

**Report on the Implementation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its 1954 and 1999 Protocols
January 2004-March 2010**

The Netherlands

Ref: Letter of 15 December 2009 of UNESCO's Assistant Director-General for Culture, regarding periodic reports on the implementation of the above mentioned international instruments.

The Kingdom of the Netherlands is a Party to the 1954 Hague Convention (since 14 January 1959), the 1954 Protocol (since 14 January 1959) and the 1999 Protocol (since 30 April 2007). Within the Kingdom, these instruments are solely applicable on the territory of the Netherlands.

As the 1999 Protocol supplements the 1954 Hague Convention, reporting about certain Articles has been combined.

I. National Report on the implementation of the 1954 Hague Convention

I.1. *Art. 3 Safeguarding of cultural property*

The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.

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.

I.2. *Article 7- Military Measures*

1. The High Contracting Parties undertake to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.

2. The High Contracting Parties undertake to plan or establish in peace-time, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.

The armed forces of the Netherlands include the Cultural Affairs & Information Section (CAI Section) of the Command Support Group of the Royal Netherlands Army.¹ 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.

I.3. Chapter V, the distinctive emblem

Article 16 Emblem of the convention

1. The distinctive emblem of the Convention shall take the form of a shield, pointed below, persaltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).

2. The emblem shall be used alone, or repeated three times in a triangular formation (one shield below), under the conditions provided for in Article 17.

Article 17 Use of the emblem

1. The distinctive emblem repeated three times may be used only as a means of identification of:

- (a) immovable cultural property under special protection;*
- (b) the transport of cultural property under the conditions provided for in Articles 12 and 13;*
- (c) improvised refuges, under the conditions provided for in the Regulations for the execution of the Convention.*

2. The distinctive emblem may be used alone only as a means of identification of:

- (a) cultural property not under special protection;*
- (b) the persons responsible for the duties of control in accordance with the Regulations for the execution of the Convention;*
- (c) the personnel engaged in the protection of cultural property;*

¹ The CAI Section is since 2001 part of the Land Forces Command Support Group. From the 1950's until the 1990's it was called the Cultural Heritage Protection Bureau (Inspectie Cultuurbescherming), which was a separate unit within the army's National Territorial Command.

(d) the identity cards mentioned in the Regulations for the execution of the Convention.

3. During an armed conflict, the use of the distinctive emblem in any other cases than those mentioned in the preceding paragraphs of the present Article, and the use for any purpose whatever of a sign resembling the distinctive emblem, shall be forbidden.

4. The distinctive emblem may not be placed on any immovable cultural property unless at the same time there is displayed an authorization duly dated and signed by the competent authority of the High Contracting Party.

The Netherlands has used the distinctive emblem since 1964 for approximately 4500 items of cultural property under (general) protection. These items can be divided into three categories: immovable property (4.371), movable property (ca. 150) and collections. All items have been registered in a database.

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

I.4. Article 25 – Dissemination of the Convention

The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the text of the present Convention and the Regulations for its execution as widely as possible in their respective countries. They undertake, in particular, to include the study thereof in their programmes of military and, if possible, civilian training, so that its principles are made known to the whole population, especially the armed forces and personnel engaged in the protection of cultural property.

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.

I.5. Article 26 (1) - Official Translation

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

I.6. Article 28 Sanctions

The High Contracting Parties undertake 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 present Convention.

Article 28 imposes an obligation on the Parties to make violations of the Convention criminal offences under national law. However, it lacks a peremptory system of sanctions. Chapter 4 of the 1999 Protocol adds a more exact list of serious violations of international humanitarian

law in relation to cultural property and also contains provisions governing criminal responsibility and jurisdiction. The Dutch report with regard to this Article is therefore combined with the report concerning Chapter IV of the 1999 Protocol.

I.7. 1954 (First) Protocol²

In 2007 the Netherlands adopted the Cultural Property Originating from Occupied Territory (Return) Act.³ 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.

The first request by a foreign authority to the Dutch government for the return of cultural objects was not submitted under the Protocol until 1997. This was a request by the Cypriot authorities for the return of icons that had been removed from a Greek Orthodox Church in northern Cyprus after the Turkish occupation began in 1974 and had ended up in the Netherlands. All States concerned (Cyprus, Turkey and the Netherlands) are parties to the Protocol. The request for the return of the icons was made following civil proceedings instituted in 1995 by the Greek Cypriot church before the District Court of Rotterdam for their return. In its judgment of 4 February 1999⁴, the District Court held that Article 1.4 of the Protocol was not a self-executing provision within the meaning of Article 94 of the Dutch Constitution. This judgment was upheld on appeal by The Hague Court of Appeal.⁵ The claim for the return of cultural objects on Dutch territory as referred to here was refused for this reason.

The conclusion to be drawn from this was that the Netherlands could no longer wait to implement the Protocol in national legislation. The parliamentary questions on this subject in 1997⁶ and in 1999⁷ indicated to the government that the House of Representatives also believed the Protocol should be transposed into Dutch legislation.

In a folder '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.

² The text below is derived from the Explanatory Memorandum of the Act. The Act and the Memorandum are available through the UNESCO Art Law database.

³ 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 cultuurogoderen afkomstig uit bezet gebied.

⁴ NJ kort 1999, 37.

⁵ Judgment of 7 March 2002, case number 99/693; this judgment has not been published

⁶ Appendix to Parliamentary Papers, House of Representatives, 1997/98, no. 213.

⁷ Appendix to Parliamentary Papers, House of Representatives, 1998/99, no. 1332.

II National reports on the implementation of the 1999 Protocol to the 1954 Hague Convention

II.1. Article 5- Safeguarding of cultural property

Preparatory measures taken in time of peace for the safeguarding of cultural property against the foreseeable effects of an armed conflict pursuant to Article 3 of the Convention shall include, as appropriate, the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property.

Article 3 of the Hague Convention and Article 5 of the 1999 Protocol provide for the obligation of the High Contracting Parties to adopt the relevant peacetime safeguarding measures against the foreseeable effects of an armed conflict.

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 received governmental financial support (through the Mondriaan Foundation) and receive substantive support of provincial museum advisors. 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.

Beginning 2004 the safeguarding of cultural heritage against disasters has been governed by the Disaster Response (Quality Improvement) Act.⁸ Under this Act, the protection of cultural heritage against the risk of disasters was foreseen to be regulated in municipal disaster response plans, subsequently evaluated by the provinces.

In 2008 the ‘Expertise centre on safety and security for heritage institutions’ was established.⁹ The centre has a national role in collecting and making available information and expertise on risk preparedness and safety to heritage institutions.

Although officially outside of the timeframe of this periodic report, we would like to inform that starting in 2010 the policy for disaster risk reduction, crisis and disaster response will change with the establishment of the Law on Safety Regions; however the principal responsibility of municipalities and provinces remains. They are being advised by the 25 Safety Regions. In the near future, heritage concerns will be taken into account by these authorities in 4 stages:

⁸ Wet kwaliteitsverbetering rampenbestrijding.

⁹ Kenniscentrum veiligheid cultureel erfgoed, KVCE; The centre will be transferred in 2010 from the Royal Library to the Cultural Heritage Agency.

- First, 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.
- Second, based upon the risk inventory the Safety Regions analyse 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 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.
- Third, 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.
- Fourth, 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 Defence 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.

Risk preparedness through disaster plans is mandatory for government subsidized museums and heritage institutions. State subsidized museums are receiving subsidies for drawing up an integral safety plan and for making up the backlog in regard to safety issues. Through the Archive decree and the Archive arrangement¹⁰ 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 these collections and archives, including the risk preparedness.

II.2. Chapter 3- Enhanced Protection

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

¹⁰ Archive Decree (Archiefbesluit 1995) art. 13; Archive arrangement (Archief regeling 2009) art. 28.

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.3. Article 15- Serious violations of this Protocol

1. Any person commits an offence within the meaning of this Protocol if that person intentionally and in violation of the Convention or this Protocol commits any of the following acts:

- a. making cultural property under enhanced protection the object of attack;*
- b. using cultural property under enhanced protection or its immediate surroundings in support of military action;*
- c. extensive destruction or appropriation of cultural property protected under the Convention and this Protocol;*
- d. making cultural property protected under the Convention and this Protocol the object of attack;*
- e. theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention.*

2. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the offences set forth in this Article and to make such offences punishable by appropriate penalties. When doing so, Parties shall comply with general principles of law and international law, including the rules extending individual criminal responsibility to persons other than those who directly commit the act.

The acts defined as offences in Chapter IV of the 1999 Protocol were expressly criminalized in the International Crimes Act.¹¹

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.

The relevant part of the International Crimes Act reads:

‘4. Anyone who, in the case of an international armed conflict, intentionally and unlawfully commits one of the following acts shall be liable to a term of imprisonment not exceeding fifteen years or a fifth category fine:

- (a) making the object of attack cultural property that is under enhanced protection as referred to in articles 10 and 11 of the Second Protocol, concluded in The Hague on 26 March 1999, to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (Netherlands Treaty Series 1999, 107);
- (b) using cultural property that is under enhanced protection as referred to in (a) or the immediate vicinity of such property in support of military action;
- (c) destroying or appropriating on a large scale cultural property that is under the protection of the Convention, concluded in The Hague on 14 May 1954, for the Protection of Cultural

¹¹ 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.

Property in the Event of Armed Conflict (Netherlands Treaty Series 1955, 47) or the Second Protocol thereto;

(d) making cultural property that is under protection as referred to in (c) the object of attack; or

(e) theft, pillaging or appropriation of – or acts of vandalism directed against – cultural property under the protection of the Convention referred to in (c).’

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:

‘1. Anyone who, in the case of an international or non-international armed conflict, commits a violation of the laws and customs of war other than as referred to in sections 5 or 6 shall be liable to a term of imprisonment not exceeding ten years or a fifth category fine.’

‘2. A term of imprisonment not exceeding fifteen years or a fifth category fine shall be imposed:

(a) if an act as referred to in subsection 1 is likely to result in the death of or serious bodily injury to another person;

(b) if an act as referred to in subsection 1 involves one or more outrages committed upon personal dignity, in particular humiliating and degrading treatment;

(c) if an act as referred to in subsection 1 involves compelling another person to do, refrain from doing or permit something, or

(d) if an act as referred to in subsection 1 involves pillaging a city or place, even when taken by assault.’

‘3. Section 5, subsection 6, shall apply mutatis mutandis to an act as referred to in subsection 1.’

II.4. Article 16 Jurisdiction

1. Without prejudice to paragraph 2, each Party shall take the necessary legislative measures to establish its jurisdiction over offences set forth in Article 15 in the following cases:

a. when such an offence is committed in the territory of that State;

b. when the alleged offender is a national of that State;

c. in the case of offences set forth in Article 15 sub-paragraphs (a) to (c), when the alleged offender is present in its territory.

2. With respect to the exercise of jurisdiction and without prejudice to Article 28 of the Convention:

a. this Protocol does not preclude the incurring of individual criminal responsibility or the exercise of jurisdiction under national and international law that may be applicable, or affect the exercise of jurisdiction under customary international law;

b. except in so far as a State which is not Party to this Protocol may accept and apply its provisions in accordance with Article 3 paragraph 2, members of the armed forces and nationals of a State which is not Party to this Protocol, except for those nationals serving in the armed forces of a State which is a Party to this Protocol, do not incur individual criminal responsibility by virtue of this Protocol, nor does this Protocol impose an obligation to establish jurisdiction over such persons or to extradite them.

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. The relevant part of the International Crimes Act reads:

‘1. Without prejudice to the relevant provisions of the Criminal Code and the Code of Military Law, Dutch criminal law shall apply to:

- (a) anyone who commits any of the crimes defined in this Act outside the Netherlands, if the suspect is present in the Netherlands;
- (b) anyone who commits any of the crimes defined in this Act outside the Netherlands, if the crime is committed against a Dutch national;
- (c) a Dutch national who commits any of the crimes defined in this Act outside the Netherlands.’

‘2. The expression ‘any of the crimes defined in this Act’ as referred to in subsection 1 shall be equated with the crimes defined in Articles 131-134, 140, 189, 416-417bis and 420bis-420quater of the Criminal Code, if the offence or crime referred to in such articles is a crime defined in this Act.’

‘3. Prosecution on the basis of subsection 1 (c) may also take place if the suspect becomes a Dutch national only after committing the crime.’

II.5. Article 21- measures regarding other violations

Without prejudice to Article 28 of the Convention, each Party shall adopt such legislative, administrative or disciplinary measures as may be necessary to suppress the following acts when committed intentionally:

- a. any use of cultural property in violation of the Convention or this Protocol;*
- b. any illicit export, other removal or transfer of ownership of cultural property from occupied territory in violation of the Convention or this Protocol.*

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.

II.6. Article 30 – Dissemination

1. The Parties shall endeavour by appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect for cultural property by their entire population.

2. The Parties shall disseminate this Protocol as widely as possible, both in time of peace and in time of armed conflict.

3. Any military or civilian authorities who, in time of armed conflict, assume responsibilities with respect to the application of this Protocol, shall be fully acquainted with the text thereof. To this end the Parties shall, as appropriate:

(a) incorporate guidelines and instructions on the protection of cultural property in their military regulations;

(b) develop and implement, in cooperation with UNESCO and relevant governmental and non-governmental organizations, peacetime training and educational programmes;

(c) communicate to one another, through the Director-General, information on the laws, administrative provisions and measures taken under sub-paragraphs (a) and (b);

(d) communicate to one another, as soon as possible, through the Director-General, the laws and administrative provisions which they may adopt to ensure the application of this Protocol.

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) specifically mentions that pre-deployment training should always address the cultural heritage and cultural history of the mission area, as well as provide detailed information on local culture, religious beliefs, social customs, and do's and don'ts.

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.

On the occasion of the tenth anniversary of the 1999 Protocol on 26 March 2009, the Ministry of Foreign Affairs, in cooperation with the Ministries of Defence and Culture organised an international symposium to highlight the added value of this Protocol under international law. Preceding this symposium, on 25 March 2009, the Ministry of Defence organised a seminar on the topic of “Cultural Property Protection in times of Armed Conflict”. Both meetings were attended by military personnel, legal advisors, diplomats as well as by experts in the field of the protection of cultural property.

In 2009, based on a similar initiative by the United States, for the purpose of disseminating the principles of the 1954 Hague Convention and its two Protocols, so called “Heritage Resource Preservation” playing cards were developed as a tool in training Dutch military personnel for peacekeeping or peace enforcement missions abroad. This has been done in cooperation between the Netherlands Ministry of Defence, the Netherlands National UNESCO Commission, and the Netherlands Ministry of Education, Culture and Science (the Cultural Heritage Inspectorate and the Department for Cultural Heritage).

II.7. Article 37 – translations and reports

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