High Contracting Party: **THE NETHERLANDS**

2010-2012

In this report developments in relation to the Hague Convention and its two Protocols are described for the period mid 2010-mid 2012. In this period the constellation of the Kingdom of the Netherlands changed in such a sense that three islands in the Caribbean (previously making part of the Netherlands Antilles) became part of the Netherlands from 10 October 2010: Bonaire, St Eustatius and Saba. The Hague Convention and its Protocols are now applicable on these islands. The scope of application of the International Criminal Act, which among other things serves as the implementation of the Second Protocol, is enlarged to include also these islands.

I. The 1954 Hague Convention

1. Article 3 – Safeguarding of cultural property

This Article provides for the obligation of the High Contracting Parties to adopt relevant peacetime safeguarding measures against the foreseeable effects of an armed conflict.

Have you undertaken such measures?

- YES: ☐X NO: ☐

If yes, please provide more specific information.

⇨ Article 5 of the 1999 Protocol is complementary to this Article. The Dutch report with regard to this Article is therefore combined with the report concerning Article 5 of the 1999 Protocol.

2. Article 7 – Military Measures (in peace time)

This Article provides for the obligations of the High Contracting Parties to introduce into their military regulations or instructions provisions that may ensure observance of the Convention, as well as to plan or establish within their armed forces services or specialists whose purpose will be to secure respect for cultural property.

(i) Have you introduced such provisions into your military regulations and instructions?

YES: ☐ NO: ☐

If yes, please provide more specific information.

⇨ This Article is linked to Articles 5 and 30 of the Second Protocol. The report of the Netherlands with regard to this Article is therefore combined with the report concerning those articles of the Second Protocol.

(ii) Have you created such services or appointed specialists in your country?

YES: ☐X NO: ☐

If yes, please provide more specific information.

⇨ The armed forces of the Netherlands include the Cultural Affairs & Information Section (CAI Section) of the Command Support Group of the Royal Netherlands Army. This unit is responsible for the implementation of those regulations which are relevant to the armed forces. The CAI Section provides instruction on cultural heritage and cultural awareness during all military pre-deployment training programs, including on the obligation to prevent damage to, destruction of, or illegal transfer of cultural property during military operations abroad. The CAI Section also provides a Cultural Heritage Liaison Group for military support operations on national territory in case of a large-scale disaster or crisis. Reserve officers connected to this Liaison Group are able to advise military commanders on the importance of cultural heritage at risk and will serve as point of contact for civilian staff of those cultural institutions involved. They can be deployed in every Safety Region where military support in assistance to civilian authorities is contemplated.

⇨ Furthermore, during Stability or Peace Support Operations the Dutch armed forces can deploy specialists in cultural heritage protection from 1st CIMIC Battalion Network for Cultural Affairs & Education (more about this Network can be found in this report concerning Article 30 of the 1999 Protocol). This unit consists of expert reserve officers who can be attached to any CIMIC team or military staff in the field.

3. Chapter V – The distinctive emblem

Do you mark cultural property with the distinctive emblem of the Convention?

YES: ☐X NO: ☐

If yes, please provide more specific information.

⇨ The Netherlands has used the distinctive emblem since 1964 for approximately 4500 items of cultural property under (general) protection. The cultural property not under special protection, which are listed in relation to the Hague Convention in the Netherlands can be divided into three categories: immovable property (4.371), movable property (ca. 150) and collections. All items have been registered in a database that is being maintained by the Cultural Heritage Agency (CHA) of the Netherlands. Recently, in the online register of national monuments immovable property under protection has been identified as such. See: www.monumentenregister.nl. Only the immovable property and the buildings in which collections are kept are marked with the distinctive emblem.

⇨ Currently, CHA, in cooperation with the national Blue Shield Committee, is conducting a checkup on the presence and correct application of the distinctive emblem on monuments and collection buildings within the city of The Hague.

⇨ Continuously attention is being paid to disseminate the meaning and context of the emblem and to discourage imitation and unauthorized use.

4. Article 25 – Dissemination of the Convention

Knowledge of the laws of armed conflict is of capital importance for the civilian and military personnel required to apply them. Have you disseminated the provisions of the Convention within armed forces as well as among target groups and the general public?

YES: ☐X NO: ☐

If yes, please provide more specific information.

⇨ Article 30 of the 1999 Protocol is complementary to this Article. The Dutch report with regard to this Article is therefore combined with the report concerning Article 30 of the 1999 Protocol.

5. Article 26(1) – Official translations

To date, the Secretariat has received 32 official translations of the Convention and of the Regulations for its execution (Arabic, Azerbaijani, Bulgarian, Burmese, Cambodian, Chinese, Czech, Danish, Dutch, Estonian, Finnish, German, Hebrew, Hungarian, Greek, Italian, Japanese, Kyrgyz, Latvian, Lithuanian, Montenegrin, Nepali, Norvegian, Persian, Polish, Romanian, Serbo-Croatian, Slovak, Slovenian, Swedish, Thai, and Turkish).

Have you officially translated the Convention and the Regulations for its execution?

YES: ☐X NO: ☐

If yes, could you please provide the Secretariat with an electronic copy of the translation, if you have not already done so?

⇨ The Dutch translation of the Convention is already in the possession of the Secretariat of UNESCO.

6. Article 28 – Sanctions

This Article provides for the obligations of the High Contracting Parties to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the Convention.

Have you introduced this provision into your penal code?

YES: ☐X NO: ☐

If yes, please provide more specific information.

⇨ The Dutch report with regard to this Article is therefore combined with the report concerning Chapter IV of the 1999 Protocol.

If yes, we would be grateful if you could kindly provide the Secretariat with a copy of the relevant provision(s) in English or French.

⇨ The Secretariat has it already in its possession.

II. Resolution II of the 1954 Conference

Have you established a national advisory committee in accordance with the wish expressed by the Conference in Resolution II?

YES: ☐ NO: X☐

If yes, please provide more specific information.

Is such a committee a part of the national commission on the implementation of international humanitarian law?

YES: ☐ NO: X☐

⇨ The Netherlands does not have a national commission on the implementation of IHL.

III. 1954 (First) Protocol (to be filled in only by the High Contracting Parties party to the 1954 Protocol):

The Protocol provides for the obligation of the High Contracting Parties to prevent the exportation of cultural property from a territory occupied by it and requires the return of such property to the territory of the State from which it was removed.

Have you complied with this provision? In particular, have you implemented its provisions in your national legislation?

YES: ☐X NO: ☐

- ⇨ In 2007 the Netherlands adopted the Cultural Property Originating from Occupied Territory (Return) Act.[1] With this Act the (First) Protocol of the Hague Convention has been implemented in Dutch Law. The Protocol includes obligations which necessitated the drawing up of statutory rules for the return of cultural objects taken from occupied territory.
- ⇨ For more information on the Act and its background, please be referred to our previous report.

- ⇨ In a brochure 'Import and Export of Cultural Property', published in March 2010, information has been included on the prohibition to import or to have in one's possession cultural property that was taken after 1959, the year the Netherlands became a Party to the Protocol, from a territory occupied during an armed conflict. See: www.erfgoedinpectie.nl

- ⇨ The bodies responsible for supervision of the Act are Customs and the Cultural Heritage Inspectorate. Further information in relation to the Act can be obtained from the Ministry of Education, Culture and Science, www.government.nl or from the Cultural Heritage Inspectorate, www.erfgoedinspectie.nl, P.O. Box 16478 (IPC 3500), 2500 BL The Hague, tel +31 70 4124012, info@erfgoedinspectie.nl .

Have you have taken into custody cultural property imported into your territory from an occupied territory?

YES: ☐ NO: ☐X

If yes, please provide more specific information, including what steps you have taken to return this property at the close of a conflict.

IV. **The 1999 Second Protocol** (to be filled in only by the States party to the 1999 Protocol):

1. General provisions

(i) Article 5 - Safeguarding of cultural property

Article 5 of the Second Protocol complements Article 3 of the Hague Convention by providing concrete examples of peacetime preparatory measures, such as the preparations of inventories of cultural property or the designation of competent authorities responsible for the safeguarding of cultural property.

Have you undertaken these preparatory measures?

YES: ☐X NO: ☐

If yes, please provide more specific information.

[1] Official full title in English: Act of 8 March 2007 containing rules on the taking into custody of cultural property from an occupied territory during an armed conflict and for the initiation of proceedings for the return of such property; and the title in Dutch: Wet tot teruggave cultuurgoederen afkomstig uit bezet gebied.

⇨ In the Netherlands the preparatory measures in peacetime for the safeguarding of cultural property are covered by the policy for disaster risk reduction, crisis and disaster response. Elements of this policy are described below.

Since 2002 ‘networks for the prevention of damage to cultural heritage’ are established in towns and regions in the Netherlands. The leading principle in the networks is integral safety and security management for people, collections and buildings. The networks include a broad scope of heritage institutions: museums, archives, libraries, churches, mills, managers of monuments and archeological services. Continuous cooperation is sought with the police and fire brigade. The goal of the networks is to establish disaster plans for all participants, as well as cooperation between participants in the event of a calamity within safety regions e.g. for the evacuation of collections. The networks received governmental financial support (through the Mondriaan Foundation) and receive substantive support of provincial museum advisors. The support through the Mondriaan Foundation is continued in the years 2011-2013, with a focus on churches and ecclesiastical heritage and safeguarding measures for cultural heritage in the Caribbean part of the Netherlands.

In 2008 the ‘Expertise centre on safety and security for heritage institutions’ was established. The centre has a national role in collecting and making available information and expertise on risk preparedness and safety to heritage institutions. In 2010 this Centre was incorporated in the Cultural Heritage Agency.

From 1 October 2010, the policy for disaster risk reduction, crisis and disaster response has been changed with the establishment of the Safety Regions Act. The Mayors of the municipalities form together the board of the 25 ’Safety Regions’. The Safety Regions take heritage concerns into account in 4 stages:

Firstly, the Safety Regions continually make an inventory of the regional safety risks. Recently cultural heritage has been added to this inventory as a new category. Selected cultural heritage will be nationally incorporated in the automated system of provincial risk maps.

Secondly, based upon the risk inventory the Safety Regions analyze the relevant incident scenarios for all safety risks. This risk analysis consists of an assessment of the "impact" (total of the consequences of the scenario) and the "probability" (a forecast about the occurrence of the incident scenario). The impact assessment is a multi criteria analysis on 10 criteria, including casualties, economical costs, environmental damage and also damage to cultural heritage. This means that in the impact assessment of risk scenarios like fires, floods, earthquakes and terrorist acts the possible damage to cultural heritage explicitly is taken into account. Recently a new method for the assessment of impact on cultural heritage has been proposed. This method aims at assessing the potential damage by taking into account the preventive measures, the capactiy of the cultural organization itself in the event of a disaster (such as evacuation of cultural objects from a building at risk) and the potential for disaster relief by the emergency services.

Thirdly, the assessments of the impact and probability of all risk scenarios are brought together in a two-dimensional “risk diagram”. On the basis of this diagram and local (political) concerns the municipalities decide which risks are given priority attention. This

may include heritage risks. For the priority risks selected the Safety Regions and all relevant public and private partners will develop and implement better risk reduction and disaster management. In the first instance this will be limited to regional strategic safety policies, rather than safety measures for individual risk locations.

Fourthly, the municipalities and local fire services cooperate with individual museums, libraries and so forth for better preparedness in regard to fire and safety risks and specific risk reduction measures, based upon the regionally selected strategic safety policies. This includes fire compartments, safety procedures and evacuation plans for both people and museum collections.

The ministry of Defense is one of the "crisis partners" of the local and regional authorities which have responsibilities in a Safety Region. In every one of the 25 Safety Regions the Netherlands Armed Forces maintains liaison officers. They serve as advisors on military matters to civilian authorities.

The Dutch method for regional risk inventory and assessment is described in a national guideline in which a specific chapter is dedicated to cultural heritage.

Risk preparedness through disaster plans is mandatory for government subsidized museums and heritage institutions. State subsidized museums have drawn up integral safety plans and have made up the backlog in regard to safety issues, with the financial support of specific government subsidies.

Through the Archive decree and the Archive arrangement archives have the obligation to take measures to secure archival depots against fire and water intrusion. The Cultural Heritage Inspectorate supervises the management and care of the museum collections and archives, including the risk preparedness.

(ii) Article 9 – Protection of cultural property in occupied territory

Article 9 of the Second Protocol complements the provisions in Article 5 of the Hague Convention by imposing a number of prohibitive measures on the occupying power. If applicable, please describe the implementation of such measures.

⇨ Not applicable.

2. **Enhanced protection** (Chapter 3)

The Second Protocol establishes an enhanced protection regime for cultural property, provided that the property is cultural heritage of the greatest importance for humanity, is properly protected by administrative and legal measures, and is not and will not be used for a military purpose or to shield military sites.

(i) Do you intend to request the granting of enhanced protection for a cultural property?

YES: ☐ NO: ☐X

⇨ Regarding the possibility of nominating cultural property for enhanced protection and, in particular, those cultural sites inscribed in the World Heritage List complying with criteria of Article 10, the Netherlands has in the period covered by this report not considered this possibility. In the international context the Netherlands is of the opinion that priority should be given to applications of States Parties where the threat of an armed conflict is existent.

(ii) Do you intend to use the distinctive emblem to mark cultural property under enhanced protection?

YES: ☐ NO: ☐

If not, please state the reasons you have not done so.

⇨ As stated above, the Netherlands has a policy of marking cultural property with the distinctive emblem; however, as we have no cultural property under enhanced protection, marking does not occur for that reason.

3. Articles 15 and 21 - Serious violations of this Protocol and measures regarding other violations, respectively

Article 15 obligates Parties to establish certain acts listed under its first paragraph as criminal offences under domestic law and to make them punishable by appropriate penalties.

Article 21 obligates Parties to adopt relevant legislative, administrative or disciplinary measures to suppress any intentional use of cultural property, illicit export, or other removal or transfer of ownership of cultural property from occupied territory, in violation of the Hague Convention or the Second Protocol.

Have you penalized each of these offences and adopted the above-mentioned measures?

YES: ☐X NO: ☐

If yes, please provide more specific information.

⇨ The acts defined as offences in Chapter IV of the 1999 Protocol were expressly criminalized in the International Crimes Act.[2]

Paragraph 1 of Article 15 of the 1999 Protocol describes a number of acts contrary to the Protocol as serious violations and obliges the States Parties to make such acts criminal offences. As far as Dutch law is concerned, these obligations in relation to offences committed in an international armed conflict have already been implemented by inclusion in section 5, subsection 4 (a), (b), (c), (d) and (e) of the International Crimes Act.

[2] Wet Internationale Misdrijven. The Act killed two birds with one stone, as it also served as the implementation legislation for the Rome Statute of the International Criminal Court.

Although the International Crimes Act does not explicitly state that these acts are criminal offences when committed in a non-international armed conflict, they will still be criminal under the catch-all provision of section 7 of the International Crimes Act.

The text of the relevant provisions is in the possession of the Secretariat of UNESCO.

Under Article 21 the Parties to the Protocol are required to adopt, in addition to the criminal sanctions prescribed by article 15 (2), for the serious violations described in paragraph 1 of that article such other measures as may be necessary to suppress other intentional violations of the Protocol. Subparagraphs a) and b) of this article indicate when these measures must be taken.

However, the Parties have greater freedom of choice in respect of these measures than in the case of the serious violations, since the measures in question need not necessarily be of a criminal law nature. Dutch law already has penal sanctions for a number of the acts covered by this, for example under the Cultural Heritage Preservation Act (Sections 7, 14a-d in conjunction with section 1 of the Economic Offences Act), and the definitions of offences of a more general nature (such as handling stolen goods in article 416, paragraph 1 of the Criminal Code) may be applicable in certain situations

4. Article 16 – Jurisdiction

Have you taken the necessary measures to establish jurisdiction over offences mentioned in Article 15?

YES: ☐X NO: ☐

If yes, please provide more specific information.

⇨ Under paragraph 1, States which are party to the Protocol are required to establish jurisdiction over the offences listed in Article 15, in so far as they are committed in their territory, by one of their nationals and, in the case of the offences set out article 15, sub-paragraphs a), b) or c), when the alleged offender is present in its territory.

Section 2 of the International Crimes Act provides for jurisdiction over these offences in keeping with the requirement in Article 16 (1) of the present Protocol.

5. Articles 29 (The Fund for the Protection of Cultural Property in the Event of Armed Conflict), 32 (International assistance) and 33 (Assistance of UNESCO)

Are you currently receiving international assistance from the Fund?

YES: ☐ NO: ☐X

Are you currently providing or planning to provide international or technical assistance on a bilateral or multilateral level?

YES: ☐X NO: ☐

If yes, please provide more details.

⇨ Please be referred to the answer under point 7 below: Fund for the Protection of Cultural Property in the Event of Armed Conflict'

6. Dissemination (Article 30)

Article 30 calls for, among other things, the strengthening of the appreciation and the respect for cultural property, the dissemination of the Protocol and the establishment of military instructions, training and communication facilities.

Please describe the measures taken concerning the above-mentioned obligations.

⇨ The protection of cultural property is part of the curriculum in military education programs at all levels. Instruction is increasingly detailed in the higher ranks. The subject of cultural heritage protection is taught in the specific preparations which military personnel undergo prior to a deployment. The Netherlands armed forces military directive on training (directive A-700(A)) specifically mentions that pre-deployment training should always address the cultural heritage and cultural history of the mission area.

⇨ The Convention, the Protocols and the Regulations have been included in the Ministerial Publications publication series, which is made available electronically to all Defence personnel and in part publicly via the internet. The main rules and principles are also included in doctrinal publications, including the Manual on the Law of Armed Conflict issued by the Commander of the Royal Netherlands Army, which is also used by the other services of the armed forces. The relevant provisions of the Protocol are also taken into account in drafting rules of engagement.

⇨ Within the Dutch armed forces an important role in the implementation of Article 30 has been assigned to 'Cultural Affairs and Information Section' (henceforth: CAI Section) and '1st CIMIC Battalion' (the military unit responsible for Civil-Military Cooperation). The role of CAI Section has been outlined under I (2) (Art. 7 of the 1954 Convention) above. The Commanding Officer of the '1 CIMIC Battalion' (henceforth: 1CIMICBAT) is responsible within the Netherlands' Armed Forces for maintaining a network of some 33 reserve officers who in civilian life are experts in the fields of cultural affairs and education. This is called the '1st CIMIC Battalion Network for Cultural Affairs and Education' (CA&E Network). Any one of them can be called out for a tour of duty with a CIMIC team attached to a Dutch military taskforce taking part in a military operation abroad. Experts in the field of archaeology, museum management, architectural monuments and cultural heritage protection are available whenever their services are needed in the field. The Network has close personal links with the CAI Section. From 2005 to 2008 the Head of the CAI Section served as

chairman of the CA&E Network. Other regional experts at the CAI Section have joined the Network as well. Three of them have served as Cultural Advisors in Kandahar, Afghanistan.

7. The Fund for the Protection of Cultural Property in the Event of Armed Conflict

Have you contributed to the Fund?

YES: ☐X NO: ☐

If yes, please provide detailed information concerning your contribution.

⇨ The Netherlands has contributed to the Fund for the Protection of Cultural Property from 2009 onwards. This is a annual voluntary contribution to mark the long tradition of commitment of the Kingdom of the Netherlands to the protection of cultural property in the event of armed conflict. As early as 1907, the Hague Regulations concerning the Laws and Customs of War on Land mentioned this issue. In collaboration with UNESCO and its other Member States, the Kingdom of the Netherlands played a key role in drafting the 1954 Convention, First Protocol and, later, its Second Protocol. The relation between the Netherlands and the Convention and its Protocols has been perpetuated through its name The Hague Convention, being the place where it was adopted. It is hoped for that the example of the Netherlands of regular voluntary contributions will be followed by other contributions to enable UNESCO and the Parties to protect the cultural heritage which is in danger due to acts of armed conflict.

8. National focal point

Please provide us with the name and address of a single national focal point for all official documents and correspondence related to the implementation of the Second Protocol.

⇨ The Permanent Delegation of the Kingdom of the Netherlands to UNESCO
7, rue Éblé
75007 Paris
pau@minbuza.nl

V. Other issues related to the implementation of the Hague Convention and its two Protocols

The Secretariat would appreciate it if you could provide us with a copy of the following documents in English and/or French:

- the relevant administrative civilian and military regulations;
- national laws on the protection of cultural property as well as penal provisions not covered by Article 28 of the Hague Convention and Articles 15, 16, 21 of the Second Protocol; and, case-law on the protection of cultural property related to the implementation of the Hague Convention and its two Protocols.

- ⇨ The Netherlands contributed to the compilation of a ‘cultural property no strike list’ used during NATO Operation Unified Protector in Libya.

- ⇨ National laws from the Netherlands on the protection of cultural property are recently updated in the UNESCO Cultural Heritage Law database.

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VI. Official Translations of the Second Protocol to the 1954 Hague Convention

To date, the Secretariat has received 18 official translations of the Second Protocol (Armenian, Brazilian Portuguese, Burmese, Croatian, Czech, Danish, Dutch, Estonian, German, Greek, Italian, Japanese, Latvian, Nepali, Persian, Romanian, Slovak and Slovenian).

Have you officially translated the Second Protocol?

YES: ☐X NO: ☐

If yes, could you please provide the Secretariat with an electronic copy of the translation, if you have not already done so?

- ⇨ The Dutch translation of the 1999 Protocol is already in the possession of the Secretariat of UNESCO.