

PROTECTING THE PAST IN TIMES OF WAR UK PROGRESS TOWARDS ACCESSION TO THE 1954 HAGUE CONVENTION

War is merely a continuation of politics or of policy... by other means.

(Carl von Clausewitz 1780–1830)

To start with our successes, it is true to say that the UK government has already made considerable strides in curbing illicit trafficking in looted antiquities, reducing the threat to cultural sites worldwide which has been exacerbated by globalisation of tourism and organised crime, plus new technology. Local people usually receive little when their heritage is destroyed in this way, and asset-stripping this finite resource is, by definition, unsustainable. Recent damage to ancient sites in Afghanistan and Iraq reinforces the importance of the anti-illicit trade programme being developed by the Department for Culture, Media and Sport (DCMS).

New treaty obligations

In October 2002 the UK became a State Party to the 1970 UNESCO Convention *on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* and is now introducing measures to strengthen its treaty obligations. These include a new criminal offence of dealing in cultural objects unlawfully removed from anywhere in the world (the *Dealing in Cultural Objects (Offences)* Act came into force on 30 December 2003); and the passing in June 2003 of the *Iraq (UN sanctions)* Order 2003 implementing UN Security Council Resolution 1483, which makes it a criminal offence both to deal in and to hold Iraqi cultural property illegally removed after 6 August 1990. DCMS is now developing tools to improve enforcement and due-diligence practices.

Looting of the Iraq National Museum in Baghdad brought into sharp focus the rights and obligations of parties involved in armed conflict. Often the loss or destruction of cultural property is regarded as inevitable 'collateral damage', or results from a cultural site being used, or being perceived to be used, for military purposes. In addition, cultural sites are often targeted to demoralise the enemy. Such was the case in the former Yugoslavia, where official sanctions to damage cultural property provided a means of 'ethnic cleansing'. Recent conflicts have exposed numerous instances of deliberate damage in order to secure a military or political objective. In 1991 the Iraqi government used cultural property to protect legitimate



Every effort was made to avoid known monuments, such as the Ctesiphon Gate, during the bombing of Iraq. Photograph Fergus Muir, DCMS



Rural sites, such as the tell at Umma (founded 274 BC, once home to some 600,000 people), are still mostly unguarded and are therefore subject to looting. Stopping trade by closing markets and preventing exports is essential for the survival of such sites. Photograph Fergus Muir, DCMS

targets from attack, and the Balkan conflict produced numerous examples of systematic destruction in pursuit of political objectives, including shelling of the medieval and Renaissance World Heritage site of Dubrovnik and the blowing of the Neretva Bridge at Mostar.

Hague Convention 1954

Following wholesale destruction during the second world war, moves were initiated by UNESCO to protect cultural property in time of armed conflict.

The outcome was the landmark Hague Convention of 1954 for *the Protection of Cultural Property in the Event of Armed Conflict*. Cultural property is defined by the Convention as museums, libraries, archives, archaeological sites and monuments of architecture, art or history, whether religious or secular. It also includes the portable heritage: manuscripts, books and other objects of artistic, historical or archaeological interest. Today there are 103 States Parties to the Convention. Crucially, to date, the US and the UK are not among them.

Requirements to protect

States Parties are required under the Convention to respect cultural property situated within their own territory as well as within the territory of other parties by refraining from committing any hostile act against it *and* by prohibiting, preventing, and if necessary stopping any form of theft, pillage or misappropriation of the property or any acts of vandalism against it. Use of the property or of its immediate surroundings for military purposes or to support military action is also prohibited. 'Imperative military necessity' is the only ground on which the obligation to respect cultural property can be waived. A party to the conflict is even bound by that obligation when



Looting in the unprotected National Museum of Baghdad caused enormous damage in the immediate aftermath of war. Fortunately, many artefacts had been hidden in vaults at the museum or at a bank. The bank itself was bombed, but objects such as the Nimrud treasure were found in a secure chest beneath the ruins. Photograph Fergus Muir, DCMS

the cultural property is being used for military purposes (unless imperative military necessity should relieve him of the obligation).

An occupying power must as far as possible support the authorities of the occupied country in safeguarding and preserving its cultural property, as well as taking any necessary measures where it is damaged by military operations and the national authorities are unable to take such measures. To benefit from this protection, States Parties are required to mark cultural property with a distinctive emblem (a blue and white shield).

The Convention also provides for a system of *special protection* to a limited number of refuges to shelter moveable cultural property, and to centres containing monuments and other immovable property of great importance. To qualify, cultural property has to be included in the 'International Register of Cultural Property under Special Protection' established under the Convention. It must be marked with the distinctive emblem provided under the Convention and is subject to international inspection. This immunity may be lost if the property is used for unauthorised purposes: while the violation persists, the opposing party is released from the obligation to ensure immunity.

There are currently over 85 States Parties to the First Protocol of the Convention passed in 1954, the purpose of which is to prevent the export of cultural property during armed conflict. Each Party also undertakes to take into custody cultural property imported from any occupied territory, and at the end of the occupation to return this, also paying an indemnity to the holders in good

faith of any such property that has to be returned. A third State, which has agreed to receive cultural property, must return it to the competent authorities of the territory from which it came.

The Second Protocol, adopted on 26 March 1999, crucially reinforces the Convention by requiring States Parties to make certain acts against cultural property punishable as criminal offences under their domestic law. They must also prosecute or extradite anyone committing serious violations of the Convention or the Second Protocol, whether the offence is committed within their territory or by their nationals. For certain offences, they must also establish jurisdiction when the offender is present within their territory. These provisions only apply to the nationals and armed forces of States Parties to the Second Protocol.

UK reconsiderations

Although Coalition forces refrained from attacking Iraqi cultural property during the recent conflict, they failed to prevent widespread looting and pillage of public and private property, including cultural institutions and sites. These widely reported events directly contravened Article 4(3) of the Convention, which obliges an occupier to 'prohibit and prevent any theft, pillage or acts of vandalism directed against cultural property'. As a result, the pressure for the UK government to reconsider its former resistance to the 1954 Hague Convention has intensified. The Standing Conference on Portable Antiquities, hosted by the Council for British Archaeology, has been proactive in raising the issue and passed a resolution at its emergency meeting on the Iraq cultural heritage crisis in



Books and manuscripts were equally at risk. These volumes, disordered but safe, had been rescued from the National Library by clerics and were protected in a mosque. Those left behind were mostly lost. Photograph Fergus Muir, DCMS

June 2003 for the UK to ratify the Hague Convention.

Past concerns at the Ministry of Defence (MoD) that the Convention imposed unrealistic rules in the context of global (or nuclear) war have been resolved with the acceptance that, following the end of the Cold War, future military conflicts are likely to be more confined geographically and predominantly fought by conventional weapons. In addition, the contribution of the UK to anti-terrorist and peacekeeping missions around the world is not expected to recede. Following a review of policy, in 2003 the Ministry confirmed that it was now content that the UK ratifies the Hague Convention and its two Protocols as comprehensively as possible.

In its capacity as lead Department for policy on international cultural property issues, DCMS is now coordinating implementation in the UK. This involves scoping a study of legal requirements for consultation among relevant government departments (MoD, Foreign and Commonwealth Office and the Home Office), the devolved administrations and key stakeholder bodies, such as the British Red Cross, the UK and Ireland Blue Shield Committee and CBA. One key question is the possible need for legislation to enact the new criminal sanctions. The Department hopes to complete consultation during Spring 2004 and to publish a timetable for accession to coincide with the 50th anniversary of the Convention in May this year. If successful, this will be a major contribution towards the protection of the past on a global scale.

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