

International Code of Ethics for Dealers in Cultural Property

Members of the trade in cultural property recognize the key role that trade has traditionally played in the dissemination of culture and in the distribution to museums and private collectors of foreign cultural property for the education and inspiration of all peoples.

They acknowledge the world wide concern over the traffic in stolen, illegally alienated, clandestinely excavated and illegally exported cultural property and accept as binding the following principles of professional practice intended to distinguish cultural property being illicitly traded from that in licit trade and they will seek to eliminate the former from their professional activities.

ARTICLE 1 Professional traders in cultural property will not import, export or transfer the ownership of this property when they have reasonable cause to believe it has been stolen, illegally alienated, clandestinely excavated or illegally exported.

ARTICLE 2 A trader who is acting as agent for the seller is not deemed to guarantee title to the property, provided that he makes known to the buyer the full name and address of the seller. A trader who is himself the seller is deemed to guarantee to the buyer the title to the goods.

ARTICLE 3 A trader who has reasonable cause to believe that an object has been the product of a clandestine excavation, or has been acquired illegally or dishonestly from an official excavation site or monument will not assist in any further transaction with that object, except with the agreement of the country where the site or monument exists. A trader who is in possession of the object, where that country seeks its return within a reasonable period of time, will take all legally permissible steps to co-operate in the return of that object to the country of origin.

ARTICLE 4 A trader who has reasonable cause to believe that an item of cultural property has been illegally exported will not assist in any further transaction with that item, except with the agreement of the country of export. A trader who is in possession of the item, where the country of export seeks its return within a reasonable period of time, will take all legally permissible steps to co-operate in the return of that object to the country of export.

ARTICLE 5 Traders in cultural property will not exhibit, describe, attribute, appraise or retain any item of cultural property with the intention of promoting or failing to prevent its illicit transfer or export. Traders will not refer the seller or other person offering the item to those who may perform such services.

ARTICLE 6 Traders in cultural property will not dismember or sell separately parts of one complete item of cultural property.

ARTICLE 7 Traders in cultural property undertake to the best of their ability to keep together items of cultural heritage that were originally meant to be kept together.

ARTICLE 8 Violations of this Code of Ethics will be rigorously investigated by *(a body to be nominated by participating dealers)*. A person aggrieved by the failure of a trader to adhere to the principles of this Code of Ethics may lay a complaint before that body, which shall investigate that complaint before that body, which shall investigate that complaint. Results of the complaint and the principles applied will be made public.

Adopted by the UNESCO intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its Tenth Session, January 1999 and endorsed by the 30th General Conference of UNESCO, November 1999.

Why a Code?

Countless transactions take place every day all over the world concerning cultural property. They are part of the vibrant dialogue between cultures which UNESCO supports.

But unfortunately every day there are also ancient tombs broken into, libraries stolen from, monuments dismembered and collections robbed. Not only is the context and history of the purloined items lost, but very often the objects themselves are damaged and their place of origin destroyed for serious scholarship. A trail of desecrated religious places, damaged monuments and broken fragments witness the activities of the looters.

Much of the spoils find its way into the legal trade in art, antiquities and antiquarian books. Many collectors are today conscious of the damage done to cultures which they love and would like to help protect them. But how is one to know whether the object one wants to buy was properly transferred and legally dealt with?

One way is to be sure to buy from a dealer who espouses the highest principles of ethics devised by professionals in the care of cultural property and who is scrupulous to check the provenance of the works he deals in. Anyone can call himself a dealer. Thus objects sold from the back of a truck at 3 a.m. in the morning may gradually work their way up the chain from the thief to the local flea market, to an antiques fair, to a small dealer and eventually find themselves in the international market at a dealers' or auction house where a collector may assume that he is dealing with a responsible handler of the cultural heritage.

The best dealers have the ethical dimensions of their work in mind when working with the cultures whose values they handle. But how is the collector to separate them from the less scrupulous?

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995 provides that a stolen cultural object must be returned. A purchaser in those systems which protect the *bona fide* purchaser will, however, receive compensation where it is otherwise entitled to retain the object if it has used the required diligence in acquiring the object. Indications of such diligence include the circumstances of the acquisition, including

- the character of the parties,
- the price paid,
- whether the possessor consulted any reasonably accessible register of stolen cultural objects,
- any other relevant information and documentation which it could reasonably have obtained,
- whether the possessor consulted accessible agencies or
- whether the possessor took any other step that a reasonable person would have taken in the circumstances.

The character of the parties and the reasonable steps which could be taken would include purchase from a reputable dealer.

UNESCO has therefore decided to assist in the process of establishing who are dealers who have acceptable standards by establishing an international code of conduct for dealers. Dealers who adopt it will be recognizable and the public will be entitled to expect that those dealers have been diligent in ascertaining the origin of the objects concerned and will be able to give assurances of their good provenance. Such dealers will be under the particular scrutiny of their fellow dealers and of the media to ensure that these high standards are kept. UNESCO will follow closely the practice of the dealers who use the Code.

History of the Code

The adoption of a Code was requested by the 5th session of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation in 1987 and was considered by that Committee in its subsequent sessions. Approved for adoption in 1999 by the Committee, it was endorsed by the 30th General Conference of UNESCO in November 1999.

While the work was in progress contributions and comments on the work were invited from dealers and dealer groups.

The Code builds on the principles developed in the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 and subsequently in the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995.

It also relies on the experience of various national Dealers' Codes including those of France, the Netherlands, Switzerland and the United Kingdom, as well as the code of the *Confédération internationale des Négociants d'Oeuvres d'Art* (CINOA). There were some differences between these Codes which have been harmonized in the UNESCO text. Experience had also shown that there were some loopholes which allowed cultural material to be handled even though it had been abstracted from its country of origin with some illegality. These areas have been tightened up.

The new *International Code of Ethics for Dealers in Cultural Property* is also close to the model rule on the Acquisitions Policies of Museums found in the Code of Professional Ethics of the International Council of Museums (ICOM).

If you would like more information as to how the Code was developed you may wish to consult the UNESCO Document "Feasibility of an International Code of Ethics for Dealers in Cultural Property for the Purpose of More Effective Control of Illicit Traffic in Cultural Property", Document CLT/94/WS/11

Contents of the Code

The key clause is Article 1 which reads:

Professional traders in cultural property will not import, export or transfer the ownership of this property when they have reasonable cause to believe it has been stolen, illegally alienated, clandestinely excavated or illegally exported.

The effect of the phrase "reasonable cause to believe" is set out in later clauses. However, it is to be read as requiring traders to investigate the provenance of the material they handle. It is not sufficient to trade in material without questions and consider that the clause only comes into effect when somehow evidence of the illegality is fortuitously acquired. To satisfy this requirement, traders must actively examine the background of the objects they are offered and question the person concerned. They must pay attention to any circumstances likely to arouse suspicions, such as a demand for a large payment in cash or too low a price asked for a valuable object. That having been said, if there are no suspicious circumstances and questions are answered satisfactorily, traders can proceed with the transaction having no reasonable cause to believe there is any illegality.

Advantages of the Code

For Collectors

The issue of the Code gives collectors who have a serious concern for the fate of the cultures which they are attracted to the possibility of showing their preference for the legal over the illegal trade by bestowing their custom on ethical dealers.

They are also giving themselves some insurance that, if the status of an object in their collection is challenged, they will have evidence that they did their best to ensure that provenance of the object was legal and that they only dealt with a dealer who follows appropriate standards designed to avoid the transfer of illicitly acquired cultural property into the legal market.

For Dealers

Adopting the Code gives dealers a way of distancing themselves from disreputable people who claim to be dealers and in fact make no inquiry into provenance or even themselves knowingly instigate illegal acquisitions.

It therefore attracts to them the business of ethical collectors and raises the reputation of the ethical dealer community in the minds of the public and the media.

In cases where dealers themselves are selling as owners and not only as agents, it also gives them the right arguments to insist on proper evidence of legal acquisition from their suppliers.

For the Public

Adoption of the Code by dealers indicates that there is an ethical body of dealers who are not to be confused with those exposed by the media as instigating and commissioning thefts, clandestine excavations and illegal exports of cultural property.

It will show that there is a real and serious effort to prevent damage and destruction of the cultural heritage by a coalition of international organizations, museum and other cultural professionals, dealers, governments and local peoples in source countries in order to fight against the illegal trade.

International law on the illicit trade

Codes of Ethics do not replace the law - they complement it. The chief international instruments on the illicit trade are:

- *Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954* which provides for the return of cultural property illegally exported from occupied territory. Eighty-two States are Party to this Protocol.
- *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970* which creates co-operation strategies between States to prevent illicit traffic and co-operate on the return of cultural property. Ninety-one States are party to this Convention and a number of others are currently considering accession. It also includes a provision on illegal export from occupied territories and, as some of the States party to this Convention are not party to the Hague Protocol, it widens the circle of States which are committed to return cultural property displaced as a result of conflict. It operates on a State to State basis.
- *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995* which ensures that private owners have direct access to the courts of another country where cultural property stolen from their owners is found. It also allows States to sue in the courts of such a country for important cultural property belonging to certain categories which has been illegally exported. Twelve countries are already party to this Convention which is in force. Fourteen States have signed but not yet ratified and others are currently considering accession.

Other action on illicit trade

Codes of Ethics and international treaties are two important elements of the current major international effort to prevent the damage caused by the illegal trade.

Other efforts include action by UNESCO to

- Heighten awareness in source countries among local populations to the importance of protecting their cultural heritage.
- Help source countries update their legislation.
- Hold regional workshops so that experts can compare their laws and strategies and improve implementation of the Convention.
- Publicize simple but effective inventory systems which will help in the tracing of cultural property

such as "Object-ID".

- Publicize the laws of source countries so that they are known and understood by local and international dealers.
- Publish handbooks and other information on preventing the illicit trade.
- Co-operate with INTERPOL, The World Customs Organization (WCO) and ICOM.