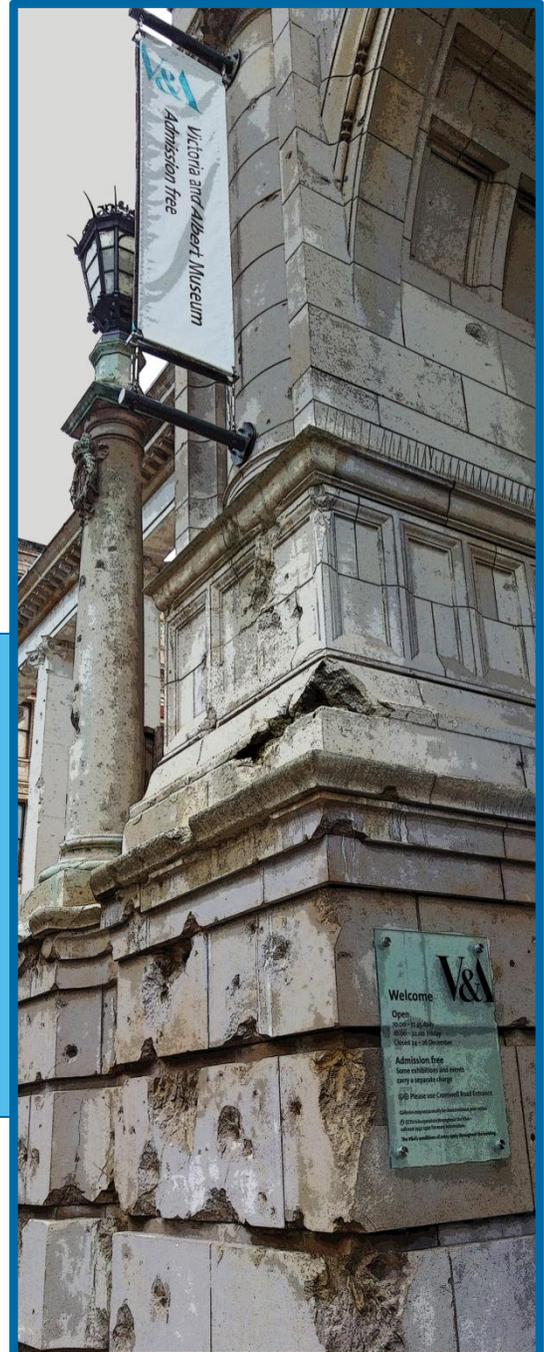




UK BLUE SHIELD

**UK IMPLEMENTATION OF
THE 1954 HAGUE
CONVENTION FOR THE
PROTECTION OF CULTURAL
PROPERTY IN THE EVENT OF
ARMED CONFLICT**

POSITION PAPER



23 February 2018



1.0 Introduction

- 1.1 The global impact of recent armed conflict on cultural property has attracted much scholarly, military, and media attention. Damage and destruction has degraded social cohesion, economic wellbeing, and the credibility of the laws of armed conflict. In the wake of this new awareness, in December 2017, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its first and Second Protocols (1954/1999) (hereafter HC54) entered into force in the UK, together with the Cultural Property (Armed Conflicts) Act 2017. In November 2017 the Department for Digital, Culture, Media & Sport (DCMS) released guidelines for peacetime measures to support implementation¹.
- 1.2 UK Blue Shield welcomes the ratification of this important convention, which will provide internationally mandated standards to aid our armed forces safeguard cultural property on operations and to protect cultural property in the face of future threats to the UK.
- 1.3 However, we express our concern that the implementation of the Act may fall short of its intended purpose, placing UK cultural property at risk. This outcome would be unfortunate, given the UK's role scrutinising armed conflicts as a Permanent Member of the UN Security Council, potentially compromising the UK's ability to lead by both action and example in this field.
- 1.4 HC54 is the only international treaty specifically to deal with the protection of cultural property in armed conflict. It is the only convention to set out for the defence, security, and heritage sectors the steps to be taken in peacetime, as well as during armed conflict, in order that all three sectors may take the necessary precautions, in accordance with the Laws of Armed Conflict, to protect cultural property. We urge the UK Government to seize the opportunity offered by ratification and address the concerns posed here in order to work towards the comprehensive, pragmatic implementation of this legislation.

¹ Available at: <https://www.gov.uk/government/publications/protection-of-cultural-property-in-the-event-of-armed-conflict>



2.0 Current implementation standards and identified issues

- 2.1 UK Blue Shield acknowledges and welcomes the measures taken so far to implement the Convention, including the creation of a new capability in the armed forces (in line with Article 7 of HC54); preparation of a baseline inventory (as recommended in Article 3 of HC54, and elaborated in Article 5 of the Second Protocol); and the creation of new criminal offences, including dealing in cultural property unlawfully exported after 7 August 1956 from an occupied country of origin (in line with obligations in the First and Second Protocols).
- 2.2 However, we express our concern about three aspects of implementation guidance:
- a) **Guidance note Section 1** - The definitions used to frame inventory production are not compatible with those required by HC54, and thus do not meet the challenges posed by armed conflict identified by the Convention's creators, which remain valid today.
 - b) **Guidance note Section 2** - The provisions regarding peacetime planning for protection during armed conflict are inadequate.
 - c) **Guidance note Section 3** - The decision not to sanction the display of the distinctive emblem (Blue Shield) in peacetime runs counter to the Convention's aspiration to educate and inform.

These concerns are elaborated below.

3.0 Guidance note Section 1 - Inventory definitions and the Convention's regime of value

- 3.1 Implementation guidelines state:

Guidance note paragraph 1.4: 'It is important to note that, in order to qualify as 'cultural property' under the Convention, the property must be "of great importance to the cultural heritage of every people". As such, the definition only applies to a limited but very special category of cultural property.'



The guidelines do not address the other two categories that are built into HC54's three-tier regime of value: *'very great importance to the cultural heritage of [a] people'*, and *'the greatest importance to humanity'* (Appendix 1).

In this context, paragraph 1.4's use of the term 'very special' is unhelpful because the concept of 'specialness' is reserved in the Convention only for cultural property assigned to the category *'very great importance to the cultural heritage of [a] people'*, which is linked to whether property is deserving of special protection.

- 3.2 Guidance note paragraph 1.5 *'There is no obligation for State Parties to specify the cultural property they consider to meet the definition and therefore to be protected by the Convention and its Protocols.'*

HC54 Second Protocol, Article 5 (General provisions regarding protection) states: *'Preparatory measures taken in time of peace for the safeguarding of cultural property against the foreseeable effects of an armed conflict pursuant to Article 3 of the Convention shall include, as appropriate, the preparation of inventories'*. UK Blue Shield considers that this constitutes an obligation in all three categories: 'Protection'; 'Special Protection'; and 'Enhanced Protection'.

- 3.3 In particular, we express concern about Guidance note Section 1, paragraphs 6-8, concerning UK cultural property protected by the Convention, and the UK inventory. There are no references to HC54's regime of value in the implementation guidelines, beyond the creation of an inventory presumably in the category; *'of great importance to the cultural heritage of [UK] people'*. UK Blue Shield acknowledges that the cultural property listed in accordance with UK criteria (c. 15,000 locations) is approximately 5% of the UK's cultural property potentially eligible under HC54's generic definition (HC54 Article 1), and therefore constitutes a prioritised selection. However, to make the point again, the Convention demands conformity to the regime defined by all three categories: Protection; Special Protection; and Enhanced Protection, for two reasons:

- 3.4 Firstly, in the potentially chaotic circumstances attending the unpredictability and violence of armed conflict, cultural property which is deemed of *'very great importance to the cultural heritage of [a] people'*, or of *'the greatest importance to humanity'*, must be singled out as priorities for safeguarding during peacetime planning, as well as during armed conflict. The Second Protocol, which introduced the additional 'Enhanced' third tier of value, sets out not only to reaffirm this regime, but to strengthen it: *'The Second Protocol supplements the Convention by reinforcing the provisions related to the safeguarding of and respect for cultural property in the event of armed conflict'* (Guidelines for the



Implementation of the 1999 Second Protocol, paragraph I.A.6); *'The Second Protocol does not affect the rights and obligations of the High Contracting Parties to the Convention.'* (Guidelines for the Implementation of the 1999 Second Protocol, pI.C.11). All three categories depicted at Appendix 1 are legally extant and must be considered valid: State Parties may not derogate from this mandated regime. Appendix 2 provides a historical example of the necessity of prioritised inventory production as a basis for planning to safeguard and respect cultural property in the event of armed conflict.

- 3.5 Secondly, the Convention's regime of value is linked explicitly to military command responsibility, in order to impose tightly regulated decision making whereby decisions during deliberate planning must be personally authorised by officers holding specific command appointments identified as 'Battalion' (Protection); 'Division' (Special Protection); and 'Force' (Enhanced Protection) levels. As such, we note with concern that, by not categorising in accordance with the Convention, implementation effectively frustrates military compliance in the event of armed conflict (Appendix 3).
- 3.6 We note that the 2005 consultation² worked out of the UK's peacetime regime of heritage value, suggesting that it should be employed as the basis from which to transpose the higher categories of nationally significant cultural property directly into HC54 'Protection' category. 100% of heritage sector respondents were in favour of employing the 'Enhanced Protection' category, in lieu of 'Special Protection'. However this received position deviates from the obligations of the Convention and its Protocols embedded in the Convention's regime of value, rendering the UK non-compliant, and perpetuating the *status quo ante*, whereby the vast majority of signatory State Parties have simply not acceded to their obligations. It is unclear to what extent the defence and security sectors were canvassed for their opinion in 2005. Overall, non-compliance creates legal, resource prioritisation, and command vacuums in the event of armed conflict.
- 3.7 Setting aside the point that the UK is not entitled to disregard a legally-mandated HC54 category, addressed above, two reasons were cited for doing so (Consultation Paper, Part 4, p. 22): firstly, concern that another State Party might object to its entry on the Special Protection Register, which – if upheld according to the process in Article 14 of the Regulations for Execution of the Convention – might result in the removal of the entry; and,

² Consultation paper

<http://webarchive.nationalarchives.gov.uk/20100512164615/http://www.culture.gov.uk/images/consultations/HagueConvention.pdf>

Responses received:

<http://webarchive.nationalarchives.gov.uk/20100512165837/http://www.culture.gov.uk/images/publications/HagueGovernmentsresponsepublicationversionfinal.pdf>



secondly, that it would disclose the presence of refuges. Neither argument is convincing. The former, places the potential for procedural obstacles above the task of realising the aspirations of the Convention; the latter denies the largely positive history of transparent refuge use. Both are antithetical to the goals of the Convention, which seek to impose a safeguarding regime predicated on a full declaration of a hierarchy of inventories, and of protectively marked refuges and immovable sites. Any deviation from this framework risks undermining the ethical framework of the entire Convention, thereby eroding the very rationale underpinning ratification.

4.0 Guidance note Section 2 - Provisions regarding peacetime planning for protection in the event of armed conflict

- 4.1 Guidance note Section 2 paragraphs 2.1-2.4 state: *'The Convention and Second Protocol require State Parties to take appropriate measures during peacetime to safeguard cultural property in the event of armed conflict. However, the owners, guardians and trustees of protected cultural property will not be required to take any new measures to comply with this obligation' on the basis that:*
- *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 of adequate in situ protection of such property;*
- '... are common sense precautions which are likely to be covered by existing contingency planning for an emergency or natural disaster.'*

Further, (Guidance note paragraphs 2.9 and 2.10): *'Arts Council England provides advice on standards and security to support museums in safeguarding and protecting their collections and buildings. Additional guidance and resources are available on the website of the Collections Trust', and 'Historic England provides advice and guidance on safeguarding and protecting historic buildings, landscapes and environments.'*

Guidance note paragraph 2.11 summarises the UK's position as: *'In the event of armed conflict affecting the United Kingdom, the government will work with both agencies and*



other partners to provide, where appropriate, additional advice on safeguarding cultural property.’

- 4.2 It should be noted that Article 3 of HC54 commits State Parties to put in place during peacetime such measures as they consider appropriate in order to safeguard cultural property situated within their own territory against the foreseeable effects of an armed conflict. While major heritage organisations may include terrorism and cyber threats, for example, in their risk assessments for emergency planning purposes, planning remains patchy overall. We note that owners of cultural property listed under HC54 are not compelled by the implementation guidelines to expend resources elaborating peacetime preparations for the event of armed conflict; indeed, such a task is impossible in the absence of a definitive generic threat assessment, and the existence of an agency responsible for compelling compliance via a monitoring and evaluation unit. The position that existing peacetime measures provide an adequate platform and that no further contingency planning is required in peacetime is therefore antithetical to the entire thrust of HC54, which stresses the need to plan in peacetime for contingencies exceeding those necessary when responding to peacetime security challenges.
- 4.3 We note that a recent review of emergency planning found that *‘The cultural heritage sector, while advancing in terms of planning, through, for example, the accreditation schemes for museums, galleries and archives, and through the development of local and regional networks in response to events, is, however, not well integrated in the wider emergency planning structures of the UK.’*³ The implementation of HC54 provides an opportunity to remedy this shortfall, and for the heritage sector to become better integrated with, for example, the UK Resilience sector.
- 4.4 We question whether the UK heritage agencies named at paragraph 4.1, above, have the capacity and the resources to respond rapidly in the event of armed conflict, and so deliver practical support to the owners of all the 15,000 (un-prioritised) entities listed in the UK ‘Protection’ category, given the unprecedented demands imposed by armed conflict. At very least, we would welcome further consideration of this issue, to include the National Trust, the Historic Houses Association, and others.

³ *Preparing for the future: mitigating disasters and building resilience in the cultural heritage sector* Macalister (2015) *Journal of the Institute of Conservation* 38(2); pp 115-129.



5.0 Guidance note Section 3- Use of the emblem

- 5.1 UK Blue Shield is disappointed with Guidance note Section 3, paragraph 1: *'The government does not intend to grant permissions to display the cultural [distinctive] emblem in connection with immovable cultural property during peacetime except where there is a strong and persuasive case for display.'*
- 5.2 We note a number of other countries, for example Argentina, Austria, Cambodia, Germany, The Netherlands, Peru, and Poland (and many more) display the distinctive emblem on cultural property, and we disagree that the use of the emblem in this context might fail to *'protect its integrity'* (Guidance note paragraph 3.5). (HC54 Article 16 and 17).
- 5.3 We also stress the utility of the distinctive emblem for armed forces on operations as a means of identifying significant cultural property. For example, after the most recent earthquake in Haiti the rapidly applied red symbol placed on properties to be protected was confused with a symbol marking unstable structures earmarked for demolition. This lack of awareness, which could have been addressed pre-crisis, led to unnecessary loss of cultural property.
- 5.4 We note the lost opportunities for education and awareness attending the decision not to permit the display of the distinctive emblem. Education and awareness are fundamental components of the *'safeguarding and respect'* agenda (HC54 Article 3), and initiatives *'to foster in the members of their armed forces a spirit of respect'* (HC54 Article 7.1).

6.0 Dealing in unlawfully exported cultural property

- 6.1 UK Blue Shield will respond to DCMS's *Guidance on the Cultural Property (Armed Conflicts) Act: Dealing in Unlawfully Exported Cultural Property* with a short position paper under a separate cover. Whilst we welcome the new s.17 offence under the Act, we consider that some areas in the guidance require further clarification and explanation, not least because the offence attracts custodial sentences. Specifically: the definition of import; reconciliation with limitation periods and passing of title under different jurisdictions; and compensation orders.

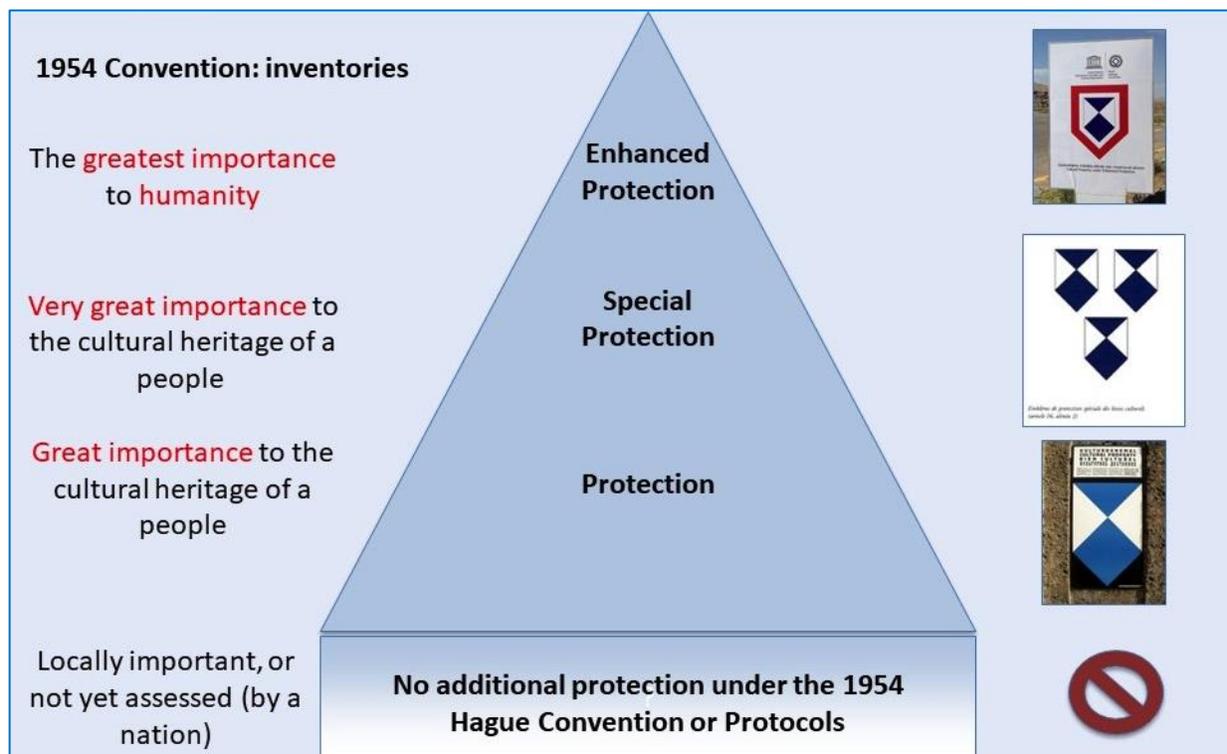


7.0 Conclusion

- 7.1 Whilst UK Blue Shield welcomes UK ratification of HC54, and the Cultural Property (Armed Conflicts) Act 2017 that has allowed it to enter into force, we express a number of fundamental concerns regarding implementation. In summary, we note with concern:
- 7.1.1 That implementation does not conform to the three-tier regime of value mandated by HC54, designed to ensure that the highest categories of cultural property receive prioritised attention – a fundamental pillar of the Convention.
 - 7.1.2 The apparent lack of commitment to peacetime preparation under the umbrella of an authoritative generic threat assessment and an active compliance regime.
 - 7.1.3 That the UK has opted not to permit the use of the three types of distinctive emblem (Blue Shields), missing an opportunity symbolically to signal the UK's commitment to cultural property protection, and to activate the Convention's regime of value.
- 7.2 It is UK Blue Shield's conviction that if HC54 is to be an effective instrument, State Parties must conform to its entire framework, and may not derogate from the demands of the Convention, such as, for example, opting out of the 'Special Protection' category, or opting not to put in place necessary and proportionate safeguarding measures in peacetime.
- 7.3 UK Blue Shield reaffirms its hope that the UK will capitalise on its ratification of HC54 to set an international standard for the protection of cultural property before, during, and after armed conflict, placing it as a world leader in this field, complementing other UK cultural property initiatives, including the Cultural Protection Fund.
- 7.4 UK Blue Shield is very willing to assist in the full implementation of HC54.



Appendix 1: HC54 and Protocols, Regime of Value





Appendix 2: Prioritisation during armed conflict

During the Second World War air raid protection assets were prioritised in order to safeguard Saint Paul's Cathedral from destruction by aerial bombardment. Herbert Mason's iconic photograph of the dome rising above the burning City of London became synonymous with the Ministry of Information's propaganda strap line: 'London can take it!'

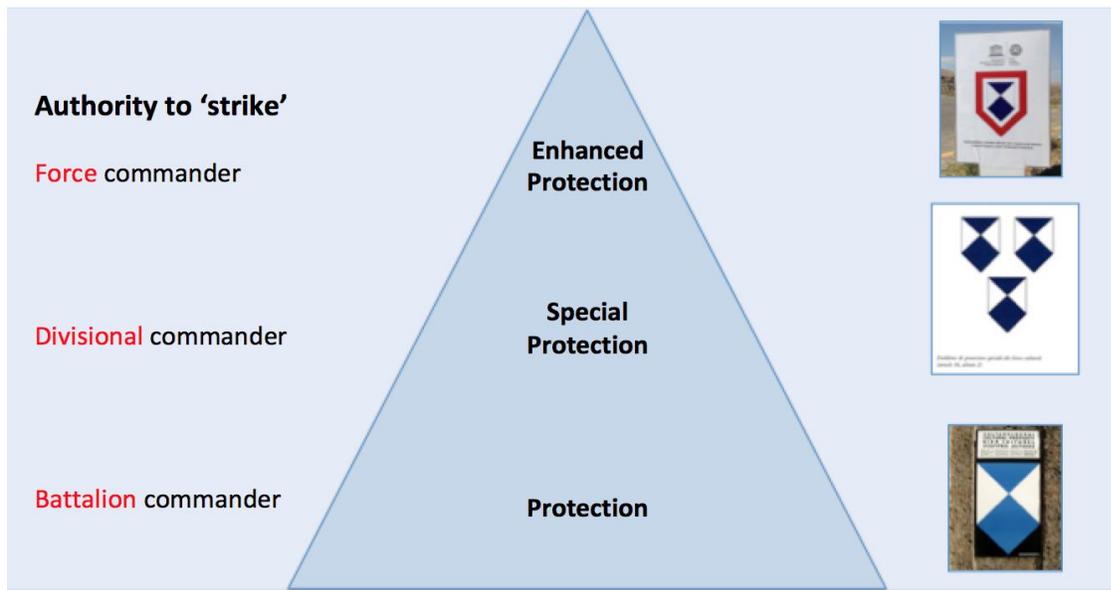


Herbert Mason, *St Paul's Survives*, 29/30 December 1941

Daily Mail photographer [Public domain], via Wikimedia Commons



Appendix 3: HC54 and Protocols, Regime of Value and Decision Making





Organisation Information

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Cover: Second World War shrapnel damage to the Victoria and Albert Museum, London.

Photograph: Emma Cunliffe