

Recommendation to Prevent the Illicit Import, Export and Transfer Ownership of Cultural Property

Written by Gaëtan Juillard

Sunday, 10 June 2007 19:11 - Last Updated Sunday, 10 June 2007 19:23

Full title: **Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property**

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 20 October to 20 November 1964, at its thirteenth session,

Being of the opinion that cultural property constitutes a basic element of civilization and national culture, and that familiarity with it leads to understanding and mutual appreciation between nations,

Considering that it is incumbent upon every State to protect the cultural property existing within its territory and which constitutes its national heritage against the dangers resulting from illicit export, import and transfer of ownership,

Considering that, to avert these dangers, it is essential for every Member State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations,

Considering that the objectives in view cannot be achieved without close collaboration among Member States.

Convinced that steps should be taken to encourage the adoption of appropriate measures and to improve the climate of international solidarity without which the objectives in view would not be attained,

Having before it proposals for international regulations to prohibit and prevent the illicit export, import and transfer of ownership of cultural property, which constitutes item 15.3.3 on the agenda of the session,

Having decided, at its twelfth session, that these proposals should be regulated at the international level by way of a recommendation to Member States, while expressing the hope that an international convention may be adopted as soon as possible,

Adopts, this nineteenth day of November 1964, this recommendation. The General Conference recommends that Member States should apply the following provisions by taking whatever legislative or other steps may be required to give effect, within their respective territories, to the principles and norms formulated in this recommendation.

The General Conference recommends that Member States should bring this recommendation to the knowledge of authorities and organizations concerned with the protection of cultural property.

The General Conference recommends that Member States should report to it, on dates and in a manner to be determined by it, on the action, which they have taken to give effect to this recommendation.

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I. Definition

1. For the purpose of this recommendation, the term 'cultural property' means movable and immovable property of great importance to the cultural heritage of a country, such as works of art and architecture, manuscripts, books and other property of artistic, historical or archaeological interest, ethnological documents, type specimens of flora and fauna, scientific collections and important collections of books and archives, including musical archives.

2. Each Member State should adopt whatever criteria it deems most suitable for defining which items of cultural property within its territory should receive the protection envisaged in this recommendation by reason of their great importance.

II. General principles

3. To ensure the protection of its cultural heritage against all dangers of impoverishment, each Member State should take appropriate steps to exert effective control over the export of cultural property as defined in paragraphs 1 and 2.

4. No import of cultural property should be authorized until such property has been cleared from any restrictions on the part of the competent authorities in the exporting State.

5. Each Member State should take appropriate steps to prevent the illicit transfer of ownership of cultural property.

6. Each Member State should lay down rules governing the application of the above principles.

7. Any export, import or transfer of ownership effected contrary to the rules adopted by each Member State in accordance with paragraph 6 should be regarded as illicit.

8. Museums, and in general all services and institutions concerned with the conservation of cultural property, should refrain from purchasing any item of cultural property obtained through an illicit export, import or transfer of ownership.

9. In order to encourage and facilitate legitimate exchange of cultural property, Member States should strive to make available to public collections in other Member States, by sale or exchange, objects of the same type as those the export or transfer of ownership of which cannot be authorized, or certain of the latter objects, on loan or deposit.

III. Measures recommended

Recognition and national inventory of cultural property

10. To ensure more effective application of the above general principles, each Member State should, as far as possible, devise and apply procedures for the recognition of the cultural property, as defined in paragraphs 1 and 2 above, which exists within its territory, and draw up a national inventory of such property. The inclusion of a cultural object in this inventory should produce no change in the legal ownership of that object: In particular, a cultural object in private

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ownership should remain such even! after inclusion in the national inventory. This inventory would not be of a restrictive character.

Institutions for the protection of cultural property

11. Each Member State should provide that the protection of cultural property shall be the concern of appropriate official bodies and, if necessary, should set up a national service for the protection of cultural property. Although differences of constitutional provisions and tradition and disparity of resources preclude the adoption by all Member States of a uniform structure, certain common principles, set forth below, should nevertheless be adopted if the creation of a national service for the protection of cultural property be considered necessary:

a) The national service for the protection of cultural property should, as far as possible, take the form of a State-operated administrative service, or a body operating in accordance with the national law with the necessary administrative, technical and financial means to exercise its functions effectively.

b) The functions of the national service for the protection of cultural property should include :

i) Recognition of the cultural property existing within the territory of the State, and, where appropriate, the establishment and maintenance of a national inventory of such property, in accordance with the provisions of paragraph 10 above;

ii) Co-operation with other competent bodies in the control of the export, import and transfer of ownership of cultural property, in accordance with the provisions of Section II above; the control of exports- would be considerably facilitated if items of cultural property were accompanied, at the time of export, by an appropriate certificate in which the exporting State would certify that the export of the cultural property is authorized. In case of doubt regarding the legality of the export, the institution entrusted with the protection of cultural property should address itself to the competent institution with a view to confirming the legality of the export.

c) The national service for the protection of cultural property should be em-powered to submit proposals to the competent national authorities for any other appropriate legislative or administrative measures for the protection of cultural property, including sanctions for the prevention of illicit export, import and transfer of ownership.

d) The national service for the protection of cultural property should be able to call upon experts to advise it on technical problems and to propose solutions in contentious cases.

12. Each Member State should, in so far as necessary, set up a fund or take other appropriate financial measures in order to have means necessary to purchase exceptionally important cultural property.

Bilateral and multilateral agreements

13. Whenever necessary or desirable, Member States should conclude bilateral or multilateral agreements, within the framework of regional intergovernmental organizations for instance, to resolve problems flowing from the export, import or transfer of ownership of cultural property, and more especially in order to secure the restitution of cultural property illicitly exported from the territory of a party to the agreements and located in the territory of another. Such agreements might, where appropriate, be comprised within agreements of wider scope, such as cultural agreements.

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14. Whenever necessary or desirable, these bilateral or multilateral agreements should include provisions to the effect that whenever it is proposed to transfer the ownership of a cultural object the competent services of each State shall ascertain that there are no grounds for regarding that object as proceeding from a theft, an illicit export or transfer of ownership, or any other operation regarded as illegal under the legislation of the exporting State, for, instance, by requiring the presentation of the certificate referred to' in paragraph 11. Any dubious offer, and any details relating thereto, - should be brought to the knowledge of the services concerned.

15. Member States should endeavour to assist each other by exchanging the fruits of their experience in the fields covered by this recommendation.

Restitution or return of illicitly exported cultural property

16. Member States, services for the protection of cultural property, museums and, in general, all competent institutions should collaborate with one another in ensuring or facilitating the restitution or return of cultural objects illicitly exported. This restitution or return should be carried out in accordance with the laws in force in the State on whose territory the objects are located.

Publicity in the event of the disappearance of a cultural object

17. The disappearance of any cultural object should, at the request of the State claiming that object, be brought to the knowledge of the public by means of appropriate publicity.

Rights of bona fide purchasers

18. Each Member State should, if necessary, take appropriate measures to provide that its internal laws or the international conventions to which it may become a party, ensure to the bona fide purchaser of cultural property which is to be restored or returned to the territory of the State from which it had been illegally exported, the possibility of obtaining damages or fair compensation.

Educational action

19. In a spirit of international collaboration which would take into account both the universal nature of culture and the necessity of exchanges for enabling all to benefit by the cultural heritage of mankind, each Member State should take steps to' stimulate and develop among its nationals interest in and respect for the cultural heritage of all nations. Such action should be undertaken by the competent services in co-operation with the educational services and with the Press and other media for the communication and dissemination of information, youth and adult education organizations and groups and individuals concerned with cultural activities.

The foregoing is the authentic text of the Recommendation duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its thirteenth session, which was held in Paris and declared closed the twentieth day of November 1964.

IN FAITH WHEREOF we have appended our signatures this twenty-first day of November 1964.

The President of the General Conference

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The Director-General