

**NOT FOR SALE**  
**A Swiss-British conference on  
the traffic in artefacts from  
Iraq, Afghanistan and beyond**

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## Recent UK measures against the international illicit trade in cultural objects: outlining the UK strategy

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Until recently Switzerland and the UK were branded as centres for the trafficking in art and antiquities unlawfully removed from monuments and sites around the world. It is true that for the previous 30 years or so both countries stood on the sidelines of decisive international action against the illicit traffic in cultural property. Today both the Swiss and British art and antiquities markets are operating in a very different climate.

Not only have both key market countries recently acceded to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Trade in Cultural Property, they have also both introduced primary legislation designed to reinforce their new treaty obligations to regulate the trade in cultural objects and to raise standards in the marketplace.

In addition to making a significant extension to national criminal law (see below), the UK Government is now working to develop a package of measures designed to strengthen its international treaty obligations and to help enforce the new regulatory framework. These include:

- the establishment of improved intelligence tools for conducting due-diligence more effectively
- refinements to the UK export licensing arrangements in order to restrict the movement of those objects which have recently entered the UK after their illegal exportation from an overseas country
- closer working between policy officials and enforcement and Customs officers working on the front line
- a campaign of awareness among the trade, the museum community and the public at large.

### The need for a new criminal offence

The existing offences of theft and the handling of stolen goods will continue to apply to many of the activities that the proposed offence is intended to catch. However, the underlying purpose of the Theft Act is to protect owners' interests. The new offence has a different purpose, namely, to strangle the traffic in unlawfully removed cultural objects and, indirectly, to assist in maintaining the integrity of monuments and wrecks worldwide by removing the commercial incentive to those involved in the looting of such sites. As such it is intended to go further than the protection of proprietary interests under

the Theft Act, and will cover objects which although not stolen, have been illegally excavated or removed from a monument or wreck. The proposed offence should apply irrespective of the place where the cultural object was unlawfully excavated or removed. The conclusion of widespread consultation was that the elimination of the UK as a marketplace for the illicit trade could best be achieved by creating a new free-standing offence.

### How the new offence works

The Dealing in Cultural Objects (Offences) Act covers the dishonest dealing in a cultural object knowing or believing that the object was illegally excavated or removed from a monument or wreck either in this country or anywhere in the world. For these purposes 'dealing in' a tainted cultural object means acquiring, disposing of, importing or exporting such an object, or agreeing or arranging to do so. The requirement for the prosecution to prove that the person was acting dishonestly when dealing in the cultural object provides an important safeguard.

A second important safeguard of the Act is the requirement that in order to be guilty of the offence a person must know or believe the cultural object to be tainted. A person who, for example, produced evidence to show that before dealing he made reasonable enquiries, the result of which indicated that the object was not tainted, will not have committed the offence even if after the dealing had taken place it transpired that the cultural object was tainted.

The unlawful removal of a cultural object is capable of constituting an offence under the Act. The trigger for the offence is split into two parts: removal from a building or structure of historical, architectural or archaeological interest under protection, and removal from a monument of historical, architectural or archaeological interest under protection.

### Impact on the marketplace

The Act does not necessarily oblige dealers to take steps to ascertain provenance or to exercise due diligence to avoid committing the offence. Knowledge or belief and dishonesty must be proved by the prosecution. Rather, the measure is designed to target irresponsible trading. It will inject greater transparency into the process of acquiring and disposing of cultural objects within the art market so that clear chains of ownership can be established in the event of suspected unlawful removal or excavation. In effect, the Act does not impose further costs in terms of due diligence checks but, rather, formalises them and encourages those not complying with industry-approved standards of good practice to come on board. The measure is designed to protect small business from the illicit trade, which threatens their commercial

position through unfair competition. An increase in costs to legitimate business, therefore, is agreed to be minimal. The measure will also affect museums, particularly those that collect British and foreign antiquities. The Act should ensure that museums do not acquire artefacts of doubtful provenance and so stimulate the market.

### Iraq

For Iraq, the UK has added an extra – comprehensive – layer of protection through its implementation in May 2003 of the United Nations Security Council Resolution 1483. The Iraq (UN Sanctions) Order passed in June of that year makes it a criminal offence in the UK both to deal in and be in possession of Iraqi cultural property illegally removed from Iraq after 6 August 1990.

### Consensus building

Among the strongest advocates to improve standards in the UK have been the art market trade associations, which have adopted voluntary codes of conduct by which participants undertake, to the best of their ability, not to import, export or transfer the ownership where they have 'reasonable cause to believe' that an imported object has been stolen, illegally exported or illegally removed or excavated. The representation of national art and antiquities trade organisations on the DCMS Advisory Panel on the Illicit Trade (ITAP) has been crucial in gaining consensus for these measures across the whole sector. The UK Government has favoured a 'bottom-up' approach aimed at securing the support of the art market through offering participation in the policy development process, rather than imposing new regulations upon it. The fact that the British Art Market Federation and the British Antiquities Dealers Association were both involved in the formulation of the new criminal offence gives added strength to the force of its provisions. As James Ede has said at this meeting, the trade is as much part of the solution as the problem.

### Responsibilities for museums

Equally, the requirements of the UNESCO Convention and the new criminal offence in the UK make it more important than ever that our museums and galleries have robust procedures for assessing the legitimacy of potential acquisitions and loans. The Department for Culture is now working with the professional bodies in this sector to convert high-level ethical codes into practical-steps guidance on the acquisition of cultural objects from overseas. The guidance will be applicable to all registered museums, from the nationals to regional institutions, universities and independent museums.

### Next steps: making the system work

#### Closing loopholes

Now the regulatory framework is in place, the UK Government has a duty to ensure it delivers improved intelligence for due diligence purposes and the necessary enforcement tools to make the new systems work.

To this end, we in the UK are now focusing on developing a more structured approach to inter-departmental working on this issue by creating a new steering group of policy officials and law enforcement counterparts under Department for Culture chairmanship. The group comprising DCMS policy officials, HM Customs and Metropolitan Police officers will review policy issues, operational strategies and intelligence sharing and progress specific cases so as to ensure the most effective working of the new framework. Should loopholes be identified in our provision, the group will work together on remedial measures to ensure comprehensive protection against criminal activity in the marketplace.

On the question of using the UK export licensing system to restrict the outflow of tainted objects from non-EU countries of origin, the Department for Culture is currently exploring the compatibility of proposals to regulate in this manner with national obligations under EU regulations on the export of cultural goods. Should a problem be identified, the UK Government will seek to move an amendment to the EU Regulation. In this DCMS is strongly supported by HM Customs, where officials wish to see any legislative loopholes closed so that the factor of tainting can be dealt with as part of the export licensing process.

#### Improved intelligence

The UK Government regards the provision of improved intelligence for due-diligence purposes as fundamental to its long-term strategy to assist the art market in policing itself. A database of stolen and unlawfully removed cultural objects is regarded by the art trade and the museum community as a vital part of the package of due-diligence measures designed to curb the circulation of stolen and unlawfully removed cultural objects. The database would enable both art and antiquities dealers and museums to conduct due-diligence checks more effectively, and facilitate the police and law enforcement agencies to identify and track suspect objects. Access to the proposed database should be extended to businesses in the trade, museums and to private individuals.

The availability of an efficient database with audit trail facilities is integral to establishing the 'mental element' in prosecuting the proposed new criminal offence of dishonestly acquiring, disposing of, importing or exporting tainted cultural objects, or agreeing or arranging to do so. A key provision of the offence recommended by the DCMS Illicit Trade Advisory Panel is that a person can only be found guilty if he acts knowing or believing that an object has been illegally removed.

Working closely with the UK Home Office, the Department for Culture is currently scoping user needs, systems requirements, data-handling specifications, access issues and operating budgets for a pilot database to be rolled out during the second half of 2004.

Similarly, we consider a regularly updated database of international cultural property legislation to be another vital part of the package of due-diligence tools designed to stem the illicit trade, indeed complementary to, and no less important than, the database for stolen and unlawfully removed cultural objects. Besides an improvement in the provision of due-diligence services for the marketplace, web-based translations of the cultural property laws of other countries will be of significant benefit to UK police and HM Customs officers working in front-line enforcement roles.

It is widely agreed that the United Nations Educational, Scientific and Cultural Organisation (UNESCO) is the best organisation to take the lead on this initiative. Such a resource would have the widest possible dissemination through availability in its original language and automatic translation into the two official working languages of UNESCO.

At its 32nd General Conference in October 2003 UNESCO voted a budget for launching at the earliest possible date an electronic cultural property legislation database bringing together all national legislation applicable in Member States of UNESCO concerning the import, export and transfer of ownership of cultural property and also including models of the export and import certificates for cultural property in use in Member States'. The UK was among the States Parties registering support for the necessary amendment to the budget vote on major programmes and projects relating to cross-cutting cultural property themes for 2004-05. UNESCO has recently issued a letter to Member States of the 1970 Convention requesting electronic copies of the relevant documentation.

## Conclusion

This is a multi-faceted strategy responding to diverse stakeholder needs. Each measure is a vital and complementary part of a package of actions intended, firstly, to raise standards in the marketplace and, secondly, to target the organised criminal element that does so much damage to legitimate business. No one action, including the new criminal offence, will solve the problem of the illicit trade in isolation.

By removing the incentives for criminal activity in the UK, the ultimate objective of the UK Government is to help to disincentivise those who do so much damage to cultural sites and who, by so doing, threaten the economic base and sustainable futures of so many communities worldwide.

At the same time, we recognise that we stand only at the very start of this process. To make the new systems work we must continue to work together in partnership – that means policy makers, auctioneers and dealers, collectors, archaeologists, as well as law enforcement and Customs officers – perhaps now even more closely than before.

*(Full documentation of the UK policy, strategy and implementation of measures against the international illicit trade can be found, alongside copies of legislation and guidance documents, on the cultural property page of the Department for Culture, Media and Sport website: [www.culture.gov.uk/cultural\\_property/illicit\\_trade.htm](http://www.culture.gov.uk/cultural_property/illicit_trade.htm))*

**From:** [blog@notforsale.ch](mailto:blog@notforsale.ch)  
**Subject:** Cynicism and politicians

People tend to be cynical when it comes to politics – and even more when it comes to politicians. It's easy enough, because, rightly or not, their actions can usually be put in terms of 'I want to be re-elected'.

It's more difficult to be cynical about a politician for whom the issue of the illicit arts and antiques business (a seemingly esoteric field) is obviously a vital issue. The speech of Richard Allen MP, the driving force behind the Dealing in Cultural Objects (Offences) Act, was clear and to the point – neither Britain nor Switzerland will stand for the looting of their own heritage. Why should they stand by and watch as the cultural heritage of other countries is looted? A political agenda that insists on the prosecution of vendors of tainted goods shows that it is not simply about self-serving aims and short-term goals.

Getting this to work in practice is more difficult, it seems. The further you go back in time before the 1970 legislation, the more difficult it becomes to ensure where exactly an object has come from. According to what was said by some of the dealers and collectors here, there are many perfectly legit goods in circulation whose legitimacy cannot be proven.

It's difficult to say for sure this early in the proceedings, but one does get the feeling that the dealers and collectors on the one hand and the legislators on the other are at times at cross-purposes. I have to admit that for me as an 'interested observer' (which in this case roughly translates as 'opinionated and essentially ignorant on the topic', the prerogative of someone coming at the issue from different angles), this is more than confusing. Those who make the laws and endeavour to enforce them stress: new, strict laws will protect legit trade and collecting as well as archaeological, academic and national interests. Yet some of the dealers and collectors who have expressed their opinions so far sound dubious about the practicality and validity of applying the laws as written.