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Kila, J.D.

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Chapter 9

Dissemination of the 1954 Hague Convention and the 1999 Second Protocol: Embedding cultural property protection within the military

Joris D. Kila*

All truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident.¹

1. Introduction

Preceding the symposium organised by the Dutch Ministries of Foreign Affairs, Education, Culture & Science and Defence to mark the tenth anniversary of the Second Protocol to the 1954 Hague Convention, the Ministry of Defence organised a seminar on ‘Cultural property protection in the event of armed conflict’.² This can be considered as a contribution to the Netherlands’ obligation concerning dissemination of the 1954 Hague Convention³ and the 1999 Second Protocol.⁴ Organised by the Operational Preparedness Department (DAOG), the Ministry emphasised the importance and relevance of cultural property protection (henceforth: CPP) for military operations. The seminar’s overall theme was the legal basis for and different aspects of CPP (and cultural property as such) as seen from both Dutch and international military perspectives. Participants concluded that it is vital to diffuse CPP expertise throughout the armed forces, as otherwise military organisations and

* Lieutenant-Colonel (reserve); adviser to the Dutch Ministry of Defence on the protection of cultural property and member of the International Military Cultural Resources Working Group (IMCRWG). This article was written in his personal capacity. The opinions in this essay are solely his and do not necessarily represent those of the Kingdom of the Netherlands.

¹ Arthur Schopenhauer.
² Internationally renowned experts from different countries, such as Austria, the Netherlands, the United Kingdom and the United States, presented the activities and views of their countries’ militaries on the subject. Other participants included military and civilian representatives from China, Denmark, France, Germany, Iran, Israel, Japan and Poland. Topics discussed and analysed ranged from the origins of the growing interest in cultural property protection (CPP) to the increasing awareness of its importance. The seminar adopted several recommendations.
³ Article 25, Dissemination of the Convention.
⁴ Article 30: Dissemination.


To grasp the complex issues surrounding CPP, such as the wide range of interests at stake, different cultural backgrounds, types of expertise, and religious, scientific, social, ethnographic, political, historical, philosophical, legal, ethical, sociological and linguistic considerations, a number of key issues will be identified and addressed:

- The importance of CPP, especially for military organisations;
- The relationship between CPP and the Comprehensive Approach;
- The advantages of implementation of CCP by the armed forces;
- The activities of national and international organisations and countries in this field.

2. The importance of CPP, especially for military organisations

At present nations, peoples and groups seem increasingly driven to define or reaf-
firm themselves as distinctive entities. This creates a complex of tensions, in which a sense of identity is central and conflicting processes of identity formation and maintenance by other nations and groups also play a role. Protection and destruction of cultural property\(^5\) are both part of these processes. Recent armed conflicts (as in Yugoslavia, Iraq and Afghanistan) and especially intrastate conflicts have the feature in common that they are culturally conditioned or even determined. In some cases the parties deliberately try to destroy or damage their opponents’ material or other expressions of identity. We have seen clear examples of this in former Yugoslavia – the destruction of the Mostar bridge and of the Sarajevo library, for instance – and in Afghanistan. Such acts are sometimes referred to as a kind of rape. The term ‘rape’ is often used in contemporary literature on CPP and looting, as in ‘the rape of Europe’ (the destruction of cultural property during the Second World War) and ‘the rape of Mesopotamia’ (Iraq).

This explains why military organisations should deal with CPP. The fact that cultural property can be a driving force behind human identity, history, progress and in some cases economies makes CPP a matter of strategic importance for belligerents and subsequently for military peacekeeping and stabilisation operations. As mentioned above, many conflicts have a cultural dimension: one side aims to destroy its opponent’s cultural heritage as a means of undermining its identity. Looting, stealing and trafficking in cultural artefacts during a conflict or in its immediate aftermath, as seen in World War II, has re-emerged as a side-effect of conflict in countries such as Iraq and Afghanistan. Accordingly archaeological sites and premises like museums, archives, libraries and monuments must be protected. Cultural property can be more effectively protected during conflicts through military channels and with military logistics and tools, especially when the security situation does not allow civilian experts to be deployed and civilian agencies like the police are no longer able to act.

CPP in time of conflict requires prior national and international preparation in peacetime. Apart from the peacetime obligations laid out in the 1954 Hague Convention.

\(^5\) The term ‘cultural property’ is used here as defined in Article 1 of the 1954 Hague Convention.
Dissemination of the 1954 Hague Convention and the 1999 Second Protocol, however, CPP means protecting cultural property during military operations. During such operations cultural property can be exposed to possible damage inflicted by a country’s own forces or by plunder and theft by local populations, criminal networks or opposing militant forces (OMF). The use of Hescos without consulting a CPP expert is an example of how damage can be inflicted, sometimes unintentionally, by a country’s own forces. Hescos are large containers filled with sand or rubble that serve as barriers for military camps and fortifications. There are cases known in which Hescos were filled with deposits from archaeological sites containing pottery fragments, bones etcetera, possibly in violation of the 1954 Hague Convention or the 1999 Second Protocol. The soil in an archaeological site contains a range of data that is only useful when extracted by experts from their original context. For instance, layers of earth can yield information through stratigraphic data; pottery pieces in particular are an important dating tool. When Hescos are filled with such deposits, the context of the site is disturbed and it becomes very difficult or even impossible to do archaeological research. Even worse are situations where, after a complaint is made about the use of archaeological deposits, these deposits are replaced and dumped on another archaeological site, thus disturbing the context at a second location.

As mentioned above, trafficking in and looting (often commissioned) of artefacts in war-stricken areas and the plunder of archaeological sites are often practised by OMF. Just as often, however, these practices are driven by economic motives. In the case of Uruk, the economic incentive was neutralised by Dutch military experts’ offering modest payments to local guards. The whole complex of looting, theft

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6 See Articles 3 and 4 of the 1954 Hague Convention on safeguarding and respecting cultural property and on preparing in peacetime to safeguard cultural property within a country’s own territory as well as within the territory of other States Parties.
7 Sometimes referred to as insurgents.
8 Also known as Concertainer™ barriers, these were originally produced by the UK company Hercules Engineering Solutions Consortium (HESCO).
9 See Articles 3 (Safeguarding of cultural property), 4 (Respect for cultural property), 5.2 (Occupation) and 7 (Military measures) of the 1954 Hague Convention, and Articles 5 (Safeguarding of cultural property) and 9 (Protection of cultural property in occupied territory) of the 1999 Second Protocol.
11 Uruk – its modern name is Warka – is situated in the former area of responsibility of the Dutch military forces in the province of Al Muthanna It is one of the oldest cities of South-Mesopotamia situated at a branch of the Euphrates River approximately halfway between Baghdad and Basrah in Iraq. Uruk appears in the Bible as Erech. Already from 5000 BC people inhabited the site. The most important period in Uruk’s history was the era between approximately 3400 and 2800 B.C, the time of the so-called ‘high civilisation’. The site of Uruk was discovered in 1849 and excavations have meanwhile exposed part of the city.
and smuggling of artefacts is market-driven and based on the rising international demand for antiquities. Since there is a finite supply of objects offered for trade, any increase can only come from illicit sources. Buying objects from such sources encourages more theft and pillaging and helps finance the conflict. In this context, CPP is a way of denying resources to the opposing forces.

The 1999 Second Protocol is much more concrete in addressing a range of military-related aspects as well as dissemination. This makes proper training and awareness-raising for armed forces with regard to the 1954 Hague Convention and its Protocols even more indispensable.

In an effort to improve the protection of cultural property, the US currently uses a small pocket guide with instructions on how to recognise certain cultural and archaeological objects. There is also a Civil Affairs Arts Monuments and Archives Guide issued by the US Department of the Army. The Netherlands, like the US, has given out decks of CPP playing cards as a tool in training military personnel for peacekeeping or peace enforcement missions abroad.

The first on-site training for military personnel took place June 2009 in Saqqara, Egypt, and was a joint Dutch/US initiative. More such training exercises are planned in Egypt during Bright Star and in Petra, Jordan.

3. The relation between cultural property protection and the Comprehensive Approach

The aim of a military operation is to reach the ‘end state’, which generally means the establishment of a sustainably safe and secure environment. Economic, legal and political systems that can function without external military assistance are indispensable elements of such an end state. Realising it demands a ‘Comprehensive Approach’.

What is the Comprehensive Approach? To quote former NATO Secretary-General Jaap de Hoop Scheffer: A comprehensive approach fosters cooperation and coordination between international organisations, individual States, agencies and NGOs, as well as the private sector. Developing such a culture of cooperation is not going to be easy. We are all attached to our own ways.

The Dutch Joint Doctrine Bulletin on Provincial Reconstruction Teams states that the essence of the Comprehensive Approach is the realisation that conflicts cannot be resolved by military means alone. Since most conflicts have non-military causes, the use of different types of intervention is necessary. As development and security are closely interconnected, safety, reconstruction and good governance must be approached in tandem. Development cooperation and military and diplomatic

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15 A major military exercise that takes place in Egypt every two years.
16 Speech held during the “Defence Leaders Forum”, Noordwijk aan Zee, the Netherlands, 23 April 2007; file in possession of the author.
activities should be integrated. This means that the military contribution to crisis management operations must be combined with diplomatic efforts and development cooperation, in the so-called ‘3D strategy’ (Development, Defence and Diplomacy). The Dutch armed forces are currently using a second generation of this 3D concept, focusing on four areas of concern: security, politics, and social and economic well-being.

Due to its complexity, CPP can by definition only be effectively implemented in a multidisciplinary and consequently joint, inter-agency manner. An effective CPP strategy stimulates reconstruction efforts in a conflict zone as well as stability in the post-conflict phase. In general, local populations have special ties with their country’s cultural property, which often symbolises for them the glorious past or at least better times. In addition, cultural property is frequently an economic factor, which has a positive effect on political, social and commercial (e.g. tourism-related) aspects of reconstruction, thus furthering local stability.

4. Advantages of the implementation of cultural property protection by the armed forces

Little attention was paid to CPP in the immediate aftermath of World War II. The expertise developed by the Allies during the Second World War had been allowed to be dispersed. The subject had no priority within their respective defence organisations. CPP in the event of armed conflict only resurfaced on the Dutch agenda in 1958, when the 1954 Hague Convention was ratified. Obligations for State Parties to this Convention range from organising risk preparedness and training to actual protection of cultural property during operations. The 1999 Second Protocol widened these obligations.

After the Bamiyan Buddhas were destroyed by the Taliban in 2001, the protection of cultural heritage and its legal and ethical mainsprings gained renewed international attention. When the National Museum in Baghdad was looted in 2003 following the invasion of Iraq, the US experienced not only how important CPP can be as a ‘force multiplier’ but also how lack of CPP can strengthen the opposing military forces and generate negative PR for the occupying force, thus undermining public acceptance of its presence. The only positive effect of the 2003 cultural debacle in Iraq was an increase in international attention to CPP. If implemented correctly, preferably as part of a comprehensive approach, CPP can be an impediment to illicit traffic in artefacts and a stimulus for economic growth, stability and public acceptance of a military presence.

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17 ‘A capability that, when added to and employed by a combat force, significantly increases the combat potential of that force and thus enhances the probability of successful mission accomplishment.’ US Department of Defence, Dictionary of Military and Associated Words, 2003.

18 Thousands of archaeological sites and several monuments, museums, archives and libraries were looted and in some cases destroyed.
The seminar in The Hague and recent publications support the thesis that from a military perspective, CPP can contribute substantially to an operation’s success. Its multi-agency and multidisciplinary character makes it highly suitable for implementation within the Dutch Comprehensive Approach (3D) or any other comprehensive strategy. It should be noted that experience shows that CPP is necessary during all phases of a conflict or operation; most of the damage is done at the beginning of a conflict.

When Dutch troops are involved in conflicts or deployed for peacekeeping or peace enforcement missions, they generally have to work in areas where the culture is different from their own. Their operational environment will in such cases include these cultures’ material representations. The military have to be prepared for this on all levels, both individually and as a group. The 1954 Hague Convention and the 1999 Second Protocol can only be correctly interpreted by a commander who has some understanding and knowledge of these legal instruments and of CPP. This knowledge can also be provided through special CPP advisers or officers, providing the armed forces have such capabilities or are willing to create them. Under all circumstances continuous research and training is needed, since CPP is not a static subject; new developments take place and should be monitored and analysed. Sufficient financial means should be available for this in the defence budget and in the state budget more generally.

5. Cultural property protection from an international perspective

Internationally no doctrine has been developed concerning CPP in times of armed conflict. NATO has laid out 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. It has however become clear that international cooperation is necessary. Both financial and human resources are too scarce for any individual country to be able to provide a solution on its own. Cooperation is more efficient and less costly. Training and lecturing, the development of training tools, joint exercises, special training in situ and joint assessments are all areas in which cooperation yields shared benefits.

CPP can strengthen the international rule of law and contribute to a positive image of the country implementing it. On the other hand, a poor CPP policy can create or reinforce a negative image. The fact that international public opinion (rightly or wrongly) has identified the US as the party most responsible for the destruction of cultural property in Iraq, and condemned it for violating international instruments on CPP, is a clear example. Images broadcast by CNN showing the looting of the National Museum in Baghdad had a great impact on international

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opinion, giving the US a reputation as a destroyer of cultural property; it will take years to change this image.

Since the US ratified the 1954 Hague Convention in September 2008, however, many CPP activities are being conducted by it. Currently the possibilities are being studied of expanding activities like training and of embedding capabilities in the Department of Defence (DoD), starting from its existing environmental and legacy programmes and the archaeologists and other experts it already employs. Civil Affairs training courses focusing on museums and art are also being given. CPP experts can already be found in all the services. Examples of CPP activities include the DoD Legacy Resource Management Programme, the Cultural Resources Programme in the Environmental Division, and the Integrated Training Area Management Programme in the Directorate of Plans, Training, Mobilisation and Security. The Central Command has a Historical/Cultural Technical Working Group and the US is represented in the newly established International Military Cultural Resources Working Group (IMCRWG). The DoD works closely with the University of Colorado, and the US aims to join in international cooperation on CPP. Currently a CPP \textit{in situ} training course is being conducted in Egypt in cooperation with an expert from the Dutch Ministry of Defence.

Other states are also active in the field of CPP. The UK has expressed the intention to ratify the 1954 Hague Convention and its Protocols in the near future. The British Ministry of Defence is now preparing to create military CPP capabilities, and has asked the Netherlands for advice. A first major project of the British Ministry is supporting the creation of a museum in Basra, Iraq. Professor Peter Stone\textsuperscript{20} is advising the Culture, Media and Sport Committee of the British Parliament and will draw on the outcomes of the seminar held in The Hague before the symposium on the 1999 Second Protocol.

In Austria the subject of CPP is already firmly on the agenda. Cultural Property Protection Officers (CPPO) are deployed in all branches of the armed forces. CPP is fully integrated into training and planning. The highest ranked CPPO is a Brigadier General in the Ministry of Defence. Currently civil and military experts are preparing to establish a scientific institute in Vienna dedicated to research and PhD programmes on CPP in time of conflict. The newly founded Association of National Committees of the Blue Shield (ANCBS), though it has its main office in The Hague, is also represented in Austria.

In the 1960s the Italian Ministry of Education secured the establishment of a special unit of the Carabinieri (military police) charged with the defence of the country’s palaeontological, archaeological, artistic and historic heritage. This unit, later known as the Comando Carabinieri Tutela Patrimonio Culturale, has been very active in Iraq. Rome also hosts the World Association for the protection of Tangible and intangible Cultural Heritage in times of armed conflict (WATCH),\textsuperscript{21} an NGO with an extensive network of stakeholders in the Middle East and Mediterranean countries.

\textsuperscript{20} Chairman of the seminar on CPP and military operations held in The Hague.
\textsuperscript{21} See www.eyeoniculture.net.
Estonia organised a major conference on CPP in February 2008 in Tallinn. A Memorandum of Cooperation on CPP has been signed by the Estonian Ministries of Culture and Defence.22

In the Netherlands, following the seminar organised by the Dutch Ministry of Defence in The Hague, a report was prepared containing recommendations for the way ahead. This report, advocating a dedicated CPP capability within the Ministry of Defence, has been presented to the Chief of the Dutch Defence Staff. A response is expected towards the end of 2009. CPP playing cards for Dutch troops deployed abroad have been developed by the Ministry of Defence in cooperation with the National UNESCO Committee, the Cultural Heritage Inspectorate and the Ministry of Education, Culture and Science.

6. The distinction between cultural property protection and ‘cultural awareness’, including Human Terrain Systems

The process of raising awareness of the 1954 Hague Convention and of getting CPP implemented by the military involves facing multiple organisational, bureaucratic, political, corporate, cultural and ethical challenges.

Currently there is an international discussion developing about ethical issues raised by anthropologists, archaeologists and art historians’ working within or with the military. The discussion regards the so-called Human Terrain Systems (HTS), a United States Army program which embeds anthropologists and other social scientists within combat brigades to help tacticians in the field understand local cultures. The goal of HTS is to give commanders insight into the population and its culture in order to enhance operational effectiveness and reduce military and civilian conflict.23 Opponents of scholarly engagement with the military are using the involvement of anthropologists in HTS as an excuse to reject all cooperation by social scientists with the military, specifically on CPP. In some people’s view, “social scientists in the Human Terrain System teams embed within the military, ostensibly to improve cultural awareness of the populations in Afghanistan and Iraq. However, this ‘cul-

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22 The publication of this conference can be found online on: http://www.muinsuskaitse.ee/failid/156_est_haagi_konvents.pdf

23 Wikipedia states the following with regard to HTS (1 December 2009): “The Human Terrain System (HTS) is a United States Army program which embeds anthropologists and other social scientists within combat brigades (currently in Iraq and Afghanistan) to help tacticians in the field understand local cultures using Human Terrain Mapping (HTM). Between July 2005 and August 2006, the US Army put together HTS as an experimental counterinsurgency program. [...] HTS utilizes experts from social science disciplines (anthropology, sociology, political science, geography), regional studies, linguistics, and intelligence. HTS provides military commanders and staff with an understanding of the local population by conducting research, interpreting, and archiving cultural information and knowledge. The goal of the HTS is to give commanders insight into the population and its culture in order to enhance operational effectiveness and reduce military and civilian conflict [...]” (See: http://en.wikipedia.org/wiki/Human_Terrain_System)
tural awareness’ is used to formulate strategies for killing and destruction.” Many experts also oppose the ‘hearts and minds’ strategy of counterinsurgency (COIN). Especially from the UK, a small number of archaeologists and anthropologists are spreading confusion. Even if this is done unintentionally and is merely the result of inappropriate research and insufficient knowledge, damage is being done. What is contributing to the problem is the use of the term ‘cultural awareness’, which is often unjustly seen as forming part of CPP.

It undermines the process of making the military aware of their obligations under the 1954 Hague Convention and the 1999 Second Protocol. The anthropologists working for US HTS teams should not be confused with CPP experts who work with the military in accordance with the 1954 Hague Convention and 1999 Second Protocol or other international legal instruments.

CPP differs from cultural awareness: contrary to CPP, cultural awareness is not mandatory under international conventions and is primarily meant as a tool for troops that are about to be deployed on foreign soil. Knowledge of cultural backgrounds and local habits should help them to reach the end state of a mission easier and faster. There are cases where cultural awareness intentionally or non-intentionally has been used as an excuse not to implement any projects dealing with CPP. Often, organisations state that they are already dealing with culture, while in fact they do something regarding cultural awareness and not CPP. They are of course related, but only in the sense that a dentist is related to a cardiologist because both work in the field of medicine. Contrary to the situation with cultural awareness and HTS, there are no known cases of CPP involvement in COIN; COIN and cultural awareness are both practised by different experts than CPP. In theory, there could only be a link through illicit traffic in artefacts by OMF. Nevertheless, it would be worthwhile for legal experts specialising in the 1954 Hague Convention and other cultural heritage instruments to research the implications of possible CPP involvement with COIN (e.g. in the fight against illicit trafficking). Recent discussions


25 The ultimate goal of counterinsurgency (COIN) warfare is to “build (or rebuild) a political machine from the population upward.” David Galula, Counterinsurgency Warfare: Theory and Practice (New York: Frederick A. Praeger, 1964, 2006), p. 95. In itself, COIN is a tool that has been in military use for some time. International humanitarian law, and sometimes national restrictions apply to this type of operation.

26 Dahr Jamail, op.cit. quotes US anthropologist David Price as saying: “The problem with anthropology being used in counterinsurgency isn’t just that anthropologists are helping the military to wear different cultural skins; the problem is that it finds anthropologists using bio power and basic infrastructure as bargaining chips to force occupied cultures to surrender.”

27 Awareness of local customs, tribal behaviours, etc.

28 There is now a tendency to involve cultural awareness, and especially HTS, in COIN.

29 For example at the World Archaeological Congress in Dublin in 2008.
and publications\textsuperscript{30} have made clear that in Europe these two concepts are still being mixed up. Information and training are therefore necessary, particularly to underline the need for CPP officers to function separately from cultural awareness experts.

7. Conclusions of the cultural property protection seminar in The Hague\textsuperscript{31}

At the beginning I referred to the seminar that has been held prior to the symposium on the occasion of the tenth anniversary of the 1999 Second Protocol. The participants in that seminar adopted the following conclusions about CPP:

\begin{itemize}
  \item CPP expertise and capabilities developed during and immediately after the Second World War have been allowed to be dispersed, with the result that many State Parties to the 1954 Hague Convention and its Protocols are not meeting their obligations as laid out in these instruments;
  \item CPP has been forced back onto the political and military agenda by the catastrophic theft and looting of cultural property in Iraq since 2003. This is not a new development, however; there have been numerous examples of such activity since World War II;
  \item CPP is a military ‘force multiplier’. It should never be regarded as an unnecessary burden that has been legally imposed but is militarily problematic or useless;
  \item Military success can no longer be defined in terms of battlefield victory alone, but has to take into account the long-term, post-conflict political, social, and economic stability of the countries involved (the Comprehensive Approach). CPP is critical to the Comprehensive Approach;
  \item While CPP relates to the issue of general cultural awareness, it is actually a separate issue involving specific concerns. It requires specialised skills that are different from those needed for general cultural awareness.
\end{itemize}

Various participants in the seminar expressed the desire to begin international military cooperation on CPP. As a first initiative, the International Military Cultural Resources Working Group (IMCRWG) was founded in Phoenix, Arizona, USA on 13 August 2009. The IMCRWG comprises cultural heritage professionals working in the military context in order to:

\begin{itemize}
  \item enhance military capacity to implement CPP across the full range of operations;
  \item provide a forum for international cooperation and networking for those working in a military context;
  \item identify areas of common interest;
\end{itemize}


\textsuperscript{31} This Chapter has been written in cooperation with Peter Stone, Chairman of the Dutch MoD seminar in The Hague.
– share best practices and lessons learnt;
– raise awareness of and publicise the military commitment to the protection of cultural property and of cultural heritage, both tangible and intangible.

The IMCRWG is not intended to replace any existing organisation working in this field. Rather, it can be pro-active in developing partnerships and networks between the military and existing non-military organisations and groups, working within the framework of the 1954 Hague Convention and the 1999 Second Protocol and addressing issues related to archaeological sites, historic buildings, museums, libraries, galleries and archives.