



FORTIFIKATIONSVERKET

# Defending the Military Heritage; Legal, Financial and Administrative Issues

Reports from the Seminar 16 – 17 May,  
2011, in Karlskrona, Sweden, organised  
by ICOMOS International Scientific  
Committee for Legal, Financial and  
Administrative Issues (ICLAFI) and the  
Swedish Fortifications Agency of Sweden

## Introduction

ICOMOS International Scientific Committee for Legal, Financial and Administrative Issues (ICLAFI) was founded in 1997 and its members have since arranged annual meetings and scientific seminars on topics within the remit of the committee. In 2011 it was my turn, having represented Sweden since the beginning.

My employer, the Swedish Fortifications Agency of Sweden, manages properties used by the Armed Forces of Sweden. Many of these harbour historic values, but are still being used for military purposes. It is a complicated task to safeguard the historic values at the same time as adapting the premises to the demands of current defence needs. The agency decided that it would be of great interest to see how these tasks were being met in other countries, and it therefore put means at disposal for the seminar.

The seminar attracted participants from ten states: Gideon Koren, Advocate, Gideon Koren & Co Law Offices, Israel, ICLAFI President, Claudia Fadul Rosa, Dr. en Derecho, Castillo San Felipe de Barajas, Colombia, Satu-Kaarina Virtala, Ministry of the Environment (Ret.), Finland, Sara Byström, Juriste, France, Werner von Trützscher, Dr., Thüringer Kultusministerium, Germany, Toshiyuko Kono, Professor of Law, Kyushu University, Japan, Wojciech Kowalski, Prof. Dr., University of Silesia, Poland, Thomas Adlercreutz, LLM, Swedish Fortifications Agency, Sweden, Ingela Andersson, Heritage Specialist, Swedish Fortifications Agency, Sweden, Jan-Mikael Bexhed, Advocate, Sweden, Christopher Young, Dr, Head of World Heritage and Int'l Policy, English Heritage, UK, and James Reap, Dr, University of Georgia, USA.

Here are the reports presented at the seminar with later amendments. Unfortunately, not all presentations were submitted in time for inclusion in this comprehensive edition. However, a few members who could not participate in the flesh, did instead make valuable contributions by sending in their reports, and these are here too. As participants had in advance been guided by a Topic Outline, this document is the first in the row of reports.

In addition to the sponsorship provided by the Fortifications Agency, the County Administration of Blekinge, Karlskrona city, the Naval Base of Karlskrona and the National Board of Housing, Building and Planning also generously assisted the seminar in various ways. This should certainly be recognised in this introduction.

Eskilstuna, 27 April, 2012

Thomas Adlercreutz

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## Topic Outline

for National Reports to the seminar 16 – 17 May, 2011, in Karlskrona, Sweden, organised by ICOMOS International Scientific Committee for Legal, Financial and Administrative Issues (ICLAFI) and the Swedish Fortifications Agency of Sweden

### 1. International Aspects

The 1954 Hague Convention with the two protocols. Ratification and implementation (how to prevent shooting at the military heritage)

Defence Alliances, if of importance to heritage properties or management

Other instruments or circumstances

### 2. Constitutional Aspects

on the Armed Forces

on Heritage Protection

### 3. What is typical of your country's military history reflected in property? (briefly)

### 4. Administrative Setup

Government administration of heritage properties for defence purposes; responsible ministries or agencies; chain-of-command issues

Considerations for heritage properties still in active use or without current military use.

Re-use: military installations or civilian purposes

Public/private partnership, if any

Museums or other institutions for military history

### 5. Legal instruments for protection of heritage values in properties for defence purposes

Acts of Parliament, Government Regulations, other provisions

Secrecy issues

Relation to civilian planning and building instruments

### 6. Financial aspects

How are costs for management of military properties in general covered? How covered or heritage properties? Sponsorship, if any

## **Bulgaria**

ICLAFI Meeting, Karlskrona, Sweden, 16 – 17 May, 2011  
Defending the Military Heritage; Legal, Financial and Administrative Issues

Bulgarian National Committee of ICOMOS  
Svetoslav Georgiev

### **International Aspects**

#### **The 1954 Hague Convention with the two protocols. Ratification and implementation (how to prevent shooting at the military heritage)**

Republic of Bulgaria has ratified the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Decree № 154 of the Presidium of the National Assembly, since 26.05.1956 and it is in effect since 07.11.1956, as well as the Regulations for its implementation. Accession to the Protocol on Protection of Cultural Property in the Event of Armed Conflict was approved by Decree № 290 since 09.08.1958 and came in effect in Republic of Bulgaria on 09. 01. 1959.

In accordance with the requirements of Article 4, Section 3 of the Convention, in the Bulgarian penal legislation lays down measures for the preservation of cultural property in armed conflict. According to Article 414, Paragraph 1 of the Criminal Code of Bulgaria, in breach of international law of war destroyed, damaged or made worthless cultural or historical monuments and objects, works of art, buildings and structures of cultural, scientific or other humanitarian purposes shall be punished with imprisonment of one to ten years. The same punishment shall be imposed on those who steal, misappropriate or illegally concealed objects, referred to in the preceding paragraph, or imposed in respect of such objects contribution or confiscation.

### **Defence Alliances, if of importance to heritage properties or management**

Military-Patriotic Unions participate by their representative to participate in the regional commission "Military monuments" to the Governor on matters of finding, studying, entering in the card-index, preservation, maintenance, rehabilitation and construction of military monuments in the area. They are able to realize this privilege according requirements of the Law for military monuments in terms, that they have concluded agreement with the Ministry of Defense.

### **Constitutional Aspects on the Armed Forces on Heritage Protection**

Drafting and promulgation of the Law on Military monuments are preceded by several broad public initiatives.

In the late 80's and early 90's of XX century on the initiative of the Bulgarian National Television has created the Association for restoration and maintenance of soldiers' monuments. "

In 1992 National Institute of Monuments declared as historical monuments commemorative signs erected on the occasion participation of Bulgaria in wars in 1885, 1912-1913, 1915-1918 and 1944-1945. The basis for this appears: "the relationship of these objects to significant events of Bulgarian history, their preserved authenticity, historical documentary and artistic value of some of them, the works of prominent Bulgarian sculptors. So they become part of the cultural heritage of Bulgaria and all regulations for its protection become obligatory for them."

The term "military memorials" is introduced into use by law in early 2008.

### **What is typical of your country's military history reflected in property? (briefly)**

After the liberation of Bulgaria from Ottoman rule the Bulgarian state took parts in five wars for 60 years. They killed about 200 000 Bulgarian soldiers and about half a million are injured, maimed and missing. The Balkans are a place of two Balkan and two World Wars. After every war Bulgaria build new monuments . The first military monument in Bulgaria was built after the Serbo-Bulgarian War, and the construction in large numbers of memorials began in the period 1920 – 1940. On the territory of Bulgaria were built more than 1800 Bulgarian military monuments in over 1300 cities. Foreign military memorials, monuments of fighters for the liberation of Bulgaria from Ottoman

rule and the monuments of the participants in the antifascist resistance are not included in this number. By virtue of historical circumstances, most of the graves of Bulgarian soldiers and officers died in five wars are now in foreign territory. These are about 1500 Bulgarian military cemeteries in Macedonia, Romania, Serbia, Turkey, Greece, Croatia, Hungary and Austria. In them lie the remains of more than 50 000 Bulgarian soldiers. By tracing and recovery of the Bulgarian military monuments and cemeteries abroad in the beginning are engage the civil society, which to become a state policy in 2002 when the programme "Soldiers' monuments" at the Ministry of Defence. In this regard the main effort of the State and society are directed primarily towards Macedonia. Not just because there are 471 such sites, which is more than a quarter of all known war memorials in which lie the remains of 17,000 of our soldiers - one third of all buried on foreign territory. In 1992 all military monuments have been declared as cultural monuments.

### **Administrative Setup**

**Government administration of heritage properties for defence purposes; responsible ministries or agencies; chain-of-command issues.**

Minister of Defence or authorized by him officials exercise direction and control upon survey, registration, entering in card-index, preservation, maintenance, rehabilitation and construction of military monuments in the territory of Bulgaria.

Written orders of officials on issues affecting military monuments are obligatory on the local executive authority as to all natural persons and legal entity.

Written orders for military monuments with the status of cultural values are issued jointly by the Minister of Culture and Minister of Defence.

Minister of Defence in cooperation with the Ministry of Foreign Affairs carries out the activities about exploration, registration, entering in card-index, preservation, maintenance, restoration and development of the Bulgarian military monuments abroad.

Coordination on issues of searching, examination, filing, preservation, maintenance, rehabilitation and construction of military monuments in the country is carried out by regional commission "Military memorials" to the governor. Regional Commission "Military monuments" consists of a chairman, vice-chairman and members: the Director of the corresponding Museum of History, Head of Culture Department in the corresponding municipality, one representative of the military-patriotic associations in the country with which the Ministry of Defence has agreement, and a representative of the Ministry of Defence.

Chairman of the Regional Commission "Military monuments" is the governor

and vice-chairman of the committee - deputy governor. Secretary of the Commission is the Head of Unit "Defense Mobilization" in the district administration.

The names of the Commission are determined by order of the governor.

The organization, distribution and the operation of the regional commission shall follow the general rules agreed with the Minister of Defence.

The activity of the regional commission is assisted by the district administration.

Regional Commission has the following competencies:

- Provides to the Minister of Defence received information for military monuments and assists in finding, studying, preservation, maintenance, restoration and building them;
- Proposes to the Minister of Defence military sites, which to be declared as cultural property under the Law on Cultural Heritage;
- Leads district registry and card-index of the military monuments;
- Coordinates the implementation of activities and functions under this Law by the municipality, the individual nature persons and legal and entities, and other civic committees.

#### **Public/private partnership, if any**

1. The activities in research, preservation, maintenance, restoration and construction of military monuments Ministry of Defence interacts with NGOs recorded in the central register at the Ministry of Justice under Article 45 in the Law for non-profit organizations. NGOs could receive subsidy from the state budget under the Law on State Budget for the year.

2. National Register of military memorials is created by the Ministry of Defence in the period between 2004 and 2007 The report contains data for the 1515 military monuments on the territory all over of the country. The register is based on questionnaires in which is used historical experience to the existing till 1951 division "Military museums, monuments and graves" at the ministry and then register. Completion of questionnaires is done on the principle of voluntary cooperation between regional governments and municipalities, civic associations "Preserve the Bulgarian", the four war-patriotic unions and many volunteers.

## **Museums or other institutions for military history**

1. **National Museum of Military History** (NMMH) is a state museum, which from its establishment until today is the structure of the Ministry of Defence (respectively the Ministry of War and the Ministry of National Defense). It finds out, stores, processes and disseminates scientific and cultural values of national and European military history. NMMH operates throughout the country. For almost its centennial presence in the cultural and historical space in its funds are preserved and studied more than 1 million cultural values, witnesses of the Bulgarian and European military history. National Museum of Military History is a cultural and scientific institute, which:

- searches, studies, collects, acquires, stores, preserves, documents, promotes and presents cultural values and patterns related to the Bulgarian military history with cognitive, educational and aesthetic purposes;

- investigates, records, preserves and maintains military memorials connected with the Bulgarian military history;

- carries out activities involving the storage, processing and service to his own film archive, cinema facilities, and telecine equipment and producing educational and documentary films;

- perform stemming from the preceding paragraphs cultural upbringing, education and outreach activities;

- research activities, subject to its core;

- organizes scientific events (conferences, workshops, discussions, roundtables, etc.).

In the museum are working commissions authorized by the Ministry of Culture to evaluate cultural values - weapons, decorations and other items, according to its profile. National Museum of Military History is specialized in thematic scope and national in the territorial scope of activities includes:

1. NMMH - Sofia;

2. Affiliates:

- a) **Naval Museum** - Varna;

- b) **Park Museum of combat friendship - 1444** - Varna;

- c) **Museum of Aviation** - Krumovo.

2. **Memorial Complex “Military Cemetery – 1916”** – in Tutrakan is memorable and holy name in the wars for national unification and liberation of Dobrudja. The city as part of the southern Dobrudja, was occupied by the Kingdom of Romania in 1913. For 2 years, the project of French and Belgian specialists build Tutrakan fortress - bridgehead

on the Danube, with 15 fort, two defensive lines, earthen forts, wolf pits, defended by 39 thousand garrison with 150 guns and dozens of machine-gun nests. Three years later, on 5 and 6 September 1916, at Tutrakan playing one of the most dramatic battles in all of Bulgarian national military history. Considered for impregnable the fortress was attacked early on September 5 by the Bulgarian troops after a powerful artillery preparation.

Immediately after the epic battle the command of the IV<sup>th</sup> Preslav Infantry Division, decided all killed on the battlefield Bulgarian, Romanian, German and Turkish solders to be buried at Fort № 6 of the Romanian fortified line of the fortress.

In the battle died 8000 people, of which 1,800 Bulgarians. The dead on the Bulgarian side has a significant part of officers due to the application by General Kiselov practice during the attack officer corps to be in front of the soldiers.

The location of the battle today is made the memorial complex "Military Cemetery - 1916" like the Skobelev park in Pleven.

### **Legal instruments for protection of heritage values in properties for defence purposes**

#### **Acts of Parliament, Government Regulations, other provisions**

The Law on military monuments, adopted in 2008 by Parliament fills a gap in existing legislation on this matter. The Act continues the tradition of the current Law on military graves, cemeteries, tombs, ossuaries, mausoleums and monuments from 1942. Difference in Bulgarian legislation 66 years ago is that now there is the new general term "military memorial", which combines themselves as "Soldiers' monuments, i.e. the monuments to the fallen in wars and military cemeteries, tombs, ossuaries and mausoleums. In the Law on military memorials, they are presented as "real material evidence in memory and honor of soldiers from the Bulgarian army, took part in the war led by the Bulgarian state, the Bulgarian soldiers who died taking part in operations and missions outside the country and performance of their service in peacetime in protecting the population, and participants in the Bulgarian volunteers in the Russo-Turkish War and the participants in the Macedonian-Adrianopolitan Volunteer. Military monuments are military cemeteries, tombs, ossuaries and mausoleums.,

Regulations to search and study of war memorials in the country and abroad is proposed. National register of military monuments and card-index are created for the first time. A regulation for repair, conservation, restoration and other activities on military

monuments is created, building projects and new all investment initiatives about on which is situated a military memorial.

### **Relation to civilian planning and building instruments**

Military monuments in Bulgaria are maintained at the places where they are. Removal is possible only upon proving of need of urban planning with a view to optimal exposure of the monument.

When carrying out construction, public utility or agricultural work are detected findings that have signs of military memorials, the work is suspended. Owners and managers of construction are required to take measures to preserve the find and immediately notify the relevant regional commission. Regional Commission within 7 days is required to notify property owners and managers of construction whether the find constitutes military memorial and to give an indication of measures must be taken for the study and conservation.

Repair, conservation, restoration and other activities on military monuments as the construction of new memorials be made after informing the Minister of Defence, and for sites with the status of cultural values - under the Law on Cultural Heritage. Projects for build new military memorials are sent to the Minister of Defense for coordination through the district commission that gives attitude. All investment initiatives about territories in which the military memorial is located shall be covered by project documentation under the Law on spatial planning and implementing acts, such as:

1. projects to areas outside the sites allocated for management of the Ministry of Defence, is sent to the Minister of Defense for coordination through the district committee;
2. visas and projects are coordinate with the Ministry of Culture for military monuments with the status of cultural value.

### **Financial aspects**

**How are costs for management of military properties in general covered?  
How covered for heritage properties?**

Regarding the financing of activities related to military monuments, laid down the principle that state and municipal authorities, which have been granted military control monuments are required to plan means for their protection and maintenance. Necessary funds for the local authorities, which have been granted military control monuments,

shall be made in the manner determined by the Minister of Finance in consultation with the Minister of Defence.

Ministry of Defence planes annual funds under the budget to finance activities under the direction and coordination of the studding, recording, entering in card-index, preservation, maintenance, rehabilitation and construction of military monuments.

In its activities the Ministry of Defense interacts with NGOs recorded in the central register at the Ministry of Justice under Article 45 in the Law on non-profit organizations, whose main research is preservation, maintenance, restoration and construction of military monuments. NGOs could receive grants from the state budget under the Law on State Budget for the year.

National Museum of Military History is funded by:

- Budget subsidy;
- Own revenues;
- State fees collected for services and for issuing documents and copies;
- Projects under international and national programs;
- Gifts, bequests, sponsorships.

### **Sponsorship, if any**

1. In 2006 at the initiative of the Ministry of Defence held a national workshop titled: "Preservation and maintenance of military monuments". The decisions of this meeting is recorded establishment of endowment fund "Military memorials" engaging the national electronic and print media for free advertising, and all institutions to raise public support and commitment to activities relating to military memorials.

2. In 2001 the Bulgarian National Assembly passed the Law on National Donation Fund "13 Centuries Bulgaria". The Fund aims to organize and support fundraising activities conducted by Bulgarian and foreign natural persons and legal entities in support of education, science, culture, restoration and preservation of historic and cultural values, health and other social spheres. Assets of the fund are formed by:

1. gifts and bequests for the benefit of the fund;
2. revenue from the management of the fund assets;
3. revenue of charities, campaigns, fundraising, sponsorship and other donations;
4. subsidy from the central budget provided by Law for the state budget of

Bulgaria for the year.

To "13 Centuries Bulgaria" Fund was established Trust Fund for the restoration of military memorials.

## Chile

### Defending the Military Heritage; Legal, Financial and Administrative Issues CHILE.

#### 1. Aspectos internacionales

La Convención de La Haya de 1954 con sus dos protocolos: Ratificación e implementación (cómo evitar disparar contra el patrimonio militar)

La Corona Española percibió tempranamente el carácter estratégico de la región austral de Chile, la cual, a través del Estrecho de Magallanes y del Cabo de Hornos, permitía la navegación y paso desde Europa hacia el Océano Pacífico, de naves francesas, inglesas y holandesas, así como las incursiones de los corsarios. A raíz del frecuente tránsito, las autoridades peninsulares emprendieron desde fines del siglo XVI la construcción de poderosos conjuntos defensivos en Valdivia, Valparaíso y Chiloé. Estos conjuntos, y particularmente los situados en el estuario del Río Valdivia, constituyen un patrimonio relevante en cuanto a ubicación, magnitud, protagonismo y presencia en el territorio chileno. Valdivia, el más antiguo de los tres, constituiría, junto con El Callao, el complejo defensivo más importante de la costa americana del Pacífico sur, con objeto de defender Perú, que, junto a México, constituía la principal fuente americana de riquezas de la Corona española.

Alianzas militares si es de importancia para el manejo o los propietarios de éste patrimonio.

En Chile, las Fuerzas de la Defensa no están vinculadas al patrimonio de las Fortificaciones. Solo se involucra a la Armada (la Marina) cuando se interviene el borde costero asociado a un determinado Fuerte. En esos casos las Gobernaciones Marítimas respectivas son consultadas y tienen tuición sobre determinadas áreas del territorio que constituye borde marino.

Otros instrumentos o circunstancias.

## 2. Aspectos constitucionales

En las fuerzas armadas

Las Fuerzas Armadas en general no son propietarias ni administradoras de Fortificaciones coloniales ni indígenas.

En la protección Del patrimonio.

Un número importante de Fortificaciones chilenas están protegidas por la Ley N° 17.288 de Monumentos Nacionales en categoría de Monumentos Históricos.

## 3. ¿Qué es lo típico de la historia militar de su país que se refleja en estos bienes? (brevemente).

Chile posee, a lo largo de todo su territorio y hacia el Océano Pacífico, Fortificaciones de carácter defensivo de diversos orígenes, y que son parte de un circuito a lo largo de todas las costas americanas. Ellas constituyen hoy un referente histórico, social, arqueológico, arquitectónico y de ingeniería.

Las fortificaciones defensivas existentes en el territorio de Chile se presentan en tres periodos:

- Las erigidas en tiempos del dominio Inca (1.470 a 1.535 D.C.) denominadas Pucarás (indígenas).
- Las construidas por los españoles en el marco de la llamada guerra de Arauco, entre mapuches y españoles, y ( s. XVII a XIX)
- Las erigidas durante el periodo colonial para hacer frente a las amenazas provenientes de las potencias rivales europeas de ultramar, que constituyen a la fecha el patrimonio defensivo colonial más relevante del país.

Estas últimas fueron construidas por los españoles y una vez que fueron abandonadas, no fueron nuevamente ocupadas. Posteriormente vendrían los

terremotos y los embates del abandono en que quedaron estas instalaciones, una vez que ya no fueron necesarias. Hoy, las Fortificaciones existentes a lo largo del país, presentan serios problemas de conservación y de uso, sin embargo, mantienen su carácter como testimonios excepcionales de la escuela hispanoamericana colonial de fortificación.

#### 4. Tipo de administración

Administración del Estado con relación a Fortificaciones defensivas; Responsabilidades de los ministerios u organismos; aspectos de la cadena de mando.

La mayor parte de las Fortificaciones Españolas y otras de menor envergadura en cuanto a tamaño, son de propiedad fiscal, es decir pertenecen al Ministerio de Bienes Nacionales de Chile y son entregadas en comodatos de administración u otras figuras, a diferentes organismos públicos o privados sin fines de lucro. Municipios, otros Ministerios, Universidades, entre otros, son los organismos a los cuales se les ha hecho cargo de administrar estos sitios de Fortificaciones patrimoniales.

Consideraciones para los bienes patrimoniales aún en uso o sin un uso militar. Reutilización: instalaciones militares o fines civiles.

La mayor parte de las Fortificaciones en Chile, constituyen actualmente Museos de Sitio. Estos se han reutilizado asimismo como espacios públicos, como plazas –fuerte y como centros de interpretación.

Ya no tienen uso militar. Tienen solo fines civiles.

Asociación público/privada, si las hubiere.

En general, es el Estado de Chile, a través de distintas Instituciones, quien se encarga de la mantención y administración de los fuertes mencionados.

En general, no hay fuertes destinados a comercio, ni a hostelería, ni a otra actividad. La comunidad, en general, quiere recuperar la esencia de lo que fueron y más bien existe una tendencia a conservarlos como ruinas o a recrear su historia, creando museos de sitio, sitios de encuentros culturales, etc.

Museos o instituciones de historia militar relacionadas.

Los Fuertes en Chile no son Museos de Historia Militar. Para ello, los militares han rehabilitado regimientos y otros edificios de su propiedad para el uso de museos militares.

**5. Instrumentos jurídicos para la protección de los valores patrimoniales en bienes del área de la defensa.**

Actos Del Parlamento, regulaciones gubernamentales, otras disposiciones.

La Mayor parte de los Fuertes en Chile, son MONumentos Nacionales bajo la Ley N° 17.288.

Cuestiones de confidencialidad.

No es problema.

Relación con los instrumentos de planificación y la construcción de edificios.

En general, como están protegidos legalmente por la Ley N° 17.288, no tienen problemas de intervenciones negativas importantes al interior de los sitios. Sin embargo, los entornos cercanos y el territorio circundante, no respeta la existencia de estas instalaciones defensivas patrimoniales y los instrumentos de planificación territorial no consideran a los fuertes un elemento relevante a considerar.

**6. Aspectos financieros**

¿Cómo es la cobertura de los costos en la administración de los bienes militares en general?

No son Bienes Militares. Son Bienes Fiscales. Su restauración y puesta en valor se financia con fondos del Estado y su mantenimiento se gestiona en cada institución que los tiene en administración.

¿Cómo se cubre para los bienes patrimoniales?

Su ubicación, generalmente en situaciones geográficas atractivas y de gran significado para la ciudadanía, deriva en una asociación con variables turísticas, educativas, académicas, culturales y políticas, entre otras.

Patrocinios si los hubiere.

En general no hay.

Respuestas aportadas por Mireya Danilo.

AMAYA IRARRAZAVAL Z. ICOMOS- CHILE. ICLAFI VOTING. Mayo 2011.

## Colombia

### DEFENDIENDO EL PATRIMONIO HISTÓRICO MILITAR: TOPICOS LEGALES, FINANCIEROS Y ADMINISTRATIVOS

ICLAFI – Karlskrona – Suecia 16 -19 de Mayo de 2.011

CLAUDIA FADUL ROSA – DELEGADA DEL ICOMOS DE COLOMBIA ANTE EL ICLAFI –

## 1. ASPECTOS INTERNACIONALES

### La Convención de la Haya de 1954

Colombia suscribió la adhesión a la Convención para la Protección de los Bienes Culturales en caso de conflicto Armado y reglamento para la aplicación de la Convención de La Haya el 14 de mayo de 1954

#### Protocolo 1.

Protocolo a la Convención para la protección de los Bienes Culturales en caso de conflicto armado. La Haya 14 de mayo de 1954.

Adhesión: Junio 18 de 1998.

#### Protocolo 2.

Protocolo a la Convención para la protección de los Bienes Culturales en caso de conflicto armado. La Haya 26 de marzo de 1999.

Adhesión: 24 de Noviembre de 1999.

## 2. ASPECTOS CONSTITUCIONALES

### Constitución Política de Colombia 1991

**Artículo 72:** El patrimonio cultural de la Nación está bajo la protección del Estado. El patrimonio arqueológico y otros bienes culturales que conforman la identidad nacional, pertenecen a la Nación y son inalienables, inembargables e imprescriptibles. La ley establecerá los mecanismos para readquirirlos cuando se encuentren en manos de particulares y reglamentará los derechos especiales que pudieran tener los grupos étnicos asentados en territorios de riqueza arqueológica.

**Artículo 133:** La actividad económica y la iniciativa privada son libres, dentro de los límites del bien común. Para su ejercicio, nadie podrá exigir permisos previos ni requisitos, sin autorización de la ley.

La libre competencia económica es un derecho de todos que supone responsabilidades.

La empresa, como base del desarrollo, tiene una función social que implica obligaciones. El estado fortalecerá las organizaciones solidarias y estimulará el desarrollo empresarial.

El Estado, por mandato de la ley, impedirá que se obstruya o se restrinja la libertad económica y evitará o controlará cualquier abuso que personas o empresas hagan su posición dominante en el mercado nacional.

La ley delimitará el alcance de la libertad económica cuando así lo exijan el interés social, el ambiente y el patrimonio cultural de la Nación.

## **LEY 397 DE 1997 – LEY GENERAL DE CULTURA**

### **Título II - Patrimonio Cultural de la Nación**

**Artículo 4º:** El patrimonio cultural de la Nación está constituido por todos los bienes y valores culturales que son expresión de la nacionalidad colombiana, tales como la tradición, las costumbres y los hábitos, así como el conjunto de bienes inmateriales y materiales, muebles e inmuebles, que poseen un especial interés histórico, artístico, estético, plástico, arquitectónico, urbano, arqueológico, lingüístico, sonoro, musical, audiovisual, fílmico, científico, testimonial, documental, literario, bibliográfico, museológico, antropológico y las manifestaciones, los productos y las representaciones, los productos y las representaciones de la cultura popular.

Las disposiciones de la presente ley y de su futura reglamentación serán aplicadas a los bienes y categorías de bienes que siendo parte del Patrimonio Cultural de la Nación pertenecientes a las épocas prehispánicas, de la Colonia, la Independencia, la República y la Contemporánea, sean declarados como bienes de interés cultural, conforme a los criterios de valoración que para tal efecto determine el Ministerio de Cultura.

**Parágrafo 1°:** Los bienes declarados monumentos nacionales con anterioridad a la presente ley, así como los bienes integrantes del patrimonio arqueológico, serán considerados como bienes de interés cultural.

También podrán ser declarados bienes de interés cultural, previo concepto del Ministerio de Cultura, aquellos bienes que hayan sido objeto de reconocimiento especial expreso por las entidades territoriales.

**Artículo 8°.** Declaratoria y Manejo del Patrimonio Cultural de la Nación. El Gobierno Nacional, a través del Ministerio de Cultura y previo concepto del Consejo de Monumentos Nacionales, es el responsable de la declaratoria y manejo de los monumentos nacionales y de los bienes culturales de interés nacional.

A las entidades territoriales, con base en los principios de descentralización, autonomía y participación, les corresponde la declaratoria y el manejo del patrimonio cultural y de los bienes de interés cultural del ámbito municipal, distrital y departamental, a través de las alcaldías municipales y las gobernaciones respectivas, y de los territorios indígenas, previo concepto de los centros filiales del Consejo de Monumentos Nacionales allí donde existan, o en su defecto por la entidad delegada por el Ministerio de Cultura. Lo anterior se entiende sin perjuicio de que los bienes antes mencionados puedan ser declarados bienes de interés cultural de carácter nacional.

Para la declaratoria y manejo de los bienes de interés cultural se aplicará el principio de coordinación entre los niveles nacional, departamental, distrital y municipal y de los territorios indígenas.

Los planes de desarrollo de las entidades territoriales tendrán en cuenta los recursos para la conservación y la recuperación del patrimonio Cultural.

**Artículo 355.** Ninguna de las ramas u órganos del poder público podrá decretar auxilios o donaciones en favor de personas naturales o jurídicas de derecho privado.

El Gobierno, en los niveles nacional, departamental, distrital y municipal podrá, con recursos de los respectivos presupuestos, celebrar contratos con entidades privadas sin ánimo de lucro y de reconocida idoneidad con el fin de impulsar programas y actividades de interés público acordes con el Plan Nacional y los planes seccionales de Desarrollo. El Gobierno Nacional reglamentará la materia. (Nota: Inciso reglamentado por el Decreto 842 de 1992.).

**Decreto 02941 de 2009 – 6 de Agosto de 2009**

“Por el cual se reglamenta parcialmente la Ley 397 de 1997 modificado por la Ley 1185 de 2008, en lo correspondiente al Patrimonio Cultural de la Nación de naturaleza inmaterial”

**Decreto 777 de 1.992**

**Artículo 1.** Contratos con entidades privadas sin ánimo de lucro para impulsar programas y actividades de interés público.

Los contratos que en desarrollo de lo dispuesto en el segundo inciso del artículo 355 de la Constitución Política celebren la Nación, los Departamentos, Distritos y Municipios con entidades privadas sin ánimo de lucro y de reconocida idoneidad, con el propósito de impulsar programas y actividades de interés público, deberán constar por escrito y se sujetarán a los requisitos y formalidades que exige la ley para la contratación entre los particulares, salvo lo previsto en el presente decreto y sin perjuicio de que puedan incluirse las cláusulas exorbitantes previstas por el decreto 222 de 1983.

**OTROS INSTRUMENTOS JURÍDICOS****PLAN DE ORDENAMIENTO TERRITORIAL**

Adoptado por la Alcaldía Mayor de Cartagena mediante decreto 0977 de 2001 en el tema del Centro Histórico se refiere particularmente a los siguientes puntos:

Área de influencia y la periferia histórica de la ciudad

Áreas de protección del Patrimonio Histórico

Normas relativas a las vías en el Centro Histórico

Tratamientos urbanísticos: Conservación, consolidación, mejoramiento integral, renovación urbana, redesarrollo y desarrollo.

**PLAN ESPECIAL DE MANEJO Y PROTECCION DEL CENTRO HISTÓRICO – PEMP**

Este año fue aprobado por el Ministerio de Cultura de Colombia, cumpliendo de esta forma con la obligación que le impone la UNESCO a Colombia y a Cartagena de Indias por haber sido declarada Patrimonio de la Humanidad.

En cuanto a los fuertes ubicados en la bahía exterior de la Isla de Tierra Bomba –

Bocachica, en este momento se encuentra en proceso de elaboración entre los diferentes actores, comunidad, especialistas, administradores de los bienes culturales, gremio turístico, etc.

## **ESTUDIO PATOLOGICO DEL CORDON AMURALLADO Y SUS BALUARTES**

Con el objeto de tener toda claridad en cuanto al estado del cordón amurallado y sus Baluartes, la Sociedad de Mejoras Públicas contrató el referido estudio, de tal forma que pudiera conocer la situación de cada uno y definir de acuerdo con los planes de acción las obras que deben realizarse y la prioridad de las mismas. Este estudio es una herramienta muy importante por cuanto nos dice en detalle como se encuentra la estabilidad de estas fortalezas.

## **MANUAL DE USO DE LAS MURALLAS DE CARTAGENA DE INDIAS**

Mediante consenso entre el Ministerio de Cultura, el sector turístico de Cartagena de Indias y la Sociedad de Mejoras Públicas, institución que administra el cordón amurallado y sus baluartes, este año se elaboró el manual que contiene todos los usos, materiales, aprovechamiento, tiempos, sonido que se deben usar y aplicar en estos bienes, manual que fue debidamente aprobado por el Ministerio de cultura de Colombia.

Tanto el manual como el estudio patológico se constituyeron en herramientas muy eficaces, que llevó al Ministerio de Cultura a tomar la decisión de que no era necesario elaborar un plan especial de manejo y protección del cordón amurallado y sus baluartes., criterio que venía imponiéndose.

### **3. ¿Qué es típico de la historia militar de su país que se refleje en el Patrimonio Histórico Militar?**

El Patrimonio Histórico Militar de Colombia, declarado como tal por el Gobierno Nacional mediante la Ley 163 de 1959, art. 4 y su parágrafo correspondiente, se encuentra en la ciudad de Cartagena. Es un patrimonio monumental del período colonial, que fue construido en los siglos XVI, XVII, y XVIII para la defensa de la ciudad.

Ahora bien, las circunstancias que más influyeron en la construcción de este patrimonio fue, en primer lugar, la noticia de que en la región del Sinú, perteneciente a la gobernación de la cual Cartagena era capital, el fundador, don Pedro de Heredia, encontró a su llegada en 1533, una enorme riqueza representada en objetos de oro que enterraban los indígenas con los difuntos, formando túmulos en el cementerio general de la comarca. Este tesoro fue saqueado por los españoles, violando las sepulturas durante muchos días. Los expedicionarios regresaron a Cartagena donde lograron repartir un fabuloso botín. Las sepulturas sinuanas ganaron entonces por todo el Nuevo Mundo tanta o más fama que las recién descubiertas riquezas incaicas del Perú. Ello fue la causa de que gran número de inmigrantes se presentaran a Cartagena ilegalmente creando problemas de abastecimientos y despertara la codicia de piratas y corsarios que asediaron y asaltaron a Cartagena que para entonces se encontraba desprotegida.

El otro hecho que hizo necesarias las defensas de Cartagena fue que la ciudad, por las ventajas de su abrigada bahía se convirtiera en el principal puerto de Tierra Firme, destino final de una de las dos flotas de la carrera de las Indias que englobaba todo el comercio y la navegación entre España y sus colonias. En Cartagena recalaba la llamada Armada de Galeones, donde permanecía varios meses, durante los cuales se organizaba una feria en la Plaza de la Mar (hoy de la Aduana) para vender las mercancías traídas de Europa, mientras que se hacía acopio de las riquezas de la Nueva Granada, la Capitanía de Venezuela y el Virreinato del Perú, estas últimas transportadas por la Armada del Pacífico hasta Panamá para atravesar el istmo hasta Portobelo, de donde se daba aviso a la Armada fondeada en Cartagena para que fuera a recogerlas. La Armada regresaba a Cartagena para aprovisionarse y hacer aguada para su regreso a la península ibérica con la riqueza americana.

Semejante riqueza reunida en Cartagena era un succulento plato servido para los piratas y especialmente los corsarios apoyados por las potencias Europeas enemigas de España, especialmente Inglaterra y Francia, por lo cual se daban al asedio y saqueo de la ciudad. Ante el clamor de habitantes y autoridades de la ciudad Felipe II incluyó a la ciudad dentro del Plan General de Fortificaciones de América Española y Filipinas encargando a dos eminentes autoridades en ingeniería militar: el Mariscal don Juan de Tejada y al ingeniero italiano al servicio de España Bautista Antonelli. No fue, pues, casual que Antonelli viniera a la ciudad en 1586, el mismo año en que la ciudad sufriera el ataque de Francis Drake que la dejó casi destruida a pesar de haber pagado un cuantioso rescate.

Antonelli hace entonces una serie de recomendaciones para reforzar la defensa de la bahía que ya contaba con algunos fuertes y concibe el amurallamiento de la ciudad,

cuyos planos entregó en 1595, que, con algunas modificaciones contiene la traza que ha permanecido hasta hoy. La construcción de las murallas las inició Cristóbal de Roda en 1614 comenzando por el baluarte de Santo Domingo, entonces llamado de San Felipe. La última obra fue el cuartel de las Bóvedas realizada por Antonio de Arévalo.

## **PATRIMONIO HISTORICO MILITAR DE COLOMBIA DECLARADO PATRIMONIO DE LA HUMANIDAD**

Puerto, Fortificaciones y Conjunto Monumento de Cartagena, 1.984

### **CASTILLO SAN FELIPE DE BARAJAS**



El castillo san Felipe de barajas, que evoca con sus muros imponentes el fragor de sangrientas batallas, era el guardián de Cartagena de indias por la puerta de la “media luna”, el único acceso a la ciudad desde el continente.

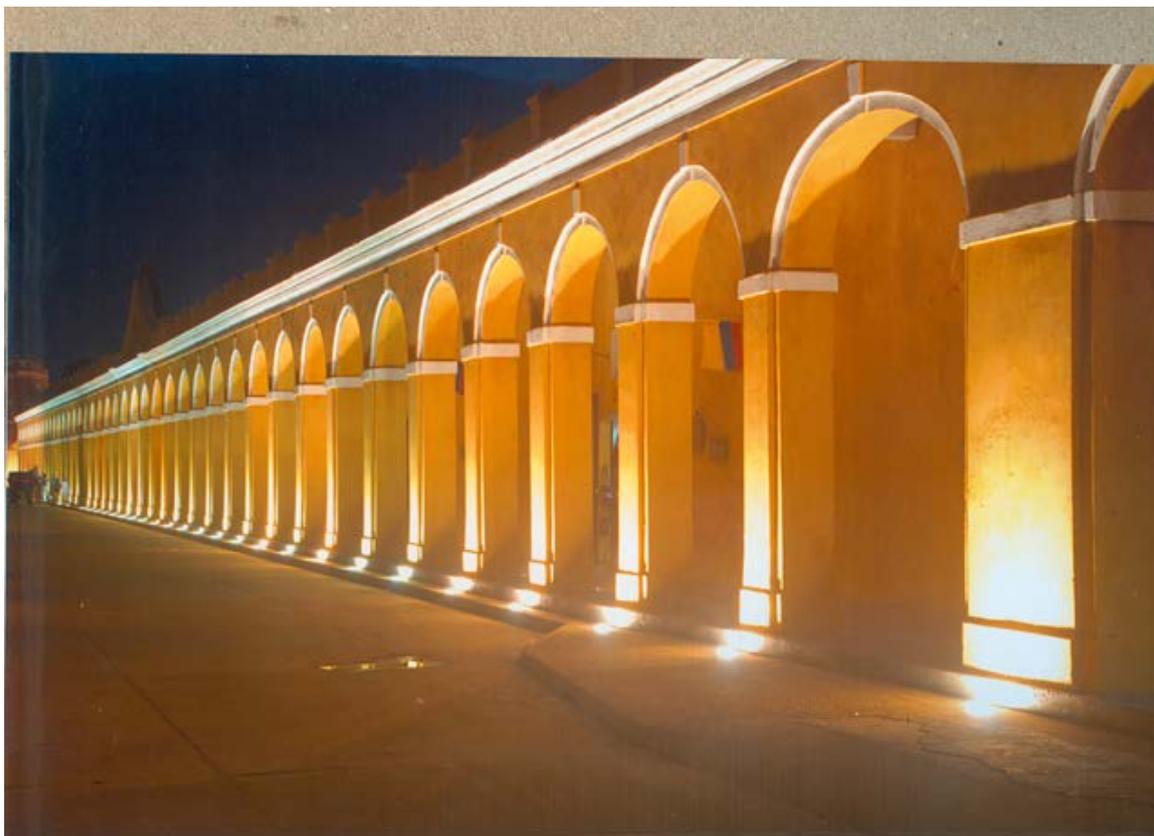
La fortaleza más antigua, que corona el originalmente llamado “cerro de san lázaro”, es un bonete para 8 piezas de artillería, 20 soldados y 4 artilleros, construido entre 1656 y 1657 por orden del gobernador de la ciudad don

Pedro Zapata de Mendoza, con planos del ingeniero holandés Ricardo Carr y la dirección del maestro mayor Gaspar Mejía. La obra tuvo un costo de 13.235 pesos de oro, pagados en 2/3 partes por los vecinos de Cartagena.

La fortificación completa del cerro, que convirtió a San Felipe de Barajas en una enorme mole de piedra con 63 cañones, fue terminada en 1798 por el ingeniero militar Antonio de Arévalo, luego de 36 años de duro trabajo.

Con un costo total invaluable en dinero y vidas de esclavos africanos, el castillo es una de las obras más grandes realizadas en América durante el periodo colonial español.

## CUARTEL DE LA BOVEDAS



Su construcción duró poco más de tres años, en la que intervinieron entre otros los Ingenieros Bautista Antonelli, Francisco de Murga, Cristóbal de Roda, Juan de Semovilla, Juan Bautista de Herrera y Sotomayor.

Concluida la Guerra de Independencia, las Bóvedas sirvieron de cárceles o mazmorras para los prisioneros de guerra o políticos.

Para finales del siglo XIX y principios del XX, el solado se arruinó totalmente, siendo reconstruido por el Gobierno Nacional hacia los años treinta.

Hacia los años Setenta la Sociedad de Mejoras Publicas realizo trabajos de mantenimiento, consolidando el solado con concreto e instalando sobre él una tableta de arcilla cocida.

Construidas junto a las murallas entre 1792 y 1796, fueron usadas como polvorín y posteriormente como cárcel, hoy en día es uno de los rincones típicos de la Cartagena colonial y lugar de gran atractivo turístico para la compra de las más diversas artesanías colombianas.

## FUERTE SAN SEBASTIAN DEL PASTELILLO



Sobre la isla de Manga se encuentra el Fuerte de San Sebastián del Pastelillo. En este lugar existía el fuerte del Boquerón, que fue destruido en 1741 por el almirante Vernon en el ataque a la ciudad de Cartagena. Junto con otras fortalezas como el Fuerte de San José y el Fuerte de San Fernando, controló el tráfico marítimo de la bahía para prevenir posibles ataques. El Fuerte de San Sebastián del Pastelillo posee 31 cañones y se logra camuflar en el terreno. El nombre de San Sebastián procede de un Santo que era el patrón de los conquistadores, y Pastelillo es un término militar que significa como la hierba, por lo tanto un castillo que se adapta al terreno.

## BALUARTE SAN LORENZO DEL REDUCTO



Primera obra de fortificación del recinto de Getsemaní, construida a consecuencia del ensanchamiento de la ciudad que paso a poblar el islote. Llamado también San Lázaro y San Lorenzo, defendía el Surgidero y reforzaba la defensa del fuerte San Sebastián del Pastelillo. En 1631 Francisco de Murga inicia la construcción de las obras de defensa del Arrabal, entre las que se encontraba este baluarte, ubicado al sureste de la isla en la punta de San Lorenzo. Descrito por Juan Manuel Zapatero como una "Torre - Fuerte" probablemente basada en los proyectos de Cristóbal de Roda de traza muy primitiva, de fuerte inspiración medieval, reflejándolo en la cara 2 donde aparece un perfecto matacán. Se encuentra aislado del resto de las murallas producto de la construcción del puente Román y parcialmente destrozado por haber sido colocado sobre su plataforma, el monumento de la virgen de los Navegantes, después trasladada a la bahía interior.

## FUERTE DE BOCACHICA FUERTE SAN FERNANDO DE BOCACHICA



Está localizado en la Isla de Tierra bomba, a un extremo del Canal de Bocachica. Restringía el paso por dicho canal combinando fuerzas con la Batería de San José. Su construcción se inició en 1753.

De forma singular, es uno de los más llamativos entre los fuertes de Cartagena de Indias. Fue también prisión por su segura ubicación y su aislamiento de tierra firme. Queda a pocos pasos de las playas de Bocachica.

## **BATERÍA DEL ANGEL SAN RAFAEL**



De reciente restauración, este fuerte se localiza en la cima del Cerro del Horno, cerca al balneario de Bocachica en Tierrabomba. Fue punto clave para la defensa de la ciudad comenzando por el Canal de Bocachica, donde apoyaba al Fuerte San Fernando.

## **FUERTE BATERÍA DE SAN JOSÉ**



Construido por Juan de Herrera y Sotomayor a principios del siglo XVIII del otro lado de la Boca Chica. Cruzaba fuegos con el Castillo de San Fernando para cerrar el paso por el Canal de Bocachica. Fue restaurado en su plenitud en 1990

## **PATRIMONIO HISTORICO MILITAR DE COLOMBIA DECLARADO PATRIMONIO NACIONAL**

Ruta de la Campaña Libertadora:

Los sitios que a continuación se señalan son los que fueron visitados por el Libertador Simón Bolívar y que en ellos se dieron hechos de vital importancia en la Campaña Libertadora. Estos lugares cobran mucha importancia en éste año del Bicentenario de la Independencia de Colombia.

1. Ermita de Chivatá, Boyacá – Ruta de la Campaña Libertadora
2. Monumento del Pantano de Vargas, Paipa, Boyacá – Ruta de la Campaña Libertadora
3. Cerro del Cangrejo, Paipa, Pantano de Vargas, Boyacá - Ruta de la Campaña Libertadora
4. Puente sobre el Río Gámeza, Tópaga, Boyacá - Ruta de la Campaña Libertadora
5. Casa de Teja o de Postas, Ventaquemada, Boyacá - Ruta de la Campaña Libertadora
6. Puente de Boyacá, Ventaquemada, Boyacá - Ruta de la Campaña Libertadora
7. Templo de la Libertad, Ventaquemada, Boyacá - Ruta de la Campaña Libertadora
8. Fuerte de San Fernando, Santa Marta
9. Fuerte El Morro, Santa Marta
10. Quinta de San Pedro Alejandrino, Santa Marta

#### **4. ESQUEMA ADMINISTRATIVO**

**Patronatos público privados**

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## **MUSEOS E INSTITUCIONES DEDICADAS A LA HISTORIA MILITAR DE COLOMBIA**

## MUSEO MILITAR DE COLOMBIA



Es un museo histórico, donde a través de la labor de las Fuerzas Militares, de su armamento y elementos de dotación se enseña la independencia, la libertad, la formación de las diferentes Fuerzas Militares y la conservación de la democracia de nuestro país con la evolución de la bandera y escudo de la República de Colombia.

### **Historia**

Funciona en una amplia casa que marca dos épocas. La parte interior construida a finales del siglo XVIII, perteneció a la familia del héroe de nuestra independencia, el capitán Antonio Ricaurte, quien ofrendó su vida en San Mateo.

El sector principal, de corte republicano que fuera construido de 1911 a 1913, auspicio la Escuela de Ingeniería y luego la de las Bellas Artes.

En la década de los 40's funcionó la oficina nacional de aprovisionamiento y suministro del Estado, posteriormente una unidad de la Policía Militar.

El 6 de agosto de 1982, siendo presidente el doctor Julio Cesar Turbay Ayala y el Ministro de Defensa el General Luís Carlos Camacho, se inauguró el Museo de Armas, utilizando las muestras que se exhibían en la Escuela Militar de Cadetes. Posteriormente toma el nombre de Museo Militar de Colombia.

### **El Museo**

Se exhibe armas, uniformes, maquetas, y diversos elementos que enmarcan la evolución histórica y técnica del Ejército Nacional, la Armada Nacional y la Fuerza Aérea Colombiana.

Por el sistema de dioramas y audiovisuales se puede apreciar la Batalla del Pantano de Vargas y la conquista del espacio desde la mitología hasta los modernos transbordadores.

## **EL MUSEO NAVAL DE CARTAGENA, UN PATRIMONIO HISTÓRICO NAVAL.**



En el Día Internacional de los Museos, la Armada Nacional de la República de Colombia, rinde tributo a la historia naval del país a través de este importante centro histórico y cultural ubicado en la ciudad de Cartagena.

En 1986, la Armada Nacional de Colombia, los Jesuitas, y algunos líderes locales, combinaron esfuerzos para lograr la creación de El Museo Naval para todo el Caribe, inaugurado el 8 de Julio de este año.

El Museo se encuentra en la ciudad de Cartagena. Estuvo dedicado a la Escuela de Aprendices de la Sociedad Española de Construcción Naval.

Su temática abarca fundamentalmente los eventos navales de la Armada en el Mar. Muestra así su especial dedicación a los Submarinos, la Construcción Naval en Cartagena y la Cartografía, recogiendo elementos museísticos referentes a América, Filipinas y la Antártida; hace un recorrido por toda la historia marítima de Colombia; donde escenas de conquista, luchas navales, fuertes murallas y embarcaciones, se mezclan con el ambiente.

El Museo Naval tiene dos grandes áreas, la Colonial y la Republicana; en ellas se exhiben materiales históricos, científicos e interactivos, donados por la Fuerza Naval Colombiana y algunos países del Caribe.

Actualmente, ofrece permanentes exhibiciones relacionadas con la historia Militar Naval de Cartagena de Indias, navegación universal, la Institución Naval Colombiana, incluyendo información actual y renovada. Adicionalmente representaciones de la Era Colonial y los primeros periodos Republicanos.

El Museo fue creado con el objetivo de crear un mejor conocimiento de la historia naval del Caribe, conservar y exhibir artefactos históricos e información relacionada con la historia naval de el Caribe, así como, facilitar el desarrollo de arqueología subacuática en el Caribe, servir como un colaborador con otros museos, Colombia, y organizaciones de otros países y crear eventos y publicaciones para la diseminación de información relacionada con la historia del Mar Caribe.

## MUSEO AEROESPACIAL COLOMBIANO



La Fuerza Aérea Colombiana, consciente de su deber como garante y líder en la preservación del legado aeronáutico de la nación, creó en 1968 el primer Museo Aeronáutico del país, ubicado en las instalaciones del antiguo Aeropuerto de Techo, sede hasta 1959 del Escuadrón de Transporte.

El Museo fue dotado con diversos tipos de aeronaves que habían salido del servicio, pero que se conservaban en perfecto estado. Los antiguos hangares fueron acondicionados como salas de exhibición, en donde una interesante colección de cuadros, fotografías, réplicas de aeronaves, elementos aeronáuticos y espaciales, acercaron al público al mundo de la aviación.

Cuatro años más tarde, el Museo estaba en crisis, no se contaba con personal idóneo para la administración y desarrollo de este centro cultural y algunas de las colecciones se deterioraron o se prestaron. Debido a esto, se optó por trasladar las aeronaves a predios del Comando Aéreo de Transporte Militar, CATAM, y algunos cuadros y modelos a escala fueron enviados al Cuartel General del Comando Fuerza Aérea, donde aún hoy se conservan.

Pero el sueño no murió, en 1981 se creó en la Escuela Militar de Aviación en Cali, la

“Casa Museo”, acondicionada en una bella construcción que sirviera de Casa Comando en los inicios de la Unidad, auténtico patrimonio arquitectónico de la Escuela y de la ciudad.

Lamentablemente, estos centros culturales pioneros en el ámbito aeronáutico desaparecieron debido a problemas presupuestales, pero esto no detuvo la iniciativa de oficiales como el mayor Oscar Forero Racines, q.e.p.d., apasionado historiador militar, quien en 1993 creó la Academia Colombiana de Historia Aérea, adscrita a la Fuerza Aérea Colombiana como órgano consultivo, para hacer de ella el instrumento que les permitiera crear un Museo Aeroespacial Colombiano, proyecto en el que trabajó durante 18 años.

En 1998, el comandante de la Fuerza Aérea, General Héctor Fabio Velasco Chávez, conocedor y estudioso de la historia militar, apoyó el proyecto del mayor Forero y de la Academia. En 1999, el antiguo despacho de aeronaves de CATAM fue remodelado y acondicionado, a un costo de 88 millones de pesos, para convertirse en la primera sede del Museo Aeroespacial Colombiano.

Durante ese año, el mayor Forero se desempeñaba como director del Museo Militar del Comando General de las Fuerzas Militares, ubicado en el centro de Bogotá, pero ante la necesidad de contar con su asesoría y profesionalismo en el proceso de creación y desarrollo del Museo Aeroespacial, el Comando de la Fuerza Aérea ordenó el término de su comisión. Lamentablemente, en febrero de 2000, durante una intervención quirúrgica falleció, sin lograr poner en marcha su sueño.

El 16 de agosto de 2000 se creó la Sección Patrimonio Histórico y Cultural del Comando de la Fuerza Aérea, teniendo como objetivo principal el funcionamiento del Museo Aeroespacial Colombiano, su continuidad y desarrollo, además de asesorar al Comando de la Fuerza en los asuntos relacionados con la preservación, estudio, divulgación y aprovechamiento del legado histórico, cultural, tecnológico y científico, actividad para la que fue nombrado el mayor Raúl Eduardo Gutiérrez Gómez, piloto.

La Sección estuvo conformada inicialmente por un oficial, un suboficial y una secretaria, a quienes les correspondió la adquisición y adecuación de los elementos para ser exhibidos en las salas internas, la obtención de los recursos para restaurar las aeronaves del Parque Aeronáutico y la conformación de una planta de personal adecuada para cumplir con las actividades propias de un Museo.

Simultáneamente, se diseñó un ambicioso plan de adecuación y dotación de las salas: se visitaron Unidades Aéreas y personajes que pudieran aportar elementos para conformar una colección. Poco tiempo después de iniciar actividades, se adecuaron las oficinas del área administrativa y del futuro Centro de Investigaciones Histórico Aeronáuticas.

El 14 de abril de 2001 se abrieron las puertas al público. El apoyo de la familia del mayor Oscar Forero Racines fue fundamental en este proceso con el préstamo de la colección privada de su esposo y padre.

Uno de los logros más importantes ha sido conformar el Centro de Investigaciones Histórico-Aeronáuticas de la Fuerza Aérea, CIHFA, único en las Fuerzas Militares de Colombia, que cuenta con dos historiadores profesionales, uno egresado de la Universidad del Valle y otro de la Universidad de Antioquia, incorporados a la Fuerza Aérea como Oficiales del Cuerpo Administrativo los subtenientes Nohora Gutiérrez y Yesid Peña, quienes se convirtieron en los pioneros de esta especialidad en la Fuerza Pública.

El propósito del CIHFA es complementar el proceso de desarrollo de la doctrina institucional a través del estudio y análisis histórico de las operaciones aéreas y de las actividades institucionales; por otra parte, es un elemento fundamental para el desarrollo del Museo, ya que se convierte en fuente de consulta para quienes deseen o necesiten conocer sobre el devenir aeronáutico nacional, y se encarga de registrar, clasificar, archivar, preservar y manejar la documentación histórica, así como, el material fotográfico de la aviación nacional.

Entre los proyectos del Museo está la creación de una Fundación o Asociación de Amigos del Museo y del Centro Histórico; la creación de un programa de visitas para niños y jóvenes de bajos recursos provenientes de otras ciudades; la conformación de la primera biblioteca aeronáutica del país, y la consolidación de la red de museos militares y de policía para fomentar la creación de nuevos centros históricos, culturales y tecnológicos a lo largo y ancho del territorio nacional.

## MUSEO DE LAS FORTIFICACIONES



Desde diciembre de 2002, en el interior del Baluarte de Santa Catalina, la Sociedad de Mejoras Públicas de Cartagena, dio al servicio el Museo de las Fortificaciones.

El Museo de las Fortificaciones, es un Museo de Sitio, un recinto que resume siglos de historia, de una dinámica febril e intensa que fue la construcción de Las Murallas

Un lugar que habrá de servir para hacernos pensar, pensar en el tiempo, pensar en cómo fueron construidas, en quienes las construyeron, en por qué existen en esta Ciudad donde existen y porque son como son. Este espacio no solo yacen respuestas, sino que quedan planteadas preguntas, para todo aquel que tenga capacidad de asombro ante la inmenso esfuerzo humano que hay tras la construcción de la ciudad amurallada.

En el interior del Baluarte de Santa Catalina, y utilizando los espacios del mismo como parte integral de éste Museo de Sitio, encontramos: La Casamata, Bóveda emplazada dentro del terraplén del Baluarte, con dos grandes ventanas o Troneras por donde se asomaban sendos cañones, cuyo objetivo principal era proteger el acceso por la Puerta Antigua de Santa Catalina, en el caso que nos concierne esta Casamata, tuvo y tiene acceso por dos sitios. La Casamata es una enorme bóveda de 100 mts<sup>2</sup> aproximadamente, en la que los españoles mantenían todo tipo de pertrechos, pólvora, balas, cañones, cureñas y donde los soldados estaban a salvo de las bombas de la época.

Allí a través de paneles se explican los sistemas constructivos utilizados en las fortificaciones en América, con énfasis en la construidas en Cartagena de Indias; la historia del Baluarte de Catalina-recinto que acoge al Museo; recuento del proceso de restauración del Baluarte de Santa Catalina realizado por la Sociedad de Mejoras Públicas de Cartagena entre 1996 y el año 2000; se hace un perfil biográfico del Ingeniero Militar Antonio de Arévalo y del defensor de la Ciudad Don Blas de Lezo y se exhiben los objetos encontrados durante las excavaciones arqueológicas en el Baluarte.

## **MUSEO DE HISTORIA ESCUELA MILITAR DE CADETES "GENERAL JOSÉ MARÍA CÓRDOVA"**



La Escuela Militar de Cadetes "General José María Córdova" preserva en su museo la memoria tangible, desde su creación como Alma Mater del Ejército Nacional, hasta nuestros días.

El museo cuenta con una variada colección de elementos que permiten revivir los inicios de la Escuela Militar con uniformes de la época de la Independencia, pasando los siglos XIX, XX, lo transcurrido del XXI, sus combates y guerras más destacadas.

La colección de armas permite conocer al detalle la evolución estratégica del Ejército Nacional y de la Escuela Militar en particular. Es posible apreciar por ejemplo, una pistola que perteneció al señor Teniente General Gustavo Rojas Pinilla.

Fotografías, documentos originales y periódicos, complementan la invaluable colección del museo que describe las tres etapas históricas de esta academia militar, insigne en Colombia, declarada patrimonio histórico nacional: en San Agustín (1907-1914), San Diego (1915-1942), sede actual en Rio negro (1943 al presente) . Aquí se preservan entre otros, actas, cartas, permisos, solicitudes y demás, algunos de los cuales corresponden a la primera Misión Militar Chilena de 1907, conformada por los Capitanes Arturo Ahumada y Diego Guillén.

Dentro de la colección también se muestra la evolución de la bandera de Colombia; la vida del General José María Córdova y títulos honoríficos que ha recibido la Escuela Militar a lo largo de su historia.

## MUSEO DE CABALLERÍA "JUAN JOSÉ RONDÓN"



Este es un espacio diseñado para enaltecer el Arma de Caballería Colombiana. Conmemora, a través de cuadros, fotos, trofeos y objetos invaluablees, a aquellos hitos y personajes que han hecho parte de la historia de la Divisa Amarilla. (29 de junio de 2009)

La exposición, que se divide en cuatro salas, comprende un recorrido por los hechos relevantes en la Caballería de nuestro país, la transición del Arma de montada a mecanizada, y la evolución de los vehículos blindados, representados mediante figuras

en miniatura.

Así mismo exhibe una colección de copas y trofeos nacionales e internacionales; el sable con funda del General José Miguel Silva Plazas; la imagen de “Jorgito”, el equino insignia de la hípica militar nacional; el caballo en porcelana de la dinastía china Tang, donado por el ex presidente Belisario Betancourt; y un juego de sillas con grabados medievales alusivos a la Caballería de esa época.

Dentro del recinto también se aprecia una colección de la Heráldica del Arma conformada por el himno, la oración, los poemas y las reseñas de los Grupos de Caballería.

## **5. INSTRUMENTOS LEGALES PARA LA PROTECCION DEL PATRIMONIO HISTORICO MILITAR EN COLOMBIA**

Los instrumentos legales para la protección son los mismos a los que me he referido en el punto segundo donde expongo los aspectos constitucionales y demás herramientas de orden legal.

## **6. ASPECTOS FINANCIEROS**

En términos generales el Patrimonio Histórico Militar de Colombia se encuentra a cargo de la Nación, en cabeza del Ministerio de Defensa y del Ministerio de Cultura, de tal manera que le corresponde a cada una de estas carteras ministeriales incluir en su presupuesto sumas destinadas a la conservación y administración de estos bienes de carácter cultural.

Capítulo aparte lo constituye el Patrimonio Histórico Militar de Cartagena de Indias cuyo titular es el Ministerio de Cultura y que en virtud de un contrato suscrito con la Sociedad de Mejoras Públicas de Cartagena, esta última, tiene a su cargo su conservación y administración debiendo cumplir con la cláusula especial de que todos los ingresos que produzcan estos bienes deben ser invertidos íntegramente en su conservación.

Ahora bien, en cuanto a los museos ellos son atendidos directamente por la Nación si son de carácter nacional y por las administraciones locales y distritales si tienen carácter distrital o municipal.

En Colombia existen museos como el Museo Nacional que además de contar con el apoyo del Estado cuentan con el apoyo de la sociedad civil a través de una institución cívica y privada denominada AMIGOS DEL MUSEO quienes se encargan de conseguir recursos económicos para auspiciar las diferentes exposiciones y programas que adelantan.

## **Finland**

Satu-Kaarina Virtala

Katri Nuuja

Finland

Defending the Military Heritage; Legal, Financial and Administrative Issues  
Karlskrona, Sweden 16-18 May 2011

### **The Hague Convention and Protocols**

Finland signed and ratified the 1954 Hague Convention and its First Protocol in 1994 (Act 1135/94) and signed the Second Protocol in 1999. The Protocol was ratified in 2004 (Act 151/2004, 661/2004).

In Finland, the obligations related to defining and protecting cultural property imposed by the Convention fall within the sectors of the Ministry of Education and Culture and the Ministry of Defence, but their implementation requires broad cross-administrational cooperation. The Ministry of Education and Culture takes the main responsibility for implementing the Convention, but in practice the work has been delegated to the National Board of Antiquities, which centrally coordinates practical measures for protecting cultural property and disseminating information about the Convention.

An inventory of cultural property protected under the Hague Convention (UNESCO 1954, second protocol 1999) is being prepared. It combines both movable and immovable property (built heritage, archaeological heritage, museums, museum collections, libraries, archives). The Ministry of Education and Culture established a national advisory board to coordinate its implementation. The board has representatives from the heritage authorities and experts: National Board of Antiquities; the National Archives; the National Library; the Finnish National Gallery; ICOM National Committee of Finland; ICOMOS National Committee of Finland; and authorities, experts and owners that are linked to the safety, preservation and good management of the cultural property: the Defence Forces; the Ministry of Defence; the Ministry of the Interior; the Ministry of the Environment; the Ministry of Foreign Affairs; the Association of Finnish Local and Regional Authorities; the Church Council of the Evangelical Lutheran Church; the Church Council of the Finnish Orthodox Church; and the The Finnish National Rescue Association.

The preparations for the national listing of cultural property started in late 1990's. Although this list is based on the Hague Convention for the protection of cultural property in the event of armed conflict it will be also used for the safeguarding of cultural property against daily civil emergencies (fire hazard, flood hazard etc.). The aim is to provide the owners of the sites further information about e.g. fire risk prevention. Besides heritage authorities, the relevant actors using the inventory are the Defence Forces and 22 regional rescue departments responsible for rescue services in their area. It is found vital that both the military and the fire and rescue services can have easy access to the information and database of the inventory.

The list will be discussed with the Defence Forces and a hearing will be arranged also for the owners of the cultural property and the regional heritage authorities i.e. provincial museums that take care for the cultural environment, art collections and museum collections. The listing prepared by the heritage authorities will be ratified by the Ministry of Education and Culture. In future the listing will be updated and re-evaluated every five years.

The main purpose of the inventory is to give the Defence Forces and fire and rescue services a list of sites that should be taken into consideration when planning actions and charting risks or threats/ to prepare risk assessment and disaster plans for the sites. The responsibility of the Article 7 of the Convention (Military measures) lies with the Defence Forces.

According to the Rescue Act the owner is responsible for the preparedness measures. All the owners of the sites listed are being contacted during the process. The owners will be informed about the Hague Convention, national legislation concerning heritage and the overall importance of taking preparedness measures (according to Rescue Act).

There are also plans for education and training of the owners. The heritage authorities are also willing to cooperate with the defence forces and regional rescue services in assisting in their training.

### The Finnish military history reflected in property

Finland's military history covers about thousand years, but only the oldest fortifications, hillforts, and the most recent ones, WW II fortifications are planned and built by Finns. Others were built by powers that be, first by Sweden and later by Russia. The fortifications were situated according to the changes in the boundary line mainly in eastern and southern Finland. The ancient Finnish

fortifications as well as the Russian fortifications in WW I and the Salpa line in WW II were hidden in terrain and landscape. Other fortresses and castles were meant to be seen as a declaration of military, financial and administrative powers with massive walls and magnificent architecture.

At first stone and timber and later also brick were used as building material. Timber proved to be a destroyable material, in regard to time and enemy, and so most of the now remaining buildings and structures are made of stone and brick.

After the hillforts's time came citadels, which later developed to castles with surrounding settlements. Usually they were built alongside waterways, where they best served military purposes. The newest proper castle, Olavinlinna in south-eastern part of Finland, was built in 1475, and it was old fashioned already by that time. Nowadays three of these castles are in good repair, and about half a dozen of them in various levels of ruins.

Since 18<sup>th</sup> century fortress towns were built along the eastern border of Finland. These towns often reflect both Swedish and Russian fashion of military architecture. Most of these towns even now have military use, but some, like Davidov (in Finnish Taavetti) lost their military significance and were shut down relatively soon after they were built. Sea fortresses were built either on coast or on islands by both Swedish and Russians. The best known sea fortress is Suomenlinna.

In 19<sup>th</sup> century, when Finland was an autonomous grand duchy under Russia, garrisons for sharpshooter battalions were built in eight Finnish province towns. The garrison areas were planned in squares and followed a strict hierarchy. Exceptionally timber was used as building material. Special attention was paid to the area's comfort and healthiness. Trees and plants separated barracks. Garrisons were situated usually outside the town centres.

When the international atmosphere tensed in the early 20<sup>th</sup> century, extensive fortification works and large-sized building period started and was liveliest during 1910-1915. New garrisons were built in old towns and in consideration to mobilization, near railways. They were built in red brick and again strict hierarchy labelled buildings. When Finland came independent in 1917, the

former Russian garrisons were transferred to the ownership of the Finnish Defence Forces.

Before WWII a new type of modern barrack building was developed; it was white-plastered brick and it met all then prevailing sanitary requirements. The established style was functionalism.

During WWII a fortification line, the Salpa-line, was built to safeguard the eastern border. It was in the range of 900 kilometres from the Gulf of Finland to Lapland. The fights never reached the Salpa-line. It was kept in serviceable condition for some time after the war, but it lost its operative significance gradually.

### Military heritage properties in active use and its administration

Senate Properties is a government owned enterprise under the aegis of the Finnish Ministry of Finance and is responsible for managing the Finnish state's property assets and for letting premises, primarily to customers which form part of the state administration. This includes also properties in military use. The services include leasing premises, investments, and the administration and development of the property. As a business enterprise, Senate Properties finances its own operations and is not dependent on the state budget. If a property has no use for any form of state administration, it is put up for sale.

Senate Properties cares for the preservation of the architectural and cultural historic value of buildings, and for their uninterrupted usability regarding their users' needs. According to Senate Properties buildings' continuous use provides the economic basis for the maintenance and renovation.

Extra and variation work in areas of cultural historic value or near protected buildings is carried out with respect towards the protected buildings and their preservation. Maintenance and construction of yard areas and immediate surroundings is also done taking the protected buildings into account.

Selecting a new use for a protected building is done based on the building's characteristics so the new use shall not compromise its protection value. New functions are adjusted to the old room layout and structural guidelines wherever possible.

Some of the buildings of architectural and cultural historic value in Senate Properties' possession are protected under the Decree on the Protection of State-owned Buildings, some under the Act on the Protection of Buildings, and some are protected by respective town plans. Protection of valuable environments and buildings presently outside this legislation, shall be arranged by agreement with museum and environment authorities as well as by town planning work in co-operation with planning authorities.

Renovation of protected buildings aims to preserve as much of the existing building mass as possible. Building components are replaced only if the existing ones are beyond reasonable repair. Replacement components are primarily made after old models. Improvement upon existing systems is the starting point for the planning of mechanical and electrical services.

### Legal instruments for protection of heritage values in properties for defence purposes

The heritage legislation for the current military use properties is the same as to all other heritage properties, the Act on the Protection of Buildings and the Decree on the Protection of State-owned buildings. Senate Properties has drawn up a strategy for state heritage buildings, which is described in administrative part of this text.

The heritage properties not in current use and about and more than hundred years old, are automatically, without separate measures, protected by the Antiquities Act. Without a permission granted under this act it is prohibited to dig, cover, modify, damage, remove or physically interfere with antiquities. The Antiquities Act orders that the planner of public land-use projects or town plans must examine the effects of the plan on antiquities. According to the act, the party responsible for a public or a large private project is required to fund the research work caused by the project.

The Act does not set a time limit to its objects, but by definition objects should be abandoned and reflect the past of the country.

The Act includes as military heritage objects abandoned ancient castles, hillforts,

fortresses, forts, walls of earth, moats and their remains.

The most recent military heritage properties, such as the fortifications dating from WWII, are not protected by the Antiquities Act. The Salpa-line should, however, be taken into consideration in spatial planning and building. In practice, because the number of objects is extensive, the preservation and protection is decided case by case.

### Financial aspects

In the view of Senate Properties, continuous use of properties of architectural and cultural historic value provides a steady economic basis for their maintenance and renovation. Senate Properties is mostly able to take care of the buildings of value that are in use by the same financial principles it applies to the rest of the building stock in its possession. Lease conditions for buildings of value are agreed upon individually for each case, taking into account the building's spatial efficiency and other characteristics, as well as the user's needs and potential. Properties left without a state-related user are sold according to handover principles agreed upon with environment authorities.

When a military heritage property is owned by private owner, it can be allotted grants by the environmental or museum authorities.

## France

### DEFENDING MILITARY HERITAGE: LEGAL, FINANCIAL & ADMINISTRATIVE CHALLENGES IN FRANCE

Sara BYSTRÖM, Lawyer LL.C in Cultural Heritage Law - ICOMOS France  
ICLAFI seminar, Karlskrona Sweden, May 15 2011

In order to have a greater understanding of the legal, financial and administrative challenges the military cultural heritage faces in France (part II), we will first consider the actual situation and context of the French military heritage (part I).

#### I – THE ACTUAL SITUATION IN FRANCE

##### A. General, Administrative and Financial Context

###### 1° Historical context

The ongoing globalization has increased national & local history interest overall as well as awareness of cultural heritage, especially buildings and sites. More and more linked to interpretation disposals for educational purposes (“mediation”), the importance of cultural heritage as a way for a territory to increase tourism, also touches military heritage.

The geographical position of France, in central Europe with opening on the Mediterranean Sea, has made it a land of crossing and invading, making its borders with six countries fluctuating. Wars and armed conflicts are a very important part of French history from the beginning of time to modern times, as assailant and as well as defendant.

Accordingly, the military heritage in France is considerable, even in its overseas territories such as Guadeloupe in the French West Indies.

Many centuries of military constructions have structured France with about 65.000 buildings and monuments dispersed on about 260.000 Hectares. The tremendous diversity of these military constructions include structures and works of military engineering, arsenals, harbours, barracks, naval bases, testing fields, battlefields, coastal defence installations, commemorative monuments and marks etc.

## 2° Administrative context

The Hague Convention (UNESCO, 1954) on the protection of cultural heritage in case of armed conflict was ratified by France on June the 7th 1957.

As for the official recognition of the historical and archaeological values of military heritage, it is rather recent in France. Military heritage was in fact very much ignored by the public until about 20 years ago. The annual “European Days of Cultural Heritage” (“Journées Européennes du Patrimoine”) have largely contributed to its success and the creation of many non-profit organizations with the aim to protect this national heritage.

Several museums are dedicated to military history and also conserve its movables. Many are located in regions linking the military history to the place (i.e “Clairière de l’Armistice”, Réthondes). The most well-known museum is the French Army Museum located in the equally famous “Hôtel National des Invalides” in Paris.



Hôtel National des Invalides

The administration of military properties naturally falls under the Ministry of Defence. When a building, site or area is officially protected, its heritage status is supervised by the Ministry of Culture through the DRAC – Directions Régionales des Affaires Culturelles (Regional Direction of Cultural Affairs).

Having taken into consideration the memorial and symbolic cultural value of its activities, several initiatives such as the creation of a division “Mémoire et Patrimoine” (Memory and Heritage) and its website “Chemins de mémoire” (Pathways to memory) have been taken by the Ministry of Defence.

A general and important decentralization program is undertaken since many years in France. It includes of responsibility transfers with a possibility to transfer ownership and administration of built cultural heritage from the state to the local public authorities, except for cathedrals and heritage of major national importance.

In the beginning of the 1990's, a restructuration of the Ministry of Defence decided to program the demilitarization with a necessity to abandon lands, sites and buildings. It also decided to program important transfers of military buildings. In order to ensure its success, the MRAI – “Mission pour la Réalisation des Actifs Immobiliers” (Mission for the realization of real estate assets) was created. This agency within the Ministry of Defence and its “Direction de la Mémoire, du patrimoine et des Archives” (Direction for Memory, Heritage and Archives) negotiates, supervises and accompanies the local actors in the transfers of built heritage. It works closely with the public service “France Domaine”, service within the Ministry of Finances that administrates all public real-estate matters.

A cooperation related to cultural military heritage has been initiated between the concerned public authorities: the Military-, Culture- & Environment Ministries, i.e coastline heritage such as bunkers etc.

Today, the situation for the military heritage is as any cultural heritage subject to decreasing state budgets for heritage and transfers from the state to local authorities. This situation urges for private funding and sponsorships and increases the importance of local non-profit organizations actors in defending and restoring buildings and sites.

## B. Legal Protection of military buildings, areas & sites

### 1° General legal context for cultural heritage

In France, the concept of cultural heritage originates from the 17<sup>th</sup> century but the protection of the “national heritage” concretely emerges with the French Revolution in 1789 and the interventions of l’Abbé Grégoire. The “General Inspection of Historical Monuments”, charged notably to proceed with a complete inventory of architectural heritage, was created in 1830.



Château Fort of Sedan

There is no constitutional value of Cultural Heritage in France. Only the intangible force of Property is stated as “sacral and inviolable” through the attached “Declaration of Human Rights”. Cultural Heritage is considered as a precious legacy from preceding generations and is deemed public property and common good.

The Act on Built Cultural Heritage (“Loi sur les Monuments Historiques”) originally dates from 1913. Another Act in 1930 extended the protection to Natural Monuments and Sites of Historic, Scientific, Artistic, Legendary and Picturesque public interest. They are regularly completed by other Acts and numerous Decrees.

All provisions on Cultural Heritage are today stated in the Cultural Heritage Code (Code du Patrimoine Culturel), Book VI - articles L.611-1 to L. 641-2 related to Buildings,

## Sites and Protected Areas.

The general article L.111-1 in the Cultural Heritage Code states that all buildings, monuments, sites and areas listed as “Monument Historique” are automatically considered “National Treasures”.



Fort of Fougères-sur-Bièvre

In order to preserve the significance of listed heritage, there is an additional protection “500 meters radius from the buildings ground” around the Historic Monument and the “ area in the visibility “ of the protected building.

Since the beginning of the 19th century and the built heritage national legal protection, officially protected buildings, sites, areas and movable goods are either:

- Listed, if of “particular significance”;
- Registered, if of “sufficient interest to preserve”.

### **2° General definitions of listed cultural heritage**

- “Monument historique - MH” (Listed building): “Any building whose conservation presents a public/national interest from an artistic or historical point of view “.
- “Site protégé” (Listed Site): “Any natural site or monument whose conservation or

preservation presents a public (national) interest from an artistic, historical, scientifique, legendary or picturesque point of view“.

- “Secteur Sauvegardé – SS” (Listed Area): “Any built or natural urban area of historic or aesthetic nature which vouches protection, preservation or rehabilitation“.

- “Aire de Mise Valeur Architecturale Patrimoniale – AMVAP”: “Any urban site presenting a cultural, architectural, urban, landscaping, historic or archeological interest with respect to sustainable development“(q.v. ZPPAUP).

### **3° General legal system for listed cultural heritage**

The allowed protection is considered as an easement. Once listed, there can be no additions, restaurations or modifications done on the building, unless a written demand to the prefect is done four months before the works start and that the authorisation is granted. No new construction can be done in the strut of the building without autorisation from the Ministry of Culture.

There are specific requirements and controls by public authority (Ministry of Culture) for any work on a protected building or site. The ACMH architect (Architecte en Chef des Monuments Historiques), representative for the Ministry of Culture and the ABF architect (Architecte des Bâtiments de France) on a local level, share the responsibility and coordination of listing, rehabilitation or development of heritage.

The owner of a protected building or site has the obligation to restore the listed building but there are public aids and tax exemptions.

Regarding registered buildings there is mostly an informational duty on the owner but still a public control on works undertaken.

Any transfer of a listed heritage requires information to the Ministry of Culture. The protection status (listed or registered) compulsorily comes with the building and is at charge of the transferee.

#### 4° Protection of military heritage

There are no specific legal provisions for military heritage nor yet a complete inventory of all military heritage in France. Related military movables are preserved by military museums and “Interpretation Centers“ such as “Le Grand Blockhaus” in Batz-sur-Mer .



The Big Blockhaus, Batz-sur-Mer

Only 170 of the 65.000 military buildings and monuments are officially protected (“listed” or “registered”) through the general legal system of Monuments Historiques and Sites. Most of them are fortifications, representing about 1% of the total of all protected buildings in France.

Given the important French military history, only a small number of the protected military heritage is represented by buildings and sites from the 19th and 20th century, mainly related to the two world wars.

Following French military heritage (fortifications) has been accepted on the UNESCO World Heritage list:

- In 1997 “Historic fortified city of Carcassone”



- In 2001, "Provins, town of mediaeval fairs"



- In 2008, “Fortifications of Vauban”- 16 sites in network amongst which:

“The Citadel of Besançon”



” The citadel Saint Martin de Ré”



There have been partnership agreements signed between the Ministry of Defence and the Ministry of Culture concerning military heritage. In these agreements, costs are shared for protection, rehabilitation and development. Considering the huge number of military buildings and sites, many are unfortunately not included in these partnerships. Non-profit organizations are the main actors in the field.

## II – ACTUAL CHALLENGES IN FRANCE

### A. From Military Use to Civil Use

#### 1° Context of the transfers

Following the demilitarization, many sites and buildings have been abandoned by the military forces. The “liberation” of these properties makes them subject to transfer of ownership and subsequent rehabilitations or reconversions. If the property is listed as “Monument Historique”, it first needs to be decommissioned and then declassified before the actual transfer can take place.



“Hôtel de la Marine”

Even though the Ministry of Defence chooses the final project and is involved with the setting-up of rehabilitation and projects, there is no general or established system to determine the military building’s economic value. The price of the transfer is fixed only

according to the financial situation of the buyer.

The MRAI service, analyzing the proposed rehabilitations and conversions in case of real estate transfer, did proceed in 2010 with 76 cases of transfers, mostly to local public authorities, for an amount above 95 million Euros.

When there are important natural aspects in a military site or a building on the coastline, the transfer often benefits the “National Conservatory of Seaside” for a continued national protection of both cultural and natural heritage values.

## **2° Issues raised by the change of use**

Military heritage rehabilitation sometimes also points out a need for increased attention on ecologic considerations (military industry pollution...) and integrated landscape planning.

There is no neutral commission to consider if a legal protection is needed before the decision is taken to transfer a building or a site to private, regional or local actors. Some buildings, sites and areas may therefore be insufficiently protected while leaving the public property sphere.

Considering this huge and important heritage some questions could appear:

- What happens when re-habilitations need to respect new energy and accessibility standards? What about the sites or the buildings integrity if a modification of an essential element is undertaken?
- Is private financing aim when conversion to civil use a threat to heritage consciousness where there may be commercial stakes to respect? Will the heritage preservation and eventual “spirit of the place” be sufficiently taken into account?
- If private transferees of former military heritage subsequently re-concede it, will the initial heritage value subsist?
- Which future for the furniture and objects in link with the building or site? Is it a good

thing to separate them from the building through the transfer into a museum or interpretation center?

### 3° Positive consequences

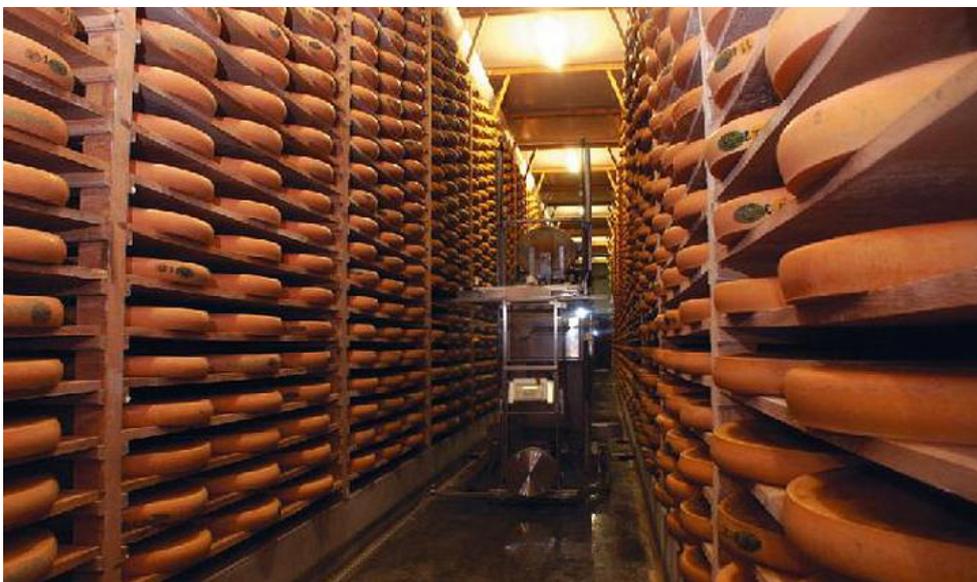
Very important local economic effects of rehabilitations often compensate removed military activities such as the commercial area in “District Plessis” and the business activity (cheese making) in “Fort des Rousses”.



Barracks District Plessis, Altkirch



Fort des Rousses



Fort des Rousses

Increased tourism through interregional perspectives by networks and guided tours is also a very important consequence. The Ministry of Tourism has even edited a map guide with regional itineraries of architectural military heritage.

The liberation of spaces and the stimulation through cultural and/or social activities or urban space planning have shown their positive effects in many cases.

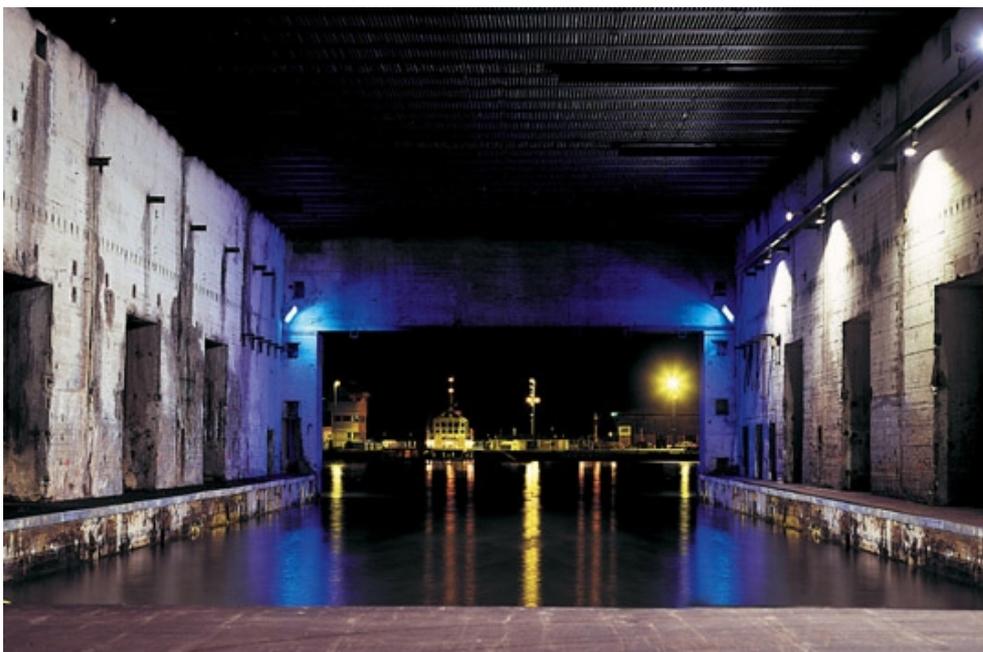
When rehabilitation respects the old military use, benefits have been noted in a shared local history and emotional reinvestment by local populations and even linked to contemporary cultural expressions and events such as the submarine base in Saint Nazaire.



The submarine base in Saint Nazaire



The submarine base in Saint Nazaire

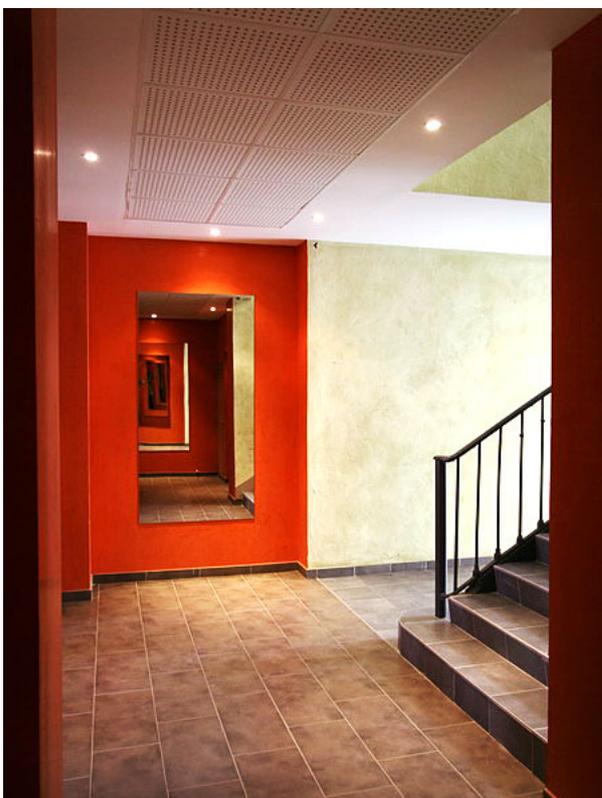


The submarine base in Saint Nazaire

Also, more rehabilitations of buildings such as barracks as civil apartments could participate to decrease the lack of accommodations (i.e the “Carré Mansart” in Grenoble).



Barracks Carré Mansart, Grenoble



Apartments Carré Mansart, Grenoble

Some private financing initiatives support social reinsertion through restoration work as training for people “in difficult situations”. By doing so, they also assure the safeguarding of traditional heritage restoration know-how such as the project initiated by the Fondation du Patrimoine sponsoring the rehabilitation of “Fort Mutzig”.



Fort of Mutzig

There have also been regional answers, such as good practice guides, to the lack of specific military heritage knowledge when a restoration is undertaken by local non-profit organizations.

The absence of specific legal protection for a World Heritage site is somehow compensated by its importance for local urban and economic development. Thus, local public authorities pay attention to the safeguarding and enhancement of such opportunities, acting as initiators of new or extended Cultural Centers (i.e Besançon).

## B. From a National Perspective to an International Perspective

### 1° Trans-national history

There seems to be an important prospective in the partnerships related to military heritage that could take place between countries with shared borders and important military history (i.e the bunkers along the “Atlantic wall” and the Forts in Catalogne).



Batterie TODT, Audinghem (Part of the Atlantic wall)

The specific emotional value that military history and heritage conveys, can nevertheless increase negative reactions and emotions of threat. In that perspective, cultural heritage education and mediation as well as tourism incentives could play an important role.



Abri de Hatten, “The Maginot Line”

Thus, the abolition of European borders and increased displacement could initiate transnational cooperation and solidarity, as a European challenge to be continued. The “Septentrion” project is a network initiative from northern France through Belgium and to the Netherlands that has created a common cultural territory based on fortified cities developing into sustainable cities.

## **2° International consideration**

Other examples of the impressive French military heritage, once rehabilitated in respect of its history, integrity and symbolic value, could certainly meet the UNESCO requirements and join the other World Heritage sites.

This specific heritage, charged with symbolic values, deserves to be shared as an international human heritage. This would also mean a return of the original, social dimension of any cultural heritage, e.g. the transmission through generations by history telling monuments, buildings and sites.

### **In conclusion**

There is a general increased interest for cultural heritage, may it be industrial and/or military, now need to challenge bad economy since the public financing has decreased a lot. The need for sponsorships and private financing could bring a lack of global vision on the future of military heritage. Non inventoried buildings and sites often will remain unprotected and often not rehabilitated, should they still be in active use or without current military use.

Considering the a huge number of diverse military buildings and sites abandoned by the military forces, their rehabilitation or conversion could clearly boost French town- & land planning regionally and locally as already mentioned.

Rehabilitation of military heritage can also serve ecological purposes such as participating in saving a rare animal species found in an abandoned military building. In another case, an adapted military monument has served sustainable development purposes in its second life as a gardening area. Sometimes, military buildings can be part of natural heritage such as a natural park.



Citadel Le Quesnoy, Natural Regional Park of Avesnois

The re-investment of local populations by participation in military heritage rehabilitation projects has an important effect in the re-appropriation of their history and life surroundings. This effect can be connected to the “European Landscape Convention” (Council of Europe) and its aim to develop participative citizenship.

The military heritage buildings and sites are clearly today a local driving force as they represent national, local and regional history whilst building a bridge over difficult historic events towards a shared future.

In consideration of all the potential the military heritage detain, could one not consider the military heritage as peace incentive as increasing a common memory that strengthens collective identity, may it be local, regional, national or international?

*“Whoever wish to construct has first of all to proportionate his building with the income of his land, with his condition, with his needs, and especially with the means he has to get out of it with honor”.* **Sébastien Le Prestre de Vauban**, French military architecte and engineer in the 17th century.

# Germany

Dr. Werner von Trützscher

## Defending the Military Heritage; Legal, Financial and Administrative Issues

### Report on Germany

Prepared for the ICLAFI seminar 16 – 17 May ,2011 in Karlskrona  
( pursuant the given topic outline for National Reports)

#### 1. *International Aspects*

1.1 The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two protocols were ratified by Germany. Responsible for the distinctive marking of cultural property as foreseen in Article 6 of the Convention is the Federal Office of Civil Protection and Disaster Assistance within the remit of the Federal Ministry of Interior. However the enforcement of marking cultural heritage with the blue/white rhomb shaped sign lies with the administration of the 16 Federal States (Länder) by delegated authority. So far only about 10.000 historic buildings have been marked with the symbol. Compared to the estimated number of about 1.000.000 protected monuments and sites this is a negligible amount.

1.2 The status of foreign armed forces in Germany was after the World War II based on the law imposed by the occupying powers. This regime ended for West Germany in 1955 with the entry into force of the 1952 Convention on Relations between the Three Powers and the Federal Republic of Germany . In addition the 1954 Convention on the Presence of Foreign Forces in the Federal Republic of Germany between Germany and eight partners created a treaty basis for the presence of forces stationed in Germany ( *ius ad praesentiam* ). This open ended convention remains effective following the

conclusion of the 1990 Two plus Four Treaty on the unification of Germany.

Further details on the presence of forces from the eight NATO states stationed in Germany are governed by the 1951 NATO Status of Forces Agreement (SOFA) and the 1959 SOFA Supplementary Agreement ( *ius in praesentiam* ). Both these treaties contain detailed provisions on all aspects regarding those foreign troops stationed in Germany. Concerning the use of buildings, infrastructure and construction work Articles 48 and 49 of the SOFA Supplementary Agreement confer the responsibilities for these matters on the German authorities. This means that the same rules apply as for buildings used by the German armed forces (Bundeswehr) including the consideration of preservation concerns should the property used be part of cultural heritage.

## 2. *Constitutional Aspects*

2.1 With joining NATO in 1955 West Germany and gaining partial sovereignty was allowed by the three western allied powers to form an army with a strength of up to 500.000 men integrated into NATO. To accomplish this the German Constitution called Basic Law (Grundgesetz) was amended. With a new Article 87a the establishment of armed forces for purposes of defence was sanctioned. In addition a new Article 87b introduced a new Federal Defence Administration with its own administrative substructure. This is a civil administration distinctable and apart from the military administration and hierarchy and not under its command or control. It is especially responsible for the procurement needs of the armed forces including the provision of accommodation for the troops, its maintenance and construction work. –The common name for both the armed forces and the civil administration is “Bundeswehr”. Supreme authority for the Federal Defence Administration as well as for the armed forces (supreme command) during peace time is the Federal Ministry of Defence. Accordingly the ministry is organized into a military sector structured into five service staffs and a civilian sector structured into several departments..

2.2 According to Article 30 of the German Constitution all state powers belong to the Federal States (Länder) as far as the Constitution itself does not state otherwise. The same applies for carrying out and administering all laws including the federal laws. As a result of this partition of competences the protection of cultural heritage falls into responsibility of the Federal States. Planning law also relevant to heritage protection is federal law on the basis of competences allocated to the Federation in Article 74 of the Constitution whereas building law regulating project planning and technical aspects of construction work again is legislated by the federal states.

### *3. Germany's military history reflected in property*

Germany's military history reflects the country's history. After a short period of existence of the North German Federation created in 1867 by 22 until then independent states the German Empire was founded in 1871 lasting until 1918. It was the unification of 25 constituent until then independent states including the kingdoms of Prussia, Bavaria, Saxony and Württemberg, Grand Duchies, Duchies and small Principalities like Schwarzburg-Rudolstadt, Free Hanseatic Cities like Hamburg and the imperial territory Alsace-Lorraine.. Some of the federal states had their own armed forces till 1918 (Prussia, Bavaria, Saxony and Württemberg) under the supreme command of the German emperor in war times and of course there are remnants of their military property now protected as monuments. From later periods, the German Empire itself, the Weimar Republic and the Nazi Period remain military buildings and infrastructure as well. So it is almost impossible to find anything typical for Germany's military history reflected in property except diversity.

### *4. Administrative Setup*

4.1 Properties for defence purposes are administered by the Federal Defence Administration (see 2.1). This civil administration giving work to about 95.000 people (serving military forces with a strength of about 184.000) has a

three tier structure. The supreme or upper federal authority is the Federal Ministry of Defence, the higher federal authority is the Federal Office of Defence Administration, the four middle federal authorities are the Defence Area Administrations (Wehrbereichsverwaltung) and below these under their legal and technical supervision you will find 52 Military Recruiting Offices (Kreiswehrrersatzamt) responsible for administering conscription and 53 Service Centres (Bundeswehr-Dienstleistungszentrum) responsible for procuring supplies (except arms) and for the management of facilities for the armed forces .

Until 2013 almost all federal infrastructure including property used for military purposes will be transferred to the Federal Agency for Real Estate Management (Bundesanstalt für Immobilienaufgaben), a legally independent federal institution directly under the control of the Federal Ministry for Finances. This agency employing about 5.800 collaborators manages all real estate owned by the Federal State . From 2013 on only the facility management will be carried out by the Service Centres which now have an all round responsibility. For properties no longer needed for military purposes conversion projects are worked out jointly with the communal and municipal authorities.

4.2 The German armed forces use about 1.600 properties with a an area of about 300.000 hectares for their purposes. Out of these about 85 facilities are fully or in parts protected as listed monuments including 27 barracks, two castles, one church, two air bases, two hangars, two soldiers' cemeteries , one archaeological monument and 48 other different types of buildings. The oldest of the protected buildings dates from 1693 (Castle Diez), the youngest from 1982 (an apartment building in Berlin).

The reunification of Germany resulted in a massive reduction of military presence in both East and West Germany. Between 1990 and 2000 military sites covering a total of 383.000 hectares released and converted to civil use. During the last decade the reduction of military personnel continued and is still going on so that more military properties are no longer needed for military purposes. Conversion projects for which the local authorities due to their planning authority given to them by the laws regulating urban and

spatial planning are primarily responsible are substantially funded by the State and the Federal governments. In addition the European Union has funded the establishment of two transnational conversion networks for the exchange of information and cooperation on the challenges posed by the conversion of former military sites. The first network named “Demilitarised” (1992 – 2004) included 16 partners from England, Northern Ireland, the Netherlands, Greece, Spain and Germany, in the second one named “Conver Net” (2003 – 2006) partners from Sweden, Finland, Estonia, Lithuania, Latvia, Poland, the Czech Republic and Germany participated. Unfortunately no statistics on the number of protected monuments and sites included in conversion projects are available.

4.3 About 30 to 40 museums for military history exist in Germany, the exact number depending on the definition of a military museum. The biggest and most well known are the Museum of Military History in Dresden, the German Marine Museum in Wilhelmshaven, the Air Force Museum of the Bundeswehr in Berlin, the Museum of Military History in Rastatt and the Bavarian Army Museum in Ingolstadt. The museums in Dresden and Berlin are the two official museums of the German armed forces under the supervision of the Military History Research Institute in Potsdam which is also part of the Bundeswehr (Joint Support Service). Besides research its main task is historical education within the armed forces working out the curriculum and teaching materials. Documents on the former German armies are found in the Federal Archive and in the different state archives.

##### *5. Legal instruments for the protection of heritage values in properties for defence purposes*

There are no special legal instruments for the protection of heritage values in property for military use. On the contrary such property is to a certain extent exempt from normally binding building plans and building permits. However there is no restriction in listing historically important military property as protected monuments as foreseen in the state laws on the preservation of monuments. Bigger alterations and the demolition of buildings normally need to be permitted according to the Federal Building

Code (Baugesetzbuch) and the State Building Codes . The building permit is the result of a complex procedure involving different authorities representing different public interests including the State Office for the Preservation of Monuments as well as the neighbours and given by the local authority. Building projects for defence purposes need not go through this permit procedure. According to § 37 of the Federal Building Code such projects only need the consent of the (state) upper administrative authority which in the three tier administrative organisation in Germany is the intermediate authority. Before giving its consent the municipality where the facility is situated has to be consulted. As the local authority is also responsible for the implementation of the (state) preservation law aspects of monument preservation can and will be taken into consideration after consultation with the respective State Office for the Preservation of Monuments and Sites when forming an opinion on such a project serving defence purposes. In case the upper administrative authority or the local authority does not agree with the project the Federal Ministry of Defence can take the final decision on the project after having consulted the highest administrative authority which is the state ministry competent for planning and building matters. In practice such projects are agreed upon in consultation processes involving all parties concerned including the persons responsible for the preservation of monuments.

## *6. Financial Aspects*

The cost for management of and for investments in military property used for defense purposes are covered by the Federal Government. The costs for military properties which are no longer in use for military purposes and which have been converted to other uses having changed their owners are covered by their owners who just like owners of other properties may receive grants and tax benefits in case these properties are protected historical monuments.

# Israel

## Defending the Military Heritage; Legal, Financial and Administrative Issues

ADV. Gideon Koren<sup>1</sup>

### INTRODUCTION

The State of Israel has the unique responsibility of preserving the cultural heritage of three major world religions and the military action that ensued from their birth. At the same time, the world's cultural heritage is placed in a vulnerable position as a result of the regional conflict and turmoil that has, unfortunately, been part of the State from its inception. Further, much of the population was personally affected by World War II and its wide spread destruction of cultural property. It is within this framework that Israel chose to sign onto, ratify and implement the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Convention asks that the following be considered in its implementation: (a) Protect and respect cultural property during armed conflicts, international and local; (b) Consider adding the international list of sites of cultural property under special protection and secure protection for these assets; (c)

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Consider a highlight of important buildings and sites of cultural importance in a special protective sign which is determined in defense; (d) Establish special units that operate within the armed forces and who will be responsible for protection of cultural property; and (e) Impose penalties for violations of the Convention and to promote public awareness of the provisions of the Convention and certain population segments such as professionals in the field of cultural heritage, the military or law enforcement agencies .

The State of Israel signed the Convention on May 14, 1954 and ratified it on October 3, 1957, and the First Protocol to the Convention was ratified on April 1, 1958. The Second Protocol adopted decades later - in 1999, has not been signed or ratified by Israel. However, despite not signing onto the Second Protocol, the State goes to great lengths to adhere to the Convention itself.

#### LEGAL IMPLEMENTATION OF 1954 CONVENTION

We find the Convention's implementation in many of Israel's enacted laws that protect military heritage sites. While, it is worth noting that no laws have been specifically enacted for the protection of military heritage sites, military heritage sites make up many historical sites and their protection is, therefore, incorporated within the definition of protected sites. Thus, within the State, the following laws are used to protect military heritage as well: (a) The Antiquities Law-1978, (b) The Antiquities Authority Law-1989, (c) The National Parks, Nature Reserves, National Sites and Monuments - 1988, and

(d) The Planning and Building Law-1965. The Israel Antiquities Authority operates under the first 2 laws and The National Parks and Nature Reserves Authority under the 3<sup>rd</sup> one. Both are the authorities responsible for the protection of military heritage in the sites. The Antiquities Law-1978 states that damage to antiquities or ancient sites, in any form, as well as other violations of law are criminal offenses which may even carry a prison sentence. Similarly, National Parks, Nature Reserves, National Sites and Monuments, provides broad authority to the Nature and National Parks Authority and states that injury to a site institute is a criminal offense punishable by law with imprisonment. The Planning and Building Law might protect military heritage as well, under its requirements for zoning sites of historical importance.

#### THE ESTABLISHED LAWS

A. The Antiquities Law 1978, establishes a legal framework for exposure, handling and preservation of archaeological finds discovered in Israel and gives tools to state authorities to enforce its provisions. The Law defines ancient Israel, determines ownership, the conditions for granting a license to dig and excavate, license and conditions for trading antiques, setting antiquarians and conditions for managing a collection, a statement of ancient sites and modes of conduct which, expropriation of land for the exposure and preservation of antiquities. The Law states that the damage to antiquities or an antiquities site, in any form, as well as violating other provisions of the Law is a criminal offense that might carry a prison sentence.

B. Antiquities Authority Law-1989, the Israel Antiquities

Authority operates under this Law. It is in charge of enforcing the Antiquities Law and any offenses done under the Antiquities Law. The Israel Antiquities Authority is responsible for maintaining and investigating the archaeological heritage of the country while balancing the country's development needs and the preservation of antiquities. The Authority is responsible for exposure, preservation and examination of ancient sites, and invests heavily in developing and preservation of historic buildings in historic cities.

C. National Parks, Nature Reserves, National Sites and Monuments Law of 1988 - by virtue of this law, the Nature and Parks Authority (INPA) operate as the government authority on preserving nature and heritage in the country. The INPA enforcement system includes its rangers and legal department. The rangers are the eyes of the INPA. These rangers, who have policing powers, are responsible for their particular area, and work to ensure that all activities in the field, both governmental and private, are in keeping with the law and do not harm nature or man made heritage assets. The rangers also have the authority to issue citations and charge those who damage nature and heritage assets in national parks and nature reserves. Another arm of the INPA in the field is the Green Patrol (the unit for the supervision of open spaces). The Green Patrol is responsible, among other things, for preventing illegal takeover of public lands and open spaces. The INPA is responsible for the management of military heritage sites defined as national parks and National Monuments. INPA also operates education and information centers and has a science division.

D. Planning and Building Law-1965, governs the preservation of sites in the planning aspect. Military heritage, which is included within historical significant assets, is protected under Article 61. Each local authority, as mandated by the law, has the authority to determine which military sites are intended to be preserved and requires the maintenance of the site by its owner or to expropriate it if the committee deems after reflection that the site is in danger. In the case of danger, the expropriation committee may sell the site or lease it, provided that the lessee or purchaser will ensure the proper preservation of the site.

#### IDF AND THE CONVENTION<sup>2</sup>

Even though Israel has not established special military units to protect military heritage, a simple examination into the Israel Defense Forces Military Code makes it quite clear that Israel has taken great efforts to incorporate the Convention and ensure the preservation of cultural assets in the time of armed conflict.

A. Israel's Law of War Booklet (1986), states that, the Israel Defense Forces does not intentionally target historic monuments, works of art or places of worship.

B. Israel's Manual on the Laws of War (1998) and the second edition, Israel's Manual on the Rules of War (2006), fully discuss the Convention in a section entitled "Places of prayer and cultural property" and in the second edition, "Shrines and Cultural Property". The Manuals

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<sup>2</sup> Found at [www.icrc.org](http://www.icrc.org)

explain the importance of buildings that are dedicated to religion, art, science or similar property and how they form a part of the spiritual heritage of a people. Further, the Manuals break down the psychological impact involved in the destruction of cultural property and the importance of its preservation and adherence to the 1954 Convention. Within the manual we find direct references to the Convention and its efforts to prevent the destruction of cultural heritage and the importance of preservation, stating, "though one could maintain that the existence of such edifices has an impact on the military morale of the adversary's side, they are not considered a legitimate target". In addition, IDF soldiers are obligated to comply with the Convention whenever it is likely to be relevant, by virtue of GHQ Regulation 33.0133.<sup>3</sup>

C. Israel's Manual on the Rules of Warfare (2006) imposes a detailed ban on using cultural property to assist in conflict. In addition, the manual states that, "Protected places (hospitals, places of worship, etc.) must remain protected".

D. Israel's IDF General Staff Order of 1982 requires all soldiers of the IDF, "to act, with regard to 'Cultural Property' situated within the State of Israel or any other country, in accordance with the provisions of the 1954 Hague Convention for the Protection of Cultural Property".<sup>4</sup> The General Staff Order provides that IDF soldiers shall abstain from attacking

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<sup>3</sup> Israel, *Laws of War in the Battlefield, Manual*, Military Advocate General Headquarters, Military School, 1998, pp. 33–34.

<sup>4</sup> Israel, *Rules of Warfare on the Battlefield*, Military Advocate-General's Corps Command, IDF School of Military Law, Second Edition, 2006, p. 49.

or causing damage to historic monuments, works of art or places of worship.

It should be noted that in 1998, at the Vienna expert meeting on the revision of the 1954 Hague Convention for the Protection of Cultural Property, Israel advocated the inclusion of an additional paragraph in the draft Article 1 of the Revised Lauswolt Document, which would provide: The provisions of this instrument shall not prejudice or derogate from accepted customary principles of the laws of war, including, *inter alia*, the principles of proportionality, distinction and military necessity.<sup>5</sup> However, despite the failure of its inclusion and Israel not signing onto the Second Protocol, the Convention has been adopted, implemented and is adhered to in the country's legal makeup.

### MILITARY HISTORY IN PROPERTY

Israel has a wide range of military heritage assets from different eras including antiquity sites, fortifications and fortified cities. A few main examples are:

#### I. Antiquity sites -

A. Masada National Park - an ancient fortress on the summit of an isolated cliff on the eastern edge of the Judean Desert overlooking the Dead Sea. Masada is best known as the royal fortress of Herod and the last stronghold of the rebels during the Revolt against the Romans in 73 AD. The

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<sup>5</sup> Israel, Comments submitted to the Expert Meeting on the Revision of the 1954 Hague Convention, Vienna, 11–13 May 1998.

site was declared a World Heritage Site in 2001 by UNESCO.

B. Herodiun - Archaeological site from the Second Temple with an artificial hill-shaped fort and city, built by King Herod, located about 12 kilometers south of Jerusalem, in the Judean Desert.

## II. Fortifications -

C. Ammunition Hill is the nickname given to the Jordanian army post in northern Jerusalem. It was where a fierce battle took place during the six days war in 1967. The complex was built by the British army in the 1930's. After Israel's War of Independence the compound remained under Jordanian control until the Six Day War. Today the remains are found in the outpost of the National Memorial. Ammunition Hill is administered under the zoning of historical sites according to the Planning and Building Law-1965.

## III. Forts -

D. Latrun - the place was a key point in the conquest of Jerusalem and many battles took place in the region. In 165 BCE, Judah Maccabee's army defeated the Greeks in Emmaus. The Battle of Emmaus was one of the most successful battles conducted by Judah Maccabee. Further, the fort was used during the Crusades in many battles between the Crusaders and Muslims. The Latrun fort was built by the Templar Knights and was abandoned in 1187. Most of the fort was completely destroyed by the Muslims in World War I, when Latrun was captured by the British brigade of cavalry who came from the city of Ramla.

#### IV. Fortified towns -

E. Caesarea - a port city established in the middle of the 1st century BC. It served as Israel's capital in Roman times. Today the old city is a national park and near a city of the same name. The city of Caesarea is named after Augustus Caesar.

F. Acre - The walls surrounding the Old City of Acre were built during the Ottoman period. Parts of the old city are an antiquity site. In 2001 UNESCO declared the Old City of Acre to be a World Heritage Site.

#### ADMINISTRATIVE SETUP

Israel receives no specific administrative decisions regarding military heritage. Military heritage is maintained by the Israel Antiquities Authority, which is responsible for keeping and investigating the archaeological heritage of the country. The heritage of the country is defined with the inclusion of its military heritage. The INPA is responsible for preserving world heritage sites, which includes military heritage sites. Israel maintains a number of military museums. Museums belong to the Museums Unit at the Ministry of Defense, which include, among others, the Naval Museum in Haifa and the Palmach Museum in Tel Aviv.

#### MONETARY MANAGEMENT OF MILITARY PROPERTIES

As mentioned earlier, authorities must manage military heritage sites within their own budgets. Authorities charged with maintaining military heritage

sites are funded by the state through the various and appropriate laws; The Israel Antiquities Authority, pursuant to Section 23 (B) of the Antiquities Authority- 1989, INPA, by virtue of Section 10 of the National Parks, Nature Reserves, National Sites and Monuments Law, 1998. Further, Museum budgeting is done under the Museums Law of 1983. The distributed amount is specified in the state budget as a contribution to the budgets of museums which is done by the Minister of Education after consultation with the Council of Museums. On the whole, though, it is worth noting that most of the funding is the responsibility of the authority itself too. INPA budget is partly self-generated through entrance fees to its national parks and fundraising through integrated non-profits. On the other hand sites recognized under the Planning and Building Law-1965, have no responsible "authority" and many times remain in private ownership. In these cases, there is no public responsibility for the financial needs of these sites. As a result, military heritage sites defined as Antiquity sites or national parks have more available resources for their protection.

# Japan

Defending the Military Heritage: Legal, Financial and Administrative Issues –  
Japanese Report

Toshiyuki Kono, Japan

## 1. Introduction

I would like to raise a question to begin with this paper: what “military” in the context of heritage should mean. Is it equivalent to any armed force? I came to this question through the lens of Japanese history. Before Japan was politically unified in 16<sup>th</sup> century, the country was divided and owned by many local rulers. They constantly fought against each other. Temples and shrines as big landowners under such unsafe and unstable circumstances, needed to hold armed forces to protect their properties in unsafe societies. These armed monks not only guarded the properties, but also exercised their physical powers for other purposes such as negotiations with secular powers or dispute resolutions with other temples. They were so powerful and difficult to control that once an Emperor confessed that he could not control three things, i.e. the stream of Kamo River in Kyoto, a roll of the dice and the monk soldiers of Enryaku-ji Temple. Could these monk soldiers be classified as a “military”?

## 2. Japan’s military history reflected in properties

2.1. Typical military facility during the feudal period was castle. In Japan, buildings for military purpose and residential quarters were built on the same compound.

During the period called as the Age of Provincial Wars (1467-1573), where many feudal lords fought against each other, so that the number of castles dramatically increased. Then during the Momoyama Period (1576-1598), where the centralized authority was established, the culture of castle construction flourished. Representative buildings were built on well-designed stone formations to show the owner’s power.

These buildings could be designated as “**important cultural property**”. 115 buildings in castle compounds built during the Momoyama Period (1576-1598) alone are

designated as important cultural properties. 12 out of 115 are national treasures.

During the Edo Period (1603 and 1866), due to the strict control by the central Tokugawa Government, each feudal lord was allowed to build one castle in his territory. Construction by subordinates was controlled by feudal lords. Already existing ones built by subordinates were demolished. 119 buildings built during the Edo period are designated as important cultural properties. 4 out of 119 are national treasures.

The criteria to designate these castles as important cultural properties do not refer to their military related character as a value of these castles. The criteria for buildings concern only architectural values.

If these buildings were lost due to fire or earthquake etc., another legal technique “**historical site**” could be applicable. A criterion to designate as historical site refers to “war” as an important factor. Among 1620 currently designated historical sites, 346 ruins of castle, 4 fortresses, 2 bulwarks, 10 batteries, and 3 old battle fields should be mentioned as military heritage.

2.2. In 1867 the Meiji Restoration ended the feudal regime that had governed Japan since 12<sup>th</sup> century. Samurai as the ruling class was abolished. In 1873, the Meiji Government ordered to demolish castles. Many buildings on castle compounds were demolished. Himeji Castle, a World Heritage inscribed in 1993, for example, was sold for the money equivalent to today’s 1200 US\$ to an individual who wanted to sell roof tiles, but he could not demolished, simply because it was too costly.

Replacing the feudal system, the Meiji Government introduced the French style army (later changed to the Prussian style) and the English style navy in 1870.

Due to such drastic changes and social disconnection from the past, properties related to military, built prior to the Meiji period, became a part of history, so that they could be preserved purely based on values as cultural heritage.

2.3. On the other hand, the imperial military plunged the country into the war against the Western allies and existed until Japan’s defeat at the WWII. In other words, between the Meiji Restoration and Japan’s defeat at the WWII, there was continuation of the military operations. Therefore additional value as “war” related properties could be taken into consideration, as long as properties built or constructed after 1867. But it was not the case. This means that the policy of the preservation of cultural property directly affects the preservation of military heritage.

There was no unified temporal criteria to designate properties as legally protected cultural properties. For example, the production period during 1920's-1930's was the criterion for paintings, while the period during 1870-1880's was for historical sites. Hence in 1995, the Agency for Cultural Affairs expanded the scope of research for designation for historical site, which should cover the period until 1945. "Military affairs" was referred to as a domain to be covered.

The new criteria for the designation of **historical site**, scenic beauty, and natural monuments were published on March 6<sup>th</sup> 1995, according to which, the temporal coverage reaches until the end of WWII. Objectives should retain historical and/or scientific values, which could include fortress or ruins as results of war. The Agency for Cultural Affairs conducted a nationwide survey, but it is not yet published. This survey covers properties built not only for military purposes, but also for the heavy industry or transportation.

As for buildings, many buildings were demolished in 1980's due to the bubble economy. In 1996, the temporal criterion of designation as important cultural property was changed and extended. In this framework, a comprehensive survey on military heritage has been conducted and is almost ready for publication.

Owners of modern buildings can be motivated to demolish the old buildings and build new ones purely from economic incentives. To cope with such situations, a new category of preservation was introduced, i.e. registered cultural property. The level of preservation is not strong. Under this category, to be preserved is only two thirds of the exterior of building. The owner of building could change the interior. So far 24 military-related buildings were registered under this category. But if a building is not designated as important cultural property nor registered as registered cultural property, it could be demolished. It could partially be preserved.

Besides the items protected under the Law for the Protection of Cultural Property, to be mentioned is properties located in the US military base. Some military bases formerly used by the Japanese military are used by the US military under the US-Japan Security Treaty (1960). The facilities built by Japanese military are protected under the legal framework of National Historical Preservation Act (16 USC 470). Some located in the bases of Japanese Self-Defense Force are managed by the Ministry of Defense. To my knowledge, there is no official arrangement between

the Agency for Cultural Affairs and the Ministry of Defense.

3.

Japan ratified the 1954 Hague Convention and two Protocols in 2007. No monument or building holds the Blue Shield yet. The Ministry of Defense did not take any concrete measure even for educational purpose. Why so?

Article 9 of the Japanese Constitution declares that Japan abandons war as means of dispute resolution and that Japan does not hold military force. However Japan has the Self Defense Force. Is it constitutional? If it is constitutional, what could the Self Defense Force do in and outside of the territory of Japan? These fundamental questions have been raised for more than five decades. Thus very single military action needs to be justified in accordance with Article 9 of the Constitution. Under the current constitutional regime, discussing about “military” in contemporary context is a delicate matter. But it does not mean that there is no museum. In Chiran, a small town in Kagoshima, for example, there is a museum in a compound as ex-airport for Kamikaze troop. The museum is run by the town, but its collection mainly consists of donated private collections.

Here I have another question: the Atomic Bomb Dome, as a World Heritage, was a building for commercial fair. It had nothing to do with military actions. Could it be classified as a military heritage? If the answer should be positive, what is military heritage? Besides the facilities specifically designed for military purposes, such as fort or bulwark, what types of heritage would be covered by the concept of military heritage?

### Conclusion

As military heritage before the Meiji Restoration in 1867 where drastic social and institutional changes occurred in Japan, castles, batteries and other military related facilities were built by feudal lords. After the modernization of Japanese military after the Meiji Restoration, modern military and industrial facilities were constructed. Japanese law does not have specific legal scheme or tool for the preservation of military heritage. The preservation should be planned and conducted under the Law for the Protection of Cultural Property. Legal tools for the preservation are designation as important cultural property or historical site or register as registered cultural property. Japan ratified the 1954 Hague Convention as well as two Protocols, but no concrete measure was taken. The Atomic Bomb Dom

was inscribed as a World Heritage. Since it was a building for commercial exhibition before bombing, the inscription leads to a fundamental question: what factors constitute military heritage.

## Mexico

### IN DEFENSE OF THE MILITARY HERITAGE: LEGAL, FINANCIAL AND ADMINISTRATIVE (Mexican Case)

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KARLSKRONA, SWEDEN  
MAYO 16-17-2011

#### 1. International aspects

The Hague Convention 1954 with its two protocols. Ratification and implementation (such as to prevent attacks on the military heritage).

The Convention on the protection of cultural property and its two protocols adopted in The Hague and endorsed by Mexico on May 7, 1956, and that fortunately there was no need to implement to protect cultural property in our country.

#### 2. Constitutional aspects

-Forces armed-the Constitution establishes that are powers of the Congress among others the lift and hold the armed institutions: Army, Navy of war, and force air national and to regulate its organization and [\[1\]](#) service.

The President of the Republic has among its duties and powers the dispose of the army, the armed forces and the air force for internal security and external defense of the Federation and appoints the colonels and other senior officers of the Army, National Navy and Air Force [\[2\]](#) with the approval of the Senate.

The Ministry of National Defense has the faculties for building and preparing fortifications, forts and all sorts of military compounds for use of the army and air force, as well as the management and conservation of barracks and hospitals, and

other military establishments [\[3\]](#).

-Asset protection-the Constitution of the Mexican United States lays down that the forts, barracks, warehouses of deposit and other immovable property intended by the Government of the Union for the public service or common usage will be subject to the jurisdiction of the Federal [\[4\]](#) powers.

It has the General Law on National Properties[\[5\]](#) which are subject to the regime of federal public domain considered federal buildings and monuments of historical or artistic in accordance with the law of the matter or the corresponding Declaration and on the other hand the historical monuments are defined[\[6\]](#) as the goods connected with the history of the nation of the establishment of the Hispanic culture in the country and determination of the law are the buildings built in the 16th to the 19th intended among other uses of the civil and military authorities.

### **3.-Which is typical of the military history of his country reflected in properties.**

Protection against possible attacks of the won territories and by winning institutions were established in the aftermath of the conquest of Spain by the Spanish, who were the military conjugate with the civilians represented by the viceroy who at the end of the 16th century received the title of Captain General of the King of Spain.

We found at that time three defense systems which were articulated together in order to protect the areas related to economic productivity and trade in the new Spain; the strengths, the dockyards and the of the presidios. The fortresses were built at strategic locations on the coasts of the Gulf of Mexico, the Pacific and the Caribbean.

Maritime trade ended up having a boom in the Pacific Ocean by the transfer of products shipped in Manila who turned from 1565 in territory of the Viceroyalty of New Spain and these products from Southeast Asia reached the port of Acapulco at the same time also traveled through Veracruz - Xalapa - Mexico European products coming from Seville and Cadiz, to which was added the annual celebration of the successful fair in Acapulco, where traders were carrying out the purchase of lots of

Asian merchandise for that reason also increased attacks by pirates and Dutch and English Privateers and was necessary to first a guard standing to protect the ports and later the construction of fortresses<sup>[7]</sup>; security in the port of Acapulco was essential to a Royal Decree of May 25, 1616 ordered the construction of the Fort of San Diego which lasted from the end from 1616 until April 1617 and was committed to prevent attacks of pirates. This fortification was damaged by an earthquake in 1776 by which the Fort was again drawn and finished in 1783.

Due to the war of independence (1810-1821) trade with the East ceased to practice from the port of Acapulco and was changed to the port of San Blas, currently State of Nayarit, on the same shores of the Pacific.

In 1815 it sailed from these coasts bound for Manila Galleon Magallanes, officially closing 250 years of uninterrupted sea trade between the New Spain and the far East.

On the other side of the territory, the Gulf of Mexico and the Caribbean became stage important for European shipping, especially from the Spanish metropolis and to protect their ships as well as the treasures that were transporting created the system of the fleets on the one hand and on the other hand the construction of fortifications in the ports of Veracruz, Campeche and Bacalar.

Front of Veracruz is located San Juan de Ulúa is a small islet that served as shelter for ships to make their operations for loading and unloading of goods but to have been attacked by pirates proceeded in 1564 to start the works of fortification that concluded until 1572; in 1568 he was assaulted and again taken by the pirate Sir Francis Drake and John Hawkins by reinforced his defense being properly fortified in 1626 and notwithstanding this in may 1683 the French Laurent pirate known under the name of Lorencillo with 11 ships and 1,500 men took by surprise razing the port of Veracruz before such a disaster the viceroy sent troops to increase the defense and ordered disputing the port and built the stronghold of Santiago. The wall delimited space built during the colonial period and even during much of the 19th century, in 1880 was demolished the wall to enlarge streets and squares due to development and saturation of the city.

The fortified city of San Francisco of Campeche was founded in 1540, has the stroke in grid, with streets such as a checkerboard or chess board, one of his paintings next to the sea was occupied by the Plaza Mayor or Plaza de Armas, surrounding which lined the buildings which gave legitimacy to the powers of the Conqueror: the parish church, the Municipal Government, customs, the Atarazana and the houses of settlers. The trace was the same as in other cities colonized by Spain in America after 1573.

In the 17TH century the port of Campeche was attacked and severely looted by pirates and privateers Britons, Dutch and French, and to defend against them was built the castle of San Benito and the construction of the walled enclosure that was completed in final form until 1704 began in 1686 and fortified the city as a whole. It had eight bastions and three gates: the San Román de Guadalupe and the Sea Entry.

The monumental complex of Campeche has a great cultural historic value, in the colonial era was a port in the middle of the journey from Havana to Veracruz and operated as station supplies and shipyard. He was also rich in the so-called precious woods: cedar and mahogany and the "dye stick" or "stick of Campeche" which was extracted the dye that only could be traded from Andalusia and which was required by the European textile manufacturers, by what emerged a huge traffic of wood, especially those prohibited by the monopoly of the dyes. The English settled near Campeche and attacking small populations carrying wood, to control the passage of the dye stick between Mexico and Belize built the fortress of Bacalar in the region South of the State of Quintana Roo.

Within the first defensive system in the colonial era as well as the strengths we the dockyards were strengthened architectural spaces to give shelter to vessels so that they remain safe and able to enter or exit in case if necessary.

The first dockyards of the New Spain were those who ordered the construction of Hernán Cortés to maintain and protect the bergatines used in the attack against Tenochtitlan, is the first building that sends build with a tactical purpose and using a structure of three vessels and towers with pockets and was used from 1521 to 1571.

The second defensive systems in the colonial period are the prisons that were military buildings that were used to contain armed assaults and were located on roads which were trade routes as in the case of the "Royal Road of inland". The use of the presidios was protection of roads, the defense of towns and villages and the safeguarding of the real of mines.

The third of these defense systems relates to the protection of property in transit against armed and organized attacks and they were the so-called strong houses, the tobaccoists, watchtowers and bridges.

The 1810-1821 independence war took place in the 19th century and then came the invasions of French troops in 1838 that bombarded the Fort of San Juan de Ulúa in Veracruz which possession until 1843; in 1847 the United States of North American troops attacked the port of Veracruz by sea and by land, and both this port which at that time was walled and the Fort of San Juan de Ulúa withstood the bombardment for six days and after a heroic defense had to sign the surrender to run out of ammunition or food. United States army approached the Capital of Mexico and battles in some historical monuments were fought as the convent of Churubusco and Chapultepec Castle.

In 1862 it came French intervention waging the battle of May 5 in the forts of Loreto and Guadalupe in the city of Puebla, battle which was defeated the French army.

Again there was another invasion of the Army of the United States on 21st and 22nd April 1914 to the port of Veracruz and the Fort of San Juan de Ulúa.

Both the Mexican Revolution of 1810 - 1828 and the Cristero war 1926-1929. They had no impact or involvement in historical monuments.

#### **4. Administrative system**

Public Administration of Cultural properties defense purposes.

The cultural properties that had purpose of defense and to which we have referred are historic monuments, national goods subject to the regime of federal public domain<sup>[8]</sup>. in accordance with the provisions of the General Lay on National Property,

the Ministry of Public Education through the National Institute of Anthropology and History determines the rules and criteria technicians for the restoration, preservation, maintenance and use of federal buildings as historic monuments under the law of the matter or the corresponding declaration.

The responsible ministries are the Ministry of Public Education<sup>[9]</sup> which corresponds conserve, protect and maintain the historical monuments that make up the National Cultural Heritage, following the laws of matter and the Ministry of Public Administration<sup>[10]</sup> which corresponds to issue technical standards authorize and any keep or manage, directly or through third-party real estate of the Federation in order to get the most out of the use and enjoyment of them.

**Considerations of properties in active use or without current military use. Facilities reused on military or civilian purposes.**

In Mexico there are not cultural properties with active military use.

The historic monuments built in the 16th to 19th centuries for use at the time of the authorities that exist currently and military are as follows:

- **Fort of San Diego-1616-1617**.-Located in the port of Acapulco, Guerrero State. Was restored by the National Institute of anthropology and history and since 1986 began operating as Acapulco historical Museum, he has ten rooms of permanent exhibition on the history of the port, the pre-Hispanic settlers, the Manila Galleon, the history of navigation, piracy in the Pacific, trade with Asia, the independence of Mexico and architectural history of the fortress.
- **Fort of San Blas**.-Built in the 18th century on the Hill of the accounts in the port of San Blas 71 km. Tepic, Capital of the State of Nayarit, the ruins of the old Fort are preserved.
- **Fort of San Juan de Ulúa**.-Construction of the core-1689-1692 and external works 1739-1742-is located on the islet of Ulua against the port of Veracruz. This monument has great significance in the history and national life, was integrated to the system of fortifications in all the Caribbean due to the

constant siege of pirates and enemies of Spain in the 17TH and 18th centuries, and later served as defense against the attacks of the foreign forces, against the Spanish in 1825, the French in 1838 and the Americans in 1847 to 1914.

This Fort is composed of four curtains that make up a large rectangle arriving at measure 130 m in length with bastions at each of its vertices and four batteries of tyre, is in restoration, but this has not been sufficient and adequate and that discharges batteries container protruding from the profile of the strength and national arsenals of Navy that were built on with the fortification made this figure among the one hundred monuments of greatest danger to disappear in the world. ICOMOS and CARIMOS have insisted that they must change their site both arsenals and the courtyards of containers and that this is a commitment to national cultural authorities and the Government of the State of Veracruz are faced with.

- **Bastion of Santiago**. - Built in the 17TH century and is only thing that remains of the defensive system of Veracruz destroyed in 1880, currently intended for Museum.
- **San Francisco de Campeche**. - Fortified city built between 1686 and 1704, both the wall as the six bastions and two forts, the curtains had an average thickness of 2.50 M in the upper part and a height of 8.40 M approximately, included the parapet that was the passage of round that was going along ligand and the bastions with the contour.

The walls and the bastions were declared national monuments on December 7, 1951, by a decree published in the Official Gazette dated December 10, 1986 was declared as a historical monuments zone in the city of Campeche and 1 December 1999 was designated as a World Heritage.

It is in good condition and the bastions and forts have now conditioned to the use of various museums.

Baluarte de San Carlos	Museum of the city.
Bastion of solitude	He served in barracks military at the beginning of the 20th century. Currently Museum of contrails.
Bastion of Santiago	Botanical Garden.
Baluarte de San Pedro	It was used as a prison in the 18th century for accused persons of the Holy Inquisition. Currently Museum of crafts.
Baluarte de San Francisco	Library of the National Institute of anthropology and history.
Bulwark of Santa Rosa	Art Gallery-paintings 19th and 20th centuries.
Fort of San José el Alto	Historical Museum of piracy.
Fort of San Miguel	Archaeological Museum of Campeche.

- **Fortress of Bacalar**. - Located in the region South of the State of Quintana Roo, built to control the passage of the dye stick between Belize and Mexico.
- **Fortress of San Carlos**. - Located in Perote, Veracruz - built between 1770 and 1777 to store food and other goods that were transported from Acapulco - city of Mexico - Veracruz in order to supply the port of Veracruz in the event of attack. During World War II was used as a prison of foreigners being deported.
- **Fort of Loreto**. - Located in the courtyard front of the chapel of our Lady of Loreto (1659) currently destined to Museum and along with **Fort Guadalupe** contributed to the defense of the city of Puebla during the French intervention in May 1862, leaving only this last Fort the moat and the wall.

## **5. Legal instruments of the value of goods for purposes of Defense**

The Cultural properties that have defense purposes, if they were built during the centuries XVI to XIX, are considered historical monuments, according to article sixth of the Federal Law on Archaeological, Artistic and Historical monuments. However, this law does not establish specific provisions to protect the monuments for defense purposes, as explained above, the vast majority of them are dedicated to museums.

Therefore, cultural properties that have defense purposes are subject to regulation for any other historic monument. In other words, the works of intervention to be performed in the same must be authorized by the National Institute of Anthropology and History (INAH). These cultural properties must be registered to the National Registry of Archaeological and Historical Monuments and Zones in charge of the INAH.

Also, these cultural properties are considered as national properties, so they are subject to the General Law on National Properties. This Law reaffirms that any intervention to be performed in those properties should have the approval of the National Council for Culture and the Arts, as well as the INAH. However, nor did we find no specific legal provision for cultural properties for defense purposes and therefore, they share a common regulation with other national monuments.

## **6. Financial aspects**

In general terms, the conservation, restoration and maintenance of the property properties that have defense purposes are expenses that are provided in the annual budgets of the authorities responsible for the management of these properties and which are approved by the Congress of the Union.

There are no specific legal provisions to promote the sponsorship in the restoration of heritage properties for the purpose of defense.

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<sup>[1]</sup> Mexican Constitution.-Article 73 fraction XIV.

<sup>[2]</sup> Mexican Constitution.-Article 89 fraction IV and VI.

<sup>[3]</sup> Organic Law of the Federal Public Administration.-article 29.

<sup>[4]</sup> Mexican Constitution.-Article 132.

<sup>[5]</sup> General Law on National Properties (last amendment).-published in the Official Gazette of the Federation on August 31, 2007.- Article 6 fraction XVIII.

<sup>[6]</sup> Federal Law on Archaeological, Artistic and Historical Monuments and Zones.- Article 35 and 36 fraction I.

<sup>[7]</sup> Mexico in the Time, Magazine on History and Conservation. Time of galleons.-No. 25. INAH.

<sup>[8]</sup> General Law on National Properties.-articles 3, 6th, 7th, 9th, 103.

<sup>[9]</sup> Organic Law of the Federal Public Administration.

<sup>[10]</sup> Organic Law of the Federal Public Administration.

# Sri Lanka

**DEFENDING THE MILITARY HERITAGE; LEGAL, ADMINISTRATIVE AND FINANCIAL CHALLENGES** Prashantha B. Mandawala Department of History and Archaeology University of Sri Jayewardenepura Sri Lanka

## 1.0 Introduction

Military Heritage of Sri Lanka which includes forts and fortifications date back thousands of years with several walled cities built by Sri Lankan Kings. With the onset of colonial rule in the Indian Ocean, Sri Lanka was occupied by several major colonial empires that from time-to-time became the dominant power in the Indian Ocean. The colonists built several western styled forts, mostly in and around the coast of the island. The first to build colonial forts in Sri Lanka were the Portuguese, these forts were captured and later expanded by the Dutch and then British occupied these Dutch forts until the island became independent. Most of colonial forts were garrisoned up until the early 20th century. The coastal forts had coastal artillery manned by the Ceylon Garrison Artillery during the two world wars. Most of these were abandoned by the military, but retained civil administrative officers, while others retained military garrisons, which were more administrative than operational. Some were reoccupied by military units with the escalation of the Sri Lankan Civil War, Jaffna fort for example came under siege several times.

## 2.0 Pre-colonial forts

There are several pre-colonial forts identified in Sri Lanka. **Vijithapura** was a fortress-city that existed during the Anuradhapura Kingdom. It was the site of a major battle between the forces of Elara and Dutthagamani in 161 BC., but no remains have been identified as yet.

**Sigiriya** is commonly referred to as a fortress built on the rock of Sigiriya with fortifications around it. It is an ancient rock fortress and palace ruin situated in the central Matale District of Sri Lanka, surrounded by the remains of an extensive network of gardens, reservoirs, and other structures. A popular tourist destination, Sigiriya is also renowned for its ancient paintings. It is one of the seven World Heritage Sites of Sri Lanka. Sigiriya may have been inhabited through prehistoric times. It was used as a

rock-shelter mountain monastery from about the 5th century BC, with caves prepared and donated by devotees to the Buddhist Sangha. According to the chronicles as *Mahavamsa* the entire complex was built by King Kashyapa (AD 477 – 495), and after the king's death, it was used as a Buddhist monastery until 14th century. However archaeologist Senarath Paranavithana claims that it was more a palace than a fortress.

**Yapahuwa** served as the capital of Sri Lanka in the latter part of the 13th century (1273–1284). Built on a huge, 90 meter high rock boulder in the style of the Sigiriya rock fortress, Yapahuwa was a palace and military stronghold against foreign invaders. The palace and fortress were built by King Buvanekabahu I (1272–1284) in the year 1273. In 1272, King Bhuvanekabahu transferred the capital from Polonnaruwa to Yapahuwa in the face of Dravidian invasions from South India, bringing the Sacred Tooth Relic with him. Many traces of ancient battle defenses can still be seen, while an ornamental stairway is its biggest showpiece. On top of the rock are the remains of a stupa, a Bodhi tree enclosure, and a rock shelter/cave used by Buddhist monks, indicating that earlier this site was used as a Buddhist monastery, like many boulders and hills in the area.

### 3.0 Colonial Forts

The first colonial fort built in Sri Lanka was **Colombo** which started out as a trading post of the Portuguese and became the capital of Portuguese regime. The first fort called Santa Barbara was built in 1518 but in 1524 it was abandoned. In 1554 a new fort was built and the city of Colombo. The Portuguese town was destroyed by the Dutch during the siege in 1655-56 and rebuilt Colombo fort and strengthened its bastions. In 1870 the Dutch fort of Colombo was demolished by the English. In the late 19th century the walls of the fort were demolished by the British to extend the growing city. Today there is no trace of the old fort or any part of it, however the area which the fort occupied is still referred to as Fort which is the central business district of Colombo.

**Galle Fort** was built first by the Portuguese which was modified by the Dutch during the 17th century. During the Dutch period in Ceylon, the Dutch brought labourers from Indonesia and Mozambique to build this massive fort. Even today, after 400 years of existence, it looks new and polished. Today many Dutch people who still own most of the properties inside the fort are looking at making this one of the modern wonders of the world.

Fort Fredrick is a **Fort** built by Portuguese at **Trincomalee** in 1624. This was captured by a Dutch fleet under Admiral Westerwold in 1639 and in 1665 a new fort built here by the Dutch to defend against the advancements of the British and the French. In 1672 the Dutch Republic was attacked by France, Britain, and two German states, the French captured Trincomalee and later they occupied Batticaloa. However the French were forced to leave from the fort with in a shot [eriod of time. Trincomalee was important for its large all-season secure harbor. In late 18th century Trincomalee traded hands once more with the French capturing it again and later handing back to the Dutch East India Company at the Peace of Paris in 1784. In 1795 it was taken over by the British, and remained a British garrison till 1948. Coastal artillery guns were added during the two World Wars. Today it remains garrisoned by a detachment of the Sri Lanka Army but is accessible to visitors.

**Fort Ostenburg** is a small fort built at the entrance to the inner harbour of Trincomalee by the Dutch and surrendered to the British 1795. It has been called "the most powerfully gunned fort in Ceylon" with strong batteries at sea level and many guns on the ridge above them. However little of it remains today, mainly due to the contraction of Coastal artillery placements by the British since the 1920 in the Ostenburg ridge. Much of these are well preserved by the Sri Lankan Navy, which maintains the *Hoods Tower Museum* here.

The original Portuguese **Fort of Jaffna**, where the remaining Portuguese had assembled after the fall of Colombo, had been captured by the Dutch in 1658 after a three and a half month siege. Since 1680 until the takeover by the British in 1795 the fort went through several phases of development making it one of the strongest forts in Asia. Unlike the Colombo and Galle Forts, which were fortified towns, the Jaffna Fort had an almost exclusively military and administrative purpose. All the civilians lived in the residential town of Jaffna, adjoining the fort. Up till the 1970s the fort and its buildings were in their original state, despite its continuous use by the British and later the Ceylon government. During the Sri Lankan Civil War the fort and the town of Jaffna changed hands several times. Notably the Sri Lanka Army garrison of the fort lead out a siege for months before being withdrawn in the 1980s. As a result of the war much of the fort has been destroyed.

The **Batticaloa Fort** was built by the Portuguese in 1628 and was the first to be captured by the Dutch (18 May 1638). It is one of the most picturesque of the small Dutch fort of Sri Lanka, it's situated in an island, still in good condition. Near Batticaloa the Portuguese had a tiny fort at Tanavare (there is a map of it but no remains) There is a

1st century CE Buddhist Dagaba inside the Dutch fort.

Matara fort was built by the Portuguese about 1550 but the actual fort was built by the Dutch when they took Matara, after the capture of Galle. The remains of the fort are in good preservation.

On the other side of the river that flows through the Matara town is the **Star fort**. This little redoubt called *Van Eck* was built in 1763-1765 by the Dutch after the Matara rebellion in 1761-1762. This fort is the unique star shaped fort in Ceylon, over the gate of the fort is the Dutch coat of arms. It's still in good condition.

**Fort Macdowall** was built by the British in the town of Matale in 1803 as an out post during the Kandian Wars. The fort was named after General Macdowall, who led the expedition to the Kingdom of Kandy, it is one of the few forts build inland. In 1848 during the Matale Rebellion the fort came under siege of the rebels. Today only the gate way and few ramparts remain, with the interior of the fort turn into a cemetery, the Fort MacDowall Cemetery.

**Kalpitiya Fort** is located at the northern tip of the narrow land tongue that stretches to the north for about 50 kilometres beyond Puttlam parallel to the mainland. Built in 1667, on the spot where the Portuguese had a stockade and a Jesuit chapel. The walls are about 4 meters high and inside are the remnants of the chapel, a commander's house, barrack rooms, a prison and several go downs. Kalpitiya was important since it command the entrance to the bay. Puttlam was an area that had large amounts cinnamon cultivations. The Dutch even built a canal from Puttlam via Negombo to Colombo to bring the cinnamon. The fort was neglect for many years until it was turned into a Sri Lankan Navy base for training and operational activity escalation of the Sri Lankan Civil War. The ramparts are in good condition today.

**Negombo fort** is a small but important fort in the town of Negombo, north of Colombo was built by the Portuguese to defend Colombo. In 1640 the Dutch destroyed it and rebuilt it not on the usual square pattern, but on a pentagonal one, though it had only four bulwarks. The fort was located on a narrow strip of land between a lagoon and an inlet of the sea. It was surrounded by moats, and the gate was accessed via a drawbridge. The English occupied it in 1796. Today only part of the walls and an arched gateway remains of the fort. It is used as a prison by the Department of Prisons.

**Tangalle fort** a small Dutch fort exists in the coastal town of Tangalle, south of the island. Tangalle was an important anchorage. Although much of the fort is altered it still stands

and in uses as a prison by the Department of Prisons.

**Mannar Fort** is built on the island of Mannar by the Portuguese in 1560, it surrendered to the Dutch on 22 February 1658 and was rebuilt by the Dutch in 1696. On 5 October 1795 the Dutch surrendered to the British. The fort has four bastions and it's still in good condition.

**Fort Hammenhiel** situated on a small island between Kayts and Karaitivu islands in the north of the country, Hammenhiel Fort was built by the Dutch to protect Jaffna. It remains in good condition garrisoned by the Sri Lanka Navy.

**Pooneryn fort** built in the Pooneryn area of north portion of the island first by the Portuguese to protect its possessions in Jaffna, it was expanded by the Dutch till in 1770 it was recorded that it was square shaped with two bastions at opposite corners; the rampart on each of the sides was about 30 metres and was garrisoned till the late 18th century. The British built a rest house in 1805. Since 1983 due to the civil war it was garrisoned by the Sri Lankan Army till it withdrew from the Pooneryn area in 1991; and recaptured in 2009. Ruins of the fort remain, however in bad condition.

**Elephant Pass Fort** is located in Elephant Pass is one of the most strategic locations in Sri Lanka, linking the Jaffna peninsula with the rest of the island. In 1760 the Portuguese built a fort, which was later rebuilt and garrisoned by the Dutch in 1776 and later by the British. A modern military base was built there in the area in 1952 by the Sri Lankan Army. The area has been the site of many major battles in the civil war. The state of the fort is unknown.

**Ruwanwella Fort** was originally built as stockade in the 1590s by the Portuguese; however, the Dutch, in 1665, built a wooden fort. In 1817 British built a new fort with two bastions and used as an outpost. Today it remains in good condition and houses a police station.

**Kalutara Fort** was the fort which was first built by the in Kalutara and was surrendered to the Dutch in 1655 without a shot being fired; it was later enlarged by the conquering Dutch with the addition two bastions. Very little of it remains today.

The island of **Delft** was called by the Portuguese ilha das Vacas, they had a fort here. There are two ruined forts in this island. That on the eastern sea shore is the Portuguese small fort or "tranqueria" only two ruined walls survive, the other fort was probably built in more ancient times which do not have any traces.

**Menikkadawara fort** is built by Portuguese in the 1590s a fortified base camp. Only earthwork remains at present.

**Katuwana fort** was built before to 1697, in 1761 was destroyed by the Kandyans. It's now a beautiful restored fort.

Hanwella Fort plan A stockade was built here by the Portuguese at the end of XVI century. The Dutch built a strong fort at the end of XVII century. Disappeared, only the traces of the old moat of the fort are visible.

**Sitawaka or Avissavella fort** was built by the Portuguese in 1595 it was a small fort on the top of a low hill; the Dutch in 1675 built a strong fort with four bastions in another hill north of the old Portuguese fort. In 1685 this fort was abandoned. Disappeared, only a few traces are visible.

#### **4.0 Legal Challenges**

The pre colonial forts identified above are belongs to the department of archeology as they have been declared archeological reserves under the antiquities ordinance. As such no excavations, conservation, development activities could be carried out without the approval of the Department of Archaeology. Most of the activities with in these sites are being handled directly by the department since its creation in 1890 while the activities of the Sigiriya and Yapahuwa has be licensed to the Central Cultural Funs a semi-government institution created by an act of Parliament in 1980. The development activities in these sites are now being carried out under the supervision of the Department.

The colonial forts are divided into two distinctive categories. The first category being the forts which are owned by the Department of Archaeology and the second being the forts which are belongs to the other government institutions. There is an exceptional third category, forts that have been built with an entire city enclosed thin in the ramparts in which the ownership is shared with the Department of Archaeology, Other Government Institutions and the Private individuals and institutions. Since the first category is belongs to the department of archeology the development activities could be handled according to the norms of the department. The second category of forts are declared as ancient monuments and protected monuments under the antiquities ordinance in which no development activity could be carried out without a permit and supervision of the department. If the owner is not keeping to the standards stipulated by the department by way of maintenance and carrying out development activities without keeping to the

standards laid down by the department, it could legally take over the activities with the approval of the minister. The most distinctive legal challenges observed in defending the military heritage in Sri Lanka are the challenges faced in the colonial forts within which entire city have been enclosed. Since the ownership is divided among the department of archaeology, other government institutions and the private individuals and institutions there are various legal measures have been taken to preserve them for the future generations. The best example being the Galle Fort in which a foundation called “Galle Heritage Foundation” have been established to take guardianship of the Galle Fort since it has been declared as a World Heritage Site. Second being the use of the Urban Development Authority Law to declare the Fort as a special Urban Development Area in which special planning regulations have been imposed. The Urban Development Authority has formulated a special planning committee including eminent scholars, members of the department of archaeology to scrutinize the development proposal and to make recommendations to the planning committee of the Galle Municipality before the planning approval is given. But over the past years it has been observed that number of unauthorized development activities have been carried out since the legal fine for such activities were stated as “imprisonment for 2 to 5 years or a fine of up to Rs. 50,000/= or both.” In most of the court cases that have been perused by the Department of Archaeology only fine have been imposed and in most of the cases the fine was below Rs. 25,000/=. Although the government of Sri Lanka took steps to increase the fine in between Rs. 50,000.00 to Rs.300,000.00 the problem of unauthorized development still prevails since there is no legal binding to either remove the development or change it back to the original state.

### **5.0 Administrative Challenges**

Virtually there are no administrative problems identified in the pre colonial forts as all of them are belongs to the department of archeology in the way of managing development activities as well as visitor management. The only challenge faced by the authorities of the department is the political interference with regard to the business activities in which the political pressure is been imposed to the authorities who are managing the site to open the site for various vendors who sell various item to the national and international tourists. The authorities have taken measures to solve the problems created by the vendors through dialog with the political authorities of the respective area and by building common areas to serve as car parks with boutiques and stalls.

The post colonial forts which are belongs to the department of archeology is being

managed without much problems while the forts occupied by various other government institutions are also being managed with the advise given by the department of archeology. But most of the problems identified are belongs to the forts with private ownership. The main challenges with in these forts, specially in Galle Fort is unauthorized development activities that happened during weekends when the government offices are closed. Since it is difficult to control such activities the method adopted by the authorities is to educate the owners by providing guidance and advice of the desired developments that they could be carried out in their buildings. Galle Heritage Foundation coordinates such activities while the Urban Development Authority and the Department of Archaeology provides the necessary advice. Galle Heritage Foundation has also completed a pilot project with in the Galle Fort with the help of the Government of Netherlands by conserving several private houses with the Galle Fort in order to educate the owners of buildings to show the methods in which they could develop their buildings without harming the ancient character.

### **6.0 Financial Challenges**

Te most difficult challenge that has being faced by the authorities in protecting the both per colonial and colonial forts are to find the essential financial requirements in safe guarding the military heritage from further deterioration. Due to the entrance fees levied in Sigiriya, the essential financial requirements for the maintenance, conservation and archeological investigations are been taken care off. During past years there had been several archaeological research excavations carried out in Sigiriya with the help of assistance provided by the German governments and research institutions. Japan International Cooperation Agency has provided fund for the establishment of a visitor center for Sigiriya while Japan Bank for International Cooperation has provided funds for the provision of infrastructure facilities to the visitors in Sigiriya. On the other hand Central Cultural Fund has commenced a new project in Yapahuwa to carryout archeological investigations, conservation and layout, provision of infrastructure facilities.

The colonial forts which are occupied by various government institutions tend to provided finances required for the maintenance through their annual budget. Archaeological Department also provided similar financial allocations for the conservation and maintenance of forts belongs to them. Since almost all colonial forts in Sri Lanka were built by Dutch, the Netherland Cultural Corporation Programme has provided financial support for the conservation of Galle, Mathara Star and Katuwana Forts while the programme is currently funding the conservation of Jaffna Fort.

## Sweden

By Thomas Adlercreutz, Ingela Andersson and Jan-Mikael Bexhed

### 1. International Aspects

#### 1.1 The 1954 Hague Convention with the two protocols. Ratification and implementation

Sweden participated actively in negotiations preceding the Convention. Parliamentary support was gained in a decision taken in 1974. A report was issued in 1983 by the National Heritage Board. Subsequently, the Government proposed ratification in 1984, and ratification became effective the following year. The issue was uncontroversial.

#### 1.2 Implementation

National implementation is achieved mainly through the following set of provisions:

- Government Regulation Concerning Swedish Defence and International Law (SFS 1990:12)
- National Heritage Board Ordinance Regarding the County Administrations' Measures for marking of Cultural Property according to the 1954 Hague Convention (KRFS 1997:1)
- The Swedish Penal Code Ch. 22 Para. 6

The Government Regulation places responsibility on the National Heritage Board and the 21 County Administrations to take preparatory measures and mark out property under special protection.

Chapter 22 Section 6 of the Penal Code states:

A person guilty of a serious violation of a treaty or agreement with a foreign power or an infraction of a generally recognised principle or tenet relating to international humanitarian Law concerning armed conflicts shall be sentenced for *crime against international Law* to imprisonment for at most four years. Serious violations shall be understood to include:

.....

5. initiating an attack against establishments or installations which enjoy special protection under international law,

Sweden has ratified the First, but not yet the Second Protocol to the Convention.

## 2. Constitutional Aspects

### 2.1 on the Armed Forces

Sweden's constitution consists of four acts of parliament, different from normal acts only insofar as their adoption and amendment need two identical decisions by Parliament, the second after an intervening general election. The act on how the country is governed is in English often termed the Instrument of Government. Its final Chapter 13 holds provisions for governance in times of war or under imminence of war. Parliament may be replaced by a War delegation. There are no provisions there, however, relevant to how the military command should take care of property.

### 2.2 On Heritage Protection

There are no constitutional provisions for the cultural heritage per se in Swedish Constitutional Acts, let alone for heritage properties with a military connection. In several acts of parliament, however, provisions are handed down of direct or indirect importance to the preservation or rescue of heritage properties in times of war or crisis.

Provisions for the implementation of the 1954 Hague Convention have already been mentioned. In the Act (SFS 1992:1402) on Removal and Destruction there are provisions giving the Government extraordinary powers in times of war in or near Sweden. The purpose of the act is not just to keep property of importance for the defence out of reach of an enemy, but also to protect property with cultural values. The primary measure is to remove the property, but if that is not possible and the falling of the property into the hands of the enemy would aid his war efforts, it may also be destroyed. This applies also to cultural property. The Government or an agency under its control decides on suitable measures. Compensation for adverse effects to property holders is to be paid by the State. The application of the act can be effected quickly by the Government, but needs subsequent parliamentary consent, or consent of Parliament's War delegation.

Some acts may indirectly have importance for property where cultural values may be endangered by armed conflict or in a crisis. The Act (SFS 1999:889) on Registration of War Damages to Property places responsibility on the Swedish Financial Supervisory

Authority to keep a register on war damages in order to provide for subsequent parliamentary decisions on compensation. There is no particular view to assessing damages to cultural property. In the same vein the Act (SFS 1999:890) on Insurance in Times of Imminence of War provides for extraordinary measures with regard to insurance of persons and property. The Protection Act (SFS 2010:305) restricts public access – also in peacetime – to property in order to avert sabotage, acts of terrorism or espionage.

### 3. What is typical of your country's military history reflected in property?

Sweden, as a unitary state, emerged in the early Middle Ages. Earlier defence works dating from the Iron Age and the Age of Migrations remain today mainly in hill top forts: ruined remnants of walled enclaves erected where the natural surroundings provided good conditions for withstanding sieges. Few of these have been excavated, generally with meagre findings.

With the emergence of a noble class and royal rule, castles and strongholds were erected from the 12<sup>th</sup> Century and onwards. Stockholm became the effective capital first at the end of the Middle Ages, then *inter alia* because of its situation as a fortified lock to the lake Mälaren. During and after the reign of Gustavus Vasa (1521 – 1560) some of the strongholds were developed into royal castles with the double purpose of asserting royal power and providing palatial residences for the King's family (Kalmar, Gripsholm, Uppsala, Vadstena, with Åbo, Tavastehus and Viborg as examples from then Swedish Finland).

The 17<sup>th</sup> Century was an expansionist period in Swedish history with the assertion of power around the Baltic Sea and the remarkably successful participation in the Thirty Years' War. Especially, the transfer of the Southern Swedish provinces from Denmark brought an increasing need for defence installations to hold on to the territorial gains. Fortresses inspired mainly by military technology fetched from France were built in strategic places. The Naval Shipyard Karlskrona dates from this period.

Sweden's position as a Great European Power collapsed during the following century. Finland was repeatedly threatened, and the construction of the Sveaborg (today Suomenlinna) at the entry to Helsinki was probably the most remarkable defence achievement of this epoch.

With the final loss of Finland in 1809 Sweden attained its present borders. Defence installations were improved around the coast line, primarily to fend off invasions from

Tsarist Russia, but arms technology made the olden fortifications increasingly obsolete.<sup>6</sup> The most spectacular monument from the 19<sup>th</sup> Century is probably the Karlsborg fortress, erected inland at the lake Vättern, communicating through the newly inaugurated cross country canal with both the North Sea and the Baltic. The idea behind the construction of this huge compound was that the King and his entire administration should be able to retreat from Stockholm in case of a Russian attack. It took 90 years to complete the compound, and by then both technology and strategic reasoning had made the original concept redundant.

In 1901 Sweden started recruiting its armed forces by general (male) conscription. To house a potentially vast army during training many large and middle sized cities were provided with barracks and training grounds, today mainly converted to various civilian uses. The concept of inland fortresses was not entirely abandoned. In the northern city of Boden, a new set of hill top forts was created, this time blasted down into the rock and provided with long range artillery. Sweden managed to stay out of World War I and in 1925 embarked on a road of disarmament, which became increasingly questioned when the clouds of European conflict gathered in the 1930's. However, no significant measures of rearmament had been taken when Denmark and Norway were occupied by the Third Reich in 1940. A system of bunkers was then rapidly erected on the south and west coasts of Sweden to provide for initial defence measures. Inland air bases were built and command posts were hewn down into the bedrock at strategic locations around the country.

When World War II passed from active conflict over to the passive era of the Cold War, and the threat of nuclear devastation hung over the world, Sweden decided to stay officially neutral between the two blocks (today it is known that Swedish officials co-operated closely with NATO in order to secure assistance in the event of a Soviet attack). To enhance credibility for the neutral stance, rearmament continued. The air force grew to become in the 1950's the fourth largest in the world, equipped almost only by

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<sup>6</sup> The Vaxholm fortress in the inlet to Stockholm is the subject of a popular anecdote: Count Moltke –the German Chief of Staff during the Franco-Prussian War – is said to have laughed only three times in his lifetime. The first was when his mother-in-law passed away, the second when he was shown the Vaxholm fortress, and the third ... has fallen into oblivion. What is true is that this fortress after extensive modernisation in the first half of the 19<sup>th</sup> Century - with the broadening of walls to over two meters - in 1872 was subjected to test firing by a rifle-barreled cannon with a pointed bullet. The projectile penetrated the wall.

Swedish constructed aircraft. Coastal fortifications were once again being built, dug down into the rock, where huge cavities were filled in with installations as big as five stories apartment houses, resting on rubber cushions to mitigate the effects of nuclear hits, and sealed off to resist biological and chemical attacks as well. The heavily iron armed concrete tops were finished with turrets for long range artillery, concealed by camouflage. The vastest project of this epoch was the creation of a complete naval shipyard inside the mountain of the Muskö island southeast of Stockholm.

Today, most of these incredibly expensive installations have become obsolete. The Muskö Naval Yard is still operational but has become semi-privatised. Some of them have been converted to civilian purposes, and a few are being kept as museums. The remainder are gradually dismantled and sealed from entrance.

#### 4. Administrative Setup

##### 4.1 Government administration of heritage properties for defence purposes; responsible ministries or agencies; chain-of-command issues

In the Kingdom of Sweden the King himself is deprived of all political power. Unusual for a constitutional monarchy he has no role even in appointing the Prime Minister, signing Government decisions or other acts. The only semblance of political importance attached to the King is that he is chairman of the Foreign Policy Council, a body mainly for exchanging information and contact between the political parties in matters concerning relations to foreign states.

Rather unusual for Sweden, too, is the fact the Ministers do not have any official supremacy over State agencies. It is the Government as a collective body (cabinet meetings) that takes decisions and exercises its functions through these decisions, be they administrative or financial. A Minister therefore cannot order an subordinate agency to perform a certain task or to refrain from taking measures that run contrary to the Minister's or the Government's policies. The decision making has to go through proper channels, i.e. be prepared by the Minister's own ministry and other Government ministries concerned, and then cleared at a meeting of the Government as a whole. This, at least, is the theory. What happens over the phone or in private meetings may, perhaps, be a bit different.

The Swedish Armed Forces are organised as an agency parallel to other Government agencies, and under the responsibility of the Ministry for Defence.

The Supreme Commander is the authoritative head of the Armed Forces and supervises the Armed Forces on the basis of the instructions provided by the Government. Within the framework of the Government decisions and objectives, the Supreme Commander must weigh the immediate against the long-term effect as far as defence is concerned.

The Supreme Commander supervises the Armed Forces on a central level, assisted mainly by the director general and the Armed Forces Command. The Headquarters assist the Supreme Commander in his authoritative command. The three defence branches: Army, Navy and Air Force, are each headed by an Inspector and consist of many different units. None of these, however, have property management as its charge.

#### 4.2 The Fortifications Agency

Instead the management of property used by the Armed Forces has been entrusted to a separate agency, the Swedish Fortifications Agency. This agency was in 1994 set up of staff recruited primarily from the similar body previously within the Armed Forces. Originally, this agency was placed under the Ministry of Finance (indicative of a special need for economizing). A division of administrative responsibilities between the ministries has recently placed the agency under the Minister for Public Administration and Housing.

The Armed Forces uses the properties and services provided by the Fortifications Agency and pays rent and other expenses according to agreements (similar to rent contracts) worked out between the two agencies. Apart from the Armed Forces there are also a few other defence related agencies that have a corresponding arrangement.

It is not only State owned properties that may be put at the disposal of the Armed Forces and the other agencies. The Fortifications Agency may also procure usufruct from properties owned by local governments or private parties: it may rent office space, storage, secure the right to use private land for exercise etc. It also happens that state owned properties, to the extent they are not currently needed for the Armed Forces, are leased to other interested parties.

The Fortifications Agency maintains a little more than 300 buildings protected by decision of the government as part of the national heritage. There are at least 300 other

buildings and areas within the Agency that are important heritage from a regional or local point of view. The Fortifications Agency is also responsible for the core of the world heritage, 'the Naval City of Karlskrona'.

#### 4.2.1 Types of buildings

The Agency's built heritage can be divided into two categories: military heritage and, non-military, former civilian heritage. The non-military heritage is mainly buildings that are located in areas that are used as military training areas. It is for example former private manor houses, lighthouses and a former quarantine station as for example the 'mist bell-tower' of Måsknuv in the Stockholm archipelago, the Klagstorp manor house (now military offices) outside of Skövde and the Karlberg Palace in Solna next to Stockholm (military academy since the 1790's).

The heritage originally built for military use and still is in use represents the army, navy and air force. The protected buildings within the army are mainly military garrisons and establishments like the Skövde administrative buildings and barracks erected in early 20<sup>th</sup> century. The navy is represented by the naval base in Karlskrona with 86 protected buildings within the world heritage. The air force is only represented by a couple of hangars. There are also a few protected coastal artillery batteries still within the Agency like batteries on the island of Landsort in the Stockholm archipelago and batteries on the island of Aspö in the Karlskrona archipelago. They are no longer in use and will hopefully soon be handed over to the National Property Board, which have the responsibility of maintaining and develop national heritage no longer in use for its original purpose.

The Naval Base is the core of the world heritage site in Karlskrona. Originally a naval shipyard from the 1680's it has expanded and developed through the centuries up until today. Along with the protected buildings that are mainly used as museums, like the Rope Walk and the Figure Head Workshop. There are protected buildings that are re-used for today's needs. Some examples of re-use are the old 'Rope Bath House', originally used for tarring of ropes, now converted into an office building; the 'Cistern Shed', now also an office building and the so called 'Arsenal', originally the Bastion Söderstjärna (South

star), now converted into a sea safety school. The Naval Base consists of both protected and other newer buildings that are not protected.

#### 4.2.2 Considerations for heritage properties still in active use or without current military use. Re-use: military installations or civilian purposes

Facilities with a cultural or historic value may in many instances still be used for military purposes, even though special care must be taken and the possibility to modify is very limited. As long as the facility serves some of the demands of the Armed Forces, the Fortifications Agency will continue to manage it with funding and with due consideration to the heritage value.

Properties that have become permanently redundant for defence purposes should, as a main principle, be dismantled and transferred to another State agency, a local government, or sold on ordinary market terms. Under the current instructions (SFS 1996:1190) one reason for the State to hold on to redundant properties is that they may be needed to maintain cultural values, nature conservation or recreational purposes for the public at large.

There are problems specifically for the Fortifications Agency in holding on to property not needed any more by the Armed Forces. One problem is that this is not within the remit for what the agency has been set up to do. Once the Armed Forces have left, then the financing also goes. The Fortifications Agency has no State funding directly from the Government, but needs – as just mentioned – funding by agreement with the agencies using its services. Temporarily, solutions are often found to allow the Fortifications Agency to hold on to redundant property, but in the end some other management or owner must be found.

With regard to cultural heritage properties the usual solution is that management is handed over to the Swedish Property Board, a parallel Government agency under the Minister for Public Administration and Housing, and responsible for the palaces, royal parks, embassies, wild nature and many other historical buildings in Sweden. The problem of funding often remains, but will then have to be solved – if rent income is not sufficient – by direct Government grants.

#### 4.3 Public/private partnership, if any

None

#### 4.4 Museums or other institutions for military history

The National Swedish Museums of Military History (SFHM) was formed in 1976 when the Army Museum in Stockholm and the Navy Museum in Karlskrona were united. The newly created Air Force Museum in Linköping was added the following year, and The Board of Military traditions, an advisory body for traditions, heraldry, etc., relating to the Swedish Armed Forces was added in 1992. The last part of SFHM - the office of the Swedish Military Heritage (SMHA:k) was added 1 January 2009.

SFHM was initially organised as part of the Swedish armed forces and later transferred to the Ministry of Defence. Since 1996 it has been under the Ministry of Culture. The Navy Museum was transferred to the National Maritime museums (SMM) in 1997. Since 2008, SFHM has been responsible for a network of approximately 20 museums relating to particular units and for certain defence facilities of a culture historical value that previously had been under the auspices of the Swedish armed forces. In addition, SFHM supports other activities related to the cultural heritage of the armed forces at approximately 30 locations throughout Sweden.

The Army Museum has been located at Artillerigården in Östermalm, Stockholm, since it was opened in 1879. The site has been used for military purposes since the middle of the 17th century, and the main depot of the artillery was located here for nearly 300 years. The current buildings were erected during the latter part of the 18th century. The museum was first known as the Artillery Museum, and changed its name to the Army Museum at the beginning of the 1930s, in order to reflect more accurately the focus of the museum. The museum underwent a major refurbishment and opened in new, modern premises in 1943.

A further refurbishment led to the museum being closed in 1993, to reopen in 2000. The museum covers not only the history of the army, but also the role that the Swedish armed forces play in the development of society. The Army Museum is also the only museum that displays the historical development of Sweden. The Army Museum was awarded the title of Stockholm's Best Museum in 2005.

The air force is a young branch of the armed forces compared to the army. The first collection of aircraft was formed in 1953 at the wing that was located at the exercise field outside of Malmen, close to Linköping. The collection gradually grew to become an air force museum, and the Swedish parliament decided in 1977 that such a museum should be formally set up. The first modern exhibition building was opened in 1984. This was supplemented five years later with an extension, and the third stage of building

development is currently in progress. The Air Force Museum, however, is already a unique museum, not only within Sweden but also in an international perspective.

The Swedish Military Heritage office (SMHA:k) is a joint organisation between the National Museums of Military History (SFHM) and National Maritime museums (SMM). The office supports a network of 23 military museums all over Sweden. Five of the 23 museums are still under construction and the last of them will open in 2012.

National Maritime Museums in Sweden is a public agency under the Ministry of Culture. It consists of the Naval Museum in Karlskrona, the Maritime Museum and the Vasa Museum, the latter two both in Stockholm. The Vasa Museum, housing the amazingly well preserved remains of the Man O'War capsized in 1628 on its maiden voyage, is by far Sweden's most visited museum.

5. Legal instruments for protection of heritage values in properties for defence purposes
  - a. Acts of Parliament, Government Regulations, other provisions. Relation to civilian planning and building instruments

Generally, in Sweden, there are two legal ways open for the protection of heritage buildings, sites and other installations. The most frequently used one is provided for in the Planning and Building Act (SFS 2010:900). In detailed development plans and area ordinances there may be issued demolition prohibitions or regulations as to how buildings etc. should be preserved and to what extent they may not be changed. The question of demolition could also be tried directly in a planning permission application. The Planning and Building Act is basically under local government application, but the State has reserved the right to intervene and annul local government decisions which are considered detrimental to national interests. This does happen on the few occasions when local governments use their planning tools without due considerations to national defence interests. As regards cultural heritage properties, however, no real conflict has so far occurred between local government interests and the defence agencies.

The other main avenue to protecting heritage properties in Sweden is provided for in the Cultural Monuments (Etc.) Act (SFS 1988:950). Building, constructions, parks and other areas of outstanding value to the cultural heritage may be designated as "Building memorials" by the respective County Administrations, which are State agencies. This is a

rather selective procedure which so far has been used for approximately 2 500 entities in private or local government ownership. Some of these have had a military past, but properties currently used by the Armed Forces are almost always property of the State, and then the Act is not applicable.

As the disposition of State property under constitutional law are matters primarily for the Government, within frameworks given by Parliament, provisions for the management of state properties have been issued as Government regulations. Only specially appointed agencies may manage State real property (among these, of course, the Fortifications Agency). Rules pertinent to the protection of the State's cultural heritage are to be found in the Regulation (SFS 1988:1229) on State Owned Building Memorials.

There are three tiers of protection under this regulation. The strongest measures apply to buildings etc. of outstanding value. These can be designated as Building Memorials by decision of the Government on proposal from the Swedish Heritage Board, an agency under the Ministry of Culture. A proposal is to be accompanied by a Protective Order, detailing what applies to the building etc. in terms of demolition and other changes and regulating how it should be maintained. The Protective Order could also contain a demarcation of an area under protection. Management remains with the agency previously in charge, but that body must be consulted in writing.

The Swedish Heritage Board has to keep a register for State Owned Building Memorials and monitors that management is consistent with the Protective Order. The Heritage Board may also grant permission for minor changes sought by the managing agency, if there are special reasons presented. Permission to change may be granted on condition as to how it should be carried out and documented and how it should be investigated and controlled.

If the Heritage Board finds it should not grant permission, it has to turn the matter over to Government together with its own opinion. It is expressly stated that the Board's decision – affirmative or not - must not be appealed, a provision that perhaps bears more strongly on other parties than the managing body, for example on neighbouring property holders, environmentalists or other groups claiming a special interest.

A State Owned Building Memorial must not be transferred to another owner, if this would jeopardize its cultural values. Before a transfer the managing agency has to consult the Heritage Board. If the Board does not consent, permission must be sought from the Government.

After transfer the Heritage Board and the relevant County Administration must be notified immediately. In the Cultural Monuments (Etc.) Act it is stipulated that the building etc. remains protected under the provisions of this act.

Extraordinarily, the Government after consultation with the Heritage Board may lift a designation or provide for dispensation from the Protective Order.

The managing agency may in consultation with the Heritage Board appoint a special heritage architect in order to ensure conscientious care and maintenance of a Building Memorial.

The second tier of protection applies to buildings etc. with cultural heritage values, but not (yet) deemed to be mature for designation as Building Memorials. The Heritage Board should keep an inventory of these objects after consulting the managing agency. Buildings in this category should be changed only if necessary. The Heritage Board advises on their care and maintenance and may issue orders on how change may be effected, documentation etc., provided no undue hardship is in tail for the managing agency. If a building is deemed worthy of becoming a Building Memorial, this should be noted in the inventory. Different opinions between the Heritage Board and the managing agency should be resolved by the Government.

The third tier of protection is a rather vague provision in the Regulation that properties owned by the State and representing an important part of the national cultural heritage or otherwise harbouring great cultural values should be managed in such a way that this value is not diminished. The Heritage Board is to propose a list of such properties to be confirmed by the Government, but has so far failed to come up with any.

#### b. Secrecy issues

Secrecy is, of course, second nature to all defence activity; it is vital that an enemy should not know your preparations, and knowledge of security matters should be kept in as close a circle of people as possible. As a general rule, military buildings and installations are closed to the public under provisions in the aforementioned Protection Act.

After the fall of the iron curtain secrecy has been lifted with regard to many installations. The fact that this group of foreigners now can visit an active naval yard without much security clearance is indicative of this changed atmosphere. Many of the buildings here in Karlskrona and elsewhere are, though still managed as part of military compound, of interest because of their cultural values, and the Fortifications Agency does its best to

show them. The ground rule, however, still is that secrecy should prevail.

The lifting of secrecy becomes an issue when military buildings and installations become redundant. There are two aspects here, with quite different legal implications. All documents and records – on paper as well as electronic - of installations have to be revisited to see which ones still contain material that should be kept secret under the Publicity and Secrecy Act (SFS 2009:400). Even though a particular property may be opened up to a new owner or the public, the documents describing it or its contents could be relevant to other, still secret installations. Under the Swedish system the basic rule is that the public has access to any document that does not fall under any secrecy provisions of the Act. The issue of secrecy, then, is to be determined every time someone requests access to a document. The secrecy stamp placed on documents is an indication that there is under law a secrecy issue to be dealt with, but if the motives for affixing the stamp are deemed not to be relevant any more the document should be released.

Access to documents is, of course, highly relevant to anyone who wants to study heritage properties, especially as they may be revealing of the historic era in which a particular installation was established and what security considerations then were being taken. It could in this context be mentioned that the historic records are collected and made public through the **Military Archives in Stockholm**. This institution was founded in 1805 and has been responsible for inspection and control of military records since 1943. The Military Archives keeps military records from the 16th century and onwards.

The other secrecy issue with regard to property becoming redundant is that objects: buildings, fortresses, shelters, arms and other installations are not secret in themselves like documents. Just as for buildings in general there is access only to those who have been authorized by the holder or owner. But if the defence interests motivate that public should not even be allowed near such an object, then an order under the Protection Act has to issued.

6. Financial aspects. How are costs for management of military properties in general covered? How covered for heritage properties? Sponsorship, if any

The goal is that every protected building should have a conservation program. Most of the buildings have such a program today.

The program contains information about:

- the history of the building
- the historical, cultural and architectural values
- construction and technical information
- description of the building today
- advice on how to maintain the building in order to preserve the historic, cultural and architectural values
- goals for future use

The government provides no extra money for the protection and maintenance of protected buildings owned by the state. Everything has to be covered by the rent paid by the military. Therefore it is hard to keep the maintenance on a high level especially for the buildings that have no use today. The Agency therefore has made extra efforts to keep up the level of maintenance. It is hard to get money from for example the EU for maintenance and Sweden has not a good system for private sponsorship.

The future of the national heritage is unsure. There is a governmental report that suggests that all protected buildings should be handled by the National Property Board. The report argues that this will make the management of the national heritage more efficient. What the report does not consider is what happens when the military has to have two estate managers within the same areas. The Fortifications Agency fears that this might lead to a more inefficient management as a whole in these areas.

What buildings should be kept as state property is decided by a new definition stated by the National Heritage Board based on story-telling. A review based on this definition has been made of the protected buildings owned by the state by the National Property Board in cooperation with the Swedish Fortifications Agency, the Swedish Maritime Administration and the National Heritage Board. The result was that about 90% of the buildings should be kept as state property and that for example buildings representing the military air forces need to be added.

## United States of America

### Defending the Military Heritage; Legal, Financial and Administrative Issues

#### Report on the United States of America

(Prepared for the ICLAFI seminar 16-17 May, 2011 in Karlskrona, Sweden, pursuant to the topic outline for national papers)

#### 1. International Aspects

The United States was a signatory of the Roerich Pact in 1935. The purpose of the treaty was to preserve in time of war all nationally and privately owned immovable monuments including historic monuments, museums, scientific, artistic, educational and cultural institutions. It was ratified by the Senate of the United States in July, 1935 and promulgated by the President in October of that year.



*Signing of the Roerich Pact in 1935; US State Department Photo.*

The Hague Convention for the Protection of Cultural Property in the Event of Armed conflict was signed on behalf of the United States in 1954, but was not ratified by the Senate until September 25, 2008. The ratification included several “understandings”: “special protection” prohibits the use of cultural property to shield legitimate military targets and allows all property to be attacked using any lawful means if required by military necessity notwithstanding possible collateral damage; that decisions of military personnel should only be judged on the basis of that person’s assessment on information available to them at the time of the action; that the rules of the convention only apply to conventional weapons; and that the primary responsibility for protecting cultural objects with the party controlling the property to ensure it is properly identified and not used for an unlawful purpose. The Senate further declared that the convention was

self-executing, except as it pertains to the imposition of sanctions for breach, and that it did not confer private rights enforceable in United States courts. No administrative agency has been designated for carrying out responsibilities under the convention. The United States military has taken the position in the past that they largely followed the convention in spite of its lack of formal ratification, and these understandings likely reflect the military views of its implementation. The military has been implemented increased training for personnel in combat zones in Iran and Afghanistan following criticism of failures to protect cultural resources early in the conflict. The Pentagon is now employing archaeologists to instruct troops on their way to Iraq on how to avoid damaging archaeological sites. Two teaching tools employed by the military are posters and a set of playing cards with tips on preserving archaeological resources.



*Playing cards and poster used to make U.S. military personnel aware of cultural resources. U.S. Defense Department photo.*

A United States Committee for the Blue Shield (<http://www.uscbs.org>) has been organized and recognized as the national committee by the International Committee for the Blue Shield. The goals of the organization include:

- Coordinate with the U.S. military, U.S. government, and other cultural property organizations to protect cultural property worldwide during armed conflict.
- Promote U.S. legal protections for and commitments to cultural property, consistent with the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its Protocols.

- Prepare and maintain a database of volunteers to advise and assist in the protection of cultural property worldwide damaged or threatened by armed conflict.

## **2. Constitutional Aspects**

The U.S. Constitution gives the following powers regarding the military to the Congress:

- To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; . . .
- To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
- To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;
- To provide and maintain a Navy;
- To make Rules for the Government and Regulation of the land and naval Forces;
- To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

The Constitution gives the following authority to the President:

- The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.

There are no Constitutional provisions for environmental protection or for heritage conservation. However, the Department of Defense, and thus the military branches, are responsible for complying with Federal law in regard to the protection of these resources that are controlled by them or are affected by their actions.

The 10<sup>th</sup> Amendment of the Constitution provides that, “The powers not delegated to the United States nor prohibited by it to the states, are reserved to the states respectively, or to the people.” Since the protection of heritage properties is not a power given exclusively to the federal government by the Constitution, states—and by delegation of power, local governments—are authorized to protect heritage resources under their jurisdiction. They do not have the power to regulate federal properties such as military bases, however.

## **3. United States Military History Reflected in Protected Property**

Military sites and properties reflect the history of the United States from the earliest

settlement by the colonial powers to the present. Designated heritage properties represent a broad cross-section of resources and historical periods. Only one U.S. military property is inscribed on the World Heritage list, La Fortaleza and San Juan National Historic Site in Puerto Rico which includes the forts of San Felipe del Morro, San Cristobal, and San Juan de la Cruz and a large portion of the original San Juan City Wall. Another example of a colonial era fortress is Castillo de San Marcos in St. Augustine, Florida.



*La Fortaleza and San Juan National Historic Site in Puerto Rico © Ulises Jorge*

The French and Indian Wars are represented by Fort Ticonderoga, for example, and many sites from the Revolutionary War are designated including the Yorktown Battlefield and the warship the U.S.S. Constitution. Other examples of conflicts and designated military properties include: Fort McHenry (the War of 1812), the Alamo (the



*Fort McHenry, National Park Service*

War for Texas Independence), Fort Sumter and the Gettysburg Battlefield (the Civil War), the Battle of Little Bighorn (Indian wars), Liberty Memorial (World War I), the U.S.S. Arizona Memorial at Pearl Harbor and the Trinity Site in New Mexico (World War II), the Air Force Academy (mid 20<sup>th</sup> Century cultural landscape), and the Minuteman Missile National Historical Site (Cold War).



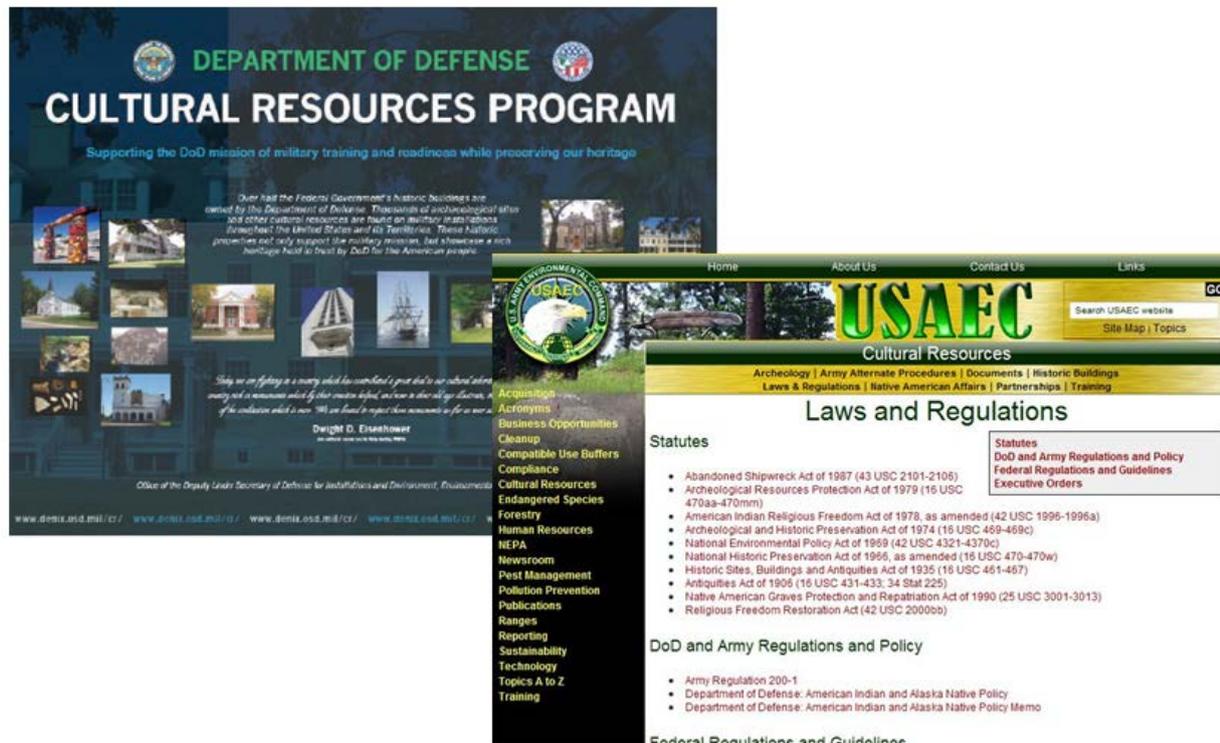
*Minuteman Missile National Historical Site, National Park Service*

#### **4. Administrative Setup**

The Department of Defense manages the largest holding of United States property of any government agency, roughly 61 % of all federal property. As stewards of this property, the Department has responsible for both military-related and non-military resources on the land they control. The Department has a very large inventory of historic properties including 78 National Historic Landmarks more than 600 places listed in the National Register of Historic Places comprising over 19,000 individual historic properties (buildings, structures objects and sites) located on over 200 military installations. In addition, since buildings generally reach a threshold for potential designation when they reach 50 years of age, the Department will be faced with assessing eligibility for protection for many thousands of buildings in the next 20 years. (See US Defense Department chart, below). To assist in the management of these resources, the Department has created the Cultural Resources Program. Their mission is: “As stewards of the nation's largest inventory of Federally owned or managed historic properties, DoD strives to maintain, promote, and interpret the resources it manages, both to support the mission and to preserve military heritage for future generations. Cultural resources are mission enhancing assets, connecting our fighting men and women with their proud history and traditions. The Department continues to use and maintain some of the nation's most prized cultural properties as an integral part of mission support and readiness.” The Federal Preservation Office within the Department has policy responsibility for all Department historic properties. Additionally, the Department’s Legacy Resource Management Program has provided over \$55.5 million dollars in financial assistance for the protection and enhancement of cultural resources on DoD lands while supporting military readiness. (<http://www.denix.osd.mil/cr/>).

	<b>Army</b>	<b>Navy</b> (incl. Marine Corps)	<b>Air Force</b>	<b>DoD Total</b> (incl. Marine Corps and WHS)
<b>Total DoD Buildings: US/ Territories (2004)</b>	<b>156,043</b>	<b>91,340</b>	<b>100,534</b>	<b>347,966</b>
<b>Total currently (2005) over 50 years old subject to NHPA</b>	<b>93,295</b> <b>60%</b>	<b>48,960</b> <b>54%</b>	<b>52,751</b> <b>52%</b>	<b>195,009</b> <b>56%</b>
<b>Additional over 50 years old in next 10 years (2006-2016)</b>	<b>14,976</b> <b>(108,271 total)</b> <b>69%</b>	<b>12,492</b> <b>(61,452 total)</b> <b>67%</b>	<b>13,720</b> <b>(66,471 total)</b> <b>66%</b>	<b>41,188</b> <b>(236,197 total)</b> <b>68%</b>
<b>Additional over 50 years old in next 20 years (2016-2026)</b>	<b>15,098</b> <b>(123,369 total)</b> <b>79%</b>	<b>8,605</b> <b>(70,057 total)</b> <b>77%</b>	<b>8,761</b> <b>(75,232 total)</b> <b>75%</b>	<b>32,464</b> <b>(268,661 total)</b> <b>77%</b>
<b>Note: Does not include projected new construction, demolition or other disposal (e.g. BRAC) activities.</b>				

The Department of Defense operates 93 military museums which in fiscal year 2009 hosted over 8.1 million visitors. The purpose of the museums is to instruct and inspire American military personnel while encouraging support for the military by the American people. Each branch of the military sets museum policies and requirements. Military museums utilize historic buildings, new buildings, and retrofitted facilities. Currently 285 buildings are used for museum purposes. Thirty-four military museums have facilities listed in or eligible for the National Register of Historic Places and 23 are National Historic Landmarks or contributing structures in a National Historic Landmark District. In addition to the museums operated by the various branches of the military, there are military exhibits in other national museums and many state, local, and private nonprofit museums dedicated to American military history.



Websites of the Department of Defense Cultural Resources Program (<http://www.denix.osd.mil/cr/index.cfm>) and the U.S. Army Environmental Command (<http://aec.army.mil/usaec/>)

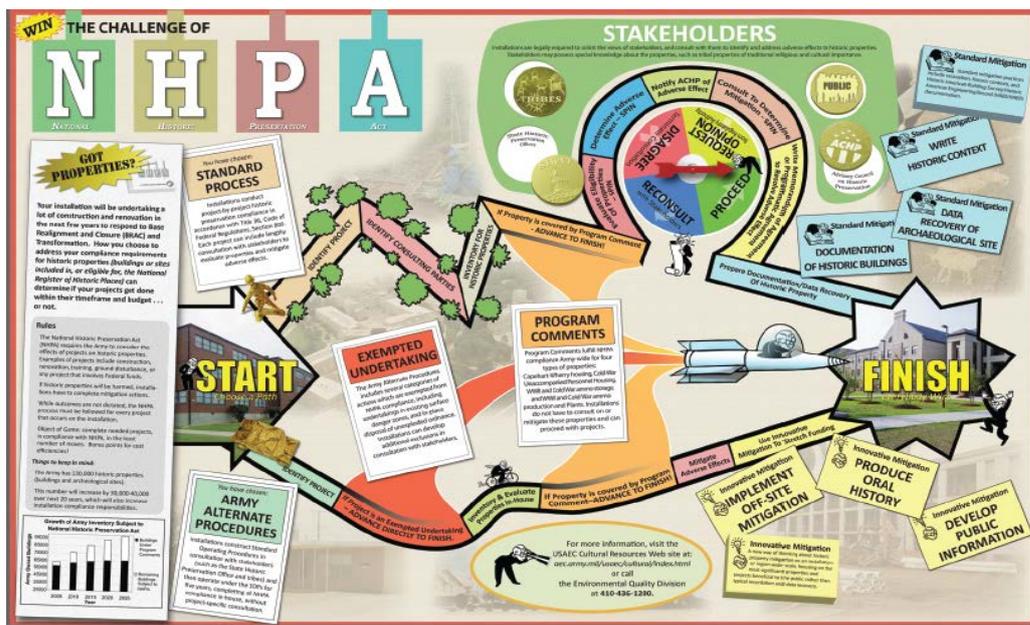
Other federal agencies have responsibility for former military properties that are no longer needed for defense purposes. Most significant is the National Park Service, an agency of the Department of the Interior. This agency manages 397 units, including 58 national parks, many national monuments and other conservation and historic properties with various designations. Each state and local government that manages former military properties has its own administrative structure.

## 5. Legal Instruments for Protection of Heritage Values in Military Properties

***National Historic Preservation Act of 1966***, as amended, 16 U.S.C. § 470 *et. seq.* The National Historic Preservation Act of 1966 (NHPA) forms the framework for the current American preservation program. It embodies the philosophy that preservation must be a partnership between the federal, tribal, state and local governments and the private sector. It has had great influence on the evolution of preservation in the United States

since the 1960s by establishing national standards and by promoting those standards through regulations and through incentives. This legislation does not prohibit the destruction of historic properties, but insures that they are considered in the planning process of projects which might adversely affect them.

- a. **Section 110** mandates that military installations and other federal agencies must, among other things, preserve and use historic buildings "to the maximum extent feasible," and develop preservation programs to identify and evaluate historic properties. It also mandates that agencies nominate historic properties to the National Register of Historic Places (NRHP). Requires "consultation" with "other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations, and with private individuals" in carrying out these preservation and planning activities. In *National Trust for Historic Preservation v. Blanck*, 938 F. Supp. 908 (D.D.C. 1996), the court interpreted the Section 110 guidelines issued by the Secretary of the Interior as requiring Federal agencies merely to "consider" ways to use historic properties and to integrate them into agency programs, but not as instructing agencies that they "have an affirmative obligation to spend money to preserve historic buildings."
- b. **Section 106** mandates that base commanders and other federal land managers "take into account" the effects of their undertakings (licensed or funded projects) on "historic properties." They must consult with the appropriate State Historic Preservation Officer and afford the Advisory Council on Historic Preservation and opportunity to comment.
- c. **Section 402** provides that prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects. In a case of first impression for the interpretation of Section 402, *Okinawa Dugong v. Gates*, 543 F. Supp. 2d 1082 (N.D. Cal. 2008), the federal court found that since Dugongs are listed as a "natural monument" on the Japanese Register of Cultural Properties, Japan's Law for the Protection of Cultural Properties prohibited any disturbance of their habitat. The court order issued on 2 March 2005 declared that the Okinawa dugong did indeed constitute historically significant "property," rejecting the DoD's claim that it did not.



The U.S. Army Environmental Command has developed a board game to assist in training of military personnel on compliance with the National Historic Preservation Act.

**Historic Sites Act of 1935**, 16 U.S.C. §§ 461-467 establishes a national policy for the preservation of historic American sites, buildings, objects and antiquities of national significance, delegating specific powers and responsibilities to the Secretary of the Interior in the implementation of that policy. Also authorizes the imposition of a \$500 fine plus costs for violations of any rules promulgated under the act. A number of active and inactive military properties are listed as National Historic Landmarks.

**National Environmental Policy Act**, 42 U.S.C. §§ 4321-4347 is a declaration of national environmental policy which requires the federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony. Section 102 requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach. Specifically, all federal agencies are to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment. These statements are commonly referred to as environmental impact statements (EISs). Section 102 also requires federal agencies to lend appropriate support to initiatives and programs designed to anticipate and prevent a decline in the quality of mankind's world environment. This would include actions that affect any historic military properties or any properties or archaeological resources located on federal land.

***Archaeological Resources Protection Act of 1979***, 16 U.S.C. §§ 470aa-mm. Principal federal law protecting archaeological resources on all federal and Indian lands. It establishes a permit application process for the excavation and removal of archaeological resources located on these lands. Provides for the imposition of civil and criminal penalties for specific violations.

***Archaeological and Historic Preservation Act of 1974***, 16 U.S.C. §§ 469-469c-2. Provides for the preservation of historical and archaeological data that might otherwise be irreparably lost through alterations to the terrain resulting from federal agency construction-related activities. Upon notification by a federal agency that significant resources may be irreparably lost, the Secretary of the Interior must conduct a survey, preserve data, and consult with others regarding ownership and appropriate repository for items recovered.

***Antiquities Act of 1906***, 16 U.S.C. §§ 431-433. Imposes criminal sanctions for the destruction of historic or prehistoric sites on federally owned or controlled land without a permit.

***Department of Transportation Act of 1966***, 49 U.S.C. § 303. Prohibits federal approval or funding of transportation projects that require the “use” of any historic site, including active or inactive military sites, unless there is “no feasible and prudent alternative to the project,” and the project includes “all possible planning to minimize harm to the project.”

***Abandoned Shipwreck Act of 1987***, 43 U.S.C. § 2101 *et. seq.* Asserts title to abandoned shipwrecks within U.S. territorial waters and then transfers ownership to the state in whose submerged lands the shipwreck is located to facilitate the protection of historic shipwrecks. The United States retains ownership over all naval vessels, wherever located in the territorial sea of the United States or elsewhere in the world’s oceans.

***Native American Graves Protection and Repatriation Act of 1990***, 25 U.S.C. §§ 3001-3013. Provides for repatriation of Native American human skeletal material and related sacred items and objects of cultural patrimony. Also allows for the imposition of criminal penalties for the illegal trafficking in human remains and burial items.

***State historic preservation and environmental laws*** require state agencies to consider impact of proposed governmental actions on historic and archaeological resources, including those privately owned or controlled by local governments.

***Local government ordinances.*** The most important listing mechanism to protect cultural properties in the United States is found at the local level. States delegate authority to local governments to enact laws or ordinances for the protection of heritage resources. The specific scope and content of local planning, zoning, and preservation legislation varies considerably due to the differences among the states in the authority delegated to local governments, community need, and the type of resources protected. Generally, though, preservation ordinances regulate changes that would negatively affect or destroy the character that gave designated historic properties or historic districts their significance. There is a particular emphasis on mandatory control over changes in the exterior architectural features of designated buildings. Over 2,500 local governments across the United States have enacted some form of historic preservation ordinance. While these laws do not control properties owned by the federal or state governments, they would control inactive military properties that are privately, or in some cases, municipally owned.

***Department of Defense Policy.*** According to DOD Instruction Number 4715.16, Sept. 18, 2008, it is the policy of the Department to:

- a. Manage and maintain cultural resources under DoD control in a sustainable manner through a comprehensive program that considers the preservation of historic, archaeological, architectural, and cultural values; is mission supporting; and results in sound and responsible stewardship.
- b. Be an international and national leader in the stewardship of cultural resources by promoting and interpreting the cultural resources it manages to inspire DoD personnel and to encourage and maintain U.S. public support for its military.
- c. Consult in good faith with internal and external stakeholders and promote partnerships to manage and maintain cultural resources by developing and fostering positive partnerships with Federal, tribal, State, and local government agencies; professional and advocacy organizations; and the general public.

***Base Realignment and Closing (BRAC) process.*** The process of closing and consolidating military facilities had its origins in the 1960 as the military tried to adjust to the new realities of the Cold War. Originally an administrative process, Congress asserted more control by passing Public Law 95-82 in 1977. Between 1977 and 1987 no

bases were closed as Congress thwarted closures because of economic and political pressures in their districts. In an effort to break the deadlock, Congress introduced a new closure procedure in P.L. 100-526, enacted October 24, 1988. This process involved the use of an independent, bipartisan commission which made recommendations to Congress and the Secretary of Defense on closures and realignments. Congress had to accept or reject the commission's report in its entirety without singling out any individual recommendations. Congress refined this successful approach in 1990 (PL 101-510) with the Defense Department with drawing up the initial list of bases to be considered by the commission. This commission, held three rounds of closures in 1991, 1993, and 1995. In 2001



*Building in the historic district of Fort Sam Houston, Texas, undergoes renovation in preparation for the influx of workers brought by the 2005 round of Base Realignment and Closure. U.S. Army Environmental Command photo by Neal Snyder.*

Congress authorized a new round of military base closings, but delayed any action until 2005. That round of closings will be complete by September 15, 2011. In this last round there were 182 recommendations for closure and realignments. Criteria for selection involved the facilities' military value, other considerations such as financial, and impact on the closure on the community. The process considered what other uses the facilities could be put to including military, other federal government, state or local government or private. Transfers would be either no cost or sale. These closures were

accomplished within the parameters of the Base Closure Community Redevelopment and Homeless Act of 1994 and in compliance with the National Historic Preservation Act and the National Environmental Policy Act.

## **6. Financing Aspects**

The cost of preserving, restoring and maintaining cultural properties owned by the federal government is the responsibility of each federal agency. The active military properties used for defense purposes receive their funding through the Defense Department budget. Former military properties controlled by other federal agencies derive their funding from those agencies budgets, e.g. properties that are part of the National Park System receive their funding through the U.S. Department of the Interior. For former military properties no longer in federal ownership, funding comes from their owners—states and local governments and private organizations or individuals. Properties listed in the National Register of Historic Places or in a state register may be eligible for grants or tax benefits for their preservation or rehabilitation.

In 1990, Congress established the Legacy Resource Management Program to provide financial assistance to the Department of Defense (DoD) to assist in the preservation of the country's natural and cultural heritage. The program assists DoD in protecting and enhancing resources while supporting military readiness. Funding for the program is "fenced" so that it can only be used for cultural and natural resource preservation. Since its inception, the Legacy program has funded both demonstration projects and program development. The current emphasis is on projects with regional or DoD-wide benefit.



*Gettysburg National Military Park, National Park Service*

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