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Report

Cultural Property Protection: Global Capacity and Financing

Expert and Stakeholder Meeting

Tuesday 22 – Wednesday 23, June 2021.

Convener: The Nordic Center for Cultural Heritage and Armed Conflict – CHAC and the Blue Shield International – BSI.

Executive Summary

Cultural Property Protection (CPP) is a thematic issue focusing on the protection and safeguarding of cultural property in times of conflict and crisis. As an operational concept, CPP can be viewed as a descriptive label for a crosscutting range of policies and practices aiming towards respecting, safeguarding, and generally handling various challenges related to objects and sites of significant cultural relevance during armed conflicts. Some of these practices are obligatory as a matter of international law, whilst others are not. Some of them may aim at protecting CP, whilst others may include moral, developmental, or diplomatic considerations. For instance, NATO considers cultural property as an essential aspect of the security environment, and that its protection can constitute an important element in strategic, operational, and tactical considerations.

CPP enjoys increasing focus as a part of the broader peace and security agenda. As concerns about CP recently started to migrate from the cultural sector to the defense and development sectors, aid planners and military commanders often find themselves lacking the tools for including CP in the planning, conduct and after-action review of initiatives and operations. There remains a considerable gap between developments in international law and policy, on the one hand, and practical investment in the area at national and international levels.

Against this background, CHAC and BSI invited 20 stakeholders/focal points working on CPP or related issues in national and international organizations and agencies. The meeting offered an opportunity to discuss general barriers for making CPP a priority issue and mobilizing practical resources for implementing policy and applicable international law; challenges related to CPP as a crosscutting topic straddling several sectors / silos; and diverging concepts and narratives of "CPP".

The recent years have shown many noteworthy developments regarding advancing CPP policies and practice, yet this meeting zoomed in on the barriers and challenges to such activities. The summary offers a broad overview over the identified barriers and challenges, and individual participants may therefore not recognize all of them in their organization setup.

Key observations resulting from the discussions were:

1) The capacity in terms of positions/personnel and resources is globally viewed as extremely low compared to other protection related areas of global security management.

2) Stakeholders and staff working on CPP struggle with making the case for prioritizing and mobilizing even basic resources.

3) CPP is generally not considered to be a priority issue. There is a clear lack of support at the policy level for allocating funding and resources.

4) The concept of CPP is unclear and varies across organizations and expert communities. This confusion of ends, means and relevant authorities stands as a key barrier for setting priorities and allocating resources.

5) There is a lack of evidence and empirical lessons learned to underpin CPP as a thematic issue and operational challenge.

Summary of key observations

1. Capacities

CPP-focused capacities in terms of positions/personnel and resources is globally viewed as exceptionally low compared to other protection- related areas of global security management. It is estimated that, when viewed globally, the number of full-time civil and military CPP positions funded by states or international organizations (including NATO, European Union (EU), United Nations (UN), UNESCO, Organization for Security and Co-operation in Europe (OSCE)[1] dedicated to the topic may often be counted on fingers and toes. That number includes both ministerial positions and operational staff. However, it is difficult to clearly assess capacities because of the crosscutting nature of the topic and because of the recent dovetailing of CPP with issues related to organized crime and trafficking.

- The EU Council has adopted an *EU Concept on Cultural Heritage in Conflict and Crisis* (approved by the Council at its Foreign Affairs Council held on 21 June 2021) and a related EU Approach. Enjoying full support from EU member states, the Approach represents a substantial leap forward regarding the placement of cultural heritage as a strategic component within EU's external action, with impacts for the EU Common Security and Defence Policy (CSDP). The financial resources allocation in the field remains unclear and needs to be worked out.

- Since 2014, OSCE has addressed cultural heritage in their program related to countering cross-border crimes tied to organized crime and terrorism. The focus lies on illicit trafficking and the topic is placed along the trafficking of narcotics and weapons. Attempts to tie the topic into the military and defense component of their work in the line with the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its First (1954) and Second (1999) Protocol have been limited to occasional discussions of shared priorities or interoperability between police and military organisations.

- In 2019, NATO's Strategic Commands have embraced CPP and adopted a comprehensive Bi-Strategic Command Directive on implementing CPP in NATO Operations and Missions that defines roles and responsibilities across branches and functions through all phases of operations. CPP is viewed as a topic that exists in addition to, and independently of, the Law of Armed Conflict (LOAC), whilst retaining a clear connection to it. At NATO HQ, the topic lies with the Human Security Unit in the Office of the Secretary General, together with four other cross-cutting topics: protection of civilians, children and armed conflict, countering trafficking in human beings, and preventing and responding to conflict-related sexual violence. Allied Nations have at the political level addressed the need for adopting a stand-alone NATO

[1] Research positions at universities are not included.

policy on CPP to institutionalize it and separate it from the human security agenda, but the issue remains contentious. However, resources have been allocated to develop CPP at the strategic level.

- The United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) is often mentioned as UN peacekeeping's opening towards CPP because its mandate gave the mission a role in protecting cultural heritage, but this was removed in 2018 by the Security Council. In 2013 the Mission together with UNESCO reached out to member states and asked for specific capacities in the police component to handle this part of the mission namely to capacity build the host nation's ability to counter illicit trafficking. Nations declined due to lack of sufficient expertise capacity in their own countries on this issue. On the civilian side, it took two years to get officially a position of a UN Volunteer (UNV) as associate culture officer in the budget to work on the topic, a position which was incumbered for the first four years of the Mission. Hence, mission-mandate does not always mean resources.

Out of these four organizations with a clear mandate within global security management, only NATO presents developments on CPP with a clear military dimension.

- UNESCO has 6 positions at HQ level focusing on various aspects of heritage in conflict. This includes various tasks related to handling international cultural heritage protection treaties, namely the 1954 Hague Convention and the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. UNESCO's strategy in this area is to implement UNESCO policy objectives through field offices and partnerships.

- Despite forming a part of International Humanitarian Law, the International Committee of Red Cross (ICRC) does not have a specific position or focus on CPP although the organization increasingly involves itself in the debates about CPP.

- Neither the UK British Army Cultural Property Protection Unit, nor the US Army Cultural Heritage Preservation Officers have any full time CPP staff; nor do equivalent units in other national western forces.

Even in countries with sufficient military doctrinal components in place for operationalizing CPP these activities do not transpire. In general, CPP activities are mostly pursued by staff out of personal interest and passion rather than defined institutional duties. The axiomatic condition is the lack of support at the policy level. Initiatives and capacities emerge on an ad-hoc basis and typically hinge on personal interests and aspirations rather than organizational outlooks. That leaves CPP vulnerable to shifts in institutional priorities, rotation of personnel, and similar.

2. Priorities

If cultural heritage/property poses the kind of challenges and opportunities to military organizations that some argue, then why is there not a response driven focus on CH? While there seems to be broad agreement about the relevance of CPP and its cross-cutting nature, CPP is not viewed by senior leadership in states and international organizations as a priority issue. It is generally difficult to explain to agencies within foreign development, defense, and security organisations why and how CPP matters. Therefore, funding is seldom given. Indeed, the same member states which provide mandate (in all organizations) do not necessarily approve the financial support to implement those mandates.

For instance, the ICRC recently explored the possibility of establishing a full-time CPP advisor to provide technical support to states as part of its mission to promote and strengthen humanitarian law and universal humanitarian principles. Yet it has been difficult to mobilize funds for the area because: 1) It is difficult to raise funding for a new position with an unclear function; 2) while the relevance of the topic is widely recognised when it comes to allocating resources CPP struggles with gaining ground as a priority topic internally in the ICRC organization; 3) COVID has led to a focus on securing normal ongoing budgets and on post-pandemic recovery with no capacity to ask potential donors for funding supporting a new topic.

For defense organizations, the recent shift from counterinsurgency (COIN) and stabilization operations to large-scale military operations has created the effect that anything dealing with more precise elaborate doctrine and detailing of LOAC obligations that could reduce the commander's flexibility has been attenuated. This general crisis of LOAC and the Protection of Civilians also impinges on establishing CPP as a resourced priority.

3. Ambiguities

CPP stakeholders report that their difficulties in making the case for CPP and "selling" it to senior leadership often results from the lack of clarity and ambiguities surrounding the aims and purposes of CPP. The concept and narratives of CPP vary across organizations and expert communities. Consequently, it remains a challenge for states and international organizations to come to terms with the agenda. The expert community has never defined CPP. Some states and international organizations use the term CPP; whilst others use Cultural Heritage Protection (as is the lexicon within US DoD). While the meaning may be the same, the difference adds confusion.

CPP is often grouped with "new" cross-cutting topics such as the Protection of Civilians, Children in Armed Conflict, and Women Peace and Security, or even Environment Protection (as in UN peace operations and in NATO until 2016). That gives the confusing impression that CPP constitutes a new topic to consider even if the 1954 Hague Convention constitutes a 70-year-old part of LOAC.

The narrative of CPP struggles with the perceived, if reductive, contradiction between 'saving stones' and saving human lives. Such concern can be applied to many other resource allocations

and priority settings in global security management but tend to play a more decisive role in the context of CPP.

The 1954 Hague Convention is today a controversial instrument as much as it is a unifying one. At one end of the spectrum, some view it as the very definition of CPP, and do not wish to engage in any CPP activity outside its obligations. Yet for others the 1954 Hague Convention is sometimes viewed as outdated and irrelevant, and today a lack of belief in its relevance or utility can be observed in certain quarters. Stakeholders are not looking at the Convention from the perspective of modern warfare, and its implications for it, and thus cannot see any value it may add. Furthermore, even what modern warfare constitutes can cause ambiguity. As asymmetric and hybrid threats continue to dominate some conversations, others are shifting focus to large-scale military operations, whilst other organisations retain their focus on security cooperation, whilst many in the heritage sector continue to refer to armed conflict as a generality.

There is a predominant legalistic focus on the 1954 Hague Convention that tends to overrule other perspectives on CP as an essential aspect of global security that could function as drivers for bringing forward the topic. LOAC provides a key driver for CPP as a thematic area, either bounded by, or added onto, the 1954 Hague Convention. The focus on law and regulation (led by legal advisors in both civilian ministries and armed forces) tends to push strategic and tactical issues related to CP during military operations into the background, obscuring the practical (and reputational) nature of the issues, the need for proactive preparation before conflict, and the value of building both civil and military capacities.

At the national level, there seems to be a lack of understanding of how the 1954 Hague Convention and its Protocols are intended to operate. In some countries, the convention is viewed as only being relevant for military operations, and not applicable in peace time; in other countries, it is viewed as a "cultural convention" that lies with the Ministry of Culture. There is an enduring confusion about whether the obligations enshrined in the 1954 Hague Convention are the responsibility of ministries of culture or of defense (or of internal affairs i.e. coordination of emergencies). The answer is, clearly, both. However this is not at all clear at state level in either conceptual understanding or practice, or in the wider national NGO sector.

Generally viewed, there is little if any cross-sectoral communication between the cultural sector and the security sector. Ministries of foreign affairs are even more likely to be overlooked, despite the obvious international elements of most conflicts.

UNESCO is misunderstood to be the panacea to protect all cultural property in conflict, despite its clear legal mandate (both generally and with regards to the operation of the Conventions), state-party membership, and state-determined funding.

Cultural institutions in western states consider war in their homeland unlikely and thus view the 1954 Hague Convention as redundant, whilst those in conflict-prone areas either lack the capacity to undertake CPP, or view lack of compliance as a political tool through which to demonstrate state strength.

The emergence of illicit trafficking as an issue of organized crime and financing of terrorism has created new synergies between the 1954 Hague Convention and the UNESCO 1970 Convention. Yet it has also created new ambiguities about roles and responsibilities and the meaning of CPP.

The 1972 World Heritage Convention (which offers little to no legal conflict protection) is regularly discussed in place of the 1999 Second Protocol Enhanced Protection regime (despite, or because of, the 1121 vs 17 registrations of cultural locations), and CPP discussions about conflict protection are often diverted to discuss the impacts of climate change. Looting and the 1970 UNESCO Convention also frequently replace broader discussion of CPP. Conversely, some agencies are shifting to a more 'holistic' role, focused on conflict prevention, again withdrawing CPP focus from conflict.

The legal definitions of cultural property can encompass a broad – and to some overwhelming – number of places and sites as "cultural property", allowing them to enjoy international legal protection regardless of their nomination as world heritage sites or placement on national lists (even if such recognition prior to destruction or damage makes prosecution easier). This results in a lack of clarity about the scope of obligations.

It is also clear that the topic of CPP can be addressed from many perspectives. For instance, the attention to and protection of religious places in conflicts technically qualify for consideration under the 1954 Hague Convention on par with the Additional Protocols (1977) to the 1949 Geneva Conventions.

The field of CPP is characterized by experts with many different backgrounds and understandings of what this so-called CPP (or 'CHP') means. This group has stood together for many years, and it has been hard to raise internal critique due to the common cause of bringing CPP forward. The consequent inconsistencies about framing the topic makes it even harder to identify policy hooks for the agenda, and the expert and advocacy community easily ends up contradicting each other and engaging in turf wars.

Collectively, these issues cause hesitation among policy makers and senior leadership about committing to the agenda.

4. Need for better evidence

The confusion of concepts, narratives and relevant authorities stalls political processes and the allocation of resources. It also stalls monitoring of the area and the buildup of lessons identified, requirements assessments, and an evidence base against which to set priorities.

It is difficult to map out the challenges and build an evidence base without investing in capacities to do so. The lack of operational staff in the field and attentions to cultural property during conflict analysis and post-action evaluation hinders evidence collection, strategy development, and the uptake of CPP practice. This results in inconsistencies in how the topic is framed and leaves no operational successes that could rise priorities.

Illicit cross-border trade of artefacts (moveable cultural property) is argued by some to constitute one of the highest rewarding markets for organized crime, but apart from a few underfunded research groups, we see little if any investments in finding out more precisely to what degree – perhaps because violence is rarely associated with "art crimes".

Generally, the evidence underpinning CPP is not sufficiently concrete and often anecdotal. There is no standard for what operational success in CPP efforts looks like in different contexts. This hinders evidence collection, strategy development, and the elaboration and normalisation of CPP practice.

There is a critical lack of a social science research within the peace and security agenda on "cultural property/heritage" and violent conflicts. The topic is mostly a humanities research topic. Equally, there is a lack of social-science evidence base on the importance of conducting CPP, the results of failing to do so on armed forces and communities, or even of collated examples of good practice to demonstrate operational success and importance, that can support CPP in the peace and security agenda, also in relation to mitigate natural disasters, not least those related to climate change.

The CPP agenda is dominated by professionals with a background in humanities or the cultural sector with little or no experience with defense and security. Recommendations therefore often fail to tap into the language, organizational outlook, and operational reality of defense and security sectors, resulting in a lack of dialogue and action.

Russia's strategic application of CPP appears to be well ahead of the western camp and likewise appears to be the only country which includes a section specifically on cultural heritage in its national security strategy. But Russia's instrumentalization of cultural heritage generally flies under the radar of the western security community due to the lack of focus on the topic. China also demonstrates a similar proactivity. The scope of such activities and their implications to peace and security remain to be researched and understood.

5. Recommendations

To remedy the gap between developments in international law and policy, on the one hand, and practical investment in the area at national and international levels, states should consider, among other things, to:

- Identify requirements of resources at national and international levels.
- Financially strengthen focal point positions at the national level and in key international organizations, and establishing focal points where necessary, namely with regard to EU, NATO, UN, ICRC, and OSCE. Seconding staff could also be an option.
- Align positions of ministries of defense, ministries of culture and ministries of foreign affairs as well as relevant branches such as customs, and those dealing with emergencies.
- Support evidenced-based awareness raising of the cross-sectoral nature and relevance of CPP amongst culture, defense, security, development, and foreign affairs staff.

- Support the development of a social science-anchored evidence base on which to base the CPP agenda, strategy development, and priority settings.

2. The CPP stakeholder and expert community should support states and international organizations in defining what CPP is, and what best practice and success look like, and to whom, within the various agendas and types of operation they seek to engage with. The CPP agenda should be more clearly aligned to other areas of work to demonstrate its core relevance.

3. Military CPP obligations should be clearly legally defined, but more importantly in terms of the wider contributions to mission success. Given this, the focus must be on operations and operational success rather than conventions and legal responsibilities to keep it relevant to commanders.

4. Civil CPP obligations should likewise be clarified and encouraged, irrespective of any potential domestic conflict threat.

5. NATO's model of reaching out to and being able to work productively with external experts and organizations should be highlighted as effective practice.

Nordic Center for Cultural Heritage and Armed Conflict
Denmark
www.heritageconflict.org

Email:
chac@heritageconflict.org

Blue Shield International
United Kingdom
www.theblueshield.org

Email:
Blueshield.international@theblueshield.org

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