



Library Note

Cultural Property (Armed Conflicts) Bill [HL] (HL Bill 3 of 2016–17)

The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict provides for a system of general and special protection of cultural property in situations of armed conflict. There are also two protocols to the Convention—the First Protocol, adopted in 1954, sets out undertakings for the protection of cultural property in territory occupied during an armed conflict. The Second Protocol, adopted in 1999, extends and clarifies obligations under the Convention, identifies five acts which are serious violations of the Second Protocol, and establishes a system of enhanced protection for “cultural heritage of the greatest importance for humanity”.

The UK signed the Convention in 1954, but has not ratified it or acceded to either of the Protocols, although it does comply with the Convention during military operations. It has been the policy of successive governments since 2004 to ratify the Convention, but to date parliamentary time has not been found to pass the primary legislation necessary to ensure that the UK could fully meet the obligations set out in the Convention and Protocols. The Labour Government introduced a draft Bill in 2008, but it did not proceed beyond pre-legislative scrutiny.

The Cultural Property (Armed Conflicts) Bill [HL], which is based on the 2008 draft Bill, was introduced in the House of Lords on 19 May 2016 and is scheduled for second reading on 6 June 2016. It would introduce:

- Offences designed to protect cultural property in the event of armed conflict, including attacking, thieving, pillaging, misappropriating or vandalising protected cultural property, with heavier penalties for extensive destruction and attacking property under enhanced protection.
- An offence of misuse of the Blue Shield, an emblem that identifies cultural property protected under the Convention and Protocols. It would also establish authorised uses of the Blue Shield.
- An offence of dealing in cultural property that has been illegally exported from territory occupied during an armed conflict, and powers for the forfeiture or seizure of such cultural property.
- Immunity from seizure for cultural property in the UK which is being transported for safekeeping during a conflict between other states.

Labour and the Liberal Democrats have expressed support for the Bill, as have international cultural protection organisations.

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I. Convention for the Protection of Cultural Property in the Event of Armed Conflict

The [Convention for the Protection of Cultural Property in the Event of Armed Conflict](#) was adopted at The Hague in May 1954, in the wake of massive destruction of cultural heritage during the Second World War.¹ The Convention covers immovable and movable cultural heritage, including monuments of architecture, art or history, archaeological sites, works of art, manuscripts, books, and other objects of artistic, historical or archaeological interest, as well as scientific collections of all kinds regardless of their origin or ownership. The Convention entered into force on 7 August 1956, and 127 states are currently party to it.² It is accompanied by the [Regulations for the Execution of the Convention](#) which set out practical measures for the implementation of the Convention.

Parties to the Convention must “undertake 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” (Article 3). They must also undertake to respect cultural property situated within their own territory as well as within the territory of other parties to the Convention by refraining from using it, its immediate surroundings, or any appliances used to protect the cultural property for “purposes likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property” (Article 4). The Convention created a distinctive emblem, known as the Blue Shield, as a symbol to identify cultural sites protected under the Convention; the Convention regulates the use of this emblem (Articles 6, 16 and 17). The Convention also offers parties the opportunity to apply for special protection for a limited number of refuges, monumental centres and other immovable cultural property of very great importance by registering it in the International Register of Cultural Property under Special Protection (Articles 8 to 12).

The Convention is accompanied by two protocols. The [First Protocol](#) was adopted in 1954 and came into force on 7 August 1956, alongside the Convention.³ To date, 104 states are party to the First Protocol.⁴ The First Protocol sets out undertakings for the protection of cultural property in territory occupied during an armed conflict. The [Second Protocol](#) was adopted in 1999 following a review initiated in 1991 to “draw up a new agreement to improve the Convention taking account of the experience gained from recent conflicts and the development of international humanitarian and cultural property protection law since 1954”.⁵ The Second Protocol entered into force on 9 March 2004, and 68 states are currently party to it.⁶ It extends and clarifies obligations under the Convention. It identifies five acts as “serious violations” of the Second Protocol, which are to be considered offences. It also establishes a system of ‘enhanced protection’ for cultural heritage that is “particularly important for mankind”, a higher level of protection than the ‘special protection’ available under the Convention itself. UNESCO explains that the Second Protocol “does not replace” the Convention, but “complements it”.⁷

¹ UNESCO, ‘[Convention for the Protection of Cultural Property in the Event of Armed Conflict](#)’, accessed 24 May 2016. The Convention is sometimes referred to as the Hague Convention.

² UNESCO, ‘[Armed Conflict and Heritage: The States Parties](#)’; and ‘[Official List of States Parties to the Hague Convention](#)’, both accessed 24 May 2016.

³ UNESCO, ‘[Armed Conflict and Heritage: The States Parties](#)’, accessed 24 May 2016.

⁴ UNESCO, ‘[Official List of States Parties to the First Protocol](#)’, accessed 24 May 2016.

⁵ UNESCO, ‘[Armed Conflict and Heritage: Second Protocol to the Hague Convention](#)’, accessed 24 May 2016.

⁶ UNESCO, ‘[Armed Conflict and Heritage: The States Parties](#)’; and ‘[Official List of States Parties to the Second Protocol](#)’, both accessed 24 May 2016.

⁷ UNESCO, ‘[Armed Conflict and Heritage: Second Protocol to the Hague Convention](#)’, accessed 24 May 2016.

2. UK Position on Ratifying the Convention

2.1 1950s–1990s

The UK signed the Convention in December 1954 but has never ratified it or acceded to either of the Protocols.⁸ When asked in 1958 about the UK’s position on ratifying the Convention, the Conservative Government of the time said that it was “still examining the obligations” it “would assume by ratifying this Convention, the provisions of which are very complex”.⁹ The Department for Culture, Media and Sport (DCMS) explained on its website in 2014 that the UK originally chose not to ratify the Convention or accede to the First Protocol in 1954 “not on the grounds that it opposed measures to protect cultural property in the event of armed conflict, but rather because it considered, together with a number of other countries, that it did not provide an effective regime for the protection of cultural property”.¹⁰ The DCMS said that, for example, it had been felt that “the Convention did not contain adequate criminal sanctions”, “the meaning of many terms was imprecise” and “the special protection regime that it proposed was considered too political”.

2.2 Labour Government, 1997–2010

The adoption of the Second Protocol in 1999 “removed the UK’s concerns” as it “set out clear criminal sanctions”, “defined important terms” and “replaced the special protection regime with the enhanced protection regime”.¹¹ In May 2004, Lord McIntosh of Haringey, then Minister for Heritage in the Labour Government, announced that the UK intended to ratify the Convention.¹² In September 2005, the DCMS ran a consultation on how to implement the Convention and the two Protocols in the UK.¹³ The Government’s summary of responses to the consultation, published in October 2006, noted that “in general” there was “a high degree of support for the Government’s plans for implementation of the Hague Convention and its two Protocols”.¹⁴

Since existing UK laws are not sufficient to enable the UK to meet in full the obligations contained in the Convention and the two Protocols, legislation was drafted following detailed discussions between the DCMS and other departments.¹⁵ In January 2008, the Labour Government published a Draft Cultural Property (Armed Conflicts) Bill for pre-legislative scrutiny.¹⁶ The House of Commons Culture, Media and Sport Committee “welcome[d] the draft Bill, which was strongly supported in evidence” and found that “by and large” it was “drafted and structured in a way which will enable it to meet its aims”.¹⁷ The Labour Government announced its plans to introduce a Heritage Protection Bill incorporating the

⁸ UNESCO, ‘[Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954—Opened for Signature](#)’, accessed 24 May 2016.

⁹ [HL Hansard, 19 November 1958, col 1142](#).

¹⁰ Department for Culture, Media and Sport, ‘[Hague Convention 1954](#)’, archived version as at 12 February 2014.

¹¹ *ibid.*

¹² [HC Hansard, 16 June 2004, col 1016W](#).

¹³ Department for Culture, Media and Sport, [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.

¹⁴ Department for Culture, Media and Sport, [1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its Two Protocols of 1954 and 1999: A Summary of Responses Received to the Government’s Consultation](#), October 2006, p 5.

¹⁵ Department for Culture, Media and Sport, ‘[Hague Convention 1954](#)’, archived version as at 12 February 2014.

¹⁶ Department for Culture, Media and Sport, [Draft Cultural Property \(Armed Conflicts\) Bill](#), January 2008, Cm 7298.

¹⁷ House of Commons Culture, Media and Sport Committee, [Draft Cultural Property \(Armed Conflicts\) Bill](#), 22 July 2008, HC 693 of session 2007–08, p 3.

provisions of the draft Cultural Property (Armed Conflicts) Bill in the 2008–09 session subject to the availability of parliamentary time, but did not do so.¹⁸

2.3 Coalition and Conservative Governments, 2010 Onwards

The Coalition Government’s stated position was that it remained “committed to protecting cultural heritage” and would “seek to legislate on the 1954 Hague Convention and the subsequent protocols when parliamentary time allows”.¹⁹ The Coalition Government did not proceed with legislation.

At the beginning of June 2015, shortly after the general election, Ed Vaizey, Minister of State for Culture and the Digital Economy, said that he hoped the Conservative Government would “get on with” introducing legislation to ratify the Convention “very soon”.²⁰ He argued that: “The destruction in Iraq and Syria highlights the importance that we must place on safeguarding cultural artefacts from conflict”. On 21 June 2015, John Whittingdale, Secretary of State for Culture, Media and Sport, released a statement in which he said he was “in no doubt that the UK must also do what we can to prevent any further cultural destruction”.²¹ He made three commitments: to bring forward legislation to ratify the Convention “at the earliest opportunity”; to develop a new cultural protection fund to “support the protection of cultural heritage and the recovery from acts of cultural destruction”; and to hold a summit in the summer of 2015 with key stakeholders to advise on the proposed new legislation and delivery of the cultural protection fund.

In October 2015, the DCMS and the Foreign and Commonwealth Office hosted a Cultural Protection Summit, at which a £3 million Iraqi Emergency Heritage Management Project was announced as the first programme to be funded by the new £30 million Cultural Protection Fund.²² However, no legislation to allow the UK to ratify the Convention was brought forward during the 2015–16 parliamentary session. During a debate on the Convention in January 2016, a number of Members of the House of Lords expressed frustrations about this, with Lord Howarth of Newport (Labour), for example, declaring it “extraordinary that we are still having to hound the Government”, and the Earl of Clancarty (Crossbench) noting that the Convention was “now backed by every party and all departments”.²³ At the start of the 2016–17 session, the Cultural Property (Armed Conflicts) Bill was not mentioned in the Queen’s Speech, but it was included in background briefing notes published by the Cabinet Office on the day of State Opening.²⁴

¹⁸ Department for Culture, Media and Sport, [Government Response to the Culture, Media and Sport Committee Reports on the Draft Heritage Protection Bill and Draft Cultural Property \(Armed Conflicts\) Bill](#), October 2008, Cm 7472, p 3.

¹⁹ House of Lords, [Written Question: UN Convention for Protection of Cultural Property in Event of Armed Conflict](#), 11 August 2014, HLI360.

²⁰ [HC Hansard, 4 June 2015, col 739](#).

²¹ Council for British Archaeology, [‘CBA Pushes for Definite Timescales for Protection of Cultural Property’](#), 25 June 2015.

²² Department for Culture, Media and Sport and Foreign and Commonwealth Office, [‘New Scheme to Protect Cultural Sites from Destruction’](#), 28 October 2015; and House of Commons, [Written Question: Cultural Heritage](#), 24 February 2016, 26714.

²³ [HL Hansard, 14 January 2016, col 488](#) and [col 493](#).

²⁴ Cabinet Office, [Queen’s Speech 2016: Background Briefing Notes](#), 18 May 2016.

Although the UK has not ratified the Convention or acceded to the Protocols, the Government has stated that:

Our armed forces already act as though bound by the Hague Convention, and we have extensive arrangements in place for the protection of cultural property through our dedicated heritage and museum sectors.

[...] It is important to note that the Hague Convention and its protocols already inform our armed forces' law of armed conflict doctrine and training policy, particularly with regard to respect for cultural property, precautions in attack and recognition of the Blue Shield.²⁵

The Government assesses that there would be three primary benefits for the UK in ratifying the Convention:

- It will formalise the responsibilities of UK troops when operating in armed conflict overseas with regard to the protection of cultural property;
- It will provide reciprocal protection for UK cultural property in the event that we were attacked by a state party to the Convention; and
- In the current context of unprecedented cultural heritage destruction in the Middle East and North Africa region, especially in Iraq and Syria, it will ensure that the UK can act and be seen to act legitimately according to international law in response to such crises.²⁶

3. Provisions in the Bill

The Cultural Property (Armed Conflicts) Bill received its first reading in the House of Lords on 19 May 2016 and is scheduled to have its second reading on 6 June 2016. The Bill would introduce:

- Offences designed to protect cultural property in the event of armed conflict, including attacking, thieving, pillaging, misappropriating or vandalising protected cultural property, with heavier penalties for extensive destruction and attacking property under enhanced protection.
- An offence of misuse of the Blue Shield, an emblem that identifies cultural property protected under the Convention and Protocols. It would also establish authorised uses of the Blue Shield.
- An offence of dealing in cultural property that has been illegally exported from territory occupied during an armed conflict, and powers for the forfeiture or seizure of such cultural property.
- Immunity from seizure for cultural property in the UK which is being transported for safekeeping during a conflict between other states.

²⁵ [HL Hansard, 14 January 2016, cols 501–2.](#)

²⁶ Department for Culture, Media and Sport, [Impact Assessment for the Draft Cultural Property \(Armed Conflicts\) Bill](#), 1 May 2016, p 5.

Putting these measures in statute would enable the UK to fulfil obligations under the Convention and its Protocols, which would then enable the UK to ratify these international agreements. The DCMS has stated that in substance the policy behind the Bill has remained the same since the draft Bill published by the Labour Government in 2008, “although minor changes have been made to update and improve the drafting”.²⁷

The following sections of this briefing comment on key clauses within the Bill, although they do not give a full clause-by-clause commentary. More detailed comment on clauses can be found in the [Explanatory Notes](#) to the Bill.

3.1 Definitions (Part 1)

Part 1 of the Bill contains key definitions. Clause 1 introduces the Convention, the Regulations and the First and Second Protocols, the full texts of all of which are included in schedules 1 to 4 of the Bill respectively. Clause 2 provides that “cultural property” is defined as in Article 1 of the Convention. The definition in Article 1 covers “movable or immovable property of great importance to the cultural heritage of every people”, “buildings whose main and effective purpose is to preserve or exhibit the movable cultural property”, and “centres containing a large amount of cultural property”.

3.2 Serious Breach of Second Protocol (Part 2)

Part 2 of the Bill would incorporate into domestic law offences set out in Article 15 of the Second Protocol to the Convention. Article 15(1) defines certain acts as “serious violations” of the Second Protocol as follows:

Any person commits an offence within the meaning of this Protocol if that person intentionally and in violation of the Convention or this Protocol commits any of the following acts:

- (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 this Protocol;
- (d) making cultural property protected under the Convention and this Protocol the object of attack;
- (e) theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention.

Article 15(2) requires parties to the Second Protocol to adopt measures to establish these acts as criminal offences under domestic law. The Explanatory Notes to the Bill state that “although the United Kingdom already complies with the Convention during all military operations”, existing laws are “not sufficient to meet the obligations set out in the Convention and its

²⁷ [Explanatory Notes](#), p 5.

protocols in full”.²⁸ Paragraphs 11 to 18 of the Explanatory Notes explain in further detail where domestic legislation does not fully cover the offences contained in Article 15 of the Second Protocol. The requisite new offences are created in clauses 3 to 5 of the Bill.

Under clause 3, it would be an offence to commit one of the acts outlined in Article 15(1) of the Second Protocol if the act was done intentionally, in violation of the Convention or the Second Protocol, and the person knew that the property in question was cultural property. Clause 3 also sets out provisions relating to jurisdiction: the acts in question would be an offence whether they were committed in the UK or elsewhere. Clause 3 would make the acts described in paragraphs (a), (b) and (c) of Article 15(1) an offence regardless of the nationality of the person who carried out the act. These acts—targeting or using cultural property under ‘enhanced protection’, or engaging in “extensive” destruction or appropriation of protected cultural property—are treated as more serious offences. Under Article 10 of the Second Protocol, ‘enhanced protection’ can be granted only to “cultural heritage of the greatest importance for humanity” and there is a special procedure, outlined in Article 11 of the Second Protocol, for considering applications to grant enhanced protection to cultural property. To date, only ten locations have been granted enhanced protection, all of which are World Heritage properties.²⁹ The Explanatory Notes state that: “The threshold for enhanced protection is very high and therefore it is unlikely that such offences will in practice be committed”.³⁰

For the less serious offences in paragraphs (d) and (e) of Article 15(1)—attacking, thieving, pillaging, misappropriating or vandalising protected cultural property—clause 3 would give the UK authorities jurisdiction only over acts carried out by UK nationals or those subject to UK service jurisdiction (essentially UK armed forces personnel and civilians subject to UK armed forces discipline).

Clause 4 of the Bill would create ancillary offences related to the new offences created in clause 3. The exact wording differs for the three jurisdictions of England and Wales, Northern Ireland and Scotland, but the ancillary offences would include actions such as attempting or conspiring to commit the offences covered in clause 3, assisting an offender or concealing the commission of an offence. The provisions in clause 4 replicate those in clause 3 in terms of the location of the offence and nationality of the offender.

Clause 5 would make military commanders and other superiors criminally responsible for offences committed by their subordinates in certain circumstances. The Explanatory Notes explain that a distinction is drawn “between the standards expected of military and quasi-military commanders in relation to military forces under their command and other superiors such as government officials or heads of civilian organisations, as it is recognised that the latter may not have the same degree of control over the actions of their subordinates”.³¹ Therefore, a commander would be liable under clause 5 “where he or she knew, or owing to the circumstances at the time should have known, that his or her forces were committing an offence”, whereas a superior would be liable only “where he or she knew or consciously disregarded information indicating that the subordinate was committing an offence”.

²⁸ [Explanatory Notes](#), p 5.

²⁹ Two in Azerbaijan; three in Belgium; three in Cyprus; and one each in Italy and Lithuania (UNESCO, [List of Cultural Property Under Enhanced Protection](#), 20 March 2014).

³⁰ [Explanatory Notes](#), p 9.

³¹ *ibid*, p 10.

Clause 6 provides that the penalty for both the offences described in clause 3 and for the ancillary offences described in clause 4 would be a prison term of up to 30 years.

3.3 Cultural Emblem (Part 3)

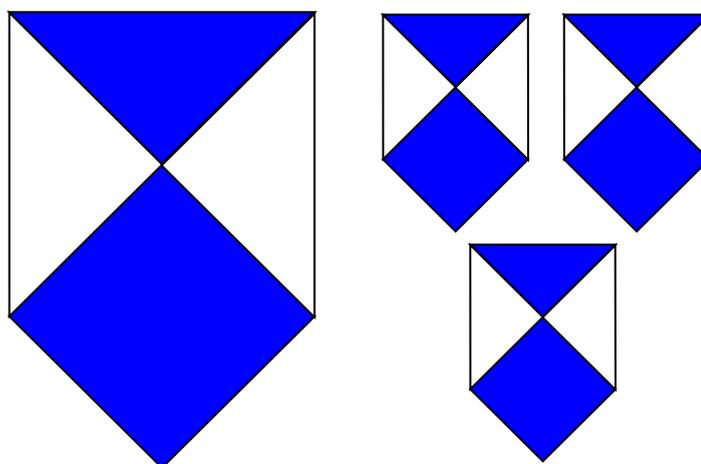
Article 16 of the Convention created a ‘cultural emblem’, a distinctive royal blue and white shield, to be used to identify cultural property protected by the Convention (see Figure 1). The emblem has also come to be known as the Blue Shield. The Blue Shield is regarded as “the ‘cultural equivalent’ of the Red Cross”.³²

Under Article 17 of the Convention, the cultural emblem on its own may be used to identify cultural property not under special protection, and used on armbands and identity cards for people engaged in protecting cultural property in accordance with the Convention or Regulations.

Article 17 also states that the emblem repeated three times in a triangular pattern (see Figure 1) may be used to identify immovable cultural property under special protection; cultural property being transported in accordance with the conditions provided for in Articles 12 and 13; or improvised refuges, under the conditions provided for in the Regulations. Article 8 of the Convention explains what is meant by ‘special protection’: it allows for a “limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monument and other immovable cultural property of very great importance” to be placed under ‘special protection’ providing they are situated at “an adequate distance” from large industrial centres or important military objectives and are not used for military purposes. ‘Special protection’ is different from the ‘enhanced protection’ category created under the Second Protocol.

The Convention allows the emblem to be placed on immovable cultural property only if it is accompanied by a signed and dated authorisation from the competent national authority (Article 17(4)). Article 17 of the Convention forbids the use of the distinctive emblem during armed conflict for any other purposes than those set out within the Article. It also forbids the use “for any purpose whatever” of “a sign resembling the distinctive emblem”. Part 3 of the Bill therefore creates offences relating to the unauthorised use of the emblem. Clauses 10, 11 and 12 would authorise the emblem to be used for the purposes described in the Convention. Clause 9 would make it an offence to use the emblem for any other purpose, including using “any other design that so nearly resembles the emblem as to be capable of being mistaken for it”. People summarily convicted of this offence in England and Wales would be liable to a fine (no maximum cap), and in Scotland and Northern Ireland to a fine not exceeding Level 5 on the standard scale.

Figure 1: Cultural Emblem—The Blue Shield



³² Newcastle University, [‘New Bill Will Protect Ancient Sites in War Zones’](#), 18 May 2016.

Clause 13 would create some defences to this offence which would allow designs similar to the emblem that are currently lawfully in use to continue being used in certain circumstances. The Explanatory Notes give as examples a sports club badge already registered as a trademark, or a t-shirt with a similar logo printed prior to the Act coming into force, in which case someone selling or buying the t-shirt would not incur criminal liability.³³

3.4 Property Exported from Occupied Territory (Part 4)

Clause 17 would create a new offence of dealing in unlawfully exported cultural property. The First Protocol requires all parties to prevent cultural property being exported from territory that is occupied during an armed conflict. It also requires parties to take into custody any cultural property that has been imported into their country from an occupied territory, and to return the property to the competent authorities of the previously occupied territory at the close of hostilities. Clause 17 would make it an offence to deal in unlawfully exported cultural property, knowing or having reason to suspect that it had been unlawfully exported. The penalties would be as follows:

	Conviction on Indictment	Summary Conviction
England and Wales	Imprisonment for up to seven years, or a fine, or both	Imprisonment for up to twelve months, or a fine (no maximum cap), or both
Scotland		Imprisonment for up to twelve months, or a fine up to the statutory maximum, or both
Northern Ireland		Imprisonment for up to six months, or a fine up to the statutory maximum, or both

Clause 17(2) provides that this offence would not apply retrospectively to property that had been imported into the UK before the clause came into force. However, cultural property imported into the UK after the clause came into force would be unlawfully exported even if it had been removed from an occupied territory before the Bill came into force—clause 16, which defines “unlawfully exported cultural property”, provides that “it does not matter whether the property was exported before or after this section comes into force”. The Explanatory Notes state that “cultural property unlawfully exported from occupied territory any time after 1956 (when the First Protocol came into force) will come within the definition”.³⁴

Clauses 18 to 27 deal with the forfeiture of unlawfully exported cultural property. Clause 18 would allow a court which convicted someone of the offence of unlawfully exporting cultural property to order that property to be forfeited, and to make provision for it to be retained or disposed. Clauses 19 to 22 would enact legal provisions allowing a court to order the forfeiture of cultural property otherwise than in connection with an offence, including allowing for a forfeiture order to be conditional on compensation being paid by the Secretary of State or authorities in the country seeking the return of the cultural property. The Explanatory Notes

³³ [Explanatory Notes](#), p 12.

³⁴ *ibid*, p 13.

explain that this “enables the court to protect the interests of a person who acquires cultural property in good faith not knowing that it was unlawfully exported from occupied territory”.³⁵

Clauses 23 to 27 give the authorities powers to search for, seize and retain cultural property which is suspected of being unlawfully exported from occupied territory, and set out how the property is to be returned to the owner or disposed of at the conclusion of an investigation or if a forfeiture order is not carried through.

3.5 Property Removed for Safekeeping (Part 5)

Clause 28 implements the UK’s obligations under Article 14 of the Convention to grant immunity from seizure to any cultural property which enjoys ‘special protection’ under Article 12 of the Convention. The Explanatory Notes state that Article 12 “applies to cultural property which is being transported for safekeeping”, either to the UK or in transit through the UK to another destination.³⁶ The immunity from seizure or forfeiture given by clause 28 would apply both to the cultural property and to the vehicle transporting the property.

3.6 General (Part 6)

Clause 29 provides that if an officer of a company or Scottish partnership consents to or connives in an offence under the Bill, that individual would be guilty of the offence as well as the company or partnership. The Explanatory Notes give the example of private military contractors as the type of company to which this clause might be particularly relevant.³⁷

Clause 30 provides that all provisions in the Bill would apply to the Crown, but the Crown cannot be criminally liable, nor would the Bill affect the Queen in her private capacity. The Explanatory Notes explain that this clause would mean that enforcement powers such as powers of entry would apply to government offices, that Crown property could be seized and that individuals in Crown service, such as civil servants, could be held criminally liable.³⁸

Clause 31 provides that the Bill would extend to England and Wales, Scotland and Northern Ireland. There are no clauses which apply to England only or to England and Wales only.³⁹ Legislative consent motions would be needed in Scotland, Northern Ireland and Wales for some clauses—Annex A of the Explanatory Notes provides full details.

4. Reaction to the Bill

There have been a number of positive responses to the announcement of the Bill. The UK National Commission for UNESCO, the British Red Cross and the UK National Committee of the Blue Shield all welcomed the Bill, the British Red Cross pointing out that it was “the only outstanding major international humanitarian law treaty the UK has not yet ratified”.⁴⁰ Professor Peter Stone, UNESCO Chair in Cultural Property Protection and Peace at Newcastle

³⁵ [Explanatory Notes](#), p 14.

³⁶ *ibid*, p 16.

³⁷ *ibid*, p 17.

³⁸ *ibid*.

³⁹ *ibid*, p 22.

⁴⁰ UK National Committee for UNESCO, ‘[UKNC Welcomes UK Government’s Commitment to Ratify the Hague Convention on Cultural Protection](#)’, 20 May 2016; UK National Committee of the Blue Shield, ‘[Blue Shield Statement on the 2016 Queen’s Speech](#)’, accessed 20 May 2016; British Red Cross, ‘[Red Cross Welcomes UK Move to Protect Cultural Sites](#)’, 19 May 2016.

University, described the announcement as “excellent news” and said that: “Taken with the recently announced Cultural Protection Fund, the commitment to ratification provides a real platform for establishing the UK as an international leader with respect to the protection of cultural property in the event of armed conflict”.⁴¹

Lord Stevenson of Balmacara, Labour Spokesperson for Culture, Media and Sport in the House of Lords, said that his party “strongly support[ed]” the Bill.⁴² The Earl of Clancarty (Crossbench), who has asked numerous parliamentary questions about the UK’s plans to ratify the Convention, congratulated the Government on bringing in the Bill.⁴³ Baroness Andrews (Labour), Chair of English Heritage, who tabled a question for short debate on the Convention in January 2016, said that she was “really delighted that the Government has finally committed to the ratification of the Hague Convention and its Protocols”.⁴⁴ In the House of Commons, Tim Farron, Leader of the Liberal Democrats, also said that he was “especially delighted” that the Government had announced the Cultural Property (Armed Conflicts) Bill.⁴⁵

Writing for Chatham House, Sasan Aghlani argued that the Bill “would present a unique opportunity for the UK to become an effective global leader in this area”.⁴⁶ The Government itself has noted that the UK would be the first permanent member of the UN Security Council to ratify both the Convention and its two Protocols (although it would be the last to ratify the Convention).⁴⁷ However, in Sasan Aghlani’s view, “the effectiveness and credibility of the UK as a leader in this area will hinge on its ability to conceptualize heritage destruction more broadly than ISIS iconoclasm, balance capability-building between the state and civil society and take action against some of its own allies guilty of destroying heritage”, such as attacks by Saudi Arabian warplanes against UNESCO World Heritage Sites in Yemen.⁴⁸ Mr Aghlani also pointed out that “there is divergence of opinion over whether the Hague Convention can be applied to non-state actors”.

5. Implementation and Impact

5.1 Ratification

Baroness Neville-Rolfe, Parliamentary Under Secretary for Culture, Media and Sport, explained in January 2016 that once the necessary legislation to enable the UK to ratify the Convention had been introduced, the UK would deposit an instrument of ratification with UNESCO in Paris.⁴⁹ The Convention and its Protocols would enter into force three months afterwards. She explained that the Government was “also working on a statement that will set out our

⁴¹ Newcastle University, ‘[New Bill Will Protect Ancient Sites in War Zones](#)’, 18 May 2016.

⁴² [HL Hansard, 19 May 2016, col 107](#). Examples of the Earl of Clancarty’s parliamentary questions are at [HL Hansard, 28 March 2012, col WA261](#) and House of Lords, [Written Question: UN Convention for Protection of Cultural Property in Event of Armed Conflict](#), 4 December 2015, HL4076.

⁴³ [HL Hansard, 14 January 2016, col 482](#); and [HL Hansard, 19 May 2016, col 69](#).

⁴⁴ UK National Committee of the Blue Shield, ‘[Blue Shield Statement on the 2016 Queen’s Speech](#)’, accessed 20 May 2016.

⁴⁵ [HC Hansard, 18 May 2016, col 69](#).

⁴⁶ Sasan Aghlani, ‘[Queen’s Speech Provides UK with Path to Leadership on Cultural Property Protection](#)’, Chatham House, 24 May 2016.

⁴⁷ Cabinet Office, [Queen’s Speech 2016: Background Briefing Notes](#), 18 May 2016, p 54; UNESCO, ‘[Official List of States Parties to the Hague Convention](#)’, accessed 24 May 2016. France and Russia ratified the Convention in 1957, China in 2000 and the USA in 2009.

⁴⁸ Sasan Aghlani, ‘[Queen’s Speech Provides UK with Path to Leadership on Cultural Property Protection](#)’, Chatham House, 24 May 2016.

⁴⁹ [HL Hansard, 14 January 2016, col 501](#).

approach in determining what cultural property in the UK will be afforded general and enhanced protection, in the event of armed conflict”. She said that the Government also planned to describe its policy on “taking the protection of cultural sites into account when planning military operations and in the aftermath of a military operation”.

Under Part 2 of the Constitutional Reform and Governance Act 2010, before a treaty can be ratified, a Minister of the Crown must lay a copy before Parliament, in whatever format he or she thinks appropriate, and 21 sitting days must elapse without either House resolving that the treaty should not be ratified.⁵⁰

5.2 Armed Forces

When the House of Commons Culture, Media and Sport Committee scrutinised the draft Bill in 2008, one of its main concerns was to establish whether or not it would “constrain military operations unduly, for instance by limiting troops’ freedom to protect themselves when coming under fire from opposing forces based in a museum or in a mosque, or by enabling opposing forces to surround military objectives with cultural sites”.⁵¹ The Committee found that “the Ministry of Defence appears confident that passage of the Bill into law would not impose such a constraint; and the Minister provided similar assurances in writing”.⁵²

In answer to a parliamentary question about what changes to military law would be necessitated by ratifying the Convention, Penny Mordaunt, Minister for the Armed Forces, stated in 2015 that:

Respect for cultural property is already upheld across the Armed Forces and they currently act within the spirit of the 1954 Convention. This respect is incorporated into military law through the UK Manual of the Law of Armed Conflict, our targeting policy, training, and in battle area evaluation and assessments. The Armed Forces must comply with the Rome Statute which makes intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, and historic monuments, provided they are not military objectives, a war crime.⁵³

Baroness Neville-Rolfe described in January 2016 efforts that were already ongoing in the armed forces to recruit cultural property specialists:

A joint military cultural property protection working group, established in early 2014, is developing the concept of a unit of cultural property protection specialists [...] In the near future that unit will start to recruit specialists, perhaps reservists with cultural expertise, pending final approval. The working group will be reviewing cultural property protection training within the armed forces.⁵⁴

⁵⁰ See House of Commons Library, [Parliament’s New Statutory Role in Ratifying Treaties](#) (8 February 2011) for further information about this process, and what happens in the event one or both Houses passes a resolution against ratifying a treaty.

⁵¹ House of Commons Culture, Media and Sport Committee, [Draft Cultural Property \(Armed Conflicts\) Bill](#), 22 July 2008, HC 693 of session 2007–08, p 3.

⁵² *ibid.*

⁵³ House of Commons, [Written Question: UN Convention for Protection of Cultural Property in Event of Armed Conflict](#), 1 July 2015, 3958.

⁵⁴ [HL Hansard, 14 January 2016, cols 501–2.](#)

Given that the Convention is already treated by the UK military as “part of customary international law” and that British troops are trained accordingly, the Government assesses that “the likelihood of UK troops being prosecuted under this Bill for damaging cultural property is extremely small”.⁵⁵ The Government also notes that “although there have been instances of damage to cultural property in Iraq by coalition forces, none of these have been carried out by UK troops”.⁵⁶

5.3 Heritage, Arts and Antiques Sectors

Although those who buy and sell cultural property, such as art dealers, auction houses, museums and private collectors would need to satisfy themselves that objects presented for sale had not been unlawfully exported from occupied territory, the Government assesses that this would not impose significant new costs on dealers.⁵⁷ The Government states that dealers would not be required to do anything more than is already required under existing codes of conduct, such as the [Code of Practice for the Control of International Trading in Works of Art](#) (which members of the British Antique Dealers Association must comply with) and the [Code of Conduct](#) of the Antiquities Dealers Association. At the time of writing, these organisations had not publicly commented on the Bill.

With regard to implementing the Blue Shield, the Government has noted that:

Owners/guardians of cultural property protected by the Convention may choose to affix the blue shield to their cultural property to visibly demonstrate that it is protected by the Convention. The blue shield may be affixed during peacetime or only in times of armed conflict. The affixing of such an emblem is, however, an entirely voluntary matter. Neither the Bill nor the Convention require it. Cultural property will not lose its protection through the Convention because no emblem is affixed. Furthermore, the affixing of the emblem is not the only means by which opposing commanders will be able to identify protected property. It is the Government’s intention to provide a password-protected list to UNESCO, containing the GPS co-ordinates of all cultural property that the Government considers to be protected by the Convention. In the event of armed conflict the password will be supplied to any opposing state party and so there can be no doubt about the cultural property in the UK that is protected under the Convention.⁵⁸

5.4 Iraq, Syria and North Africa

The Government has alluded to the destruction of cultural heritage by ISIS/ISIL in Iraq, Syria and North Africa as a catalyst for ratifying the Convention.⁵⁹ Members speaking in a House of Lords debate on the Convention in January 2016 echoed this point. For example, Baroness Andrews (Labour) noted “a growing sense of urgency, which has been underlined by the grotesque failures in Iraq and [...] now fuelled by the increasing barbarity in Syria”.⁶⁰ She

⁵⁵ Department for Culture, Media and Sport, [Impact Assessment for the Draft Cultural Property \(Armed Conflicts\) Bill](#), 1 May 2016, p 10.

⁵⁶ *ibid.*

⁵⁷ *ibid.*, p 7.

⁵⁸ *ibid.*, p 8.

⁵⁹ [HC Hansard, 4 June 2015, col 739](#); BBC News, ‘UK to Adopt Hague Convention to Protect Artefacts in War Zones’, 21 June 2015; Department for Culture, Media and Sport, [Impact Assessment for the Draft Cultural Property \(Armed Conflicts\) Bill](#), 1 May 2016, p 5.

⁶⁰ [HL Hansard, 14 January 2016, col 484](#).

believed that this made “the effective application of the Convention more urgent than ever, both as a clear framework of principles and [...] also as the means of attributing individual responsibility and securing justice through the International Criminal Court”. The Bishop of Portsmouth argued that although trade in looted antiquities from Iraq and Syria was already illegal, ratifying the Convention and Protocols was “one way in which the United Kingdom can make law enforcers take this problem far more seriously”.⁶¹

However, Lord Howarth of Newport (Labour) sounded a note of caution that the UK’s ratification of the Convention would not in itself “have stopped ISIL in its deprivations”—he said they would still have looted ancient sites to make money and filmed the destruction of buildings for propaganda purposes. He argued that “more than ratification and legislation is needed” to tackle ISIS’s “full-blown criminal enterprise dealing in cultural property to finance terrorism”.⁶²

⁶¹ [HL Hansard, 14 January 2016, col 492.](#)

⁶² [ibid, col 490.](#)

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