Adjudicating attacks targeting culture: revisiting the approach under state responsibility and individual criminal responsibility

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GENERAL CONCLUSION: EMERGING TRENDS AND FUTURE PROMISES

This study has gathered, compared and contrasted the work of international law actors, ie legislators, adjudicators and legal scholars with respect to the causes, means and consequences of attacks targeting culture. Like scientific modelling which conceptualises empirical phenomena and processes them in an ordained manner, this study's various propositions have sought to conceptualise a theoretical model designed to facilitate the adjudication of attacks targeting culture.

Having proposed a legal scope for the concept of culture in the form of a diptych/triptych (I), this study has argued that attacks targeting culture have been more comprehensively adjudicated than commonly thought. This has been done through what this study has called heritage-centred and tangible-centred means, in both converging (II) and osmotic (III) manners.

As demonstrated in an in-depth manner, international law actors have contributed to this convergence and osmosis substantively, but not formally. In other words, while in their interpretation and application of treaty law, both modes of responsibility jurisdictions have often reached the same conclusions when addressing attacks targeting culture, they have been limping formalistically when referring to the interplay between culture's tangible and intangible components. Indeed, anthropology's lack of a universally accepted definition of culture has impacted on international law actors' ability to structurally consider attacks that target culture. Furthermore, the recent revival of ICR – which dates back mainly to the very end of the twentieth century – as opposed to State responsibility – which has benefited from over one hundred years of scholarly reflection – means that legal scholars have, unintentionally, specialised in either of the two modes of responsibility, resulting in an inadvertent compartmentalised approach.

By incorporating this study's proposed model, international law actors can begin standardising their approach with respect to the analysis of judicial cases involving attacks targeting culture. Building on this, they could expand the scope of work to include customary international law and national practice which, as indicated in the general introduction, had to be omitted due to this study's already wide scope. Trial and error – in sum experience – will contribute to enhancing and refining the proposed model.

I. Introspection: culture as a heritage-centred and tangible-centred triptych

It is impossible to find a universal definition of culture, a concept that is "almost everything in a society".[1087] Nonetheless, this study has argued that culture is anthropo-centred: it exists not in isolation, but through human beings and the value they give to it (general introduction).[1088] In its widest understanding, culture, which is both tangible and intangible, anthropical and natural, may thus be viewed, as a metaphorical triptych made of local, national and international panels (A).[1089] While each of these panels may make sense in isolation, their true interdependence may only be considered when viewed together, as part of a legacy-oriented concept (B).

A. Culture as an anthropical and natural concept

The value and protection of culture's tangible and intangible features, as distinct concepts, is attested since antiquity, and at least since the 538 BCE Proclamation of Cyrus the Great.[1090] Civilisations materialise both tangibly and intangibly. They are represented by their movable (eg sculpture) and immovable (eg architecture) achievements, whether secular or religious. They also manifest themselves through, inter alia, language, politics and religion. Both of these tangible and intangible shape and are shaped by their ethnic, racial, national, gender and other types of human manifestations. These are in turn both constitutive of culture and understood through cultural lenses.[1091]

But culture is not exclusively anthropical. As reflected in some of the regional and international legal instruments adopted since the 1930s (general introduction), culture may also be natural in that it may encompass the fauna and flora. Even so, those instruments' terminology remains confusing. This is best reflected in the 1972 World Heritage Convention which considers both anthropical and natural elements as constitutive of heritage. Thus, that instrument's title confuses matters by aligning "Cultural and Natural Heritage". Indeed, for that instrument's purpose (as with many others reviewed in this study), natural elements are included because of their cultural significance. Accordingly, "Anthropical and Natural Heritage" would have been a more suitable combination of terms in the 1972 World Heritage Convention's title. This shows that international legislators are not more immune from the uncertainties of the scope of culture than anthropologists. Intriguingly, with exceptions such as Blake,[1092] legal scholarly output addressing cultural property/cultural heritage is more concerned with culture's anthropical than natural components, even though, for example, the 1935

[1087] Sider (n 45) p 6.
[1088] Abtahi, "From the Destruction of the Twin Buddhas to the Destruction of the Twin Towers" (n 3) p 55.
[1089] *See* also Blake, *International Cultural Heritage Law* (n 14) pp 12-22.
[1090] Abtahi, "Reflections on the Ambiguous Universality of Human Rights" (n 10).
[1091] Abtahi, "From the Destruction of the Twin Buddhas to the Destruction of the Twin Towers" (n 3) p 59.
[1092] Blake, *International Cultural Heritage Law* (n 14) pp 114-149.

Roerich Pact and the 1972 World Heritage Convention do expressly consider both. As seen (Part I, Chapter 2), human rights scholars have incorporated the IACtHR's determination regarding the symbiotic relationship between certain communities' natural environment and heritage. In contrast, ICR scholars have done little in that direction. Of course, some like Gillett have worked on the protection of the natural environment, but this remains largely unconnected to culture.[1093] Partly, this results from ICR-based jurisdictions' lack of case law addressing this problematic. This may in turn be explained by their jurisdictional limitations. For example, the factual context of each of the ICTY, ICTR, SCSL, ECCC and STL means that none of these jurisdictions had to addresses environmental crimes, let alone their relationship with culture. ICR scholars should view the ICC's open-ended mandate as an opportunity to explore the extent to which State responsibility jurisdictions' practice – and related commentaries – on the natural environment and culture may be processed by ICR-based jurisdictions. This would help transcending the 1977 Additional Protocols article 55 and ICC Statute's war crimes article 8(2)(b)(iv) as standalone provisions capable of addressing environmental crimes. As seen throughout this study, other crimes, such as CaH persecution and genocide may, depending on the case at hand, help connect environmental crimes to attacks targeting culture.

B. Culture as a legacy-oriented concept

Heritage is about inter-generational memory and value transmission. It is geared toward identity, which is shaped by culture. Attacking the culture of a people disfigures their past, present and future and warps their reality, which in turn depletes world heritage.[1094] In this sense, culture is endowed with the notion of memory and transmission. Hence the term "cultural heritage", which has come to encompass both the tangible – whether anthropical or natural – and intangible. Attacking culture may thus focus on both of these, alternatively or cumulatively.

To begin to properly adjudicate attacks targeting culture is to consider the above. It may seem that each case may require focusing on either the tangible or the intangible. However, in truth, they will almost always be interdependent. When the tangible and the intangible are altered, whether intentionally or collaterally, the consequence is heritage-centred. Any such cultural alteration is both subjective and objective. Two examples will illustrate this. After the seventh century's conquest of Persia by Arab Muslims, Iranians converted to Islam and Persian was transcribed in a modified version of the Arabic alphabet. Iranians' non-access to their pre-Islamic alphabet has necessarily impacted on their identity, including their pre-Islamic religion, Zoroastrianism. Moreover, the combination of Islam, a religion born in Arabia, and the Arabic alphabet means that non-Iranians will forever view Iranians as Arabs, despite Persian being a most ancient Indo-European language and Iranians not viewing themselves as Arabs. To make things easier to an English language reader, suffice it to imagine that Shakespeare's English language masterpieces would only be available as

[1093] Matthew Gillett, "Environmental Damage and International Criminal Law" *in* Sébastien Jodoin and Marie-Claire Cordonnier Segger (eds) *Sustainable Development, International Criminal Justice, and Treaty Implementation* (Cambridge University Press 2013).
[1094] Abtahi, "From the Destruction of the Twin Buddhas to the Destruction of the Twin Towers" (n 3) p 55.

transcribed in the Arabic alphabet. How would one view him? Shakespeare would see himself as an English and European writer (testimony to that would be his classical and Italianate comedies: Merchant of Venice, Richard II, Henri IV, Romeo and Juliet; and tragedies: Hamlet, Othello, King Lear, Macbeth). But how would others perceive him when his masterpieces' visual representation would be only in the Arabic Alphabet, albeit in the English language?

In linguistics, every generation produces its own phonology. For example, the 1920s' Received Pronunciation of the English language is different from that of the 2020s. The intangible may therefore evolve dynamically and organically. But what about the tangible? In the West, the 2020s' dress codes and architecture are different from that of the 1920s. But this dynamism is not organic. That is, unlike the 1920s' language transformation, a 1920s' Art Deco building does not "grow" into a 2020s' steel and glass building. The latter will be simply built next to the former or as part of a city's urban planning expansion. The static character of the tangible bears witness to the time it was built, the past. Thus, Venice's static culture, ie its anthropical and natural environment – the architecture and urban planning around the lagoon – are the tangible signposts of the Venetian Republic. Those tangibles, including the Doge's Palace and its paintings are the reminders of how Venice looked like and Venetians dressed like six hundred years ago. Such is the importance of the tangible to every civilisation throughout their often organic and sometimes forcible, but always inevitable, intangible alterations. The intangible changes, the tangible remains.

Thus, both "property" and "heritage" limit culture to a concept that is workable in practical terms. Cultural property's clear scope makes it suitable for legal considerations. However, even the tangible-centred legal instruments have linked the tangible to the more inclusive concept of cultural heritage. Most relevant international instruments have viewed the latter as a local-national-international triptych. While each of this triptych's three panels may be appreciated in isolation, the full meaning transpires only when all three are viewed together. Accordingly, cultural heritage's legacy-oriented nature may be better suited, in some circumstances, to assist a fuller consideration of attacks targeting culture under State responsibility and ICR schemes while a tangible-centred approach may enable focusing on the tangible exclusively or, better, addressing it through legal persons, when such opportunity exists.

Rather than engaging in terminological debates regarding cultural property and cultural heritage, international adjudicators should consider culture in substance, ie through its tangible and intangible components. Otherwise, matters can rapidly get unclear. In *Bosnia*, the ICJ did not explain why it had called the destroyed objects and sites "historical, religious and cultural property" as opposed to "cultural property" since, the latter comprises both secular and religious components (general introduction).[1095] Additionally, the French version of the judgment refers to "patrimoine historique, religieux et culturel", which translates as "historic, religious and cultural *heritage*" [emphasis added]. In *Croatia*, the matter was further complicated since the ICJ referred to the fact that "Serb forces destroyed and looted assets forming part of the *cultural heritage and monuments* of the Croats" [emphasis added].[1096] This is intriguing since from one judgment to the other, the ICJ moved from property to heritage while not

[1095] *Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (n 146) paras 320, 322, and 335.
[1096] *Genocide (Croatia v Serbia)* (n 147) paras 361 and 386.

explaining how it linked cultural heritage and monuments. This time, however, the French version referred to "patrimoine culturel" and not "bien culturel".[1097] While seemingly minor issue is illustrative of international jurisdictions' uncertainties when it comes to culture's tangible and intangible, from both property and heritage viewpoints. In turn, this has not helped to draw a neat distinction between heritage-centred and tangible-centred crimes. If adopted systematically, this study's holistic approach to the concept of culture (both tangible and legacy-oriented) will assist international law actors – legislators, adjudicators and practitioners, scholars – to better address the causes, means and consequence of cases involving attacks targeting culture.

II. Retrospection: State responsibility and individual criminal responsibility's converging paths

This study has shown the converging paths of State responsibility and ICR-based jurisdictions with respect to attacks targeting culture. While this is not apparent in the first place, a systematic review of the practice of both modes of responsibility's adjudicatory mechanisms permits to establish their converging acceptance that attacking culture may be both tangible-centred and anthropo/heritage-centred, in terms of both typology of damage (A) and its victims (B). This study has sought to standardise this convergence.

A. The typology of cultural damage

The typology of cultural damage is dual: what instruments proscribe them and what the damages actually consist of. The former has been addressed by both State responsibility and ICR-based jurisdictions. Thus, both ISCMs and HRCts have adjudicated attacks targeting culture on the basis of States' breach of relevant treaty law, whether bilateral or regional (Part I, Chapters 1-2, respectively). As for the ICR-based jurisdictions, IHL-ICL instruments on war crimes are essentially tangible-centred in that they proscribe damage to culture's tangible, whether anthropical or natural. The ICTY has expanded this approach to CaH persecution insofar as the anthropical components are concerned. In contrast, international legislators expressly rejected the tangible-centred approach as an actus reus of genocide. Notwithstanding this, the Genocide Convention is the only tripartite international crime to expressly proscribe anthropo-centred attacks targeting culture in the form of the forcible transfer of the children, although both the ICJ and ICR-based jurisdictions have systematically contested even that. On the other hand, the ICTY has determined that CaH persecution criminalises anthropo-centred attacks targeting culture.

Moving to the typology of damage, culture may be attacked through its tangible – often referred to as cultural property. This targeting may range from pillage to destruction, whether total or partial. Since the end of the nineteenth century, international legislators have addressed in details this type of damage, whether through ICL-IHL instruments

[1097] *Genocide (Croatia v Serbia)* (n 147) paras 361 and 386.

or the so-called peacetime regime (general introduction and Part II, Chapter 1). On this basis, ISCMs and ICR-based jurisdictions have adjudicated attacks targeting culture's tangible (Part I, Chapter 1 and Part II, Chapters 1-2).[1098] Attacks targeting culture may also be heritage-centred. This will involve culture's intangible, such as language and religion, in isolation or in combination with its tangible components. For example, the restriction of religious practice may be effected through legislative measures and/or else materially, by closing down or destroying the places of worship. Importantly, more recently, the ECCC and ICC have also considered, as CaH persecution, fundamental (human) rights violations that focus on the intangible, such as religious-oriented restrictions. This type of violation will often occur in the context of mass human rights violations (mainly addressed by HRCts) or mass human rights crimes (mainly addressed by ICR-based jurisdictions) (Part I, Chapter 2 and Part II, Chapters 2-3, respectively).

While some of the above has been achieved through the principle of dynamic interpretation, often the literal reading of the applicable law will suffice.

B. The victims of cultural damage

The victims of attacks targeting culture can be tangible-centred but also anthropo-centred. Starting with the latter, a comparative analysis of both State responsibility and ICR jurisdictions' practice permits to identify a twofold convergence, specifically in cases of gross human rights violations – particularly mass cultural rights violations addressed by both HRCts (Part I, Chapter 2) and, more recently, ICR-based jurisdictions in the context of the CaH persecution and, to some extent, genocide (Part II, Chapters 2-3). Accordingly, and on the one hand, the IACtHR has ruled that individual natural persons as members of the collective may suffer mass human (cultural) rights violations. This approach is similar to that of gross human rights violations under CaH persecution, where individuals are targeted because they belong to a group (Part I, Chapter 2 and Part II, Chapter 2). On the other hand, the IACtHR has considered that the collective as the sum of natural persons may suffer the heritage-centred attacking of culture. This approach is akin to that of genocide, where it is the group, as such, that is targeted (Part I, Chapter 2 and Part II, Chapter 3). But natural persons can also claim to be the victims of attacks targeting culture's tangible. Beyond their intent to destroy the tangible for its intrinsic value, the perpetrators often, if not always, aim to damage the collective whose heritage includes the targeted cultural tangible.[1099] Whereas the destruction of private property in general affects the material possessions of individuals, the targeting of culture's tangible affects collective identity, ie ties, beliefs and the sense of belonging.[1100] This is when cultural property becomes tangible cultural heritage. In this context, natural persons as part of the collective or else the collective as the sum of natural persons become the victims of the destruction of culture's tangible.

But the victims of attacks targeting culture can also be viewed in a tangible-centred

[1098] For a review of the ICTY cases, *see* Roger O'Keefe, "Cultural Heritage and International Criminal Law" *in* Jodoin and Cordonnier Segger (n 1091).
[1099] Abtahi, "The Protection of Cultural Property in Times of Armed Conflict" (n 1) pp 3 and 28.
[1100] Abtahi, "Does International Criminal Law Protect Culture in Times of Trouble?" (n 5) p 200.

manner. Treaty law, State responsibility and ICR-based jurisdictions have gradually granted legal persons standing in judicial proceedings. Therein, they can participate and seek reparations for harm sustained as a result of damage inflicted on their property. This becomes interesting for this study when the said property has consisted of culture's tangible. But international legislators have conceived an even more radical approach, starting as early as the 1874 Brussels Declaration, and through to the ICC Rules rule 85. This is when cultural tangible itself is endowed with legal personality. Evidently, this excludes cultural object such as statues, ornaments, manuscripts or else scientific instruments. However, it applies to institutions dedicated to religion, arts and sciences. For example, a museum may seek participation in judicial proceeding and demand reparations in two non-mutually exclusive ways. On the one hand, the museum may seek reparations for damage sustained to it, as a building (eg mortars fired at it and damaging its walls). One the other hand, the museum may claim damage as a result of looting of cultural tangible (statues, ornaments, books, scientific instruments) that it owns/administers. Evidently, this approach through legal persons has been more limited than that of natural persons: it is the latter who legislate and adjudicate, not legal persons. In practice, State responsibility adjudicators, whether ISCMs' State-centred and State-driven scheme or the ECtHR have been the forerunners of this approach, (Part I, Chapters 1-2). As regards ICR-based jurisdictions, legal persons have locus standi only before the ICC scheme-based ICR-based jurisdictions (ICC, SCPS, ECCC) while, in the ICC's case, they must have sustained direct harm (Part II). In contrast to State responsibility adjudicatory jurisdictions, however, ICR-based jurisdictions offer, thus far, virtually no such jurisprudence. Two reasons may explain this. First, the ICC Statute entered into force only in 2002, as opposed to ISCMs' century old and the ECtHR's half a century old practices. Thus, time may be required to address cases where culture's tangible and the legal person would be one and the same. Second, ICR-based systems are inherently anthropocentric, even if legal persons may be regarded as victims in the ICC scheme. Here, suffice it to recall the *Al Mahdi* Trial Chamber holding that property crimes "are generally of lesser gravity" than crimes against persons. Notwithstanding its limitations, the tangible-centred approach is a welcome path forward in the adjudication of attacks targeting culture.

In fact, as attacks targeting culture in practice often aim at or results in altering cultural identities, regardless of whether they are shaped by intangible or tangible manifestations, ICR-based jurisdictions have linked the tangible-centred targeting of culture to a heritage-centred one (Part II, Chapter 1.III.C, Chapter 2.III.A and Chapter 3.IV). This is why this study opted for the use of cultural property or culture's tangible instead of tangible cultural heritage, so as to better illustrate why and how the former is part of cultural heritage.

III. Prospection: State responsibility and individual criminal responsibility's osmotic paths

This study proposes that in law, there are no major obstacles for State responsibility and ICR-based jurisdictions to increase their interaction beyond what has been identified and analysed with regard to attacks targeting culture (A). To achieve this

osmosis, this study proposes to rely on three conceptual pillars so as to ask the right question as regards the said adjudications (B).

A. Towards a synergetic experience

Beyond converging in their consideration of attacks targeting culture, State responsibility and ICR-based jurisdictions have also borrowed from each other's practice, through a mutually beneficial synergy. Due to public international law's Westphalian foundation, chronologically, ISCMs pioneered the adjudication of attacks targeting culture, in the late nineteenth century. Because of this longevity but also their vast diversity, ie permanent courts (PCIJ-ICJ, ITLOS); UN-generated bodies (eg UNCC); and arbitral bodies (eg EECC); ISCMs have adjudicated a vast array of subject-matters. As such, ISCMs provide a wide range of cases that, if not always principally, at least accessorily, have addressed attacks targeting culture from both tangible-centred and heritage-centred approaches. Later on, HRCts consolidated this by tailoring attacks targeting culture to human rights violations, specifically when cultural rights are involved. With their mainly late twentieth century emergence, ICR-based jurisdictions have benefited from the practice of ISCMs and HRCts.

As the sole permanent ICR-based jurisdiction, the ICC will address ever evolving atrocity crimes scenarios, including on attacks targeting culture, that will require a case-by-case assessment.[1101] In so doing, the ICC will also refer to State responsibility and other ICR-based jurisdictions, at minimum, as interpretative guidance, mindful of the ICC Statute article 21.[1102] Since other ICR-based jurisdictions' factual matrix will always be limited by their ad hoc nature, the ICC will therefore also be guided by State responsibility practice insofar as parallels may be drawn between the latter and ICR. While the ICC could agree with or depart from State responsibility practice, depending on the circumstances, it will nonetheless continue to consider it. As seen, the ICC has already done so. In *Lubanga*, while not concerned with attacks targeting culture, the Trial Chamber took account of the "regional human rights courts and national and international mechanisms and practices" and international instruments since, as held by the Chamber, despite their inter-State nature, their "general concepts relating to reparations […] can provide useful guidance to the ICC".[1103] Most directly, for this study's purpose, the *Al Mahdi* Trial Chamber referenced the "disruption of culture" by

[1101] This paragraph imports, in part, Abtahi, "Types of Injury in Inter-State Reparation Claims" (n 8).

[1102] ICC Statute (n 54) art 21 provides that the ICC's applicable law shall be, in the following order: its own legal framework; "applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflicts" where appropriate; and "failing that, general principles of law derived by the Court from national laws of legal systems of the world" provided that they are not inconsistent with the ICC Statute, international law and internationally recognised norms and standards.

[1103] The Trial Chamber also referred to the International Centre for Transitional Justice's recommendation that when facing ambiguities on harm and reparations, the ICC and the TFV could "take an innovative approach and […] learn from the practice of States". *See Lubanga* Reparations Decision (n 639) paras 32, 39, 65, 186 (fn 377) and 230 (fn 230). Later, the Appeals Chamber also considered ISCMs, albeit not in relation to the typology of harms, but on the standard of causation, and only by reference to hybrid criminal and human right courts. The Chamber noted the latter's "limited guidance", but only regarding the standard of causation – as those courts deal with State responsibility. Therefore, it did not exclude recourse to the typology of harm of ISCMs. *See Prosecutor v Lubanga*, (ICC) Appeal Judgment (3 March 2013) No ICC-01/04-01/06-3129, paras 127-128.

express reference to the IACtHR; while also welcoming an expert's reference to ISCMs by relying on the EECC's methodology to determine the amount of moral damage (Part II, Chapter 1).[1104] Over a longer period of time, ISCMs and HRCts will also benefit from the practice of ICR-based jurisdictions. This has already been the case with *Bosnia* and *Croatia*, where the ICJ abundantly referred to the findings of the ICTY.[1105]

Instrumental in achieving the above will be the legal scholars' appetite to overcome the State responsibility-ICR dichotomy. While this will not always be practical – methodology, semantics, consequences – it will rest on scholars to contribute to bringing together, as closely as possible, the two modes of responsibility. For, there are instances wherein ICL (eg persecution as CaH) and human rights (many HRCts cases) intersect (Part I, Chapter 2 and Part II Chapters 2-3).[1106]

B. The three pillars for the right question

Most importantly, if properly applied, this study's propositions will be valid regardless of which mode of responsibility addresses attacks targeting culture. This, however, will rest on acknowledging three main pillars and asking the right question.

The first pillar requires to keep in mind that the interpretation of treaty law – by international adjudicators and legal scholars – is in and of itself a cultural exercise. It is crucially noteworthy that, in an international setting, legislators, practitioners-adjudicators and legal scholars will each carry their cultural basis, that is their social background, legal system, language, gender, sexual orientation and other factors that

[1104] *Al Mahdi* Reparations Order (n 49) paras 85 and 132 (disruption of culture) and 131-132 (ISCMs).
[1105] *Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (n 146); *Genocide (Croatia v Serbia)* (n 147).
[1106] Among those scholars who have dedicated such focus, *see* eg Ben-Naftali (n 15); Gioia (n 15); Shany (n 15); and Scott Doucet, "The Inter-American Court of Human Rights and aggravated state responsibility: Operationalizing the concept of state crime" *in* Stahn and van den Herik (n 15). As explained by Chechi, some scholars have contemplated this synergetic experience through the creation of an international jurisdiction in charge of cultural heritage disputes; *see* Chechi (n 56) pp 204-218. In concrete terms, however, this proposition encounters a series of challenges, not least the procedural and process-based differences between the two modes of responsibility's jurisdictions (as opposed to substantive common denominators contemplated in this study). This is akin to merging the ICJ, the procedures of which are centred on judges and States, and the ICC, which is centred on judges and a prosecutor. Beyond this foundational challenge, there is a conceptual one. Accordingly, the legislator will have to agree on the contours of culture, a most challenging concept, as seen in this study. Will it be tangible-centred or intangible-centred or both, as this? Beyond these foundational and conceptual challenge, there are also other jurisdictional challenges. First, who could seize the jurisdiction (States, natural/legal persons, prosecutor?) and against whom (States, natural/legal persons?). Second, what the jurisdiction's temporal scope would be? Will States – the creators of international jurisdictions – be content to provide the latter with retroactive competence? Second, how will the competence ratione materiae be addressed? Will the jurisdiction address peacetime cases or, as analysed in this study, will it address attacks targeting culture? As if these were not enough challenges, one could recall the creation, under the ICJ Statute article 26(1), of a Chamber for Environmental Matters, which received no cases in its thirteen year-long existence (1993-2006). In fact, States preferred to seize the Court under its general competence, even when environmental issues where at least partly at stake. For example, in *Gabčikovo-Nagymaros Project*, which was presented under its environmental angle and economic development angle by Hungary and Slovakia, respectively; *see Case Concerning the Gabčikovo-Nagymaros Project* (*Hungary v Slovakia*) (ICJ) Judgment (25 September 1997), ICJ Rep 1997.

contribute to their identities as individual members of the collective. This will take an extra dimension when these same actors will consider cultural issues, which are constantly evolving, both spatially and temporally. Metabolising this will help adopting a transcultural (or pan-cultural?) posture, one filled with empathy and humility. This will help move to the next pillars.

Under the second pillar, and as just described above (II), international law actors should approach attacks targeting culture not from a formal standpoint but from a substantive one. This is so because the former will inevitably convey meanings that, instead of being factual, are opinion-based. For example, the use of the terminology cultural property and tangible cultural heritage will impact the outcome of a given adjudication since they will convey different notions. Cultural property will convey mercantile values. This may be suitable in, eg UNCC cases where privately owned collections had to go undergo valuation for reparations purpose (Part I, Chapter 1). But this may not be suitable in cases of desecration of, eg a river stream, as with the IACtHR's so-called indigenous/tribal cases. Tangible cultural heritage on the other hand may be suitable when addressing cultural tangible's destruction/damage from a legacy-oriented approach, which is by necessity anthropo-centred. But tangible cultural heritage may not be suitable when looking at cultural tangible's destruction/damage from a legal person's viewpoint. These varying terminologies are thus loaded with anthropological conceptions. In other words, they are infused with cultural preconceptions. Consequently, their uses will precondition the adjudicators' reasoning. The misleading consequences of this formalism can be attenuated by looking at culture substantively, ie by considering it as being made of tangible and intangible components. This will help considering attacks targeting culture under tangible-centred and heritage-centred approaches, in isolation or in combination. The former would be focused not only on damage to culture's tangible, but also, the relevant legal framework permitting, on legal persons who could also constitute the victims of attacks against the tangible. The heritage-centred approach would in turn focus on culture's intangible, although it could also combine that with the intangible. This is so because its victims will always be natural persons belonging to the collective or the collective as the sum of natural persons. If adopted, this proposition will help reduce the complexities of attacks targeting culture to manageable notions. This would avoid the many confusions pointed out in this study, not least the Genocide Convention negotiations with regard to the tautological cultural genocide and the related ensuing adjudicatory confusions and scholarly approximations (Part II, Chapter 2).

As for the third pillar, this study proposes to contemplate culture as a metaphorical triptych (or diptych), wherein culture's tangible and intangible are considered in any of their local-national-international combinations. The triptych is often apparent in international instruments. The diptych being so in regional instruments. Accordingly, keeping the diptych/triptych metaphor in mind helps to adjudicate attacks targeting culture more completely in terms not only of damage but also of victims. This is best illustrated in *Al Mahdi*, wherein the Trial Chamber considered the victims under each of the triptych's three layers. In this regard, Drumbl has pointed to the fact that the *Al Mahdi* Trial Judgment moved towards Merryman's cultural internationalism while the *Al Mahdi* Reparations Order tilted towards Merryman's cultural nationalism or, rather, what Drumbl calls a "localist vision", since most of the reparations went to Timbuktu's

population.[1107] This vision in fact corresponds to this study's proposed triptych, in terms of both culture's reach and its victims. However, one should not neglect the fact that the Trial Chamber referred to the third layer – the most abstract of the three – as the "international community", regardless of what these terms mean. As seen, this layer was represented by UNESCO (Part II, Chapter 1). While not further elaborated upon by the Trial Chamber, in this case a legal person (UNESCO) came to represent the international community in terms of reparations. Thus, because of ICC Rules rule 85, wherein both natural and legal persons can be the victims of harm and the beneficiaries of reparations, ICC reparations orders will always have a local-national component. Accordingly, *Al Mahdi*'s striking feature lays not in the triptych's local-national layer (which can be found in most HRCts reparations orders), but in the international one.

When the above three pillars have been processed and consolidated, the model proposed by this study requires asking one and only one question. But that question must be the right one. The wrong question is whether the destruction of monuments or limitations on the use of language should be equated with the murder of human beings. The right question is what effects do attacks targeting culture's tangible and intangible have on human collectives, whether locally, nationally or internationally.[1108] International legislators, adjudicators and scholars have gradually answered this by determining that this targeting depletes world heritage and warps future generations' identity. Under this approach, culture's tangible and intangible become heritage. It is only necessary to consider the ICC Statute preamble's broader anthropological approach to law, in order to recall that law is meant to be humane:

> Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time.

This wording leaves no doubt as to the fact that, whether tangible-centred or anthropo-centred, attacks targeting culture always have heritage implications.[1109] Often implicitly recognised by State responsibility and ICR-based jurisdiction, an explicit recognition would only expand law's raison d'être: to serve and to protect civilisation.

[1107] Mark A Drumbl, "From Timbuktu to The Hague and Beyond – The War Crime of Internationally Attacking Cultural Property" (2019) 17 *Journal of International Criminal Justice* 77, p 82.
[1108] Abtahi, "The Protection of Cultural Property in Times of Armed Conflict" (n 1) p 3.
[1109] Jacot (interview with Abtahi) (n 4).