
CULTURAL ERASURE AS GENOCIDE: A LEGAL AND MORAL BLIND SPOT IN INTERNATIONAL LAW

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“A people without the knowledge of their past history, origin and culture is like a tree without Roots”

- Marcus Garvey

ABSTRACT

The idea of genocide often brings to mind images of mass killings and violence. The concept of genocide, as codified in the 1948 Genocide Convention, focuses primarily on the physical and biological destruction of national, ethnic, racial, or religious groups. But there's another, quieter form of destruction that doesn't involve weapons or bloodshed the systematic erasure of a community's culture, language, and identity. This is what we call cultural genocide or culturicide, and surprisingly, it isn't officially recognised in international criminal law. However, Rome statute, UNESCO and UNDRIP address some elements of cultural genocide but does not explicitly mention the term cultural genocide. This research paper explores why that is, even though the man who first coined the word "genocide," Raphael Lemkin, saw cultural destruction as a central part of it. The paper looks into how cultural genocide was deliberately removed from the final version of the 1948 Genocide Convention and how this decision has affected international justice ever since. Through real-world examples such as the forced assimilation of Indigenous children in Canada, the destruction of Uyghur culture in China, and the suppression of tribal identities in India this study shows that cultural genocide is very real and ongoing, even if it's not formally punishable under law. By analysing international treaties, court judgments, and expert opinions, will discuss the gap that has to bridge by the new possible effective reforms in international criminal law. It argues that this gap not only denies justice to affected communities but also fails to protect the rich diversity of human cultures. In conclusion, the paper suggests that it's time for the international community to rethink the definition of genocide and take cultural destruction seriously before more histories, traditions, and identities are lost forever.

Keywords: cultural genocide, Raphael Lemkin, human rights, culturicide, mass destruction

1. Introduction

International law has long recognized genocide as one of the gravest crimes against humanity. However, its focus has overwhelmingly been on physical and biological destruction mass killings, bodily harm, and birth prevention while largely ignoring the systematic erasure of a group's culture, identity, and heritage. This omission of cultural genocide represents a critical blind spot in international law. Despite its inclusion in Raphael Lemkin's original conception of genocide, *cultural genocide* was deliberately excluded from the final draft of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, largely due to political pressures from colonial and settler states¹.

Cultural genocide refers to the deliberate destruction of the cultural, religious, linguistic, or social institutions of a group, with the aim of eliminating their identity and continuity. Practices such as forced assimilation, banning of native languages, destruction of sacred sites, and removal of children from indigenous families as seen in the policies of residential schools in Canada², Tibet under Chinese rule³, or assimilationist policies in Latin America and Australia are glaring examples of cultural genocide that fall outside the legal framework of genocide under current international law. Although the Genocide Convention was eventually adopted and ratified by various nations, many states opposed the inclusion of cultural genocide during its drafting stage as it was seemed to them as obstacle in their domestic matters, colonial states also were resisted the inclusion of this term because this would implicate their colonial policies. Cultural genocide is a reality that is always changing, as evidenced by the forced assimilation of Indigenous peoples in Canada and Australia, the destruction of Uyghur mosques and language in Xinjiang, and the repression of Rohingya identity in Myanmar. Under the pretext of national security or unity, these practices which do not always involve mass murder systematically destroy communal memory, identity, and self-determination which are fundamental human rights.

This paper argues that the exclusion of cultural genocide from the legal definition of genocide would lead to grave violation of basic human rights enshrined in the various covenants. It critically examines the historical development of the Genocide Convention, the political

¹ William A. Schabas, *Genocide in International Law: The Crime of Crimes* 179 (2d ed. 2009).

² Truth & Reconciliation Comm'n of Can., *Final Report, Volume 1: The History, Part 1* 5 (McGill-Queen's Univ. Press 2015).

³ Michael C. Davis, *The Case for Cultural Genocide in Tibet*, 9 Human rights. Brief 2 (2002).

motivations behind the exclusion, and the need for legal recognition of cultural genocide in international instruments. By drawing on case studies, UN reports, and scholarly debates, the paper seeks to establish that cultural genocide is not only real but legally and morally indefensible to ignore.

2. From Lemkin to the United Nations: Tracing the Origins of Cultural Genocide

Long before the Genocide Convention was ratified, Raphael Lemkin envisioned genocide as more than mass murder he saw it as a multi-layered erasure, including culture in his work⁴. It consists of the Greek prefix *genos*, meaning race or tribe, and the Latin suffix *cide*, meaning killing. Lemkin developed the term partly in response to the Nazi policies of systematic murder of Jewish people during the Holocaust, but also in response to previous instances in history of targeted actions aimed at the destruction of particular groups of people. Later on, Raphael Lemkin led the campaign to have genocide recognised and codified as an international crime. Even before 1944, he had proposed the similar concept that include cultural components as early as 1933, Lemkin strove “to declare the annihilation of racial, religious or social groups as a crime under international law in a proposal to the international conference for unification of criminal law in Madrid. Later he proposed the creation of two new international crime; crime of barbarity consisting in the extermination of racial, religious and social collectiveness, and other was crime related to destruction of cultural groups⁵. But his proposal to declare cultural destruction as crime was not accepted.

Lemkin In his work defined the genocide as – “destruction of a national or ethnic group ...not only through mass killing, but also through a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national group, with the aim of annihilating the groups themselves”. According to him there are different form of genocide cultural, religious, economic, social, biological, political, physical and moral, these were distinguished by different technique of implantation⁶.

⁴ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* 79–95 (Carnegie Endowment for Int’l Peace 1944) (Washington, D.C.).

⁵ Raphael Lemkin, Genocide as a Crime under International Law, 41 Am. J. Int’l L. 145, 146 (1947).

⁶ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation – Analysis of Government – Proposals for Redress* 79–95 (The Lawbook Exch. 2005) (originally published 1944).

2.2. Draft convention on the crime of genocide 26th march, 1946

Lemkin on the based on his previous work he drafted a resolution that proposed the genocide convention after considering the events that documented by him (the destruction endured by the Armenian population at the hands of the Ottoman government during World War I and the Holocaust that Nazi Germany had carried out throughout World War II). After considering the work of him general assembly affirmed that genocide was a crime under international law in resolution 96 (1) and mandate the preparation of draft convention on genocide. Initial draft prepared by the Lemkin's Draft Article II defined genocide, it divided into three categories: physical, biological and cultural. Draft referred content of this section as "cultural genocide". This definition included-

- forcible transfer of children
- forced and systematic exile of individuals
- prohibition of the use of the national language
- systematic destruction of books printed in the national language or of religious works or prohibition of new publications or systematic destruction of historical or religious monuments⁷.

While these actions might not lead to the physical destruction of a group, they can seriously harm the group's culture. In this way, cultural genocide doesn't wipe out people directly it destroys their culture, which in turn erases their identity. In the comments section of this draft, Professors Pella and de Vabres contended that cultural genocide was an excessive expansion of the concept of genocide. Conversely, Professor Lemkin argued that a racial, national, or religious group cannot survive unless it maintains its spirit and moral cohesion. He asserted that acts of cultural genocide constituted criminal offenses under domestic law and that there was no justification for their exclusion from the international definition of genocide⁸.

⁷ Elisa Novic, *The Concept of Cultural Genocide: An International Law Perspective* 25 (Oxford Univ. Press 2016).

⁸ Draft Convention on the Crime of Genocide, U.N. Econ. & Soc. Council, U.N. Doc. E/447 (June 26, 1947).

2.3. Debate on the inclusion and exclusion of cultural genocide

Later debate was begun on the first draft, where delegate state raised their opposition to the inclusion of cultural genocide in the genocide convention's draft instrument, primarily amongst Western countries, namely the United States, Canada and France, who favoured the exclusion of cultural genocide, not only from the Convention, but from the international legal regime of genocide as a whole⁹. The main argument was that cultural genocide concerned the cultural rights of minorities and, accordingly, it belonged to the field of minority protection under both international human rights law ('IHRL') and international humanitarian law ('IHL')¹⁰. Consequently, a proposal was later put forward to incorporate this concept into the Universal Declaration of Human Rights, as it was being formulated concurrently with the Convention and was adopted just one day after it, on 10 December 1948. Nevertheless, this proposal has also not been actualized. Countries opposing the draft contended that if we include the cultural genocide then we will not be able to achieve the real objective of this convention as separating cultural genocide from physical genocide allowed settler states to escape accountability, and let the cultural genocide deal with the other instrument like convention for the protection related to minority minorities since they considered it as matter of minority rights.

Those countries generally opposed to cultural genocide, in particular the U.S., France, Canada, South Africa, New Zealand, the Netherlands, Sweden, and Denmark, maintained several rationales against inclusion of the term: -

- unlike its physical counterpart, cultural genocide did not shock the conscience of mankind
- it fell within the sphere of general human rights protection, or protection of minority rights;
- it was too vague a concept to include in the genocide convention; and

⁹ Ad Hoc Comm. on Genocide, Summary Record of the Two Hundred and Nineteenth Meeting, U.N. Doc. E/SR.219 (Aug. 26, 1948).

¹⁰ WILLIAM A. SCHABAS, *GENOCIDE IN INTERNATIONAL LAW: THE CRIME OF CRIMES* 209, 211–12 (2d ed. 2009).

- it might lead to abuses of the concept or prevent widespread support of the convention.

In favour to inclusion particularly, the Pakistan delegation viewed cultural genocide as representing the primary goal of a campaign to eliminate a group, the end, whereas physical genocide was merely the means. Sardar Bahadur Khan, the head of the Pakistan delegation, stated that for millions of men in most Eastern countries, the protection of sacred books and shrines was more important than life itself, and thus, attacks on culture were almost more damaging than attacks on one 's person¹¹. The Czechoslovak representative quoted numerous instances of cultural genocide during the Nazi occupation designed to pave the way for the systematic disappearance of the Czechoslovak nation through the destruction of national heritage.

According to Mr. Zourek, all those acts of cultural genocide had been inspired by the same motives as those of physical genocide and had the same object: the destruction of racial, national, or religious groups¹². Thus, according to these countries, cultural genocide would need to be included in the convention. Some member of committee agreed to include the cultural genocide in different article, hence delegate of Lebanon gave the strict definition of cultural definition, even after these countries were agreed to include only one facet that was forced transfer of children¹³.

2.4. Exclusion of cultural genocide in final vote

On 25th October, 1948 answer to the question “whether or not to include cultural genocide in the genocide convention 1948” was given before the sixth committee of general assembly through final voting to draft. Votes were taken, and by 25 votes to 16, with 4 abstentions, the Sixth Committee decided not to include provisions relating to cultural genocide in the

¹¹ United Nations General Assembly, Sixth Committee, Eighty-Third Meeting, United Nations Document A/C.6/SR.83 (25 October 1948), reprinted in Hiram Abtahi & Philippa Webb, *The Genocide Convention: The Travaux Préparatoires*, Volume 2, 1502 (Martinus Nijhoff Publishers 2008).

¹² United Nations General Assembly, Eighty-Third Meeting, Sixth Committee, U.N. Doc. A/C.6/SR.83 (25 October 1948), reprinted in Hiram Abtahi & Philippa Webb, *The Genocide Convention: The Travaux Préparatoires*, Volume 2, 1499–1518, at 1517 (Martinus Nijhoff Publishers, 2008).

¹³ Jeffrey S. Bachman, *An Historical Perspective: The Exclusion of Cultural Genocide from the Genocide Convention*, in *Cultural Genocide: Law, Politics, and Global Manifestations* 39, 39–56 (Jeffrey S. Bachman ed., Routledge 2021).

Convention¹⁴. After considering the argument from the all-delegate states and votes, united nation general assembly adopted the genocide convention on 9th December 1948.

2.5. The conclusive definition set forth in the Convention-

Article 2 of the convention 1948, 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.

Through the final voting only one facet of cultural genocide definition retained in the conclusive definition of genocide under article 2(e) – forcibly transfer of children from one group to another. According to Schabas, the inclusion of this point in the definition of genocide was essentially an afterthought, with little substantial debate or consideration¹⁵. This objection was raised by Greece at the end of the Convention's work, following the decision to omit cultural genocide from the definition. The Greek delegation justified its move by stating that while many states opposed the inclusion of cultural genocide in the Convention, they did not necessarily reject "forced transfer." Another unanimous opinion was given in favour of inclusion of Art 2 (e) in the definition since it was considered a part of biological genocide.

2.6. Revival of Cultural Genocide in International Soft Law: The 1994 Draft Declaration

After exclusion of cultural genocide from the definition under Article 2 in the genocide convention 1948, new approach was taken to include the cultural genocide. It was the draft

¹⁴ United Nations General Assembly, Eighty-Third Meeting, Sixth Committee, U.N. Doc. A/C.6/SR.83 (25 October 1948), reprinted in Hiram Abtahi & Philippa Webb, *The Genocide Convention: The Travaux Préparatoires*, Volume 2, 1499–1518, at 1514-1518 (Martinus Nijhoff Publishers, 2008).

¹⁵ William A. Schabas, *Genocide in International Law: The Crime of Crimes* 216–17 (2d ed. 2009).

declaration on the indigenous people 2007, in which some aspects of cultural genocide were recognised. As mentioned above, cultural genocide definition was not acceptable due to lack of universality acceptance and ambiguity in the definition. In order to avoid confusion with the 1948 Convention's definition of genocide (which emphasises the physical aspects of destroying a group for national, ethnic, racial, or religious reasons), in the context of the ongoing political debate, it proposes the term 'culturicide', which directly refers to the possibility of 'killing a culture' without physically exterminating its members. The term 'cultural genocide' refers to the killing of individuals within a group for cultural grounds.

Article 7 of the Draft Declaration affirms that “Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including the prevention of their cultural traditions and customs, their religions and languages, and the prevention of access to and control over their cultural and ceremonial property¹⁶”. It was the first instrument that address some aspects of cultural genocide explicitly.

Although this draft declaration is still a non-binding soft law instrument, it is normatively significant in restarting the legal debate over cultural genocide. It represents a growing realisation that the deliberate destruction of cultural identity is a major human rights violation, particularly for Indigenous peoples who have historically faced assimilationist and colonial policies. The document's phrasing demonstrates a fundamental normative shift from a merely physical definition of genocide to one that recognizes the relevance of cultural identity in the survival of groups¹⁷.

3. Legal framework in international law

Although cultural genocide is not explicitly defined as a crime in international law, several conventions recognize and protect its essential components, however they explicitly not mentioned the cultural genocide term but its various aspects have been addressed through these conventions. It is not separate crime which should be recognised by international law, its aspects address by various conventions i.e. inclusion in 2 (e) genocide convention which is a proof that at least some of its aspect was accepted. The U.N. Declaration on the Rights of

¹⁶ Draft United Nations Declaration on the Rights of Indigenous Peoples, art. 7, U.N. Econ. & Soc. Council, Sub-Comm'n on Prevention of Discrimination & Prot. of Minorities, 46th Sess., Agenda Item 14, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994).

¹⁷ Jérémie Gilbert, *Indigenous Peoples' Land Rights Under International Law: From Victims to Actors* 224 (2d ed. 2016).

Indigenous Peoples addresses similar concerns by detailing culturecidal practices in points (a)–(e) of Article 8. Although it does not explicitly use the terms culturicide or ethnocide, it indicates that such practices are criminalized under the categories of forced assimilation and cultural destruction.

Even after the 1948 convention, in which cultural genocide was excluded, but some of its components are still evolving and increasingly being recognized by other instruments apart from genocide convention 1948 and UNDRIP 1994 which are discussed above. These instruments are¹⁸: -

a) Hague convention 1954 and its protocols

After the World War II, this instrument was enacted for the protection of cultural property during the armed conflicts. The 1954 Hague Convention is the first and most comprehensive multilateral treaty that is exclusively dedicated to the protection of cultural heritage in times of peace and during an armed conflict. The belief of protection of cultural property can be reflected in its preamble –

“That damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world¹⁹”

Obligation upon the states

The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate²⁰.

Countries that signed the Convention promise to respect cultural sites whether in their own land or in other countries by not using them in ways that could put them at risk during war. They also agree not to attack such sites. They can only make an exception if there is an urgent military need that leaves no other choice. In addition, they promise to stop and prevent any

¹⁸ David Nersessian, *A Modern Perspective: The Current Status of Cultural Genocide Under International Law*, in *Cultural Genocide* 73 (Jeffrey S. Bachman ed., Routledge 2019).

¹⁹ *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* pmb., 249 U.N.T.S. 240 (1954).

²⁰ *Id.art.3.*

stealing, looting, or vandalism of cultural property. They won't take or seize important cultural items from other countries. Finally, they also agree not to harm cultural property in revenge or retaliation during conflicts²¹.

The High Contracting Parties agree to uphold the immunity of cultural property under special protection by avoiding any hostile actions against it, and, unless specifically permitted under paragraph 5 of Article 8, by not using the property or its surrounding areas for military purposes once it has been entered into the International Register²².

Although the 1954 Hague Convention does not explicitly address cultural genocide, it embodies a vital legal commitment to preventing the destruction of cultural identity by safeguarding cultural property during armed conflict an essential step toward recognizing and addressing the cultural dimensions of genocide.

b) UNESCO Convention 1972

This convention was adopted for the protection and preservation of world cultural and natural heritage but does not criminalise it²³. It established the world heritage committee to identify and designate World Heritage sites, recognizing their significance and giving additional protection²⁴. State parties to it undertake to conserve the cultural and natural heritage in within their state²⁵. Although treaties do not explicitly prohibit cultural genocide, they suggest a basic expectation that states should not engage in such acts or allow them to be carried out by others, especially concerning protected cultural sites. Still, there are often no clear legal consequences if a state fails to meet these obligations.

Some international instruments also aim to safeguard the intangible aspects of cultural identity, such as language, traditions, and ways of life particularly in relation to indigenous peoples²⁶. However, efforts to directly confront the issue of cultural genocide in these contexts have remained limited and controversial. For instance, while the UN Declaration on the Rights of

²¹ *Id.art.4.*

²² *Id.art.9.*

²³ *Convention Concerning the Protection of the World Cultural and Natural Heritage*, Nov. 16, 1972, 1037 U.N.T.S. 151.

²⁴ *Id.art.15.*

²⁵ *Id.art.4-6.*

²⁶ *Convention for the Safeguarding of the Intangible Cultural Heritage* art. 2(2), Oct. 17, 2003, UNESCO Doc. MISC/2003/CLT/CH/14.

Indigenous Peoples affirms important cultural rights, it remains a non-binding resolution and does not carry the legal force of a treaty.

c) Rome statute of international criminal court 1998

International humanitarian law continues to provide protection for cultural property from the destruction and obligation to take measure for their preservation. Although it does not explicitly define the cultural genocide or criminalised it, but some of its provision implicitly safeguards culturally significant sites and reflects the international community's growing concern over the deliberate targeting of cultural identity during armed conflicts. Under the ICC Statute, any of the following could constitute war crimes relating to a group's cultural property or members:

- Unnecessarily and wantonly destroying the property of the adversary²⁷;
- Intentionally attacking civilian objects (targets that are not military objectives)²⁸;
- Intentionally attacking historic monuments or buildings dedicated to religion, education, art, science or charitable purposes²⁹;
- Pillage³⁰;
- Destroying or seizing property unjustified by military necessity³¹; and
- Outrages upon personal dignity, including humiliating and degrading treatment³²

The relevance of this framework was reinforced in the ICC's prosecution

In *Prosecutor v. Al Mahdi*, the accused, a member of the extremist group Ansar Dine affiliated with Al Qaeda was prosecuted under Article 8(2)(e)(iv) of the Rome Statute for war crimes involving attacks on cultural and religious monuments. After admitting guilt, he received a nine-year prison sentence and was ordered to pay €2.7 million in restitution for destroying ten culturally significant sites, including sacred shrines, an ancient mosque, and cemeteries in

²⁷ ICC Statute, art. 8(2)(a).

²⁸ Id. art. 8(2)(b)(ii).

²⁹ Id. arts. 8(2)(b)(ix), 8(2)(e)(iv).

³⁰ Id. arts. 8(2)(b)(xvi), 8(2)(e)(v).

³¹ Id. arts. 8(2)(b)(xiii), 8(2)(c)(ii), 8(2)(e)(xii).

³² Id. art. 8(2)(b)(xxi).

Timbuktu, northern Mali. Although the restitution order was largely symbolic, the case carried profound legal and moral weight³³.

In its sentencing judgment, the International Criminal Court (ICC) emphasized that targeting religious and cultural landmarks constitutes one of the gravest offenses under international criminal law. The Court referred to broader international frameworks on cultural heritage protection and highlighted that many of the sites destroyed were part of the UNESCO World Heritage list. Importantly, the ICC recognized that the harm extended beyond local religious communities, affecting the people of Mali and the global community, thereby reinforcing the idea that cultural heritage holds universal value³⁴.

d) Relevance of cultural genocide in human right treaties

In the absence of explicit recognition of cultural genocide within the convention of 1948, international human rights law serves as one of the principal normative frameworks through which aspects of cultural destruction are addressed. As these conventions affirm the significance of culture as fundamental aspect of human dignity and self-determination³⁵. Various international instruments recognise cultural participation and cultural development as human rights, situating them within the broader “international bill of rights.” However, the individual-centric approach of these instruments, combined with the non-criminal nature of their enforcement mechanisms, limits their capacity to prevent or redress acts of cultural genocide.

The Universal Declaration of Human Rights (UDHR), one of the three pillars of the international human rights framework, affirms in that everyone, “*as a member of society, is entitled to realization of the economic, social and cultural rights indispensable for his dignity and the free development of his personality*”³⁶.

³³ *Prosecutor v. Al Mahdi*, Case No. ICC-01/12-01/15, Judgment and Sentence (Int’l Crim. Ct., Trial Chamber, Sept. 27, 2016), and Case No. ICC-01/12-01/15 A, Public Redacted Judgment on the Appeal of the Victims Against the “Reparations Order” 1 (Int’l Crim. Ct., Appeals Chamber, Mar. 8, 2018).

³⁴ *Prosecutor v. Al Mahdi*, Case No. ICC-01/12-01/15, Judgment and Sentence (Int’l Crim. Ct., Trial Chamber, Sept. 27, 2016) [hereinafter *Al Mahdi (TC)*].

³⁵ *International Covenant on Civil and Political Rights* art. 1(1), Dec. 16, 1966, 999 U.N.T.S. 171; *International Covenant on Economic, Social and Cultural Rights* art. 1(1), Dec. 16, 1966, 993 U.N.T.S. 3.

³⁶ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 22 (Dec. 10, 1948).

This protection is reinforced in another article, which declares that “*everyone has the right freely to participate in the cultural life of the community*”³⁷. Likewise, the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** contains a recognition of the collective right to cultural development, which provides that “*all peoples have the right of self-determination and freely pursue their economic, social and cultural development*.”³⁸ At the individual level, obligates State Parties to “*recognize the right of everyone to take part in cultural life*”³⁹.

Despite the important symbolic and legal recognition of cultural rights in international human rights instruments, these frameworks often prove ineffective in practice when it comes to addressing cultural genocide. A major limitation lies in the fact that these treaties operate only when states voluntarily choose to sign and implement them. However, the governments most likely to commit or permit cultural genocide are often the ones least willing to participate in or comply with such human rights obligations and they only place legal duties on states and do not extend criminal responsibility to individuals. This means that when acts of cultural destruction occur, the international response is typically limited to asking the state to stop the violation or provide monetary compensation. Such remedies, while important, are not sufficient for confronting acts intended to destroy a group's cultural identity. They do not reflect the gravity of cultural genocide, which, as some scholars argue, requires criminal accountability and stronger international enforcement mechanisms, similar to those used for other international crimes like war crimes or physical genocide⁴⁰.

4. Contemporary Manifestations of Cultural Genocide

Even though cultural rights are increasingly recognized under international law, there is still no binding legal framework that clearly prohibits cultural genocide. Because of this gap, many states continue to destroy the cultural identity of vulnerable communities by banning languages, demolishing cultural sites, or forcing people to abandon their traditions without any real punishment. These actions are not hidden; they often happen openly, while international bodies remain silent or powerless. This shows a serious weakness in international law, where cultural genocide is still not treated as a separate and punishable crime. The following examples

³⁷ Id. art. 27.

³⁸ International Covenant on Economic, Social and Cultural Rights art. 1(1), Dec. 16, 1966, 993 U.N.T.S. 3.

³⁹ Id. art. 15(1)(a).

⁴⁰ Nersessian, *supra* note 18, at 75.

highlight recent instances where states and actors have systematically targeted the cultural identity of ethnic and religious groups, often under the guise of national security or assimilation.

1. Residential school in Canada

One of the most powerful and painful examples of cultural genocide in recent history is Canada's Indian Residential School system. Between 1883 and 1997, more than 150,000 Indigenous children were taken often by force from their families and placed in boarding schools across the country. These children were forbidden from speaking their languages, practicing their traditions, or maintaining any connection with their culture. They were subjected to religious indoctrination, harsh discipline, and often forced labour. The stated goal was to "kill the Indian, save the man," a phrase that reveals the system's clear intent to erase Indigenous identity⁴¹.

In 2015, the Truth and Reconciliation Commission of Canada (TRC) concluded that these actions amounted to cultural genocide⁴². The trauma inflicted on generations of First Nations, Inuit, and Métis people continues to this day. What's even more horrifying is the number of children who never returned home. In recent years, over 1,300 unmarked graves have been found at the sites of just four former residential schools. These discoveries confirmed long-standing accounts from survivors, who spoke of children disappearing, secret burials, and even being made to dig graves for their classmates.⁴³ Some have argued that the children died from diseases like tuberculosis. But historical records say otherwise. In 1907, Dr. Peter Bryce, a government medical officer, inspected 35 schools and found shocking death rates 25% of children had died, and at one school, the number was as high as 69%. He directly blamed the overcrowded, poorly ventilated, and unsanitary conditions in the schools, not disease itself.⁴⁴

This case highlights how cultural genocide can happen through state policy not just by banning culture, but by removing children from their communities, erasing identities, and allowing conditions that led to death, all under the veil of "education." Despite this, there has been no

⁴¹ Ian Mosby & Erin Millions, *Canada's Residential Schools Were a Horror*, *Scientific American* (Aug. 1, 2021), <https://www.scientificamerican.com/article/canadas-residential-schools-were-a-horror/>.

⁴² Truth & Reconciliation Comm'n of Can., *Final Report of the Truth and Reconciliation Commission of Canada* Vol. 1: The History, Part 1 (McGill-Queen's Univ. Press 2015).

⁴³ *Id.* at 65–68.

⁴⁴ Peter H. Bryce, *The Story of a National Crime: An Appeal for Justice to the Indians of Canada* 4–7 (James Hope & Sons 1922).

international criminal accountability for these actions, exposing how gaps in international law allow such atrocities to occur without consequence.

2. The Uyghur Minority in China

The ongoing persecution of the Uyghur Muslim minority in China's Xinjiang region represents one of the most compelling examples of cultural genocide in the 21st century. Although the Chinese government claims to be combating extremism, international scholars, UN bodies, and human rights organizations have argued that the policies in place constitute a state-sponsored campaign to erase Uyghur identity, rather than combat terrorism.

Between 2017 and 2020, it is estimated that over one million Uyghurs have been detained in a vast network of so-called "vocational education and training centers," which function as de facto internment camps.⁴⁵ Within these camps, detainees have reported being forced to abandon their religion, memorize Communist Party doctrines, and even undergo acts of psychological and physical abuse.⁴⁶ Children have been separated from their families and placed in state-run boarding schools where the Uyghur language and religion are prohibited, effectively severing generational cultural transmission.⁴⁷ This is not merely repression but a systematic state policy designed to bring about the "extinction of Uyghur culture" through bureaucratic and legal means.⁴⁸ The Chinese state has banned religious clothing, destroyed mosques and shrines, censored Uyghur literature, and discouraged the use of the Uyghur language in public life. Uyghur women have also been subjected to forced sterilizations and birth control, amounting to a broader strategy of cultural and biological erasure.⁴⁹

What makes this crisis more alarming is the complete failure of international legal mechanisms to prevent or respond. Despite numerous reports and findings including 2022 United Nations Human Rights Office assessment detailing crimes "that may amount to crimes against

⁴⁵ Ciara Finnegan, *The Uyghur Minority in China: A Case Study of Cultural Genocide, Minority Rights and the Insufficiency of the International Legal Framework in Preventing State-Imposed Extinction*, 9 *Laws* 1, 1–20 (2020).

⁴⁶ Adrian Zenz, "Break Their Lineage, Break Their Roots": China's Crackdown on Uyghur Families, *The Journal of Political Risk*, Vol. 7, No. 7 (2019).

⁴⁷ Human Rights Watch, "Eradicating Ideological Viruses": China's Campaign of Repression Against Xinjiang's Muslims (Sept. 9, 2018), <https://www.hrw.org>.

⁴⁸ U.N. Human Rights Office, *Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China* (Aug. 31, 2022), <https://www.ohchr.org>.

⁴⁹ Vicky Xiuzhong Xu et al., *Uyghurs for Sale: "Re-education," Forced Labour and Surveillance Beyond Xinjiang*, Australian Strategic Policy Institute (2020).

humanity” there has been no formal international legal action, largely due to China’s geopolitical influence.⁵⁰ The Genocide Convention (1948) does not currently include cultural genocide as a punishable offense, and existing human rights treaties focus more on individual rights than the collective survival of cultural groups.⁵¹ This legal gap has allowed China to pursue its policies with near impunity. Finnegan calls this “state-imposed extinction” a slow, lawful form of destruction executed not through mass killings but through surveillance, re-education, and structural assimilation. This case illustrates the modern face of cultural genocide not conducted in secrecy, but in full view of the international community. It underscores how existing international law lacks the enforceable power to prevent or punish the destruction of cultural identity, especially when the perpetrator is a powerful state.

3. The Kurds in Turkey

The Kurds, an ethnic group of over 18 million people, primarily located across Turkey, Iran, Iraq, and Syria, have long been denied cultural and political recognition—especially in Turkey. Following the collapse of the Ottoman Empire, the Treaty of Sèvres (1920) proposed a Kurdish state, but it was never implemented. Instead, the Treaty of Lausanne (1923) ignored Kurdish aspirations and marked the beginning of their marginalization.⁵²

In the name of creating a unified Turkish identity, successive governments in Turkey implemented policies aimed at erasing Kurdish cultural identity. By 1924, Kurdish language, schools, music, publications, and even the words “Kurd” and “Kurdistan” were officially banned. During the 1925–1939 period, approximately 1.5 million Kurds were deported or killed in forced assimilation and military operations. The Minister of Justice in 1930 openly declared that non-Turks had no status in the country except as servants or slaves.⁵³ Even in the post-war period, these policies continued. The Kurdish regions remained deliberately underdeveloped, with⁵⁴ disproportionate investment and limited access to public resources. Peaceful activists, scholars, and even foreign nationals were arrested for possessing Kurdish

⁵⁰ Darren Byler, *Terror Capitalism: Uyghur Dispossession and Masculinity in a Chinese City* (Duke Univ. Press 2021).

⁵¹ Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 277.

⁵² Treaty of Lausanne, July 24, 1923, 28 L.N.T.S. 11.

⁵³ Kurdish Repression in Turkey, *Cultural Survival Q.* (Apr. 15, 2009), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/kurdish-repression-turkey>.

⁵⁴ *Id.*

music or literature. Speaking Kurdish in public, naming children with Kurdish names, or displaying Kurdish signs were met with punishment, imprisonment, or violence.

By the 1980s, military campaigns in Kurdish provinces, mass arrests, and widespread torture had become regular. According to reports, over 80,000 Kurds were arrested, and many were tortured or executed under vague national security laws. Turkey also tried to prevent Kurdish language education in diaspora communities abroad.⁵⁵ Despite being a member of the UN and the Council of Europe, Turkey's actions violated both the Universal Declaration of Human Rights and the European Convention on Human Rights.⁵⁶ Yet, due to geopolitical alliances and continued military and economic support from Western states, these human rights violations faced little international accountability. The Kurdish case is a powerful example of how the absence of a binding legal framework on cultural genocide enables states to erase minority identities with impunity.

4. Palestinian genocide

Since October 2023, the Israeli military campaign in Gaza has devastated not just lives but the very cultural memory of the Palestinian people. Satellite imagery and field reports confirm that nearly 200 heritage sites including ancient mosques, monasteries, public markets, libraries, and archaeological ruins have been destroyed or severely damaged in the early months of the war⁵⁷. The targeting of landmarks such as the Qasr al-Basha/Mamluk-era palace, the 7th-century Great Omari Mosque, the Church of St. Porphyrius, and Gaza's Central Archives suggests a deliberate effort to dismantle Palestinian history and identity⁵⁸. With over 90% of Gaza's educational and cultural infrastructure including universities, schools, and museums now ruined, observers speak of "cultural genocide" aimed not only at physical destruction but at preventing future generations from understanding their own past⁵⁹.

⁵⁵ Id.

⁵⁶ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948); Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

⁵⁷ Indlieb Farazi Saber, *A 'Cultural Genocide': Which of Gaza's Heritage Sites Have Been Destroyed?*, *Al Jazeera* (Jan. 14, 2024), <https://www.aljazeera.com/news/2024/1/14/a-cultural-genocide-which-of-gazas-heritage-sites-have-been-destroyed>

⁵⁸ *Destruction of Cultural Heritage During the Israeli Invasion of the Gaza Strip*, Wikipedia (visited June 2025), https://en.wikipedia.org/wiki/Destruction_of_cultural_heritage_during_the_Israeli_invasion_of_the_Gaza_Strip.

⁵⁹ Kaamil Ahmed, *"Everything Beautiful Has Been Destroyed": Palestinians Mourn a City in Tatters*, *The Guardian* (Feb. 4, 2024), <https://www.theguardian.com/world/2024/feb/04/palestinians-mourn-a-city-in-tatters>.

UNESCO and human rights bodies have raised alarm, but the lack of a strong international legal mechanism specifically criminalizing cultural genocide has resulted in minimal accountability. Legal scholars and organizations have pointed out that such deliberate erasure violates international humanitarian law, including the 1954 Hague Convention on the Protection of Cultural Property, to which Israel is a party⁶⁰. Yet, the international response has remained largely symbolic, exposing a significant weakness in current frameworks: the inability to prevent or punish state-led efforts to annihilate a people's cultural identity. As Gaza's mosques, libraries, cemeteries, and archives lie in ruins, what unfolds is not just the loss of infrastructure but the deliberate dismantling of Palestinian existence as a cultural and historical community⁶¹. In this way, Gaza stands as a grave modern example of cultural genocide in action one that continues amid global silence and legal inertia.

Conclusion

Cultural genocide may not always leave behind mass graves, but its damage is just as deep. It aims to wipe out the soul of a group its language, traditions, religion, and identity without necessarily touching the body. This paper has shown how the term *cultural genocide* was once part of the legal debate but was later excluded from the Genocide Convention due to political pressure. That silence in the law has left many communities like Indigenous peoples in Canada, Uyghur Muslims in China, Kurds in Turkey, and Palestinians in Gaza unprotected and unheard. Even today, international law does not clearly recognize or punish cultural genocide as a crime on its own. While some treaties and human rights documents offer cultural protections, they are either too soft, too vague, or not enforceable. As a result, states can destroy a people's identity through schools, language bans, forced assimilation, or bombing cultural heritage without real legal consequences. The continued neglect of cultural genocide is not just a legal gap; it is a failure of justice. If we want to truly protect vulnerable communities, international law must evolve to recognize that destroying a culture is also destroying a people. Until then, the silence will speak louder than any law.

⁶⁰ Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict art. 4, May 14, 1954, 249 U.N.T.S. 240.

⁶¹Kaamil Ahmed, "Everything Beautiful Has Been Destroyed": Palestinians Mourn a City in Tatters, *The Guardian* (Feb. 4, 2024), <https://www.theguardian.com/world/2024/feb/04/palestinians-mourn-a-city-in-tatters>.