Interdisciplinary Studies in Society, Law, and Politics 2024; 3(4): 18-28

ISSLP
Interdisciplinary Studies in Society, Law and Politics

Original Research

Protection of Intangible Cultural Heritage in Armed Conflicts through the International Humanitarian Law

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Received: 2024-08-02 **Revised:** 2024-10-10 **Accepted:** 2024-10-18 **Published:** 2024-10-25

Intangible Cultural Heritage is safeguarded under UNESCO 2003 Convention. However, it is threatened in armed conflicts by damages imposed to cultural properties, environment, and bearer communities. UNESCO 2003 Convention has not subjected armed conflicts directly. Hence, it is necessary to hire other legal regimes, including IHL to enhance the protection. IHL contributes the safeguarding by protection of the three components of the ICH, namely to cultural properties, environment, and bearer communities. This research examines such contribution.

Keywords: *intangible cultural heritage, armed conflict, international humanitarian law.*

How to cite this article:

Blake, J., & Goodarzi, A. (2024). Protection of Intangible Cultural Heritage in Armed Conflicts through the International Humanitarian Law. *Interdisciplinary Studies in Society, Law, and Politics, 3*(4), 18-28. https://doi.org/10.61838/kman.isslp.3.4.2

1. Introduction

Intangible cultural heritage (hereinafter: ICH), as defined by the UNESCO 2003 Convention for the Safeguarding of ICH Article 2(1), consists of means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage (UNESCO, 2003). This ICH, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. As it is clear, there are three important components in this definition, namely humans as owners of heritage, material cultural properties, and environment. Each of these three components may be damaged in the course of armed conflicts and thus affect the viability of ICH. This is due to the fact that ICH by itself has not been supported in any of the international documents of humanitarian rights, and hence, its three vital components are examined.

However, international humanitarian law (hereinafter: IHL) has norms to support each of these three components. The current research tries to evaluate the protection of these components and ultimately the protection of intangible cultural heritage by IHL in order to find an answer to the question of whether IHL can protect ICH in armed conflicts or not. For this purpose, the instruments of IHL regarding the protection of the three components of ICH are reviewed and other library sources are also used.

2. Protection of cultural properties in armed conflicts through IHL

The connection between material cultural heritage and ICH is more than a simple one. It is for this reason that

the 2003 UNESCO Convention, instruments, objects, artefacts and cultural spaces associated therewith included as ICH (UNESCO, 2003: Article 2(1)). In this way, it is as if the tangible cultural heritage becomes a part of the ICH and it becomes troublesome even to distinguish the two, through conventions and even national legal regimes (Forrest, 2010).

It should be accepted that the distinction between tangible and intangible in the general context of cultural heritage rights is artificial and unrealistic. In most cases, tangible and intangible heritage are inextricably linked. As a result, for example, the value and importance of an important part of cultural property included in the World Heritage List is related to their connection with intangible cultural elements, and simultaneously, intangible forms of heritage usually have tangible elements with them and in connection with them (Blake, 2015). Despite the many differences, tangible and intangible cultural heritage are two sides of the same coin: both carry the hidden meaning and memory of humans, and both rely on each other when understanding the meaning and significance of the other. This is why even museums and objects inside them play a significant role in protecting ICH (Blake, 2018).

In Geneva law, it is prohibited to attack and destroy civilian property belonging to individuals, private individuals, the government or other public institutions and cooperative organizations. This prohibition is included in Articles 53, 146, and 147 of the Fourth Geneva Convention of 1949 related to the protection of civilians in war, Articles 52 and 53 of the First Additional Protocol of 1977 to the Four Geneva Conventions and Article 14 of the Second Additional Protocol to the Four Geneva Conventions. These regulations include cultural properties, works and places.

According to the Fourth Geneva Convention, "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations". (ICRC, 1949: Article 53).

According to the Commentary, in the very wide sense in which the Article must be understood, the prohibition covers the destruction of all property (real or personal), whether it is the private property of protected persons (owned individually or collectively), State property, that of the public authorities (districts, municipalities, provinces, etc.) or of co-operative organizations It should be noted that the prohibition only refers to "destruction". Under international law the occupying authorities have a recognized right, under certain circumstances, to dispose of property within the occupied territory -- namely the right to requisition private property, the right to confiscate any movable property belonging to the State which may be used for military operations and the right to administer and enjoy the use of real property belonging to the occupied State..

It is also important that according to Articles 146 and 147 of the Fourth Geneva Convention, intentional destruction of civilian property is considered as a gross violation that should be criminalized in the domestic legal system (ICRC, 1949: Articles 146-147). This is important regarding the protection of objects related to ICH, as mentioned in Article 2(1) of the 2003 Convention. Apart from this Article, as mentioned earlier, Article 52 of the First Additional Protocol to the Four Geneva Conventions stipulates that civilian objects should not be targeted for attack or trade, and that attacks should be limited directly to military targets. Regarding these objectives, military objectives are limited to those objects that by their nature, location, purpose or use have an effective participation in military operations and the total or partial destruction, capture or neutralization of them, according to the prevailing circumstances at that time has a definite military advantage. It is also important that "In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used". (ICRC, 1977: Article 52).

AP II further stipulates that, "without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort" (ICRC, 1977 (2): Article 16). This Article more decisively prohibits any kind of use of the cultural places we want in non-international armed

conflicts. Similar to this Article, it is stated in the second protocol, which will be further discussed.

With the provision of this Article, the protection of civilian places and property, including cultural properties will be broadened. According to the following Article, the principle is that the places and properties are civilian, except by ensuring the effective participation of these places in the armed conflict.

According to the Commentary, the reason for placing this Article in the Second Additional Protocol, despite the 1954 Hague Convention, was that the Convention was not yet generally accepted and the importance of this issue required that an Article in this Protocol deal with it. However, the 1954 Hague Convention is also applicable in internal armed conflicts. However, this Article in the second additional protocol does not have the conditions stipulated by the 1954 Convention; Such as being located at a suitable distance from important military targets, use for military purposes and global registration of the effect. In this sense, it seems that a more comprehensive support can be implemented through the earlier (UNESCO, 1954).

In The Hague law, the most important document is the 1954 Hague UNESCO Convention for the Protection of Cultural Property in the Time of Armed Conflicts. This convention is based on the idea that the protection of cultural heritage is not only a matter of the state in whose territory the work is located; Rather, this protection is very important for all the people of the world, and for this reason, it requires the support of all of them. The importance of such support transcends national borders and becomes a matter of international importance. To be effective, this support must be organised in peacetime and through both domestic and international instruments (Toman, 1996).

This introduction can show the mentality governing the issue of cultural heritage protection in the middle of the 20th century. In this introduction, while referring to the damages caused to cultural property in the recent armed conflicts, i.e. the two world wars, it introduces this issue as a result of the development of weapons techniques in the field of destructive risk. It also introduces the cultural heritage, belonging to any people, as part of the cultural heritage of the world. This Preamble considers national and international actions as complementary to each other and calls for all possible steps to be taken to protect cultural property (UNESCO, 1954: Preamble). In fact, this is important for ICH; Because it supports objects that, as discussed earlier, are deeply connected to ICH. In fact, considering the lack of a boundary between tangible and ICH, this is actually a support for ICH as well.

Article 1 of the Convention defines cultural property include movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above (UNESCO, 1954, Article 1(a)). According to the wording of this Article, these works are allegories and other things can be added to it. The importance of this regulation is also very high for ICH; Because it supports objects that are the subject of Article 2 of the 2003 Convention and in connection with ICH.

The art of making and playing the Kamancheh, which was jointly registered as ICH by Iran and the Republic of Azerbaijan in 2017, includes several tangible components: the tools and instruments with which the Kamancheh is made, as a material component of the art of making and itself The Kamancheh instrument as a tangible part of the art of playing the Kamancheh. With this description, self-made construction tools and wood should be considered a tangible part of this ICH work. This does not create an acute problem, because the Kamancheh instrument is neither unique nor rare. There are various types of Kamancheh in each part of Iran and Azerbaijan, and the survival of one or more type of this instrument does not create a problem in the durability of this work. Also, in Azerbaijan carpet weaving and Cremona violin making, the method of production is important and production depends on the product, or in the Sicilian puppet theater, the puppet with which the show is performed is a material part of the ICH.

But in another example, that is, the Mevlevi Sema ceremony, which was registered by Turkey in 2008, although it is performed in different places in Turkey, its main performance is in Konya and in the tomb of Molavi. However, Molavi's tomb itself has been registered as a world heritage site in 2000 as part of the cultural landscape of Konya. In fact, Molavi's tomb can be considered under two types of support; On the one hand,

as a tangible part of an intangible heritage work under the 2003 UNESCO Convention, on the other hand, as part of a cultural landscape under the 1972 Convention.

Another example is the rice terraces in the Philippines, which were registered as a World Heritage Site in 1995. In these layered rice paddies, chants have been sung in a collective form for a long time, which is reflected in the general context of the layered paddies and agricultural livelihood. In 2008, these chants were registered in the list of ICH under the title of Hudhud chants. Also, the Iranian Qanat, which was registered as a world heritage in 2016, is associated with the way of making the Qanat, which can be considered an ICH.

Also, buildings whose effective purpose is to protect or display the movable works mentioned in this Article, such as museums, libraries and large archival repositories, as well as shelters that are considered for these properties in the event of an armed conflict, and centres that have a large amount of the mentioned movable works. It is also protected as cultural property (UNESCO, 1954, Article 1(a-b)). This section is also not limited and some things can be added to it.

According to Article 2 of this convention, protection of cultural property includes protection and respect (UNESCO, 1954, Article 2). Safeguarding in the context of this convention means preparing for the foreseeable effects of an armed conflict through the necessary measures for cultural property located in their territory (UNESCO, 1954, Article 3). But respect includes cultural property in their territory and other signatories of this convention. Regarding respect, it should be mentioned that in no way should such property be exposed to the dangers of armed conflict. This means that it should not be used for military purposes, nor should it be targeted. They should also be protected against robbery and looting and destructive behavior and confiscation and retaliatory actions (UNESCO, 1954, Article 4). These provisions are also relevant in the time of occupation with the occupying government, which must implement all actions in coordination with the competent national authorities (UNESCO, 1954, Article 5). The effect of this issue on the ICH is that with this method, it is possible to support the continuation of the implementation and transfer of the ICH during the occupation.

If one of the parties to the conflict commits a violation of this convention, the other party can be exempted from the obligations of this convention in a limited way and as long as the violation continues. Also, absolute military necessity can justify the violation of these provisions (UNESCO, 1954, Article 11). Neither of these seems to be consistent with the spirit of patronage. Provisions have been mentioned for their safe transportation as well as the protection of the people involved in the protection of these works (UNESCO, 1954, Articles 12-15). These measures are also applied in non-international armed conflicts (UNESCO, 1954, Article 19(1)).

The second additional protocol to the 1954 Hague Convention was ratified on March 26, 1999. In Articles 10 and 11, this protocol introduced a new support system known as the enhanced protection system, based on which, even if one of the parties to the armed conflict was not a party to this protocol, the other party is bound by these provisions (UNESCO, 1999: Article 3(2)), which is related to the principle of the Convention on Improvement in the Protection of Cultural Property.

According to Article 6 of the Protocol, which relates to the respect of cultural property, more protective criteria than the 1954 Convention have been considered: only if it is based on absolute military necessity, attacks can be directed to cultural properties as a legitimate military objective, or if there is no other way for military purposes other than targeting cultural properties. Such a decision must be taken by the highest military authority responsible for the aforementioned military operation (UNESCO, 1999: Article 6). This can make possible abuses of the provisions of the 1954 Convention more difficult.

An important possibility that The Hague regulations can provide us is to use the capacity of obligations of *erga omnes partes*. The obligations *erga omnes partes* purport to provide legal standing for states not directly injured, provided that these states are also parties to the same treaty. In so doing, the concept challenges the deeply held belief that multilateral treaties consist of bundles of bilateral, reciprocal rights and obligations (Chow, 2020). In the matter of the application of the Convention on the Prevention and Punishment of the Crime of Genocide, Gambia against Myanmar, regarding the question regarding the position of The Gambia, the Government of Myanmar accepted that the Government of Gambia as a contracting party to the Convention has interests and based on the commitment of Government of Myanmar, it can accept this Government as its standing (ICJ, 2020: para. 39). Similarly, in the temporary order of the Court

in the case of the application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip, South Africa filed against Israel, and the Court accepted South Africa's standing, without Israel's objection. Based on this interim order, the Court declared that South Africa has a common interest as a party to the Genocide Convention and can bring Israel to the Court under this obligation (ICJ, 2024: para. 33). With this possibility, the responsibility of the state that destroys cultural works can be inferred against all member states of the 1954 Hague Convention.

While the concept of *erga omnes* obligations has been developed with regard to obligations arising in general international law, a treaty law version— which may be relevant with regard to the Convention— exists under the terms of *erga omnes partes* obligations. A significant difference exists from customary international law and related *erga omnes* obligations. In matters of *erga omnes partes* obligations, states that negotiate a treaty have for these treaty obligations, whether an ordinary 'synallagmatic' or an innovative 'nonsynallagmatic' regime equivalent to that of *erga omnes* obligations. (Carducci, 2023). This interpretation can be extended to the provisions of the 1954 UNESCO Convention in the present discussion and the 2003 Convention of ICH in the general context of this treatise. Actually, it can be said that the directly damaged government is not the only government that can claim protection of cultural works, but based on the obligation of *erga omnes partes*, any contracting government can claim protection of cultural heritage based on this type of obligation.

In the arbitration case between Ethiopia and Eritrea, the International Court of Arbitration has an important decision about the destruction of cultural and historical works. In this dictum, the statue of Stella of Matara in Eritrea was destroyed during an explosion. This statue was about 2500 years old and was an important symbol for the nearby city of Matara. In the midnight of May 30-31, 2000, when the armed conflict between Eritrea and Ethiopia was going on, the statue was destroyed by an explosion. At that time, the part of Eritrea where this statue was located was occupied by Ethiopian forces. There was no military building or target within reasonable distance of this statue and only one camp of Ethiopian forces was located near it. According to the decision [of the court], the burden of proving the intentional destruction of the Stella by the Ethiopian military was on the responsibility of Eritrea; But Eritrea failed to prove it. However, the occupying forces of Ethiopia were responsible for the protection of this cultural work and were at least negligent in protecting it (PCA-CPA, 2004: paras. 107-112). A very important point is that none of the two countries, Ethiopia and Eritrea, were members of the 1954 UNESCO Convention. However, the Commission considered the protection of cultural works to be covered by Article 56 of The Hague Regulations, which is a part of IHL (PCA-CPA, 2004: para. 113). According to this Article, the properties of communes and religious, charitable and educational institutions, as well as artistic and scientific institutions, even if they are owned by the government, should be assumed as private property. Any appropriation and destruction or deliberate damage to such institutions, historical works, artistic and scientific works is prohibited and is the cause of prosecution (The Hague Regulations, 1899: Article 56).

Also, the Court of Arbitration announced the prohibited the destruction of the Stella as one of the civilian properties in the occupied lands based on Article 53 of the Geneva Convention IV and Article 52 of the AP. However, according to the sufficiency of Article 56 of The Hague Regulations, the Commission did not recognise necessity to identify the value of Stella for it to be covered by Article 53 of the First Protocol (PCA-CPA, 2004: para. 113). Article 53 of the Geneva Convention IV prohibits the destruction of buildings and personal, state and cooperative property by the occupying government (ICRC, 1949: Article 53). Article 52 of the AP I also limits the attack or trade in civilian objects, unless it is absolutely necessary for military advancement (ICRC, 1977 (1): Article 52). According to the Commission, this was enough for the illegitimacy of the destruction of the stela and there was no need for the next Article of the Protocol.

According to the interpretation of the Commission, in order to be able to consider a work as part of the aforementioned Article, that work must be among the most famous works such as the Acropolis in Athens or St. Peter's Basilica in Rome. However, it is not necessary to verify whether the Stella was among such works or not due to the sufficiency of other provisions (PCA-CPA, 2004: para. 113). In fact, it can be inferred that there is no need for such a test to support intangible cultural elements during armed conflicts that are of a different

gender than St. Peter's Basilica; because, in principle, such a test is not possible, and secondly, it is not required by this interpretation of the Commission. The importance of this topic in the current discussion is that many works and buildings that are important for ICH may not be mentioned among the important and famous works; however, according to the Commission's opinion, the protection of such properties and buildings does not require a special test to discover their importance.

Of course, the jurisprudence of the International Court of Justice considers the value of cultural heritage in the interpretation of other applicable norms and principles in each case (Francioni & Vrdoljak, 2020). In the case of Cambodia's Preah Vihear Temple which was later registered as a UNESCO World Heritage Site in 2008, against Thailand, the Court did not make a specific provision about the temple's heritage value and simply used it to assert Cambodia's sovereignty over it. Of course, this decision also refers to the return of the parts that were separated from the temple by the Thais to Cambodia, but in the end it does not help to establish the international customary law (ICJ, 1962: 6).

In the ICTY, such destruction has been mentioned as a war crime. Article 3(d) of the Statute of the Court recognises that taking over and destroying or causing intentional damage to institutions that are assigned to religious, charitable and educational purposes, art and knowledge, as well as artistic and scientific works, historical buildings and artistic and scientific works [as violation of rights and customs of war] (UNSC, 1993).

In the case of *Kordic and Cerkez*, the Appellate Division stated that the deliberate destruction of [civilian] property can be included in Article 5 as a Crime of Persecution [in the context of crimes against humanity] according to its nature and dimensions (ICTY, 2004: paras. 108-109). Of course, in this case, the investigation of the committed crimes only focused on educational and religious places and did not say anything about cultural places and works (see ICTY, 2001). The situation was the same in Blaškić's case (ICTY, 2000: paras. 14-15).

The reason given for this gap in the ICTY is that in most cases there was destruction of cultural monuments and objects, but with other cases such as intentional destruction of private property or harassment based on race, religion or political issues. Hence, the court has considered such destructions under indirect persecution of people related to these institutions. However, the statute of the Court has considered cultural property as one of the assets and institutions and failure to protection can be considered of war crimes (Forrest, 2010). Even if the destruction of cultural property in itself is not an act of genocide, it can be a sign of these actions (Ehlert, 2014) and in fact, the ICTY identified the physical and biological elimination of people as genocide, not the destruction of cultural properties (see ICTY, 2001: para. 580). However, according to some scholars, the fact that the protection of cultural properties is included in the ICTY Statute means that it is part of customary international law; because the mission according to the Statute is to try and punish the perpetrators regarding customary IHL.

The achievements of the ICTY in this field, however, should not be ignored. Although it did not recognise the destruction of cultural works and property as an act of genocide, Article 19 of the 1954 Hague Convention introduced it as a part of customary law (ICTY, 1995: para. 98). This Article, as discussed earlier, is about the responsibility to protect cultural property during international armed conflicts. Also, in the case of Miodrag Jukić, he was found guilty for the the artillery attack on the old town (historical area) of Dubrovnik (ICTY, 2004: para. 113) and, furthermore, the court declared that the attack itself is prohibited, regardless of its results (ICTY, 2004: para. 50).

The first and only case that was dealt with in the International Criminal Court on the charge of intentional destruction of cultural properties in armed conflicts was the Al-Mahdi case (ICC, 2016: 1980), in which the Court, considering the adequacy of its statute regarding criminality, addressed the issue. The customary nature of this matter does not come into play, and the proceedings proceed by relying merely on the Rome Statute. Al-Mahdi targeted 10 religious and historical buildings in the Timbuktu region of Mali, all of which belonged to Sufis and included 9 tombs and 1 mosque (ICC, 2016: para. 10). The legal basis of the trial was Article 8(2(4)) of the Rome Statute, which considers Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly as a war crime. Subsequently, at the time of reconstruction of the tombs, researches were also conducted regarding ICH. Based on these researches, a number of ICH elements were discovered in direct relation with these tombs, such as the roofing, etc. and

also revealed a wide range of maintenance practices (Joffroy, 2020: 915) and another number are performed in its vicinity, such as praying for rain (Joffroy, 2020: 916).

It is based on the legacy of the Criminal Court of former Yugoslavia that some authors believe that the criminalization of intentional destruction of cultural heritage has been approved by customary international law (Francioni, 2008). In this regard, there is another opinion stating that the protection of cultural heritage has become customary in international armed conflicts, but in non-international armed conflicts and in peacetime, it is merely supported by the treaty law (Beigzadeh, 2011). In any case, the general opinion, considering all these aspects, is that the protection of cultural properties and their return to the main land in case of history of occupation is among the general obligations of international law (Beigzadeh, 2011).

Also, inclusion within the context of protected properties listed in Article 8 of the Rome Statute can also confirm the customary nature of protection of cultural property. According to the majority of scholars, the list of war crimes included in this Article represents international customary crimes (Beigzadeh, 2022), which has been dealt with in the case of al-Mahdi in the financial situation, as mentioned earlier.

3. Protection of the environment in armed conflicts through IHL

According to Article 2(1) of the 2003 Convention, ICH "is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history". The 1972 UNESCO Convention deals with the world cultural and natural heritage, and for this reason, according to some scholars, cultural heritage law can be considered a specialised part of environmental law (United Nations Conference on the Human Environment, 1972). The fact that in some domestic legal systems some aspects of the environment are part of the heritage of specific local or indigenous communities or cultural groups and are regulated together, and the components of the natural environment such as mountains, vegetation or desert landscapes may be used as symbols of national or ethnic cultural identity reaffirms this opinion. For example, Australian legislation combines the protection of the environment and world heritage (Blake, 2015).

As a result, we can see that today's heritage law is divided into two branches, namely cultural and natural (Francioni & Vrdoljak, 2020), therefore, none of them cannot be protected independently. Recent researches show that there is a direct relationship between biological and cultural diversity in different regions of the world: the global mapping of biodiversity and cultural diversity shows how, wherever there is a high level of biodiversity, the level of cultural diversity is also high (Petrillo, 2019). Another case is a document published by the International Law Commission in 2022: Draft principles on protection of the environment in relation to armed conflicts. In this document, the areas of environmental and cultural unity are protected in an interrelated manner.

This relationship, as mentioned in Article 2(1) of the 2003 Convention, can also be seen in the manifestations of ICH. For example, one of the elements registered by Mexico is the dance ceremony of Voladores, Inscribed on the Representative List of the ICH of Humanity in 2009. This ceremony is a dance with fertility rituals performed by various ethnic groups in Mexico and other Central American regions. Its goal is to express respect towards nature and the spiritual universe, as well as the harmony with both. During the ceremony, four youths climb a pole 18 to 40 meters high. Sitting on the platform that finishes off the mast, a fifth man, the leader, plays melodies with a flute and a drum in honor in the sun, and to all directions and cardinal points (Petrillo, 2019). The role of the Ritual Ceremony of the Voladores in the identity of the region of the Totonacapan is fundamental, but factors such as deforestation (shortage of the tree species required to perform the ritual) means that most of the ritual is no longer performed and that its meanings and symbolisms are forgotten (Petrillo, 2019).

The first direct reference to the environment in an IHL instrument was in the AP I of 1977. According to Article 35(3) of this protocol, It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

As a result of this clause, the use of such methods of warfare and weapons of war is absolutely prohibited, not even with the exception of military necessity. The 1987 Commentary also supports this interpretation (Sandoz *et al*., 1987: para. 1440). Chemical weapons with the same

effect on the environment are also regulated by the same rule (Sandoz *et al*., 1987: para. 1443).

Article 54 of the AP I deals with the protection of those things that are objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works (ICRC, 1977: Article 54); but does not mention explicitly the environment. However, according to the 1987 Commentary, this Article should be understood in the light of Article 55 (Sandoz *et al*., 1987: para. 2088).

Article 55 of the 1st Additional Protocol of 1977 explicitly prohibits damage to the environment:

1. Care shall be taken in warfare to *protect the natural environment against widespread, long-term and severe damage*. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.
2. Attacks against the natural environment by way of reprisals are prohibited (ICRC, 1977: Article 55, emphasis added).

The clarity of this Article provides an absolute prohibition and leaves no doubt for justification by military necessity. In fact, in 1977, after the use of weapons and military methods against the environment, especially in the US war against Vietnam and Cambodia, it became clear that the destruction of the environment could be a threat to the survival or health of population groups. Considering the long-term effects of such warfare, which can sometimes threaten the next generations who will be born years after the end of the war, the environment and the ICH will be affected together. In fact, the prohibition of environmental destruction and the establishment of regulations for precaution and prevention are compatible with the ultimate goal of IHL. This issue, due to the entanglement of ICH and nature, causes ICH to disappear along with nature. Preventive and precautionary provisions are the stipulations in both Article 35 and Article 55 regarding the predictability of extensive, long-term and severe damages due to the use of certain warfare methods and weapons. By combining these two Articles, not only are methods and tools aimed at destroying nature prohibited, but they should also not be used if such results can be predicted to be likely.

According to 1987 Commentary, the concept of environment in this Article should be interpreted in the broadest way to include the biological environment in which the [human] population lives. The environment should not be interpreted only in such a way that it is a vital part for the survival of humans (as set on Article 54); Rather, it should include forests and other vegetation mentioned in the 1980 Convention on the Prohibition or Restriction of the Use of Certain Conventional Weapons, as well as plant and animal species or other biological or climatic elements (Sandoz *et al*., 1987: para. 2126).

It should also be considered that Article 35 looks from the point of view of weapons, but Article 55 refers to the survival of the population. The use of the civilian population without restrictions or the like has helped to strengthen this Article and implies the necessity of protecting the environment for the long-term survival of the population as well as the lasting effects of the destruction of the natural environment (Sandoz *et al*., 1987: paras. 2132-2133).

There is an important convention related to the present discussion which, despite its great importance, has not gained an appropriate acceptance. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, adopted on December 10, 1976 (ENMOD), has only 78 signatory states.

The preamble of the convention wishes for peace and disarmament so that humanity can be saved from the danger of using new methods of warfare. It also confirms the effect that the Stockholm Conference of 1972 had on the creation of this document and considers the use of environmental change methods in peaceful ways to improve human life.

According to Article 1 of ENMOD, states parties to the Convention undertake not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party. State parties to this Convention also undertake not to assist, encourage or induce any State, group of States or international organization to engage in activities contrary to the provisions of Article 1(1). Environmental modification techniques in this Convention are any technique for changing - through the deliberate manipulation of natural processes - the

dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space (ENMOD, 1977: Article 2). Of course, as mentioned in the Preamble, Article 3 of the Convention not only does not prohibit the use of techniques for peaceful purposes, but also encourages states and international organizations to co-operate in this field.

Another important document is the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, 1980, which may be assumed to cause excessive injury or have non-discriminatory effects. Actually, this is the continuation of legislation to limit warfare and war methods. This convention has been accepted and joined by 126 countries until July 2023, albeit the Islamic Republic of Iran is not a party to it.

The introduction of the convention, relying on the United Nations Charter, calls for non-use of force and threats in international relations. Further, it prohibits the use of methods and warfare whose purpose is to cause widespread, long-term and severe damage to the natural environment or such damage is expected from it. Apart from stating this sentence in the introduction, however, this convention does not add a special provision regarding the protection of the environment in armed conflicts to the provisions before it.

4. Protection of human beings in armed conflicts through IHL

Geneva law governs protects persons in armed conflicts. The most important Geneva law instruments are the 4 famous conventions of 1949, plus the three protocols mentioned earlier. Geneva law arise to defend those who are not legitimate targets of war: combatants who are no longer fighting and civilians. ICH is safeguarded through the lives of people and the implementation of their culture. In fact, everything that we recognise as ICH and try to safeguard, flows in the heart of human life (see Article 2 of the 2003 Convention). A dead person no longer has a culture to practice, and if his death is only limited to the material heritage, a part of that people's culture will be buried with him. On the other hand, in addition to preserving human life, it is important to recognize and respect the cultural rights of people living in war zones and occupied lands during armed conflict and occupation.

Although the bearers of ICH may be combatants and non-combatants, the focus of the present discussion is on civilians, which means the persons protected by the Fourth Geneva Convention of 1949. According to this convention, protected persons are those who do not actively participate in the conflict and are not subject to the other three conventions (ICRC, 1949, Article 4). This negative definition actually separates combatants and non-combatants from civilians. Anyone who is not among the persons mentioned in the earlier three conventions are considered civilians and can benefit from the protections of this convention; Whether it is a state official or someone who has an intellectual/political/ideological connection with a belligerent party or an ordinary citizen. Of course, this protection is granted without prejudice and discrimination based on race, nationality, religion or political opinion (ICRC, 1949, Article 13).

Sheltering in hospitals and safe areas or neighbourhoods is provided for civilians, including the wounded, sick and elderly, children under 15 years old, pregnant people and mothers of children under 7 years old (ICRC, 1949: Article 14). Actually the general prohibition of targeting hospitals has been hired to protect the life and health of persons of the most vulnerable groups against potential harm in war.

The belligerents can introduce neutral places to keep wounded and sick combatants and non-combatants safe, as well as civilians (ICRC, Article 15). The importance of this Article for our discussion is that such centers can be placed in crowded areas or places such as markets, historical district, cultural or archaeological areas, so that they can be safe even from unwanted attacks by the hostile parties. Such spaces can be a place to perform and consequently transfer ICH during armed conflicts.

In the Operational Directives of the 2003 convention, the necessity of dealing with ICH has been emphasized to resolve disputes and achieve peace (UNESCO, 2022: 197). This case can show the importance of implementing ICH during and after armed conflicts.

Article 23 of the GC IV 1949 deals with the necessity of free delivery of medical equipment, food and clothing as well as the equipment needed to perform religious ceremonies to civilians in war with priority of children and pregnant women (ICRC, 1949: Article 15). Violation of this Article is a war crime, and when it is done in the general context with the aim of destroying a population

group, it can be imposed as the imposition of living conditions that lead to its destruction, even subject to the title of genocide (see Article 2 of the 1948 Genocide Convention and Article 6 of the Rome Statute).

According to Article 24, orphan children (unaccompanied or alone) should be protected and, *inter alia*, their religious affairs and education should be implemented according to their own cultural traditions (ICRC, 1949: Article 24). In addition to emphasizing the health of children, this regulation also has the importance of education and freedom in the performance of religious rituals for our discussion, and this helps to transfer traditions to the future generations. These cases, along with other Articles and regulations that form the GC IV of 1949 as a whole in the protection of civilians in armed conflicts, is the role that Geneva law plays in protecting ICH. These regulations support people as owners and bearers of ICH and properties and places as a platform for its formation and continuation.

The Hague Regulations of 1907 also deal with cultural property in Articles 27 and 56. The importance of these regulations was, on the one hand, being a pioneer in the field of cultural property protection, and on the other hand, referring to it by the Nuremberg trials. According to Nuremberg trials, in 1939, in the beginning of World War II, these provisions were recognized by all civilized nations and were part of the customary law of war (Toman, 1996: 10). Article 56 supports scientific, artistic and cultural property and buildings regardless of private or state ownership (The Hague Regulations, 1907: Article 56). This development and innovation, which was welcomed by the Nuremberg trials, became the basis for the 1954 UNESCO convention.

Apart from this, there are important provisions in the Hague Regulations of 1907, which are considered an important contribution in protecting people, their property, and their environment. According to Article 22 of these regulations, the method of harming the enemy is not unlimited. Further, Article 23 stipulates prohibitions that are valuable for the protection of intangible heritage in armed conflicts; including the prohibition of causing unnecessary suffering and the prohibition of destroying or taking possession of enemy property without military justification. Article 25 also prohibits the attack or bombardment of defenseless cities and villages. This provision does not have any exceptions, such as justification by military necessity, and is important for the protection of individuals and communities who own and carry ICH.

Also, the honour and rights of families, human life and private property, as well as the freedom of religious practices and rituals must be respected (The Hague Regulations, 1907: Article 46). As already mentioned, religious rites and ceremonies are a part of ICH, and the occurrence of armed conflicts should not disrupt it; Because in addition to implementation, such a defect can cause problems in transferring the element to the next generations. In any case, not paying attention to the environment in armed conflicts (Azadbakht, 2020) and limiting the protection of property to the battlefield were among the biggest shortcomings of The Hague Regulations of 1907.

5. Conclusion

IHL does not have a specific provision for the protection of ICH in armed conflicts. However, by protecting three components of ICH, namely the cultural heritage, the environment and humans who are the performers, carriers and transmitters of the ICH participate in the protection of the ICH. It should also be kept in mind that the only protection system available for such protection of IHL is not and legal systems such as cultural heritage rights, the 2003 UNESCO Convention and human rights are very important.

Considering the harmful effects that armed conflicts have on ICH, it seems necessary that the relevant institutions, especially UNESCO, directly address the issue and take positive action to protect ICH. The importance of such effort is, on the one hand, the lack of a norm that directly deals with the protection of ICH in armed conflicts, and on the other hand, the existence of norms that are indirectly important for such protection and can facilitate UNESCO's positive action. In fact, it can be said that the most important document for the safeguarding of ICH in armed conflicts is the 2003 Convention, and other instruments, treaties and legal regimes play a complementary role in this regard.

Furthermore, it is possible to point out the necessity of initiatives in the field of humanitarian law. As there are treaty and customary law regarding the protection of material heritage, we can also think about the development of IHL to coordinate more with developments related to ICH. This can happen through treaty norms or through the development of national

measures to prepare guidelines during conflicts, including the protection of ICH. Also, in addition to the countries involved in armed conflicts, the countries accepting refugees and forcibly displaced persons due to armed conflicts should also be aware of the requirements of protection ICH from armed conflicts effects, foresee the possibility of implementation and transfer and overall safeguard ICH in armed conflicts in their internal regulations.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

Acknowledgments

We would like to express our gratitude to all individuals helped us to do the project.

Declaration of Interest

The authors report no conflict of interest.

Funding

According to the authors, this article has no financial support.

Ethical Considerations

Not applicable.

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