



Cultural Property (Armed Conflicts) Act 2017

2017 CHAPTER 6

PART 2

SERIOUS VIOLATION OF SECOND PROTOCOL

5 Responsibility of commanders and other superiors

- (1) A person described in this section as responsible for a section 3 offence is to be treated as—
 - (a) aiding, abetting, counselling or procuring the commission of the offence under the laws of England and Wales and Northern Ireland, and
 - (b) being art and part in the commission of the offence under the law of Scotland.
- (2) A military commander is responsible for a section 3 offence committed by forces under the commander's effective command and control if—
 - (a) the offence is committed as a result of the commander's failure to exercise control properly over those forces,
 - (b) the commander either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit the offence, and
 - (c) the commander failed to take all necessary and reasonable measures within the commander's power to prevent or repress the commission of the offence or to submit the matter to the competent authorities for investigation and prosecution.
- (3) In subsection (2)—
 - (a) references to a military commander include a reference to a person effectively acting as a military commander, and
 - (b) in relation to such a person, the reference to effective command and control is to effective authority and control.

Status: This is the original version (as it was originally enacted).

- (4) With respect to superior and subordinate relationships not described in subsection (2), a superior is responsible for a section 3 offence committed by a subordinate who is under the superior's effective authority and control if—
- (a) the offence is committed as a result of the superior's failure to exercise control properly over the subordinate,
 - (b) the superior either knew, or consciously disregarded information which clearly indicated, that the subordinate was committing or about to commit the offence,
 - (c) the offence concerned activities that were within the superior's effective responsibility and control, and
 - (d) the superior failed to take all necessary and reasonable measures within the superior's power to prevent or repress the commission of the offence or to submit the matter to the competent authorities for investigation and prosecution.
- (5) References in this section to a "section 3 offence" are to—
- (a) an offence under section 3, or
 - (b) an offence ancillary to such an offence.
- (6) In interpreting and applying the provisions of this section (which corresponds to article 28 of the Statute of the International Criminal Court done at Rome on 17 July 1998) a court must take account of any relevant judgment or decision of the International Criminal Court.
- (7) Nothing in this section affects any criminal liability that arises apart from this section.