# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# CULTURAL PROPERTY (ARMED CONFLICTS) BILL [*LORDS*]

*First Sitting*

*Tuesday 15 November 2016*

*(Morning)*

CONTENTS

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**not later than**

**Saturday 19 November 2016**

**The Committee consisted of the following Members:**

*Chairs:* † Ms Karen Buck, Mr Andrew Turner

† Allin-Khan, Dr Rosena *(Tooting)* (Lab)
† Borwick, Victoria *(Kensington)* (Con)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Bryant, Chris *(Rhondda)* (Lab)
† Burrowes, Mr David *(Enfield, Southgate)* (Con)
† Crouch, Tracey *(Parliamentary Under-Secretary of State for Culture, Media and Sport)*
† Davies, Mims *(Eastleigh)* (Con)
† Djanogly, Mr Jonathan *(Huntingdon)* (Con)
† Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Nicolson, John *(East Dunbartonshire)* (SNP)
† Offord, Dr Matthew *(Hendon)* (Con)
† O'Hara, Brendan *(Argyll and Bute)* (SNP)
Smeeth, Ruth *(Stoke-on-Trent North)* (Lab)
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Stuart, Graham *(Beverley and Holderness)* (Con)
† Sturdy, Julian *(York Outer)* (Con)
† Thomas, Derek *(St Ives)* (Con)
† Warburton, David *(Somerton and Frome)* (Con)

Katy Stout, *Committee Clerk*

**† attended the Committee**

# Public Bill Committee

*Tuesday 15 November 2016*

*(Morning)*

[Ms Karen Buck *in the Chair*]

## Cultural Property (Armed Conflicts) Bill [*Lords*]

9.25 am

*Ordered,*

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 15 November) meet—

(a) at 2.00 pm on Tuesday 15 November;

(b) at 11.30 am and 2.00 pm on Thursday 17 November;

(2) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 17 November. —*(Tracey Crouch.)*

*Resolved,*

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication—*(Tracey Crouch.)*

**The Chair:** Before we begin, could everyone ensure that their phones are switched off? The selection list for today's sitting is available in the room and online, and it shows how the amendments have been grouped together for debate. Amendments grouped together are generally on the same or similar issues. I am aware that there are very experienced Members in the room, but there are also some who are not so experienced, so I will spend a moment running through the process.

A Member who has put their name to the lead amendment in a group is called first. Other Members are then free to catch my eye to speak on any or all of the amendments within that group. A Member may speak more than once in a single debate. At the end of a debate on a group of amendments, I shall call the Member who moved the lead amendment again. Before they sit down, they need to indicate whether they wish to withdraw the amendment or seek a decision. If any Member wishes to press any other amendment or new clause in a group to a vote, they need to let me know. I will work on the assumption that the Minister wishes the Committee to reach a decision on all Government amendments tabled.

Please note that decisions on amendments take place not in the order in which they are debated, but in the order in which they appear on the amendment paper. In other words, debate occurs according to the selection and grouping list, but decisions are taken when we come to the clause that the amendment affects. New clauses are decided after we have finished with the existing text—that is, after considering schedule 4 to the Bill. I shall use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules following the debates on the relevant amendments. I hope that explanation is helpful.

*Clause 1 ordered to stand part of the Bill.*

**Clause 2**

"Cultural property"

**Kevin Brennan** (Cardiff West) (Lab): I beg to move amendment 2, in clause 2, page 1, line 18, at end add

"and shall be taken to include cultural property in digital form."

**The Chair:** With this it will be convenient to discuss amendment 6, in clause 8, page 5, line 5, at end insert—

'( ) Where cultural property is in a digital form, the cultural emblem may be displayed in a digital format."

I call Kevin Barron.

**Kevin Brennan:** We are very good friends, Ms Buck, so I do not need to remind you that I am Kevin Brennan, not Kevin Barron, although that mistake has been made previously; the *Daily Mail* online accidentally knighted me, briefly—

**Mims Davies** (Eastleigh) (Con): Very accidentally.

**Kevin Brennan:** The hon. Lady is quite right. Like her, I am much more shovelry than chivalry.

Amendment 2 stands in my name and that of my hon. Friend the Member for Tooting. As with all the Opposition's amendments to the Bill, it is a probing amendment. Having closely looked at what was said on Second Reading, Members will realise that we merely seek to scrutinise and stress test the Bill a little. The Bill has completed its stages in the House of Lords, but some outstanding issues remain that we need to explore in Committee, particularly through the amendments that my hon. Friend and I have tabled. An amendment has also been tabled by a Government Back Bencher.

We made it clear on Second Reading that we very much support the Bill, which has been a long time coming. It brings into UK law the 1954 Hague convention, which the UK did not ratify at the time and which has been hanging around waiting for ratification for some considerable time, including after the second protocol was added in 1999. Indeed, it was the Labour Government in 2004 that announced their intention to legislate in this way. They introduced a draft Bill in 2008, which was then scrutinised by a Select Committee but unfortunately ran out of time prior to the 2010 general election and then went into a deep sleep under the coalition Government. It has been revived by this Government, which we think is a good thing, although it is now 62 years since the convention was originally passed.

We are not seeking to challenge the spirit of the convention or the principles of the Bill. In fact, we understand that it is in many ways a different kind of Bill. As the Minister reminded us yesterday in the Programming Sub-Committee, the schedules are in effect there to give the Committee information, rather than to be debated or amended. They actually represent the wording of the convention and the subsequent protocols to it. The first six parts of the Bill are very much for us to debate and amend. As I have said, our amendments will, for the most part, be probing amendments, as this one is. I agree with what the Secretary of State said on Second Reading:

"We want to get on with it".—[*Official Report*, 31 October 2016; Vol. 616, c. 700.]

That is why we are here today. I hope that we will be able to conclude our proceedings in the plenty of time given by the programme motion that was agreed by the Government and the Opposition.

We would like the Government to clarify some aspects of the Bill that could create difficulties in future for those who have to interpret and implement it when it becomes law. Amendment 2, which we are considering in conjunction with amendment 6, speaks to one such difficulty. An inevitable consequence of the Bill's 62-year gestation is that certain aspects of it may well have become outdated. The convention was written in the light of the cultural destruction of the second world war, but quite a lot has happened in the intervening period. The descriptions of the types of cultural property that are in need of protection, which can be found in schedule 1 to the Bill, show their age in the way they refer to physical artefacts and the buildings that house them, with no mention of, for example, those objects that take a digital, rather than physical, form.

The convention, as it is worded, covers cultural property that is "movable or immovable", but the question that was quite reasonably raised in the other place is whether it covers digital cultural artefacts. For example, would it cover moving images as well as movable or immovable images? I understand that the list in schedule 1 is illustrative and not necessarily exclusive, and that the omission might be seen in some ways as a natural consequence of technological developments rather than any particular negligence at the time, but I still think that it would be useful for the Minister to set out the Government's position on that.

Having said that it is because of technological developments, it may also reflect a change in mindset since 1954 with regard to what are regarded as cultural objects. It is quite telling that the wording of schedule 1 and the definition of cultural property under article 1 of the convention do not seem to say or to imply that, for example, film would be included as cultural property in that regard. Perhaps people in 1954 did not envisage that film, which was still a relatively new form of artistic expression, albeit more than half a century old, would fall into the category of a cultural object. Lord Stevenson spoke quite eloquently in the other place about the growing and indisputable importance of film, and subsequently television, and the way that they are woven into everyday life, and the way that they reflect, reproduce and challenge the worlds that we inhabit. Therefore, the national film archives in England, Wales, Scotland and Northern Ireland, as well as regional archives, are all of critical importance.

In fact, a couple of years ago I was fortunate enough to visit the British Film Institute's archives, which are located near Milton Keynes—if the Minister gets an opportunity in her busy life, I recommend she visits them at some stage—to see the work being done to preserve the cultural heritage of the British film industry. In recent years we had the fantastic discovery of the very early Mitchell and Kenyon films, which catalogue life in the Edwardian era in an incredibly moving and powerful way. They reveal the cultural life of ordinary people in this country, not just so-called high culture, showing how they lived and spent their leisure time and their working lives more than 100 years ago with an amazingly vivid quality. While I was there, I was given a DVD of some of the early colour films of Claude Friese-Greene, who developed an early technique for making colour films but was largely forgotten for many years. There are amazingly vivid images of life in the UK from a tour he took in the 1920s.

To confirm that "cultural property" can be interpreted to include that which takes a digital form would clarify that items do not need to be ancient to be covered by the Bill and by the convention. Our creative industries are thriving, dynamic and constantly changing, producing precious commodities that deserve our protection. I therefore hope that the Minister will assure us that they will be granted the protection outlined in the Bill in the event of armed conflict.

The Minister may argue that the Bill, once passed, will take its place among other UK laws on the protection of cultural property and that we would be better off ensuring that digital culture is covered by those Acts, rather than risk amending the Bill. I understand that argument, which is why I outlined that this is a probing amendment to ensure that we have the Government's position on the record. However, to ensure that we have informed the future interpretation of the Bill, we want to ensure that UK law is as consistent as possible and that there can be no doubt about the importance of digital cultural property or the severity or importance of anything done to destroy it. I hope that the concerns raised are remembered when we decide which items of cultural property are to be safeguarded by the cultural protection fund.

When this topic was debated in the House of Lords, the Minister, Baroness Neville-Rolfe, said that the wording of schedule 1—in other words, the 1954 convention—was

"flexible enough to meet the concerns expressed about what sort of cultural property might be covered."

However, earlier in the same speech she responded to Labour's amendment on the topic by saying

"the noble Lord's amendment risks allowing the development of an interpretation of the definition in the United Kingdom which is not consistent with its internationally accepted interpretation. That would be undesirable. It would create uncertainty and inconsistency in the application of the convention and its protocols and could result in the UK failing to comply with its obligations under them."—[*Official Report, House of Lords,* 28 June 2016; Vol. 773, c. 1478-1479.]

In those two statements there is some possibility of misunderstanding. Is interpreting cultural property so as to include that which takes a digital form a fair interpretation of flexible wording, as the Minister seemed to hint at one point in her remarks? Alternatively, is that interpretation—as expressed in a probing amendment in the House of Lords—a threat to the ratification of the convention? She seems to be suggesting that, and both those things cannot be true. We would be most grateful if the Minister clarified the Government's exact position on that point. The more strongly she expresses the Government's view that digital property is covered under the wording of the convention, and therefore by the Bill, the better.

Amendment 6 probes how part 3 of the Bill, which relates to the cultural emblem, fits into the digital age. Hon. Members will have noted that the Bill is unusual in another way, besides the fact that we are not debating the schedules, because it contains a picture. That is unusual in a parliamentary Bill.

**Chris Bryant** (Rhondda) (Lab): The Red Cross symbol.

**Kevin Brennan:** As my hon. Friend the Member for Rhondda notes from a sedentary position, there is an analogy with the Red Cross symbol, in the sense that we are dealing with an international emblem recognised in law. The picture is not in colour, but the Bill tells us that the colours of the emblem, which is intended to indicate cultural property protected under the convention, should be royal blue and white.

As I mentioned earlier, it is inevitable that a Bill based on a convention written more than six decades ago will be framed partly in ways that are outdated. I have discussed that in relation to the definition of cultural property, but it may be equally applicable to the form of the emblem. There has been broad cross-party agreement on the importance of protecting cultural property. The cultural emblem is crucial to that process, making the protected status of an item known to all those surrounding it, and reducing the chances of it being damaged because that status was not known.

On Second Reading mention was made of the famous use of the cultural emblem in recent years, during the second Iraq war—perhaps in the first Iraq war as well—when it was painted on the roof of a museum in Iraq so that those flying above would know that it was under the convention's protection. However, there is the potential for that to backfire, as it could signal to looters where cultural property is being stored—we know what happened in Iraq after the invasion.

Leaving that aside, the blue shield is often described as the cultural equivalent of the Red Cross symbol, as my hon. Friend the Member for Rhondda noted. I reiterate the point, made on Second Reading, that the Red Cross supports the Bill. That is a testament to the fact that culture is recognised as important to identity, even by those such as the Red Cross whose first responsibility is the protection of life. Given the importance of the blue shield, we have tabled the amendment to clarify the potential scope of its use.

We welcome the measures that protect against unauthorised use of the blue shield. Its impact should not be diluted. However, the wording in schedule 2 about its authorised uses may be slightly outdated. My concern is to ensure consistency as to formats and the protection available.

I appreciate that the wording of schedule 2 is flexible in the sense that the regulations on the execution of the convention specify that the cultural emblem

"may be displayed on flags or armlets; it may be painted on an object or represented in any other appropriate form."

The Government have previously said that there is nothing to preclude the emblem being displayed in digital form, for example on a screen or by projection. There could be clear benefits to being able to use the blue shield in digital form; in certain circumstances, for example, it could be projected to prevent the need for it to be painted or physically fixed on protected objects. When this issue was discussed in the Lords, the Government said that digital property such as recorded music could be marked as protected by the emblem if it were added to the physical object containing the digital data.

9.45 am

**The Parliamentary Under-Secretary of State for Culture, Media and Sport (Tracey Crouch):** MP4.

**Kevin Brennan:** The Minister refers from a sedentary positon to MP4. I do not think we would meet the high bar required for cultural property.

I remain concerned that the Government's previous statements on the importance of consistent interpretation could prohibit such an understanding on digital data being implemented in practice. Will the Minister reiterate and expand on the assurance that the emblem could take a digital form? Could the wording of the schedule be interpreted as allowing the emblem to be included in digital format—in a digital file which is protected—as well as on its casing?

**Tracey Crouch:** It is a pleasure to take my first Bill through Committee under your chairmanship, Ms Buck. I look forward to receiving wise counsel and guidance if I get anything procedurally incorrect.

I am grateful to the hon. Member for Cardiff West and the Opposition for their support for the Bill on Second Reading and in Committee, here and in the other place. Members should always feel honoured to be on a Bill Committee, but I am sure colleagues share my pride in being on this particular Bill Committee ratifying The Hague convention and both protocols, which will make us the first permanent member of the UN Security Council to do so. That will give us great gravitas and status around the world and ensure that we protect cultural property in the future.

I am grateful to the hon. Gentleman and to Lord Stevenson for the amendments. It is important to recognise Members' concerns that the Bill should enable appropriate protection of all forms of cultural property, including those which have been created using modern digital technology. The tabling of these probing amendments enables us to reassure hon. Members and to reiterate that we do believe that that is the case, and that the amendments are therefore not necessary.

On amendment 2, the definition of cultural property set out in article 1 of the convention and incorporated into clause 2 of the Bill as

"movable or immovable property of great importance to the cultural heritage of every people"

is broad and flexible. It is not limited to those things that are specifically mentioned in article 1 of the convention, which are presented as examples of the sorts of cultural property that are protected by the convention. Other cultural property can also be protected under the convention if it is

"of great importance to the cultural heritage of every people".

We consider that the definition is already sufficiently broad and flexible and can accommodate modern forms of cultural property such as digital material.

As Members will have seen, Professor Roger O'Keefe of University College London states in his written evidence to the Committee:

"There is no ground for concern and no cause for doubt on this point."

We also received support on this point from Michael Meyer, the head of international law at the British Red Cross. In his view:

"The examples set out under Article 1 are extensive, but not exhaustive"

and the definition in the convention is

"able to apply to a very broad range of items, which may well include those of a digital nature, such as rare and/or important film and music."

I reiterate the statement made in the other place that using the definition from the convention does not mean that it is not flexible enough to include modern types of cultural property.

As we stated in the other place, there is also a risk that the amendment would allow the development of an interpretation of the definition in the United Kingdom that is not consistent with its internationally accepted interpretation. That would be undesirable. It would create uncertainty and inconsistency in the application of the convention and the protocols, and it could result in the UK failing to comply with its obligations under them. I must therefore oppose amendment 2.

On amendment 6, the Bill specifies not the format in which the cultural emblem should be displayed, but only the design. The regulations to the convention provide that the emblem may be represented in any appropriate form. The emblem was devised in the '50s, and although at the time there may have been an expectation that it would be fixed to or painted on objects, there is nothing to preclude it being displayed in a digital format—for example, on screen or by projection. For modern, born-digital material, such as films and music, in practice we would expect the emblem to be displayed on the physical object on which the material is stored or on the building in which the physical storage object is kept, rather than being displayed digitally. That would help to ensure that the emblem is readily visible. That is not to say that it cannot also be depicted in digital form. Next month, we will be holding a roundtable on particular aspects of the implementation of the convention, which will provide a further opportunity to discuss implementation measures. This issue will be on the agenda.

The Government are not aware of any other state parties that have raised concerns about the definition or the rules for displaying the emblem. When the second protocol was agreed in 1999, the definition and the rules relating to the emblem were still considered to be appropriate at a time when digital culture was already well developed.

In conclusion, the amendment is unnecessary and I oppose it. I thank the hon. Member for Cardiff West for giving us the opportunity to clarify that we believe that that issue is included within the wider definition of the convention.

**Kevin Brennan:** I thank the Minister for her response and for giving the Opposition access to her officials before Second Reading. For a Bill of this kind, it is very helpful to be able to have such discussions and to clarify things in advance.

In a sense, the Minister did not address my point about the potential conflict between Baroness Neville-Rolfe's remarks in the House of Lords that clarifying the Bill by amending it to include the words "in digital form" would damage the international interpretation of what is meant by cultural property and that the wording of the convention effectively includes digital cultural property. I am not going to press that point, because the Minister and the Government have made it clear that they believe that the definition should be flexible enough to include digital property. It is useful for her to put that on the record and repeat it to the Committee today.

Later in the Bill we will get on to the very interesting subject—hon. Members from both sides of the Committee might want to contemplate this—of which cultural objects and what cultural property in this country, and indeed in each of our constituencies, are regarded as being of sufficient importance to all the people of the world, not just to us and our constituents, to be worthy of protection under the convention. I am sure everybody will spring to life later to give examples from their constituencies, because every hon. Member has in their constituency a cultural treasure that is important to all the people of the world. I look forward to hearing about the cultural richness of this country, including Queen's Park and north London—your part of the world, Ms Buck, although you are not allowed to talk about it. I accept the Minister's assurances on amendment 6. On that basis, I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Question proposed,* That the clause stand part of the Bill.

**Victoria Borwick** (Kensington) (Con): It is a pleasure to serve under your chairmanship, Ms Buck. I would like to declare that I am the president of the British Antique Dealers' Association, and I have been advised by the British Art Market Federation, the Antiquities Dealers' Association and LAPADA, all of which have made written representations to this Committee.

I wish to draw the Committee's attention to the art and antique market's concerns about the definition of cultural property in the clause, which draws on the convention. I am grateful to the Minister for her clarification. A number of representative bodies of the art and antiques market, which is the second largest such market in the world, have made written submissions to the Committee. I draw Members' attention to the submissions from the British Art Market Federation, the Antiquities Dealers' Association, Professor Janet Ulph and LAPADA, among others. They all make clear that they are fully supportive of the Bill.

It is particularly important that honest and well-intentioned dealers and auction houses do not risk criminal prosecution when conducting reasonable due diligence. As the Committee will have read in those submissions, the three aspects of the Bill that concern the trade relate to avoiding uncertainty in the art market and ensuring clarity in the practical operation of the law. There is no doubt that uncertainty hampers the successful operation of any market, and it is reassuring that my right hon. Friend the Secretary of State made it clear on the Floor of the House that she does not want the market to be hampered.

The clause 17 offence that we will come to later of dealing in unlawfully exported property depends directly on clarity and understanding of what is meant in the Bill by the term "cultural property". As it stands, the punctuation used in sub-paragraph (a) of article 1 of the convention, which is reproduced in schedule 1 to the Bill, means that cultural property is not limited to property of great importance to the cultural heritage of every people, although the Minister has just clarified that cultural property can be protected if it is of great importance to every people. The market seeks absolute clarification of those points. Other categories of property are covered in the definition, regardless of their cultural significance, including works of art, manuscripts, books and other objects of artistic, historical or archaeological interest.

*[Victoria Borwick]*

It has been drawn to my attention that the original—and, as article 29 states, equally authoritative—French and Spanish texts of the convention, which I have to hand, are not worded in that way. They use commas, not semi-colons. On account of that, in the French and Spanish versions a work of art must be of great importance to the cultural heritage of every people for the convention to apply to it. I was delighted that the Minister confirmed in the House on 31 October that the Government intend to take the same restricted approach to the definition of cultural property and that the clause 17 offence of dealing in unlawfully exported property will apply only to a very small but very special category of cultural objects—those which are of great importance to the cultural heritage of every people. I thank the Minister for her clarification on that point this morning.

Given what we know about the other versions of the convention and the Government's intention that the Bill should apply only to objects that are of great importance to the cultural heritage of every people, it cannot surely be right for the wording of the law to be at odds with its intention. I have not tabled an amendment on this important point, but the Government might consider a little clarification on it.

**Kevin Brennan:** The hon. Lady is making an important point. Given the benefit of her expertise, will she give an example of a cultural object located in the UK that she believes would pass the test in the convention, under the wording as she and the Government interpret it, and perhaps one that she thinks might not pass the test but that some might regard as an object of importance?

**Victoria Borwick:** I cannot think of something instantly, but the important point is whether the restricted view should apply that the object should be

"of great importance to…every people".

We are making sure that we do not by mistake include things that are not covered in the convention—in other words, that we do not, through loose punctuation, fail to make it absolutely clear which objects are covered.

10 am

To remove uncertainty, I want confirmation in the Bill that the convention will be interpreted as per the French and Spanish texts, which are of equal validity—in other words, that the phrase,

"property of great importance to the cultural heritage of every people",

which I hope covers the hon. Gentleman's comment, relates to the categories of objects listed in article 1 of the convention. I appreciate that the Minister has clarified this morning that cultural property can be protected if it is of great importance to every people.

**Tracey Crouch:** I am grateful to my hon. Friend the Member for Kensington for her contribution. The clause defines cultural property by reference to the definition in article 1 of the convention, as we discussed in the debate on the amendments. This is a broad definition, covering a wide range of movable and immovable property of great importance to the cultural heritage of every people.

The convention provides a non-exhaustive list of examples, simply mentioning monuments, buildings, historical and archaeological sites, books, objects and scientific collections. We are clear that all cultural property must be of the greatest importance to all people to be covered by the definition; the punctuation should not be seen as limiting the definition to only the first items listed.

The definition includes buildings where cultural property is preserved or exhibited, such as museums, major libraries and archives, but is sufficiently broad and flexible, as has been said, to accommodate modern forms of cultural property, such as rare or unique film or recorded music, because the list of objects covered is not exhaustive.

Although the definition was drafted some time ago, it is sufficiently flexible to deal with the developments of the digital age. Changing it would risk the development of a definition in the UK that is inconsistent with the current international interpretation. However, I confirm and reiterate that the definition will cover only a very small and special category of objects.

*Question put and agreed to.*

*Clause 2 accordingly ordered to stand part of the Bill.*

**Clause 3**

OFFENCE OF SERIOUS VIOLATION OF SECOND PROTOCOL

**Kevin Brennan:** I beg to move amendment 3, in clause 3, page 2, line 16, leave out "or".

**The Chair:** With this it will be convenient to discuss the following:

Amendment 4, in clause 3, page 2, line 17, at end insert

", or

(c) a foreign national serving under the military command of the UK Armed Forces."

Amendment 5, in clause 3, page 2, line 17, at end insert

"or if the act was committed by a private military contractor or an individual employed by a private military contractor, including persons contracted to the UK armed forces."

**Kevin Brennan:** These are probing amendments in my name and that of my hon. Friend the Member for Tooting. Amendment 3 is a technical drafting amendment that allows amendments 4 and 5 to make sense. We are exploring which military personnel are bound by the second protocol, specifically in relation to foreign nationals embedded in UK armed forces. At the heart of this debate is the question: who is classed as being subject to UK jurisdiction, for the purposes of the convention and the Bill, and who is not?

I said earlier that it is inevitable when ratifying a convention that was written more than six decades ago that some elements will no longer chime with modern reality and practice, and we are limited in how we can amend the Bill because it forms part of an international convention. The hon. Member for Kensington illustrated the complications when referring to whether the difference between a comma and a semicolon could lead to misinterpretation. She said that she had the Spanish

translation available; I am sure that my hon. Friend the Member for Rhondda could cast his eye over that. Although I am tempting him, he is not contributing with his fluent Spanish.

The passage of time provides less of an excuse for uncertainty regarding those parts of the Bill that were written more recently, so gaining clarity is all the more important. On amendment 4, which refers to embedded soldiers, I welcome the fact that the Minister, Baroness Neville-Rolfe, said in the Lords that under the Armed Forces Act 2006,

"regular members of the Armed Forces remain subject to UK service law"—[*Official Report, House of Lords,* 28 June 2016; Vol. 773, c. 1488.]

even when they are embedded within another army. They remain under the UK's jurisdiction, and so would remain bound by the second protocol. It is also important to note that the UK armed forces already behave, and are instructed to behave, as if they were bound by the convention and its protocols, and that the impact assessment for the Bill showed that their conduct will have to change very little when the Bill becomes law.

However, the Government have not quite clarified the reverse, which is how the convention and its protocols apply when a foreign national is embedded in UK armed forces, particularly if that other nation is not a state party to the convention or its second protocol. That concern is particularly pressing as the use of embedded forces has become much more prevalent since the convention was originally passed in 1954. The Armed Forces Deployment (Royal Prerogative) Bill, which is awaiting its Committee stage in the other place, is testament to the growing concern about how, when and where the UK armed forces use embedded forces.

The uncertainty that amendments 4 and 5 aim to clarify points to one of the Bill's vague points: while it is clear about which institutions will be affected, it does not address their internal nuances, or how those institutions interact with each other. That is particularly obvious in clause 5; its interpretation and implementation is complicated by the frequency of use of coalition forces, and the rise in the use of private security firms.

During line-by-line scrutiny of the Bill in the House of Lords, Lord Howarth of Newport recalled that private military contractors had participated in terrible destruction of cultural property at crucial archaeological sites during the Iraq war. However, when asked whether such contractors and the individuals in them would be bound by the Bill, Baroness Neville-Rolfe concluded her remarks by saying:

"I think they are covered."—[*Official Report, House of Lords,* 28 June 2016; Vol. 773, c. 1489.]

It is not enough, for our purposes, for a Minister to say "I think", so I look to the Minister to confirm that they are most certainly covered. Given that we all agree on the severity of the crimes listed in the Bill, it is absolutely right and only fair that we ask for more certainty on who exactly is considered to be under UK jurisdiction—and so criminally liable if they commit such crimes.

I appreciate that the Government have previously referred to clause 29, which states that senior managers of private military contractors are criminally liable for actions committed by their company if they were involved in making those decisions. Our amendments are intended to clarify the remaining ambiguity surrounding the criminal liability of individuals who are under the command of UK armed forces without being members of them, and are not necessarily UK nationals.

In the same debate, Baroness Neville-Rolfe went on to say:

"By making explicit reference to embedded forces and private military contractors in the Bill, we could risk creating doubt and confusion in the interpretation of both the Bill and other legislation."—[*Official Report, House of Lords,* 28 June 2016; Vol. 773, c. 1489.]

In my experience, doubt and confusion are created by a lack of clarity, not an abundance of it, so clarity is what we need from the Minister in responding to our amendments. Will she provide us with that? Will foreign nationals embedded in the UK armed forces, private military contractors and the individuals in those contractors, including those contracted by the UK armed forces, be bound by the second protocol and the provisions of the Bill?

**Tracey Crouch:** I thank the hon. Gentleman for tabling the amendments; that allows the Government to reassure the Committee on this important issue. It also allows me to pay tribute to the UK armed forces, which, as he said, already apply the convention in their actions and behaviours. We should take a moment to thank them for doing so. In addition, it allows me to pay tribute to the excellent monuments men and women, who have done a great deal to protect cultural heritage in conflict zones. We cannot praise them enough for what they have done.

The amendments seek to extend the UK's jurisdiction over the offences described in article 15(1)(d) and (e) of the second protocol. Under the second protocol, the UK is required to establish jurisdiction over such acts only when they are committed on UK territory or by UK nationals. Extending that to foreign nationals committing these acts abroad would be exceeding our obligations under the convention and protocols.

The amendments would mean that foreign nationals committing such offences abroad would come under our jurisdiction if they were serving under the military command of the UK armed forces, or were private military contractors or their employees. To deal with embedded forces first, when any foreign military personnel are embedded in UK forces, a bespoke status of forces agreement or memorandum of understanding is drawn up that sets out responsibility for the individual involved. That will normally outline that the embedded individual continues to be subject to the jurisdiction of their home state. We would expect that same principle to apply to UK military personnel embedded in overseas militaries.

Therefore, if a foreign soldier were to commit an act set out in article 15(1)(d) or (e) while embedded in a UK unit, we would dismiss them and send them back to their home state to be dealt with for disobeying orders. The individual would face the consequences of their actions on their return home, and there is no loophole for embedded forces; that would apply whether or not a foreign state had ratified the convention or protocols, as the individual would be disobeying an order. Similarly, if a UK soldier embedded in the armed forces of another state broke military rules, we would expect them to be dealt with under the UK's jurisdiction.

Our concern in the Bill must be to focus on protecting cultural property in the UK and to set clear rules for how UK military personnel and UK nationals operate

*[Tracey Crouch]*

abroad. We should not be extending our jurisdiction to police foreign nationals committing crimes abroad; that is beyond what is required by the convention and protocols. Private military contractors and their staff are already covered and would be criminally liable in the same way as any other legal or natural person. That means that if an employee of a private military contractor who is a UK national or subject to UK service jurisdiction vandalised or looted cultural property, they would be potentially criminally liable under clause 3 on the same basis as any other person.

Clause 29 also ensures that the senior management of private military contractors are personally liable for offences committed by their organisations if they consented to or connived in the offence. That ensures that senior managers cannot escape the consequences of the actions of their organisations if they were personally involved in them. However, in accordance with our obligations under the protocol, that is limited to UK nationals and those subject to UK service jurisdiction for the offences in article 15(1)(d) and (e) of the second protocol.

To extend our jurisdiction to non-UK nationals for all offences committed abroad would be to go beyond what is required to become party to the convention and protocols. It should be remembered that jurisdiction over the acts in article 15(1)(a) to (c) already extends to foreign nationals committing the most grave offences abroad, as required by the convention and protocols. We would be extremely concerned if amendments to the Bill were to lead the UK to extend our jurisdiction beyond what is necessary to become party to the convention and protocols.

I am sure that we all agree that the UK should not attempt to exceed the boundaries set out in this internationally agreed approach, or become a world policeman in going beyond that. I hope that I have clarified the Government's thinking on this matter, and that the hon. Gentleman will feel able to withdraw the amendment.

10.15 am

**Kevin Brennan:** I thank the Minister for her response. On amendment 4, I think she was saying that the answer is no—that foreign nationals serving with the UK armed forces will not be covered, and that the Government do not wish them to be included, because that would go beyond the requirement in the convention. We could debate at some length whether it would be desirable for the UK to seek to do that, but given that we accept that the purpose of the Bill is to bring the convention, as written, into UK law, I will not seek to extend our debate and press the amendment to a vote.

On amendment 5, the Minister has made it clear that as far as the UK Government are concerned, contractors are covered by the Bill and the schedules to it. She gave a clearer explanation than her colleague in the House of Lords, Baroness Neville-Rolfe, who said:

"so I think they are covered."—[*Official Report, House of Lords,* 28 June 2016; Vol. 773, c. 1489.]

I thank the Minister for being clear on that point.

That raises an interesting question. Prior to this Committee, I asked the Secretary of State for Defence in parliamentary question 52310 how many members of foreign armed forces have been embedded in the UK armed forces in each year since 2010. I thought that information might be of use to colleagues on both sides of the House in understanding how our armed forces operate. I got back an answer from the Minister for the Armed Forces on 14 November at 5 pm saying:

"This information is not held centrally and could be provided only at disproportionate cost."

I say gently that that is a good example of how Governments—of all colours, before the Government Whip, the hon. Member for Beverley and Holderness, does his usual chunter at me for saying this sort of thing—fail to answer parliamentary questions. That annoys me, as it should annoy us all, whatever side of the House we are on. Lloyd George, when driving in north Wales, once stopped to ask directions from a local farmer—in Welsh. He said, "Where am I?" and the local farmer said, "You're in your car." Lloyd George said that was a perfect example of how civil servants draft and Ministers answer parliamentary questions: the answer was short, accurate and told him absolutely nothing he did not know already.

It would be helpful, if we are properly to scrutinise and understand the Bill, if the Minister's colleagues in the Ministry of Defence made an effort to tell us how many members of foreign armed forces have been embedded in the UK armed forces in recent years. I understand the point that she made about how they would be disciplined in the event of them breaching the Bill, but it would be useful to all of us in the House to know the answer to that question. I do not know whether the Defence Committee is interested in pursuing that. I may pursue it further, depending on my other priorities, but I would certainly like to know the answer to that question. Perhaps the Minister could pass on our concerns to her colleagues in the Ministry of Defence. On that basis, I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 3 ordered to stand part of the Bill.*

**Clause 4**

ANCILLARY OFFENCES

*Question proposed,* That the clause stand part of the Bill.

**Kevin Brennan:** Although we have not tabled amendments to the clauses in this part of the Bill, it would be useful if the Minister briefly explained this clause and some of the others as we go along.

**Tracey Crouch:** I am delighted to respond to the hon. Gentleman's request to explain the clause, which contains one of my favourite subsections of all time. I am one of those Members of Parliament who likes to read the legislation that we pass, alongside the explanatory notes. I know that is a terribly quaint thing to do these days. I draw hon. Members' attention to the wonderfully worded subsection (7), which states that

"an offence that is ancillary to an offence under section 3 includes a reference to an offence that is ancillary to such an ancillary offence, and so on."

It is an infinite provision, and I thoroughly enjoyed trying to work it out.

**Kevin Brennan:** On that point, will the Minister explain subsection (7) to the Committee?

**Tracey Crouch:** I need not do so, because the explanatory notes do it absolutely brilliantly. The lesson for anybody reading legislation is that they should do so alongside the explanatory notes, because that is what they are there for. May I instead recommend that the hon. Gentleman read paragraph 37 on page 10 of the explanatory notes, which gives an absolutely excellent explanation? When I took a picture of the clause and put it up on my personal Facebook page, a lot of my friends who have nothing to do with politics found it as interesting as I did.

Turning to the clause itself, the second protocol requires parties to extend criminal responsibility to persons other than those who directly commit an act outlined in article 15, paragraph 1, of the protocol. It also obliges parties to assert extraterritorial jurisdiction in specified circumstances. The clause ensures that those obligations are fully implemented. Its purpose is to ensure that the UK has extraterritorial jurisdiction to try all ancillary offences in the same circumstances in which clause 3 establishes jurisdiction to try the substantive defence. It does not itself establish the ancillary offences, which already exist under other legislation and apply automatically to offences under clause 3. It applies only to ancillary offences if there is uncertainty about their extraterritorial application. Where the existing law is clear about extraterritorial application, as it is in relation to aiding and abetting and offences under the Serious Crime Act 2007, no provision is made. To make such express provision unnecessarily would be bad drafting practice and could create doubt about other situations for which no express provision is made.

Subsections (1) to (3) set out provisions about jurisdiction that mirror those for the principal offence set out in clause 3. In relation to any of the acts listed in article 15, paragraph 1, sub-paragraphs (a) to (c) of the second protocol, a person can be prosecuted for an ancillary offence committed abroad, regardless of their nationality. In contrast, in relation to ancillary offences concerned with the other acts set out in the article, only a UK national or a person subject to UK service jurisdiction can be prosecuted for an offence committed abroad.

Subsections (4), (5) and (6) take into account the differences in the criminal law in the different legal systems of the UK with regard to the definition of ancillary offences. The intention is to produce the same effect in each legal system. On Report in the other place, an amendment was made to subsection (6) to ensure that the Bill's provision relating to ancillary offences has the intended effect in Scotland. The amendment was tabled by the Government following consultation with the Crown Office and the Scottish Government. I am grateful to the devolved Administrations for their help and support in drafting the Bill.

Subsection (7) ensures that offences that are ancillary to ancillary offences are also provided for.

I hope that, following that explanation, the Committee is fully appraised of the intention of the clause.

**Kevin Brennan:** I thank the Minister for a thorough explanation. As I understand it, an example of an offence ancillary to an ancillary offence under subsection (7) might be when someone involved in the theft of an item of cultural property decides to destroy evidence in relation to the theft, and the clause provides for such an offence to be covered.

**Tracey Crouch** *indicated assent.*

**Kevin Brennan:** The Minister is nodding, so I take it that that is also her understanding. Although she is right that we should always read the Bill and the explanatory notes, the explanatory notes—I intend no particular criticism here—do not always tell us much more than the clause. They sometimes seem just to paraphrase rather than attempt to elucidate or give a figurative example. However, on the basis of what she has said, we shall not oppose the clause.

*Question put and agreed to.*

*Clause 4 accordingly ordered to stand part of the Bill.*

## Clause 5

### Responsibility of commanders and other superiors

*Question proposed,* That the clause stand part of the Bill.

**Kevin Brennan:** As previously, I would be grateful if the Minister outlined the meaning of the clause for the Committee.

**Tracey Crouch:** The clause provides an additional form of individual criminal responsibility—that of commanders and superiors for the actions of their subordinates. That concept is one of the recognised principles of international law referred to in article 15, paragraph 2, of the second protocol, which parties to the protocol are obliged to implement.

The wording of the clause is based on article 28 of the statute of the International Criminal Court, which is regarded as an authoritative statement of the general principles of international law in relation to criminal liability. It mirrors the UK's implementation of other international law, in particular the International Criminal Court Act 2001.

Subsection (1) provides that liability under the provision is to be treated as aiding and abetting in England, Wales and Northern Ireland, and being art and part in Scotland. That takes into account the different criminal law in Scotland. A distinction is drawn between the standards expected of military commanders in relation to the military forces under their command, and other superiors, such as Government officials. That distinction is made to recognise that the latter may not have the same degree of control over their subordinates.

In the case of a military commander, liability will arise only if he or she knew, or owing to the circumstances should have known, that his or her forces were committing or about to commit an offence. In contrast, a superior who is not a military commander will commit an offence only if they knew or consciously disregarded information clearly indicating that the subordinate was committing or about to commit an offence. Importantly, subsection (7) makes it clear that liability under the clause does not preclude any other criminal liability in relation to the

*[Tracey Crouch]*

same event, so a commander can still be prosecuted as a principal offender under clause 3 as well as under this clause.

The clause ensures that the UK adheres to the requirements of article 15, paragraph 2, of the second protocol, and complies with the general principles of international law in relation to criminal liability.

**Stephen Doughty** (Cardiff South and Penarth) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Ms Buck. I apologise for my late arrival in Committee this morning; I was at a Select Committee meeting.

I have some specific questions for the Minister about how the clause will be put into practice. I have had the pleasure of seeing UK armed forces being trained, at very close quarters. I saw infantry, artillery and tank training, and I have always been impressed by the teaching in practice of compliance with international law, including the Geneva conventions. I was in Canada last year at the BATUS training area—British Army Training Unit Suffield—where much of our heavy armour training is done. The Bill will clearly be very much applicable to conduct with respect to artillery, tanks and other vehicles capable of seriously damaging cultural property, so will the Minister say a little about how it will be incorporated into training and what plans the Ministry of Defence has to bring that about?

A point has been made about embedded forces, and situations when UK forces are in command of forces from other countries. The clause states that

"references to a military commander include a reference to a person effectively acting as a military commander".

There have been circumstances where civilians from the Department for International Development and the Foreign Office have held senior command roles—for example, in the provincial reconstruction teams in Afghanistan. Will the Minister say a little about the practical arrangements for ensuring that personnel, whether they be military, foreign military or civilians acting in a military capacity, comply with the terms of the Bill?

10.30 am

**Tracey Crouch:** I am grateful for the hon. Gentleman's contribution. He will of course understand and appreciate that I am not an expert on all things military, but I can tell him that the Bill applies equally to all the armed forces. No distinction is made for the specific services.

Cultural property protection is included in the annual training of all services of the UK armed forces. Specific cultural protection training is not tailored to the RAF, Army or Navy, but is provided for individuals across all three services when a certain deployment determines it necessary. For example, specific cultural property protection issues are covered on the joint targeting course run at RAF Cranwell and the Royal School of Artillery. Those courses are held for all three services and are attended by personnel who have responsibility for target selection and planning. The graduates of those courses have to demonstrate an awareness of cultural property protection issues in various planning exercises throughout the course.

As the hon. Gentleman pointed out, we should recognise that such training is already heavily embedded in our armed forces and we should be incredibly proud of that. There is a great deal of co-operation between the Department for Culture, Media and Sport and the Ministry of Defence in ensuring the ratification of the convention through the Bill, and work is being done to ensure the continued expansion of that. Members will be aware of the specific unit being set up in the Ministry of Defence. That is well under way and a great deal of progress is being made. Everybody, right from the very top of the Ministry of Defence down to the early recruits undergoing training, is certainly 100% behind making sure that we protect cultural property.

*Question put and agreed to.*

*Clause 5 accordingly ordered to stand part of the Bill.*

**Clause 6**

PENALTIES

*Question proposed,* That the clause stand part of the Bill.

**Kevin Brennan:** The clause refers to the penalties that could be handed out to someone guilty of an offence under section 3, or, as discussed earlier, an offence ancillary to such an offence, or indeed an offence ancillary to an offence that is ancillary to the offence under section 3, although that is not specifically mentioned in this clause.

**Tracey Crouch:** And so on.

**Kevin Brennan:** And so on, ad infinitum—and perhaps reductio ad absurdum. The penalty envisaged in clause 6 includes

"imprisonment for a term not exceeding 30 years."

That is a lengthy term of imprisonment. We know that we are talking about some potentially serious offences, but it would be helpful to the Committee and to those observing our proceedings if the Minister clarified the severity of offence that would be likely to attract a sentence of that length. Clearly, that would not apply to all offences that might be committed under the Bill, although these are offences that, as we heard earlier, relate to cultural property of importance to all people, so an offence committed under the Bill would be a serious offence against all peoples of the world.

If the Minister clarified the thinking on the term of imprisonment and on the kinds of offence that might attract that length of sentence, I am sure the Committee would be enlightened.

**Tracey Crouch:** The clause sets the maximum penalty for section 3 offences and the associated ancillary offences. The second protocol obliges parties to make the criminal offences established in their domestic law to meet the obligations of paragraph 1 of article 15 "punishable by appropriate penalties". A person found guilty of an offence under section 3, or a related ancillary offence, is liable on conviction on indictment to a prison term not exceeding 30 years. The maximum penalty introduced by the clause aligns with related provisions in both the International Criminal Court Act 2001 and its Scottish equivalent, and the Geneva Conventions Act 1957.

At first sight, it may seem surprising that offences of that nature, and ancillary offences, attract the same maximum penalty as war crimes covered by the relevant provisions of the 2001 Act, but that flows naturally

from the seriousness with which those offences are considered under international law. It is worth noting and stressing that that is a maximum penalty. In practice, the sentence may be much shorter, or even a fine. The maximum sentence is likely to be reserved for only the most heinous crimes against cultural property. Each sentence must be considered case by case, and the Government believe that it should be left to the courts to determine the appropriate penalty based on the facts of the individual case.

The offence in clause 3 could be committed in a wide range of scenarios, with an equally wide variety of possible ancillary offences. I do not think it would be right for us to attempt to address that variety of scenarios by setting different penalties in the Bill. If an individual was responsible for deliberately destroying one of our national cultural landmarks during an armed conflict, I am sure we would wish to see the severest punishment. Likewise, we would want a similar sentence to be available for an individual who masterminded such destruction, or an army commander who ordered it as part of a campaign in full knowledge that the object in question was protected cultural property. That should also apply to UK nationals taking part in cultural destruction of a similar nature during an armed conflict overseas. Accordingly, the maximum penalty is considered appropriate for ancillary offences, as well as for the principal offence.

The clause reflects the seriousness with which the UK views serious violations of the second protocol. It is consistent with existing UK legislation and allows the UK successfully to meet its obligations under that protocol.

*Question put and agreed to.*

*Clause 6 accordingly ordered to stand part of the Bill.*

## Clause 7

### Consent to prosecutions

*Question proposed,* That the clause stand part of the Bill.

**Stephen Doughty:** I will ask a simple question; I am not an expert on these matters when it comes to Scottish law. Why does the clause make no reference to consent for prosecutions with regard to Scotland? It references only the Attorney General in England and Wales and, for Northern Ireland, the consent of the Director of Public Prosecutions for Northern Ireland. Is that particular quirk due to the way the Scottish legal system works or something else?

**Tracey Crouch:** I am not an expert on Scottish law, but I can answer that question. There is no equivalent provision in relation to Scotland as the position of the Lord Advocate, as master of the instance in relation to all prosecutions in Scotland, means that such a provision is unnecessary.

*Question put and agreed to.*

*Clause 7 accordingly ordered to stand part of the Bill.*

## Clause 8

### The cultural emblem

*Question proposed,* That the clause stand part of the Bill.

**Mr David Burrowes** (Enfield, Southgate) (Con): It is a great pleasure and a privilege to take part in the proceedings of the Committee, not least as I am co-chair of the all-party parliamentary group for the protection of cultural heritage. I will not say too much, not least because I do not have much a voice, but I will say that this a particularly uncontentious part of a relatively uncontentious Bill.

I draw particular attention to the emblem of the blue shield, which is, as we know and as has already been mentioned by the hon. Member for Cardiff West, a symbol used to identify cultural sites protected by the convention and the personnel engaged in protecting such property. I also draw attention to the work of the Blue Shield network, which provides support in the promotion of the ratification of the convention and its protocols, as we are doing today. It is also part of the International Committee of the Blue Shield, which is a voluntary NGO, but one that has already been said to be the equivalent of the International Red Cross and Red Crescent Movement, and it needs to be given proper status and support.

The International Committee of the Blue Shield provides an unrivalled body of expertise, which allows the organisation to collect and share information on threats to cultural property worldwide. This is a hugely significant organisation that encourages the safeguarding and restoration of cultural property and raises national and international awareness of cultural heritage. It also provides an important focus for the promotion of not only the ratification but the implementation of the convention, and its work with the Government and with other countries, in terms of the protocols and the convention, is no doubt ongoing. It is worth noting in the submissions to the Committee the support for the Bill from the International Committee of the Red Cross and the offer to support the Government in the promotion of the blue shield emblem, which it has done so admirably with the red cross. I would be interested to hear from the Government on the progress of that in terms of social media and other forms of media that have developed in the 60 years since the introduction of the convention.

**Kevin Brennan:** The hon. Gentleman's contribution and expertise in this area are welcome in Committee. When reading the Bill, one issue of interest is the threshold for a cultural object to pass muster under the convention and the Bill, and therefore presumably be covered by the cultural emblem. In the UK, what sorts of object or building will be covered, or, of just as much interest, might not be covered? If we are to raise awareness among the general public of what the Bill means, it is important that there is some idea of how and where that line is drawn.

**Mr Burrowes:** The hon. Gentleman is generous to call me an expert; I do not think I am a great expert at all. My interest in the subject arose not least from a background of concern around trafficking and the links to trade of

*[Mr Burrowes]*

human beings within property and a concern about the human value, which is aligned with the property value when we get the destruction we have seen by Daesh and other organisations in occupied lands.

I am encouraged by the Minister's response to a question already raised that we will no doubt return to: there will be proper engagement with stakeholders and consideration of experts' views around how we ensure there is proper focus. In one sense, that needs to be wide, as the definition in the convention is, and the purpose of the Bill is to ratify the convention and the definition in article 1, which is properly wide and recognises such categories, while providing sufficient reassurance to the trade and others around the practical implementation of that not just in the Blue Shield committee but beyond, with the Government engaging actively to ensure that proper guidance on implementation is set out. I will return to the clause before I get called out of order by the Chair.

I also want to refer in particular to the UK part of the network, the UK Committee of the Blue Shield, ably chaired by Professor Peter Stone, who is also the 2016 UNESCO chair in cultural property protection and peace. We are well placed in this country to help take the lead on the blue shield programme and provide that important conduit of expertise that draws in the military, Red Cross and UNESCO as observers for that committee. Along with charities and heritage protection organisations across the UK, we are helping to provide a lead in this area.

It is important to recognise that the UK committee has been on the case for some years. Since 2003, Peter Stone has been urging successive Ministers and Committees to do what we are doing today to ratify the convention and both protocols. I draw attention to his submission, in which he makes a pitch for the UK to take a lead internationally, certainly among the permanent members of the Security Council, in ratifying the second protocol and in

"funding a small, permanent office for the Blue Shield",

which, despite its huge significance, is a voluntary, unfunded international non-governmental organisation.

To achieve cultural equivalence with the red cross, the blue shield needs money and resources. Will the Minister respond on how we will provide that further support and partnership work with Peter Stone's Blue Shield committee, and recognise the added momentum given to Blue Shield's work by this Committee's process of ratification, not least of the second protocol? The easy answer she can give is to join us in commending the great work of Blue Shield.

10.45 am

**Tracey Crouch:** I am grateful to my hon. Friend the Member for Enfield, Southgate for his contribution. He is an expert, and he should not understate the work he has done on the issue over a number of years. He should be congratulated on his commitment and dedication to the protection of cultural property. I am very grateful for the advice he has given me and my Department in recent months.

My hon. Friend's contribution allows me to pay tribute to the UK Committee of the Blue Shield and put on the record my gratitude to Professor Peter Stone for the work he has done in advising on the Bill and beyond. My hon. Friend mentioned Professor Stone's plans for a Blue Shield centre, which I and my Department will continue to work with him on. I agree with my hon. Friend that it will allow us to take an international lead on the issue.

Clause 8 relates to the cultural emblem. The hon. Member for Cardiff West said that the Bill is a piece of legislation with a picture in it. I humbly suggest that if there were more pictures in Bills, more people outside this place might read them.

**Chris Bryant:** It is not a very beautiful picture.

**Tracey Crouch:** If it protects beautiful heritage and culture, one might suggest otherwise.

The cultural emblem takes the form of a blue and white shield and allows cultural property protected under the convention to be marked to facilitate its recognition. In introducing the emblem, we will recognise for the first time in the United Kingdom the only symbol in international law for the protection of cultural property during armed conflict. It will act as a means of identification for this country's most important cultural property and safeguard it in the event of an armed conflict.

*Question put and agreed to.*

*Clause 8 accordingly ordered to stand part of the Bill.*

**Clause 9**

OFFENCE OF UNAUTHORISED USE

*Question proposed,* That the clause stand part of the Bill.

**Kevin Brennan:** I am not sure whether this will meet with your agreement, Ms Buck, but it seems to me that, as we debate clause 9 stand part, the Minister might go a little further and discuss how the clause relates to clauses 10, 11 and 12, which are about the authorised uses. The offence is created by clause 9. If that is convenient to the Committee, it might be a sensible way of discussing those clauses.

**Tracey Crouch** *indicated assent.*

**The Chair:** The Minister is indicating that she is happy to do that.

**Tracey Crouch:** Clause 9 introduces a new criminal offence of the unauthorised use of the cultural emblem, or any other design capable of being mistaken for it. That offence will meet our obligations under the convention, which sets out rules for the emblem's use. It also requires parties to prosecute or impose sanctions on unauthorised use.

This will be the first time that the UK legally recognises this important symbol. Our policy is to afford the cultural emblem equivalent protection to that afforded the Red Cross and other distinctive emblems under section 6 of the Geneva Conventions Act 1957. As with the Red Cross, the breadth of the offence reflects the need to protect the potency of the emblem by forbidding

its unauthorised use. An offence under this clause will be punishable by a fine. As with prosecutions under clause 3, prosecution under this clause can take place only with the appropriate consent in England, Wales and Northern Ireland. The position of the Lord Advocate makes a consent provision for Scotland unnecessary.

Clause 10 gives the appropriate national authority the power to give general or specific permission for particular uses of the cultural emblem to be authorised. It also enables the national authority to withdraw permission, for example when it is no longer necessary or appropriate. This will ensure protection for the cultural emblem and allow for urgent authorisation of cultural property, which can display the emblem, as may be required in the event of war or armed conflict. Subsection (2) imposes an additional requirement, as required by the convention, that the distinctive emblem may not be placed on any immovable cultural property unless a copy of the authorisation is displayed.

Clause 11 authorises the use of the cultural emblem for moveable cultural property in the circumstances permitted by the convention and regulations. It authorises the use of the cultural emblem when it is used to identify moveable cultural property and the use of three cultural emblems in a triangle to identify cultural property undergoing protected transportation. Finally, it outlines what is meant by cultural property undergoing protected transportation. That meaning is provided for in the convention. For example, should an armed conflict occur in one part of the United Kingdom, the cultural emblem triangle could be displayed on moveable cultural property during its transportation under special protection to a refuge in an area of the United Kingdom not affected by the armed conflict. That will help to ensure that cultural property is not exposed to damage and destruction during its transportation out of a conflict zone. I hope that clarifies the three clauses—10, 11 and 12—and that they will stand part of the Bill.

*Question put and agreed to.*

*Clause 9 accordingly ordered to stand part of the Bill.*

*Clauses 10 to 12 ordered to stand part of the Bill.*

**Clause 13**

DEFENCES

*Question proposed,* That the clause stand part of the Bill.

**Kevin Brennan:** Again, it might be useful if the Minister outlined the circumstances in which use of the emblem would be subject to a reasonable defence against a prosecution.

**Tracey Crouch:** Clause 13 sets out three defences to the offence of unauthorised use of the cultural emblem. This is to ensure that any person who already legally uses the emblem, or a sign that so nearly resembles the emblem that it could be mistaken for it, is not disadvantaged and criminalised as a result of the new clause 9 offence. Under subsection (2) it will be a defence to show that use of the cultural emblem is for a purpose for which it had previously been lawfully used before clause 9 came into force. Under subsection (3) it will be a defence to show that the emblem forms part of a trademark registered before clause 9 came into force, and that the trademark was being used lawfully in relation to the goods and services for which it was registered.

Under subsections (4) and (5) it will be a defence for a person to show that a design used on goods was: first, applied to the goods by their manufacturer or someone trading in those goods before they came into the possession of the accused; and secondly, that the person applying the design was using it lawfully in relation to the same type of goods before the clause came into force. The defence in those subsections is intended to protect purchasers of goods already bearing the emblem, or a design closely resembling it. Subsection (6) makes it clear that where the defendant can provide evidence that a defence exists, the burden to prove the offence still lies with the prosecution.

*Question put and agreed to.*

*Clause 13 accordingly ordered to stand part of the Bill.*

*Clause 14 ordered to stand part of the Bill.*

**Clause 15**

"APPROPRIATE NATIONAL AUTHORITY"

*Question proposed,* That the clause stand part of the Bill.

**Kevin Brennan:** I think that it would be useful, in this age of devolution, if the Minister outlined the reasoning behind the way in which the appropriate national authorities have been set out in the Bill.

**Tracey Crouch:** I am very happy to do so. Clause 15 defines the appropriate national authority for each part of the United Kingdom. This explains the term that is used in clauses 10 and 12. For the purposes of part 3, the appropriate national authorities are: for England, the Secretary of State; for Wales, the Welsh Ministers; for Scotland, the Scottish Ministers; and for Northern Ireland, the Department for Communities. I reassure the Committee that these definitions, as set out in the Bill, were agreed with the devolved Administrations.

*Question put and agreed to.*

*Clause 15 accordingly ordered to stand part of the Bill.*

**Clause 16**

"UNLAWFULLY EXPORTED CULTURAL PROPERTY" ETC

*Question proposed,* That the clause stand part of the Bill.

**Tracey Crouch:** I thought it would be particularly helpful for the Committee to discuss clause 16, because it sets the scene for the discussion on clause 17, which I know we are due to have because amendments have been tabled. Part 4 of the Bill deals with cultural property that has been unlawfully exported from occupied territory. Clause 16 defines what is meant by "unlawfully exported cultural property" and sets out how it is determined whether territory is occupied.

Unlawfully exported cultural property is defined as cultural property that has been exported from an occupied territory contrary to either the laws of that territory or international law. At the time of the export, the territory

*[Tracey Crouch]*

concerned must have been occupied by another state. Either the occupying state or the state of which the occupied territory is a part must have been a party to the first or second protocol. That means that the earliest date on which cultural property could have been unlawfully exported for the purposes of the Bill is 7 August 1956, which is when the first protocol came into force. If neither of the states concerned became a party to the first or second protocol until a later date, that will be the date from which cultural property can fall within the definition.

The clause sets out what is meant by "occupied territory". The test for that is based on article 42 of the regulations concerning the laws and customs of war on land, which were agreed at The Hague on 18 October 1907. The article states:

"Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation applies only to territory where such authority is established and in a position to assert itself."

Whether a territory is occupied now, or was occupied at a particular time, is a matter that must be determined on a case-by-case basis. The clause provides that a certificate issued by the Secretary of State shall be conclusive evidence as to whether, at a particular time, territory was occupied. That is standard procedure for determining such matters that concern international relations and are considered to be matters of state.

**Kevin Brennan:** The Minister may not have this information available, and may want to write to the Committee with it, but do the Government have a list of territories that they currently consider to be occupied under that definition?

**Tracey Crouch:** I do not have that information to hand now, but I do not think we have an official list, because this is often a controversial point. May I suggest that if we are still on clause 16 when we return this afternoon, we perhaps clarify or confirm that point then?

**Kevin Brennan:** I am grateful. I understand her not having the information now. It might be useful to clarify, for example, whether the Government consider Crimea to be an occupied territory.

**Tracey Crouch:** Again, if we are still debating clause 16 this afternoon—or perhaps even when we debate clause 17—if the hon. Gentleman wants to raise the point then, I may be able to give him more information. However, as he can imagine, the definition of occupied territories is sometimes controversial, and it is often open for discussion.

A certificate may not be issued in all cases. Alternative evidence may be used to prove the status of a particular territory. Before I conclude, I have been reliably informed that, yes, Crimea is considered an occupied territory; that at least covers one of the questions that the hon. Gentleman might have wanted to return to this afternoon, allowing us more time for other matters.

**Victoria Borwick:** I thank the Minister for that clarification, because we all seek greater clarity about what is in the Bill.

I have previously mentioned the uncertainty inherent in clause 2 and how our art market is keen to avoid uncertainty. Another area of uncertainty is an auctioneer's or dealer's ability to identify the occupied territories to which the law applies, particularly if an item may have been here previously; of course there is a lot of trading going on all the time, which is why the points about certainty and dates need to be clarified.

Clause 16(6) states that the Secretary of State's confirmation that a territory was occupied is conclusive evidence of that status once legal proceedings have begun. If the Secretary of State's word may be provided after the beginning of proceedings, cannot a list of the occupied territories, together with the relevant dates of occupation, be drawn up for all to see? Alternatively, could the criteria that a Secretary of State would apply when determining whether and when a territory is considered to have been occupied be clarified? Examples have already been given, but I could add East Jerusalem, the west bank, northern Iraq, Libya or southern Sudan and I am sure others could add alternatives. For the avoidance of doubt, dealers will need to know at what points since 1954 a particular territory is covered by the legislation.

11 am

Even if those operating in the art market can identify territories and the periods when they were considered to be occupied, there is the added issue of determining whether objects left those territories during the period of occupation or at another time, and whether those objects were here before, during or after that period. We need that clarity. The precise historical date or year when an object left a territory could well be difficult to ascertain. Concerns about clarity in the Bill have already been mentioned and this is yet another factor that contributes to the uncertainty engendered by the clause 17 mens rea provision, which we will come to later.

In 2008, the then Government's response to the territory list question was that a dealer who had carried out proper due diligence checks would be unlikely to be convicted of a criminal offence. We would like that response clarified and brought up to date. The Government added that they were unaware of any other parties to the convention having drawn up such a list. I struggle to understand how a law concerned solely with objects unlawfully exported from occupied territories can be expected to operate effectively when there is no means by which anyone is able to identify those territories. Do the Government expect a dealer or auction house to submit requests for confirmation of a territory's status to a Secretary of State on a case-by-case basis, prior to handling an antique, as part of their due diligence? I ask the Government to prepare a list of the territories covered and the relevant dates. As the application is retrospective to 1954, that information must presumably already be available.

**Kevin Brennan:** The hon. Lady raises a valid point. I accept that this was discussed when the draft Bill was considered in 2008, but that Bill did not come before the House in a final form. It is very reasonable to explore whether the Government will consider publishing a list of the territories that they consider occupied during the relevant period since 1954. It would be extremely useful.

Clearly, it is not always going to be easy to ascertain when an object left a particular territory, although we have already clarified that we are talking about a very small number of very important movable objects that might have been removed from a territory, and that in itself should set off alarm bells with any dealer. If it was an object of such cultural importance that it would be covered by the legislation, people would naturally take extra precautions to ensure that the object had not been removed illegally from a territory during a period of armed conflict and occupation. However, it is perfectly valid to ask why the Government are unable or unwilling to produce a definitive list of territories that have been under occupation during the relevant period. Perhaps the Minister could enlighten the Committee further on the Government's thinking.

**Mr Burrowes:** I want to raise an issue brought up on Second Reading and in the other place, about the Bill's applicability to non-state actors, particularly in relation to Daesh, which has prompted a huge wave of concern about cultural property destruction and added an extra dimension to the process that we are in of ratifying the convention and protocols. I am particularly grateful to the Secretary of State for clarifying the categories in the Bill that are applicable and for clarifying where the UK can prosecute.

The Hague convention already extends to non-state actors, and the offences in article 15 of the second protocol may be committed by non-state actors in non-international armed conflicts. The question is how that will be prosecuted. As Syria is not party to the second protocol, there is no possibility of prosecuting the most serious offences in article 15. However, there is scope to prosecute UK nationals involved in Daesh under clause 3 of the Bill.

Is there evidence of UK nationals being involved in such damage or in stealing cultural property in Syria? If there is, we will be able to prosecute them for those heinous crimes after the enactment of the Bill. Many of us, including the UNESCO chair, consider such acts to be on the same level as a war crime, and they need to be dealt with appropriately and punitively.

**Tracey Crouch:** I am grateful to colleagues for raising a number of important issues. I will respond as best I can.

First, I remind the Committee that this law is not solely concerned with dealing in cultural property; it is about protecting cultural property at home and abroad. We need to keep reminding ourselves of what we are trying to achieve with this Bill. That said, some important issues have been raised.

Colleagues will appreciate that extremely sensitive foreign relations issues are in play when drawing up a list. It is important to reiterate the point made by my hon. Friend the Member for Kensington that the Government are not aware that any of the other 127 state parties to the convention have produced a list of territories that they consider to be or to have been occupied since the convention came into force in 1956. In practice, very few territories are likely to be deemed to be or to have been occupied within the meaning of the Bill. The amount of cultural property from such territories that dealers are likely to come across is expected to be extremely small. That said, I realise that there are concerns.

Legal advice will be available to those who have concerns. If in doubt, dealers can seek appropriate legal advice from a solicitor or barrister who is familiar with public international law. The Bill does not impose any requirements on those who deal in cultural property beyond the normal due diligence that they should carry out in accordance with industry standards, such as the code of practice for the control of international trading in works of art. In the event of legal proceedings, the burden of proof will be on the prosecution to show that the person knew, or had reason to suspect, that the cultural property had been unlawfully exported from an occupied territory.

We will discuss the wording later, but I remind the Committee that the Government will not be publishing a list of occupied territories. It will be determined on a case-by-case basis. Anyone who has a question or any doubt can seek appropriate legal advice. Like the other 127 state parties to the convention, we have no intention of publishing a list.

**Victoria Borwick:** I am concerned on behalf of traders that there will inevitably be a great deal of cost. As you and the Secretary of State have been kind enough to say that you do not wish to place additional burdens, I am concerned that you are appearing—

**Kevin Brennan:** She.

**The Chair:** I remind the hon. Lady about addressing the Chair.

**Victoria Borwick:** I apologise, Ms Buck. High legal costs might be incurred, but I do not understand that to be the Minister's intention.

**Tracey Crouch:** I repeat that I do not think that the clause imposes any more requirements on those who deal in cultural property beyond the normal due diligence that they undertake now in accordance with industry standards, so I am not convinced that there will be additional costs. We need to remind ourselves that the offence is not retrospective; it applies only to cultural property unlawfully exported from occupied territories after the date that the convention and protocol came into force for those countries that are party to it, and cultural property needs to be imported into the UK after the Bill comes into force to be an offence.

To clarify exactly what sort of cultural property we are talking about and the dating of that property, I will briefly repeat messages back to my hon. Friend the Member for Enfield, Southgate about Syria. It is important to take this opportunity to clarify how the Bill applies to the situation in Syria. The Bill's application to the situation in Syria is limited for two reasons: first, while Syria is party to the convention and the first protocol, it has not ratified the second protocol; secondly, the UK does not recognise Daesh as a state.

With regard to the first point, the current conflict in Syria is defined as a non-international armed conflict—a civil war, in other words—and the offences listed in article 15 of the second protocol may be committed

*[Tracey Crouch]*

during civil wars. However, the application of clause 3 is complicated as it varies depending on whether the state experiencing civil war is a party to the convention and/or the second protocol. The Bill's application to Syria is limited to the offence set out in article 15(1)(e) of the second protocol, which is

"theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention."

Because Syria is party to the convention, its cultural property is protected against that offence. The Bill's application is limited in some respect because Syria is not yet party to the second protocol, which means that the UK cannot prosecute for any of the other four offences set out in article 15 of the second protocol.

**Kevin Brennan:** I saw the Secretary of State's letter, together with an explanatory note, that she provided following Second Reading. It made it clear that the Bill could, in effect, apply in civil wars, although that is not the phrase that she used; I think the Minister has confirmed that with what she just said. I am just trying to understand exactly what the Minister meant in relation to the first and second protocols. Is it that Daesh could not be covered by the Bill because it is not a state party or a recognised state, or is it because the second protocol to the convention has not been ratified by Syria?

**Tracey Crouch:** It is probably both, actually. First, Daesh is not a recognised state, and secondly, not all parts of article 15 apply because Syria has only signed up to the convention. Article 15(1)(e) applies because Syria has ratified the convention, but articles 15(1)(a), (b), (c) and (d) do not apply because Syria has not signed up to the second protocol.

**Kevin Brennan:** To be clear, does that mean that the Bill could apply to only one side in a civil war—namely, to a recognised Government who were signatories to the convention—while the other side, despite committing identical actions, was not covered because it was not a recognised state under the convention?

**Tracey Crouch:** We ae going beyond the specific purpose of this legislation. I can tell the hon. Gentleman that the Bill will apply if there is evidence that a UK national has joined Daesh and damaged or stolen cultural property while in Syria. The UK could seek to prosecute that individual under clause 3 on their return to the UK. As I stated, article 15(1)(e) applies to

"theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention."

Article 15(1)(e) is broad enough to take into account everything protected under the convention, which Syria has signed, but article 15(1)(a), (b), (c) and (d) all refer to aspects that are in the second protocol, to which Syria is not a signatory. I hope that clarifies the point. I appreciate that this is incredibly complicated, but we are limited to talking about some issues relating to UK nationals in Syria.

On the question raised by my hon. Friend the Member for Enfield, Southgate, we are not aware of any UK nationals who have been involved in cultural destruction in Syria. On the second point in relation to Syria, clause 17 creates the criminal offence of dealing with cultural property that has been unlawfully exported from occupied territory. Territory belonging to one country can only be occupied by another state. The UK does not recognise terrorist groups such as Daesh as states, so Syria cannot be classed as an occupied territory, and the dealing offence is not engaged. There is no loophole in our approach to dealing in Syrian cultural property, as sanctions already exist for the sorts of objects that have been illegally removed from Syria. I can confirm that the second protocol would apply to both sides in a civil war if the state had ratified the second protocol, which Syria has not.

11.15 am

**Kevin Brennan:** That is very interesting. I am still slightly struggling to understand how the second protocol could apply to both sides in a civil war if one of the sides was not a recognised state, Government or signatory to the protocol, but I will let that lie for now; it might be something that we cogitate on, and there might be a way of discussing that when we come to later amendments and new clauses.

I understand what the Minister was saying about clause 16: that the Government will not produce a list because no one else has produced one. That is not necessarily a good argument for a country that is seeking to be a leader in this field. The Minister quite rightly boasted that we will become the first permanent member of the Security Council of the United Nations to ratify both protocols, although we will be the last to bring in the convention overall, so that is not entirely something to boast about—and that goes for Governments of all kinds. Saying that we should not produce a list because no one else has produced seems to be not an argument, but a simple statement of our position and that of other countries.

The Minister hinted that the reason why the Government were reluctant to produce such a list was because it is sensitive—she used that terminology—to talk about whether a country has been occupied since 7 August 1956, which is the date that she mentioned. We are not producing a list because no one else has, and because it might be sensitive to do so, but she said, without feeling too sensitive about doing so—I welcome that very much—that the UK Government considered Crimea to be occupied. That is what I do not understand. If it is possible to say clearly that Crimea is considered an occupied territory, why is it not possible to say whether the UK Government consider other territories to have been occupied since 1956? That makes no sense whatever, unless we are engaged in some kind of history seminar, which we are not; we are talking about the UK Government's position on whether territories have been occupied since 1956. The Government are happy to say that Crimea is occupied, but not whether they consider other countries or territories to have been occupied in that period.

**Victoria Borwick:** I think the point is that if a Security Council resolution regards a territory as being occupied, surely that is on the record.

**Kevin Brennan:** It may well be on the record, but the hon. Lady herself made the point that clause 16(6) says that territory is considered occupied if, once proceedings have begun, a certificate is issued by the Secretary of State, whatever the UN has said. The Bill says:

"a certificate by the Secretary of State is conclusive evidence as to whether, at a particular time, territory was occupied by a party to the First or Second Protocol or by any other state."

Can the Minister add further clarity to that? We have not really had a full explanation as to why the Government are reluctant to produce that list. There may be reasons, but I am not sure that we have teased them out yet.

**Mr Jonathan Djanogly** (Huntingdon) (Con): This is an interesting discussion, but I wonder whether the reason goes more towards the effectiveness of the convention. If states have not been producing lists, could it be that some countries are bringing prosecutions that other countries would not, because they view what should go on the list differently? If so—this is perhaps one for the Minister—perhaps this should be looked at internationally, so that an agreed list is formed.

**Kevin Brennan:** The hon. Gentleman is an eminent lawyer and understands these matters much better than I do. I am sure that he is correct to say that that is part of the problem, but I imagine that agreeing on a list internationally will be much more difficult than the UK Government drawing up their own list of territories that they consider to be occupied. After all, we are bringing these provisions into UK law, so it would be during proceedings in the UK when this would be a matter of importance. I do not think that there is any great logic in why the Government have said that they are not prepared to produce a list. We will not vote against the clause, but if the Minister has anything further to add, I am sure it will be helpful.

**Tracey Crouch:** The only thing that I would like to add is that the hon. Member for Cardiff West is a very experienced and somewhat naughty man for leading me down a garden path; I will now no doubt get a smacked bottom from the Foreign Secretary for declaring, on the record, that comment about Crimea. It is important to stress that this is an incredibly complex area, involving sensitive issues relating to foreign affairs. No other state that is part of the convention has produced a list. I appreciate that the hon. Gentleman does not think that a reliable or worthy response to the issue. We want to make sure that we introduce the Bill and ratify The Hague convention properly, so that we protect cultural property in the United Kingdom and abroad.

We firmly believe that the Bill does not place any further burdens or restrictions on the art market. There is nothing in the Bill that those in the art market do not already do, in terms of due diligence. Where they have concerns, we would expect them to seek appropriate legal advice, as they currently do. There is a whole wealth of people out there who are able to provide that.

**Victoria Borwick:** I want to take the Minister up on the due diligence point, if I may. Inevitably, there are different levels of due diligence, and different categories. There is no accepted level of due diligence. This goes back to the point made about getting absolute clarity in the Bill, because nobody wants there to be confusion later. We all have the right spirit here; we are just making sure that things are absolutely clear. There are inevitably different levels of due diligence for different categories of objects, with the risk of forfeiture and potentially a prison term.

**Tracey Crouch:** I hope that those in our art market, with all their expertise and with the market's worldwide reputation for being one of the best, have the highest standards of due diligence, and that when it comes to these specific cultural objects of great importance to all people, as defined by the convention, they take particular care with due diligence, as set out by their own industry codes and standards of ethics. They are self-regulated, and they provide a gold standard of best practice for the rest of the world, and I hope that they will continue to do so.

I reiterate that we do not think it is necessary to produce a list; we do not think that it would be helpful in a wider sense. A certificate from the Secretary of State would only be used during a dispute on an issue. We believe that this is the right way forward, and I hope that the clause will stand part of the Bill.

*Question put and agreed to.*

*Clause 16 accordingly ordered to stand part of the Bill.*

11.25 am

*The Chair adjourned the Committee without Question put (Standing Order No. 88).*

*Adjourned till this day at Two o'clock.*