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# MODEL LAW ON THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

**Legislation for common-law States seeking to implement their obligations under the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its 1954 and 1999 Protocols**

# INTRODUCTION

This model law has been drafted for consideration by States with a common-law legal tradition. For States with a civil-law legal tradition, it may prove useful as a checklist of provisions that need to be implemented through domestic law.

Some of the provisions of the Geneva Conventions of 1949 and their Additional Protocols of 1977<sup>1</sup> have been supplemented through the adoption of international instruments that provide for the protection of certain categories of property in the event of armed conflict. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention) and its First and Second Protocols are examples of such instruments.

The Hague Convention and its First Protocol were adopted in 1954 following large-scale destruction of cultural property during the Second World War. While the Hague Convention is the first treaty to provide for a system of protection of cultural property in the event of armed conflict, the First Protocol provides for a system of protection specifically adapted to situations in which the territory of one State is occupied by another State. Several conflicts that erupted in the 1990s revealed certain gaps in the protection afforded by the Hague Convention and its First Protocol. This led in 1999 to the drafting of the Second Protocol, which supplements and reinforces the protection system set out in the Hague Convention by, *inter alia*, clarifying the concepts of 'safeguarding' and 'respect,' providing for new precautions and instituting a system of enhanced protection for property of the greatest importance for humanity.

Parties to the Hague Convention and its Protocols are responsible for enshrining the protection of cultural property in their domestic legislation, in particular by introducing offences for violations of these instruments.<sup>2</sup> Acts defined as offences may also be prohibited under the implementing legislation for the Geneva Conventions and/or the Rome Statute. In such cases, States may choose to let the relevant prosecuting body determine under which piece of legislation to prosecute the alleged offender.

This model law seeks to provide guidance on how to incorporate the Hague Convention and its two Protocols into domestic law. This can be a complicated process given the nature of the provisions in each instrument and their potential overlap. For States that have only ratified the Hague Convention, or the Hague Convention and its First Protocol, some provisions in the model law will not be applicable. An effort has therefore been made to highlight those provisions in the model law that specifically implement provisions contained in the Protocols to the Convention. In addition, some provisions that may be useful to States in the practical implementation of the Hague Convention and its Protocols have not been included in this model law, and States may choose to add such provisions when drafting domestic legislation. These include, for instance, provisions concerning defences, search and seizure, and forfeiture, which may be particularly useful in regulating unlawfully exported cultural property. Where such provisions are included in domestic legislation, section 16 should be amended to set out the relevant offences.

Finally, the Hague Convention and its Protocols oblige States to take many administrative steps that are not part of the implementing legislation. In order to ensure the full protection required by the Hague Convention and its Protocols, States must therefore adopt comprehensive regulations pertaining to the implementing legislation. An effort has been made in this model law to highlight some of the provisions that need to be elaborated on in such regulations.

<sup>1</sup> Articles 53 and 85(4)(d) of the First Additional Protocol and Article 16 of the Second Additional Protocol.

<sup>2</sup> See Article 28 of the Convention and Articles 15 and 21 of the Second Protocol.

## **CULTURAL PROPERTY (PROTECTION IN ARMED CONFLICT) ACT** **[INSERT NUMBER AND YEAR OF ACT]**

*An Act to implement the obligations of [insert country name] under the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954, and under the Protocols to that Convention of 1954 and 1999, and to provide for matters incidental thereto.*

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### **SCHEDULES**

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

Whereas [insert desired preamble].

Be it enacted by the Parliament of [insert country name] as follows:

## PART I – PRELIMINARIES

### 1. Short title and entry into force

1) This Act may be cited as the Protection of Cultural Property in the Event of Armed Conflict Act [insert year].

2) This Act comes into force on [insert date/procedure].

### 2. Definitions

In this Act –

**‘Commanding officer’** means an officer commanding a force equivalent to a battalion<sup>3</sup> in size or larger, or a force smaller in size where circumstances do not permit otherwise, and effectively acting as a military commander;

**‘Committee’** means the Committee for the Protection of Cultural Property in the Event of Armed Conflict;<sup>4</sup>

**‘Convention’** means the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on 14 May 1954;

**‘Cultural property’** covers, irrespective of origin or ownership:

- (a) movable or immovable property of great importance to the cultural heritage of all peoples, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings that, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; and scientific collections and important collections of books or archives or of reproductions of the property defined above;
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a), such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a); and
- (c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as **‘centres containing monuments’**;

**‘Cultural-property emblem’** means the emblem in the form of a shield, pointed below, consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle;

**‘Enhanced protection’** means the system of enhanced protection established by Articles 10 and 11 of the Second Protocol to the Hague Convention;<sup>5</sup>

**‘First Protocol’** means the Protocol for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on 14 May 1954;<sup>6</sup>

<sup>3</sup> As the definition of a battalion may vary, depending on the State, from 650 to 800 soldiers, a State may choose to amend this definition accordingly.

<sup>4</sup> This international Committee, established under Article 24 of the Second Protocol, serves to ensure the proper implementation of that Protocol and to grant enhanced protection for certain cultural property. It is therefore only necessary to include this term if the Act is intended to implement the Second Protocol.

<sup>5</sup> As the system of enhanced protection is established under the Second Protocol, it is only necessary to include this term if the Act is intended to implement the Second Protocol.

<sup>6</sup> It is only necessary to include this term if the Act is intended to implement the First Protocol.

**'Fund'** means the Fund for the Protection of Cultural Property in the Event of Armed Conflict;<sup>7</sup>

**'High Contracting Party'** means a State party to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict;

**'Identification'** means the decision to consider an object, building or site to be cultural property worthy of protection;

**'Illicit'** means under compulsion or otherwise in violation of the applicable rules of the domestic law of the occupied territory or of international law;<sup>8</sup>

**'Inventory'** means a list of all protected cultural property that is drawn up and made available to the national bodies concerned with the protection of cultural property, both civilian and military;

**'List'** means the International List of Cultural Property under Enhanced Protection;<sup>9</sup>

**'Military objective'** means an object that, by its nature, location, purpose or use, makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage;

**'Minister'** means the Minister of [insert Minister with responsibility for this Act] or his or her delegate;

**'Party'** means a State party to the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict;

**'Regulations'** means the Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict;

**'Second Protocol'** means the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on 26 March 1999;<sup>10</sup>

**'Special protection'** means the system of special protection established under Articles 8-11 of the 1954 Hague Convention and Articles 11-16 of the Regulations for the Execution of the Convention, and granted to a limited number of:

- refuges intended to shelter movable cultural property in the event of armed conflict;
- centres containing monuments; and
- other immovable property of great importance.

### 3. Application

Apart from the provisions of this Act that apply in times of peace, this Act shall apply in the event of an international armed conflict, including all cases of partial or total occupation, and in the event of a non-international armed conflict.<sup>11</sup>

### 4. Relationship between Convention and Second Protocol<sup>12</sup>

1) If cultural property has been granted both special protection and enhanced protection, the provisions of special protection will be replaced by the provisions of enhanced protection.

7 This Fund is established under the Second Protocol, therefore it is only necessary to include this definition if this Act is intended to implement the Second Protocol.

8 Illicit export, removal or transfer of ownership of cultural property is prohibited in the context of occupation and dealt with in the Second Protocol. Therefore, it is only necessary to include this term if the Act is intended to implement the Second Protocol.

9 This List refers to a list of property under enhanced protection, which is established by the Second Protocol. It is, therefore, only necessary to include this definition if this Act is intended to implement the Second Protocol.

10 It is only necessary to include this term if the Act is intended to implement the Second Protocol.

11 The Convention specifies in Articles 18 and 19 that its provisions apply in the event of an international armed conflict, including occupation, but that in the event of a non-international armed conflict, all States Parties are bound to comply, as a minimum, with the provisions relating to respect for cultural property. The Second Protocol specifies in Article 22 that its provisions shall also apply in the event of a non-international armed conflict. In addition, Rules 38–40 of the ICRC's study, *Customary International Humanitarian Law*, provide that the obligations undertaken by States to avoid damaging cultural property, to avoid exposing it except where imperative military necessity so requires, and to refrain from seizing or stealing it, all apply in both international and non-international armed conflicts. It is therefore suggested that all provisions of this Act be extended to both international and non-international armed conflict. States may also elect to extend the provisions of this Act to situations of internal disturbances and tensions, as some national jurisdictions have begun to do in their draft legislation.

12 This section need only be included where a State intends to incorporate the Second Protocol into its domestic legislation.

2) In mutual relations with High Contracting Parties to the Convention alone, [insert country name] remains bound solely by the Convention. In mutual relations with States party to the Convention and the Second Protocol, [insert country name] is bound by both instruments.

## 5. Act binding on the State

This Act binds the State.

# PART II – GENERAL PROTECTION OF CULTURAL PROPERTY

## 6. Safeguarding cultural property in times of peace

1) The Minister shall, in times of peace and in consultation with the relevant Ministries, prepare for the safeguarding of cultural property situated within the borders of [insert country name] against the foreseeable effects of an armed conflict, including through the following non-exhaustive measures:<sup>13</sup>

- (a) designating those competent authorities, including within the armed forces of [insert country name], responsible for the safeguarding of cultural property;
- (b) ensuring wide dissemination of knowledge regarding the provisions of the Convention and Protocols among both military personnel and the general population;<sup>14</sup>
- (c) identifying cultural property and preparing inventories, as defined in the regulations for this Act;
- (d) planning emergency measures for the protection of cultural property against fire or structural collapse;
- (e) preparing for the removal of movable cultural property or the provision of adequate *in situ* protection of such property;
- (f) incorporating guidelines or instructions on the protection of cultural property in military doctrine, procedures, regulations and training materials;<sup>15</sup> and
- (g) marking cultural property with the cultural-property emblem as set forth in Articles 6, 10, 16 and 17 of the Convention and Article 20 of the Regulations.<sup>16</sup>

## 7. Precautionary measures during armed conflict<sup>17</sup>

1) In the event of armed conflict, the Minister shall, in consultation with the relevant Ministries, take all feasible precautions to remove cultural property from the vicinity of military objectives or provide for adequate *in situ* protection, as defined in the regulations for this Act.

2) In the event of armed conflict, the Minister shall, in consultation with the relevant Ministries, take all feasible precautions to avoid locating military objectives near cultural property.

<sup>13</sup> While the Convention requires States Parties to undertake to prepare in times of peace for the safeguarding of cultural property, it is the Second Protocol that provides clarity on these preparatory measures. It is therefore only necessary to enumerate these measures if the Act is intended to implement the Second Protocol. However, as these measures are examples of means of complying with an obligation under the Convention, it is recommended that, for the purpose of clarity, they be included even where the Act is not intended to implement the Second Protocol.

<sup>14</sup> While not included in the list of safeguarding measures, this activity is derived from Article 25 of the Convention and Article 30 of the Second Protocol.

<sup>15</sup> While not included in the list of safeguarding measures, this activity is derived from Article 7(1) of the Convention and Article 30 of the Second Protocol, which require States Parties to ensure that military authorities are acquainted with the system of protection of cultural property.

<sup>16</sup> Although not required under the Convention or Protocols, it has been suggested by UNESCO that this measure be included in domestic legislation, and that it be elaborated on in domestic regulations for that legislation.

<sup>17</sup> The Second Protocol includes precautions in attack and against the effect of hostilities in Articles 7 and 8 respectively, so it is only necessary to include this section if the Act is intended to implement the Second Protocol.

3) In the event of armed conflict, the Minister shall remind the relevant Ministries to take all feasible precautions to avoid attacking cultural property and to avoid or minimize excessive incidental damage to cultural property.

## **8. Respect for cultural property**

1) The Minister, together with the Minister of Defence,<sup>18</sup> shall ensure that cultural property is not used in a manner that is likely to expose it to destruction or damage in the event of an armed conflict, or to any act of hostility directed against such property.

2) A commanding officer of the armed forces of [insert country name] may invoke imperative military necessity,<sup>19</sup> and accordingly waive the obligation to respect cultural property, where and for as long as:

- (a) the cultural property in question has been made into a military objective;
- (b) there is no feasible alternative available to obtain a similar military advantage to that offered by directing an act of hostility against that objective;
- (c) the cultural property in question is used for purposes that are likely to expose it to destruction or damage, where no choice is possible between such use of the cultural property and another feasible method for obtaining a similar advantage; and
- (d) effective advance warning of attack is given where circumstances permit.

3) Personnel engaged in the protection of cultural property shall be respected and allowed to continue to carry out their duties as far as is consistent with the interests of security.

4) For the purposes of this section, respect for cultural property shall refer to cultural property located within and outside the borders of [insert country name],<sup>20</sup> and shall extend to the immediate surroundings of the property and to the means that are in use for the protection of the property.

## **9. Protection of cultural property in occupied territory**

1) In the event of occupation during an armed conflict, the Minister shall, in consultation with the relevant Ministries, prevent the export of cultural property from the territory that [insert country name] is occupying. Any cultural property directly or indirectly imported into [insert country name] shall be taken into custody by [insert relevant body] as defined in the regulations for this Act.<sup>21</sup>

2) Where necessary, the Minister shall, in consultation with the relevant Ministries, take the measures required to preserve damaged cultural property in the occupied territory.

## **10. Return of cultural property**

1) The Minister may, on application by the relevant foreign authority, accept into custody foreign cultural property for safekeeping.

2) The Minister shall, in consultation with the relevant Ministries, ensure that cultural property deposited with [insert country name] for protection is returned at the end of hostilities to the competent authorities of the territory from which it came.

<sup>18</sup> An important aspect of this Act is to establish the necessary links between the civilian and military authorities and existing protection systems in order to ensure that the rules applicable in armed conflict are known and observed.

<sup>19</sup> The Second Protocol goes further than the Convention by setting out the conditions under which military necessity will be defined as imperative. It notes that the doctrine of 'imperative military necessity' may only be invoked where the cultural property in question has been made into a military objective and where there is no feasible alternative to obtaining a similar military advantage. It is therefore strictly necessary to add these conditions only where the Act is intended to implement the Second Protocol. However, it is important to remember that during the negotiation of the Second Protocol, this extended interpretation of the waiver in case of imperative military necessity was not controversial. For this reason, it is suggested that the conditions for imperative military necessity be included even where this Act is not intended to implement the Second Protocol.

<sup>20</sup> The Convention only requires that respect be extended to cultural property within the borders of States party to the Convention, but States may wish to take this opportunity to extend the principle of respect to cultural property in all territories.

<sup>21</sup> Provisions relating to the protection of cultural property in the event of armed conflict were not included in the Convention but rather in its First Protocol. It is therefore not necessary to include this section if the Act is not intended to implement the First Protocol.

3) The Minister shall, in consultation with the relevant Ministries, ensure that cultural property on the territory of [insert country name] and illegally exported from territories occupied by [insert country name] is returned at the end of hostilities and is not retained as war reparations. Where [insert country name] was responsible for preventing such export, the authorities shall pay an indemnity to the holders in good faith of such cultural property.<sup>22</sup>

## PART III – SPECIAL AND/OR ENHANCED PROTECTION OF CULTURAL PROPERTY

### 11. Special protection<sup>23</sup>

1) The Minister may apply to have a limited amount of immovable cultural property placed under special protection, provided:

- (a) the property consists of refuges intended to shelter movable cultural property or centres containing monuments and other immovable cultural property of very great importance;
- (b) the property is situated at an adequate distance from large industrial centres constituting a vulnerable point or important military objectives; and
- (c) the property is not used for military purposes.

2) For the purpose of paragraph 11(1)(c), a centre containing immovable property is used for military purposes when it is used for the movement of military personnel or material, even in transit. The same shall apply when activities directly connected with military operations, the stationing of military personnel or the production of war material, are carried out within the centre.

3) For the purpose of paragraph 11(1)(c), property guarded by armed custodians specially empowered to do so, or property having, in its vicinity, police forces normally responsible for the maintenance of public order, shall not be deemed to be used for military purposes.

4) No act of hostility may be directed against any cultural property under special protection, and such property may not be used for military purposes, except in exceptional cases of unavoidable military necessity and only for as long as that necessity continues or when a party to the conflict uses property under special protection for unauthorized purposes.

5) The Minister shall define in the regulations for this Act the necessary procedures to apply for the registration of such cultural property with the International Register of Cultural Property under Special Protection.

### AND/OR

#### Enhanced protection<sup>24</sup>

1) The Minister may apply to have certain cultural property placed under enhanced protection, provided:

- (a) the property is considered as cultural heritage of the greatest importance for humanity, in that it has exceptional cultural significance, is unique and its damage would constitute an irretrievable loss for humanity;<sup>25</sup>

<sup>22</sup> While all cultural property should be returned to its rightful owner after an armed conflict, there is a specific provision in Article 3 of the First Protocol requiring that cultural property from occupied territories not be retained as war reparations.

<sup>23</sup> Where this Act is intended to implement the Second Protocol, it may not be necessary to include the chapter on special protection as the latter is in general effectively replaced by the system of enhanced protection provided for under the Second Protocol. Chapter 3 should therefore in most cases only provide for one system of protection, depending on the ambit of this Act. See Article 4(b) of the Second Protocol, which states that where cultural property has been granted both special and enhanced protection, only the provisions of enhanced protection shall apply. However, where a State has ratified both the Convention and the Second Protocol, there may be cases where cultural property granted special protection is not given enhanced protection, even though it is entitled to it. In such cases, a State may choose to include both systems of protection in this Act.

<sup>24</sup> As the system of enhanced protection is established under the Second Protocol, it is only necessary to include this chapter if the Act is intended to implement the Second Protocol. In such cases, it will replace the section on special protection.

<sup>25</sup> The phrase "greatest importance for humanity" is not taken from the Second Protocol but rather from the UNESCO *Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*.

- (b) the property is protected by adequate domestic legal and administrative measures recognizing its exceptional cultural and historical value and ensuring the highest level of protection; and
  - (c) the property is not used for military purposes or to shield military sites, and a declaration by the competent State authorities has been made to the effect that it shall not be so used.
- 2) Cultural property under enhanced protection shall be immune from attack and from any use of the property or its immediate surroundings in support of military action.
- 3) Cultural property under enhanced protection shall lose its protection where the following requirements are met:
- (a) protection is suspended or cancelled by the Committee owing to the conditions of protection listed in subsection (1) no longer being met; and/or
  - (b) protection is suspended or cancelled by the Committee in the case of a serious violation of subsection (2); and/or
  - (c) if and for as long as the property has, through its use, become a military objective and:
    - (i) the attack is the only feasible means of terminating the military use of the property;
    - (ii) all feasible precautions have been taken in the choice of means and methods of attack; and
    - (iii) the attack is ordered by the highest operational level of command<sup>26</sup> and effective advance warning and reasonable time for redress is given to the opposing forces, unless the requirements of immediate self-defence do not permit.
- 4) The Minister shall define in the regulations for this Act the necessary procedures to apply for such cultural property to be incorporated into the List.

## PART IV – CULTURAL-PROPERTY EMBLEM

### 12. Protection of cultural-property emblem

The cultural-property emblem is protected in the manner provided for in this Act and in the Schedules to this Act.<sup>27</sup>

### 13. Use of cultural-property emblem

- 1) Use of the emblem to facilitate the recognition of cultural property must be authorized by the Minister, in accordance with [existing Geneva Conventions/emblem legislation], and a copy of such authorization, duly dated and signed, shall accompany the use of the emblem on cultural property.<sup>28</sup>
- 2) The emblem may<sup>29</sup> be used alone to identify the following:
- (a) cultural property not under special protection;
  - (b) personnel engaged in the protection of cultural property, including through identity cards; and/or
  - (c) cultural property under enhanced protection.<sup>30</sup>

<sup>26</sup> If this is unclear, it may be better to replace it with the term 'commanding officer', which is defined in this Act.

<sup>27</sup> This section may not be necessary where the cultural-property emblem is already protected under relevant legislation on the use of protective emblems, e.g. legislation implementing the Geneva Conventions, but it is suggested that it be included nonetheless for reasons of clarity.

<sup>28</sup> Use of the emblem is regulated by Article 17 of the Convention.

<sup>29</sup> Cultural property under general protection *may* be marked with the cultural property-emblem so as to facilitate its recognition.

<sup>30</sup> The Second Protocol does not specify how the cultural-property emblem should be used for recognition of enhanced protection. However, according to the UNESCO *Guidelines for the Implementation of the Second Protocol*, as cultural property under enhanced protection is by definition cultural property, States are entitled to mark such property by displaying the emblem once. The 6th Meeting of States Parties to the Second Protocol will, in 2015, decide on the possibility of a new emblem to mark cultural property under enhanced protection.

3) The emblem shall<sup>31</sup> be repeated three times in a triangular formation to identify the following:

- (a) immovable cultural property under special protection;
- (b) transport for cultural property under special protection and in urgent cases; and/or
- (c) improvised refuges under special protection.

#### 14. Trademarks and saving clause

1) The filing and registration of trademark applications, trade names, associations, commercial or merchandise brands and industrial models and designs making use of or incorporating the cultural-property emblem shall be in violation of this Act and shall be refused registration.

2) Persons making use of the cultural-property emblem, or of any sign constituting an imitation thereof, prior to the entry into force of this Act shall be permitted to continue such use for a maximum period of [insert period of time] after its entry into force.

## PART V – PROHIBITIONS AND OFFENCES

#### 15. Prohibited conduct<sup>32</sup>

1) A person commits an offence if he or she commits one of the following serious violations in the context of an armed conflict:<sup>33</sup>

- (a) makes cultural property under enhanced protection the object of attack, where there is no exception under military necessity;
- (b) uses cultural property under enhanced protection or its immediate surroundings in support of military action;
- (c) causes extensive destruction or appropriation of protected cultural property;
- (d) makes cultural property the object of attack; or
- (e) steals, pillages, vandalizes or misappropriates protected cultural property.

2) A person commits an offence if he or she commits one of the following violations:<sup>34</sup>

- (a) illicitly exports, removes or transfers ownership of cultural property from occupied territory;
- (b) conducts archaeological excavation of cultural property in an occupied territory, except where strictly required to safeguard, record or preserve cultural property;
- (c) makes alterations to or changes the use of cultural property in occupied territory in order to conceal or destroy cultural, historical or scientific evidence;

<sup>31</sup> Cultural property under special protection *must* bear the cultural-property emblem so as to facilitate its recognition.

<sup>32</sup> In adopting this model provision, States may wish to amend the language to reflect national definitions of existing domestic offences.

<sup>33</sup> These offences are listed in Article 15 of the Second Protocol as serious violations. They are separated from other offences as they involve special measures relating to jurisdiction. While the first two serious violations need only be included where the Act is intended to establish a system of enhanced protection, the other three serious violations can be included even where the Act is only intended to implement the Convention.

<sup>34</sup> The offences in section 15(2)(a)-(c) are listed in Article 9 of the Second Protocol, and as such need only be included where the Act is intended to implement the Second Protocol. However, it is suggested that all five offences listed in section 15(2) be included, even where the Act is only intended to implement the Convention and the First Protocol.

- (d) uses the cultural-property emblem or a sign resembling the cultural-property emblem in any cases other than those provided for in part 4 above; or
  - (e) uses cultural property in any manner that violates the provisions of the Schedules to this Act.<sup>35</sup>
- 3) It is an offence to assist, aid, abet, encourage or induce, in any way, anyone to engage in conduct referred to in subsections 15(1) and 15(2).

## 16. Offences and penalties

- 1) Any person who contravenes subsection 15(1) shall be guilty of an offence and liable upon conviction to:
- (a) in the case of an individual, imprisonment for a term not exceeding [insert number] years or to a fine not exceeding [insert amount] or both.
  - (b) in the case of a body corporate/legal person, a fine not exceeding [insert amount].
- 2) Any person who contravenes subsection 15(2) shall be guilty of an offence and liable upon conviction to:
- (a) in the case of an individual, imprisonment for a term not exceeding [insert number] years or to a fine not exceeding [insert amount] or both.
  - (b) in the case of a body corporate/legal person, a fine not exceeding [insert amount].
- 3) Where an offence under subsection 16(1) or 16(2) that is committed by a body corporate/legal person is proved to have been committed with the consent and connivance of, or to be attributable to any negligence on the part of, any director, manager or other similar officer of the body corporate/legal person, or any person who was purporting to act in such capacity, such person, and the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished, upon conviction, in accordance with paragraphs 16(1)(a) or 16(2)(a) above.

## 17. Offences by commanders and superiors<sup>36</sup>

- 1) If an offence listed in section 15 is committed by forces that are under the effective command and control of a military commander or by subordinates who are under the effective authority and control of a superior, the commander or superior in question commits the same offence if it is proved that:
- (a) the offence was committed as a result of the commander or superior's failure to exercise proper control over the forces or subordinates;
  - (b) the commander or superior either knew or ought reasonably to have known that the forces or subordinates were committing or about to commit the offence; and
  - (c) the commander or superior failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of the offence or to submit the matter to the competent authorities for investigation and prosecution.
- 2) In such cases the commander or superior shall be guilty of an offence and liable upon conviction to imprisonment for a term not exceeding [insert period of time] or to a fine not exceeding [insert amount] or both.

<sup>35</sup> Although this is a generic offence, it is required by Article 28 of the Convention and Article 21 of the Second Protocol, and serves as a catch-all phrase for offences such as acts of reprisal against cultural property or the marking of immovable property with the cultural-property emblem without attaching a copy of the necessary authorization.

<sup>36</sup> Superior responsibility is required by Article 15(2) of the Second Protocol, which extends criminal responsibility to persons other than those who directly commit the act, and Article 28 of the Convention, which extends criminal responsibility to those who order a breach to be committed.

**18. Extraterritorial application of this Act<sup>37</sup>**

1) Where an offence listed in paragraphs 15(1)(a)-(c) is committed on the territory of [insert country name] or where the alleged offender is a national<sup>38</sup> of [insert country name] or a body corporate/legal person incorporated under the laws of [insert country name] or where the alleged offender is present on the territory of [insert country name], the authorities shall submit the case without delay to the [insert name of competent court] for the purpose of prosecution. Alternatively, the authorities may extradite the alleged offender, in accordance with [relevant domestic legislation].<sup>39</sup>

2) Where an offence listed in paragraphs 15(1)(d)-(e) is committed on the territory of [insert country name] or where the alleged offender is a national of [insert country name] or a body corporate/legal person incorporated under the laws of [insert country name], the authorities shall submit the case without delay to the [insert name of competent court] for the purpose of prosecution.<sup>40</sup>

3) Where an offence listed in subsection 15(2) is committed, the ordinary jurisdictional requirements for prosecution in [insert country name] shall apply.

## PART VI - ADMINISTRATION OF THIS ACT

**19. International assistance<sup>41</sup>**

1) Where necessary, the Minister may request assistance from the Committee, UNESCO or other States party to the Second Protocol, through the procedure defined in the regulations for this Act.

2) Where feasible, the Minister may choose to provide direct bilateral or multilateral technical assistance to other States party to the Second Protocol, or to inform the Committee where and to what extent it is in a position to provide technical assistance to other States party to the Second Protocol.

**20. National Commission for the implementation of this Act**

The Minister may establish a National Commission responsible for the implementation of the provisions of this Act, and shall define in the regulations for this Act the responsibilities and powers of the Commission.<sup>42</sup>

**21. Regulations<sup>43</sup>**

1) The Minister shall establish regulations providing for such other matters as are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, in order to carry out or give effect to this Act, including setting out procedures for:

- (a) identifying and preparing an inventory of cultural property;
- (b) illustrating the form of the cultural-property emblem as described in the Convention;
- (c) marking buildings and monuments with the cultural-property emblem, and regulating the marking of armlets, identity cards, flags and other objects, all in good time;

<sup>37</sup> Instead of referring to extradition in this section, States may prefer to amend existing domestic legislation dealing with extradition to include the offences listed in section 15(1)(a)-(c) as extraditable acts.

<sup>38</sup> A State may wish to extend this provision to cover permanent residents and nationals.

<sup>39</sup> For the purpose of extradition, these offences may not be regarded as political offences, and so a request for extradition based on such offences may not be refused on the sole ground that it concerns a political offence (see Article 20 of the Second Protocol). This may necessitate a change to a State's domestic legislation or to bilateral extradition treaties entered into by the State.

<sup>40</sup> Where the ordinary jurisdiction of a State's courts extends to offences committed on the territory of the State or by a national of the State or a body corporate/legal person incorporated in the State, it will not be necessary to include subsection 18(2). In such a case, subsection 18(3) can be extended to include reference to offences committed under paragraphs 14(1)(d)-(e).

<sup>41</sup> This section need only be included where a State intends to incorporate the Second Protocol into domestic legislation.

<sup>42</sup> Where applicable, the authorities may delegate the powers of such a commission to the existing National Committee for the Implementation of International Humanitarian Law.

<sup>43</sup> Many of the suggested areas requiring regulation are derived from the Regulations to the Convention, which form an integral part of the protection regime and should also be reflected in a State's domestic framework. Some are directly derived from the First and Second Protocols, and therefore need only be included where a State has ratified those instruments.

- (d) removing cultural property from the vicinity of military objectives or providing for adequate *in situ* protection;
- (e) ensuring registration of [special/enhanced] protection, including emergency enhanced protection during armed conflict;
- (f) adopting the necessary measures to access and contribute to the Fund for the Protection of Cultural Property in the Event of Armed Conflict;
- (g) defining the responsibilities and functions of the National Commission described in section 20;
- (h) appointing a representative for cultural property if [insert country name] is engaged in an armed conflict;
- (i) regulating improvised refuges for cultural property and the transport of cultural property;
- (j) regulating cultural property taken into custody from an occupied territory;
- (k) regulating the interaction between the authorities and the Committee, including the submission of State reports to the Committee; and
- (l) applying for international and technical assistance.

## **22. Effect of this Act on [relevant Rome Statute/Geneva Conventions legislation]**

The provisions of this Act shall not be construed as limiting, amending or otherwise altering any provision of [relevant Rome Statute/Geneva Conventions legislation], or as exempting any person from any duty or obligation imposed by [relevant Rome Statute/Geneva Conventions legislation] or prohibiting any person from complying with any provision of [relevant Rome Statute/Geneva Conventions legislation].

# SCHEDULES

- 1) 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict
- 2) Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict
- 3) 1954 Protocol for the Protection of Cultural Property in the Event of Armed Conflict
- 4) 1999 Second Protocol to the 1954 Hague Convention

