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## Cultural property protection in NATO present CIMIC doctrine as euro-atlantic milestone for implementation of 1954 Hague Convention

### 1. Introduction – wide context

“Peacekeeping is not a job for soldiers, but only soldiers can do it” – these words, by Dag Hammarskjöld,<sup>1</sup> seem to resonate today more clearly than ever.<sup>2</sup> Paradoxically, a soldier trained for combat can also be the best possible defender of whatever needs protection. When thinking about the protective tasks of a single soldier, one usually thinks about the protection of personnel, weapons, or buildings useful from a military point of view. The protection of cultural property, as an element of civil-military cooperation, began to play an increasingly important role in the catalog of tasks for NATO soldiers after the experiences of the conflict in the Balkans. However, to understand the role of the armed forces in the protection of cultural property, one should turn to the initial regulations dealing with them – international humanitarian law of armed conflicts.

International humanitarian law is traditionally divided into two groups: *ius ad bellum* (which means “right to go to war”) and *ius in bello* (“right conduct in war”). The difference between these concepts is simple – first one concerns the morality of initiating the conflict (*a priori*) and the second is focusing on moral conducting hostilities

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<sup>1</sup> Dag Hammarskjöld – Secretary-General of the United Nations from 10 April 1953 until 18 September 1961. Lawyer, economist, diplomat, and Nobel laureate (posthumously), see: “Second United Nations Secretary-General”, [www.un.org/depts/dhl/dag/bio.htm](http://www.un.org/depts/dhl/dag/bio.htm) (accessed: 30.11.2020).

<sup>2</sup> W. Stam, “International Day of UN Peacekeepers, a day of reflection”, 29 May 2019, [www.thehagueuniversity.com/about-thuas/thuas-today/news/detail/2019/05/29/international-day-of-un-peacekeepers-a-day-of-reflection](http://www.thehagueuniversity.com/about-thuas/thuas-today/news/detail/2019/05/29/international-day-of-un-peacekeepers-a-day-of-reflection) (accessed: 30.11.2020).

(*a posteriori*).<sup>3</sup> In modern terms, the division covers three normative levels. The first is the prevention of armed conflicts – *ius contra bellum*. The second is the already known *ius in bellum*, which defines the limits of the freedom to choose means and the way of fighting. The third area is humanitarian law, the purpose of which is to protect civilians who are not party to the conflict and those who have ceased to be party to the conflict – prisoners of war or combatants.<sup>4</sup> And this branch of international law, especially during the conflict in the Balkans, became an impulse for the create modern regulations on the cultural property protection (CPP).

## 2. History of Civil-Military Co-operation (CIMIC)

Military operations entail destruction of infrastructure of the countries in which they take place. They often result in deep economic and humanitarian disasters. In the second half of the 20<sup>th</sup> century, many governmental and non-governmental organisations (including foundations, agencies and associations) focused on combating the effects of these crises across the world, primarily through assistance provided to the civilian population. In 1999 alone, during the SFOR mission in Bosnia and Herzegovina, nearly 50 organisations were involved, bringing together more than 8,000 civilian workers and volunteers to help those in need. The genesis of civil-military cooperation was connected to the need to reach heavily mined areas with humanitarian aid. NATO soldiers established safe routes for humanitarian convoys and cleared areas, based on information on the location of minefields obtained from the warring parties to the conflict. Thus, the concept of organised civil-military cooperation was developed from a grassroots initiative, the priority of which was to ensure the security and assistance of the civilian population.<sup>5</sup>

At present, each allied country has a specialised CIMIC department, and the Hague has the CIMIC Center of Excellence for the entire NATO (CCOE). The Center is constantly researching, publishing, and disseminating knowledge on improving CIMIC through, inter alia, detailed, thematic studies.<sup>6</sup> One of them is cultural property protection.

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<sup>3</sup> C. Guthrie, M. Quinlan, *Just War: The Just War Tradition: Ethics in Modern Warfare*, London 2007, pp. 11–15.

<sup>4</sup> M. El Ghamari, “Współpraca cywilno-wojskowa wobec prawa humanitarnego” [in:] *Współpraca cywilno-wojskowa w zarządzaniu kryzysowym. Seminarium naukowe*, ed. J. Kręcikij, MSWiA, Warszawa 2007, p. 123.

<sup>5</sup> L. Bagiński, C. Marcinkowski, *Współpraca cywilno-wojskowa w operacjach pokojowych*, Warszawa 2000, p. 46.

<sup>6</sup> Y. Foliant, *Cultural Property Protection Makes Sense: A Way to Improve Your Mission*, Hague 2015, p. 5.

### 3. History of cultural property protection

The history of damaging or destroying cultural property is as long as the history of mankind. Sun Tzu's remarks about the conquest in his *opus magnum* "The Art of War" were accurate. The treatise was well known in Asia but almost unknown in Europe until the beginning of 18<sup>th</sup> century, when Jean-Joseph-Marie Amiot translated the work of the Chinese strategist into the Western language. The translation however did not bring anything new to the European military experiences in terms of the destruction of cultural property.<sup>7</sup> First thoughts about CPP came from ancient Greece, about *shameful* practices of plunder and destruction of works of art – words expressed by Polybius and Cicero.<sup>8</sup> In the Middle Ages, the Catholic Church implemented the first formal restrictions against these above-mentioned crimes – but limited to buildings and objects of worship. Pope Urban II in 1095 proclaimed the inviolability of churches and monasteries during the war, and ordered the restitution of relics of saints, sculptures, utensils, and bells stolen from the Gniezno Cathedral (Poland).<sup>9</sup>

These notions survived until the industrial revolution, when Clausewitz's idea of war spread throughout Europe and armed conflicts to some extent became more *organised*. The Brussels<sup>10</sup> and St. Petersburg<sup>11</sup> declarations to some extent limited the possibilities of destroying and seizing cultural property. The 20<sup>th</sup> century brought the growing importance of the protection of cultural property in international law. The years 1899 and 1907 brought two Hague Conventions on humanitarian law, and it was the latter of the two that contained the first provision concerning the obligation to protect cultural property. The rule included in Article 27 of the Hague Convention of 18 October 1907 however, stipulating that cultural property "provided they are not being used at the time for military purposes", is provided with the condition *autant que possible* – as far

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<sup>7</sup> Lei Sha, *Translation of Military Terms in Sun Tzu's The Art of War*, Binzhou 2017, p. 195.

<sup>8</sup> S.E. Nahlik, *Grabież dzieł sztuki. Rodowód zbrodni międzynarodowej*, Wrocław 1958, pp. 75–78.

<sup>9</sup> W. Kowalski, "Międzynarodowo-prawne aspekty ochrony wspólnego dziedzictwa kulturowego. Od sporów do współpracy" [in:] *Ochrona wspólnego dziedzictwa kulturowego*, ed. J. Kowalczyk, Warszawa 1993, p. 15.

<sup>10</sup> Project of an International Declaration concerning the Laws and Customs of War, signed in Brussels on 27 August 1874; P. Żarkowski, "Ochrona dóbr kultury w czasie wojny w świetle prawa międzynarodowego", *Krakowskie Studia Międzynarodowe* 2016, vol. XIII, no. 3, p. 163.

<sup>11</sup> Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, signed in Saint Petersburg on 29 November/11 December 1868; M. Piątkowski, "Międzynarodowe prawo humanitarne wobec zastosowania broni zapalającej w konflikcie zbrojnym", *Bezpieczeństwo – Teoria i Praktyka* 2017, no. 2, pp. 150–152.

as possible. Consequently, it has in fact become *lex imperfectae*, opening up an endless repertoire of ways to circumvent this provision.<sup>12</sup>

While the Hague Convention of 1907 could not solve the problem, the Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments, signed in Washington D.C. on 15 April 1935 (Roerich Pact of 1935) had potential to provide full protection of cultural property. Unfortunately, the range of the treaty was limited (only 21 signatories) and the imminent outbreak of the Second World War meant that any work by the League of Nations on a modern system for the cultural property protection was suspended. However, the destruction brought by the war gave a new impulse, forcing the international community to develop a new answer to the problems of contemporary armed conflicts. Thus, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was developed, adopted on 14 May 1954 at the United Nations Educational, Scientific and Cultural Organization (UNESCO) General Conference in Hague. The convention was groundbreaking – it was an act regulating the issues of cultural property protection comprehensively, from their definition, through forms of protection and obligations of the parties, to justifications.

The delegates present at the conference in The Hague divided into two factions – supporters of the primacy of military necessity and supporters of “humanitarianisation” of armed conflicts. Representatives of the former, led by the American col. Perham, sought to make it possible to take advantage of the widest possible range of exceptions to liability for the destruction of cultural property.<sup>13</sup> The American delegation, supported primarily by the British, clashed with the views of opponents of freedom in shaping the rules of engagement. This faction was mainly composed of the Greeks, Poles and Spaniards, who perceived the convention as a great opportunity to preserve their cultural heritage.<sup>14</sup> Today the doctrine is eclectic in its approach, indicating that due to the nature of the regulations and the penal nature of their sanctions, the possibility of applying the freedom of military necessity should be treated as an exception, which means

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<sup>12</sup> Article 27 of Hague Convention: “In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand”.

<sup>13</sup> S.E. Nahlik, “International Law and the Protection of Cultural Property in Armed Conflicts”, *Hastings Law Journal* 1976, vol. 27, issue 5, p. 1085.

<sup>14</sup> H. Schreiber, “Komentarz do Konwencji o ochronie dóbr kulturalnych w razie konfliktu zbrojnego wraz z Regulaminem wykonawczym do tej Konwencji oraz Protokołem dóbr kulturalnych w razie konfliktu zbrojnego” [in:] *Konwencje UNESCO w dziedzinie kultury. Komentarz*, ed. K. Zalasńska, Warszawa 2014.

that they must be interpreted narrowly.<sup>15</sup> The provisions of the 1954 convention lasted 40 years until the experiences of the Balkan war prompted the contracting parties to make amendments. Additionally the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, signed in Hague on 26 March 1999 (hereinafter: the Second Protocol to the Convention) brought more *lex plus quam perfectae* to the Convention, defining a catalogue of crimes against cultural property (protected under the Convention) and proposing regulations facilitating the prosecution of perpetrators – from extradition to mutual legal assistance.<sup>16</sup>

However, despite the fact that the Hague Convention of 1954 contains provisions to protect monuments *a priori*, there are still cases of irreversible destruction of cultural heritage sites – including those included in the UNESCO World Heritage List (established by the Convention concerning the Protection of the World Cultural and Natural Heritage, signed in Paris on 16 November 1972). In an armed conflict, civilian personnel, archaeologists and conservation services may not be able to provide sufficient protection for cultural property. That is why it is crucial for a new actor to appear in the structure designed by the Hague Convention of 1954 – the armed forces.

The involvement of the armed forces in the protection of cultural property was defined by the Hague Convention of 1954 already in Article 7.<sup>17</sup> The parties to the convention were burdened with two main obligations: 1) Development and implementation of instructions, regulations, and provisions to increase the awareness of personnel (both civilian and military) in the field of protection of cultural heritage; 2) Preparation of organisational units or teams of persons competent for cooperation with civil authorities in the field of safeguarding of cultural goods.

The Second Protocol to the Convention enhances the high contracting party duties, with *inter alia* planning of emergency measures. It also extends the catalogue of the conflict participants to include armed groups, responding to the challenges of the present day.<sup>18</sup>

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<sup>15</sup> K. Sałaciński, “Dziedzictwo kultury w konfliktach zbrojnych – prawo, praktyka, nowe wyzwania” [in:] *Ochrona dziedzictwa kultury w konfliktach zbrojnych w świetle prawa międzynarodowego i krajowego. 60 lat konwencji haskiej i 15 lat jej protokołu dodatkowego*, eds. E. Mikos-Skuza, K. Sałaciński, Warszawa 2015, p. 30.

<sup>16</sup> A. Przyborowska-Klimczak, *Rozwój ochrony dziedzictwa kulturalnego w prawie międzynarodowym na przełomie XX i XXI wieku*, Lublin 2011, p. 21; K. Prażmowska, “Sprawa Al Mahdiego przed Międzynarodowym Trybunałem Karnym: przełomowy wyrok czy stracona szansa?”, *Studia Prawnicze KUL* 2019, no. 2(78), pp. 300–301.

<sup>17</sup> C. Wegener, *The 1954 Hague Convention And Preserving Cultural Heritage*, Archaeological Institute of America, 2010, p. 2, [www.store.archaeological.org/sites/default/files/files/Wegener%20v2.pdf](http://www.store.archaeological.org/sites/default/files/files/Wegener%20v2.pdf) (accessed: 30.11.2020).

<sup>18</sup> K. Hausler, P. Bongard, M. Lostal, “20 Years of the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in Armed Conflict: Have All the Gaps Been

#### 4. The meeting point

The North Atlantic Treaty Organization is a political and military alliance formed in 1949. The alliance functions in many spheres – including organising, training, military equipment of allied armies, personnel resources, infrastructure, and interoperability. Common procedures in situations and in time of war guarantee the Alliance's effective implementation of security policy objectives.<sup>19</sup> One of the most important pillars for an entire organisation is operational standardisation, which is mainly expressed in the form of common doctrines.<sup>20</sup> A doctrine as understood by NATO is a document containing basic principles according to which the forces of an allied state conduct their activities in the area of joint operations. It contains fundamental principles by which the military forces guide their actions in support of objectives.<sup>21</sup> Using a comparison to the law of the European Union, the doctrine would correspond to some features of the Council or Commission regulations.<sup>22</sup> The content of the doctrines is developed and accepted by the Military Committee Joint Standardization Board, and sent to the member states for the translation and implementation stage.<sup>23</sup>

Doctrines in NATO cover the most important areas of international cooperation that require a common approach to problems. Thus, we can distinguish the doctrine of military reconnaissance, conduct of joint operations, logistics or training doctrine. Among them is also the doctrine of civil-military cooperation, which is the point of contact for the world of culture and war.

#### 5. Why is it important

At a first glance the current issue of CIMIC doctrine may not seem particularly prominent, but this impression disappears if its provisions are studied in more detail. So

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Filled?”, *EJIL:Talk! Blog of the European Journal of International Law*, 29 May 2019, [www.ejiltalk.org/20-years-of-the-second-protocol-to-the-1954-hague-convention-for-the-protection-of-cultural-property-in-armed-conflict-have-all-the-gaps-been-filled/](http://www.ejiltalk.org/20-years-of-the-second-protocol-to-the-1954-hague-convention-for-the-protection-of-cultural-property-in-armed-conflict-have-all-the-gaps-been-filled/) (accessed: 30.11.2020).

<sup>19</sup> Z. Groszek, “Współpraca cywilno-wojskowa w NATO – istota, cele i podstawowe funkcje”, *Przedsiębiorczość i Zarządzanie* 2018, vol. XIX, fasc. 8, part II, p. 220.

<sup>20</sup> J. Dereń, “Standaryzacja w siłach zbrojnych sojuszu w aspekcie procesu planowania obronnego NATO”, *Bezpieczeństwo – Teoria i Praktyka* 2012, no. 3 (VIII), pp. 49–50.

<sup>21</sup> *Doctrine* [in:] *AAP-06 – NATO Glossary of Terms and Definitions*, NATO 2019, p. 44, [https://www.coemed.org/files/stanags/05\\_AAP/AAP-06\\_2019\\_EF.pdf](https://www.coemed.org/files/stanags/05_AAP/AAP-06_2019_EF.pdf) (accessed: 15.11.2020).

<sup>22</sup> C. Fretten, V. Miller, *The European Union: a guide to terminology procedures and sources*, London 2016, p. 14, <https://commonslibrary.parliament.uk/research-briefings/sn03689/> (accessed: 25.10.2020).

<sup>23</sup> T. O’Harrar, *Military Committee Standardization Activities*, Brussels 2018, p. 6.

far, the cultural property protection was a “hot potato” in NATO legislation. CPP was within area of responsibility of both civil-military cooperation and international humanitarian law, and it was not always certain where the borderline between military and civil jurisdiction was. There was heterogeneity in the allocation of CPP competences to CIMIC teams and to *ad hoc* units assigned solely to the implementation of obligations under Article 7 of the Convention. The experiences in Iraq have brought reflections on the hardly predictable impact that criminal offences against cultural heritage can have. A notable example of this phenomenon is the event where, as a result of terrorist acts against mosques in Samara, a large number of civilians began to migrate to other parts of the country, which could significantly hinder stabilisation activities, and certainly affect the status of the mission.<sup>24</sup> This situation only confirmed the assumptions of the planners to update the doctrine of civil-military cooperation (AJP 3.19).<sup>25</sup> However, can a doctrine be regarded as a normative act equivalent to a statute? Being scrupulous, a doctrine should be implemented (as opposed to its simple translation) and put into the activities of the armed forces of the allied state. Present doctrine recognises cultural property protection as a cross-cutting topic.

Until 2018, cultural property protection was considered an interesting, but not necessarily important topic. This changed in 2018 – the AJP update raised the CPP rank to the level of cross-cutting topic. Today these subjects are considered important from military and political point of view. They can have various effects on the course of the mission, but they are beyond the agency of the soldiers. A cross-cutting topic does not belong to one specific military discipline or branch. So how did the protection of cultural property become a cross-cutting topic in the course of operations? When considering this issue, one should bear in mind the context of global security. Recent years have brought irreparable losses to cultural heritage in every corner of the world – from the destruction of Buddha statues in Bamiyan,<sup>26</sup> to the destruction of the Citadel in Aleppo<sup>27</sup> and mausoleums in Timbuktu.<sup>28</sup> Each of these activities had their origins, and NATO is learning the lessons and is trying to increase the security of still existing World Heritage sites.

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<sup>24</sup> UN Report A/HRC/28/18, Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, 15 March 2015.

<sup>25</sup> <https://www.cimic-coe.org/resources/external-publications/ajp-3.19-eda-v1-e.pdf> (accessed: 30.11.2020).

<sup>26</sup> ABC News, “U.N. Confirms Destruction of Afghan Buddhas”, 6 January 2006, [www.abc-news.go.com/International/story?id=81406&page=1#.UA4FSrQe5TI](http://www.abc-news.go.com/International/story?id=81406&page=1#.UA4FSrQe5TI) (accessed: 30.11.2020).

<sup>27</sup> BBC, “Syria civil war: Bomb damages Aleppo’s ancient citadel”, 12 July 2015, [www.bbc.com/news/world-middle-east-33499609](http://www.bbc.com/news/world-middle-east-33499609) (accessed: 30.11.2020).

<sup>28</sup> BBC, “Timbuktu shrines damaged by Mali Ansar Dine Islamists”, 30 June 2012, [www.bbc.com/news/world-africa-18657463](http://www.bbc.com/news/world-africa-18657463) (accessed: 30.11.2020).

## 6. Conclusions and next steps

The next stage in constructing a unified, coherent system for the cultural property protection may be the engagement of non-military defence units in activities aimed at increasing the security of cultural goods. Potentially, these activities could involve the police, border services, fire brigades or other paramilitary organisations. It is necessary to take decisions extremely carefully, bearing in mind the nature of objects in question – priceless, tangible achievements of civilisation. Another potential development area will be the dissemination of knowledge about the operationalisation of culture in the activities of the armed forces. The possibility of using knowledge of some aspects of local culture by commanders operating outside their own countries will certainly improve the effectiveness of military operations – both classic, as understood by Clausewitz – and modern asymmetric operations.<sup>29</sup>

The interest in the subject is still growing – new publications in this area appear on a regular basis. Some NATO member states have implemented the protection of cultural property in their training system, and some have developed their own guides on the activities of the armed forces in this area.<sup>30</sup> UNESCO has also produced its own guide.<sup>31</sup> This movement is highly promising. One thing is certain – this area of military activity is being discussed more and more widely, and more and more decision-makers are getting involved. If this trend improves chances that the cultural heritage will be passed intact on to future generations, then it deserves nothing but praise.

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<sup>29</sup> K. Trochowska, “Operacjonalizacja kultury w przeciwdziałaniu zagrożeniom asymetrycznym”, *Zeszyty Naukowe AON* 2013, no. 3(92), p. 51.

<sup>30</sup> PFT 5.3.2, *Handbook on The Protection of Cultural Property in the Event of Armed Conflict*, France 2020, [www.c-dec.terre.defense.gouv.fr/index.php/fr/content-english/our-publications/57-content-in-english/233-pft-5-3-2-handbook-on-the-protection-of-cultural-property-in-the-event-of-armed-conflict%20-%201](http://www.c-dec.terre.defense.gouv.fr/index.php/fr/content-english/our-publications/57-content-in-english/233-pft-5-3-2-handbook-on-the-protection-of-cultural-property-in-the-event-of-armed-conflict%20-%201) (accessed: 30.11.2020).

<sup>31</sup> R. O’Keefe, C. Péron, T. Musayev, G. Ferrar, *Protection of Cultural Property – Military Manual*, UNESCO, Sanremo 2016, [www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/MilitaryManuel-En.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/MilitaryManuel-En.pdf) (accessed: 30.11.2020).



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### Summary

#### **Cultural property protection in NATO present CIMIC doctrine as euro-atlantic milestone for implementation of 1954 Hague Convention**

The provisions of the Hague Convention lasted 40 years, so that the experiences of the 90' were compelled the international community to adopt clarifying protocols. However, each signatory state was free to interpret the provisions of the Convention. The latest NATO Allied Joint Doctrine for Civil-Military Cooperation recognises cultural property protection as a cross-cutting topic, which may have a significant impact on missions. It is the very first time that an alliance has distinguished protection of cultural property and treats it not only as part of international humanitarian law.

**Keywords:** international humanitarian law, cultural property protection, civil-military cooperation, blue shield, NATO, cultural heritage, UNESCO, CPP, CIMIC

**Streszczenie****Kwestia ochrony dóbr kultury w nowelizacji doktryny CIMIC  
Sojuszu Północnoatlantyckiego jako kamień milowy  
w implementacji postanowień konwencji haskiej z 1954 r.**

Postanowienia konwencji haskiej z 1954 r. przetrwały ponad 40 lat aż doświadczenia konfliktów zbrojnych lat 90. skłoniły społeczność międzynarodową do uchwalenia protokołu dodatkowego. Jednocześnie każde z państw-sygnatariuszy miało swobodę własnej interpretacji postanowień konwencji. W ostatniej nowelizacji doktryny współpracy cywilno-wojskowej NATO uznano kwestię ochrony dóbr kulturalnych za temat przekrojowy, co może mieć znaczący wpływ na prowadzenie działań sojuszniczych. Po raz pierwszy Sojusz wyróżnił ochronę dóbr kultury jako coś więcej niż element międzynarodowego prawa humanitarnego konfliktów zbrojnych.

**Słowa kluczowe:** międzynarodowe prawo humanitarne konfliktów zbrojnych, ochrona dóbr kultury, współpraca cywilno-wojskowa, błękitna tarcza, NATO, dziedzictwo kultury, UNESCO, CPP, CIMIC