



Civil-Military Cooperation  
Centre of Excellence  
The Hague

# Cultural Property Protection Makes Sense

## A Way To Improve Your Mission



... uniting overlaps.

# Cultural Property Protection Makes Sense

Second Edition

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Title: Cultural Property Protection Makes Sense

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This publication represents the views and opinions of the CCOE, as an independent organization and a subject matter expert in its domain. Drafts of this publication have been peer-reviewed by military and civilian experts from different organizations, governments and universities worldwide.

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On the cover: a member of the NATO Mission Resolute Support talks to local children in front of the Blue Mosque, also known as the Shrine of Hazrat Ali. Mazar-e-Sharif, Afghanistan, 2019.

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## Preface

“As members of the armed services, the primary task of Cultural Property Protection (CPP) personnel is supporting the advancement of military objectives. As such, the value of CPP must be described in military terms and evaluated through a tactical, operational, and strategic lens. From the operational approach, CPP’s value exists in how the identification, understanding, and protection of cultural heritage domains in the operational environments provide unique analytical insights for military commanders and staff. A few examples include:

- Descriptions of opposition groups’ targeting of Cultural Property (CP) indicate the nature and source of conflict (political, cultural, religious, ethnic);
- Analysis of the types of CP targeted and the level of action against CP indicates the conflict’s state in terms of escalation or de-escalation;
- The analysis of CP illicit activities identifies antagonists and opposition groups’ revenue sources;
- The identification of CP domains that offer opportunities for peace and reconciliation efforts.

These analytic examples describe how CPP is an essential military capability for identifying key elements of the operational approach: 1) identify the challenge; 2) identify the state of conflict; 3) develop courses of action to achieve objectives.<sup>1</sup> From this operational-centric valuation, CPP is a tactical, operational, and strategic imperative for all stakeholders working to provide security and peace.”

*Colonel Andrew DeJesse, Commander of the Cultural Heritage Task Force, part of the US Armed Forces*

*Dr Paul Fox, Cultural Property Protection expert and author of the CPP estimate.*

“Cultural Property Protection is about delivering against the obligations set for us in the Law of Armed Conflict. It’s about our moral obligation to the communities amongst whom we conduct military operations. It is about our reputation as armed forces, as NATO and as our countries. It is about our ability to maintain influence with the communities amongst whom we’re operating. It’s about the force protection of our personnel, including protection against an adversary’s information operations. It’s about a better, richer cultural understanding of these communities. It’s about countering threat finance and long term harm caused by the illicit trafficking of cultural property. Finally, by ensuring that we respect and protect their cultural property during our operations we afford communities a better and faster opportunity to recover after the trauma of conflict.”

*Lieutenant Colonel Tim Purbrick, Commander of the Cultural Property Protection Unit, UK Armed Forces*

“Within the military, we are convinced that culture is a crucial element in military operations. Through training and education, members of the armed forces are, therefore, made aware of the importance of cultural property in, for example, the constitution of identity. This awareness should ultimately convince military personnel that treating cultural heritage respectfully influences the operational environment significantly. The role that CPP plays in the operational planning process is hereby of vital interest.”

*Major Edwin Maes, Commander Cultural Property Protection Unit, part of the Dutch Armed Forces*

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<sup>1</sup> US Joint Publication 5-0: Joint Planning.

## Introduction

Ever since the ‘Monuments Men’ (the Allies’ Monuments, Fine Arts, and Archives program) were called into life during World War II, Cultural Property Protection (CPP) has become increasingly important for NATO. This is not only due to the legal obligations stemming from the 1954 Hague Convention and its two protocols (1954 and 1999), but also because of the rising awareness within NATO that CPP is crucial for mission success. The 2015 Make Sense publication on CPP by the NATO Civil-Military Cooperation Centre of Excellence (CCOE) contributed to this awareness. Since 2015 several developments have taken place within NATO. For example, a NATO Bi-SC command directive on CPP has been adopted<sup>2</sup> and NATO SPS has initiated two projects on the topic.<sup>3</sup> Besides, CPP has been integrated into training exercises, such as Trident Jaguar (2018) and Trident Jackal (2019).

These positive developments do, however, not mean that damage to Cultural Property (CP) in armed conflict is something from the past. Recent research reports 1,947 incidents of damage to heritage sites in Syria and Iraq from 2014 to halfway through 2018 (including Libya from 2017 onwards).<sup>4</sup> This damage is overwhelmingly caused by airstrikes, other types of military activity and illegal excavations.

States involved in the region’s conflicts – Syria, Iraq, Russia, and the US to name a few – are primarily responsible for the airstrikes while they are all party to the 1954 Hague Convention. This seems like a contradiction, but the Convention does not absolutely prohibit the military use of CP or attacks on CP when taken into use by the enemy – notwithstanding the LOAC principles of necessity, proportionality and distinction.<sup>5</sup> The number of incidents (more than once per day), however, does raise the question of whether protagonists are acquainted with the specifics of the Convention and its application. It is thus important to continue working on cultural property protection in armed conflict, understood as a military imperative.

This publication aims to move beyond the question of why CPP is important for NATO. Instead, the reader will gain understanding what CPP obligations entail and how to deal with these obligations in the operational context of a mission. The reader will find lessons learned from past examples, the spectrum of relevant fields of CPP within NATO, and a practical approach to give guidance in a CPP operational context. Finally, the reader will obtain knowledge of the available databases, organisations and resources to be able to work effectively with CPP. The booklet starts with an introduction of the concept of CPP and the outline of the booklet.



Figure 1: CPP in Timbuktu, Mali (2019).

<sup>2</sup> Bi-Strategic Command Directive 086-005. Implementing Cultural Property Protection in NATO and NATO-led operations and missions (SH/J9/CL/SG/TT001345).

<sup>3</sup> Frederik Rosén, *NATO and Cultural Property. Embracing New Challenges in the Era of Identity Wars* (NATO SPS Programme and the Nordic Centre for Cultural Heritage and Armed Conflict 2017) (hereafter: NATO SPS programme); NATO SPS Programme (forthcoming).

<sup>4</sup> Allison E. Cuneo, Michael D. Danti, ‘Tracking Heritage Loss in the Middle of Armed Conflict, the ASOR Cultural Heritage Initiatives’ (June 2019). In Bessenay-Prolonge J., Herr J.-J., Mura M. (eds.) ‘Archaeology of Conflict and in Conflict – Proceedings of the International Conference held in Paris, November 2017’, Route de l’Orient.

<sup>5</sup> Article 4 of the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict (1954). (hereafter: Hague Convention).

## 1. Cultural property protection in general

The CCOE factsheet on CPP provides a brief introduction to the concept of cultural property and its protection.<sup>6</sup> This section reiterates basic information on CPP, tackling the ‘what’, ‘who’, ‘why’, and ‘when’.

Protection of cultural property in the event of armed conflict is a legally mandated military task, equally applicable to all phases of military activities and operations.

The Law of Armed Conflict (LOAC) is the framework of CPP obligations in the event of armed conflict. Specific CPP obligations are codified in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (the ‘Hague Convention’), part of LOAC. It is an international treaty currently signed by 133 states. Two protocols have been adopted (in 1954 and 1999) to clarify and complement the original treaty. Most of its content is also applicable to non-signatory states as CPP obligations are regarded as customary international law.<sup>7</sup> The 2016 UNESCO Military Manual is a useful document that explains the obligations of the Hague Convention for the state party armed forces.<sup>8</sup>

### 1.1. What are CP and CPP?

The 1954 Hague Convention defines the terms of cultural property and cultural property protection.

The term cultural property entails “movable or immovable property of great importance to the cultural heritage of every people.”<sup>9</sup> This includes, among others, monuments of architecture, works of art or history, buildings that preserve or exhibit movable cultural property, and centres containing a large amount of cultural property.<sup>10</sup> Cultural property protection is defined as “the safeguarding of and respect for such property”.<sup>11</sup> In practice, CPP is used to describe all efforts dedicated to managing the various challenges related to CP in the event of armed conflict.<sup>12</sup>

Cultural property can be recognised by the blue and white shield (see figure 2), which is the international protective emblem for cultural property under general protection. It indicates the legal protection of the object or site under international law. In many territories of high contracting parties, no emblem is attached to cultural property, because marking CP with the symbol is not obligatory. The cultural property still has its (international) legal protection as cultural property, even when no emblem is present.<sup>13</sup> Misuse of the emblem is prohibited.<sup>14</sup>

When the cultural property is declared to have greater importance, it may be granted a higher legal status. This status implies a higher degree of protection and results in stricter rules and obligations. In accordance with the 1954 Hague Convention and its protocols, there are two categories of higher protection: special protection and enhanced protection.

Special protection is meant for centres containing monuments, immovable CP of very great importance and refuges for movable CP in the event of armed conflict.<sup>15</sup> UNESCO decides on granting

<sup>6</sup> Civil-Military Cooperation Centre of Excellence (CCOE), ‘Cultural Property Protection - a CCOE factsheet’ (2020).

<sup>7</sup> Roger O’Keefe, Camille Péron, Tofiq Musayev, and Gianluca Ferrari, *Protection of Cultural Property: Military Manual* (International Institute of Humanitarian Law and UNESCO 2016) (hereafter: UNESCO Military Manual), 4.

<sup>8</sup> UNESCO Military Manual (2016).

<sup>9</sup> Article 1 of the Hague Convention.

<sup>10</sup> Article 1 of the Hague Convention.

<sup>11</sup> Article 2 of the Hague Convention.

<sup>12</sup> NATO SPS Programme (2017).

<sup>13</sup> The meaning of this legal status is explained in sections 2.1, 3.1, and 4.2.

<sup>14</sup> UNESCO Military Manual (2016), 68.

<sup>15</sup> Article 8 of the Hague Convention.

such status after a request by a state party. Up to now, very few properties have been listed for special protection. The emblem for CP under special protection consists of a formation of three blue shields (see figure 2). It is obligatory to physically mark CP under special protection.<sup>16</sup>

The system of CP under enhanced protection was invoked in the second protocol of the Hague Convention (1999). It applies to the heritage of the highest importance for humanity, at the request of a high contracting party or nominated by other parties or expert organisations.<sup>17</sup> The Committee for the Protection of CP in the Event of Armed Conflict decides upon entry on the list.<sup>18</sup> The emblem used to indicate heritage under enhanced protection (created in 2015) is seen in figure 2 and constitutes the original blue shield emblem with a white and thick red line around it. States are not obligatory to mark CP under enhanced protection. Only a small amount of cultural property is placed under the regime of enhanced protection.

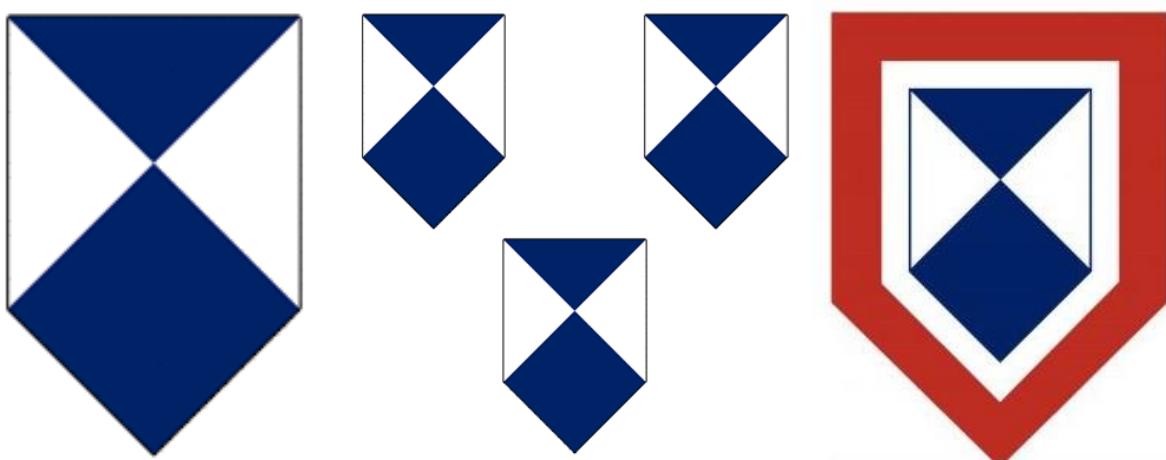


Figure 2: The Blue Shield emblems.

### 1.2. Why is CPP important?

There are several reasons why CPP is important for NATO. These can be divided into legal, strategic, and ethical considerations, in light of some recent developments.

Legally, the Hague Convention obligates states – and thereby state party armed forces – to abstain from certain conduct in armed conflict that may damage or destroy CP; chapters 2.1, 3.1 and 4.2 discuss the legal obligations of LOAC regarding CPP. Strategically, CPP is regarded as an element of mission success. Destruction of CP may cause increased violence and an escalation of conflict due to local resentment and public outrage.<sup>19</sup> Furthermore, the looting and illicit trade of CP may be a significant source of income for armed non-state actors, funding terrorism and transnational criminal groups.<sup>20</sup> Although the magnitude of this source of funding is not clear, there is conclusive evidence that multiple terrorist organisations have relied significantly on the looting and trafficking of CP.<sup>21</sup> Another strategic consideration is the role CP can play as a tourist attraction, becoming a source of

<sup>16</sup> Article 10 of the Hague Convention.

<sup>17</sup> Article 10 and 11 of the second protocol to the Hague Convention (1999).

<sup>18</sup> Article 27 of the second protocol to the Hague Convention (1999).

<sup>19</sup> Emma Cunliffe, Paul Fox, and Peter Stone, ‘The Protection of Cultural Property in the Event of Armed Conflict: Unnecessary Distraction or Mission-Relevant Priority?’ (2018) *NATO Open Publications* 2 (4).

<sup>20</sup> Howard, R., et al., ‘Digging in and Trafficking Out: How the Destruction of Cultural Heritage Funds Terrorism’ (2015) *CTC Sentinel* 8(2); Z. Boz, *Fighting the Illicit Trafficking of Cultural Property: A Toolkit for European Judiciary and Law Enforcement* (UNESCO 2018) (hereafter: UNESCO Report on the Illicit Trafficking of CP).

<sup>21</sup> N. Brodie, ‘Why Is No One Talking About Libya’s Cultural Destruction’ (2015) *Near Eastern Archaeology* 78(3); P. R. Williams and C. Coster ‘Blood Antiquities: Addressing a Culture of Impunity in the Antiquities Market’ (2017) *Case Western Reserve Journal of International Law* 49; R. Howard et al. (2015).

income for the owning state party after conflict. As NATO, conforming to its mission mandates, may be involved in stabilisation and nation-building, the protection of CP is a vital part of achieving that goal.<sup>22</sup> Ethically, CP should be protected as part of the identity of people. It constitutes a societal memory that cannot be repaired or recovered when removed or destroyed.

Some recent developments have increased the importance of CPP. For instance, public opinion has become more critical in legitimising a conflict due to social media and globalisation. Destruction of CP can have a significant influence on public opinion, and can, therefore, influence the legitimacy of a conflict.<sup>23</sup> Furthermore, destruction of CP is used by terrorist groups to widen sectarian divisions as part of their identity politics.<sup>24</sup> A third factor that shows the importance of CPP in the current timeframe is the increased urbanisation of conflict. As CP is often concentrated in urban areas, it becomes more vulnerable to destruction.<sup>25</sup> Finally, a negative consequence of the growing attention for CPP is that it increases the value of CP as a strategic/tactical target. Adversaries might use this and popularise CP as a weapon of war.<sup>26</sup>



### **Example Looting of Baghdad museum / Iraq 2003**

By Martine Jaarsma

An example of bad publicity and its consequences is the 2003 looting of the Baghdad museum in Iraq. During hostilities in Baghdad, local staff and curators left the museum, while the US forces active in the surroundings did not safeguard the museum. Over the next few days, the museum was looted. A week after the museum staff had left, US forces started guarding the museum. The majority of the objects of the Baghdad museum have not been recovered yet.

The looting of the Baghdad museum caused public outrage. Academic literature and news articles criticising the failure to prevent looting in Iraq have been published continuously over the last sixteen years. Examples include the book 'The Rape of Mesopotamia: Behind the Looting of the Iraq Museum', and the book 'Catastrophe! The looting and destruction of Iraq's past'. When armed forces have the opportunity to prevent looting of CP but fail to do so, this causes lasting damage to the reputation of the mission.

In hindsight, the situation must be viewed with some nuance. The hostilities in Baghdad were fierce, so US forces could not safeguard the museum until the security situation made it safe to do so – during the hostilities US forces did simply not have the opportunity to prevent the looting. The presence of a proactive plan to safeguard the museum could have, however, prevented further looting, shortening the required reaction time after the hostilities had ended. This nuance does not change the consequences to the reputation of the mission and the role of public perception in legitimising an armed conflict.

Sources: L. Rothfield, *The Rape of Mesopotamia* (University of Chicago Press 2009); G. Emberling and K. Hanson, *Catastrophe! The Looting and Destruction of Iraq's Past* (Oriental Institute Museum Publications 2008); D. Randall, 'Revealed: the real story behind the great Iraq Museum thefts' *the Independent* (13 November 2005).

<sup>22</sup> Cunliffe, Fox, Stone (2018).

<sup>23</sup> NATO SPS Programme (2017).

<sup>24</sup> NATO SPS Programme (2017); Cunliffe, Fox, Stone (2018).

<sup>25</sup> NATO SPS Programme (2017).

<sup>26</sup> NATO SPS Programme (2017).



### Example Looting by ISIS / Iraq, Syria 2014-2018

By Martine Jaarsma

ISIS is the most striking example that used looting CP as a significant source of funding. The degree to which smuggling of CP was organised under ISIS is remarkable. While the estimates of revenue from looting and trafficking of artefacts vary (from several million to more than \$100 million each year) ISIS' looting stood out because of its organised nature.

ISIS had established a formal Department of Antiquities, headed by a high ranking ISIS-member. The department owned heavy machinery and metal detectors and was in charge of 35 digging groups of 45 members for the excavation of artefacts in their areas of control. Helped by Syrian army officers, they trafficked these goods to Turkey, where they were sold. If locals themselves wanted to excavate a site, they needed a permit which was formally granted following a predefined process. Excavated goods had to be formally declared, proceeds from trafficking were taxed, and the sale of looted cultural property was registered.

Sources: Georgina Adams, 'Antiquities: The Spoils of War' *Financial Times* (March 11, 2016); H. D. Willet, 'Ill-Gotten Gains: A Response to the Islamic State's Profits from the Illicit Antiquities Market' (2016) *Arizona Law Review* 58, 836; N. Brodie and I. Sabrine, 'The Illegal Excavation and Trade of Syrian Cultural Object: A View from the Ground' (2018) *Journal of Field Archeology* 43, 78.

### 1.3. To whom does CPP apply?

We can distinguish five actors that are all interlinked but which have different obligations regarding CP. States are the main responsible actor in CPP, and can be the host nation in an armed conflict. A state's armed forces are an inherent part of the state. This also applies to individual members of the armed forces; as members of a nation's armed forces, they all have specific obligations regarding CPP. NATO, the main focus of this booklet, is the actor that has implied CPP tasks, mirroring state party obligations.

A state party in armed conflict always has overall responsibility for CP in its territory. Every state is bound by some of the obligations set out in the Hague Convention: those parts of the Convention that are now widely regarded as constituting customary international law, apply to all states, including those that have not signed the treaty.<sup>27</sup> States are obliged, therefore, to comply with the core elements of the convention.

The host nation is, in the context of NATO operations, a key actor. In all types of conflict, the host nation remains responsible for its cultural property. This responsibility includes respect for, safeguarding of, and possible recovery of cultural property. So, also in armed conflict, the host nation is the lead actor regarding CPP.

A state party's armed forces must comply with the state's obligations regarding CPP. CPP obligations to respect cultural property directly apply to a state's armed forces. Other obligations, for example, to safeguard CP, apply more directly to a state's heritage sector state institutions.

<sup>27</sup> UNESCO Military Manual (2016), 11.

Under LOAC, everyone is responsible for their personal conduct towards CP. At its most extreme, the intentional, systematic destruction, damage or misuse of CP in armed conflict may amount to a war crime.<sup>28</sup> Commanders bear a particular responsibility to ensure that CPP is factored into operational plans and decision making during mission execution. States may also have national laws and regulations in place that prohibit certain conduct against CP.

NATO does not 'own' CP and is not a signatory to international law. This does not mean, however, that NATO does not have a responsibility towards CP during armed conflict. Personnel acting on behalf of NATO are first and foremost acting on behalf of their nation and must comply with their national legal obligations to respect CP. NATO's own, implied, CPP task is added to support the host nation realise its obligations to safeguard CP according to its mandate. This does not only apply to NATO missions in the state of armed conflict but also to operations with lower intensity as well as field training and exercises.

#### Example Convictions of international law CPP violations / The Hague 2004-2017

Recently, for the first time, an individual was convicted by the International Criminal Court (ICC) for intentionally destroying CP. Ahmad Al Faqi Al Mahdi was found guilty as co-perpetrator of the war crime of intentionally directing attacks against historical and religious buildings in Timbuktu, Mali. Several cases at the ICTY (International Criminal Tribunal for the former Yugoslavia) have convicted individuals for violating international law concerning CP. Individuals were found guilty for the shelling of Dubrovnik and attacking ancient mosques and other religious buildings.

Note that the ICTY appeals chamber revoked the conviction of destroying the Mostar Bridge as a violation of international law. The judges found that the military necessity clause was fulfilled (see chapter 2.1. for more information on military necessity).

Sources: ICC judgement ICC-01/12 The Prosecutor v. Ahmad Al Faqi Al Mahdi [27 September 2016], ICTY judgement IT-04-74 Appeals Chamber Prosecuter v. Prlić, Stojić, Praljak, Petković, Čorić, and Pušić [29 November 2017], ICTY judgement IT-01-42 Prosecutor v. Stugar [17 July 2008], ICTY judgement IT-01-42/1 Prosecutor v. Jokić [30 August 2005].

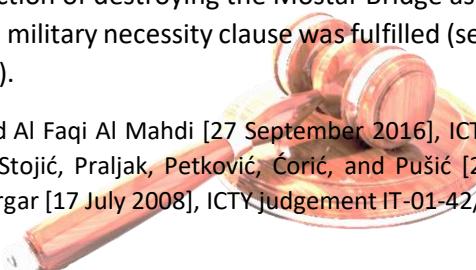


Figure 3: Judgement.

#### 1.4. When does CPP apply?

In the Hague Convention, different sets of CPP obligations apply to different circumstances. There are peacetime obligations, obligations during hostilities, and during the belligerent occupation. Put differently; there are always obligations regarding CPP that must be adhered to, only the extent of responsibilities varies between the different situations. This applies not only during missions but also during field exercises.

The situations can theoretically be distinguished as follows. Peacetime refers to the situation where there is no armed conflict (neither international nor non-international). Hostilities refer to the case where there is an International Armed Conflict (IAC) or Non-International Armed Conflict (NIAC). In a situation of belligerent occupation, additional CPP requirements apply to a state's armed forces. It comes into being when military forces of state control and govern (part of) the territory of another

<sup>28</sup> Rome Statute of the International Criminal Court (1998) (hereafter: ICC statute).

state.<sup>29</sup> So the military forces of one state exercise effective control over the territory of another state. It can only occur after an inter-state war: a war between the armed forces of one nation against the armed forces of another nation. Examples of occupation are the occupation of Germany by the allied forces from 1945 to 1949, the occupation of Iraq by the US from 2003-2011, and the occupation of Crimea by Russian troops since 2014. During a belligerent occupation, the occupying forces are obliged to enable civilians to continue their life as undisturbed as possible.<sup>30</sup>

The differentiation between peacetime, hostilities and belligerent occupation is by no means complete or without room for interpretation. There is, for example, no clear guidance on the CPP obligations during counterinsurgency operations, stabilisation missions, or during disaster relief operations. Different types of situations unfold, whereas it is a state inviting an international military mission to its territory or non-state armed actors that play a role.

In all operational contexts, NATO and its troop-contributing nations must provide clear guidelines for CPP activities. These guidelines should strike a balance. On the one hand, in a situation which does not meet the legal definition of occupation, armed forces are not legally obliged to fulfil obligations under belligerent occupation, although the factual situation may have similarities. On the other hand, to serve the protection of cultural property best, it is more favourable to follow the tightest set of obligations (those of belligerent occupation). This should be carefully arranged with the host nation, which must remain in overall control. If the host nation requests assistance, or cannot fulfil its obligations, it should be considered to mandate NATO missions to take up some of the commitments under belligerent occupation in order to protect CP best. However, in ambiguous situations without a clear mandate and task, NATO is not legally obliged to.

This brief explanation of the characteristics of the Hague Convention does not tell us the substance of the CP obligations; what may and may not be done? It does show us what the term CPP means, why

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<sup>29</sup> UNESCO Military Manual (2016), 49.

<sup>30</sup> Article 6(1) of the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) (hereafter: the fourth Geneva Convention);  
Section III of the fourth 1949 Geneva Convention (1949).

it is important, to whom it applies, and when it is relevant (different types of conflict). Figure 4 gives an overview of the discussed aspects of CPP.

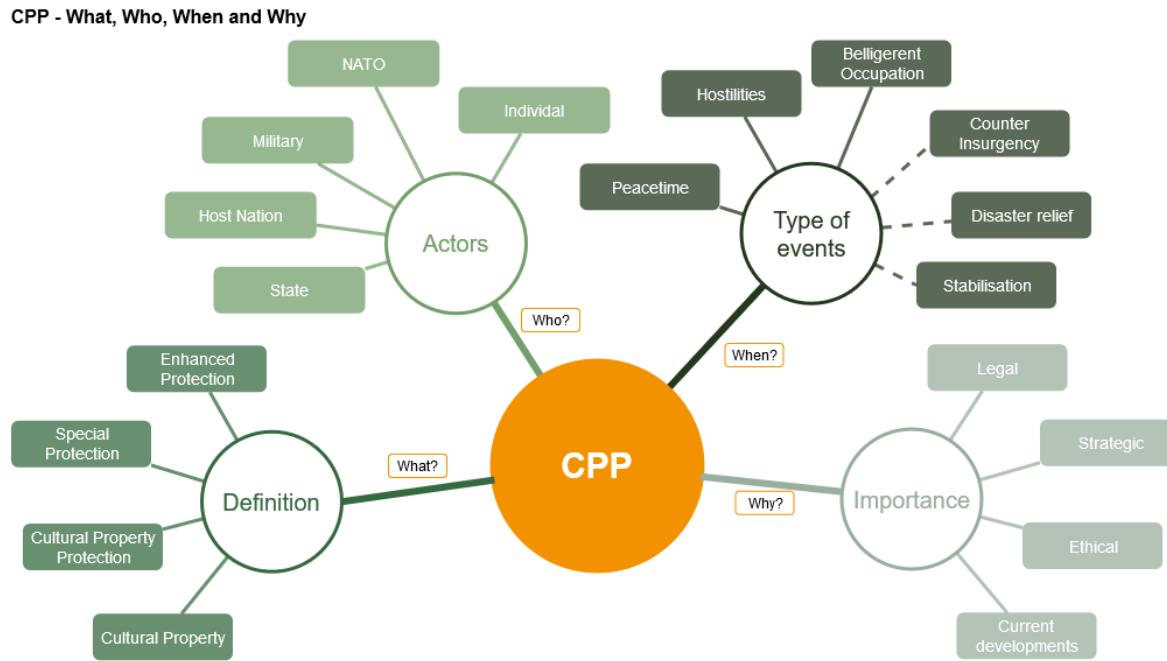


Figure 4: CPP – What, Who, When, Why.

## 1.5. Outline

The booklet continues with three subsequent chapters that each cover an aspect of CPP: protection, first aid, and looting/trafficking. These chapters each elaborate on legal obligations, practical implications and resources/tools.

### 1.5.1. Chapter division

Protection and countering looting/trafficking are core topics established by the 1954 Hague Convention. First aid is not but is added to give a complete overview of the circumstances in which CPP may be operationally significant.

Protection of CP is the core task imposed by the Hague Convention on state parties, including their armed forces. There are two pillars to protection: respect and safeguarding. Respect for CP is centred on the military task not to target CP or to take it into operational use. Safeguarding CP is the wider state party obligation to conduct peacetime planning for protection measures in the event of armed conflict. While it is civil led, NATO may be invited to support state party initiatives to execute CPP safeguarding plans. Obligations regarding protection will be further discussed in chapter two.

First aid is the second aspect of CPP. First aid covers the recovery, security and the stabilisation of affected cultural property during and directly after an emergency. Put differently, it entails the preservation of damaged CP. Military CP first aid is not an obligation under the 1954 Hague Convention. First aid is typically carried out by the owning state and specialised International Organisations (IOs) and Non-Governmental Organisations (NGOs). NATO forces may, however, be faced with requests to support state parties in first aid operations. Chapter three explains when and how NATO forces may act on CP first aid.

The third aspect of CPP is looting and trafficking; stealing CP and selling it for profit. Although the phenomenon is not unique to armed conflict, the topic is relevant to NATO. The 1954 Hague Convention obliges states and their armed forces to act to counter looting and trafficking during armed

conflict. Chapter four covers the specific rights and obligations of the NATO member state armed forces in countering looting and trafficking of CP.

#### 1.5.2. Section division

Each chapter contains information on legal obligations, practical implications and resources/tools.

First, the legal obligations regarding CPP are discussed. The section separately describes the responsibilities in the different types of situations (peacetime, hostilities, belligerent occupation). The 1954 Hague Convention and the supporting 2016 UNESCO Military Manual will guide these discussions. When relevant, other legal instruments and treaties are mentioned.

The second section focuses on the practical implications. This could be seen as the translation of the legal obligations to military reality. This section covers the following topics:

- The applicable areas of CPP within NATO and their respective tasks and challenges;
- Real-world examples;
- Approach for the practical execution of legal obligations;

The third section aims to give the reader a solid start in the execution of his/her tasks regarding CPP. This section thus presents hands-on tools, databases, leading organisations and possible further readings.

This first chapter has introduced the ‘who’, ‘what’, ‘when’, and ‘why’ of CPP and the further outline of the booklet. Next, we dive into the substantive obligations of CPP.

## 2. Protection

Protection of CP is the most important, but also the most challenging aspect of CPP. Important because it aims to prevent damage to and destruction of cultural property in the event of armed conflict. It is, however, a difficult task to plan for when assessed threats are difficult to evaluate. This chapter will try to identify the importance and difficulty of protecting cultural property. First, the legal obligations will be discussed, afterwards the practical implications and ultimately, the practical tools and resources.

### 2.1. Legal obligations

The 1954 Hague Convention covers the obligations regarding the protection of CP in armed conflict, distinguishing between respect for and safeguarding of cultural property.<sup>31</sup> Respect for CP mostly covers military conduct during armed conflict. Safeguarding denotes the proactive protection measures that state parties must put in place and execute in the event of armed conflict. The specifics of the respect and safeguarding obligations are explained in the section below.

The UNESCO Military Manual (2016) provides us with a clear interpretation of the Convention. The obligations are divided into three conflict phases, as explained in section 1.4: peacetime, hostilities and belligerent occupation.

#### 2.1.1. Respect

##### *Peacetime*

NATO should, in preparation for their responsibilities during hostilities, take the following measures during peacetime (letters A-D):<sup>32</sup>

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<sup>31</sup> Article 2 of the Hague Convention (1954).

<sup>32</sup> Article 7 of the Hague Convention (1954).

A. Include provisions on CPP in military regulations and instructions

In order to execute responsibilities on CPP during NATO-led operations, military regulations and instructions are necessary to uphold LOAC in the field. The mission-specific rules of engagement (ROE) are of particular importance in this respect. Operational directives and orders should assign responsibility for CPP activity.

B. Promote a ‘spirit of respect for the culture and cultural property of all peoples’ among all members of the NATO member state armed forces

This task can be fulfilled in various ways. Education may include cultural awareness training and education on the history and cultural heritage of the region of deployment. Besides, members of the armed forces can be informed via posters and playing desks.



**Example Playing cards on CPP / Iraq, Egypt, Afghanistan 2007-2010**

Two US organisations, Fort Drum and Colorado State University Centre for the Environmental Management of Military Lands (CEMML), cooperated in producing archaeology awareness playing cards. Covering various themes (from ‘winning hearts and minds’ to cultural preservation), each card contained a different educational message. For Iraq over 150,000 decks have been distributed since the introduction in 2007. Later, playing cards for Egypt and Afghanistan were introduced in various languages. A soldier pocket card with the essential information was designed for military personnel to fit in their uniform.

Other organisations have also been active in producing playing cards for members of the armed forces, especially in the Netherlands and Norway.

Source: Laurie W. Rush, ‘The Importance of Training Cultural Property Protection – An Example from the US Army’ (2017) Legal Gazette 38, 87; UNESCO Military Manual (2016), 18.



Figure 5: Playing cards Iraq.

C. Develop and implement peacetime military education and training on CPP in armed conflict

Training and education are crucial to be able to comply with the CPP obligations during armed conflict. It should take various forms, such as including CPP obligations in basic military training and using pre-

deployment training for education on the specific cultural characteristics of the area of interest. In addition, rehearsing CPP challenges during training exercises is crucial. Securing specialist knowledge within the armed forces requires enhanced CPP training. Section 2.2.1 elaborates on the subject of education and training.

#### D. Establish CPP specialist services or personnel within armed forces

NATO member state Ministries of Defence are obliged to include a unit with CP specialists in their armed forces. This unit should secure respect for cultural property and cooperate with the responsible civilian authorities in the event of armed conflict. State parties are free to decide on the way of organisation; the specialists may, for example, be reservists who are called upon in the event of armed conflict. It is, though, advisable for the specialists to have a significant amount of military know-how; this will improve the efficiency and effectiveness during armed conflict. The organisation of services may take any form, as long as it is established and structured.

### **CPP Obligations Protect Respect - Peacetime**

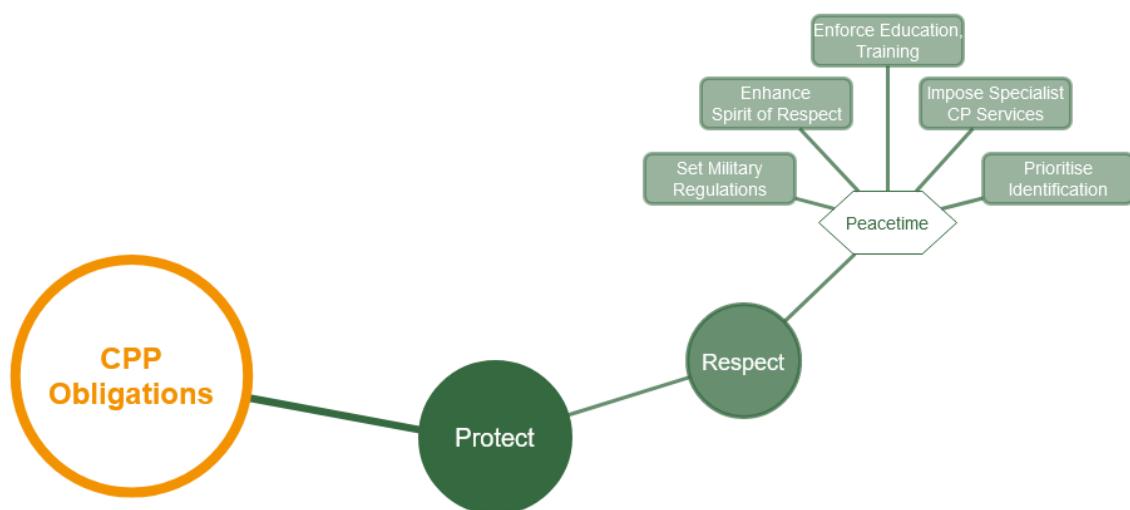


Figure 6: CPP Obligations Protect, Respect – Peacetime.

Figure 6 summarises the peacetime obligations for NATO and its member state armed forces discussed in this section (letters A-D). These obligations mostly entail the way CPP should be embedded in the organisation; it does not tell us the limits and regulations of what may and may not be done during armed conflict. That is the topic of the next section.

#### *Hostilities*

During armed conflict, the obligations regarding respect for CP apply directly to military operations. The duties of NATO armed forces during hostilities amount to the following (letters A-E):

#### A. Identification of CP

To protect CP, it is essential to know what kind of CP is located where, in the area of operations. The first state party obligation is thus the identification of CP.<sup>33</sup> This starts with the mere establishment of existence and location of CP. Afterwards, the CP should be classified on its significance to assist in prioritisation. The production of CP intelligence will result in an operationally-focused database with

<sup>33</sup> UNESCO Military Manual (2016), 23.

consistent, assured, information that is accessible, utilisable, specific, accurate and standardised. The amount of organisations that may provide data and the variety of military branches working on data collection complicates this exercise, but in every instance the starting point will be the owning state party.



### Example CPP standards for data / 2018

When setting up a CP database, it is crucial to optimise the way CP is recorded. To indicate a site with CP it is, for example, preferable to use polygon extents over centre points. "A single centre point is frequently used to identify an entire site. A polygon is a shape that is drawn to indicate a boundary. This can encompass the outside edges of a site, but additional polygons can be drawn within that to identify the extent of features within the site." The image shows the boundaries of the heritage site of Babylon and additional marking for specific property such as temples.

Source: Cunliffe, Fox, Stone (2018), 16-17.



Figure 7: Identification archaeological site of Babylon, Iraq, via Google Earth. The red lines indicate the approximate boundaries of the archaeological site and visible property (above ground). Source: Digital Globe satellite image via Google Earth, 10/08/2004, in Cunliffe, Fox, Stone (2018).

A classification of significance, both in heritage and military value, must follow the identification of CP. This enables prioritisation and proportionality assessments. Establishing the heritage value of CP is a task for heritage experts, not least when various conflicting cultural groups are involved. For example, a certain sanctuary might not be valuable for the majority of a country's population, but it might be for a specific religious minority.<sup>34</sup> Establishing the operational value of CP is a military task. The attribution of both heritage and military significance must be achieved by experts in both the

<sup>34</sup> Cunliffe, Fox, Stone (2018), 21.

military and heritage fields. Together, it enables valid priority considerations; “prioritisation is an inherent part of conflict: sometimes choices must be made.”<sup>35</sup>

Chapter 2.2 further elaborates on the practical implications of identification and valuation.

### B. Restraint of targeting CP

During hostilities, armed forces are prohibited from targeting CP unless its legal protection is suspended. There are two obligations regarding targeting.

First, in general, targeting CP is prohibited.<sup>36</sup> One may not target a church, a museum or a historic bridge, just because of its cultural value. There is an exception of military necessity to this obligation under LOAC. Under this exception, CP may be targeted if it is occupied by the enemy, thereby becoming a legitimate military objective, and if there is ‘no feasible alternative to obtaining a similar military advantage’.<sup>37</sup> A military objective is subsequently described as an object that must make ‘an effective contribution to military action by its nature, location, purpose or use’. The destruction, capture or neutralisation must, at the time of the attack, offer ‘a definite military advantage’.<sup>38</sup> There is a high threshold to fulfil all the requirements of the exception. A brief discussion of the conditions shows that.

For CP to become a military objective, CP must fulfil the following four requirements:

- The ‘what’: ‘make an effective contribution to military action’. For example, a historic bridge that is used as the main supply line for the adversary, but not the same bridge that is not used for military transport.
- The ‘how’: ‘by its nature, location, purpose, or use’. For example, a sniper that operates from a minaret, or a museum that functions as an ammunition warehouse. However, not the mere fact that a museum is under control of the adversary and protected by armed guards.<sup>39</sup>
- The ‘when’: ‘at the time of attack’. The circumstances at the time of the attack must be taken into account; the target decision must consider all information that is known at that specific time.
- The ‘why’: ‘to offer a definite military advantage when the object is destroyed, captured or neutralised’. The object must thus be a crucial factor in the particular tactical event.

When the above requirements are fulfilled, CP is judged a military objective. In addition, the exception requires that there is no feasible alternative for obtaining a similar military advantage. For example, when bypassing a building, using a more precise weapon, or laying a siege offers the same result, CP may not be targeted.

NATO forces may not target CP unless all the requirements of the exception are fulfilled. When the exception does apply, an officer commanding a force equivalent in size to at least a battalion must take the decision to attack CP, unless circumstances do not permit.<sup>40</sup> Subsequently, whenever circumstances permit, an adequate advance warning should be given.<sup>41</sup> This allows the adversary to stop any activities that make CP a military objective, and by doing so, an attack on the property becomes unlawful (as it is no longer a military objective). Besides, it is recommended to take practical

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<sup>35</sup> Cunliffe, Fox, Stone (2018), 13.

<sup>36</sup> Article 4(1) of the Hague Convention (1954).

<sup>37</sup> Article 6(a) of the second protocol to the Hague Convention (1999).

<sup>38</sup> Article 1(f) of the second protocol to the Hague Convention (1999).

<sup>39</sup> UNESCO Military Manual (2016), 28.

<sup>40</sup> Article 6(c) of the second protocol to the Hague Convention (1999).

<sup>41</sup> Article 6(d) of the second protocol to the Hague Convention (1999).

protection measures to minimise damage on CP. Equivalently to the prohibition of targeting CP, targeting ‘transport that is exclusively engaged in the transfer of CP’ is also prohibited.<sup>42</sup>



### **Example Military necessity in the Yugoslav wars/ Croatia 1991, Bosnia 1993**

There is little guidance on the interpretation of the military necessity clause in practice, since in few cases the practical application of the military necessity clause has been judged. There are, however, two relevant cases of the International Criminal Tribunal for the former Yugoslavia (ICTY).

In the Strugar case, the ICTY judged whether the shelling of the old town of Dubrovnik in 1991 by the JNA (Yugoslav People’s Army) was legally justified. The court judged that there were no military objectives in the old town; the evidence of the defence to prove that there were Croatian firing positions or heavy weapons in the old town was deemed “inconsistent, improbable and not credible”. This finding led the Court to decide that the exception of military necessity was not applicable. In this case, an appeal on the military necessity clause was not successful.

In November 1993, during the Yugoslav wars, Croatian forces destroyed the Mostar Bridge in Bosnia. The question was raised whether the military necessity clause was fulfilled to justify this attack on CP. The Appeals Chamber of the ICTY judged that the bridge was used for military purposes at the time of attack; the bridge was used for combat operations, and functioned as the main supply line of the adversary. Its destruction offered a definite military advantage. The Appeals Chamber concluded that the destruction of the bridge was lawful. This is an example of a LOAC compliant exception to the general prohibition of targeting CP.

Source: ICTY judgement IT-01-42-T Prosecutor v. Strugar [31 January 2005], para 193, 194, 295; ICTY judgement IT-04-74-A Prosecutor v. Prlić, Stojić, Praljak, Petković, Čorić, and Pušić [29 November 2017]



Figure 8: Mostar Bridge.

The second rule related to targeting prohibits causing disproportionate damage to CP when targeting a legitimate military objective.<sup>43</sup> Put differently, military action is not permitted if this will likely cause excessive incidental damage to CP in relation to the anticipated military advantage. This covers the proportionality clause; the military advantage must be proportionate to the damage to CP. It can be difficult to measure these factors. The military advantage is seen in terms of the anticipated concrete

<sup>42</sup> Article 12(3) of the Hague Convention (1954).

<sup>43</sup> Article 7(d) of the second protocol to the Hague Convention (1954).

and direct advantage. The damage to CP consists of both the magnitude of the physical damage and the value of the CP. The benefit of the attack must then be weighed against the loss of CP.

**Example Aircrafts next to the City of Ur/ Iraq 1991**

During the First Gulf War, the Iraqi forces of Saddam Hussein placed two military aircrafts next to the heritage site of Ur. Although aircrafts are a legitimate military target, coalition commanders decided not to attack them in this case. As no runway was nearby, the aircrafts were effectively put out of action. Therefore, the damage to the ancient temple would be disproportionate to the value of the destruction of the aircrafts.

Source: UNESCO Military Manual (2016), 35.

To adhere to the prohibitions of targeting CP and excessively damaging CP, the following three concrete measures must be taken:<sup>44</sup>

*Doing everything feasible to verify that CP is not targeted and the damage to CP is not excessive*

The sentence ‘everything feasible’ depends on the circumstances. A planned attack has reasonably more options to verify the target and possible damage than an immediate return of fire in self-defence. All available information must be reviewed and assessed. Verification of the targeted object and damage to CP must be included in the process of the targeting planning cycle. The addition of CP on the No-Strike List is an essential part of this.

*Taking all feasible precautions in the choice of means and methods of attack to avoid or minimise damage to CP*

The choice of means refers to the choice of weapon, favouring more precise munitions (think of blast, fragmentation, radius, etcetera).<sup>45</sup> The choice of methods refers to the way to attack, favouring methods with higher rates of precision such as the deployment of a sniper and day-light low-altitude aerial raids over bombardment or automatic-weapon fire.<sup>46</sup> In deciding on the choice of means and methods, protecting CP is, naturally, not the only consideration; risks of casualties, Protection of Civilians (PoC), and other factors are to be taken into account too – as covered in the targeting process. The targeting planning cycle should include a restricted target list. Such a list covers military targets and objectives that can only be attacked with a restriction in means and methods of attack.

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<sup>44</sup> Article 7 of the second protocol to the Hague Convention (1954).

<sup>45</sup> UNESCO Military Manual (2016), 35.

<sup>46</sup> UNESCO Military Manual (2016), 35.



### **Example Means of attack in targeting the Djinguereber mosque / Mali 2013**

Government forces planned to target insurgents situated in a house next to the Djinguereber mosque in Timbuktu, Mali. In considering the means of attack, an airstrike was decided unsuitable as the risk of damaging the mosque, a world heritage site, was too high. Instead, a choice was made for using a howitzer, being able to target the house while leaving the mosque untouched. The operation was successful.

Source: UNESCO Military Manual (2016), 35.



*Figure 9: Djinguereber mosque Timbuktu; during a UNESCO visit in the context of the unite4heritage project, April 2015.*

*Cancelling or suspending an attack when it becomes apparent that CP is targeted or damage to CP would be excessive (in terms of proportionality).*

A situation may arise where the verification before an attack is insufficient due to, for example, time and ability constraints. The attack must be cancelled or suspended at the moment it becomes clear that CP is the object of attack or damage to CP would be excessive.

Apart from the No-Strike List and the Restricted Strike List, CP should also be included in the Collateral Damage Estimation, in which the objects and magnitude of collateral damage are assessed.

For CP under special or enhanced protection, some of the above obligations are more strict. For CP under special protection the military necessity exception to targeting CP is more narrow than the original rule. In addition to the normal rules, attacking CP under special protection must be preceded by a request to a cessation of the military use of the property or its surroundings. Only a commander of a force equivalent in size to at least a division may take the decision to attack.<sup>47</sup>

For CP under enhanced protection an extra requirement applies to the military necessity clause for targeting CP. CP must be used as military objective and the attack must be ‘the only feasible means of terminating such use’. Only the highest operational level of command may decide to attack unless there is a situation of immediate self-defence. In line with the general rule, all feasible precautions (in means and methods) must be taken, and an adequate warning must be given (including time for the adversary to redress the situation).<sup>48</sup>

### **C. Restraint of damaging and destructing CP**

<sup>47</sup> Article 11 of the Hague Convention (1954).

<sup>48</sup> Article 13 of the second protocol to the Hague Convention (1954).

Apart from the prohibition to target CP under control of the adversary, it is also prohibited to damage or destroy CP under one's own control. In addition, using CP or its surroundings for 'purposes that are likely to expose it to destruction or damage' is not allowed.<sup>49</sup>

The general rule prohibits the destruction of CP to, for example, impede the progress of the adversary, clear a line of fire or deny cover to fighters of the opposing forces. Other than military reasons to destroy or damage CP are off-limits; destruction that goes beyond the military rationale or has no military rationale whatsoever is not permitted.

An exception to the general obligation exists in cases that are imperatively required by military necessity. The exception of military necessity, as explained under B, also applies to the destruction of CP under one's own control. This exception may be called upon when the cultural property is a military objective, and no feasible alternative exists to obtain a similar military advantage.<sup>50</sup> When invoking the military necessity clause, the armed forces must do everything in their power to minimise the damage. Only an officer commanding a force equivalent in size to at least a battalion is allowed to take a decision on military necessity unless circumstances do not permit. See the text box 'Military necessity in the Yugoslav wars' above for two examples of an appeal on military necessity in practice.

Besides direct destruction, it is not allowed to use CP that exposes it to destruction or damage. Put differently, CP or its surroundings may not be used 'for purposes that are likely to expose it to destruction or damage'. This involves using CP actively as a military target or objective (put a sniper in a minaret), and using CP passively in such a way that it may constitute a military objective for the adversary. In general, situations such as CP being part of a defensive line, using CP as military headquarters, or putting military assets next to CP are prohibited. The text box 'Aircrafts next to the City of Ur' on military vehicles that were located next to CP is one example of a clear deviation of this rule. The obligation also extends to the conduct of the own forces, when using the surroundings of CP might directly damage the heritage. A common example is when construction works for new military camp harm nearby archaeological fields, by digging, using heavy vehicles, and levelling the ground.

This obligation may be waived in case there is "no choice possible between such use of CP and another feasible method for obtaining a similar military advantage."<sup>51</sup>



#### Example Babylon/ Iraq 2003

With the aim to prevent looting, US Marines set up a camp near the ancient site of Babylon, Iraq. This resulted, however, in large scale destruction of the heritage site. Defensive barriers were filled with material from the site, containing archaeological remains like pottery sherds. To make the site suitable for accommodating troops, supplies and transport means, parts of the site were covered with gravel originating elsewhere, mixing archaeological remains.

Source: NATO SPS Programme (2017), 26; David J. Burbridge, 'The Integration of Cultural Property Protection into NATO Environmental Protection Policy: An Example of Good Practice' (2017) Legal Gazette 38, 14.

<sup>49</sup> Article 4(1) of the Hague Convention (1954).

<sup>50</sup> Article 6(a) of the second protocol to the Hague Convention (1954).

<sup>51</sup> Article 6(b) of the second protocol to the Hague Convention (1954).

CP under special protection or its surroundings may never be used for military purposes. The military necessity exception for CP under special protection is more narrow than the original rule. In addition to the normal rules, damaging CP under special protection must be preceded by a request to a cessation of the military use of the property or its surroundings. Only a commander of a force equivalent in size to at least a division may invoke the military necessity clause.<sup>52</sup>

For CP under enhanced protection, the exception of military necessity does not apply; the prohibition of damaging CP under own control is strict.<sup>53</sup> Exposing CP under enhanced protection or its surroundings to damage is never allowed in support of military action (actual combat). Another use is only permitted when the military necessity clause applies.<sup>54</sup>

#### D. Prohibition of requisition and retaliation.

NATO member state armed forces are prohibited from requisitioning CP or using CP as retaliation.<sup>55</sup> Both these conduct frequently occurred in the Second World War. There is no exception of military necessity that waives this prohibition.<sup>56</sup>

#### E. Respect for CP personnel

At all times, staff engaged in CPP must be respected, insofar possible in the interest of security. They should be able to continue to carry out their work, no matter which party of the conflict is in control of the territory.<sup>57</sup>

Figure 10 shows the obligations of armed forces to respect cultural property during hostilities, as discussed in this section (letters A-E).

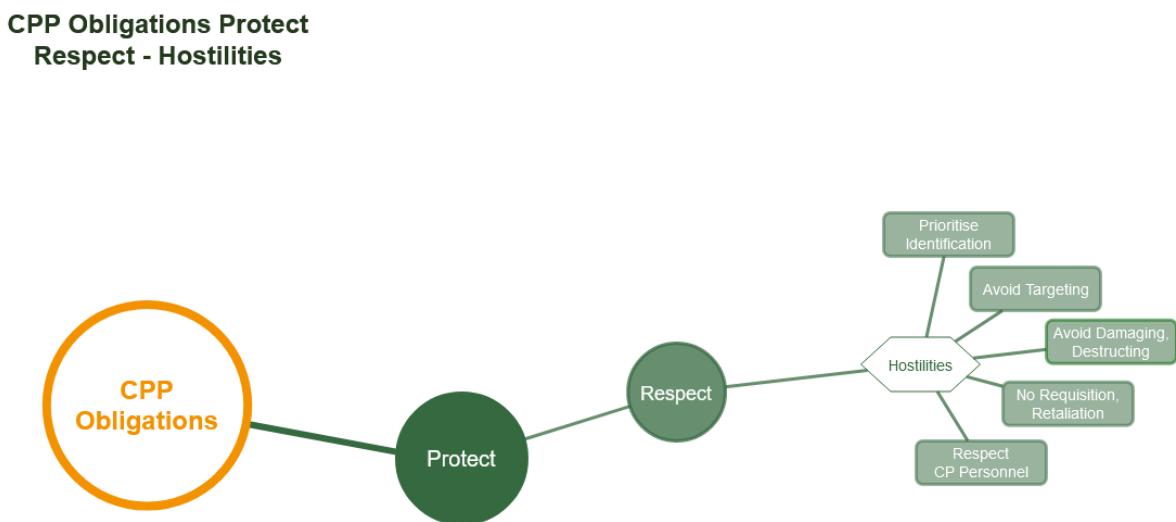


Figure 10: CPP - Obligations Protect, Respect – Hostilities.

<sup>52</sup> Article 11 of the Hague Convention (1954).

<sup>53</sup> UNESCO Military Manual (2016), 39.

<sup>54</sup> UNESCO Military Manual (2016), 41 et seq.

<sup>55</sup> Article 3(4) and 4 of the Hague Convention (1954).

<sup>56</sup> UNESCO Military Manual (2016), 47.

<sup>57</sup> Article 15 of the Hague Convention (1954).

### *Belligerent occupation*

In a situation of belligerent occupation (see section 1.4 for an explanation of belligerent occupation and the ambiguity regarding some of today's conflicts and military missions), the armed forces of a state exercise control over the territory of another state. State party authorities, for example, assigned with CP responsibilities, may still function. Additional rules regarding the respect for CP apply to armed forces that occupy a territory; letters A and B discuss these specific obligations.

#### A. General rules

The mandated force must respect all laws in force in the occupied territory unless absolutely prevented. Laws that relate to CPP and authorise state party authorities to execute these tasks must thus be left to do their job. Respect in this regard means leaving local laws in place.<sup>58</sup>

Besides, the mandated force must make sure that civilians in the occupied territory adhere to the laws in force. Dependent on the capabilities of the host nation authorities, this may mean that NATO armed forces should not interfere in enforcement at all, should assist in enforcement, or should enforce laws themselves. To reach this goal, the mandated force may, in last resort, introduce laws themselves.<sup>59</sup>

These rules do not specifically apply to the protection of CP; in chapter three and four more tasks are related to these general rules.



#### **Example US Control over City of Ur / Iraq 2003-2009**

In 2003 US forces took over the Saddam Hussein built airbase next to the City of Ur, incorporating it into their military base. While protecting the site, the military used the Ziggurat for ceremonies and guided tours. When the local archaeological inspector from the Iraq State Board of Antiquities was denied access to the heritage site, tension grew between the Iraqis and US forces. Eventually, this led to the hand-over of the heritage site to the Iraqi government. The military invited the President of the Archaeological Institute of America to attend the event, which was a smart move for public opinion.

Source: Laurie W. Rush, *Cultural Property as a Force Multiplier: Implementation for all Phases of Military Operation* (NATO 2017), 28.



Figure 11: Ziggurat of Ur

<sup>58</sup> UNESCO Military Manual (2016), 51.

<sup>59</sup> UNESCO Military Manual (2016), 51.

## B. Equivalent rules of hostilities (A-E)

All obligations regarding respect for CP – regarding identification, targeting, damaging, misappropriating and retaliating CP – apply to mandated forces.

As to misappropriation and vandalism, the mandated power must not only abide by the prohibition but also proactively promulgate military laws. This ensures violations of this prohibition are enforceable under military law, regardless of the enforceability under local law.<sup>60</sup> See also chapter four on this issue.

Figure 12 gives an overview of all legal obligations that apply to NATO forces in respecting CP. It covers the requirements in all three situations of conflict: peacetime, hostilities, and belligerent occupation. The dotted lines indicate that the obligations during hostilities also apply to the situations of peace and occupation.

### CPP Obligations Protect Respect

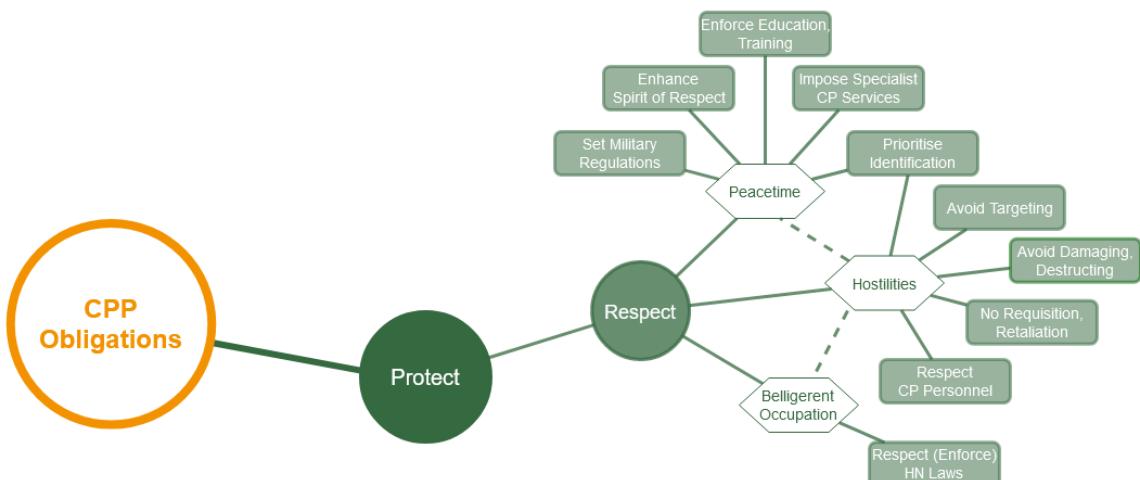


Figure 12: CPP Obligations Protect, Respect.

### 2.1.2. Safeguarding

The previous section covered the obligations relating to the respect for CP. Besides the constraining obligations set out (refraining to attack and damage CP), there is also a positive obligation in CP protection. This regards the safeguarding of CP.

#### *Peacetime*

For the obligation to safeguard CP, a state party has several duties to fulfil during peacetime. To prepare for armed conflict, it is required to make inventories and draw up plans to be employed in the event of armed conflict. Planning must include state party command, control and coordination arrangements. Emergency plans should be rehearsed regularly, and shared with coalition partners during early operational planning.

<sup>60</sup> UNESCO Military Manual (2016), 56.

In reality, most states lack useful inventories, do not have emergency plans, and fail to have a clear division of responsibilities in times of crisis. This places cultural property at great risk during hostilities. This equally applies to private cultural property institutions.

#### *Hostilities*

During hostilities CP should be protected against the dangers resulting from military operations by executing state party safeguarding plans. While the state party has the lead responsibility for this task, NATO forces have the duty to support state party safeguarding initiatives.

This entails taking necessary precautions to the maximum extent feasible.<sup>61</sup> This can be translated in, but is not confined to, the following practical obligations: removing CP from the vicinity of military objectives, providing adequate in situ protection (protection of CP at its original place, when it cannot be evacuated for example), and avoiding locating military assets near CP.<sup>62</sup> The limit of the precautionary measures to ‘the maximum extent feasible’ does not waive the necessity for dedicated action to protect.

State party authorities own safeguarding plans and their execution. That said, when a state party is no longer able to execute its responsibilities, NATO forces may take the lead, always at the invitation of the owning state party. In the case of disaster response operations NATO forces may be the first actor in the field and may conduct emergency first aid. See also chapter three in this respect.

In circumstances where NATO forces are requested to take up responsibility for safeguarding, CPP becomes a stated task that is to be translated into operational plans, and for which specialist resources are assigned accordingly. NATO CPP experts should lead such operations. The highest operational command possible under the given circumstances must be in charge of the execution of responsibilities.



#### **Example Protecting CP in Jerusalem/ British Palestine (later Israel) 1917**

In 1917 forces of the British Empire (the Egyptian Expeditionary Force) occupied Jerusalem. CP of all three religions was declared protected. Showing cultural awareness, the commander let Muslim troops of the Indian Army protect the mosques.

Source: Cunliffe, Fox, Stone (2018), 3.

#### *Belligerent occupation*

Also during the occupation (see section 1.4 for an explanation of belligerent occupation and the ambiguity regarding some of today’s conflicts and military missions) the primary responsible party for safeguarding CP is the host nation.

The mandated NATO forces must support the civilian authorities in safeguarding CP. This, for example, relates to guarding cultural heritage objects. NATO armed forces should back-up, assist, or replace the host nation mechanisms when the authorities are not able or willing to safeguard CP.<sup>63</sup>

<sup>61</sup> Article 8 of the second protocol to the Hague Convention (1954).

<sup>62</sup> Article 8 of the second protocol to the Hague Convention (1954).

<sup>63</sup> UNESCO Military Manual (2016), 58-59.



### **Example TPC Iraqi Site Guard Program/ Iraq 2003**

The Carabinieri Tutela Patrimonio Culturale (TPC), the Italian unit for the Protection of Cultural Property, was deployed to Iraq in 2003. At the request of UNESCO, the peacekeeping mission worked to restore social order. This involved, among others, the protection of CP by supporting capacity-building in countering looting and site protection.

The Carabinieri identified all key sites with CP in the region to enhance protection. Besides, they successfully trained the Iraqi Facilities Protection Service (FPS), including providing new uniforms and supplies. After six years, six visits were conducted to measure the results; the looting had ended and in various other measures of social stability the region performed significantly better.

Source: Rush (2017), 16.

Besides, the mandated forces must prohibit and prevent any conduct that conceals or destroys evidence of CP and all forms of misappropriation. This relates to any deliberate alteration or change of use of CP that conceals or destroys cultural, historical or scientific evidence.<sup>64</sup> Modifications of the use of CP that are not conducted to destroy evidence is allowed. However, it should still be carried out in close cooperation with the local authorities.<sup>65</sup> See chapter four for further elaboration on countering looting and trafficking.

Figure 13 shows the legal obligations regarding the aspect of protection of CP. It summarises the obligations regarding respect for and safeguarding of CP in peacetime, during hostilities and in times of belligerent occupation. The dotted line between peacetime and state party obligations indicates that the obligation is not specifically for the military but for state parties in general.

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<sup>64</sup> Article 9(1)(c) of the second protocol to the Hague Convention (1954).

<sup>65</sup> Article 9(2) of the second protocol to the Hague Convention (1954).

## CPP Obligations Protect

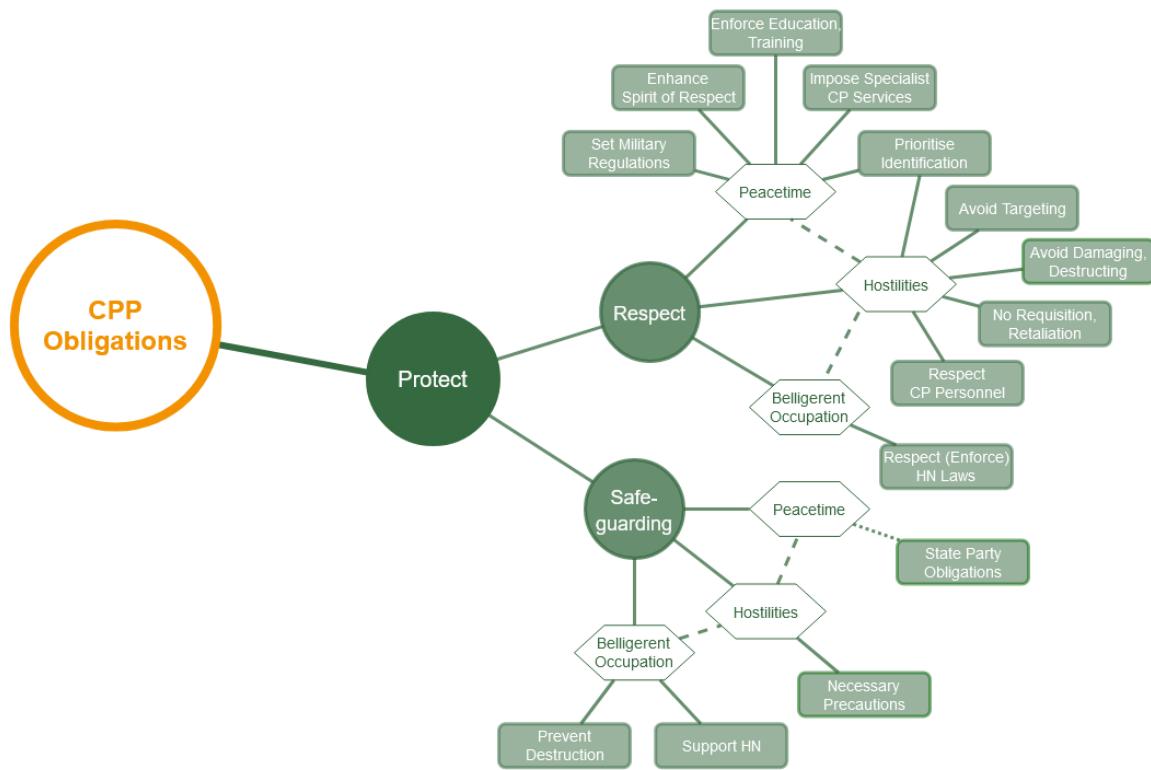


Figure 13: CPP Obligations Protect.

### 2.2. Practical implications

The CPP obligations are applicable in various situations, concerning multiple military disciplines, on several levels. While it is difficult to compare the different situations that might arise in the field, an attempt has been made to provide clear guidance to members of the armed forces when acting on a situation where CP is involved.

This chapter elaborates on the general CPP implications for NATO and its member states, the applicability of CPP to NATO branches (Joint Functions), and the CPP approach for practical guidance.

#### 2.2.1. General implications

The legal obligations regarding the protection of CP induce NATO member states to take some general measures. These measures provide their armed forces with knowledge and resources to apply to CP situations during a mission. Such actions are listed and elaborated below.

##### *Education*

Complying with the legal obligations on CPP is only possible if members of the armed forces are adequately educated. A general implementation of educational programmes, both in basic military training, specialist training, and pre-deployment education is preferable and recommended over ad hoc and dispersed measures.



#### **Example CPP in videogame / 2017**

Education may take various forms. In 2017 two retired US Navy Commanders introduced the video game “culturalrecon”. It is used to educate the basic principles and concepts of CPP to US military personnel preparing for deployment. In an interactive format, the game requires the player to identify cultural heritage sites, stop looters and gain respect of the local population. “The player has weapons, but in order to win, he/she must resist the urge to use them.”

Source: Rush (2017) Legal Gazette 38, 86; <http://articulatedpython.com/cultural-recon/>

All members of NATO member state’ armed forces are routinely educated on LOAC. As CPP is part of LOAC, the rights and obligations to protect CP during armed conflict should be integrated into ongoing LOAC education.

Pre-deployment training should incorporate education on CPP in the area of interest. To be able to recognise and handle CPP situations, this should cover a range of topics, such as cultural awareness, regional history and regional cultural expressions. Besides, teaching the specific rights and obligations regarding CPP is a fundamental part of good preparation for deployment. This not only includes the legal aspect but should also contain education on potential risks and possible courses of action when faced with CP challenges. Clear guidelines on how members of the armed forces should behave when encountering CP in various circumstances should be taught and practised.



Figure 14: Armed forces visit a mosque in Timbuktu, 2019.

Apart from a basic CPP capability for all members of armed forces, more specialist knowledge is essential too. This entails providing CPP specialist training for selected members of NATO state party armed forces. Good examples are the UK CPP Special to Arm course (2019) of the UK Reserves CPP Unit, the US training for the Reserves Officers of the new Cultural Heritage Task Force (2020) and UNESCO training on the protection of cultural heritage in armed conflict.

#### **Training exercises**

To acquire and improve skills on CPP, it is crucial to practise real-world scenarios during exercises. This is possible when CPP is written into the exercise setting from the outset of the planning process. Being able to recognise, describe, and report CP are skills that are essential to conducting proper CPP. During planning for, and the execution of field training exercises, members of NATO state party armed forces should develop these skills.

Training in CPP does not only mean including CP in the No-Strike List. Situations involving a manoeuvre alongside a historic church with valuable artefacts, or the frontline laying close to an archaeological excavation, for example, enable the practice of CPP skills for all relevant branches. All obligations

should be practised in various types of conflict and in different cultural regions. In this way, the armed forces adequately prepare for complying with the legal obligations during armed conflict.

To provide for adequate military training, CPP should be written into the highest level exercise settings, included in specific exercise scenarios, and inserted into exercise play from the moment strategic guidance is given. In particular, the structure and organisational characteristics of state party ministries of culture, along with state party inventories of CP in the Enhanced, Special, and General categories must be provided if the 1954 Convention is to be exercised realistically during exercise play.

#### **Example Trident Jaguar / Norway and Greece 2018**



The addition of a CP scenario to NATO exercise Trident Jaguar in 2018 was highly successful. Trident Jaguar was a joint headquarters operational exercise testing the Alliance's military capacity and readiness.

The CPP challenges in the exercise involved activities like assisting the host nation with a museum evacuation, establishing coalition command and control arrangements and protecting a world heritage site implicated in joint combat operations. This implied a risk management exercise (a CPP estimate) and combined planning of kinetic targeting and a post-combat return of full control to the host nation. The exercise showed that the intention, the capability and the awareness to handle CP issues at the training audience could be improved.

Source: Blue Shield International, 'Exercise Trident Jaguar 2018 report' (2018).



Figure 15: NATO exercise Trident Jaguar 2018.

#### *Military rules and regulation*

To provide for consistent and adequate military conduct, CPP should be the subject of NATO regulations, directives and instructions. These should provide a translation of international law to military conduct at the strategic, operational and tactical levels. It should, among others, include the (disciplinary) consequences of violating legal obligations. The Hague Convention's 'mission of control' is of key importance herein; directives should assign responsibility for CPP activity.

#### *Structural ties with governments, CP IOs, NGOs, experts*

It is crucial for NATO forces to establish a structural liaison with state party ministries of culture, global experts, IOs and NGOs in peacetime. Whereas governments (should) have inventories and safeguarding plans, CP expert organisations have valuable knowledge and resources that may be useful during the conduct of operations. They may also have the capacity to help design education and training tools, contribute to CPP scenarios for exercises, and provide consultation for incorporating CP regulations and instructions in the military organisation. An example of useful cooperation can be seen in the example 'Playing cards on CPP' in section 2.1.1.

#### *Identification*

The task of identifying CP means gathering data both on the existence of CP and on the value of CP to assist in prioritisation. This is, however, only the first step in establishing a broader CP intelligence, that evaluates CPP factors with a view to informing operational decision making.

Multiple sources may be used to obtain data on CP.

- National armed forces and NATO dedicate resources to the collection of CP data.<sup>66</sup> In Libya for example, information on the location of CP was provided by the US and shared through the NATO Intelligence Fusion Centre.<sup>67</sup> NATO should be prepared to assign intelligence, surveillance and reconnaissance assets towards the production of CP intelligence, when operationally necessary.
- Through bilateral cooperation, state inventories of cultural property might become accessible to NATO. As mentioned in section 2.1.2, although state parties are obliged to have such inventories, in practice this is often not the case, or it might not be shared with NATO or foreign armed forces.
- International cooperation enables the sharing of CP information. CP expert organisations may develop records of cultural heritage in a country of interest and share it with NATO. This proved highly useful during, for example, the mission in Libya (see the example ‘No-Strike Lists including CP’). It should, however, be taken into account that these inventories were compiled using standards and prioritisation mechanisms that are different from NATO’s intelligence protocols.
- When deployed in the field, liaison with stakeholders, such as local experts, authorities, archaeologists, and heritage workers (museum staff), may be valuable for the development of CP intelligence. The local population may also be regarded as an expert group with relevant knowledge.



#### **Example No-Strike Lists including CP / Libya 2011**

In 2011 the International Council of Museums (ICOM) made a ‘watch-list’ for NATO with Libyan cultural property. The Blue Shield conveyed a similar list with CP during Operation Unified Protection (OUP). The list was successfully implemented in the No-Strike List and used as CP intelligence input. Six communication and radar vehicles of Gadhafi loyalists that were parked at a Roman building were consequently targeted with precision weapons rather than a large weapon. In this way, the vehicles were destroyed while the site was protected.

Source: Patty Gerstenblith and Nancy C. Wilkie, ‘The US Committee of the Blue Shield and the Blue Shield Movement (2017), Legal gazette38, 77; Cunliffe, Fox, Stone (2018), 9; NATO SPS programme (2017), 24.

In 2012, the NATO Joint Analysis and Lessons Learned Center analysed the lessons learned from the operation in Libya. They emphasised that the success to protect CP during OUP was mainly due to states and expert organisations that provided CP data. They concluded however, that for future operations it is not guaranteed that external partners will or can provide this service (in time). The report emphasised it poses a risk for future operations when there is no NATO process in place that ensures the construction of CP intelligence.

Source: NATO SPS Programme (2017), 25.

<sup>66</sup> Bi-Strategic Command Directive 086-005. Implementing Cultural Property Protection in NATO and NATO-led operations and missions (SH/J9/CL/SG/TT001345), 12.

<sup>67</sup> NATO SPS Programme (2017).

The protection of CP thus asks for a range of activities, that should be undertaken on a general level. Education, training, regulation, liaison, and identification (intelligence production) are tasks that apply across branches, units and specialisms; a truly cross-cutting topic.

### 2.2.2. Relevant branches

This section discusses the specific NATO branches for which CPP is particularly relevant as a cross-cutting topic. In a wide variety of situations, CP challenges cannot be solved by one CPP specialist operating independently – specific knowledge in specific branches is needed to react adequately on CP challenges.

Reiterating the CP obligations to protect (section 2.1, figure 13), the relevant branches for each requirement are mentioned.

Identification of CP and the subsequent production of CP intelligence is a task that applies mostly to the Intelligence (J2) assisted by the CIMIC (J9) branch. While intelligence staff can collect information and develop CP intelligence, CIMIC enables liaison with other organisations and experts that can contribute. The professional CPP dialogue will require professional CP specialist officers accommodated in the J9 branch.

The obligation to refrain from targeting and occupying CP whenever possible is especially relevant for the branches involved with intelligence (J2), operations (J3) and plans (J5). For all these branches, CPP considerations should be factored into the planning and decision-making process as a matter of structural design.

The importance of the logistics (J4) and engineering (JENG) branch should, however, not be underestimated either. Damaging CP can easily happen outside pure combat when logistical or engineering operations do not adequately assess consequences on CP. The case of Babylon (see example ‘Babylon’, section 2.1.1), where a military camp was built next to a heritage site inflicting

#### **Example Engineering military bases / Afghanistan 2016**

In 2016 research has been conducted to assess how often military bases affected cultural heritage. A pilot survey showed that, from the military sites known from open source information, nine were located on or close to archaeological sites. All nine caused damage to the site. Four of which caused substantial damage, meaning the construction of trenches, pits, and roads by heavy equipment. The other five inflicted light damage or the risk of future harm.

Source: NATO SPS Programme (2017), 24.



Figure 16: Military base in Afghanistan, (Meymaneh); no relation to the example.

heavy damage to the property, is a clear example hereof. This is unfortunately not the only example in this regard, see the example ‘Engineering military bases’.

The prohibition on requisition and retaliation is a general obligation, that must be enforced across the armed forces of NATO member states. This does also apply to respect CP personnel.

The responsibility for active protection of CP, including providing evacuation or adequate in situ protection, is a state party responsibility. Any military task flowing from the obligation to safeguard should be discussed with military CPP experts. The J9 is able to liaise with local organisations that may initiate evacuation of CP in the area. It is important to establish oversight of such operations and prioritisations.

### 2.2.3. CPP approach

When encountering CP, non-specialist military personnel must know how to act. With reference to the CPP Estimate employed by CPP specialists,<sup>68</sup> the CPP approach aims to provide a step-by-step approach to use in field situations where CP is involved.

The overall goal of any CPP related action is to strike the balance between advancing military objectives and protecting CP during armed conflict.

The CPP approach consists of *six actions* that give guidance in any operational CPP context. The actions are categorised in three steps: prepare, observe, refer (POR). First, however, some prerequisites must be met.

#### In advance

Due to the variety of situations in which CPP can be relevant for the armed forces, all military personnel must have basic capabilities to react on CP in a military context. This requires some general preconditions to be met, as discussed in section 2.2.1.

Specifically, all military personnel must know how CP in the mission area may look like, to be able to recognise it. Substantive cultural **training** is indispensable. Besides, all members of the armed forces must be trained on the LOAC CPP rights and obligations. Non-specialists may face acute CP issues that must be addressed according to international law. Another precondition is the availability of knowledge and expertise of CPP experts for military personnel, regarding the **mission of control**. It is important that CPP experts are involved in decision making on CPP issues. The **liaison** with relevant stakeholders – the host nation, IOs and NGOs, must be in place before field operations start. Lastly, **identification** of CP and CP intelligence provides field operations with the necessary information on the place and form of CP, and consequential potential CP issues.



Figure 17: CPP Approach, in advance.

<sup>68</sup> Fox, P., ‘CPP Estimate – Cultural Property Protection input to the Operational Planning Process’ (2020) (hereafter: CPP Estimate).

### A. Prepare

When preparing for an operation, it is crucial to know the **military mandate on CPP (action 1)**. The division of responsibilities should be clear, both within the NATO mission and within the civil society. Military personnel needs to know who will take decisions on CPP issues within the command structure (and is legally authorised to do so). Outside the mandated NATO mission, overall responsibilities regarding CP will lay at the host nation (which department is in charge?) or with an international organisation (taking care of evacuations, for example). Put differently, military personnel must precisely know what falls within the military mandate and what remains the responsibility of the host nation.

During the preparation phase, CPP should be included in **scenario planning (action 2)**. Many CP situations can be anticipated, and should, therefore, be taken into account when planning an operation. For example, in an urban area combat situation, it may be anticipated that the adversary will make use of nearby CP for shelter. By preparing military personnel for the various CP situations that may occur, and what trade-offs may be at hand, a better decision can be made in the field.



Figure 18: CPP Approach, prepare.

### B. Observe

During an operation we focus on two actions for field officers. It starts with **recognising CP (action 3)**. In some cases this may be obvious; a church, mosque, or statute has familiar characteristics which makes them relatively easy to identify. There is, however, also a lot of CP that is less recognisable. Think, for example, of graveyards (unorganised heaps of earth, with litter across the field, and no fence), sanctuaries of unfamiliar religions, or archaeological sites that are not indicated. Recognising CP directly relates to the training and education of military personnel prior to any operation.



Figure 19: Graveyard Afghanistan.

When CP is identified, the property should be **described (action 4)**. This entails a description of the general external characteristics of the CP, such as the location, the exterior, and recognisable characteristics. Besides, members of the armed forces should aim to answer the 5WH questions; what is the function of the property, where is it situated, who visits the property, when and why do they

visit, and how is the CP dealt with (e.g. guarding, maintenance, etc). Such comprehensive description can be made by observation, supplemented with, if possible, contact with the local population. An extensive description helps CPP experts to indicate the value of CP, possible threats to it and the criticality of the CP to the mission.

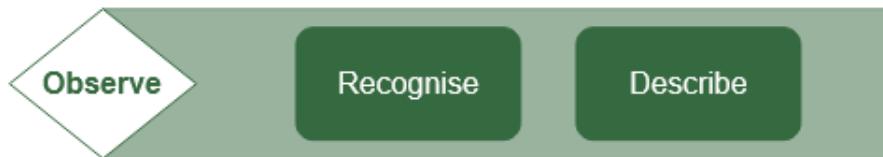


Figure 20: CPP Approach, consider.

### C. Refer

After observation military personnel should actively refer to the CP situation. This is optimally done by **reporting** the information up the chain of command and registering what has been observed (*action 5*); think of the common phrase ‘if you don’t tell, it didn’t happen’. The standard reporting methods are suitable to apply to CPP situations.

Afterwards, when the situation allows, the courses of action regarding the CP situation should be determined in close liaison with **CPP experts** (*action 6*). The CPP experts should, by using the CPP estimate, determine the best courses of action that balances advancing military objectives and protecting CP.



Figure 21: CPP Approach, refer.

With good preparation, observation and referral, members of the armed forces are able to optimally serve the protection of CP in an operational context. Balancing military objectives with the protection of CP is the core issue in tackling CP issues. Consequently, CPP experts can assess the value, the threats and the risks of the CP to decide on the best course of action.

Figure 22 shows the CPP approach, compromising of all steps above.<sup>69</sup>

<sup>69</sup> This approach differentiates from the NATO comprehensive operational planning directive as the approach’s aim is different. While the NATO operational planning process covers the full spectrum of a crisis (from identification to resolution), this CPP approach aims to give concrete tools to use in an operational context. The operational planning directive may be of additional guidance in handling CP situations.

## CPP Approach

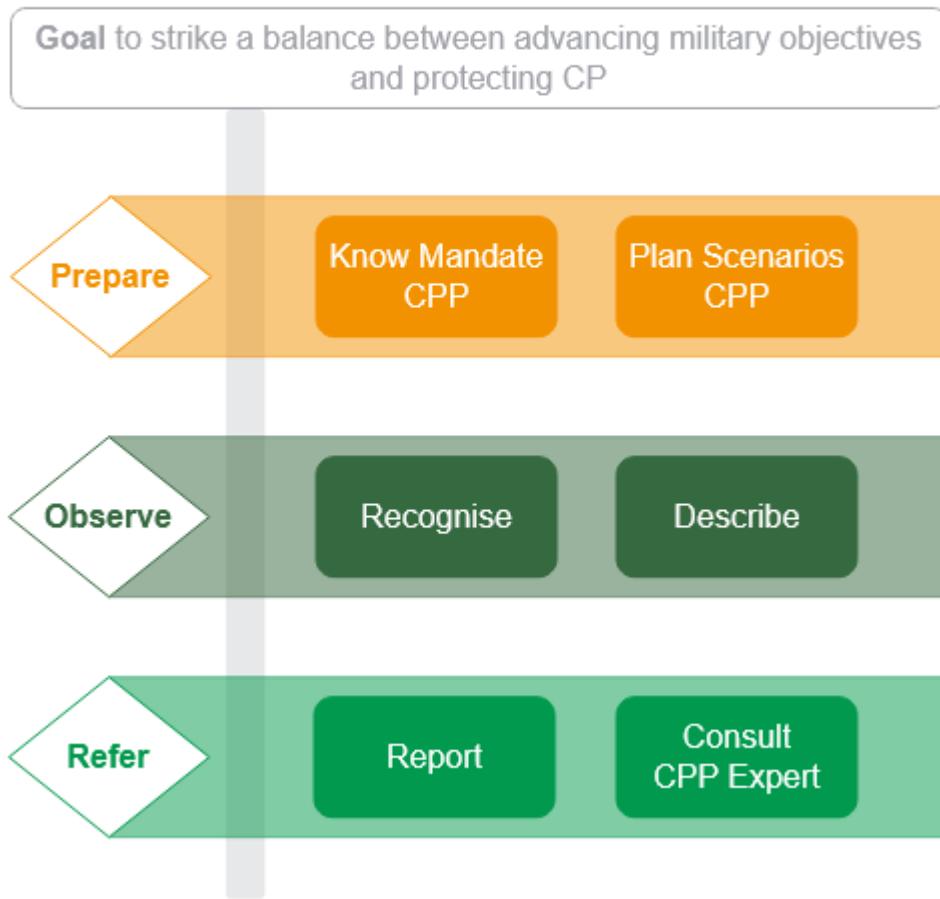


Figure 22: CPP Approach.

## 2.3. Resources and tools

This section provides relevant information for the practitioner in the field. After the discussion of the legal obligations and practical implications of protection, the following paragraph aims to give the reader a head start to act on CPP challenges. First, relevant organisations are listed and afterwards databases and further readings are discussed. The footnotes provide relevant links to websites.

### 2.3.1. Relevant organisations

In fulfilling all CP protection obligations, information, advise and sometimes help can be provided by several international and non-governmental organisations (list in alphabetical order).

#### *International organisations*

##### Committee for the Protection of Cultural Property in the Event of Armed Conflict

The second protocol of the 1954 Hague Convention called into life this intergovernmental committee. It grants the status of enhanced protection to cultural heritage. Besides, it decides on requests for international assistance during emergencies; a state party may request financial or technical support for the protection of CP during or directly after an armed conflict. For NATO, this committee is not of particular relevance.

##### European Union

CPP is for all EU institutions (most notably the European Commission, the European Parliament and the European Council) a subject of attention. Briefings, reports and policy have been made on the protection of cultural property, following closely the international legal obligations stemming from the Hague Convention.<sup>70</sup> Especially in looting and trafficking the EU plays a significant role.

##### UNESCO

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) is the guardian of the 1954 Hague Convention on CPP. It is the leading organisation regarding the coordination of projects on CP protection, first aid and trafficking. Besides, it manages various lists of valuable CP; the world heritage list, and the lists of CP under special and enhanced protection. Cooperation between UNESCO and NATO member state armed forces could foster CP training, identification and expert knowledge.<sup>71</sup>

##### UNOSAT

For identification of CP it is valuable to establish a strong liaison with the Operational Satellite Applications Programme (UNOSAT), part of the United Nations Institute for Training and Research (UNITAR). The UN organisation delivers satellite imagery analysis on crises and disasters. Satellite images, geospatial information systems and related information resources are crucial in identifying and monitoring CP in the area of interest - especially in the field of intelligence and CIMIC.<sup>72</sup>

##### *ICRC*

The ICRC's core function is to provide humanitarian protection in armed conflict and promote respect for LOAC. A derivative hereof is the protection of CP, as part of LOAC. The ICRC works to enhance compliance with the CPP obligations and may assist in the education and training activities of the armed forces. Besides, during armed conflict, the ICRC may be allowed (when consented by all

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<sup>70</sup> See for example [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621876/EPRS\\_BRI\(2018\)621876\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621876/EPRS_BRI(2018)621876_EN.pdf); [https://ec.europa.eu/culture/content/european-framework-action-cultural-heritage\\_en](https://ec.europa.eu/culture/content/european-framework-action-cultural-heritage_en).

<sup>71</sup> See <https://en.unesco.org/> and <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/contacts/>.

<sup>72</sup> See <https://unitar.org/sustainable-development-goals/satellite-analysis-and-applied-research>.

conflicting parties) to rescue CP in danger, for example by evacuation or protection. It is thus useful to identify the relevant ICRC departments and points of contact when preparing for a mission.<sup>73</sup>

#### *NGOs*

##### Blue Shield

The Blue Shield is a non-profit organisation committed to the protection of CP across the world ('the cultural equivalent of the Red Cross'). It is the leading organisation regarding the protection of CP in armed conflict. The Blue Shield organisation consists of an international component and national committees. Close cooperation with NATO has resulted in CP training, the inclusion of CP in NATO exercises, and the provision of No-Strike Lists in countries of deployment. It is wise to establish a close liaison with this organisation, as access to experts on CP is crucial during armed conflict.<sup>74</sup>

##### CHAG

CHAG, the Nordic Center for Cultural Heritage and Armed Conflict, is a non-profit organisation based in Denmark. The independent organisation aims to assist the international CP community in improving its approach towards CPP. It was initiated after the first NATO SPS project on CPP.<sup>75</sup>

##### CHAMP and MilCHAG

The US-based organisations' CHAMP (Cultural Heritage by Archaeology & Military Panel) and MilCHAG (Military Cultural Heritage Advisory Group) aim to create close collaboration between the military and heritage professionals. Aside from supplying education and training, MilCHAG also provides CPP support for military operations during the full spectrum of operations.<sup>76</sup>

#### *Academically based organisations*

##### ASOR and other US organisations

US organisations on CP research are plentiful. The American Schools of Oriental Studies (ASOR) provide relevant research on CPP. It is a consortium of 75 US Universities and institutions aimed at research and public understanding of the history and cultures in the Middle Eastern region. Other examples are the Archaeological Institute of America and institutions related to individual universities (for instance the YPCH of Yale, the K9 artefact finders of Penn University, and the CEMML of Colorado State University).<sup>77</sup>

##### Culture Under Threat Task Force

Set up by the Antiquities Coalition, Asia Society, and the Middle East Institute, the Task Force #CultureUnderThreat works to counter threats to world heritage in the Middle East and North Africa region (MENA). It brings together experts in heritage, law enforcement, military, and security sectors. It published recommendations to the US government in 2016 advocating for US actions to end cultural crimes in the MENA region.<sup>78</sup>

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<sup>73</sup> See <https://www.icrc.org/> and <https://www.icrc.org/en/resource-centre/result?t=cultural+property+protection>.

<sup>74</sup> See <https://theblueshield.org/>.

<sup>75</sup> See <https://www.heritageconflict.org/>.

<sup>76</sup> See <https://www.aiamilitarypanel.org/>.

<sup>77</sup> See <http://www.asor.org/>; <https://www.archaeological.org/>; <https://ipch.yale.edu/>; <https://www.vet.upenn.edu/research/centers-initiatives/penn-vet-working-dog-center/working-dog-news-stories/working-dog-center-releases/can-canines-sniff-out-smuggled-artifacts>; <https://www.cemml.colostate.edu/>.

<sup>78</sup> <https://live-ac-taskforce.pantheonsite.io/>.

## EAMENA

The organisation EAMENA (Endangered Archaeology in the Middle East and North Africa) is academically based at the Universities of Oxford, Leicester, and Durham. EAMENA records and evaluates the status of the archaeological landscape in the MENA region. Remote sensing technologies and fieldwork provide input for a publicly available dataset to inform heritage professionals.<sup>79</sup>

## Heritage in War

The Heritage in War project, part of the UK based and publicly-funded Arts & Humanities Research Council (AHRC), is a research project on the destruction of cultural property in armed conflict. With an ethical and theoretical perspective, international law and practice on CPP are analysed.<sup>80</sup>

## *Armed forces CPP specialist units*

### Carabinieri Tutela Patrimonio Culturale

The Italian Tutela Patrimonio Culturale (TPC) unit of the Carabinieri, a specialist police force, has a long history in CPP. The units primarily focus on cultural property crimes (excavations, trafficking and fakes). Their contribution to military missions both in CPP and in combatting looting and trafficking should not be underestimated. As experts on the topic, close cooperation is highly recommended – both on education, training and expert advice.<sup>81</sup> Chapter four discusses this organisation in more detail.

### US armed forces CPP specialist units

The distant successor of the ‘Monuments Men’ is the Cultural Heritage Task Force, part of the Army Civil Affairs and Psychological Operations Command at Fort Bragg in North Carolina. The unit will consist of Army reserve officers that are also experts on cultural property like curators, scholars, archaeologists and conservators.<sup>82</sup>

At Fort Drum, home of the 10<sup>th</sup> Mountain Division, the Cultural Resources Branch included CPP in educational programs and incorporated various CPP challenges in field exercises. The development of playing desks, as mentioned in chapter 2.1.1, was initiated by Fort Drum in cooperation with several other organisations.

### Other armed forces specialist units

The UK Reserves CPP unit with CPP expert reservists is recently established (operational by 2020). In 2019, the unit organised the UK CPP Special to Arm course, which was attended by CP military staff from various countries.<sup>83</sup>

In Austria, the LO/milPCP unit (Liaison Officers Military Protection of Cultural Property, part of the Civil-Military Liaison Service) serves as a liaison between military and civilian authorities.<sup>84</sup> The Austrian army dedicates structural efforts on education and training in CPP, for example in local resilience.<sup>85</sup>

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<sup>79</sup> See <https://eamena.arch.ox.ac.uk/background-and-aims/>.

<sup>80</sup> See <https://www.heritageinwar.com/>.

<sup>81</sup> See <http://www.carabinieri.it/multilingua/en/the-carabinieri-tpc>.

<sup>82</sup> See <https://www.nytimes.com/2019/10/21/arts/design/new-monuments-men.html>.

<sup>83</sup> UK Blue Shield, ‘UKBS supports UK’s first CPP Special to Arm course’ (October 2019), <https://theblueshield.org/ukbs-supports-uks-first-cpp-special-to-arm-course/>.

<sup>84</sup> UNESCO Military Manual (2016), 22.

<sup>85</sup> Blue Shield, ‘CPP features prominently at Coping with Culture Conference’ (November 2018), <https://theblueshield.org/cpp-features-prominently-at-coping-with-culture-conference/>.

Also the armed forces of France, the Netherlands, Belgium, Poland, and Norway have, to a greater or lesser extent, established CPP units and structural expert cooperation.

### 2.3.2. Data resources

As emphasised in section 2.1 and 2.2, for CPP to be carried out effectively, it is crucial to have complete, standardised, and good quality information on the location and value of CP in the area of interest. Below, various sources of CP data are listed. Note this list is subject to changes; the relevance is dependent on the area and subject of interest and may change over the years. The starting point for CP data is always the host nation.

#### *UNESCO*

As the leading UN organisation on CPP, UNESCO manages and provides various lists of the most important CP across the world.

- UNESCO World Heritage List<sup>86</sup>
- List of CP under enhanced protection<sup>87</sup>
- List of CP under special protection<sup>88</sup>

#### *UNOSAT*

UNOSAT, the satellite analysis team of UNITAR, publishes up-to-date maps on the consequences of disasters. This does not necessarily entail data on CP in armed conflict. However, useful information regarding destruction and looting may be found.<sup>89</sup> UNESCO and UNOSAT have a memorandum of understanding on the provision of intelligence concerning the looting of cultural property.

#### *MENA region*

For the MENA region, more specific databases exist. EAMENA created an open-access database with information on heritage under threat. It allows heritage professionals to be better informed and enables them to prioritise protection measures.<sup>90</sup>

The ASOR Cultural Heritage Initiatives (CHI) focuses on education, emergency responses, and documentation of damage on CP. Its database with site inventories of Syria, Iraq and Libya is comprehensive, containing 15,400 sites. Reports and updates on damage provide up-to-date information on the situation on the ground. The database is not open access, but access may be requested.<sup>91</sup> Besides, research that analysed this data contains useful insights.<sup>92</sup> The site of ASOR CHI provides access to monthly reports and publications.<sup>93</sup>

#### *Other resources*

The CIMIC Handbook (in chapter 6.1.2 Information Sharing) provides some general data platforms with humanitarian data. The UNOCHA (United Nations Office for the Coordination of Humanitarian

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<sup>86</sup> See <http://whc.unesco.org/en/interactive-map/>.

<sup>87</sup> See <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/protection/enhanced-protection/>.

<sup>88</sup> See <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/protection/special-protection/>.

<sup>89</sup> See <https://unitar.org/maps>.

<sup>90</sup> See <http://eamena.arch.ox.ac.uk/resources/database-2/>.

<sup>91</sup> Access to the database of Syria, Iraq and Libya CP sites can be requested via [asorhert@bu.edu](mailto:asorhert@bu.edu).

<sup>92</sup> For example: Casana and Laugier ‘Satellite imagery-based monitoring of archaeological site damage in the Syrian civil war’ (monitoring damage to archaeological sites by using satellite imagery) 2017 PLoS ONE 12 (11);

M. Danti, S. Branding, and S. Penacho, ‘The American Schools of Oriental Research Cultural Heritage Initiatives: Monitoring Cultural Heritage in Syria and Northern Iraq by Geospatial Imagery’ 2017 Geosciences 7 (4).

<sup>93</sup> See <http://www.asor.org/chi>.

Affairs) humanitarian data exchange, for example, is a hub for humanitarian organisations offering open-source data on a wide variety of topics. By searching on location, organisation, or theme (cultural, heritage, etcetera), useful datasets can be found. However, data on CP is scarce.<sup>94</sup>

Increasingly, archaeologists are able to detect looting remotely through landscape analysis, aerial photographs (made with drones) and satellite imagery (available on Google Earth and Bing maps).<sup>95</sup>

### 2.3.3. Further reading

More information on the protection of CP can be found in the following resources.

Regarding the legal obligations:

- Bi-Strategic Command Directive 086-005. Implementing Cultural Property Protection in NATO and NATO-led operations and missions (SH/J9/CL/SG/TT001345).
- Roger O’Keefe, Camille Péron, Tofiq Musayev, and Gianluca Ferrari, *Protection of Cultural Property: Military Manual* (International Institute of Humanitarian Law and UNESCO 2016).<sup>96</sup>

Regarding CPP and armed forces in general, and NATO specifically:

- Frederik Rosén, *NATO and Cultural Property. Embracing New Challenges in the Era of Identity Wars* (NATO SPS Programme and the Nordic Centre for Cultural Heritage and Armed Conflict 2017).<sup>97</sup>
- Laurie W. Rush, *Cultural Property as a Force Multiplier: Implementation for all Phases of Military Operation* (NATO 2017).
- NATO Legal Gazette ‘Cultural Property Protection: NATO and other perspectives’ (2017) issue 38.
- Emma Cunliffe, Paul Fox, and Peter Stone, ‘The Protection of Cultural Property in the Event of Armed Conflict: Unnecessary Distraction or Mission-Relevant Priority?’ (2018) NATO Open Publications 2 (4).
- The Blue Shield library.<sup>98</sup>

Regarding the input of CP risks and information in the Operational Planning Process

- Fox, P., ‘CPP Estimate – Cultural Property Protection input to the Operational Planning Process’ (2020).

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<sup>94</sup> See <https://www.handbook.cimic-coe.org/6.execution/6.1general/>.

<sup>95</sup> Tim Boaz Bruun Skuldbøl and Carlo Colantoni ‘A Damage Assessment of Iraq’s Past: Archaeological Heritage Management on the Rania Plain in Iraqi Kurdistan’ (2014) Middle East - Topics & Arguments 3.

<sup>96</sup> UNESCO Military Manual (2016).

<sup>97</sup> NATO SPS Programme (2017).

<sup>98</sup> See <https://theblueshield.org/resources/documents/>.

### 3. First aid

Having discussed the aspect of protection, we now turn to the topic of CPP first aid. CP first aid can be described as the measures taken to preserve CP that has been affected by conflict or disaster (manmade or natural). Put differently, it encompasses “the immediate and interdependent actions taken to stabilise and reduce risks to endangered tangible and intangible cultural heritage, during and after an emergency.”<sup>99</sup>

First aid is not a core function of military CPP, but (NATO) armed forces can be called upon to assist and could have duties in this regard. Insight in the legal obligations and practical implications is therefore important. This chapter discusses the tasks and responsibilities of NATO member state armed forces according to the various conflict situations and how to deal with them.

The 2018 Handbook on First Aid to Cultural Heritage in Times of Crisis ('the First Aid Handbook')<sup>100</sup> provides step-by-step directions on how to act when confronted with endangered CP.

#### 3.1. Legal obligations

As put forward in chapter one, the Hague Convention distinguishes three situations of responsibilities: peacetime, hostilities and belligerent occupation. The current chapter adopts a similar order, while also considering the situation of disaster relief; not only in conflict but also after a (natural or humanmade) disaster CP first aid may be required and the armed forces could have responsibilities.

##### 3.1.1. Peacetime

In peacetime, a natural disaster might induce the need for CP first aid. Depending on the regulations of a country and the gravity of a disaster, CP first aid disaster response may be regulated at the local, national or international level.

First, when an event is relatively small, such as a local hailstorm, first aid will be done by a local party. This can be the owner or custodian of the affected CP, for example, the local or national government, private foundations or religious trusts.

Secondly, in case of an official-declared emergency (e.g. a flood), the national emergency laws direct who is responsible for which part of the emergency response. CP first aid can be accommodated at the national or local government – which could imply a nation's armed forces. This 'emergency authority' decides on the prioritisation and the delegation of preserving CP, dependent on the circumstances.<sup>101</sup>

Thirdly, in case a state asks for assistance from the international community (in case of a tsunami or an earthquake, for example), the UN will be involved in directing humanitarian action. CP first aid is not included in the operational structure of the UN humanitarian emergency response (the cluster-approach).<sup>102</sup>

So, during natural disasters, a nation's armed forces may be asked, both by the national government or by the international community, to assist in the emergency response. When national emergency

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<sup>99</sup> Aparna Tandon, *Handbook - First Aid to Cultural Heritage in Times of Crisis* (ICCROM and Prince Claus Fund, 2018) (hereafter: First Aid Handbook), 7.

<sup>100</sup> First Aid Handbook (2018).

<sup>101</sup> First Aid Handbook (2018), 14.

<sup>102</sup> First Aid Handbook (2018), 15; Jennifer Price-Jones 'Cultural Property Protection: a Humanitarian Concern' (ICRC, 13 February 2020), <https://blogs.icrc.org/law-and-policy/2020/02/13/cultural-property-protection-humanitarian/>.

laws direct so, armed forces may be obliged to take up certain parts of the response. CP first aid can be part of such emergency response.



#### **Example CP evacuation after earthquake / Nepal 2015**

In 2015, the earthquake in Kathmandu, Nepal, badly damaged the Hanuman Dhoka Palace. This caused some valuable artefacts in the Palace to be in danger. The museum staff called the military for assistance to evacuate the objects.

Some factors increased the risk of the operation. The lack of an available inventory, for example, delayed the process. The armed forces were to dismantle the Golden Throne – a specialist task that should be guided (preferably even executed) by experts. In addition, the artefacts were temporarily kept in the courtyard as no safe refuge had been found yet. The armed forces thus guarded the courtyard until a better location was found.



Figure 23: Members of the armed forces conduct CP first aid after the earthquake in Nepal, 2015.

Source: First Aid Handbook, 78.

In peacetime, apart from providing assistance (whether obliged or requested) after a natural disaster, the armed forces should plan education and training. In an optimal situation, members of the armed forces that may be deployed to assist in CP first aid, are trained and educated on the specifics of CP first aid. This enables the military to comply with legal obligations during disaster and conflict.



#### **Example Heritage Emergency and Response Training (HEART) / US 2017**

Since 2017, the Smithsonian Institute, a leading organisation in CPP in the US, organises CP first aid training for heritage workers. It aims to improve their preparation to address emergencies and disasters that may affect cultural institutions or historic sites.

During the training in 2017, a group of cultural-heritage professionals and emergency responders were to evacuate a fictional museum after a pretend cyclone. The assignment was not without challenges as the collection was scattered and uncatalogued, the museum's director was looting the collection for personal means, a journalist was looking for news, and there was barely any staff. Under substantial time pressure, the team of volunteers (heritage and emergency workers) thus had to work hard to succeed.

Such training initiatives improve the skills of heritage professionals to work in crises, and of emergency responders to work with cultural heritage.

Source: Cunliffe, Fox, Stone (2018); Sarah Zhang, 'What It's Like to Evacuate a Museum in a Natural Disaster' *the Atlantic* (US, 14 December 2017).

### 3.1.2. Hostilities

An emergency may regard a natural disaster, but may also regard armed conflict. During hostilities, the same logic applies to the division of responsibilities for emergency response (including CP first aid). Dependent on the regulations of the country, a state's armed forces may have specific duties in providing CP first aid, and the military may be requested for assistance by the relevant authority (local, national, or international).<sup>103</sup>

Regardless of who is responsible for the deployment of CP first aid, the military has a responsibility in preventing damage and destruction. Reiterating the obligations of chapter two regarding the respect for CP, (NATO) armed forces are required to prevent CP from becoming involved in military action. Besides, they are to prevent damage from non-combat actions, such as logistical and engineering activities. Put differently, in terms of the type of conflict, damage to CP should be prevented not only in the 'close' operational area, but also in the 'deep' and 'rear' area. The obligation to safeguard CP requires armed forces to avoid damage to CP by taking up evacuation and in situ protection.

Not adhering to these protection obligations actions may risk the preservation of CP.<sup>104</sup>

### 3.1.3. Belligerent occupation

In a situation of belligerent occupation, the mandated military (NATO) force has more responsibilities. In chapter two, it became clear that armed forces should respect the laws in force while making sure public life can continue as undisturbed as possible. The mandated NATO force may, however, need to intervene in some cases (see chapter 2.1.), among which in the situation of the preservation of cultural property.

The mandated forces must take action when the competent civil authorities of the occupied territory are unable or unwilling to take the necessary measures for preserving CP. This includes CP that is harmed by military action and CP that is affected by other threats (a natural disaster, for example). The action to be taken concerns the most necessary measures for preservation, to be organised in close cooperation with the civilian authorities and international organisations such as UNESCO. Only where an imminent threat to the CP exists, the mandated power should proceed to structural intervention. The emphasis should, however, be laid on stabilising the situation and cooperating closely with the relevant authorities.<sup>105</sup>

The competent authorities may always request support from the mandated force, which the armed forces are required to provide. When the occupation ends it is important to secure a comprehensive hand-over to the local authorities to prevent damage and destruction (by natural and human sources).<sup>106</sup>

Figure 22 summarises the tasks of NATO and its member state armed forces regarding CP first aid in peacetime, hostilities and during belligerent occupation, as discussed in this section. The dotted line indicates that obligations during peacetime also apply to the situation of hostilities.

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<sup>103</sup> First Aid Handbook (2018), 15.

<sup>104</sup> UNESCO Military Manual (2016), 54.

<sup>105</sup> UNESCO Military Manual (2016), 59.

<sup>106</sup> UNESCO Military Manual (2016), 59.

## CPP Obligations First Aid

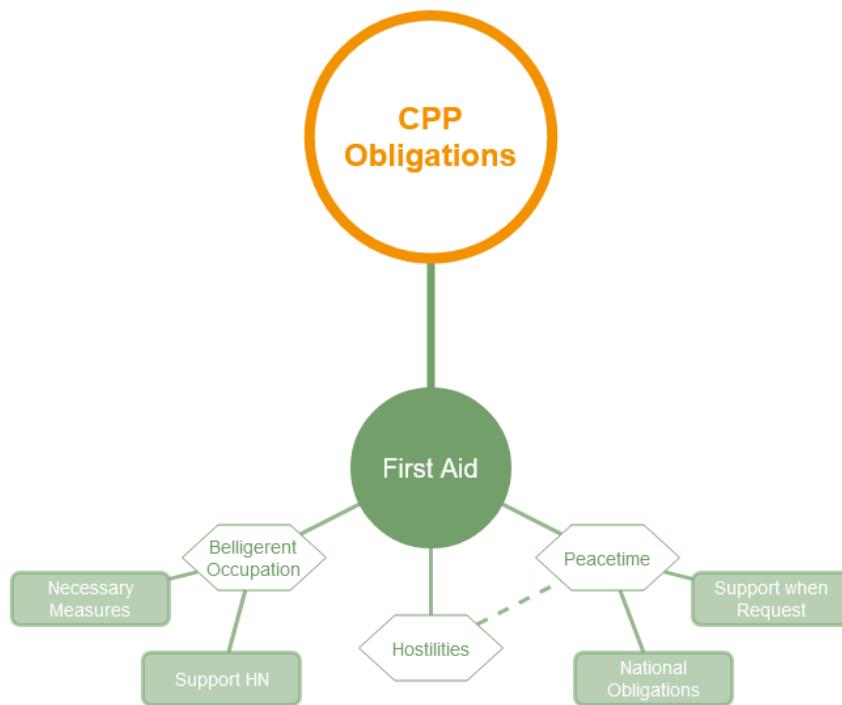


Figure 24: CPP Obligations First Aid.

### 3.2. Practical implications

While CP first aid is not the core business of NATO and member state armed forces, military personnel should know how to act. If the armed forces are called upon to assist, JENG and J9 will be the relevant branches, with support of all others. This section discusses how to conduct first aid to damaged CP.

The First Aid Handbook aims to provide a comprehensive approach to implementing first aid operations. This section elaborates on the findings of the Handbook. Conducting first aid contains three steps: analysis of the situation and its effects on CP, on-site assessment of the damage and risks, and operations to secure and stabilise CP.

#### 3.2.1. Situations analysis

Any first aid operation starts with gathering all relevant information. This entails information on the context of the emergency (the place(s), causes and consequences) and the context of the cultural property (identification, value, damage and the local cultural customs). We also look at the 'command and control' system; identifying and mapping all relevant stakeholders and actors. This includes the actors in charge of the (local) emergency response, the owners of the CP, the local communities, and the organisations and people that may assist in first aid operations.

With all information collected, the relevant information is analysed. This contains prioritisation of preservation actions according to the CP value, the damage and the risk of secondary damage to CP. Besides, the on-site assessment should be prepared. One should establish security actions, the needs regarding the type of expertise, supplies and equipment, and the stakeholders that can grant permission for on-site work.

This information is subsequently used to make a plan for the on-site visit. This plan should cover the objective, time period, scope and costs of the operation. It also includes the roles and responsibilities of anyone involved, a communication plan, and prerequisites regarding preparation and resources. Possible training, safety and quality control measures are to be provided, as are monitoring and evaluation procedures.

### 3.2.2. Damage and risk assessment

After the situation analysis, we turn to the on-site damage and risk assessment. It involves visual inspection and documentation of the damaged CP. The First Aid Handbook provides a step-by-step flowchart to comprehensively conduct on-site damage and risk assessment.

First, the visit is prepared by obtaining permission, training the team, collecting specific CP information (floor plans, inventories, photos), collecting tools and equipment, planning budget and logistics, and coordinating the program with other emergency actors.

Afterwards, the actual site inspection takes place. The accessibility of (parts of) the site, safe access and evacuation routes, and the safety of buildings (together with an expert) should be established. This includes determining vulnerable areas, safe work and storage spaces, and the presence of hazardous waste or chemicals, for example.

The third step consists of recording the damage and the effects of the disaster. It is important to report the damage consistently, by marking the damage on the site map or floor plan, taking photographs, filling in forms to describe the loss, and by talking to eyewitnesses and local actors.

Afterwards, an assessment of the immediate risks takes place. Combining the identification of hazards and vulnerabilities leads to a level of risk for the affected CP.

The construction of a database with all information from the on-site assessment and situation analysis then allows for the construction of an assessment report. This report combines all information and formulates a proposed course of action regarding security and stabilisation actions, prioritised by CP value and risk level. This results in a plan for on-site actions.



Figure 25: On-site inspection of the damaged Umayyad Mosque in Aleppo, Syria by ICOMOS members.

### 3.2.3. Security and physical stabilisation

After the on-site assessment, the condition of the affected CP should be stabilised, and further damage should be prevented by mitigating risks. This phase thus requires to take temporary measures, such as evacuation, salvage and emergency stabilisation.

The step-by-step checklists for conducting evacuation, salvage and physical stabilisation operations can be found in the First Aid Handbook.<sup>107</sup> It should be noted that physical stabilisation actions are a specialised task that should not be executed without engineering expertise.

After conducting first aid, the preparation starts for long-term and sustainable measures for the preservation of CP. It is unlikely that these subsequent tasks fall to (NATO) armed forces.

## 3.3. Resources and tools

As CP first aid is not a core business of NATO, nor its member state armed forces, it is all the more important to know the places to find information and expertise.

### 3.3.1. Relevant organisations

Chapter two has introduced many organisations, of which some are also relevant for CP first aid. UNESCO, for example, is a leading organisation on cultural heritage in general, including CP first aid. Other organisations have particular expertise on CP first aid, please find a list of them below.

#### ICCROM

The International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), is the leading organisation in CP first aid. It is an international organisation located in Italy. They develop best practices, provide enhancing publications, and deliver first aid training, also customised for military specialists. This is the first organisation to liaise with when CP first aid issues arise – and preferably already before the issues arise.<sup>108</sup> Related to ICCROM are the International Councils on Museums (ICOM),<sup>109</sup> Monuments and Sites (ICOMOS),<sup>110</sup> Archives (ICA),<sup>111</sup> and Libraries (IFLA),<sup>112</sup> all with their own focus and expertise.

#### Prince Claus Fund

The Prince Claus Fund for Culture and Development is an NGO based in the Netherlands. They are the co-author of the First Aid Handbook, and provide cultural emergency response to cultural property under threat. This involves both implementing projects themselves or in direct cooperation with local partners, and providing training to heritage professionals.<sup>113</sup>

#### Smithsonian Institute

The Smithsonian Institute (US) is an important actor in training heritage workers and members of the armed forces in CPP (see the example ‘Heritage Emergency and Response Training’ above). It is a leading institute on CP first aid. With its Cultural Rescue Initiative, they conduct projects to protect cultural heritage affected by disasters.<sup>114</sup> The Safeguarding the Heritage of Syria and Iraq Project

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<sup>107</sup> First Aid Handbook (2018), 80 -87 (evacuation), 90-104 (salvage), 108-117 (physical stabilisation).

<sup>108</sup> See <https://www.iccrom.org/>.

<sup>109</sup> See <https://icom.museum/en/>.

<sup>110</sup> See <https://www.icomos.org/en>.

<sup>111</sup> See <https://www.ica.org/en>.

<sup>112</sup> See <https://www.ifla.org/>.

<sup>113</sup> See <https://princeclausfund.org/cultural-emergency-response>.

<sup>114</sup> See <https://culturalrescue.si.edu/>.

(SHOSI), in which several institutions worked together to respond to the threats to heritage in the Middle East, is an example hereof.<sup>115</sup>

### 3.3.2. Further reading

These organisations have developed useful tools and guidance to optimally perform CP first aid:

- Aparna Tandon, *Handbook - First Aid to Cultural Heritage in Times of Crisis* (ICCROM and Prince Claus Fund 2018).<sup>116</sup>
- Aparna Tandon, *Toolkit - First Aid to Cultural Heritage in Times of Crisis* (ICCROM and Prince Claus Fund 2018).<sup>117</sup>
- Aparna Tandon, *Endangered Heritage – Emergency Evacuation of Heritage Collections* (ICCROM and UNESCO 2016).
- Simon Lambert and Cynthia Rockwell (eds), *Protecting Cultural Heritage in Times of Conflict – Contributions from the participants of the International course on First Aid to Cultural Heritage in Times of Conflict* (ICCROM 2012).

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<sup>115</sup> See <https://global.si.edu/projects/safeguarding-heritage-syria-and-iraq-shosi>.

<sup>116</sup> First Aid Handbook (2018).

<sup>117</sup> First Aid Toolkit (2018).

## 4. Looting and trafficking

Illegally digging up cultural property and selling it for profit is not a phenomenon that is new, or unique to armed conflict; looting and trafficking of cultural property have been taking place for centuries and occurs in times of peace as well.<sup>118</sup> However, there is often a surge in looting and trafficking of CP during armed conflict. In a conflict, people lose their incomes, become displaced and prices of basic needs rise. As a consequence, more people are willing to resort to looting and trafficking to get by. At the same time, in conflict areas there is less oversight on archaeological sites by the local population and the government, which makes looting and trafficking of cultural property much easier.<sup>119</sup>

This chapter slightly differs from the other chapters. First, a general introduction is given to the topic, after which the legal framework, practical implications and tools and resources are discussed. Note that this chapter concerns the topic of looting and trafficking of CP in armed conflict. While looting and trafficking also occur in other forms and occasions (drug trafficking; looting in peacetime), this chapter is focused on the specifics of CP and armed conflict.

### 4.1. General introduction

As looting and trafficking of CP in armed conflict is a distinct subject, the ‘who’ and ‘why’ questions of chapter one are further elaborated. The textbox below discusses the definitions of relevant terms.

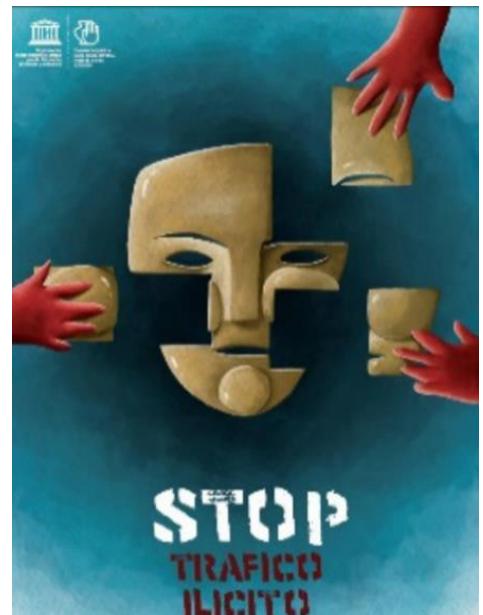


Figure 26: UNESCO Poster on CP looting and trafficking.

#### **Definition Looting and trafficking of CP in armed conflict**

- **Looting CP:** deliberately removing objects from archaeological sites in a non-archaeological, destructive manner (e.g. by using digging machines) for the purpose of selling them.
- **Illicit trafficking of CP:** import, export or sale of cultural property prohibited by the domestic laws of the host country, or export by (or on behalf of) an occupying military power.
- **Illicit excavations:** archaeological excavations that are prohibited by the 1954 Hague Convention (see paragraph 4.2.1.) or by the laws of the host country.
- **Smuggling CP:** transporting movable cultural property or pieces of destroyed immovable cultural property (e.g. pieces of a temple) across a border without reporting the cultural property to a customs officer.
- **Theft of CP:** obtaining cultural property illegally, including by stealing from a museum or looting.
- **Misappropriation of CP:** illegally keeping cultural property that was initially held lawfully (e.g. not returning cultural property after safeguarding it).
- **Antiquities or artefacts:** valuable objects from ancient times made by humans. This chapter uses the terms cultural property, antiquities and artefacts interchangeably.

<sup>118</sup> H. D. Willet (2016); P. Lossen, ‘Does the International Trafficking of Cultural Heritage Really Fuel Military Conflicts?’ (2017) Studies in Conflict and Terrorism 40.

<sup>119</sup> P. Lossen (2017).

#### 4.1.1. Who is involved in looting and trafficking?

The illicit trade in cultural property during armed conflict may occur in various ways. It depends on the structure of illicit trade before the conflict and on the specific context during the conflict. However, generally, there are five types of actors involved in the illicit trade of CP in the event of armed conflict.<sup>120</sup>

##### *Diggers and excavators*

The illicit excavation of antiquities from archaeological sites is usually done by locals. There are generally two reasons for locals to be involved:

- They can no longer afford basic necessities due to war-related loss of income and inflation,<sup>121</sup> so they need the extra income to get by;
- They are put under pressure to cooperate with an intermediary.

ISIS, for example, rewarded locals financially to cooperate with looting but also beheaded an archaeologist that refused to lead ISIS militants to artefacts in Palmyra.

Locals generally know what is lost as a result of illicit excavation, but do not view their actions as a serious crime. An example of this attitude is a Syrian digger, who stated he "feels bad because we are stealing our history and selling it for a cheap price, but we have become homeless and jobless, so we don't care."<sup>122</sup> The digging is often condoned or tolerated by other locals. The excavators do not earn much with looting, as the price of antiquities of an area often drops significantly during armed conflict.<sup>123</sup> This is a result of the upsurge in opportunities for looting and of people willing to take more risks.

##### *Small intermediaries*

Small intermediaries generally originate from the conflict area. They had different careers before the armed conflict started, and became involved in the illicit trade of antiquities during the conflict. They either buy the finds from the excavators, hire excavators and pay them a daily salary, or they buy and rent metal detectors and other digging equipment. As they are new to the illicit trade, they do not have an established network of smugglers and buyers. Therefore, they either sell the objects directly to an unknown buyer, or they sell the objects to another intermediary.

Small intermediaries predominantly sell the artefacts for a significantly lower price than big intermediaries or sellers; Byzantine silver that a small intermediary had sold for \$17.000 was later resold for \$150.000.<sup>124</sup> While intermediaries generally do not have a background in archaeology, they do have quite detailed knowledge of the nature and value of the artefacts from their area. They incentivise the excavators to work for them financially, but they may occasionally use the threat of violence in order to gain their cooperation.

##### *Big intermediaries*

Big intermediaries are mostly experienced in the field of looting and trafficking. They are much wealthier than their counterparts that started during the conflict. In peacetime the supply of artefacts is, namely, lower, and the profit margin of trafficking in CP is higher. This category also includes armed groups that use looting and trafficking as a source of funding.

Both these professional smugglers and armed groups have ties to customs officials, the government, the army, and organised crime networks that smuggle drugs, weapons or oil. These actors are likely

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<sup>120</sup> Overall source for this section: UNESCO Report on the Illicit Trafficking of CP (2018).

<sup>121</sup> D. Yates and N. Brodie 'Subsistence Digging' (*Trafficking Culture* 2012) <https://traffickingculture.org/encyclopedia/terminology/subsistence-digging/> last accessed 26 February 2020.

<sup>122</sup> H. D. Willet (2016).

<sup>123</sup> S. Samuel, 'It's Disturbingly Easy to Buy Iraq's Archaeological Treasures' (*The Atlantic* 19 March 2018) <https://www.theatlantic.com/international/archive/2018/03/iraq-war-archeology-invasion/555200/> last accessed 27 December 2019.

<sup>124</sup> N. Brodie and I. Sabrine (2018).

to use violence or the threat of violence. Professional intermediaries either directly sell and bring their goods to a buyer, or sell and bring their goods to a seller in a neighbouring country.

#### *Sellers and buyers*

Sellers are located in neighbouring countries, and sell the looted goods to art collectors for a high price – collecting the most profit. Usually, these sellers are part of criminal networks of the bordering country. They were active before the conflict started, and also engage in other types of transnational organised crime. Sellers may have the resources to wait sometime before they sell their goods to lower the chances of being caught. Artefacts are mostly sold online,<sup>125</sup> increasingly at the dark web. It is generally difficult to track down sellers. The most frequent buyers of Greek and Roman artefacts are Europeans, and the most frequent buyers of Islamic artefacts are Gulf Arabs. These individuals can be antiquities experts or established art dealers who sell to collectors and museums.<sup>126</sup>

The image below structures the various actors in looting and trafficking, and shows three distinct groups: the conflict economy, the coping economy and the criminal economy. The dividing lines between the groups are not strict and clear, there is always some overlap.

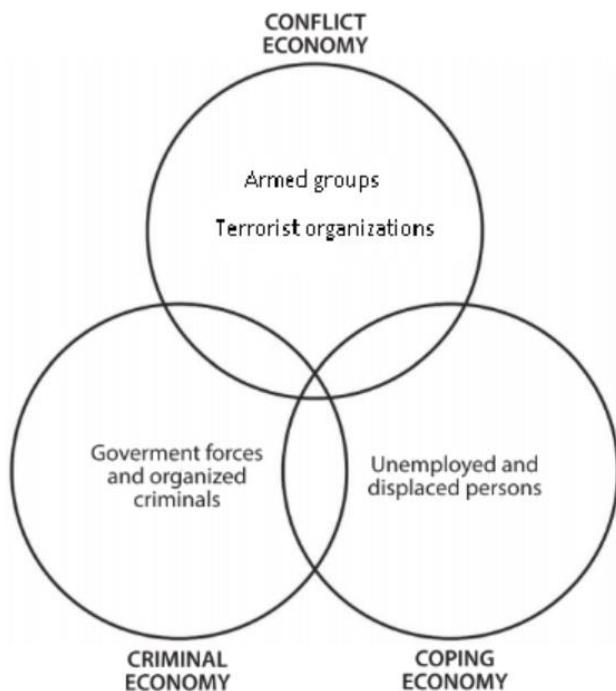


Figure 27: Interaction of various actors during a conflict.

<sup>125</sup> T. van Ham et al, *The Art of the Internet: A Study of Illegal Online Trading in Cultural Goods* (Eleven International Publishing 2011).

<sup>126</sup> See for example J. Rohrlich, 'International Art Expert Charged with Selling Looted Cambodian Antiquities for the Past 50 Years' (Quartz 28 November 2019) <https://qz.com/1758283/international-art-expert-charged-with-selling-looted-cambodian-antiquities/> last accessed 8 December 2019 and A. Buffenstein, 'New York Antiquities Dealer Charged With Trafficking Looted Artifacts' (Artnet news 22 December 2016) <https://news.artnet.com/art-world/new-york-antiquities-dealer-arrested-for-laundering-looted-objects-793622> last accessed 8 December 2019.



### **Example Who is looting Syria's cultural property? / Syria 2016**

The 2018 article by Neil Brodie and Isber Sabrine entitled 'The Illegal Excavation and Trade of Syrian Cultural Objects: A View from the Ground' describes the involvement in the illicit trade in CP of a number of residents of the Syrian Idlib Governorate in 2016.

Person A was a construction worker in Lebanon before the war, who occasionally excavated archaeological sites in his spare time. Now that the route to Lebanon is cut off, he excavates full time to make a living. Illicit excavations are easier as there is no consistent police presence; before the war he would risk a five year prison sentence. He works twelve hours a day and earns approximately \$20 per month – something he would have earned in two days before the war. In comparison, the prices of food have increased six times.

Person B owns ten metal detectors that he rents out in exchange for a share of the proceeds from found objects. Doing this, he earns approximately \$200 a month, although this would have been \$1300 in 2014. He sells to intermediaries that were established before the war, and who sometimes buy off senior army officers in the Syrian army. These wealthier established buyers store objects until the prices of Syrian artifacts rise again.

Person C was a government employee before the war, who, like person A, excavated in his spare time. When the war began, he started working as an intermediary. With a group of people he traveled to an area controlled by ISIS, where he worked alongside approximately 300 people to try to find coins.

Person D was both a government employee and intermediary before the war. He owns three metal detectors that he rents out in exchange for 30% of the proceeds. Most of his 'employees' worked in Lebanon before the war started, but can no longer travel to Lebanon. He mostly finds and sells coins, for a price much lower than before the war started.

Person E was a policeman before the war and now lives in a refugee camp inside Syria, close to the Turkish border. Like many other inhabitants of the camp, he occasionally sells coins and glass vessels, but it is not enough to feed his children. He knows that some of the refugees on the Turkish side of the border have contacts with Turkish sellers. Intermediaries inside Syria do not make much money; most of the profit is made by sellers in Turkey.



### **Example Looting and trade of Cambodian temples / Cambodia 2013**

Person A (a small intermediary), who began as a looter during the Cambodian civil war, is now an intermediary with a reputation for violence. Each day, he picks up volunteers to participate in looting – if there is a lack of volunteers, he picks some villagers, that tend to comply. The looted goods are transported to person B and C in a town near the border with Thailand; the 'money man' and the 'delivery man'. All first intermediaries deliver their goods to person B and C, who are known to use violence to maintain their monopoly in the border town. Person B and C transport the looted goods to person D in Thailand. Person D makes a few fake versions of the looted goods and delivers both the original goods and the fakes to person E in Bangkok. Person E proceeds to sell the antiquities on the global art market.

Source: UNESCO Report on the Illicit Trafficking of CP (2018).

#### 4.1.2. Why is combatting looting and trafficking important?

Section 1.2. has already described several reasons why the protection of CP, including preventing and combatting looting and trafficking, is important for NATO member state armed forces. These entail the international legal obligations (see 4.2.), the fact that looting is a source of funding for terrorist organizations, and legitimacy issues that may arise from bad publicity after looting (see also the examples in chapter 1.2). Aside from these reasons, the looting of cultural property is increasing, and the damage it does to science and culture is both increasing and irreversible.

Looting and trafficking of CP in conflict areas is recently recognised as an operationally significant factor. This has to do with a number of developments that coincide. The internet and the dark web have led to an increasingly sophisticated and professional trade in illicit antiquities, for which there is a growing market. It is now easier than ever to transport and sell goods across the globe. At the same time, conflicts are increasingly fought in populated areas where archaeological sites, temples and museums are located. Furthermore, today's conflicts are often between a state and non-state armed groups. These non-state armed groups get most of their funding from illegal trade, as they have no revenue from official sources such as a national budget or international aid.

These developments have made looting and trafficking of CP a tremendous problem. Almost all major known sites in Afghanistan have been looted.<sup>127</sup> Mali's government declared that since the start of the conflict in 2012, Mali has been suffering an "archaeological emergency".<sup>128</sup> During the conflict in Cambodia, tens of thousands artefacts were smuggled out of Cambodia.<sup>129</sup> In Iraq, nine archaeological sites have been extensively damaged by looting<sup>130</sup> and most archaeological sites in Syria have been impacted severely by the increase in and spreading of looting associated with the conflict.<sup>131</sup> Libya has seen an upsurge in illicit trafficking of materials since 2016.<sup>132</sup> Once an artefact is removed from its archaeological context, it loses much of its informational value. As a consequence, even when objects are eventually brought back, a lot of important information about the past is permanently lost.<sup>133</sup>

#### 4.2. Legal obligations

Looting and trafficking of CP related to armed conflict is regulated in a number of international treaties. For the armed forces the 1954 Hague Convention and its two Protocols are the most relevant ones, as they spell out the obligations pertaining to looting and trafficking that are directly relevant to armed conflict. After discussing the content of these obligations, this paragraph will give a brief overview of the treaties pertaining to the trafficking in CP that do not only apply to the armed forces specifically.

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<sup>127</sup> NATO SPS Programme (2017), 24.

<sup>128</sup> M. Flick, 'Mali Declares Archaeological Emergency' (*Financial Times* 16 December 2016) <<https://www.ft.com/content/559aa998-c386-11e6-9bca-2b93a6856354>> last accessed on 7 December 2019.

<sup>129</sup> A. Seiff, 'How Cambodia's temples Fell to Looters' (*Deutsche Welle* 25 June 2014) <https://www.dw.com/en/how-cambodias-temples-fell-to-looters/a-17735835> last accessed on 7 December 2019.

<sup>130</sup> J. Farchakh, 'The Massacre of Mesopotamian Archeology: Looting in Iraq is out of Control' (*Conservation News* 21 September 2004) [https://web.archive.org/web/20060927083518/http://www.globalheritagefund.org/news/conservation\\_news/massacre\\_mesopotamian\\_archaeology\\_sept21\\_2004.asp](https://web.archive.org/web/20060927083518/http://www.globalheritagefund.org/news/conservation_news/massacre_mesopotamian_archaeology_sept21_2004.asp) last accessed on 7 December 2019.

<sup>131</sup> J. Casana and M. Panahipour, 'Notes on A disappearing Past: Satellite based monitoring of Looting and Damage to Archaeological Sites in Syria' (2014) *Journal of Eastern Mediterranean Archeology and Heritage Studies* 2.

<sup>132</sup> S. Kane, 'The Antiquities Coalition Digs Into Libyan Cultural Heritage' (*Antiquities Coalition* 26 February 2018) <https://theantiquitiescoalition.org/ac-digs-libya/> last accessed on 8 December 2019.

<sup>133</sup> P. Lossen (2017).

#### 4.2.1. Peacetime and hostilities

The 1954 Hague Convention sets out the obligations for state parties with regard to cultural property protection during armed conflict. With regard to looting and trafficking, the general obligations entail refraining from looting CP, and trying to prevent others (enemy combatants and civilians) from looting.

##### *The obligation to refrain from looting*

The 1954 Hague Convention prohibits theft and misappropriation of CP in all cases; there is no exception.<sup>134</sup> It is the responsibility of the commander to make sure all military personnel is aware of this prohibition, and to strictly enforce the prohibition.

To this end, the commander has to ensure all personnel is able to recognise CP (see also section 4.4). He or she should, furthermore, give clear instructions on the appropriate course of action when soldiers encounter movable cultural property.<sup>135</sup> Because looting and trafficking are by definition illegal (see the text box Definition in section 4.1), the commander should take steps to discipline military personnel that do participate in the looting and trafficking of CP. In addition, they should seek legal advice to see if a referral to a military court is appropriate.<sup>136</sup>

Particularly grave cases of looting<sup>137</sup> (especially if they are widespread or part of a policy)<sup>138</sup> can in some circumstances<sup>139</sup> be prosecuted before the International Criminal Court. In these cases not only the perpetrators themselves, but also the commander and those who assisted can be held liable for war crimes.<sup>140</sup> Establishing the rules and procedures for this obligation is to be done in peacetime.

Commanders should verify that members of the armed forces themselves do not traffic any CP (accidentally or on purpose). To this end checks must be in place to ensure military personnel returning from a mission, on leave or at the end of their deployment, do not take home any cultural property. Checking for CP should be included in the mail, cargo, and luggage handling procedures as well as in body-check procedures.

##### *The obligation to prevent looting*

During hostilities, armed forces also have the obligation to try to prevent others from looting CP.<sup>141</sup> This obligation is one of effort rather than the result: what matters is not whether the armed forces succeeded in preventing looting by others, but whether they took reasonable measures to prevent the looting.<sup>142</sup> What kinds of measures are reasonable depends on the level of control that the forces have over the territory; the more consolidated the military control of an area is, the more effort is required to prevent looting.<sup>143</sup>

In order to effectively fulfil this legal obligation, the prevention of looting should be considered during the planning of military operations. Dependent on the context, it may amount to guarding CP, establishing local guards, and improving border control – section 4.3 elaborates on this topic. Not facilitating looting by others also means that military personnel should not provide a market for looting by buying CP from locals – and returning the object immediately if that does happen.

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<sup>134</sup> Article 4(3) of the Hague Convention (1954).

<sup>135</sup> UNESCO Military Manual (2016), 45 et seq.

<sup>136</sup> Article 28 of the Hague Convention (1954); article 15 of the Second Protocol to the Hague Convention (1999), UNESCO Military Manual (2016), 45 et seq.

<sup>137</sup> War crimes related to looting are listed in article 8(2)(iv), article 8(b)(xiii) and article 8(b) (xvi) of the ICC statute.

<sup>138</sup> See article 8(1) of the ICC statute.

<sup>139</sup> Depending on whether the ICC has jurisdiction, see Article 12(2) and 17 of the ICC statute.

<sup>140</sup> See 25(3) and article 28(a) of the ICC statute.

<sup>141</sup> Article 4(3) of the Hague Convention (1954).

<sup>142</sup> UNESCO Military Manual (2016), 46 et seq.

<sup>143</sup> UNESCO Military Manual (2016), 46 et seq.



### **Example Preventing cultural property looting by others / various cases**

- During the First World War, the German forces tasked the Kunstschatz (Art Unit) with keeping other German troops from looting art.
- During the Second World War, the Roberts Commission (the American Commission for the Protection of Artistic and Historic Monuments in Europe) was tasked with preventing and stopping theft of CP by both the local population and US troops.
- The Italian Carabinieri TPC, deployed to Kosovo in 2002, were tasked with the monitoring of churches and mosques to keep them from being plundered.
- In Iraq, Spanish forces put seven kilometers of wire around the archaeological site at Tell Nuffar to prevent looting of the artefacts there.
- With helicopters, Polish forces regularly reviewed the cultural sites they were responsible for during their 2003 deployment in South Iraq. Besides, they embedded archaeologists, who used satellite imagery to keep track of the state of the archaeological sites in the areas under multilateral control.
- Dutch forces, during their employment in Iraq starting in 2003 (Stabilisation Force Iraq), made sure that the local Bedouin custodians of the archaeological site Uruk continued to receive salaries for guarding the site so that there would be no risk of looting.

#### **4.2.2. Belligerent occupation**

The 1954 Hague Convention specifies a number of obligations that apply specifically to mandated NATO forces during belligerent occupation. In such situation, the obligation to prevent looting and trafficking is not one of effort (as during hostilities), but one of result. What matters is not the measures that were taken, but whether or not the mandated force succeeded at preventing rampant looting and trafficking of CP during belligerent occupation. Mandated forces are therefore responsible for the following tasks (letters A-D).

##### **A. Leave local laws in place**

Local laws concerning archaeological excavations and the sale and export of CP must be left in place. The local administration is to enforce these laws. This requires that after hostilities end, the military guardianship over any archaeological site and museum is carefully transferred to the local administration in a coordinated and organised way.

##### **B. Assist host nation**

NATO armed forces should assist the local authorities in enforcing local laws if the civilian authorities ask for assistance, or if the local authorities do not adequately enforce the local laws. Assistance could involve activities such as guarding museums and archaeological sites, patrolling to deter looters and, inspecting premises where looted objects may be stored and seizing and returning CP that has been confirmed stolen.

##### **C. Enact and enforce military laws**

The mandated power must promulgate military laws prohibiting the looting and trafficking of CP. By promulgating military laws that criminalise looting and trafficking of CP, the mandated force ensures that the relevant laws can not only be enforced in local civilian courts, but in military courts as well. This applies regardless of whether local laws already prohibit looting and trafficking of CP.

NATO armed forces should enforce these laws if the local authorities are not able or not willing to prevent looting and trafficking of CP. This can be the case if no sufficient local laws are in place, if there is no functioning local administration, if the local administration does not have the capacity and resources to do effective prevention or if the local administration is not interested in prevention. Enforcing these laws could include setting up checkpoints at border posts, ports and airports to discover and seize looted cultural property that is being exported illegally.

#### D. Prohibit any type of archaeological excavation

During the occupation, no archaeological excavations are allowed to take place.<sup>144</sup> The only exception to this rule, is for excavations that are strictly to safeguard CP, and that are conducted in close cooperation with the local authorities.<sup>145</sup> Public excavations by professional archaeologists that would have been legal in peacetime, are thus prohibited during the occupation. This rule is meant to be preventive; the best guarantee to make sure the excavated artefacts are not trafficked during occupation is to temporarily ban all archaeological excavations. It is of course strictly prohibited for any mandated force to order archaeological excavations themselves, and any forced exports of CP arising directly or indirectly from occupation is illegal.<sup>146</sup> Any archaeological artefacts found by chance should be protected by the mandated power, and handed back to the civilian local government once the occupation ends, together with any relevant documents.

As discussed in chapter 1.4 there are many situations, such as counterinsurgency and stabilisation, where armed forces may have control over some territory, but the situation is not regarded as a belligerent occupation. In all these situations, preventing the looting and trafficking of CP remains the responsibility of the host nation. The NATO deployed armed forces can assist if they are mandated to or if the host nation requests assistance. However, there are situations where the government of the host nation has very little capacity or does not have effective control over its territory. In such cases the armed forces could consider taking on (some of the) tasks of mandated forces listed above, although strictly speaking only the obligations during hostilities apply.<sup>147</sup> As the UN Security Council has called for greater attention and cooperation in countering looting and trafficking of CP in conflict zones.<sup>148</sup> Taking on the obligations above to prevent this widespread looting is advisable.

#### Example Occupying allied powers during World War II / Libya 1943

In 1943 British forces occupied the Italian colonies in what is now Libya. The area contained several important archaeological sites. The British Military Administration issued the "Proclamation on Preservation of Antiquities" that gave the military government the temporary power to handle all matters pertaining to antiquities. At the same time, the proclamation prohibited unlicensed excavation and sale of cultural property. The United States Military Government in Germany likewise promulgated a law on cultural property.

Source: UNESCO Military Manual (2016), 56.

The legal obligations as explained in this section are summarised in the figure below. The dotted lines indicate that the obligations during hostilities also apply during peacetime and belligerent occupation.

<sup>144</sup> Article 9(1)(b) of the second protocol to the Hague Convention (1999).

<sup>145</sup> Article 9(2) of the second protocol to the Hague Convention (1999).

<sup>146</sup> Article 11 of the UNESCO Convention (1970).

<sup>147</sup> UNESCO Military Manual (2016).

<sup>148</sup> United Nations Security Council (UNSC) Resolution 2347 (24 March 2017) UN Doc S/RES/2347.

## CPP Obligations Looting and Trafficking

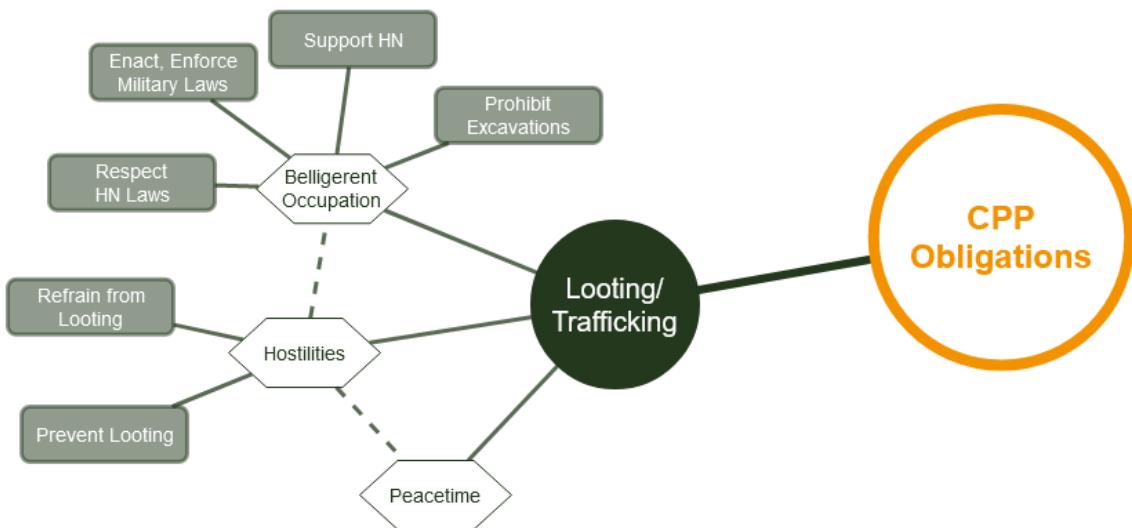


Figure 28: CPP Obligations Looting and Trafficking.

### 4.2.3. Other relevant international treaties

Outside of LOAC, there are multiple treaties that concern trafficking in cultural property. While the responsibility for observing these treaties rests on the state as a whole rather than (NATO) armed forces, it is important that practices of the armed forces do not undermine states' ability to meet their obligations. Below you find a brief overview of the treaties that bind most NATO member states.

#### *The International Covenant on Economic, Social and Cultural Rights (ICESCR)*

The ICESCR contains the right to take part in cultural life.<sup>149</sup> This right explicitly includes the obligation to "respect and protect cultural heritage in all its forms, in times of war and peace, and natural disasters".<sup>150</sup> The interpretation of this human right during armed conflict is informed by the 1954 Hague Convention as discussed in the previous section.

#### *The UNECSO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property (the 1970 UNESCO Convention)*

The 1970 UNESCO convention requires states to impose penalties on persons that illicitly import or export stolen CP,<sup>151</sup> and to cooperate to return the stolen CP to the state where it is originally from.<sup>152</sup> It also explicitly prohibits forced export and sale of CP relating directly or indirectly to military occupation.<sup>153</sup>

#### *The Nairobi Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (The 1977 Nairobi Convention)*

<sup>149</sup> Article 15(1)(a) of the ICCPR.

<sup>150</sup> Article 50(a) of the CESCR's General Comment #21 of 2 November 2009, UN Doc E/C.12/GC/21.

<sup>151</sup> Article 8 of the UNESCO Convention (1970).

<sup>152</sup> Article 7(b)(ii), 13(b) and 13(c) of the UNESCO Convention (1970).

<sup>153</sup> Article 11 of the UNESCO Convention (1970).

This treaty was drafted by the World Customs Organization to provide a framework for international cooperation between customs offices to prevent transnational crime. Annex 11 of the treaty concerns international cooperation to combat the smuggling of cultural property. It emphasizes the importance of sharing information and calls upon states to make use of INTERPOL and UNESCO to cooperate more closely.

*The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (the 1995 UNIDROIT Convention)*

The 1995 UNIDROIT Convention emphasises the responsibility of the buyer of artefacts (rather than the importer or exporter). The treaty imposes a due diligence obligation on buyers of art.<sup>154</sup> It also regulates in more detail how and when CP should be returned to its place of origin.<sup>155</sup> It is important to note that CP does not have to be returned if the CP was not registered as stolen.<sup>156</sup>

*The United Nations Convention Against Transnational Organized Crime (UNTOC)*

Due to the close link between the smuggling of CP and other types of transnational crime, such as the illegal drug and arms trade, states extended the obligations in the UNTOC to crimes relating to the trafficking of CP.<sup>157</sup> The UNTOC requires states to assist each other as much as possible in preventing and investigating the illicit trafficking in CP.<sup>158</sup>

*The Convention on Offences relating to Cultural Property (CoE Convention no. 221)<sup>159</sup>*

In 2017, the Council of Europe, an international organisation consisting of 47 European states, adopted a treaty that called for the criminalisation of a number of CP related offences. These include the theft, unlawful excavation, import and export of CP, the illegal acquisition and marketing of CP. It seeks to decrease the differences in national laws that deal with trafficking in CP. It also obliges states to cooperate as much as possible with other states' investigations into CP trafficking.

*EU Regulation 1332/2013*

This EU regulation binds all EU member states directly, and prohibits the import, export and transfer of Syrian CP if these goods are suspected to be obtained by looting.

*UN Security Council Resolutions no. 2199 and 2347*

Resolution 2199 concerns the prohibition of financing terrorism. In the resolution, the security council notes that trafficking CP is a source of income for terrorist groups. It, therefore, decides that states must take all appropriate steps to prevent the trade in Iraqi and Syrian cultural property. Resolution 2347 was adopted out of concern for the rampant looting and trafficking of cultural property in states experiencing armed conflict. It encourages all states to ratify the relevant international conventions, including the 1954 Hague Convention and its two protocols and urges states to cooperate with UNESCO and INTERPOL, and to be more proactive in documenting stolen cultural property.<sup>160</sup>

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<sup>154</sup> UNESCO Report on the Illicit Trafficking of CP (2018).

<sup>155</sup> UNESCO Report on the Illicit Trafficking of CP (2018).

<sup>156</sup> Article 4(4) of the UNIDROIT Convention, UNESCO Report on the Illicit Trafficking of CP (2018).

<sup>157</sup> Article 6 of the UNTOC Convention, UNESCO Report on the Illicit Trafficking of CP (2018).

<sup>158</sup> Article 18 of the UNTOC Convention.

<sup>159</sup> So far, this Convention has only been ratified by Cyprus and Mexico, but it is indication of the evolution of international law on this subject.

<sup>160</sup> Para 8 en para 17(e) of the UNSC Resolutions 2347.

### 4.3. Practical implications

This section discusses the activities the armed forces should undertake to fulfil its looting and trafficking obligations under the Hague Convention. These activities fall into three categories: activities that NATO armed forces should undertake in general, during each mission, and only when local administrative authorities are absent, when they have requested assistance or when it is explicitly part of the mandate of the mission.

#### 4.3.1. General activities

Each troop-contributing nation has to ensure that the armed forces have the knowledge and resources to react adequately to looting and trafficking during a NATO mission. This means there must be ties with experts, IOs and NGOs, that soldiers should be trained in responding to looting and trafficking, and that there should be a code of conduct and procedures in place for reporting CP misbehaviour.

##### *Develop close ties with CP experts, IOs and NGOs*

The armed forces themselves do not have the resources to stay up to date on the latest developments with regards to CP trafficking. Therefore, it is important to maintain close, structural ties with people and organisations that are specialised in countering looting and trafficking of CP. These ties should not be established on an ad hoc basis. For example, the US military staff at the coalition training centre in Iraq developed the Mosul passport (a guideline booklet for CPP) in cooperation with archaeologists from the conservation centre in Irbil, Iraq.

Section 4.4 contains an elaborate overview of expert organisations in the field of preventing looting and trafficking of CP.

##### *Training and education*

In order for militaries to be able to meet the obligations in section 4.2, military personnel should be educated on the basics of LOAC, including the obligations on looting and trafficking CP. In addition, it is crucial that members of the armed forces learn how to distinguish between CP objects and ‘ordinary’ objects, and become aware of the seriousness of the problem of looting and trafficking.

Next to basic education, training exercises and courses that involve the activities explained in the legal obligations section should be organised. The Blue Shield and other organisations listed in paragraph 4.4.1 can be of assistance in designing these exercises. These training exercises enable military personnel to learn what types of CP related activities are required in different types of operations (near-peer regional conflict, counterinsurgency, counterterrorism, stabilisation, monitoring, disaster relief). In addition to being the subject of specific training exercises, the problem of looting should routinely be integrated into NATO exercises and collective training.



Figure 29: The NATO mission in Afghanistan trains Afghan border patrolmen, Afghanistan 2010.

#### *Protocols and codes of conduct*

Each member state armed forces should have standardised codes of conduct on the looting of cultural property, to prevent inconsistent and ad hoc measures. Such codes should contain answers to questions like: what are the applicable disciplinary measures to looting and trafficking by military personnel; what type of cases will be prosecuted; what should military personnel do when they encounter CP; and where can suspicions of trafficking be reported? Within the armed forces, the responsibilities should be clear, and procedures should be standardised.

#### *4.3.2. Mission specific activities*

##### *Pre-deployment training*

Prevention of CP looting and trafficking should be part of pre-deployment training. The looting and illicit trade of CP looks differently in each conflict and affects the success of each mission differently. Prior to departure, soldiers should receive information on what type of CP they can expect to encounter in what places. Military personnel should be trained in recognising CP in the area of operations. The US military for example distributed the Mosul passport, containing pictures and descriptions of the cultural property soldiers would encounter in Mosul.

Pre-deployment training can also address what sites might be vulnerable to looting and by whom. In addition, it should address what looting would look like: is the digging done by locals who lost their income due to the war, or by organised, violent groups; are local government officials involved; and do the looters make use of enemy armed groups to smuggle the artefacts out of the country? The answers to all these questions will vary tremendously from mission to mission, and they matter a lot for the approach of the armed forces towards countering looting. In pre-deployment training, members of the armed forces can also be informed of any relevant mission-specific procedures regarding CP trafficking (for example, who to report CPP related incidents to if necessary).

##### *Identify lootable CP*

Next to the identification of CP in chapter two, specific identification of CP that is vulnerable to looting and trafficking is important. The locations of lootable cultural property and the places where looting takes place are to be included as part of both the Comprehensive Preparation of the Operational

Environment (CPOE)<sup>161</sup> and Understanding the Human Environment (UHE).<sup>162</sup> Ideally, this information concerns not only what lootable cultural property is located where, but also who is involved in the looting (directly and indirectly), when, how, and why they loot.

This information should be collected by all possible sources, including human intelligence and the use of technology. It requires close cooperation with both international and civil partners. For looting and trafficking specifically, NATO armed forces should take up the following identification activities; the general activities have already been set out in chapter two (section 2.2.1).

- Liaising with host nation: local archaeologists, local authorities and others will likely be able to contribute information on the location of lootable CP. Locating lootable CP should be included in the CIMIC estimate.
- Engaging with the local population: military personnel should engage with the local population, as they have the most complete information on the location of lootable CP, instances of looting, the identity and modus operandi of the looters and the reason for looting.
- Reporting finds of CP and instances of looting: military personnel encountering archaeological sites or indications of archaeological sites should report this in their chain of command.
- Satellite imaging: NATO member state armed forces have a strong capability of satellite imaging. Civilian experts like archaeologists could contribute by detecting looting remotely through landscape analysis aerial photographs and satellite imagery.<sup>163</sup> On the civilian side, UNESCO and UNOSAT work together on this matter (see section 2.3).

#### *Include CP looting in planning operations*

With the available information on the location and nature of CP, it is possible to map the sites vulnerable to looting in the area of operation. In Afghanistan and Iraq, archaeologists employed by the US military collaborated with local experts and GIS (geographic information system) analysts to create such archaeological maps. This allowed military planners to consider the prevention of looting in their work. It could be decided to instruct a unit to guard a museum, or to clear a part of the area where an important archaeological site is situated. Military planners should, where tactical and strategic considerations allow, consult experts when planning an operation in an area with CP.

#### *Cooperate with the local population to solve looting issues*

When an archaeological site is being looted in the area of operations, the local population can be an important partner. Clear communication and cooperation is a large part of the solution. Depending on who is involved – enemy armed groups, the local population, local government officials, etcetera – and what the modus operandi of the intermediaries is – paying diggers a daily wage or threatening diggers with violence – armed forces could discuss the problem with the local population and come up with solutions that fit within the particular context.

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<sup>161</sup> See the NATO Comprehensive Operational Planning Directive for an overview of where the CPOE is placed within the NATO operational planning process.

<sup>162</sup> Refers to the concept of Protection of Civilians.

<sup>163</sup> Bruun Skuldbøl and Colantoni (2014).

Adjusting a response to the specific local context is crucial: it is unproductive to address locals digging to get by as organised criminals, or vice versa. If the looting is the result of extreme poverty caused by the war, paying the locals a daily wage to guard the site is preferable to employing units to guard the site and arrest looters. If the looting is done by (opposing) armed or criminal groups, it is preferable to employ a unit to guard the site rather than leave the matter to the local population.



#### **Example** *The case of Uruk / Iraq 2003*

During the Dutch deployment in Iraq, the ancient site of Uruk was situated in their area of responsibility. Before the war broke out, the site was guarded by a local Bedouin tribe. The tribe received payments from the German Archaeological institute, who were in charge for excavating the site. The German Archaeologists left when the conflict started, and the German payments stopped in 2003. The Bedouin tribe still felt responsible for guarding the site, but were unable to do so without money for transport, food and water.

The Dutch army arranged a solution. The tribe could continue to guard the site in return for a payment of approximately \$70 per month. In interviews, the locals were positive about the arrangement; the financial rewards for looting during wartime are quite low and barely enough make a living. By paying the locals to guard the site, the cultural property was preserved, and the locals had a consistent source of income. When the Dutch forces left, the payments again stopped. In 2006, Japan funded a new fence to surround the site.

Source: Joris D. Kila 'Cultural Property Protection in the Context of Military Operations: The Case of Uruk, Iraq' (2011) *Conservation and Management of Archaeological Sites*, 13(4).

#### **Ensure military personnel does not (accidentally) traffic CP**

At the outset of a NATO mission, all military personnel should be made aware of the prohibition on looting cultural property. This includes the various situations in which military personnel may find him/herself (un)consciously taking artefacts and the consequences of violating this prohibition. Before redeployment, procedures should be in place for checking military personnel's luggage on CP.

If a soldier is found to have taken CP, the commander should make sure appropriate disciplinary actions are taken. Given the complex network of legal obligations that underlies the issue of taking cultural property, commanders should consult legal advice if a member of the armed forces has misappropriated CP.



Figure 30: Luggage ready for redeployment, Afghanistan 2012.

#### 4.3.3. Possible activities in liaison with local authority

The activities listed below are mandatory during belligerent occupation. In any other situation, NATO armed forces may also consider undertaking one or more of these activities, for example, when the host nation is not able to meet its obligations or if the host nation requests military support. NATO may also be specifically mandated to undertake one of the activities below. Wherever this section refers to mandated NATO missions, one can also read ‘NATO armed forces requested to do so’ or ‘NATO armed forces, if it is necessary for the success of the mission to do so’.

##### *Divide tasks with the host nation*

As CPP is fundamentally a host nation obligation, it must be agreed what tasks fall to the host nation and what tasks fall to the military forces present in the area.



##### **Example NATO agreement with host nation / Afghanistan 2014**

The agreement between Afghanistan and NATO read:

*“NATO operations ... shall be conducted with full respect for Afghan laws and regulations for the protection of sites or artefacts of historic and cultural heritage. NATO Forces Authorities shall notify and consult immediately with appropriate Afghan authorities through the Afghanistan–NATO Implementation Commission when sites or artefacts of historic and cultural heritage are discovered on an agreed facility or area.<sup>1</sup>*

Source: Article 5(7) of the agreement, cited from NATO SPS Programme (2017).

##### *Train local authorities*

Supporting the civilian authorities in the prevention of CP looting and trafficking, whether obliged, mandated or requested, can take various forms. The armed forces can, for example, train the local authorities to prevent looting and trafficking. In Dhi Qar (Iraq) units of the Carabinieri TPC cooperated with the Iraqi State Board of Antiquities and Heritage (SBAH) to train guards in protecting archaeological sites. Archaeologists embedded in the Polish forces provided the SBAH with

information retrieved from satellite imagery. The Polish forces also trained and equipped the Iraqi archaeological police (FPS or Facility Protection Service) and repaired the destroyed offices of the State Board of Antiquities and Heritage.<sup>164</sup>

#### *Guard CP*

Aside from training, sometimes NATO armed forces will need to guard CP sites themselves. In Kosovo, the KFOR was tasked with the protection of patrimonial sites. Units of the Italian Carabinieri were deployed to KFOR in 2002 and 2003 to stop the looting of churches and mosques. Up to now, KFOR is still present in Kosovo, guarding a monastery.

#### *Establish checkpoints*

Dependent on the ability and willingness of the host nation to enforce an effective system of border control and customs, the mandated NATO mission may or should establish checkpoints and border control themselves. This should prevent looted cultural property to be trafficked to neighbouring countries. In 2014 for example, NATO and Afghanistan agreed that “NATO Forces Authorities, working with relevant Afghan authorities, shall take appropriate measures to ensure that no items or material of cultural or historic significance to Afghanistan are being exported.”<sup>165</sup>

When mandated forces take up a role in the border control system, military personnel should be well equipped to recognise looted CP. It is recommended to provide training to border control officers and to establish close ties with expert organisations to share information and best practices (see section 4.4). The military police may provide useful expertise in this regard.

#### *Arrest looters and recover stolen artefacts*

Depending on the mandate of a mission, law enforcement tasks (stability policing) can be the responsibility of NATO armed force. Tasks may comprise enforcing a prohibition to excavate archaeological sites, actively detecting looting, mapping criminal networks, and prosecuting suspects.

While countering the illegal excavation and digging of cultural property is perhaps the most visible task, it may not be the most effective way of countering the whole chain of looting and trafficking networks. It may therefore be recommended to focus on the broader network of intermediaries and sellers and to prioritise preventing the local population from looting.

#### *Register and report stolen CP*

INTERPOL, the World Customs Union, the International Commission of Museums (ICOM) and UNESCO have developed a lot of tools and expertise to track down and return looted CP. For an overview of their endeavours and databases, see section 4.4. Their databases work best if they are up to date. Therefore, if military personnel finds a site looted, it is crucial to share this information with INTERPOL and other relevant organisations. In 2002 and 2003, the Italian Carabinieri, deployed to KFOR, documented data on looted cultural property and stored it in their Carabinieri TPC database. National CIMIC contributions to KFOR collected data on looted CP as well, but did not do this systematically, and did not store the data in a coordinated and organised manner.

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<sup>164</sup> UNESCO Military Manual (2016), 59.

<sup>165</sup> Article 14(3) of the agreement, cited from NATO SPS Programme (2017).

#### 4.4. Resources and tools

After the discussion of the legal obligations and practical implications of CP looting and trafficking, the following section aims to give the reader a head start to act on CPP challenges. First, relevant organisations are listed after which databases and further readings are discussed.

##### 4.4.1. Relevant organisations

Please find information on UNESCO, the Blue Shield, the ICRC, and the Carabinieri TPC in section 2.3. Chapter 3.3 mentions ICCROM. Other relevant organisations in the field of CP looting and trafficking are listed below.

###### *International organisations*

###### Council of Europe

The Council of Europe is a human rights organisation with 47 European member states (including for example Turkey and Russia). The organisation frequently drafts treaties on current issues – member states can then choose whether they want to ratify the treaty. In 2017 the Council of Europe drafted the Convention on Offences relating to Cultural Property. The convention requires states to criminalise a number of offences related to CP trafficking. The Council of Europe provides clarity on the content of the convention through Explanatory Reports, and oversees the implementation of the convention.

###### Europol

Europol, or the European Union Agency for Law Enforcement Cooperation is an agency of the European Union. Europol helps law enforcement agencies of EU states (and some non-European states) to enhance cooperation and coordination. Europol can establish Joint Investigation Teams. Such teams comprise judges, prosecutors and police officers of multiple European states and are established for a specific purpose for a limited duration.<sup>166</sup> These teams can be useful when investigating criminal activity that crosses (multiple) borders. Europol, for example, supported an operation where police forces of multiple European countries arrested 23 individuals and seized around 10,000 cultural items.<sup>167</sup> During the operation Pandora III, that Europol supported together with INTERPOL and the World Customs Union, police forces from 29 different countries arrested 59 individuals and seized over 18,000 cultural items.<sup>168</sup>

###### Eurojust

Where Europol coordinates the investigation of transnational crime between members of the European Union, Eurojust coordinates the prosecution of transnational crime between members of the European Union. In each of the crackdowns on trafficking described above, Eurojust supported and supplemented Europol, especially with regard to matters of jurisdiction, the validity of evidence and viability of criminal prosecution.

###### EU CULTNET

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<sup>166</sup> See <https://www.europol.europa.eu/activities-services/joint-investigation-teams>.

<sup>167</sup> Press release '23 arrests and around 10 000 cultural items seized in an operation targeting Italian archaeological trafficking' (Europol, 18 November 2019), <https://www.europol.europa.eu/newsroom/news/23-arrests-and-around-10-000-cultural-items-seized-in-operation-targeting-italian-archaeological-trafficking>.

<sup>168</sup> Press release 'Over 18 000 items seized and 59 arrests made in operation targeting cultural goods' (Europol, 29 July 2019) <https://www.europol.europa.eu/newsroom/news/over-18-000-items-seized-and-59-arrests-made-in-operation-targeting-cultural-goods>.

EU CULTNET is an informal network of European law enforcement authorities and experts in the field of cultural goods. It exists to coordinate strategies, share information, exchange best practices, and improve the efficiency of formal cooperation channels such as Europol, UNESCO, WCO and IN.

#### Financial Action Task Force (FATF)

The FATF is an international organisation that seeks to stop the financing of terrorist organisations. As trafficking in cultural property is a source of terrorist financing,<sup>169</sup> the FATF is concerned with stopping cultural property trafficking as well. The FATF publishes detailed reports on how specific terrorist organisations, such as ISIS are financed. The FATF moreover facilitates the sharing of financial information between private actors and publishes strategies to counter-terrorist financing.

#### INTERPOL

INTERPOL is an organisation with 194 member states and aims to enhance cooperation on transnational crime. It enables its members to share information and offers technical support in transnational criminal investigations. In the field of CP crime, INTERPOL houses several CP experts in the Works of Art Unit. They control the database on stolen works of art (see next section), provide information on the modus operandi of traffickers and support several major transnational law enforcement operations.

#### World Customs Organization (WCO)

The WCO focuses on the cooperation between customs authorities worldwide. They focus on the sharing of information and the standardisation of export and import forms and procedures to combat cross-border crimes like money laundering and smuggling.

#### United Nations Office on Drugs and Crime (UNODC)

UNODC is the UN agency concerned with combatting transnational crime. The UN General Assembly has issued the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property.<sup>170</sup> The UN Security Council oversees the implementation of Resolutions requiring states to combat terrorist financing through preventing CP trafficking.

#### *NGOs*

#### The Antiquities Coalition

The Antiquities Coalition is a US-based think tank consisting of CP trafficking experts. It fosters better law and policy, improved diplomatic cooperation, and the adoption of best practices.

#### *Other*

#### The International Military Cultural Resource Work Group (IMCURWG)

The IMCURWG is a small organisation consisting of cultural heritage experts working within a military context that seeks to share existing knowledge and best practices on CPP in a military context. They aim to provide a bridge between organisations that focus on CPP and the armed forces.

#### EUROMED Heritage

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<sup>169</sup> See <https://www.fatf-gafi.org/fr/publications/gafiengeneral/documents/terroristfinancing.html>.

<sup>170</sup> UN General Assembly 18 December 2014, A/RES/69/196.

An organisation is concerned with strategies for the preservation of cultural heritage in the Mediterranean region – a region where CP is increasingly endangered as a consequence of the conflicts in Libya, Iraq and Syria.

#### 4.4.2. Toolkits and guidance

A lot of international cooperation takes place on the issue of CP looting and trafficking. This section aims to discuss practical sources that military personnel can use to execute tasks on CP looting and trafficking.

##### *ICOM- red lists*

The International Council of Museums (ICOM) creates flyers with the categories of CP that are at risk of being exported illegally. These flyers aim to help police and customs officials identify objects as possibly looted CP. The red list is **not** a list of objects that have been stolen: the objects on the flyers are objects that illustrate what type of objects might be looted and trafficked. ICOM's red lists are available online. ICOM has published red lists for Afghanistan, Cambodia, Haiti, Iraq, Libya, Yemen and West Africa. The red lists are usually available in multiple languages. In 2012 the ICOM red list of Iraq helped investigators from the French Central Office for the Fight against Illicit Trafficking in Cultural Goods identify two tablets with Sumerian writing on it as cultural property that might have been looted in Iraq. Upon examination, this was confirmed and the objects were seized and returned to Iraq.<sup>171</sup>



Figure 31: ICOM Red lists of cultural objects at risk, two examples.

#### INTERPOL – database of stolen works of art

INTERPOL has a database of approximately 50.000 works of art that have been stolen. Countries provide the input for the database, which is checked by authorised experts from INTERPOL, UNESCO and ICOM. Anyone can apply to become a user of the INTERPOL database. If an item is entered into

<sup>171</sup> UNESCO Report on the Illicit Trafficking of CP (2018), 96.

the database, it simplifies the process of confiscating and returning the object. It is important to keep in mind that if an item is not in the database, it might still have been looted; the database is not conclusive. Nevertheless, if customs officers or military personnel encounter something that looks like stolen CP, it is useful to consult the INTERPOL database to see if the object was registered as stolen.

#### *INTERPOL – posters of most wanted works of art*

Each June and December, INTERPOL distributes a poster that depicts the most wanted stolen works of art. INTERPOL distributes special posters to highlight objects that were stolen in a particular area, for example objects from the Idlib museum (Syria), the Raqqa museum (Syria), the Artaban tomb in Palmyra (Syria) and the Mosul museum (Iraq).



Figure 32: INTERPOL posters of most wanted works of art, two examples.

#### *Antiquities Coalition – checklist for stolen antiquities*

The antiquities coalition has made a checklist to help buyers identify when an object for sale might have been looted. While the checklist is aimed at tourists, it is useful for members of the armed forces to keep the criteria in mind. If they, during patrols, at a checkpoint or when searching premises, encounter objects that meet several of the criteria on the ‘buyer beware checklist’, chances are high that the object was looted. The criteria relevant for the armed forces are as follows:

- The object still has dirt on it;
- The object looks like it came from a temple, church, mosque or synagogue;
- It was originally attached to something else, for example a wall or a statue;
- There are small numbers on the base or edge of the object;
- The price seems too low for its value (if it is clear for what price the objects are being sold).

Distributing the checklist in areas where looting is ongoing helps military personnel recognise looted cultural objects.<sup>172</sup>

#### *INTERPOL – purple notices*

INTERPOL issues purple notices to share information on the modus operandi of transnational criminal groups, including networks of CP looters and traffickers. These notices are usually made available only to the relevant national law enforcement agencies and are published on INTERPOL’s secure website. The armed forces might request access to the secure website, and in some cases notices are made public.

#### *WCO – ARCHEO*

ARCHEO is a real-time communication tool that is secured and encrypted, and is accessible to authorised users only. It facilitates communication and cooperation between customs administrations, law enforcement agencies and other relevant national academic experts. The platform is used to exchange training materials, identification guides, manuals, and experiences. ARCHEO was instrumental in operation Pandora in 2016, in which over 3.500 stolen artworks were seized and 75 people were arrested as a result of efforts by Europol, UNESCO, the WCO, INTERPOL and 18 countries.

#### *ICOM – International Observatory on Illicit Traffic in Cultural Goods (the observatory)*

The observatory is an information databank for resources on fighting the illicit trafficking of CP. It can also be used as a platform to cooperate and establish ties with law enforcement agencies, international organisations, universities and research institutions. In 2015 the observatory published a book on the illicit trafficking in cultural goods written by 16 experts from different disciplines.<sup>173</sup>

#### 4.4.3. Further reading

##### *Guidance on legal obligations*

- Roger O’Keefe, Camille Péron, Tofiq Musayev, and Gianluca Ferrari, *Protection of Cultural Property: Military Manual* (International Institute of Humanitarian Law and UNESCO 2016).<sup>174</sup>
- Forces Employment Doctrine Center, ‘Handbook on the Protection of Cultural Property in the Event of Armed Conflict’ (French Ministry of Defence 2015).
- Recommendation for the Protection of Movable Cultural Property, adopted by the General Conference of UNESCO in 1978.
- Recommendation on International Principles Applicable to Archaeological Excavations, adopted by the UNESCO General Conference in 1956.

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<sup>172</sup> The checklist is available at [ow.ly/5WuP303f5Yn](http://ow.ly/5WuP303f5Yn).

<sup>173</sup> France Desmarais (Eds.) *Countering Illicit Traffic in Cultural Goods The Global Challenge of Protecting the World’s Heritage* (ICOM 2015).

<sup>174</sup> UNESCO Military Manual (2016).

- Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict.

#### *Reports*

- F. Desmarais (Eds.), *Countering Illicit Traffic in Cultural Goods: The Global Challenge of Protecting the World's Heritage* (ICOM 2015).
- Laurie W. Rush, *Cultural Property as a Force Multiplier: Implementation for all Phases of Military Operation* (NATO 2017).
- Frederik Rosén, *NATO and Cultural Property. Embracing New Challenges in the Era of Identity Wars* (NATO SPS Programme and the Nordic Centre for Cultural Heritage and Armed Conflict 2017).
- Z. Boz, *Fighting the Illicit Trafficking of Cultural Property: A Toolkit for European Judiciary and Law Enforcement* (UNESCO 2018).
- International Council of Museums, *Report on the Situations Where Cultural Property is at Risk in the Context of an Armed Conflict, Including Occupation* (UNESCO 2017).

#### *Detecting looting through satellite imaging*

- N. Brodie 'Satellite Imagery for the Investigation of Looted Archaeological Sites.' (2012) Trafficking Culture.<sup>175</sup>
- Jesse Casana and E. J. Lagier 'Satellite imagery-based monitoring of archaeological site damage in the Syrian civil war' (2017) PLoS ONE 12(11).
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- Emma Cunliffe 'Remote Assessments of Site Damage: a New Ontology' (2014) International Journal of Heritage in the Digital Era 3(3).
- Anthony Lauricella et al. 'Semi-automated Detection of Looting in Afghanistan Using Multispectral Imagery and Principal Component Analysis' (2017) Antiquity 91.

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<sup>175</sup> See <https://traffickingculture.org/encyclopedia/theory-and-method/use-of-satellite-imagery-for-the-investigation-of-looted-archaeological-sites/>

## 5. Summary and Conclusion

In this CCOE CPP Makes Sense publication, members of (NATO member state) armed forces have been provided with an overview of relevant information on CPP, aiming to translate international law to military practice.

The introduction reiterated the importance of CPP for NATO and described the definition of CP and CPP, the relevant actors and the relevant types of situations in which CP obligations arise. The chapters two, three, and four each covered one of the aspects of CPP: protection, first aid and looting/trafficking. These chapters are intended to provide an understanding of the CPP legal obligations and what these obligations practically mean during a NATO mission. Multiple examples showed experiences from the past, with concrete lessons learned for future operations. Discussion of general implications and of the relevant branches within NATO induce member state armed forces, on all levels and in all relevant fields, to start working on implementing these measures. Lists of relevant organisations, databases, tools and sources for further reading aim to give members of the armed forces in charge of CPP, a head-start on solving CP issues.

Without going into detail, the legal obligations are shortly summarised and recommendations are listed.

### 5.1. Summary legal obligations

All chapters have separately discussed the legal obligations regarding CP protection, first aid and countering looting/trafficking. Figure 33 (next page) aims to give an overview of all legal obligations.

Starting with peacetime obligations, the armed forces should introduce appropriate military rules and regulations on CPP, endorse a spirit of respect for CP with all members of the armed forces, educate troops, and establish specialist CPP services. In first aid, the armed forces may be requested or required to assist in (CP) disaster relief. Regarding looting and trafficking, troops are to refrain from looting and prevent looting (e.g. during exercises and field training).

During hostilities, identification of CP is the most important prerequisite for NATO armed forces. In respecting CP, the armed forces are prohibited to target or destruct CP, unless the exception of military necessity applies. Besides, the armed forces should refrain from requisition and retaliation, and must respect CP personnel. Armed forces must actively safeguard CP by taking necessary precautions against damage and destruction in close liaison with the host nation. Regarding first aid and looting and trafficking, the same obligations apply as during peacetime (hence the dotted lines in the figure). This means that NATO armed forces can be requested or required to conduct CP first aid operations. Besides, troops are to refrain from looting themselves, and are required to prevent looting by others (to the best of their endeavours).

In case of belligerent occupation, the mandated NATO mission should adhere to all obligations during hostilities (see the dotted lines). Besides, armed forces must respect and, if necessary, enforce the laws of the host nation and support the host nation where possible or necessary – both in protection, first aid, and looting/trafficking. They are to enact and enforce military laws on looting, trafficking and other forms of misappropriation to prevent CP destruction. Excavations should be prohibited in general. Finally, necessary measures must be taken to preserve CP from the consequences of armed conflict.

## CPP Obligations

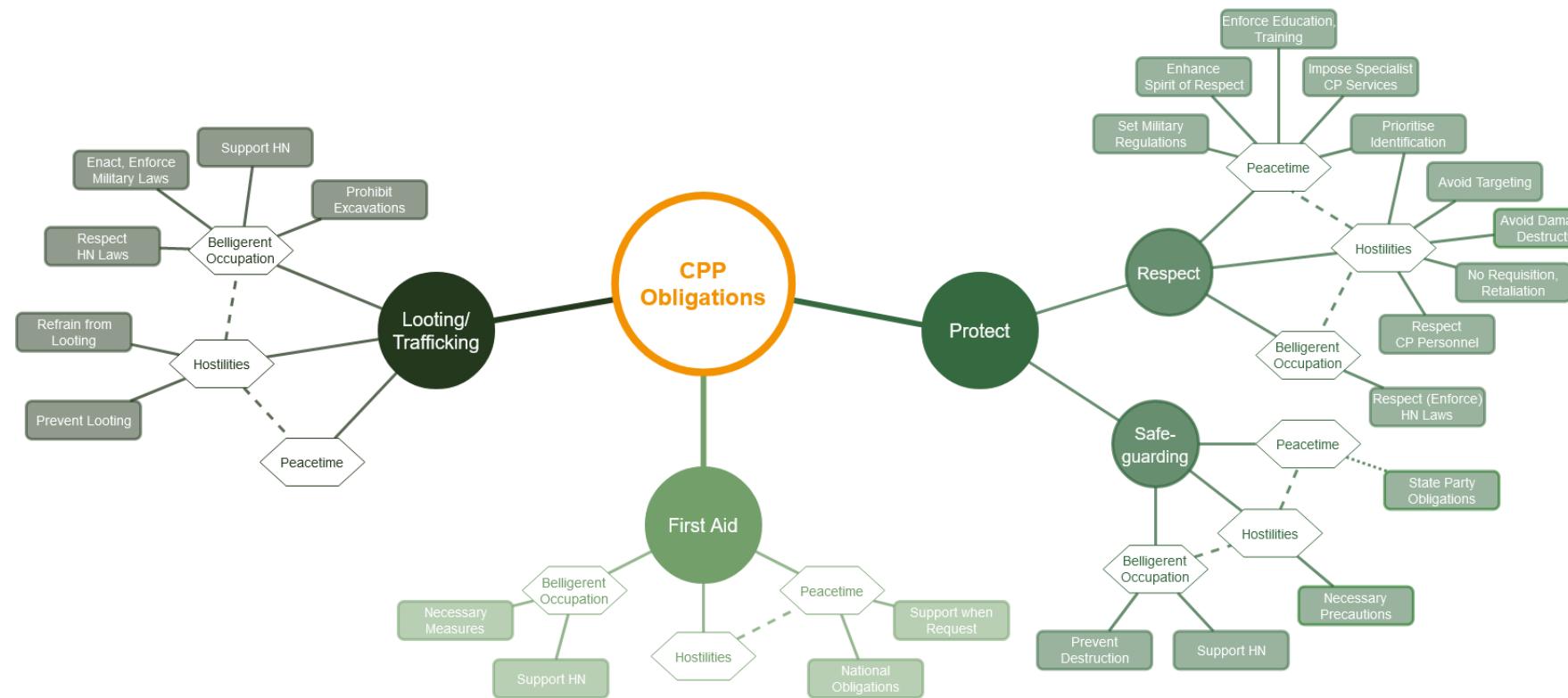


Figure 33: CPP Obligations.

## 5.2. Recommendations

Throughout the booklet various areas for improvement have been identified. These are summarised in the following recommendations that NATO and national armed forces should take up to improve their conduct in CPP. It is, however, not possible to ignore a state's obligations under the 1954 Hague Convention.

As put forward in chapter 2.1.2, states have certain peacetime obligations regarding CPP. As these are often not fulfilled, states are called upon to actively implement the following measures to adhere to their legal obligations, and to provide their armed forces with the necessary preconditions to do their work:

- Make inventories;
- Make (emergency) plans;
- Make command, control and coordination arrangements;
- Conduct regular training and practice of emergency policies.

NATO and national armed forces are recommended to structurally devote efforts and resources to CPP. Ideally, this results in a continuous built-up of CPP expertise, at all relevant levels, in all relevant fields. To that end, the following concrete recommendations are formulated.

### *Education and training*

It is a crucial prerequisite to be educated and trained to be able to adequately work with CP issues in practice. It cannot be reiterated enough that this applies to all the relevant branches (J2, J3, J4, J5, JENG, and J9), on all relevant levels (strategic, operational, tactical), in all types of conflict (from stabilisation operations to counterinsurgency and near-peer conflicts). Establishing proper education and training involves:

- Including CPP in basic military training to educate:
  - The importance of CPP;
  - A spirit of respect towards CP;
  - The basic obligations.
- Including CPP in pre-deployment training to teach:
  - Cultural awareness;
  - Regional history and cultural expressions to be able to identify and recognise CP;
  - All (specific) legal rules and obligations regarding CP;
  - Practical skills to handle CP issues, using, for example, the CPP approach.
- Including CPP in exercises and field training to:
  - Practice CPP skills across the spectrum of conflict – the implementation in the NATO exercise Trident Jaguar 2018 serves as a leading example.

### *Identification*

Much improvement is still needed to acquire comprehensive, accessible and timely databases filled with CP data. NATO cannot blindly rely on state inventories (non-existent) or on NGOs providing lists of CP in the area of operations. To improve matters in the long term, NATO should take a leading role at the international stage to enhance the standardisation and sharing of CP data.

Short term, NATO may need to gather CP data itself as it is vital for the protection of CP that comprehensive CP data is included at an early stage in the operations planning cycle. The J2 and J9 branch should establish common principles and procedures to gather and assess CP data.

### *Military rules and regulations*

While the NATO Bi-Strategic Command Directive 086-005 “Implementing Cultural Property Protection in NATO and NATO-led operations and missions” is highly welcomed, the structural embedding of CPP throughout the NATO organisation has not been finished yet. This embedding looks upon several types of measures:

- Command and control arrangements; it should be clear who is responsible when for which CP. This is not only an issue for NATO internally but it should also be a top priority to arrange with the host nation in a mission area.
- Codes of conduct; it should be established what conduct is expected from members of the armed forces when encountering CP. This includes clarity about what violations of CPP obligations lead to which disciplinary measures. The ROE are of great importance herein.
- Operational procedures; in various types of processes, for example in the planning and targeting cycle, CPP must be accounted for as a meaningful factor.

### *Liaison with expert organisations*

In complying with the legal obligations it is highly recommended to have established structural ties with experts organisations. Organisations listed in sections 2.3, 3.3, and 4.4 can be of significant added value in providing education and training, in identifying CP, and in establishing effective military rules and regulations. Structural cooperation with relevant organisations is inevitable for establishing proper conduct on CPP. Relations should already be built in peacetime to ensure continuity and effectiveness. To this end, units within the armed force must be organised, authorised and must be subsequently made responsible for the liaison with the international community on CPP.

This booklet is intended to contribute to the awareness of CPP within NATO by giving a comprehensive overview of the legal obligations, practical implications, and resources/tools. Continuing the efforts within and outside NATO on this topic will eventually develop CPP into a respected factor, embedded in all phases and elements of a military operation.

## Annex A. List of images

Number	Title	Creator	Date	Source
Cover	NATO Resolute Support at the Blue Mosque, Afghanistan	Olivier Pieper	2019	Bundeswher
1.	CPP in Timbuktu, Mali (2019)	T. Stadel	2019	Etats-Major des armées - Armée de terre
2.	The Blue Shield emblems	UNESCO	1954; 1999	<a href="http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/convention-and-protocols/1954-hague-convention/blue-shield-emblem/">http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/convention-and-protocols/1954-hague-convention/blue-shield-emblem/</a> ; <a href="https://theblueshield.org/resources/laws/1954-hague-convention-treaty-law/armed-conflict-protocols/">https://theblueshield.org/resources/laws/1954-hague-convention-treaty-law/armed-conflict-protocols/</a>
3.	Judgement			<a href="https://pixabay.com/">https://pixabay.com/</a>
4.	CPP – What, Who, When, Why	Jolien Berends	Feb. 2020	Made by author
5.	Playing cards Iraq	Military Cultural Heritage Advisory Group	2009	<a href="https://www.aimilitarypanel.org/milchag/what-we-do/">https://www.aimilitarypanel.org/milchag/what-we-do/</a>
6.	CPP Obligations Protect, Respect Peacetime	Jolien Berends	Feb. 2020	Made by author
7.	Identification archaeological site of Babylon, Iraq, via Google Earth	Emma Cunliffe	August 2004	Cunliffe, Fox, Stone (2018)
8.	Mostar bridge			<a href="https://pixabay.com/">https://pixabay.com/</a>
9.	Djinguerere mosque Timbuktu	UNESCO-Emmanuelle Hernandez	April 2015	<a href="https://en.unesco.org/galleries/heritage-risk-world">https://en.unesco.org/galleries/heritage-risk-world</a>
10.	CPP Obligations Protect, Respect Hostilities	Jolien Berends	Feb. 2020	Made by author
11.	Ziggurat of Ur	russpetcoff	Jan. 2009	<a href="https://www.flickr.com/photos/33583872@N07/3806745987">https://www.flickr.com/photos/33583872@N07/3806745987</a>
12.	CPP Obligations Protect, Respect	Jolien Berends	Feb. 2020	Made by author
13.	CPP Obligations Protect	Jolien Berends	Feb. 2020	Made by author
14.	Armed forces visit a mosque in Timbuktu, 2019	T. Courtois	2019	Etats-Major des armées - Armée de terre
15.	NATO exercise Trident Jaguar 2018	NATO	2018	<a href="https://theblueshield.org/new-bsi-report-exercise-trident-jaguar-2018/">https://theblueshield.org/new-bsi-report-exercise-trident-jaguar-2018/</a>

16.	Military base Afghanistan (Meymaneh)	Metziker	Dec. 2009	<a href="https://search.creativecommons.org/photos/f994ec5b-4af4-46d3-bba5-3b5987156361">https://search.creativecommons.org/photos/f994ec5b-4af4-46d3-bba5-3b5987156361</a>
17.	CPP Approach, in advance	Jolien Berends	Feb. 2020	Made by author
18.	CPP Approach, prepare	Jolien Berends	Feb. 2020	Made by author
19.	Graveyard Afghanistan	Wil Brod, Canadian Military	Aug. 2005	<a href="https://www.flickr.com/photos/wilbrod/257138674/in/photostream/">https://www.flickr.com/photos/wilbrod/257138674/in/photostream/</a>
20.	CPP Approach, observe	Jolien Berends	Feb. 2020	Made by author
21.	CPP Approach, refer	Jolien Berends	Feb. 2020	Made by author
22.	CPP Approach	Jolien Berends	Feb. 2020	Made by author
23.	Members of the armed forces conduct CP first aid in Nepal	Rohit Jigyasu	June 2015	ICOMOS mediatheque <a href="https://www.icomos.org/en/mediatheque">https://www.icomos.org/en/mediatheque</a>
24.	CPP Obligations First Aid	Jolien Berends	Feb. 2020	Made by author
25.	On-site inspection of the damaged Umayyad Mosque in Aleppo	Samir Abdulac	Jan. 2019	ICOMOS mediatheque <a href="https://www.icomos.org/en/mediatheque">https://www.icomos.org/en/mediatheque</a>
26.	UNESCO Poster on CP looting and trafficking	Alejandro Rodríguez Juele and Nicolás Peruzzo	Feb. 2014	UNESCO Uruguay <a href="https://comisionunesco.mec.gub.uy/innovaportal/file/46805/1/hl.jpg">https://comisionunesco.mec.gub.uy/innovaportal/file/46805/1/hl.jpg</a>
27.	Interaction of various actors during a conflict	Martine Jaarsma	Jan. 2020	Made by author of chapter 4
28.	CPP Obligations Looting/Trafficking	Jolien Berends	Feb. 2020	Made by author
29.	The NATO mission in Afghanistan trains Afghan border patrolmen, Afghanistan 2010	US Air Force, Master Sgt. Paul Hughes	Jan. 2010	<a href="https://www.flickr.com/photos/ntm-a_cstc-a/6142846703/in/photolist-amPGj4">https://www.flickr.com/photos/ntm-a_cstc-a/6142846703/in/photolist-amPGj4</a>
30.	Luggage ready for redeployment, Afghanistan 2012	Sgt. Richard Wrigley	May 2012	DVIDSHUB <a href="https://www.flickr.com/photos/dvids/7217620054/">https://www.flickr.com/photos/dvids/7217620054/</a>
31.	ICOM Red lists of cultural objects at risk	ICOM	2015	<a href="https://icom.museum/en/resources/red-lists/">https://icom.museum/en/resources/red-lists/</a>
32.	INTERPOL posters of most wanted works of art	INTERPOL, Works of Art unit	2015	<a href="https://www.interpol.int/Crimes/Cultural-heritage-crime/How-we-fight-cultural-heritage-crime">https://www.interpol.int/Crimes/Cultural-heritage-crime/How-we-fight-cultural-heritage-crime</a>
33.	CPP – Legal Obligations	Jolien Berends	Feb. 2020	Made by author

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