FORUM

INACTIVE, REACTIVE, OR PRO-ACTIVE?

Cultural Property Crimes in the Context of Contemporary Armed Conflicts

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ABSTRACT

The ever-increasing problem of cultural heritage destruction in the eastern Mediterranean is the topic for this Forum. With the rapid spread of armed conflict and civil uprising throughout the Middle East and North Africa, the protection of cultural property takes a backseat to more pressing concerns about the destruction of lives and economic resources. In this article and the responses that follow, the complexities of preserving the past in the context of a volatile present are explored.

EDITORS' NOTE

Many of the photographs in this Forum were taken by investigators or locals on the ground using cellphone cameras in less than optimum, and at times even dangerous, conditions. While some of these images may not be of the highest quality, they stand as a very stark and poignant testament to the types of destruction discussed in this Forum. In fact, some of these photos may be the only documentation available for much of this damage.

On March 13, 2009 the United States (US) Senate ratified the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The ratification makes it mandatory for the US government and any of

more than 115 other national governments that are state parties to this treaty to protect cultural property. The obligation is also valid for the respective armed forces of such nations.

This article addresses the problem of today's increasing damage and destruction of cultural heritage, especially in the Middle East and North Africa. Its focus is on cultural property crimes in times of conflict.[1] Having said this, it must be taken into account that the concept of armed conflict in today's context also encompasses the pre- and post-conflict phases.

The goal here is to give the readers an impression of the complexity, not only of the conflicts causing destruction, but also of the cultural property protection (CPP) phenomenon that is part of contemporary asymmetric conflicts. Throughout the article, suggestions will be made for practical solutions and measures for improving CPP. Because this article is in many ways a synthesis of my work in this area, I have taken the liberty of referencing my earlier publications *Heritage under Siege* and *Cultural Heritage in the Crosshairs* (Kila 2012, and Kila and Zeidler 2013 respectively).

Within the scope of this short article, it is not possible to give a complete overview of all the dilemmas currently affecting cultural property. This, instead, is just a set of indicators that will hopefully trigger discussions and stimulate people to engage in CPP in a proactive manner. A discussion of the legal issues that are intermingled with CPP is unavoidable, as is an analysis of the military aspects especially since we are focusing specifically on conflict situations. However, showing the multi-disciplinary

and complex nature of the subject also demonstrates the need for exchanging knowledge between cultural specialists, legal experts, and military professionals. Hopefully, this article will contribute to that dialogue.

Before delving deep into this subject, we should realize that there are two overarching issues that prevent basic work on CPP in the event of conflict. One is a lack of funding (see below) and the other is the bureaucratic, risk-avoiding attitudes of organizations and individuals that can block simple solutions (Wilson 1989; Kila 2012). An example of the latter is that as I was writing this in August 2013, the news reached me that the United Nations (UN) was sending a team of observers to Syria, especially to Aleppo, to investigate accusations concerning the use of chemical weapons. The specialists that would take part in this team are apparently trained in The Hague, which is my hometown and is well known to cultural heritage specialists through the 1954 Hague Convention. The chemical weapons mission to Syria would have provided the opportunity to investigate the heritage devastation in Aleppo; thus making it possible, after the conflict in Syria, to prosecute those responsible

under either the 1954 Hague Convention or the 1998 Rome Statute. For years now, articles have been written and appeals made to organizations such as the North Atlantic Treaty Organization (NATO) and the UN (via the United Nations Educational, Scientific and Cultural Organization [UNESCO]) to make use of the services of the relatively small group of us who are willing to join missions as (militarized) cultural experts in order to assess and register damages to cultural property (Fig. 1). These experts, who are unafraid and in fact accustomed to working in war zones, have never gotten answers from the organizations mentioned.[2] This is only one of many missed opportunities. Such participation would not have been in the way of the chemical weapons assessment nor would it have hindered any humanitarian aid missions or appropriated any allocated funding for humanitarian aid.

CPP has developed into a multidisciplinary subject involving a variety of stakeholders with different interests, different cultures, and various types of expertise and concerns about the selection of places and objects to be protected. The fact that all of these elements do not mix easily and the respective players are not communicating (enough)

FIG. 1
Cultural heritage experts Karl von Habsburg, Joris D. Kila, and Hafed Walda (left to right) in Sabratha, Libya, in 2011. (Photo by J. D. Kila.)

with each other, let alone working together, makes effective CPP measures and actions extremely difficult. So far, this lack of international and domestic multidisciplinary cooperation is the reason that large-scale destruction of cultural heritage, especially in the event of conflict, is not prevented, or at least monitored *in situ*, for legal actions later. It is not possible to present a complete overview, but I will discuss a number of examples to illustrate problems that have occurred when trying to protect or prepare for safeguarding cultural property. Let it be said however that the biggest problem at this moment is funding! We cannot even say there is a lack of funding—at present, there is *no* funding.

Although during the last few decades several heritage disasters have happened relating to conflict (for example in Iraq, Afghanistan, and the former Yugoslavia), no lessons have been learned about prevention and practical solutions. A serious issue is that stakeholders do not seem to realize that CPP in the context of armed conflict cannot be implemented without taking the military into account. In other words, it is impossible to research and prevent arson while excluding the fire brigade. This does not mean that the ethical beliefs of heritage rescuers are discarded—it is just a simple fact that must be accepted in order to achieve a holistic perspective and a depoliticized CPP system. This, also, does not suggest that the military are automatically willing or interested in implementing CPP mandatorily under the 1954 Hague Convention. Rather, involving them calls for knowledge of military organizations, cultures, semantics, and operational planning in addition to a strategic and intelligent approach.

While appropriate CPP legislation, comprised of International Humanitarian Law (IHL), domestic laws, and even some military regulations, is in place, such legislation is not, in the practical sense, successfully implemented. Adding to this is the fact that CPP in the event of conflict, including the military perspective, is not a topic in the academic heritage debate. There is not much joint research and cooperation between archaeologists and art historians with legal experts. Certainly, there has been an ethical debate among archaeologists about engaging with the military, but this has not produced any solutions since intense emotions have driven the opposing arguments, many of which are not supported by knowledge about legislation, military organizations, and concepts of modern conflict.[3] Nevertheless, contemporary scholarly debate on cultural heritage (see, for example, Tilmans, van Vree, and Winter 2010) can be of vital importance to CPP although it is on a more abstract and philosophical level compared to the discussion about the military aspects and connected issues of CPP.

Creating more awareness by shedding light on the complex playing field, the players, and their different interests and cultures that create the conditions that allow for cultural heritage destruction will help to emphasize the subject in the academic debate. This will hopefully stimulate the development of theoretical frameworks that are not dominated by emotion or other factors that do not support the promotion of CPP in the context of current heritage disasters in conflict areas.

Having said this, it should be stressed again that a major problem for CPP activities including research, raising awareness, and education is lack of funding (Kila and Zeidler 2013: 351–53). It is not expected that help will come from organizations that are earmarked to carry out these responsibilities—for instance, in the 1954 Hague Convention. The last decades have shown that they are incapable to act, mainly because they behave in bureaucratic, risk-avoiding, and political ways. In addition, they argue that they suffer from budget problems. It seems fair to say that, at this stage, people are needed who are not afraid to stick out their necks or to be creative and flexible.

Cultural Heritage and Today's Conflicts

When looking at countries in conflict and turmoil, we can see as van der Auwera (2012) puts it a "prevalence of contemporary wars in weak or failed states, and a multiplicity of actors engaged". I would add autocratic states to this list and sense another prevalence, namely for countries with an abundance of archaeological and/or cultural resources (for example, Iraq, Syria, and Egypt). What this implies is that in each case many different groups, including religious ones, and consequently various cultural properties can be involved. A lot of these are, at the same time, challenged by the fact that they are developing countries which are urged by the international community to concentrate on internal economic matters and, therefore, do not have the financial resources to sufficiently manage their own cultural heritage (Figs. 3–4).

Countries with sufficient financial means and an interest in global archaeology, sometimes based upon

FIG. 2
The looted de Morgana storehouse in Dahshur, Egypt, on February 15, 2011. (Photo by J. D. Kila.)

FIG. 3
The office of Zahi Hawass, then Minister of State for Antiquities Affairs, under siege on February 13, 2011 in Cairo, Egypt. (Photo by J. D. Kila.)

FIG. 4
Graffiti in Tripoli, Libya, during the revolution in 2011. (Photo by J. D. Kila.)

FIG. 5
An exterior view of the neglected second-century CE Villa Silin in Libya as of September 2011.
(Photo by J. D. Kila.)

FIG. 6
A view of the exposed tile floors at the Villa Silin in Libya as of September 2011. (Photo by J. D. Kila.)

FIG. 7
A neglected tile floor of the Villa Silin in Libya as of September 2011. (Photo by J. D. Kila.)

previous colonial ties, are archaeologically active in these source countries—thus interpreting the host country's or local community's heritage from a different, often Western, perspective. Here we touch upon potentially complicated situations that raise professional and ethical questions. A budding opposition between global and local archaeology and heritage studies has created a difficult choice between conducting professional activities according to Western standards versus the incorporation of culturally relevant values (McManamon, Barnes, and Stout 2008).

Nevertheless, the lack of sufficient heritage management and maintenance can be caused by political reasons as well as a lack of resources. For example, Libya was not a poor country, but former dictator Muammar Gaddafi considered archaeology to be a colonial activity and dismissed it as unimportant. On the one hand, because he was not sufficiently convinced of its value Gaddafi did not use cultural property for political purposes, but on the other hand, he took no measures to protect it with the result that the country's cultural heritage is currently in a state of neglect and needs maintenance and restoration (Figs. 4–7) (Kila 2012).

Some New Trends and Threats to Cultural Property

Globally, cultural resources, or to use the legal term cultural properties,[4] are under serious threat of damage and destruction. Armed conflicts as well as local turmoil are exacerbating neglect in many places. Present examples are Mali, where recent deliberate destruction of Sufi shrines and mosques has taken place; Libya, where in the aftermath of revolution the illicit traffic of cultural property and deliberate destruction of shrines and mosques has occurred; Egypt, with an ongoing problem of looting mainly because of the lack of guards at archaeological sites, a problem that could be handled by deploying the military to sites; and Afghanistan, where there is continuous looting and trafficking. Iraq, Jordan, and Lebanon are (still) at risk. Finally, we can see a wave of iconoclastic cultural property destruction visible throughout the region stretching between Mali and Syria.

The most severe circumstances, however, are found in Syria where the destruction of monuments and sites, looting, and trafficking happens on a daily basis.[5] Widespread damage has resulted from shelling, army occupation, terrorism, looting, and uncontrolled demolition (similar to Al Hatra in Iraq). World Heritage sites like the ancient villages of northern Syria, the Crusader castle of *Krak des Chevaliers*, and cultural properties in Damascus, Aleppo, and Palmyra are among the sites that have been adversely affected. More destruction is being reported by "concerned citizens within the country, expatriates and Syrian heritage organisations [who] are monitoring damages as best they can while sending information to the outside world" (Cunliffe 2012: 4).

Iconoclasm, that seems to be back in today's criminal repertoire, can be described as cultural destruction causing (or aimed at) historical obliteration leading to damage or eradication of identities. The aforementioned destruction in Mali was perpetrated by the extremist Muslim group Ansar ad-Din against mosques and mausoleums in Timbuktu containing the tombs of Sufi "saints," many of which are registered on the list of endangered World Heritage sites, because they regarded the shrines as idolatrous.[6] Here, we see a clear parallel with events from the past like the iconoclastic outburst during the reign of Byzantine Emperor Leo III that became known as the first Byzantine Iconoclasm. This began as a campaign to remove an image of Jesus from the main entrance to the Great Palace of Constantinople known as the Chalke Gate. Another classic example of iconoclasm which took place in the Netherlands in 1566, was the so-called *Beeldenstorm*, also known as the "Iconoclastic Fury," which resulted in the large-scale destruction of church interiors and monasteries during a religious conflict between Calvinists and Catholics (Fig. 8).

Contemporary iconoclasm in many ways resembles the classic religious-driven form known from the European Middle Ages. The phenomenon returned to international news in 2001 with the destruction of the Bamiyan Buddhas by the Taliban in 2001 in Afghanistan. The Taliban considered the statues an abomination from the pre-Islamic "dark ages." Common denominators for iconoclasm in both ancient and modern cases are accusations of idolatry and profane depictions of human figures.

There are also non-religious driven iconoclasms such as the appropriation of the cultural treasures of conquered peoples as trophies of war by the Romans who displayed them in triumphal marches, and later installed them in the Roman Forum (Merryman 2005). Incidents throughout history have occurred when conquering powers, in an

FIG. 8
An altarpiece from the Cathedral of Saint Martin de Dom from Utrecht in the Netherlands that was damaged during the *Beeldenstorm*. (Photo by A. Y. Arktos.)

effort to exterminate the identity of enemies from memory destroyed significant objects associated with their culture (Figs. 9–10). In the destruction of Carthage by the Romans after the Third Punic War, iconoclasm merged with urbicide, a term that literally translates as "violence against the city" or, as Bevan puts it, "the murder of a city" as a strategy to erase its character and identity from the memory of its (former) inhabitants and mankind (examples in addition to Carthage, Sarajevo, and Beirut [Bevan 2006; Sandes 2013]). Bevan takes it a step further by suggesting that the activity of destroying architecture while creating widespread civilian casualties is a means to extinguish the collective life and cultural identity of a community (cultural genocide) (Bevan 2006: 209–10). This happened in 1697 when the Spanish completed the defeat of Mesoamerica by burning and wiping out Tayasal, the last Mayan capital.

A complicating development is cultural heritage's expanding nature and changing status. What falls under cultural heritage? This is subject to change as new trends and topics, for example, cultural landscapes, emerge. Other issues are the questions of how people memorialize the past as places of memory or *lieux de memoires* (Nora 1984–1992), the so-called Traumascapes[7] (such as Ground Zero

New York) and intangible heritage that includes traditions or living expressions inherited from our ancestors and passed on to our descendants, such as oral traditions, performing arts, social practices, rituals, festive events, and skills to produce traditional crafts (UNESCO 2012).

The aforementioned continually developing and changing heritage classifications have an effect on the sensitivity of cultural property too, as well as developments involving new media and the sensitive connection between cultural heritage and strategic communications. For instance, the media reporting regarding the Baghdad Museum looting (especially CNN) made the already low international support for the Iraq War almost disappear. In spite of the fact that the US tried to limit the damage, its image as the "destroyer of culture" continues to this day. Currently, new media have started to play key roles since they are capable of provoking negative (inter) national reactions or triggering positive media coverage almost instantaneously. While the latter can generate military force multipliers like enlarging acceptance, one should not underestimate the potential influence of bloggers and websites that can be driven either by individuals or by specific interest groups.

FIG. 9
A damaged mural of St. Peter in the Matejce
Monastery in Macedonia in August 2002.
(Photo by J. D. Kila.)

FIG. 10
Another damaged mural in the Matejce Monastery in Macedonia in August 2002. (Photo by J. D. Kila.)

A recent example of the weight such new media or to be more specific social media can carry is the 2011 revolution in Egypt. Social media's influential powers became eminent through the particular role that it played in terms of intensifying awareness and creating support among anti-government protesters (Mainwaring 2011). Additionally, the input of social media can help to spread cognitive dissonance by connecting opinion makers, community leaders, and protesters to common citizens and swiftly increasing the group of people who become willing to take decisive action. The best known examples of internet platforms potentially capable of doing so are networks like Facebook, LinkedIn, Twitter, and YouTube (for Twitter, see Laracuente 2012).[8]

Overlaps between Cultural and Natural Heritage

Another development to consider is the phenomenon of cultural sites that also qualify as natural heritage. Examples are the so-called cultural landscapes like Uluru-Ayers Rock in Australia, the Loire Castles in France, and even animals such as the Dugong, a large marine mammal, all of which can be classified as cultural heritage. The acknowledgement of the latter's significant cultural identity was even the subject of a legal action—the so-called Dugong case. These examples show that cultural heritage is not always easy to define or distinguish as evidenced by the interpretation of natural and cultural heritage legislation on both national and international levels influenced by socio-political and environmental aspects such as the cultural landscapes. Still this "overlap" has positive side effects that can help to support CPP capabilities within the military in accordance with international legal obligations and military regulations. This is conveyed to NATO's military members by the NATO STANAG 7141 EP doctrine under which natural and cultural resources are considered characteristics of the environment that have to be taken into account in relation to NATO-led military activities.[9]

In 1990, the US passed legislation establishing the Legacy Resource Management Program that provides financial assistance to Department of Defense (DoD) efforts to preserve American natural and cultural heritage. The program assists the DoD in protecting and enhancing resources while supporting military readiness.

The program supported and sponsored a lot of CPP activities among them the famous US military CPP playing cards (Figs. 11–12).

An important provision slotted into existing military environmental management is *Regulation Number 200-2 Environmental Quality (US) CENTCOM Contingency Environmental Guidance*. It states that the US's Central Command forces will actively prevent pollution and respect the natural, historical, and cultural resources of their host nations. Regulation 200-2 contains essential guidance, best management practices, and environmental enforcement capabilities for heritage preservation for US base camps and all contingency operations within the USCENTCOM's Area of Responsibility. The latest accomplishment, not particularly related to environmental provisions is US AFRICOM's Cultural Property Protection Appendix to Annex G to the Theater Campaign Plan. The author of this article advised on and co-authored this annex that provides strategic guidance to all AFRICOM elements for the protection and preservation of all cultural property. This annex is a major step since it will be followed without discussions upfront because it now forms part of the planning process. It is expected that this document (to be made public at a later stage) will serve as an example for other US Combatant Commands and international military organizations that currently lack CPP provisions in their planning process.

These institutionalized and codified connections between cultural and natural resources open new perspectives for international, joint, and multidisciplinary cooperation—especially for embedding CPP capabilities in set structures for environmental issues.

Re-Use of Cultural Property for Strategic Purposes during Conflict

A disturbing development is an increasing use, from a military perspective, of strategically located sites such as ancient fortifications on elevated terrain. Examples are citadels, towers, and castles that already are (historical) fortifications or towers and minarets, a strange approach to recycling. An example of this type of misuse is the spiral minaret of Samarra in Iraq also known as the Malwiya tower, built by Caliph al-Mutawakil in the 9th century. In 2005, insurgents blew up the top section of the 52m (162ft) tower, because it was being used by US soldiers as a lookout position (Fig. 13).

3 ♣

St. Peter mural Matejce monastery,
Former Yugoslav Republic of Macedonia

No graffiti!
Defacing walls or ruins with
spray paint or other materials
is disrespectful and counter-
productive to the mission.

J. Kila

6 ♦

Thousands of artefacts are
disappearing from Iraq and
Afghanistan. Report suspicious
behaviour.

2 ♣

If you find artefacts damaged
by water, please leave them
wet and do not touch. Inform
your superior.

Department of Defence U.S.

Q ♥

Cultural property matters to
the local community. Showing
respect will winn hearts and
minds.

Almuthanna Province, Iraq

J. Kila

Governments of the Netherlands

Netherlands
National Commission
for UNESCO

WILD CARD

This cultural property awareness product was
made possible through the Netherlands
Ministry of Defence, the Netherlands National
Commission for UNESCO, the Netherlands
Ministry of Education, Culture and Science
(Department of Cultural Heritage and the State
Inspectorate for Cultural Heritage). The purpose
is to disseminate the principles of the '1954
Hague Convention' and its two Protocols for the
Protection of Cultural Property in the Event of
Armed Conflict (UNESCO).

The playing cards are an educational and
informational tool. These cards are not for
sale and are not to be reproduced without
permission of the above mentioned parties.

The original concept was created through the
US DoD Legacy Resource Management Program
by dr. Laurie Rush, dr. James Zeidler and Tracy
Wager. Permission for this adaptation was
granted to Joris Kila, cultural advisor Netherlands
MoD by the US DoD.

Image credits are listed on each 'card'. If no credit is listed,
no copy rights apply.
March 2009 / (Origin)ameike Hendriks

2 ♠

World Heritage sites belong to
all the peoples of the world.
Its protection and preservation
for future generations is our
responsibility. (whc.unesco.org)

Mill Network at Kinderdijk-Elshout, the Netherlands

E. Mostaefoi

7 ♠

Customs play an important
role in seizing illegally
obtained cultural property,
such as this ivory object.

Dutch Tax and Customs Administration

FIG. 11
CPP playing cards to educate Dutch and NATO forces on cultural heritage best practices. (Photo by J. D. Kila.)

FIG. 12
CPP playing cards for US forces during the second Gulf War. (Courtesy of the US Department of Defense.)

FIG. 13
The spiral minaret in Samarra, Iraq that was damaged by insurgents in 2005. (Photo by J. Gordon.)

Military re-use of fortified sites has occurred elsewhere, as well. The recent shelling of national heritage sites in Syria, including the 12th-century Crusader fortress of *Krak des Chevaliers* and the Citadel, the medieval fortress at the center of Aleppo, occurred because these places were being used by modern fighters (Figs. 14–15). This suggests that it is wise to give higher priority protection to such sites in risk preparedness plans while taking into account the so-called military necessity implications they can evoke.[10]

Looting and Plundering (Figs. 16–21)

Looting has military parallels beginning with the Romans who allowed their soldiers to plunder as a form of wages. In more recent times, the traditional tribal militias in Afghanistan and Pakistan (the Lashkar) are not paid salaries but share in loot captured from the enemy. This form of pay is, of course, not permitted under international law, but it occurs nonetheless. Looting, stealing, and smuggling of artifacts are, of course, market-driven and based on the international rising demand for antiquities. Since there is only a finite supply of legal objects that are available for trade, any increase can only come from illegal sources (O'Keefe 1997). Cultural objects that are first looted and then smuggled out of conflict zones end up in the antique and art black markets of the Western hemisphere. Profits stimulate belligerent and rebelling parties to continue stealing and looting to generate funds for weapons and ammunition, thus prolonging a conflict. CPP is, in this context, an instrument to deny resources to the opponent consequently reaching the end state of a military operation sooner by creating a military force multiplier.[11]

Actually here too we can draw a parallel with the past when soldiers (often mercenaries) were allowed to plunder as a form of wages. Still, it should be stressed that motives for plunder and looting differ. Mac Ginty gives a more refined perspective on looting; he finds the terms "looting" and "looters" generally to be considered pejorative. From this perspective, the negative label prevails over an objective description of looting as a certain activity. Many looters choose not to interpret their activities in a negative way, but see it as justifiable and legitimate. Some point to the fact that they are unemployed and need to provide for themselves and their families. Others justify looting as an act of taking back items that were in the possession of an ousted regime by entering its former facilities or as an act to express their anger by just vandalizing objects. A recent example was, for instance, the takeover of Gadaffi's house in Tripoli by rebel forces during which statues and even a golden mask of the dictator were damaged in anger as a form of revenge. From that angle, certain lootings can be even explained as redistribution or, as the former British Defense Minister Geoff Hoon stated in 2003 when referring to plunder in Iraq, "liberating those items that are in the charge of the regime by entering its former facilities and the secret organizations and redistributing that wealth among the Iraqi people" (Mac Ginty 2004: 857–70).

From another angle, looting is regarded as a byproduct of violent protest and riots especially in the so-called flash or mob lootings happening as sudden outbursts. Finally, looting can be organized by a government to serve as a motive to take tough action against protesters, while withdrawing fighters or armed forces have been known to deliberately destroy objects because they do not want the winning party to take them in possession. It is obvious that looting has several reasons that have to be considered specifically in relation to military and cultural intervention.

To What Extent Can Iconoclasts and Looters Be Brought to Justice?

There are lawful instruments that supply a legal framework for safe guarding cultural property, especially in the event of conflict. The most important is The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The convention dates from 1954 and has two protocols (1954 and 1999).

The 1954 Hague Convention was designed with World War II as a reference or, in other words, the treaty works optimally in the case of relatively dated types of conflict we call symmetric as opposed to modern asymmetric conflicts. Because of this, problems can occur when one or more belligerents involved in a conflict are no state party to the 1954 Hague Convention or are not recognized as an official party, which is often the case with insurgents and rebels.

FIG. 14
Aerial view of the twelfth-century Crusader fortress of *Krak des Chevaliers.* (Photo by J. Strzelecki.)

FIG. 15
The Citadel in Aleppo, Syria, in 2010. (Photo by B. Gagnon. Courtesy of Wikimedia Commons.)

FIG. 19
Not all artifacts were destroyed in Libya. This pottery in Apollonia was safely stashed away during the revolution. (Photo by J. D. Kila.)

FIG. 20
These sculptures from Cyrene in Libya were also safely stored during the revolution. (Photo by J. D. Kila.)

FIG. 21
Additional sculptures from Cyrene in Libya safely stored during the revolution. (Photo by J. D. Kila.)

Nevertheless, it is still possible to hold people responsible for heritage crimes in the event of non-international conflicts. The Second Protocol of the 1954 Hague Convention mentions individual criminal responsibility, but this legal provision does not to apply in the case of Mali, who has not signed this protocol. The International Criminal Court (ICC) has options to prosecute crimes such as the deliberate destruction of cultural property and Mali is a party to the 1998 Rome Statute that established the ICC, which is based in The Hague. According to the principle of complimentarity, the ICC complements national legislation of its state parties in the earlier-mentioned cases. To put it differently, if the criminal laws of Mali cannot be enforced or are no longer working, the Rome Statute can function as a substitute. The ICC stated that: "Nations agree that criminals should normally be brought to justice by national institutions. But in times of conflict, whether internal or international, such national institutions are often either unwilling or unable to act" (UN General Assembly 1998).

The 1998 Rome Statute, for the ICC, constitutes a landmark treaty on individual responsibility regarding international crimes and contains important provisions for crimes against cultural property (Hector 2010). Two sections are relevant in Article 8 of the statute where a description is given of certain places and buildings that cannot be deliberately attacked unless they are made into military objectives.[12] Examples are buildings dedicated to religion and historic monuments. In the Timbuktu example, the mosques and tombs fall under both categories. Those who intentionally undertake such acts of violence are considered to be guilty of committing war crimes so in fact they can be prosecuted under criminal law. The 1998 Rome Statute generates individual criminal responsibility; however, in the best case scenario, a country in which the cultural property crimes took place has (or is expected to have) already implemented national legislation for investigation and prosecution of such crimes and the 1998 Rome Statute (if applicable) works complimentarily.

The Position of the Military as a CPP Stakeholder

The military is a vague term and is sometimes addressed as the armed forces, Ministry of Defense (MoD), or DoD.[13] They comprise paramilitary police like the Italian Carabinieri and the Spanish Guardia Civil. Therefore,

when referring to the military as the armed forces, it is more effective to speak about the MoD or the US DoD.

By definition, the military are involved in all aspects of armed conflict including protection of cultural property or, in a negative sense, the destruction of cultural property. Apart from the fact that the military are often the first to arrive within the conflict area and have logistical assets to operate in cultural emergency situations, there are more aspects including legal obligations that demonstrate the logic of positive military involvement in CPP. In fact, it is a military's responsibility to create a plan to limit damage that should be implemented before kinetic operations begin. Lack of CPP planning can exacerbate social disorder; eradicate national, ethnic, and religious identities; elicit international condemnation; and prolong conflict. If planned and executed correctly, CPP can be a force multiplier by concurrently ensuring international and domestic stability and goodwill, the latter resulting in an increase of force acceptance.

CPP was implemented by military organizations in World War II (the so-called Archives and Monuments Men) but this CPP strategy and military field experiences gained during World War II seem to have been forgotten. As a result, the wheel had to be reinvented by those that attempted to do something after the topic returned to the international limelight following the cultural devastations in the former Yugoslavia, Afghanistan, and Iraq. It was clear that the earlier circumstances were not the same as the contemporary situation. Generally speaking, World War II cultural strategies would not be very accurate today since they were predominantly based on the more classical symmetrical interstate concepts of warfare/conflict. At present particularly, challenges as how to utilize and deploy military or militarized experts have to be met and (re)discussed after studying practical examples and the new asymmetrical challenges. In Kila 2012, I used a number of case studies, including Uruk and protection against looters and Mattejce and iconoclasm, to demonstrate problems as well as examples of good and bad practices followed by possible solutions and recommendations for better practices.

Issues to take into account include the shifting status and fluctuating appraisal of cultural objects involved in the whole complex of risk preparedness, actual conflicts, hostilities, and reconstruction. Furthermore, today's military operates in an increasingly complex setting. In this regard, the military has had to learn to

adapt to new situations; and the increasing complexity of war creates situations that are especially challenging for activities involving Civil Affairs and Civil Military Coordination (CIMIC) units trying to work with and engage the local population during missions. From this perspective, CPP is one of the many "new" specialties required by the military, taking its place alongside other skills such as civil administration, economic development, humanitarian affairs, and civil infrastructure. In some CIMIC organizations, we find cultural affairs units, but these are rarely put into action since all CIMIC activities are in accordance with NATO CIMIC Doctrine [AJP-3.4.9(A)]. This doctrine orders CIMIC activities (including cultural affairs) to be in support of a commander's mission. In practice this means that CPP is rarely implemented because the commander has no knowledge of the relevance of CPP and has no advisers pointing out the obligations and possible force multipliers. This is another reason to urge NATO to pay attention to CPP.

In addition to the 1954 Hague Convention, there are a number of international treaties that affect the military in case their country is a signatory to these agreements. The most significant relating to cultural property are:

1. Obligations deriving from the 1954 Hague Convention and protocols to be found under:
   a. Article 3: Safeguarding of Cultural Property;
   b. Article 4: Safeguarding of Cultural Property;
   c. Article 5: Occupation;
   d. Article 7: Military Measures;
   e. Article 25: Dissemination of the convention; and
   f. Second Protocol, Article 2: Organization of Control.[14]
2. Obligations deriving from the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 also referred to as the UNESCO Treaty of 1970.
3. Obligations deriving from the Convention for the Safeguarding of the Intangible Cultural Heritage UNESCO 2003. Article 1—Purposes of the Convention:
   a. to safeguard the intangible cultural heritage;
   b. to ensure respect for the intangible cultural heritage of the communities, groups, and individuals concerned;

c. to raise awareness at the local, national, and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof; and
   d. to provide for international cooperation and assistance.
4. Convention on the Protection of the Underwater Cultural Heritage UNESCO 2001.
5. The 1998 Rome Statute of the International Criminal Court (UN 1998).

It is also possible that national legislation can affect the military. For example, the US DoD has an obligation under Section 402 of the National Historic Preservation Act of 1966 to protect the heritage property of any area in the world under the responsibility of the DoD. Failure to take into consideration heritage property could easily result in the DoD being sued both by US citizens and possibly in international court.

The Principle of Military Necessity

Military necessity or military convenience? The notion of military necessity creates a basic conflict of interest between CPP and the military's aim to reach a conflict's end state as soon as possible. In order to get an idea of the legal context in which CPP implementation and legal restrictions function, it is necessary to take a further look at the rather ill-defined principle of military necessity.

"Nothing can stand against the argument of military necessity but the phrase is sometimes used where it would be more truthful to speak of military—or even personal convenience" this was not said by an anarchist but by a famous military man, General Dwight D. Eisenhower on December 29th 1943. According to David Turns, "military necessity is one of the most fundamental yet most misunderstood and misrepresented principles of the international law of armed conflict. It has been invoked by military operators to justify any violent measures deemed necessary to win a given conflict, and it has also been dismissed by human rights groups, nongovernmental organizations, and other critics of the armed forces as a typical military excuse to explain away shocking collateral damage in modern military operations" (2013). Basically, military necessity or urgent military need is considered part of "just war" theory[15] dealing with the conduct of warfare. It is also a legal concept used in IHL as part of the legal justification

for attacks on legitimate military targets that may have adverse consequences for civilians and civilian objects. It implies that military forces in planning military actions are permitted to take into account the practical requirements of a military situation and the imperatives (prerequisite) of winning at any given moment.

Military necessity acknowledges that even under the laws of war, winning the war or battle is a legitimate consideration, though it must be put alongside other considerations of IHL (Hampson 2011). This does not mean that military necessity gives armed forces immunity for taking actions that would otherwise be impermissible, for it is always balanced against the humanitarian requirements of IHL. Three requirements or constraints upon exercising military necessity are of importance:

1. Any attack must be intended and tend toward the military defeat of the enemy; attacks not so intended cannot be justified by military necessity because they would have no military purpose.
2. Even an attack aimed at weakening the military of the enemy must not cause harm to civilians or civilian objects that is excessive in relation to the concrete and direct military advantage anticipated.
3. Military necessity cannot justify violation of the other rules of IHL.

Aside from all this, there are related aspects regarding military necessity such as the principle of proportionality or to put it simple the amount of force to be used. Proportionality is difficult to interpret in relation to the protection of cultural property. It goes without saying that this entire system causes constant tensions between different interests that can be contradictive and on occasion multi-interpretable. Also military necessity is not a static phenomenon, nor are the conditions, perspectives, or rules under which it can be applied. In fact, today, military necessity is treated as a tool just as CPP can be a tool to reach the end state of a mission.

Military commanders on the ground have already relied on this tool in the past (Boylan 2002), for example, when arguing that a certain high church tower might be used for military purposes such as observation or sniping by the defending forces. It is a fact that military necessity was a standard defense used by accused war criminals in trials following World Wars I and II (Dunbar 1952).

Having established the flexible nature of military necessity, it is understandable why Eisenhower and Boylan wondered whether it is used as a response to a "necessity" or as a "military convenience." Military necessity is often cited as a reason, or excuse, for cultural destruction. To make things less convenient Boylan, who designed the Second Protocol of the 1954 Hague Convention sought to restrict the military necessity exemption. While at the same time, anticipating changing methods and conditions of warfare and conflict, he created the Second Protocol to the convention.

Article 11 §2 of the new protocol states that immunity as granted to cultural property according to Chapter II, Article 8 can be lifted in the case of "exceptional cases of unavoidable military necessity." This necessity can only be established by a commander of a force the equivalent of a division in size or larger. It appears to be an indication of the high importance the treaty gives to the quality of military decision making on the subject and the quality of expert advice obviously needed for a commander's considerations while making the decision. In practice the commander of an equivalent to a division will be at least a two-star general often heading a multinational mission. And here we are back to today's problem: from a logical point of view advice concerning withdrawing immunity has to be given by military strategic experts, military lawyers, and last but not least subject matter experts, in this case cultural property experts. Results of assessments and research undertaken prior to the mission should normally play a role in this and as we know this pro-active attitude is currently not exercised.

There is a risk of erosion, deflation, and misuse of the concept of military necessity. In an attempt to restrain this, emphasis is put on the addition of "imperative." Thomas Desch states that the term imperative is not defined for use in connection with military necessity within the treaty text (2002). Therefore it is up to each state party to interpret the term, causing ambiguity in the respective state's practices as well as the risk of misuse.

The Relationship between Cultural Property and Identity

It is clear that there is a trend toward misuse and abuse of cultural, often archeological, objects and sites in the context of conflict. This is as opposed to the more

traditional theft of paintings and sculptures combined with the devastation of monuments, libraries, archives, and museums deriving from collateral damage as known from conflicts like World War II. In other words, there seems to be a shift affecting sites and objects that have a connection with identity, either religious or non-religious. This explains the iconoclastic perspective that drives certain opposing and insurgent forces. But what is the current understanding of identity? National identities for instance are relatively new. Nationalism was developed in Western Europe after the French and American revolutions where it replaced theological and monarchical ideologies as primary instruments used by the state to justify its power. In fact, this actual invention of nationalism gave way to the development of different types of group-related identities linked to cultural heritage and cultural properties. In the late twentieth century, identity-related questions, especially on individual levels, became more manifest because of the development of new social movements, many starting in the 1960s like black power and women's lib. This intensifying of identity gave an extra boost to identity-related cultural property claims, some of the intangible kind, some deriving from an urge for individual distinction (Bourdieu 1984). Later concerns began to include the use and ownership of cultural properties in connection with the new information society.

Cultural objects that represent identity are inherently associated with an idealized reconstruction of the past in the present. Clearly, this historical reconstruction is not taking place according to set rules. It depends on constantly shifting local, political, and social circumstances. Collective identities overlap with social and personal identity and are constructed, so in general not biologically determined. This category is clearly occupied with constructed meanings referring to cultural property. Collective identities are often unambiguous so that their identity co-depends on cultural objects (for example, free masons, soccer teams, military regiments, religions, etc.).

Cultural property is available or can be made available for manipulation. A well-tried method for manipulation was to take property representing cultural identity to add to your own group (for example, just before World War II, the Nazi's defined paintings from Rembrandt as being "Nordic and/or Germanic," thus part of the German culture [Nicholas 1994]).

The identity aspect of cultural heritage is critical; it is one of the key elements in the civil heritage debate, including authenticity and uniquity (that is, uniqueness). This discourse also aims at demonstrating the link between heritage sites and "cultural" landscapes or the cultural and natural aspects of heritage (Luengo 2009). In *The Destruction of Memory*, Bevan analysizes the connection of cultural property with identity and conflict and the potential openings for strategic use by military or opposing forces (2006). An example of denying a people its past as well as its future could be the 1993 destruction of the Mostar Bridge in former Yugoslavia. Seen from this perspective military interests can lead to *exterminating the enemy by obliterating its culture*. The scope is relatively wide since the threat to common objects, especially buildings, is considered a threat to identity in addition to the collective memory maintaining a group's consciousness.

A Selection of Dilemmas and Restraints

It should be taken into account that cultural property or cultural heritage and its protection are complex issues. They touch upon a wide range of interests and involve different cultural backgrounds of both the heritage that has to be protected as well as of all protection stakeholders including their types of expertise and various religious, scientific, social, ethnographic, political, historical, philosophical, legal, ethical, sociologic (tribal), and semantic aspects. To mention an example of semantic aspects, the general use of the nouns "property" and "heritage" in connection with the adjective "cultural" indicates room for disputes about ownership and makes cultural property prone to manipulation. Then there are problems regarding dissimilarities in perceptions between US and European armed forces[16] and public insights on matters as Counter Insurgency (COIN) that in Europe is perceived as secret intelligence operations while in the US CPP is a legitimate part of COIN. The status of military members and for instance reservists in society differs as do what budgets spend on military institutions. The budget problem also becomes apparent in the excuse used by military organizations that they will only act when directly ordered by politicians, knowing that policy and decision makers lack awareness on the subject or exercise bureaucratic and risk-avoiding behavior often based on financial restraints.

To the same extent, cultural heritage and CPP are highly politicized and there are organizations and countries that claim certain market shares.[17]

Other problems include legal aspects and their interpretation by cultural and legal experts restrained by lack of research and dialogue. The international community should be aware that CPP solutions are only possible via pro-active measures. In order to take such measures, people have to be educated and trained. For instance, cultural experts have to be educated about strategic and tactical military issues and the chain of command so that heritage experts can help get CPP obligations into military operational planning documents and procedures. This works the other way too; military experts need cultural heritage education to be able to integrate CPP skills into planning and training. A good illustration of generating added value by cooperation could be collaboration between civilian and military cultural experts, within ethical boundaries, on contemporary technical developments like utilizing Geographic Information Systems and archaeological remote sensing technologies. At this moment, there is no university in the world that created a chair on CPP in the event of armed conflict. Although internationally there is a lot of demand by students from all levels to obtain degrees in this specific multidisciplinary subject, no university takes the initiative; this is really something to think about.

Joint Strategies and International Cooperation

It seems clear that international cooperation in establishing military responsibility in CPP is necessary.[18] In most cases, financial and personnel resources are insufficient to achieve a comprehensive solution. By combining forces, cost-efficient training, exercises, interagency cooperation, research, academic education, in-theater assessments, and the development of educational tools will be possible. The benefits are timely implementation, which is important given the current conflicts where cultural heritage is at risk, efficiency at a low (tactic) level, and effective synergy. Overall, CPP can generate important force multipliers and help end military missions sooner, while contributing to post-conflict reconstruction by stimulating tourism and strengthening national identities.

Policy makers are gradually becoming aware of two important factors in the assessment and study of international CPP cooperation. First, cooperation brings efficiency; second, it enhances cultural diplomacy, loosely defined as "the exchange of ideas, information, art, and other aspects of culture among nations and their peoples in order to foster mutual understanding" (Cummings 2003: 1). CPP as part of cultural diplomacy also provides the means to restore old or develop new contacts after conflict with countries with subversive governmental systems or ideology. "Cultural diplomacy is the first resort of Kings," says Diplomat Richard Arndt (2005). One still must be very careful: Eric Nemeth in the *Chicago Tribune* suggested that there is a potential for proactive protection of cultural artifacts, particularly in the light of the US ratification of the 1954 Hague Convention (2012). Nemeth claims that US foreign policy can transform the risk related to the potential loss of cultural property into a diplomatic gain by insisting that military interventions include a strategy for securing cultural sites and avoiding collateral damage. This approach is mandatory under IHL; however, Nemeth forgets to mention that the US has not ratified the protocols of the 1954 Hague Convention. This means that using this treaty to promote certain ethically driven values could backfire, especially when the US invokes a treaty to which they have not signed. The sanctions put down in both Protocols 1 (1954) and 2 (1999) are those that the US did not ratify.

Nevertheless, the 1954 Hague Convention and protocols should be used in strategic communication and cultural diplomacy, albeit only by the parties who fully endorse them. If demonstrable success implementing the convention should be a condition for its use, not many states or parties would qualify. Therefore, promoting CPP for diplomatic or even economic reasons is a valid and potentially beneficial idea, but should be addressed cautiously.

As established, a vital aspect of international cooperation would be to create a military or militarized cultural emergency assessment capability that, at the very least, is able to monitor and mitigate cultural destruction during conflicts. NATO or the UN can serve as an institutional umbrella for such a capability. In addition, a civilian counterpart has to be created to take over from the military as soon as the situation permits. It is highly recommended that political motives,

competence struggles, and bureaucracy do not restrain the creation of such entities. It is time to include individuals that prove to be inspired by the subject instead of merely career-driven opportunists.

I have tried together with my colleagues Karl von Habsburg and Hafed Walda[19] to set an example by undertaking emergency assessments in Egypt (during the first revolution) and Libya (twice during the overthrow of power), and earlier this year I managed to assess the situation at the Villa Cāsdaglī near Tahrir Square in Egypt (ANCBS and IM CuRWG 2011a–c; Kila 2013). These initiatives were not externally funded. Regrettably, our examples have not been followed.

Epilogue

At the beginning of 2014 there will be the premiere of a major movie production called *The Monuments Men*, which is based on the 2009 book by Robert M. Edsel, which is based on Nicholas 1994, and chronicles the efforts of a group of military men and civilians on the Allied side in World War II whose job it was to protect the cultural heritage of Europe. I can only hope that those who profit from the story of these men and women from the past realize that a small group of individuals are now taking action to save heritage in today's war zones. These modern protectors need at least some financial support and recognition to be able to continue.

I end this discussion with the following recommendations to prevent further damage to cultural property in the context of contemporary conflicts.

- In general, actions claiming to support CPP should be proactive instead of reactive or non-active.
- Measures to prevent conflict-related damage to cultural properties are neither adequately extensive nor swift to prevent such damage. Existing organizations are not doing a good job.
- For the armed forces, CPP is a force multiplier and should not be regarded as an unnecessary burden that is legally imposed but militarily problematic.
- Military necessity in the context of CPP should be discussed and studied among all stakeholders, both military and civilian.

- The relationship and possible connections of CPP with global security should be studied and debated by both civilian and military experts.
- An independent international academic center that can work with an international military CPP competence center organized by NATO or a military academic institute would provide efficiencies and authority to various projects. This institution can also coordinate cultural no-strike lists.
- There is a strong need for a "CPP in the event of armed conflict chair" to allow international students to receive guidance and supervision on the subject.
- CPP support should be, as far as possible, depoliticized and kept in compliance with international agreements.
- As soon as possible the UN and NATO should create an international military and a civilian cultural emergency assessment team. NATO member countries should request CPP expertise and capacity building within NATO since the organization recently made it clear that it would only act on this after requests are made by member states.
- There has to be funding for the above-mentioned actions.

Notes

1. Not all damage inflicted against cultural property is considered a crime. There are exceptions when it can be proven that military necessity urged such mutilation. For military necessity, see Kila 2012: 176–79.
2. On September 18th, 2013, I spoke to a representative of the UN Inter-Agency Task Force for Syria. The CPP aspect was new to them since they focused on humanitarian disaster aspects. They would take it into consideration, but it would be difficult to include cultural heritage experts in any mission since humanitarian aid experts could not even go in yet. The conclusion is that there is a lack of awareness of CPP's importance and it is not a priority issue.
3. During the 2008 World Archaeological Congress in Dublin, Ireland, this led to a confrontation. CPP experts working with the military gave papers, participated in panels, and had to face fierce opposition. Those who had chosen to partner with the military were labeled as "part of the problem" and accused of having lost their impartiality.
4. The term "cultural property" refers to the official definition used in Article 1 of the 1954 Hague Convention.
5. The Cunliffe report, supported by the Global Heritage Fund and presented in May 2012, mentions different types of

damage, more or less in concordance with the categories distinguished in earlier publications.

6. The same happened in Libya. On August 25, 2012 a historical Mosque library containing important manuscripts and several adjacent Sufi shrines and monuments were demolished in the town of Zlitanin. On August 26, 2012 Salafists destroyed a Sufi mosque and numerous shrines in Tripoli (*The Tripoli Post* 2012).

7. See Tumarkin 2005: "In the world we inhabit, traumascapes are everywhere. They are the physical sites of terror attacks, natural and industrial catastrophes, genocide, exile, ecological degradation, and communal loss of heart. They are part of a scar tissue that stretches across the world, from Hiroshima to Auschwitz, Dresden to Srebrenica, Sarajevo to New York, Bali, London, Jerusalem, and New Orleans. Traumascapes are haunted and haunting places, where visible and invisible, past and present, physical and metaphysical, come to coexist and share a common space."

8. A derivative of this is called "viral marketing" also named "going viral," which refers to marketing techniques that use pre-existing social networks to produce increases in awareness concerning brands or certain topics. Viral in this context is used to point at the self-replicating spreading process of viruses.

9. NATO received good press when international cultural heritage experts succeeded in creating a cultural heritage no-strike list before the airstrikes in Libya began. As checked on the ground by the author and Karl von Habsburg, the no-strike list worked (see Kila 2013: 24–28). Unfortunately NATO recently answered (when asked for a follow-up) that although CPP is mentioned in their STANAG 7141 EP, they would not take any measures to implement this because of a lack of expertise (read lack of funding and carrying responsibility). Only on specific requests of member states could CPP be implemented.

10. In this situation, military necessity forms part of a basic conflict of interest between military necessity that is used as a reason to solve (or end) a conflict as soon as possible and civil interests in CPP related to matters like identity, economy, and science in post-conflict conditions.

11. The term "force multiplier" refers to a capability that, when added to and employed by a combat force, significantly increases the combat potential of that force and thus enhances the probability of successful mission accomplishment.

12. This can be the case if for instance anti-aircraft guns or other weapons or snipers are installed in such places.

13. I do not want to suggest that there is such a thing as "the military" because they consist of a variety of institutions, individuals, and cultures. I use the term for the sake of argument.

14. N.B.: An important legal argument for deploying archaeologists in military settings is the fact that the 1954 Hague Convention states in Chapter 1 under General provisions, Article 7: Military Measures that it is mandatory for the military forces of signatories to employ specialist personnel (being art historians, archaeologists, and the like).

15. Just war theory has three main components: (a) *jus ad bellum*: the justice of going to war; (b) *jus in bello*: war is conducted; and (c) *jus post bellum*: the means by which the war is concluded and peace restored.

16. Deriving from cultural differences to be read as corporate cultural dissimilarities.

17. Non-governmental organizations tend to defend their market shares and while doing that, they see CPP as humanitarian aid, resulting in the disapproval of the military implementing CPP.

18. "Joint" in this context stands for integration of various service branches of a state's armed forces.

19. Dr. Walda was with us in Libya. In Egypt we were accompanied by Tilly Mulder.

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