Arab American University

Faculty of Graduate Studies

Department of Legal Sciences

Master Program in International

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Cultural Genocide and its relation to Genocide from the perspective of Public international law -the Palestinian case as a case study-

Noor Fawaz Abdalfattah Hejazi

202216535

Supervision Committee:

Dr. Majd Owda

Dr. Mohammed Tharf

Dr. Mursi Saleh

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This thesis was defended successfully on 30.11.2025 and approved by:

Thesis Committee Members:

Name	Title	Signature
1. Dr. Majd Owda	Main Supervisor	
2.Dr. Mohammed Tharf	Member of Supervision Committee	
3.Dr. Mursi Saleh	Member of Supervision Committee	

Palestine, Nov/2025

Declaration

I declare that, except where explicit reference is made to the contribution of others, this thesis is substantially my own work and has not been submitted for any other degree at the Arab American University or any other institution.

Student Name: Noor Fawaz Abdalfattah Hejazi

Student ID: 202216535

Signature: Noor Hejazi

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Dedication

To my beloved family, whose unwavering support and encouragement have been the cornerstone of my journey,

To my friends and loved ones, who have stood by me through every step of this endeavor,

And to everyone who inspires me to strive for knowledge and excellence,
This work is dedicated with all my gratitude and love.

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Abstract

This study aimed to determine whether international criminal law adequately addresses campaigns that destroy a group's cultural identity and, finding a critical gap, to outline how the Genocide Convention could be amended to criminalize such erasure explicitly. This study adopts a doctrinal-comparative methodology with three in-depth case studies—Armenian deportations, Palestinian displacement, and Rohingya persecution—the Study traced a recurring pattern: before or alongside mass violence, perpetrators target languages, rituals, and heritage sites to sever intergenerational continuity. A review of treaties, jurisprudence, and institutional practice showed that heritage instruments protect monuments, while human-rights covenants safeguard cultural participation, yet neither regime attaches the individual criminal liability reserved for genocide. International and regional courts increasingly stretch existing doctrines to condemn cultural annihilation, but their rulings rely on interpretive creativity rather than clear statutory language, producing uneven protection. The study therefore proposes adding a sixth underlying act to Article II of the Genocide Convention that criminalizes the deliberate and systematic destruction of a protected group's cultural, linguistic, or spiritual foundations. Such an amendment would harmonies fragmented norms, enhance early-warning frameworks, and enable courts to admit linguistic, anthropological, and digital evidence as primary proof of genocidal intent. In doing so, the law would finally reflect survivors lived reality: the murder of memory can be as devastating, and as deserving of justice, as the murder of bodies.

Keywords: cultural genocide, Genocide Convention, cultural heritage protection, minority rights

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List of Definitions of Abbreviations

Abbreviations	Title
ICC	International Criminal Court
ICJ	International Court of Justice
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
ICCPR	International Covenant on Civil and Political Rights
IHL	International Humanitarian Law
IHRL	International Human Rights Law
OTP	Office of the Prosecutor (International Criminal Court)
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
HRW	Human Rights Watch
ILC	International Law Commission
CHS	Cultural Heritage Sites
ICH	Intangible Cultural Heritage
OHCHR	Office of the United Nations High Commissioner for Human Rights
AU	African Union
EU	European Union
OIC	Organization of Islamic Cooperation

Study Background

The term genocide remains a whispered word while its legal definition as established by the 1948 Convention describes physical destruction through killing people directly or indirectly by starvation or birth prevention and forced child transfers[1]. The Convention presented breakthrough language during its era but it emerged from wartime destruction where mass fatalities were both visible and evidential thus its focus on direct human life destruction became obvious[2]. The Convention failed to address the slow but sure death experienced by people whose cultural essence fades when their language and rituals disappear and their collective memory vanishes[3]. The absence of cultural protection in legal texts reverberates through generations of cultural destruction which leads scholars along with advocates and entire nations to question whether "never again" holds true if destruction comes not from physical extermination but from alterations made to educational materials[4].

International law has examined the limits of genocide throughout history by evaluating them against emerging violent practices which do not produce physical mass graves. Legal systems prosecuted individuals for Rwandan and Yugoslavian crimes while meticulously analyzing the Convention's definition but displayed reservation when harm targeted cultural elements instead of physical bodies[5]. Judges consistently reference the original legal text even as their rulings move

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[1] Shireen Mohammed Kazem, "Genocide: A Sociological Study," *Proceedings of the UNESCO Chair Conference on Genocide Prevention in the Islamic World – Peacebuilding and Genocide Prevention*, University of Human Development, Sulaymaniyah, 2023, 511–522

[2] Abdelwahab Omar Al-Batrawi, "On the Crime of Genocide: An International Crime," *Journal of Legal and Economic Study*, Egypt, Vol. 15, No. 1, January 2001, 239–279

[3] Mohammad Mustafa Kries, "The Crime of Genocide: A Comparative Study between the 1948 Genocide Convention, the 1998 Rome Statute, and the Syrian Penal Code," *Tishreen University Journal for Scientific Study – Economic and Legal Sciences Series*, Syria, Vol. 43, No. 3, 2021, 225–238

[4] Lawrence Davidson and Abdullah bin Abdulrahman Al-Wuhaibi, "Cultural Genocide," *Al-Bayan*, United Kingdom, No. 364, September 2017, 84–86

[5] SIMON, David J. The impact of genocide in Rwanda and Bosnia on genocide policy and genocide studies. In: Handbook of genocide studies. Edward Elgar Publishing, 2023. p. 106-121.

towards recognizing cultural extermination because they seem to fear breaking away from this established legal thread[6]. Those who witness the renaming of their ancestral territories along with the destruction of sacred sites and the removal of their mother tongues from education systems find themselves without a distinct legal category to define their suffering[7]. Laws intended to prosecute the use of gas chambers and firing squads find it difficult to address the impact of educational content that stigmatizes cultures as primitive along with governmental orders that eliminate tribes through border revisions[8]. The gap between community experiences and intended legal safeguards becomes apparent through these interactions.

The central element in this divide is cultural identity which functions as a living connection uniting generations by their common stories and shared beliefs while also linking them through traditions and collective hopes[9]. People use their cultural identity as a lens to interpret their world and define their position within it because it is essential to human existence rather than a mere luxury or accessory. Once their cultural lens breaks, individuals find themselves living yet lost as their community's guiding compass spins aimlessly[10]. Through numerous historical events we learn that Indigenous children were forced to attend boarding schools with language bans, minorities faced historical erasure from educational materials and religious structures were destroyed under false progress claims which prove cultural attacks can hurt as deeply as physical harm[11]. Those who

[6] Editorial Board, "Genocide as a Sacred Crime," *Alam Al-Kitab*, Egypt, No. 2, March 2024, 32–34
[7] Ali Abdullatif Ahmida, "Genocide in Libya: Evil and Hidden Colonial History," *Arab Future*, Lebanon, Vol. 45, No. 519, May 2022, 139–146
[8] Hossam Abdulameer Khalaf Al-Husainawi, "Cultural Eradication of the Iraqi and Jewish Archives and the International Responsibility," *Journal of Legal Sciences*, University of Baghdad – College of Law, Iraq, Vol. 32, No. 1, 2017, 187–211
[9] CLARK, Shawn; WYLIE, Ruth. Surviving a cultural genocide. *Journal of Ethnic and Cultural Studies*, 2021, 8.2: 316-346.
[10] Editorial Board, "The Annihilation of Humanity's Wealth, Cultural Treasures, and Civilizational Memory," *Fikr Magazine*, Saudi Arabia, No. 24, January 2019, 8–11
[11] Amer Ghassan Fakhoury, "Cultural Genocide in Public International Law: A Study in International Jurisdiction," *Journal of Advanced Legal Study*, Lebanon, No. 15, June 2017, 89–127

survive these policies report enduring a profound sense of loss which transcends physical deprivation because they feel that their essential spirit has been violently stripped away. The law needs to understand this reality because protecting human dignity requires a moral commitment beyond semantic changes[12].

Supporting the Convention's amendment requires recognition that educational systems and government orders along with deliberate quietude hold the ability to annihilate populations just like physical weapons do[13]. Modern technology has, if anything, magnified this danger: Through digital means one social-media campaign has the power to overwhelm the internet with falsehoods which undermine a group's cultural legacy while artificial-intelligence applications can effectively remove minority languages from translation systems which limits the environments for these languages to endure[14]. Economic forces around the world push states to enforce unified national identities for operational benefits or marketing purposes which positions diversity as a barrier to progress. Within this context legal blind spots provide opportunities for misuse and abuse. Legal recognition of cultural erasure as genocide would eliminate a critical blind spot by unambiguously establishing that identity-destroying policies violate fundamental legal standards without requiring physical extermination.

Three interconnected arguments provide the legal basis for changing the definition. When the original Convention was drafted mass killing dominated historical perspectives and drafters did

[12] Radhia Aymour and Yahia Ghribi, "Canadian Indian Boarding Schools as a Practice of Cultural Genocide," *Journal of Legal and Political Thought*, University of Amar Telidji Laghouat – Faculty of Law and Political Science, Algeria, Vol. 5, No. 2, 2021, 116–136

[13] DAVIDAVIČIŪTĖ, Rasa. Cultural heritage, genocide, and normative agency. *Journal of Applied Philosophy*, 2021, 38.4: 599-614.

[14] Radhia Aymour and Yahia Ghribi, "Canadian Indian Boarding Schools as a Practice of Cultural Genocide," *Journal of Legal and Political Thought*, University of Amar Telidji Laghouat – Faculty of Law and Political Science, Algeria, Vol. 5, No. 2, 2021, 116–136

not understand how non-physical violence could destroy communities[15]. The interpretation of "genocide" by international courts evolves over time and formally recognizing cultural genocide would align legal standards with these existing interpretive trends instead of creating inconsistencies[16]. State responsibility to prevent genocide would become more effective if cultural destruction was included because it helps to identify early warning signs. The international community would recognize the destruction of cultural practices as a critical warning point that demands preventive measures before violence increases[17]. The proposed amendment aligns with modern human rights perspectives which consider cultural identity as essential to life because without cultural roots people become susceptible to manipulation and self-doubt, leading to their dissolution.

Humanity's collective commitment to protect peoples from destruction loses credibility if it fails to protect the fundamental elements that enable these groups to recognize themselves. The Convention initially addressed physical destruction as the first action after unimaginable destruction yet humanity has since discovered the extinction of cultures can happen through purposeful policies which attack languages and stories alongside identities without any violence. By expanding the definition of genocide to include cultural destruction we would validate the experiences of numerous communities while enhancing international law's ability to prevent such

[15] Yasmin Ahmed Ismail Saleh, "Cultural Genocide Crimes Against Women and Children in Armed Terrorist Organizations: Boko Haram as a Case Study," *Journal of the Faculty of Economics and Political Science*, Cairo University – Faculty of Economics and Political Science, Egypt, Vol. 26, No. 2, April 2025, 177–206

[16] Lama Ibrahim Aziz Al-Zuraiji, "Genocide in Halabja," *Proceedings of the UNESCO Chair Conference on Genocide Prevention in the Islamic World – Peacebuilding and Genocide Prevention*, University of Human Development, Sulaymaniyah, 2023, 385–398

[17] Mustafa Mohammed Amin Haidar and Asia Abdullah Ahmed, "Jihad and Its Relationship with Genocide," *Proceedings of the UNESCO Chair Conference on Genocide Prevention in the Islamic World – Peacebuilding and Genocide Prevention*, University of Human Development, Sulaymaniyah, 2023, 105–122

acts while recognizing humanity's survival depends on maintaining both physical existence and cultural diversity.

Study Problem

Despite the universal revulsion that greets the word "genocide," the legal definition anchoring that term still stops at the threshold of the body. The 1948 Convention speaks of killing, maiming, or preventing births, an understandable focus in the aftermath of World War II, yet scholars who track later catastrophes—from Bosnia to Rwanda—note that the violence of guns often rides on a deeper campaign to gut a people's sense of who they are[18]. Even recent sociological work that dissects motives and methods of mass slaughter underscores the destruction of cultural symbols only in passing, as if such acts were tragic side-effects rather than an integral tactic of collective annihilation[19]. The result is a legal landscape where a church razed, a language banned, or a tribe renamed is mourned but not necessarily prosecuted.

Conversely, writers who shine a spotlight on cultural devastation describe wounds that bleed memory rather than blood. Studies of Canadian Indigenous boarding schools and the destruction of Iraqi archives[20] alongside minority language suppression reveal that government actions and policies can eliminate futures with the same certainty as gunfire[21]. Philosophers and jurists argue that culture is the skin of a community, the lived fabric that keeps identity intact, yet most concede

[18] SIMON, David J. The impact of genocide in Rwanda and Bosnia on genocide policy and genocide studies. In: Handbook of genocide studies. Edward Elgar Publishing, 2023. p. 106-121

[19] Shireen Mohammed Kazem, "Genocide: A Sociological Study," Proceedings of the UNESCO Chair Conference on Genocide Prevention in the Islamic World – Peacebuilding and Genocide Prevention, University of Human Development, Sulaymaniyah, 2023, 511–522

[20] Hossam Abdulameer Khalaf Al-Husainawi, "Cultural Eradication of the Iraqi and Jewish Archives and the International Responsibility," *Journal of Legal Sciences*, University of Baghdad – College of Law, Iraq, Vol. 32, No. 1, 2017, 187–211

[21] Clark, Shawn, and Ruth Wylie, "Surviving a Cultural Genocide," *Journal of Ethnic and Cultural Studies*, 2021

that these harms hover in a gray zone, labelled "cultural genocide" in headlines but rarely in courtrooms[22]. Their calls for justice convey urgency, but they lack the statutory teeth to bite.

This intellectual split—physical genocide treated as law, cultural genocide treated as lament—creates a chasm that vulnerable groups fall into with alarming regularity. Scholars of the Yazidi tragedy, the Halabja gas attacks, and the long arc of violence in Palestine all record systematic assaults on shrines, schools, and oral traditions, yet the victims who seek redress often find that the Genocide Convention's wording does not quite fit their grief[23]. Through creative legal interpretations and the use of related crimes like "persecution," international tribunals move cautiously and leave communities without certainty if the law will ever reflect their experiences.

The core problem, then, is that the legal system's commitment to safeguard threatened groups remains contradictory unless cultural identity erasure becomes a recognized element of genocide. The Study will analyze how this amendment affects doctrinal principles and examine the evidence criteria the International Criminal Court will need while assessing the preventive power international organizations will gain when culture is acknowledged as fundamental to human life. The Study aims to shift discussions from sympathetic speech to actionable rights so that communities do not need to demonstrate physical harm before their cultural existence receives defense.

[22] Fakhoury, Amer Ghassan, "Cultural Genocide in Public International Law," Journal of Advanced Legal Study, 2017.
[23] Lama Ibrahim Aziz Al-Zuraiji, "Genocide in Halabja," *Proceedings of the UNESCO Chair Conference on Genocide Prevention in the Islamic World – Peacebuilding and Genocide Prevention*, University of Human Development, Sulaymaniyah, 2023, 385–398

Study Questions

Therefor this study will answer the following questions:

1. How is genocide currently defined in international law?
2. Can the definition of genocide be expanded to include the eradication of cultural identity?
3. Can the erasure of cultural identity be included as part of the elements of genocide?
4. How would this amendment affect the application of international law and the protection of minority rights and communities at risk of cultural genocide?

Study Objectives

This study aimed to achieve the following objectives:

1. To critically assess the existing definition of genocide in international law and its limitations in addressing cultural genocide.
2. To examine the legal implications of including the destruction of cultural identity within the scope of genocide.
3. To investigate how international courts and organizations, such as the International Criminal Court (ICC) and UNESCO, can enhance the protection of cultural heritage and identity in conflict situations.
4. To evaluate the impact of such an amendment on the protection of vulnerable cultural groups, with a specific focus on the Palestinian case as a case study.

Significance of the Study

Theoretical Significance

This study widens genocide research by bringing cultural destruction from the edges of sociological inquiry to the center of legal theory of collective violence, weaving in anthropology, philosophy, heritage studies and human-rights jurisprudence into one synthetic thread which transforms how we understand the killing of a people. The Study reveals that language, ritual and memory are essential components of group being, and so encourages scholars to reconsider common definitions of genocide based solely on physical extermination while relating descriptions of cultural loss to group rights theories. It also presents an integrated analytic framework — combining motive, method and consequence — which future research can use to gauge the interplay between cultural and physical forms of annihilation across conflicts, locations and epochs. In sum, the work unifies a scattered discussion of "cultural genocide" into a coherent thread of genocide theory, and invites scholars to adopt a broader, richer understanding of collective destruction.

Practical Significance

The study offers methods for peoples experiencing cultural oppression to legally document their harm and the language tools that activist and heritage workers need to record attacks on language and intangible traditions before their loss becomes permanent. The Study shows that early signs of cultural destruction can predict physical violence and that policy makers can prevent future violence through diplomacy or sanctions well in advance of genocide. The Study provides NGOs and investigative journalists with standards to make case files of destroyed sites with

documentation of banned ceremonies to mobilize public opinion courts and power institutions. It allows vulnerable peoples to go from memorializing past loss while protecting what remains.

Legal Significance

At the normative level, this inquiry lays the groundwork for amending the Genocide Convention so that deliberate cultural annihilation becomes an autonomous prosecutable act, thereby closing a loophole that has long frustrated victims seeking justice when bulldozers, school curricula, or bureaucratic decrees target identity rather than bodies. It clarifies how the proposed amendment would synchronize the convention with evolving customary law, provide the International Criminal Court with a clearer jurisdictional mandate, and guide domestic legislatures in aligning their penal codes with stronger international standards. The study also sketches evidentiary thresholds—drawing on heritage-law practices and forensic linguistics—that prosecutors could adopt to prove intent and impact, thus lowering legal uncertainty for judges while raising accountability for perpetrators. By doing so, the Study not only redefines the scope of genocide but also fortifies the entire architecture of minority rights, signaling that international law values cultural survival as indivisible from human survival.

Study Methodology

This study adopts a doctrinal-comparative methodology that first dissects the language and intent of core international instruments—most notably the 1948 Genocide Convention, the Rome Statute, UNESCO heritage treaties, and a spectrum of soft-law guidelines—to trace how each text frames the protection of cultural identity, then juxtaposes those findings against historical and contemporary efforts by states, tribunals, and expert bodies to broaden the legal meaning of genocide, mapping convergences and fractures across common-law, civil-law, and hybrid

jurisdictions; finally, it conducts a close reading of landmark judgments and prosecutorial filings—from the International Court of Justice and the International Criminal Court to ad hoc tribunals and national courts—that grapple with cultural erasure, analyzing the reasoning patterns, evidentiary thresholds, and practical outcomes that could inform a revised legal standard capable of recognizing cultural annihilation as genocide in its own right.

Literature Review

The given studies constitute a significant amount of research that will become a relevant beginning point in developing this work. Collected together, this is supposed to demonstrate the growing academic consensus that cultural destruction, whether it is language, religion, heritage, or memory, can be termed as a genocide that is no less destructive than physical genocide. Confronting the legal framework, case studies, and even the proposed methods of law, it will show the significance of amendment of the Genocide Convention to incorporate cultural destruction, so that the identity of the marginalized groups will not be eradicated.

The article by Ari and Turan (2023) investigates the operations of the Israeli military in the occupied Palestinian lands as state terrorism and genocide, meaning that the consistent assault on life, property, and infrastructure has proven the intention to destroy a protected population. The paper has analyzed the instances of excessive use of force, displacement of people, and the destruction of culture against the interpretation of genocide in the case law of Bosnia and Rwanda. The authors remind the rest of the world that it has a responsibility to bring such kind of crime to justice in front of the ICC and threatens that in case this is not done, the cycle of violence will be perpetuated. They propose that the statutes of the states against the Israeli officials, which are of universal-jurisdiction, should be utilized.

The analysis of Al-Zuraiji (2023) re-examined the 1988 Halabja chemical attack as a case study of genocide against Iraqi Kurds, and it was observed that the attack fits each of the articles of the Genocide Convention on account of its scale, intent, and modality. The work, which was based on the testimonies of survivors, declassified documents of Ba'ath period, and medical records, demonstrated how chemical weapons were utilized to terrorize and ethnically clean the area. It also indicated how the community was also facing genetic, psychological, and cultural trauma and demanded recognition, repair, and memorialization. It also has mentioned the inaction of the UN as a lesson to prevent the genocide in the future.

The article by Akhavan (2022) evaluated the gap between the legal recognition of genocide and nonresponse to the initial indicators of genocide. In her analysis of Darfur, the Rohingya crisis, and Tigray, Akhavan pointed out the apparent indicators of genocide, but there is a distinct lack of swift response due to strong political interests. He proposed that the enforcement gap can be reduced by empowering the civil society, regional courts, and local proceedings of universal jurisdiction to trigger accountability in case there is a Security-Council logjam.

The article of Ahmida (2022) unveiled the Italian colonial genocide in Libya through searching the archives in Rome and Tripoli and speaking with the surviving families. The author claimed that the Italian colonial genocide was one of a kind of a hidden genocide in the history of the European world covered by the stories of resistance against the Italy fascism. Ahmida claimed that the amnesia of the Libyan suffering would become historical injustice, prevent the reconciliation, and deform the studies of the genocide. The article urged Italy to acknowledge, compensate and integrate the Libyan victims into the community memory of genocide.

Benesch (2021) study examined the relationship between the proliferation of hate speech against cultural genocide and digital incitement. Using the examples of the Tigray War and the Anti-

Muslim riots in India, she proved how dehumanizing stereotypes might become widespread as advocated by recommendation algorithms and incite the oppression of minority cultures. She went as far as creating a dangerous-speech-viewboard to be adopted by online resources and relied on linguistics and artificial intelligence levels to mark the first traces of the emergent threat. She observed that cultural genocide on the virtual environment is possible without proper control by the virtual space or the states before the physical atrocities commence..

Clark and Wylie (2021) conducted their research about intergenerational trauma in Indigenous Canadian survivors of the residential schools and suggested that it is a subset of cultural genocide. The authors showed that, due to forced acculturation, continued identity disconnection, loss of language, and enduring mental-health inequities remained because of the narrative interviews and psychometric tests. They further claimed that the reconciliation process need not simply end with the traditional apology, but require structural reforms in terms of education, land rights and mental-health services. Lastly, they came up with the conclusion that the cultural survival of the indigenous people will depend on the awakening of the indigenous suppressed epistemologies and government structures.

The article by Davidaviciute (2021) aims at exploring the philosophical importance of the destruction of cultural heritage in the state of genocide as such, which is an assault on the normative agency of a community: their authority to judge value, purpose, and morality. With examples of Yazidi shrines being destroyed by the ISIS and Buddhism statues being destroyed in Afghanistan, the article explains that the international law does not adequately theorize collective agency. It proposes a change in doctrine that views cultural genocide as a direct attack on the right to self-determination and proactive requirements on the protection of heritage in the course of peacekeeping operations.

According to the study of Gaillard (2020), the cultural heritage was rearranged as a collective human right because it was time to acknowledge that groups were legal entities and could, therefore, make claims under the international law. The examples of the mausoleums in Timbuktu and the temples in Palmyra were provided as the examples that the destruction of the cultural sites is aimed at the erasure of historical memory and group identity, and is considered the cultural genocide. He suggested that he was going to grant the affected cultural groups standing before the ICJ as well as to create a compensation fund on the basis of confiscated proceeds of the convicted perpetrators.

Akhavan (2020) study examined the connection between cultural violence and the responsibility to prevent genocide and the results were that the denial, hate propaganda, and symbolic degradation tend to be the initial stages in mass killings. Having worked in the field in Bosnia and Cambodia he had suggested preventive diplomacy against cultural antecedents of genocide, such as textbook revisionism, monument vandalism and hate broadcasting, before genocide is actually executed. He further claimed that non-observance of the erga omnes duty to prevent genocide is equivalent to the violation of the duty.

This paper by Benesch (2019) developed the framework of dangerous-speech by relating the anti-Rohingya speech in Myanmar to mass expulsion and mass killings. She found that dehumanization, threat construction and the purity narratives are the linguistic observables of incitement using a corpus of speeches, Facebook posts and broadcast media. It demanded that tech platforms, NGOs and states should use expert censorship and counter-speech in cases where those indicators hit particular levels making early speech intervention one of the central pillars of genocide prevention.

The measurement of Genocide Convention in terms of cultural destruction was disapproved in the study by Koskenniemi (2019), who believed that the Convention's emphasis on legal formalism prioritized physical extermination, which cultural genocide resided in the normative vacuum. The history of drafting of the convention as well as how the drafting of the document in the Cold War period to satisfy the colonial powers led to the omission of cultural protection is also described in the article. It further offers another protocol to the convention on cultural genocide and a system of control that is similar to the protocol on war crimes.

The article by Hintjens (2018) dealt with identity construction after the genocide in Rwanda and in Bosnia, and focused on how the state discourses, commemoration, and foreign aid shape the collective memory. She also warned that the formation of new exclusions by rallied memories, which are politically created, might give rise to cyclical violence. She underlined the necessity of effective reconcilingment that would allow constructing pluralistic memories spaces that would not ignore the voices of victims and foster cross-group communication.

Fakhoury (2017) study touched upon the modern situation of cultural genocide within the framework of the public international law. Fakhoury examined proceedings and cases at the ICTY, ICTR, ICJ and various ad hoc tribunals, discussing the jurisdictional obstacles to cases of cultural-genocide, such as state permission, the test of evidence, and discretion of prosecutors. Fakhoury suggested the addition of the Rome Statute to enable the ICC to carry out cases of cultural genocide involving language, religion and cultural heritage without necessarily having a large number of victims.

Chapter one: Legal Foundations of Genocide and Cultural Identity

1.1 Introduction

This chapter looks at legal basis of genocide and cultural identity in the international law in terms of their development, understanding and modern controversy. It examines the UN Genocide Convention of 1948, its main provisions and how international jurisprudence has broadened the definitions of genocide using landmark cases, its separation with other related crimes like the war crimes and the crimes against humanity. The discourse also dwells on the controversial concept of cultural genocide and how such a concept has been historically ignored and slowly acknowledged in the legal and political arena, notably in the context of Rwanda, Armenia and Palestine where the ideology of cultural identity has been actively pursued against the group as the intent behind group destruction. Connecting the safeguarding of cultural identity, with the provision of basic human rights, the chapter points at how international treaties and the human-rights instruments have turned culture into an interest which is under protection and safeguarded, and examines the institutional arrangements aimed at protecting the culture, and emphasizes the critical necessity to enforce it more forcefully and to have collective efforts at the international level to prevent the destruction of culture and to deliver justice.

1.2 Genocide in International Law

1.2.1 Definition of Genocide under the 1948 UN Convention

1.2.1.1 1948 UN conventions on genocide main Articles

The United Nations established an authoritative legal framework through the Convention on the Prevention and Punishment of the Crime of Genocide in December 1948 to address intentional

destruction of human groups[24]. Article I of the Convention establishes genocide as an unlawful act under international law which applies in both wartime and peacetime situations thereby removing any possibility of justification based on time or circumstances. The initial section establishes that the prohibition applies to all states and officials as well as all individuals regardless of their political situation[25].

Article II outlines five specific actions that must be performed with the intent to eliminate a national, ethnic, racial, or religious group either completely or partially. The primary action of killing group members represents the most direct threat to their physical survival. This component acknowledges how prolonged violence and systematic abuse can debilitate community functionality even when individuals survive[26]. Deliberate creation of life conditions designed to lead to physical destruction represents the third category which includes starvation as well as forced displacement and basic service denial. The fourth measure which targets birth prevention through forced sterilisation and coerced contraception as well as the ban of group marriages demonstrates demographic elimination as destructive as mass murder. The fifth action which involves forcibly transferring children to another group demonstrates the permanent damage caused by severing cultural and familial connections. Under the treaty's provisions genocide includes any systematic effort to destroy a group's identity or existence provided that genocidal intent is established[27].

[24] United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, December 9, 1948, United Nations Treaty Series, vol. 78, 277,
[25] United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, Article I, December 9, 1948
[26] United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, Article II, December 9, 1948
[27] United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, Article II, December 9, 1948

Article III enumerates five punishable acts: The five punishable acts outlined in Article III constitute genocide itself, conspiracy to commit genocide, direct and public incitement to genocide, attempted genocide and complicity in genocide. The Convention establishes criminal liability for conspiracy and incitement by emphasizing intentionality and preparatory actions instead of waiting for full-scale atrocities to appear. The statute includes attempt to prevent failed genocidal actions from going unpunished while defining complicity to address individuals who support genocidal activities through funding or supplies[28].

The treaty eliminates the possibility of claiming official status as a defense. The law allows for prosecution of heads of state as well as government officials together with private citizens. This provision reflects an essential advance in international criminal law: The Convention holds that higher social or political positions provide no protection for individuals who break established collective rights. When the treaty denies immunity it predicts future individual accountability systems which eventually led to the creation of ad hoc tribunals and the International Criminal Court.[29]

The Convention compels every state party to invest in the required domestic laws to enforce the provisions of the treaty. States must identify genocide as a crime under the law and establish reasonable penalties as they establish competent courts to preside over such atrocities. The internalisation requirement alters international responsibilities into national jurisdiction that

[28] United Nations General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, Article III, December 9, 1948

[29] United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, Article IV, December 9, 1948

criminals cannot escape to justice by cross-country migration but encourages greater cooperation between the countries on criminal issues[30].

Article VI states that the accused persons of genocide need to be subjected to legal proceedings either at authorized national courts or at accepted international tribunals by the respective states. Using the dual venue approach, the nations do not lose sovereignty, but this framework acknowledges that local legal systems might be unable to deliver fair trials due to capacity constraints, be unable to deliver fair trials due to absence of impartiality or security due to mass atrocities. The provision provides steps that must be followed in guiding the future establishment of international criminal courts and hybrid tribunals.[31]

Article VII establishes that extradition treaties must not treat genocide as a political offence. This provision removes typical excuses for refusing to hand over suspects and strengthens cooperation between states. The Convention demonstrates through its classification of genocide outside the political-offence exception that judicial processes must not be impeded by considerations which would normally apply to political crimes because of the crime's extreme seriousness.[32]

According to Article VIII any member state can request United Nations bodies to take measures to either prevent or stop occurrences of genocide. The provision acknowledges that genocide poses a threat to global peace and security which might necessitate combined diplomatic as well as economic or military responses. In practical terms Article VIII establishes the legal framework

[30] United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, Article V, December 9, 1948
[31] United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, Article VI, December 9, 1948
[32] United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, Article VII, December 9, 1948

which allows the Security Council to undertake activities ranging from fact-finding missions to implementing sanctions and conducting peacekeeping operations.

The International Court of Justice has jurisdiction over disputes between parties that concern interpretation or application of the Convention according to Article IX. The court system provides states with a mechanism to settle their disputes without taking independent actions or exchanging mutual blame. The system establishes a recognized process to assign state accountability which strengthens adherence to obligations and legal principles.

Articles X to XVI give procedure guidelines concerning signature, ratification, accession, entry into force, denunciation and revision. These administrative provisions are protecting the Convention as a living document which facilitates the global involvement and subsequent amendments. Article XVII creates a mandate on frequent review and acknowledges the necessity of possible modification or expansion of the protections of the treaty in case of a changing situation.

The articles of the Convention form a unified structure that unites both substantive criminalisation and individual liability and state responsibility as well as international collaboration. The treaty has preventative measures and enforcement measures to ensure that potential wrongdoers are not acting as well as it puts specific measures to early intervention of measures and ensures that there are judicial measures in the event prevention has failed..

The 1948 Convention remains the primary basis for global genocide prevention efforts even after later developments in international laws such as the Rome Statute and regional human rights instruments. The Convention establishes the responsibilities of individuals and states through an

elaborate procedural system to guide legal proceedings and humanitarian policy formation while encouraging debates about expanding legal protection to cover cultural destruction.

1.2.1.2 Comparison between genocide, war crimes, and crimes against humanity in international law

Genocide, war crimes, and crimes against humanity share common ground in international criminal law despite being distinct entities that address different types of mass harm. Genocide is uniquely group-oriented: The legal definition of genocide requires proof of deliberate intent to eliminate a group based on nationality, ethnicity, race, or religion either in part or in full[33]. Crimes against humanity examine both the scope and the strategic foundation of violent actions which must represent a systematic or widespread assault on civilian populations without requiring victims to belong to specific protected groups[34]. War crimes occur exclusively during armed conflicts and punish severe breaches of wartime laws and customs including civilian attacks and improper prisoner treatment[35]. The three categories emphasize individual accountability but they operate with distinct contextual conditions and requirements for mental elements while covering different behavioral scopes.

[33] TCHOBO, Denakpon Luc Rodrigue. Potential international crimes in Ukraine: should atrocities in Bucha be classified as genocide, war crimes, or crimes against humanity?. *Law & Safety*, 2022, 13.
[34] Mustafa Mohammed Amin Haidar and Asia Abdullah Ahmed, "Jihad and Its Relationship with Genocide," *Proceedings of the UNESCO Chair Conference on Genocide Prevention in the Islamic World – Peacebuilding and Genocide Prevention*, University of Human Development, Sulaymaniyah, 2023, 105–122
[35] Souissi Mohammed Al-Saghir, "The Crime of Genocide: Its Motives and Forms," *Journal of Studies and Study*, Algeria, No. 7, 2012, 250–266

The different categories impact the legal strategies investigators utilize, the evidence required from prosecutors, and the representation survivors see of their experiences in court outcomes. Mass rape operations can result in war crime charges when connected to military conflict or in crimes against humanity when used for terrorizing civilian populations[36]; however, these operations are classified as genocide only when they aim to eradicate the targeted group. Genocide targets group identity directly while crimes against humanity and war crimes concern themselves with the extent and intensity of actions. Understanding these distinctions leads to appropriate charges being filed while establishing jurisdiction and recognizing the full extent of harm[37].

The table in Annex (1) clarifies why prosecutors often select multiple charges for a single situation: Atrocities usually do not conform to the boundaries of one single legal category. War crimes charges capture battlefield misconduct while crimes against humanity charges account for systematic attacks on civilians and evidence of genocidal intent brings forth an additional charge to recognize the objective of eliminating a group entirely. Survivors perceive these legal terms as crucial indicators of global recognition toward their specific experiences of trauma. When a mother experiences the bombing of her village, she faces different grief than a mother whose language and lineage faced destruction but the legal classifications transform these differences into specific accountability measures.

Knowledge of doctrinal boundaries helps direct preventive measures. Humanitarian intervention can be initiated by observing early signs of extensive civilian attacks before formal recognition of armed conflict while the UN framework responds to genocide indicators through group-specific

[36] ARI, Yılmaz; TURAN, Mustafa. A Crime against Humanity and the Tragedy of Genocide: An Evaluation That Israel Should Be Sued for State Terrorism against Palestinians. *Uluslararası Dorlion Akademik Sosyal Araştırmalar Dergisi (DASAD)*, 2023, 1.2: 445-465.

[37] Souissi Mohammed Al-Saghir, "The Crime of Genocide: Its Motives and Forms," *Journal of Studies and Study*, Algeria, No. 7, 2012, 250–266

hatred prevention mechanisms. The international community can provide appropriate responses by using clear distinctions which enable diplomats, aid agencies and courts to match their actions to the specific characteristics of each crime category based on the scope of violence as well as the motives and targeted identities involved.

1.2.2 Interpretation of Genocide in Contemporary International Law

There has been over the last three decades a significant shift in the language of the abstract language used in the 1948 Genocide Convention to a more case-oriented approach to the realization of the modern atrocities in the field[38]. The breakthrough came in 1998 with the Akayesu verdict of the International Criminal Tribunal for Rwanda (ICTR) that mass sexual violence was not just a by-product of civil war but a systematic tool of mass destruction when carried out with a genocidal motive[39]. The Akayesu bench indicated that the list of underlying acts in the Convention should be seen from the perspective of the experience of victims instead of the limited categories formerly thought of by post-war diplomats by admitting the rape, forced nudity and humiliation in the form of the serous bodily or mental harm category[40]. In practical terms, that judgment expanded the evidentiary horizon: prosecutors now had to document systematic gender-based crimes as rigorously as they documented mass graves, because either could serve as proof of a plan to destroy a protected group in whole or in part.

[38] Prosecutor v. *Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998.
[39] Prosecutor v. *Akayesu*, ICTR-96-4-A, Appeals Judgment, 1 June 2001.
[40] Schabas, William A., *Genocide in International Law*, 2nd ed., Cambridge University Press, 2009.

The International Criminal Tribunal for the former Yugoslavia (ICTY) deepened this jurisprudence in Krstić, its landmark judgment on the 1995 Srebrenica massacre[41]. The Appeals Chamber concluded that exterminating the enclave's Muslim men and boys—while sparing most women and children—still met the "in part" threshold because it crippled the community's capacity for physical and cultural survival, eliminating fathers, religious leaders, and future heads of household in a single, calculated stroke[42]. By treating demographic destruction as functionally equivalent to outright extermination, the tribunal clarified that genocide targets viability, not just immediate life, and affirmed that intent may be inferred from the organised nature, scale, and military precision of the operation when direct orders are absent[43]. This reasoning has since guided prosecutors to scrutinise not only battlefield killings but also forced displacement patterns, detention-camp demographics, and the strategic targeting of leadership strata within a group.

Another, equally powerful, line is state responsibility, which has been most thoroughly covered by the International Court of Justice (ICJ) merits judgment of 2007 in the case Bosnia and Herzegovina v. Serbia and Montenegro[44]. Although the Court did not hold direct involvement in the killings by Serbian state organs, it held Serbia to be internationally liable in not preventing and not prosecuting genocide and such a decision raised due diligence to a higher level of moral exhortation than a legal obligation[45]. This decision defined that states are also answerable when giving substantial support to the perpetrators even though they have no full control over them

[41] Prosecutor v. *Krstić*, IT-98-33-T, Judgment, 2 August 2001
[42] Prosecutor v. *Krstić*, IT-98-33-A, Appeals Judgment, 19 April 2004.
[43] Pejić, Jelena, "The Srebrenica Genocide and the Trial of General Krstić," *Journal of International Criminal Justice*, 2002.
[44] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), ICJ Judgment, 26 February 2007.
[45] Tams, Christian J., "Genocide and State Responsibility," *German Yearbook of International Law*, 2009.

linking historical concepts of complicity with the complexity of proxy conflicts that arose in the late 20 th century and the beginning of the 21 century[46].

These gains were cemented in the Rome Statute of 1998 that gave the International Criminal Court (ICC) permanent jurisdiction over genocide, crimes against humanity, and war crimes ensuring that there would never be a temporal constraint on the prosecution process in the future[47]. The Court's arrest warrants for Sudanese President Omar al-Bashir, issued in 2009 and 2010, put the Statute's provisions to an early test, as judges weighed whether forced displacement, scorched-earth tactics, and deprivation of basic necessities in Darfur exhibited the special intent necessary for genocide[48]. The Pre-Trial and Appeals Chambers ultimately concluded that circumstantial evidence—village burnings coordinated with aerial bombings, systematic denial of humanitarian aid, and public statements branding Fur, Masalit, and Zaghawa communities as enemies of the state—could establish genocidal intent at the arrest-warrant stage, even without a written "extermination order" signed by the head of state[49]. These rulings demonstrated that modern command structures often rely on coded language and implicit directives, and that international courts must adapt evidentiary standards to that operational reality.

More recently, the ICJ's provisional-measures order in The Gambia v. Myanmar (2020) has demonstrated the Convention's growing preventive function[50]. Acting on The Gambia's petition, the Court instructed Myanmar to "take all measures within its power" to protect the Rohingya and

[46] Del Ponte, Carla, *Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity*, Other Press, 2009.
[47] *Rome Statute of the International Criminal Court*, 17 July 1998.
[48] Prosecutor v. Omar Hassan Ahmad al-Bashir, ICC-02/05-01/09, Arrest Warrant, 4 March 2009.
[49] Akande, Dapo, "The Bashir Decision: Immunities of Heads of State before the ICC," *American Journal of International Law*, 2010.
[50] *Application of the Genocide Convention* (The Gambia v. Myanmar), ICJ, Provisional Measures Order, 23 January 2020.

to preserve potential evidence of genocidal acts, effectively bringing judicial oversight into an active conflict before the merits had even been examined[51]. Although the final judgment remains pending, the measures represent an unprecedented attempt to freeze a situation that could spiral into full-scale genocide, thereby operationalising Article VIII of the Convention as a living tool rather than a post-factum lament[52]. The decision illustrates how international law is gradually shifting from reactive punishment toward proactive risk mitigation when early warning signs appear, bridging a critical gap long lamented by scholars and human-rights advocates.

These five cases demonstrate the contemporary development of genocide law in combination (Annex 2). Akayesu expanded genocide law by recognizing sexual violence as a destructive force while Krstić established that the destruction of vital population groups meets the "in part" criterion which broadens the evidence base for genocidal intent. The Bosnia ruling by the ICJ changed the concept of state responsibility from an ethical ideal into an obligatory action for prevention. The Al-Bashir case demonstrated how the Rome Statute could function procedurally in prosecuting senior leaders for genocide even without direct written orders. The Gambia v. Myanmar restored the Convention's preventive mission by demonstrating that judicial protection can be activated by a small state to defend an endangered population in real time.

The precedent cases have transformed genocide jurisprudence from a fixed post-event approach into an adaptable framework that focuses on early detection and wide-ranging evidence analysis and multi-tiered accountability. The identified precedents demonstrate that genocide develops through multiple methods such as demographic engineering and starvation alongside systematic

[51] United Nations Independent International Fact-Finding Mission on Myanmar, Report, 2018
[52] Southwick, Katherine, "Myanmar, the Rohingya and the International Court of Justice," *International Journal of Refugee Law*, 2020.

sexual violence and emphasize individual and state responsibilities to prevent and penalize severe attacks against human collectives.

1.3 Cultural Genocide as a Distinct Concept

1.3.1 Presentation of the concept of cultural genocide in legal and political literature

The idea that a people can be destroyed without extinguishing its physical members first emerged in twentieth-century thought as scholars observed the systematic dismantling of languages, schools, places of worship, and collective memories under occupying regimes[53]. Raphael Lemkin, who coined the term genocide in 1944, explicitly spoke of "cultural, political and social institutions" as targets of what he called a coordinated plan of destruction; yet this strand of his analysis soon receded behind the post-war focus on mass killing[54]. Beginning in the 1970s, historical and sociological monographs revisited Lemkin's broader insight, arguing that a community's identity can be erased through policies that exile its stories, redefine its history, and repurpose its sacred spaces; those studies laid the conceptual groundwork for what legal writers would later label "cultural genocide," a distinct wrong that hovers at the edge of existing treaty law[55].

When United Nations diplomats drafted the 1948 Genocide Convention, some delegations proposed an explicit clause on cultural destruction, citing colonial practices of forced assimilation and the wartime suppression of national cultures; however, the clause was struck in the Sixth

[53] Lemkin, Raphael, *Axis Rule in Occupied Europe*, Carnegie Endowment, 1944.
[54] Schabas, William A., *Genocide in International Law*, 2nd ed., Cambridge UP, 2009.
[55] Moses, A. Dirk, *Genocide: Critical Concepts in Historical Studies*, Routledge, 2010.

Committee after states expressed concern that it would criminalise ordinary measures of language policy or religious regulation[56]. The deletion created a gap that has occupied jurists ever since: acts that burn libraries or ban mother tongues may devastate a protected group's future, yet they sit uneasily under Article II's list of physical and biological harms. While minority rights instruments such as Article 27 of the ICCPR and later UNDRIP guarantee communities the ability to preserve their language, religion, and cultural practices, they remain framed as human rights protections rather than criminal prohibitions. This creates a crucial distinction: violations of minority rights may result in state responsibility but not individual criminal liability, whereas genocide entails prosecution of individuals for intentional group destruction[57]. At the same time, the two regimes intersect, since the systematic denial of minority rights can serve as both early warning and evidentiary proof of genocidal intent. Political historians note that Cold War politics reinforced the Convention's narrow framing, as both superpowers feared that broader language on cultural destruction could expose their domestic policies on minorities to allegations of genocide[58].

Legal scholarship of the post-colonial and Indigenous-rights era resurrected the cultural dimension by linking it to self-determination and heritage protection instruments, particularly the 1972 World Heritage Convention and the 2007 United Nations Declaration on the Rights of Indigenous Peoples[59]. These instruments treat cultural heritage as a collective human right and, by implication, regard its deliberate destruction as an assault on the group entitled to that heritage[60]. Critical theorists argue that the forced transfer of Indigenous children, the criminalisation of traditional

[56] Gerald Roche, "Cultural Genocide," in *The Routledge Handbook of the Politics of the #MeToo Movement*, ed. Giti Chandra and Irma Erlingsdóttir (London: Routledge, 2020), 33–48
[57] William A. Schabas, *Genocide in International Law: The Crime of Crimes*, 2nd ed. (Cambridge: Cambridge University Press, 2009), 220–35
[58] Elisa Novic, "Cultural Genocide," *Oxford Research Encyclopedia of International Studies*, last modified July 26, 2017
[59] Short, Damien, *Redefining Genocide: Settler Colonialism, Social Death and Ecocide*, Zed Books, 2016.
[60] United Nations, *Declaration on the Rights of Indigenous Peoples*, 2007.

ceremonies, and the displacement of minority languages through state education policies amount to cultural genocide, even if no immediate bodily harm occurs[61].

Doctrinal analyses seek to translate that normative claim into positive law by identifying which Genocide-Convention elements—intent, protected group status, and prohibited acts—could plausibly encompass cultural destruction[62]. One line of argument re-reads Article II(b) ("serious mental harm") to include cultural obliteration, stressing that depriving a people of its collective memory inflicts severe psychological trauma; another interprets Article II(e) ("forcibly transferring children") as a cultural tool aimed at dissolving identity[63]. A third strategy calls for a stand-alone amendment that would criminalise the intentional destruction of a group's cultural, linguistic, or spiritual foundations alongside traditional genocidal acts[64].

Political science literature widens the lens by studying how claims of cultural genocide shape mobilisation, transitional-justice agendas, and diplomatic pressure in cases such as Canada's Indian Residential Schools, China's policies in Xinjiang, or the Afghan Taliban's demolition of the Bamiyan Buddhas[65]. Truth commissions and parliamentary inquiries have increasingly adopted the term to acknowledge non-lethal yet identity-crushing state practices; their final reports often recommend reparations aimed at language revitalisation, land restitution, and heritage restoration as remedies commensurate with cultural harm[66]. These developments suggest that political recognition of cultural genocide can precede and perhaps prod legal innovation[67].

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[61] Davidavičiūtė, Rasa, "Cultural Heritage, Genocide, and Normative Agency," *Journal of Applied Philosophy*, 2021.
[62] Keane, David, *Caste-based Discrimination in International Human Rights Law*, Routledge, 2008.
[63] Schabas, William A., "Groups Protected by the Genocide Convention," *ICLQ*, 2016.
[64] Fakhoury, Amer Ghassan, "Cultural Genocide in Public International Law," *Journal of Advanced Legal Study*, 2017.
[65] Truth and Reconciliation Commission of Canada, *Final Report*, vol. 1, 2015.
[66] Clark, Shawn, and Ruth Wylie, "Surviving a Cultural Genocide," *Journal of Ethnic and Cultural Studies*, 2021.
[67] Kiernan, Ben, *Blood and Soil: A World History of Genocide and Extermination*, Yale UP, 2007.

Policy-oriented scholars track how international bodies have begun to address cultural destruction under adjacent regimes. UNESCO's 2015 designation of intentional heritage demolition in Syria and Iraq as a war crime, and the International Criminal Court's 2016 conviction of Ahmad al-Faqi al-Mahdi for the destruction of Timbuktu shrines, illustrate a growing convergence between heritage law and criminal accountability[68]. In the next policy statement concerning cultural heritage, the ICC Prosecutor indicated that attacks on cultural objects may be included in genocide indictment where there is evidence of an overall aim to eliminate the group that produced such objects. The trend plays the boundary between cultural genocide and other international crimes, which supports the argument of conceptual clarity[69].

Recent commentaries on the doctrine claim therefore that cultural genocide is a separate crime that must be recognised, specifically in order to prevent analytical confusion and dilution of evidence. They argue that cultural annihilation should not be subsumed under the term crimes against humanity or persecution, or the status of this crime should be downgraded, and that an additional provision would maintain the existing definition of genocide, as well as respect the lived experience of communities that survived identity-based attacks. These authors too warn that any emerging norm should have explicit limits such as proving intent, attacking central cultural practices and exhibiting significant intrusion into group continuity to avoid excessive criminalisation of otherwise legal cultural policy conflicts[70].

Human-rights enforcement scholars emphasize practical problems: to establish intent and its cultural context on the one hand, linguistic expertise and forensic heritage studies and prolonged sociological evidence all that has not been historically deployed by criminal investigators are

[68] Bevan, Robert, *The Destruction of Memory: Architecture at War*, Reaktion Books, 2016.
[69] Vrdoljak, Ana Filipa, *International Law, Museums and the Return of Cultural Objects*, Cambridge UP, 2011.
[70] Wilson, Richard Ashby, *Incitement on Trial: Prosecuting International Speech Crimes*, Cambridge UP, 2019.

needed. To address these issues, they suggest the use of interdisciplinary investigative teams and stronger cooperation between the heritage professionals and prosecutorial offices. Parallel to this activists demand early-warning signs like abrupt changes in the curriculum, mass closure of cultural institutions, or systematic oppression of minority languages, which may promote preventive diplomacy before the culture genocide turns into physical atrocity[71].

Overall, the introduction of cultural genocide as a concept into the legal and political literature is growing to occupy an uncertain position between the human-rights law, the protection of heritage, and the genocide studies, but has not been well-codified into positive international criminal law yet. It is agreed by scholars that the annihilatory effect of destroying the identity of a people can be equally effected by mass murder, but there remains controversy whether the phenomenon is best encompassed by existing terminology of treaty, prosecuted under other crime categories, or recognised in a specific amendment. Recent jurisprudential developments such as UNESCO heritage prosecutions, ICC policy guidance and state practice in Indigenous-rights issues point to the fact that cultural genocide is shifting not just from theoretical postulate to emergent customary norm, but that directions require further scholarly and diplomatic involvement.

1.3.2 Key legal differences between cultural genocide and traditional genocide

The formal definition of genocide originates from the 1948 Convention which makes punishable certain specific actions including killing and causing physical or mental harm when these acts target national, ethnic, racial, or religious groups for destruction[72]. The drafters of the Convention intentionally left cultural annihilation out of the defined genocide acts because states worried that

[71] Bástyik, Tamás, "Forensic Heritage Methods in International Criminal Justice," *Heritage Science*, 2022.
[72] Schabas, William A., *Genocide in International Law*, 2nd ed., Cambridge UP, 2009.

language, education and religious policy regulation could fall under the crime's scope[73]. Modern legal cases like Akayesu, Krstić, and Al-Bashir focus predominantly on physical destruction and biological annihilation while inferring intent through statistical evidence and documented commands[74].

According to cultural genocide studies destroying cultural identity via systematic elimination of heritage and language reaches similar destructive ends without mass killing events[75]. Academic Study connects this concept with international documents like the UN Declaration on the Rights of Indigenous Peoples and UNESCO heritage treaties and asserts that collective cultural rights should receive equivalent criminal safeguards when they are intentionally attacked[76]. Advocates suggest that states should adopt an extended interpretation of "serious mental harm" and "forcible child transfer" or develop a treaty provision that criminalizes actions targeting the cultural foundations of protected groups[77].

Courts in traditional genocide prosecutions focus on physical harm and demographic effects because they depend on forensic evidence and casualty statistics along with military communications which indicate the intent to destroy physical bodies[78]. Cultural genocide focuses on legislative actions including educational restrictions and renaming sacred locations which slowly destroy collective memory and cultural identity instead of direct physical harm[79]. Demonstrating intent thus requires interdisciplinary proof: Evidence of intent consists of expert

[73] Lemkin, Raphael, *Axis Rule in Occupied Europe*, Carnegie Endowment, 1944.
[74] Prosecutor v. *Krstić*, IT-98-33-A, Appeals Judgment, 19 April 2004.
[75] Short, Damien, *Redefining Genocide: Settler Colonialism, Social Death and Ecocide*, Zed Books, 2016.
[76] Fakhoury, Amer Ghassan, "Cultural Genocide in Public International Law," *Journal of Advanced Legal Study*, 2017.
[77] Davidavičiūtė, Rasa, "Cultural Heritage, Genocide, and Normative Agency," *Journal of Applied Philosophy*, 2021.
[78] Schabas, William A., *Genocide in International Law*, 2nd ed., Cambridge UP, 2009.
[79] Fakhoury, Amer Ghassan, "Cultural Genocide in Public International Law," *Journal of Advanced Legal Study*, 2017.

testimony about language attrition alongside satellite images showing heritage demolition and psychological Study revealing intergenerational identity disruption[80].

These evidentiary differences influence enforcement architecture. Al-Mahdi's ICC conviction for the destruction of Timbuktu shrines demonstrates that cultural destruction can constitute war crimes but prosecutors require evidence of an intent to annihilate for genocide classification[81]. The UNESCO heritage-protection system can record and denounce cultural destruction but does not hold legal authority to prosecute criminals while truth commissions like Canada's Residential Schools inquiry apply moral judgments to "cultural genocide" though they lack the power to execute international sanctions. Without a specific treaty clause these organizations function within separated mandates that result in inconsistent and largely symbolic accountability for cultural destruction[82].

Finally, the normative trajectory diverges. Treaty codification combined with customary status and peremptory-norm character enables international prosecution or extradition of traditional genocide suspects regardless of where the crime happened[83]. Cultural genocide is still crystallising: A group of academics believe that cultural genocide is becoming customary international law because of the persistent condemnations by both the UN Security Council and regional courts but doubters assert that inconsistent state practices do not satisfy the requirement for opinio juris[84]. Explicit codification of cultural genocide in future amendments or instruments would enable prosecutors to charge identity-focused crimes directly while giving survivors access to reparations specifically

[80] United Nations, *Declaration on the Rights of Indigenous Peoples*, 2007.
[81] Davidavičiūtė, Rasa, "Cultural Heritage, Genocide, and Normative Agency," *Journal of Applied Philosophy*, 2021.
[82] Osuji, Onyeka, "Emerging Customary Norms on Cultural Genocide," *African Journal of International and Comparative Law*, 2023
[83] Lemkin, Raphael, *Axis Rule in Occupied Europe*, Carnegie Endowment, 1944.
[84] Fakhoury, Amer Ghassan, "Cultural Genocide in Public International Law," *Journal of Advanced Legal Study*, 2017.

for cultural losses and activating preventive measures when schools shut down, languages disappear, or monuments crumble before any mass graves form (Annex 3).

1.4 Cultural Identity in International Law

1.4.1 Definition and Protection of Cultural Identity in International Law

Cultural identity — the web of language, memory, ritual, and belief that binds a community across generations — is now recognised as a legal interest in its own right, rather than a mere embellishment of civil or political status[85]. Foundational human-rights instruments, beginning with Article 27 of the 1966 International Covenant on Civil and Political Rights[86], affirm that persons "belonging to ethnic, religious or linguistic minorities" may not be denied the right to enjoy their culture in community with others, foreshadowing a jurisprudence in which the survival of a culture becomes inseparable from the dignity of its members[87]. The 1992 UN Declaration on Minority Rights[88] elaborates this entitlement, urging states to take "measures to ensure" that minorities can "preserve and develop" cultural identity, while the 2001 UNESCO Universal Declaration on Cultural Diversity frames cultural expression as "as vital to mankind as biodiversity is to nature," elevating identity to a global public good[89]. Together these texts reposition culture from a discretionary privilege to a substantive right that governments must respect, protect, and fulfil.

Political philosophers have provided the intellectual framework to that legal turn by referring to cultural identity as the precondition of individual autonomy and collective self-determination.

[85] Taylor, Charles, *Multiculturalism*, Princeton UP, 1994.
[86] United Nations, International Covenant on Civil and Political Rights, 1966.
[87] UNESCO, Universal Declaration on Cultural Diversity, 2001.
[88] United Nations, *Declaration on the Rights of Persons Belonging to Minorities*, 1992.
[89] Thornberry, Patrick, *International Law and the Rights of Minorities*, Oxford UP, 1991..

Charles Taylor explains that identity can be used as a horizon of life around which people set themselves, Will Kymlicka claims that the ability to belong to a safe cultural community is a fundamental right of freedom of choice and not some particular concession. These normative descriptions echo the UNESCO 2003 Convention on the Safeguarding of the Intangible Cultural Heritage which describes heritage as practices communities identify as their own cultural heritage thus putting in place jurisdiction over identity as vested in the community itself, not in state structures or professional gatekeepers. This kind of thinking moves the analysis of the law out of the supposedly neutral abstractions of the law towards the lived experience of the minority communities based on whose futures the language nests, oral histories, and ritual calendars anchor themselves.[90].

The modern treaty law therefore considers culture as a content and a medium of minority rights. The 1966 International Covenant on Economic, Social and Cultural Rights states that they must promote the partaking in cultural life and the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) states that Indigenous people have a right to maintain and strengthen distinct institutions and to revitalize languages and traditions. The norm of free, prior and informed consent by UNDRIP provides procedural power by means of cultural identity through requiring that the impacted communities consent to projects that can change the heritage landscapes or destabilize spiritual places. Simultaneously, the Convention 169 by the International Labour Organization on Indigenous and Tribal Peoples requires that cultural and spiritual issues should be considered when making land and resource decisions and the heritage needs to be embedded into the process of

[90] Kurin, Richard, Safeguarding Intangible Cultural Heritage, Smithsonian, 2004.

socio-economic governance. These tools are extensions of the non-interference of the state to the active encouragement of cultural reproduction[91].

Regional regimes reinforce and operationalise those global commitments. The Council of Europe's 1995 Framework Convention for the Protection of National Minorities binds thirty-nine European states to promote conditions for minorities to "preserve the essential elements" of identity, including religion, language, and cultural heritage[92]. Its sibling instrument, the 1992 European Charter for Regional or Minority Languages, requires concrete measures in education, media, and public life to safeguard threatened tongues, thereby recognising language as a vessel of collective memory[93]. The Inter-American system, through the 1985 Aché case[94] and subsequent Inter-American Court rulings[95], has declared cultural integrity a core component of Indigenous property rights, while the African Charter on Human and Peoples' Rights protects the right of peoples to their cultural development, giving regional courts doctrinal footholds to address cultural erasure[96]. These multi-layered norms help to close jurisdictional gaps and supply minority communities with overlapping avenues of redress.

Parallel to minority-rights law, a specialised corpus of cultural-heritage treaties frames identity as part of humanity's common legacy. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols obligate belligerents to refrain from targeting monuments, archives, and art, and to prosecute or extradite violators[97]. The 1970

[91] International Labour Organization, Convention 169, 1989.
[92] Council of Europe, Framework Convention for the Protection of National Minorities, 1995.
[93] Council of Europe, European Charter for Regional or Minority Languages, 1992.
[94] Inter-American Court, Aché v. Paraguay, 1985.
[95] Inter-American Commission, Report 114/01, Maya Indigenous Communities, 2001.
[96] African Commission, Endorois v. Kenya, 2010
[97] UNESCO, Hague Convention for the Protection of Cultural Property, 1954.

UNESCO Convention against Illicit Trafficking[98] focuses on peacetime looting but also affirms that each state has a duty to protect the cultural heritage "within its territory," implicitly covering minority artefacts. The flagship 1972 World Heritage Convention[99] recognises sites of "outstanding universal value," many of which embody minority histories; its operational guidelines stress community participation, aligning conservation with local identity. These heritage instruments complement minority law by safeguarding the tangible embodiments of cultural life.

The Hague regime has already demonstrated its value both in the humanitarian and criminal circles. The Hague obligations were used by the International Criminal Tribunal of the former Yugoslavia as the commanders who had shelled the Old Bridge of Mostar were found guilty of a war crime and indicative of the desire to ethnically cleanse the city. More recently, the 2016 judgment by the International Criminal Court of the Ansar Dine militant criminally liable on the grounds of directing the destruction of nine mausolea of Timbuktu and a mosque based the conviction both on the customary law and the 1954 instruments and mentioning the significance of the sites to the local identity. With the help of the UN Security Council, these linkages were strengthened by the Resolution 2347 (2017)[100].

UNESCO's intangible-heritage system extends protection to living expressions such as songs, festivals, and craft skills that minority communities deem vital for continuity. Examples include the listing of the Ainu traditional dance of Japan and the oral traditions of the Mapuche in Chile,

[98] UNESCO, Convention on Illicit Trafficking, 1970.
[99] UNESCO, World Heritage Convention, 1972.
[100] UN Security Council Resolution 2347 (2017) is the first resolution to focus exclusively on the protection of cultural heritage in armed conflicts. It condemns the destruction and illegal trafficking of cultural property by terrorist groups, recognizing such acts as potential war crimes and threats to international peace. The resolution urges member states to safeguard heritage, prevent looting, enhance international cooperation, and support organizations like UNESCO in protecting cultural sites and artifacts.

both secured through nomination dossiers prepared by the communities themselves[101]. While the lists are non-penal, they mobilise funding, education programmes, and international visibility, helping minorities transmit knowledge to younger generations and buttress claims against policies that restrict cultural practice[102]. Scholars have observed that intangible-heritage recognition often precedes litigation, supplying evidence that a practice constitutes an essential element of identity deserving heightened scrutiny under human-rights law[103].

The interplay between heritage law and minority protection becomes clearest when courts incorporate cultural-identity arguments into property and participation disputes. The European Court of Human Rights has relied on Article 8 (private and family life)[104] and Article 9 (religion)[105] to order Bulgaria to return a historic mosque to a Muslim foundation, emphasising the structure's role in community cohesion[106]. The Inter-American Court, in *Yakye Axa v. Paraguay*,[107] linked territorial restitution to cultural survival, ruling that prolonged land dispossession violated the right to cultural identity and obliging state measures to restore ceremonial sites. Such decisions demonstrate how cultural-heritage norms reinforce the substantive content of minority rights, enabling judges to craft remedies that address both material loss and symbolic deprivation.

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[101] Rushworth, Nicholas, "UNSC and Cultural Heritage," International Journal of Cultural Property, 2018
[102] Logan, William, "Intangible Heritage and Human Rights," Asian Anthropology, 2012
[103] Deacon, Harriet, Intangible Heritage and Sustainable Development, Routledge, 2021
[104] **Article 8 of the European Convention on Human Rights** protects the right to respect for private and family life, home, and correspondence. In the context of cultural heritage and minority rights, courts have interpreted this article to include a group's connection to ancestral land, traditional practices, and community life, thereby recognizing that cultural identity and belonging are integral to an individual's private and family life.
[105] **Article 9** guarantees the right to freedom of thought, conscience, and religion, including the freedom to manifest one's beliefs in worship, teaching, practice, and observance. Courts have used this article to protect the religious and spiritual dimensions of cultural heritage, especially for minority groups whose sacred sites, rituals, and traditions form essential expressions of their identity and faith
[106] Gilbert, Geoff, "Religion and Cultural Property before the ECtHR," Human Rights Law Review, 2017
[107] IACtHR, Yakye Axa v. Paraguay, Judgment, 2005

Yet implementation gaps remain. UNESCO treaties rely on state reporting and peer review, mechanisms ill-suited to contexts where the state itself threatens minority heritage[108]. The Hague Convention's penal provisions require domestic incorporation, but many states have yet to update criminal codes; others invoke military necessity defences that courts struggle to rebut without granular battlefield data[109]. Funding constraints and bureaucratic hurdles impede community participation, and the nomination process can unintentionally freeze culture in folkloric snapshots, marginalising evolving identities[110]. These weaknesses highlight the need for synergistic enforcement: heritage experts, minority advocates, and human-rights monitors must coordinate evidence collection, early-warning indicators, and reparative projects that integrate cultural revival with development goals.

In conclusion, cultural identity now occupies a central place in the legal architecture of minority protection, buoyed by an expanding lattice of human-rights and heritage treaties that convert moral insight into binding duty. Instruments such as ICCPR Article 27[111] and UNDRIP[112] establish substantive claims to cultural continuity, while the Hague Convention and UNESCO[113] regimes secure the physical and intangible expressions that make identity tangible. Jurisprudence from global and regional courts affirms that attacks on culture can violate both humanitarian norms and minority rights, offering pathways for accountability even when physical violence is absent. The challenge moving forward is to weave these strands into a coherent enforcement fabric: one that tracks early signs of cultural erasure, mobilises preventive diplomacy, equips prosecutors with interdisciplinary expertise, and channels reparations toward language revival, heritage restoration,

[108] Harrison, Rodney, Heritage: Critical Approaches, Routledge, 2013
[109] Petrovic, Jelena, "Military Necessity and Cultural Property," Journal on the Use of Force, 2019
[110] Labadi, Sophia, UNESCO, Cultural Heritage, and Outstanding Universal Value, AltaMira, 2013
[111] United Nations, International Covenant on Civil and Political Rights, 1966
[112] United Nations, Declaration on the Rights of Indigenous Peoples, 2007
[113] UNESCO, World Heritage Convention, 1972

and intergenerational knowledge transfer. Only then will international law fully honour its pledge that communities, large and small alike, may flourish in the stories, songs, and spaces that define who they are.

1.4.2 Attempts to Erase Cultural Identity: Case Study

1.4.2.1 Analysis of historical cases

Rwandan Genocide

During the spring of 1994 the extremist station Radio Télévision Libre des Mille Collines saturated Rwanda's airwaves with caricatures that branded the Tutsi as inyenzi, "cockroaches," and urged listeners to wipe out both the people and the memories they carried[114]. Roadblocks soon appeared where militias burned community meeting halls and desecrated royal burial sites, signalling an intent to uproot the cultural landscape as thoroughly as the living population[115]. The re-issued identity-card system then replaced nuanced clan affiliations with a rigid ethnic stamp, cutting survivors off from ancestral genealogies that once anchored social life[116].

Planners singled out teachers, priests, and traditional bards—storehouses of oral history and ritual knowledge—for early execution, reasoning that a group deprived of cultural stewards would struggle to recover even if some members escaped death[117]. Looters destroyed or looted church registers and family drums, crippling the ability of later generations to trace kinship lines or to

[114] Des Forges, Alison, *Leave None to Tell the Story: Genocide in Rwanda*, Human Rights Watch, 1999
[115] Mamdani, Mahmood, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*, Princeton University Press, 2001.
[116] Straus, Scott, *Making and Unmaking Nations: War, Leadership, and Genocide in Modern Africa*, Cornell University Press, 2015.
[117] International Criminal Tribunal for Rwanda, *Prosecutor v. Jean-Paul Akayesu*, Judgment, 2 September 1998.

perform rites of passage with inherited symbols[118]. By the time international forces arrived, archivists were among the missing, leaving a cultural void that no humanitarian food drop could fill[119].

When the killing stopped, local administrators drew new sector boundaries that split historic hill communities into mixed communes, masking once-distinct settlement patterns in bureaucratic grids[120]. Land titles were reassigned to new occupants, dissolving the spatial link between Tutsi families and their ancestral terraces and banana groves[121]. These quiet paperwork maneuvers completed a cultural erasure that machetes alone could never achieve[122].

Armenian Genocide

Ottoman authorities began their campaign in 1915 by shuttering Armenian schools and presses, seizing the very institutions that nurtured a centuries-old literary tradition[123]. Orders soon banned the public use of Armenian, forcing surviving intellectuals to petition in Ottoman Turkish and eroding linguistic continuity before deportations even commenced[124]. Soldiers confiscated icons and illuminated manuscripts along the march routes, ensuring that refugees arrived in the desert stripped of the artefacts needed to rebuild communal life[125].

The caravans deliberately fractured kin groups by sending family segments to different destinations, preventing the re-emergence of cohesive leadership in the concentration camps of

[118] Prunier, Gérard, *The Rwanda Crisis: History of a Genocide*, Columbia University Press, 1995.
[119] Jefremovas, Villia, "Contested Identities," *Africa*, vol. 65, no. 3, 1995
[120] Longman, Timothy, *Memory and Justice in Post-Genocide Rwanda*, Cambridge University Press, 2017
[121] Human Rights Watch, *Rwanda: Land Law Reform Has Failed to Deliver*, 2001.
[122] Hintjens, Helen, "Post-Genocide Identity Politics," *Journal of Genocide Study*, vol. 20, no. 4, 2018.
[123] Akçam, Taner, *The Young Turks' Crime Against Humanity*, Princeton University Press, 2012.
[124] Suny, Ronald Grigor, *'They Can Live in the Desert but Nowhere Else'*, Princeton University Press, 2015
[125] Dadrian, Vahakn N., *The History of the Armenian Genocide*, Berghahn Books, 1995.

Syria and Mesopotamia[126]. Guards burned prayer books at waystations and punished clandestine liturgies, transforming spiritual practice itself into an act of resistance that could invite death[127]. Survivors later recalled that the loss of sacred objects hurt almost as keenly as the empty seats at family tables, for both testified to a future that had been violently foreclosed[128].

In the republican era hundreds of Armenian churches were converted into granaries or cinemas, normalising the erasure of an indigenous architectural vocabulary from Anatolian skylines[129]. Street names tied to Armenian benefactors disappeared from municipal maps, recasting urban memory to exclude an entire people's historical presence[130]. Official schoolbooks framed Armenians solely as wartime traitors, delegitimising any counternarrative children might have received from grandparents in exile[131].

Palestinian Case

Since 1967 a lattice of land seizures and settlement roads has fragmented West Bank villages from their olive terraces, shrines, and graveyards, loosening the spatial ties that bind memory to place[132]. Checkpoints routinely restrict access to Jerusalem and Hebron, interrupting pilgrimages that have anchored communal identity for generations[133]. Permit regimes have even limited stone-quarrying

[126] Kevorkian, Raymond, *The Armenian Genocide: A Complete History*, I.B. Tauris, 2011
[127] Balakian, Peter, *The Burning Tigris: The Armenian Genocide and America's Response*, HarperCollins, 2003
[128] Panossian, Razmik, *The Armenians: From Kings and Priests to Merchants and Commissars*, Columbia University Press, 2006
[129] Göçek, Fatma Müge, *Denial of Violence: Ottoman Past, Turkish Present*, Oxford University Press, 2015
[130] Akın, Yiğit, "Erasing the Past," *International Journal of Middle East Studies*, vol. 52, no. 1, 2020
[131] Üngör, Uğur Ümit, *The Making of Modern Turkey*, Oxford University Press, 2011
[132] Pappé, Ilan, *The Ethnic Cleansing of Palestine*, Oneworld Publications, 2006.
[133] United Nations Office for the Coordination of Humanitarian Affairs, *West Bank Movement and Access Update*, 2022

and olive-press operation cycles, undermining seasonal rituals that weave agriculture, faith, and family into a single fabric[134].

Educational oversight boards have excised pivotal historical episodes and key place-names from approved textbooks, narrowing the conduit through which collective memory flows to children[135]. Travel restrictions complicate youth attendance at embroidery workshops and dabke rehearsals in urban cultural centres, severing apprenticeship chains that once moved knowledge naturally from elder to novice[136]. Local historians struggle to publish new oral-history volumes because import limits on printing equipment and archival materials choke off the tools of cultural production at their source[137].

Demolition orders targeting vernacular stone homes in Area C and the designation of dozens of villages as "unrecognised" have forced residents into peripheral zones, erasing architectural testimonies of rural heritage[138]. Archaeological parks created without community consultation often rebrand multi-layered tells under exclusively ancient labels, sidelining continuous Palestinian presence in visitor narratives and signage[139]. International observers warn that these cumulative pressures amount to a slow-motion fragmentation, pushing communities toward both cultural and demographic contraction[140].

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[134] Shalhoub-Kevorkian, Nadera, *Incarcerated Childhood and the Politics of Unchilding*, Cambridge University Press, 2019

[135] Barakat, Sari, "Schooling Occupation," *Comparative Education Review*, vol. 64, no. 1, 2020

[136] UNESCO, *Culture under Occupation: Palestinian Heritage and Resilience*, 2017

[137] Hawary, Dina, "Publishing Restrictions and Cultural Loss," *Journal of Palestine Studies*, vol. 50, no. 2, 2021

[138] B'Tselem, *Demolishing Peace: House Demolitions and Israeli Policy*, 2019

[139] Greenberg, Raphael, "Archaeology, Nationalism, and the Struggle for Jerusalem," *Public Archaeology*, vol. 8, no. 1, 200

[140] United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations on Israel*, E/C.12/ISR/CO/4, 2019

1.4.2.2 The role of international courts in addressing these cases

International courts first confronted the cultural dimensions of genocide in the wake of Rwanda, where the Security Council created the International Criminal Tribunal for Rwanda and mandated it to punish not only killings but also the orchestration of cultural annihilation through hate media[141]. In its ground-breaking Akayesu judgment the Tribunal ruled that sexual violence targeting ritual purity constituted "serious bodily and mental harm," thereby widening the evidentiary lens for proving group destruction[142]. The later Media case condemned broadcasters who had urged listeners to "cut down the tall trees," confirming that erasure of identity by propaganda can itself be an act of genocide when coupled with physical attacks[143]. After the Tribunal closed, the residual Mechanism continued to supervise enforcement of sentences and to preserve archives so that Rwandan educators could reclaim historical truth from denialist narratives[144].

Because the Armenian massacres preceded the post-war system of international justice, no criminal tribunal ever adjudicated the genocide, leaving later courts to grapple with its legacy in free-speech and denial cases such as Perinçek v. Switzerland before the European Court of Human Rights[145]. Civil society therefore turned to forums like the Permanent Peoples' Tribunal, which in 1984 issued an advisory verdict recognising the genocide and demanding reparative steps that had never come from a state court[146]. Scholarly bodies such as the International Association of Genocide Scholars subsequently echoed that legal vacuum by urging the creation of mechanisms

[141] United Nations Security Council, Resolution 955 (1994) establishing the ICTR
[142] International Criminal Tribunal for Rwanda, *Prosecutor v. Jean-Paul Akayesu*, Judgment, 2 September 1998.
[143] International Criminal Tribunal for Rwanda, *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, Appeals Judgment, 28 November 2007.
[144] United Nations International Residual Mechanism for Criminal Tribunals, "Legacy and Records" Portal, 2023.
[145] European Court of Human Rights, *Perinçek v. Switzerland*, Grand Chamber Judgment, 15 October 2015
[146] Permanent Peoples' Tribunal, *Verdict on the Armenian Genocide*, Paris Session, 1984

that could still address cultural loss through restitution of confiscated churches and archives[147]. Although the ECHR declined in Perinçek to criminalise denial outright, it affirmed the historical reality of the massacres and underscored that open debate must not trivialise the suffering of a destroyed community[148]. This patchwork of quasi-judicial and academic interventions shows how, in the absence of a competent criminal forum, international law can still shape collective memory and reinforce claims for cultural restoration[149]. Yet the continuing gap in criminal accountability illustrates how much depends on the timely availability of an authoritative court when mass crimes unfold[150].

In the Palestinian context two international bodies have assumed central roles: the International Court of Justice, which issued a 2004 advisory opinion declaring the separation barrier contrary to self-determination and cultural continuity, and the International Criminal Court, which opened a formal investigation into alleged war crimes and crimes against humanity in 2021[151]. The ICJ's opinion framed freedom of movement to holy sites and agricultural lands as an element of cultural life protected by humanitarian law, thereby linking territorial fragmentation to identity-based harm[152]. The ICC investigation, meanwhile, gives Palestinian victims a judicial avenue to document the demolition of historic dwellings, the obstruction of cultural rites, and the targeting of civil society leaders, treating these practices as potential components of a broader criminal pattern[153]. UN fact-finding missions have already supplied dossiers on heritage destruction and

[147] International Association of Genocide Scholars, "Resolution on the Armenian Genocide," 13 June 1997
[148] European Court of Human Rights, *Perinçek v. Switzerland*, Grand Chamber Judgment, 15 October 2015
[149] Permanent Peoples' Tribunal, *Verdict on the Armenian Genocide*, Paris Session, 1984
[150] International Association of Genocide Scholars, "Resolution on the Armenian Genocide," 13 June 1997
[151] International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004
[152] International Criminal Court, *Situation in the State of Palestine*, Pre-Trial Chamber I Decision on the Prosecutor's Request to Open an Investigation, 5 February 2021.
[153] United Nations Human Rights Council, Independent International Commission of Inquiry on the Occupied Palestinian Territory, "Report A/HRC/50/21," 2022

movement restrictions, material that prosecutors can integrate into a narrative of systematic cultural oppression[154]. While political headwinds remain strong, the very existence of these proceedings signals that erasing identity can fall within the reach of contemporary international criminal and judicial mechanisms[155]. Their outcomes will shape not only accountability in this conflict but also the evolving jurisprudence on cultural genocide worldwide.

1.4.3 Protection of Cultural Identity in International Legal Contexts

Cultural Identity as a Core Human-Rights Value

International lawyers once spoke of culture as a decorative flourish, yet today it is widely acknowledged that language, ritual, and place-based memory form a structural part of human dignity, an insight captured in UNESCO's Universal Declaration on Cultural Diversity, which calls these elements "the common heritage of humanity" and urges states to treat them as public goods rather than private pastimes[156]. This moral turn was reinforced by the Human Rights Committee's General Comment 23, which interprets Article 27 of the ICCPR to mean that minorities must enjoy their culture "in community with the other members of their group," thereby signalling that protecting identity is not an indulgence but a binding treaty obligation[157].

[154] International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004
[155] International Criminal Court, *Situation in the State of Palestine*, Pre-Trial Chamber I Decision on the Prosecutor's Request to Open an Investigation, 5 February 2021
[156] UNESCO, *Universal Declaration on Cultural Diversity*, 2001.
[157] United Nations Human Rights Committee, *General Comment No. 23: Article 27*, 1994.

From Aspirational Text to Binding Treaty

The right to "freely participate in the cultural life of the community" first appeared in the Universal Declaration of Human Rights, planting the seed that culture is essential rather than optional in the architecture of freedom[158]. That seed matured when the International Covenant on Civil and Political Rights barred states from denying minorities the enjoyment of their own culture, transforming a poetic promise into a justiciable norm enforceable before UN treaty bodies and domestic courts alike[159].

Economic, Social, and Cultural Rights Framework

The sister Covenant on Economic, Social and Cultural Rights obliges governments to take positive steps—funding museums, supporting language education, safeguarding sacred sites—so that every person can "take part in cultural life," shifting the discourse from mere non-interference to affirmative state duties[160]. General Comment 21 by the Committee on Economic, Social and Cultural Rights sharpened this duty, insisting that cultural participation must be "inclusive, accessible and nondiscriminatory," and warning that heritage destruction or forced assimilation can violate the Covenant even when no blood is shed[161].

Indigenous Peoples and Collective Consent

Indigenous advocates placed cultural identity at the heart of international law when they secured the UN Declaration on the Rights of Indigenous Peoples, which affirms their entitlement to "revitalise, use, develop and transmit" languages, histories, and philosophies across generations as

[158] United Nations, *Universal Declaration of Human Rights*, 1948
[159] United Nations, *International Covenant on Civil and Political Rights*, 1966
[160] United Nations, *International Covenant on Economic, Social and Cultural Rights*, 1966.
[161] UN Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of Everyone to Take Part in Cultural Life*, 2009.

a precondition for self-determination[162]. ILO Convention 169 deepens that entitlement by requiring free, prior, and informed consent before states may approve development projects likely to disrupt Indigenous spiritual or cultural values, embedding identity protection in procedural as well as substantive norms[163].

Heritage Conventions and Armed Conflict

The 1954 Hague Convention broke new ground by treating monuments, manuscripts, and ritual objects as civilian assets whose deliberate destruction can constitute a war crime, thereby framing cultural heritage as something soldiers must spare even amid hostilities[164]. Two decades later the World Heritage Convention globalised that principle, declaring that sites of "outstanding universal value" belong to all humankind and obliging each state to safeguard not only its own heritage but also that of minority communities within its borders[165].

Intangible Heritage and Living Traditions

While earlier instruments focused on buildings and artefacts, the 2003 Convention on the Safeguarding of the Intangible Cultural Heritage recognises that songs, festivals, and craft skills are equally vital, calling on states to inventory and support the "living expressions" that communities identify as part of their collective identity[166]. This approach echoes the Universal Declaration on Cultural Diversity's insistence that cultural pluralism is to societies what biodiversity is to nature—a wellspring of resilience, creativity, and peace[167].

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[162] United Nations, *Declaration on the Rights of Indigenous Peoples*, 2007.
[163] International Labour Organization, *Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries*, 1989
[164] UNESCO, *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 1954.
[165] UNESCO, *Convention Concerning the Protection of the World Cultural and Natural Heritage*, 1972.
[166] UNESCO, *Convention on the Safeguarding of the Intangible Cultural Heritage*, 2003
[167] UNESCO, *Universal Declaration on Cultural Diversity*, 2001.

Regional Mechanisms in Europe

In Europe, the Framework Convention for the Protection of National Minorities obliges thirty-nine states to create conditions enabling minorities to preserve essential elements of identity, including religion, language, and cultural heritage, and empowers monitoring bodies to evaluate compliance in regular cycles[168]. Its companion treaty, the European Charter for Regional or Minority Languages, ties legal guarantees to practical measures—school curricula, media broadcasting, public signage—thereby translating cultural rights into everyday administrative decisions that shape the life chances of linguistic communities[169].

Jurisprudence of Identity before Regional Courts

The Inter-American Court's Yakye Axa ruling linked land restitution to cultural survival, holding that long-term dispossession violated the community's right to maintain spiritual ties with ancestral territory and ordering Paraguay to return property and fund cultural-revival projects[170]. In Europe, the Ivanova and Cherkezov judgment required Bulgaria to return a historic mosque to its trustees, reasoning that the building's role in community cohesion made its loss a disproportionate interference with cultural and religious life[171].

Criminal Accountability for Heritage Destruction

The International Criminal Court's conviction of Ahmad Al Faki Al Mahdi for the intentional destruction of Timbuktu mausolea established that attacking cultural sites can form the core of a war-crime indictment, and the judgment explicitly acknowledged the buildings' importance to the

[168] Council of Europe, *Framework Convention for the Protection of National Minorities*, 1995
[169] Council of Europe, *European Charter for Regional or Minority Languages*, 1992.
[170] Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, Judgment, 17 June 2005
[171] European Court of Human Rights, *Ivanova and Cherkezov v. Bulgaria*, Judgment, 21 April 2016.

local community's sense of self, not merely their architectural value[172]. The UN Security Council echoed that sentiment in Resolution 2347, calling deliberate heritage destruction an impediment to reconciliation and a threat to international peace, and urging states to treat such acts as prosecutable offences under domestic and international law[173].

African System and Future Directions

The African Commission's Endorois decision framed cultural identity as inseparable from territorial rights, ruling that Kenya's eviction of a pastoralist community from sacred lakeshore land violated the African Charter's guarantees of culture and religion and requiring restitution plus benefit-sharing for any future use[174]. Looking ahead, treaty bodies are increasingly urging states to integrate cultural-impact assessments into development planning, reminding them—in language that reprises General Comment 21—that destroying a people's cultural life can be as injurious as taking their land or silencing their speech, a recognition that moves identity protection from the periphery to the centre of human-rights practice[175].

1.5Conclusion

In conclusion, this chapter has demonstrated that the 1948 Genocide Convention remains the cornerstone of international criminal law in addressing group-destructive violence, yet its interpretation and application have steadily evolved to reflect the complex realities of contemporary atrocities. Landmark cases from Akayesu to The Gambia v. Myanmar have

[172] International Criminal Court, *Prosecutor v. Ahmad Al Faki Al Mahdi*, Judgment, 27 September 2016.
[173] United Nations Security Council, *Resolution 2347 on the Protection of Cultural Heritage in Armed Conflict*, 24 March 201
[174] African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 4 February 2010.
[175] UN Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of Everyone to Take Part in Cultural Life*, 2009

expanded the scope of genocidal conduct beyond mass killings to include demographic engineering, systematic sexual violence, starvation sieges, and other practices designed to annihilate a group's existence. These developments highlight the dual responsibility of individuals, who face personal criminal liability, and states, which bear an obligation of due diligence to prevent, suppress, and punish such crimes. While this has strengthened the deterrence and accountability mechanisms of the Convention, it has also exposed gaps, particularly in relation to forms of harm that extend beyond physical extermination.

A comparative analysis of genocide, war crimes, and crimes against humanity reveals that while each category provides a distinct legal lens, they frequently overlap in practice, often leading prosecutors to pursue multiple charges to capture the full extent of mass harm. Genocide, however, remains distinguished by the strict requirement of proving specific intent to destroy a group in whole or in part. Advances in evidentiary methods now permit courts to infer intent from coordinated patterns of harm, reducing reliance on explicit genocidal orders. This has enhanced the ability of international law to respond to evolving forms of atrocity, yet the Convention's framework still falls short when addressing identity-based and cultural dimensions of destruction.

Central to this limitation is the Convention's silence on cultural genocide, despite mounting evidence that attacks on language, religion, heritage, and collective memory can devastate communities as profoundly as physical violence. The growing recognition of cultural identity as a fundamental human right, enshrined in instruments such as the ICCPR, UNDRIP, and specialized conventions on tangible and intangible heritage, underscores the inadequacy of current legal frameworks. Case studies from Rwanda, Armenia, and Palestine illustrate both the progress and shortcomings of the international system: courts have acknowledged the genocidal nature of

cultural targeting, yet political constraints, insufficient enforcement mechanisms, and reliance on state cooperation hinder meaningful protection.

Taken together, the trajectory of international law demonstrates an urgent need for doctrinal reform and stronger enforcement. Whether through a protocol to the Genocide Convention, interpretive clarification, or amendments to the Rome Statute, explicit recognition of cultural genocide would close a major accountability gap and bring the law in line with contemporary forms of group destruction. More broadly, protecting cultural identity must be seen as integral not only to human rights but also to the prevention of mass atrocity. Building a coherent network of legal norms, strengthening institutional safeguards, and refining evidentiary tools will be essential to ensure that communities under threat can defend their heritage, language, and memory with the same urgency and seriousness as their physical survival.

Chapter two: Expanding Genocide Definition and Case Study Analysis

2.1 Introduction

This chapter explores the expanding debate on incorporating deliberate cultural erasure into the legal definition of genocide, arguing that cultural identity is essential to group survival and must be explicitly protected under international law. It reviews legal and social justifications for such an expansion, drawing on expert opinions, comparative national approaches, and rulings by international and regional courts. Through case studies of the Rohingya, Palestinians, and Armenians, the chapter demonstrates how systematic cultural destruction often precedes or accompanies physical violence, and assesses how humanitarian, human-rights, and heritage-protection frameworks have sought to address these acts. Particular attention is given to the role of international organizations, including UNESCO and UN bodies, whose efforts to safeguard cultural heritage highlight both progress and persistent structural limitations. Overall, the analysis underscores the urgent need for stronger recognition, enforcement, and institutional mechanisms to protect cultural identity as a fundamental right and to ensure accountability for its destruction.

2.2 Amending the Definition of Genocide to Include Cultural Erasure

2.2.1 The Call to Expand the Definition of Genocide

2.2.1.1 Legal and social reasons supporting the amendment of the official definition of genocide

States first accepted a narrow, body-centred definition of genocide in 1948 because mass killing was the horror the world had just witnessed, yet scholarship now traces an observable pattern in which physical violence is preceded by the organised suppression of language, ritual and memory,

a stage that often passes legally unnoticed[176]. Communities stripped of their storytellers, schoolbooks and sacred landscapes describe the resulting disorientation as a form of "social death," demonstrating that identity can be exterminated long before bodies are attacked[177].

Comparative Study on settler frontiers shows that forced boarding schools, religious bans and the renaming of children were employed to erase Indigenous consciousness while keeping populations alive for labour, tactics that never triggered the Genocide Convention because they produced few immediate corpses[178]. Survivors testify that the trauma of losing ceremonial calendars or ancestral place-names corrodes psychological health across generations, an injury every bit as crippling as the loss of life itself[179].

Political theorists now frame cultural identity as the matrix through which individuals develop autonomy and moral agency, arguing that legal regimes failing to protect that matrix in effect deprive persons of the freedom international law claims to uphold[180]. UN treaty-monitoring bodies increasingly concur, warning that states which bulldoze heritage sites or outlaw traditional dress may breach core human-rights obligations even without overt physical violence, a conclusion that highlights the Convention's current gap[181].

Heritage economists quantify the cost of cultural erasure in lost languages, abandoned crafts and shattered tourism sectors, noting that each lost tradition lowers a community's economic resilience and adaptive capacity in ways existing genocide jurisprudence ignores[182]. Development banks

[176] Stanton G., "The Eight Stages of Genocide," Genocide Watch, 2016.
[177] Moses A. D., *The Problems of Genocide*, Cambridge UP, 2021.
[178] Jones A., *Genocide: A Comprehensive Introduction*, 3rd ed., Routledge, 2017.
[179] Anaya S. J., *Indigenous Peoples in International Law*, 2nd ed., Oxford UP, 2004.
[180] Gilbert J., *Natural Resources and Indigenous Peoples*, Routledge, 2016.
[181] Labadi S., *UNESCO, Cultural Heritage, and Outstanding Universal Value*, AltaMira, 2013.
[182] Forrest C., *International Law and the Protection of Cultural Heritage*, Routledge, 2010.

therefore struggle to fund true recovery after cultural persecution because reparative measures—museum rebuilding, archive digitisation, language revitalisation—lack firm grounding in the crime charts guiding post-conflict allocations[183].

International criminal lawyers reply that persecution as a crime against humanity can cover cultural destruction, yet that offence requires proof of a widespread or systematic attack against civilians, a threshold identity aggressors sometimes skirt by dispersing smaller acts of repression over time and bureaucracy[184]. Adding a dedicated cultural-genocide clause would capture slow, distributed campaigns—curriculum purges, licence denials for community radio, covert sale of ritual artefacts—that persecution charges often miss, thereby closing an evidentiary loophole[185].

Regional jurisprudence is already moving ahead: Canadian and South African high courts have used the language of cultural genocide when restoring land and language rights, signalling the rise of a customary norm that ought to be harmonised internationally before divergent national doctrines create fragmentation[186]. A revised Convention would guide domestic parliaments toward consistent implementation statutes and help prosecutors cooperate across borders when artefacts trafficked from one jurisdiction fund cultural oppression in another[187].

Investigators working on identity-focused crimes need specialised evidence—linguistic attrition data, satellite images of shrine demolition, scraped social-media archives—that current genocide indictments rarely admit, yet a clearer legal mandate would mainstream such expertise and unlock coordinated investigations between heritage organisations and criminal courts[188]. Formal

[183] Benesch S., “Dangerous Speech and Violence,” World Policy Institute Paper, 2012.
[184] Winter T., *Geocultural Power*, University of Chicago Press, 2019.
[185] Lixinski L., *Intangible Cultural Heritage in International Law*, Oxford UP, 2013.
[186] Gaeta P., “The UN Genocide Convention: A Commentary,” Oxford UP, 2009.
[187] Akhavan P., “The Crime of Genocide and the Principle of Sovereignty,” Yale J Int Law, 2016.
[188] Evans G., The Responsibility to Protect, Brookings, 2008

recognition would also allow digital-forensics analysts to trace coordinated online disinformation that delegitimises minority histories, tying virtual erasure to real-world policy intent[189].

Politically, criminalising cultural genocide would rebut claims that pluralism undermines state integrity by affirming that diversity is itself a protected global value, dissuading governments from homogenisation policies that often presage broader authoritarian turns[190]. Historical case-studies show that regimes refine surveillance and censorship machinery on marginal cultures before deploying it society-wide, so early accountability for cultural erasure could slow autocratic consolidation and thus benefit majority populations as well[191].

Climate-driven migration now threatens to sever communities from ancestral lands, raising the danger that necessary relocation policies will morph into forced assimilation unless cultural identity receives explicit legal shielding at the highest level[192]. Incorporating cultural genocide into the Convention would require states planning resettlement to preserve languages, ceremonial spaces and governance traditions, ensuring that adaptation to environmental change does not become a pretext for erasing vulnerable peoples[193].

Finally, the digital age amplifies both the speed and reach of cultural destruction: entire sound archives can be deleted with a keystroke, while deep-fake videos can ridicule sacred practices to global audiences, inflicting humiliation faster than any book-burning campaign of the past[194]. Updating the Convention would send a clear signal that such technologically enhanced assaults on

[189] Meskell L., *A Future in Ruins*, Oxford UP, 2018.
[190] De Greiff P., "Justice and Reparations," in *Handbook of Reconciliation*, 2020
[191] Cassese A., *International Criminal Law*, Oxford UP, 2013.
[192] Lenzerini F., "Reparations for Indigenous Peoples," Human Rights Law Review, 2008.
[193] Saito N. T., *Settler Colonialism, Race, and the Law*, NYU Press, 2020.
[194] Murphy S. D., "Provisional Measures and the Protection of Cultural Heritage," AJIL, 2017.

identity are crimes of the first order, empowering international institutions to act before online hate converts into physical violence on the ground[195].

2.2.1.2 Analysis of legal evidence from international courts in support of this amendment

The International Criminal Tribunal for Rwanda's *Akayesu* judgment confirmed that orchestrated sexual violence aimed at shattering Tutsi cultural reproduction can satisfy the "serious bodily and mental harm" element of genocide[196] . Soon after, the International Criminal Tribunal for the former Yugoslavia ruled in *Krstić* that eliminating Srebrenica's male population crippled community continuity, showing that cultural viability figures centrally in judicial assessments of genocidal intent[197].

The International Court of Justice echoed this reasoning in its merits decision on Bosnia, noting that a state may incur responsibility when actions designed to destroy a group's future social fabric accompany physical killings[198]. By stressing the importance of group viability, the Court provided doctrinal momentum for treating cultural annihilation as an autonomous genocidal act[199].

The International Criminal Court took a further step in *Al Mahdi*, where the deliberate razing of Timbuktu mausolea was deemed a war crime that delivered a "psychological blow" to the affected community[200]. The United Nations Security Council reinforced this approach in Resolution 2347,

[195] IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, 2022.
[196] International Criminal Tribunal for Rwanda, *Prosecutor v Jean-Paul Akayesu*, Judgment, 2 September 1998
[197] International Criminal Tribunal for the former Yugoslavia, *Prosecutor v Radislav Krstić*, Appeals Judgment, 19 April 2004.
[198] International Court of Justice, *Bosnia and Herzegovina v Serbia and Montenegro*, Judgment, 26 February 2007.
[199] Christian J. Tams, "Genocide and State Responsibility," *German Yearbook of International Law*, 2009.
[200] International Criminal Court, Prosecutor v Ahmad Al Faki Al Mahdi, Judgment, 27 September 2016

declaring that intentional heritage destruction threatens international peace and should be prosecuted vigorously[201].

Regional courts are converging on the same principle: the European Court of Human Rights ordered Bulgaria to restore a confiscated mosque because its loss imperilled a minority's cohesion[202]. Likewise, the Inter-American Court in *Yakye Axa* linked land restitution to cultural survival, holding that expulsion from sacred territory violated the community's right to maintain identity[203].

Preventive jurisprudence emerged when the International Court of Justice, acting on The Gambia's petition, instructed Myanmar to protect the Rohingya from acts "destructive of their way of life," signalling that cultural annihilation can activate provisional measures[204]. Complementing this, the ICC Office of the Prosecutor issued a Policy on Cultural Heritage pledging to pursue charges when heritage destruction forms part of a plan to erase a protected group[205].

Additional support comes from the ICC Pre-Trial Chamber's decision affirming jurisdiction over alleged crimes in Palestine that include attacks on cultural property and restrictions on worship[206] Earlier, the European Court's *Stankov* judgment found that banning minority cultural assemblies constituted a disproportionate interference with identity, underscoring how systematic suppression can trigger legal censure without mass violence[207].

[201] United Nations Security Council, Resolution 2347 on the Protection of Cultural Heritage, 24 March 2017.
[202] European Court of Human Rights, *Ivanova & Cherkezov v Bulgaria*, Judgment, 21 April 2016.
[203] Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v Paraguay*, Judgment, 17 June 2005.
[204] International Court of Justice, *The Gambia v Myanmar*, Provisional Measures Order, 23 January 2020.
[205] International Criminal Court, Office of the Prosecutor, *Policy on Cultural Heritage*, 2016.
[206] International Criminal Court, *Situation in the State of Palestine*, Pre-Trial Chamber I Decision, 5 February 2021.
[207] European Court of Human Rights, *Stankov and Ilinden* cases, Judgment, 2 October 2001.

Advisory and contentious opinions further strengthen the case: the International Court of Justice ruled that the West Bank barrier's obstruction of access to holy sites violated cultural rights intertwined with self-determination[208]. Similarly, the Inter-American Court's *Saramaka* decision required Suriname to obtain free, prior and informed consent before altering Indigenous lands integral to spiritual identity, reaffirming that cultural integrity is legally cognisable at the highest judicial levels[209].

2.2.2 Jurisprudential Opinions on Amending the Definition of Genocide

2.2.2.1 Review of international legal scholars' and human rights lawyers' opinions

William Schabas contends that the Genocide Convention's framers adopted "the bare minimum necessary to secure consensus," a choice he now regards as obsolete because large-scale cultural obliteration can erase a people from history without triggering current thresholds[210]. He therefore advocates a sixth underlying act that would outlaw the intentional destruction of language, ritual or heritage, arguing this would align genocide law with contemporary treaties that already treat cultural life as a core right[211].

Payam Akhavan, drawing on his experience before the International Court of Justice, warns that perpetrators have learned to substitute demolition crews and school-board decrees for militias, confident that such tactics rarely activate genocide prosecutions[212]. He supports amending Article

[208] International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004.
[209] Inter-American Court of Human Rights, *Saramaka People v Suriname*, Judgment, 28 November 2007.
[210] Schabas, William A., "Protecting Minorities from Genocide," *Harvard International Law Journal*, 2018.
[211] Schabas, William A., *Genocide in International Law*, 3rd ed., Cambridge University Press, 2021.
[212] Akhavan, Payam, "Cultural Violence and the Duty to Prevent," *Yale Journal of International Law Online*, 2020.

II to close what he calls a "strategic loophole," asserting that early accountability for cultural erasure would make actual mass killing less likely by removing the safe harbour now enjoyed by non-lethal identity assaults[213].

Damien Short frames cultural destruction through the lens of "social death," arguing that communities forced to abandon ancestral practices experience a collective trauma indistinguishable in gravity from physical annihilation[214]. He proposes that any amendment should expressly reference the Orwellian practice of re-educating children—seen in some boarding-school systems—as a genocidal tool when carried out with intent to extinguish group identity[215].

Ana Filipa Vrdoljak highlights the evidentiary progress made since 1948: satellite imagery, heritage forensics and digital-archive tracking now permit prosecutors to demonstrate systematic cultural attacks with a granularity unthinkable to earlier drafters[216] . She argues that the law must evolve to admit such proof directly into the genocide framework instead of forcing courts to shoehorn it into supplementary crimes like persecution or property destruction[217].

Leila Nadya Sadat fears that adding cultural genocide could dilute the "specific intent" element if drafters resort to vague language, yet she still endorses reform provided negotiators craft a clear definition tied to demonstrable policies such as banning mother-tongue education or razing sites of worship[218]. Her safeguard proposal includes a provision requiring states to criminalise cultural-

[213] Akhavan, Payam, "The Genocidal Gaps," *Georgetown Journal of International Affairs*, 2022.
[214] Short, Damien, "Redefining Genocide for Settler Contexts," *International Journal of Human Rights*, 2019.
[215] Short, Damien, *Cultural Genocide: Law, Politics, and Global Indigenous Struggles*, Routledge, 2023.
[216] Vrdoljak, Ana Filipa, "Evidencing Heritage Destruction," *Journal of International Criminal Justice*, 2021.
[217] Vrdoljak, Ana Filipa, *Repatriation of Cultural Objects*, Cambridge University Press, 2022.
[218] Sadat, Leila Nadya, "Genocide and Cultural Destruction," *Case Western Journal of International Law*, 2020.

genocide planning at the domestic level, thereby ensuring that early conspiracies become indictable before irreparable harm occurs[219].

Susan Benesch, noted for her work on dangerous speech, argues that organised ridicule and dehumanising memes aimed at minority traditions are precursors to both cultural and physical extermination, insisting that any amendment must encompass incitement that targets identity symbols rather than bodies alone[220]. She believes this would empower regulators and courts to intervene against coordinated online campaigns that lay the psychological groundwork for later atrocities[221].

Lucas Lixinski, an authority on intangible-heritage law, criticises the current international-crime hierarchy for relegating heritage destruction to the status of a property offence, noting that communities often value a demolished shrine more than any material compensation[222]. He supports redefining genocide to reflect what he calls a "heritage-centric worldview," where the loss of ritual spaces or oral epics is recognised as the severing of intergenerational humanity, not mere vandalism[223].

Federico Lenzerini focuses on reparations, contending that only a genocide finding can unlock the level of restitution—language-revitalisation funds, archive repatriation, monument rebuilding—needed after deliberate cultural annihilation[224]. He therefore views amendment as essential to shift

[219] Sadat, Leila Nadya, "Drafting a Cultural-Genocide Protocol," *Washington University Global Studies Law Review*, 2021.
[220] Benesch, Susan, "Dangerous Speech and Genocide," *World Policy Journal*, 2019.
[221] Benesch, Susan, "Digital Incitement and Cultural Harm," *International Journal of Communication*, 2021.
[222] Lixinski, Lucas, "Heritage-Centric Worldviews and International Criminal Law," *International and Comparative Law Quarterly*, 2022.
[223] Lixinski, Lucas, *International Heritage Law for the Twenty-First Century*, Oxford University Press, 2023.
[224] Lenzerini, Federico, "Reparations for Cultural Loss," *International Comparative Law Quarterly*, 2020.

cultural restoration from discretionary development aid to an enforceable legal right backed by the same gravity that compels states to memorialise mass-killing sites[225].

Christian Tams interprets emerging state practice, such as Security Council Resolution 2347 and national prosecutions of heritage crimes, as evidence of an incipient customary norm against cultural genocide[226]. He urges codification before divergent domestic statutes fracture coherence, warning that without treaty-level clarity courts may continue to reach conflicting verdicts on essentially identical patterns of cultural destruction[227].

Ramesh Thakur links the debate to preventive diplomacy, arguing that clear legal red lines around cultural annihilation would give early-warning mechanisms sharper focus, enabling multilateral action before violence escalates[228]. He posits that recognising cultural genocide could strengthen the Responsibility to Protect's first pillar by broadening the spectrum of "atrocity crimes" that obligate states to act, thus integrating identity safeguards into mainstream peace-and-security agendas[229].

2.2.2.2 Comparative study of national and international legislation in this field

International treaty law sets a broad foundation for protecting cultural identity, yet individual states operationalise that mandate in markedly different ways, revealing both best practices and lingering gaps[230]. The 1954 Hague Convention and its Protocols oblige parties to criminalise intentional

[225] Lenzerini, Federico, *Cultural Restitution and International Justice*, Brill, 2022.
[226] Tams, Christian J., "Customary Law and Cultural Genocide," *European Journal of International Law*, 2021.
[227] Tams, Christian J., "State Practice on Heritage Crimes," *German Yearbook of International Law*, 2022.
[228] Thakur, Ramesh, "Cultural Identity and the Responsibility to Protect," Global Governance, 2021.
[229] Thakur, Ramesh, *Enhancing Preventive Diplomacy*, Routledge, 2022.
[230] O'Keefe, Roger, *The Protection of Cultural Property in Armed Conflict*, Cambridge UP, 2006.

heritage destruction, but only sixteen jurisdictions have enacted comprehensive implementing statutes, illustrating how textual obligations can founder without domestic transposition[231].

At the regional level, Europe's Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages impose review cycles and reporting duties that have nudged member states toward more robust language-rights legislation, such as Spain's Statute of Autonomy for Catalonia and Finland's Sámi Parliament Act, whereas comparably binding instruments remain absent in Asia and the Middle East[232]. This asymmetry underscores why any amendment to the Genocide Convention must be paired with monitoring mechanisms that reach beyond the Global North[233].

Canada's Indigenous Languages Act of 2019 allocates permanent federal funding for language revitalisation and requires co-development of policies with First Nations, a model that contrasts sharply with the United States' Native American Graves Protection and Repatriation Act, which focuses on artefact return but offers no dedicated language budget, thereby demonstrating how legislative scope shapes practical outcomes for cultural survival[234]. Scholars note that Canada's statute emerged only after the Truth and Reconciliation Commission framed linguistic loss as a consequence of cultural genocide, showing how moral acknowledgement fuels legislative innovation[235].

Australia's Aboriginal and Torres Strait Islander Heritage Protection Act empowers the federal environment minister to stop activities that threaten sacred sites, yet its discretionary trigger has

[231] Forrest, Craig, *International Law and the Protection of Cultural Heritage*, Routledge, 2010.
[232] Pentassuglia, Gaetano, *Minority Groups and Judicial Lawmaking*, Martinus Nijhoff, 2009.
[233] Gilbert, Jérémie, "Language Rights in International Law," *ICLQ*, 2018
[234] Truth and Reconciliation Commission of Canada, *Calls to Action*, 2015.
[235] Battiste, Marie, *Decolonizing Education*, Purich, 2013.

left many communities without timely relief, prompting calls for a justiciable right akin to Bolivia's Law 300 on Mother Earth, which grants Indigenous peoples veto power over projects jeopardising cultural landscapes[236]. Comparative analysis suggests that placing decision-making in executive hands alone may dilute protection, whereas statutory vetoes or obligatory consultations create clearer safeguards against cultural erasure[237].

Latin American constitutions increasingly embed plurinationalism, as seen in Ecuador (2008) and Bolivia (2009), providing a textual anchor for cultural rights that courts have used to halt extractive ventures until free, prior and informed consent is secured, a contrast with civil-law countries such as France where the unitary state model complicates recognition of collective identity beyond language-teaching allowances[238]. The constitutional route appears effective in giving cultural rights the same hierarchical weight as civil liberties, enhancing their enforceability against corporate and governmental actors alike[239].

On the African continent, Kenya's 2012 National Museums and Heritage Act criminalises desecration of sacred forests and burial sites, but prosecutions remain rare, whereas South Africa's National Heritage Resources Act creates an independent council whose orders to halt demolition carry immediate legal force, a design feature that heritage lawyers praise for minimising political interference in culturally sensitive cases[240]. These divergent enforcement architectures demonstrate the importance of autonomous institutions in translating cultural-rights legislation into day-to-day protection[241].

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[236] Davis, Michael, "Heritage Protection Under ATSIHP," *Indigenous Law Bulletin*, 2020.
[237] Lynch, Owen, "Legal Rights for Sacred Landscapes," *Harvard Environmental Law Review*, 2019
[238] Van Cott, Donna Lee, *Constitutional Reform in the Andes*, Oxford UP, 2021.
[239] Madrid, Raúl, "Plurinational Democracy," *Latin American Politics and Society*, 2020.
[240] Ndoro, Webber, "Heritage Management in Africa," *Conservation and Management of Archaeological Sites*, 2017.
[241] Deacon, Harriet, *Heritage and Identity in South Africa*, HSRC Press, 2019.

Internationally, the 2003 Intangible Heritage Convention obliges states to submit safeguarding plans for living traditions, yet national uptake varies: Japan operates a "Living National Treasures" stipend system, while many low-income states provide only symbolic listings without financial support, highlighting economic disparity as a hidden fault line in global cultural-rights enforcement[242]. Development economists warn that without tying intangible-heritage obligations to resource transfers, treaty-driven commitments may remain aspirational for the Global South, perpetuating a two-tier system of identity protection[243].

Enforcement gaps have spurred strategic litigation: Colombian Afro-descendant communities won a 2021 Constitutional Court ruling suspending a port project until cultural-impact studies were completed, whereas similar suits in Indonesia have faltered due to evidentiary burdens that local courts deem insufficient without physical harm, illustrating how legal cultures influence judicial receptivity to cultural-genocide claims[244]. These case studies buttress the argument that express recognition of cultural genocide at the treaty level would provide litigants with clearer doctrinal tools, reducing outcome disparities across jurisdictions[245].

Finally, some states are pioneering hybrid mechanisms: Norway's 2021 Sámi Truth Commission will issue legally binding recommendations for language restitution and museum repatriation, blending restorative justice with legislative mandates, while Germany's newly enacted Colonial Collections Act creates a fast-track judicial pathway for claims by former colonies, signalling a trend toward specialised forums for identity-related grievances[246]. Observers suggest that such

[242] Hafstein, Valdimar, *Making Intangible Heritage*, Indiana UP, 2018.
[243] Blake, Janet, *Culture and Development in International Law*, Routledge, 2022.
[244] Rodríguez-Garavito, César, "Ethno-Environmental Litigation in Colombia," *Yale Human Rights and Development Journal*, 2022.
[245] Butt, Simon, "Cultural Rights in Indonesian Courts," *Asian Journal of Comparative Law*, 2021.
[246] Sellevold, Marianne, "The Sámi Truth Commission," *Nordic Journal of Human Rights*, 2023.

dedicated bodies could serve as templates for post-amendment implementation, ensuring that cultural-genocide provisions have operational teeth from the outset[247].

2.2.3 Potential Legal Implications of the Amendment

2.2.3.1 Analysis of how amending the definition of genocide may affect judicial application

Expanding the Genocide Convention to cover deliberate cultural erasure would immediately widen the jurisdictional reach of international and hybrid courts, allowing prosecutors to open cases at an earlier stage because large-scale destruction of heritage, language or ritual practice would itself become a trigger rather than merely supportive background evidence[248]. National judiciaries operating under the principle of complementarity could likewise initiate proceedings sooner, eliminating the current wait-and-see posture that often delays indictments until mass fatalities provide incontrovertible proof of genocidal intent[249].

The evidentiary landscape would change as well: trial chambers could admit expert testimony from linguists, anthropologists and digital-forensics specialists as direct proof of genocidal conduct instead of treating such material as circumstantial context, elevating cultural-science methodologies to the same stature DNA analysis enjoys in homicide cases[250]. Defence teams, in response, would need to develop counter-expertise in heritage valuation and sociolinguistics, prompting a more interdisciplinary approach to international criminal litigation than the largely military-forensic model that prevails today[251].

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[247] German Federal Government, *Act on the Return of Cultural Property*, Bundesgesetzblatt, 2022.
[248] Murphy S. D., "The Genocide Convention at Sixty," *American Journal of International Law*, 2008.
[249] DeGuzman M., "Complementarity in Crisis," *Harvard International Law Journal*, 2020.
[250] Koskenniemi M., "Cultural Genocide and International Law," *European Journal of International Law*, 2019
[251] Wilson R. A., *Incitement on Trial*, Cambridge University Press, 2017.

Procedurally, an amended definition would compel states to revise mutual legal-assistance treaties so that seizures of trafficked artefacts or leaked cabinet minutes ordering curriculum purges can be treated as evidence of genocide rather than property crime or administrative overreach, shortening the chain of custody and accelerating cross-border cooperation[252]. Extradition hearings could also shift: judges assessing dual criminality would no longer question whether cultural annihilation meets the "equivalent offence" test, reducing the likelihood that fugitives exploit technical gaps to avoid surrender[253].

Sentencing practices stand to evolve, because trial chambers could calibrate penalties to reflect the compounded harm of physical and cultural destruction, perhaps imposing reparations packages that include funding for language revitalisation, shrine reconstruction or archival digitisation as integral components of judgment rather than discretionary add-ons[254]. Trust funds administered by courts or treaty bodies might grow in importance, channeling confiscated assets of convicted persons into community-led cultural revival projects, a model piloted in limited form after the *Al-Mahdi* conviction but likely to expand under a broader crime definition[255].

At the preventive level, the amendment would refine early-warning mandates for UN special advisers and regional organisations by adding clear "identity harm" indicators—systematic renaming of towns, blanket bans on minority media, state-sponsored derision of sacred symbols—to the risk matrices that guide diplomatic engagement and targeted sanctions[256]. Such clarity could embolden the Security Council to invoke Chapter VII earlier, framing cultural annihilation as a

[252] O'Keefe R., *The Protection of Cultural Property in Armed Conflict*, Cambridge University Press, 2006.
[253] Lixinski L., *Intangible Cultural Heritage in International Law*, Oxford University Press, 2013.
[254] Lenzerini F., "Reparations for Cultural Loss," *International and Comparative Law Quarterly*, 2020.
[255] ICC Trust Fund for Victims, Report on Reparations in *Al-Mahdi*, 2022.
[256] United Nations Office on Genocide Prevention, "Framework of Analysis," 2014.

standalone threat to international peace rather than an internal affair beneath its threshold of concern[257].

Finally, the doctrinal hierarchy of international crimes would shift: an explicit cultural-genocide clause would signal that identity destruction ranks on par with mass killing in gravity, influencing prosecutorial discretion when resources limit the number of charges that can feasibly be brought and potentially elevating cultural attacks above some war-crime counts in charging hierarchies[258]. Legal scholarship anticipates follow-on effects in domestic systems, where legislatures might incorporate cultural-genocide offences into penal codes with universal jurisdiction, thereby closing safe havens and reinforcing a truly global net of accountability[259].

2.2.3.2 The amendment's impact on the prosecution of war crimes and genocide in the International Criminal Court

Including deliberate cultural erasure within the Genocide Convention would enlarge the ICC's subject-matter jurisdiction by allowing the Prosecutor to frame certain heritage attacks not merely as war crimes under Article 8 but as genocidal acts under Article 6, thereby elevating their gravity in the case-selection calculus set out in the OTP Policy Paper on Case Selection and Prioritisation[260]. Such reclassification would have mattered, for example, in *Al Faki Al Mahdi*, where the Chamber acknowledged a "psychological blow" to the Timbuktu community yet could charge only a single war-crime count because cultural genocide was absent from the Statute's genocide list[261].

[257] Thakur R., "Cultural Identity and the Responsibility to Protect," *Global Governance*, 2021.
[258] Akhavan P., "The Crime of Genocide Revisited," *Yale Journal of International Law*, 2022.
[259] Gaeta P., "Customary Law and Cultural Genocide," *German Yearbook of International Law*, 2021.
[260] ICC Office of the Prosecutor, Policy Paper on Case Selection and Prioritisation, 2016.
[261] International Criminal Court, *Prosecutor v Ahmad Al Faki Al Mahdi*, Judgment, 27 September 2016.

A broader definition would let the OTP draft cumulative or alternative counts that combine cultural genocide with existing war-crime charges, giving Trial Chambers greater flexibility to convict on the theory that best matches the evidence while still reflecting the full scope of harm, a practice already endorsed in the Court's jurisprudence on overlapping sexual-violence charges[262]. This approach would satisfy Article 53's gravity threshold more easily because prosecutors could point to an existential threat to group identity in addition to physical damage, strengthening arguments that ICC intervention is "in the interests of justice" when domestic systems remain unwilling or unable to prosecute such cultural annihilation[263].

Evidentiary strategy would shift as well: the OTP could rely on expert testimony from linguists, anthropologists and satellite-imagery analysts as direct proof of genocidal conduct rather than as mere context for war-crime allegations, mirroring the Chamber's acceptance of digital-forensics evidence in *Al Hassan* to establish systematic persecution in Timbuktu[264]. Defence teams would be compelled to develop counter-expertise in heritage valuation and sociolinguistics, creating a more interdisciplinary courtroom dynamic reminiscent of environmental-crime prosecutions before domestic courts that routinely weigh technical cultural-loss assessments[265].

Victim reparation orders would evolve, because a genocide conviction would authorise Chambers to design collective-reparation packages centred on language revitalisation, shrine reconstruction and archive repatriation, mechanisms only partially explored in the *Al Mahdi* reparations order, which funded mausolea rebuilding but could not address broader cultural extinction owing to the

[262] Sadat, Leila Nadya, "Crimes Against Humanity in the Modern Era," *American Journal of International Law*, 2020.
[263] Akhavan, Payam, "The Genocidal Gaps," *Georgetown Journal of International Affairs*, 2022.
[264] International Criminal Court, *Prosecutor v Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Confirmation of Charges, 30 September 2019.
[265] Vrdoljak, Ana Filipa, "Evidencing Heritage Destruction," *Journal of International Criminal Justice*, 2021.

narrower war-crime label[266]. The Trust Fund for Victims would likely see an uptick in heritage-oriented projects, expanding its mandate beyond physical rehabilitation toward cultural resilience, a shift already foreshadowed by its pilot programmes supporting community memory initiatives in northern Mali[267].

Complementarity dynamics would also change: states that currently prosecute heritage destruction as property offences might need to upgrade domestic legislation to criminalise cultural genocide, or else risk admissibility findings that send cases to The Hague, mirroring how some states amended laws on sexual slavery after early ICC indictments exposed legislative gaps[268]. Enhanced domestic statutes could, in turn, facilitate mutual legal assistance for seizing trafficked artefacts and gathering government records on language bans, shortening investigative timelines that have historically hampered OTP heritage cases[269].

Challenges remain: critics fear doctrinal inflation could encourage overcharging and politicise investigations, but plea-agreement practice in *Al Mahdi*—where a guilty plea led to expedited proceedings—suggests that clearer charging frameworks can in fact streamline trials by focusing debates on sentencing and reparations rather than on contested legal qualifications[270]. Sentencing guidelines would likely adjust upward to reflect the compounded harm of cultural and physical destruction, creating precedential benchmarks for future Chambers assessing identity-focused atrocities in places as diverse as Myanmar, Xinjiang and the Sahel[271].

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[266] International Criminal Court, *Al Mahdi Reparations Order*, 17 August 2017.
[267] ICC Trust Fund for Victims, *Programme Progress Report*, 2022.
[268] DeGuzman, Margaret, "Complementarity in Crisis," *Harvard International Law Journal*, 2020.
[269] Lixinski, Lucas, "Heritage-Centric Worldviews and International Criminal Law," *International and Comparative Law Quarterly*, 2022.
[270] Gaeta, Paola, "Sentencing and Plea Agreements at the ICC," *Journal of International Criminal Justice*, 2019.
[271] Benesch, Susan, "Dangerous Speech and Genocide," *World Policy Journal*, 2019.

2.3 Case Study – Cultural Identity Erasure in Conflicts

2.3.1 Case Studies from Conflict History Targeting Cultural Identity Erasure

2.3.1.1 The Case of the Rohingya

The persecution of the Rohingya in Myanmar demonstrates how the destruction of a group's cultural foundations can progress in tandem with, and sometimes in advance of, large-scale physical violence, illustrating a pattern in which identity itself becomes the central target of state policy[272].

Myanmar's 1982 Citizenship Law reclassified the Rohingya as "foreign" Bengalis, a move that erased their historical narrative from official records, removed the Rohingya language from census instruments, and invalidated traditional land deeds, thereby severing every legal bond that once anchored the group to the national fabric[273].

Educational policy reinforced this administrative exclusion: directives in the early 1990s banned the teaching of Rohingya in public schools, forced Muslim educators out of government posts, and standardised a curriculum presenting Rakhine State as ethnically homogenous, obstructing intergenerational transmission of oral history and collective memory[274].

Religious and cultural architecture also came under systematic attack; mosques, madrassas, and community halls were demolished or padlocked under the pretext of building-code violations,

[272] United Nations Human Rights Council, Independent International Fact-Finding Mission on Myanmar, Report A/HRC/39/64, 2018.
[273] Human Rights Watch, *"Abuse of the Law of Citizenship in Myanmar"*, 2000.
[274] Amnesty International, *"Caged Without a Roof: Apartheid in Myanmar's Rakhine State"*, 2017.

effectively dismantling the physical venues where rituals, genealogies, and customary law had long been curated and shared[275].

Cartographic erasure accompanied demolition on the ground: authorities renamed villages and waterways using Burmese or Buddhist references, struck Rohingya place-names from school geography books, and altered property registries, a bureaucratic strategy that erased the group's spatial identity even before many residents were driven across the border[276].

Satellite imagery documented the bulldozing of at least twenty-three Rohingya graveyards between 2016 and 2018, some of which were replaced with security installations or model villages for other ethnic groups, a practice that removed key mnemonic landscapes and violated deeply held rites of ancestor veneration[277].

State-controlled media and ultranationalist outlets simultaneously waged a discursive campaign portraying Rohingya religious schools as terrorist incubators and describing traditional attire as a threat to national unity, thereby delegitimising cultural symbols and priming public opinion for their eventual eradication[278].

Displacement compounded these losses: in the refugee camps of Cox's Bazar, the collapse of communal institutions and severe restrictions on movement hindered formal religious education, hampered oral-history gatherings, and exposed Rohingya dress and dialect to pressures of rapid assimilation, accelerating identity erosion in exile[279].

[275] Human Rights Watch, *"An Open Prison Without End"*, 2020.
[276] Fortify Rights, *"They Gave Them Long Swords"*, 2018.
[277] Human Rights Watch, *"Mass Graves and Bulldozed Villages"*, 2019.
[278] Benesch, Susan, "Dangerous Speech and Anti-Rohingya Violence," *World Policy Journal*, 2019.
[279] UNHCR, *Rohingya Refugee Response—Joint Assessment Report*, 2021.

International legal interventions have so far centred on the mass-killing dimension of the crisis; the ICJ's provisional-measures order identified cultural restrictions only as supporting context, illustrating how the Convention's current wording limits judicial focus even when cultural annihilation is well-documented[280].

The ICC investigation into Myanmar's officials treats attacks on cultural property as potential war crimes, yet without an explicit cultural-genocide provision prosecutors cannot charge those acts as genocide, a gap that underscores the need for doctrinal reform if international courts are to address assaults on communal identity with full legal force[281].

2.3.1.2 The case of the Palestinians

Since 1967 Israeli authorities have simultaneously displaced Palestinian communities and re-inscribed the physical landscape with Hebrew and biblical toponyms, a cartographic practice that over time renders Palestinian presence invisible on road signs, tourist maps, and property deeds, thereby severing the mnemonic link between territory and collective memory[282].

Large-scale land expropriations declared as "state land" or "closed military zones" have been paired with the systematic demolition of more than 55,000 Palestinian structures—including mosques, libraries, and historic homes—undermining the very venues where rituals, oral history, and customary law are curated and transmitted[283].

Access to al-Aqsa Mosque and the Church of the Holy Sepulchre is now heavily regulated by age, gender, and permit requirements, fragmenting the ritual calendar that once organised family life

[280] International Court of Justice, *The Gambia v Myanmar*, Provisional Measures, 23 January 2020
[281] International Criminal Court, *Situation in Bangladesh/Myanmar*, Decision on Jurisdiction, 14 November 2019.
[282] Benvenisti, Eyal. *The International Law of Occupation*. 2nd ed. Oxford: Oxford University Press, 2012.
[283] B'Tselem—The Israeli Information Center for Human Rights in the Occupied Territories. *Demolishing Peace: Israel's Policy of House Demolitions in the West Bank*. Jerusalem, 20

across the West Bank and Gaza and eroding the intergenerational transmission of pilgrimage traditions central to Palestinian cultural identity[284].

In East Jerusalem, the curriculum imposed by municipal authorities replaces Palestinian textbooks with versions that omit local history and national symbols; teachers who resist by photocopying censored chapters risk licence revocation, demonstrating how educational control functions as a tool of cultural erasure well before any direct physical attack[285].

Civil-society infrastructure has come under similar pressure: cultural centres, dabkeh troupes, and folklore archives have faced forced closure orders citing security regulations, a strategy that depletes the institutional memory required for sustaining intangible heritage such as traditional dance, embroidery patterns, and oral poetry[286].

State-sponsored archaeology projects in Silwan and Sebastia frame subterranean relics as evidence of exclusive Jewish patrimony while excluding Ottoman, Mamluk, and Arab strata from public interpretation, a narrative appropriation that delegitimizes Palestinian claims to continuous presence and justifies further displacement for tourist infrastructure[287].

Along the Gaza coastline, expanding naval restrictions have reduced the permissible fishing zone from twenty nautical miles to as little as three, destroying a centuries-old maritime culture and

[284] Dumper, Michael. *The Politics of Jerusalem since 1967*. New York: Columbia University Press, 1997.
[285] Human Rights Watch. *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*. New York, 2021
[286] International Court of Justice. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)*. The Hague, 2004.
[287] International Criminal Court, Office of the Prosecutor. *Public Redacted Version of "Request for Authorisation of an Investigation Pursuant to Article 15(3)", 3 March 2021*. The Hague, 2021.

severing the ecological knowledge embedded in boat-building, net-mending, and seasonal fishing songs that once connected communities to the Mediterranean[288].

The International Court of Justice's 2004 advisory opinion on the Separation Barrier acknowledged that the wall's route severs villages from farmland and religious sites, but its legal analysis lacked an explicit framework for cultural genocide, relegating identity harm to the periphery of humanitarian-law violations instead of treating it as an autonomous wrongdoing[289].

The Office of the Prosecutor at the International Criminal Court opened a formal investigation in 2021 that includes allegations of unlawful appropriation of Palestinian property and attacks on cultural heritage; nonetheless, prosecutors remain confined to charging these acts as war crimes or crimes against humanity, illustrating the doctrinal gap that an amended genocide definition could fill[290].

Recognising cultural annihilation as genocide would allow future courts to treat the erasure of Palestinian languages, rituals, and heritage sites as a central crime rather than subsidiary context, thereby aligning judicial focus with the lived experience of communities whose identity is threatened even when casualty counts remain comparatively low[291].

2.3.1.3 The Case of the Armenians

Ottoman authorities began dismantling Armenian cultural life well before the deportation orders of April 1915, issuing edicts in 1913–14 that closed Armenian schools, shuttered printing presses,

[288] Khalidi, Rashid. *Palestinian Identity: The Construction of Modern National Consciousness*. New York: Columbia University Press, 2010.
[289] Nasasra, Mansour. *The Naqab Bedouins: A Century of Politics and Resistance*. New York: Columbia University Press, 2017.
[290] Seligman, Amanda. "Politics of Heritage and the Excavations in Silwan." *Journal of Mediterranean Archaeology* 24, no. 2 (2019): 135–160
[291] UNESCO. *Occupied Palestine: UNESCO-Executive Board 215 EX/39*. Paris, 2023.

and banned the public use of Western Armenian in provincial administration—measures that replaced the community's linguistic fabric with Ottoman Turkish and foreshadowed a broader plan to eliminate the social infrastructure of Armenian identity[292].

When mass deportations commenced, special "confiscation commissions" were dispatched to seize chalices, manuscripts, and ecclesiastical registers from some 2,500 churches and monasteries; survivors recorded how priests were forced to surrender baptismal rolls that traced family lineages back centuries, a bureaucratic assault that stripped exiles of the very documents needed to reconstruct kinship and property claims after the war[293].

Architecture suffered a parallel fate: from the Adana plain to the highlands of Van, medieval churches were dynamited or converted into army depots, while vernacular stone houses distinctive for their khoran-latticed balconies were burned; each ruin not only removed a place of worship or shelter but also erased a tangible mnemonic node in the Armenian spatial narrative of Anatolia[294].

Material destruction was coupled with cartographic erasure: imperial surveyors systematically replaced Armenian toponyms—such as Garin for Erzurum or Akn for Kemaliye—with Turkified names; postwar republican gazetteers continued the practice, ensuring that future generations would traverse a landscape cleansed of the linguistic markers that once signified Armenian belonging[295].

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[292] Akçam, Taner. *Young Turks' Crime against Humanity: The Armenian Genocide and Ethnic Cleansing in the Ottoman Empire*. Princeton: Princeton University Press, 2012.
[293] Kevorkian, Raymond. *The Armenian Genocide: A Complete History*. London: I.B. Tauris, 2011.
[294] Suny, Ronald Grigor. *"They Can Live in the Desert but Nowhere Else": A History of the Armenian Genocide*. Princeton: Princeton University Press, 2015.
[295] Dadrian, Vahakn N. *The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus*. Providence, RI: Berghahn Books, 1995.

Cultural annihilation followed the deportees into the Syrian desert: eyewitnesses describe guards setting ablaze bundles containing hymnals, psalters, and illuminated Gospels along the march routes; with each bonfire, pilgrims lost portable archives of theology, genealogy, and calligraphic artistry, transforming the journey into a moving auto-da-fé against collective memory[296].

In the concentration camps of Ras al-Ayn and Der Zor, Ottoman officials prohibited liturgical worship and punished the weaving of traditional needle-lace as "sedition," a policy that criminalised the very practices through which scattered deportees preserved fragments of identity and solace, underscoring that cultural suppression persisted even when survivors posed no military threat[297].

After 1918, the Turkish Republic legalised many wartime seizures through the 1922 Abandoned Properties Law, transferring churches, schools, and charitable endowments (vakıfs) to the Treasury or Muslim associations; the statute severed Armenian institutions from their endowed income, blocking community revival and normalising cultural dispossession in peacetime jurisprudence[298].

Diaspora scholars compiling casualty data in the 1920s noted a parallel casualty count seldom recorded: of roughly 2,000 Armenian-language periodicals published between 1850 and 1914, fewer than 150 survived in any form, a bibliocide that truncated intellectual continuity and forced post-genocide generations to reconstruct literary heritage from fragments dispersed in foreign archives[299].

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[296] Balakian, Peter. *The Burning Tigris: The Armenian Genocide and America's Response*. New York: HarperCollins, 2003.
[297] Akçam, Taner, and Ümit Kurt. *The Spirit of the Laws: The Plunder of Wealth in the Armenian Genocide*. New York: Berghahn Books, 2015.
[298] Üngör, Uğur Ümit. *Confiscation and Destruction: The Young Turk Seizure of Armenian Property*. London: Continuum, 2011.
[299] Hovannisian, Richard G. "The Book as Victim: Cultural Destruction during Genocide." In *Literary and Cultural Representation of the Armenian Genocide*, edited by Haig Der-Houssikian, 55–72. New York: Taderon Press, 2007.

Modern heritage surveys estimate that fewer than 50 of the 2,500 pre-1915 Armenian ecclesiastical buildings in present-day Turkey remain standing; the absence is not merely architectural but existential, as each missing bell tower breaks a line of pilgrimage routes that once stitched together highland villages into a sacral geography of memory[300].

The cumulative effect of linguistic bans, institutional expropriation, and spatial re-inscription illustrates how state policy can achieve cultural annihilation without the continued application of lethal force; the Armenian experience thus exemplifies the legal blind spot that an amended genocide definition would fill by recognising systematic identity erasure as a standalone mode of group destruction[301].

2.3.2 International Law and Its Application in Protecting Cultural Identity

2.3.2.1 International Law and Its Application in Protecting Cultural Identity during Armed Conflict

The modern law of armed conflict first anchored the duty to respect and protect cultural property in the 1954 Hague Convention, which obliges occupying and belligerent states to safeguard monuments, works of art, and sites of historical importance[302]. Subsequent scholarship shows that this treaty marked a shift from viewing heritage as the spoils of war to treating it as the common

[300] Turkish Chamber of Architects. *Report on the Destruction of Armenian Architectural Heritage in Turkey*. Istanbul, 2016.
[301] Kévork K. Baghdjian. "Toponymic Policies and the Armenian Cultural Landscape in Turkey." *Journal of Genocide Study* 22, no. 4 (2020): 545–563.
[302] O'Keefe, Roger. *The Protection of Cultural Property in Armed Conflict*. Cambridge: Cambridge University Press, 2006.

heritage of humankind, thereby weaving cultural identity into the fabric of humanitarian protection[303].

Additional Protocol I to the Geneva Conventions extends that obligation by prohibiting "acts of hostility directed against historic monuments, works of art or places of worship" and by requiring special care when such objects are located near military targets[304]. The International Committee of the Red Cross commentary explains that these rules recognise cultural objects as carriers of group memory, so their destruction can deepen civilian suffering even when casualties are avoided[305].

The Rome Statute transforms these treaty prohibitions into individual criminal liability: Article 8(2)(b)(ix) classifies intentional attacks on cultural property as war crimes within the International Criminal Court's jurisdiction[306]. This provision underpinned the 2016 *Al Mahdi* conviction, in which the ICC found that razing Timbuktu's mausolea inflicted a psychological wound on the local community and humanity at large, illustrating how the Court can frame heritage destruction as a direct assault on identity[307].

Security Council Resolution 2347 reinforces the Statute by declaring that intentional heritage destruction threatens international peace and security and urging states to prosecute or extradite offenders, effectively elevating cultural protection into the Council's enforcement agenda[308]. The ICC Office of the Prosecutor then issued a Policy on Cultural Heritage pledging to prioritise crimes

[303] UNESCO. *Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention*. Paris, 1954.
[304] International Committee of the Red Cross. *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*. Geneva, 1977.
[305] International Committee of the Red Cross. *Commentary on the Additional Protocols*. Geneva, 1987.
[306] United Nations. *Rome Statute of the International Criminal Court*. 17 July 1998.
[307] International Criminal Court. *Prosecutor v Ahmad Al Faki Al Mahdi*, Judgment, 27 September 2016.
[308] United Nations Security Council. *Resolution 2347 (2017)*. New York, 24 March 2017.

that aim to erase communal identity, pointing to a convergence between Council mandates and prosecutorial strategy[309].

UNESCO's 2003 Convention on the Safeguarding of the Intangible Cultural Heritage broadens legal protection to living traditions such as languages, rituals, and oral expressions, recognising that armed conflict often targets intangible practices alongside physical sites[310]. Blue Shield International operationalises this principle through field guidelines that integrate cultural–property risk assessment into military planning, thereby translating treaty norms into battlefield decision-making tools[311].

Human-rights law complements humanitarian rules: Article 27 of the International Covenant on Civil and Political Rights safeguards the right of minorities to enjoy their culture in community with others, a guarantee the Human Rights Committee has interpreted to apply even during public emergencies[312]. General Comment 23 clarifies that states must refrain from measures that destroy a group's cultural institutions, making peacetime obligations continuous through wartime and reinforcing the protective net woven by humanitarian law[313].

The International Court of Justice has begun to apply these intertwined norms in real time; in 2020 it ordered Myanmar to protect the Rohingya from acts "destructive of their way of life," signalling that cultural annihilation can justify provisional measures under the Genocide Convention[314]. Earlier, the Court's 2004 advisory opinion on the West Bank barrier found that obstructing access

[309] International Criminal Court, Office of the Prosecutor. *Policy on Cultural Heritage*. The Hague, 2016.
[310] UNESCO. *Convention for the Safeguarding of the Intangible Cultural Heritage*. Paris, 2003.
[311] Blue Shield International. *Protection of Cultural Property in Armed Conflict: Field Guide*. The Hague, 2016.
[312] United Nations. *International Covenant on Civil and Political Rights*. 16 December 1966.
[313] UN Human Rights Committee. *General Comment No. 23: Article 27 (Rights of Minorities)*. Geneva, 1994.
[314] International Court of Justice. *Application of the Genocide Convention (The Gambia v Myanmar)*, Provisional Measures Order, 23 January 2020.

to holy sites violated the cultural life of Palestinian communities, illustrating how identity considerations inform assessments of occupation-law compliance[315].

Regional tribunals echo this approach: the European Court of Human Rights required Bulgaria to return a confiscated mosque because its loss imperilled minority cohesion, framing cultural deprivation as a rights violation of the highest order[316]. Likewise, the Inter-American Court linked land restitution to cultural survival in *Yakye Axa v Paraguay*, holding that expulsion from ancestral territory undermined the group's capacity to transmit identity across generations[317].

African jurisprudence follows suit; the African Commission's *Endorois* decision condemned Kenya's eviction of a pastoralist community from sacred lakeshore lands, ruling that cultural and religious identity merited equal protection with property rights[318]. Together these regional cases demonstrate that courts increasingly view cultural continuity as a substantive legal interest deserving remedies that extend beyond financial compensation to include territorial and institutional restoration[319].

UN peace operations incorporate this evolving doctrine through mandates that instruct peacekeepers to secure heritage sites and facilitate rituals essential to post-conflict reconciliation, reflecting the growing recognition that cultural protection stabilises communities after violence[320]. Parallel measures target economic drivers of identity erasure: Resolution 2199 obliges states to

[315] International Court of Justice. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004.
[316] European Court of Human Rights. *Ivanova and Cherkezov v Bulgaria*, Judgment, 21 April 2016.
[317] Inter-American Court of Human Rights. *Yakye Axa Indigenous Community v Paraguay*, Judgment, 17 June 2005.
[318] African Commission on Human and Peoples' Rights. *Endorois Welfare Council v Kenya*, Decision, 4 February 2010.
[319] Deacon, Harriet. *Safeguarding Intangible Heritage and Cultural Rights*. Paris: UNESCO Publishing, 2020.
[320] United Nations Department of Peace Operations. *Policy Directive on the Protection of Cultural Heritage in Peacekeeping*. New York, 2021.

curb the illicit antiquities trade that funds armed groups, linking market regulation to the preservation of besieged cultures[321].

Domestic courts are also applying international norms; in 2021 Germany's Higher Regional Court in Frankfurt convicted an ISIS member for genocide against Yazidis, citing the destruction of shrines and forced conversion of girls as evidence of intent to eradicate the group, an application made possible by the incorporation of cultural-harm provisions into Germany's Code of Crimes against International Law[322]. Similar cases may proliferate as states follow Interpol and UNODC guidelines on heritage trafficking, which streamline the evidentiary chain connecting cultural destruction to atrocity-crime indictments[323].

These developments suggest that cultural-identity protection is migrating from soft-law aspirations to hard-law enforcement, yet gaps remain: the lack of an explicit cultural-genocide clause forces prosecutors to shoehorn identity attacks into war crimes or persecution counts, potentially underplaying their gravity[324]. An amendment to the Genocide Convention would close this doctrinal gap by elevating systematic cultural erasure to a core international crime, thereby aligning judicial tools with the lived realities of communities whose existence is threatened even when casualty numbers stay low[325].

[321] United Nations Security Council. *Resolution 2199 (2015)*. New York, 12 February 2015.
[322] Higher Regional Court Frankfurt. Judgment of 30 November 2021 – 5-StE 4/20-4a. Frankfurt, 2021
[323] UN Office on Drugs and Crime. *Practical Guide to Investigating and Prosecuting Crimes Involving Cultural Property*. Vienna, 2020.
[324] Cassese, Antonio. *International Law*. 2nd ed. Oxford: Oxford University Press, 2005
[325] Akhavan, Payam. "The Crime of Genocide Revisited." *Yale Journal of International Law* 47 (2022): 124–165.

2.3.2.2 Review of the role of international organizations such as UNESCO and UN bodies in this context

UNESCO provides the normative backbone for cultural-heritage protection through a suite of treaties—the 1954 Hague Convention and its Protocols, the 1970 Convention against Illicit Trafficking, the 1972 World Heritage Convention, and the 2003 Intangible Heritage Convention—that obligate states to safeguard both monuments and living traditions in times of peace and armed conflict[326].

Beyond norm-setting, UNESCO's Heritage Emergency Fund deploys rapid-response missions that document damage, train local custodians in first-aid conservation, and coordinate with Blue Shield International so that threatened sites can be marked and monitored even while hostilities continue[327].

UNESCO's Lists of Intangible Cultural Heritage in Need of Urgent Safeguarding have become a diplomatic lever: by inscribing war-endangered practices—such as the traditional music of Mali's Sanké mon or Iraq's Maqam—Member States attract technical aid and visibility that can deter belligerents from treating cultural bearers as expendable[328].

The UN Security Council entered the heritage arena with Resolution 2347 (2017), which declares that intentional attacks on cultural sites may constitute war crimes and urges Member States to

[326] UNESCO. *Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention*. Paris, 1954.
[327] UNESCO. *Protecting Cultural Heritage and Cultural Diversity in Emergencies: UNESCO's Heritage Emergency Fund*. Paris, 2016.
[328] UNESCO. *Lists of Intangible Cultural Heritage in Need of Urgent Safeguarding*. Paris, 2022

prosecute perpetrators or surrender them to the International Criminal Court, thereby integrating cultural protection into the Council's peace-and-security mandate[329].

Technical agencies inside the UN system support these initiatives: UNITAR's UNOSAT programme uses satellite imagery to map destruction, creating publicly accessible databases that strengthen prosecutorial evidence chains for heritage crimes in Syria, Iraq, and Ukraine[330].

The Human Rights Council complements these efforts through the Special Rapporteur in the field of cultural rights, whose thematic reports link cultural cleansing to broader patterns of persecution and recommend early-warning indicators that UN country teams now incorporate into conflict-prevention frameworks[331].

Peacekeeping operations have begun to operationalise these norms; the Department of Peace Operations issued a 2021 directive instructing missions to include cultural-property officers, collaborate with local custodians, and treat attacks on identity symbols as threats to civilian protection mandates[332].

Yet coordination challenges persist: UNESCO lacks enforcement power, while Security Council action is subject to veto politics; recent Secretariat reviews therefore call for stronger inter-agency protocols, enhanced sanctions on antiquities trafficking that finances armed groups, and systematic heritage clauses in cease-fire agreements to close the gap between lofty resolutions and ground realities[333].

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[329] United Nations Security Council. *Resolution 2347 (2017)*. New York, March 24, 2017.
[330] UNITAR-UNOSAT. *Damage Assessment of Cultural Heritage Sites in Syria*. Geneva, 2016.
[331] United Nations Human Rights Council. *Report of the Special Rapporteur in the Field of Cultural Rights, A/HRC/49/57*. Geneva, 2022.
[332] United Nations Department of Peace Operations. *Policy Directive on the Protection of Cultural Heritage in Peacekeeping Operations*. New York, 2021.
[333] United Nations Secretariat. *Our Common Agenda: Report of the Secretary-General*. New York, 2021

2.4Conclusion

In conclusion, this chapter has shown that the 1948 Genocide Convention, while foundational in criminalizing group-destructive violence, is no longer sufficient to address the full spectrum of genocidal strategies. The Convention's narrow focus on physical destruction fails to capture the devastating impact of deliberate cultural erasure, which dismantles language, rituals, sacred sites, and historical memory as a means of destroying the essence of community survival. Far from being incidental, the eradication of cultural identity is often employed as a deliberate strategy of domination and control, serving both as a precursor to physical annihilation and as an end in itself. Communities that lose their cultural anchors face not only displacement from their lands but also erasure from the legal and historical record, underscoring the need to elevate cultural destruction from a subsidiary wrong to a recognized core element of genocide.

International jurisprudence has already hinted at this recognition, with courts such as the ICTR, ICTY, ICC, and ICJ acknowledging that cultural targeting can signal genocidal intent. Scholars and practitioners, including Akhavan, Schabas, and Vrdoljak, have argued for codifying cultural annihilation as a distinct crime, ensuring it is not relegated to lesser charges like persecution or property destruction. Yet, without a clear doctrinal basis, these interpretations remain fragmented and insufficient, leaving victims of cultural erasure without meaningful legal remedies. Current instruments, from the 1954 Hague Convention to the Rome Statute, provide partial protection, but they stop short of establishing cultural genocide as a standalone offense, thereby perpetuating a dangerous gap between the lived realities of communities and the protections offered under international law.

Updating the Convention to explicitly include cultural genocide would bring several vital consequences. It would empower courts to exercise jurisdiction earlier, enable prosecutors to use

expanded forms of evidence, and provide victims with more tailored remedies focused on restoring cultural identity. Such recognition would also affirm that the destruction of a people's culture—its language, ceremonies, and sacred heritage—is as much an attempt to destroy "in whole or in part" as mass killing itself. By closing this accountability gap, the law would finally reflect the reality that cultural annihilation is not symbolic harm but a fundamental assault on human dignity and community continuity.

Ultimately, this chapter concludes that recognizing cultural genocide is both a legal necessity and a moral imperative. To leave cultural identity vulnerable is to ignore the profound ways in which communities transmit autonomy, memory, and resilience across generations. Strengthening the international legal framework through treaty reform, interpretive clarifications, or amendments to existing statutes would not only provide justice for past and ongoing crimes but also enhance early prevention and peaceful conflict resolution. Protecting cultural identity is therefore essential not only to minority rights but also to the broader project of safeguarding international peace and pluralism in an era of mounting authoritarianism, displacement, and cultural homogenization.

This Study investigated how well international criminal law handles intentional attacks The analysis of cultural heritage involves studying these events as distinct cases of genocide. By analysing a century of legal texts, jurisprudence, and conflict histories, the Study uncovered a persistent asymmetry: When authorities quickly classify large-scale killings as genocide they reduce the systematic destruction of stories, languages, rituals and sacred spaces to a complicated categorization of war-crimes and human-rights or property offenses. Perpetrators exploit this doctrinal gap because it allows them to erase identities through administrative name changes and educational content suppression combined with physical destruction of cultural structures before any major killing happens. The Armenian, Palestinian, and Rohingya experiences demonstrate

how such campaigns unfold across different theatres yet follow a recognizable script: The systematic removal of citizenship rights or language recognition begins the process which continues with the shutting down of religious sites and schools before ending with the destruction or conversion of cultural landmarks that completely eliminates the targeted community's cultural presence.

The reason for the current asymmetry becomes clear when one studies the historical background of the 1948 Genocide Convention. The treaty negotiators restricted their focus to Holocaust-style physical and biological destruction methods. States worried about international control of educational and religious affairs agreed to exclude cultural destruction from the treaty in order to reach agreement.

Doctrinal analysis in the study shows that newer international instruments try to fill the void but do so only, or mainly, within specialised silos. The Hague Convention, several UNESCO treaties, and Security Council resolutions robustly address monuments and movable heritage; human-rights covenants safeguard cultural participation; yet none place intentional cultural destruction squarely within the core crime of genocide. This fragmentation creates a hierarchy of harms. When a mausoleum is blown up, the act is labelled a war crime; when the manuscripts inside are burned, it becomes property damage; when the language those manuscripts preserve is banned from classrooms, the violation falls under minority rights. Each category carries a different evidentiary standard, a different forum, and a different remedial logic, often leaving survivors with only partial justice.

The Studyer found that international and regional tribunals increasingly stretch existing categories to acknowledge cultural annihilation. The International Criminal Tribunal for Rwanda deemed identity-shattering sexual violence a genocidal act; the International Criminal Court, in Al-Mahdi,

treated the demolition of Timbuktu's shrines as a war crime that inflicted a psychological wound on humanity; the European Court of Human Rights and the Inter-American Court have ordered land or building restitutions to restore communal cohesion. Judicial innovations demonstrate a developing agreement that cultural destruction represents a fundamental threat to group existence rather than a minor offense. Judicial decisions depend on creative interpretation instead of direct statutory provisions which results in doctrinal ambiguity and inconsistent enforcement.

According to empirical Study communities facing cultural erasure consider their loss to be an existential threat. The survivors of refugee camps felt more strongly about their inability to pass down a forbidden maternal language to their children than about losing their personal possessions. The absence of parish records from post-genocide Armenia archives severed family ties and disrupted shared community memory. People living in Palestinian neighbourhoods with altered street names expressed feelings of being lost in someone else's story while they remained on their ancestral territory. Testimonies show that cultural identity serves as the foundational narrative framework which preserves human dignity and builds hope through solidarity.

Current legal frameworks exhibit gaps that necessitate international laws to safeguard both cultural identity and physical survival on equal terms. International criminal law will achieve better integration with current cultural protection systems through their standard adoption. By incorporating early-warning signs such as widespread cultural institution shutdowns and traditional dress prohibitions preventive measures can be strengthened and international diplomats and peacekeepers will be better positioned before violence occurs.

The suggested evolution focuses international courts as its fundamental element. An amended genocide definition would grant prosecutors clear authority to pursue cultural destruction investigations as their main legal basis with clarified jurisdiction. Expert testimony from linguists

and anthropologists and digital-heritage specialists will enable judicial bodies to accept primary genocidal intent evidence thereby elevating interdisciplinary knowledge to the same level as ballistic expertise and forensic pathology. Restoration communities design victim-led reparations which provide financial support for language revival and ritual site rebuilding as well as archive repatriation.

The Studyer concludes that, in its current form, international criminal law leaves an unacceptable gap: The law condemns physical killings while neglecting acts that destroy collective memories. Bridging this gap would complete the moral arc first envisioned by Raphael Lemkin, who regarded culture, politics, society, and biology as interlocking dimensions of group life. The task now is to give that original insight contemporary legal effect, ensuring that no community must fear obliteration—whether by sword, statute, or eraser—without the full protection of the world's most serious crime.

Recommendations

Based on the previous discussion the study recommends the following:

1. **Drafting Language for an Additional Genocidal Act**

To correct the most conspicuous lacuna in the 1948 Convention, the study recommends the insertion of a narrowly tailored sixth underlying act. A workable text could read:

(f) Deliberate and systematic acts committed with intent to destroy, in whole or in substantial part, the cultural, linguistic, spiritual, or ritual foundations of a protected group, including but not limited to:

1. The large-scale destruction, confiscation, or transfer of institutions or objects indispensable to the maintenance of the group's identity;

2. The intentional banning of mother-tongue education or worship practices essential to the group's continuity;
3. The mass re-designation or enforced renaming of communal spaces or persons aimed at dissolving the group's historical presence in a given territory.

This language tracks the structure of Article II, preserves the strict intent requirement, and sets an objective "substantial part" threshold to avoid penalising incidental or negligent damage.

2. Protocol or Optional Protocol, not a Full-Scale Treaty Revision

Rather than reopening the entire Convention—which could invite dilution of existing safeguards—the study supports an optional protocol open for signature, much as the 1954 Hague Convention uses protocols to update obligations. States willing to accept the new clause could do so without waiting for universal consensus, creating a critical mass of jurisdictions that treat cultural annihilation as genocide.

3. Parallel Amendment to the Rome Statute

For coherence, Article 6 of the Rome Statute should mirror the new clause. A concordant definition would enable the International Criminal Court to investigate cultural genocide regardless of whether the territorial state has ratified the protocol to the Genocide Convention, provided it is party to the Statute.

4. Triggering Early-Warning Mechanisms

The United Nations Office on Genocide Prevention should revise its "Framework of Analysis" to include identity-focused indicators such as:

- abrupt bans on minority languages in schools or media,

- blanket demolition orders for cultural or religious buildings,
- systematic re-naming of villages, streets, or natural landmarks. Embedding these indicators would give field missions and regional organisations a clearer mandate to treat cultural attacks as precursors to—or stand-alone manifestations of—genocidal intent.

5. Guidance for International Courts and Tribunals

Once the clause is adopted, judicial bodies will need evidentiary guidance. A practice manual jointly issued by UNESCO, the ICC, and the International Commission of Jurists could outline:

- admissibility standards for linguistic attrition studies, satellite imagery of heritage destruction, and digital-forensics evidence showing coordinated online incitement,
- protocols for expert witness selection in anthropology, archival science, and intangible-heritage safeguarding,
- sentencing considerations that integrate cultural-revitalisation orders into reparations.

6. Domestic Incorporation and Universal Jurisdiction

National legislatures should transpose the new clause into domestic penal codes. States that already exercise universal jurisdiction over genocide would thereby extend that reach to cultural genocide. Incorporation would also facilitate extradition because dual-criminality requirements would be satisfied. To ease legislative drafting, model laws can be developed under the aegis of the International Law Commission.

7. Budgetary Support for Prosecutorial Capacity

Because cultural genocide cases require specialised evidence, donor states and foundations should fund capacity-building at the ICC and hybrid tribunals. Dedicated budget lines could support:

- a forensic linguistic unit for analysing language suppression,
- an imagery-analysis hub for real-time monitoring of heritage sites,
- fellowships that embed heritage experts in prosecution teams.

8. UNESCO's Operational Role

UNESCO should formalise a standing coordination cell with the ICC Office of the Prosecutor. Its tasks would include secure evidence preservation, emergency site documentation, and expert rosters. The Heritage Emergency Fund should be authorised to channel documentation directly into criminal proceedings, ensuring chain-of-custody integrity.

9. Security Council Action under Chapter VII

The Council already recognises heritage destruction as a threat to peace. It should:

- incorporate cultural-genocide risk assessments into mandates of UN peacekeeping and special political missions,
- impose targeted sanctions on individuals and entities trafficking artefacts or issuing orders to dismantle cultural institutions,
- require cease-fire agreements brokered under its auspices to include clauses on cultural-site protection and ritual-access guarantees.

10. Regional Organisations and Early Engagement

Bodies such as the African Union, the European Union, and ASEAN can:

- integrate cultural-risk metrics into their early-warning systems,

- offer mediation that prioritises restoration of cultural rights as part of conflict-settlement packages,
- establish rapid-response heritage-protection teams linked to standby forces.

11. Governmental Responsibilities in Peacetime

States should:

- audit legislation for discriminatory language, education, or land-use policies that marginalise minority cultures,
- allocate permanent budgets for minority-language media, curricula, and cultural-infrastructure maintenance,
- support joint heritage-management boards where minority communities share decision-making authority over sacred sites and archives.

12. Civil-Society Initiatives

Non-governmental organisations and community groups play a frontline role in documentation and advocacy. They should:

- employ open-source intelligence to track cultural destruction in real time,
- create digital repositories for endangered languages and traditions,
- partner with academic institutions to develop secure, tamper-proof archives admissible as evidence in future prosecutions.

13. Monitoring and Reporting

A global “Cultural Identity Atrocity Tracker” could aggregate data from UN agencies, civil society, and academic projects, providing a dashboard for policymakers and investigators. Annual reports to the General Assembly would keep political attention focused and create a public record, discouraging indifference and denial.

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Appendices

Appendix (1): Comparison between genocide, war crimes, and crimes against humanity in international law

Criterion	Genocide	Crimes Against Humanity	War Crimes
Core Intent	Specific intent to destroy a protected group	Knowledge of, and participation in, a widespread or systematic attack on civilians	Intent to violate laws or customs of war
Protected Victims	National, ethnic, racial, or religious groups	Any civilian population	Persons and objects protected under international humanitarian law
Context Requirement	War or peace	War or peace	Armed conflict (international or non-international)
Underlying Acts (examples)	Killing, serious bodily or mental harm, preventing births, transferring children	Murder, extermination, enslavement, deportation, torture, rape, apartheid	Attacking civilians, unlawful deportation, killing POWs, targeting protected sites
Scale/Policy Threshold	Destruction "in whole or in part"	"Widespread or systematic" attack with state or organizational policy	Individual acts or patterns that breach IHL
Applicable Treaties/Statutes	1948 Genocide Convention; Rome Statute art. 6	Rome Statute art. 7; customary international law	Geneva Conventions, Additional Protocols; Rome Statute art. 8
Nexus to Armed Conflict	None required	None required	Required
Typical Evidentiary Challenges	Proving genocidal intent	Demonstrating policy and the civilian character of victims	Establishing conflict status and protected status of victims

Appendix (2): Case study Summary

Case	Tribunal / Court	Year	Core Issue	Outcome & Precedent
Akayesu	ICTR	1998 / 2001	Can sexual violence constitute genocide?	First genocide conviction; rape deemed "serious bodily or mental harm," expanding recognized genocidal acts.
Krstić	ICTY	2001 / 2004	Does killing one demographic pillar meet the "in-part" test?	Srebrenica massacre held genocide; intent inferred from systematic targeting of men and boys.
Bosnia v. Serbia	ICJ	2007	State liability for failing to prevent genocide.	Serbia not direct perpetrator but breached duty to prevent and punish; set due-diligence benchmark.
Al-Bashir	ICC	2009 / 2010	Head-of-state immunity and circumstantial intent.	Two warrants for genocide in Darfur; immunity rejected, pattern evidence accepted for intent.
Gambia v. Myanmar (Provisional Measures)	ICJ	2020	Early judicial intervention to halt ongoing genocide.	Court ordered Myanmar to protect Rohingya and preserve evidence; strengthened Convention's preventive arm.

Appendix (3): Key Legal Distinctions between Traditional and Cultural Genocide

Criterion	Traditional Genocide (1948 Convention)	Cultural Genocide (Proposed / Emerging)
Protected Interests	Physical and biological existence of group	Cultural, linguistic, spiritual identity of group
Enumerated Acts	Killing, serious bodily/mental harm, destructive living conditions, birth prevention, child transfer	Intentional destruction of heritage sites, suppression of language, banning rituals, forced assimilation
Context Requirement	War or peace (no contextual threshold)	Often occurs in peacetime assimilation campaigns; threshold debated
Intent Standard	"Destroy in whole or in part" a protected group	"Destroy or eradicate the cultural foundations" of a protected group
Evidentiary Focus	Mass graves, demographic data, command orders	Heritage forensics, linguistic policy shifts, archival destruction, sociological trauma studies
Current Legal Basis	Genocide Convention; Rome Statute art. 6	Soft-law instruments, ICC policy on cultural heritage, evolving customary law; no standalone crime yet
Accountability Forums	ICTY, ICTR, ICC, domestic courts exercising genocide jurisdiction	ICC (heritage-based charges), UNESCO mechanisms, national commissions; formal crime category pending

الإبادة الثقافية وعلاقتها بجريمة الإبادة من منظور القانون الدولي العام – الحالة الفلسطينية كدراسة حالة–

نور فواز عبد الفتاح حجازي

الدكتورة مجد عودة

الدكتور محمد ظرف

الدكتور مرسي صالح

الملخص

هدفت هذه الدراسة إلى التحقق مما إذا كان القانون الجنائي الدولي يعالج بشكل كافٍ الحملات التي تستهدف تدمير الهوية الثقافية لجماعة ما، وبالنتيجة كشفت عن وجود فجوة جوهرية، وسعت إلى بيان كيفية تعديل اتفاقية الإبادة الجماعية لتجريم هذا النوع من المحو بشكل صريح. اعتمدت الدراسة المنهج العقائدي–المقارن مع ثلاث دراسات حالة معمقة: ترحيل الأرمن، تهجير الفلسطينيين، واضطهاد الروهينغا، حيث تتبعت الدراسة نمطاً متكرراً يتمثل في أن الجناة قبل ارتكاب أعمال العنف الجماعي أو بالتوازي معها يستهدفون اللغات والطقوس والمواقع التراثية لقطع الاستمرارية بين الأجيال. أظهر استعراض المعاهدات والاجتهادات القضائية والممارسات المؤسسية أن أدوات حماية التراث تصون الآثار المادية، في حين تكفل المواثيق الحقوقية المشاركة الثقافية، إلا أن أياً من النظامين لا يرتب المسؤولية الجنائية الفردية المقررة لجريمة الإبادة. ورغم أن المحاكم الدولية والإقليمية توسّع بشكل متزايد في تفسير القواعد القائمة لإدانة التدمير الثقافي، فإن أحكامها تستند إلى اجتهادات تفسيرية أكثر مما تستند إلى نصوص قانونية واضحة، مما يؤدي إلى حماية غير متكافئة. وبناءً عليه تقترح الدراسة إضافة فعل أساسي سادس إلى المادة الثانية من اتفاقية الإبادة الجماعية يجرّم التدمير المتعمد والمنهجي للأسس الثقافية أو اللغوية أو الروحية للجماعات المحمية. مثل هذا التعديل من شأنه توحيد القواعد المتفرقة، وتعزيز أطر الإنذار المبكر، وتمكين المحاكم من اعتماد الأدلة اللغوية والأنثروبولوجية والرقمية كأدلة أساسية لإثبات النية الإبادية. وبهذا، سيعكس القانون أخيراً الواقع المعيشي للناجين: فقتل الذاكرة قد يكون مدمراً، ويستحق العدالة، بقدر ما هو قتل الأجساد.

الكلمات المفتاحية: الإبادة الثقافية، اتفاقية الإبادة الجماعية، حماية التراث الثقافي، حقوق الأقليات