

After 359 years the French Parliament passed a bill granting COM status to both jurisdictions of St. Martin and St. Barthélemy which both populations have voted for in 2003 to secede from Guadeloupe to become separate overseas collectivities. February 22, 2007 was the date when the law was published in the official journal. St. Martin and St. Barthélemy under the Treaty of Lisbon remain part of the European Union.

The reason for taking a peep into the past is to illustrate how both halves of the island have developed over the years. One side having more flexibility than the other therefore it has taken on the role of a big brother to solve problems that are of bi-national interest.

Considering that the Southern half of the island (St. Maarten) has an international airport and a mega cruise facility it lends itself automatically to more commercial activity and is prone to the vulnerability of the Illicit Trafficking of Cultural Property more so than the Northern half of the island.

There were two cases recently that illustrated how the Dutch Kingdom and its Caribbean counterparts (countries) can work

together in combatting crime that infringe on Cultural Heritage in the form of movable property. The same is true for the Republic of France that shares the one International Princess Juliana Airport.

In conclusion I invite you to read the following examples as small and insignificant that they may appear are excellent in that they illustrate the informal bilateral cooperation of countries in Europe with their partner countries in the Caribbean where rapid and efficient cooperation between the local/insular and European heritage, environment experts, law enforcement authorities, property owners and commercial service sector staff members proved to be detrimental in combatting the illicit trafficking of Cultural Property. Even more so it is a wakeup call to implement formal treaties of bilateral cooperation among friendly and neighboring countries that have been working together for centuries under good faith. The ultimate goal is to protect, preserve the country's fragile and precious heritage simultaneously prosecuting anyone who tries to violate the treaty of Illicit Trafficking of Cultural Property which in essence preserves and thereby strengthens the identity of a people. [\[3\]](#)

■ The Department of Culture was contacted by a permit officer of the CITES department of the Netherlands regarding the application of the CITES MA and SA of St. Martin regarding the application of a passenger that entered the Netherlands with questionable artefacts. The passenger in question recently migrated from St. Martin to the Netherlands. In his personal belongings he had 19 pieces of ivory carvings with him. These carvings according to him have been in his family since at least 1946. His parents bought these pieces in another Dutch Caribbean Island somewhere between 1937-1955. The pictures below are proof of such.

Barring that the passenger was unaware of the CITES regulation and obligation for permits when he moved his belongings, he did not apply for any permits and the customs in the Netherlands stopped the import.

According to the legislation, the passenger could request a retrospective import permit, because the pieces are antiques and of personal belongings. The passenger had no intention for any commercial use, but to make sure, the custom officer restricted the permit with a sanction that no commercial activity was allowed within the next 6 months.

But, before they could issue a retrospective import permit, they needed a retrospective export permit from St. Martin. The island consequently was asked if it was possible to issue a retrospective export permit for the antique pieces. And if so, how the passenger could apply for such a permit.



Fort Amsterdam
Canon-Ball

■ Heritage conservationists and judicial authorities managed to foil an attempt by a tourist to ship off an historical eighteenth century cannonball on Thursday.

A tip was given from a courier mail service to an environmental activist that a historical cannonball was poised for export to the United States. The environmental activist contacted St. Martin Archaeological Center, who took immediate action to stop the export. The Director of the archeologist center contacted the, Head of the Interpol Office, who called the Prosecutor's Office. Both persons then went to the mail service office, where they met two custom officers from the police substation who ensured that the artefact was held by the mail service. The 18th century historical cannonball was confiscated. Interviews were conducted to find the person who attempted to export the artefact via the mail service office. Apparently a guest vacationing at a well-known resort from the United States told the mail service clerk that he/she had found the cannonball at an historical site and was shipping it home.

With the confiscated cannonball in their possession, the director of the archeological center and the custom officer went to the Resort, where the managers were co-operative to provide the necessary information about the guest in question. The guest was not in at the time, so follow-up was to be carried out by the police.

Based on the international Valetta Treaty, ratified by the St. Maarten Government, the export of historical and archaeological artefacts without authorized permission is strictly forbidden, with a punishment, related directly to prior St. Martin statutes, of up to one year imprisonment and up to a Naf. 5,000 equivalent to US \$ 2,777.78 fine.

The Director of the archeological center and the Resort representative strongly advise the public that removal of artefacts from any heritage site is strictly forbidden. The public was further advised to take notice that the export of historical artefacts without proper authorization is also strictly forbidden and can be prosecuted.

OPPORTUNITIES AND CHALLENGES IN THE CARIBBEAN

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Introduction

Cultural heritage is at the core of any people. Efforts at development must recognize and incorporate cultural practices and norms. Tangible cultural heritage presents a basis for connection, a defined link with the past and a bridge to the future. In the words of Marcus Mosiah Garvey¹ 'A people without the knowledge of their past history, origin and culture is like a tree without roots'² A country's cultural property forms part of that root system, and the retention of cultural property in the country of origin is one element of national and self definition. The Caribbean is rich in cultural heritage and enjoys similarity in cultures, through the various manifestations of ethnic retentions reflected in both tangible and intangible cultural heritage. So endemic is the role of culture in national and regional sustainable development that paragraph 1 of the Preamble to the Barbados Programme of Action in recognizing the role of culture in sustainable development affirms that the survival of small- Island developing States is firmly rooted in their human resources and cultural heritage, which are their most significant assets. The affirmation further states that these assets are under severe stress and all efforts must be taken to ensure the central position of people in the process of sustainable development.³

A Memorandum of Understanding between the Caribbean Community (CARICOM) and The United Nations Educational, Scientific And Cultural Organisation (UNESCO), 5 May 2003, Georgetown, Guyana in addressing CARICOM's commitment to the preservation and protection of Caribbean culture affirms that in the field of Culture, CARICOM and UNESCO will cooperate in safeguarding the tangible and intangible cultural heritage of the Caribbean through ratification and implementation of Conventions on World Heritage and Underwater Cultural Heritage, in support of intercultural heritage and cultural diversity...⁴ To say that the Caribbean as a community has recognized the protection of cultural heritage is an understatement.

Protecting cultural heritage within national and global spheres is facilitated through the work of the United Nations Educational Scientific and Cultural Organization (UNESCO) through a number of complementary international agreements.

This paper will focus on The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970). Property by its very definition denotes ownership and the convention focuses on the ownership of cultural property and their protection, by stemming the illicit

trade in them. The Preamble to the Convention notes that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting,⁵ Article 1 of the convention defines cultural property very broadly and provides the opportunity for states parties to the convention to seek international cooperation in the protection of cultural property.

The Convention articulates very clearly, basic tenets for compliance including:

1. The establishment within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:
2. Contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;
3. Establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage (emphasis supplied)
4. The introduction of an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized.

The Status of the Implementation of the Convention in the Caribbean: Challenges and Opportunities

Status of Ratification

Of the one hundred twenty four (124) states parties to the convention only six (6) Caribbean countries have ratified. These are: The Bahamas, Barbados, Cuba, Dominican Republic, Grenada and Haiti. This is perhaps the first challenge. The lack of ratification of the convention limits significantly the degree to which Caribbean states can come together to protect cultural property. The need for co-operation is necessary given the similarities in culture and therefore similarities in cultural property. The CARICOM Single Market and Economy provides an opportunity for regional cooperation in the fight against the illicit traffic in cultural property and the opportunity to develop harmonized legislative regimes for their protection.

Interpretation

Caribbean countries may also collaborate in the interpretation and application of certain articles of the Convention. The convention for example addresses Historical connections to metropolitan countries. Article 22 provides that States Parties to this Convention recognize that the Convention is applicable not only to their metropolitan territories but also to all territories for the international relations of which they are responsible. Metropolitan countries therefore, undertake to consult, if necessary, the governments or other competent authorities of these territories on or

before ratification, acceptance or accession with a view to securing the application of the Convention to those territories. Caribbean countries boast independence from the countries that colonized them and this Article could present a challenge in the application of the Convention and pose a challenge to the sovereign rights of Caribbean states over their cultural property. Cuba for example has declared that it considers that the implementation of the provisions contained in Articles 22 and 23 of the Convention is contrary to the Declaration on Granting Independence to Colonial Countries and Peoples (Resolution 1514) adopted by the United Nations General Assembly on 14 December 1960, which proclaims the necessity of bringing to a speedy and unconditional end to colonialization in all its forms and manifestations.’ It is the view of the writer that there needs to be greater collaboration among Caribbean states regarding the application of the convention in its entirety.

Private Collections

There is a large number of cultural properties in private collections. The Convention requires an inventory of cultural property both in private and public collections. The creation of these inventories requires a system that protects the interests of both collections at the same time recognizing that their export would constitute an appreciable impoverishment of the national cultural heritage (Article 5 (b). The convention therefore limits the exportation of cultural property. This provision also poses some degree of challenge in the creation of the inventory and the listing of private property for purposes of management and protection. There are advantages of course to creating inventories to private collections, since those private collections would now be protected under national laws and would be subject to international corporation should they end up in the illicit trade. Public Education therefore must accompany any effort at implementing the Convention.

Ratifying Complementary Conventions

The effective implementation of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) is enhanced by other conventions: the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995) along with the Convention on the Protection of the Underwater Cultural Heritage (2001) together present a global stage upon which countries can cooperate internationally towards the protection of cultural property.

The Convention on the Protection of Underwater Cultural Heritage⁶ recognizes that underwater cultural heritage is threatened by unauthorized activities directed at it, and of the need for stronger measures to prevent such activities. The convention has as one of its most important tenets the prohibition of the commercial exploitation of underwater cultural heritage. (Art. 2)

Under the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995)⁷, if a cultural object has been stolen, it must be returned. Restitution is an absolute duty unless the limitation period has expired. The only question that arises is whether compensation must be paid.

The Convention in Article 7 stipulates that at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

At the UNESCO Regional Seminar on the Fight against Illicit Trafficking in Cultural Property for the Caribbean held in Castries, Santa Lucia, 3-5 December 2012, Caribbean states parties discussed strengthening the fight against illicit trafficking in Cultural Property in the Caribbean. The meeting was attended by representatives from Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, St Maarten, Saint Vincent and the Grenadines, Surinam and Saint Lucia.

At the conclusion of the meeting, there was a renewed commitment to take concrete actions in enhancing the legal and operational levels to improve their capacity to fight illicit trafficking in cultural property and to strengthen international cooperation. One specific action agreed to by the participants was the request for the inclusion of an item in relation to the illicit traffic in cultural property on the agenda of the 19th Forum of Ministers of Culture and Officials in Charge of Cultural Policies of Latin America and the Caribbean. Recommendations also included the creation or identification of specialized law enforcement services responsible for the prevention of and fight against illicit traffic of cultural property, as well as the development of training of police, customs officials and all civil and military personnel involved at the front line of the fight against this trafficking.

Costs to Implementation


It is obvious that there are costs associated with the implementation of the convention(s). Countries are expected to implement sustainable legal and policy frameworks, establish mechanisms for enforcement including training of customs personnel, police personnel and sensitizing the Judiciary on the application and interpretation of the convention and attendant legislation. The financial and administrative costs however pale in comparison to the benefits to be derived from a system of international cooperation that protects cultural property.

The Regional Agenda

If the Caribbean territories are to take measures to stem the prohibition and prevention of the Illicit Import, export and transfer of ownership of cultural property, then the subject must be placed on the regional agenda. Caribbean governments must therefore take the lead in addressing the issue which must be translated to the various national agendas. A harmonized approach to combating the illicit traffic in cultural property is desirable. Memoranda of Understanding could be considered as one way of enlisting the cooperation of Caribbean states parties.

Conclusion

The illicit traffic in cultural property is an epidemic and must be eliminated. This can only be achieved through international co-operation in implementing the convention. The Caribbean though challenged by the basic requirements for implementation, must recognize the regional power of collaboration in the fight against illicit traffic. There must be emphasis on a regional rather than a national approach to complying with the tenets of the convention. There is a need for harmonized policy and legislative framework and the establishment of standard operating procedures for addressing illicit traffic in cultural property.

Ratifying and implementing the Convention on presents challenges, but embraces unqualified opportunities for securing Caribbean cultural property for present and future generations. 

Notes

¹ Marcus Mosiah Garvey: National Hero of Jamaica
²Top Seventeen Quotes and Sayings by Marcus Mosiah Garvey: <http://consciouspen.blogspot.com/2011/08/top-ten-sayings-and-quotes-by-marcus.html#Umns-YHBJPmk>
³Barbados Programme of Action Global Conference on the Sustainable Development of Small Island Developing States Report Of The Global Conference On The Sustainable Development of Small Island Developing States Bridgetown, Barbados, 25 April-6 May 1994http://www.un.org/esa/dsd/dsd_aofw_sids/sids_pdfs/BPOA.pdf
⁴Memorandum of Understanding between the Caribbean Community (CARICOM) and The United Nations Educational, Scientific And Cultural Organisation (UNESCO), 5 May 2003, Georgetown, Guyana http://www.caricom.org/jsp/secretariat/legal_instruments/mou_caricom_unesco_03.jsp?menu=secretariat
⁵Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970: http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html
⁶Convention on the Protection of the Underwater Cultural Heritage 2001: http://portal.unesco.org/en/ev.php-URL_ID=13520&URL_DO=DO_TOPIC&URL_SECTION=201.html
⁷<http://www.UNIDROIT.org/english/conventions/1995culturalproperty>