

Explanatory Memorandum on the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999

Title of Treaty:

Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999

Command Paper No: 9411

Subject Matter

1. This Explanatory Memorandum refers to the proposed accession by the United Kingdom to the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (the 'Second Protocol').
2. The Second Protocol extends and clarifies obligations under the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (the 'Convention'). It makes further specific provision to protect cultural property in the event of armed conflict and, in particular, it identifies five acts, each a serious violation of the Protocol, which are to be considered an offence under the Protocol. It also introduces obligations to adopt measures to suppress any use of cultural property in violation of the Convention or Second Protocol; and any illicit export, other removal or transfer of ownership of cultural property from occupied territory in violation of the Convention or Second Protocol. Finally, it establishes an optional system of enhanced protection for specially designated cultural property.
3. The Government intends to ratify the Convention and accede to the First and Second Protocols at the same time. The Convention provides for a system of general and special protection of cultural property in situations of armed conflict. The First Protocol (1954) imposes a number of obligations on parties in relation to the protection of cultural property in occupied territories. The Convention and First Protocol were published and laid before Parliament in a Command Paper in the Miscellaneous Series in 1956 (Command Paper 9837) so are not specifically addressed in this Memorandum.¹

Ministerial Responsibility

4. The Secretary of State for Culture, Media and Sport is responsible for policy on cultural property protection. The Secretary of State for Foreign and Commonwealth Affairs has overall responsibility for the conclusion and implementation of treaty obligations and responsibility for their application in Overseas Territories. The Secretary of State for Defence has overall responsibility for defence planning and policy concerning the armed forces.

Policy Considerations

(i) General

¹ Copies of this Command Paper are appended to this Explanatory Memorandum.

5. The UK Government announced its intention to ratify the Convention and accede to its two Protocols in 2004. Such a step will send a strong message about its commitment to the protection of global cultural heritage. It would make the UK the first permanent member of the UN Security Council to become a party to both the Convention and its two Protocols. It will cement the UK's position on the world stage at the forefront of cultural property protection and encourage other members of the global community to follow our lead.
6. Ratification of the Convention and accession to its two Protocols will have three primary benefits:
 - It will formalise the responsibilities of UK troops with regard to the protection of cultural property when they are engaged in armed conflicts;
 - It will provide protection for UK cultural property in the event of armed conflict in the UK; and
 - It will ensure that the UK can act and be seen to act legitimately and according to international law in response to the current unprecedented destruction of cultural heritage in the Middle East and North Africa region.

(ii) Financial

7. There will be one-off low-level familiarisation costs associated with the Convention and Protocols for public sector organisations, such as heritage and enforcement agencies, and businesses, such as art dealers and museums. Additional low-level costs are also anticipated for prosecuting authorities, enforcement agencies and Central Government.²

(iii) Declarations

8. The following declarations are to be made by the UK upon ratification and accession:
 - 1) It is the understanding of the United Kingdom that military commanders and others responsible for planning, deciding upon, or executing attacks necessarily have to reach decisions on the basis of their assessment of the information from all sources which is reasonably available to them at the relevant time.
 - 2) The United Kingdom understands the term "feasible" as used in the Second Protocol to mean that which is practicable or practically possible, taking into account all circumstances ruling at the time, including humanitarian and military considerations.
 - 3) It is the view of the United Kingdom that, when referred to in the Second Protocol, the military advantage anticipated from an attack is intended to refer to the advantage anticipated from the attack considered as a whole and not only from isolated or particular parts of the attack.
 - 4) The United Kingdom recalls the Declaration made by the Republic of Mauritius on its accession to the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954 as to the purported territorial application of the Convention.

² Further details of the financial impact of the Cultural Property (Armed Conflicts) Bill are provided in the Bill's Impact Assessment: <http://services.parliament.uk/bills/2016-17/culturalpropertyarmedconflicts.html>

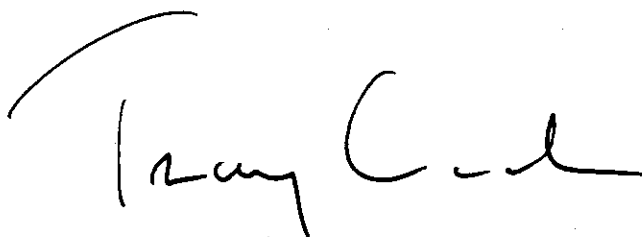
The United Kingdom rejects the claim contained in the Declaration made by Mauritius that the territorial application of the Convention extends to the Chagos Archipelago including Diego Garcia. In particular, the United Kingdom rejects the claim by the Republic of Mauritius that the Chagos Archipelago, which the United Kingdom administers as the British Indian Ocean Territory, is part of Mauritius. The United Kingdom has no doubt about its sovereignty over the British Indian Ocean Territory / Chagos Archipelago. Mauritius' purported extension of the Convention to this territory is unfounded and does not have any legal effect.

(iv) Implementation

9. In order to put in place the necessary domestic legislation, the Government introduced the Cultural Property (Armed Conflicts) Bill in the House of Lords on 19th May 2016.³
10. The Bill creates the new criminal offence of serious violation of the Second Protocol, giving effect to Article 15 (1). The Bill also introduces the offence of dealing in unlawfully exported cultural property, which fulfils the obligation in Article 21(b) of the Second Protocol.

(v) Consultations

11. The Government conducted a public consultation on ratification of the Convention and accession to its two Protocols in 2005. Responses to the consultation demonstrated a high level of support for the Government's proposals.
12. UK Overseas Territories (excluding those without permanent populations) and Crown Dependencies have been consulted about ratification of the Convention and accession to the Protocols with a number having expressed interest in extension to their territories. Initial ratification and accession will be on behalf of the UK itself. The Convention and Protocols can be extended to interested territories after the UK has deposited its instruments of ratification and accession.



Tracey Crouch MP
Minister for Sport, Tourism and Heritage

³ <http://services.parliament.uk/bills/2016-17/culturalpropertyarmedconflicts.html>