. However, in 2007 a new law created a new Supreme Court, which replaced the Supreme Judicial Council as the highest legal authority. Meanwhile, the Supreme Judicial Council assumed the authority formerly given to the Ministry of Justice to establish and abolish courts, and name judges. The impact on the independence of the legal system might be subtle and even imperceptible to outsiders. However, this restructuring established a professional rather than religious body as the highest legal body. In addition, this restructuring was part of an overall reform of the legal system that included the establishment of commercial courts to expedite the enforcement of contracts, which was believed necessary to attract foreign investment.

29 The Basic Law of Government, art 56.
30 The Basic Law of Saudi Arabia adopted on March, 1992, chapter six, Article 44 states that “The authorities of the state consist of the following: the judicial authority; the executive authority; the regulatory authority. These authorities cooperate with each other in the performance of their duties, in accordance with this and other laws. The King shall be the point of reference for all these authorities”.
31 Cabinet term lasts for four years, and ministers are appointed and removed by the King. Each minister is responsible for his ministry to the King. The Council of Ministers is composed of the Chairman of the Council, Deputy Chairman of the Council, Ministers, and Ministers of State who are appointed as members of the Council of Ministers by Royal order. Advisers to the King are also appointed as members of the Council of Ministers by Royal order. The Basic Law of Saudi Arabia, art 49, 59, 56.
32 Basic Law of Government, art 57.
33 Basic Law of Government, Article 59, 60.
36 In November 2007 King Abdullah initiated judicial reform, mandating new, specialised Courts and training for judges, with a budget of US$1.9 billion. On 14 February 2009, the new experts have appointed a Minister of Justice, the head of highest judiciary council, first members of the new high Court, all in order to improve the judicial authority. Another revolutionary step is the addition of the first woman as the vice-minister of education. See Al-Riyadh Newspaper, February 15, 2009, issue 14846; Also see Ibrahim Al-Harbi, *The Administrative Law in Saudi Arabia* (al-Humid Press, 2004) 9.
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direct investment. These reforms are considered a small but necessary step toward the adoption of a fully professional and independent judiciary in Saudi Arabia. However, the judiciary remains under the control of the royal family, and thus heritage protection in the courts still requires executive sanction.

4. Saudi System and Sharia Law

The Kingdom of Saudi Arabia’s legal system subscribes to a Basic Law of Governance that emphasizes the Koran and the Sunna Traditions as the foundational texts of the law. In the context of heritage protection the Koran speaks of a “human kind unity” that “means this rich and positive human diversity.” Multicultural appreciation of heritage is also supported by the Koran. For example, the Koran talks of God’s creation of humanity into different nations and tribes “that would become acquainted with each other.” This concept recognizes diversity as a unifying rather than divisive aspect of human culture, which aligns well with references to universal value expressed in the Convention. Appreciation of others’ cultures emanates from recognition of diversity.

Saudi scholarship on heritage protection also notes compatibility between ancient sites mentioned in the Koran and more contemporary existing heritage. This notion of heritage, however, does not rely on the heritage being specifically Islamic. The Oukhdood region, for example, is noted in the Koran even though it is non-Islamic. This site includes stone monuments with Roman characteristics and aesthetic images that are pagan. These examples show how the Koran and Islamic teachings have been broadly interpreted to include appreciation of heritage that is non-Islamic. This might reflect a newfound appreciation of non-Islamic heritage that can result in more intensive legal frameworks for protection, though the literature provides as many counter examples, such as the destruction of the Ottoman Castle, to this potential trend.

39 Mashary Al-Naim, above n6, 12.
40 Ibid, 12.
41 Ibid, 24.
5. Saudi Efforts to Conserve and Protect Heritage

Institutional heritage protections in Saudi Arabia have been significantly expanded in recent years. The Saudi Council of Ministers established the Supreme Commission for Tourism SCT with Resolution (No 9), dated 16 April 2000. The resolution emphasized the role of tourism as one of the productive sectors of the Kingdom, providing an opportunity for investment, development of human resources, and expansion and creation of new job opportunities for Saudi citizens. Subsequently, in view of the importance of institutions preserving antiquities and museums, another resolution by the Council of Ministers (No.78,) dated 24/3/2008, was issued to integrate the Antiquities and Museums sector into the SCT. According to this resolution, the name was changed to the Saudi Commission for Tourism and Antiquities (SCTA). The present SCTA Organizational Chart is divided in four levels of Administrative and Management Units:

- Administrative Unit of Board of Directors.
- Support Unit of the SCTA President.
- Five First Level Administrative Units, directly subordinate to the SCTA President (Antiquities & Museums, Tourism Investments & Development, Marketing & Programs, Regions, National Urban Heritage Centre).
- Administrative Units of the first level functions.

The Kingdom of Saudi Arabia has issued a number of royal decrees, directions, resolutions and circulars in support of the protection of heritage. They include the following, listed in chronological order:

- The issuance of Cabinet Resolution No.727 dated 22 March 1964 to establish a Commission of Antiquities, which is related to the Ministry of Education.  

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42 Council of Ministers, Resolution No 9, dated 16 April 2000 (Available in Arabic only); also see Karen Exell and Trinidad Rico(eds), Cultural Heritage in the Arabian Peninsula: Debates, Discourses and Practices ((London: Ashgate, 2014) 144.
43 Council of Ministers, Resolution No.78, dated 24/3/2008 (Available in Arabic only).
44 Resolution of cabinet of ministers of Saudi Arabia (No.727 dated) 22 March 1964.
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- The issuance of the Regulation of Antiquities under the Royal Decree No M/26 dated 23 July 1972. The regulation included 79 articles and was divided into seven chapters. The overall purpose of this decree was to provide domestic statutory support for the Convention. The decree will be discussed in more detail later in this chapter.

- The circular of the undersecretary of the Ministry of Transportation, dated 24 May 1969, wherein the Ministry of Education stated that: “Since some roads are paved near the archaeological sites in the Kingdom of Saudi Arabia, it is necessary to coordinate with and get the approval of the concerned Department in the Ministry before layout of these roads are accepted as they contradict with the archaeological regions.” All investment companies shall coordinate with the Ministry of Education in this respect.

- The letter of the Minister of Education No. 36/18/18195, dated 13 June 1979 to his Excellency Minister of Justice demanding the issuance of a circular to all courts and court clerks in the provinces ensuring that registered fallow land are free from antiquities. If they were not, the Ministry would have to take back these lands for the purpose of conservation.

- The issuance of the circular of the Deputy Prime Minister No. 3/H 2229, dated 5 September 1979, instructing contractors to abstain from the violation of archaeological sites and buildings and adhere to the content of the Royal Decree as stated in the Regulation of Antiquities. In addition, it affirms the necessity of coordinating with the Department responsible for the antiquities in the Kingdom of Saudi Arabia before implementing any new projects of development or construction, especially in remote places or around the cities where the archeological sites and building are aplenty. Failure to comply with

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46 The circular of the undersecretary of Ministry of Transportation, dated 24 May 1969.
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this circular would result in the companies being subject to penalties as set out in the Regulation of Antiquities.\textsuperscript{48}

- The issuance of a circular of the Secretary General of the Cabinet Presidency No.3/H5251, dated 20 January 1981 to each Government Ministry, Department and Authority attached to the Cabinet Resolution No. 25, dated 23 December 1980. The resolution indicates the approval of the request of the Ministry of Education and Secretary General of the Supreme Council of Antiquities to order the concerned ministries and authorities to conserve the history sites and the old cities and quarters, not demolish them and to avoid harming them in planning developments.\textsuperscript{49}


The Regulations for Antiquities, Royal Decree No.M/26 was established in 23/6/1392, dated August 3, 1972\textsuperscript{50} after the Kingdom ratified the World Heritage Convention in 1978.\textsuperscript{51} The decree was made by King Khaled ibn Abd al-Azis Al Saud upon the recommendation of the Council of Ministers.\textsuperscript{52} Part 1 includes general definitions, including the composition of the Supreme Council for Antiquities, which includes the chairman from the Ministry of Education and representatives from the ministries of finance and national economy, interior, education, pilgrimage, and information.\textsuperscript{53} The Supreme Council is given the functions of proposing policies and amendments,\textsuperscript{54} supervising acquisitions, loans, and exchanges of antiquities.\textsuperscript{55}

\textsuperscript{48} The circular of the Deputy Prime Minister (No. 3/H 2229) dated 5 September 1979.

\textsuperscript{49} The circular of the Secretary General of the cabinet presidency (No.3/H5251) on 20th of January 1981; For more see The circular of the Ministry of Justice (No.106/12/T) dated 18 May 1978.

\textsuperscript{50} Law of Antiquities 1972 (\textit{Kingdom of Saudi Arabia}) Royal Decree [No. M/26].


\textsuperscript{52} To review the law see: Antiquities Regulations, scta.gov.sa (9 September 2014) <http://www.scta.gov.sa/ebooks/Documents/Others/Regulations/Antiquities-Reg/Antiquities-Reg.pdf>

\textsuperscript{53} Law of Antiquities 1972, Article 1.

\textsuperscript{54} Law of Antiquities 1972, Article 2 (1-2).

\textsuperscript{55} Law of Antiquities 1972, Article 2 (3).
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establishing new museums, executing the law, and examining issues of heritage protection referred by the Director of the Department of Antiquities.

The decree recognizes the fact that heritage includes fixed and movable phenomena. Under Article 5, “antiquities” is defined as movable and immovable property, “built, made, produced, adapted, or designed by man over two hundred years ago, as well as property having acquired archeological characteristics through ancient natural factors.” “Immovable antiquities”, also called “fixed antiquities”, include caves and other natural objects that were used by ancient humans, including paintings, carved figures, inscriptions, and writings; ruins of cities and buildings; historic buildings and structures; and, remnants of historic buildings and structures. “Movable antiquities” means antiquities originally intended to be separate from the ground or a historic building or structure. These include sculptures, coins, inscriptions, manuscripts, fabrics, and other manufactured articles. The Department of Antiquities has the right to classify antiquities more 200 years old if the property has archeological or artistic characteristics of value. The Minister of Education decides on classifications upon the Department’s recommendation.

The Department of Antiquities is required to collaborate with other government ministries and agencies in the protection of heritage. Once an antiquity is registered, it is implied that:

The State recognizes the historic or artistic value of the said object and has undertaken to preserve, protect, and study it, and to give it a proper appearance in accordance with the terms of these Regulations.

All antiquities are considered the property of the state except for fixed and movable antiquities whose private ownership has already been sanctioned by the state. In the

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56 Law of Antiquities 1972, Article 2 (5).
57 Law of Antiquities 1972, Article 2 (6-7).
58 Law of Antiquities 1972, Article 5.
59 Law of Antiquities 1972, Article 7 (a).
60 Law of Antiquities 1972, Article 7 (b).
61 Law of Antiquities 1972, Article 5.
64 Law of Antiquities 1972, Article 8 (A-B).
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case of movable antiquities, all private items must be registered. The Department of Antiquities has the right to determine which antiquities should be registered based on an evaluation by international and domestic experts, which make recommendations to the Department. Registration means the State acknowledges the historical, artistic, or national value of a monument, and the State commitment to preserve, protect, research and use it in accordance with the Regulations.

Fixed antiquities are covered in Part II. The Department of Antiquities also has the authority to evict individuals or organizations that occupy fixed sites. If the occupation was not illegal, the State will provide compensation for resettlement costs and for the costs of any property that is destroyed or damaged as a result of eviction. Landowners are prohibited from altering or moving any fixed or movable antiquities on their property: no individual can alter, damage, modify, or disfigure an antiquity, including hanging posters or signs on buildings. Of course, it should be noted that this is a general protection provision common in most heritage frameworks in international and domestic law.

Local governments are also required to protect antiquities from development plans. All development plans being considered by local governments must be submitted to the Department of Antiquities for approval. Approval involves a process in which international and domestic experts evaluate the heritage and make a recommendation to the Department, which also considers other interests as espoused by commercial stakeholders and other ministries. The Department is responsible for designating archeological sites and reporting this information to local planning agencies. Local governments must also receive approval from the Department for any development or renovation project that is adjacent to an antiquities site. Similar to heritage frameworks in other jurisdictions, the Department “shall ensure that new buildings

65 Law of Antiquities 1972, Article 8 (c).
66 Law of Antiquities 1972, Article 9.
67 Law of Antiquities 1972, Article 16.
69 Law of Antiquities 1972, Article 23.
70 Law of Antiquities 1972, Article 12.
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will be of the style it deems to be in harmony with the historic character of the place.”

The Department of Antiquities is also responsible for protecting antiquities sites from intrusion by surrounding populations. The Department of Antiquities is to cooperate with international and national organizations in recovering antiquities that have been appropriated by outsiders or smuggled outside the country. The Department has funds available to return antiquities to the Kingdom. This element of the statute reflects the agreements made between the state and international bodies under the UNESCO and UNIDROIT conventions. The Kingdom has, in fact, been very aggressive in its proprietary activities to retrieve heritage and protect its exodus from the country.

Fixed antiquities are the focus of registration processes that set into motion the protection of heritage. The Department of Antiquities records the antiquities in the register of archeological sites and historical buildings after approval by the Supreme Council for Antiquities. Easements for adjacent properties are established upon registration. Registration and easements must be communicated to local governments and the owners and custodians of all affected properties. Easements are created in respect of areas around the site, and include the imposition of architectural styles and dimensions of adjacent development, and the imposition of materials, colors, and other aesthetic elements. Sites can be removed from the register upon recommendation of the Supreme Council and ministerial decision by the Minister of Education. Given the hierarchical nature of an absolute monarchy, opportunities for public comment are non-existent except for those members of the public who have

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75 Aygen, above n 15.
76 Law of Antiquities 1972, Article 16.
77 Law of Antiquities 1972, Article 17.
commercial ties to the royal family, making this aspect of Saudi legislation deficient compared to that in countries with a representative government.

Eminent domain, or government appropriation of private property, can be executed carte blanche by the state, applying not only to the acquisition of sites with antiquities but also to adjacent properties.\(^7\) These adjacent properties can be acquired by the state for the purpose of adding to the value of the antiquity site. Compensation is determined by market rates regardless of the archeological, artistic, or historic value of the site as a result of its registration as an antiquity.\(^8\) Unlike heritage statutes in Australia and other countries with representative governments, those who maintain ownership of the fixed antiquity cannot appeal any decision by the Department of Antiquities to restore or preserve the antiquity.

All people who discover a fixed antiquity or learn of a fixed antiquity are required to make an immediate report of this information to the most convenient governmental authority.\(^9\) The authority must immediately report this information to the Department of Antiquities. A reward may be provided to the discoverer or informer based on the recommendation of the Department to the Minister of Education.

Movable antiquities are covered in Part III. Movable antiquities are protected from transfer of ownership or location by the requirement for the approval of the Supreme Council for Antiquities and the Minister of Education.\(^10\) Exchanges can be provided with museums and scientific institutions if such exchange is considered useful to the goal of heritage protection.\(^11\) For example, the Saudi National Museum has participated in exchanges with the British Museum given the extensive collection of Middle Eastern heritage acquired by the United Kingdom during its colonization period.\(^12\) Private ownership of movable antiquities is allowable as long as the antiquity is registered, but the private owner must ensure the protection of the

\(^{7}\) Law of Antiquities 1972, Article 16.
\(^{8}\) Law of Antiquities 1972, Article 21.
\(^{9}\) Law of Antiquities 1972, Article 24.
\(^{10}\) Law of Antiquities 1972, Article 27.
\(^{11}\) Law of Antiquities 1972, Article 28.
\(^{12}\) Aygen, above n 15.
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antiquity and report any loss, damage or alteration immediately to the Department of Antiquities. Antiquities considered of significant national or cultural value cannot be privately owned, and this determination can be made by the Department without any appeal by objectors. Failure to register an antiquity results in confiscation and punishment. Records must be kept by organizations and individuals who own antiquities, and these can be reviewed at any time by the Department. Transfers of ownership must be reported within one week by the previous owner. An export license is required if the foreign owner wants to remove the item from the Kingdom.

Those who find movable antiquities or learn of a discovery must immediately report this information to the Department of Antiquities, which can provide a reward if deemed appropriate. Failure to report a discovery can result in confiscation of the item and punishment. The Department retains the right to determine whether the antiquity can be returned to the discoverer in lieu of compensation. Rewards are also allowable for individuals who report a discovery that is not reported by the discoverer. At any time, the Department can demand a movable antiquity for the purpose of study or exhibition, after which the property will be returned to the registered owner, who can retain ownership upon approval of the Department.

The decree also seeks to more strictly regulate the trade in antiquities. Dealing in antiquities is regulated under Part IV of the decree. Dealers must have a licence from the Department of Antiquities, which is renewable on an annual basis for a fee. Only those antiquities that have been exempted from registration can be sold, purchased, and exchanged by dealers. All transactions must be submitted to the Department within one week of the deal.

Dealers are required to abide by specific regulations under the decree. These include keeping official records, including inventories and written sale/purchase...
transactions. These must be provided upon request to any employee of the Department. The Department can also request inspection of the inventory at any time or require photographs of items in the inventory or that were sold or purchased. Employees can also demand an inspection of the dealer’s private residence. Every month, the Department must be provided with a report of all transactions that contains details of the items and identities of the buyers/sellers. Dealers must notify buyers that no antiquities can leave the country without an export license. Dealers cannot engage in any type of excavation without a license for excavation.

Export of antiquities is covered in Part V of the decree. Exports require a special licence granted by the Department of Antiquities. The Department can prevent any export of an item if it is determined “that this would impoverish the country’s archeological or artistic heritage.” Applications for export must include a variety of personal and logistical information, including port, station, and/or border points from which antiquities will be exported; destination and identity of the consignees; method by which the antiquities are obtained; description of the antiquity; and, submission of the antiquity to the Department before export. Notably absent in the literature is the impact of these strengthened regulations on the wholesale export of antiquities from Saudi Arabia. However, given the highly authoritarian strength of state security and law enforcement institutions in Saudi Arabia, it is believed that the wholesale export of antiquities in Saudi Arabia is much less pronounced than in states with weaker infrastructures, notably in Africa.

The Department has the authority to reject any application for export. The Department can also purchase an antiquity at the price listed in the export agreement. This applies to any antiquity identified by the Department. The owner cannot object to the sale. However, the price must be comparable with the market price of the item as determined by the Department. This is intended to prevent dealers from attempting to mark up prices in the export agreement for the intent of selling only to the
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Department. Duties must be paid for all exported antiquities based on estimated value as determined by the Department. The price listed by the dealer will determine the estimated value unless the Department determines otherwise. 95

Exemptions to fees for export licences are provided if the antiquities are exchanged with museums and scientific organizations for study or exhibition in return for other antiquities. 96 Scientific and research organizations may receive allotments of exported antiquities based on their officially approved excavations under agreement with the Department of Antiquities. This component of the statute is intended to expand the amount of heritage under the control of the state, private institutions and museums. 97 Even though outside organizations may receive allotments from their excavations, this component of the statute is intended to encourage excavations that increase the overall amount of heritage. Excavation by domestic parties is inadequate to recover as much heritage as would be possible by accommodating international cooperation from parties with more expertise.

Archeological excavations are covered in Part VI of the decree. “Excavation” is defined as any digging, sounding, and searching activities “which aim at finding movable or fixed antiquities below or above ground level, or in streams, lakes, or territorial waters.” 98 Graves are also covered as the focus of prohibitions on excavations intended to find antiquities at a grave site. 99 This component of the statute is intended to address the fact that artifacts often accompany the deceased as a result of burial rites and belief systems of ancient cultures. 100

Exclusive right to conduct and approve excavations is given to the Department of Antiquities. 101 International archeologists can only obtain access to excavation sites with Department approval. Scientific organizations and societies engaged in

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96 Law of Antiquities 1972, Article 51 (A-B-C).
98 Law of Antiquities 1972, Article 54 (A).
99 Law of Antiquities 1972, Article 54 (B).
100 Maisel, Shoup, above n 15.
101 Law of Antiquities 1972, Article 55.
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excavations must operate under special permission granted by the Department. 102 Private owners of an excavated site must be compensated for any costs of restoring the site to its original condition. The Minister of Education determines compensation upon recommendation by a special committee formed by the Minister. Private owners may sell their property to the excavators as long as the property becomes state-owned property after the project. 103

Excavations must meet specific standards established and supervised by the Department of Antiquities. 104 These include photographing, mapping, and drawing the site and the location of any found items. 105 Activities of the excavation must also be provided in written and graphic detail. 106 A daily record of excavations shall be registered in a register provided by the Department. 107 The register will be in the possession of the project leaders during the excavation and returned to the Department upon completion. 108 The project leaders and members of the teams are those individuals explicitly named in the excavation approval documents.

The Department must be notified of excavation activities every 15 days. No information can be published about the excavation without first reporting the information to the Department. 109 The excavation season will conclude with a report on that season’s activities and plans for the next season. A list of items discovered, including drawings and photographs, must be provided to the Department. 110 At the end of the project, a detailed scientific report must be submitted within one year to the Department. The report must be suitable for publication. 111 In addition, within five years, the project team must publish a scientific interpretation of the excavation and the discoveries. 112 If the team fails to publish this report, the Department has the right to publish such a report or permit another individual or organization to do so. The

102 Law of Antiquities 1972, Article 56.
103 Law of Antiquities 1972, Article 56.
104 Law of Antiquities 1972, Article 57.
105 Law of Antiquities 1972, Article 59 (A).
106 Law of Antiquities 1972, Article 57.
107 Law of Antiquities 1972, Article 59 (B).
108 Article 59 of law of antiquities covers all the excavations requirements.
109 Law of Antiquities 1972, Article 59 (E).
110 Law of Antiquities 1972, Article 59 (F).
111 Law of Antiquities 1972, Article 59 (G).
112 Law of Antiquities 1972, Article 64.
excavating individual or organization has no right to object to the right of the Department to award publishing rights to another party.113

A representative from the Department will have complete supervision over excavation activities and all discovered items.114 The licensee must pay for all costs of that supervision. All movable antiquities must be provided to the Department at the end of each excavation season. However, before removal from the site, the project leaders must seek approval from the Department.115 The project leaders must also accept visitations from members of other scientific organizations and individuals per Department approval.

All discovered antiquities are the property of the state.116 The Department may provide exemptions to antiquities that are duplicates of others found at the site that are already in the state’s collections. Any exemptions must be provided “for the purpose of publicizing the civilizations which flourished on Saudi soil and to promote interest in such archeological studies among foreigners by making such studies easier for them.”117 Any exempted antiquities must be exhibited by the excavator in a public museum or scientific institute museum within one year after exemption is provided.

Any violation of these requirements can be the basis for suspension of the licence to excavate until the violation is addressed.118 Serious violations can be the basis for cancellation of the licence by the Minister of Education upon recommendation of the Department of Antiquities.119 If the project managers suspend excavation activities for more than two seasons during two consecutive years, the Department can cancel the licence and provide it to another organization or team. Suspension is also possible if the Department believes there is any risk to personnel.120

113 Law of Antiquities 1972, Article 64.
114 Law of Antiquities 1972, Article 59 (H), 60.
115 Law of Antiquities 1972, Article 59 (I).
118 Law of Antiquities 1972, Article 61.
119 Law of Antiquities 1972, Article 63.
120 Law of Antiquities 1972, Article 62.
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Additional penal provisions are covered in Part VII of the decree. Penalties include fines and incarceration for altering, destroying, damaging, demolishing, disposing of, or stealing a state- or privately-owned antiquity. 121 Fines and imprisonment are also provided for those found guilty of unlawful excavations, trading, export, or violating easements. Fines and imprisonment are also provided for unlawful possession of antiquities and removal of any debris from an archeological site without a licence. 122 Trials are conducted by a commission formed by the President of the Council of Ministers. 123 Notably absent in the literature is details of any actual trials conducted by the Council, the proceedings of which are not public or recorded in any official documents available to the public.

7. Newly Enacted Law of Antiquities, Museums and Built Heritage (LAMBH)

The Saudi government is aware that existing laws concerning heritage in the country are in need of strengthening as they leave many important resources without protection. As noted above, Prince Sultan bin Salman has publicly noted the importance of heritage protection under the laws and institutions of the public and private sector. 124 The Supreme Commission for Tourism drafted a new Antiquities and Museums Law (AML) approved in June 2014 by the Saudi government. This new legislation includes various chapters covering: archaeological historical and urban sites; underwater antiquities; trading in antiquities; surveys and excavations; urban heritage; museums; penalties for non-compliance and effectiveness. Furthermore, it foresees the introduction of regulations to cover all the detailed requirements for implementation of the law. 125 These will be subject to the authority of Government departments and Ministerial control, and where required will be ratified by the Council of Ministers.

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121 Law of Antiquities 1972, Article 67, 68.
122 Law of Antiquities 1972, Article 69.
123 Law of Antiquities 1972, Article 77.
124 Maisel, Shoup, above n 15; also see ‘Saudi Arabia Launches a New Era of Reform’ Al-Riyadh Newspaper issue 14846 (Riyadh) 15 February 2009.
125 Interview with Faisal Al-Fadhel, Director of Legal Department (personal communication in a participation in field work, 24th January 2014).
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The law-making and law-approving process in Saudi Arabia, as elsewhere, is long and complex. There were a number of steps leading toward approval of the LAMBH the exact nature of which was difficult to assess. Final approval was initially scheduled for 2009, but in fact final approval did not occur until June 2014.¹²⁶ The official procedure requires that the draft law be submitted to the Council of Ministries (done in November 2006) that seeks the advice of a Ministerial Committee to review the text (done in 2007). Following this initial analysis, the Council of Ministries transmits the text to the Bureau of Experts for a complete review (this revision was meant to be completed by the end of 2014). Finally, once the text was reviewed and eventually amended, it was sent to the Shura Council (Parliament), which transmitted its remarks to the Council of Ministries, which approved the Law.¹²⁷ The Shura Council is an advisory body only and lacks any capacity to enact or approve laws.

The Law of Antiquities, Museums and Built Heritage (LAMBH) provides significant changes to the royal decree No. M/26.¹²⁸ The definition of heritage is expanded to include on-going traditional heritage including intangible heritage. Dr. Faisal Al-Fadhel director of legal department in SCTA said:

> The Draft Law of Antiquities, Museums and Built Heritage covers these areas in detail, which are the areas and artifacts associated with social and handicraft activities, including ship manufacturing, sesame seed mills, honey production, and agricultural terraces. Locations for seasonal and sustainable social events are identified as traditional heritage. In addition, collections of traditional heritage are identified within


¹²⁷ Interview with Faisal Al-Fadhel, Director of Legal Department (personal communication in a participation in field work, 24th January 2014).

¹²⁸ The new Law of Antiquities, Museums and Built Heritage was approved by the Shura Council in the 78th Session held on the 31st of December 2012. Now it is under review in the last stage in The Saudi Council of Ministers. Interview with Ali Al-Ghaban, Vice President for Antiquities and Museums Affairs Saudi Commission for Tourism and (personal communication in a participation in field work, 24th January 2014). The first draft of Antiquities and Museums Law available at UNESCO, Nomination Document for the Inscription on the World Heritage List: *Saudi Commission for Tourism and Antiquities* (2010) <http://whc.unesco.org/uploads/nominations/1361.pdf>; However The second draft of Law of Antiquities, Museums and Built Heritage is not available for public and is still in the confidential stage. Most of the information in this section collected during the fieldwork we conducted in January 2014. Interview with Faisal Al-Fadhel, Director of Legal Department (personal communication in a participation in field work, 24th January 2014). All materials translated from Arabic to English by the Author.
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the heritage definition, which includes anything necessary to produce traditional heritage, such as food, clothes, accommodation, health care and entertainment means.\textsuperscript{129}

In addition, the LAMBH proposes more restrictions on commercial activities. Specifically targeted in the new law are mining and crusher projects that present a threat to heritage.\textsuperscript{130} These projects and the ministries associated with them must coordinate with the SCTA before implementing work, and even if approval is granted the project managers must preserve existing antiquities at the site.\textsuperscript{131} Heavy and dangerous industrial activities must be kept not less than 500 metres away from immovable antiquities.\textsuperscript{132}

The law Article 16 also expands the roles and responsibilities of the Commission.\textsuperscript{133} The new law envisions more coordination between the Commission, security agencies, and the Ministry of Interior to “create a mechanism for protecting archeological sites.”\textsuperscript{134} The Commission is required to establish investment regulations for urban heritage locations, archeological sites, and historical sites.\textsuperscript{135} The Commission is charged with returning smuggled antiquities of Saudi or foreign origin as part of an international effort addressing the black market in antiquities.\textsuperscript{136} The new law also establishes a Board of Consultation to the SCTA comprised of experts from domestic and international organizations. The newly-established Board will serve as a source of expertise for the Commission in its decision-making processes.\textsuperscript{137} Such a formal structure of expert consultation was lacking under the previous statute.

\textsuperscript{129} The new Law of Antiquities, Museums and Built Heritage, Article 1.
\textsuperscript{130} The new Law of Antiquities, Museums and Built Heritage, Article 11,12 (1-2-3).
\textsuperscript{131} The new Law of Antiquities, Museums and Built Heritage, Article 9 (1-2-3), 10(1-2), 13, 24 s1 (A-B-C), 54.
\textsuperscript{132} The new Law of Antiquities, Museums and Built Heritage, Article 46.
\textsuperscript{133} The new Law of Antiquities, Museums and Built Heritage, Article 16.
\textsuperscript{134} Interview with Faisal Al-Fadhel, Director of Legal Department (personal communication in a participation in field work, 26\textsuperscript{th} January 2014) Article13, 14, 16.
\textsuperscript{135} The new Law of Antiquities, Museums and Built Heritage, Article 42.
\textsuperscript{136} The new Law of Antiquities, Museums and Built Heritage, Article 16.
\textsuperscript{137} The new Law of Antiquities, Museums and Built Heritage, Article 21.
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The law also establishes revenue opportunities for maintenance expenses required for government bodies and private sector organizations to protect heritage. Such revenue can come from public visits to the heritage site or artifact collection. The Commission cannot charge these bodies or organizations fees.

The Antiquities Protection and Development Fund is intended to finance the activities of the Commission in supporting the preservation, maintenance, and utilization of antiquities, particularly in the private sector. The goal is to create institutions, associations, and other legal entities that have the primary objective of protecting and displaying heritage. This adds to the existing laws’ strengthening of private institutions by providing funding to museums and other civic organizations involved in heritage protection.

The LAMBH also includes specific mention of the protection of underwater antiquities, which was not noted in the royal decree. Underwater antiquities are defined as moveable and immoveable antiquities in regional and interior waters. These will be the property of the Kingdom. The same rules applying to moveable and immoveable antiquities discovered on land, apply to underwater antiquities. The Commission is required to coordinate with the General Authority for Ports, the National Commission for Wildlife Protection, and the Public Administration of Border Guards to form a mechanism for protection of underwater antiquities. The Commission is also given the responsibility to coordinate with international organizations to discover and protect underwater antiquities.

The LAMBH also establishes a specific protection framework for urban heritage. Urban heritage is defined as providing high, medium, or low level of importance in national, scientific, artistic, cultural, and historical fields. For example, urban areas

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138 The new Law of Antiquities, Museums and Built Heritage, Article 20 (1).
139 The new Law of Antiquities, Museums and Built Heritage, Article 20 (2).
140 Interview with Faisal Al-Fadhel, Director of Legal Department (personal communication in a participation in field work, 24th January 2014).
142 The new Law of Antiquities, Museums and Built Heritage, Article 27, 28, 29.
143 The new Law of Antiquities, Museums and Built Heritage, Article 45.
144 The new Law of Antiquities, Museums and Built Heritage, Article 45 s 1 (a-b-c).
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consisting of multiple immovable antiquities and surrounding areas necessary to protect the heritage site can be considered urban heritage. The protection areas are specifically established at a minimum of 200 metres surrounding a registered antiquity or site. Areas of viewing must also be included in the protection area. These developments appear to be related to the adoption by the Kingdom of international norms and values as expressed by the World Heritage Commission. For example, the 200-meter boundary is a specific recommendation of the Commission.

The LAMBH also establishes a funding mechanism for protection of urban heritage. The Commission and/or the Ministry of Municipal and Rural Affairs is responsible for 50 percent of restoration, repair, and maintenance expenses associated with an urban heritage site listed in the medium class. The remainder shall be funded by the private owner or organization. However, if the private party cannot pay these expenses, the Commission and/or the Ministry can provide the remaining expenses. Class A expenses are provided with 100 percent funding from the government, since the government maintains exclusive ownership, such as artifacts in national museums, while Class C expenses are provided with 30 percent government funding, such as privately owned artifacts donated on a temporary basis to a museum.

The LAMBH also envisions an expanded role for museums to showcase heritage. Private museums shall operate under the stewardship of the Commission, which will issue official Saudi Museum certification to the museums. The museums shall be organized under the same classes as those designated for urban heritage. Museums with Saudi Museum certification are required to undertake various tasks related to heritage protection and display, including research and activities in collaboration with other bodies. Saudi Museums will also have access to the expertise of the

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145 The new Law of Antiquities, Museums and Built Heritage, Article 45 s 2 (a-b).
146 The new Law of Antiquities, Museums and Built Heritage, Article 46 s 1.
147 Aygen, above n 15; Maisely, Shoup, above n 15; Price, above n 97.
148 Maisely, Shoup, above n15.
149 Interview with Ali Al-Ghaban, Vice President for Antiquities and Museums Affairs, Saudi Commission for Tourism and Antiquities (personal communication in a participation in field work, 24th January 2014) Article 52, 53 s (1-2).
150 The new Law of Antiquities, Museums and Built Heritage, Article 56.
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Commission, its documents, and its consultants. A Museums Friends Association will be established at every province to raise funds for the Saudi Museums. The Saudi Museums Fund will be financed by the Commission, private corporations, individuals, and local institutions.

In addition, the LAMBH increases fines and penalties for theft, illegal trade, or damage to heritage. The LAMBH specifically designates responsible bodies for enforcement, prosecution and sentencing, envisioning an expanded role for local government authorities. The Commission is also required to establish a special commission regarding violations of the LAMBH. The special commission will be comprised of members of the Board of Grievance, Ministry of Justice, specialists, and Commission representatives. Due to the lack of transparency in governmental affairs in the Kingdom, the literature lacks any significant discussion of how violations of the LAMBH have been brought to the Commission and adjudicated. However, undoubtedly the establishment of a formal structure and system of enforcement represents a step forward for heritage protection, even though ultimate authority for enforcement still lies with the royal family.

8. Heritage Protection Measures for Sites and Monuments: Legal and Administrative Perspectives of National Conservation Cases

While heritage destruction and preservation by the Kingdom has reflected nationalistic and religious interests, there are counter-examples in the contemporary heritage protection practice.

8.1 Contemporary Heritage Protection

Notably, in 2008, the Kingdom’s first World Heritage Site was included on the World Heritage List, the archeological site known as Madain Salih. The site is considered

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151 The new Law of Antiquities, Museums and Built Heritage, Article 58, 59.
152 The new Law of Antiquities, Museums and Built Heritage, Article 60 s (1-2).
153 The new Law of Antiquities, Museums and Built Heritage, Article 71, 72 s (1-2).
154 The new Law of Antiquities, Museums and Built Heritage, Article 86.
155 The World Heritage Committee, report of the decision adopted by the world heritage, AT ITS 34TH
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of outstanding universal value due to its designation as a major site of the ancient Nabataean civilization. This recognition reflects international norms of protection rather than traditional religious and state interests. The site is also well conserved as a result of domestic efforts by the Kingdom to preserve its features. The site includes tombs, monuments, and decorations cut into sandstone.

The site is notable for its confluence of numerous civilizations, including Assyrian, Egyptian, Phoenician, and Hellenistic. There are epigraphs in multiple languages, while architectural elements reflect the noted civilizations. Agricultural techniques associated with the Nabataean civilization are also evident at the site. The site includes the ancient city of Hegra/Al-Hijr, which was a major caravan route in late Antiquity. In its acceptance of the site for listing, the World Heritage Committee noted the “extremely comprehensive Local Management Unit” for its conservation.

In 2007, the Kingdom of Saudi Arabia presented another area to be included in UNESCO’s World Heritage List. This site was accepted for listing in 2010. That property is at At-Turaif, located in the district of the ad-Dir’yah, located on a low plateau made of natural limestone. At-Turaif lies in between Wadi Hanifah on the north and a number of smaller wadis on the east and south. This general area includes Madain Salih. Both listed site are, to some degree, easily identifiable and separate from the natural landforms and the communities that surround them, and are together a part of what is known as the Nominated Property.

The boundaries that make up the site are defined exactly by the metal fence that surrounds the site. This up-to-date fence, or perimeter, follows the outline of the ancient Al-Turaif City Walls that, during the 1980s, were restored and renovated. However, the site includes a 20-metre perimeter outside the city walls to protect views and the immediate surrounding area. The Nominated Property is surrounded by


156 Decision: 34 COM 8B.15
157 Ibid.
158 Ibid.
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a huge Buffer Zone that includes the middle sector of the area originally enclosed by ad-Dir’iyah walls and, perhaps most notably, the wadi vicinity that is made up of palm tree groves and desert.

The At-Turaif District in ad-Dir’iyah covers over 29 hectares, or 29,000 square meters. Enclosed by a gigantic buffer zone, it holds outstanding universal values, which justifies its inclusion on the World Heritage List. At the end of the 18th century, the wadi-based oasis of ad-Dir’iyah at-Turaif became a centre of control under the House of Saud, who created its palaces in a one-of-a-kind style. The reason for its outstanding universal value is its physical remnants, location, and relationship with surrounding developments and landforms. The area of al-Turaif indicates a sameness throughout the site and a one-of-a-kind coherence, usual for architectural sites, seen in such elements as building heights and architectural details like color and surface types.

The ruins of the palaces of the Imams of ad-Dir’iyah in at-Turaif, which is a place where traditional architecture reached unmatched excellence, represent the finest example of Najdi architectural style, where an important stylistic tradition was first created in Saudi Arabia. Design details are important parts of the local architecture as they add to the world’s cultural diversity as a whole.

The area of at-Turaif District in ad-Dir’iyah is a representation of an urban and architectural monument of the First Saudi State, which is a direct ancestor of the current Saudi Arabian Kingdom. In addition, it holds historical value as being the battleground of an important military occurrence that included international powers and had a long-lasting impact on the geographical politics of the entire area as the first Saudi dynasty established power that continues to this day.

According to the criteria of the Convention, the site of ad-Dir’iyah is an outstanding example of earthen architecture for several reasons. First, for its mud brick masonry on limestone foundation; and, second, for its traditional human settlement in a desert

159 Ibid.
160 Ibid.
environment, which reflects the close link between landscape, natural resources and the human effort to settle the land. As such, it is from this site that the message of the Reform has echoed throughout the Arabian Peninsula itself and the Muslim world in general.

The site of At-Turaif District in ad-Dir’iyah includes a wide set of categories and classifications, and conditions of preservation.161 These include everything from razed ruins to free standing walls, from original to rebuilt palaces, from traditional living areas to current mud houses, with an astonishing solidarity in color, shape and building materials. The entire area is included within the Nominated Party and its desert and oasis environment has been preserved in modern-day ad-Dir’iyah.

The many layers of ad-Dir’iyah have been well preserved, including the housing neighbourhood constructed in the 20th century using old, or traditional, techniques. Its conversion into a Living Heritage Museum has as its main goal, preserving both material remains as well as the original and symbolic role of the village as a whole. The preservation project carefully retains and consolidates the physical ruins that exist in the main palaces and revitalizes the area, making it a positive experience for the Saudi citizens that live there. Changes and additions are done to the area only when necessary for purposes of stability and the materials used are compatible with traditional ones, as are the rebuilding techniques.

The Kingdom of Saudi Arabia owns the entire site. As such, it is safe from outside threats and guarded around the clock, according to the World Heritage Committee’s report on listing.162 The Buffer Zone was created as a way to protect ad-Dir’iyah from urban encroachments, to preserve the agricultural use of the wadi area from the same, and to protect it from outsiders. Ad-Dir’iyah has a large amount of palm dates plantations, traditional and new developments and neighborhoods, and desert areas that have been carefully preserved. Lastly, the Buffer Zone ensures protection of the site from the growth of the nearby agricultural and urban settlements.

161 Ibid.
162 Ibid.
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8.2 Reflection

The protection of these sites represents a major step forward for heritage protection in Saudi Arabia, though at the same time they also reflect contradictions in heritage protection in the Kingdom. In the case of the World Heritage sites, the regime has shown an interest in conforming to heritage protections established through the Convention and enforced and guided by the World Heritage Commission. This departs from the historical conceptualization of heritage protection as being limited to protecting the interests of the state, religious authorities, and commercial actors. The fact that this site is pre-Islamic and is the first Saudi site listed site shows a break from religious and nationalistic ideologies. However, the heritage protection at other heritage sites in Saudi Arabia contains elements of reconstruction and touristic display, reflecting the influence of state and commercial motivations.

9. Role of the Supreme Commission for Tourism & Antiquities (SCTA)

The legal and governance frameworks for heritage protection in Saudi Arabia manifest in the institutional structure, programs, and policies of the SCTA. This institution represents the culmination of decades of planning and evolution in the Kingdom toward heritage protection. After many stages of development, the SCTA is the first government agency to be developed for the sole purpose of dealing with heritage protection and tourism as mentioned above.163

During this process, the Saudi Council of Ministers issued many Resolutions that supplemented the decree, reflecting the capacity of state institutions to act carte blanche without statutory authority. For example, in 2000, Resolution No 9 was issued to establish a Supreme Commission for Tourism (SCT), stressing the fact that

tourism is one of the more productive sectors that can help do many things, such as retaining the Saudi tourists within the country while increasing fiscal and other investment opportunities, developing human resources, and making and expanding new job opportunities for the Saudi citizens.

Because of the importance of the Antiquities and Museums sector, another Resolution was passed in 2008. It was Resolution No 78 pursuant to which the Council of Ministers melded the Antiquities and Museum sector with the SCT. When this occurred, the previously-named SCT became the entity responsible for not just its original job of tourism, but for the execution of the related tasks as well, notably heritage protection.

Resolution No 78 changed the name of the SCT to the Saudi Commission for Tourism and Antiquities (SCTA) with the affirmation that tourism needs to have a national authority responsible for the tourism sector’s planning and development. This was particularly true in relation to the following:

1. Gigantic archaeological treasures, rare historical sites and museums, all connecting the Kingdom to several ancient civilizations.
2. The Kingdom’s one-of-a-kind geographical location, its variety of terrains and climate and stunning views.
3. Long seacoasts that lie on the shores of the Red Sea and the Arabian Gulf.
4. The one-of-a-kind Saudi customs and traditions and the famous generosity and hospitality of the Saudi people.
5. A current infrastructure with advanced services and a government that stresses the importance of developing the tourism sector.
6. Confirmed security and political steadiness in the Kingdom and a healthy economy, as well as a society that is moving forward and progressing.

From the start, the primary goal of the creation of the SCTA was so that it could oversee the heritage protection and tourism sector and be responsible for its development, organization and promotion. The Kingdom has significant tourism

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potential, and as such, the SCTA is responsible for ridding any obstacles or problems that arise and that may get in the way of its development. The SCTA works to preserve, develop, expand and maintain antiquities and to endorse the contribution of antiquity in the cultural and economic development of Saudi citizens.166

Saudi Arabia’s vision and mission for the tourism sector is based primarily on its ethical, social, and civil aspects. It is also based, to a lesser degree, on its economic importance and the local and international role it plays, as well as its interaction with other communities. In all areas of heritage protection, the Saudi state is the primary participant in the creation of the principles that produce this vision. Such principles included economic capability and sustainability. The framework likewise included taking into account the social, cultural and environmental truths and the genuine Islamic values and heritage and the Kingdom’s famous hospitality.

The vision for tourism that Saudi Arabia has is based primarily on the uniqueness of the Kingdom.167 The development of tourism is based on the Kingdom’s unique social, cultural, environmental and economic values as well as its Islamic values. With respect to the Kingdom’s interest in tourism, Saudi Arabia works towards creating a balanced way to develop tourism. Ideally, this would include economic diversity, for example, and making job opportunities for its citizens while preserving the genuineness of its culture and environment.168

In order to realize these goals, the State has created a partnership between the public and private sectors, with each sector assuming various roles in terms of financing and stewardship on a case-by-case basis.169 The public sector’s tasks include planning and giving guidance when needed, as well as infrastructure support. It is also responsible for research and studies for the development of tourism. Simultaneously, the private

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166 Interview with Ali Al-Ghaban, Vice President for Antiquities and Museums Affairs, Saudi Commission for Tourism and Antiquities (personal communication in a participation in field work, 24th January 2014).
167 SCTA, above n 16.
168 Interview with Ali Al-Ghaban, Vice President for Antiquities and Museums Affairs, Saudi Commission for Tourism and Antiquities (personal communication in a participation in field work, 24th January 2014).
169 SCTA, above n 16.
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sector takes on the primary role in tourism investment. It can also be responsible for
development and putting into practice the marketing policies of the tourism industry.

With respect to its tourism mission, the SCTA is dedicated to assisting in creating
balanced and sustainable tourism development throughout the Kingdom.\textsuperscript{170} It plans to
do this by creating clear and specific policies, which are non-binding and subject to
approval of the Commission, in close partnership with tourism industry leaders and
the private sector. Another goal is to make the tourism industry stronger so that it can
be as self-sufficient as possible. This multi-stakeholder approach reflects a higher
degree of regulatory involvement with commercial actors. Formerly, the regulatory
institutions of the state were relatively weak, and commercial actors only needed
informal approval of ministers and department chiefs. By contrast, the multi-
stakeholder approach allows for state and non-state actors with interests in heritage
protection to play a formal role in a review process that is more transparent and abides
by strengthened statutes.\textsuperscript{171}

With regard to the SCTA’s goal regarding Antiquities and Museums, it emphasizes its
ability to keep monuments safe by conducting antiquity-related explorations and
developing architectural heritage museums to encourage and increase the
understanding of the cultural heritage of the Kingdom.\textsuperscript{172} The Antiquities and
Museums section of the SCTA is working diligently to develop cultural resources in
order to present them to the community for the endorsement of cultural tourism, such
as a chain of national museums dispersed geographically to provide the populace with
convenient access.\textsuperscript{173} In turn, this encourages the private sector to invest in the
Antiquities and Museums.\textsuperscript{174}

The Board of Directors of the SCTA includes the following officials:

1. HRH Prince Sultan bin Salman bin Abdul- President of the SCTA and
Chairman of the Board of Directors of Aziz SCTA.

\textsuperscript{170} Ibid.
\textsuperscript{171} Price, above n 97.
\textsuperscript{172} Ibid.
\textsuperscript{173} Ibid.
\textsuperscript{174} Ibid.
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2. Vice-President and General Presidency of Youth Welfare- H.E. Faisal bin Abdul Aziz Al Nasar

3. The Assistant Minister of Foreign Affairs- HH Prince Khalid bin Saud Al Saud.


5. The Undersecretary Ministry of Interior- H.E. Dr. Ahmed bin Mohammad Al Salim.


The organization and structure of the tourism section of the SCTA was developed with the help of specialized international consulting firms in Arabic and European countries. The organizational and administrative structure was created to accommodate the needs of the national tourism industry on its own.

Flexibility is stated by official sources to be the primary trait of the SCTA’s structure, as is openness to change and modernization to keep up with and be attuned to the necessities of the advanced tourism industry. These qualities stand in contrast to the non-transparent and highly rigid qualities of heritage governance in the Kingdom’s past. Compared to heritage systems and structures in representative governments, these qualities are nascent at best in the Kingdom. In order to accomplish modernity and openness, the SCTA had to take several initiatives into account in the administrative area. These programs were also aligned with the first goal set in front of SCTA - planning and study.

In a review of the current framework of the tourism industry in 2013, it was discovered that there was an overlapping and replication of tasks and

\[\text{Ibid.}^{175}\]
\[\text{Ibid.}^{176}\]
\[\text{Ibid.}^{177}\]
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responsibilities. This was one reason for creating a body that would oversee and ensure that coordination and cooperation at the national, regional, and municipal level was accomplished.

Basically, all the various tourism and heritage activities of the SCTA are integrated and interdependent because tourism, as a product, is interrelated; that is, it exists as activities and is thus considered to be a whole product in tandem with heritage. Without linking the tourism activities together into a whole, they will operate in isolation from the other, which in turn will rob them of the chance to benefit from the mutual, combined services. Hence, there was an urgent need for a comprehensive approach to make sure that the different areas of the tourism industry were combined into one single government body.

To fulfil this need, the Council of Ministers suggested the creation of a regulatory power that would show the State’s plan for a disciplined and structured tourism industry. With this idea in mind, SCTA was established. It became a knowledgeable, skilled authority with several different statutes and regulatory frameworks in the field of tourism and antiquities.

10. Developments and initiatives in Saudi Heritage

The SCTA initiatives include national, tourism, and organizational ones. For instance, at the national level one initiative is referred to as the Tourism Marketing Partnership Program. The program’s goal is to work at creating an integrated system through which both private and public sector’s work together to generate more tourism money for partners, and to create decent and competitive local tourist products and services.

Another local initiative is called the Historic City Centers Program. Creating historic city centres has always been a key to Saudi’s success in the tourism industry.

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178 Ibid.
179 Ibid.
180 Ibid.
181 Saudi Commission for Tourism and Antiquities, Historic City Centers Program (SCTA press, 2009).
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The restoration of the original historic city is an important part in stimulating several activities, which show off the city’s cultural heritage, thereby attracting tourists. SCTA has done several different such projects, like the restoration of the Red Sea axis, and continues to do more.

Some other national initiatives include the World Heritage Sites, the Historic and Archaeological Sites Interpretation, the Protection of Urban Heritage, the 1st International Conference for Urban Heritage in the Islamic Countries, and the Heritage Villages Development Project.¹⁸²

The World Heritage Sites initiative refers to the success of the Kingdom of having three sites registered on the UNESCO’s World Heritage List, which are Madain Saleh (Al-Hijr) in 2009, Adderiyah in 2010 and Historic Jeddah, the Gate to Makkah in 2014. The Historic and Archaeological Sites Interpretation initiative refers to how the SCTA has established several visitor centers in prominent archaeological and historic areas, such as Djabal Um-Sanman in Jubbah, Al-Khuraiba in Al-Ula, Al-Shnana Tower in Al-Rass. It has also created field museums in Al-Khobar and Marduma, for instance, and renovated many archaeological and cultural sites on tourism routes. Under this initiative, the SCTA has also renovated seven historic routes in addition to the World Heritage Sites in Madaen Saleh and Adderiyah. The SCTA has now revealed that there will be two more historic sites in the near future.

The Protection of Urban Heritage initiative referred to above reflects one way the SCTA is trying to protect Saudi national heritage, by creating the National Center for Urban Heritage, a center whose aim is to stop any destruction of urban heritage.¹⁸³

The SCTA is working on getting a special decree just for this purpose. Another initiative the SCTA took was to have the 1st International Conference for Urban Heritage in the Islamic Countries.¹⁸⁴

¹⁸³ Ibid; also see Exell and Rico, above n 42, 122, 153.
¹⁸⁴ Interview with Ali Al-Ghaban, Vice President for Antiquities and Museums Affairs, Saudi Commission for Tourism and Antiquities (personal communication in a participation in field work, 24th January 2014).
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28 in 2010 under the sponsorship of the Custodian and Two Holy Mosques. Many different people and groups participated in the conference, including tourism ministers and commissions from member states in the Organization of Islamic Conference (OIC). Businessmen and members of the Chambers of Commerce also participated. The primary goals of the conference was to:

1. Address the current state of urban and architectural heritage in Islamic countries and create a framework for future development of their social, economic, and cultural prospects.
2. Develop a plan for collaboration among Islamic States with respect to the preservation and functioning of architectural heritage buildings and villages.
3. Stress the significance of cultural, economic, social and tourism aspects of urban and architectural heritage as a key area of development in Islamic countries.

As a result of the conference, the 1st National Forum for Urban Heritage was launched, and a national center for urban heritage as well as a center for urban architect is being realized.  

The goal of the Heritages Villages Development Project is to preserve urban and architectural heritage and ensure sustainability for heritage villages socially and economically as well as maintain the traditional characteristics of their architecture, thereby contributing to the bettering of their standard of life. In its first phase, the project took on several villages, including Al-Ghatt in Riyadh, Jubbah Traditional Village in Hail, Rijal Almaa in Assir, Al-Muznib traditional village in Al-Qassim, DhiAyn in Al-Baha, and the Al-Khabra traditional village in Al-Qassim.

The Reclaiming Antiquities taken Outside the Kingdom initiative involves the recovery of more than 14,000 archaeological artifacts which were taken from the Kingdom. It also involves having an international conference and exposition of recovered objects, which King Abdullah Bin Abdulaziz is to organize and fund. Other events under this initiative include an increase in the protection of archaeological

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185 Ibid.
186 Ibid.
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sites, a Sites Observer Program, which means 24/7 observation, a retrieval of archaeological sites owned by the private sector to stop misuse of artifacts, and to increase the awareness of owners of artifacts and antiquities. Along with protecting the Islamic sites of Mecca and Medina, a media campaign has begun to increase awareness and stop the illegal export of antiquities.

Some tourism initiatives include an initiative called the General Tourism Strategy. Since the SCTA was established in 2000, it started working on putting together a 20-year national strategy and a plan for creating tourism in the Kingdom. The work was completed in April of 2002, and involved all the stakeholders in the tourism sector, both public and private. The national plan is to be completed in 2020, with the goal that tourism in the Kingdom should become a serious contributor in developing economic growth on a national level. Because of its location, the Kingdom is often referred to as the cradle of Islam, and hence, the place where all civilizations meet. With this in mind, the major cornerstones of the national strategy include preserving the teaching of Islam and Islamic values and promoting the Arabian heritage.

Other tourism initiatives include the Tourism Destinations Development: The Red Sea Tourism Strategy and the Tourism Destinations Development and the Al-Ugair Destination. The first refers to how the SCTA, beginning in December 2004, began working on how to develop the coastal area of the Red Sea as one of the most popular tourist destinations both from abroad and locally. The strategy was approved in 2008 by the Minister’s Council. The goal of the Red Sea Tourism Strategy is to identify the role that the Red Sea and its related coastal area can play in the Kingdom’s hope to create a modern and sustainable tourism industry. The strategy of the plan is to look at all the combined issues of tourism possibilities and coastal preservation in an holistic manner that looks to develop areas of shared benefit as well as lessen or avoid any areas of conflict.

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The Al-Uqair188 Tourism Destination initiative refers the Al-Uqair coastal area being identified as a priority development area in the National Tourism Development Strategy.189 In 2005, the SCTA hired a specialized firm to prepare the plans for development of the Al-Uqair as the first self-contained and sustainable coastal tourist zone in the Kingdom with many attractions. As long as the Supreme Economic Council approves it, the SCTA is working with the Al-Hassa Municipality and the Ministry of Finance to create the Al-Uqair Development Company (ADC), to be the commercial body entrusted with the project of developing Al-Uqair. ADC will be a public-private partnership.

An example of an organizational initiative is the SCTA website.190 The mission in creating this site is to help assist in the implementation of SCTA’s main goals. These goals are to inspire and develop the tourism industry in the Kingdom. These goals advanced by offering integrated information about SCTA and what it offers. The site gives easy access to this information and helps people become more knowledgeable. As such, the site has contributed significantly to the awareness and better understanding of cultural tourism in the community.

Another example of an organizational initiative is called the Government Project’s Management which is directed at a main goal of SCTA being to automate all of its business processes. The primary benefit of doing this is to more quickly master the project management process with an interactive guide that assists SCTA develop

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188 Al-Uqair is an ancient port located in the east coast of Saudi province. The place contains Historic old buildings for tourism. The commission is expecting to welcome visitors to Al-Uqair beach in early 2017. SCTA, above n16.
projects, manage tasks and resources, follow schedules, and report project-related information as well as better customer service.\textsuperscript{191}

The SCTA’s New Statute Initiative is also an organizational initiative. The SCTA was created by a Council of Ministers as discussed earlier, in 2008 and emerged from the earlier SCT and the Deputy Ministry of Antiquities and Museums.\textsuperscript{192} In practice, the SCTA continues to act as the Kingdom’s national tourism administration (NTA), but also, because of its control over most of the Kingdom’s cultural heritage, as the Kingdom’s national cultural heritage agency. Article 3 of the SCTA Statute basically defines the purpose of the SCTA as promoting tourism by organizing, developing and marketing it. In addition, the SCTA is to improve the role of tourism so it becomes an important economic resource for the Kingdom, and at the same time, take care of and preserve the Kingdom’s antiquities and museums. The private sector is to play the primary role in the construction of tourism facilities.

The SCTA statute has significantly enlarged the roles and responsibilities of the body, mainly by bringing under its authority main tourism sectors, which were previously under the guise of other government agencies, such as travel and tour services, accommodation, tour guides and other tour-related activities.\textsuperscript{193} Now, the SCTA is solely responsible for the regulation of tourist-related activities. The new SCTA mandate has made the role and goals of the national tourism administration very clear. As a result, it has filled the primary public sector institutional facets of the tourism legal framework.

\textsuperscript{191} Interview with Ali Al-Ghaban, Vice President for Antiquities and Museums Affairs, Saudi Commission for Tourism and Antiquities (personal communication in a participation in field work, 24\textsuperscript{th} January 2014).

\textsuperscript{192} Council of Ministers, (KSA) Resolution No. (78) dated 24\textsuperscript{th} March 2008, Article 3. Most of the information in this section collected during the fieldwork we conducted in January 2014. Interview with Faisal Al-Fadhel, Director of Legal Department (personal communication in a participation in field work, 24\textsuperscript{th} January 2014). All materials translated from Arabic to English by the Author.

\textsuperscript{193} Interview with Ali Al-Ghaban, Vice President for Antiquities and Museums Affairs, Saudi Commission for Tourism and Antiquities (personal communication in a participation in field work, 24\textsuperscript{th} January 2014); also see Council of Ministers, Resolution No. 78, Article 4.
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With respect to its budget, in 2008, the Council of Ministers issued a regulation that the SCTA should have an independent budget.194 Also, the SCTA’s owed fiscal appropriations should follow the instructions of the State’s Public Budget. The SCTA gets its money from the following sources:195

1. Aids, donations and grants that the Board of Directors of the SCTA accepts.
2. Returns from the membership of the Board of Directors, which the Board of Directors decides. It is taken primarily from the investors who gain from the facilities and services that the SCTA offers.
3. Returns from SCTA’s services to other entities.

Its appropriations have steadily grown since the year 2001 until the present.196

In order to add to the effective development of the tourism industry in the Kingdom, several years ago the SCTA purposefully chose a plan of cooperation by creating strategic partnerships with some of the private and public sectors’ institutions.197 These partnerships were likewise to help with archeological finds and preservation in all of the regions in the Kingdom. To this end, the STCA has created an extremely regimented methodology and precise principles to follow in choosing these partners, with the end goal being to achieve the maximum benefit possible for the two parties.198 In addition, the public and private parties should work persistently with one another in order to achieve their goals.

Hence, the public and private parties have different roles. First, the role of the partner is to carry out the tasks and measures related to any part of a protection plan and make suggestions, while the role of the STCA is more of a supportive role, as it provides technical and fiscal support to the authority that is carrying out the plan. But, in all circumstances, the STCA must collaborate and interact with the public and private sectors alike. Some of the bodies that have signed cooperation agreements with the STCA include the Tabuk University, the Saudi Red Crescent Authority, King Abdul

194 Council of Ministers, Resolution No. 78, Article 12 (1,2,3,4,5).
195 Ibid.
196 Ibid.
197 Resolution No. 78, Article 7.
198 Ibid.
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Aziz Dara, the Saudi Geological Survey, the Saudi Ports Authority, the Agricultural Development Fund, and the Saudi Post, among many others. 199

11. Conclusion

The Kingdom of Saudi Arabia’s heritage protection framework, both in the statutory and regulatory regime, has a long way to go before it can be compared favourably to what exists in Australia and other pluralistic countries with representative governments. Ultimately, the royal family reserves exclusive and absolute authority to interpret and enact any statute it sees fit. Even the best statute on paper means nothing without the rule of law enforced by an independent judiciary, transparency of the regulatory environment, laws passed by representative bodies, and restrictions on the authority of the executive. Nevertheless, the reforms made by the Kingdom in the new Antiquities law LAMBH reflect a nascent accommodation of international norms and values related to heritage protection. The listing of the first World Heritage Site illustrates a higher level of commitment by the state to heritage protection, even as other actions by the state and its commercial and religious allies contradict the same norms and values of heritage protection.

This chapter has focused on the heritage framework of the Kingdom of Saudi Arabia in which special emphasis is placed on the role of the national government in preservation, management, and the nomination system. This chapter also examined the Saudi legal system in the context of its effectiveness for the protection of heritage sites, including the new LAMBH that significantly expands heritage protection. Attempts to improve the heritage framework have been undertaken since Saudi Arabia signed the WHC in 1978. However, the question remains whether the Saudi heritage framework and system in general fulfils its responsibilities, including the role of an expanded government and private-sector institutional framework.

The successful nomination of sites to the World Heritage List illustrates one step toward improved heritage protection in the Kingdom. Yet the most important

199 SCTA, above n 19.
development in Saudi protection of heritage has been the passage of the new LAMBH, which greatly expands heritage protection in several ways.

First, the LAMBH provides much more specificity regarding heritage issues that can guide heritage protection. For example, the LAMBH provides more details about commercial and infrastructure threats to heritage that must be the focus of protection efforts. The LAMBH provides more details about circumstances in which heritage must be protected, such as minimum protection areas designated by quantitative measures (meters).

Second, the LAMBH significantly expands the role of the SCTA. For example, the Board of Consultants and the special commission on violations will play an important role in improving human expertise and enforcement of the law, respectively. The SCTA has an increased role collaborating with other ministries and municipal governments in protecting heritage. The SCTA plays a significant financing role in cultivating a museum network that will make heritage protection a cultural norm in the Kingdom. The SCTA also has an expanded role collaborating with international organizations and foreign organizations that have particular human capital and expertise in protection.

Third, the LAMBH significantly expands the definitions of heritage, particularly the inclusion of traditional, underwater heritage, and urban heritage. These definitions of heritage are not noted in the current royal decree. Traditional heritage in particular is identified as of crucial importance because it represents ongoing cultural practices, systems, and tools of production. This resembles the protection of Aboriginal heritage in the Australian heritage protection framework. Urban heritage is also designated for particular emphasis in the LAMBH. Most notably, urban heritage becomes the source of specific funding mechanisms financed by the Commission, the Ministry of Municipal and Rural Affairs, and private parties.

Of course, consideration of the LAMBH is ongoing, and there is likely resistance by various governmental and private parties concerned about its impact on commercial
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activities. However, the fact that the new LAMBH envisions a new heritage protection framework that is integrated with tourism might mitigate such resistance. The success of the recently included sites and the nomination of other sites for inclusion on the World Heritage List suggest that the Kingdom is entering a new era of heritage protection that should result in expanded protection. Passage of the LAMBH will ensure that this new era becomes codified in the Kingdom’s statute and institutional framework, even as contradictory trends continue due to the influence of commercial actors, religious fundamentalism, and state interests in the promotion of a specific national identity. The next chapter identifies a possible future framework for heritage protection in Saudi Arabia via conclusion and recommendations.
Chapter 7

Recommendations and Conclusion

1. Research Findings

This research utilized primary and secondary sources to examine domestic and international heritage protection frameworks in the context of issues facing Saudi Arabia. In Chapter One culture and heritage were shown to have emerged as objects of protection as a result of norms, practices, and domestic and international legal developments, but there is significant variation in the types and levels of protection among countries. Overall, international agreements have little impact on heritage protection unless they are implemented through strong domestic regimes.

Chapter Two examined the history and background of Saudi Arabia with specific reference to heritage and its protection. Saudi Arabia’s monarchical and religious systems of governance and law present significant challenges to heritage protection. Saudi Arabia is in the early stages of developing contemporary heritage protection, with significant reforms in the law emerging since ratification of the World Heritage Convention (WHC). Most importantly, Saudi Arabia has won approval for inclusion of its first World Heritage Site on the World Heritage Site. Heritage challenges in Saudi Arabia relate to an overall preference for economic development rather than heritage protection, unless such protection facilitates nationalistic, religious, or tourism interests.

In Chapter Three early national law and policy to protect heritage outside Saudi Arabia, before the passage of the WHC, was examined. These efforts in the United States, United Kingdom, Australia, and the Ottoman Empire reflect the domestic origins of heritage protection, with most heritage protected because of its facilitation of nationalistic or cultural supremacy interests. This chapter also revealed how heritage protection tends to only occur after the emergence of strong regulatory and bureaucratic systems in the nation-state.
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The WHC has been important in assisting developing countries as they improve their systems of governance and legal frameworks of heritage protection. Chapter Four explored in detail the role of the WHC in protecting heritage by providing funding and expertise for countries that have exhibited an interest in domestic heritage protection. However, as with some other international law regimes, even those countries that ratify the WHC can ignore the spirit and letter of the law if intrinsic motivation to protect their heritage is lacking. Strong national implementation, including the political will to do so, is critical.

Chapter Five examined the implementation of heritage protection in Australia, the United Kingdom, Jordan, and Egypt. This analysis revealed the high level of variation in the legal frameworks based on politico-legal motivation and domestic capacity. The United Kingdom led heritage protection as one of the first nation-states to institute formal regulatory and bureaucratic functions. Australia developed heritage protection much later than other industrial countries, particularly in relation to indigenous heritage. Egypt’s extraordinary amount of ancient heritage has resulted in a more sophisticated legal protection regime than would be predicted for a developing country; while Jordan’s heritage law remains at the nascent stage, with protection diminished by lack of motivation and capacity to protect heritage.

These comparative examples set the scene for Chapter Six where the heritage protection regime in Saudi Arabia was analysed. The monarchical system of governance and religious law has proven to be a significant barrier to heritage protection. Nevertheless, the regulatory and legal structures to protect heritage have been significantly improved as a result of the passage of the new antiquities law and the listing of the first World Heritage Site. The question remains whether heritage protection in Saudi Arabia will be adequate in an environment where there is an absence of a pluralistic civil society and representative government. These two limitations combine to diminish heritage protection given the high interest in economic development in the Kingdom.

The final chapter of this thesis identifies a possible enhanced framework for heritage protection in Saudi Arabia. Best heritage practices identified in other domestic and international regimes can serve as a guide for heritage protection in Saudi Arabia, even in the absence of a pluralistic civil society and representative government. However, heritage protection in the Kingdom will
never achieve optimal standards until norms, practices, and values emerge in Saudi Arabia that are secular and multicultural. Until then, heritage protection in Saudi Arabia will occur at the whim of the royal family and is likely to be diminished by nationalistic, religious, and economic interests.

2. Best Heritage Practices

The best heritage practices exist at the domestic level where appropriate norms, good governance and the law coalesce to protect heritage. Those countries in the industrialised world, which show the highest level of heritage protection, have developed a regulatory and legal framework for heritage protection as a result of heritage norms, private sector institutions, a fair and professional justice system, the rule of law, and representative government. These norms developed as a result of private-sector interests and activities initially related to the preservation of architecture supportive of nationalistic and cultural supremacist interests, such as the monarchy and religion in the United Kingdom in the 17th and 18th centuries.¹ Only in the 19th Century did heritage protection as a norm emerge in the industrialised world.² This norm recognized the value of heritage regardless of its relevance to contemporary elites in the public and private sectors. The universal norm of heritage protection recognized the importance of protecting heritage for its universal value to humanity regardless of its benefits to economic, nationalistic, or other considerations.

A pluralistic civil society emerged in the West in the 19th Century that promoted heritage norms of universal value.³ A pluralistic civil society can be defined as a diverse and robust collection of private-sector organizations and groups that promote various causes and interests.⁴ In the United Kingdom, for example, historical associations have proven instrumental in the cultivation of

² Ibid.
³ Ibid; See Chapter 5, “United Kingdom”
⁴ See chapter 3 for more details.
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heritage protection. These associations initially represented aristocratic elites interested in protecting architecture relevant to the promotion of their claims to privilege. Gradually, however, civil society in the United Kingdom facilitated heritage norms that promoted the idea of universal heritage value regardless of relevance to elitist interests.

Simultaneously, the 19th Century also witnessed the inclusion of capacity building in the regulatory and legal systems of the industrialised world. In the United Kingdom, heritage protection that was formerly promoted by the private sector and the royal family became the focus of the law and the nascent regulatory system of the nation-state. Similar developments occurred in the rest of Western Europe, North America, and Australia, and more recently in the developing world. Both the law and its enforcement, through a robust regulatory system, are necessary to protect heritage that is threatened by neglect, trafficking, and economic development.

Similarly, capacity building must be considered from the perspective of the research and academic establishment. In the industrialised world, expertise in archeological and anthropological fields of study has been instrumental in promoting the norms of heritage protection and providing practical delivery of heritage protection. Research institutions in the non-profit and academic sectors are perhaps the most significant promoters of heritage protection outside the legal and regulatory frameworks. Without the expertise provided by these sectors, even the best-intentioned advocates of heritage protection would face insurmountable challenges in protecting heritage, which requires a technical as much as a legal approach. The WHC facilitates this by providing research assistance to countries with resource deficiencies. In addition, the WHC regime promotes the norm of heritage protection through public reports that apply international pressure to countries lagging in their obligations.

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6 See Chapter 5, “United Kingdom”
8 See Chapter 5
9 Stefan Fisch, National Approaches to the Governance of Historical Heritage Over Time: A Comparative Report (Fairfax, 2008) 8.
Even in those countries with the highest level of heritage protection, it is almost always contested. This contestation is mostly by those who perceive heritage protection as limiting development and economic activities. In the United Kingdom, real estate developers object to historical preservation guidelines that prohibit new architecture. In the United States and Australia, mining interests object to the protection of Indigenous heritage on public lands with precious minerals. In the developing world as well, heritage protection is considered antithetical to industrial development. In summary, industry tends not to support the protection of heritage, but local communities and non-government interests on that.

Without a civil society, technical expertise, representative government, and a regulatory system, the heritage norms will never be translated into a legal framework of heritage protection. By providing capacity building to countries with resource deficiencies and nascent norms of heritage protection, the WHC plays an important role in encouraging parties to fulfill their obligations by constructing institutions and mechanisms of protection. At the same time, however, one must recognize the limitations of the WHC, similar to most other international laws that lack enforcement powers due to the primacy of state sovereignty. No party to the WHC has much fear of repercussions beyond reputational damage for violating its obligations. Vested interests, notably commercial and religious, in Saudi Arabia present a particular challenge for the Kingdom in meeting its heritage obligations because of the relative lack of pluralism that would allow other interests, such as heritage proponents, to petition the state on equal terms. Only pluralism, transparency, representative government, and the rule of law will allow Saudi Arabia to achieve the ideals of the WHC.

Even when these elements of heritage protection are lacking at the domestic level, international pressure and assistance can provide some capacity building in developing countries such as Saudi Arabia. Best practices can be promoted by the WHC when interest in heritage protection exists in part among some domestic actors. Certainly, the ratification of the WHC by Saudi Arabia has facilitated some good practices and heritage protection in the Kingdom. The WHC has promoted the value of protecting heritage of universal value, delivered technical assistance to

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10 Fisch, above n 9.
State Parties, and presented legal and regulatory models that have been applied to varying extents at the domestic level. For example, the World Heritage Centre is providing considerable technical expertise to Saudi Arabia in its conservation of the nominated site of Al-Turaif, including the partnering of domestic actors with international actors with expertise in archeology and excavation. The Kingdom, however, has failed to demonstrate the implementation of best practices as called for by the WHC and demonstrated by exemplary domestic heritage leaders, such as the United Kingdom.

Civil society is considered one of the hallmarks of an effective heritage protection regime. A pluralistic civil society involves a social and political environment in which individuals and groups are able to organize their activities and petition an elected government. The history of heritage protection in the West illustrates the advancement of heritage protection as a result of the influence of non-governmental actors on the drafting of laws and construction of the regulatory regime. For example, archeological and architectural organizations in the United Kingdom were instrumental in heritage protection from as early as the 17th Century. In the United States and Australia, Indigenous peoples and environmental organizations have been instrumental in heritage protection where natural features are major targets of protection.

Heritage protection also is most robust in states with impartial, objective, and professional legal systems, which provide the forum for heritage interest groups to litigate against public and private sector actors that threaten heritage or fail to protect heritage as required by the law. Such legal systems allow for interest groups to act as de facto regulators of heritage law. For example, in Australia and the United States, Indigenous and environmentalist interest groups have sued the government, mining interests, ranchers, and various corporations that have threatened or failed to protect heritage as defined by existing laws. Judges and juries that are autonomous from executive branches of government are necessary for such litigation to be an

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11 The World Heritage Committee, report of the decision adopted by the world heritage, AT ITS 34TH SESSION (BRASILIA, 2010) Decision: 34 COM 8B.15
13 Fisch, above n 9; also see chapter 3.
14 Deepak Chhabra, Sustainable Marketing of Cultural and Heritage Tourism (Routledge, 2010).
15 Chhabra, above n14.
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effective component of heritage protection. Even Saudi Arabia has made efforts to reform its judiciary away from a strictly religious institution into one that is secular and professional.\(^{16}\)

Pluralistic, representative governments with autonomous, professional legal systems are not necessary as much for the effectiveness of the regulatory regime so much as to pressure government to institute an effective regulatory framework.\(^{17}\) The advent of heritage protection norms, which are society-wide values that recognize the need to protect heritage, typically emerge from civil society organizations, such as preservation societies and archeological organizations, rather than from public-sector actors.\(^{18}\) Regarding the effectiveness of the regulatory regime, there are examples of authoritarian states engaged in effective heritage protection. In these states, heritage norms emerged from sources other than a vibrant and pluralistic civil society or a representative government. Rather, heritage norms and protections developed as a result of collective agreement along longstanding cultural, ethnic, and nationalistic identities. For example, protection of ancient Chinese heritage in the People’s Republic of China emanates from a collective Han identity, the predominant ethnic identity among the Chinese population.\(^{19}\) Heritage norms in the United Kingdom emerged as a result of the aristocracy’s interest in protecting built heritage that reflected the aristocracy’s claims of legitimacy.\(^{20}\) In Australia, early heritage norms valued European heritage while neglecting the value of Indigenous heritage.\(^{21}\) These examples reveal how the contemporary norm of outstanding universal value as expressed in the WHC emerged only after earlier norms that reflected culturally supremacist values.

However, a challenge for heritage protection occurs when norms are based on the authoritarian state’s recognition of the value of heritage that facilitates a state interest, such as the protection of heritage that supports ethnic, cultural, or nationalistic aims of the state.\(^{22}\) In the People’s Republic of China, for example, the protection of ancient Chinese heritage is admirable, but the

\(^{16}\) For more see chapter 6, “Newly Enacted Law of Antiquities, Museums and Built Heritage (LAMBH)”.
\(^{17}\) Rowan, Yorke & Baram, above n 12.
\(^{19}\) Chhabra, above n 14.
\(^{20}\) See Chapter 5, “United Kingdom”.
\(^{21}\) See Chapter 5, “Australia.”
\(^{22}\) Chhabra, above n 14.
protection of heritage related to ethnic minorities that have challenged Han predominance is markedly less robust. By contrast, even in industrialised states where ethnic minorities are marginalized, the existence of civil society, representative government, and an objective and impartial justice system provide forums for minority interests to be expressed and even codified. Thus, protection of heritage in authoritarian states is typically limited to the heritage that supports state interests in the absence of a pluralistic civil society that has influence in the promotion of minority interests. The primary avenue for protection of heritage that reflects non-state interests in authoritarian regimes is the pressure exacted by international agreements. While the WHC has certainly been unable to encourage heritage protection in authoritarian states as effectively and broadly as heritage protection in pluralistic, representative governments influenced by various interest groups, the WHC has been able to apply some international pressure on authoritarian states, leading to protection that is broader than would likely have occurred in those states in the absence of international law.

3. Recommendations for an effective heritage protection regime in Saudi Arabia

The recommendations that follow recognize the fact that the Kingdom of Saudi Arabia is unlikely to develop a secular, pluralistic civil society, a representative government, or an autonomous legal system on par with that which exists in the West. These recommendations recognize the fact that the government will retain its basic social, political, and legal systems in the near future, which can be defined as authoritarian, with the primary state interests being the support of the monarchy, economic development of the energy sector and other industries, and its preferred interpretation of orthodox Islam. Nevertheless, there is evidence that the Kingdom has embarked on political, social, and legal reforms that reflect an interest in modernization that includes limited pluralism, less religious orthodoxy, and even some forms of representative government. These recommendations reflect the potential for universal heritage protection in Saudi Arabia to become more robust, particularly if promoted by members of the royal family

23 Ibid.
who recognize the outstanding value of universal heritage, not just heritage that supports state interests.

3.1 Civil Society

Saudi Arabia must build its domestic capacity in technical areas related to heritage protection. This capacity building will promote the norm of outstanding universal value throughout the Kingdom. Research and academic institutions are beginning to emerge in Saudi Arabia, evident in the contributions of scholars and researchers in *Research & Heritage: Research Papers on Architectural Heritage*, published in 2013 by the Supreme Commission for Antiquities and Heritage. Many of the authors of the research papers are Saudi, while those from other countries were given access to Saudi heritage sites and documents. As the Saudi editor of the collection notes, Saudi heritage protection is in a relatively early stage and is still undergoing an existential debate about necessity among some stakeholders in Saudi society. But the norms of outstanding universal value are being promoted by Saudi researchers and academics, who are also building their expertise as they study and learn abroad. More than a technical document, *Research & Heritage: Research Papers on Architectural Heritage* appears primarily interested in promoting the value of heritage protection.

However, civil society has two components: promoting the norm of universal heritage protection in the public and government, as well as providing technical assistance for the practical necessities of heritage protection. The Kingdom must continue its efforts to promote civil society in the area of heritage protection through direct and indirect economic support for research and academic institutions. For example, direct economic support should be made to provide scholarships to Saudi students to study abroad, where they can learn the technical fields of study

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25 Ibid.

26 In 2005 King Abdullah created a new scholarship program called ‘the King Abdullah Scholarship Program (KASP)’, which enabling Saudi students to study all around the world. KASP is the largest scholarship program in Saudi Arabia’s history. For more see (1st March 2015) <http://he.moe.gov.sa/en/studyaboard/King-Abdullah-hstages/Pages/default.aspx>.

27 SCTA, above n 24.
for heritage protection. Indirect economic support could include encouraging corporations and wealthy individuals to make contributions to museums, research organizations, and other civil society organizations involved in heritage protection. For example, indirect economic support might include reductions in the payment of the Zakat, a religious tax, for companies and individuals who make contributions to non-profit heritage organizations.

As the examination of heritage protection in the industrial world illustrates, the emergence of private and public academic institutions has played a significant role in heritage protection. Currently, Saudi Arabia’s public academic institutions lack the technical capacity to promote and execute heritage protection, particularly the lack of expertise in archeology, history of the ancient world, and excavation. However, over time, capacity building will occur as more Saudi students return to the Kingdom to apply their learning abroad to heritage protection. The Supreme Commission for Antiquities and Heritage’s publication of Research & Heritage: Research Papers on Architectural Heritage represents a promising start toward civil society capacity building. This publication is the first substantial effort by the Kingdom’s university system to involve young Saudi scholars in heritage protection from a humanities rather than technical perspective.

In the meantime, the Kingdom must rely more extensively on technical expertise from foreign academic and research organizations. Under the current regime, permission is provided to such academic and research institutions for the purposes of providing technical assistance as well as archeological explorations. This reliance must be recast to provide more opportunities for capacity building, and the transmission of knowledge and expertise, for Saudi organizations and individuals. This can occur as foreign actors are required to include Saudi people and entities as part of their research and archeological endeavours in the Kingdom. The Law of Antiquities, Museums and Built Heritage (LAMBH) could include a provision that requires a certain number or percentage of Saudi nationals to be included as participants in foreign-led excavations and research efforts in the Kingdom. These nationals could be students or scholars whose current or projected career endeavors involve heritage protection. In order to ensure this requirement does

This research is the result of assistance from Saudi officials involved in heritage protection.
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not discourage foreign-led research and missions in the Kingdom, which directly promotes heritage protection, the requirement for participation of Saudi nationals should be designed in a way that does not diminish the productivity of heritage conservation projects. For example, the law could simply require Saudi nationals to serve in a support function if they lack expertise that can contribute to the success of the enterprise. Combined with the current obligation in the LAMBH that requires foreign-led missions to produce reports and submit them to the SCTA, this new condition to require participation of Saudi nationals will facilitate capacity building in heritage expertise. The conceptual rather than technical nature of Research & Heritage: Research Papers on Architectural Heritage reflects the early stage of promotion of heritage norms by the Saudi state “to introduce the concept of heritage into the hearts of all people.”

The promotion of this conceptual aspect of heritage norms of outstanding universal value has important implications for protecting heritage that falls outside the protection of state interests or existing norms of the majority of the populace (notably Muslim), particularly heritage that predates the establishment of Islam in Saudi Arabia. Promotion of norms that value non-Islamic heritage can emphasize the aesthetic value of such heritage. Professor Mashary A. Al-Naim, Supervisor General of the National Architecture Heritage Center, emphasizes the importance of promoting a generalized aesthetic appreciation for non-Islamic heritage in Saudi Arabia. Such aesthetic understanding can be integrated with an appreciation for the natural features in which ancient heritage is often located. As Al-Naim states, such heritage “is rather shaped to be part of the place it occupies.”

Even if neither the Saudi state nor the majority of the populace identifies with the culture of pre-Islamic heritage, norms that recognize the importance of protecting such heritage can result as the early civil society in Saudi Arabia attaches a generalized aesthetic value to such heritage.

Technology can be an important instrument in the promotion of heritage norms in Saudi Arabia. An Egyptian scholar who published in Research & Heritage: Research Papers on Architectural Heritage documents the utilization of websites and online tools to promote the protection of

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29 SCTA, above n 24, 6.
30 SCTA, above n 24, 10.
heritage.\textsuperscript{31} For example, appreciation of the aesthetic value of ancient heritage should be promoted by the state through funding of online, interactive technologies. Civil society actors, such as academic and non-profit organizations, should receive financial assistance by the state to create such technologies for the purpose of public outreach. Most individuals will be unable to physically visit heritage sites, and online tools will be essential in distributing the images and information about such sites. Currently, the only heritage that is promoted through online tools intended for public outreach is Islamic. State funding of online tools that promote non-Islamic heritage should also be implemented.

Financial assistance is currently provided to preservation organizations involved in the protection of heritage, particularly through the museum framework.\textsuperscript{32} Other organizations that could play an instrumental role in heritage protection in the Kingdom include academic research organizations, non-profit research organizations, and non-profit preservation organizations. However, a review of the literature fails to provide evidence that preservation organizations have emerged for the purpose of lobbying the government for conservation of unprotected heritage sites. The history of heritage protection in the West reveals the importance of preservation organizations playing such a role. Thus, the existing non-profit organizations in Saudi Arabia currently engaged in heritage protection must expand their role to the identification of heritage that is unprotected and worthy of protection, not just nominating sites for inclusion in the WH List but for protection under domestic law as well. All current organizations involved in heritage protection in the Kingdom are state-operated. Ideally, non-profit organizations and institutions in the private sector and private academia will emerge to lobby for heritage protection and petition the state to enact heritage protection.\textsuperscript{33}

3.2 Amendments to the Law of Antiquities, Museums, and Built Heritage

The LAMBH provides significant changes to the royal decree No. M/26, including an expanded definition of heritage that is more closely aligned with the concept of universal heritage,
restrictions on commercial activities that threaten tangible and intangible heritage, greater penalties for trafficking and heritage destruction, and strengthened enforcement capacities in the regulatory system.\textsuperscript{34} However, LAMBH was drafted and is overseen by the SCTA, which supports the economic interests of a commercial activity, tourism, rather than the promotion of heritage protection for its inherent value.

Therefore, the first recommendation should be to establish a separate ministry as the primary public sector actor involved in identification and regulation of heritage of outstanding universal value, regardless of its contribution to tourism. Resolution No. 78 by the Council of Ministers in 2008 integrated the antiquities function into the SCT, creating the SCTA.\textsuperscript{35} This integration should be extended to create an entirely new ministry devoted exclusively to heritage protection. The administrative unit in the SCTA that is currently devoted to antiquities and museums should be combined with the administrative unit focusing on urban heritage protection - the National Urban Heritage Centre. This structural recommendation will ensure that heritage efforts are consolidated into a single institution dedicated exclusively to that cause.

The history of heritage protection in Saudi Arabia also includes integration with the Ministry of Education.\textsuperscript{36} Reorganization of heritage protection under a single ministry should also distinguish between these functions of the state. Even though heritage protection includes educational outreach functions, these should be organized under a ministry distinct from that involved in general educational functions. If the state determines that creation of a Cabinet-level ministry devoted to heritage protection is unnecessary, heritage protection should fall under an appropriate ministry, such as the Ministry of Interior, which would fall within the structural model utilized in Australia, the United Kingdom, and the United States. This structural recommendation will ensure that heritage efforts are consolidated into a single institution devoted exclusively to that cause.

\textsuperscript{34} Ibid.
\textsuperscript{35} Council of Ministers, Resolution No.78, dated 24/3/2008 (Available in Arabic only).
\textsuperscript{36} Resolution of cabinet of ministers of Saudi Arabia (No.727 dated) 22 March 1964. Resolution of cabinet of ministers of Saudi Arabia (No.727 dated) 22 March 1964.
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The promotion of non-Islamic heritage must confront the reality that there is a close relationship between religious and state interests in the Kingdom. In the worst cases, intentional destruction of non-Islamic heritage has occurred as a result of the influence of religious actors. Combined with economic development, religious fundamentalism represents a significant threat to at least the neglect of and at worst the destruction of non-Islamic heritage. The inclusion of civil society actors from academic and non-profit organizations in the heritage regulatory regime must be formal, explicit, and intentionally constructed to diversify the stakeholder make-up from primarily commercial and religious actors. Civil society actors must be appointed to important leadership and consultative positions at the ministry and department levels. For example, advisory bodies of experts from the private sector and academia play an instrumental role in Australia in lobbying for heritage protection and recommending the course of heritage protection. This could be problematic in the Kingdom due to a monolithic social and religious ideology of supremacy. However, potential for appeal to religious actors can emphasize the fact that the Koran talks of God’s creation of humanity into different nations and tribes “that would become acquainted with each other.” Religious actors will never in the foreseeable future be relegated to the sidelines by secular actors in any act of governance in the Kingdom. Yet an ideology of inclusion of the concept of outstanding universal value might be conceptually incorporated into fundamentalist Islam. This can occur as advisory bodies include both secular and religious actors.

The newly enacted LAMBH approved in June 2014 is a significant improvement upon the existing royal decree. The LAMBH is broader in its scope and more intensive in its protection and punitive measures. However, there is significant opportunity for improvement in the statutory provisions of the LAMBH. The process of approval of the LAMBH provides insight into how amendments should be developed and implemented in the future. The inclusion of actors from civil society organizations on consultative boards is paramount.

37 Aygen, above n1.
38 See Chapter 5, “Australia.”
39 Ibid., 12.
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For example, the official procedure for reviewing a draft law in the Kingdom involves submission to the Council of Ministries, which seeks advice from a Ministerial Committee that reviews the draft law. The Ministerial Committee seeks advice from a Bureau of Experts. The make-up of the Bureau of Experts must include, by amendment of the statute, members of civil society institutions, including from academic and non-profit institutions involved in heritage protection. These individuals on the Bureau of Experts should have direct experience in the scholarly, technical and managerial aspects of heritage protection. Most importantly, the findings of the Bureau of Experts should be reflected in the recommendation to the Council of Ministries. Any decisions by the Council of Ministries that rejects the recommendation of the Bureau of Experts should be noted on the record of review.

Such transparent governance is necessary in authoritarian states as they make the transition to a more representative regime for heritage protection. The current review process for draft laws lacks any recording of disputes between the Bureau of Experts and the Council of Ministries. Moreover, the current appointment process for the Bureau of Experts is also not recorded in any publicly available document but rather is only known through personal communications. The Bureau of Experts must be comprised of individuals with recognized scholarly, technical, and managerial qualifications, and the selection process for these individuals must be transparent. The recommendations of the Bureau of Experts regarding new regulatory provisions must also be publicly available.

Under Article 21 of the LAMBH, a Board of Consultation comprised of experts from domestic and international organizations provides advice to General Commission for Tourism and Antiquities (the Commission) about heritage protection efforts. However, knowledge of the selection process and recommendations of the Board of Consultation is known only through personal communications and not through formal public records. While the Board of Consultation represents an improvement upon the royal decree, which lacked an independent expert consultative structure, the lack of transparency in selection processes and

40 Interview with Faisal Al-Fadhel, Director of Legal Department (personal communication in a participation in field work, 24th January 2014).
41 Skeates, above n 18.
42 The new Law of Antiquities, Museums and Built Heritage, Article 21.
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recommendations represents an area of necessary improvement. For example, protection of urban heritage includes designation of such heritage as high, medium, or low levels of importance in national, scientific, artistic, cultural, and historical fields. Yet the processes used to make these determinations are not delineated in the statute. Recommendations for these designations must be given by the Board of Consultation, and any rejection of such recommendations by the Commission must be recorded in public documents. Such transparency is essential to achieve accountability among state actors and to encourage a broader debate about the value of heritage protection.

Members of the Bureau of Experts and Board of Consultation should be drawn from the museums that receive official certification, thus ensuring that expertise is built into this advisory body. Moreover, the establishment of the Museum Friends Association under the LAMBH should give this non-profit organization an advisory function in the selection processes for members of the Bureau and the Board. Appointments to the Bureau and the Board should be made by an independent appointment body rather than from the Commission’s Board of Directors, since such a body has been found to give preference to direct governmental appointments, which are often influenced by commercial and state interests.

The punitive measures of the LAMBH must also be the focus of amendments that target procedure and structural components of heritage protection. Currently, the LAMBH increases fines and penalties for theft, illegal trade, or damage to heritage. The LAMBH also specifically designates responsible bodies for enforcement, prosecution and sentencing, envisioning an expanded role for local government authorities. The Commission is also required to establish a special commission regarding violations of the law. However, the LAMBH lacks transparency in how violations of the law are brought to the Commission and how they are adjudicated. Even though the establishment of a formal structure and system of enforcement represents a step forward for heritage protection, the lack of transparency in criminal procedure presents the

43 The new Law of Antiquities, Museums and Built Heritage, Article 45 s 1 (a-b-c).
44 Skeates, above n 18.
45 Ibid.
46 The new Law of Antiquities, Museums and Built Heritage, Article 71, 72 s (1-2).
47 The new Law of Antiquities, Museums and Built Heritage, Article 86.
opportunity for favoritism to promote various interests of the state or commercial sector. Thus, those articles in the LAMBH relating to punitive measures must be amended to require transparency in the criminal procedures involving violations of heritage law. Such transparency should include public documents that record indictments, evidence of wrongdoing, defense arguments, and imposed penalties. Even though criminal trials are not public in Saudi Arabia, greater transparency in the LAMBH for violations of heritage protection can protect against favoritism for those violators that harm heritage for state or commercial interests.

One of the unique features of the law in Saudi Arabia relates to the capacity of the Council of Ministers to act carte blanche in the formulation of new statutes. This function occurs in the resolution process, in which the Council of Ministers issues resolutions that can amend existing statute. For example, as noted, the Council of Ministers issued Resolution No. 9 in 2000 to create the SCT and in 2008 to integrate heritage protection into the Commission, now known as the SCTA. These resolutions amending exiting law are not required to undergo the same review process as entirely new laws. Resolutions can be issued carte blanche by the Council of Ministers.

This procedural features of Saudi law presents the possibility for favouritism to occur as the Council of Ministers issues resolutions involving heritage protection without consultation from the Bureau of Experts or the Board of Consultation. Such resolutions are a significant contributor to Saudi law, since no representative legislative function exists to take input from various interest groups and the public. Thus, the resolution function of Saudi law must be amended in relation to heritage protection. This amendment must reflect the reality that there may be high resistance to changes in the resolution authority of the Council of Ministers, since this function is the primary basis for the amendment of law in the state.

The resolution authority of the Council of Ministers should not be removed in relation to heritage law. Rather, the recommendation of this thesis is that all resolutions of the Council of Ministers

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in relation to heritage protection should first be reviewed by the Board of Consultation. The Board should provide recommendations to the Council of Ministers about the effect of the resolution on the goals of protecting heritage. The Council of Ministers will retain the right to reject the recommendations of the Board, but the Board’s recommendations shall be available for public review.

The composition of the Board of Directors of the SCTA should also be the focus of statutory amendment. Currently, the Board of Directors consists of the following officials:

1. HRH Prince Sultan bin Salman bin Abdul- President of the SCTA and Chairman of the Board of Directors of Aziz SCTA.
3. The Assistant Minister of Foreign Affairs- HH Prince Khalid bin Saud Al Saud.
5. The Undersecretary Ministry of Interior- H.E. Dr. Ahmed bin Mohammad Al Salim.

The composition of the Board of Directors should be diversified to include more individuals with direct experience and interest in heritage protection. The Board of Directors should include individuals from academic and non-profit institutions involved in the scholarly, technical, and managerial aspects of heritage protection. At least two additional positions on the Board should be created to diversify this body.

4. Conclusion

This chapter has consolidated aspects of successful heritage protection components in non-Saudi national frameworks in reflecting upon existing domestic protection in the Kingdom. The analysis was used to develop recommendations to improve domestic heritage protection in Saudi
Arabia. These recommendations will facilitate incremental improvement in the heritage regime, as well as the cultivation of a heritage norm of outstanding universal value in Saudi society.

Best practice heritage conservation exists at the domestic level where norms, governance and the law protect heritage. Norms developed as a result of private-sector interests and activities initially related to the preservation of architecture supportive of nationalistic and cultural supremacist interests, but a pluralistic civil society, combined with autonomous legal systems and representative government, contributed to establishing effective heritage protections in Australia, the United Kingdom, and the United States, among other countries in the industrial world. The emergence of capacity building in the regulatory and legal systems of the industrialised world also contributed to the effectiveness of heritage protection as regulatory systems were reinforced by professional bureaucracies. Capacity building also occurred as a result of expertise in archeological and anthropological fields of study through non-profit research and academic institutions. Even in countries with effective heritage systems, contestation is a constant feature of the heritage environment, largely as a result of private sector economic development that considers protection a hindrance.

In the absence of pluralistic civil society, representative government, and autonomous legal systems, authoritarian states can nevertheless promote effective heritage protection. Certainly, the ratification of the WHC by Saudi Arabia has facilitated some good practices of heritage protection in the Kingdom. The WHC has promoted the importance of protecting heritage of outstanding universal value, delivered technical assistance to State Parties, and presented legal and regulatory models that have been applied to a certain extent at the domestic level, even though the Kingdom has failed to achieve the level of protections encouraged by the WHC and evident in other jurisdictions such as the United Kingdom. Saudi Arabia continues to promote economic, state, and religious interests over heritage protection in many cases, even in intentional destruction of heritage. Certainly, however, the WHC has been instrumental in promoting heritage protection in the Kingdom compared to historical levels.

The recommendations made focus on amendments to the administrative and statutory environment in the Kingdom including governance structures and the LAMBH as well as the
expansion of financial assistance oriented toward capacity building. Saudi Arabia must build its domestic capacity in technical areas related to heritage protection. This capacity building will help promote the norm of outstanding universal value throughout the Kingdom. Research and academic institutions with a focus on heritage protection are beginning to emerge in Saudi Arabia, illustrated by the contributions of scholars and researchers in *Research & Heritage: Research Papers on Architectural Heritage*. This effort should be further promoted through state financing of scholarships, research grants, and academic endeavors oriented toward heritage protection. Indirect economic support could include encouraging corporations and wealthy individuals to make contributions to museums, research organizations, and other civil society organizations involved in heritage protection. In the meantime, the Kingdom must rely more extensively on technical expertise from foreign academic and research organizations, which should be partnered with domestic actors to build capacity.

Public outreach must include the cultivation of norms of heritage protection beyond those related to state, economic, or religious interests but rather that appreciate the outstanding universal value of heritage. Such aesthetic appreciation can be integrated with an appreciation of the natural features in which ancient heritage is often located, since environmental norms are emerging in Saudi society. Technology can be an important instrument in the promotion of heritage norms in Saudi Arabia, particularly online tools constructed for public outreach.

Non-profit organizations, such as certified antiquities museums, must also be encouraged to play a more influential role in the identification of heritage sites, not just in their protection and presentation. This can be achieved as structural governance processes are reformed to include more consultation from the expert bodies. The Bureau of Experts, Board of Consultation, and Board of Directors of the Commission should include transparent selection criteria for members from non-profit institutions involved in heritage protection.

Specific amendments to the LAMBH must recognize the importance of separating tourism from heritage protection. Thus, the establishment of a separate ministry is recommended as the primary public sector actor involved in identification and regulation of heritage of outstanding universal value, regardless of its contribution to tourism. The administrative unit in the Commission that is currently devoted to antiquities and museums should be combined with the
administrative unit currently devoted to urban heritage protection, the National Urban Heritage Centre.

The punitive measures of the LAMBH must also be the focus of amendment. Those articles in the LAMBH relating to punitive measures must be amended to require transparency in the criminal proceedings involving violations of heritage law. Such transparency should include public documents that record indictments, evidence of wrongdoing, defense arguments, and imposed penalties.

Another amendment relates to the capacity of the Council of Ministers to act carte blanche in the formulation of new statutes. The resolution function of Saudi law must be amended in relation to heritage protection. All resolutions of the Council of Ministers in relation to heritage protection should first be reviewed by the Board of Consultation. The Board shall provide recommendations to the Council of Ministers about the relation of the resolution to the goal of protecting heritage. The Council of Ministers will retain the right to reject the recommendations of the Board, but the Board’s recommendations shall be available for public review.

Lastly, amendments must diversify the Board of Directors to the newly created SCTA. The composition of the Board of Directors should be diversified to include more individuals with direct experience and varied interests in heritage protection. The Board of Directors should include individuals from academic and non-profit institutions involved in the scholarly, technical, and managerial aspects of heritage protection. At least two additional positions on the Board should be created to diversify this body.

These recommendations will ensure that an authoritarian state lacking pluralistic civil society, representative government, and an autonomous legal system can nevertheless protect heritage. Certainly, heritage protection of sites and artifacts outside the interests of commercial, state, and religious actors will face greater threat in an authoritarian state. However, the Kingdom has shown a willingness to modernize and reform key aspects of governance and the law, not just in the domain of heritage protection but in other areas as well. These recommendations will facilitate the incremental improvement in the heritage framework and norms in Saudi Arabia.
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