Scheme of the

PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT (HAGUE CONVENTION)
BILL 2015

Long Title

AN ACT TO MAKE PROVISION IN LAW ENABLING THE STATE TO RATIFY THE CONVENTION FOR THE
PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT, DONE AT THE HAGUE ON
THE 14TH OF MAY 1954, AND TO ACCEDE TO THE PROTOCOL TO THAT CONVENTION, DONE AT THE
HAGUE ON THE 26TH OF MARCH 1999.
Arrangement of Heads

1. Interpretation
2. Offences
3. Offences outside the State
4. Penalties
5. Command Responsibility
6. Defence of superior orders
7. Evidence in proceedings for offences outside the State
8. Prosecute or Extradite
9. Double Jeopardy
10. Mutual Legal Assistance
11. Blue Shield Emblem
12. Short title and commencement
To provide that in this Act

‘Act of 2008’ means the Criminal Justice (Mutual Assistance) Act 2008;

‘Blue Shield emblem’ is the distinctive emblem of the Convention, being a shield 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;

‘Convention’ means the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on 14 May 1954, the text of which is set out for ease of reference at Schedule 1 of this Act;

‘cultural property’, irrespective of its origin or ownership, means:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above; and

(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);

‘cultural property under enhanced protection’ means cultural property to which the status of enhanced protection has been granted in accordance with the system established by the Protocol;

‘Minister’ means the Minister for Foreign Affairs and Trade;

‘Protocol’ means the Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on 26 March 1999, the text of which is set out for ease of reference at Schedule 2 of this Act;

EXPLANATORY NOTE

This is a standard interpretation provision defining terms used in the Bill.
Head 2

Offences

To provide that:

(1) A person shall be guilty of an offence if he or she commits (or orders the commission of) any of the following acts:

   (a) making cultural property under enhanced protection the object of attack;

   (b) using cultural property under enhanced protection, or its immediate surroundings, in support of military action;

   (c) extensive destruction or appropriation of cultural property;

   (d) making cultural property the object of attack; or

   (e) theft, pillage or misappropriation of, or acts of vandalism directed against, cultural property.

(2) A person who attempts to commit an offence under subsection (1) shall be guilty of an offence.

EXPLANATORY NOTE

This Head establishes individual criminal responsibility for the commission of acts prohibited by the 1999 Protocol, as required by Article 15 thereof.
Head 3

Offences outside the State

To provide that

(1) A person who, in a place outside the State, engages in conduct that would, if the conduct occurred in the State, constitute an offence under subsection (1) (a), (b) or (c) of Head 2 shall be guilty of an offence.

(2) A person who, in a place outside the State, engages in conduct that would, if the conduct occurred in the State, constitute an offence under subsection (1) (d) or (e) of Head 2 shall be guilty of an offence if the person is—

(a) an Irish citizen, or

(b) a member of the Defence Forces.

(3) A person to whom subsection (1) or (2) applies who attempts, in a place outside the State, to commit an offence to which those subsections refer shall be guilty of an offence.

(4) Proceedings for an offence under this section may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

(5) If a person is charged with an offence under this section, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by, or with the consent of, the Director of Public Prosecutions.

EXPLANATORY NOTE

Article 16 of the Protocol requires the exercise of universal jurisdiction with respect to the commission outside the territory of the State of the acts described in Head 2(1)(a)-(c), and of nationality jurisdiction for acts described at (d) and (e) of that subhead. Head 3 would therefore make it an offence punishable in Ireland for a person of any nationality to commit outside the State the acts described in Head 2(1)(a)-(c) as if they had been committed in Ireland, and for Irish citizens or members of the Defence Forces to commit outside Ireland the acts described at (d) and (e).
Head 4

Penalties

To provide that

A person guilty of an offence under Head 2 or 3 shall be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment to—

(i) a fine, or

(ii) imprisonment for 30 years or such lesser term of imprisonment as the court may determine, or

(iii) both.

EXPLANATORY NOTE

This Head makes provision for appropriate penalties, including penal sanctions, to prevent and suppress activities prohibited by the Protocol.
Head 5
Command Responsibility

To provide:

(1) If an offence under this Part is committed by forces that are under the effective command and control of a military commander, the commander shall be guilty of the same offence where:

(a) the offence committed by the forces was committed as a result of the commander’s failure to exercise control properly over the forces; and

(b) the commander either knew or ought to have known that the forces were committing, or were about to commit, the offence; and

(c) the commander failed to take all necessary and reasonable measure within his or her power to prevent or repress commission the commission of the offence or to submit the matter to the competent authorities for investigation and prosecution.

(2) If an offence under this Part is committed by subordinates that are under the effective command and control of a superior, the superior shall be guilty of the same offence where:

(a) the offence committed by the subordinates was committed as a result of the superior’s failure to exercise control property over the subordinates; and

(b) the superior either knew, or consciously disregarded information that clearly indicated that the subordinates were committing, or were about commit, the offence; and

(c) the offence concerned activities within that were within the effective responsibility and control of the superior; and

(d) the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress commission of the offence or to submit the matter to the competent authorities for investigation and prosecution.

(3) Reference in subsection (2) to subordinates that are under the effective command and control of a military commander.

(4) In this section, ‘military commander’ includes a person effectively acting as a military commander.

(5) Nothing in this section affect any criminal liability that arises apart from this section.
Explanatory Note

This Head will provide for criminal responsibility for commanders and other superiors, in line with the principles set down in Article 28 of the Rome Statute of the International Criminal Court (Irish Treaty Series No. 3 of 2002 – cf. https://www.dfa.ie/media/dfa/aldfawebsitemedia/treatyseries/uploads/documents/treaties/docs/200203.pdf.)
Head 6

Defence of Superior Orders

To provide:

(1) In proceedings for an offence under this Part, it is a defence where:

   (a) the defendant was under a legal obligation to obey orders of a government or of
       a superior, whether military or superior; and

   (b) the defendant was acting under an order of that government or superior; and

   (c) the defendant did not know that the order was unlawful.

(2) For the purposes of subsection (1), the defendant must

(3) The defendant may not rely on the defence in subsection (1) if the order in question was
    manifestly unlawful.

(4) It is question of law –

   (a) whether an obligation is a legal obligation; and
   (b) whether an order is manifestly unlawful.

(5) Nothing in this section prejudices any other defence that may be available to the defendant.

Explanatory Note

This Head provides for a defence of lawful orders.
Head 7

Evidence in proceedings for offences outside State

To provide that

(1) In any proceedings relating to an offence under Head 3 in the circumstances referred to in subsection (2)(a) of that Head —

   (a) a certificate that is signed by an officer of the Minister and stating that a passport was issued by the Minister to a person on a specified date, and

   (b) a certificate that is signed by an officer of the Minister for Justice and Equality and stating that, to the best of the officer’s knowledge and belief, the person has not ceased to be an Irish citizen,

shall be evidence that the person was an Irish citizen on the date on which the offence concerned is alleged to have been committed, unless the contrary is shown.

(2) A document purporting to be a certificate under paragraph (a) or (b) of subsection (1) is deemed, unless the contrary is shown—

   (a) to be such a certificate,

   (b) to have been signed by the person purporting to have signed it.

EXPLANATORY NOTE

This Head is a standard provision concerning evidence of Irish citizenship for the purposes of a prosecution under Head 3(2).
To provide that

The Director of Public Prosecutions may take, or consent to the taking of, further proceedings against a person for an offence in respect of an act to which Head 3 (1) applies if satisfied—

(a) that-

(i) a request for that person's surrender for the purpose of trying him or her for an offence in respect of that act has been made under Part II of the Extradition Act 1965 by a state to which an Order under Part II of that Act applies; and

(ii) the request has been finally refused (whether as a result of a decision of the court or otherwise),

or

(b) that-

(i) a European arrest warrant has been received from an issuing state for the purpose of bringing proceedings against the person for an offence in respect of that act, and

(ii) a final determination has been made that the European arrest warrant should not be endorsed for execution in the State under the European Arrest Warrant Act 2003 or that the person should not be surrendered to the issuing state concerned,

or

(c) that, because of special circumstances (including, but not limited to, the likelihood of a refusal referred to in paragraph (a)(ii) or a determination referred to in paragraph (b)(ii)), it is expedient that proceedings be taken against the person for an offence under the law of the State in respect of the act.

Explanatory Note

Article 17 of the Protocol requires that where an alleged offender is found on the territory of a state, if that state does not extradite him to stand trial for those offences it should try him itself. Head 6 is based on s. 43 of the Criminal Justice (Terrorist Offences) Act 2005

November 2015 Draft
Head 9

Double Jeopardy

To provide that

A person who has been acquitted or convicted of an offence in a place outside the State shall not be proceeded against for an offence under this Act consisting of the act that constituted the offence of which the person has been acquitted or convicted.

EXPLANATORY NOTE

This Head is a standard provision to prevent double jeopardy.
Head 10
Mutual Legal Assistance

To provide that

Section 2(1) of the Act of 2008 is amended—

(a) by the insertion of the following definition:


(b) in the definition of ‘international instrument’ by the insertion of the following paragraph after paragraph (l):

‘(la) the 1999 Protocol’;

Explanatory note

This provision will render the 1999 Protocol an ‘international instrument’ for the purposes of the 2008 Act, in accordance with the provisions of which mutual legal assistance may be provided to a state party once the Minister for Foreign Affairs, after consultation with the Minister for Justice, has made an order under s. 4 of that Act designating the states parties to the Protocol.

The amendment of the 2008 Act follows the model used to amend it by s. 128 of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014.
Head 11

Blue Shield Emblem

To provide that:

(1) The Minister for Arts, Heritage and the Gaeltacht, may at his or her discretion, grant or refuse to grant consent to use the blue shield emblem.

(2) Such consent shall be given in writing.

(3) The Minister for Arts, Heritage and the Gaeltacht shall have the power to amend or revoke such consent.

(4) The Minister for Arts, Heritage and the Gaeltacht shall consult the Minister for Defence before exercising his or her discretion.

(5) The Minister for Arts, Heritage and Gaeltacht shall have regard to the purposes of the blue shield emblem, as provided for in the Convention, when exercising his or her discretion.

(6) The Minister for Arts, Heritage and Gaeltacht may make regulations specifying the manner and form in which applications for consent may be submitted.

(7) It shall be an offence for any person to use for the purposes of trade or business or any other purpose whatsoever without the permission of the Minister for Arts, Heritage and the Gaeltacht, the Blue Shield emblem.

(8) A person guilty of an offence under subsection (7) shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both.

Explanatory Note

This Head will provide legal protection for the Blue Shield Emblem and make its misuse a summary offence.
Head 12

Short Title and Commencement

(1) This Act may be cited as the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention) Act 2015.

(2) This Act shall come into operation on such day as the Minister may by order appoint.

Explanatory Note

This Head is a standard provision.
Schedules

1954 Convention

1999 Protocol