

**REGIONAL SEMINAR: "THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT - A CHALLENGE AND AN OPPORTUNITY FOR LATIN AMERICA AND THE CARIBBEAN" BUENOS AIRES, MARCH 2005**

**The future role of Non-Governmental Organisations and Cultural Professionals in the Protection of Cultural Property in the Event of Armed Conflict following the adoption of the Second Protocol of the Hague Convention**

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Up to now there has been virtually no an explicit role for cultural property professionals or their local, national or international non-governmental organisations in any of the established provisions of the International Law of Armed Conflict in relation to the protection of cultural property.

The main emphasis of the Law of Armed Conflict from the Hague Laws and Customs of War 1899 and 1907, through the 1949 Geneva Conventions and their 1977 Additional Protocols is on the obligations of the military personnel and of the politico-military command, and this extends to the requirements relating to peacetime preparation through the establishment of relevant military regulations, command orders and the training of military personnel.

This traditional approach is seen also throughout the main treaty text of the ground-breaking 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict. This similarly requires States Parties to undertake peacetime preparation for protection measures for cultural property in the event of armed conflict, whether international or non-international, including giving necessary special training to military personnel, identifying and marking cultural property, and to ensuring that the military authorities and command leadership have adequate specialist advice and supervision during armed conflicts. However, following Hague and Geneva those drafting and adopting these important provisions in 1954 seem to have regarded cultural protection in times of conflict as again them as again very largely if not wholly something for the military and for national government ministries or agencies and their senior officials, and much too important (or much too secret) to involve even the directors of the cultural services that would be protected in the event of a threatened or actual conflict.

It is true that the Hague Regulations, detailing procedures under the 1954 Convention, provide for the designation of an “International List of Persons”, nominated by the States Parties, from whom Commissioners-General for Cultural Property may be appointed in the event of armed conflict, and the clear assumption is that those nominated would be distinguished cultural heritage professionals. However, only a tiny handful of people have ever been appointed to the International List and the Commissioner-General system has very rarely been even attempted over the more than 47 years since the Convention came into force in August 1956, and arguably in not even one case has the system worked as intended. Similarly, though there is provision in the Hague Regulations for “persons” (presumably including cultural property specialists) involved in the authorised transport of cultural property during a conflict to have a special identity card and armband, this provision too has never been invoked during the almost 200 armed conflicts that have occurred since 1954. (In 1992 I found that the initial supply of identity cards and Blue Shield armbands lying unused and forlorn in an office cupboard in the Paris headquarters of UNESCO.)

In the Autumn of 1992 I was commissioned jointly by UNESCO and The Netherlands (as part of its contribution to the International Decade of International Law) to carry out a wide-ranging review of the apparent succession of failures of the 1954 Hague Convention and its Protocol (now the First Protocol) to achieve its clear and honourable objectives. Obvious examples and case-studies included the conflicts of the 1970s and 1980s in Vietnam, Los and Cambodia, in successive and continuing conflicts in Israel, Lebanon and the Palestinian territories, in Cyprus, and from 1991 right in the heart of Europe in the republics of former Yugoslavia. I was asked to re-examine what this important International Legal Instrument was intended to achieve, and to make recommendations for its updating and improvement in order to make the Convention more effective and more widely recognised and respected.

I must confess that I was surprised to be asked to undertake such a task, since I am not a qualified lawyer. However, I was assured by UNESCO and by the Foreign Affairs and Culture Ministries of The Netherlands that after a number of inconclusive legal reviews over a period of decades, they were seeking the perhaps more practical viewpoint of an experienced senior heritage manager who could be guided on any specific points of law by the expert legal teams of UNESCO and the Dutch Ministries of Foreign Affairs and Culture.

Over a six month period I consulted very widely around the world, made detailed studies of

the documentation of a number of conflicts in which there had been serious cultural losses, including various Middle East conflicts, Cambodia, Cyprus and the then current conflicts in Yugoslavia. I had at my disposal throughout outstanding specialist legal expertise, particularly from the UNESCO International Standards team led by Professor Lyndel Prott, and The Netherlands government international law experts, led by Drs Adriaan Bos, Chief Legal Adviser to the Foreign Ministry.

By May 1993 my findings and recommendations had been brought together in a detailed report of 248 pages. After various consultations, including an International Expert Meeting in The Hague in June, the final version, Review of the Convention on the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention of 1954), was submitted by the Director-General to the Executive Board of UNESCO, which agreed to its immediate publication in English and French editions, and its submission to the October 1993 UNESCO General Conference.

In this report I criticised just about everyone for their failures: the UN, UNESCO, States Parties to the Convention, countries which had failed to adopt the Hague Convention, and both cultural professionals and their organisations. However, I found that the 1954 Convention itself was basically very good: most of the problems and failures had been, in my view, failures of implementation and commitment. Not for the first, or I suspect the last, time the law was good: what a pity it's implementation depends on people! This was a very bold position to take, at least at that time, and I know that the criticisms made enemies.

However, all this was balanced by an insistence that the Hague Convention could be made to work with proper commitment and application by the world community and its international, national and local organisations. Nevertheless, I argued, that there was a need for some significant changes and additions to both clarify and strengthen its provisions, application and enforcement, and I made specific recommendations addressed to the United Nations, UNESCO, States Parties to the 1954 Convention, other States which had not yet adopted Hague 1954, and Non-Governmental Organisations in the tangible cultural heritage sector.

I was particularly impressed by the marked contrast between the 1954 Hague Convention, under which there is no formal role for cultural property professionals, and the 1972 World Heritage Convention. Under the latter, where local, national and international heritage

professionals and their organisations are closely involved throughout the process, up to and including the assessment of proposed Inscriptions to World Heritage List, and the relevant UNESCO-linked international non-governmental organisations, the International Council on Monuments and Sites (ICOMOS) and the International Union for the Conservation of Natural (IUCN) both sit in the World Heritage Committee as non-voting advisory bodies.

In my 1993 report I therefore recommended that all non-governmental organisations and especially international NGOs in relationship with UNESCO operating in the tangible culture sector, and relevant regional organisations, should become much more active in relation to cultural protection in relation to armed conflict. I argued that professionals and their organisations could – and of course should – play a very active role in developing both practical advice and training procedures in relation to the protection of monuments and collections etc. within their respective fields of interest. Equally, at the international level the specialist UNESCO-linked they should work closely with UNESCO in both developing and actively promoting at the professional level the measures that are needed in terms of both peacetime preparation and training, including the training of military and civil defence personnel, and in times of armed conflicts of all kinds.

In particular, I concluded in my Executive Summary, “Non-governmental organisations have the potential to play a most important role in providing direct assistance in terms of professional and technical labour, specialised equipment and materials for protection and emergency conservation, and for assisting with the temporary evacuation of important movable cultural property in times of actual or threatened armed conflict. The role of the voluntary sector could be especially crucial in those cases where international and governmental organisations are unable to offer such assistance because of the (unavoidable) political consequences, e.g. where the country is under a de facto government or administration which is not recognised as legitimate by the United Nations or other international organisations.”

UNESCO’s publication of my 1993 Review was followed by very many - certainly some dozens - of meetings, conferences, symposia, workshops and in my case individual lectures, across five continents. Also, the four leading UNESCO-linked NGOs for cultural property began to co-operate very closely in relation to all emergency risks and response, including those arising from armed conflicts. The four are the International Council on Archives

(ICA), the International Federation of Library Associations and Institutions (IFLA), the International Council of Museums (ICOM), and the International Council on Monuments and Sites (ICOMOS) – the latter have had nearly two decades of experience of the World Heritage Convention system that I had recommended as a model in my 1993 Review.

In 1996 these four NGOs agreed to set up a standing joint emergency and response joint committee under the name of The International Committee of the Blue Shield (ICBS), taking as name and symbol the blue and white quartered shield emblem of the 1954 Hague Convention. UNESCO, the intergovernmental International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), and the International Committee of the Red Cross are also invited to all ICBS meetings. Since 1996 the Committee has co-ordinated a wide range of joint and co-operative activities, including joint training seminars and meetings, publication, promotion of understanding of the need for preparedness against all potential emergencies, and in responding to actual emergencies. Blue Shield and its constituent professional organisations are also increasingly working closely with the military and civil defence authorities and organisations, both internationally, and within member countries, assisting in particular in specialist training and in the development of military manuals and procedures.

There is also a growing network of affiliated National Blue Shield Committees which aim to undertake a similar role in bringing together the expertise and resources of archive, library, museum and monuments & sites professionals at the national and local level, as well as co-operating at the international level through the International Committee of the Blue Shield.

At last March 1999 arrived, and with it the Diplomatic Conference to be called by The Netherlands to review the 1954 Hague Convention, which was attended by representatives of over eighty States. I attended in two capacities, as the consultant expert who had been so closely involved in the review and the subsequent consultations and negotiations for UNESCO and The Netherlands, but also as Head of the Delegation of Accredited Non-Governmental Organisations. On the final scheduled day, 29<sup>th</sup> March 1999, the Conference agreed to adopt a Second Protocol to the 1954 Convention. The fundamental aim of this was to greatly improve the effectiveness and implementation of the long-standing principle that significant cultural property must be respected and protected in times of armed conflict,

whether international or non-international. (Other speakers in this seminar are detailing those changes, so I will not duplicate what they are saying.)

However, I would argue that one of the most significant changes to the protection regime introduced by the 1999 Second Protocol to the Hague Convention are the new provisions, modelled on those that have proved very successful in the 1972 World Heritage Convention, which seek to involve professionals from the cultural sector. Already, individually and collectively through their professional bodies, very many cultural sector professionals such as archivists, archaeologists, conservation architects, museum and art curators, librarians, information scientists, and heritage building and site management professionals, are becoming actively involved at the local and national levels.

Equally, the relevant world professional bodies are working for improvements in cultural property protection through the International Committee of the Blue Shield as well as their own specialist programmes. Blue Shield itself is actively preparing for the highly important new role of the four organisations within the new Second Protocol structures and procedures. The new International Committee for the Protection of Cultural Property will be elected for the first time during a meeting of States Parties to the Second Protocol that is going to be held in October 2005 during the next General Conference of UNESCO. Blue Shield will have both a general role in advising on all aspects of the work of the Committee, and not least in relation to assisting with the evaluation of proposals from States Parties for monuments, sites, archive repositories, museums and important libraries to be placed under “enhanced protection” in accordance with Chapter 3 of the 1999 Second Protocol.

All four NGOs are strongly committed to diffusing knowledge and understanding of emergency preparedness and response among their many tens of thousands of members around the world, and in addition there are also relevant special programmes within each of the professional organisations. For example, the ICA had been developing guidelines on emergency preparedness, actively monitors and responds to actual and potential threats, and is campaigning on the protection of “vital records” relating to individuals and their property, such as birth, nationality, marriage and domestic property ownership – a possible area for future joint cooperation with the ICRC. IFLA has an important and well-developed Preservation and Conservation “Core Activity” programme for libraries and their collections, based on the Bibliothèque Nationale de France. ICOM has launched a five year Museum

Emergency Programme in partnership with the Getty Conservation Institute and ICCROM. This has now moved into its third phase with an action-centred training and emergency plan development programme for a range of museums in a region – initially Asia, but Latin American and the Caribbean programme will follow shortly. ICOMOS has a “Heritage at Risk” programme together with an annual report. All four professional NGOs are very active in alerting both governmental and the general public to emergency situations and threats, and also contribute through the very active promotion of high standards of ethical conduct by both individuals and institutions.

Within this region, nine Latin American and Caribbean States (out of the 28 Ratifications or Accessions registered with UNESCO to date) will be able to participate as States Parties to the new Protocol at the coming October meeting as follows (in order of date of Ratification or Accession): Nicaragua, Argentina, El Salvador, Honduras, Mexico, Costa Rica, Ecuador, Paraguay and Guatemala. States that have not yet ratified the Second Protocol must do so at least three months before the date of the October meeting to be eligible to be elected to the new International Committee or to vote at the meeting.

Those drafting the original 1954 Convention assumed that States Parties would all want to establish some form of national committee to co-ordinate and advise on the country’s actions under the Hague Convention, though this has rarely been done. The recent adoption of the Second Protocol offers an opportunity for States to reconsider such arrangements, and to bring into these the professional advice of the country’s archive, library, museum and monuments professionals and their representative national bodies, perhaps through the national Blue Shield, where this has been established. Many countries have found that in implementing the highly successful 1972 World Heritage Convention such advice from the heritage professionals and organisations such as the ICOMOS National Committee in developing the case for World Heritage Inscription has been very valuable, and the same is very likely to be true in relation to implementing the Hague Convention overall, and especially the Second Protocol.

Finally, but by no means least, while the emphasis in relation to training and information under the original 1954 Convention was focussed very largely on military personnel, Article 30 of the Second Protocol calls for States to widen this to seek to ensure that the general public, including children and students, are aware of the importance of protecting and

enhancing the national and international cultural heritage, particularly through “educational and information programmes, to strengthen appreciation and respect for cultural property by their entire population.” Again, this is an area in which civilian cultural and educational professionals and organisations will have a vital role to play. To take just one example, in my country, the United Kingdom, there are around 100 million museum visits a year, while over half the population visit and use their local libraries. Exhibition, information and education programmes presented and promoted through such institutions could therefore play a very important role in bringing a State’s obligations under the Hague Convention and its Protocols to enormous numbers of people around the world.

If the world is to ensure that the unparalleled losses of cultural property in armed conflict, above all those of the 20<sup>th</sup> century we will need everyone who can contribute to work tirelessly towards this goal. Governments and military authorities must clearly take the lead in this – that is their responsibility under International Humanitarian Law or the Law of Armed Conflict. But the knowledge, expertise and – above all – dedication and enthusiasm of the world’s million or more specialist professionals needs to be effectively mobilised at the same time.

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