

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

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Intangible Cultural Heritage is safeguarded under UNESCO's 2003 Convention for safeguarding this heritage. However, it is threatened in armed conflicts by damages imposed to cultural properties, the environment, and bearer communities. Since, UNESCO's 2003 Convention does not address armed conflicts directly, it is necessary to resort to other legal regimes, including IHL to enhance the protection afforded to intangible cultural heritage. IHL contributes to safeguarding by protection of the three components of the ICH, namely cultural properties, environment, and bearer communities. This research examines how this contribution operates and how effective it is.

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

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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 it is important that the 2003 UNESCO Convention (UNESCO, 2003) includes instruments, objects, artefacts and cultural spaces associated therewith in its definition of 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 law 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).

Under the regime of the 1949 Geneva Conventions, 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 extend to cultural properties, works and places.

This article should be understood in a very wide sense. The prohibition should cover the destruction of all property, including real or personal, whether it is the private property of protected persons (owned individually or collectively), State property, that of the public authorities) or of co-operative organisations (Pictet, 1959).

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 grave breach that should be criminalised in the domestic legal system (ICRC, 1949). This can be significant regarding

the protection of objects related to ICH, according to Article 2(1) of the 2003 Convention.

Furthermore, Article 52 of the First Additional Protocol to the Four Geneva Conventions stipulates that civilian objects should not be the object of attack or of reprisals, and that attacks should be limited directly to military targets. Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage. It is also notable 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, 1977a).

Additional Protocol 2 to the Four Geneva Conventions further provides that, "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, 1977b). This article (16) more decisively prohibits any kind of use of the cultural places we want to protect in non-international armed conflicts. 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.

The reason for placing this article in the Second Additional Protocol, despite the existence of the 1954 Hague Convention, was that that 1954 Convention was not yet generally accepted at that time and the importance of this issue required that an Article in this Protocol should deal with it (Sandoz et al., 1987). Despite this, it should be noted that the 1954 Hague Convention is also applicable in internal armed conflicts. Despite this, this provision in the Second Additional Protocol does not contain some important conditions that were 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. For this reason, it seems that a more comprehensive support can be implemented through the former instrument.

In the Hague law, the most important document for our purposes is the aforementioned UNESCO's 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. This Convention is predicated

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 of great importance for all peoples of the world and, for this reason, it requires international protection (UNESCO, 1954a). The importance of such protection transcends the borders of a single state and becomes a matter of international importance. To be effective, this support must be organised in peacetime by means of both domestic and international regulations (Toman, 1996).

This Preamble demonstrates the mindset of cultural heritage protection in the middle of the 20th century. Referring to grave damages imposed to cultural property in the recent armed conflicts, namely the two World Wars, the Preamble addresses such damages as a result of the developments in the technique of warfare (UNESCO, 1954b). It also introduces the cultural heritage, belonging to any people, as part of the cultural heritage of all mankind, since each people makes its contribution to the culture of the world (UNESCO, 1954a). In fact, this is important for ICH because it supports objects that are connected to ICH. Considering the lack of a substantial distinction between tangible and intangible heritage, this could provide protection for ICH as well.

Article 1 of the Convention defines cultural property as “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, this list is not exhaustive and other examples can be included to the definition scope. This is also of importance for ICH since it protects objects that are subject to Article 2(1) of the 2003 Convention for being “associated with” ICH.

The Art of Crafting and Playing the Kamantcheh/Kamancha element, inscribed jointly by Iran and the Republic of Azerbaijan on the Representative List of Intangible Heritage of Humanity (RL) in 2017 has a number of tangible aspects: the tools and instruments with which the Kamancheh is crafted as a material part of the art of crafting, and also the Kamancheh instrument itself is as a tangible part of the art of playing itself. So, self-made construction tools and wood should be considered a material aspect of this ICH

work. Presently, this ICH element’s material parts are not challenges for protection because the Kamancheh instrument is neither unique nor rare: There are various types of Kamancheh in each part of Iran and Azerbaijan, and the destruction of one or more types of this instrument does not challenge the viability of this ICH element. Similarly, in carpet weaving in Azerbaijan and violin making in Cremona (Italy), the method of production is fundamental to the viability of the ICH element which depends upon the product; in the Sicilian puppet theatre, the puppet with which the show is performed is a material part of the ICH element.

In another example, the Mevlevi Sema Ceremony element was inscribed by Turkey on the RL in 2008. Although it is performed in different places in Turkey, its main performance is in Konya and in the Shrine of Rumi which itself was inscribed as a world heritage property in 2000 as part of the cultural landscape of Konya. The Shrine of Rumi tomb can be considered as falling under two types of protection: on the one hand, as a tangible part of an intangible heritage work under the 2003 UNESCO Convention and, on the other hand, as part of a cultural landscape under the 1972 Convention. Another parallel case relates to the Rice Terraces in the Philippines, inscribed as a World Heritage Site in 1995. In these layered rice paddies, chants have been sung collectively over a long period of time as is reflected in the general context of the layered paddies and agricultural livelihood. In 2008, these chants were inscribed by the Philippines on the RL of the 2003 ICH Convention under the title of Hudhud chants. Also, the Persian Qanat, inscribed as a world heritage in 2016, is associated with the traditional knowledge required for building these aquifers as well as for managing them, which can be considered as an ICH.

Furthermore, buildings whose main and effective purpose is to preserve or exhibit the movable cultural property as defined by the 1954 Convention such as museums, large libraries and archival depositories, and refuges intended to shelter, in the event of armed conflict, the aforementioned movable cultural property are all protected, as well as centres containing a large amount of cultural property known as “centres containing monuments” (UNESCO, 1954: Article 1(b)-(c)). These buildings are seen as crucial in the pre-conflict phase of protection whereby the protection of cultural property, according to Article 2 of 1954 Convention, includes safeguarding 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).

States should protect cultural property situated on their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property. The duty of respect applies both to cultural property located in their own territory as well as in that of other Parties of the 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. It should also be protected against theft, pillage, and misappropriation of, and any acts of vandalism directed against, cultural property. Furthermore, Parties must refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party (UNESCO, 1954, Article 4). These provisions are also relevant in the time of occupation with the occupying power, which must implement all actions in coordination with the competent national authorities (UNESCO, 1954, Article 5). It is worth noting in this regard that the initial intervention by South Africa in the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) case made in December 2023 stated that: "Israel has also laid waste to vast areas of Gaza, including entire neighbourhoods, and has damaged or destroyed in excess of 355,000 Palestinian homes, alongside extensive tracts of agricultural land...cemeteries, cultural and archaeological sites, municipal and court buildings". The importance of this provision to the ICH is that it is possible to support the continued practice (and viability) and the transmission of ICH during the occupation through applying the safety granted to cultural sites.

In the case that one of the belligerent parties commits a violation to its obligations as set out in the Convention, the opposing Party shall, so long as this violation persists, be released from the obligation to ensure the immunity of the property concerned. Also, unavoidable military necessity may provide a justification for the violation of these provisions (UNESCO, 1954, Article 11). Neither of these provisions appears to be consistent with the spirit of protection, but they reflect both customary rules of the law of armed conflict as well as the inevitable compromises made in the international arena.

Ultimately, military security is always going to trump protection of cultural heritage, whether material or non-material. Provisions have also been adopted for the safe transportation of cultural property as well as the protection of the people involved safeguarding these works (UNESCO, 1954, Articles 12-15). These measures are also applicable during 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 protection system known as the "enhanced protection system" based upon which, even if one of the belligerent parties was not a party to this Protocol, the other party is bound by these provisions in their mutual relations (UNESCO, 1999: Article 3(2)). This article is related to the principle of the Convention on enhancement of the protection of cultural property.

According to Article 6 of the Protocol, which relates to the respect for cultural property, more protective measures than those of the 1954 Convention have been considered: Only if they are based on imperative military necessity can attacks can be directed towards cultural property if that cultural property has, by its function, been made into a military objective. Furthermore, there must be no feasible alternative available to obtaining a similar military advantage to that offered by directing an act of hostility against that objective, as long as no choice is possible between such use of the cultural property and another feasible method for obtaining a similar military advantage (UNESCO, 1999). Such a decision shall be taken only by an officer commanding a force the equivalent of a battalion in size or larger, or a force smaller in size where circumstances do not permit otherwise; (UNESCO, 1999: Article 6). Such specific limitations on the notion of military necessity can make possible abuses of the provisions of the 1954 Convention more difficult to commit, and therefore, enhance the protection.

An important tool offered by the 1954 Convention to protect cultural heritage is the existence of erga omnes partes obligations. Erga omnes partes obligations purport to provide legal standing for states that are not directly injured by a violation of a treaty-based norm, provided that these states are also Parties to the same treaty. In so doing, an erga omnes partes obligation challenges the belief that multilateral treaties consist of bundles of bilateral, reciprocal rights and obligations. Thus, erga omnes partes obligations stretch the interpretation of treaties and therefore of state consent (Chow, 2020). In the case of the Application of the

Convention on the Prevention and Punishment of the Crime of Genocide (*Gambia v Myanmar*), the ICJ observed the common interest of all States parties in compliance with these obligations and, therefore, that they are not limited to the state of nationality of the alleged victims. In this connection, the Court observed that victims of genocide are often nationals of the State allegedly in breach of its obligations *erga omnes partes* ("[Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(The Gambia v. Myanmar\)](#)," 2022). As a consequence Gambia, as a State Party to the Genocide Convention (1948), had standing to invoke the responsibility of Myanmar for the alleged breaches of its obligations under that Convention ("[Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(The Gambia v. Myanmar\)](#)," 2022; *Convention on the Prevention and Punishment of the Crime of Genocide, 1948*).

Similarly, in its Order 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 v Israel*), the International Court of Justice accepted South Africa's standing, without any objection from Israel. Based on this Order, the Court declared that any State party to the Genocide Convention may invoke the responsibility of another State party with a view to determining the alleged failure to comply with its *erga omnes partes* obligations under the Convention and to bringing that failure to an end ("[Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip \(South Africa v. Israel\)](#), Order of 26 January 2024," 2024). With this possibility, the responsibility of states arose from breaching the 1954 Convention can be inferred by and against all Contracting States to the Convention.

While the *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 the opportunity to spell out in it the specific enforcement regime they deem appropriate for these treaty obligations, whether an ordinary 'synallagmatic' or an innovative 'non-synallagmatic' regime equivalent to that of *erga omnes* obligations. By clarifying *ab initio* the relevant regime, the states concerned avoid leaving it to interpretation, and the consequent uncertainties, for the treaty concerned (Francioni, 2008). Such interpretation

can be applicable to the provisions of the 1954 Convention in the present discussion and to 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 property, but based on the *erga omnes partes* obligations any Contracting Party has standing to invoke the responsibility.

In an arbitration case between Ethiopia and Eritrea, the Permanent Court of Arbitration addressed the destruction of cultural and historical works in relation to the 2500-year-old Stella of Matara statue in Eritrea which was an important symbol for the city of Matara. During the night of 30-31 of May 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 award, the burden of proving the intentional destruction of the Stella by the Ethiopian military was placed on 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 ("[Eritrea-Ethiopia Claims Commission, Partial Awards: Central Front, Eritrea's Claims](#)," 2004). A very important point is that neither Ethiopia nor Eritrea was a Party to the 1954 UNESCO Convention. Nevertheless, the Court considered the protection of cultural works to be covered under Article 56 of The Hague Regulations, which is a part of customary international humanitarian law ("[Eritrea-Ethiopia Claims Commission, Partial Awards: Central Front, Eritrea's Claims](#)," 2004). According to this Article, "the property of the communes, that of religious, charitable, and educational institutions, and those of arts and science, even when State property, shall be treated as private property. All seizure of and destruction, or intentional damage done to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of proceedings" (*The Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land, 1899*).

The Court of Arbitration also recognised the prohibition of the destruction of the Stella of Matara as one of the civilian property in the occupied lands, regulated *inter alia* by Article 53 of the Geneva Convention IV and Article 52 of the AP (ICRC, 1949). However, according to the

sufficiency of Article 56 of The Hague Regulations, the Court did not have recourse to necessity to identify the value of the Stella of Matara for it to be covered by Article 53 of the AP I ("[Case No.IT-01-42/1-S: Prosecutor v. Miodrag Jokic, Sentencing Judgement](#)," 2004). Article 53 of the Geneva Convention IV prohibits the destruction 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. The exception to this prohibition is again an absolute necessary for military advancement (ICRC, 1949). Article 52 of the AP I also limits the attack or trade in civilian objects, unless it offers a definite military advantage (ICRC, 1977a). According to the Court, this was enough to demonstrate the illegitimacy of the destruction of the Stella and there was no need to employ the next Article of the Protocol. As interpreted by the Court, in order to be able to consider a work as falling under 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, but it is not necessary to examine whether the Stella was among such works or not due to the sufficiency of other ruling provisions ("[Eritrea-Ethiopia Claims Commission, Partial Awards: Central Front, Eritrea's Claims](#)," 2004). It can be inferred that there is no need for such a test to protect intangible cultural heritage elements during armed conflicts that are by nature of a different type from a building such as St. Peter's Basilica because such a test is not possible nor required, according to the interpretation of the PCA. The importance of this award for the protection of ICH in armed conflicts is that many works and buildings that are important for ICH may not be mentioned among globally important or famous works; however, according to the Court's interpretation, the protection of such property and works does not require a special test to discover their importance. The jurisprudence of the ICJ also shows a clear tendency to take into account the value of cultural heritage for the purpose of interpreting other norms or principles applicable to the case. However, such jurisprudence does not offer conclusive precedents for the express recognition of customary norms applicable to the field of cultural heritage protection (Francioni & Vrdoljak, 2020). In the case of Cambodia's case against Thailand over the Preah Vihear Temple, later registered as a UNESCO World Heritage Site in 2008, the Court ordered the return of the parts that were separated from the temples by the Thais to Cambodia, but in the end it does not seem to contribute to establishing any customary

international law ("[Case concerning the Temple of Preah Vihear \(Cambodia v. Thailand\) case, Merits](#)," 1962).

Under the ICTY Statute, such destruction has been criminalised as a war crime. Article 3(d) of the ICTY Statute stated that seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science are amongst war crimes (UNSC, 1993). In the case of Kordić & Čerkez, the Appeals Chamber 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) due to its nature and dimensions ("[Prosecutor vs. Dario Kordic and Mario Cerkez, The Appeals Chamber Judgement](#)," 2004). Albeit in this case, the investigation only focused on educational and religious places and did not say anything about cultural places and works ("[Prosecutor vs. Dario Kordic and Mario Cerkez, The Trial Chamber Judgement](#)," 2001). The same position was taken in the Blaškić case ("[Prosecutor vs. Tihomir Blaškić, The Trial Chamber](#)," 2000).

The reason given for this gap in the ICTY jurisprudence is that in most cases such destruction was committed in context of the crime of persecution of a people on the grounds of race, religion or politics. That is, the destruction of religious institutions, which might also have historical value for example, was considered an indirect persecution of the individuals associated with these institutions while the Statute recognises cultural property as part of a bundle of property and institutions directly protected by customary international law (Forrest, 2010). Even if the destruction of cultural property in itself is not a genocidal act, it can be a sign of these actions (Ehlert, 2014) even though the ICTY identified the physical and biological elimination of people as genocide, not the destruction of cultural property ("[Prosecutor v. Krstić \(Trial Chamber\)](#)," 2001). Regardless of the Court's decision, nonetheless, according to some scholars, the fact that the protection of cultural property is criminalised by the ICTY Statute means that it is part of customary international law because the Statute's mission is to try and punish the perpetrators with regard to customary IHL (Meron, 2005).

The contributions 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, it has considered Article 19 of the 1954 Hague Convention as customary international law ("[Prosecutor v. Duško Tadić \(Appeals Chamber\)](#)," 1995). This Article,

as discussed earlier, establishes the responsibility to protect cultural property during international armed conflicts. In this context, Miodrag Jukić, was found guilty for directing artillery attack to the old town of Dubrovnik city ("[Prosecutor vs. Dario Kordic and Mario Cerkez, The Appeals Chamber Judgement](#)," 2004) and, furthermore, the Court stated that the attack itself is prohibited, regardless of its results ("[Prosecutor vs. Dario Kordic and Mario Cerkez, The Appeals Chamber Judgement](#)," 2004).

The only case dealing with this issue in the International Criminal Court's jurisprudence is the Al-Mahdi case ("[Situation in the Republic of Mali, Prosecutor v. Ahmad Al Faqi Al Mahdi](#)," 2016), in which the Court considered the adequacy of its Statute regarding criminality of destruction of cultural property. The customary nature of this crime was not addressed as such, and the proceedings merely relied on the Rome Statute. Al-Mahdi targeted 10 religious and historical buildings in the Timbuktu region of Mali, all of which belonged to Sufis, including nine tombs and one mosque ("[Situation in the Republic of Mali, Prosecutor v. Ahmad Al Faqi Al Mahdi](#)," 2016). The legal basis of the trial was Article 8(2(4)) of the Rome Statute, which declares extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly as a war crime ([The Rome Statute of the International Criminal Court](#), 1998). 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 & Ben](#), 2020) and another number are performed in its vicinity, such as praying for rain ([Joffroy & Ben](#), 2020). Furthermore, the actual reconstruction of the tombs itself involved the use of traditional local know-how and skills, itself a form of ICH.

It is based on the legacy of ICTY, some authors believe that the criminalisation of intentional destruction of cultural heritage has been supported by customary international law ([Francioni](#), 2008). In this regard, there is another viewpoint 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 property and their return to the country of origin in the case of a history of occupation is among the

general obligations of international law ([Beigzadeh](#), 2011).

Inclusion within the context of protected property listed in Article 8(2(4)) 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), and this has been dealt with in the case of al-Mahdi in Mali situation, as mentioned above.

3. Protection of the environment in armed conflicts through IHL

According to 2003 Convention, ICH "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" ([UNESCO](#), 2003). At the same time, the 1972 Convention deals with the world cultural and natural heritage. According to some scholars, cultural heritage protection law should not be regarded as a discreet discipline but rather as an integral part of environmental law in general, albeit a somewhat specialised area ([Birnie & Boyle](#), 2009). The fact that national legal systems may treat certain aspects of the environment as part of the heritage of a specific local community or cultural group or address both cultural heritage and the natural environment in one piece of legislation, in addition to that components of the natural environment such as mountain ranges, particular collections of vegetation, or desert landscapes may well serve as symbols of national or ethnic cultural identity can support this idea ([Blake](#), 2015). For example, Australian legislation combines the protection of the environment and world heritage ([Government](#), 1999).

As a result, we can see that contemporary heritage law is divided into two branches, namely cultural and natural ([Francioni](#), 2008), neither of which cannot be protected independently. Recent research shows 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). The Draft Principles on Protection of the Environment in Relation to Armed Conflicts, published by the International Law Commission in 2022, is also a text of importance here. In this document, the unity and

integrity of both the environment and culture are protected in an interrelated manner.

This relationship, as reflected in Article 2(1) of the 2003 Convention, can also be seen in the elements of ICH. For example, one of the elements internationally inscribed by Mexico on the RL in 2009 is the Ritual Ceremony of the Voladores. This ceremony is a dance with fertility rituals performed by various ethnic groups in Mexico and other Central American countries. 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 honour in the sun, and to all directions and cardinal points. After this invocation, the dancers jump off the platform tied with long strings, they rotate imitating the flight of birds while the rope is uncoiled, and they go descending gradually to the ground (UNESCO, 2009). The role of the Ritual Ceremony of the Voladores in the identity of the region of the Totonac community is fundamental, but due to deforestation (shortage of the tree species required to perform the ritual), besides the presentation only of the last part of the ceremony (the flight) in commercial spaces, means that most of the ritual is no longer performed and that its meanings and symbolisms are forgotten (Petrillo, 2019). This ritual dance simply shows the intimate relationship between the environment and ICH whereby protection of the environment is an act related to safeguarding ICH.

The first direct reference to the environment in an IHL instrument was in the AP I of 1977, according to which, "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" (ICRC, 1977b). 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, an interpretation also supported by the commentators (Sandoz et al., 1987). Chemical weapons with the same effect on the environment are also regulated by the same rule (Sandoz et al., 1987).

AP I also deals with the protection of those objects that are 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, 1977a). However, although it does not mention explicitly the environment, some commentators believe that this article should be understood in the light of Article 55 (Sandoz et al., 1987) which explicitly prohibits damage

to the environment. This article seeks to protect the natural environment against widespread, long-term and severe damage, prohibiting 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. It also aims to prevent attacks directed against the natural environment by way of reprisals (ICRC, 1977a).

The clarity of this article provides an absolute prohibition and leaves no doubt for any justification, such as 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 it can sometimes threaten future as well as current generations, and even those who will be born years after the end of the war. If such weapons and military methods are employed, the environment and the ICH will be affected together. Attacking the natural environment causes the disappearance of ICH along with nature, due to the interrelationship between ICH and the environment. In fact, the prohibition of environmental destruction and the establishment of regulations for precaution and prevention are compatible with the ultimate goal of IHL. Preventive and precautionary measures are stipulated by both Article 35 and Article 55 regarding the predictability of extensive, long-term and severe damages caused by certain weapons and warfare methods. By combining these two articles, not only are such methods and weapons are prohibited, but also they should also not be used if such results can be predicted as likely.

It has been proposed that the concept of environment in this article should be interpreted in the broadest way in order to include the biological environment in which the human population lives. Moreover, 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). It should also be noted that Article 35 looks from the point of view of methods of warfare, while Article 55 refers to the survival of the population. It should also be noted that the population is mentioned without the use of the qualifying adjective "civilian", which is the expression is

used in many other articles in the Protocol. This omission is deliberate: it emphasizes that damage caused to the environment may continue for a long time and affect the whole population without any distinction (Sandoz et al., 1987).

The Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, adopted on December 10, 1976 (ENMOD) is another important treaty related to our current discussion. However, despite its great importance, this Convention has not gained an appropriate acceptance with only signatory states. The Preamble of ENMOD aims to contribute towards the cause of halting the arms race, and of bringing about general and complete disarmament under strict and effective international control, and of saving mankind from the danger of using new means 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 adaptation methods in peaceful ways to improve human life (ENMOD, 1976: Preamble).

According to 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 organisations to engage in activities contrary to the provisions the Convention (ENMOD, 1976: Article 1). The term “environmental modification techniques” as used here means “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 organisations to co-operate in this field (ENMOD, 1977: Article 3).

4. Protection of human beings in armed conflicts through IHL

Geneva law governs the protection of persons in armed conflicts. The most important Geneva instruments are the four famous conventions of 1949, in addition to the three Additional Protocols. This regime protects those who are not legitimate targets of war, namely combatants who are no longer fighting and civilians. ICH

is safeguarded through peoples’ lives and the vitality of their culture, and everything that we identify as ICH and wish to safeguard exists in the minds and bodies of human beings (see Article 2 of the 2003 Convention). A dead person has no longer a culture to practice, and if the ICH that s/he as a bearer of is lost then it no longer exists. In addition to preserving human life, this law is vital for safeguarding ICH in armed conflicts to protect 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 armed 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 treaty; 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).

Sheltering in hospitals and safe zones or localities is a privilege granted to civilians, including the wounded, sick and elderly, children under 15 years old, pregnant people and mothers of children under 7 years old (ICRC, 1949). Actually, the general prohibition against targeting hospitals has been adopted in order to protect the life and health of persons belonging to the most vulnerable groups in war. Further, the belligerents can introduce neutral zones intended for sheltering protected persons from the effects of war (ICRC, 1949). The importance of this article for safeguarding ICH is that such centres can be placed in crowded areas or places such as markets, historical district, cultural or archaeological areas, so that protected persons are kept safe even from unwanted attacks by the hostile parties. Such spaces can be a place to practise and enact ICH elements and, consequently, to ensure their viability and transmission during armed conflicts. Given that the Operational Directives of the 2003 Convention, have emphasized the crucial role that can be played by ICH in resolving disputes and achieving peace (UNESCO, 2022), this demonstrates the importance of fostering an

environment for the continues practice of ICH during and after armed conflicts.

Geneva Convention IV also deals with the necessity of free delivery of medical and hospital equipment, food and clothing as well as the equipment needed to perform religious worship to civilians in war with priority of children and pregnant women (ICRC, 1949: Article 23). 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 considered as the imposition of living conditions that lead to its destruction, even fall under the title of genocide (*Convention on the Prevention and Punishment of the Crime of Genocide, 1948*).

Orphan children under the Convention should be protected and, inter alia, their religious affairs and education should be implemented according to their own cultural traditions (ICRC, 1949). In addition to emphasizing the health of children, this provision is also notable for education and freedom in the performance of religious rituals for our discussion, and this helps to transfer traditions to the future generations. Hence, it can be of great relevance to a wide range of ICH elements. These provisions, along with the other articles and provisions that form the Fourth Geneva Convention of as a whole, is the role that Geneva law plays in safeguarding ICH. These provisions protect people, inter alia as owners and bearers of ICH, as well as cultural property and places as a platform for the viability, continuation, and transfer of ICH.

5. Conclusion

IHL does not contain any specific provision for the protection of ICH in armed conflicts since this aspect of cultural heritage was not conceived of at the time of its development. However, by protecting three components of ICH - namely cultural heritage, the environment and humans who are the owners and transmitters of the ICH - contributes towards the protection of the ICH in armed conflicts. It should also be kept in mind that IHL is not the only protection system available for such protection and other legal regimes such as cultural heritage law, in particular the 2003 UNESCO Convention, environmental protection law and human rights law can all be of notable importance.

Considering the negative effects that armed conflicts are likely to have on ICH and the well-being of its bearers, and the centrality of this heritage to supporting a community's identity and cohesion during armed conflict, it seems necessary that UNESCO and other relevant international institutions directly address the

issue and take positive action to protect ICH before, during and after armed conflicts. The importance of such efforts is, on the one hand, the lack of any norm that directly deals with the protection of ICH in armed conflicts and, on the other, the existence of norms that are indirectly important for such protection and can facilitate UNESCO's positive action. However, the most important document for the safeguarding of ICH in armed conflicts is the 2003 Convention, and other instruments, treaties and legal regimes should play a complementary role in this regard.

Furthermore, it is possible to point out the necessity of initiatives in IHL. Since customary norms and treaty law already exist for the protection of material heritage, we can also think about the development of IHL to coordinate more with developments related to ICH. This can be developed through treaty norms or through the evolution of national measures to prepare guidelines during conflicts, encompassing protection of ICH. Also, in addition to the countries involved in armed conflicts, the countries accepting refugees and forcibly displaced persons should be aware of the requirements of protection ICH from armed conflicts effects as well, foresee the possibility of implementation and transfer and overall safeguard ICH in armed conflicts in their domestic regulations.

Authors' Contributions

Authors contributed equally to this article.

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

Transparency Statement

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