

Owain Lloyd-James
Cultural Property Unit
Department for Culture, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

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CONSULTATION PAPER ON THE UK'S RATIFICATION OF THE 1954 HAGUE CONVENTION AND ACCESSION TO ITS TWO PROTOCOLS

The Historic Environment Advisory Council for Scotland (HEACS) would comment as follows -

Question 1

HEACS would agree that the general protection afforded by the Convention should be extended to the categories of immovable and movable cultural heritage identified in the six specified groupings, though with some hesitation in respect of the Armed Services Museums. If many other sites were to be identified then the Convention would be unworkable. However, HEACS would raise the question as to the putative ability to demonstrate "objectively" which cultural property is of "great importance" since subjective opinions and judgements are inevitable within the extensive range of historic environment interests.

HEACS understands the provisional nature of some of the Scottish designations while awaiting the outcome of the Scottish Executive's consideration of the report by the Cultural Commission. Since it is now clear that the Cultural Commission focused almost entirely on the Arts, or the Culture of Activity, to the virtual exclusion of the historic environment, or Culture of Place, it is unlikely that the report will have any effect insofar as the areas identified in the Consultation document are concerned.

Question 2

HEACS would support voluntary action by Property Owners, Guardians or Trustees in terms of the application of the Convention to specific properties since, notwithstanding the assertion that additional costs can be avoided, there will be operational and financial considerations. This does raise a question of consistency on the part of the Government in that it would appear that it wishes to implement the Convention on paper but does not wish to insist on compliance in practice. This may be perceived as politically-correct posturing unless the Government engages in offering practical support and encouragement to those responsible for properties. HEACS does however accept the position, provided that bureaucracy and costs can be avoided.

While HEACS understands the point that the Convention seeks to ensure that the cultural properties in question are neither attacked nor used in defence during conflict, the acceptance of the existence of “military necessity” means that such a claim can be prayed in aid in answer to any charge of breach of the Convention. HEACS would suggest that within the terms of the Convention and the Protocols, efforts should be made to clarify “military necessity” in more concrete terms and in such a way as to make combatants more aware of the restrictions on this rationale for action, since the term lends itself to ambiguity.

Question 3

HEACS agrees that it is a logical position that the peace-time safeguarding measures, as set out in Article 5 of the second Protocol, should be undertaken by existing owners, guardians or trustees. While HEACS is fairly certain that current contingency planning, as part of normal stewardship, covers many areas, the forced/emergency removal of **all** the contents of major cultural properties is not likely to be an area which figures as a priority item in risk analysis considerations. HEACS would recommend that the Government take the necessary action to remind the relevant interest groups that there is a need to ensure that all risks are assessed, including the emergency removal of cultural property from premises.

Question 4

HEACS agrees that the decision to affix the special emblem to a property should be left to the decision of owners, guardians or trustees. However, HEACS again would recommend that the Government take practical steps to encourage interested bodies to use the emblem, as a mechanism for identifying places of significance and as a visible token of UK signatory status. Unless such action is taken the government could again be accused of being willing to sign up to the Convention but not being willing to take any direct action that would signify adherence to the Convention. At best, in the absence of

Government Action, it could be seen as a paper exercise with no outcomes expected or demanded.

HEACS would point out the possibility of confusion with the emblem used by the UK Lottery Fund and would recommend that ways of making the cultural emblem more distinctive be examined.

Question 5

HEACS agrees that the UK should not nominate any of its cultural property for Special Protection but should rely on the provisions for enhanced protection contained in the Second Protocol. HEACS considers that the risks associated with Special Protection outweigh the advantages. Enhanced Protection is sufficient for the UK requirements.

Other Comments

The foregoing comments by HEACS are subject to the caveats that conflict situations, by their very nature, develop in uncontrollable directions and dimensions and well-meaning intentions can be disregarded by alleged military imperatives. The victors in conflicts all too frequently succeed in defending their actions by the simple process of winning. Questioning processes and practices subsequent to conflict, such as the destruction of cultural property, can too easily be dismissed as carping against the greater good.

Mrs Elizabeth K Burns CMG OBE
Chair