



Consultation Paper on:

The 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999

September 2005

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1. Foreword



This Consultation Paper represents an important step towards the UK's ratification of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention) and its two Protocols.

I believe that the UK's declared intention to ratify the 1954 Hague Convention and its two Protocols is an important signal of the priority we attach to the protection of cultural property in the event of armed conflict, both nationally and internationally.

Recently we have witnessed the full extent of the damage which an armed conflict can visit upon on cultural property. The siege of Dubrovnik in 1991; the destruction of the Bridge and Old City of Mostar in 1993; the burning of the National Library of Iraq; and the looting of the Baghdad Museum in 2003 have all left an unforgettable mark on the world's cultural landscape.

The 1954 Hague Convention upholds the principle that damage to cultural property belonging to any country results in damage to the cultural heritage of all humanity, since every people makes its contribution to the culture of the world. Ratification of the Convention will strengthen the UK's commitment to the protection of our own heritage; highlight our civic duty as part of an international community to respect the cultural property of other nations; and demonstrate that the UK takes seriously its commitments in the area of international humanitarian law.

I am certain that such protection cannot be effective unless both national and international measures have been taken to organize it in time of peace. Efforts will be made to increase public awareness and to ensure military personnel are fully informed of the practicalities of this ratification. I, and all those across Whitehall who support this project, are determined to do whatever we can to ensure the protection of cultural property from the potentially devastating effects of armed conflict.

A handwritten signature in black ink, which appears to read 'David Lammy'.

David Lammy MP
Minister for Culture

2. Executive Summary

In this document we are consulting stakeholders on a number of aspects of the Hague Convention and its Protocols in relation to how they should be implemented in the UK.

The Convention also introduces a number of obligations for UK military forces operating overseas. We are not consulting on the implementation of these, as we are discussing these issues direct with the Ministry of Defence and the relevant branches of the armed forces.

The Convention and its Protocols raise a number of interesting but complex questions regarding their implementation in the UK. In those cases where we think there is one solution that is most appropriate we have recommended that as the way forward and explained why. However, we welcome all views and would be pleased to receive comments either on the suggested way forward or on alternative solutions. For ease of collation, we ask respondents to use the Questionnaire provided (see Annex A).

The legislation and administrative arrangements concerning both the movable and the immovable cultural heritage in the UK differs in each of the four Home Countries. This consultation document has sought, wherever possible, to reflect those differences. We would, however, welcome any comments about how these proposals could be adapted to allow them to be implemented in each of the four Home Countries in such a way as to best take account of national circumstances.

A Partial Regulatory Impact Assessment for this proposal can be found at Annex B. However, the impact of ratification (the process by which the UK agrees to be bound in international law by the terms of the Convention and its Protocols) will be largely dependent on the outcome of this consultation process. A summary of the responses will be placed on the DCMS's website (www.culture.gov.uk)¹.

The deadline for responses is 2 December 2005.

¹ Please note that although a respondent may request confidentiality, this cannot be guaranteed. Please see Annex A for further details.

Consultation Paper on the 1954 Hague Convention and its two Protocols

All responses or questions relating to the content of this consultation should be sent (hard copy or electronically) to:

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3. Introduction

The UK Government publicly announced its intention to ratify the 1954 Hague Convention and accede to both its Protocols in May 2004, on the 50th anniversary of the Convention.

The Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention) was signed at The Hague on 14 May 1954. The Convention provides for a system of general and special protection of cultural property in situations of international and non-international armed conflict. Cultural property for this purpose is described as movable and immovable property of great importance to the cultural heritage of every people. The Convention is supplemented by two Protocols – the first adopted at the same time as the Convention, in 1954 (the First Protocol) and the second adopted in 1999 (the Second Protocol). A copy of the Convention, Regulations and the two Protocols can be downloaded from the website of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) at www.unesco.org/culture/laws/hague/html_eng/page1.shtml

The UK decided not to ratify the Convention when it was first drafted because, along with a number of other countries, it considered that it did not provide an effective regime for the protection of cultural property.

In 1991, the Netherlands Government and UNESCO conducted a review of the working of the Convention and the Protocol. This resulted in the adoption of the Second Protocol in 1999, at a Diplomatic Conference in The Hague. The UK welcomed the work on this Second Protocol and was actively engaged in its negotiation with the objective of helping to produce a Second Protocol that would enable the UK to ratify the Convention.

The ratification of the Convention and accession to its Protocols will send out an important message regarding the UK's commitment to the protection of cultural property in the event of armed conflict and will complete the UK's ratification of all the major international humanitarian law treaties.

4. An overview of the convention and its two protocols

The Convention

The Convention is the principal international instrument devoted specifically to the protection of cultural property in armed conflict. The basic principles enshrined in the Convention are now regarded as part of customary international law.

The Convention is an instrument of international humanitarian law, which was negotiated under the auspices of UNESCO. Its language and structure are, however, not always straightforward (for example, the Articles relating to one particular issue can be spread throughout different parts of the Convention). Ease of understanding is also made more difficult by the fact that the two Protocols supplement the main text of the Convention and, in some cases, the two Protocols supplement the same Article of the Convention.

Thus, in this section and throughout the document we have tried, wherever possible, to provide explanatory text and, where necessary, a commentary on the impact of the two Protocols on each Article of the Convention. For those who really want to understand the legislation in detail, however, we recommend that they read the Convention itself and its two Protocols.

The Convention applies to armed conflicts of an international character (whether or not a formal state of war exists between the parties concerned) and to cases of partial or total occupation. The Convention also applies in general to conflicts not of an international character. Some of its provisions are intended to apply not only in time of hostilities but also in time of peace. Currently, there are 114 countries (or “States Parties”) that have ratified the Convention.

The Convention provides a definition of cultural property, which it places under a regime of “general protection”, as including movable and immovable property, such as:

- monuments of architecture, art or history;
- archaeological sites;
- works of art;

- manuscripts, books and other objects of artistic, historical or archaeological interest; and
- scientific collections and important collections of books or archives.

It also includes buildings designed to house cultural property, such as museums, libraries, depositories of archives; as well as temporary refuges intended to shelter movable cultural property in the event of armed conflict and centres containing large amounts of cultural property. To qualify as cultural property, items must be of “great importance to the cultural heritage of every people”.

In time of armed conflict, parties to the Convention are required to respect cultural property situated within their own territory as well as within the territory of other Parties, by refraining from using the property for military purposes and by refraining from committing any hostile act against the property. “Imperative military necessity” is the only ground on which this obligation to respect cultural property can be waived.

States Parties also undertake to prohibit, prevent, and, if necessary, stop any form of theft, pillage or misappropriation of cultural property or any acts of vandalism directed against it. In addition, they undertake to refrain from requisitioning movable property in other States. Acts of reprisal against cultural property are also prohibited. These obligations are absolute ones and there is no waiver for ‘military necessity’.

A State Party that is an occupying power must, as far as possible, support the competent national authorities of the occupied country in safeguarding and preserving its cultural property, as well as take any necessary preservation measures, where cultural property is damaged by military operations and the competent national authorities are unable to take such measures themselves. To facilitate the identification of cultural property protected by the Convention, States Parties may mark cultural property with a distinctive emblem.

The Convention also provides for a system of ‘special protection’ to be afforded to a limited number of refuges, intended to shelter movable cultural property in the event of armed conflict, and to centres containing monuments and other immovable cultural property of very great importance.

Since the entry into force of the Convention limited use has been made of the regime for special protection (there is currently only one centre containing monuments and five refuges on the Register). In response, the Second Protocol introduced the regime of ‘enhanced protection’. Between States Parties to the Second Protocol the ‘enhanced protection’ regime replaces the special protection regime.

The First Protocol

There are currently 91 States Parties to the First Protocol. The purpose of the Protocol is to prevent Parties from exporting cultural property from territories that they occupy during armed conflict, and to provide for the return of cultural property deposited with a third State for safekeeping during a conflict.

The provisions of this Protocol have to some extent been overtaken by the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the UK acceded to this Convention on 31 October 2002); Article 11 of the 1970 Convention requires States Parties to regard as ‘illicit’ the export and transfer of ownership of cultural property under compulsion from a territory under occupation.

The Second Protocol also contains provisions requiring States Parties to, among other things, prohibit and prevent in relation to the occupied territory any illicit export, other removal or transfer of ownership of cultural property.

The Second Protocol

The Second Protocol, adopted on 26 March 1999, was designed to improve the application and effectiveness of the Convention. There are currently 32 States Parties to the Second Protocol.

The Second Protocol applies to situations of international and non-international armed conflict, but not to situations of internal disturbances and tensions, such as riots.

The Second Protocol provides clarification of the measures that need to be taken in peacetime to safeguard cultural property and specifies the circumstances in which the obligation to protect cultural property can be waived on grounds of ‘imperative military necessity’.

The Second Protocol creates a new, further category of protection, called “enhanced protection”, for certain cultural heritage which is of the greatest importance for humanity and which must not be used for military purposes or to shield military sites.

Parties to a conflict are obliged to ensure the immunity of cultural property under enhanced protection by refraining from making such property the object of attack and refraining from any use of the property or its immediate surroundings in support of military action. Immunity from attack may be lost if, and for as long as, the property becomes, by its use, a military objective. Even then, the property may only be attacked in limited circumstances.

The Convention explained – Part 1²

What is the difference between general protection, special protection and enhanced protection at a glance?

General Protection

The system of general protection applies to all cultural property covered by the Convention (which must meet the definition of being of great importance to the heritage of every people). Articles 3, 4 and 5 of the Convention, plus Articles 1 and 3 of the First Protocol and Articles 6, 7, 8 and 9 of the Second Protocol constitute the full range of measures that provide general protection. In short, these are as follows:

Protection

- Parties to the Convention must prepare in peace-time to safeguard their own cultural property against foreseeable effects of armed conflict (C, Art 3).
- Parties must also respect cultural property in their own and other Parties' territory by the following:
 - i. not using cultural property or its immediate surroundings for any purpose likely to expose it to destruction or damage in the event of armed conflict;
 - ii. not directing any act of hostility against cultural property (C, Art 4).

Exception

- The obligation to respect cultural property, described in the second bullet point above, may be waived only on the basis of "imperative military necessity" (C, Art 4).
- This waiver may be invoked:
 - i. for defending troops – to use cultural property for purposes likely to endanger it, only if there is no feasible alternative available to obtain a similar military advantage (P2, Art 6)
 - ii. for attacking troops – to attack cultural property, only when that property has by its function, been made into a military objective and there is no feasible alternative available to obtain a similar military advantage.

In both cases, effective advance warning must be given, circumstances permitting (P2, Art 6).

The obligation to respect cultural property also includes other provisions such as preventing acts of vandalism, theft, pillage or misappropriation and refraining from reprisals against cultural property. There is no waiver for these obligations.

Precautions

- Parties to a conflict must, to the maximum extent feasible, either move moveable cultural property away from military objectives or provide it with adequate *in situ* protection. They must also avoid placing military objectives near cultural property (P2, Art 8).
- Parties to a conflict must do everything feasible to ensure that cultural property is not attacked or damaged, even indirectly, owing to military operations. (P2, Art 7).

² DCMS is indebted to the International Committee of the Red Cross (ICRC) for the following shortened explanations of general and enhanced protection. See ICRC Advisory Service on International Humanitarian Law, Fact sheet on the 1954 Hague Convention and its Protocols.

Special Protection

The 1954 Convention provides a system of special protection for cultural property which is of very great importance to the heritage of every people. In practice, this system of special protection was not widely taken up. Nonetheless, its provisions are as follows:

Protection

- Parties are required to ensure that cultural property under special protection is immune from any act of hostility directed against it and from any use of such property or its surroundings for military purposes (C, Art 9)

Exception

- A party may withdraw immunity for cultural property under special protection if, and for as long as, the other party violates its obligations in Art 9. (C, Art 11)
- The immunity may also be withdrawn in exceptional cases of unavoidable military necessity, for as long as that necessity continues. This decision can only be taken by divisional commander rank or above. (C, Art 11)

Enhanced Protection

In response to the limitations of the 1954 system, the Second Protocol introduces a new system of enhanced protection for cultural property that is “of the greatest importance for humanity” and is not used for military purposes. If property has been granted both special and enhanced protection, only enhanced protection applies between States that have acceded to the Second Protocol.

Protection

- Parties shall ensure the immunity of cultural property under enhanced protection by not using the property or its immediate surroundings in support of military action. (P2, Art 12).
- Parties to a conflict must refrain from attack against property under enhanced protection. (P2, Art 12).

There can be no waiver of these obligations.

Exception

- The obligation not to attack property under enhanced protection does not apply if such property has, by virtue of its use, become a military objective. Attack is permitted only if it is the only feasible means of terminating such use and if precautions are taken to minimise damage to the property. Effective advance warning must be given, circumstances permitting. (P2, Art 13)

Precautions

- The cultural property under enhanced protection must not be used for military purposes or to shield military sites and the party which has control over it must make a formal declaration that it will not be used in that way. (P2, Art10)

Conclusion

In short, the principal difference between general, special and enhanced protection does not lie in the level of protection that each affords (all three involve refraining from using cultural property for military purposes and from attacking cultural property). The main difference is in the exception criteria according to which these obligations can be waived and in the precautions that must be taken when attacking the property. The exception criteria for special and enhanced protection are more tightly drawn than those for general protection.

Crucially, the Second Protocol reinforces the provisions relating to jurisdiction and criminal responsibility in the Convention, by requiring States Parties to the Second Protocol to establish criminal jurisdiction over, and prosecute or extradite, persons committing certain serious violations of the Convention or the Second Protocol³. Jurisdiction must be established over such violations when an offence is committed within their territory or when committed by their nationals. In the case of certain offences, they must also establish jurisdiction when the offender is present within their territory. However, the obligation to establish such jurisdiction only applies to the nationals and armed forces of States Parties to the Second Protocol.

The Second Protocol establishes new institutional structures to supervise the implementation of the Protocol, including setting up a new standing committee: the Committee for the Protection of Cultural Property in the Event of Armed Conflict. To assist towards meeting the cost of national measures to implement the Convention, the Second Protocol provides for a Fund to be established for the protection of cultural property in the event of armed conflict. The resources of the Fund are intended to consist partly of voluntary contributions made by States Parties to the Second Protocol. The Second Protocol also expands on the general dissemination provisions in the Convention by listing specific measures that States must take, such as developing and implementing peacetime training and education programmes.

³ These serious violations are defined in Art 15 of the Second Protocol.

5. What we are consulting on

What follows is a brief description of each of the Articles of the Convention and its Protocols and, where appropriate, a discussion of the issues these raise for the UK. The order these are presented in generally follows the order adopted in the Convention and its Protocols.

The Articles of the Convention

Article 1. Definition of cultural property

Article 1 provides a definition of “cultural property” for the purposes of the Convention. The definition is as follows:

- (a) movable or immovable property of great importance to the cultural heritage of every people. By way of example, the Convention mentions several forms of such property:
- monuments of architecture, art or history, whether religious or secular;
 - archaeological sites;
 - groups of buildings which, as a whole, are of historical or artistic interest;
 - works of art;
 - manuscripts, books and other objects of artistic, historical or archaeological interest;
 - scientific collections;
 - important collections of books or archives or of reproductions of the property defined above.
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in (a); and
- (c) centres containing a large amount of cultural property as defined in (a) and (b) to be known as “centres containing monuments”.

This definition raises the question of how we in the UK should interpret the phrase, “movable or immovable property of great importance to the cultural heritage of every people”. This is an important

question because its answer determines what cultural property may be offered the general protection afforded by the Convention⁴.

Consideration

The home countries of the UK already have systems for identifying and designating the different parts of our movable and immovable cultural heritage, though these vary across the different nations. In broad terms, these systems are as follows:

Immovable cultural heritage

- listed building status for historic buildings (which covers a wide variety of historical buildings and structures ranging from, among other things, churches, historic houses and the Royal Palaces to terraced houses and individual statues);
- scheduled ancient monument status (or scheduled monument status in Scotland) for archaeological sites and ancient monuments;
- conservation area status for identifying areas or clusters of buildings with a group character;
- World Heritage Site status for those parts of our heritage which are of outstanding universal value from the point of view of history, art or science;
- Registered parks and gardens for our most historic parks and gardens;
- Registered historic battlefields (in England and Wales only);
- Protected Wrecks for designated underwater sites.

Movable cultural heritage

- a number of national museums, galleries and depositories which house our national collections of artistic, scientific, archaeological and other treasures;
- a small number of other museums directly sponsored and funded by central Government;

⁴ Please note that the Convention applies only to cultural property and not to the natural environment. It does not, therefore, apply to such things as landscape areas, protected natural sites, national parks, wildlife reserves or areas of outstanding natural beauty etc. These matters are covered by the 1972 UNESCO Convention concerning the Protection of World Cultural and Natural Heritage, which the UK ratified on 29 May 1984.

- a number of designated museums whose collections have been identified as being pre-eminent collections of national and international importance;
- a number of university museums (some of whose collections have been designated for their national and international importance);
- a national network of local authority museums which house collections and artefacts, often primarily of regional or local interest (though a number of these also contain collections which have been designated as of national importance);
- groups of armed services museums and museums run by the National Trust, English Heritage and Historic Scotland;
- a large number of independent museums managed outside the traditional frameworks of central or local government⁵;
- the Public Record Offices/National Archives and a substantial network of regional and local archives which house our most important archives and manuscripts;
- five legal deposit libraries which receive one copy of every publication in the United Kingdom and also house collections of national and international importance; and
- a substantial collection of other libraries, both public and private, which contain books and manuscripts of national significance.

Thus, one obvious answer to the question of what constitutes cultural heritage of “great importance to the cultural heritage of every people” would be for the UK to decide that the provisions of the Convention should apply to all or most of the above categories of immovable and movable cultural property. There are, however, difficulties with this approach.

Firstly, there is a problem of numbers. There are, for example, more than 500,000 listed buildings in the UK, nearly 20,000 scheduled ancient monuments, some 8,500 conservation areas (some of which can contain hundreds of buildings and structures), around 2,500 accredited museums, and around 4,600 public libraries throughout the UK.

⁵ In addition to all these different types of museum, there is in place a system for accrediting museums which shows that these museums meet clear basic requirements on how they care for and document their collections, how they are governed and managed, and on the information and services they offer to their users. Accreditation is open to all museums.

The difficulty that arises, therefore, is that if we put forward an excessive number of sites for protection that is likely to make the protection unworkable in practice. An enemy confronted with a multitude of protected sites (particularly in an urban setting) would be unable to direct its operations via the least important obstacles and would probably have to resort to claiming military necessity to achieve its goals. Putting forward too many sites would, therefore, have the opposite effect to that desired in that it would actually jeopardise the level of protection that can be provided by the Convention.

Thus, there is a need to strike a balance between protecting as much of our heritage as possible, whilst both staying within the definition set out by the Convention and not seeking to protect so much that it actually jeopardises the protection given.

Indeed, this approach is reflected in the practice of those States Parties that have ratified the Convention and notified UNESCO of the details of their implementation. These States have drawn up very restrictive lists of cultural property that merits protection under the Convention. Further details of the numbers involved can be found at page 37.

Thus, we need to agree an approach in the UK that allows us to decide what items of our heritage fall within the definition offered by the Convention of being “of great importance to the heritage of every people”. We consider that this analysis should be directed at the items that are currently designated for protection, so that the list of items does not become too extensive.

In the case of immovable heritage, a further problem is that not all heritage designation systems, most importantly the scheduling system, incorporate any measure of grading or relative importance and, thus, it is not possible for us to identify in any objective way which parts of our heritage fall within the terms of the definition. We need to have objective criteria for this, otherwise we would be unlikely to get agreement on what should be protected under the Convention.

This situation will be helped in England by the **Heritage Protection Review**. The ongoing Heritage Protection Review is developing plans for a new designation system in England that will bring together the currently separate designation regimes of listing, scheduling and registering into a new Register of Historic Sites and Buildings of England and is aiming to provide a clear set of criteria for assessing the importance of each entry on the Register. These proposals will be taken forward in a Heritage Protection White Paper, due to be issued in 2006, and subsequent legislation. These proposals will not, however, affect heritage legislation in the Devolved Administrations. The Heritage Protection Review is likely to be completed before we are in a position to ratify the Hague Convention and so we will need to revisit the issue of the immovable heritage that is to be protected under the Convention once the Review is completed.

The principal area in which the absence of a grading system presents a difficulty in terms of the Hague Convention is in relation to scheduled ancient monuments. The lack of grading means that, for example, a single pill box has the same importance as Stonehenge (although Stonehenge is also a World Heritage Site). This issue will be considered as part of the Heritage Protection Review and, once that has been completed, we will take account of any changes to the designation of scheduled ancient monuments in the development of our implementation plan for the Hague Convention. Similarly, the Review will also look at how to treat the issue of Grade II* buildings in the context of the new Register and any changes here will also need to be taken into account in the UK's implementation plan for the Convention. The Devolved Administrations will also need to consider this issue and, in Scotland, the issue of the Inventory of Gardens and Designed Landscapes

On the movable heritage side, the system of designation (which identifies outstanding collections of national and international importance) currently only applies to museums and galleries. The scheme is, however, currently being extended to cover libraries and archives. A first round of designated libraries and archives will be announced in September 2005 and a second round will be announced in 2006. In Scotland, the Scottish Executive has recently asked the Scottish Museums Council to conduct a consultation on proposals to set up a Significance Recognition Scheme to enable the Scottish Executive to recognise a schedule of collections in non-National museums and galleries that are of such importance and quality that they are worthy of formal recognition and support by the national government. The UK's implementation plan for the Hague Convention will, thus, also need to take account of any changes that emerge as a result of these developments.

In Scotland, Ministers received in June 2005 the Report of the **Cultural Commission**. The Commission's recommendations cover a wide range of cultural matters in Scotland, including the organisation of the sector, and the recommendation that "national" status of cultural organisations in Scotland should be defined by the Scottish Parliament and the list of national bodies should be reviewed regularly. The Scottish Executive is expected to publish its response to the Commission recommendations before the end of 2005 and this response is likely to impact on the way in which the Convention should be implemented in Scotland.

Proposal

The Government takes the view, therefore, that the most pragmatic solution to achieving the balance required is to restrict the application of the Convention only to that cultural property which we can demonstrate objectively is of "great importance". For the reasons explained above we are currently only able to do that in England on a provisional basis whilst we await the outcome of the Heritage

Protection Review. Similarly, in Scotland we can also do that only on a provisional basis whilst awaiting the Scottish Executive's response to the Report of the Cultural Commission. Using this approach we provisionally propose that the protection afforded by the Convention should be restricted to the following categories of cultural property:

Immovable cultural heritage

- all listed buildings of Grade I (category A in Scotland and Northern Ireland) status (this would be about 7,000 list entries in England and Wales and around 3,650 Category A buildings in Scotland);
- in England, all historic parks and gardens of Grade I status (this would be 126 list entries);
- all UK World Heritage Sites, excluding those sites which are inscribed as natural sites (this would be 22 sites).

Movable cultural heritage

- the collections of the Museums and Galleries that are directly sponsored or funded by Government (see Annex C);
- the museums, galleries and universities in England with designated collections and in Scotland with important collections (see Annex C); and
- the National Record Offices and the five legal deposit libraries in the UK.

Question 1 – On the basis of the existing designation systems in place in the UK, do you agree that the general protection afforded by the Convention should be extended only to the above six categories of immovable and movable cultural heritage?⁶

⁶ Please bear in mind that at this stage we are not asking you to nominate individual buildings or collections that should be protected under the Convention. We are simply seeking to establish the categories of cultural property that should be eligible for general protection.

Should coverage of the Convention be mandatory or voluntary?

Once we have established to which categories of cultural property the Convention should apply then the next question that arises is whether the Government should require all cultural property in those categories to be protected or whether this should be a voluntary decision that is left to the owner or guardian of each cultural property potentially affected.

Consideration

In order to ensure that the Convention provides the maximum protection possible to the UK's cultural property it is important to ensure that its coverage is as wide as possible within the categories of cultural property chosen to be protected. One way to do that, of course, would be to require all relevant cultural property to be protected by the Convention.

The Government does not, however, have any existing powers to require owners to agree that their cultural property should be protected by the Convention.

Proposal

We do not consider that it would be appropriate for the Government to seek new powers to force owners of cultural property to be protected by the Hague Convention. Instead, we believe that the decision as to which properties should be protected by the Convention should be left to the actual owners, guardians or trustees of each property within the categories chosen.

Although some of the movable and the immovable cultural property that is encompassed by the categories proposed is owned by private owners and charitable organisations, the large majority is either in receipt of public funds or is owned by a public sector body.

In the case of public bodies or bodies in receipt of public funds the Government can make clear that it sees the protection of these properties under the Convention as a priority and an important addition to the mechanisms for protection of the UK's cultural heritage. In the case of both private and charitable owners we believe that these owners, guardians or trustees will have the best interests of their property at heart and will want, wherever possible, to apply the maximum protection measures that are available to their property.

The main reasons why private or charitable owners might be concerned about application of the Convention to their property are likely to be connected either with (i) concerns about the potential for increased costs or bureaucracy or (ii) concerns about increased chances of theft or looting as a result of the increased profile from inclusion.

We are seeking to implement the Convention in such a way as to eliminate extra costs and extra bureaucracy for owners of cultural property (see section on Potential Costs of the Convention at page 39) and to reduce the chances of increased looting or theft (see section on Special Protection at page 22).

Thus, in practical terms, we believe that the number of owners or guardians of cultural property within the categories identified who will not wish the Convention to apply to their property will be extremely few.

Question 2 – Do you agree that the decision on whether any particular cultural property should be protected by the Convention should be left to the individual choice of the property's owners, guardians or trustees?

Article 2. Protection of cultural property

Article 2 explains that for the purposes of the Convention the protection of cultural property shall comprise the safeguarding of and respect for such property.

Article 3. Safeguarding of cultural property

Article 3 commits States Parties to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.

The Convention and its Protocols explained – Part 2**What safeguarding measures are considered appropriate?**

Article 3 of the Convention is rather vague in its instruction to take “such safeguarding measures as are considered appropriate”.

Fortunately, the Second Protocol (Article 5) expands on the meaning of “safeguarding cultural property” by giving some examples of the kind of preparatory measures that should be taken in peace-time.

These are to include:

- the preparation of inventories;
- the planning of emergency measures for protection against fire or structural collapse;
- the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property; and
- the designation of competent authorities responsible for the safeguarding of cultural property.

The first three measures all represent common sense precautions and are likely to be covered by existing contingency planning for an emergency or natural disaster. The Government does not intend to impose any additional requirements on owners of cultural property to safeguard their property in peace-time as a result of the Government’s ratification of the Convention and accession to its Protocols. Once we have decided which properties will receive general protection under the Convention we will also then be in a position to decide which are the most appropriate competent authorities for safeguarding those cultural properties in the event of armed conflict.

As a result, we do not anticipate any increased costs or bureaucracy for owners of cultural property arising from the obligations in Article 3.

Consideration

Thus, following on from the clarification provided by Article 5 of the Second Protocol, the question that arises is who should be responsible for implementing the safeguarding measures for cultural property in the UK?

Proposal

Once again, we take the view that the most appropriate body to implement safeguarding measures in peace-time is the body that has direct responsibility for the cultural property or the cultural objects in question. The current owner, guardian or trustee should already have contingency plans in place to cover a disaster or civil emergency and we do not believe it would be appropriate to appoint a new body to supplant those arrangements.

In short, we believe that the owners, guardians or trustees of cultural property will have the best interests of their properties or collections in mind and that they are best placed to decide how to implement safeguarding measures on the ground and in the context of their own cultural property. Of course, any owners or guardians who are uncertain of how best to do that in the context of their own property will be able to seek the advice and guidance of either English Heritage, Cadw, Historic Scotland, the Environment and Heritage Service (NI) or the Museums, Libraries and Archives Council, Scottish Museums Council and Scottish Library and Information Council.

Question 3 – Do you agree that the most appropriate body to undertake the peace-time safeguarding measures set out in Article 5 of the Second Protocol is the existing owner, guardian or trustees of a cultural property?

Article 4. Respect for cultural property

Article 4 requires States Parties to respect cultural property situated within their own territory as well as within the territory of other Parties by:

- a) refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection, for purposes which are likely to expose it to destruction or damage in the event of armed conflict,
- b) refraining from any act of hostility directed against such property;
- c) undertaking to prohibit, prevent and, if necessary, put a stop to theft, pillage or misappropriation of, and any acts of vandalism directed against cultural property. Refraining from requisitioning movable cultural property situated in the territory of another State Party; and
- d) refraining from any act of reprisals against cultural property.

The obligations in (a) and (b) above can only be waived in cases where “imperative military necessity” applies. The obligations in (c) and (d) above cannot be waived.

The Convention and its Protocols explained – Part 3

What is meant by imperative military necessity?

Once again, the phrase in Article 4 of “imperative military necessity” is ambiguous. The Second Protocol (Articles 6) provides further explanation of the basis on which a waiver on the grounds of imperative military necessity may be invoked. This states that it is only permissible to direct an attack against cultural property when, and for as long as:

- that cultural property has by its function been made into a military objective; and
- there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective.

Furthermore, Article 6 specifies that defending troops may only use their own cultural property for purposes which are likely to expose it to destruction or damage when and for as long as no choice is possible between such use and another feasible method for obtaining a similar military advantage.

It also specifies that normally the decision to invoke imperative military necessity shall only be taken by an officer of a force the equivalent of a battalion in size and an effective advance warning should be given whenever circumstances permit.

We have discussed in the context of Article 1 above which categories of cultural property should be afforded such respect in the UK. In the context of ensuring respect for, and safeguarding of, cultural property in the territory of other States Parties we are working with the Ministry of Defence and the Armed Forces to ensure that the training of British soldiers and officers reflects this requirement.

Article 5. Occupation

Article 5 sets out the obligations that we have to support another State Party in safeguarding and preserving its cultural property in the event that UK troops occupy the whole or part of their territory. Once again, we are working with the Armed Forces to ensure that these requirements are built into military planning and training.

Article 6. Distinctive marking of cultural property

Article 6 provides that cultural property “may bear a distinctive emblem so as to facilitate its recognition”. This Article should also be read in conjunction with *Article 16 Emblem of the Convention* (which specifies the type of distinctive emblem to be used). Thus, the next question which arises is whether the UK should make the distinctive marking of cultural property mandatory or voluntary.

Consideration

When considering this issue it is important to bear in mind that upon ratification of the Convention and accession to its Second Protocol, the UK will submit a list to UNESCO of all the cultural property that has been agreed should be designated as being protected by the provisions of the Convention. In the event of armed conflict, this list will be made available to other States Parties, so they will be aware of which property is protected.

This means that affixing an emblem is not a prerequisite to ensuring that a building is protected (that is provided by the inclusion of a property on the UK’s notification list). The fixing of an emblem is designed as a visual aid to troops on the ground during the event of an armed conflict. The commanders of those troops are, however, still under an obligation to know what cultural property is protected and to ensure that it is not attacked (unless imperative military necessity applies) even when a distinctive emblem is not affixed.

Other issues to consider include:

- would the placing of a permanent emblem detract from the aesthetic appeal of the cultural property;
- would the actual risk of an armed conflict in the UK justify the cost of producing and storing an emblem for use only in the event of armed conflict;
- what size should the emblem be; and
- where and how should the emblem be fixed.

Proposal

We take the view that because the affixing of the emblem is not required for cultural property to receive the protection afforded by the Convention then the UK should adopt an approach that does not require the emblem to be affixed to each property. However, if the owners of a particular cultural property would like to affix the emblem to their property then they should not be prevented from doing so. It should be clear, however, that in these cases the costs of producing and affixing the emblem should be borne by the body that decides it wants to affix the emblem.

Question 4 – Do you agree that the UK should leave the decision to affix the special emblem to a particular cultural property to the owner, guardian or trustees of the property or objects in question?

Article 7. Military measures

This states that military regulations or instructions should be introduced in peace-time to ensure compliance with the Convention. The Article also requires States Parties to establish in peace-time within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.

The Ministry of Defence is responsible for operations at home and abroad and for the provision of personnel who can advise on the protection of cultural property and, where necessary, liaise with the civilian authorities. There is, however, no current direct military threat to the UK and it is assessed that there would be considerable warning of such a threat emerging in the future. Therefore, home defence plans are held dormant and will only be reinvigorated should the situation change.

Articles 8-11. Granting of special protection

These Articles cover the granting of special protection to:

- (i) a limited number of refuges intended to shelter movable cultural property in the event of armed conflict,
- (ii) centres containing monuments; and
- (iii) other immovable cultural property of very great importance, provided that they:
 - a. are situated at an adequate distance from a large industrial centre or important military objective constituting a vulnerable point; and
 - b. not used for military purposes.

To be given special protection the Party must undertake, in the event of armed conflict, to give absolute immunity to cultural property under special protection (i.e. to prohibit any act of hostility directed against such property) and to make no military use of the specially protected property or its surroundings, except in limited circumstances. It must also notify UNESCO of the property that it wishes to extend special protection to by making an entry in the “International Register of Cultural Property under Special Protection”.

The Convention and its Protocols explained – part 4

How special protection has worked in practice

Since its introduction in 1954, the regime for special protection has not been widely taken up by States Parties. Of the 114 States Parties that have ratified the Convention only 4 have made use of its provisions for special protection. These are the Holy See to nominate the Vatican City as a centre containing monuments and Austria (one refuge), the Netherlands (three refuges) and Germany (one refuge) to establish refuges.

The main reasons why States Parties have not made use of special protection are twofold. Firstly, the regime has been seen as having an element that is too political. States Parties are required to register cultural property which they think should be accorded special protection on the International Register of Cultural Property under Special Protection. However, entry on the Register can be challenged by the objection of just one other State Party. Indeed, this has actually happened in a number of cases and has led to cultural property being removed from the Register.

The second reason that special protection has not been widely used is that States Parties have expressed concern that creating a refuge for movable cultural property and then having to enter its details on the International Register simply acts to advertise the presence of the refuge. Making its location publicly known increases the chances that looting might take place in the event of armed conflict (particularly at the start of hostilities when law and order are more likely to breakdown temporarily). States Parties have, therefore, tended to prefer to establish refuges but not give them special protection, so that their location can be kept secret.

It was because of these problems with the special protection regime, leading to it not being adopted by States Parties, that the Second Protocol introduced the regime of enhanced protection with an improved set of conditions for nominating and respecting cultural property under enhanced protection. The measures covering enhanced protection are discussed in more detail at page 29.

Proposal

We believe that for the same reasons that most States Parties have not made use of the regime of special protection, the UK should similarly not make use of these provisions and that we should only take advantage of the regime for enhanced protection.

Whilst there are currently 114 State Parties that have ratified the Convention and only 32 that have acceded to the Second Protocol, we still believe that this is the most appropriate course of action because (a) the immediate threat of war against the UK is very low, (b) many State Parties are giving active consideration to acceding to the Second Protocol and, therefore, (c) the number of State Parties that have agreed to abide by its provisions is likely to rise significantly in the next few years.

Question 5 – Do you agree that the UK should not nominate any of its cultural property for special protection but instead make use of the provisions for enhanced protection contained in the Second Protocol?

Articles 12–14. Transport of cultural property

These Articles provide for transport exclusively engaged in the transfer of cultural property to be placed under protection at a States Party's request and given immunity from seizure, capture and prize.

Article 15. Personnel

This Article requires that personnel engaged in the protection of cultural property shall be respected (insofar as is consistent with the interests of security) and, if they fall into the hands of the enemy, shall be allowed to continue to carry out their duties whenever the cultural property for which they are responsible has also fallen into the hands of the enemy.

Article 16. Emblem of the Convention

This Article describes the emblem mentioned in Article 6.

Article 17. Use of the emblem

Provides further details of the circumstances in which the emblem may be used. In short, the emblem may be repeated three times to identify cultural property and transport under special protection and used alone as a means of identifying cultural property otherwise covered by the Convention and personnel engaged in its protection.

In addition, this Article forbids, during armed conflict, use of the emblem for property or for any other purpose that is not covered by the Convention. It also requires that the use of the emblem on immovable cultural property is valid only if at the same time there is displayed an authorisation duly signed and dated by the competent authority of the State Party.

Articles 18-19. Scope of application of the Convention

These Articles explain that the Convention applies not only to direct international armed conflict between States Parties but also to conflicts not of an international character and to occupations of States Parties' territory, even if the occupation meets no resistance. They also specify that in the event of an armed conflict in which only one Party has ratified the Convention, that Party is still bound by its obligations under the Convention if the opposing Party has declared that it accepts the provisions of the Convention and applies them.

Articles 20-28. Execution of the Convention

These Articles set out a range of provisions, including establishing a set of regulations for the execution of the Convention as an integral part of the Convention. The requirements of the regulations are considered in the next section of this paper.

In addition, these Articles set out the procedures for conciliation, co-operation with Protecting Powers⁷, when the assistance of UNESCO can be called upon, when special agreements can be made, how the Convention should be disseminated, the provision of official translations of the Convention and of periodic reports on implementation measures, the arrangement of meetings and the application of sanctions to those breaking the Convention. The issue of sanctions is discussed more fully in the section on the Second Protocol at page 34.

Articles 29-40. Final Provisions

These Articles set out, among other things, a series of administrative requirements concerning formal legal issues such as the signature, ratification, accession and entry into force of the Convention. They also allow States Parties to declare, at the time of ratification, that the Convention will extend to their overseas territories.

Regulations for the execution of the convention

Article 1. International list of persons

This Article provides for UNESCO to compile an international list of all persons nominated by the States Parties as people qualified to carry out the functions of the Commissioner-General for Cultural Property.

The UK will, therefore, be asked to nominate a suitable person to go on the list for possible appointment as a Commissioner-General for Cultural Property.

⁷ A Protecting Power is a State appointed by one Party to an armed conflict, and accepted by the opposing Party, to safeguard the interests of the former by, for example, visiting prisoners of war, by providing a channel for communications and helping to settle any disagreements.

The Convention and its Protocols explained – Part 4

What is the role of the Commissioner-General?

The functions of the Commissioner-General are set out in Article 6 of the Regulations. These state that the Commissioner-General for cultural property shall:

- deal with all matters referred to him⁸ in connection with application of the Convention;
- have powers of decision and appointment;
- have the right to order an investigation or to conduct it himself;
- make any representations to the Parties to the conflict or their Protecting Powers (see Article 21 of the Convention for information on Protecting Powers) which he deems useful;
- draw up such reports as may be necessary; and
- if there is no Protecting Power, he shall exercise the functions of Protecting Power.

Article 2. Organisation of control

This Article requires a State Party, once engaged in an international armed conflict, to appoint a representative for cultural property.

Since this appointment does not need to take place until the UK is engaged in armed conflict, we are not seeking views at this stage on who would be a suitable appointee. However, if you have any strong views on who would be suitable for this role then please include these in the box provided in the Questionnaire (Annex A) for “any other comments”.

Article 3. Appointment of delegates of Protecting Powers

This Article allows for any Protecting Powers acting for each of the Parties in conflict to appoint accredited delegates from among its diplomatic or consular staff.

Article 4. Appointment of a Commissioner-General

This requires that a Commissioner-General shall be chosen from the international list of persons by joint agreement of the Party to which he or she will be accredited and the Protecting Powers acting on behalf of the opposing Parties.

⁸ The original treaty only uses the masculine. However, that should not be interpreted as excluding women as the use of the masculine is intended to include the feminine.

Articles 5-6. Functions of delegates and the Commissioner-General

These Articles set out the various functions of the delegates of the Protecting Powers (to note violations and make representations to secure cessation of attacks on cultural property) and the Commissioner-General (as explained above).

Article 7. Inspectors and experts

This Article allows the Commissioner-General to appoint an inspector of cultural property for a specific mission, who may have recourse to the services of experts.

Article 8-10. Discharge of the mission of control and substitutes for Protecting Powers

These Articles set the limits of the Commissioner-General's mandate, who should pay his or her expenses and the appointment of substitute Protecting Powers.

Articles 11-16. Special Protection

These Articles concern the setting up of improvised refuges, requests for registration on the International Register of Cultural Property under Special Protection, the procedure for raising objections to such requests for registration and how to cancel the provision of special protection for any property.

Articles 17-19. Transport of cultural property

These Articles set out the procedure to obtain immunity, for transport of cultural property abroad or for transport within an occupied territory.

Articles 20-21. The Distinctive Emblem

These Articles concern the regulations for affixing the emblem and the forms of identification that should be carried by persons involved in the protection of cultural property.

First protocol

The principal purpose of the First Protocol is to prevent the export of cultural property from occupied territory and to provide for the restitution of such illegally exported objects.

Section I (Paragraphs 1-4)

This Section commits States Parties to prevent the export of cultural property from a territory occupied by it during an armed conflict; to take into protective custody any cultural property imported into its territory directly or indirectly from any occupied territory; to return, at the close of hostilities, cultural property in its territory which has been removed from territory occupied by it; and to pay an indemnity to the holders in good faith of any cultural property where it was exported in breach of a State Party's obligation to prevent the export of cultural property from territory that it occupied.

Section II (Paragraph 5)

This Section requires any State Party that has agreed to look after the cultural property of another State Party in order to safeguard it for them during an armed conflict to return that cultural property at the end of the hostilities in which the other State Party is engaged.

The Convention and its Protocols explained – Part 5

What are the measures for preventing the export or removal of cultural property from territories under occupation and any unlawful trade in cultural objects?

In addition to the requirements set out in the First Protocol above, the Second Protocol (Article 9) lists a further set of requirements in relation to protection of cultural property in occupied territory.

Article 9 – states that a State Party to the Second Protocol, which occupies another State Party's territory shall prohibit and prevent:

- any illicit export, other removal or transfer of ownership of cultural property;
- any archaeological excavation unless this is strictly necessary to safeguard, record or preserve cultural property; and
- any alteration to, or change of use of, cultural property which is intended to conceal or destroy cultural, historical or scientific evidence.

The provisions of this Protocol have to some extent been overtaken by the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; Article 11 of this Convention requires States Parties to regard as 'illicit' the export and transfer of ownership of cultural property under compulsion from a territory under occupation.

The UK acceded to the 1970 UNESCO Convention in 2002. The Dealing in Cultural Objects (Offences) Act 2003 (the Dealing Act) is the legislative measure which complements its obligations under the Convention and reinforces its implementation in the relevant Nations (the Act does not extend to Scotland; any equivalent legislation that might be required in Scotland in the future would be developed through the Scottish Parliament). Under the Dealing Act it became an offence for any person dishonestly to deal in a cultural object that is tainted, knowing or believing that object to be tainted. Under the Dealing Act the term 'cultural property' is defined as an object of historical, architectural or archaeological interest.

A piece of cultural property becomes 'tainted' if, after 30 December 2003, it has been (a) excavated; (b) removed from a building or structure of historical, architectural, or archaeological interest where the object has at any time formed part of the building or structure; or (c) removed from a monument of such interest; and such excavation or removal constituted a criminal offence at the time of such excavation or removal.

It is immaterial whether the excavation or removal took place in the UK or elsewhere. Under the Dealing Act it would be illegal to deal in cultural property in the UK that had been illegally excavated or removed from any state which was occupied by UK troops.

Section III (Paragraphs 6-15)

This Section sets out a series of final clauses to specify how parties can accede to the Protocol, denounce it and how to revise it.

Second protocol

The 1954 Hague Convention was strongly influenced by the 1949 Geneva Conventions. Later developments in international humanitarian law and gaps in the implementation of the Hague Convention led to the adoption of a Second Protocol in 1999. The most important improvements brought about by the Protocol are the clearer definition of imperative military necessity, the new system of enhanced protection, the reinforcement of individual criminal responsibility and the supplementing of provisions applicable to non-international armed conflicts as well as international armed conflicts.

The UK Government has announced its intention to accede to the Second Protocol at the same time as it ratifies the Convention and accedes to its First Protocol.

Chapter 1. Introduction (Articles 1-4)

These Articles set out a series of definitions (the most important of which defines cultural property as it is defined in Article 1 of the Convention); explain that the Second Protocol supplements the Convention; specify that the Protocol applies to all armed conflicts, even those of a non-international nature; and explain that where a property has been granted both special protection and enhanced protection, then only the provisions of enhanced protection shall apply between Parties to the Second Protocol.

Chapter 2. General Provisions regarding Protection (Articles 5-9)

Article 5 – expands on the definition of “safeguarding cultural property” given in Article 3 of the Convention and has been covered in detail on page 16 of this document.

Article 6 – qualifies the grounds on which a waiver on the basis of imperative military necessity may be invoked and has been covered in detail on page 18.

Articles 7-8 – These set out a series of precautions that States Parties must undertake to seek to ensure that cultural property is not attacked or damaged, even indirectly, by military operations.

Chapter 3. Enhanced Protection (Articles 10-14)

Article 10 – provides that cultural property may be placed under enhanced protection provided that it meets three conditions:

- (a) it is cultural heritage of the greatest importance for humanity;
- (b) it is protected by adequate domestic legal and administrative measures recognising its exceptional cultural and historic value and ensuring the highest level of protection; and
- (c) it is not used for military purposes or to shield military sites and a declaration has been made by the Party which has control over the cultural property, confirming that it will not be so used.

To achieve this status, a State Party must request that the designated cultural property is included in the List of Cultural Property under Enhanced Protection (Article 11). Once cultural property has been placed under enhanced protection, the Parties to a conflict must ensure the immunity of the property in question by refraining from making it the object of attack and from any use of the property or its immediate surroundings in support of military action (Art 12).

Consideration

Article 10 thus raises the question of how we should determine which parts of the UK's cultural property are of "the greatest importance for humanity".

Proposal

In the case of the immovable cultural heritage, World Heritage Sites are designated as "places on earth that are of outstanding universal value to humanity". To be inscribed on the World Heritage List, sites have to be of outstanding universal value, have authenticity and/or integrity and have in place adequate legal protection and appropriate management systems (interpreted in the UK as meaning a Management Plan). These criteria seem to mirror closely the criteria for enhanced protection (greatest importance for humanity and protected by adequate legal and administrative measures) and so we take the view that enhanced protection should only be provided to those parts of our immovable cultural heritage that are designated as cultural sites on the World Heritage List. This would involve the following locations:

Durham Cathedral and Castle

Studley Royal Park including the ruins of Fountains Abbey

Ironbridge Gorge

Stonehenge and Avebury

Blenheim Palace

Palace of Westminster, St Margaret's Church and Westminster Abbey

City of Bath

Hadrian's Wall
 Tower of London
 Canterbury Cathedral, St Augustine's Abbey and St Martin's Church
 Castles and Town Walls of King Edward in Gwynedd
 Edinburgh Old and New Towns
 Maritime Greenwich
 Heart of Neolithic Orkney
 Blaenavon Industrial Landscape
 The Historic Town of St George and Related Fortifications, Bermuda⁹
 Derwent Valley Mills
 New Lanark
 Saltaire
 Royal Botanic Gardens, Kew
 Liverpool Maritime Mercantile City
 St Kilda

In the case of movable cultural property the situation is less clear as there is no equivalent for museums and galleries to designation as a World Heritage Site. We must, therefore, use a different approach to help us determine which movable cultural property falls within the definition of “the greatest importance for humanity”.

Of all the museums and galleries in the UK, a small number are defined as non-Departmental Public Bodies or NDPBs (in Wales these are known as ASPBs or Assembly Sponsored Public Bodies). There is no single reason why these museums have been given NDPB or ASPB status, although the majority are National Museums and Galleries established under primary legislation. In general terms, therefore, such status is an indication of the relative importance of these museums (as NDPB or ASPB status is the next level down in terms of importance to a Government Department in the hierarchy of Government structures). In the absence of any internationally agreed criteria for designating the collections of museums we propose, therefore, to use the criterion of being a museum or gallery that is an NDPB or ASPB for deciding which movable cultural property should receive enhanced protection. This includes the collections of the:

⁹ Bermuda will be consulted as one of the UK's Overseas Territories on whether it would wish the UK's ratification of the Convention and accession to its Protocols to be extended to their territory.

British Museum
Imperial War Museum
Museum of London
National Gallery
Natural History Museum
National Maritime Museum
National Museums Liverpool
National Museum of Science & Industry
National Portrait Gallery
Royal Armouries
Sir John Soane's Museum
Tate Gallery
Victoria & Albert Museum
Wallace Collection
National Museums of Scotland
National Galleries of Scotland
National Museums and Galleries of Wales
Museums and Galleries of Northern Ireland (MAGNI)
Royal Air Force Museum
Royal Naval Museum
Royal Marines Museum
Royal Navy Submarine Museum
Fleet Air Arm Museum
National Army Museum
Geffrye Museum
Horniman Museum

In addition, we propose also to request enhanced protection to cover the archives of the:

National Archives (and its places of deposit)

National Archives of Scotland and the Scottish Screen Archive

Public Records Office of Northern Ireland

The five legal deposit libraries in the UK (the British Library, the National Library of Scotland, the National Library of Wales, the Bodleian Library and Cambridge University Library).

Question 6 – Do you agree that the UK should request enhanced protection only for those World Heritage Sites designated as cultural sites, for the collections of the museums and galleries that are NDPBs or ASPBs; for the National Archive Bodies and the five legal deposit libraries?

Article 11 – This Article sets out the procedure for requesting that cultural property be granted enhanced protection. The final decision is taken by the Committee for the Protection of Cultural Property in the Event of Armed Conflict and a crucial difference between this protection and the original system of special protection is that the decision to include a property is taken by a majority of four-fifths of the Committee’s members rather than involving the States Parties.

Articles 12-14 – These Articles set out the protection, exceptions and precautions to be applied in the case of cultural property under enhanced protection as discussed earlier on page 6.¹⁰

Chapter 4. Criminal Responsibility and Jurisdiction (Articles 15-21)

Article 15 – This Article requires each State Party to make the following acts a criminal offence under its domestic law, if committed intentionally and in violation of the Convention or the Second Protocol:

- (a) making cultural property under enhanced protection the object of attack;
- (b) using cultural property under enhanced protection or its immediate surroundings in support of military action;
- (c) extensive destruction or appropriation of cultural property protected under the Convention and the Second Protocol;
- (d) making cultural property protected under the Convention and the Second Protocol the object of attack;
- (e) theft, pillage or misappropriation of, or acts of vandalism directed against, cultural property protected under the Convention.

The Convention and its Protocols explained – Part 6

What are the legal implications for the UK of ratifying the Convention and acceding to its two Protocols?

The legal implications for the UK of ratifying the Convention and acceding to its Protocols are as yet unclear. The responses to this consultation will help us to analyse the extent of any legislation that might be needed to enable implementation of the Convention.

¹⁰ The Second Protocol does not make any specific provision for marking cultural property under enhanced protection. The promotion of identification of cultural property under enhanced protection is one of the functions of the Committee for the Protection of Cultural Property in the Event of Armed Conflict.

Article 16 – requires each State Party to take the necessary legislative measures to establish jurisdiction over the offences set out in Article 15 in the following cases:

- (a) when such an offence is committed in the territory of that State;
- (b) when the alleged offender is a national of that State; and
- (c) in the case of offences in Article 15 paras (a) to (c), when the alleged offender is present in its territory (this includes when the alleged offender is a national of another State Party to the Second Protocol).

Articles 17-20 – These Articles place on States Parties to the Second Protocol a responsibility either to prosecute or extradite individuals charged with having carried out any of the Article 15 offences in paras (a) to (c), where they are nationals of a State Party to the Second Protocol. In addition, they require Parties to give each other mutual legal assistance in investigating such offences and set out the grounds on which such assistance and on which extradition can be refused.

Article 21 – This Article sets out other intentionally committed violations which Parties must adopt legislative, administrative or disciplinary measures to suppress. These include:

- (a) any use of cultural property in violation of the Convention or the Second Protocol; and
- (b) any illicit export, other removal or transfer of ownership of cultural property from occupied territory in violation of the Convention or the Second Protocol.

Chapter 5. The Protection of Cultural Property in Armed Conflicts not of an International Character (Article 22)

This Article extends the scope of application of the Protocol to include non-international conflicts but not to situations of internal disturbances and tensions such as riots. The Protocol, therefore, supplements the provisions of the Hague Convention which, under its Article 19, apply to non-international armed conflicts.

Chapter 6. Institutional issues (Articles 23-29)

These Articles set out the arrangements for meetings of the States Parties, the establishment of a Committee for the Protection of Cultural Property in the Event of Armed Conflict and the setting up of a voluntary fund to provide assistance to those Parties that need it, to help them undertake preparatory or other measures to protect cultural property in the event of armed conflict.

Chapter 7. Dissemination of Information and International Assistance (Articles 30-33)

These Articles set out the obligations of States Parties with respect to disseminating information about the Protocol, to co-operate internationally and with UNESCO and the circumstances in which Parties can request assistance from the Committee and/or UNESCO.

Chapter 8. Execution of this Protocol (Articles 34-38)

These Articles set out the requirements for the co-operation of Protecting Powers, the conciliation procedures to be used and the provision of periodic reports on implementation of the Protocol.

Chapter 9. Final Clauses (Articles 39-47)

These Articles set out the procedures for signing and acceding to the Second Protocol, its entry into force, and how to denounce it.

6. How Other States Parties have implemented the Convention

Under Article 26, para 2 of the Convention, States Parties are required every four years to send to UNESCO a report concerning, among other things, any measures taken in fulfillment of the Convention.

UNESCO then pull all this information together and produce an overall periodic report on the implementation of the Convention. The last such report was produced in 1995 and is available through the UNESCO website <http://www.unesco.org/culture/chlp>, part “Cultural Heritage at War”, sub-part “Publications”, file “Information on the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict – 1995 Reports.”

Thus, in theory, there should be a rich vein of data on issues such as the amount of property receiving general protection in other States Parties. Unfortunately, however, of the twenty-nine States Parties that provided their national reports for the 1995 periodic report, only Germany, Slovenia and Switzerland reported, to a different extent and on different aspects, on the number of cultural properties they consider as being under general protection¹¹.

The data provided by these three countries is as follows:

Germany: 8,000 architectural monuments and places of historical interest, as well as 2,000 museums, archives, libraries and archaeological sites in Western Germany have been identified as being protected by the Convention. The German report also refers to the practice of the former German Democratic Republic to mark the immovable cultural property with the Hague Convention symbol. However, it does not provide the number of such properties marked.

Slovenia: 5,550 cultural monuments are mentioned as being protected by the Convention. According to a more recent report to the Secretariat, not yet published, up to 1999 out of a total of 7,110 declared cultural monuments, 310 cultural monuments have been marked with the emblem of the Hague Convention.

¹¹ There is a common perception that both the Netherlands and Austria have protected large amounts of cultural property under the Convention. However, it is not possible to quantify this as neither country has provided UNESCO with details of the properties it has extended general protection to under the Convention.

Switzerland: reported that since 1988 it has had an inventory of cultural property, containing approximately 8,000 cultural items for which protection measures had to be taken as a matter of priority. Parallel to this inventory, a topographic map has been prepared showing 1,500 cultural items of national importance.

There is no comparative data on the number of properties under enhanced protection as the Protocol only entered into force on 9 March 2004. Its system of enhanced protection requires submissions to a Committee for the Protection of Cultural Property in the Event of Armed Conflict (Art.27(1)(b)) which will be elected for the first time during the first meeting of States Parties to the Second Protocol, scheduled to be held in Paris on 26 October 2005.

7. Possible Costs Associated With Ratification of the 1954 Hague Convention

Issue

The purpose of this section is to begin the process of identifying the costs that will arise out of the UK's ratification of the Hague Convention.

Summary

In the main, the paper is not able to put any precise figures on the costs identified at this stage. Instead, it identifies two types of cost: definite costs – those that will be incurred immediately after ratification which relate to peace time measures – and potential costs – those that may or may not be incurred at a later stage if the UK finds itself in an armed conflict. These two types of costs may fall upon one of three different sectors – the Government, the military and the cultural sector.

A table appears at the end of this section which illustrates how these costs are likely to be allocated across the three sectors.

This analysis is not definitive as the actual costs that will be incurred will depend on the precise details of the UK's implementation plan. The details of this will, to a large extent, be determined by the responses to the consultation.

Identification of Costs

A clause by clause analysis of the Convention and its Protocols reveals the following definite and potential costs:

Convention, Article 1

This Article requires States Parties to define the cultural property that will be covered by the Convention. We have proposed that we use existing or proposed designation systems as the basis of the UK's identification of the relevant cultural property to be covered by the Convention. There should, therefore, be no additional costs associated with this Article.

Convention, Article 3

This Article requires States Parties to take measures in peace-time to safeguard cultural property covered by the Convention.

These measures (as illustrated in the Second Protocol) do not go beyond what is already required in terms of disaster and emergency planning and existing fire regulations and so there should be no additional costs associated here.

Convention, Article 5

Requires a State Party occupying another State Party's territory to take responsibility for safeguarding and preserving the cultural property of the occupied Party (see also Article 1 of the First Protocol and Article 9 of the Second Protocol). Such protection is likely to carry with it a cost for the occupying power but this cannot be determined in advance of ratification, as it will depend on a variety of factors particular to each occupation (e.g. the location of the occupied State Party, the extent and condition of its cultural property, the threats that are present to its cultural property and the level of co-operation likely to be given by the local population).

Convention, Article 6

Allows for the possibility that cultural property covered by the Convention may bear a distinctive emblem (a blue shield) to facilitate its recognition. We have proposed that the fixing of the distinctive emblem should be a voluntary decision left to the individual owners of cultural property concerned. Any increased cost is, therefore, an optional one.

Convention, Article 7

Outlines preparatory measures to be taken during peace time by the military. These involve incorporating into military regulations and instructions new provisions to ensure observance of the Convention. To a large extent the military already observes the main themes of the Convention (respect for cultural property). However, the Convention does require some additional detail to be incorporated into military doctrine, which will be done during the routine amendment process and disseminated accordingly. Where necessary, existing military personnel may be given other tasks to meet the Convention requirements, which may incur additional training costs.

Convention, Article 8

This covers the granting of special protection. It includes the option of transporting cultural property to a refuge and the option of not using key strategic sites near to cultural property to allow for their protection.

We have proposed that the UK should not adopt the system of special protection. There should, therefore, be no additional costs associated with special protection.

Convention, Article 25

Covers the need to disseminate information relating to the Convention as widely as possible within the UK to both the military and the civilian population. The task of informing the military can be incorporated into meeting the obligations under *Convention, Article 7*, allowing those costs to be kept to a minimum. The cost of disseminating information to the public will be a new cost which will fall on the Department for Culture, Media and Sport (DCMS). It may have assistance from other organisations already involved with such dissemination activities, such as the British Red Cross.

Convention, Article 26

Every four years States Parties to the Convention have to submit a report to the Director-General of UNESCO outlining any implementation issues they feel are relevant (see also Second Protocol, Article 37(2)). This cost will fall to DCMS.

Convention, Regulations, Article 10

The Regulations allow for the appointment of a Commissioner-General for Cultural Property and a team of inspectors and experts reporting to him or her in the event of an armed conflict. Article 10 states that the remuneration and expenses of these shall be met by the Party to which they are accredited. Thus, if there is an international armed conflict and the opposing Party decides (with the agreement of the UK) to appoint a Commissioner-General for that conflict who is accredited to the UK, then the UK Government will need to meet that person's costs.

Convention, Regulations, Article 18

This allows movable cultural property to be moved abroad for safe-keeping, for example, during periods of threat. The planning and implementation of such a move would obviously carry with it significant additional cost. These costs would be avoided by deciding that such a move would be unnecessary (as

Churchill did in World War II – when considering whether to ship the contents of the National Gallery to Canada he declared, “Bury them in the bowels of the earth, but not one picture shall leave this island.”). However, that decision is best taken at the time of a likely threat of armed invasion of the UK.

First Protocol, Article 4

States that occupy another country shall have to pay an indemnity to anyone who has purchased in good faith cultural property removed from the occupied state since the beginning of the occupation (plans should then be made for the return of the cultural property).

This cost would fall on the Government but the extent of the costs will depend very much on the circumstances of the occupation in question and cannot be determined in advance of ratification. The costs can, however, be minimised by taking all the necessary steps to ensure that cultural property is not illegally exported in the first instance.

Resolution II adopted by the 1954 Hague Diplomatic Conference

Expresses the hope that States Parties will set up a National Advisory Committee to advise on matters relating to the implementation of the Convention. DCMS Ministers will, in due course, need to take a decision on whether there is a need for such a National Advisory Committee. If that decision is affirmative, this cost will fall on DCMS (and the Devolved Administrations, which would be represented on it).

Second Protocol, Articles 6 and 7

These set out each country’s responsibilities during military operations. Military personnel are already trained to enable the UK to meet these responsibilities. Therefore no increased costs are envisaged.

Second Protocol, Article 8

This sets out the option of moving protected cultural property to domestic refuges which are not located near legitimate military targets. Any costs will depend on the extent of current disaster planning and the particular circumstances of the threat that emerges.

Second Protocol, Article 11

This requires States to compile and submit a list of cultural property which it wants to nominate for enhanced protection. Although some of the details of the entries for the list may be provided by the owners, the task of compiling this into a single list will fall to the DCMS.

Second Protocol, Article 29

This creates a fund to aid the working of the Convention and its Protocols. One way in which this fund is to be built up is through voluntary contributions from States Parties.

Contributions to this fund are entirely voluntary. To the best of our knowledge no other State Party has contributed thus far. The UK should not expect to be in a position to withdraw money from the fund and Ministers will need to decide whether the UK should make a contribution.

Second Protocol, Article 30

This goes further than *Convention, Article 25*, in that it requires information regarding appreciation and respect for cultural property to be disseminated to the entire population (although a case can be made that this is already, in part, an obligation under the 1970 UNESCO Convention). Similar to Article 25, it also states that information on the Protocol should be disseminated ‘as widely as possible’, both in peacetime and in time of armed conflict.

Under the 1970 UNESCO Convention we currently have an undertaking to take ‘educational measures to stimulate and develop respect for the cultural heritage of all States’ (Article 5(f)). Additional effort will need to be made to disseminate information on the 1954 Convention and its Protocols, but that could be done through a single publication (as with the 1970 Convention publication – cost £1,052). The cost would fall upon DCMS and the Devolved Administrations.

Article 30 also requires military and civilian authorities responsible for applying the Protocol to be made fully acquainted with its text. This can be done through existing training programmes. Other organisations, such as the British Red Cross, may also be of assistance.

Second Protocol, Article 37

This covers the submission of a report on implementation every 4 years (presumably, as part of the same report mentioned in *Convention, Article 26*). Once again, this cost will fall to DCMS.

Table – Summary of actual and potential costs and where these will fall

	Costs incurred in peace time	Costs incurred only during armed conflict (both as occupier or occupied)
Cultural sector	<i>Optional – Convention, Art 6</i>	<i>Optional – Convention, Regulations, Art 18</i> <i>Optional – 2nd Protocol, Art 8</i>
Military	<i>Convention, Art 7</i>	<i>Convention, Art 5</i> <i>2nd Protocol, Art 9</i>
Government	<i>Convention, Art 25</i> <i>Convention, Art 26</i> <i>Optional – Resolution II</i> <i>2nd Protocol, Art 11</i> <i>Optional – 2nd Protocol, Art 29</i> <i>2nd Protocol, Art 30</i> <i>2nd Protocol, Art 37</i>	<i>Convention, Regulations, Art 10</i> <i>Optional – Convention, Regulations, Art 18</i> <i>1st Protocol, Para 4</i>

8. Bodies being consulted

Below is list of stakeholders who have been sent a copy of this document.

All Party Parliamentary Archaeology Group
All Party Parliamentary World Heritage Group
Archive and Records Council Wales
Association of Local Government Archaeologists
Association of Independent Museums
Association of Industrial Archeology
Association of Regional and Island Archaeologists
Avebury World Heritage Site Management Officer
Barber Institute of Fine Arts, Birmingham
Bath & North East Somerset Council Museum
Beamish, The North of England Open Air Museum
Birmingham City Museums & Art Gallery
Blaenavon Industrial Landscape
Blenheim Palace
Bodleian Library, Oxford
Bowes Museum
British Library
British Museum
British Red Cross
Bristol Museums & Art Gallery
Built Environment Forum for Scotland
Cabinet Office Civil Contingencies Secretariat
Cadw
Canterbury Cathedral
Castles and Town Walls of King Edward in Gwynedd
Cathedral Libraries and Archives Association
Commission for Architecture and the Built Environment
Convention of Scottish Local Authorities (COSLA)
Chartered Institute of Library and Information Professionals

Cheltenham Art Gallery & Museums
Churches Conservation Trust
City of Bath
City of Bradford Metropolitan District Council
Civic Trust
Colchester Museums
Commission for Architecture and the Built Environment
Consortium of University and Research Libraries (CURL)
Council for British Archaeology
Council for Scottish Archaeology
Country Landowners Association
Courtauld Institute Gallery
Coventry Transport Museum
Department for Constitutional Affairs
Department for Culture, Arts and Leisure, Northern Ireland
Department for International Development
Derwent Valley Mills
Design Museum
Dorset and East Devon Coast
Dulwich Picture Gallery
Durham Cathedral
Edinburgh World Heritage Trust
English Heritage
Environment and Heritage Service, Northern Ireland
Exeter City Museums & Art Gallery
Firepower, The Royal Artillery Museum
Fleet Air Arm Museum
Foreign and Commonwealth Office
Fountains Abbey Estates
Garden History Society
Geffrye Museum
Georgian Society
Giant's Causeway
Glasgow City Council

Hadrian's Wall
Harewood House Trust
Heritage Link
Heritage Lottery Fund
Historic Environment Advisory Council for Scotland
Historic Scotland
Historic Royal Palaces
Historic Houses Association
Home Office
Horniman Museum
Illicit Trade Advisory Panel
Imperial War Museum
Institute of Historic Building Conservation
Institute of Field Archaeology
International Committee of the Red Cross
International Council on Monuments and Sites – UK
International Council on Museums – UK
Ironbridge Gorge Museum
Jewish Museum
Joint Amenity Society
Kingston upon Hull City Museums & Art Galleries
Lancashire County Museum Service
Leeds Museums & Galleries
Liverpool World Heritage Officer
Local Government Association
London's Transport Museum
Manchester City Galleries
Maritime Greenwich
Mary Rose Trust
McDonald Institute for Archaeological Research
Ministry of Defence
Museums Association
Museums and Galleries of Northern Ireland (MAGNI)
Museums, Libraries and Archives Council

Museum of London
Museums of the Royal College of Surgeons of England
Museum of Science & Industry Manchester
National Archives
National Archives of Scotland
National Army Museum
National Coal Mining Museum for England
National Football Museum
National Gallery
National Galleries of Scotland
National Heritage Memorial Fund
Natural History Museum
National Library of Scotland
National Library of Wales
National Maritime Museum
National Motor Museum
National Museum Directors' Conference
National Museums Liverpool
National Museums and Galleries of Wales
National Museum of Science and Industry
National Museum of Scotland
National Portrait Gallery
National Tramway Museum
National Trust
National Trust for Northern Ireland
National Trust for Scotland
New Lanark
Northampton Museum & Art Gallery
Northern Ireland Museums Council
Northern Ireland Office
Norwich Castle Museum & Art Gallery
Office of the Deputy Prime Minister
Overseas Territories Department – FCO
People's History Museum

Portable Antiquities Scheme
Potteries Museum & Art Gallery, Stoke-on-Trent
Plymouth City Museum & Art Gallery
Public Record Office of Northern Ireland
Royal Albert Memorial Museum & Art Gallery, Exeter
Royal Armouries
Royal Air Force Museum
Royal Botanic Gardens, Kew
Royal Engineers Museum, Chatham
Royal Naval Museum
Royal Marines Museum
Royal Navy Submarine Museum
Royal Pavilion, Libraries & Museums (Brighton & Hove)
Salisbury & South Wiltshire Museum
Scottish Civic Trust
Scottish Library and Information Council
Scottish Fisheries Museum
Scottish Maritime Museum
Scottish Mining Museum
Scottish Screen
Society of Antiquaries of London
Society of Archivists
Society for the Protection of Ancient Buildings
Scottish Executive
Scottish Museums Council
Sheffield Galleries & Museums Trust
Sir John Soane's Museum
Southampton City Council Cultural Services
Stoke-on-Trent Museums Service
Tank Museum, Bovington
The Army
The Navy
The Patent Office
The Royal Air Force

The Tate
Tyne & Wear Museums
United Nations Educational, Scientific and Cultural Organisation
University of Aberdeen
University of Edinburgh
University of Glasgow
University Library, Cambridge
University of London
University of Manchester
University of Oxford
University of Reading
University of Strathclyde
UK and Ireland Blue Shield Organisation
Victoria and Albert Museum
Victorian Society
Wallace Collection
Waterways Trust
Weald & Downland Open Air Museum, Chichester
Wedgewood Museum Trust
Welsh Assembly Government
Welsh Federation of Museums and Galleries
Westminster City Council
Wiltshire Heritage Museum
Wordsworth Trust
York Museums Trust

If you feel that there is someone who should have been sent a copy and is not on the list, then please contact us using the details on the Questionnaire. You should also make any such people aware of this document's presence on the DCMS website.

Annex A. Questionnaire

Name:
Organisation:
Address:
Postcode:
Telephone:
Fax:
Email:

If you are replying on behalf of a representative group please summarise the people or organisations your group represents:

To note:

All information in responses may be subject to (a) publication by the Department; and (b) disclosure under freedom of information legislation. If a correspondent requests confidentiality, this cannot be guaranteed and will only be possible if permitted by the legislation. Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation of the reasons for it, in the main text of your response.

The deadline for responses is 2 December 2005.

All responses or questions relating to the content of this consultation should be sent (hard copy or electronically) to:

Owain Lloyd-James
Cultural Property Unit
Department for Culture, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH
Owain.lloyd-james@culture.gsi.gov.uk

If you have any complaints regarding how this consultation has been run please contact the DCMS's consultation co-ordinator:

Liz Sweet
Policy and Projects
Department for Culture, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH
Liz.sweet@culture.gsi.gov.uk

Convention, Article 1

Question 1 – On the basis of the existing designation systems in place in the UK, do you agree that the general protection afforded by the Convention should be extended only to:

- listed buildings of Grade I status (category A in Scotland and Northern Ireland);
- in England, listed historic parks and gardens of Grade I status;
- all UK World Heritage Sites, excluding those sites which are inscribed as natural sites;
- the collections of those Museums and Galleries that are directly sponsored or funded by Government;
- the museums, galleries and universities in England with designated collections and in Scotland with important collections; and
- the National Record Offices and the five legal deposit libraries.

Convention, Article 1

Question 2 – Do you agree that the decision on whether any particular cultural property should be protected by the Convention should be left to the individual choice of the property’s owners, guardians or trustees?

Convention, Article 3

Question 3 – Do you agree that the most appropriate body to undertake the peace time safeguarding measures set out in Article 5 of the Second Protocol is the existing owner, guardian or trustees of a cultural property?

Convention, Article 6

Question 4 – Do you agree that the UK should leave the decision to affix the special emblem to a particular cultural property to the owner, guardian or trustees of the property or objects in question?

Convention, Article 8

Question 5 – Do you agree that the UK should not nominate any of its cultural property for special protection but instead we should make use of the provisions for enhanced protection contained in the Second Protocol?

Second Protocol, Article 10

Question 6 – Do you agree that the UK should request enhanced protection only for those World Heritage Sites designated as cultural sites; for the collections of the museums and galleries that are NDPBs or ASPBs; for the National Archive Bodies; and the five legal deposit libraries?

Do you have any other comments?

How to respond

The deadline for responses is 2 December 2005.

All responses or questions relating to the content of this consultation should be sent (hard copy or electronically) to:

Owain Lloyd-James
 Cultural Property Unit
 Department for Culture, Media and Sport
 2-4 Cockspur Street
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Annex B. Partial Regulatory Impact Assessment

Title:

Ratification of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention) and accession to its two Protocols.

Objective:

To ensure that the UK has sufficient measures and processes in place to allow it to ratify the Hague Convention and accede to its two Protocols.

Background:

The UK Government publicly announced its intention to ratify the 1954 Hague Convention and accede to both its Protocols in May 2004, on the 50th anniversary of the adoption of the Convention.

The Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention) was signed at The Hague on 14 May 1954. The Convention provides for a system of general and special protection of cultural property in situations of international and non-international armed conflict. Cultural property for this purpose is described as movable and immovable property of great importance to the cultural heritage of every people. The Convention is supplemented by two Protocols – the first adopted at the same time as the Convention, in 1954, (the First Protocol) and the second adopted in 1999 (the Second Protocol).

The UK decided not to ratify the Convention after it was first adopted because, along with a number of other countries, it considered that it did not provide an effective regime for the protection of cultural property during armed conflicts.

In 1991, the Netherlands Government and UNESCO conducted a review of the working of the Convention and the First Protocol. This resulted in the adoption of the Second Protocol in 1999, at a Diplomatic Conference in The Hague. The UK welcomed the work on this Second Protocol and was actively engaged in its negotiation, with the objective of helping to produce agreement on a Second Protocol that would enable the UK to ratify the Convention.

Options:

Ratification

The best approach to meeting our obligations under the Hague Convention and its two Protocols is the subject of consultation with stakeholders. The Convention and its two Protocols raise a number of complex issues, about which there are different options which the UK may choose to follow. These issues, which are covered in the consultation, are as follows:

What parts of the UK's heritage should receive protection under the Convention?

One of the key questions is that of the criteria, type and number of properties which may require protection. Too many and the Convention and its two Protocols will be unworkable in practice; too few and protection is not given to important pieces of the UK's heritage. The specific questions relating to what should be considered as cultural property under the Convention and its two Protocols are:

- *On the basis of the existing and proposed designation systems in place in the UK, should the general protection afforded by the Convention be extended only to:

 - *listed buildings of Grade I status (category A in Scotland and Northern Ireland);*
 - *in England, listed historic parks and gardens of Grade I status;*
 - *all UK World Heritage Sites, excluding those sites which are inscribed as natural sites;*
 - *the collections of those Museums and Galleries that are directly sponsored or funded by Government;*
 - *the museums, galleries and universities in England with designated collections and in Scotland with important collections; and*
 - *the National Record Offices and the five legal deposit libraries.**
- *Should the UK not nominate any of its cultural property for special protection but instead make use of the provisions for enhanced protection contained in the Second Protocol?*
- *Should the UK request enhanced protection under the Second Protocol only for those World Heritage Sites designated as cultural sites; for the collections of the museums and galleries that are NDPBs or ASPBs; for the National Record Offices and the five legal deposit libraries?*

What impact should this have on owners of cultural property?

Being the owner of cultural property protected under the Convention and its Protocols will carry certain responsibilities with regard to disaster planning and safeguarding the property against the foreseeable effects of armed conflict. It is envisaged that most, if not all properties being considered will currently have such plans and safeguarding arrangements in place, but we wish to avoid placing any new obligations on owners who may feel unable to meet them. The following questions relate to the obligations that may be placed on the owners of cultural property:

- *Should the decision on whether any particular cultural property should be protected by the Convention be left to the individual choice of the property's owners, guardians or trustees?*
- *Is the most appropriate body to undertake the peace time safeguarding measures set out in Article 5 of the Second Protocol the existing owner, guardian or trustees of a cultural property?*
- *Should the UK leave the decision to affix the special emblem to a particular cultural property to the owner, guardian or custodian of the property or objects in question?*

Risks:

Risk	Consequence	Action to Avoid
Do something		
That we protect too many properties and the Convention and its two Protocols become unworkable in practice..	In the event of conflict, the number of protected properties will increase the likelihood of an enemy force damaging properties as a result of military imperative.	Consult with heritage sector on criteria for seeking an appropriate balance.
That legitimate pieces of cultural property are not protected.	In the event of conflict, important sites are damaged as they were not considered for protection.	Consult with the heritage sector on the criteria for protecting sites.
That we place an unreasonable burden on those responsible for cultural property.	Those responsible are unable or unwilling to introduce measures designed to meet our Hague Convention obligations.	Implement the Convention in a way that does not place any burdens upon the sector, unless there is support for such measures.
Do nothing		
UK cultural property is unprotected in the event of armed conflict.	Damage to UK cultural property and resulting harm to national identity.	Ratification of the Convention and accession to its two Protocols.
UK involved in occupation of territory with significant risk of damage to/unlawful removal of cultural assets of that territory.	Potential for damage to reputation of UK if adequate training of UK troops not provided.	Tri-Service Manual already includes advice on the need to respect cultural property. Customary International law also contains existing obligations for UK troops with respect to cultural property under occupation. Ratification of the Convention and accession to its two Protocols would give further level of protection.

Costs and benefits

All costs associated with the implementation of the Hague Convention and its two Protocols are, to a large extent, dependent upon the outcome of the consultation paper. Whilst the costs and benefits for the military sector are firmer (as they do not require consultation to the same degree), any costs incurred by the heritage sector are at this stage only notional.

Sector affected	Costs	Benefits
Heritage Sector (protected sites)	These will be dependent on the result of the consultation. The recommended options involve no costs being imposed on the sector, but there will be the opportunity to incur optional costs (by e.g. wishing to affix an emblem to the property in question).	The principal benefit will be the protection of cultural property at the time of conflict. There may also be benefits resulting from the possible increase in publicity that the protection process may attract.
Heritage Sector (non protected sites)	There will be no costs imposed on sites that are not protected under the Convention.	None.
Military Sector	The military has stated that the costs will be minimal as most of the obligations can be met by existing procedures. There may be a cost associated with informing and training troops in the specifics of the new procedures.	The process will codify existing procedures, making what is and is not acceptable clearer.

Small Firms Impact Test

The only small businesses (defined as those with fewer than 250 staff) that might be involved would be those from the heritage sector, as opposed to the military sector and, therefore, any impact will be dependent upon the result of the consultation. A full analysis will be carried out once an implementation plan has been established.

Competition Assessment

Ratification of the Hague Convention and accession to its two Protocols may have an impact on the heritage market (as visitor attractions). However, the extent of this will be dependent upon the method of implementation. It may be that protection given to some properties may have a positive PR affect, but the extent of that can only be assessed once the extent of protection has been better established.

Enforcement, Sanctions and Monitoring

It is unlikely that either of these will be an issue with regards to ratification. The recommended course is not to force the heritage sector to do anything that it does not want to do. However, confirmation of that will be dependent upon responses to the consultation.

Implementation and Delivery Plan

To be completed after consultation (in accordance with Cabinet Office guidelines).

Post-implementation review

This will be considered once the method of implementation has been finalised.

Summary and recommendation

The objective of this project is to ensure that the UK has sufficient measures and processes in place to allow it to implement the Hague Convention and its two Protocols. It is our intention to consult on the most appropriate method to achieve that aim. Therefore, we are not in a position to make any firm recommendations, other than the need to consult on the best means of implementation.

Annex C. Museums and galleries that we propose should receive general protection under the Convention

(i) Museums and Galleries funded by DCMS, MOD and the Devolved Administrations which are NDPBs or ASPBs

British Museum

Imperial War Museum

Museum of London

National Gallery

Natural History Museum

National Maritime Museum

National Museums Liverpool

National Museum of Science & Industry (including the National Coal Mining Museum for England)

National Portrait Gallery

Royal Armouries

Sir John Soane's Museum

Tate Gallery

Victoria & Albert Museum

Wallace Collection

National Museums of Scotland

National Galleries of Scotland

National Museums and Galleries of Wales

Museums and Galleries of Northern Ireland (MAGNI)

Royal Air Force Museum

Royal Naval Museum

Royal Marines Museum

Royal Navy Submarine Museum

Fleet Air Arm Museum

National Army Museum

Geffrye Museum

Horniman Museum

DCMS also sponsors other non-national museums as a result of changes to the system of local government administration in England or through a decision by the Secretary of State to take on funding:

Design Museum

Museum of Science & Industry Manchester (including the People's History Museum)

Tyne& Wear Museums

National Football Museum

(ii) Designated University-based Collections

University of Oxford

Museum of Natural History

Museum of History of Science

Pitt Rivers Museum

Ashmolean Museum

University of Cambridge

Fitzwilliam Museum

Museum of Archaeology & Anthropology

Whipple Museum of the History of Science

Museum of Zoology

Sedgwick Museum of Geology

University of London

Percival David Foundation of Chinese Art

Petrie Museum of Egyptian Archaeology

University of Manchester

Manchester Museum

Whitworth Art Gallery

University of Reading

Museum of English Rural Life

University of Aberdeen

Marischal Museum

National Philosophy Collection

Zoology Museum

University of Edinburgh

Talbot Rice Gallery

University of Glasgow

Hunterian Museum

Hunterian Art Gallery

Zoology Museum

University of Strathclyde

Collins Gallery

(iii) Other Museums with Designated/Important Collections

Barber Institute of Fine Arts, Birmingham

Bath & North East Somerset Council Museum

Beamish, The North of England Open Air Museum

Birmingham City Museums & Art Gallery

Bowes Museum

Bristol Museums & Art Gallery

The Burrell Collection

Cheltenham Art Gallery & Museums

Colchester Museums

Courtauld Institute Gallery

Coventry Transport Museum

Dulwich Picture Gallery

Exeter City Museums & Art Gallery

Firepower, The Royal Artillery Museum

Gallery of Modern Art, Glasgow

Harewood House Trust

Ironbridge Gorge Museum

Jewish Museum

Kelvingrove Art Gallery and Museum
Kingston upon Hull City Museums & Art Galleries
Lancashire County Museum Service
Leeds Museums & Galleries
London's Transport Museum
Manchester City Galleries
Mary Rose Trust
Museums of the Royal College of Surgeons of England
Museum of Transport, Glasgow
National Motor Museum
National Tramway Museum
Northampton Museum & Art Gallery
Norwich Castle Museum & Art Gallery
Plymouth City Museum & Art Gallery
Potteries Museum & Art Gallery, Stoke-on-Trent
Royal Albert Memorial Museum & Art Gallery, Exeter
Royal Engineers Museum, Chatham
Royal Pavilion, Libraries & Museums (Brighton & Hove)
Salisbury & South Wiltshire Museum
Scottish Fisheries Museum
Scottish Maritime Museum
Scottish Mining Museum
Sheffield Galleries & Museums Trust
Southampton City Council Cultural Services
Stoke-on-Trent Museums Service
Tank Museum, Bovington
Waterways Trust
Weald & Downland Open Air Museum, Chichester
Wedgwood Museum Trust
Wiltshire Heritage Museum
Wordsworth Trust
York Museums Trust



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