



# The 1970 UNESCO Convention – Guidance for Dealers and Auctioneers in Cultural Property

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On 31st October 2002 the United Kingdom became a party to the **1970 Convention of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property** (the UNESCO Convention). The UK made the following reservations when acceding to the Convention:

- (a) the UK interprets the term 'cultural property' as confined to those objects listed in the Annex to Council Regulation (EEC) No 3911/1992 of 9 December 1992, as amended, on the export of cultural goods and in the Annex to Council Directive 1993/7/EEC of 15 March 1993, as amended, on the return of cultural objects unlawfully removed from the territory of a Member State;
- (b) as between EC Member States, the UK shall apply the relevant EC legislation to the extent that that legislation covers matters to which the Convention applies; and
- (c) the UK interprets Article 7(b)(ii) to the effect that it may continue to apply its existing rules on limitation to claims made under this Article for the recovery and return of cultural objects.

### **What does the UNESCO Convention mean for dealers and auctioneers?**

**The obligations of the Convention are imposed on the UK as a State and do not have any direct effect on dealers and other private individuals.** However, it is necessary for dealers to be aware of the Convention since there are already provisions within domestic law which go towards fulfilling our UNESCO obligations and do have an impact on individuals.

However, the Convention does not impose any new onerous burdens on the UK or individuals. It largely reflects what has been going on between EU states since 1993, notably, under Council Directive 1993/7/EEC of 15 March 1993, as amended, on the return of cultural objects unlawfully removed from the territory of a Member State.

### **Stolen cultural property**

Dealers and auctioneers should be aware that there are a number of provisions within our domestic criminal law that apply to stolen property in general, principally the offence of handling stolen goods contrary to s.22 of the Theft Act 1968. This extends to goods that have been stolen abroad. A number of States, e.g. Egypt, have legislation declaring certain cultural property to be the property of the state and that its illegal export constitutes theft. Dealers should be aware that dishonestly dealing in property of this kind could constitute the criminal offence of handling stolen goods, and thus render them liable to prosecution. Furthermore stolen property can be seized by the police as evidence, using their powers under the Police and Criminal Evidence Act 1984. Similar powers are conferred on HM Customs. In addition, where a customs offence has been committed, e.g. falsely describing the object in the accompanying documentation, HM Customs have further powers under the Customs and Excise Management Act 1979 to seize the object and make it forfeit. Where an object has been seized by the police or customs and is no longer required for evidence purposes, it can be returned to the country of origin, as the case may be.

## **Cultural property stolen from museums and other institutions**

Article 7(b) of the Convention requires Contracting Parties to take concrete measures with regard to cultural property that has been stolen from a museum, a religious or secular monument, or other similar institution in another Contracting Party. Specifically, Contracting Parties are required to prohibit the import of such objects and assist the Contracting Party from whose territory the object was stolen to secure its recovery. These provisions are intended to ensure that persons who deal in cultural objects stolen from museums and other institutions are suitably deterred from doing so and that the police/customs have adequate powers to seize/detain such objects when discovered. The provisions referred to in the preceding paragraph that apply to stolen goods in general, as well as existing provisions of civil law, are adequate to enable the UK to implement Article 7(b).

## **Tainted cultural objects**

The Dealing in Cultural Object (Offences) Act 2003 enters into force on 30th December 2003 and will make it an offence for anyone dishonestly to deal in a cultural object knowing or believing that the object is tainted (see separate guidance issued by DCMS PP639). Since the offence will cover dealing in (which includes importing or exporting) cultural objects which have been illegally excavated or removed from buildings or monuments within the UK and abroad, the new offence will reinforce the UK's implementation of the Convention.

## **Illegally exported cultural property**

Article 13(a) of the Convention obliges States Parties to prevent by all appropriate means transfers of ownership of cultural property (as defined in EU legislation) likely to promote the illicit import or export of such property. Although the criminal law (including the new offence of dealing in tainted cultural objects) will not deal with transfers of ownership of illegally exported cultural property, the UK believes that existing provisions of UK civil law are adequate to enable the UK to implement this provision. In this context dealers and auctioneers should be aware that, under the law of some overseas countries, the illegal export of a cultural object entails forfeiture of the object and entitles that country to assert ownership of the object. Persons acquiring such objects therefore expose themselves to the risk of civil proceedings brought by such a country. To reduce the risk of civil proceedings dealers, auctioneers and others acquiring illegally exported cultural property will need to ensure that the provenance of cultural objects in which they deal is secure.

## **Export licensing requirements**

Under Article 6 of the Convention, the States Parties undertake: (a) to introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorised; (b) to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate; and (c) to publicise this prohibition by appropriate means, particularly among persons likely to export or import cultural property. The UK Government considers that its existing export licensing system adequately meets the requirements of Article 6.

Article 10(a) also obliges dealers, 'subject to penal or administrative sanctions,' to inform purchasers of cultural property of any export prohibition to which such property may be subject. Most dealers will be aware when the export of a cultural object requires a licence and will inform purchasers accordingly. However, a failure to inform a purchaser of this could incur a civil liability. In particular, it could breach the implied warranty under the Sale of Goods Act 1979 that the property was free from encumbrance, of satisfactory quality and reasonably fit for its purpose.

### **The need to keep adequate records**

Article 10(a) of the Convention requires States Parties 'as appropriate for each country' to oblige antique dealers, 'subject to penal or administrative sanctions', to maintain registers of cultural property recording the origin of each item of cultural property, names and address of the supplier, and a description and price of each item sold. Dealers will be aware that where they are registered for VAT then their business records should already contain this information and a failure to keep proper records would be a VAT offence. Furthermore, dealers, whether or not registered for VAT, also need to keep adequate records of their transactions for the purposes of accounting to the Inland Revenue.

### **Codes of Practice**

Article 5(e) contains a requirement that a Contracting Party should undertake 'establishing, for the benefit of those concerned (curators, collectors, antique dealers etc.) rules, in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of these rules.' A system of self-regulation is already in place in the UK whereby most of the relevant

professional associations such as the International Council of Museums, the Museums Association, the Institute of Field Archaeologists, UK Institute of Conservation and auctioneers and dealers associations, as well as individual companies within the art market, now have codes of conduct or company rules enforceable through internal disciplinary action. Such codes or company rules already contain provisions preventing the members of the association or company concerned from acquiring objects that have been illegally exported or where the provenance is otherwise doubtful. However, the obligation in Article 5(e) is a continuing one and the Department for Culture, Media and Sport will be monitoring the effectiveness of the codes and company rules and make recommendations for improvement where appropriate. The Department is currently assisting the UK museum profession to develop practical steps guidance for the acquisition of cultural objects from overseas in compliance with the ethical codes of conduct.

### **Checking on provenance**

The vast majority of dealers already takes reasonable steps to ensure that the provenance of cultural objects in which they deal is secure. Now that the UK is a party to the Convention it can be expected that there will be an increase in the number of countries seeking the return of cultural objects that have been stolen, illegally excavated or removed from archaeological sites and monuments. The need for dealers to satisfy themselves on provenance will assume even greater importance.

## What is the UNESCO Convention?

The UNESCO Convention is the principal international legal instrument aimed at combating illicit trade in cultural objects on a world-wide level. There are currently 100 States Parties to the Convention, including the UK. The Convention has as its purpose the prevention of illicit import, export and transfer of ownership of cultural property. The Convention is not retroactive: it is applicable only to cultural objects stolen or illicitly exported from one State Party to another State Party after the date of entry into force of the Convention for both States concerned.

The principal provisions of the Convention can be summarised as follows:

- Articles 1 and 4 contain a very broad definition of cultural property. Property has to be designated by the State as important for its archaeology, prehistory, history, literature, art or science. As a result of the UK reservation at (a) referred to in paragraph 1 above, the UK will apply the EU definition of cultural property in its relations between UNESCO Contracting Parties.
- Article 3 declares that the import, export or transfer of ownership of cultural property effected contrary to the provisions of the Convention by the States Parties 'shall be illicit'.
- Article 5 requires States Parties to adopt a number of domestic protective measures, including the drafting of appropriate legislation, the establishment of national inventories of important public and private cultural property, the encouragement of the adoption of codes of conduct for antique dealers, curators and collectors, and the implementation of educational programmes to develop respect for cultural heritage.

- Article 6 requires States Parties to introduce a system of export certificates and to prohibit the export of cultural property unless it is accompanied by an export certificate.
- Article 7 obliges States Parties to take the necessary measures to prevent museums and similar institutions from acquiring cultural property that has been illegally exported. It further obliges States Parties to prohibit the import of cultural property that has been stolen from museums, religious or secular public monuments or similar institutions and contains provisions governing the return of such stolen cultural property. At the request of the State Party of origin, another State Party is required to take appropriate steps to recover and return cultural property stolen from a museum, religious institution or public monument. The request has to be made through diplomatic channels and the object has to be documented as being part of the inventory of the institution. The requesting State has to pay just compensation to an owner who has purchased the object in good faith or holds a title which is valid according to national law, and the requesting State has to provide all the evidence to support its claim. It will also be open to a requesting State to pursue a civil claim for the return of an object through the UK courts. The effect of the UK reservation at (c) in paragraph 1 above is that such claim would remain subject to the normal rules of limitation.
- Article 9 gives a State Party whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials to call for assistance. Other States Parties are obliged to participate in a concerted international effort to carry out concrete measures, including control of exports and imports and international commerce in the materials concerned. Pending international agreement individual States are required to the extent feasible to take provisional measures to prevent irremediable damage to the cultural heritage of the requesting State.

- Article 10 obliges States Parties to restrict by education, information and vigilance the movement of cultural property illegally removed from any State Party to the Convention. It also requires States to ensure that an obligation is placed on antique dealers to maintain registers of cultural property and to inform purchasers of any export restrictions to which the property may be subject.
- Article 11 declares the export and transfer of ownership of cultural property under compulsion arising directly or indirectly from occupation of a country by a foreign power to be illicit.
- Article 13 requires Contracting Parties to prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property; to ensure that their competent services co-operate to facilitate the restitution of illicitly exported cultural property to its rightful owner; to admit actions for the recovery of lost or stolen items of cultural property; and to recognise the right of Contracting Parties to declare certain cultural property as inalienable and to facilitate recovery of such property by the State concerned.

## **Further advice**

For advice on the 1970 UNESCO Convention contact:

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The text of the 1970 UNESCO Convention can be downloaded from the UNESCO website:

[http://www.unesco.org/culture/laws/1970/html\\_eng/page1.shtml](http://www.unesco.org/culture/laws/1970/html_eng/page1.shtml)

Copies of this guidance and that for the *Dealing in Cultural Objects (Offences) Act 2003* can be downloaded from the Cultural Property page of the DCMS website:

[http://www.culture.gov.uk/cultural\\_property/illicit\\_trade.htm](http://www.culture.gov.uk/cultural_property/illicit_trade.htm)



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