

SAFEGUARDING INTANGIBLE CULTURAL HERITAGE IN THE FACE OF CLIMATE-INDUCED MOBILITY: ADDRESSING NORMATIVE GAPS IN INTERNATIONAL LAW

Assoc. Prof. Dr. Petra Perišić
Associate Professor
University of Rijeka, Faculty of Law
Department of International Law
Hahlić 6, 51000 Rijeka
Rijeka, Croatia
petra.perisic@uniri.hr
ORCID: 0000-0002-8529-0152

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Abstract: *The impact of climate change on cultural heritage is a relatively new topic. The primary reason for its previous neglect lies in the fact that the consequences of climate change have caused existential threats, such as the submergence or uninhabitability of certain parts of the world, in light of which the preservation of cultural heritage, as a non-existential issue, has remained in the background. When the two legal frameworks, one concerning climate change and the other concerning cultural heritage, began to be connected in the 2000s, the focus was primarily on tangible heritage. However, the consequences of climate change, especially population migrations, have led to an awareness that climate change significantly impacts intangible heritage, which also requires safeguarding. This paper highlights the diverse ways in which climate change can negatively affect the preservation of intangible cultural heritage. It then examines the legal framework for protecting intangible cultural heritage in the context of climate change, identifying a normative gap in that protection. Finally, it explores initiatives designed to bridge this gap, as well as the role that indigenous knowledge plays in this process.*

Keywords: *Intangible Cultural Heritage; Cultural Heritage; Climate Change; Indigenous Knowledge; UNESCO*

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1. INTRODUCTION

Recent years have been marked by intensified action against climate change. Natural disasters, such as droughts and fires, as well as rising temperatures resulting in sea-level rise, have prompted states to adopt measures aimed at adaptation and mitigation, including the reduction of greenhouse gas emissions. The United Nations Framework Convention on Climate Change (UNFCCC),¹ the Kyoto Protocol,² and the Paris Agreement³ form the core legal framework for combating climate change, with states meeting annually at the Conference of the Parties to the UNFCCC (COP)⁴ to discuss implementation.

¹ United Nations Framework Convention on Climate Change FCCC/INFORMAL/84.

² Kyoto Protocol to the United Nations Framework Convention on Climate Change FCCC/CP/1997/L.7/Add.1.

³ Paris Agreement FCCC/CP/2015/10/Add.1.

⁴ Conference of the Parties (COP).

The threats posed by climate change are multifaceted, some of them existential. Certain states, particularly small Pacific island states, face coastal erosion and the submergence of territory, forcing populations to relocate. These events have raised numerous legal questions, such as those concerning statehood and territorial loss,⁵ as well as the legal status of affected populations.⁶ In contrast to these pressing concerns, the impact of climate change on cultural heritage, and more broadly on cultural rights, has received considerably less attention.

International cultural heritage law and international climate change law have largely evolved as separate legal regimes, with only limited intersections. Where initiatives aimed at linking the two have emerged, they have primarily focused on tangible heritage, such as monuments and sites. Intangible cultural heritage (also referred to as 'ICH'), however, has remained largely overlooked. This is problematic, as climate-induced environmental change and displacement directly affect intangible forms of heritage, namely cultural expressions, practices, and knowledge systems, within specific territories. Individuals and groups forced to relocate, either within their own state or across borders, often find themselves unable to continue the lifestyles and practices they had before. In new environments, old customs face erosion, merge with those of others, or lose their original meaning. Language may change; rituals and dietary habits may change or be abandoned altogether; transmission of traditional knowledge may weaken or vanish.

These processes demonstrate that climate change impacts not only the material environment but also the practice of cultural expressions, which form the very identity of the affected populations. The safeguarding of ICH in the era of climate change thus represents an essential aspect of protecting cultural rights in general. However, the most important legal instrument for the protection of ICH, the 2003 UNESCO Convention on the Safeguarding of ICH, as well as general treaties providing for cultural rights, does not specifically address challenges posed by climate change, just as climate treaties do not mention cultural issues.

Against this background, this paper asks the following research question: Does the structural fragmentation between international climate law and cultural heritage law create a normative gap in safeguarding intangible cultural heritage in the context of climate-induced relocation?

Methodologically, the paper adopts a doctrinal approach, analysing primary legal sources, including treaties and relevant soft-law documents, as well as academic literature on cultural heritage and climate change. In addition, it employs a focused case study of the Falepili Union Treaty to illustrate the fragmentation between cultural heritage law and climate law in practice.

In addressing the research question, the paper pursues three main objectives. First, it examines how climate change and related population displacement affect the continuity of ICH. Second, it analyses how existing international legal frameworks respond, or fail to respond, to these challenges. Third, it explores how legal fragmentation

⁵ See Alex Green, 'Three Reconstructions of "Effectiveness": Some Implications for State Continuity and Sea-level Rise' (2024) 44(2) *Oxford Journal of Legal Studies* 201 <https://doi.org/10.1093/ojls/ggae003> accessed 30 May 2026; or Melissa Stewart, 'Cascading Consequences of Sinking States' (2023) 59 *Stanford Journal of International Law* 131 <http://dx.doi.org/10.2139/ssrn.4321214> accessed 30 May 2026. See also the Declaration from September 2024 by the Alliance of Small Island States (AOSIS), which confirmed the continuity of statehood and sovereignty of SIDS confronted with the sea-level rise. <https://aosis-8301060045-drhbxg6h7gce3ep.z03.azurefd.net/aosis-leaders-declaration-on-sea-level-rise-and-statehood/>.

⁶ Rafael Leal-Arcas, 'Climate migrants: Legal options' (2012) 37 *Procedia - Social and Behavioral Sciences* 86 <https://doi.org/10.1016/j.sbspro.2012.03.277> accessed 30 May 2026.

may be mitigated by creating intersections between the cultural heritage and climate change regimes, including through the recognition of Indigenous knowledge, which links cultural heritage protection with climate adaptation.

To that end, the paper first examines the impact of climate change on human mobility. It then clarifies the meaning and specific vulnerabilities of ICH in situations of environmental disruption. After demonstrating the existence of a normative gap between ICH protection and climate law, illustrated by the climate-mobility Falepili Union Treaty, it analyses emerging soft-law initiatives aimed at enhancing coherence between the two regimes. A separate chapter considers Indigenous knowledge within this framework, highlighting its significance both as a form of ICH and as a resource for climate adaptation and resilience. The paper concludes by synthesising the findings and proposing concrete legal and policy recommendations for integrating ICH safeguards into future climate-mobility and adaptation frameworks.

2. CLIMATE CHANGE AND HUMAN MOBILITY

Climate change makes people move, whether voluntary or involuntary, temporarily or permanently, internally or across borders.⁷ The Intergovernmental Panel on Climate Change confirmed that extreme weather events are increasingly driving displacement in Africa, Asia, North, Central, and South America, as well as in small island states in the Caribbean and South Pacific.⁸ Through displacement and forced migration, climate change has generated and perpetuated vulnerability.⁹

Displacement also poses a significant security risk. In his address to the UN Security Council, the UN Secretary-General António Guterres warned of the dire consequences of sea-level rise and coastal flooding for access to water, food, and health care, as well as for industries such as agriculture, fisheries, and tourism.¹⁰ In the face of scarcity of essential living resources, he warned of 'a mass exodus of entire populations on a biblical scale',¹¹ as nearly 900 million people, which is 10% of the world's population, live in coastal regions situated at low elevations. The scarcity of living resources increases the chance of the outbreak of conflicts.¹²

The exact number of people currently displaced due to climate change is difficult to establish. This is due to various factors, such as the inability to properly establish diverse drivers of movement, methodological challenges, and the lack of data collection standards.¹³ According to the data retrieved from the Migration Data Portal, in 2023, 7.7

⁷ Gül Aktürk and Martha Lerski, 'Intangible cultural heritage: a benefit to climate-displaced and host communities' (2021) 11(3) *Journal of Environmental Studies* 305, 305 <https://doi.org/10.1007/s13412-021-00697-y> accessed 30 May 2026.

⁸ IPCC, 'Sections' in H Lee and J Romero (eds), *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (IPCC 2023) 35, 51.

⁹ IPCC (n 8) 51.

¹⁰ Climate Change-induced Sea-Level Rise Direct Threat to Millions around World, Secretary-General Tells Security Council, 9260th Meeting (United Nations).

¹¹ Climate Change-induced (n 10).

¹² Guy J Abel, Michael Brottrager, Jesus Crespo Cuaresma and Raya Muttarak, 'Climate, Conflict and Forced Migration' (2019) 54 *Global Environmental Change* 239, 241 <https://doi.org/10.1016/j.gloenvcha.2018.12.003> accessed 30 May 2026; or Andreas Miles-Novelo and Craig A Anderson, 'Avoiding a Grim Future: The Climate Crisis and Its Effects on Human Aggression and Violence' (2023) 4(2) *Advances in Environmental and Engineering Research* 034 <https://doi.org/10.21926/aer.2302034> accessed 30 May 2026.

¹³ Migration Data Portal, 'Climate and Environmental Migration' <https://www.migrationdataportal.org/themes/environmental-migration> accessed 30 May 2026.

million people were living in internal displacement as a result of some kind of disaster.¹⁴ On the other hand, the Internal Displacement Monitoring Centre warned that each year, disasters lead to the displacement of approximately 25 million individuals.¹⁵

Projections of future displacement also significantly differ from one another. The Groundswell Report, Part 2, 'Acting on Internal Climate Migration', for instance, predicted that by 2050, as many as 216 million people may be compelled to relocate within their own nations due to the gradual effects of climate change.¹⁶ The Institute for Economics and Peace estimated the number at as many as 1.2 billion people.¹⁷ These predictions have been criticised as unrealistic, assuming that all people living in areas affected by climate change will move rather than adapt.¹⁸ Practice, however, shows that some communities successfully adapt.¹⁹

Climate change is a worldwide phenomenon; however, not all areas are equally vulnerable to its consequences. Small Island Developing States (also referred to as 'SIDS') are among the most vulnerable.²⁰ Some states have contemplated relocation policies.²¹ The Maldives, in the 2000s, considered buying land abroad, in Sri Lanka or India,²² but later focused on inter-atoll relocation and land reclamation.²³ Kiribati is considering buying land in Fiji.²⁴ Other low-lying states, such as the Bahamas, Haiti, and Belize, are exploring relocation.²⁵ Tuvalu stands out as the first state to conclude a climate relocation treaty with Australia, establishing a human mobility pathway for its citizens. Its significance warrants a more thorough analysis, which will be provided in Chapter 5.

¹⁴ Migration Data Portal (n 13).

¹⁵ Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2021* (2021).

¹⁶ Viviane Clement, Kanta Kumari Rigaud, Alex de Sherbinin, Bryan Jones, Susana Adamo, Jacob Schewe, Nian Sadiq and Elham Shababat, *Groundswell Part 2: Acting on Internal Climate Migration* (World Bank 2021) xxii.

¹⁷ Institute for Economics and Peace, *Ecological Threat Register 2020: Understanding Ecological Threats, Safety and Peace* (2020) 4.

¹⁸ François Gemenne, 'Why the Numbers Don't Add Up: A Review of Estimates and Predictions of People Displaced by Environmental Changes' (2011) 21 *Global Environmental Change* 41, 48 <https://doi.org/10.1016/j.gloenvcha.2011.09.005> accessed 30 May 2026; or Ingrid Boas, Carol Farbotko, Helen Adams and others, 'Climate Migration Myths' (2019) 9(12) *Nature Climate Change* 901, 902 <https://doi.org/10.1038/s41558-019-0633-3> accessed 30 May 2026.

¹⁹ Aktürk and Lerski (n 7) 306.

²⁰ At the 1992 UN Rio de Janeiro Conference on Environment and Development, SIDS were recognised as 'a distinct group of developing countries facing specific social, economic and environmental vulnerabilities'. See: United Nations, 'Conferences, Small Island Developing States' 1992. Rio Declaration, adopted at the same Conference, recognised the need to provide special priority to environmentally vulnerable states. See Rio Declaration on Environment and Development (United Nations) A/CONF.151/26 (Vol I). See also: United Nations, *High Level Panel on the Development of a Multidimensional Vulnerability Index, Final Report* (2024) 11.

²¹ Pacific Regional Framework on Climate Mobility (2023) [23].

²² Randeep Ramesh, 'Paradise Almost Lost: Maldives Seek to Buy a New Homeland' (The Guardian, 10 November 2008).

²³ 'Maldives Small Island Communities Urge Relocation for Better Access to Essential Services' (OWSA, 12 September 2024); 'Maldives president scraps plans of evacuating residents, vows to fight rising tides, shortage of drinking water' (Firstpost, 21 November 2023);

²⁴ Elfriede Hermann and Wolfgang Kempf, 'Climate Change and the Imagining of Migration: Emerging Discourses on Kiribati's Land Purchase in Fiji' (2017) 29(2) *The Contemporary Pacific* 231.

²⁵ See International Organization for Migration, 'Planned Relocation: Four Points to Consider in a Changing Environment'. Relocation, as an adaptation measure, was provided in the Cancun Adaptation Framework and the Global Compact on Safe, Orderly and Regular Migration. See: Cancun Adaptation Framework; Global Compact on Safe, Orderly and Regular Migration (United Nations) A/RES/73/195.

3. INTANGIBLE CULTURAL HERITAGE: MEANING AND VULNERABILITIES

To observe the ways in which climate change, and climate displacement as one of its consequences, influences ICH, it is worth outlining what exactly constitutes ICH. The 2003 Convention on the Safeguarding of ICH indicates that ICH means 'practices, representations, expressions, knowledge, skills, as well as the instruments, objects, artefacts and cultural spaces associated therewith, that communities, groups and, in some cases, individuals recognise as part of their cultural heritage'.²⁶ It includes oral traditions, performing arts, social practices, rituals, festive events, knowledge and practices concerning nature and the universe, as well as traditional craftsmanship.²⁷

The ICH Convention stresses that ICH is 'constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity (...)'.²⁸ It thus recognises several important features of ICH. It first establishes that ICH is not static, but rather living heritage that continually evolves and innovates over time, being the most important vehicle of cultural diversity across generations.²⁹ Second, it acknowledges that ICH is a strong factor of social cohesion that contributes to a sense of belonging and identity.³⁰ Finally, though not explicitly mentioning climate change, it recognises the interconnection between ICH and nature, implying that changes in the natural environment have an impact on ICH³¹ and, more broadly, on the cultural rights of the affected populations.

Ways in which the above impact may occur are numerous: loss of land affecting fishing, farming, and trade;³² destruction of sacred places disrupting rituals and celebrations;³³ vulnerability of languages;³⁴ impact on food-related practices; and traditional ecological knowledge for healthcare.³⁵

Once relocated, communities from vulnerable climate-affected territories attempt to maintain their traditions. Refugee camps, for instance, often demonstrate a high degree of cultural activity.³⁶ However, communities' adaptation to new environments

²⁶ Article 2(1) of the Convention for the Safeguarding of the Intangible Cultural Heritage (United Nations) MISC/2003/CLT/CH/14, Treaty Series 2368, 3.

²⁷ Article 2(2) of the Convention for the Safeguarding of the Intangible Cultural Heritage (United Nations) MISC/2003/CLT/CH/14, Treaty Series 2368, 3.

²⁸ Article 2(1) of the Convention for the Safeguarding of the Intangible Cultural Heritage (United Nations) MISC/2003/CLT/CH/14, Treaty Series 2368, 3.

²⁹ Vimbainashe Prisca Dembedza, Prosper Chopera, Jacob Mapara and Lesley Macheke, 'Impact of climate change-induced natural disasters on intangible cultural heritage related to food: a review' (2022) 9(32) *Journal of Ethnic Foods* 1, 2 <https://doi.org/10.1186/s42779-022-00147-2> accessed 30 May 2026.

³⁰ Dembedza and others (n 29) 2.

³¹ Federico Lenzerini, 'Intangible Cultural Heritage: The Living Culture of Peoples' (2011) 22(1) *The European Journal of International Law* 101, 106 <https://doi.org/10.1093/ejil/chr006> accessed 30 May 2026.

³² Aktürk and Lerski (n 7) 307.

³³ Willis Jenkins, Evan Berry and Luke Beck Kreider, 'Religion and Climate Change' (2018) 43 *Annual Review of Environment and Resources* 85, 89 <https://doi.org/10.1146/annurev-environ-102017-025855> accessed 30 May 2026.

³⁴ Jason Brown and John Middleton, 'Climate change and languages: the threat of climate-induced migration to the world's vulnerable languages' (2024) 4(1) *Oxford Open Climate Change* kgae019 <https://doi.org/10.1093/oxfclm/kgae019> accessed 30 May 2026.

³⁵ Dembedza and others (n 29) 3. On the 'traditional ecological knowledge', as a term closely associated with ICH, see: Philip McDermott and Mairéad Nic Craith, 'Intangible Cultural Heritage and Climate Change: Sustainability and Adaptability in a Time of Crises' (2024) 33(1) *Anthropological Journal of European Cultures* 1 4 <https://doi.org/10.3167/ajec.2024.330102> accessed 30 May 2026.

³⁶ Hee-Eun Kim, 'Changing Climate, Changing Culture: Adding the Climate Change Dimension to the Protection of Intangible Cultural Heritage' (2011) 18(3) *International Journal of Cultural Property* 259, 262 <http://doi.org/10.1017/S094073911100021X> accessed 30 May 2026.

leads to the blending and creation of new cultural forms.³⁷ In addition, hostility from host communities towards migrants can further challenge the preservation of ICH.³⁸ Such hostility may stem from concerns about the erosion of host identities, customs, and institutions,³⁹ as well as fears related to resource sharing.

These observations demonstrate the need for legal and policy mechanisms that ensure the safeguarding of ICH in the context of climate-driven mobility. In the following chapter, a legal framework for the protection of cultural heritage will be outlined, highlighting the existence of a normative gap in the protection of ICH in context-specific situations, such as those resulting from climate change. This will be followed by a chapter that aims to illustrate how soft-law instruments seek to bridge this normative gap.

4. THE NORMATIVE GAP: INTANGIBLE CULTURAL HERITAGE, CLIMATE CHANGE, AND HUMAN RIGHTS

4.1 *Limitations Within Existing International Frameworks*

Cultural heritage has been protected through several legal instruments. In addition to treaties that address particular aspects of cultural heritage protection, such as the protection of cultural property in armed conflict or the protection of underwater cultural heritage,⁴⁰ the 1972 World Heritage Convention provides general protection for both natural and cultural heritage.⁴¹ The Convention, however, focuses exclusively on tangible cultural heritage, such as buildings, monuments, and sites, omitting the protection of intangible heritage.

The importance of the protection of ICH was formally recognised several decades later in the 2003 Convention for the Safeguarding of ICH, which now represents the primary legal source for the protection of ICH.⁴² The Convention replicated the model of the 1972 Convention by imposing obligations on States Parties to take measures for safeguarding ICH and by introducing a system of listing protected and endangered

³⁷ Georgette Wang and Emilie Yueh-yu Yeh, 'Globalization and hybridization in cultural products: the cases of *Mulan* and *Crouching Tiger, Hidden Dragon*' (2005) 8(2) *International Journal of Cultural Studies* 175, 175 <https://doi.org/10.1177/1367877905052416> accessed 30 May 2026.

³⁸ Maria José da Silva Rebelo, Mercedes Fernández and Carmen Meneses, 'Societies' hostility, anger and mistrust towards migrants: A vicious circle' (2020) 21(5) *Journal of Social Work* 1142 <https://doi.org/10.1177/1468017320949377> accessed 30 May 2026; Pournima Sridarran, Kaushal Keraminiyage and Dilanthi Amarutunga, 'Enablers and barriers of adapting post-disaster resettlements' (2018) 212 *Procedia Engineering* 125 <https://doi.org/10.1016/j.proeng.2018.01.017> accessed 30 May 2026; Devindi Geekiyanage, Kaushal Keraminiyage, Terrence Fernando and Thilini Jayawickrama, 'Factors influencing acceptance or rejection regarding being the host community for post-disaster resettlements in developing countries' (2021) 53 *International Journal of Disaster Risk Reduction* 101973 <https://doi.org/10.1016/j.ijdrr.2020.101973> accessed 30 May 2026; Caroline Lenette, 'So-called hosts: The myth of host communities' (23 October 2021).

³⁹ Olivia E T Yates, Sam Manuela, Andreas Neef and Shiloh Groot, 'Attitudes towards climate migrants in Aotearoa New Zealand: the roles of climate change beliefs and immigration attitudes' (2022) 22(88) *Regional Environmental Change* 1, 2 <https://doi.org/10.1007/s10113-022-01942-y> accessed 30 May 2026.

⁴⁰ Convention for the Protection of Cultural Property during Armed Conflict (United Nations) Treaty Series 3511, 358-A; Convention on the Protection of the Underwater Cultural Heritage (United Nations) Treaty Series 2562, 45694; Convention on the Protection and Promotion of the Diversity of Cultural Expressions (United Nations) Treaty Series 43977.

⁴¹ Convention Concerning the Protection of the World Cultural and Natural Heritage (United Nations) Treaty Series 15511, 1037, 151.

⁴² Convention for the Safeguarding of the Intangible Cultural Heritage (United Nations) MISC/2003/CLT/CH/14, Treaty Series 2368, 3.

heritage.⁴³ The Representative List of the Intangible Cultural Heritage of Humanity and the List of the Intangible Cultural Heritage in Need of Urgent Safeguarding were established in that respect,⁴⁴ while the Register of Good Safeguarding Practices was further established by the Intergovernmental Committee for the Safeguarding of ICH, in the implementation of Article 18 of the Convention.

Neither of the two Conventions, however, addresses climate change and related human mobility. The World Heritage Convention implicitly references the impacts of climate change, specifically sea-level rise, in Article 11(4), which enumerates possible reasons for the inscription of cultural heritage sites on the 'List of World Heritage in Danger', mentioning 'changes in water level' as one of those grounds. The 2003 Convention on ICH, also failing to mention climate change explicitly, merely provides that ICH must be 'compatible with (...) sustainable development'.⁴⁵

The 2003 Convention conceptually ties heritage protection to its connection with a specific territory. Article 11 of the Convention places an obligation upon Member States to 'take the necessary measures to ensure the safeguarding of the intangible cultural heritage present *in their territory*' (*emphasis added*).⁴⁶ This is precisely where the normative gap lies: in situations in which populations are forcibly displaced due to climate change, their intangible heritage remains largely unprotected by this Convention.

At the other end of the spectrum, a legal framework was created to address climate change. The first relevant treaty was the 1992 United Nations Framework Convention on Climate Change, which was followed by the 1997 Kyoto Protocol and later by the 2015 Paris Agreement. None of these climate treaties explicitly mentions cultural heritage. However, the Paris Agreement speaks of the rights of 'Indigenous peoples' and 'local communities', as well as of 'traditional knowledge, knowledge of Indigenous peoples and local knowledge systems', which might be read as a recognition of the need to preserve those communities' intangible cultural heritage.⁴⁷

The lack of a clear intersection between climate change and cultural heritage in international treaties can be attributed to the fact that, at the time cultural heritage treaties were adopted, the consequences of climate change were not yet apparent. When these consequences became visible, prompting the adoption of climate change treaties, the focus shifted to state actions aimed at reducing greenhouse gas emissions. At the same time, the preservation of cultural heritage remained in the background. Consequently, the first climate mobility agreement, the Falepili Union Treaty, followed this line, failing to address cultural rights.

This normative gap may be mitigated through reference to general international human rights instruments. In particular, the relevant provisions of the 1966 International Covenants provide a complementary legal basis for the protection of the cultural rights of climate-displaced populations. Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which guarantees the right of everyone to take part

⁴³ Federico Lenzerini, 'Protecting the Tangible, Safeguarding the Intangible: A Same Conventional Model for Different Needs' in S von Schorlemer and S Maus (eds), *Climate Change as a Threat to Peace: Impacts on Cultural Heritage and Cultural Diversity* (Peter Lang AG 2014) 141, 143.

⁴⁴ Articles 16 and 17 of the Convention for the Safeguarding of the Intangible Cultural Heritage (United Nations) MISC/2003/CLT/CH/14, Treaty Series 2368, 3.

⁴⁵ Article 2 of the Convention for the Safeguarding of the Intangible Cultural Heritage (United Nations) MISC/2003/CLT/CH/14, Treaty Series 2368, 3.

⁴⁶ Article 11 of the Convention for the Safeguarding of the Intangible Cultural Heritage (United Nations) MISC/2003/CLT/CH/14, Treaty Series 2368, 3.

⁴⁷ Preamble and Article 7(5) of the Paris Agreement (n 3).

in cultural life,⁴⁸ together with Articles 27, 18, and 19 of the International Covenant on Civil and Political Rights, protecting respectively the rights of minorities to enjoy their own culture, religion, and language, freedom of thought, conscience, and religion, and freedom of expression,⁴⁹ offers a framework through which ICH of communities displaced by climate change may be safeguarded. While climate change has started to be integrated into human rights in general, leading to what some authors call 'climatisation of human rights',⁵⁰ the application of human rights norms to climate-induced mobility remains largely unaddressed. Some authors suggest introducing an optional protocol to the ICESCR that would specifically focus on climate displacement, recognising the cultural rights of displaced communities.⁵¹

Despite the potential of general human rights instruments to help safeguard the cultural rights of climate-displaced communities, these mechanisms remain largely underdeveloped in practice. The absence of explicit obligations addressing the protection of ICH in the context of climate mobility persists, illustrating that the normative gap is not only theoretical but also has concrete implications. This gap becomes particularly visible when examining emerging international instruments on climate-related mobility. An example is the Falepili Union Treaty, which will be addressed in the next chapter.

4.2 Case Study: *The Falepili Union Treaty and the Omission of Cultural Rights*

The Falepili Union Treaty between Australia and Tuvalu constitutes the first and so far only treaty-based response to climate-induced displacement, offering useful insight into how cultural rights, community continuity, and heritage transmission may be protected – or inadequately protected – within state practice.

A landmark treaty, which was adopted in 2023 and entered into force in August 2024, set up climate cooperation between the two states, with a special emphasis on dignified human mobility.⁵² In fulfilling the Treaty, Australia undertook an obligation to 'arrange for a special human mobility pathway for citizens of Tuvalu to access Australia', to enable citizens of Tuvalu to 'live, study and work in Australia' and to 'access Australian education, health, and key income and family support on arrival'.⁵³

It should be emphasised, however, that the mobility pathway provided by Australia is subject to a significant condition. In the security domain, Australia, apart from committing to assisting Tuvalu in the event of major natural disasters, public health emergencies of international concern, or military aggression, requires Tuvalu to consult and reach an agreement with Australia on 'any partnership, arrangement or engagement with any other state or entity on security and defence-related matters'.⁵⁴ This provision has been interpreted as entrenching a significant degree of strategic dependency, thereby

⁴⁸ Other rights, such as the right to education (Article 13), or the right to an adequate standard of living (Article 11) may find their application in this context. See International Covenant on Economic, Social and Cultural Rights (United Nations) Treaty Series 993, 3.

⁴⁹ International Covenant on Civil and Political Rights (United Nations) Treaty Series 999, 171.

⁵⁰ Anna Pedrajas, 'Protecting Our Past from the Climate Crisis: International Law to the Rescue of Cultural Heritage' (2025); César Rodríguez-Garavito, 'Climatizing Human Rights: Economic and Social Rights for the Anthropocene' (2022) <http://dx.doi.org/10.2139/ssrn.3920704> accessed 30 May 2026.

⁵¹ Yatong Yang, 'Integrating Cultural Heritage into Climate Displacement Law: the Carteret Islanders Case' (2025) 25 *International Environmental Agreements* 615, 628 <https://doi.org/10.1007/s10784-025-09686-w> accessed 30 May 2026.

⁵² Australia-Tuvalu Falepili Union Treaty.

⁵³ Article 3(1) of the Australia-Tuvalu Falepili Union Treaty.

⁵⁴ Article 4 of the Australia-Tuvalu Falepili Union Treaty.

reinforcing Australia's influence over its smaller neighbour.⁵⁵ Such dynamics are not unprecedented in Australia's relations with Pacific Island states and have been described as part of a broader geopolitical strategy to counter increasing Chinese engagement in the region.⁵⁶ According to some authors, the interaction between security concerns and climate-related obligations in the Treaty represents a reversal of the more common dynamic in which security interests tend to override or marginalise climate commitments.⁵⁷

Another feature of the Treaty, one that may be characterised as groundbreaking, is its affirmation of Tuvalu's continuing statehood and sovereignty, irrespective of the consequences of climate change-induced sea-level rise.⁵⁸ As Tuvalu faces the prospect of the physical loss of territory, it confronts the risk of no longer fulfilling one of the traditional criteria for statehood under international law. The Treaty, therefore, touches upon an emerging and largely untested area of international legal doctrine,⁵⁹ as the international community has not previously been compelled to reassess the constitutive elements of statehood in circumstances where a territory may become permanently submerged.

The Treaty has, however, been criticised for not addressing the protection of cultural heritage. In Article 2(2)(a), it speaks of the Tuvaluan people's desire to continue to live in their territory and of Tuvalu's 'deep, ancestral connections to land and sea'. This provision might be read as emphasising the importance of cultural heritage, both tangible and, even more so, intangible. Yet, given the fact that Tuvalu is heavily threatened by sea-level rise, prompting it to seek UNESCO protection,⁶⁰ the omission of any explicit mention of cultural heritage, culture, or cultural preservation is regarded as a 'vacuum (...) [in] addressing climate adaptation measures'.⁶¹

This omission illustrates the wider normative gap in international law discussed above. The Falepili Union Treaty serves as an example of emerging mobility and adaptation agreements that prioritise movement and security considerations over the protection of cultural rights. It also poses a challenge for future instruments of a similar kind, which must view climate vulnerability not solely through the prism of immediate existential threats, but also in terms of the preservation of cultural rights – a dimension that is essential to the continuity and identity of affected populations.

⁵⁵ Alex Green and Douglas Guilfoyle, 'The Australia-Tuvalu Falepili Union Treaty: Statehood and Security in the Face of Anthropogenic Climate Change' (2024) 118(4) *American Journal of International Law* 684, 690 <https://doi.org/10.1017/ajil.2024.54> accessed 30 May 2026.

⁵⁶ Clive Schofield and Frances Anggadi, 'The Australia-Tuvalu Falepili Union Treaty: Opportunities and Controversies' (2024) 9(1) *Asia-Pacific Journal of Ocean Law and Policy* 85, 85 <https://doi.org/10.1163/24519391-09010006> accessed 30 May 2026.

⁵⁷ Antonio Mariconda, 'Advancing climate-related obligations through security concerns: Lessons from the Falepili Union Treaty' (2025).

⁵⁸ Article 2(2)(b) of the Australia-Tuvalu Falepili Union Treaty.

⁵⁹ Jess Marinaccio, 'The Australia-Tuvalu Falepili Union: Tuvaluan Values or Australian Interests?' (Devpolicy Blog, 15 November 2023).

⁶⁰ Tuvalu became the 1972 World Heritage Convention state party in 2023, and in 2024, it submitted 'The Pacific Atoll-Island cultural landscape of Tuvalu' for inscription on UNESCO's World Heritage List. See: UNESCO World Heritage Centre, 'The Pacific Atoll-Island Cultural Landscape of Tuvalu'.

⁶¹ Ludovico Carofano, 'As the Land Erodes, So Does the Cultural Heritage: Unpacking (Fuzzy) Cultural Preservation Perspectives within the Falepili Union Treaty Framework' (3 February 2025).

5. INTERSECTIONS BETWEEN CLIMATE CHANGE AND CULTURAL HERITAGE PROTECTION

In the absence of explicit legal safeguards, efforts to address the normative gap have largely emerged through soft-law initiatives within the international cultural heritage and climate regimes. Although not legally binding, these instruments play a significant role, as they offer guidance on how the international community may respond to the challenges posed by climate-related threats to cultural heritage.

The issue of the impact of climate change on World Heritage was first raised in 2005 by a group of organisations and individuals who brought it to the attention of the World Heritage Committee.⁶² This action provided the impetus for subsequent UNESCO endeavours on the matter and marked the beginning of institutional engagement with climate threats in the cultural heritage regime. In 2007, UNESCO published a Report on predicting and managing the effects of climate change on World Heritage and a Strategy to assist States Parties to the Convention in implementing appropriate management responses.⁶³ It also presented a collection of 26 case studies on the effects of climate change on global cultural and natural heritage, both those that had already been examined and those that might require examination in the future.⁶⁴ As a result of all this, a Policy Document on the impacts of climate change on World Heritage properties was adopted in 2007⁶⁵ and later updated in 2021⁶⁶ and 2023.⁶⁷

The Operational Guidelines for the Implementation of the World Heritage Convention, in the amended version of 2008, for the first time acknowledged climate change as a factor affecting a site's outstanding universal value.⁶⁸ Subsequent versions, including the most recent version of 2025, have built upon this initial step, increasingly treating climate change as a core consideration in heritage management systems.⁶⁹ Climate change thus started to form an essential component of cultural heritage discourse; however, this occurred either through the proclamation of general principles⁷⁰ or by focusing primarily on tangible heritage. This reflected a deeper structural deficiency in the international cultural heritage framework: the prioritisation of material heritage over living cultural practices and knowledge systems.

It was not until 2016 that UNESCO recognised and addressed the vulnerability of ICH to climate change. The amended Operational Directives for the Implementation of the 2003 Convention acknowledged, for the first time, the challenge of safeguarding ICH

⁶² UNESCO World Heritage Centre, 'Climate Change and World Heritage'.

⁶³ These documents were published as UNESCO World Heritage Centre, *World Heritage Reports No 22: Climate Change and World Heritage* (2007).

⁶⁴ UNESCO World Heritage Centre, 'Case Studies on Climate Change and World Heritage'. Other case studies, not necessarily conducted under the auspices of UNESCO, are being carried out. One of the best-known studies examining the influence of climate change on ICH is the study on lamprey fishing in Carnikava, Latvia. See more in Sandis Laime, Kitija Balcare, Elina Gailite, Rita Grīnvalde and Anita Vaivade, 'Perspectives on Climate Change Impact on Intangible Cultural Heritage: The Case of Traditional Lamprey Fishing in Latvia' (2024) 33(1) *Anthropological Journal of European Cultures* 26 <https://doi.org/10.3167/ajec.2024.330104> accessed 30 May 2026.

⁶⁵ Policy Document on the Impacts of Climate Change on World Heritage Properties (UNESCO).

⁶⁶ Updated Policy Document on Climate Action for World Heritage (UNESCO) WHC/21/23.GA/INF.11.

⁶⁷ Updated Policy Document on Climate Action for World Heritage (UNESCO) WHC/23/24.GA/INF.8.

⁶⁸ Operational Guidelines for the Implementation of the World Heritage Convention (UNESCO 2008).

⁶⁹ See, for example, amended Operational Guidelines for the Implementation of the World Heritage Convention (UNESCO) WHC.25/01.

⁷⁰ Declaration of Ethical Principles in relation to Climate Change (UNESCO). See also: Ethical Principles for Safeguarding Intangible Cultural Heritage (UNESCO).

in a changing climate and underscored the importance of community-based resilience.⁷¹ All subsequent amendments, including those adopted in 2024, maintain reference to climate change in the context of ICH.⁷² The 2021 and later 2023 Policy Documents mention ICH, though only very briefly.⁷³ ICOMOS, one of the World Heritage Committee's advisory bodies, adopted the International Charter and Guidance on Sites with Intangible Cultural Heritage in 2024, in which it affirms the importance of ICH protection and stresses that climate change is one of the threats to ICH that needs to be mitigated.⁷⁴ In the same year, an expert meeting on safeguarding ICH and climate change resulted in the adoption of two documents – Policy Development, Partnerships and Capacity Building for Living Heritage in the Climate Emergency⁷⁵ and the Draft Guidance Note on Climate Action for Living Heritage.⁷⁶ In June 2024, the ICH NGO Forum, which brings together 264 NGOs from 73 different countries, adopted the Declaration on the Safeguarding of Intangible Cultural Heritage for Climate Action, consisting of 11 recommendations aimed at addressing this issue.⁷⁷

UNESCO and other documents on climate change and intangible cultural heritage have marked a significant step in addressing this issue, though they are not legally binding. As part of soft law, they are traditionally considered to carry only moral and political weight.⁷⁸ This should not, however, diminish the need to observe postulates enshrined in them, especially given the increasing importance of soft law in international governance.⁷⁹ In areas in which treaty law either does not exist or is too general, they may serve as valuable tools for interpretation and for bridging normative gaps. This is precisely the case with the 2003 Convention, which formulates States' obligations in rather soft terms and is thus often seen more as a 'manifesto proclaiming the rights of States'⁸⁰ than as an instrument imposing specific obligations.

Several key features emerge from the relevant documents addressing the protection of ICH in the context of climate change. First, these documents acknowledge that climate change affects ICH and outline the various ways in which this impact may occur. Second, they propose a range of actions to safeguard endangered living heritage from the effects of climate change. The first step in implementing any of these actions should be education and awareness-raising.⁸¹ Communities, which have primary responsibility for safeguarding their heritage, as well as other stakeholders, are encouraged to integrate climate change awareness into living heritage safeguarding

⁷¹ Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO 2016).

⁷² Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO 2024).

⁷³ Annex I, C 16.

⁷⁴ International Charter and Guidance on Sites with Intangible Cultural Heritage (ICOMOS).

⁷⁵ Expert Meeting on Safeguarding ICH and Climate Change, Policy Development, Partnerships and Capacity Building for Living Heritage in the Climate Emergency (UNESCO) LHE/24/EXP THEMA-CLIMA/4f.

⁷⁶ Expert Meeting on Safeguarding ICH and Climate Change, Draft Guidance Note on Climate Action for Living Heritage (UNESCO) LHE/24/EXP THEMA-CLIMA/3 Rev.3.

⁷⁷ Declaration on the Safeguarding of Intangible Cultural Heritage for Climate Action (ICHNGO Forum).

⁷⁸ Matthias Goldmann, 'We Need to Cut Off the Head of the King: Past, Present, and Future Approaches to International Soft Law' (2012) 25(2) *Leiden Journal of International Law* 335, 344–368 <https://doi.org/10.1017/S0922156512000064> accessed 30 May 2026.

⁷⁹ Timothy Meyer, 'Shifting Sands: Power, Uncertainty and the Form of International Legal Cooperation' (2016) 27(1) *European Journal of International Law* 161, 162 <https://doi.org/10.1093/ejil/chw005> accessed 30 May 2026.

⁸⁰ Lenzerini (n 43) 144.

⁸¹ Medium-Term Strategy 2022–2029 (UNESCO) 41 C/74.

plans at all levels.⁸² One of the most appropriate ways to do so is through the documentation of living heritage in digital or other inventories. Within the 2003 Convention, a Register of Good Safeguarding Practices is established precisely with the aim of documenting practices constituting ICH.⁸³ However, even outside the UNESCO system, states can create inventories for the same purpose. The one created by the state of Tuvalu is probably the most comprehensive, and understandably so. Tuvalu is a state confronted by the danger of rising sea levels and the consequent loss of its territory. It has thus created a digital platform designed to record and preserve the living traditions, practices, and knowledge systems of the Tuvaluan people, using not only textual descriptions but also photos and videos.⁸⁴ In that way, Tuvalu began paving the way to becoming the first digital nation. This case demonstrates how vulnerable states are not passive observers in the process of shaping international responses to climate-induced threats. On the contrary, they are actively engaged in creating new forms of cultural heritage preservation.

Concerted efforts to safeguard ICH against climate change necessarily include the cooperation of different stakeholders – individuals, groups, communities, institutions, and possibly other actors. Networking and creating partnerships within particular states and among different states, as well as creating synergies between Cultural Conventions and stakeholders working on natural and cultural heritage, both tangible and intangible, are recognised as potential areas for intervention.⁸⁵ States are encouraged to promote collaborative research and case-study development, as well as to develop and implement policies that integrate living heritage into strategies, plans, and programmes addressing climate change adaptation, mitigation, and safeguarding.⁸⁶ In doing so, they are increasingly urged to apply Indigenous knowledge, which has emerged as a valuable tool in tackling climate change. In this context, the growing emphasis on Indigenous knowledge reflects not only its practical relevance for climate adaptation but also its normative significance in safeguarding living heritage. The following chapter examines this dimension in greater detail, analysing the evolving role of Indigenous knowledge within the international framework for ICH protection in the face of climate change.

6. THE ROLE OF INDIGENOUS KNOWLEDGE IN BRIDGING THE NORMATIVE GAP

Across relevant policy instruments addressing ICH and climate change, increasing emphasis is placed on the role of Indigenous knowledge or Indigenous expertise. Indigenous expertise refers to the unique knowledge and experiences of Indigenous communities, which are rooted in their specific history, background, and cultural context. It helps to identify and explain relevant facts, particularly in conveying

⁸² Draft Guidance note, A.7.

⁸³ For example, preserving the traditions of Aymara communities in Bolivia, Chile, and Peru, which are threatened by soil degradation and other impacts of climate change, as well as preserving the tradition of batana boat building in the Croatian city of Rovinj, which is threatened by sea-level rise and coastal erosion. See: UNESCO Intangible Cultural Heritage, 'Community Project of Safeguarding the Living Culture of Rovinj/Rovigno: The Batana Ecomuseum'; or UNESCO Intangible Cultural Heritage, 'Lists of Intangible Cultural Heritage'.

⁸⁴ Sophie Yeo, 'Tuvalu: The Disappearing Island Nation Recreating Itself in the Metaverse' (BBC, 21 November 2024).

⁸⁵ Draft Guidelines, B.

⁸⁶ Draft Guidelines, C and D.

Indigenous concepts to those who are not part of these communities.⁸⁷ This knowledge is regarded as an asset for adapting to climate change and is meant to be used in conjunction with scientific knowledge. Moreover, its application can go beyond adaptation to climate change and can play an important role in the aftermath of emergencies, as 'cultural practices and heritage places serve as psychological and physical refuges for communities'.⁸⁸

Indigenous peoples' cultural rights, as well as the importance of Indigenous knowledge in preserving cultural heritage, have been recognised by various bodies. All UN bodies related to Indigenous peoples propose measures aimed at strengthening the role of these peoples in preserving cultural heritage.⁸⁹ The UN Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 21 of 2009 on the right to take part in cultural life stated that States Parties [to the ICESCR] should respect the right of Indigenous peoples to 'maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions'.⁹⁰ In General Comment No. 26 of 2022 on land and economic, social, and cultural rights, the CESCR provides a more detailed elaboration of the interconnection between the rights of Indigenous peoples, land, and climate change.⁹¹ ICOMOS also mentions traditional knowledge in the context of climate change, recommending it as a tool for mitigating and adapting to climate change.⁹²

Many legal instruments, including two cultural heritage conventions, affirm Indigenous peoples' cultural rights.⁹³ The 2003 ICH Convention, in its preamble, recognises the importance of Indigenous peoples in the 'production, safeguarding, maintenance and recreation' of ICH,⁹⁴ while the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions recognises the importance of traditional knowledge and knowledge systems of Indigenous peoples, their 'positive contribution to sustainable development', and the need for their adequate protection and promotion.⁹⁵ Among its guiding principles, it promotes the principle of equal dignity and respect for all cultures, including those belonging to Indigenous peoples.⁹⁶ Not only do cultural heritage treaties promote Indigenous knowledge, but climate change treaties do so as well. The 2015 Paris Agreement obliges States Parties to observe Indigenous

⁸⁷ Noelle Higgins, 'Indigenous Expertise as Cultural Expertise in the World Heritage Protective Framework' (2021) 11 *Nordic Journal of Law and Social Research* 79, 81 <https://doi.org/10.7146/njlsr.vi11.132004> accessed 30 May 2026.

⁸⁸ EurekaAlert!, 'First Ever UNESCO-IPCC-ICOMOS Meeting to Strengthen Synergies between Culture and Climate Change Science' (6 December 2021).

⁸⁹ UN Permanent Forum on Indigenous Issues, UN Expert Mechanism on the Rights of Indigenous Peoples and the UN Special Rapporteur on Indigenous Peoples.

⁹⁰ General Comment No 21: Right of Everyone to Take Part in Cultural Life (CESCR) E/C.12/GC/21.

⁹¹ General Comment No 26: Land and Economic, Social and Cultural Rights (CESCR) E/C.12/GC/26.

⁹² ICOMOS, *The Future of Our Pasts: Engaging Cultural Heritage in Climate Action* (2019) 19.

⁹³ The most specific *soft-law* document that speaks of Indigenous peoples' rights, including cultural rights and traditions, is the United Nations Declaration on the Rights of Indigenous Peoples (United Nations); Indigenous and Tribal Peoples Convention (No 169) (International Labour Organization) is a binding treaty for its States Parties, as is the Convention on the Rights of the Child (United Nations), which is not generally devoted to Indigenous peoples but contains a provision on the right of Indigenous and minority children to enjoy their culture, religion, and language (Article 30). The two International Covenants of 1966 guarantee cultural rights without specifically mentioning Indigenous peoples, but both monitoring committees for the implementation of the Conventions have interpreted this right as including Indigenous peoples (CESCR, Article 15, GC No. 21(2009); CCPR, Article 27, GC No. 23(1994)).

⁹⁴ Preamble to the 2003 Convention.

⁹⁵ Preamble to the 2005 Convention.

⁹⁶ *Ibid.*

peoples' rights when taking climate action⁹⁷ and to take adaptation measures that take into account not only scientific knowledge but also 'traditional knowledge, knowledge of Indigenous peoples and local knowledge systems'.⁹⁸

The importance of Indigenous knowledge in the context of climate change lies in the fact that inhabitants of certain parts of the world have long been accustomed to environmental changes and have devised strategies to manage these challenges effectively.⁹⁹ Examples are numerous. For instance, inherited local knowledge of water management can be used to adapt to climate change through the construction of agricultural terraces, the collection of rainwater in cisterns, and the development of channels, basins, and drainage systems.¹⁰⁰ In contrast to certain contemporary policies that overlook traditional knowledge and prove ineffective, residents in some rural coastal regions, such as those in Bangladesh, have a longstanding practice of constructing homes designed to endure the climatic challenges posed by tornadoes, floods, and erosion.¹⁰¹ Other examples include the Haenyeo women divers from Jeju Island, who harvest seafood without scuba gear, using marine resources in a sustainable manner,¹⁰² or the Kikuyu women in Kenya, who play a crucial role in the cultivation of food crops and the conservation of seeds.¹⁰³ The transmission of environmental knowledge is characteristic of Mongolian epic storytelling, which describes nature, the behaviour of animals, rituals involving animals, and seasonal patterns.¹⁰⁴

It is worth mentioning that the protection of the cultural rights of Indigenous peoples in the context of climate change, particularly the intergenerational transmission of traditional ecological knowledge, was discussed in the Torres Strait Islanders case before the Human Rights Committee.¹⁰⁵ The Committee discussed, *inter alia*, Article 27 of the International Covenant on Civil and Political Rights,¹⁰⁶ on the right of minority groups to culture, religion, and language, interpreting it in accordance with the United Nations Declaration on the Rights of Indigenous Peoples. This Declaration acknowledges the intrinsic rights of Indigenous peoples that stem from their distinct cultures, spiritual traditions, histories, and philosophies, particularly emphasising their rights to their lands, territories, and resources.¹⁰⁷ The Committee found that Australia, although taking certain measures, had reacted inadequately and with delay in protecting Indigenous peoples' collective ability to maintain their traditional way of life and to transmit their culture and traditions to their children and future generations, thus violating its positive obligation to protect the right to enjoy minority culture.¹⁰⁸

The Committee's reasoning reflects an evolving international understanding of the role of traditional knowledge in the context of climate change. An analysis of various

⁹⁷ Preamble to the Paris Agreement (n 3).

⁹⁸ Article 7(5) of the Paris Agreement (n 3).

⁹⁹ IUCN, *Indigenous and Traditional Peoples and Climate Change* (2008) 4.

¹⁰⁰ Aktürk and Lerski (n 7) 307.

¹⁰¹ Aktürk and Lerski (n 7) 307.

¹⁰² UNESCO, 'The Haenyeo: Guardians of Jeju's Coastal Legacy'.

¹⁰³ Benedetta Ubertaini, 'Safeguarding Intangible Cultural Heritage and the Environment' (2020) 64(1) *Pravovedenie* 124, 125 <https://doi.org/10.21638/spbu25.2020.110> accessed 30 May 2026.

¹⁰⁴ UNESCO Digital Library, *History of Civilizations of Central Asia, vol 6: Towards the Contemporary Period: From the Mid-Nineteenth to the End of the Twentieth Century*.

¹⁰⁵ Daniel Billy and others v Australia (Human Rights Committee, United Nations, 21 July 2022) CCPR/C/135/D/3624/2019.

¹⁰⁶ International Covenant on Civil and Political Rights (United Nations) Treaty Series 999, 171.

¹⁰⁷ United Nations Declaration on the Rights of Indigenous Peoples (United Nations); ICCPR, HRC, Views adopted by the Human Rights Committee under Article 5(4) of the Optional Protocol, concerning communication No 3624/2019 (HRC) CCPR/C/135/D/3624/2019.

¹⁰⁸ CCPR/C/135/D/3624/2019, 8.13.

documents and decisions promoting such knowledge reveals its dual role in emergencies. On the one hand, as a form of intangible cultural heritage, it is threatened by climate change and therefore requires legal protection. On the other hand, its mobilisation can aid in adapting to and overcoming the effects of climate change, serving as 'powerful leverage for resilience and recovery' for affected populations.¹⁰⁹

7. CONCLUSION

The analysis undertaken in this paper demonstrates that the fragmentation between international cultural heritage law and international climate law creates a normative gap in the safeguarding of intangible cultural heritage. This structural separation leaves this heritage insufficiently protected in situations of climate-induced mobility.

Growing awareness of the normative gap has led to increased attention to the impact of climate change on ICH in recent years, particularly through initiatives adopted under the umbrella of UNESCO. However, knowledge of the specific ways in which climate change affects ICH remains relatively general, and further research and case studies are needed to determine which forms of intangible heritage are most at risk and in which regions. One challenge lies in establishing a direct link between climate change and the erosion of ICH, as population movements – often the immediate cause of the transformation or disappearance of certain cultural practices – are typically driven by multiple factors. In addition, the loss of intangible heritage is less visible and more difficult to quantify than damage to tangible heritage.

The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, the only legally binding and widely accepted international instrument in this field, provides general protection for ICH. However, the broad framework envisaged by the Convention is insufficient to address the specific challenges posed by climate-induced displacement. Other legally binding instruments do not fill this gap. General human rights treaties protecting cultural rights remain too broad and insufficiently operationalised in this context. At the same time, climate-mobility agreements such as the Falepili Union Treaty focus primarily on mobility, statehood, and security concerns, largely omitting references to cultural heritage protection.

In response to this normative gap, targeted soft-law instruments addressing the safeguarding of ICH in the context of climate change have been adopted. Although they do not create binding legal obligations, they provide important guidance for states and other actors involved in the preservation of ICH. Many of these instruments emphasise the role of Indigenous knowledge, recognising it both as a form of ICH requiring protection and as a resource that can contribute to climate adaptation and resilience.

To strengthen the protection of ICH, several measures may be considered. Future climate-mobility treaties – drawing lessons from the limitations of the Falepili Union Treaty – should explicitly incorporate safeguards for language, knowledge systems, rituals, and other cultural practices. Such agreements should be formulated consistently with states' obligations under existing cultural heritage and human rights instruments, as well as relevant soft-law standards. States may also consider establishing or updating inventories of intangible heritage to document and preserve endangered cultural expressions. Indigenous knowledge should be employed as a

¹⁰⁹ Decision of the Intergovernmental Committee: 11.COM 15 (UNESCO); Recommendation 2, Declaration on the Safeguarding of Intangible Cultural Heritage for Climate Action (ICHNGO Forum).

complementary resource in adaptation strategies, ensuring the continued participation of affected communities.

Recent normative developments reflect both progress and remaining shortcomings. While soft-law initiatives increasingly recognise climate change as a risk factor for the safeguarding of ICH, binding climate-mobility agreements have yet to integrate cultural heritage concerns in a systematic manner. Addressing this structural gap will require greater coordination between climate governance and cultural heritage protection, ensuring that ICH is not overlooked in responses to existential climate threats.