



UvA-DARE (Digital Academic Repository)

Heritage under siege: military implementation of the 1954 Convention for the Protection of Cultural Property

Kila, J.D.

Publication date
2012

[Link to publication](#)

Citation for published version (APA):

Kila, J. D. (2012). *Heritage under siege: military implementation of the 1954 Convention for the Protection of Cultural Property*. [Thesis, fully internal, Universiteit van Amsterdam].

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

Part III

Harmonizing liabilities and revenues for now and the future

Balancing the interests

The Hague Convention of 1954 was designed as an instrument to diminish and control the tensions that naturally appear between those taking care of cultural heritage and those whose core business is armed conflict. To put it more simply the treaty aims at maintaining a proper balance between cultural heritage and warfare. Obviously the term proper as used in this context is subject to trends, insights, historical and political circumstances as described. The stakeholders from all sides are also portrayed in the first part of this study.

When looking at cases and examples described in Part II of this book it seems that the convention is not reaching its objective and that it has created more tensions in the playing field. All interests at stake seem to be to a certain extent mutually exclusive or at least not in balance with each other. This instability has different origins including personal, bureaucratic, ethnic, or political situations to mention a few. For example one can think of tensions between groups supporting archeological sites preservation versus those who give priority to exploitation of cultural heritage for tourism. Other cases of friction relate to cultural resources management involving federal versus provincial control and national versus international authority not to mention collective interests versus individual interests.²³⁷ In the case of ownership of property, tensions can occur related to private possession of cultural heritage versus community owned properties. Part II not only shows the development of this research via a collection of published and peer-reviewed articles but also contains case studies that illustrate different interests, behaviors of parties, tensions and mechanisms as they occurred in practice especially during the period this research was executed. In all cases presented, the balancing of interests appears to be a key factor for effective future realization of CPP methods and strategies.²³⁸ Since no legal framework seems to be effective enough to achieve this, new opportunities as well as creative solutions must be identified. In the current situation it looks these solutions will have to come from those not afraid of taking risks and willing to handle bureaucratic rules and formats with flexibility.

Educational materials and research results that illustrate different perspectives as well as possible (military) incentives play a role in the (re)balancing process. The following paragraphs, while taking into account outcomes of this study, and lessons learned from case examples will identify and investigate a number of vital restraints and challenges. While doing so there is room for legal considerations, unpredicted opportunities, research, education and training methods, clear cut solutions and other strategies.

Identified dilemmas and challenges standing in the way of CPP implementation

Several identified dilemmas are mentioned in sections of Part I e.g. the paragraphs explaining the different parties involved. Practical cases that include such dilemmas were also given, for instance concerning the media (the Jewish archives, Baghdad museum) and religion (Bamyian and the Israel Temple Mound). A number of vital challenges will be further explained and summarized while suggesting solutions. Some issues are of a juridical nature. Let me stress that I am not a juridical expert and therefore will approach the fundamental juridical implications from a more or less multidisciplinary position in fact, as it normally happens in practice when a commander has

²³⁷ In the Netherlands activities are often blocked by the head of the army's cultural awareness department (CAI) apparently he claims that only he is competent to deal with CPP issues.

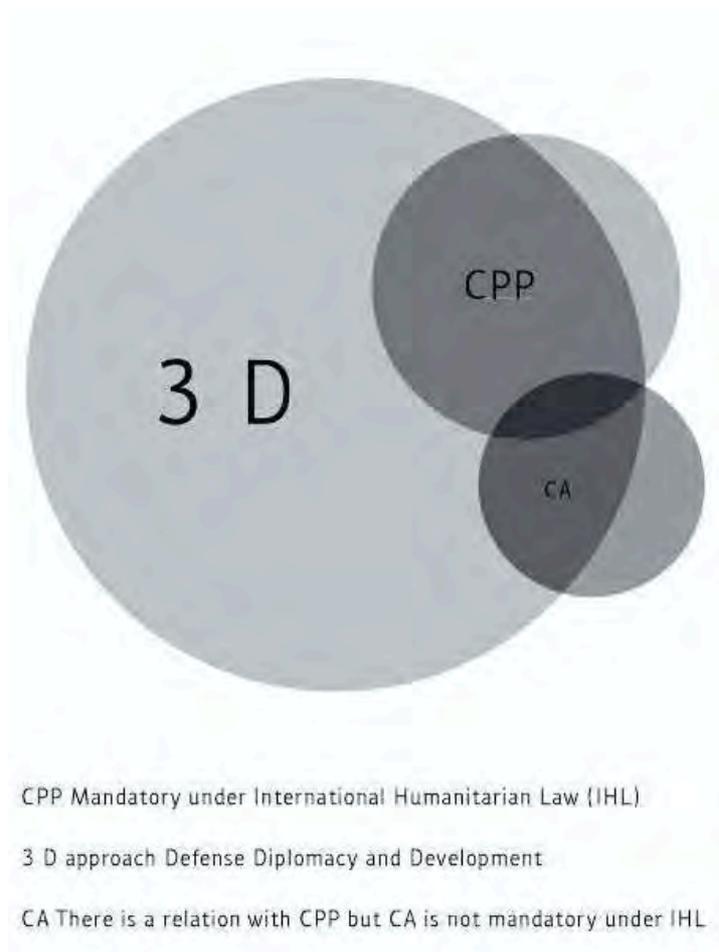
²³⁸ A source of benefit especially for the use of the term balancing the interests was a presentation by Colonel Mark Yanaway at the AIA conference that took place in San Antonio TX US in January 2011.

to interpret advice from different disciplines to make a decision. Judgments and conclusions are not mentioned without consulting juridical experts but some issues that go naturally for legal experts are discussed from a non-juridical point of view. The research shows that military CPP is often mixed up or too closely linked with military Cultural Awareness (CA). Recent discussions, like the one at the World Archaeological Congress in Dublin in 2008 that is addressed in the paragraph about the media in Part I and several publications confirm this.²³⁹ In fact this is an issue between some of the stakeholders addressed in this study namely science, the media, and the military.

To avoid all kinds of, sometimes-unexpected confusion and unwanted synergy it is better that CPP officers are embedded in a military organization separate from cultural awareness experts. Activities aiming at raising awareness through supplying information and training should include clear explanation of the fact that CPP and Cultural Awareness are two separate disciplines. Of course, they are related to each other, but in the same way as a dentist is linked to a cardiologist: both work in the medical field. Nevertheless even the vaguest relationship can potentially cause legal implications because of the legal and consequently ethical framework CPP officers should work within, the Hague convention of 1954. Implications could arise in case CPP would touch specific areas within the field of Counter Insurgency for instance when attempts are made to decrease illicit traffic of artifacts in a conflict zone. Again, it should be emphasized that in this context reference is made to the European civilian perception of the term Counter Insurgency. This argument needs clarification. It was brought to my attention on several occasions that European civilian social scientists and for that matter the general public tend to perceive COIN as secret operations aimed at destroying opponents. The Americans including the US public use a wider construct of the term and recognize all activities that are in support of a military mission, or in other words create a force multiplier such as CPP, as a tool to be used against the opponent. If CPP through COIN gets mixed up or confused with something that is understood as intelligence operations aimed at destruction or at physically disabling the enemy we get situations as happened in Dublin or even worse resulting in limited opportunities to carry out what IHL wants with respect to Cultural Property protection.

This example shows that confusion about certain matters can partly be influenced or triggered by factors of social, geographical and cultural descent but also by an individual's or group's professional expertise and environment. Apart from these there are other vital aspects for instance the fact that the multi-disciplinary nature of CPP and this investigation makes it difficult for the non-juridical trained to use and interpret juridical data and issues. On the other hand, it makes it suitable to fit in other comprehensive models like the 3 D concept. As discussed earlier CPP not only fits perfectly in this so-called 3 D approach used especially in peacekeeping and stabilization operations but CPP actually belongs in all military operations. The 3 D or diplomacy, defense, and development formula is in the Netherlands presented as the Dutch approach implying it is a Dutch invention. In practice it's implementation and consequently development remains somewhat behind and vague since the Dutch MoD suffers from major financial cut backs not allowing them to fully educate and train troops and specialists on topics and expertise vital to really realizing the 3D format. It is however possible to illustrate the positions of CPP and CA within this 3D context. It is interesting to take into account that in this 3 D method, several stakeholders introduced in chapter I take part, governmental institutions (ministries), the military, and NGOs in addition to these advisory groups, science and international organizations can be involved.

²³⁹ Albarella 2009, pp. 105–114.



19. 3 D approach. © Joris Kila.

A big restraint to point out is the general lack of mutual understanding and coordination between the different parties that should carry out what is stated in the 1954 Hague Convention and other relevant legislation. The deficiency of common sensibility is seriously hindering implementation of activities. Varying opposing factors instigate this but an overall issue is the apparent difficulty for the civilian side to understand military conditions and culture and vice versa. Conditions are worsened by the fact that the military are not showing much interest in the subject. In many countries, lack of interest and awareness cause the military not to object when CPP is not dealt with in their organizations. There are even cases where the existence of Cultural awareness programs is used as an excuse not to implement CPP. Egypt is a recent example of this phenomenon and shows what the devastating results can be if a country's armed forces are unable to act when police protection of sites and museums suddenly disappears. In fact, we are talking about bad cooperation between CPP stakeholders (military, government, juridical and civil cultural experts) as identified in Part I. This is even more reason to identify common denominators. On top of all this there is a trend started by a small number of individuals that appear to invent and introduce less relevant ethical aspects thus contributing to restrain cooperation between civil experts and military. Their arguments are often unfounded because they are made without real knowledge about the military and legal perspectives. Moreover, such opinions are beside the case because if all parties stick to the legal framework provided by the 1954 Hague Convention there cannot be an ethical problem. It can even be argued that ignoring cooperation and resolutions as mentioned in International Humanitarian Law is un-ethical. This ethics trend has as a consequence that the scarce number of experts (often reservists) that try to function in between the civil and military spheres and have knowledge of and experience with

both "cultures" are prone to suspicion from scientific peers as well as from professional military colleagues and are at risk of getting marginalized. One more major challenge for meeting the obligations as laid down in the 1954 Hague convention is the lack of funding. The bad economical situation giving low priority to subjects as CPP and in civil society culture in general, is often referred to as an excuse but it in fact it indicates low appreciation of the relevance of dealing with CPP. Because of this attitude Europe and the Netherlands in particular stay behind with implementing CPP strategies for military organizations as required by the 1954 Hague Convention.

Different examples have shown that training of the military is held up by conflicts of interests as well as by contradicting powers and arguing factions within circles of stakeholders.²⁴⁰ These, can be called identified dilemmas and are often based on oppositions and constraints linked to strategic cultures.²⁴¹ They occur on different levels and involve diverse parties, disciplines and issues. Balancing the respective interests is again a pre-requisite for success. Following are more examples, after each identified predicament a clarification with a reference to a thesis and case used in this study is given: A classic dilemma from the juridical sphere is balancing between Cultural Property protection and Military Necessity. This is a basic conflict of interest between the cultural expert's desire for conservation and preservation of cultural belongings and the military aim to reach a conflict's end state as soon as possible. A famous case dates from the Second World War namely the case of Monte Cassino.²⁴² Out of such dilemmas, more contradictions become apparent such as the desire to achieve military results against the apparent constraints of International Humanitarian Law (IHL). Here it becomes tricky for people not educated in the law. IHL is incorporated into military law and is also known as the Law of Armed Conflict (LOAC). While human rights law applies in peacetime and also, subject to derogation, in times of armed conflict, IHL/LOAC only applies in armed conflict. As with all international law, the laws of armed conflict are based on treaties and customary international law. Of course, military law is at the same time a body that contains directives and rules for the military. It is critical to distinguish these several layers and applications of such juridical instruments. All play a role in the CPP complex though intermingled with different political, technical, or cultural elements. Obviously more research as well as cooperation between civil and military legal experts and cultural experts is needed to keep all elements under control while giving expert advice to commanders. For that matter, cases and problems mentioned in this study have to be checked for their juridical implications while asking what problems can be derived from such cases. Especially since, it is not apparent to civil CPP stakeholders when or under which circumstances the accomplishment of military objectives prevails over allowing for directives of National Laws or International Humanitarian Law on protecting Cultural Property. Situations obviously cannot be judged without the advice of legal experts but these experts are normally not educated about archaeological, cultural and preservation aspects to mention a few. This example points out the difficulties of establishing cooperation between parties representing the law, the military, and science.

Apart from existing issues there are matters to be considered and researched that contain new implications (or opportunities) linked with CPP such as the environmental angle. This link has for instance not been checked for probable legal consequences deriving from environmental rules and laws. For that matter: possibilities to undertake emergency assessment missions for working

²⁴⁰ E.g cultural awareness specialists versus CPP specialists

²⁴¹ Strategic Culture is that set of shared beliefs, assumptions, and modes of behavior, derived from common experiences and accepted narratives (both oral and written), that shape collective identity and relationships to other groups, and which determine appropriate ends and means for achieving security objectives. Source: Johnson and Larsen 2006.

²⁴² In 1944, the Abbey of Monte Cassino was bombed based on the fear that it was being used as a lookout post for the Germans, this proved later not to be the case.

groups as IMCURWG and their status in the field have not been investigated from the legal perspectives that are valid in conflict and foreign diplomatic situations. A final relevant issue to mention is the fact that tensions exist between instrumental parties with financial resources to protect CP such as governments and intrinsic parties that have the expertise but lack financial resources; this is the case in the Netherlands.²⁴³ An important but inconsistent relation exists between civilian experts and military- or militarized experts. Problems range from ranking concerns as addressed in the CIMIC paragraph including financial and hierarchy consequences to legal implications such as legal status issues when Non Combatants and Combatants work together in theatre.²⁴⁴

The above is a selection of contradicting forces that are always present. Their respective influence is illustrated in the cases used in parts one and two of this book. Nevertheless, within the context of this study the legal aspects, like the classic and crucial contradiction involving military necessity already mentioned, need more elucidation. The latter concerns two elements of International Humanitarian Law (IHL) namely the principle of military necessity that is in fact a restriction on the conduct of hostilities addressed under Hague Law versus the obligation to protect Cultural Property as codified in the 1954 Hague Convention.²⁴⁵ It is useful for non-judicial experts to get an idea of the lawful context in which certain aspects function and correlate when CPP is at stake. Such a closer look is necessary to put matters in perspective while describing the legal environment connected with war. At that point it may be possible to understand the concepts of proportionality and the, according to some, ill-defined principle of military necessity.²⁴⁶ Moreover, a comparison is made between a number of different interpretations from juridical experts.

Legal aspects to consider when implementing CPP

"The law is an arcane subject. It was once said that international law is at the vanishing point of law - and the law of armed conflict is at the vanishing point of international law!"²⁴⁷

"The laws of war are as vague as you can get but they are getting more defined" as was said by Antony Dworkin.²⁴⁸ Some countries are using them to try to alter the notions of war, combatant, and battlefield. Charles Garraway disagrees to a certain extent by stating that some laws of war are very specific. However, he agrees that a few are not as clear as one might like because Diplomatic Conferences draft them and everything drafted by multiple entities is a compromise. On the other hand, Dworkin argues that one can look at the history of the laws of war as a battle between making them more precise and more defined versus making them vaguer. This process is in fact in line with other examples of contradicting forces presented in this publication including juridical elements of CPP. One of the most amorphous is the principle of military necessity.

"We are bound to respect monuments as far as war allows. If we have to choose between destroying a famous building and sacrificing our men, then our men's lives count infinitely more and the buildings must go. However, the choice is not always so clear-cut as that. In many cases,

²⁴³ Feil 2008, pp. 219-220.

²⁴⁴ Both have a different status under military law and IHL.

²⁴⁵ Present-day international humanitarian law has grown from two main sources: the Law of Geneva, i.e. a body of rules protecting victims of war, and the Law of The Hague (or Hague Law), i.e. those provisions which affect the conduct of hostilities, source: ICRC Resource Centre, 31-12-2001 Article, International Review of the Red Cross, No. 844, by François Bugnion

²⁴⁶ See: Thurlow 2005, pp. 164-166.

²⁴⁷ Lauterpacht 1952, pp. 360-382.

²⁴⁸ Antony Dworkin is the web editor of the Crimes of War Project, a site dedicated to raising public awareness of the laws of war. This quote comes from the Seminar War Reporting and War crimes in the Aftermath of 9/11, London October 2002.

the monuments can be spared without detriment to operational needs. Nothing can stand against the argument of military necessity but the phrase is sometimes used where it would be more truthful to speak of military- or even personal convenience'.
General Eisenhower, 29 December 1943.²⁴⁹

Of course, the statement of General Eisenhower is almost 70 years old and the situation has changed since. Important areas in the Law of armed conflict were subject to alterations while codifications of restrictions on the conduct of hostilities sometimes changed by building in specific exemptions such as using terms like "imperative" as an adjective to necessity. In that case necessity can be considered a high test while the addition of "imperative" or other adjectives makes the test even higher. More differences that are basic developed in the last 70 years they concern aspects like the type of weapons used, the kind of targets that can legitimately be attacked and alterations regarding international criminal liability.²⁵⁰ When focusing on the term military necessity, for a nonprofessional it reads as a need for the military. There is civilian legal notion of necessity but this cannot be compared to the notion of military necessity. A good definition is that military necessity is an exception to a prohibition in international humanitarian law (IHL).²⁵¹ In 1863 Francis Lieber described military necessity as "those measures which are indispensable for securing the ends of war, and which are lawful according to the modern laws and usage's of war".²⁵² This implicitly suggests that the definition of military necessity is always connected to contemporary juridical and conflict practices and therefore should be updated and upgraded on a regular basis in order to be weighed in the right context. Preferably, juridical experts should cooperate with others in a multidisciplinary setting to do this. In contemporary U.S. and NATO usage, military necessity is phrased as a measure not forbidden by the laws of war that can rightfully be applied to achieve a successful conclusion of a military operation. From this perspective, military necessity is treated as a tool just as CPP can be a tool to reach the end state of a mission. In essence, military necessity is considered part of just war theory dealing with the conduct of warfare.²⁵³ Since it is a concept used in IHL, it is part of the legal justification for attacks on legitimate military targets that may have adverse consequences for civilians and civilian objects. For some this holds the implication that military forces in planning military actions are permitted to take into account the practical requirements of a military situation and the imperatives (prerequisite) of winning at any given moment. Here opinions differ; therefore, some viewpoints need to be compared.²⁵⁴ Military necessity acknowledges that even under the laws of war, winning the war or battle is a legitimate consideration, though it must be put alongside other considerations of IHL.²⁵⁵ This means that military necessity does not automatically give armed forces immunity for taking actions that would otherwise be impermissible, for it is always balanced against humanitarian

²⁴⁹ Allied General Order issued by General Eisenhower. Source: Report of the American Commission for the Protection and Salvage of Artistic Monuments in War Areas 48-49 (Washington, D.C.: U.S. Government Printing Office, 1946).

²⁵⁰ Source : Greenwood 1997, 1, pp. 441-467. <<http://www.judicialview.com/Law-Articles/International/Current-Issues-in-the-Law-of-Armed-Conflict:-Weapons-Targets-and-International-Criminal-Liability//33/10483>>[11 September 2011].

²⁵¹ Source: <<http://www.diakonia.se/sa/node.asp?node=888>> revised: 18/03/2011.[17 July 2011].

²⁵² Rogers 1996, p. 4.

²⁵³ Just War Theory has 3 main components a. jus ad bellum: the justice of going to war
b. jus in bello: the means by which war is conducted and c. jus post bellum: the means by which the war is concluded and the peace restored

²⁵⁴ Being no juridical expert I was supported enormously by the information and arguments given by Professor Charles Garraway during two interviews and exchange of email messages.

²⁵⁵ Source: Crimes of War A-Z guide Military Necessity, Françoise Hampson, <<http://www.crimesofwar.org/a-z-guide/military-necessity/>> [17 July 2011].

requirements of IHL. Three requirements or constraints upon exercising military necessity are important: First any attack must be intended with a goal leading to the military defeat of the enemy; attacks not so intended cannot be justified by military necessity because they would have no military purpose. Second: even an attack aimed at the military weakening of the enemy must not cause harm to civilians or civilian objects that is excessive in relation to the concrete and direct military advantage anticipated. Third: military necessity cannot justify violation of the other rules of IHL.

Garraway has a slightly different interpretation. He establishes military necessity to be now defined as 'the principle whereby a belligerent has the right to apply any measures which are required to bring about the successful conclusion of a military operation and which are not forbidden by the laws of war'. This is the current description in the UK LOAC Manual.²⁵⁶ The Manual refines this even more by explaining the legitimate purpose of a conflict: "a state engaged in an armed conflict may use that degree and kind of force, not otherwise prohibited by the law of armed conflict, that is required in order to achieve the legitimate purpose of the conflict, namely the complete or partial submission of the enemy at the earliest possible moment with the minimum expenditure of life and resources." The following remark seems in place here: in many other military planning documents "submission of the enemy" is replaced by "reaching the end state of a mission" to describe the legitimate purpose of the conflict. When CPP is at stake, we must first distinguish between two perspectives that are inextricably linked. In the strict military sense, the end state of the military mission in armed conflict is the complete or partial submission of the enemy at the earliest possible moment with the minimum expenditure of life and resources. However in a more modern and general sense that includes a political perspective and refers more to operations outside of armed conflict like peace support missions; often the desired end state is the establishment of a safe social environment in which civilian institutions can take over from the military. Nevertheless, Garraway makes the point that military necessity is not a 'get out of jail free card!' On top of that, he identifies a noticeable change between the wording used in The Hague Regulations 1907 and that in Geneva Additional Protocol I in 1977. In 1977 the definition of a military objective is "those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage." Here the change is in the use of the word "advantage" – a much lower threshold or test as Garraway calls it. In 1999 in the Second Protocol to the Hague convention of 1954, military necessity is further narrowed down in Article 6. For a start, Cultural Property cannot be attacked unless it is a military objective – but then that is the general rule for civilian objects and as we have seen is a low test depending on "military advantage". However, Cultural Property must become a military objective "by function". It can be a military objective by any other means and not lose protection. Thus if by its location, it is an advantage to attack it, that is not sufficient. A civilian object becomes a military objective and therefore liable to attack (subject to proportionality etc.) if there is a "definite military advantage" to that attack. The attack does not need to be "necessary". In conclusion, Garraway disagrees with Eisenhower's statement as far as it would imply that today's law including the descriptions of Military necessity is not adequate.

The above line of reasoning by Garraway illustrates even to the non-judicial trained that the mix of legal, military, and civil considerations constitutes a complicated challenge. For that reason, multidisciplinary expert advice and the research of actual cases is needed to decide on matters of necessity and proportionality when it comes to handling CPP matters in theatre. It goes without saying that this entire evolving mechanism causes constant tensions between civil and military interests that can be contradictory and on occasion multi-interpretable. Finally, military necessity is not a static phenomenon nor are the conditions, perspectives or rules under

²⁵⁶ Professor Garraway is general editor of the current version of this manual.

which it can be applied. In fact, today military necessity is sometimes treated as a tool just as CPP can be a tool to reach the end state of a mission. Patrick Boylan's arguments are more in line with Eisenhower when he states that 'military commanders on the ground have already relied on this tool (military necessity) in the past for example when arguing that a certain high church tower might be used for military purposes such as observation or sniping by the defending forces'.²⁵⁷ However, it is also a fact that military necessity was used as a standard defense used by accused war criminals in trials following World Wars I and II.²⁵⁸

Having established the flexible nature of Military Necessity we can understand both Eisenhower's and Boylan's concerns about whether the military necessity concept is used as a response to a "necessity" or "military convenience"? To make things less convenient, Boylan did seek to restrict the military necessity exemption. At the same time, he anticipated on the changing methods and conditions of warfare and conflict and created the Second Protocol to the Hague Convention of 1954. Article 11 – 2 of the new protocol states that immunity as granted to Cultural Property according to Chapter II article 8 can be lifted in case of "exceptional cases of unavoidable military necessity". This level of necessity can only be established by a commander of a force the equivalent of a division in size or larger. It appears to be an indication of the high importance the treaty gives to the quality of military decision making on the subject and the quality of expert advice obviously needed for a commanders' considerations while making the decision. In practice the commander of a division equivalent will be at least a two-star general often heading a multinational mission. From a logical point of view advice concerning withdrawing immunity has to be given by military strategic experts, military lawyers and last but not least subject matter experts, in this case Cultural Property experts. Results of assessments and research undertaken prior to the mission should normally play a role in this. The immunity waiver of the Convention's second Protocol still leaves matters open. Therefore juridical experts both civil as well as military should at least communicate and execute research together in order to fully understand its consequences. Subjects to be argued and studied are for instance if the described restriction on necessity should also reflect situations like events involving a commander of a force smaller than a division and a situation where this commander is unexpectedly forced to make an instant decision concerning Cultural Property. It is also questionable whether the treaty provides a directive for military decision-making in case of acclaimed Cultural Property that is not (yet) on any national or international list. Finally an ordinance urging a Commander to seek expert advice as is the normal procedure with legal issues would add nicely to article 11 – 2 of the Second Protocol.

Apart from all this, the fact cannot be ignored that countries have different perspectives or references when interpreting military necessity. These can entail social, cultural, political, historical, and legal considerations. The military authorities in the US, for instance, deal with cultural destruction within the framework of their more general Law of War (LOW) that offers a lot of room for the principle of military necessity.²⁵⁹ This might change in the future since the US ratified the 1954 Hague Convention (but not the protocols) in 2008.

Nevertheless, the US has a long tradition in characterizing military necessity. The Lieber code dating from the US civil war defines necessity, as measures that are indispensable for securing the ends of a war that are lawful under modern law and usages of war. By doing so Francis Lieber for the first time defines military necessity in the context of *jus ad bellum*²⁶⁰ applying to the measures

²⁵⁷ Military necessity is very much more than military convenience, presentation by Prof. Patrick J. Boylan (City University London, UK) during the conference Protecting Cultural Heritage in Times of Conflict Tallinn Estonia 2008. <<http://hague2008tallinn.kul.ee/eng/prog>> [17 July 2011].

²⁵⁸ Merryman 2000, p. 105.

²⁵⁹ Thurlow 2005, pp. 164-166.

²⁶⁰ Legal norms restricting the circumstances in which states can use force, source: Forrest 2007.

as mentioned above and being indispensable and not simply convenient.²⁶¹ In strong contrast with such an interpretation is the not accepted German approach as developed prior to World War I namely the principle of 'Kriegsraison geht vor Kriegsmanier' that interprets military necessity more as a justification than a limitation.

Of influence to the changing status of military necessity are also continuous developing military conditions like the transformation of warfare from symmetrical into asymmetrical that started after World War II. This process lasted at least until the end of the Cold War marked by the falling of the Berlin Wall. Nevertheless, some matters remain the same such as snipers that take high positions in the terrain. However, instead of Church Bell towers positions are taken in minarets e.g. Samarra Iraq.²⁶² Yet new lessons learned from recent field experiences will undoubtedly lead to more contemporary cases and examples to be discussed in relation to military necessity so we no longer have to work with the old practical cases that involve church towers and convoys with Blue Shield emblems. Typical examples of modern cases to be described and used for education are the detonation of obsolete ammunition inflicting damage to monuments through vibrations and the building of military camps causing environmental and cultural damage e.g. FOB Wolverine and the destroyed ancient Karez water supply system. As for now, the trend is that in practical situations, field commanders place other values higher than cultural preservation labeling such "values" a military necessity.²⁶³ However some experts make a plea for a strict interpretation: "only allow military necessity when expressly permitted by the particular rule itself". The mere plea of military necessity is not sufficient to evade compliance with the laws of war. Otherwise, the concept of military necessity would reduce the entire body of the laws of war to a code of military convenience, having no further sanction than the sense of honor of the individual commander.²⁶⁴

As discussed, The Hague 1954 and other conventions hold many exceptions for military necessity but in fact, this is also a means to make the conventions credible, i.e. to be aware that in certain extreme situations it can be impossible to apply the rules in a strict manner. This opens the door for excuse use. Already some historical cases are described where military necessity has been alleged as an excuse. The Pavle Strugar case concerning the shelling of Dubrovnik is one of them.²⁶⁵ However while Strugar, and others have run the alleged excuse of military necessity, it did not succeed! Still it is a potential tool for the defense, even if it is hopeless!

We have to realize that there are in fact different levels of protection for Cultural Property. This is well illustrated in the opinions and interpretations of juridical experts from both the military and civil spheres. As established when discussing juridical high or higher tests involving adjectives like 'imperative' different levels in the intrinsic value (needed) when implementing or codifying prohibitions such as military necessity, do exist. Charles Garraway explains the value and application of military prohibitions very clearly: when the first codification of restrictions on the conduct of hostilities was taking place, there was a division between those prohibitions that were absolute (use of poison) and those that were not (destruction of property). In the latter,

²⁶¹ Forrest 2007.

²⁶² The destruction of the Al-Askariyya Shrine in Samarra, Iraq better known as the golden mosque. The Askariya shrine's dome was destroyed on Feb. 22nd, 2006, in a bombing blamed on Sunni Muslim militants believed to be linked to al-Qaida that unleashed a wave of sectarian violence. Insurgents blew up the two minarets in Samarra, on, June 13, 2007

²⁶³ Merryman 2000b.

²⁶⁴ Green 2000 pp.122-3.

²⁶⁵ Strugar is a former Yugoslav People's Army (JNA) General charged with crimes in the Croatian city of Dubrovnik in 1991. On 31 January 2005, He was found guilty and sentenced to eight years by a Trial Chamber for attacks on civilians; destruction or willful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science, all in relation to JNA's attack on Dubrovnik in 1991. According to the judgment, Strugar had both legal and effective control of the JNA forces who conducted the military action at Dubrovnik, including the shelling of the Old Town of Dubrovnik.

specific exemptions were built in using terms like “imperative military necessity”. Unless that exemption is in the treaty law, military necessity is no justification.²⁶⁶ This explanation shows that though military necessity is flexible and can have different applications as well as degrees of strength it is codified. In other words the rules have been made clearer since Eisenhower's argument. Nevertheless, Thomas Desch states in *Protection of Cultural property in the event of Armed Conflict* that the term imperative is not defined for use in connection with military necessity within the treaty text.²⁶⁷ Therefore, it is up to each States Party to interpret the term causing ambiguity in States practices as well as the risk of misuse.

As can be seen in above statements and clarification there is still a risk of erosion, deflation and misuse of military necessity. If the concept was a 100% proof additions such as imperative would not have been necessary. Like with many other juridical or technical instruments much depends on the skills and intentions of the users or advisers. Besides military necessity is not a static issue for instance its definition triggered intense discussions during the preparations in 1999 for the second protocol of the Hague Convention of 1954. Consequently it was determined that a waiver on the basis of imperative military necessity could only be invoked in case of an act of hostility against CP that was (temporarily) by its function made into a military objective. A requirement was the unavailability of alternatives to reach an equal military advantage. Other restrictions codified concerned the level of military command allowed to make the decision to invoke the waiver meaning the highest level possible (most likely at least a Brigadier-general) and a warning to be given before any attack while all precautions should be taken to minimize damage to the Cultural Property. As Patty Gerstenblith put it: the Military necessity waiver should only be granted when no feasible alternatives are available to obtain a similar military advantage and when it is not disproportional excessive in comparison with the obtainable military advantage²⁶⁸. This brings in the principle of proportionality that prohibits military action in which negative effects such as collateral civilian casualties clearly outweigh the military gain. This balancing may be done on target-to-target basis but also may be weighed in over-all-terms against campaign objectives.²⁶⁹ It is my opinion that both solutions are needed, simultaneously as well as a reconsideration of military necessity. When CP experts are actually involved in the planning process this will automatically happen still CPP experts must get accurate advice on the legal implications or be aware of related juridical aspects themselves.

Anyhow, military necessity cannot be seen separate from the legal concept of proportionality. According to Fischer, the principle of proportionality is embedded in almost every national legal system and underlies the international legal order.²⁷⁰ Proportionality's function in domestic law is to relate means to ends. In armed conflict, the principle is used to judge first, the lawfulness in *jus ad bellum* in other words the *ad bellum* test or the amount of force to be used and secondly, the lawfulness in *jus in bello* or the *in bello* test weighing the expected military advantage with the expected incidental loss and damage. The latter has nothing to do with the degree of force. It should be stressed again, especially for the juridical challenged, that the proportionality tests are different between *ad bellum* and *in bello*.²⁷¹

²⁶⁶ Interview of the author with Professor Colonel Charles Garraway reflections laid down in an email message to the author dated 1 April 2011.

²⁶⁷ Desch 2002. p. 13, Problems in the Implementation of the Convention from the Perspective of International law.

²⁶⁸ Gerstenblith 2008, p. 82.

²⁶⁹ Green 2000, pp. 122-4.

²⁷⁰ Fischer 2007.

²⁷¹ Do not mix here the different meanings of “in bello” and “ad bellum”. Proportionality in going to war in the first place looks at “campaign objectives”. However, proportionality in its *in bello* meaning is much more restrictive. Additional Protocol I talks of “the concrete and direct military advantage anticipated”. Many seek to add “from that specific attack” ie, limited to the immediate action. However, that is too narrow as a feint attack may be designed to give advantage elsewhere on the battlefield. The UK statement on ratification says, “the

In the Gulf War, allied forces acted in individual and collective self-defense against Iraq under Article 51 of the UN Charter, but they disagreed whether the principle of proportionality permitted them to occupy Iraqi territory or oust Saddam Hussein.²⁷² Many States felt that only the liberation of Kuwait was a permitted goal. In the same perspective it can be argued by (commanders of) forces on a mission if proportionality allows or urges them to protect CP when for instance humanitarian or military strategic goals ask for priority.

The laws of war, however, are multi interpretable. Today's problem is that not all belligerents may comply with the same set of written or customary laws, and even written international law does not cover all situations. For example, the Geneva Conventions principally assumes the fighting parties are nation-states. In a modern military environment, this is no longer a matter of course. For example if an insurgent force fighting an advanced opponent should follow the rule of wearing distinctive emblems noticeable at a distance (mandatory under the Geneva Conventions to get protection for e.g. the wounded) the other side could detect them and kill them at ranges beyond ranges of their own. With this issue, we also touch upon the notion of distinction that has both military and juridical aspects. Distinction not only plays a role in CPP as seen from philosophical and sociological perspectives (e.g. identity) but is also an international legal concept connected with military operations. It is a principle under international humanitarian law governing the legal use of force in an armed conflict. Belligerents for instance must distinguish between combatants and non-combatants (civilians).

Distinction and proportionality are important factors when assessing military necessity in the sense that damages caused to civilians or civilian property must be proportional and not excessive in relation to the direct military advantage anticipated by an attack on a military objective.²⁷³ As noticed distinction also plays a role when considering having non-militarized CPP experts working together with military experts. However, distinction applies too in case of selection or exclusion of monumental (cultural) objects. Monitoring Cultural Property during armed conflict according to IHL is not easy since both parties are responsible for distinction between civilian and military objectives of course at the same time.²⁷⁴ Attacks should be limited to military objectives. If objects like museums or churches are used for military purposes by one or both sides, there is no proper application of distinction and sanctions can apply.²⁷⁵ In order to impose sanctions and for that matter note actions and behaviors that are not in line with regulations, certain instruments and systems are vital.

military advantage anticipated from an attack is intended to refer to the advantage anticipated from the attack considered as a whole and not only from isolated or particular parts of the attack." This is generally accepted as an accurate statement of the law. Thus, one can go wider than the specific local attack and consider the operation as a whole but not the campaign itself. Source: email correspondence of the author with prof. Charles Garraway dated April 28, 2011.

²⁷² Charles Garraway argues that the issue in 1991 of whether to occupy Iraq was not one of proportionality since it was interpretation of the various Security Council Resolutions: source interview with Charles Garraway, March 2011.

²⁷³ See: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

²⁷⁴ Chapter II: "Civilians and Civilian Population" of Protocol I Additional to the Geneva Conventions covers distinction. Article 50 defines who is a civilian and what a civilian population is. Article 51 describes the protection, which should be given to civilian populations. Chapter III regulates the targeting of civilian objects. Article 8(2) (b)(i) Rome Statute of the International Criminal Court also prohibits attack directed against civilians. Not all states have ratified Protocol I or the Rome Statute, but it is an accepted principle of international humanitarian law that the direct targeting of civilians is a breach of the customary laws of war and is binding on all belligerents..

²⁷⁵ See for example Radio free Europe Iraq: Laws of War Tested amid Battle near Al-Najaf Holy Sites August 12, 2004 by Robert McMahon.

Control mechanisms and sanctions.

All legal concepts discussed here can only function properly with the help of control mechanisms and penal sanctions. First, a concrete example is given and then the line of thinking behind certain legal instruments, especially those restricting the use of military necessity, will be explained. Article 8(2) (b) (iv) of the Rome Statute of the International Criminal Court²⁷⁶ criminalizes: Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated²⁷⁷;

Article 8(2) (b) (iv) draws on the principles in Article 51(5) (b) of the 1977 Additional Protocol I to the 1949 Geneva Conventions, but restricts the criminal prohibition to cases that are "clearly" excessive. The application of Article 8(2) (b) (iv) requires, inter alia, an assessment of:

(a) the anticipated civilian damage or injury;

(b) the anticipated military advantage;

(c) and whether (a) was "clearly excessive" in relation to (b).²⁷⁸

Currently there are different ways to control military necessity. One approach is described in the Second Protocol of the 1954 Hague Convention. There are however possibilities from a wider perspective. In his article "The Doctrine of Military Necessity and the Protection of Cultural Property during Armed Conflicts" Graig Forrest discusses the humanitarian law doctrine of military necessity and its manifestations in the 1954 Hague Convention that underlie both *jus ad bellum* as well as *jus in bello* and stresses that first the requirements for necessity to resort to armed conflict have to be met.²⁷⁹ This entails that states are not free to wage unrestricted warfare. Any response must be proportionate to the legitimate aims of the use of force such as for instance the minimum required for self-defense. In this context, proportionality is considered an important restriction for the choice of methods and means to conduct war or armed conflict. Forrest distinguishes that necessity can legitimize the armed attack whereas proportionality determines the amount of force to be used. The classic motto is do not cause unnecessary suffering or damage. According to Forrest this limitation is not predominantly humanitarian in nature but is also based on: 1. economic 2. political and 3. military considerations. Considering this I find these three considerations also technically applicable to the protection of Cultural Property in the event of conflict. To be more specific the three considerations can for instance easily be substituted (following the same order) by: 1. tourism, labor and export revenues 2. status 3. force acceptance and force multipliers.

Following this the "modern" perspective should be considered that cultural heritage cannot be seen separately from natural heritage (see also the preface) in fact the same three substitutions can be made. An important treaty aimed at controlling this is the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage also known as the World Heritage Convention (WHC). Part of this convention is the World Heritage list containing both

²⁷⁶ The Rome Statute of the International Criminal Court is the treaty that established the International Criminal Court . It was adopted at a diplomatic conference in Rome on 17 July 1998 and it entered into force on 1 July 2002.

²⁷⁷ There is a juridical debate about if and how to distinguish and consider between civil as state responsible or individual criminal accountability. The words "clearly" and "overall" were inserted to differentiate between the civil and criminal tests. Where the anticipated damage is "excessive", there is a breach of IHL involving state responsibility ie. civil responsibility decided on a balance of probabilities. However, for criminal responsibility of the individual, it must be "clearly excessive". Garraway for instance finds Criminal courts not the place to second guess decisions made by Commanders in the heat of battle.

²⁷⁸ Statement from the Chief Prosecutor of the International Criminal Court The Hague Luis Moreno-Ocampo, 9 February 2006 The Hague, 9 February 2006. <http://www.icc-cpi.int/NR/rdonlyres/04D143C8-19FB-466C-AB77-4CDB2FDEBEF7/143682/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf> [17 July 2011].

²⁷⁹ Forrest 2007.

cultural and natural heritage sometimes combined. The World Heritage List includes 936 properties forming part of the cultural and natural heritage, which the World Heritage Committee considers as having outstanding universal value. In fact the aim is to maintain a list of World Heritage that could be in danger in times of conflict or natural disaster.²⁸⁰ to be exact properties described on the list are eligible for international assistance when threatened by specific dangers, among them “the outbreak or threat of an armed conflict”.²⁸¹ Last but not least it has to be stressed that expert advice to commanders for all areas mentioned or aimed at a certain situation is needed before deciding on applying military necessity. The main legal reference or legal driver for this study is the Hague convention of 1954 and its two protocols. Of course, some treaty obligations are already provided for in the respective national legislations of states parties to the convention but these differ per country.

I hoped that I could follow and analyze The Hague 1954 to understand and describe how directives for protection were actually implemented by the various stakeholders. Still instead of utilizing the convention as a framework and legal driver to create a guiding principle it was found that most countries have no policy designed or special provisions made to enforce the legal obligations the convention requires concerning the military aspects. This gives room for half solutions that are not in accordance with the spirit of the treaty. Formally, there are of course some provisions in the respective national laws and signatories to the 1954 Hague Convention states parties are expected to integrate as far as possible what is stated in the convention into their national legislation. In practice, most states-parties lag in creating national legislation. Nevertheless, in urgent cases there still is a possibility to negotiate a so-called SOFA or States of Forces Agreements between the military of two nations on a bilateral basis. Such an agreement was executed in 2008 between the governments of Iraq and the US to make provisions for protecting existing and newly to be discovered cultural heritage. In this case, there is also a strong connection with environmental rules and considerations as is common in the US. Notwithstanding this type of mostly bilateral solution, it is clear that a mechanism or stringent regime or ideally an international body to oversee compliance of the instrument can provide for a better result. UNESCO did not want to take this role partly to not discourage non-member states to become parties to the convention.²⁸² UNESCO did bring together a committee of experts to prepare a draft text that stressed the need for a stringent regime but at the same time considered it a costly and complicated undertaking. This says a lot about how the subject is perceived in terms of priority and status. Today the control system under the convention is composed of three elements: the first speaks for itself namely representatives of parties to the conflict, Commissioners General for Cultural Property and Protecting Powers.

The committee initiated by UNESCO advised to use the already established system of Protecting Powers meaning a third state chosen by a belligerent power to perform certain functions on its behalf. In fact it is a solution to create communication channels between hostile powers. In the case of CPP a Protecting Power would take care of the interest of Cultural Property in accordance with article 22 (1&2) of The Hague 1954. Until now, no party in any conflict has entrusted a Protecting Power with safeguarding its Cultural Heritage. However the system was expanded with control possibilities by a Commissioner General for Cultural Property.

The system of Commissioners General interlinked with the system of the Protecting Powers worked only once as I described in the paragraph about UNESCO. It should be revived and redesigned since it creates a possibility to deal with urgent problems that need to be handled in an intensive manner (e.g. Afghanistan, Iraq and recently Libya and Egypt thought it can be argued if the latter is an armed conflict and therefore if IHL applies). Additionally, the review of the 1954 Hague Convention, which resulted in the elaboration and adoption of the Second Protocol,

²⁸⁰ Sources <<http://whc.unesco.org/en/list>> and <<http://whc.unesco.org/en/committee/>>[6 September 2011].

²⁸¹ O’Keefe 2006.

²⁸² Ibid, p.165.

provided for the establishment of a new supervisory body—the twelve-member Committee for the Protection of Cultural Property in the Event of Armed Conflict. The committee members were elected for the first time at the meeting of the parties to the Second Protocol in October 2005. The committee had its first session on October 26, 2006, during the UNESCO General Conference.

Common denominators as part of solutions

While acquiring new data and insights within the context of this research common denominators were identified. As far as linked to the military sphere such denominators can be used to demonstrate to the military that parties hold some things in common. For example, militaries too are interested in cultural heritage. Military museums, collections, and war monuments including their preservation and conservation are excellent examples. The same goes for historical battlefields, fortifications, shelters, bunkers and the like. However, the denominator can be linked to civil society too; in the US for instance attention for the terrains of military installations is interlinked with preservation of on site Indian ritual paces and burial grounds. In many countries, e.g. Norway the Ministry of Defense is one of the biggest real estate owners, often this ownership includes cultural properties. Not all stakeholders addressed in this study are conscious of the fact that CPP can bring intangible incentives as well. It appears that many military commanders for instance do not realize that the whole exercise of educating and reflecting about CPP issues improves intellectual skills of the people involved. As illustrated in the description of CPP stakeholders there are all kinds of connections and interests that are of equal interest for multiple parties within the playing field. In a positive, sense such common denominators when regarded upon as shared interests can contribute to overcome many of the perceived challenges and problems. As an example: costs can be shared to save money and at the same time improve quality and save overlaps. In addition, the media are interested in news stories that can at the same time draw attention to a problem and generate means to overcome such a problem for instance by triggering (extra) site protection or financial means. All good reason to identify, examine and analyze positive common denominators within the complex of stakeholders.

Common denominators with a more negative connotation one can be distinguished too. An example valid for all parties engaged in CPP is the perception that they seem to be in competition with each other. Another issue in common is that all parties involved have a tendency to sense potential danger and instability or at least irritation in Cultural Property and each of them thinks they are best equipped to control these aspects. This situation creates turmoil triggered by questions as: who is allowed to act by whom; who will become known as the moral defender of a piece of global heritage; and who will get good PR and thus maintain their market share. In fact, parties behave as if they are in a contest instead of being satisfied with doing something to preserve civilization. Apart from this, rivalry focuses on the issue by whom and how the importance or relevance of certain objects or sites will be determined. The same goes for who is in charge and in control. Consequently, behaviors triggered by these issues are often driven by a competition to obtain and sustain funding. Taking into account that stakeholders not only have different interests but also dissimilar levels of expertise and perception when CPP is at stake it is obvious that communication about implementation is difficult. It goes without saying that these common attitudes can culminate in conflicts between stakeholders.

Nevertheless, the objective has to be finding and examining aspects held in common that contribute to, or serve as a basis for, solutions and improvement.

Many of the identified dilemmas of this research contribute to the current state of affairs regarding the protection of Cultural Property in the context of conflict. To be specific there is little or no movement or improvement in the present unsatisfactory situation. It has for instance been found, and this is also a common denominator, that the few successful initiatives and projects are for the larger part personality driven. Examples are the training in situ projects in Egypt and Jordan and all playing cards projects. If not for a small group of individuals who

sometimes even spend their personal resources these ventures would not have taken place. This aspect makes these activities not or less sustainable. Nonetheless pro-active conduct and visionary ideas are indispensable in this phase of developing sustainable CPP strategies certainly those that involve the Military. If military CPP could become part of the scientific discourse its basis would become more solid and accepted. This is not easy since the current scholarly discourse on cultural heritage is quite elitist while a new input comprising the military aspects including the legal implications increases its complexity and makes the debate multidisciplinary.²⁸³ Nevertheless, the time seems right; discussions are already becoming more intense since the cultural disasters in Baghdad and Afghanistan. As a result new though not always enriching insights surface on preservation, memory, and identity, stewardship and ethical considerations related to working with the military. Concluding, it can be said that on the one hand the general scientific heritage discourse is becoming more profound while on the other hand the debate on military Cultural Property protection is still in an embryonic phase, and it remains under attack by a civilian perspective sometimes driven by anti- military sentiments.²⁸⁴

Opportunities for effective implementation of Military Cultural Property Protection

As argued pro-active, creative and anticipating strategies are needed to achieve an effective and sustainable implementation of military CPP. Such an opportunity for getting CPP embedded in the military systems is the connection that already exists on paper between environmental issues and the combination natural & cultural resources. Partnering, in this case with military environmental departments, often the corps of engineers makes a position within military structures stronger especially with parties that are already established and firmly anchored in the organization. Certainly at this stage of implementing Cultural Property protection logical and effective partners are military environmental policy and protection departments as is already put in practice in the US. From an international perspective, a potential umbrella to house capabilities could be NATO.

Cultural Property obligations combined with environmental responsibilities are codified in NATO's STANAG 7141 EP doctrine. The document considers natural and cultural resources to be characteristics of the environment to be taken into account for NATO led military activities.²⁸⁵ Mandatory is the identification of potential (environmental) impacts caused by military activities including possible effects on natural and cultural Resources. Impacts should be prevented where possible. A really important directive is the desire to implement feasible mitigation measures and to consider alternative locations or activities while still achieving the military objective of the training or operation. The phrase mitigation measures gives possibilities to start Protection of Cultural Property in planning and assessment phases of operations. Of course there has to be a per case agreement with all parties involved on the nature of proposed mitigation methods. A very good example of mitigation that involves both environmental and Cultural Property issues took place in Afghanistan. In October 2010 General David Petraeus and Major General McHale, with the support of Ambassador Karl Eikenberry, tasked US Army engineers to build a storage facility and conservation lab for archaeological finds exposed in preparation for the mining of a copper quarry at Mes Anyak, Logar Province. The facilities will function as a holding house during a three-year archaeological salvage project. It demonstrates awareness among commanders and civil top officials about the value of diverse cultural heritage as a measure in reconciliation and public diplomacy.²⁸⁶

²⁸³ As can for instance be read in Grijzenhout 2007, van der Laarse 2005, and Lowenthal 1996.

²⁸⁴ See for example Lowenthal 1996, 2005 and Hamilakis 2009.

²⁸⁵ See in the doctrine under 7 b. (5) see also (7), under c. see also e

²⁸⁶ Source: CENTCOM White Paper. A Cultural Heritage Strategy as a Force Multiplier for Operation Enduring Freedom. Prepared by Cheryl White, PhD . USCENTCOM/CCJ2 – 7115.

Another opportunity to engage CPP is NATO's Environmental Training Workgroup (ETWG). The workgroup aims to study and report on selected environmental training issues, including environmental training issues during NATO led operational deployments. Their mission is to consider environmental training issues either as part of routine training, special training prior to operational deployments, or training in theatre post any period of conflict. This gives the chance for scientific research critical to get the Military Cultural Property protection debate to a higher level. ETWG's mission statement lists a number of points that justify multi national cooperation training and research as also underpinned by the STANAG 7141 EP doctrine.²⁸⁷ For instance identifying and recommending suitable environmental training projects to consolidate training within NATO through bilateral or multilateral co-operative training arrangements thus clearing the way for co-operative Cultural Property protection training in situ.

All opportunities mentioned can contribute to raising general awareness of environmental and cultural heritage issues especially areas subject to national and international statutory or legal responsibilities. In case of Cultural Property protection, these are at least the 1954 Hague Convention and the UNESCO treaty of 1970 (illicit traffic of artifacts).

Apparently, there is not only room but also a desire to strengthen international co-operation on environmental training through bilateral or multilateral training arrangements in which case the focus is on rationalization and specialization. Taken this into account it seems fair to conclude that when combined with cultural resources training and research a win-win situation can be created. The potential partners mentioned up have the right organizational infrastructure and networks to host or incorporate Cultural Property protection. The link with environmental issues gives a more sustainable basis for effective implementation in an international military setting while at the same time it provides for deploying international military experts e.g. cultural emergency assessment teams. Initial steps to make different countries and potential partners aware of possibilities were taken in October 2009 when the first Cultural Property protection briefing by the author of this book took place at the NATO School in Oberammergau during the Environmental Management for Military Forces Course. After a well-received presentation appointments were made to proceed with more lectures. Regrettably, the subject was dropped due to interference of (again) the head of the Dutch MoD's cultural awareness department who after hearing about the initiative wanted his department to give these lessons although they were not equipped to do so.²⁸⁸ A letter, signed by a General was send to the NATO school in Oberammergau. The result of this Dutch approach is that current situation is unclear and as far as could be established there are no CPP lectures offered anymore in Oberammergau. To engage the EWTG opportunity the topic of CPP was presented on 9 December 2009 during the EWTG meeting at NATO's Head quarters in Brussels, at the time the workgroup was chaired by the Dutch. The outcome was that CPP would be considered after consulting a higher echelon in the NATO organization; however, in June 2011 still nothing has happened.

The last opportunities to explain here are military incentives or deliverables that can derive from heritage protection. These opportunities become manifest in the context of the new type of conflicts and post-conflict resolutions implemented by military missions. They are the so-called military force multipliers. These Force Multipliers first have to be identified and then utilized as opportunities for instance within the framework of the so-called Comprehensive approach.

Because of changing methods in conflict management and the nature of conflicts, a new role for the military in the context of reconstruction and peacekeeping is becoming evident. The framework in which this takes place at present is known as the Comprehensive Approach or the 3 D approach (Development, Defense, and Diplomacy).²⁸⁹ The Dutch armed forces are using a second generation of this 3D concept, based on four areas of concern: security, politics, and

²⁸⁷ See: <<http://www.nato.int/structur/ntg/etwg/mission.html>> [17 July 2011].

²⁸⁸ Source: internal correspondence Dutch MoD March 9th 2010 Nota 2010004413.

²⁸⁹ Kila 2010a.

social and economic well-being. CPP activities fit into this concept because internationally and nationally it can be positive for a country's public image. Not the least since by actively demonstrating a CPP policy and meeting treaties and obligations mandatory under IHL support from a country's inhabitants for national and international military operations is strengthened. The Dutch MoD does not provide for a position of CPP within this 3 D approach. This is in contrast with signals given by the ministry during the CPP seminar organized in 2009 where it was indicated that CPP was considered important.²⁹⁰ In the spirit of the 3 D strategy, Coalition forces in Afghanistan and Iraq have developed Provincial Reconstruction Teams (PRTs) designed to help improve stability by increasing the host nation's capacity to govern; enhancing economic viability; and strengthening local government's ability to deliver public services such as security and health care. Staffed by military, militarized and civilian experts CPP should be a part of this. As explained the Comprehensive Approach that comprises the PRTs is the perfect design to incorporate the issue of Cultural Property protection. There is a logical connection between protecting cultural objects and safety, economy, and identity concerns. In other words, a relationship exists between respect for Cultural Property and successful accomplishing a military mission. Consequently, also the PRT model demands for an adaptation of the military frame of mind.

Research, education, and exercise

The case of Bright Star Egypt 2009 June and October 2009.²⁹¹

Before looking into this case it has to be emphasized that it is about training of NON-Egyptian troops, the Egyptian MoD did not want their troops to participate in this training. Given the discussions about the recent upheavals in Egypt that came with plunder, damage and theft of artifacts and sites, already insinuations been made regarding this specific training. Allegations were made suggesting that training of Egyptian troops about CPP was a cover for unknown American activities. This is not true actually; U. S. Central Command (CENTCOM) completed the first ever on site historical cultural training for U.S. military personnel in the Middle East. The opportunity was given for Egyptian military and other countries involved in Bright Star to participate in the cultural training. With the cooperation of the Egyptian Supreme Council of Antiquities, 37 people representing all branches of the U.S. Armed Forces met 20 June 2009 at the ancient pyramid complex of Saqqara in order to experience first hand the importance of cultural preservation during global operations. The Supreme Council (then lead by Dr. Zahi Hawass) provided free access for a tour of the site, including the opening of two tombs that are usually off limits to visitors. Saqqara houses the Step Pyramid, the oldest standing stone structure in the world. Many tombs and temples surround the pyramid complex with probably some archaeological sites yet to be discovered. Relevant for the training was that the terrain shows empty spaces at least for the untrained eye. Archaeologists and historians from the CENTCOM Historical Cultural Action Group (CHCAG) and the international military cultural resources working group (IMCRWG) used the archaeological setting as a background to discuss the strategic importance of recognizing ancient remains in host nation landscapes. Participants learned to identify artifacts and features in a desert landscape that indicate the presence of a site, not always obvious to a casual observer. Saqqara also offered a realistic example of how tourism to a cultural site contributes to the economy, offering income and stability to local inhabitants.

²⁹⁰ Cultural Property Protection in Times of Conflict, 25 March 2009 Peace Palace The Hague.

²⁹¹ Sources: the author and Dr. Laurie Rush US Army Archaeologist.



20. Training in Saqqara notice everybody is dressed as civilians to not unnecessary provoke local population. Photo courtesy US Army.

Different perceptions of the relevance and need for training between the military and parties who want to follow up on The Hague 1954's Article 25.

As discussed the military themselves seem not really interested in Cultural Property protection, which makes them an easy target for critique. Consequently the military do not give enough input for the debate on CPP and heritage in general therefore the military perspective remains underexposed and is never been examined seriously apart from research from the juridical angle. Reflective thinking, e.g. the parallel drawn by Mark Yanaway (see Part II the Egypt turmoil case) takes place on another level compared to the civil scientific debate. It seems fair to conclude that little empirical research has been done on the issue and theory is almost non-existing so reflections are scarce. Accordingly, the military subject requires balance between theoretical reflection and empirical research. This omission that contributes to a general lack of understanding generates a negative effect on worldwide efforts to protect Cultural Property during conflicts. The situation is especially unsatisfactory as the military are directly confronted with Cultural Property issues in today's missions; they are a key player when it comes to protection. In the light of all matters explained it is obvious that education and training are vital instruments to improve matters.

Teaching and Training

For a civilian it is not easy to lecture about CPP aspects to the military, just as it can be hard to transfer knowledge on the military aspects to civilians when you are from the military. The main reasons are the cultural and jargon differences though also ethical issues can play a role. For instance, some scholars feel that when they lecture to the military they give away knowledge that can be used for military purposes. Ideal are trainers and lecturers that have ties with military and academic institutions and preferably a military reserve or active rank. As established there is a shortage of educational materials and tools. Especially case studies and handbooks are needed as well as tools that are more modern. Currently there is an initiative to develop a CPP computer game. The idea is that most young soldiers are familiar with these types of games. Recently a demo version of such a game was developed as a private initiative. The game can be played on different levels and can be adjusted according to rank, service, nationality of armed forces and

operational environment. Although there are many games to exercise and simulate battlefield situations, it will be difficult to find funds for the production of a CPP game. The project can probably only be realized with support from governments or international organizations.

More efforts are made to establish adequate training and education, various types of instruction are being tested and as far as possible implemented. All of these are in the embryonic phase but it is possible to distinguish different approaches and examples of good practice. In the next paragraph, a number of examples will be discussed.

Training strategies for Military: Instructing and teaching military differs from lecturing to university students. Backgrounds, language and intellectual levels vary so methods for transfer of knowledge have to be tailor made for the target group. First awareness on the subject of culture and heritage must be raised to make the students more receptive and appreciative to cultural objects. When education is provided for the strategic level a basic introduction to art history is essential. Important tools for the teacher are the use of practical examples, anecdotes, discussion, working groups such as syndicates, training in situ, guest lecturers, visits to museums and libraries. There has to be a clear relation between the matters addressed during lectures and the positioning of CPP in the military planning and setting. The lecturer has to be aware of military customs, habits, and expressions before acting as a teacher this is essential and a condition for success. Personnel in charge of training should take into account that ongoing research on the topic including the scientific and theoretical aspects is necessary. This can be done in cooperation with military academies or civil educational institutions. A good method for training is the use of replica's or mock-ups when on site education is not possible. Advantages are that there is no risk of damage to cultural objects (especially in case of bigger groups) and no need for traveling. The Legacy Funded in Theatre Heritage Training Project from the Cultural Resources Section of the US Army is developing and implementing this type of training that however requires thorough research and preparation. Training with mock-ups supplements the avoidance target list provided to the US Air Force by Middle East Archaeology subject matter specialists. An example of a potentially good activity, based on inaccurate information is the following: the replica on the picture is from a stone cone mosaic tower from the ancient City of Uruk in Iraq. It is an avoidance target on Fort Drum's Adirondack Aerial Gunnery Range 48.



21. Mock up cone temple wall Fort Drum US. Photo: Laurie Rush, US Army.



22. The real cone temple wall in Uruk without a reference to put its size in perspective.

Nevertheless, the mock up is modeled after the picture of the original cone temple wall fragment that, as the picture shows is still in situ in Uruk. At the time the replica was made nobody checked, or was able to check, the real measurements in situ probably because of safety concerns due to the unrest in Iraq at the time. In April 2009 Laurie Rush Fort Drum's archaeologist was able to visit Uruk and found that the scale was completely wrong as the pictures demonstrate. Anyhow, it is an excellent lesson learned emphasizing the argument that specialists, in this case academics have to be consulted whenever possible.



23. The wall fragment in situ with reference. Photo: Diane Siebrandt for Laurie Rush, US Army.

In addition, three mock cemeteries and a number of architectural mock sites were completed at Fort Drum to train the ground troops for their Iraq deployment. According to the In Theatre Heritage Training Project, construction of these assets was extremely cost effective.

In the UK, training focusing on Afghanistan takes place on the Defense Training Estate East at Thetford while archaeological activities are taking place in the Defense Training Estate Salisbury Plain.²⁹²



24. Mock up Islam cemetery Fort Drum. Photo: Ian Warden, US Army.

Training in situ.

On site training is aimed at planners, higher officers, military attachés, policymakers etc. and takes place in and on actual monuments or archaeological sites. Training courses are planned or took place in Jordan (Petra 2011) Egypt (Saqqara 2009) and Rome. Besides the transfer of specific knowledge, it is a good possibility to raise awareness on CPP among military and other stakeholders. The ideal would be to have lectures first as an introduction and then go to an archaeological site to continue lectures using the examples in situ as illustrations. Topics can include recognition of archaeological terrain, artifacts and features; avoiding disturbance to the context of the site; guarding and protection of sites; and the use of simple documentation techniques. In addition, problems can be addressed such as dealing with situations where art is (mis)used as propaganda and identification of cultural objects including how to make a basic iconographic description and possible damage assessment. Solutions are of course intermingled with the perception of culture amongst the personnel involved but discussing this can generate synergy. The Saqqara training case from 2009 shows that political motives and manipulations can play a role or even interfere during training in situ. That these implications can have repercussions for the protection and safeguarding of Cultural Property during conflict is clearly established in the Egypt Emergency Mission casus from 2011. The CENTCOM Cultural Historical Advisory Group in cooperation with IMCRWG plans to offer additional on site trainings in the Middle East in association with planners of future exercises.²⁹³ These intentions are based on the feedback of the military students engaged in the Saqqara training. Many students clearly expressed that there is no comparison for an in situ training. In fact, the instructors learned as much as the students did. The lessons learned included: the desirability of experienced military trainers, used to communicate with military in the CPP educational process; wearing

²⁹² Source: Estatement, issue 67 Summer 09 Defense Estates. UK.

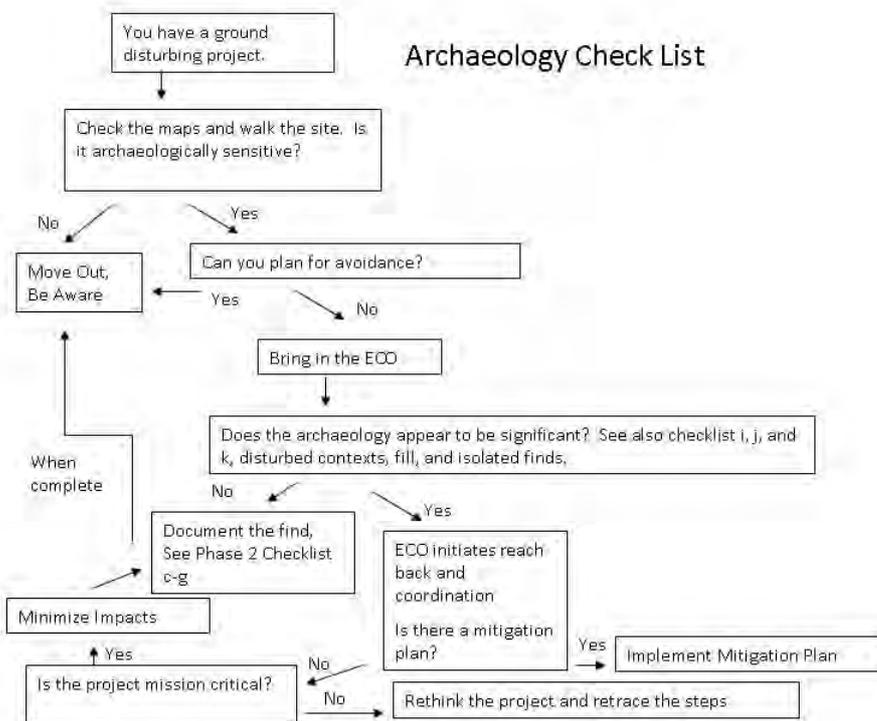
²⁹³ The CCHWG first changed its name in to CCHAG (Central Command Historical Cultural Advisory Group) but is recently renamed again in now the Combat Command Historical/Cultural Action Group. The reason is that the group now has global concerns beyond the CENTCOM area of responsibility.

civilian clothes when teaching at host nation sites; and the importance of a multinational approach in order to depoliticize the training. International cooperation on CPP is essential. CPP is a very sensitive subject connected with identity and status issues of a host country, damage inflicted by foreigners counts much more heavy than if inflicted by own population. It is also important to distinguish that training foreign military is not an attempt by foreigners to teach local nationals about their history and cultural heritage. Where possible host nation experts should be utilized.

The Egypt training was funded by the US Department of Defense Environmental International Cooperation funds and by the Office of the Secretary of Defense Legacy Resource Management Program with indirect support from Installation Management Command. In addition, the training was sponsored and coordinated by the Central Command Historical Cultural Working Group now called CCHAG with cooperation from the Bright Star Planners and IMCURWG. It turned out that it was critical to use an international approach to achieve success. Saqqara can and should become the model for military CPP training of the future. During the training of military planners in June 2009, the Egyptian MoD suddenly did not allow their military to take part in CPP training though due to the sensitiveness of foreign experts training host nation military this was not even suggested by the Americans. Still a way was found to train the military planners without help of the Egyptian MoD and without going on military terrains, the results were successful.²⁹⁴ In October 2009 the proposed trainings ran into unforeseen problems, due to travel restrictions in Egypt for US personnel.

There are a number of lessons learned from the Bright Star Cultural Property Protection training project such as the need to be patient and to use opportunities. Nevertheless, it became clear again that due to cultural differences and sensitiveness communication problems might occur. Political motives can interfere with training too an Egyptian General for instance thought that the US would train Egyptians on culture. It was also said that the US with their reputation as destroyers of CP in Babylon was not allowed to teach about culture in Egypt. It was not possible to verify the exact sources of these impediments they were probably partly the results of miscommunications and misunderstanding. However, the trainers were patient and looked for opportunities to use. In October first a team of British military and a small number of US officers and DoD employees were trained, later training of US military was allowed and could be done in cooperation with the US Moral, Welfare and Recreation team attached to the Bright Star exercise. At this time, the Egyptian revolts of January and February 2011 that included looting and theft of artifacts were of course not foreseen but prove that preparations in peacetime are necessary. A last tool to be used both for training and in theatre is developed by Laurie Rush namely the Archaeology Check List for military in the field. This list is designed for use by personnel without any formal knowledge about cultural property and demonstrates the link cultural resources have with environmental issues.

²⁹⁴ This was also a missed opportunity since in Egypt many military terrains contain archaeological objects and monuments.



25. Archaeology Checklist NB. ECO = Environmental Conservation Officer © Laurie Rush US Army.

Examples of other means for training military: the CPP Playing Cards.

An initiative from the US originally for Iraq and Afghanistan are the Defense Department CPP decks of playing cards, this time showing some of the countries most precious archaeological sites instead of the most-wanted former regime officials. Some 100,000 new decks of playing cards were sent to troops in both Iraq and Afghanistan as part of an awareness program so troops could help preserve the heritage of those countries. It is aimed at making troops aware they should not pick up and take home artifacts and to avoid causing damage to historic sites. Each card in the deck shows an artifact or site or gives a tip on how to help preserve antiquities. For the Bright Star exercise that takes place in Egypt every two years a special deck focusing on Egyptian CP has been developed.

In collaboration with the Netherlands National Commission for UNESCO, the Netherlands Ministry of Education, culture and Science (dept. of Cultural heritage and the State Inspectorate for Cultural heritage) the Netherlands MoD developed a deck of CPP playing cards. The cards are an educational and informational tool with the purpose to disseminate the principles of the 1954 Hague Convention and its protocols to Protect Cultural Property in the Event of Armed Conflict especially to military and policy makers.



26. The Dutch playing cards © Joris Kila

Geographic Information Systems (GIS) and Satellite Remote Sensing:

Within both the CENTCOM action group and IMCURWG a subcommittee exists consisting of civil GIS experts and specialists from various sections within the US and European Armed Forces. As addressed in the paragraph on looting and poverty new techniques related to GIS such as Satellite Remote Sensing can play an important role in pre-deployment assessments since terrain can be studied from space looking for ancient features on the ground.²⁹⁵ Furthermore GIS can help archaeological sites preservation by detecting and documenting looting. Of course related ethical issues have to be discussed among stakeholders. Outcomes and data of these committees can be made available to support adjacent activities like mapping initiatives, web sites and environmental aspects. As indicated earlier a good source for getting acquainted with the subject is a book by Sarah Parcak. She gives a comprehensive oversight of satellite remote sensing for archaeology. Techniques and data sets described are fit to be used for assessments helping safeguarding cultural property in case of conflict. Furthermore if combined or at least in cooperation with military sources and experts a lot of information otherwise difficult to obtain will be available for CPP. If good cooperation with military experts can be established it should be made possible to obtain aerial pictures from reconnaissance flights and even from unmanned Aerial Vehicles or drones to check for damages, looting patterns and the like.

Current examples of military CPP implementation, a comparative analysis

At present, there is some movement at the international front, for a good part triggered by the United States. The US Department of Defense recognized that destructions of Cultural Property

²⁹⁵ Satellite Remote Sensing means collecting data about the earth's surface using satellites circling around the planet.

as occurred in Iraq and Afghanistan affected the US military mission in a negative way. Critical press coverage resulted in bad PR for the United States. It was time to show to the world a willingness to avoid intentional and even more important unintentional damage to cultural sites. In 2008, the US ratified the Hague Convention of 1954.²⁹⁶ The fact that the United States ratifies a 1954 treaty in 2008 or in fact officially on March 13, 2009 when its instrument of ratification was deposited with UNESCO needs clarification. The US helped to draft and signed (but not ratified) the convention already in 1954.²⁹⁷ The reason is that at this time the treaty was self-implementing. In other words, nothing had to change regarding national US legislation. The first protocol was not ratified due to strong opposition from the Antiquities market and museums.²⁹⁸ The second protocol is also today out of the question since it is not at all self implementing and requires the creation of a criminal offense, providing criminal responsibility and intent and knowledge are proven. General US opinion however states that even only ratifying the Convention and not the protocols still gives a positive signal to the rest of the world. A measurable positive effect is that the US Department of Defense inspired by the Hague Convention of 1954 starts to implement training and is seeking international cooperation on the subject. In Europe many military appear not- or choose not to be aware of obligations following the convention, exceptions are Austria, Italy and Poland. When reminded, the absence of direct orders from the civilian government is used as a justification. A more practical reason seems avoidance of extra work and financial costs.²⁹⁹ In addition, possible projects and awareness raising on the subject are hindered because civil cultural scientists and policy makers are not familiar with military cultures and priorities. In countries like the Netherlands, the direct link that existed between civil society and the armed forces was lost when conscription was suspended.³⁰⁰ On top of that, part of the civil society is inclined to associate the armed forces with violence and destruction of property resulting in a tendency to keep a distance from "the army". Of course, perceptions differ; some consider an Israeli soldier more dangerous than let's say a Belgian warrior.

Because of the gradual shift in the type of armed conflicts from symmetric or interstate to asymmetric and today's interconnected role of the military with reconstruction related development issues, opinions are slowly beginning to change.³⁰¹ This is part of the continue process of adjusting military mindsets that at the same time brings opportunities for CPP.

The process of change in the nature of conflict particularly reveals deficiencies and weaknesses in the 1954 Hague Convention such as the multi interpretability of military necessity, the degree of effectiveness of the concept of special protection, Cultural Property protection in non-international conflicts, the efficiency of sanctions for breaches of the Convention and the control

²⁹⁶ Without the 1st and 2nd protocols.

²⁹⁷ At the time the US Executive Branch decided not to transmit the treaty to the Senate for ratification due to military concerns about how it might affect policy at the height of the Cold War. Source website US Blue Shield, <<http://www.uscbs.org/resources.htm>> [17 July 2011].

²⁹⁸ This had to do with regulations ordering to prevent export of cultural property from occupied territory and to seize cultural property imported into its territory from any occupied territory and to return seized property to the formerly occupied territory.

²⁹⁹ A reaction I got on more occasions while teaching Cultural Property Protection at Dutch military courses.

³⁰⁰ The Draft was effectively suspended in 1996. <http://www.statengeneraaldigitaal.nl/thema_dienstplicht.html> [12 January 2011].

³⁰¹ Symmetric warfare is the clash of two conventional adversaries in battles. Symmetric operations involve the engagement of similar military forces in force-on-force warfare. Source: Gray 2008.

The term "Asymmetrical warfare" appears to date from the early 1990s. In it, a relatively small and lightly equipped force attacks points of weakness in an otherwise stronger opponent by unorthodox means. All guerrilla activity, especially urban terrorism, falls within this definition. Source: World Wide Words © Michael Quinion, Oct 20th 2001.

system of the Convention.³⁰² Shortcomings related to these aspects are addressed in this study. On the other hand it should be stressed that international agreements and shared legal concepts also become more important because new asymmetric conflicts and warfare often require the use of shifting coalitions. Military from respective coalition partners will have different rules, ideas and cultures and consequently varying notions of proportionality and necessity including the effects on CPP.

In the meantime discussions with peers, stakeholders and my experience show that attempts to initiate training of military on CPP and realizing of Ministry of Defense dedicated Cultural capabilities are still challenged.³⁰³ The nature of these challenges is discussed in the paragraph about dilemmas or challenges that restrain CPP implementation but it seems fair to say that many parties involved are currently not acting in compliance with international legal appointments that include military obligations as those stated in the Hague Convention for the Protection of Cultural Property of 1954.³⁰⁴ Consequently, new insights touching directly on modern types of conflicts and their connections with cultural icons, identity and political control are ignored by parties that could use them to benefit their operational planning as will be demonstrated in the case of FOB Wolverine.³⁰⁵ Even so there are countries and institutions that can serve as examples of good practice or are catching up rapidly after signing the 1954 Hague Convention.³⁰⁶

Before giving a limited account of today's international activities a contextualization is needed. Internationally hardly any military doctrine has been developed for Cultural Property protection in times of armed conflict.³⁰⁷ The US has a chapter on historical and cultural preservation in an environmental regulation of Central Command.³⁰⁸ NATO gives some provisions and procedures through its Joint Doctrine for Environmental Protection during NATO-led Military Activities, but these are not embedded or codified in any domain or Operational Planning Process. Even if the importance of CPP will be recognized by the international military community, implementation processes will take a long time.

The current international political situation that carries risks for multiple conflicts calls for immediate precautions to safeguard cultural heritage. To prevent unnecessary damage in the near future, international cooperation on the topic is necessary. Financial as well as personnel means are too scarce to be able to provide a total solution for any individual country. Joint cooperation can be more efficient and will cost less. Areas of common benefit are training and education, developing training tools, joint exercises and in theater assessments. In order to achieve this, it is necessary for military planners and experts to work together with civil experts in order to develop doctrines. Only this way Cultural Property protection can be incorporated in military planning and become recognized as a DoD or MoD dedicated (Navy, Army, Air force, Military Police) embedded capability.

As described in the paragraph on opportunities for effective implementation of Military CPP there is also an opportunity to link cultural resources management to environmental management

³⁰² Source: Report on the implementation of the 1954 Hague Convention for the Protection of Cultural Property in the event of armed conflict and its two 1954 and 1999 protocols. Report on the activities from 1995 to 2004 <<http://unesdoc.unesco.org/images/0014/001407/140792e.pdf>> [17 July 2011].

³⁰³ My experience: five years of lecturing and training military personnel about CPP and taking part in numerous conferences and seminars, meetings and witnessing different attempts to start CPP programs and create CPP capabilities.

³⁰⁴ For instance, The Hague Convention articles 25 and 30: Dissemination of the Convention.

³⁰⁵ The U.S. Military Expanded a Base (Wolverine) and Inadvertently Disrupted Ancient Afghan Canals. <http://online.wsj.com/article/NA_WSJ_PUB:SB124224652409516525.html> [17 July 2011].

³⁰⁶ Some examples of good practice are Austria, the Polish CIMIC organization, the Carabinieri and new US DoD Initiatives.

³⁰⁷ Doctrine gives a general frame of reference for all military. This helps standardizing operations and military tasks.

³⁰⁸ US CENTCOM reg 200-2. See appendix A4.

doctrines like NATO's STANAG 7141 EP doctrine. This definitively opens alternative options for embedding Cultural Property Expertise within military organizations.

An example of good practice can be found within the US DoD where possibilities are studied for expanding training activities and embedding capabilities in the DoD. Starting points include environmental programs with already employed archaeologists plus other experts. Within Civil Affairs (civil military cooperation units), training is also being given, focusing on museums and art. Cultural Resource managers and archaeologists can be found in all the services. In addition, the Army's Integrated Training Area Management Program includes an archaeological site protection component. The Combat Commands have a Historical/Cultural Action Group (CCHAG) and an input into the newly founded International Military Cultural Resources Working Group (IMCURWG). There is a close cooperation with Colorado State University. In 2009, a Cultural Property protection in situ training took place in Egypt, in cooperation with a Dutch expert from the Netherlands. The CCHAG was instrumental in the creation of the historical and cultural preservation chapter in the CENTCOM Contingency Environmental Guidance R-200-2 this can be considered a breakthrough.

The United Kingdom has a goal of ratifying the 1954 Hague Convention and its Protocols within the near future. However, matters are repeatedly delayed due to busy parliamentary meeting schedules.³⁰⁹ There are archaeologists working within the British MoD to protect Defense Estates.³¹⁰ A civil cultural heritage expert gives advises to the Defense Committee of the British Parliament and will involve the outcomes of the seminar held in The Hague.³¹¹ For the time being apparently not much more will be undertaken due to financial restraints.

In Austria, the subject of CPP is already firmly on the agenda. In 1999 a workshop on the Protection of Cultural Property was organized in Klagenfurt by the Austrian Federal Ministry of Defense and the Austrian Society for the Protection of Cultural Property. This initiative was aimed at harmonizing cooperation on CPP during theoretical and practical defensive operations between military professionals and reservists with CPP background. Cultural Property Protection Officers (CPPO) are currently deployed in all branches of the Austrian Armed Forces. CPP is fully integrated in training and planning. The Institute for Human and Social Sciences that is part of the Defense Academy is doing research on the subject of CPP. A military CPP course aimed at officers from Eastern Europe took place in October 2010 at the Austrian Defense Academy (National Defense Academy in Vienna) in cooperation with UNESCO. The newly found Association of National Committees of the Blue Shield (ANCBS) has an Austrian president.³¹²

In Italy in the 1960's the Ministry of Education requested the establishment of a special unit of the Carabinieri. This unit, dealing with the defense of the national paleontological, archaeological, artistic, and historic heritage was the *Comando Carabinieri Ministero Pubblica Istruzione- Nucleo Tutela Patrimonio Artistica* (Ministry of Education Carabinieri Division- Unit for the Defence of Cultural Heritage) currently known as the *Comando Carabinieri Tutela Patrimonio Culturale*. Apart from fighting illicit traffic and tomb robbing (Etruscan vases are still stolen from archeological sites in Italy), the division has been very active in Iraq. The World Association for the Protection of Cultural Property in times of conflict (WATCH) see www.eyeonculture.net is located in Rome and maintains a big network with stakeholders in the Middle East and the Mediterranean countries.

A case of good practice is an event that took place in Estonia.³¹³ The Estonian Ministry of Culture and the MoD organized a conference called Protecting Cultural heritage in Times of

³⁰⁹ Source: information from Peter Stone, January 2011.

³¹⁰ For instance for Defence Estates Operations North in Salisbury UK.

³¹¹ Peter Stone the chair of the military operational seminar in The Hague.

³¹² Karl von Habsburg (Austria Blue Shield).

³¹³ Kila 2009.

Armed Conflict in February 2008 in Tallinn. During this event, a Memorandum of Cooperation between the Estonian Ministry of Culture and the Estonian Ministry of Defense was presented. The document contained an agreement to work on implementing Cultural Property protection together. A publication following the conference was released in September 2009 and is available on the internet though only in the Estonian language.³¹⁴ So far, the initiative did not result in any follow up regarding special CPP training for the Estonian or Baltic Armed Forces.

Article 90 of the Dutch Constitution states explicitly that the Dutch government is bound to promote and strengthen international justice. One can assume that this important directive serves as a basis and an argument for the Dutch participation and undersigning of international treaties. Concerning The Hague Convention of 1954, the practical implementation is not sufficient especially when obligations regarding military implementation are involved. The following case examples substantiate this assumption: The Ministry of Defense organized a seminar on the subject in The Hague in March 2009. During the conference the MoD made a statement that was put into words by a high ranking officer who said: "the Netherlands MoD will work on CPP because we have to, we are able to and we want to do this since we acknowledge the relevance and big importance of CPP".³¹⁵ After the conference a report was prepared with recommendations for the way ahead including the creation of a relatively small MoD dedicated Cultural Property protection capability. The report was offered to the Dutch Chief of Defense but was not taken into consideration due to internal financial cutbacks and opposition from the cultural awareness department.³¹⁶ Playing cards to be used as training tools for military troops deployed abroad have been developed in cooperation with the author of this study. Until now they have not been used to train the Dutch troops.

Due to the events in Libya IMCURWG attempted to get in touch again with the Dutch MoD and managed to handover coordinates of important Libyan cultural heritage sites. The coordinates will be used by the Dutch F 16 pilots who under NATO command take part in imposing a no-fly zone in Libya under the UN 1973 resolution. Maybe this will create more contacts and possibilities in the future.

In Poland, international law in relation to CPP is included in the Regulations of Tactical Actions of the Ground Forces issued by the Polish Army General Staff in 1994. The Defense Ministry has established a permanent Cultural Property protection department that coordinates actions in the field of the protection of cultural heritage in the armed forces, including the implementation of CPP activities following the 1954 Hague Convention. During research, I found that many activities are carried out through the Polish CIMIC organization. Apparently, the Polish have a distinct and more effective interpretation of NATO's CIMIC Doctrine AJP-9. A clear account of Polish military cultural activities in Iraq is given by Miroslav Olbrys in "Archaeologists on Duty in Iraq: Polish Approach to the Protection and Salvage of Archaeological Heritage in Central South Iraq."³¹⁷

Concluding remarks: from violently opposed to being accepted as self-evident

The changing military role in operations offers new possibilities for cultural intervention in theatre. In order to anticipate and prepare for this a more sophisticated understanding of the current situation including parties, playing field and their interactions as described in this study is useful.

³¹⁴ See: <www.muinsuskaitse.ee/failid/157_est_haagi_konvents.pdf>[17 July 2011].

³¹⁵ Opening speech at the Dutch MoD Seminar of 25 March 2009 in The Hague by Commodore E. Kopp.

³¹⁶ There is ongoing opposition from the Army's Cultural Awareness department. Apparently, the head of this section fears for his own position. Many, sometimes indecent actions are undertaken internally to keep new initiatives out. It is claimed that CPP is completely covered by this department. Another clear example of tension between the two disciplines CPP and Cultural Awareness causing serious restraints as will be further addressed in the next paragraph.

³¹⁷ Olbrys 2007.

Possible grounds for the lack of interest or even neglect from both military leadership as well as civilian policy, and decision makers as discussed in this research should be continuously identified and analyzed. It can do no harm to investigate geographical influences too while asking why appreciation of CPP differs per country. The Italians for instance pay more attention to military Cultural Property protection during international missions than most other countries but in spite of the fact that the term *Beni Culturali* is Italian it is not researched if they pay the same attention to environmental implications connected with cultural resources. In the same spirit it seems worthwhile to investigate if there is a causal link between appreciating national cultural resources and military Cultural Property protection during international operations and if this is influenced by national identity? As established, the modern concept of identity has multiple characteristics. Identity issues are often part of conflict causes but at the same time respective owners of identities, amongst them the military can be influenced by their urge for distinction while making decisions about conflict resolve. Moreover, in the context of training and debate it has been identified as a major perception problem that Cultural Property protection is often mixed up or too closely linked with Cultural Awareness.³¹⁸ The confusion again demonstrates lack of information and training on Cultural Property issues but also the necessity for Cultural Property experts to operate separate from Cultural Awareness specialists especially in a military setting.

A new issue, potentially fit for misunderstanding and wrong interpretations, is already emerging. It's the question of whether CPP should be fitted in the model of kinetic warfare and older styles of Special Forces warfare or be part of intelligence driven decision making giving room for extra confusion about the term COIN.³¹⁹ As argued in the paragraph about the media, the answer is not in favor of military intelligence but is still difficult to give since the majority of legislation is based on the old symmetric conflict situation. Most of the legal framework in which CPP is codified dates from the fifties, or even before. However the kinds of potential Cultural Property damage or modern iconoclasm that take place in contemporary conflicts, must be managed and solved using modern means and techniques. CPP also needs to be a component of peacekeeping operations and the military delivery of humanitarian aid. A first start would be to set up a serious dialogue between cultural, military, and legal experts aimed at upgrading the legalities. This investigation verifies that in general most civil and military parties are unaware of the military strategic, juridical, and tactical implications of Cultural Property protection. As a result civil stakeholders are not only showing ignorance but on occasions some express strong antimilitary sentiments thus compromising proper implementation of the 1954 Hague convention.³²⁰ The military from their perspective are for the larger part not aware of the relevance of Cultural Property nor are they aware about the current scholarly debate on Cultural Heritage. If the subject would have been considered relevant within military circles in the positive sense meaning to save heritage according to international legislation and not merely as a military intelligence tool, scenarios would have been developed sooner for use in training and planning.

Until recently, only a few materials using examples from World War II and the period of the Cold War were available. These materials were based on the symmetric type of warfare and therefore almost obsolete.³²¹ Experiences gained during conflicts in former Yugoslavia, Iraq and Afghanistan illustrated the role of "Iconoclasm" in contemporary, often asymmetric, armed conflicts.³²² Over the last few years, a modest number of case studies deriving from these conflicts were published a.o. by the author of this book. As addressed in the training paragraph, new tools are created or are in the process of development. Nevertheless, there is still an urgent need for up to date training materials. At the same time, cultural resources considerations

³¹⁸ Baker 2003 and Wunderle 2006.

³¹⁹ See also: (Jon) Price 2010a.

³²⁰ Hamilakis 2009.

³²¹ New materials are now available such as playing cards through the US DoD and a Dutch initiative.

³²² Gamboni 1997.

sometimes combined with environmental obligations must be included in the military planning process. It is difficult to say if this will happen soon since there are not many legal instruments suitable for States Parties to enforce compliance with The 1954 Hague Convention. Nevertheless, the Convention is clear about the obligation to disseminate its contents and directives. Parties to the 1954 Convention and its Protocols must disseminate the treaty provisions as widely as possible, seeking to strengthen appreciation and respect for Cultural Property among the general population. Particular effort should be taken to disseminate information among the armed forces and personnel engaged in the protection of Cultural Property.³²³ Investigations like this one demonstrate that dissemination is not happening in most States-Parties to the convention and regrettably, this includes the Netherlands. The lack of possibilities or willingness to disseminate what is stated in the convention and subsequently the significance of CPP especially for the military contributes to the situation in which most military do not see nor understand the relevance of cultural heritage in the context of their profession and responsibilities. Even in the rare cases that commanders open the doors for experts to start education and implementation regarding CPP there is still an intellectual restraint. It is a challenge for Cultural Property Protection professionals to prove and explain to the military the social values of CP as carriers of collective memory and identity. In addition, the fact remains that Cultural Property is hard to pin down and consequently difficult to control in situations connected to (potential) conflicts. From the practical military point of view, any relation between a certain cultural object or site and identity remains either unclear or difficult to understand. An interesting parallel is that this ambiguity can occur on the individual level when works of art are involved. Art has the potential to cause commotion through what it communicates or actually, what people think it communicates.³²⁴ A historical example is the so-called *Entartete Kunst*. The Nazis destroyed much of it in 1937 and later, they found that this type of art could be sold for hard currency.³²⁵ It makes one wonder if military also should have access to some basic education about art.

There is however a simple solution for the dissemination problem. Governments, especially signatories to the 1954 Hague Convention, can order their MoDs to implement Cultural Property protection strategies including training and preparations in peacetime. This is not likely to happen mainly due to financial reasons though de facto the financial motive stands for lack of appreciation of CPP. The current situation where in the best case half measures are taken is the result. Subsequently many MoD's and some civil parties do not comply with international legislation and do not sufficiently prevent destruction, looting, and iconoclasm of national and international cultural heritage.

As established and explained in this account there are military CPP deliverables but many commanders are not aware or are not convinced of incentives brought by proper CPP implementation. On top of that, all parties involved are too busy with cultural differences and competence struggles. This too gets in the way of initiating sustainable implementation and cooperation. In practical terms, it seems fair to conclude that in today's situation the blind are leading the blind when Cultural Property protection is concerned. To put it in a different way: parties engaged in (preparing) safeguarding Cultural Property in the event of armed conflict have on a micro level the same problems that on a macro level lead to the conflicts in which heritage is attacked or misused. This phenomenon made investigations including observing in theatre difficult. Therefore, a creative, knowledge producing and initiating approach was needed.

³²³ The Hague Convention Art. 25; Protocol 2, Art. 30. Source: International Committee of the Red Cross, ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, 09/2002. <www.savingantiquities.org/pdf/Cultural_property.pdf> [1 September 2011].

³²⁴ Leydesdorff 2010.

³²⁵ Literarily: degenerate art. The Nazis organized the exhibition *Entartete Kunst*, in July 1937 in München. The exhibit was designed to ridicule and denigrate creative works not upholding the right National Socialist virtues.

Including, taking risks by provoking peers and decision makers. The same can be said for each individual of the small group of experts that are working internationally with the military on CPP so it is evident that most current successful CPP initiatives and networks are personality driven. This does not guarantee sustainability. However, to refer again to Schopenhauer's statement as mentioned in the introduction 'All truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident'.³²⁶

Taking into account examining the present situation regarding implementation of CPP in military organizations, this translates into the following conclusions for the countries most mentioned here. In the Netherlands, appreciation is between the first and second stage. In the USA, triggered by the Baghdad and FOB Wolverine disasters it is between the second and third stage. Apart from a few exceptions, Europe stays behind. Big countries such as France and Germany are not known to have implemented military CPP following the directives of the 1954 Hague convention while Asia and Africa, as far as can be established, did not start military implementation. Assessing the situation in these continents will be a good subject for more research. Through the international military working group, new contacts have been established with countries in the Caribbean and South America it remains to be seen what these contacts will bring. Needed are new strategies to open doors that give access to CPP implementation. Again, it should be said that an excellent method is to identify and present CPP related military deliverables to military senior leadership and decision makers. In addition, current risks to Cultural Property related to social disorder, conflict and natural disaster should be explained better to military leadership and politicians. It will help if newly described situations where Cultural Property is at risk especially those involving military and civil -military partnerships were to be gathered, studied and processed into lessons learned to be finally incorporated in training and planning.

To test its receptiveness for new subjects, the ever-adapting military mindset was investigated from different angles. It became clear that under normal conditions transformations take place gradually. However, within the context of contemporary military operations soldiers are forced to transform from destroyers to protectors several times a day. Apparently quick adjustments are possible in modern operations. Therefore, certain flexibility can be expected when CPP is concerned providing there are clear orders and preparations. A less prominent but still ongoing issue is the opposition from a number of civil cultural experts, some of them self-acclaimed experts on the subject of military cultural involvement. Civil cultural heritage scientists that fiercely oppose those working together with the military should realize that they are in a relatively luxurious position that enables them to debate and reflect about heritage on a sophisticated abstract level.³²⁷ Their 'alleged opponents' are not in such a position but are still struggling to get the subject accepted among all parties. While doing so they are not afraid of taking risks. I never met any of the colleagues that criticize cooperation with the military on the ground during conflicts. However if they really wanted to help, some of them could have come to conflict zones as civilians embedded within humanitarian NGOs. The scarce number of Cultural Property specialists that were actually present, for instance in Iraq, did their best to mitigate the physically destructive impacts of war on cultural property. The efforts of these individuals and others that more recently started to prepare for protecting cultural properties in the event of conflict are not yet reducing the number of challenges to be faced when trying to get CPP and its experts accepted by the military. Many of the CPP experts that are active today in Europe invest their own time and financial resources in building contacts with the European military that are not

³²⁶ As cited in *Truth : Resuming the Age of Reason* (2006) by Mahlon Marr ; the earliest attribution of this to Schopenhauer yet found dates to around 1986; it is also sometimes misattributed to George Bernard Shaw, and a similar statement is often attributed to Mahatma Gandhi: "First they ignore you, then they laugh at you, then they fight you, then you win." <http://en.wikiquote.org/wiki/Arthur_Schopenhauer> [1 September 2011].

³²⁷ See for instance Albarella 2009 and Hamilakis 2009.

very appreciative to say the least. Bearing this in mind it seems very overdone to speak about a "military-archeology complex posing serious political and ethical challenges" as some opponents do.³²⁸

A debate with peers that have other opinions is needed and relevant but it seems besides the case to include questions of authenticity and unicity, post-modern relativism and assumed imperialistic perspectives at this stage.³²⁹ The same goes for making connections with cultural power structures and attributed political values.³³⁰ It would however be more useful to look from these perspectives in the direction of cultural awareness experts and their links to- or potential openings for military intelligence. The reality is that Cultural Property protection experts are bound to The Hague Convention of 1954 and cultural awareness experts are not. Potential dangers are more likely to be found in the area of cultural anthropology and related social sciences. As established, CPP involving the military is a new scientific topic that needs time to be studied and reflected upon. In its current phase, it is on a less profound level when compared with the abstract heritage debates in academic circles. It will enter the civil cultural heritage discourse in due time but for now CPP already demonstrated its use in the field as a primary tool for preventive and active conservation of cultural heritage. On the other hand, the cases like Egypt demonstrate that there is still inability or unwillingness to act in the spirit of The Hague by military as well as by organizations. As the quote in the introduction of this book exclaims 'Stuff Happens'. At first glance, this seems to summarize today's valuation of failing Cultural Property protection strategies in the event of conflict. However, in itself the quote can be argued and adapted as a credo urging a better protection of Cultural Property. To paraphrase secretary Rumsfeld words, Shit happens but stuff can be prevented or at least corrected.

Valorization of the research outcomes

At the end of this study, it seems appropriate to present some outcomes that are of direct use for all stakeholders. If agreed upon these do not need much discussion or planning to be implemented or taken into account.

Cultural Property protection should be approached in a pro-active fashion not just in a re-active approach.

Cultural Property protection expertise and capabilities developed during and immediately after the Second World War have been allowed to disappear, resulting in the fact that many State Parties to the 1954 Hague Convention and its Protocols are not meeting the obligations stated in these instruments.

Cultural Property protection has been forced back onto political and military agendas because of damage to Cultural Property in addition to the catastrophic theft and looting in Iraq since 2003; this is no new development, referring to the many examples of such activity since World War II.

Cultural Property protection is a military 'force multiplier' and should never be regarded as an unnecessary burden, legally imposed, but militarily problematic and useless.

Military success can no longer be defined in terms of battlefield victory but has to take into account the post-conflict political, social, and economic stability of countries involved.

Cultural Property protection touches upon the issue of general 'cultural awareness' but is actually a separate issue with particular concerns that required specialized skills, different to those for general cultural awareness.

Cultural Property protection is critical to any Comprehensive Approach and to the post-conflict long-term political, social, and economic (through tourism) stability of many countries.

³²⁸ Hamilakis 2010.

³²⁹ For the alleged imperialistic angles see Perring and Van der Linde 2009.

³³⁰ Hamilakis 2010.

International cooperation is not only needed but is a condition for a successful realization of Cultural Property protection that also should include joint training.

The ethical problems about working together with the military to protect Cultural Property addressed in this study have to be considered to ensure cooperation between militarized social scientists and academic reach back capabilities. However, the following must be taken into account: as established to protect and safeguard cultural heritage during conflict one has to be on the ground in time. Often this is only possible when military logistics and safety measures can provide access. In situations where heritage is at risk the military are normally the first on the ground. Comparisons are made with the debate about military embedded or non-embedded journalists reporting about conflicts.³³¹ These comparisons are invalid since CPP experts work under the 1954 Hague Convention just like military medical experts they are bound to regulations (in case of physician's also ethical codes). For the same reason, it can be argued that experts that not follow the directives of the 1954 Hague Convention, making it mandatory for the military to protect Cultural Property, behave unethical.

Cultural Property protection capabilities should be embedded in the MoD's to be available for all services of the Armed Forces and must function both in "peace time" as well as during operations.

Specialized staff functions should be incorporated into military structures or assignment of specific CPP duties to the existing staff members should be introduced. Specific training for specialized military personnel in charge of this subject also has to be provided.

Cultural Property can be considered as a significant economical asset. Its protection helps to secure income and tourism related jobs for the future thus supporting stabilization. In fact, Cultural Property can help a community rebuild its social fabric after a conflict or disaster.

Seen from the perspective of this investigation; the protection of Cultural Property in conflict UNESCO remains too passive. It is of vital importance that funding related to the 1954 Hague Convention and Protocols is spent on pro-active cultural emergency initiatives and training. UNESCO should consider, at least, establishing active liaison with Military organizations and supporting cultural military initiatives both financially as well as by providing expertise.

The Netherlands MoD is staying behind with the implementation of CPP as regulated in the 1954 Hague Convention and Protocols. There is proof of the fact that the MoD's department for cultural back ground information is blocking initiatives to implement CPP as stated in the 1954 Hague Convention. The recommendations and the Policy Note that were prepared following the Dutch CPP seminar that took place in the Peace Palace The Hague in 2009 should be taken into account. So far, attempts to find solutions and requests, as stated in this Policy Note, to carry out what is mandatory concerning CPP were not followed up.³³²

A good thing is that the Dutch MoD accepted Cultural Heritage coordinates regarding important sites in Libya. These data were gathered through international cooperation of the USCBS, CCHAG, academia, and IMCURWG and offered to the Dutch MoD by IMCURWG.

NATO's STANAG 7141 EP doctrine is as far as CPP is concerned (in the STANAG referred to as cultural resources) not followed by The Netherlands MoD.

NATO should act in accordance with their own NATO's STANAG 7141 EP doctrine and implement training, education, and research on CPP in its institutions. NATO should also consider very seriously creating military CPP capabilities and emergency units. The latest

³³¹ Brand 2011, p.168.

³³² The status of the Policy Note remains unclear; though the concept received a reference number, it was never officially taken into consideration or answered by the Chief of Staff. Several attempts made to get comments or react to issues concerning the Dutch MoD mentioned in this dissertation remained unanswered by the Dutch MoD. Since the comments and recommendations that involve Dutch governmental institutions are of vital importance to this research, the decision was made to make use of data such as this particular policy note ref. S2009009624.

information shows that NATO via their Allied command Transformation Department is taking matters seriously which would be a great step forwards and in concurrence with the North Atlantic Treaty of Washington D.C. - 4 April 1949 to be referred to as the Washington Treaty establishing NATO says, "the parties are determined to safeguard the freedom, common heritage and civilization of their peoples".³³³ At the time this book went to the printer a first ACT initiated NATO Cultural Property Protection course was scheduled to take place from 29 November as to 2 December 2011 in Vienna.

The subject of CPP and the military and international civil input in the event of conflict deserves a place in heritage studies it also is multi disciplinary and therefore able to connect the different disciplines involved (law, history, sociology etc.) with each other. Dutch universities can take the initiative for this.

³³³ Source: < http://www.nato.int/cps/en/natolive/official_texts_17120.htm>[9 September 2011].