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The Unrecognized Genocide – Rethinking the Legal Framework for the Destruction of Cultural Heritage in Ukraine and Gaza

Abstract: The deliberate destruction of cultural heritage has emerged as a recurring and emblematic feature of modern armed conflicts, revealing profound deficiencies in the international legal framework. From the devastation of Dubrovnik and the Mostar Bridge during the war in former Yugoslavia to the destruction of the Buddhas of Bamiyan and the attacks on monuments and sites in Mali, Iraq, and Syria, such acts target the material embodiments of identity, history, and collective memory. Although cultural heritage – now understood to encompass both tangible and intangible dimensions of human expression – enjoys nominal protection under a wide range of international instruments, including the 1954 Hague Convention, the World Heritage Convention, and the Rome Statute of the International Criminal Court, these regimes have proven insufficient in prac-

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tice. The ongoing destruction of cultural sites in Ukraine and Gaza exposes a fundamental lacuna in international law: the absence of the concept of *cultural genocide* from the Genocide Convention (1948). This exclusion, rooted in the *travaux préparatoires*, prevents the recognition of systematic cultural destruction as an autonomous international crime, limiting accountability to war crimes or crimes against humanity. This article critically examines this normative omission through an analysis of relevant treaty provisions, jurisprudence, and state practice. It argues that the eradication of cultural heritage constitutes a distinct assault on a group's existence and continuity, and thus merits recognition within the legal framework of genocide. The article concludes by advocating for the re-evaluation or amendment of the Genocide Convention to explicitly include cultural genocide and for the development of equivalent international legal mechanisms.

Keywords: genocide, Ukraine, Gaza, Raphael Lemkin, cultural genocide

Introduction

Recent decades have witnessed a marked rise in the deliberate destruction of cultural heritage during contemporary conflicts. The attacks on the Old City of Dubrovnik and the Old Bridge in Mostar during the wars in former Yugoslavia, the destruction of the Bamiyan Buddhas in 2001, and the thefts from the Iraq National Museum in 2003 serve as symbolic examples of how cultural heritage becomes a target of war and how we sometimes irretrievably lose our knowledge. Since 2010, the world has witnessed the widespread destruction of cultural heritage caused by war and extremism. In Syria, civil war and terrorism led to the devastation of ancient sites such as Palmyra, where the temples of Bel and Baal Shamin were blown up, along with centuries-old monuments across Aleppo and Bosra. In Mali, the actions of extremists resulted in the destruction of invaluable monuments in Timbuktu. In Ukraine, Russia's armed forces have damaged or destroyed hundreds of museums, churches, and historic buildings, while Sudan's civil conflict has led to the looting and ruin of key institutions such as the National Museum of Sudan. The war in Gaza has similarly obliterated numerous mosques, churches, fortresses, and archives, including Qasr al-Basha and Gaza's Central Archives. In the South Caucasus, the Nagorno-Karabakh conflict has left Armenian churches such as Kanach Zham and the Ghazanchetsots Cathedral heavily damaged. Such destruction profoundly affects people's lives, fundamental human rights, cultural identity, and collective memory. Moreover, the loss of a people's cultural heritage is a loss for all humanity. This raises urgent questions about how the international

community should respond to such crimes and how perpetrators can be effectively held accountable.

In this regard, it should be noted that the contemporary definition of cultural heritage under international humanitarian law and international criminal law takes into account its broad and evolving nature. The concept, which primarily included monumental art and architecture, also entails non-physical aspects of culture such as various beliefs, values, languages, ceremonies, or living traditions. As explained by the Office of the Prosecutor of the International Criminal Court (ICC), which formulated the policy on cultural heritage,

> the Office broadly construes the term "cultural heritage" to extend beyond cultural property and to incorporate both products and processes. This term denotes a community's sense of identity and belonging, and involves cultural resources in both their tangible and intangible forms. Cultural heritage refers not only to physical forms of heritage, such as material objects and artefacts (including digital artefacts), but also to the practices and attributes of a group or society that are inherited from past generations, maintained in the present, and bestowed upon future generations for benefit and continuity.[1]

In fact, the international community appears strongly committed to the protection of cultural property – at least on paper. The principal international instruments in this field have been widely accepted and ratified, reflecting a broad formal consensus among states. However, this commitment stands in stark contrast to the reality on the ground, where the protection of cultural heritage is frequently neglected or openly disregarded. Additionally, the international rules are fragmented, failing to address the separate, specific legal framework that deals with the protection of cultural heritage, the prevention of its destruction, and the effective prosecution of its intentional destruction. On the one hand, the international community has adopted a number of instruments concerning the protection of heritage – including during armed conflicts – which enjoy widespread acceptance. The Convention concerning the Protection of the World Cultural and Natural Heritage ("World Heritage Convention"),[2] for instance, has been ratified by 196 States Parties, and the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict has 137 State Parties,[3] including Russia, Israel, and Afghanistan. On the other hand, several documents are intended to secure effective investigations, focussing on those who engage in the destruction of cultural heritage. The UNESCO Declaration concerning the Intentional Destruction of Cultural

1 International Criminal Court, Office of the Prosecutor, *Policy on Cultural Heritage*, June 2021, para. 15.

2 16 November 1972, 1037 UNTS 151, see https://whc.unesco.org/en/statesparties/ [accessed: 13.10.2025].

3 14 May 1954, 249 UNTS 215, see https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-1954/state-parties?activeTab= [accessed: 13.10.2025].

Heritage adopted by the General Conference, outlining states' duties to prevent, stop, and punish intentional destruction, is universally accepted by the international community.[4] There are 125 States Parties of the Rome Statute of the International Criminal Court,[5] which is not directly dedicated to the protection of cultural heritage, but allows for the prosecution of those responsible for its destruction. This confirms a broad theoretical acceptance of the protection of cultural heritage among states and the prosecution of crimes related to the destruction of cultural heritage. However, the acceptance of a broad international framework does not guarantee the protection of heritage, as evidenced by the dramatic examples in Ukraine and Gaza. Furthermore, the issue of how to effectively address the impunity gap and ensure that perpetrators are held accountable for their actions remains a significant concern. Arguably, the main problem stems from the inadequacy of current international legal regulations to address acts of intentional cultural destruction beyond the individual responsibility of perpetrators for war crimes or crimes against humanity.

While the systematic destruction of cultural heritage in Ukraine and Gaza appears to constitute a form of cultural genocide, this concept cannot be formally applied because it was intentionally excluded from the Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention"),[6] despite significant historical advocacy. This exclusion leaves a critical gap in the international legal protection of cultural heritage. Consequently, "cultural genocide" is often perceived as a war crime or crime against humanity, or merely as an element of genocidal intent, rather than as the crime of genocide itself. This is significant, as the destruction of cultural heritage could lead to the eradication of a group's collective identity, history, and traditions. The gaps in current regulations are critically analysed below, broadly taking into account international law, the two case studies of Ukraine and Gaza, and some necessary examples highlighted in the jurisprudence of international courts. The main point of reference, however, is the Genocide Convention and its *travaux préparatoires*, which did not ultimately comprise a concept of cultural genocide, thereby constituting one of the most fundamental omissions in international law. The article concludes by advocating for a re-evaluation and potential amendment of the Genocide Convention to explicitly recognize cultural genocide, or for the development of new international legal mechanisms, to ensure accountability for the deliberate destruction of cultural heritage or at least the international community's use of existing paths to combat the progressive destruction of cultural heritage.

[4] UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, adopted by the General Conference of UNESCO at its 31st session, 17 October 2003.

[5] 17 July 1998, 2187 UNTS 3, see https://asp.icc-cpi.int/states-parties [accessed: 13.10.2025].

[6] 9 December 1948, 78 UNTS 277.

The Genesis of the Genocide Convention and Its Omission of Cultural Genocide

Raphael Lemkin, a Polish-Jewish scholar, is widely recognized as the father of the Genocide Convention, having coined the term "genocide" and served as an expert on the preparatory works on the Convention for the Prevention and Punishment of the Crime of Genocide. The term "genocide" first appeared in his 1944 book, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. In this book he called genocide the "destruction of a nation or of an ethnic group".[7] It is important to note that he did not explicitly use the term "cultural genocide" and that other concepts he employed took on a different meaning after the 1948 Genocide Convention was adopted (for example, the definition of genocide). However, by analysing his thoughts on this issue and the development of his ideas, we can trace the progression of his perspective. Lemkin emphasized that genocide does not necessarily mean immediate annihilation; rather, it can encompass a "coordinated plan of different actions aiming at the destruction of essential foundations of a national group".[8] He described various techniques employed by the Germans against occupied nations, which targeted the political, social, cultural, economic, biological, physical, religious, and moral spheres.[9] According to Lemkin, restrictions in the cultural field involved replacing national languages with German in schools and substituting art schools with vocational schools. Museums, archives, galleries, and libraries were destroyed, and the occupiers controlled cinemas, theatres, radio, and the press, among other things.[10] As can be observed when analysing this part of the book – while Lemkin analysed different fields of genocidal German policy – the destruction of the nation was his primary object of reference. He did not attribute any special, standalone meaning to cultural destruction, instead treating it as an integral element of the complex genocidal policies in occupied states. However, although he confirmed that "nations are essential elements of the world community", he tied them strongly with culture by noting that "the world represents only so much culture and intellectual vigour as are created by its component national groups".[11] He further stated that "the idea of

[7] R. Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, Carnegie Endowment, Washington 1944, p. 79.

[8] Ibidem.

[9] Ibidem, pp. 82-90. See also H. Schreiber, *Cultural Genocide – Culturicide: An Unfinished or Rejected Project of International Law?* in: G. Michałowska, H. Schreiber (eds.), *Culture(s) in International Relations*, Peter Lang, Frankfurt am Main 2017, pp. 323 et seq.; D. Irvin-Erickson, *Raphaël Lemkin: Culture and Cultural Genocide*, in: J. Bachman (ed.), *Cultural Genocide: Law, Politics, and Global Manifestations*, Routledge, London 2019, pp. 33 et seq.

[10] R. Lemkin, *Axis Rule*..., p. 84.

[11] Ibidem, p. 91.

nation signifies constructive cooperation and original contributions, based upon genuine traditions, genuine culture, and a well-developed national psychology".[12] In essence, in his book culture is intrinsically linked to the existence of a nation; it is the nation that gives culture its meaning and point of reference. For Lemkin, the destruction of a culture is one of the techniques leading to genocide. As with biological destruction, cultural genocide had the same aim: the destruction of a protected group. This was also confirmed in Lemkin's later writings.[13]

Work on a new convention on genocide started quickly after the United Nations was established. This was thanks to Lemkin, who successfully persuaded several members of the international community to support his advocacy for a Genocide Convention. These efforts culminated in Resolution 96(I), adopted by the United Nations General Assembly. This document stated in its preamble that "[g]enocide is a denial of the right of existence of entire human groups" and causes "great losses to humanity in the form of cultural and other contributions",[14] and in the operative part it not only declared genocide a crime under international law, but also requested UN Economic and Social Council to undertake a necessary study with a view to preparing the draft of a genocide convention.[15] Lemkin, alongside Henri Donnedieu de Vabres and Vespasian Pella, were invited as experts in international and criminal law to prepare the draft of the convention.

Article I of this draft stated that "the purpose of […] Convention is to prevent the destruction of racial, national, linguistic, religious or political groups of human beings". Lemkin harboured doubts regarding the inclusion of political groups. His argument specifically referenced features that, in contrast, justified his acceptance of the other included groups. In his opinion "political groups have not the permanency and the specific characteristics of the other groups referred". Clearly, he was referring here to the inherent culture of a group, as political groups cannot be identified by features fundamental to the recognition of racial, ethnic, national, or linguistic groups. Political ideologies did not typically have their own record of distinctive architecture, monuments, beliefs, values, or living traditions.

Article 1(2) then provided the definition of genocide, stating that it "means a criminal act directed against any one of the aforesaid groups of human beings, with the purpose of destroying it in whole or in part, or of preventing its preservation or development". This article describes the three forms of genocide called by Lemkin "physical", "biological", and "cultural" genocide. Physical genocide referred to causing death and mutilation; biological genocide meant the inability

[12] Ibidem.

[13] R. Lemkin, *Genocide*, "American Scholar" 1946, Vol. 15(2), pp. 227-230.

[14] UN General Assembly, *Resolution 96(I): The Crime of Genocide*, 11 December 1946, UN Doc. A/RES/96(I).

[15] K. Wierczyńska, *The Crime of Genocide*, in: P. Grzebyk, B. Krzan, K. Wierczyńska (eds.), *Polish Contributions to International Criminal Law*, Brill Nijhoff, Leiden 2025, pp. 298 et seq.

of a group to reproduce (restrictions on births); and cultural genocide concerned "the destruction by brutal means of the specific characteristics of a group". Other experts opined that "cultural genocide represented an undue extension of the notion of genocide and amounted to reconstituting the former protection of minorities [...] under cover of the term genocide".[16] For Lemkin, culture was the crucial element of the existence of the group; he underscored that "a racial, national, or religious group cannot continue to exist unless it preserves its spirit and moral unity". For him, the destruction of a culture would be as disastrous for humanity as the physical destruction of a nation. As can be observed, he treated equally physical and cultural destruction. Lemkin was not understood when he tried to convince his fellow experts that the destruction of cultures was not only a tendency towards assimilation through moderate coercion, but specifically aimed at the "rapid and complete disappearance of the cultural, moral and religious life of a group of human beings".[17]

The means of cultural genocide suggested in the draft were the forced transfer of children to another human group, the forced and systematic exile of representative individuals, the prohibition of the use of the national language even in private intercourse, the systematic destruction of books printed in the national language or of religious works, or prohibition of new publications in the national language, and finally, the systematic destruction or appropriation for new uses of historical or religious monuments, destruction or dispersion of documents and objects of historical, artistic, or religious value, and of objects used in religious worship. As to the "forced transfer of children" all experts agreed that this regulation should be included in the text of the Genocide Convention (and today it constitutes its Article II(e)). As to the "forced and systematic exile of individuals", Lemkin – who persistently lobbied for the inclusion of cultural genocide – was of the opinion that it should be worded differently, and suggested the following: "systematic elimination of the individuals representing the culture of the group by acts of violence or infringement of personal liberty".[18] This regulation is not covered by the Convention. He also proposed different wording for the "prohibition of the use of national language": the "prohibition, on threat of criminal punishment or violent measures, of the use of the national language even in private intercourse".[19] This provision was not mirrored in the text of the Convention either. Lemkin did not have any other specific remarks regarding the last examples of cultural genocide included in the draft.

16 UN Economic and Social Council, *Draft Convention on the Crime of Genocide*, 26 June 1947, UN Doc. E/447, comments on Art. 1.

17 Ibidem.

18 Ibidem.

19 Ibidem.

Lemkin was not the only person who referred to cultural genocide. Representatives of the Polish delegation also observed this policy. For example, Aleksander Bramson mentioned that cultural genocide had been manifested in the destruction of 50 million books in Poland.[20] However, this did not result in positive work on the convention, especially since another Polish delegate, Aleksander Rudziński – despite recognizing the problem of cultural genocide – joined the French representatives in believing that it should be regulated within the framework of minority protection,[21] and expressed his opinion that the destruction of cultural heritage could ultimately be treated as a preparatory act to physical genocide.[22] In the same vein, a Ukrainian representative claimed that "the nazis had systematically destroyed […] libraries, schools, technical institutes, churches and monasteries. Such acts, which aimed at the complete destruction of Ukrainian culture, were only the prelude to physical genocide".[23] But he supported the idea of Lemkin by stating that "no country which was genuinely anxious to combat the crime of genocide and to prevent it as well as punish it, could oppose the inclusion of cultural genocide among the acts to which the convention applied".[24] The idea was also supported by representatives from Lebanon[25] and Soviet Russia[26] during the works of the Ad Hoc Committee on Genocide; ultimately, however, the idea of cultural genocide did not appear in the Convention. From the very beginning, some states (the USA, France, and Egypt) directly criticized including the idea into the convention, suggesting *inter alia* that cultural genocide is not sufficiently defined, that the definition of genocide should be limited to other forms of discrimination, that cultural genocide rather belongs to the protection of minorities and goes far beyond the aims of the Convention, and that the inclusion of cultural genocide would allow interference in the domestic affairs of states.[27]

[20] UN General Assembly, *Summary Record of the 29th Meeting of the Committee on the Progressive Development of International Law and its Codification*, 24 June 1947, UN Doc. A/AC.10/SR.29.

[21] UN Economic and Social Council, *Summary Record of the Third Meeting of the Ad Hoc Committee on Genocide*, 13 April 1948, UN Doc. E/AC.25/SR.3.

[22] UN Economic and Social Council, *Summary Record of the Fifth Meeting of the Ad Hoc Committee on Genocide*, 16 April 1948, UN Doc. E/AC.25/SR.5.

[23] UN General Assembly, *Summary Record of the 65th Meeting of the Sixth Committee, General Assembly, Third Session*, 1948, UN Doc. A/C.6/SR.65.

[24] Ibidem.

[25] UN Economic and Social Council, *Summary Record of the Second Meeting of the Ad Hoc Committee on Genocide*, 6 April 1948, UN Doc. E/AC.25/SR.2.

[26] UN Doc. E/AC.25/SR.3, op. cit.

[27] UN General Assembly, *Draft Convention on Genocide. Communications Received by the Secretary-General: Communication Received from France*, 7 October 1947, UN Doc. A/401; UN Economic and Social Council, *Prevention and Punishment of Genocide: Historical Summary. Annex: Observations of the Governments of States Members and Communications from Non-Governmental Organizations on the Secretariat's Draft Convention*, 26 January 1948, UN Doc. E/621; UN General Assembly, *Summary Record of the 40th Meeting of the Sixth Committee, General Assembly, Third Session*, 1948, UN Doc. A/C.6/SR.40; UN Doc. A/C.6/SR.65, op. cit.;

After a long discussion on the Genocide Convention, the states forming the Sixth Committee decided not to include a special provision on cultural genocide in its regulations;[28] only the "forcible transfer of children" was left in the Convention in a general definition of genocide (Article II(e)). It was additionally limited to four protected groups (racial, ethnic, national, and religious), excluding linguistic group.

Definition of Genocide and Its Non-Uniform Interpretations

According to Article II of the Genocide Convention, genocide

> means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.

The most important element of the definition is the intent to destroy a certain protected group – namely, the *dolus specialis*, or specific intent to annihilate a group. This intent (*mens rea*) is the element that distinguishes genocide from other crimes. In order to fulfil all elements of the definition of genocide, the perpetrator must act with genocidal intent in addition to carrying out certain prohibited acts (*actus reus*). As mentioned above, the protection in the Convention is limited to only four groups; the cultural one was omitted, but the "forcible transfer of children" was left in the Convention as a form of cultural genocide.

The crime of forcibly transferring children, as regulated under Article II(e) of the Genocide Convention, is consummated by the act of forcible transfer itself, which fulfils the *actus reus* (the physical element of the crime). This of course assumes that the special intent (or *dolus specialis*) to destroy the group is also present. Considering the literal and direct wording of the Genocide Convention, no additional biological or psychological effect from this action is required,[29] although it must

UN General Assembly, *Summary Record of the 66th Meeting of the Sixth Committee, General Assembly, Third Session*, 1948, UN Doc. A/C.6/SR.66.

[28] During the vote concerning the exclusion of cultural genocide from the convention, 25 states voted for exclusion (Union of South Africa, United Kingdom, the United States of America, Australia, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, the Dominican Republic, France, Greece, India, Iran, Liberia, Luxembourg, the Netherlands, New Zealand, Norway, Panama, Peru, Siam, Sweden, and Turkey); 16 voted against (Union of Soviet Socialist Republics, Yugoslavia, Byelorussian Soviet Socialist Republic, China, Czechoslovakia, Ecuador, Egypt, Ethiopia, Lebanon, Mexico, Pakistan, the Philippines, Poland, Saudi Arabia, Syria, and the Ukrainian Soviet Socialist Republic) – UN General Assembly, *Summary Record of the 83rd Meeting of the Sixth Committee, General Assembly, Third Session*, 1948, UN Doc. A/C.6/SR.83.

[29] This view is supported by Y. Joffe, *Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?* "Journal of Genocide Research" 2023, Vol. 25(3-4), p. 315.

be noted that there is a vivid discussion on the issue and the international courts have not worked out a unified interpretation. For example, the International Court of Justice (ICJ) limited forcible transfers to the biological destruction of a group.[30] The different chambers of ad hoc tribunals have presented contrasting interpretations. For example, the Trial Chamber of the International Criminal Tribunal for former Yugoslavia (ICTY) found that the "physical or biological destruction of a group is not necessarily the death of the group members" and additionally noted that "the physical or biological destruction of the group is the likely outcome of a forcible transfer of the population when this transfer is conducted in such a way that the group can no longer reconstitute itself – particularly when it involves the separation of its members".[31] The ICTY Appeals Chamber was not convinced "that the forcible transfer operation alone or coupled with the murders and mistreatment in Bratunac town would suffice to demonstrate the principal perpetrators' intent to 'destroy' the protected group".[32] As noted by Novic, the International Criminal Tribunal for Rwanda (ICTR) predominantly adopted the interpretation based on material destruction.[33] This can be observed in *Semanza*, for example.[34] However, in *Akayesu*, when interpreting the crime of forcibly transferring children, the Trial Chamber of the ICTR did not mention physical or biological destruction and was silent on the interpretation of this provision.[35]

Consequently, given the prior practice of international courts, it is difficult to foresee how the International Criminal Court might interpret forcible transfer, especially given that in its *Elements of Crimes*,[36] forcible transfer is limited solely to the act of transferring, where the interpretation of the term "forcibly" is "not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment". This allows for both physical and biological destruction to be excluded as elements of the forcible transfer of children.

[30] See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, ICJ Reports, 2015, p. 3, para. 136.

[31] Trial Chamber, *Prosecutor v. Didoje Blagojević, and Dragan Jokić*, Case No. IT-02-60-T, Judgment of 17 January 2005, para. 666.

[32] Appeals Chamber, *Prosecutor v. Didoje Blagojević, and Dragan Jokić*, Case No. IT-02-60-A, Judgment of 9 May 2007, para. 123.

[33] For an overview of the practice of international courts, see E. Novic, *The Concept of Cultural Genocide: An International Law Perspective*, Oxford University Press, Oxford 2016, p. 56.

[34] See e.g. Trial Chamber, *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgment of 15 May 2003, para. 315.

[35] Trial Chamber, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment of 2 September 1998, paras. 522-523.

[36] ICC, *Elements of Crimes*, 2013, https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf [accessed: 13.10.2025].

The Office of the Prosecutor, in its *Policy on Cultural Heritage*, did not interpret this provision, but noted that

> children are the conduit of cultural heritage to future generations. If children are forcibly removed from a group, this will constitute an underlying act of genocide that is likely to have a profound effect on the access to, practice of, and continuation of a group's cultural heritage. In relation to the children themselves, the forcible transfer may create a severe dislocation from their cultural heritage.[37]

The Office of the Prosecutor clearly linked the forcible transfer of children to cultural heritage and the impact they have on each other. On the one hand, children transmit the culture to future generations; on the other hand, if forcibly transferred they lose their attachment to their own cultural heritage. Additionally, the Office of the Prosecutor observed the importance of cultural heritage, especially when it noted that the "targeting of a group's cultural heritage may constitute evidence of the perpetrator's intent to destroy that group".[38] It stated that

> crimes against or affecting cultural heritage frequently occur in connection with genocide, which may be effected by killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group, when committed with the requisite intent.[39]

It therefore linked the destruction of cultural heritage to the crime of genocide, but did not make any attempt to progressively interpret the destruction of cultural heritage and call it cultural genocide as an act of genocide per se.

The omission of cultural genocide from the Convention led to the situation where the destruction of cultural heritage is rather qualified as one of the war crimes or one of the acts leading to crime against humanity. As to the crime of genocide, the destruction of cultural heritage is perceived as the proof of the existence of genocidal intent, or as part of a crime which might lead to genocide, or an aggravating factor for a genocide conviction.[40] This lack of uniform practice among international courts is one of the reasons why the international community is unable to respond adequately and with unified resolve to the gravity of this crime, given its inherently genocidal nature, or even its genocidal potential. This is explored through the case studies below.

37 International Criminal Court, Office of the Prosecutor, op. cit., para. 87.

38 Ibidem, para. 79.

39 Ibidem, para. 78.

40 Ibidem.

Genocidal Potential of the Destruction of Culture – Case Studies

Denial of Ukrainian statehood

In February 2022, the armed forces of the Russian Federation launched a full-scale invasion of Ukraine. In its resolution of 2 March 2022, the UN General Assembly not only condemned Russia's acts, calling them aggression against Ukraine and a violation of Article 2(4) of the UN Charter, but also demanded that Russia immediately cease its use of force against Ukraine and refrain from any further unlawful threat or use of force against any Member State.[41] Despite this unequivocal demand, Russian soldiers have since continuously attacked Ukraine, and grave international crimes are being committed there. Different agendas and international NGOs have confirmed the scale and gravity of those crimes. The situation in Ukraine has been continuously monitored by the international community. The latest reports from the Office of the UN High Commissioner for Human Rights (OHCHR)[42] and the UN Office for the Coordination of Humanitarian Affairs (OCHA)[43] document the rising number of civilian casualties, the scale of the humanitarian crisis, and the mass displacement. Independent organizations, such as Amnesty International and Human Rights Watch (HRW), point to systemic violations of international law, including attacks on civilian targets, and document war crimes. Crucially, grave international crimes are also being documented, most notably the forced transfer and abduction of Ukrainian children. In this context, the ICC has issued arrest warrants for Russian President Vladimir Putin and Maria Lvova-Belova on charges of war crimes related to the unlawful deportation and transfer of children.[44] The international response also includes formal legal proceedings before the ICJ, where Ukraine has brought a case against

41 UN General Assembly, *Resolution ES-11/1: Aggression against Ukraine*, 2 March 2022, UN Doc. A/RES/ES-11/1.

42 OHCHR, *Report on the Human Rights Situation in Ukraine, 1 December 2024 – 31 May 2025*, 30 June 2025, https://ukraine.ohchr.org/en/Report-on-the-Human-Rights-Situation-in-Ukraine-1-December-2024-31-May-2025 [accessed: 13.10.2025].

43 OCHA, *Ukraine: Humanitarian Situation Snapshot (March – May 2025)*, https://www.unocha.org/publications/report/ukraine/ukraine-humanitarian-situation-snapshot-march-may-2025 [accessed: 13.10.2025].

44 ICC, *Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, 17 March 2023, https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and [accessed: 13.10.2025]. Arrest warrants were later issued by the ICC against several other perpetrators in the context of Russian crimes committed in Ukraine, see, for example, ICC, *Situation in Ukraine: ICC Judges Issue Arrest Warrants against Sergei Kuzhugetovich Shoigu and Valery Vasilyevich Gerasimov*, 25 June 2024, https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-sergei-kuzhugetovich-shoigu-and [accessed: 13.10.2025].

the Russian Federation for its actions, instituting proceedings concerning the Genocide Convention.[45]

Additionally, the destruction of cultural heritage is being monitored by *inter alia* the International Council on Monuments and Sites (ICOMOS Ukraine),[46] UNESCO, and the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM).[47] Those organizations are verifying the damage to museums and protected buildings. Since the beginning of the full-scale invasion, UNESCO confirmed damage to 509 sites, including 152 religious sites, 268 buildings dedicated to historical and/or artistic interest, 34 museums, 33 monuments, 18 libraries, 1 archive, and 3 archaeological sites.[48] Also, one cannot ignore the fact that some Ukrainian territories are under Russian occupation and Ukrainian culture is neither protected nor developed there, i.e. intangible cultural heritage practices are not being transmitted to future generations to support cultural identification.

Besides the direct attacks on individuals, the ongoing aggression in Ukraine is marked by a deliberate and widespread targeting of cultural heritage, which goes far beyond mere collateral damage. This destruction is part of a calculated strategy to deny Ukrainian statehood and erase its historical and cultural identity. This strategy can be observed in Russia's revisionist narrative, which falsifies facts and disseminates propaganda and disinformation to justify its war in Ukraine and to deny Ukraine its national identity and statehood.[49] This is evident in the forcible transfer of Ukrainian children.[50] Based on available documentation, Joffe argues that the "forcible transferring of Ukrainian children to the Russian Federation satisfies the *prima facie* elements of the crime of genocide under Article II (e) of the Genocide Convention that entails both state responsibility and international criminal responsibility".[51] Kidnapped from their country, they are being raised in Russian or Belarusian households or orphanages, isolated from their own culture. This act prevents them from transmitting their intangible cultural heritage, ensuring that their native culture, identity, and language will be replaced by those

45 ICJ, *Application Instituting Proceedings filed in the Registry of the Court on 26 February 2022: Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, https://www.icj-cij.org/sites/default/files/case-related/182/182-20220227-APP-01-00-EN.pdf [accessed: 13.10.2025].

46 ICOMOS, *ICOMOS and Conflict Zones*, https://www.icomos.org/advocacy/icomos-and-conflict-zones/ [accessed: 13.10.2025].

47 ICCROM, *ICCROM Launches GIS-Based Risk Map for Protecting Ukraine's Cultural Heritage*, 31 January 2025, https://www.iccrom.org/news/iccrom-launches-gis-based-risk-map-protecting-ukraines-cultural-heritage [accessed: 13.10.2025].

48 UNESCO, *Damaged Cultural Sites in Ukraine Verified by UNESCO*, 7 February 2024, https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco [accessed: 13.10.2025].

49 European Parliament resolution of 23 January 2025 on Russia's disinformation and historical falsification to justify its war of aggression against Ukraine (2024/2988(RSP)), OJ C 2025/2147, 23.04.2025.

50 Y. Joffe, op. cit., p. 315.

51 Ibidem.

of the occupying state. Ukrainian children are integrated with the Russian vision of language, culture, and history. They lose the traits of a group protected by the Genocide Convention.

Therefore, while called a strategy, this policy of de-Ukrainization, coupled with the loss of national identity by Ukrainian children can be perceived as a certain pattern, which could be instrumental in establishing the requisite intent (*mens rea*), an element of the crime of genocide, as a protected group loses its constitutive traits.[52]

Physical and cultural annihilation of Gaza

The situation in Ukraine shows some similarities to that in Gaza, but there are also differences. The military operations launched by the Israeli government following Hamas' terrorist attack in Israel on 7 October 2023 have resulted in a large-scale humanitarian crisis and material destruction in the Gaza Strip. It has dramatically deteriorated the state of cultural heritage in Gaza, which had already lacked effective and adequate protection even prior to the October attack. The humanitarian situation in the Gaza Strip is critical, according to reports from the OCHA[53] and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA),[54] with civilian infrastructure being destroyed on an unprecedented scale. Independent organizations such as HRW and Amnesty International have documented serious violations of international law, pointing to attacks on civilian targets and insufficient delivery of humanitarian aid. While Amnesty International directly pointed out that "Israel committed genocide in Gaza, including by causing some of the highest known death tolls among children, journalists, and health and humanitarian workers of any recent conflict in the world, and deliberately inflicting on Palestinians conditions calculated to bring about their physical destruction",[55] HRW formed similar accusations[56] and added war crimes and crimes against humanity to the list. According to that organization, "Israeli authorities have caused

[52] For more on the destruction of cultural heritage as evidence of the intent to destroy the nation, see D. Azarov et al., *Understanding Russia's Actions in Ukraine as the Crime of Genocide*, "Journal of International Criminal Justice" 2023, Vol. 21(2), pp. 233-264.

[53] OCHA, *Gaza Humanitarian Response Update | 22 June – 5 July 2025*, https://www.unocha.org/publications/report/occupied-palestinian-territory/gaza-humanitarian-response-update-22-june-5-july-2025 [accessed: 13.10.2025].

[54] *UNRWA Situation Report #178 on the Humanitarian Crisis in the Gaza Strip and the Occupied West Bank, Including East Jerusalem*, 4 July 2025, https://www.unrwa.org/sites/default/files/content/resources/unrwa_gaza_sitrep_178_2_july_2025_eng.pdf [accessed: 13.10.2025].

[55] Amnesty International, *The State of the World's Human Rights, April 2025*, 28 April 2025, p. 211, https://www.amnesty.org/en/documents/pol10/8515/2025/en/ [accessed: 13.10.2025].

[56] HRW, *Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Water*, 19 December 2024, https://www.hrw.org/report/2024/12/19/extermination-and-acts-genocide/israel-deliberately-depriving-palestinians-gaza [accessed: 13.10.2025].

massive, deliberate forced displacement of Palestinian civilians in Gaza since October 2023 and are responsible for war crimes and crimes against humanity".[57] Those findings were affirmed by the latest report of the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel.[58] The Commission found that not only did "Israeli political and military leaders possess the specific intent to commit genocide against Palestinians in Gaza, based on their statements and the pattern of conduct of those under their command since 7 October 2023",[59] but also that the "State of Israel is responsible for the commission of genocide against the Palestinians in Gaza as a group, namely for the acts enumerated under articles II(a)-(d) of the Genocide Convention".[60] The Commission also noted that Israel failed to prevent and punish the crime of genocide.[61] As to the destruction of cultural heritage, the Commission did not move forward with recognizing the cultural genocide as a proper genocide, but at least noted "that evidence of destruction of educational, religious and cultural sites could be used to infer intent to physically destroy the group".[62]

Those findings are being enhanced by the practice of the international courts. The ICJ issued provisional measures in a case that South Africa filed against Israel under the Genocide Convention. The decision required Israel to prevent genocide against Palestinians in Gaza, to enable the provision of basic services and humanitarian assistance, and to prevent and punish incitement to commit genocide.[63] On 28 March 2024 the ICJ issued a second order on provisional measures. The court stated that living conditions which were already catastrophic in January had deteriorated further and ordered Israel to take all necessary and effective measures to "ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza".[64] The third order on provisional

[57] HRW, *Israel's Crimes Against Humanity in Gaza: Mass Forced Displacement and Widespread Destruction*, 14 November 2024, https://www.hrw.org/news/2024/11/14/israels-crimes-against-humanity-gaza [accessed: 13.10.2025].

[58] Human Rights Council, *Legal Analysis of the Conduct of Israel in Gaza Pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide*, 16 September 2025, UN Doc. A/HRC/60/CRP.3.

[59] Ibidem, paras 161, 238.

[60] Ibidem, para. 240.

[61] Ibidem, para. 241.

[62] Ibidem, para. 286.

[63] *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, ICJ Reports 2024, p. 3.

[64] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the Modification of the Order Indicating Provisional Measures of 26 January 2024, Order of 28 March 2024, ICJ Reports 2024, p. 513, para. 45.

measures issued on 24 May 2024 required Israel to "immediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part".[65] Here, it seems that the ICJ deliberately used the language of the Genocide Convention, referring to the definition of the crime and thereby underscoring the gravity of Israel's conduct.[66]

The ICC was also quite active, as on 21 November 2024, the ICC Pre-Trial Chamber issued arrest warrants for three people: Prime Minister of Israel Benjamin Netanyahu and former Israeli Defence Minister Yoav Gallant – both for war crimes and crimes against humanity, including the starvation of civilians as a method of warfare, murder, and persecution – and the Commander-in-Chief of Hamas' military wing, Mohammed Deif, for war crimes and crimes against humanity, including extermination, murder, hostage-taking, and torture.[67]

In the context of the physical destruction of Gaza, including cultural destruction, it must be noted that satellite imagery analysis conducted by UNOSAT confirmed that a large portion of the Gaza Strip has been levelled, indicating mass-scale destruction.[68] In the context of periodic damage assessments, by the end of August 2025 UNESCO had confirmed damage to 110 sites since 7 October 2023: 13 religious sites, 77 buildings of historical and/or artistic interest, 3 depositories of movable cultural property, 9 monuments, 1 museum, and 7 archaeological sites.[69] Additionally, UNESCO pointed out the severely impeded access to education, damage to cultural and historical buildings, and killing of journalists.[70] The destruction of cultural heritage has also been confirmed in the reports of the Pales-

[65] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order of 24 May 2024, ICJ Reports 2024, p. 649, para. 50.

[66] Even years ago the ICJ was considering the destruction of cultural heritage in the light of the Genocide Convention. However, its findings cannot be characterized as progressive since the ICJ stated that "the destruction of historical, religious and cultural heritage cannot be considered to be a genocidal act within the meaning of Article II of the Genocide Convention". It did confirm, however, that such attacks "may legitimately be considered as evidence of an intent to physically destroy the group" – see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43, paras 344-345.

[67] ICC, *Statement of ICC Prosecutor Karim A.A. Khan KC on the Issuance of Arrest Warrants in the Situation in the State of Palestine*, 21 November 2024, https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-issuance-arrest-warrants-situation-state-palestine [accessed: 13.10.2025].

[68] For example, till March 2024, UNOSAT identified 31,198 destroyed structures, 16,908 severely damaged ones, and 40,762 moderately damaged ones. In total, this represents 88,868 structures or ~35% of Gaza's buildings – see OCHA, *UNOSAT Gaza Strip Comprehensive Building & Housing Unit Damage Assessment – March 2024*, https://data.humdata.org/dataset/unosat-gaza-strip-comprehensive-building-housing-unit-damage-assessment-march-2024 [accessed: 13.10.2025].

[69] UNESCO, *Impact on Cultural Heritage*, https://www.unesco.org/en/gaza/assessment?hub=102070 [accessed: 13.10.2025].

[70] UNESCO Executive Board, *Impact and Consequences of the Current Situation in the Gaza Strip/Palestine in All Aspects of UNESCO's Mandate*, 18 March 2024, UNESCO Doc. 219 EX/5.I.H, https://unesdoc.unesco.org/ark:/48223/pf0000389102 [accessed: 13.10.2025].

tinian ICOMOS, which is signalling how difficult and complex it is to document the cultural destruction (including tangible and intangible cultural heritage) "because of constant targeting of civilians by Israeli and absence of any safe zones".[71]

Reports clearly confirm that the destruction in Gaza is aimed at the total physical and cultural annihilation of Palestinians in the region, with the intent to commit genocide. Amnesty International has signalled that Israel's policy of starvation is intended to inflict genocide against Palestinians;[72] this was confirmed by the Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel, as presented above. The mass killings will result in a total collapse of political, social, and cultural life. Together with the destruction of cultural sites, protected buildings, and normal houses, it is designed to result in the complete erasure of the Palestinian nation and culture in this region, as it contributes to the annihilation of Palestinian identity, history, and connection to the land.

Legal Responses and Their Limitations

As mentioned above, the "cultural genocide" was not defined in a convention. Sadly, Lemkin was unable to convince the international community that culture is a *sine qua non* for a group's identity, that it provides the features necessary for their protection under the Genocide Convention (e.g. language or religion), and that the destruction of culture deprives the group of the very characteristics that allow it to be treated as a protected group. As a result, the group is not adequately protected in the light of the Convention's regulations (since it does not cover the cultural annihilation of a group as such); additionally, a certain hierarchy of crimes can be observed, one that has no legal foundation in international regulations. The intentional destruction of cultural heritage is clearly treated as the offence of secondary concern when compared with war crimes, genocide, or crimes against humanity such as mass killings or raping. While the protection of peoples' life is of primary concern, the destruction of monuments or intellectual or historical heritage is perceived by the international community as a lesser offence than murder, for example. The international community seems to forget that, as noted by Nafziger, "mass attacks on cultural heritage are often precursors or concomitants of atrocities against persons".[73]

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[71] ICOMOS Palestine, *Report #2: The Cultural Heritage Devastations in Gaza Strip and the Palestinian Occupied Territories (Documentation and Evidence Gathered: October 7th – December 16th 2023)*, 19 December 2023, https://palestine.icomos.org/wp-content/uploads/2024/01/Report2-Gaza.pdf [accessed: 13.10.2025].

[72] Amnesty International, *Gaza: Evidence Points to Israel's Continued Use of Starvation to Inflict Genocide against Palestinians*, 3 July 2025, https://www.amnesty.org/en/latest/news/2025/07/gaza-evidence-points-to-israels-continued-use-of-starvation-to-inflict-genocide-against-palestinians/ [accessed: 13.10.2025].

[73] J.A.R. Nafziger, *The Responsibilities to Protect Cultural Heritage and Prevent Cultural Genocide*, in: F. Francioni, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020, p. 124.

The perception that the destruction of cultural heritage is a lesser crime is changing, largely due to the work of international criminal tribunals that are boldly recognizing such acts as international crimes.[74] Although the concept of cultural genocide is evolving progressively, its status is mainly limited to an evidentiary element in proving an intent to destroy the protected group in whole or in part, not genocide per se. This makes it difficult to properly respond to the gravity of those crimes.

Evolution of a Legal Precedent

The International Criminal Court case *Al Mahdi* was the first time an individual was prosecuted at the ICC solely for the war crime of intentionally destroying cultural heritage.[75] The legal precedent for prosecuting cultural destruction had already been established in earlier cases.[76] The ICTY has addressed the destruction of cultural heritage a few times,[77] as an example of war crimes[78] and crimes against humanity,[79] as well as an element of genocidal intent.[80] In this last case, the ICTY confirmed that the destruction of a group can be the result of the "purposeful eradication of its culture and identity resulting in the eventual extinction of the group as an entity distinct from the remainder of the community".[81] Consequently, according to the practice of international courts the attacks against

[74] I am not elaborating on the differences in the statutes of criminal tribunals, but see A.-M. Carstens, *The Swinging Pendulum of Cultural Heritage in International Criminal Law*, in: A.-M. Carstens, E. Varner (eds.), *Intersections in International Cultural Heritage Law*, Oxford University Press, Oxford 2020, p. 128.

[75] *Prosecutor v. Al Mahdi*, Decision on Confirmation of Charges against Ahmad Al Faqi Al Mahdi, No. ICC-01/12-01/15, 24 March 2016.

[76] *Prosecutor v. Al Mahdi*, Trial Judgment and Sentence, No. ICC-01/12-01/15-171, 27 September 2016, para. 28, see also K. Wierczyńska, A. Jakubowski, *Al Mahdi Case: From Punishing Perpetrators to Repairing Cultural Heritage Harm*, in: A.-M. Carstens, E. Varner (eds.), *Intersections in International Cultural Heritage Law*, Oxford University Press, Oxford 2020, pp. 133 et seq.

[77] For more, see F. Lenzerini, *The Role of International and Mixed Criminal Courts in the Enforcement of International Norms Concerning the Protection of Cultural Heritage*, in: F. Francioni, J. Gordley (eds.), *Enforcing International Cultural Heritage Law*, Oxford University Press, Oxford 2013, pp. 40-64; S. Brammertz et al., *Attacks against Cultural Heritage as a Weapon of War: Prosecutions at the ICTY*, "Journal of International Criminal Justice" 2016, Vol. 14(5), pp. 1143-1174.

[78] Trial Chamber, *Prosecutor v. Miodrag Jokić*, Case No. IT-01-42/1-S, Sentencing Judgment of 18 March 2004, para. 53; Trial Chamber II, *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Judgment of 31 January 2005, para. 232.

[79] Trial Chamber, *Prosecutor v. Kordić and Ćerkez*, Case No. IT-95-14/2-T, Judgment of 16 February 2001, para. 207; Trial Chamber, *Prosecutor v. Blaškić*, Case No. IT-95-14/2-T, Judgment of 3 March 2001, para. 20; Trial Chamber, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Judgment of 24 March 2016, para. 531.

[80] Trial Chamber, *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgment of 2 August 2001, para. 574.

[81] Ibidem.

cultural or religious institutions can be helpful to establish the genocidal intent of the perpetrator (*dolus specialis*).[82] This line of reasoning allows for a broader acceptance of Lemkin's perspective that the destruction of culture can lead to the destruction of a group, meaning that to a limited extent, international tribunals have embraced Lemkin's original conception of cultural genocide.

The Problem of Application

The issue, however, is that this progressive approach is primarily limited to the practice of international criminal tribunals, which address the responsibility of individuals for international crimes. This approach has minimal application and significance for the intentional destruction of heritage taking place in Ukraine and Gaza. This is because the ICC, as the only permanent court with jurisdiction over these crimes, has a limited capacity to address massive crimes, prosecuting perhaps only a few cases a year. Thus, it cannot respond adequately to the crimes against cultural destruction committed in Ukraine and Gaza. Also, the court does not prosecute corporate bodies, only individuals. The jurisdiction of the ICC is based on a principle of complementarity, which means that this Court cannot rule over a state prosecuting international crimes (covered by the jurisdiction of the ICC) itself, unless that state is not doing so or is unable or unwilling to genuinely prosecute a case.[83] Assuming that a domestic justice system is autonomous and a state can independently regulate its scope and the crimes to be sanctioned, one could argue that Ukraine can provide an independent justice system and could even attempt to interpret its regulations to prosecute cultural genocide.

It is difficult, however, to imagine such a situation in the context of crimes committed in Gaza. Although Palestine is a party to the ICC statute, its justice system – in the current situation of an ongoing conflict aimed at annihilating the Gaza Strip[84] – would have difficulties conducting its own independent criminal proceedings regarding cultural genocide (a crime not covered by the Convention).

Furthermore, the recently announced Special Tribunal for the Crime of Aggression against Ukraine[85] will not solve this problem. This is because this tribunal's jurisdiction is limited to the crimes of leaders personally and to the crime of aggression itself. Consequently, the destruction of cultural heritage before this

82 Ibidem, para. 580, and see Appeals Chamber, *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgment of 19 April 2004, para. 25.

83 Arts. 1 and 17 of the Rome Statute.

84 K. Ambos, S. Bock, *Genocide in Gaza? Some Preliminary Deliberations from an International (Criminal) Law Perspective*, "Verfassungsblog", 4 June 2025, https://verfassungsblog.de/genocide-in-gaza/ [accessed: 13.10.2025].

85 Council of Europe, *Statute of the Special Tribunal for the Crime of Aggression against Ukraine*, 24 June 2025, CM(2025)103-final, https://search.coe.int/cm?i=0900001680b678ca [accessed: 13.10.2025].

tribunal will at best be treated as merely an act of aggression. It is worth noting that a similar discussion to resolve the issue of crimes committed in Gaza is not taking place at all.

Conclusion

The cultural existence of a group – its language, beliefs, traditions, and collective identity – is as indispensable as its physical existence. Absent its culture, memories, and historical continuity, a group loses the defining attributes of a protected collective and risks falling outside the protective scope of the Genocide Convention. Accordingly, safeguarding a group's cultural heritage is not ancillary, but integral to the preservation of its existence.

Were the international community to recognize cultural genocide as a distinct and autonomous category within the framework of international convention law, the destruction of cultural heritage would likely cease to be employed as a method of warfare or an instrument of domination. The prevailing practice of classifying acts of cultural destruction merely as war crimes, crimes against humanity, or as evidentiary components of genocidal intent, without recognizing them as per se acts of cultural genocide under the Genocide Convention, fails to capture the full magnitude and specific nature of the harm inflicted. Such an approach overlooks the gravity of identity destruction, where culture constitutes the *sine qua non* of a group's continued existence.

Raphael Lemkin, who coined the term "genocide", explicitly understood that the physical annihilation of a group is inextricably linked to the eradication of its culture. Language, traditions, and institutions form the essential elements of group identity and continuity. Contemporary conflicts – most notably in Ukraine and Gaza – tragically exemplify this dual process of simultaneous physical and cultural destruction. In both contexts, assaults on cultural heritage transcend collateral damage; they represent deliberate, systematic efforts to efface collective identity.

In Ukraine, the physical devastation of the civilian population is incontrovertible: extensive casualties, mass displacement, and the deliberate targeting of residential areas through continuous bombardment. Parallel to these acts, a concerted campaign of cultural destruction is evident. Russian forces have intentionally targeted historical monuments, religious edifices, and sites of cultural significance. Moreover, the forcible transfer of Ukrainian children to Russia and Belarus represents not merely an egregious violation of international humanitarian law, but an act of cultural annihilation. By separating children from their families and communities and re-educating them within the aggressor's cultural framework, the aggressor seeks to extinguish Ukrainian identity and replace it with their own.

The situation in Gaza similarly reveals this nexus between physical and cultural destruction. The physical dimension is manifested in mass civilian deaths, wide-

spread starvation, and the systematic demolition of infrastructure. Concurrently, there is an intentional obliteration of cultural heritage: historic mosques, libraries, archaeological sites, and archival repositories of Palestinian history have been destroyed. These acts constitute direct assaults on cultural memory. Thus, on the one hand, the population is subjected to physical removal; on the other hand, the tangible and intangible evidence of its historical existence is eradicated – an act that precludes the return and transmission of the culture to future generations.

International law demonstrates two principal failures in this respect. Firstly, the current legal framework lacks an operative mechanism for prosecuting cultural genocide as a distinct form of genocide – one that results in the destruction of a group *as such*. The international community should therefore advocate for a re-evaluation of the doctrine and a potential amendment of the Genocide Convention to explicitly include cultural genocide, consistent with Lemkin's original conception. Secondly, there are inadequate enforcement mechanisms for crimes against cultural heritage. The International Criminal Court, while vested with jurisdiction over war crimes involving attacks on cultural property under Article 8(2)(b)(ix) of the Rome Statute, lacks the capacity to address the scale and systematic nature of such crimes in Ukraine or Gaza. The inability of international institutions to match mass atrocities with proportional investigative and prosecutorial responses renders the international community effectively impotent – and, in the case of Gaza, lamentably inert.

Accordingly, new international legal mechanisms should be developed to ensure accountability for the deliberate destruction of cultural heritage. This could include the negotiation of a supplementary protocol to the Genocide Convention or the revival and operationalization of the Responsibility to Protect doctrine as applied to cultural heritage.[86] Alternatively, new, specialized international instruments enabling immediate and coordinated responses should be considered. It sometimes happens, quite unexpectedly, that rather unconventional ideas gain traction and are realized, including the delivery of effective international justice in cases of cultural heritage destruction. The international community must continue to search for such possibilities.

Ultimately, the protection of cultural heritage must be recognized as a shared responsibility of humankind. Beyond preservation, there exists a corresponding obligation to innovate preventive frameworks capable of addressing the evolving modalities of cultural destruction. The international community must therefore reconceptualize cultural heritage protection not merely as a matter of preservation, but as an essential component of the international legal order's commitment to preventing a group's extinction.

[86] Nafziger (op. cit., p. 144), for example, suggests: "The concept of R2P, with its insistence on the responsibility of States to prevent such crimes, could be instrumental in moving forward to protect the cultural heritage".

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