

NATURAL DISASTERS AND CULTURAL HERITAGE PROTECTION CAPACITY DEVELOPMENT IN THE AMERICAS by *Michael F. Welch*

One of the lessons learned from the recent earthquake in Haiti was that external responders did not have general knowledge of Haitian cultural sites, including Jacmel, which has been on Haiti's Tentative List for World Heritage nomination since 2004. Yet, protection of cultural sites is a need identified both through International Human Rights and Humanitarian Law, and is also important for religious significance, economic development, and many other reasons. The following report describes several cultural property initiatives resulting from correspondence among security and diplomatic officials of 22 Caribbean and Latin American States and other supporting entities prior to mid-October 2010.

Several references are included at the end of this report to assist understanding. These provide more detailed information about conventions and other documents pertinent to the proposed initiatives.

INTRODUCTION

Military and security representatives of Barbados, Guyana, Jamaica, and Trinidad & Tobago in Washington DC and I began by preparing a presentation to the CARICOM (Caribbean Community) Caucus of Ambassadors to seek several cultural property protection (CPP) objectives that apply to all Caribbean states. These initiatives also are being coordinated with security representatives in many CARICOM States and through several regional and sub-regional organizations. Additionally, officials from ten Latin American States have begun evaluating these CPP initiatives for further application.

The objective is to facilitate creation of an environment in the CARICOM region to better protect cultural properties and facilitate cooperative relations with external entities. There are three main objectives, with the first two intended to establish conditions to achieve the third. The first two are state accessions to the 1954 Hague Convention (Barbados is the sole CARICOM country that has ratified this convention) and creation of both National Committees of the Blue Shield (Haiti has the only Blue Shield Committee which was created subsequent to the 2010 earthquake) and International Military Cultural Resources Working Group (IMCuRWG) representation. The third objective is development of mechanisms to extend mandates for identification, planning, and training to protect cultural properties, such as those found under the 1954 Hague Convention, to natural and non-natural disaster situations. Several other initiatives that are complementary to achieving these objectives are also discussed below.

INITIATIVE I. RATIFICATION OF THE 1954 HAGUE CONVENTION

The 1954 Hague Convention has been ratified by all states in the Americas except the CARICOM states with the exception of Barbados. Although the probability of zone of conflict conditions are not strong in the Caribbean, the convention provides guidance on CPP, preparation for activities such as participation in UN Peacekeeping Missions, and strengthens the rule of law and associated institution building. If any state is interested in acceding to the Convention, officials such as the president of the Lawyers' Committee for Cultural Heritage Protection (LCCHP) and secretary general for the World Association for the Protection of Tangible and Intangible Cultural Heritage in times of armed conflicts (WATCH) have pledged to provide assistance in the accession process if desired.

NOTE: The LCCHP was one of the three organizations that combined to lobby and facilitate the United States' final ratification and initial implementation of the 1954 Hague Convention in 2009: <http://www.culturalheritagelaw.org/> WATCH <http://www.eyeculture.net/> has stated that if a request for support is developed from any CARICOM State, group of States, or (sub-) regional entity, WATCH can provide support consistent with capabilities identified on its website.

INITIATIVE II. ESTABLISHMENT OF NATIONAL COMMITTEES OF THE BLUE SHIELD AND INTERNATIONAL MILITARY CULTURAL RESOURCES WORKING GROUP (IMCURWG) PARTICIPATION

The President of the Association of National Committees of the Blue Shield (ANCBS) and the President of the United States National Committee of the Blue Shield coordinated support on all issues proposed: accession to the 1954 Hague Convention, creation of Blue Shield bodies, and assistance with implementation of cultural heritage protection measures. As part of their recovery efforts in Haiti, ANCBS worked projects described on their website (<http://www.ancbs.org/>) and assisted in the creation of the Haiti National Committee of the Blue Shield, the only National Committee of the Blue Shield among CARICOM states. Although CARICOM countries may have National Trusts and other entities that work similar areas, the ANCBS is working to develop national committees to foster cooperation and develop synergies to enhance all aspects of their mission and are ready to assist if the relevant bodies in your country seek to establish a national committee. Also, having considered resource constraints, the ANCBS indicated they would consider a regional arrangement such as the Regional Security System-affiliated committee if there were a preference to pursue that option.

A complementary action to create a supportive environment for implementing the 1954 Hague Convention and facilitating conditions for implementing CPP protocols for natural and non-natural disaster situations is the identification and participation of national representatives in the recently formed International Military Cultural Resources Working Group (IMCuRWG). In 2009, the IMCuRWG was established with a mission statement that included the following goals:

- Enhance military capacity to implement cultural property protection across the full range of operations
- Provide a forum for international co-operation and networking for those working within the military context
- Identify areas of common interest
- Share best practice and lessons learned
- Raise awareness and publicize military commitment to the protection of cultural property and cultural heritage, both tangible and intangible

In 2010, LTC Joris Kila of The Netherlands was elected president and is negotiating the support infrastructure with several governments. To date, IMCuRWG participants are primarily European, North American, and Middle Eastern military and civilian officials, but the organization is seeking to establish an international network of military and civilian security officials to work CPP objectives. Therefore, contacted governments were asked to provide official military or equivalent civilian points of contact and proper procedures to consider and possibly implement IMCuRWG participation.

INITIATIVE III. DEVELOPMENT OF MECHANISMS TO APPLY CULTURAL PROPERTY PROTECTION TO NATURAL AND NON-NATURAL DISASTER SITUATIONS

The Inter-American Convention to Facilitate Disaster Assistance of 1991 demonstrated that it is possible to develop mechanisms to facilitate response to natural and non-natural disasters; however, to date, this convention has only been ratified by the Dominican Republic, Panama, Peru, and Uruguay. Therefore, achieving the third objective—to extend the mandates for identification, planning, and training to protect cultural properties, such as those found under the 1954 Hague Convention, to natural and non-natural disaster situations—would have to be crafted with feasibility in mind.

Additionally, the Treaty for the Protection of Artistic and Scientific Institutions and Historic Monuments (the Roerich Pact) helps understanding of how it is possible to develop mechanisms to facilitate response to natural and non-natural disasters within the Inter-American System or sub-regional entities. The Roerich Pact was signed by 21 member states of the Pan American Union in 1935. "The Roerich Pact and the Military," explaining the Roerich Pact and its context among other CPP mechanisms, is available at: http://etfat.univie.ac.at/fileadmin/user_upload/inst_at_etf/Team/Schipper/Projekte/roerich-pact.pdf

One entity with the mandate to facilitate development of international law is the Inter-American Juridical Committee (IAJC): http://www.oas.org/cji/eng/inter_american_juridical_committee.htm The Secretariat for the IAJC is the Department of International Law (DIL) with their website at: http://www.oas.org/DIL/departament_international_law.htm

The Declaration of Panama regarding DIL's mandate of development of international law in the Americas is provided below. Currently, two members of the Inter-American Juridical Committee (IAJC) are working a disaster response initiative for consideration for both the next IAJC session in March 2011 and the upcoming OAS juridical affairs considerations leading up to the OAS General Assembly in June 2011. This initiative is to develop a mechanism in international law for the OAS to facilitate response to natural and non-natural disaster and the issue of CPP fits into this concept. This is in the concept development phase, but initial contacts for support are positive.

Other possibilities exist, which include development of mechanisms at levels such as the Regional Security System, CARICOM, Organization of American States, and sub-regional relationships such as between CARICOM and other countries/organizations of the Americas. Therefore, because of the many factors involved in this area, I will refrain from further comment.

INITIATIVE IV. INTERACTION ON TRAINING AND TECHNOLOGIES

Many public and private organizations have training and technological capabilities that could facilitate development of CPP programs. For example, Dr. Laurie Rush was the lead military archaeologist working with U.S. Central Command and many other DoD entities to develop CPP programs. Dr. Rush currently is in Rome to develop CPP doctrine and train with the NATO Defense College, and has agreed to provide the results to interested countries.

Other work in progress includes the development of websites for planning and training. The Center for Environmental Management of Military Lands, Dr. Rush, and others have developed websites for cultural heritage training and planning for Egypt, Iraq, and Afghanistan. Several officials involved have indicated support for development of similar sites for the Caribbean countries if agreements can be reached. This is not a guarantee, but there are very good signs during initial coordination.

For another example that applies to the Caribbean situation, the U.S. National Park Service's National Center for Preservation Technology and Training (NCPTT) <http://www.ncptt.nps.gov/> has accomplished new developments in preservation technology as part of efforts associated with Hurricanes Katrina, Ike, and others in recent years, as well as their response to the BP oil spill, and has expressed interest in investigating areas where NCPTT might be able to contribute.

Other avenues for facilitating development of training and technological capacities for CPP continue to be investigated. For example, the International Council on Monuments and Sites (ICOMOS) and some of its committees have been evaluating means of supporting the proposed CPP initiatives. The president of the ICOMOS International Scientific Committee on Archaeological Heritage Management (ICAHM/ICOMOS) has offered to provide the points of contact for national representatives in the Americas in order to facilitate interaction with military and equivalent security officials tasked with

implementing CPP programs. Therefore, if governmental authorities tasked with CPP program implementation can be networked with experts such as those in ICOMOS, improved capacities should be achievable.

INITIATIVE V. TANGIBLE AND INTANGIBLE CULTURAL HERITAGE

The U.S. National Committee of the Blue Shield and the Smithsonian Institution are working on the Haiti Cultural Recovery Project. This project includes determining how to do future emergency response operations for cultural heritage and the Smithsonian's role in the U.S. implementation of the Hague Convention. One concept being considered is the Hague Convention as it applies to the Smithsonian Institution's goals and objectives in the area of intangible cultural properties. This involves methods of identifying intangible property sites and preventing compromises that could both detract from the intangible cultural properties as well as possibly inhibit economic and other means of recovery. The findings from these efforts will be analyzed for application in the cultural protection mechanisms in development.

INITIATIVE VI. INTERNATIONAL EFFORTS ON CULTURAL HERITAGE

As part of the effort of the International Council on Monuments and Sites, the International Committee on Risk Preparedness (ICORP/ICOMOS), the International Committee on Archaeological Heritage Management (ICAHM/ICOMOS), the Institute for Archaeologists (IFA), and SRI Foundation to develop an international working meeting to address cultural heritage resources at risk from military action, difficulties in sourcing CPP issues related to some states in the Caribbean and Latin America were identified. Therefore, this issue has been presented to engaged countries and a request to establish procedures to better identify applicable points of contact and provide these to appropriate entities has begun.

Another approach is including cultural property protection into programs that will affect both awareness and compliance, such as the International Code of Conduct for Private Security Service Providers: http://www.dcaf.ch/privatisation-security/PSC%20-%202010-10-08%20-%20International%20Code%20of%20Conduct_final.pdf Although cultural property protection is only implied under human rights and humanitarian law references, the officials overseeing development provided assurances that cultural heritage and property issues will be included under the Implementation Guides that will “set out in great detail what concrete steps and practices must be carried out in order for private security practitioners to be in compliance with the Code.” On November 9, over 50 parties signed the Code. Therefore, the drafting of the Implementation Guides will begin, and the development officials have requested specific procedures/wording to address cultural property concerns.

INITIATIVE VII. REGIONAL ORGANIZATIONS WITH RELATED MANDATES

Many regional organizations work projects related to CPP and disaster response. Similar to the OAS' Department of International Law, the Military Legal Committee of the Americas' (COJUMA) mandate calls for development of international law products for military officials with a focus on the tactical and operational levels. Their most recent product was a Guide for Commanders during Natural Disasters, and they are scheduled during late October 2010 to finalize and approve a Model Curriculum for Military Lawyers that includes the direction for CPP training.

The Human Rights Initiative (HRI) is a regional process through which participating military forces develop human rights policies, doctrine, and training that complement CARICOM States' actions in

cultural property protection. Since the mid-1990s, over 30 countries in the Americas have engaged in a broad-based collective effort to strengthen respect for human rights by military and security forces throughout the region. Although the majority of CARICOM States have participated, these states have not formally committed to implement the Consensus Document in their military and security forces. The Center for Human Rights Training (CECADH), headquartered in San Jose, Costa Rica, serves as Executive Secretariat to support and advance HRI: http://www.cecadh.or.cr/iniciativa_ingles.html The next Human Rights Initiative Conference is scheduled for February 2011 in El Salvador, and the issue of cultural property protection as related to both human rights and humanitarian law has been nominated for inclusion. Therefore, the HRI provides two means to facilitate CPP: through interaction at the HRI Conference if approved and through further participation in the Human Rights Initiative to facilitate human rights and humanitarian law programs, improving the environment for CPP compliance.

The Conference of American Armies is working in the area of protocols for operations which emphasize application in peacekeeping operations and disaster response, but also other regional organizations could work the proposed CPP initiatives.

As mentioned, there are other actions under way, but the above comments describe the main initiatives involved. Please contact me with any suggestions, questions, or other information that you might have.

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This list of reference documents is not a comprehensive list, but focuses on the International Humanitarian Law side of cultural property protection. There also is the aspect of International Human Rights Law, particularly the rights of indigenous peoples to consider.

REFERENCE DOCUMENTS:

Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954 (1954 Hague Convention): <http://www.icrc.org/ihl.nsf/FULL/400>

Protocol for the Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954: <http://www.icrc.org/ihl.nsf/FULL/410?OpenDocument>

Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999: <http://www.icrc.org/ihl.nsf/FULL/590?OpenDocument>

Inter-American Convention to Facilitate Disaster Assistance:
<http://www.oas.org/juridico/english/treaties/a-54.html>

Declaration of Panama on the Inter-American Contribution to the Development and Codification of International Law: www.oas.org/dil/AG-RES_12_XXVI-0-96_eng_declaration_of_panama.pdf

Declaration on Security in the Americas:

http://www.oas.org/documents/eng/DeclaracionSecurity_102803.asp

Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact).
Washington, 15 April 1935:

<http://www.icrc.org/ihl.nsf/INTRO/325?OpenDocument>

Organization of American States General Assembly Resolution: AG/RES. 2575 (XL-O/10) Promotion of and Respect for International Humanitarian Law. The entire document is focused on the issue of international humanitarian law, but in particular:

- Para. 2. "To urge those member states that have not yet done so to consider becoming parties to the following treaties, among others
 - a. The Convention for the Protection of Cultural Property in Time of Armed Conflict (Hague Convention, 1954), and its Protocols of 1954 and 1999, respectively; ...
- Para. 3. To invite the member states to disseminate as widely as possible the rules and principles of international humanitarian law, in particular by incorporating them into military doctrine and manuals, so that armed forces will have the means and mechanisms necessary for their effective application, and by making use of the pertinent media so that such law may be familiar to the civilian population.
- Para. 9. To encourage member states to ensure the adoption of the necessary measures and mechanisms to protect cultural property from the effects of armed conflict, in accordance with the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two protocols and other international obligations, and in particular to give consideration to the adoption of preventive measures related to the preparation of inventories, the planning of emergency measures, the appointment of competent authorities, and the enactment of laws to ensure respect for such property.
- Para. 19. To invite member states to continue to support the work of national committees or commissions responsible for the implementation and dissemination of international humanitarian law; and to urge any state without such a body to consider establishing one, as a means of preventing conflicts and strengthening international humanitarian law.

Declaration of Banff, VIII Conference of Defense Ministers of the Americas. Its significant items include:

- Para. 2. Strengthening of Caribbean Community and Regional Security System
- Para. 5. Strengthen defense and security co-operation among the States of the Americas, in particular the smaller States
- Para. 10. Preparation to participate in peacekeeping operations
- Para. 14. Professionalization of civilian and military expertise
- Para. 16. Adopting and implementing policies that promote human rights and international humanitarian law