Protection of Cultural Property in the event of Armed Conflict (Hague Convention) Bill 2016

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Explanatory Memorandum
Introduction

The purpose of the Bill is to make necessary provision in law for obligations the State will assume under the 1954 Hague Convention on the Protection of Cultural Property in the event of Armed Conflict and its 1999 Protocol. Specifically, the Bill will create offences prohibiting the destruction, damage or theft of cultural property in specified circumstances during the course of an armed conflict, in accordance with the 1999 Protocol, and provide for appropriate penalties upon conviction and related matters. The Bill also confers legal protection on the Blue Shield emblem and empowers the Minister for Arts, Heritage and the Gaeltacht to authorise its use in the State.

The 1954 Convention was signed, subject to ratification, on behalf of Ireland on 14 May 1954. Enactment of the Bill will enable the State to ratify the Convention and accede to the 1999 Protocol. The Convention and the Protocol are instruments of international humanitarian law, the branch of international law that regulates the conduct of armed conflict by ensuring respect for the requirements of humanity.

Provisions of the Bill

Section 1 (Definitions): This is a standard provision necessary to give meaning to certain terms used in the Act.

Section 2 (Offences): This makes it an offence during an armed conflict to attack cultural property under ‘enhanced protection’ or use such property in support of military action. (The 1999 Protocol establishes a mechanism for the conferral of the status of ‘enhanced protection’ on cultural property.) Section 2 also makes it an offence to extensively destroy or appropriate cultural property, attack cultural property, or steal, pillage, misappropriate or vandalise cultural property.

Section 3 (Offences outside the State): This makes it an offence to commit outside the State any act which if committed within the State is an offence under section 2. This provision applies to acts committed outside the State by a citizen of Ireland, a member of the Defence Forces or a person ordinarily resident in Ireland. It also makes it an offence for such a person to export or otherwise remove cultural property from an occupied territory.
Section 4 (Penalties): This makes provision for penalties upon conviction for those guilty of an offence under Sections 2, 3 or 8. The maximum penalty, on summary conviction, will be imprisonment for 12 months, a class A fine or both. For conviction on indictment the maximum penalty is imprisonment for 30 years, a fine or both.

Section 5 (Responsibility of military commanders and other superiors): This provides that commanders and other superiors are criminally responsible themselves for offences committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to ensure investigation and prosecution of those responsible. Command responsibility is a principle of customary international humanitarian law, now reflected in the Statute of the International Criminal Court.

Section 6 (Defence of superior orders): This provides a defence in any proceedings under the Act where the person charged can prove that he or she was acting under an order that he or she was required by law to obey, and believed the order to be lawful. The defence is not available in cases where the order concerned was manifestly unlawful.

Section 7 (Double jeopardy): This provision applies the rule against double jeopardy and ensures that a person cannot be proceeded against in the State in respect of acts constituting an alleged offence under the Act where that person has already been tried outside the State. An exception to the rule is made, however, in relation to the most serious offences under the Act, namely those created by paragraphs (a), (b) and (c) of section 2(1) and by section 3(1). Section 10 of the Act adds these offences to the list of those to which Part 3 of the Criminal Procedure Act 2010 applies. The latter are of a serious nature and include murder, rape, genocide and torture. An exception to the rule against double jeopardy has been made in respect of such offences under the 2010 Act, which provides that the DPP may apply to the Court of Criminal Appeal for a re-trial order where it appears to him or her that there is new and compelling evidence in the case and that such an application is in the public interest.

Section 8 (Blue Shield Emblem): This provides for the protection in law of the Blue Shield emblem and empowers the Minister for Arts, Heritage and the Gaeltacht to authorise its use. The Blue Shield emblem is the distinctive emblem created by the 1954 Convention as a means of identifying cultural property in order to protect it in the event of armed conflict, and personnel engaged in the protection of cultural property, and the conditions of its use and protection are set out in that Convention.

Subsection (1) provides that the Minister for Arts, Heritage and the Gaeltacht may, having regard to the purposes set out in the Convention and having consulted the Minister for Defence and such other persons as he or she considers appropriate, authorise use of the emblem subject to such conditions as he or she regards as appropriate. Subsection (2) allows the Minister likewise to authorise use of the emblem where a person applies in writing to use it. Subsection (3) allows the Minister to withdraw or vary such authorisation in stated circumstances.

Subsection (4) makes it an offence to use the emblem without an authorisation under subsections (1) or (2), or contrary to the terms of such an authorisation. Subsection (5) defines the terms ‘Blue Shield emblem’ and ‘Minister’ for the purposes of section 8.
Section 9 (Amendment of Criminal Justice (Mutual Assistance) Act 2008): This amends the 2008 Act to enable the State to provide mutual legal assistance to other states parties to the 1999 Protocol in the investigation and prosecution of offences under that Protocol.

Section 10 (Amendment of Schedule to Criminal Procedure Act 2010): This adds the offences created by paragraphs (a), (b) and (c) of section 2(1) and by section 3(1) to the list of relevant offences to which Part 3 of the 2010 Act applies and in respect of which an exception to the rule against double jeopardy is made (see Section 7 above).

Section 11 (Short title and commencement): This is a standard provision setting out the short title of the Act and providing for commencement.

Financial Implications
The Bill will not result in any additional direct costs to the exchequer.