

# MINISTERIAL ADVISORY PANEL ON ILLICIT TRADE

(Chairman: Professor Norman Palmer)

## REPORT

DEPARTMENT FOR CULTURE, MEDIA AND SPORT  
2-4 Cockspur Street, London sw1y 5dh

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## **EXECUTIVE SUMMARY**

The Panel was appointed by the Rt Hon Alan Howarth CBE, Minister for the Arts, on 24 May 2000 under the chairmanship of Norman Palmer, Barrister, Professor of Commercial Law at University College London with the following terms of reference:

- a. to consider the nature and extent of the illicit international trade in art and antiquities, and the extent to which the UK is involved in this;
- b. to consider how most effectively, both through legislative and non-legislative means, the UK can play its part in preventing and prohibiting the illicit trade, and to advise the Government accordingly.

The Panel met on twelve occasions and was supported by an Inter-Departmental Working Group of officials; the Panel also took advice from a wide range of experts. Its recommendations are as follows:

## **PRINCIPAL RECOMMENDATIONS**

### **1. UNESCO Convention**

We advise that the other measures referred to in this Report satisfy the UNESCO Convention and that the UK should therefore accede to it (paragraph 61). Accession will not have retroactive effect.

### **2. Criminal offence**

We propose that, to the extent it is not covered by existing criminal law, it be a criminal offence dishonestly to import, deal in or be in possession of any cultural object, knowing or believing that the object was stolen, or illegally excavated, or removed from any monument or wreck contrary to local law (paragraph 67).

### **3. Law enforcement agencies**

We recommend that the proposed criminal offence, whilst not necessitating the introduction of any new system for the general inspection of imported goods, be fortified by appropriate powers of search, detention and seizure on the part of the enforcement authorities and that those authorities be given additional resources to enable them to discharge these powers effectively (paragraph 70). We also recommend that art theft should become a reportable offence and that there should be an art and antiques unit with a national remit. We also recommend that consideration be given to ways of expediting the existing procedures under the Police (Property) Act 1897, as amended (paragraph 74).

### **4. Export control**

We propose that, in the case of objects imported into the UK within the last 50 years for which an individual export licence is sought, the same checks would be carried out as are currently made for objects that have been imported from another EU state (paragraph 80). Implementation of this proposal will require additional resources both for the Export Licensing Unit (ELU) of the DCMS and for the expert advisers and we recommend that the ELU be expanded as necessary. We believe that an increase of the order of four members of staff will be needed. We also believe that two of the appointments should have expertise in the particular fields identified for enquiry (paragraph 82). We further recommend that the Reviewing Committee

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on the Export of Works of Art exert direct supervision over the monitoring of the movement of those cultural objects which have recently entered the UK after their illegal exportation from an overseas country, by the formation of an appropriate sub-committee (paragraph 79).

### 5. Database of legislation

We recommend the institution of a comprehensive and universally accessible database of international legislative information. The database should be run as a service available to all who transact in cultural objects. It should seek to record information about past as well as present laws and about judicial decisions construing those laws. It should, like other modern law databases, be updated daily (paragraph 89).

### 6. Database of unlawfully removed cultural objects

We propose the institution of a specialist national database of unlawfully removed cultural objects. The database would cover cultural objects unlawfully removed from any place in the world, whether in the UK or overseas. Access to the proposed database should be prescribed with carefully regulated and restricted levels of access by means of a system of security codes. Differential levels of access could, for example, be extended to police forces, public authorities, commercial entities and private individuals (paragraph 90).

### 7. Code of Practice

We welcome the Statement of Principles of Conduct of the UK Art market recently published by the British Art Market Federation (Annex H). We also believe that the DCMS should take the lead in (1) facilitating the formulation of a statement of ethical principles, which seeks to reflect the interests of all relevant parties: not only trading entities but private collectors, museums and others and (2) in encouraging compliance. This could be undertaken as part of the campaign of education to raise awareness of these issues that we also recommend (paragraph 102).

### 8. Sale of Goods Act 1979

We believe that many of those who transact in cultural objects would profit from greater awareness of contractual terms relating to the sale of goods under the Sale of Goods Act 1979 (paragraph 110). This could be achieved:

- a. by a general campaign of education directed towards trading entities, museums and collectors, concerning the content and effect of the implied terms;
- b. by a mandatory and standard form explanation of those terms, written in plain English, to be exhibited by way of notice on vendors' premises and/or to be incorporated into all written contracts for the disposition of interests in cultural objects (as defined by the Annex to the EU Directive) (see Annex E) and
- c. by amending the Sale of Goods Act 1979 to provide that the statutory terms as to right to sell, freedom from charge or encumbrance and quiet possession shall (in appropriate circumstances) apply to the sale of any cultural object (as defined by the Annex to the EU Directive) which has been stolen, illicitly excavated, or unlawfully removed from a monument or wreck, in circumstances matching those which would trigger the proposed

criminal offence.

#### 9. Campaign of education

We recommend that the DCMS should fund and co-ordinate a campaign of education, to include all interested parties, to raise awareness about the illicit trade in cultural objects, as required by the UNESCO Convention (paragraph 118).

#### 10. Resources

We note that there is likely to be a need for additional resources for H M Customs & Excise (paragraph 70), the police (paragraph 74) and the Department for Culture, Media and Sport (paragraph 82). The two proposed databases will also require resources (paragraphs 89 and 90), as will the proposed campaign of education (paragraph 118).

### **OTHER RECOMMENDATIONS**

#### 11. UNIDROIT Convention

We advise against accession to the UNIDROIT Convention under the present circumstances (paragraph 49).

#### 12. Reciprocity and incentives

We recommend that consideration be given to the imposition of conditions requiring overseas countries to observe the proper treatment of their cultural resources. Such conditions might operate through economic aid, export credit guarantees and other economic, cultural and diplomatic exchanges between the UK and overseas countries. In particular we recommend that the Department for International Development should review the UK's Overseas Aid Programme to see whether it contains adequate measures to support cultural heritage preservation and presentation projects (paragraph 65).

#### 13. Regulation of the market in second-hand goods

We have noted the Special Report of the Parliamentary Committee on the Kent County Council Bill and the Medway Council Bill. These Bills enable the councils concerned to regulate the market in secondhand goods (including art and antiques) in their administrative areas. While we support the aim of these Bills, we are concerned about the piecemeal implementation of such private legislation, because this is likely to result in variations in regulatory régimes among different local authority areas. We believe that this could be extremely confusing and agree with the Parliamentary Committee's conclusion that 'the Government should reconsider the case for public legislation to regulate the market in second-hand goods' and that 'such legislation should be introduced at an early stage' (paragraph 105).

#### 14. Government Indemnity Scheme

So far as national museums and galleries are concerned, we welcome the statement of the National Museum Directors Conference that its member museums do not 'exhibit any stolen or illegally exported works' and we urge that these principles be incorporated into revised guidelines for the Government Indemnity Scheme. So far

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as non-national institutions are concerned, we note that Resource, which administers the Scheme for non-national institutions, requires all applicants to sign an undertaking 'to take steps to confirm to the best of our knowledge that the owners of items offered on loan have legal title to them and that such items have not been wrongfully taken or illegally exported.' We recommend that this continue and be fortified by such further institutional checks of loaned objects by borrowing and other institutions as appear necessary from time to time (paragraphs 111-13). So far as third-party claims are concerned, we note that UK law does not grant immunity from seizure by the UK courts in respect of a third party claim to cultural property on loan from a public institution. Our terms of reference do not require us to examine such immunity and accordingly we do not recommend any change to the present position. We note, however, that the current lack of immunity underlines the need for careful provenance checks when objects are loaned into the UK (paragraph 114).

### 15. Acceptance in Lieu

We note that the Acceptance in Lieu Panel informed the principal agents through whom most offers in lieu are made that offers where the provenance gave rise to suspicion might not be recommended for acceptance to the Secretary of State. We endorse this approach as consistent with our general recommendations and we further recommend that the present régime be maintained and fortified as appropriate (paragraph 116).

### 16. Conditional Exemption

We recommend that the Inland Revenue should require all those who seek to claim tax relief under the Conditional Exemption scheme to complete a questionnaire along the same lines as that drawn up for the Acceptance in Lieu scheme (paragraph 117).

## **Human Rights compliance**

We have been at pains to satisfy ourselves that our recommendations conform to the European Convention on Human Rights, which is enacted into UK law. To this end we have taken expert advice on both the civil and criminal aspects of our proposals. We have been fortunate in having the advice of Nicholas Bamforth, Fellow of The Queen's College Oxford, to whom we are indebted. We believe that the proposals are consonant with the Convention and that the Minister may properly so certify in accordance with the appropriate statutory provision.<sup>1</sup>

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<sup>1</sup> Human Rights Act 1998 section 19.

## 1. BACKGROUND

The Panel was appointed by the Rt Hon Alan Howarth CBE, Minister for the Arts, on 24 May 2000 with the following terms of reference:

- a. to consider the nature and extent of the illicit international trade in art and antiquities, and the extent to which the UK is involved in this;
- b. to consider how most effectively, both through legislative and non-legislative means, the UK can play its part in preventing and prohibiting the illicit trade, and to advise the Government accordingly.

2. The Chairman of the Panel was Norman Palmer, Barrister, Professor of Commercial Law at University College London, and its members were:

- Dr Peter Addyman, Director, York Archaeological Trust;
- Dr Robert Anderson, Director, British Museum;
- Anthony Browne, Chairman, British Art Market Federation;
- Anna Somers Cocks, Editor, The Art Newspaper;
- Dr Maurice Davies, Deputy Director, Museums Association;
- James Ede, Chairman, Antiquities Dealers Association and Director, Charles Ede Ltd.;
- Joanna van der Lande, Head of Antiquities and Associate Director, Bonhams and Brooks and
- Professor Lord Renfrew of Kaimsthorn, Director, the McDonald Institute for Archaeological Research.

3. The Panel has met on twelve occasions between the date of its appointment and the date of this Report and its work has been supported by an Inter-Departmental Working Group of officials which met on four occasions, two of these being joint meetings with the Panel. In June 2000 the Panel established a Drafting Sub-Committee which has met on five occasions. The Panel has assigned individual members to informal research groups and these have convened as necessary.

4. The Panel has taken evidence and advice from practising lawyers, jurists, underwriters and loss adjusters, law enforcement agencies, government departments, commercial retrieval bodies, UNESCO, UNIDROIT, the Council for the Prevention of Art Theft and others associated with transactions in cultural objects. Individual members of the Panel have consulted widely with members of the art and antiquities trade on specific matters. A list of those consulted is appended to this Report (Annex K).

5. The Panel acknowledges with gratitude those members of the Department for Culture, Media and Sport who have assisted in its deliberations: Hugh Corner, Hillary Bauer, Karina Grazin and Lisa Ray. Particular thanks are due to Lynn Gates for her expertise on export licensing issues and to Dr Roger Bland who acted as Secretary to the Panel, advised and assisted throughout the proceedings and contributed greatly to the writing of this Report. Cordial thanks are also due to

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Kevin Chamberlain, CMG, for legal advice.



## 2. SOME STARTING PROPOSITIONS

6. Certain propositions have informed our deliberations throughout.
7. We accept that, subject to the demands of public interest, every legal and natural person is entitled to the peaceful enjoyment of its possessions: Article 1 of the First Protocol of the European Convention on Human Rights. That right extends to the enjoyment of cultural objects as much as to the enjoyment of other property and includes the right to transact commercially as well as to hold privately. Recognition of the right may also require that public authorities provide proper legal machinery to vindicate legal rights over cultural objects in the event of unlawful deprivation.
8. We also recognise that cultural institutions in the United Kingdom derive significant advantage from the existence of a market in cultural objects and from private collectors. Commercial entities and private collectors may benefit museums by acting as vendors, lenders and donors of cultural objects. They also give valuable and often unpaid expert advice to official bodies whose work depends on such support. Examples are the Treasure Valuation Committee and the Reviewing Committee on the Export of Works of Art.
9. We further accept that there is substantial public benefit in a vigorous and honourable market in cultural objects. Aside from its general contribution to the economy, the market is the touchstone of much of our law and practice on cultural property. Many public committees require knowledge of the state of the market in cultural objects in order to operate. Their terms of reference assume both the existence and the desirability of a market.
10. At the same time the Panel is aware of serious concerns. Alarming reports are received of cultural depredation both within and beyond the United Kingdom (see Annex A). In most cases the spoliation is commercially motivated and conducted by those who have no expertise in the objects in question. While the volume of such activity may be a matter for debate it is plain that any depredation of significant cultural objects (whether from archaeological sites, churches, museums, historic houses, gardens, museums or private individuals) is a matter for grave public concern. Such concern may be particularly severe in the case of illicit archaeological excavations, which involve the removal of unrecorded objects and the irreversible obliteration of the historical record. Part of our concern is to ensure that the UK is not used as either a repository or a transit point for such material.

### 3. THE UK PLACE IN THE ILLICIT MARKET

11. Our terms of reference do not require us to consider purely domestic deprivations of cultural objects. Nor, on our interpretation, do they require us to place a primary emphasis on those episodes of deprivation which occur exclusively overseas and are unconnected with the UK. Our inquiry is mainly directed, therefore, at those cultural objects which cross UK borders. We recognise, however, two qualifications on this general definition of our remit.

12. First, measures for the domestic protection of cultural objects can have an important bearing on international initiatives. Whether a country has satisfied the UNESCO Convention, for example, depends in part on the protection which it extends to its own archaeological resources (see paragraph 57).

13. Secondly, overseas deprivations, not directly connected with the UK, can indirectly affect the UK market. If overseas market countries tighten their control over illicitly-gained cultural objects, for example, an increasing number of vendors of such objects may seek an outlet in the UK.

14. There is a further consideration, which is that objects sold by an overseas seller to an overseas buyer may eventually enter the UK by way of loan or exhibition. Numerous objects are loaned into the UK every year by overseas museums and by private collectors. The UK has no immunity statute for cultural objects on public display and the risk of third-party title claims against UK borrowing museums is appreciable (see paragraph 114). Nor does the Government Indemnity Scheme offer protection against such claims. We note elsewhere in this Report an increasing awareness among museums and government of the need to check provenance before borrowing cultural objects or offering indemnities in support of loans (see paragraph 114 and Annex A, paragraph 2). We believe that a similar awareness should inform governmental policy on the trade in unlawfully-acquired objects. The prospect that such objects may eventually subvert the legal integrity of public exhibitions and the economic stability of borrowing museums offers, in our view, a further substantial reason for reform.

#### **(a) The volume of illicit trade and its contact with the UK<sup>2</sup>**

15. Since the activity in question is clandestine, we cannot hope to provide a

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<sup>2</sup> For the purpose of this Report an illicit market is deemed to be one whose participants know of, or believe in, the illicit origin of the objects in question or of their illicit removal from a particular place. A licit market is any market which is not illicit within that sense. We recognise, however, that honest members of a licit market may unintentionally transact in objects of illicit origin or other illicitly-removed objects. Part of our concern in this Report is to ensure that such objects do not enter and infect the licit market, to the embarrassment of honest persons who may transact in them innocently but in circumstances which nevertheless incur the risk of legal liability.

<sup>3</sup> Estimates of the worldwide volume of the illicit trade cited in the Culture, Media and Sport Committee, House of Commons, Session 1999-2000, 7th Report. *Cultural Property: Return and Illicit Trade* (3 vols., London, 2000) (hereafter cited as 'The Select Committee Report'), para. 9, ranged from £150 million to \$6 billion (ie, about £4 billion) a year, an extremely wide margin of error. The Select Committee went on to note that 'there are a number of individual statistics

precise estimate of the commercial value of the illicit trade, either globally or in relation to that part of it which passes through the United Kingdom.<sup>3</sup> Nonetheless, there is a large body of evidence which provides pointers to its volume and this is set out in Annex A. Evidence received from law enforcement agencies also shows that the illicit trade in cultural property is in some instances (and, in some parts of the world, very frequently) linked with other illegal activities.<sup>4</sup> While this evidence is inevitably anecdotal, we nevertheless find it persuasive.

**(b) Scale of the illicit international trade**

16. We begin by observing that, whatever its value or volume, the prime importance of the illicit trade in our context is its role in the destruction of the world's cultural heritage. Such destruction occurs most obviously where historic sites or monuments are plundered for portable artefacts. Destruction can also occur, however, where objects are unlawfully removed from such institutions as museums, churches, universities and historic houses. It is true that objects taken from such places may at least (and in contrast to those taken from archaeological sites) have been recorded beforehand. But their removal from public display and their separation from context can nevertheless cause grievous loss to knowledge and appreciation, as well as endangering the objects themselves.

17. Evidence 'on the ground', showing the modern scale of destruction of archaeological sites, is all too apparent. The causes are various. Some cases of impairment stem from insensitive public works and some from the activities of looters seeking a market for artefacts. We deplore the former cause and make further observations about it elsewhere in this Report (Annex A, paragraph 52). With regard to the latter cause (looting in quest of a market) we have set out clear and unambiguous evidence in Annex A to this Report. We also set out in that Annex cogent evidence for the unlawful removal of non-archaeological objects from locations other than archaeological sites.

18. We believe that, where efforts have been made to gather all available examples of particular types of antiquity to appear on the open market, a consistent pattern emerges, indicating that most objects within the relevant category have no stated provenance (Annex A, paragraphs 42-51). In the absence of evidence to the contrary, it is reasonable to suspect that a proportion of such unprovenanced objects have been illegally excavated and illegally exported (*ibid.*, paragraph 51).

19. The balance of evidence suggests that the value of the worldwide licit market in cultural objects continues to grow. The general trend appears not to be reflected in the UK licit market in classical antiquities which, on evidence submitted by some of our members, has diminished in recent years. We are advised by such members that the modern licit UK market in such objects is relatively small compared to the overall size of the licit trade in cultural objects and that trade concerns over

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which lend some credibility to higher estimates of the overall worldwide illicit trade in its many guises' (paragraph 12).

<sup>4</sup> In South America, for example, the illicit trade in antiquities is very frequently connected with the drugs trade.

provenance have led to the adoption of stricter acquisition policies by trading entities in this field.

20. Such factors may go some way towards explaining any apparent discrepancy between (on the one hand) the contemporary evidence which suggests a high level of looting of sites and (on the other hand) the evidence which we have received from members as to the overall size of the licit UK market in antiquities and coins. The apparent discrepancy may also be partly explained by the appreciable evidence that some unlawfully excavated material remains in its country of origin and does not enter the global market. It remains an open question whether the bulk of the illicit market is reflected in general market estimates. We have already remarked that the trade in illegally excavated and illegally exported objects is clandestine, at least in its initial stages in the country of origin. We have also observed that the illicit trade is quite often closely connected with other criminal activity. One of the pernicious effects of the illicit market is the manner in which illicitly-gained objects can gradually shed their illicit associations and assume an increased respectability as they pass through the hands of successive acquirers. It thus becomes difficult for the most scrupulous dealer or collector, whatever the precautions taken, to avoid becoming involved with such objects.

#### **(c) Volume of trade in objects stolen in UK**

21. There are also wide variations in estimates of the value of cultural objects stolen within the UK each year, many of which disappear abroad. The overall value comprises both insured and uninsured losses. The volume of uninsured losses (which would include many museum losses) is, of course, virtually impossible to estimate. The estimates of insured losses range from £50 million to £150 million a year and sometimes beyond (see Annex A, paragraphs 24-5).<sup>5</sup> The discrepancy is likely to be in large part due to differing definitions as to what is meant by 'cultural objects', with the lower estimate being based on a much narrower definition of works of art which are insured by specialist insurers, and the higher figure being largely based on an estimate of the total value of jewellery, collectibles, silver and fine art stolen in domestic burglaries. Evidence from the law enforcement agencies suggests that there are many stolen cultural goods on the market and that the illegal origins of such objects (in common with those of illegally excavated and illegally exported goods) tend to become obscured as the objects change hands within the trade.

### **4. EXISTING PROVISION TO COMBAT THE ILLICIT TRADE**

#### **(a) Common law**

##### **(i) General**

22. UK common law offers some deterrent to the unlawful cross-border removal of cultural objects. We have been advised that existing UK measures already go a

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<sup>5</sup> In evidence to the Select Committee (question 479), DC Stevenson of Interpol's London Bureau quoted figures given from the Association of British Insurers (ABI) (which excludes Lloyd's of London) to the effect that the value of insured losses of art and antiques covered by domestic insurance policies amounted to £200 million per annum. But for comment on this figure see Annex A, paragraphs 24-5.

substantial way towards meeting the obligations which would accrue from the UK's accession to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereafter referred to as 'the UNESCO Convention').

(ii) Criminal law

23. Under criminal law, a person who dishonestly appropriates property belonging to another with the intention of permanently depriving that other person of it commits the offence of theft and can be convicted and sentenced accordingly.<sup>6</sup> A further offence is committed when a person handles a stolen object knowing or believing it to be stolen. It is worth noting that the offence of handling applies even when the goods are stolen abroad.<sup>7</sup> This offence may consist in the storage or transportation of an object or in the participation as an agent in its sale or purchase or in any other facilitation of its disposal. It is also an offence to remove without authority any object displayed or kept for display to the public in a building to which the public have access to view either the building itself or a collection housed in the building.<sup>8</sup> The Police (Property) Act 1897, as amended, provides machinery for courts to order the return of objects, which have been involved in criminal investigations or proceedings, to the person entitled to them. Further provision for courts to order the restitution of stolen goods exists under section 28 of the Theft Act 1968.

(iii) Private law

24. In private law, persons whose moveable property is taken, destroyed or bought and sold without their consent can sue for the tort of conversion. If a claim in conversion succeeds, the claimant may be entitled to one or both of the following remedies: damages (ie monetary compensation) and specific delivery (ie an order for the return of the object). An order for the return of the object will normally be made where the object is one of rare artistic merit or special subjective value to the claimant; heirlooms and works of art are strong candidates for this remedy. A claimant who wishes to sue for the tort of conversion need not be the owner of the object, but need only show that he had either possession of the object, or an immediate right to the possession of the object, at the time of alleged misdealing. A claimant in conversion is greatly assisted by the general principle of UK law that *nemo dat quod non habet*: ie nobody can confer on another person a title which he personally does not have.<sup>9</sup> Under the *nemo dat* principle the mere fact that a person acquires the stolen object in good faith (whether directly from the thief or from some intermediate acquirer) cannot give the acquirer a good title or extinguish the title of the original owner. The original owner retains his immediate right of

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<sup>6</sup> Theft Act 1968, section 1(1).

<sup>7</sup> See part 1 of the Criminal Justice Act 1993 and section 24 of the Theft Act 1968. An example of a case where a successful prosecution has been brought for the handling of an item stolen abroad is *R v Tokeley-Parry* [1999] Crim. L. R. 578.

<sup>8</sup> Theft Act 1968, section 11. This offence, unlike that of theft, does not require proof of an intention to permanently deprive. Its immediate catalyst was the removal from the National Gallery of the Goya portrait of the Duke of Wellington in 1961.

<sup>9</sup> The rule is subject to statutory exceptions: see, for example, Sale of Goods Act 1979 sections 21-25; Factors Act 1889, section 2.

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possession to the object and thus remains entitled to sue in conversion. Taken in conjunction with the strict nature of liability in conversion - which can be imposed regardless of whether an acquirer knew of, or intended to act contrary to, the title of another - these principles place a powerful weapon in the hands of the owner whose cultural object has, after being stolen, become the subject of a series of transactions by parties allegedly acting in good faith. That original owner can in principle descend on the current possessor and demand the return of the object without any obligation to compensate, or he may descend on any prior party in the chain of transactions and demand damages. In addition, remedies under the law of unjust enrichment may enable the owner to trace the exchange product of the original work, or any benefit gained from dealing with it, from a party in the chain.<sup>10</sup>

25. The English law on limitation periods recognises no limitation period in favour of a thief. A buyer in good faith does have the benefit of a limitation period, which expires six years from the purchase. The burden of proving good faith is on the buyer and recent case-law has shown that, in the case of experienced dealers at least, it will not be lightly discharged.<sup>11</sup>

### (iv) Where objects cross UK borders

26. The foregoing assumes that the law applicable to a claim in respect of a cultural object brought before the court of any UK country is the law of that UK country. In many cases that will be so. But in other cases a UK court will apply some overseas system of law to the claim. Complications arise when the applicable overseas system, in contrast to UK systems of law, gives title to a good faith purchaser and extinguishes that of the original owner. In such an event the UK court may be compelled to recognise that the original owner no longer has the necessary immediate right of possession to sue in conversion.<sup>12</sup> Even in these circumstances, however, UK law extends a substantial measure of protection to the victim of an unlawful removal.

27. First, the UK common law refuses to give effect to certain transactions, despite their effectiveness under the law of the country where the object was located at the time of the transaction. It is true that UK courts will ordinarily give effect to any transaction for the disposal of an interest in personal property which is effective by the law of the country where the object was situated at the material time. But certain acquirers may not take advantage of this rule, the main examples being where the acquirer does not acquire in good faith, or where the application of the relevant overseas law would offend UK notions of public policy.<sup>13</sup>

28. Similarly, UK courts may refuse to give effect to an otherwise-applicable overseas limitation period where the application of such a period offends domestic

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<sup>10</sup> Similar principles exist to protect those who have reversionary interests in chattels.

<sup>11</sup> *De Préval v. Adrian Alan Ltd.* [1997] unreported 24th January, Arden J, noted by R Redmond-Cooper (1997) 2 *Art, Antiquity and Law* 55 (see Annex A, paragraph 3).

<sup>12</sup> *Winkworth v. Christie, Manson and Woods Ltd.* [1980] Ch. 496; and see *Autocephalous Greek Orthodox Church v. Goldberg* 717 F Supp. 1374 (Southern Division of Indiana 1989) and 917 F 2d 278 (7th Circuit, 1990); *City of Gotha and Federal Republic of Germany v. Sotheby's and Cobert Finance SA* in the High Court of Justice Queen's Bench Division Case No. 1993 C 3428 and 1997 G 185.

<sup>13</sup> *Winkworth v. Christie, Manson and Woods Ltd.* [1980] Ch. 496.

public policy.<sup>14</sup> Public policy may debar application of an overseas limitation period which, under its governing law, could run in favour of an acquirer who did not acquire in good faith.<sup>15</sup>

29. UK courts may grant a declaration in favour of an overseas state whose export control régime has been contravened by the unlawful removal of a cultural object: for example, where the export was facilitated by the use of forged export documents. Such a declaration, while not affecting title, may assist the overseas country in any negotiations for the return of the object.<sup>16</sup>

30. These doctrines do not offer a definitive system for the deterrence of the cross-border illicit trade in cultural objects. If anything, they accentuate the general inadequacy of the common law in this regard. Their existence may, however, help in shaping and evaluating reforms.

### **(b) European Union Legislation**

31. Some of the concerns referred to above are addressed by 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. This Directive was enacted into UK law by the Return of Cultural Objects Regulations 1994, as amended. The Directive obliges a State to which a request is made by another State for the return of an unlawfully-removed cultural object to comply with the request, provided that the object satisfies the necessary criteria and the prescribed procedures are followed.

32. The Directive is limited in several ways. It operates only among member States of the European Union. A request for return can be made only by a State and not by any private legal or natural person. The Directive does not in terms apply to stolen objects, but only to objects which have been unlawfully removed from a country contrary to that country's laws for the protection of cultural objects. It imposes a right of compensation for possessors or holders who have followed proper procedures. It is administratively cumbersome and appears to have had few, if any, concrete results.

33. In the light of these limitations we cannot regard the Directive as a definitive solution to the problems of the illicit trade. It may, however, be a useful model for parallel developments outside the EU.

34. Council Regulation (EEC) No 3911/1992 of 9 December 1992, as amended, on the export of cultural goods introduces a common system of licensing for the export of certain cultural goods outside the customs territory of the Community and has as one of its purposes the protection of cultural goods. The export of such goods requires an export licence issued by the competent authority of the Member State where the cultural object is lawfully located and the export licence is valid throughout the Community. Before issuing a licence, the competent authority is required to satisfy itself that the object was lawfully exported from another Member

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<sup>14</sup> Foreign Limitation Periods Act 1984, section 2.

<sup>15</sup> *City of Gotha and Federal Republic of Germany v. Sotheby's and Cobert Finance SA* in the High Court of Justice Queen's Bench Division Case No. 1993 C 3428 and 1997 G 185.

<sup>16</sup> *Kingdom of Spain v. Christie Manson and Woods Ltd.* [1986] 3 All ER 28.

State, or imported from a third country, or re-imported from a third country after lawful dispatch from a Member state to that country. Although an export licence is not required for archaeological objects of limited archaeological or scientific interest, provided their presence on the market is lawful, this exception does not apply to archaeological objects that are the direct products of excavation, finds and archaeological sites within a Member State, all of which need a licence (see Annex B).

35. These provisions, in so far as they require a check to be made that a cultural object has been lawfully exported from another Member State, go some way towards dealing with the problems of illicit trade in cultural objects located within the Member States. However, they do not deal with the problem of trade in objects imported from third countries that have been the subject of illicit excavation or removal. The presence of such objects in a Member State could be lawful and be the legitimate subject of an export licence valid throughout the Community.

### **(c) Money laundering**

36. Substantial provision to combat this malpractice already exists under UK law.<sup>17</sup> Such provision would govern traders in cultural objects who, for example, knowingly assisted in money laundering, or failed to report suspicions of laundering, or tipped off suspects when an investigation was known to be in process. It would also govern situations where illicitly-removed antiquities were themselves the subject of a criminal offence and generated proceeds to which those measures applied.

37. High value markets, which transcend national borders and deal in high value assets, may be vulnerable to involvement in money laundering. We have received evidence of one or two instances where trading entities within our field have properly identified and notified the authorities of suspected instances of laundering, and certain individual law enforcement officers have advised us that many illicitly-acquired cultural objects may have been acquired as part of a cycle of laundering, encompassing other illicit transactions. We do not, however, feel able to state with confidence the extent of such involvement.

38. Two matters are, however, plain. The first is that the substantial existing and pending measures enacted to deal with the general problem of money laundering have a part to play in countering the illicit trade in cultural objects. We do not, of course, suppose that they offer a complete corrective to that trade, not least because some aspects of the illicit trade may be too small to make laundering through them viable, but we believe that their role must be kept sharply in focus.

39. Secondly, there is a need for close liaison between law enforcement agencies and trading entities within our field if that role is to be sustained. We draw attention in this context to our recommendations about a national art and antiques unit of the police, about additional resources for enforcement agencies, and about the modification of existing criminal law to address the dishonest possession and movement of prescribed cultural objects. We also note that the Council for the Prevention of Art Theft's Codes of Due Diligence (see paragraph 97) and the new

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<sup>17</sup> Criminal Justice Act 1988, especially section 93, and the Money Laundering Regulations 1993, implementing a 1991 EU Directive. A proposal to update and extend this Directive is currently under consideration within the EU.



Principles of Conduct of the UK Art Market issued by the British Art Market Federation (Annex H) both require dealers to show awareness of the money laundering regulations.

40. In view of these considerations, we do not currently recommend any modification of the existing and pending money laundering measures to confront the specific question of the illicit trade in cultural objects.

## 5. CONVENTIONS TO WHICH THE UK DOES NOT CURRENTLY SUBSCRIBE

41. Reform in this area is dominated by the two international legal instruments, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ('the UNESCO Convention') and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects ('the UNIDROIT Convention'). The UK is a party to neither of these.<sup>18</sup>

42. The two Conventions differ in accent and purpose.

43. The UNESCO Convention operates mainly by imposing duties on States. It imposes no general duty on State parties to procure the return of unlawfully-removed cultural objects. The single duty of return which it does impose covers only objects stolen from a limited range of sources. Elsewhere the UNESCO

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<sup>18</sup> A further relevant instrument to which the UK also is not party is the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, with its second protocol (1998). There are currently 82 states parties to the Convention. The Convention provides for the return of cultural property illegally exported from occupied territories. Owing to the specialist nature of its operation we have not given separate consideration to this instrument. We do, however, recommend that serious consideration be given to accession to the Hague Convention, particularly in the light of our recommendation that the UK accede to the UNESCO Convention.

<sup>19</sup> The Convention was adopted by UNESCO in 1970. Currently there are 91 states parties to the Convention and a number of further states are currently considering ratification.

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.

In articles 1 and 4 the Convention contains a very broad definition of cultural property, but property has to be explicitly designated by the state as important for its archaeology, prehistory, history, literature, art or science.

Article 5 requires states parties to adopt the following domestic protective measures: to draft appropriate legislation; to establish national services for the protection of the cultural heritage; to promote museums, libraries and archives; to establish national inventories; to encourage the adoption of codes of conduct for antique dealers and to implement educational programmes to develop respect for cultural heritage.

Articles 6 to 9 control the movement of cultural property between states parties. States are required: to introduce a system of export certificates; to prohibit the export of cultural property unless it is accompanied by an export certificate; to prevent museums from buying objects exported from another state party without an export certificate; to prohibit the import of objects stolen from museums, religious institutions or public monuments; and to require art dealers to maintain a register of the exact origin of each object they purchase. In addition, emergency import bans may be adopted when the cultural heritage of a state party is seriously endangered by intense looting of archaeological or ethnological artefacts.

Article 7 contains the following provisions governing the return of stolen cultural property: at the request of the state party of origin, another state party will seize and return cultural property stolen from a museum, religious institution or public monument; the request has to be made through diplomatic channels; 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.

Convention seeks to prevent the acquisition and import of illicitly-gained cultural objects and to maintain cultural resources *in situ*.<sup>19</sup>

44. The UNIDROIT Convention, on the other hand, is based on a policy of claimant-initiated restitution. It is permissive rather than imperative, in that it creates optional mechanisms designed to help claimants recover cultural objects. The Convention imposes no general duty on States to maintain cultural resources

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<sup>20</sup> The Convention was adopted by Diplomatic Conference in Rome on 24 June 1995. There are currently 12 states parties, while 14 other states have signed but not yet ratified it.

The Convention contains measures dealing with the restitution of stolen cultural objects (articles 3 and 4), and for the return of illegally exported cultural objects (articles 5 to 7). The Convention states that 'the possessor of a stolen cultural objects shall return it'. The Convention further states that illicitly excavated objects are to be regarded as stolen.

The Convention allows for the possibility of compensation to be paid to the possessor of the stolen object where care was taken to avoid acquiring stolen cultural property. It contains criteria for the establishment of due diligence, including the circumstances of acquisition, the character of the parties involved, the price paid and the consultation of a register of stolen cultural objects. No compensation is necessary where the state does not already provide it (article 9(1)).

The Convention lays down that claims are to be brought by the private owner or a state before a court in the country where the objects is located and it places the following time limits on such claims: they are to be made, in general, within 50 years of the date of the theft or illicit excavation or within three years of knowledge of the location of the object and the identity of its possessor. In certain cases, however, longer time limits apply (see paragraphs 50-3).

and pays little regard to ways of protecting interests in cultural property other than by restitution and retrieval.<sup>20</sup>

45. Where other countries subscribe to one or both of these conventions, collectors and trading entities within the UK may become vulnerable to a claim under either convention even though the UK itself has not acceded to either of them. For example, where a UK dealer sells a stolen cultural object to a buyer who takes it overseas to a country which has acceded to the UNIDROIT Convention, and the object is then claimed by its original owner who alleges it was stolen from him in another UNIDROIT country, the buyer may be compelled to return it. That buyer might in turn seek a remedy against the UK dealer under section 12 of the Sale of Goods Act 1979 (see below, paragraphs 106-10). Another example might arise where a UK museum, having acquired an illegally-exported cultural object, lends it overseas to a country which has acceded to the UNIDROIT Convention, whereupon the object is claimed by a third country, also party to the UNIDROIT Convention, from which the illegal export occurred. The borrowing museum may be compelled to surrender it, in which event it is lost to the UK lender. So countries do not immunise themselves from the UNESCO or UNIDROIT Conventions by simply disregarding them.

**(a) The 1995 UNIDROIT Convention**

46. The UNIDROIT Convention has certain conspicuous virtues.

47. It gives a direct right of recovery to legal and natural persons from whom cultural objects have been stolen, without imposing any need for government to intervene. By prescribing the remedy of 'return' in cases of theft, it avoids questions as to whether (under general principles) damages are an adequate remedy, or whether the claimant qualifies for specific delivery (see paragraph 24). Accession to the UNIDROIT Convention grants access to a recovery scheme which could substantially stem or reverse the national outflow of stolen cultural objects from the UK. It allows certain valuable options: for example, the power either to grant or deny compensation to possessors who are compelled to return objects. It provides for the

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avoidance of overlap with other instruments so that, for example, it could be excluded from the field of the EU Directive. It deals expressly with objects gained from the illicit excavation of sites, a field of particular concern because of the problem of context and of damage to the historical record. We agree with the Select Committee that the UNIDROIT Convention is (in general) efficiently drafted, most of its ambiguities and lacunae being remediable by resort to local legal doctrine, or by resourceful redrafting or interpretation in keeping with the spirit of the Convention. Subscription to the UNIDROIT Convention would signal to both domestic and overseas interests a national determination to curb the unlawful removal of cultural objects.

48. But in other respects the Convention attracts less enthusiasm.

49. It prohibits reservations and there is a risk that desirable declarations (for example, as to meaning) will be stigmatised as reservations. At present only 12 States have implemented the UNIDROIT Convention and its current recovery value is thus limited. The range of material caught by Part II (stolen cultural objects) is wide and lacks the restraining features of other instruments. The length of the limitation periods in particular, and the limited factors which trigger them, cause serious misgivings (see paragraph 50). **On balance, we advise that these considerations, taken in conjunction with the alternative measures which we propose elsewhere in this Report, militate against the adoption of the UNIDROIT Convention under the present circumstances.**

#### **(b) Limitation periods**

50. We say a special word on this because it appears to us to constitute the greatest barrier to the adoption of the UNIDROIT Convention. The normal three-year limitation period in Article 3 is triggered only by the claimant's actual knowledge of the location of the object and identity of the possessor. A claimant who fails to take obvious and reasonable steps to discover these matters might therefore remain immune from the passing of time for as long as he receives no actual knowledge. Beyond that the only Convention incentive for a dilatory claimant to seek information and progress the claim is the conventional 50-year long stop. In certain cases the long-stop is longer than 50 years and in others there is none: the period is indefinite.

51. We are sympathetic to the argument that vendors of cultural objects, who have bought and sold in good faith and with due diligence, should not remain vulnerable to claims under section 12 of the Sale of Goods Act 1979 for the periods

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<sup>21</sup> As an example we might give the case of a museum that neglects for 48 years after an object is stolen from its collection to take any positive steps to determine the location of the object or the identity of the possessor. Over that period it manages to avoid any knowledge of these matters, although it could have gained such knowledge by elementary means. The museum finally runs the object to earth in the 49th year and, invoking the UNIDROIT Convention, claims it from the possessor. The possessor bought it 40 years earlier under a sale governed by English law and the applicable limitation periods are those prescribed by English law. The possessor surrenders the object under the UNIDROIT Convention and seeks redress from his vendor under the Sale of Goods Act 1979.

set out in the UNIDROIT Convention. We have been persuaded that both the legal risk and the obligation to keep records would make this unduly onerous.<sup>21</sup>

52. The principal difficulty lies, in our view, in the absence of any express recognition within the UNIDROIT Convention of the possibility that the three-year limitation period might be activated by constructive as opposed to actual knowledge on the part of a claimant. The Convention makes no express provision for situations where the claimant should reasonably have known the location of the object and the identity of the possessor, but remained ignorant because he failed to take reasonable steps to discover those matters. It has been suggested to us that the omission might be repaired by a declaration to the following effect:

'The United Kingdom declares its understanding that, in determining knowledge in terms of Article 3(3), the judge may have regard to knowledge which would have been available to the claimant if reasonable efforts had been made to trace the location of the object and the identity of its possessor.'

53. Regrettably several members of the Panel did not find this formulation sufficiently reassuring to allay their concerns or to persuade them to withdraw their objection to the UNIDROIT Convention. Furthermore, it could be claimed that the formulation is more in the nature of a reservation than a declaration and thus not allowed under the Convention.

### **(c) The 1970 UNESCO Convention**

54. The UNESCO Convention has advantages which the UNIDROIT Convention lacks.

55. It imposes no ban on reservations and so attracts the normal power of reservation, which is potentially extensive.<sup>22</sup> One reservation might be to apply the

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The time limit within which to sue the seller for a breach of the term implied by section 12(1) of the Act (seller's right to sell the goods) is probably six years from the date of the contract of sale, so the buyer's claim under that provision is probably statute-barred. But the time limit within which to sue the seller for a breach of the term implied by section 12(2)(b) of the Act (buyer's quiet possession) appears to be six years from the date on which the buyer's possession was disturbed, an event which (on our assumption) has only just occurred. In short, the period for making a claim under section 12(2)(b) has not yet expired and the vendor is exposed throughout the period of the loss. Of course the buyer might alternatively seek an indemnity by a claim for compensation from the claimant under Article 4 of the Convention. But this device, even if adopted, may not satisfy the possessor and may leave the vendor vulnerable. We also do not discount the possibility that a dilatory claimant in the position of a museum in this example may be deemed to have abandoned its property in the object and thus to have disqualified itself from bringing a claim under the UNIDROIT Convention or common law. But abandonment is a concept of uncertain scope and may require positive proof of a specific intention to abandon.

<sup>22</sup> Under article 19 of the Vienna Convention on the Law of Treaties 1969 where a treaty does not prohibit reservations a state may, on becoming party to a treaty, make a reservation to the treaty provided such reservation is not incompatible with the object and purpose of the treaty.

EU Directive, rather than the Convention, as between EU Member States that are parties to the Convention (EC law would oblige us to do this in any event), thus avoiding duplication. Through the concept of designation and other filters the UNESCO Convention captures a more clearly-defined range of objects than the UNIDROIT Convention and one which fits comfortably with existing UK classifications. It makes no reference to limitation periods so that the normal statutory periods can apply where appropriate. It provides that the removal of cultural objects from countries by forces of occupation shall be illicit. Its widespread adoption (91 countries to date) enhances its value as a means of recovering objects unlawfully removed from the UK. Compliance is almost certainly less onerous than in the case of the UNIDROIT Convention. The UNESCO Convention allows contracting states a considerable degree of discretion as to how they implement it to reflect local conditions. Existing UK law and practice already goes a substantial way towards compliance. The UNESCO Convention also contains provisions requiring parties to put their own houses in order. It is not retroactive and can, if this is required, be explicitly limited to events occurring after the Convention was ratified came into force in the states in question. As with subscription to the UNIDROIT Convention, accession to the UNESCO Convention would give a clear signal about the UK's stance against the illicit trade in cultural objects.

56. There are a number of requirements within the UNESCO Convention which had previously been identified by the Government as stumbling blocks to its accession which are, we believe, no longer so. Article 5(b) requires each State Party to undertake 'establishing and keeping up to date, on the basis of a national inventory of protected property, a list of public and private cultural property whose export would constitute an appreciable impoverishment of the natural cultural heritage'. We are convinced that the UK's current export licensing system, with its list of categories of the type of objects that will qualify, satisfy this requirement. Australia and Canada, both of which have acceded to the UNESCO Convention, have broadly similar export control systems. Both countries have assumed that the categories adopted for that system constitute a national inventory for the purposes of the Convention and that interpretation has not been challenged by any other State.

57. Another issue which had previously been identified as a stumbling block in the path of accession to the UNESCO Convention is the requirement in article 5(d) for states parties to undertake 'organising the supervision of archaeological excavations, ensuring the preservation *in situ* of certain cultural property, and protecting certain areas reserved for future archaeological research'. We are now satisfied that the previous interpretation of this provision, which was that all archaeological excavations needed to be licensed by the State, is incorrect and that current arrangements in the UK whereby (1) cultural property is preserved *in situ* through the system of monuments in guardianship, (2) scheduled archaeological monuments are protected by law, (3) there is the provision for supervision of archaeological excavations by local authority archaeological services under the

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<sup>23</sup> In Scotland this is the National Planning Policy Guidelines: Archaeology and Planning;

framework of Planning Policy Guidance Note 16 in England and its counterparts for the other parts of the UK, combine to satisfy this requirement.<sup>23</sup>

58. A third difficulty which had been identified was the requirement under Article 5(e) that the State 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.' Again, we are satisfied that the UK already meets this requirement, since 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 dealers' associations now have such codes (below, paragraphs 97-101).

59. Fourthly, the Convention introduces an obligation, under article 10, on dealers to maintain registers of cultural property in their stock, 'as appropriate for each country'. We are satisfied that the current requirements for dealers to register for VAT and to keep records of their transactions meet this obligation.

60. The merits of the UNESCO Convention outlined above are, however, accompanied by defects. We agree with the Select Committee that much of the language of the UNESCO Convention is loose and confusing. If its adoption required the direct enactment of the full official text, parts of the resulting enactment might well prove difficult to implement. Unlike the UNIDROIT Convention, the UNESCO Convention gives no direct personal right of action to the former possessors of stolen cultural objects but depends on State intervention. The range of objects caught, and malpractices attacked, by the UNESCO Convention is narrow and the provisions relating to theft do not include, for example, the unlawful taking of formerly-unrecorded objects from archaeological sites. Because the UNESCO Convention allows States a substantial discretion as to the form in which it they implement it, a potential newcomer to the UNESCO scheme may have difficulty ascertaining the counter-benefits. Some of these considerations persuaded the Select Committee that, if the Committee's other recommendations were adopted, the UK should not adopt the UNESCO Convention.

61. After careful consideration, and with due deference to the Select Committee, we have concluded as follows:

**(1) that the other measures referred to in this Report satisfy the UNESCO Convention, and**

**(2) that the UK should accede to that Convention with the following reservations:**

**(a) the UK interprets the term 'cultural property' as confined**

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in Wales, Planning Guidance (Wales), 1996 and in Northern Ireland Planning Policy Statement 6: Archaeology, Planning and the Built Heritage (March 1999). There is in addition in Northern Ireland a statutory requirement under section 41 of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 for all those who search for archaeological objects to obtain a licence from the Department of Environment (Northern Ireland).



- to those objects listed in the Annex to the EU Regulation and Directive;
- (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.

We emphasise in this regard the advice given to the Panel that the considerations mentioned elsewhere in this Report are such as to meet the UK's obligations under the UNESCO Convention. Our present recommendation is founded on that advice and on the understanding that accession requires no further legislative commitment.

62. We note that the Select Committee's rejection of the UNESCO Convention was accompanied by its endorsement of the UNIDROIT Convention, an endorsement in which we feel unable to join. We are mindful of the potential benefits of the UNESCO Convention in terms of objects removed from the UK and of the message which accession would send to interested parties across the world.

63. In so concluding we have taken account of the extensive measures which already exist under UK law for the protection of interests in cultural objects. We have already indicated our view that these measures go a substantial way towards satisfying the requirements of the UNESCO Convention.

#### **(d) Reciprocity and incentives**

64. We believe that no system for the international control of unlawfully-removed cultural objects can be viable without the co-operation of countries of origin. Recent events have shown that official neglect, or governmental initiatives that give economic considerations higher priority than protection of the heritage, can pose as serious a challenge to the safeguarding of cultural objects as the illicit market. We therefore welcome the provisions in the UNESCO Convention which require states parties to take responsibility for the protection of their cultural heritage, while noting with regret that these provisions are not always honoured in practice. We also note the policy of at least one signatory to UNESCO of concluding bilateral agreements with particular overseas countries for the purpose of safeguarding such resources. That has characterised the US approach to its obligations under the UNESCO Convention and forms part of the programme of reforms proposed in the recently published Swiss bill to implement the UNESCO Convention.

65. While we do not recommend that UK accession to the UNESCO Convention be restricted to, or made conditional upon, any scheme by bilateral agreements, we do invite consideration as to whether bilateral agreements might afford an appropriate gateway to additional privileges in favour of countries of origin, such privileges not being conferred universally by the UK's accession to the UNESCO Convention. Again we note that the Swiss bill imposes both import control and a return obligation in favour of overseas countries which conclude appropriate

agreements. We further recommend that consideration be given to the imposition of conditions requiring overseas countries to observe the proper treatment of their cultural resources. Such conditions might operate through economic aid, export credit guarantees and other economic, cultural and diplomatic exchanges between the UK and overseas countries. In particular we recommend that the Department for International Development should review the UK's Overseas Aid Programme to see whether it contains adequate measures to support cultural heritage preservation and presentation projects.

## 6. OTHER METHODS

### (a) Criminal offence

66. We have already observed the inadequacy of the UNESCO Convention to safeguard archaeological sites against illicit excavation or removal. Mercenary excavation poses a particular threat to scholarship because of its characteristic disrespect for context. Where sites are violated, objects of low commercial worth may be damaged or discarded, collections or hoards dispersed beyond retrieval and the historical record obliterated irreparably. It is important to recall that what is lost by this means is lost for ever and to all humanity.

67. We believe that the perils of illicit excavation demand a response from public and penal law. The matter is too important to be left to the vagaries of private law or to the necessarily post-active remedy of restitution. In our judgment, a crucial pre-emptive measure to counter the illicit trade in unlawfully-removed cultural objects can be devised by the creation of a new criminal offence. **We propose that, to the extent it is not covered by existing criminal law, it be a criminal offence dishonestly to import, deal in or be in possession of any cultural object, knowing or believing that the object was stolen, or illegally excavated, or removed from any monument or wreck contrary to local law.**<sup>24</sup> The expression 'cultural object' would have a special meaning in the context of the offence, corresponding with that employed in the EU Directive (see Annex E).

68. The offence would be one of guilty intent. The burden of establishing the ingredients of the offence would rest with the prosecution and the standard of proof to be satisfied by the prosecution would be the normal criminal standard. The offence would apply only to objects stolen, excavated or removed after the date on which the statutory provision creating the offence came into force. The offence would apply irrespective of the country in which the theft, excavation or removal occurred, including the UK. We accept that some dovetailing may be needed to accommodate the new offence within the existing offences of theft and handling under English criminal law.<sup>25</sup>

69. It would be for the prosecution to persuade a jury that the defendant knew that an object had been stolen, unlawfully excavated or unlawfully removed. For this purpose evidence could be adduced with regard to the following matters:

- a. the identity, period, nature, condition and general history of the object;
- b. the identity of any previous possessor;
- c. the consideration (if any) given for it;

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<sup>24</sup> We believe that it would clearly be illogical for wreck finds to be excluded from the scope of the proposed offence. However, we have not attempted to deal in any more detail with the many issues relating to the protection of underwater archaeology as we believe it to be beyond our remit.

<sup>25</sup> The Panel did not consider itself competent to make any recommendations with regard to the criminal law of Scotland. It would be for the Scottish Executive to decide whether the criminal law of Scotland should be aligned with what we are proposing for England and Wales.

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- d. the existence and content (or otherwise) of any document indicating any transaction relating to the object;
- e. the legality (or otherwise) of any relevant export of the object;
- f. the existence and content (or otherwise) of any relevant export documentation;
- g. the country from which the object emanates and the conditions prevailing there;
- h. any inquiries instituted by the defendant;
- i. the location of the transfer and
- j. any other material circumstance.

70. A recent case has suggested that the powers of H M Customs and Excise to seize or detain objects which they suspect may have been stolen or illegally excavated may need to be strengthened. **We therefore urge that Customs should be given additional resources to target such cases. We also propose that the offence, whilst not necessitating the introduction of any new system for the general inspection of imported goods, be fortified by appropriate powers of search, detention and seizure on the part of the enforcement authorities.** We note that our general proposal has support from those authorities.

71. The offence which we propose relates in several ways to that proposed, as one of their principal recommendations, by the Select Committee. However, it differs in several ways from their recommendation. The Select Committee envisaged a limited geographical application as between the UK and particular designated states, the inclusion of 'illegal export' among the categories of unlawful removal to which criminal liability could attach, and a want of due diligence as the 'mental' ingredient in the offence.

72. We differ from the Select Committee only with diffidence. But we are sceptical about the use of due diligence as a standard for criminal liability and believe that a *mens rea* defence is preferable. Secondly, we believe that it would be excessively bureaucratic to apply the offence on a bilateral basis only to objects emanating from certain countries and that such an approach would also be confusing to dealers, collectors and museums. Lastly, we have decided, albeit with reluctance on the part of some members, to omit illegally exported objects from the scope of the offence because we are concerned about the export laws of certain countries which restrain individuals from exporting their own possessions, particularly in the light of possible contraventions of the European Convention on Human Rights on grounds of uncertainty or disproportionality under the terms of article 1 of the first protocol of the ECHR. There are, moreover, further points of difference between the Select Committee's recommendations and our own, for example, in regard to the UNIDROIT Convention. These justify, in our view, the Panel's divergent approach in this regard.

73. A criminal provision of the nature proposed may have beneficial effects in civil law. The taint of criminal association may make insurance cover harder to obtain or enforce for objects of doubtful provenance, and impede their movement across national borders. It may also increase the risk of liability under the title and associated guarantees contained in section 12 of the Sale of Goods Act 1979. These guarantees are considered below (paragraphs 106-10).

**(b) Law enforcement reforms**

74. While we are fully sensible of the excellent work that the Art and Antiques Unit of the Metropolitan Police has done, we are strongly convinced that that force is seriously under-resourced. Evidence to the Select Committee demonstrated this all too clearly. We believe that its resources need to be significantly enhanced to enable it to undertake its pivotal role in enforcing the law in this area. We also believe that there should be an art and antiques unit with a national remit. We applaud the initiative of the Council for the Prevention of Art Theft in helping to establish a network of due diligence officers in 1995 throughout all police forces in the UK with the aim of liaising with the art trade and other police intelligence and investigative resources at local, national and international levels, but we are disturbed to learn from the Council for the Prevention of Art Theft that these officers are not being given the time, resources or training they need to enable them to undertake their role effectively. We also recommend that art theft should be made a reportable offence (see below, paragraph 91). **We therefore recommend that there should be an art and antiques unit with a national remit which will require increased resources**, especially if it is given charge of the database of stolen and illegally removed cultural objects (below, paragraph 94). **We also recommend that consideration be given to ways of expediting the existing procedures under the Police (Property) Act 1897, as amended.**

**(c) Human Resources**

75. Despite clear and unambiguous evidence for the damage which the illicit trade causes to the world's heritage, we do not feel that the law enforcement agencies have hitherto devoted the resources to combating the illicit trade that it deserves. In the evidence we received from a wide variety of sources the point was repeatedly made to us that combatting the trade in illicit cultural objects comes low on the list of priorities of the law enforcement agencies. We believe that the evidence presented both here and in the Report of the Select Committee demonstrate that it must be accorded a higher priority.

76. In order to make the most effective use of those staff who work in agencies such as the Art and Antiques Unit of the Metropolitan Police and the Export Licensing Unit of the DCMS, we further believe that it is essential that they should be given time to develop their expertise in their posts and that they should not be subject to frequent transfer.

**(d) Export control**

77. Attached (at Annex B) is a detailed explanation of the current export licensing legislation, policy and procedures. In brief, the licensing system under UK law is operating in tandem with the provisions of an EU Regulation covering the export of certain categories of cultural goods to destinations outside the EU (such categories being prescribed by age limits and financial thresholds as set out in an Annex to the Regulation). This Regulation does not permit the UK to grant export licences for objects (covered by the Annex to the Regulation) if they have been illegally exported from another EU Member State. As such, any applications for licences under the Regulation, which are for objects which have been imported from another Member State, are checked to ensure that the export from that other Member State was legal.

78. We believe that the export licensing system offers a workable and currently under-used means of imposing constraints on the movement of those cultural objects which have recently entered the UK after their illegal exportation from an overseas country. We further believe that an acceptable model can be derived from the present treatment of objects which are imported into the UK from EU countries.

79. We note that the Chairman of the Reviewing Committee on the Export of Works of Art, while acknowledging that this is not a consideration to which the Committee has conventionally paid regard, is willing in principle to consider the extension of the Committee's general supervision into this area. **In the light of this we further recommend that the Reviewing Committee exerts direct supervision over the monitoring of these questions by the formation of an appropriate sub-committee.** Such a sub-committee, while recognising that questions of legitimacy of origin often depend in the final analysis on the judgement of the dealer or collector, could usefully address the following issues:

- a. to advise from time to time on types of cultural property currently subject to looting and therefore needing extra checks on provenance before export licences are granted;
- b. to monitor the illegal unlicensed outflow of archaeological material from the UK, including material offered for sale on the Internet;
- c. to advise on the information on provenance that should be requested from applicants for individual export licences and the reporting that should be required of holders of Open Individual Export Licences, especially when these are used to export items permanently;
- d. to advise on the due diligence that should be required from applicants;
- e. to advise on declarations about provenance and due diligence that should be made by applicants, particularly whether it should continue to be voluntary whether to declare recent exports and imports;
- f. to press the European Commission to redesign the export licence form so as to make the requirements for statements about provenance clearer;
- g. to press the European Commission to enable export licence applications to be made electronically;
- h. to advise on the extent to which expert advisers should investigate or comment on matters of provenance for different categories of material;
- i. to monitor the impact, problems and benefits of the 'limited importance' exemption and to advise on the criteria that should be applied to judge whether items of 'limited importance' are legally on the market;
- j. to advise what action should be taken if the staff of the Export Licensing Unit or expert advisers have any suspicions about the provenance of an object;
- k. to consider whether some of the information collected during the export licensing process could be made available for the benefit of scholarship and particularly for the recording of portable antiquities found in England and Wales, without compromising legitimate

- considerations of confidentiality;
- I. to advise on the most useful ways of presenting an annual statistical report on the export of cultural property from the UK and the volume and detailed categories of items licensed for export.

80. The pursuit of such a policy appears justified by paragraph (d) of the Committee's terms of reference, which charges the Committee with the general monitoring of the system of export control. **We propose that, in the case of objects imported into the UK within the last 50 years for which an individual export licence is sought, the same checks would be carried out as are currently made for objects that have been imported from another EU state.** This policy could be implemented by a simple programme of spot checks as necessary. Because looted antiquities present, by reason of loss of context, special problems not shared by other forms of art and antiques, the Panel believes that these checks should focus, in particular, on those objects listed in the Annex to the Regulation and Directive (whether archaeological or not)<sup>26</sup> that are either (a) the products of excavations and finds on land or under water, from archaeological sites or from archaeological collections, or (b) elements forming an integral part of artistic, historic or religious monuments of an age exceeding 100 years which have been dismembered. However, such measures should not interfere unduly with the legitimate trade.

81. Such checks are currently made more difficult because auction catalogues and dealers' lists so seldom provide a provenance of the objects described.<sup>27</sup> It is frequently necessary to undertake further enquiries in order to ascertain the history of an individual object. This situation sometimes encourages the view, however misleadingly, that a large proportion of certain types of objects on the market have been illegally exported and/or illegally excavated. While we recognize that individual owners may have legitimate reasons for not wishing their names to be published in such catalogues, we feel that it is desirable to publish provenance histories even without naming individual owners. If this became normal practice it would have a beneficial effect for the art and antique market in general and would help to dispel the view widely held in the archaeological world that the majority of unprovenanced objects are likely to have been illegally excavated and/or illegally exported. We recommend elsewhere that this issue should be addressed through the introduction of a new Code of Practice (below, paragraph 102).

82. **We note that the implementation of the proposal in paragraph 80 will require additional resources both for the Export Licensing Unit (ELU) of the DCMS and also for the expert advisers and we recommend that the ELU be expanded as necessary. We believe that an increase of the order of four members of staff will be needed. We also believe that two of the appointments should have expertise in the particular fields identified for enquiry. They will need to liaise closely with the expert advisers based in the national museums**

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<sup>26</sup> Reproduced below as Annex E.

<sup>27</sup> Although the importance of provenance is now widely recognised: see Annex A, paragraph 2.

**and galleries.**

Import controls

83. In the United States, the Convention on Cultural Property Implementation Act 1983 permits the establishment of bilateral agreements with states whose heritage is under threat and such agreements include the imposition of import controls on cultural property exported from the states in question. Similar controls are proposed in the Bill for the enactment of the UNESCO Convention in Switzerland which is currently before the Swiss Parliament. We accept that such measures might in principle have a part to play within other legal systems which seek to curb the illicit trade in cultural objects. However, because of administrative complications and other factors we do not at present recommend the imposition by the UK of import controls over cultural objects, beyond those general provisions which are currently in force and which are necessarily implicit in our present procedures and proposals.

**(e) Information management**

84. A recurrent theme throughout our inquiry has been the need for relevant knowledge. No party transacting within our field can do so confidently without reliable and efficiently retrievable information. The difficulty of gaining such information is most keenly felt within two categories: information about the laws of other countries and information about the provenance and legal status of particular objects. Of course the two categories are interrelated but in our view they require distinct initiatives.

(i) Overseas laws

85. Accounts of the difficulties of ascertaining relevant overseas laws are numerous. Virtually every member of the Panel has personal experience of this problem. Some countries are dilatory, even obstructive, in responding to requests for information. Others respond by sending irrelevant material. The difficulty is aggravated by the fact that some requirements for overseas legislative information will relate, not to laws currently in force in the overseas country, but to laws which were in force at a particular time in the past, and are now locally superseded.

86. The Panel sees little attraction in an international instrument which requires the observance of unascertainable laws.

87. It concedes that, on one view, the UK already to an extent subscribes to such an instrument in the shape of the EU Directive, some of the State parties to which appear more co-operative than others.

88. The Panel also accepts that a reasonable effort in the discovery of overseas laws may constitute due diligence within (for example) the compensation provisions of the UNIDROIT Convention, thus entitling the possessor to compensation when an object is returned. But a right to compensation does not by itself create security of possession. Under the UNIDROIT Convention the object must still be returned irrespective of whether the overseas law is ascertainable or the possessor has been diligent enough to justify compensation.



89. **The Panel recommends the institution of a comprehensive and universally accessible database of international legislative information. The database should be run as a service available to all who transact in cultural objects. It should seek to record information about past as well as present laws and about judicial decisions construing those laws. It should, like other modern law databases, be updated daily.** Proof of reference to the database will be relevant to a possessor's legal position in numerous respects: it will help to show good faith for the purpose of triggering the limitation period and it will be a strong disincentive to prosecution for the proposed new criminal offence. It should assist particularly in regard to excavated objects which, being unrecorded, will not be identifiable by consulting any database of objects. While public funding may initially be needed, we believe that the database itself could be administered by a private entity under contract with the relevant government department, provided freedom of access can be maintained.

(ii) Legal status of cultural objects

90. There is a plain need for public information as to whether a particular cultural object has been unlawfully removed. **We accordingly propose the institution of a specialist national database of unlawfully removed cultural objects, as proposed in the third recommendation of the Select Committee.**

91. The database would cover cultural objects unlawfully removed from any place in the world, whether in the UK or overseas. Its primary purpose would be to record those objects which have been (a) stolen, or (b) illegally excavated, or (c) illegally removed from monuments or wrecks on the basis that, as we have already recommended (paragraph 74), that theft of such objects within the UK should be a reportable offence. Applicants should also, however, be entitled to register any object which, to their knowledge, has been illegally exported in circumstances which do not fall within the foregoing categories of unlawful removal. The effectiveness of such a database would be greatly enhanced if art theft became a reportable offence, because this would prove the most effective way of ensuring that all such objects that are reported to the police as stolen are included on the database.

92. The three categories of objects - (a) those that are stolen, (b) those that have been illegally excavated or illegally removed from wrecks and (c) those that have been illegally removed from monuments - will need to be treated differently on the database. In the case of stolen objects the database should include an image and a description of the individual object which has been stolen where the institution of individual from whom they have been stolen can supply one. It may also be possible to do this in the case of objects that have been illegally removed from a monument, where a record of the monument has been made beforehand. But, so far as concerns objects that have been illegally excavated or illegally removed from wrecks, it will not normally be possible to include details of individual pieces, because by their nature they will not normally have been recorded before their discovery. In this context, the system for classification of objects will need to be sufficiently specific to facilitate realistic searches and avoid adverse effects on the status of licit objects, while remaining sufficiently comparative to enable like cases to be matched with like and recurrent patterns of unlawful removal, calling for particular vigilance, to be identified.

93. The illicit trade in cultural objects is, by its nature, international and the Select Committee's Report rightly stressed that such a database, in order to be

effective, must be compatible with other international initiatives to develop such a resource. Previous attempts to collaborate with other countries in developing such a database have all too often foundered on the difficulty of reconciling different national systems. A truly comprehensive database of objects stolen in the UK is needed urgently and we agree with the Select Committee that the UK should not delay taking this forward in the hope that there may in the future be an international initiative. On the other hand, the Object ID standard promoted by the Getty Information Institute does represent a simple and universally-applicable template for describing cultural objects.<sup>28</sup> Its adoption should enable locally distributed databases to be compatible with each other and to be searched through a common Internet portal. We strongly recommend that the proposed UK database should be compatible with the Object ID standard.

94. Having regard to its specialist nature, the database should operate under the direct supervision and control of the Home Office or the Department for Culture, Media and Sport but with the input of appropriate specialist personnel. According to circumstances, it might be administered by the Scotland Yard Art and Antiques Unit or the National Crime Intelligence Service.

95. Access to the proposed database should be prescribed with carefully regulated and restricted levels of access by means of a system of security codes. Differential levels of access could, for example, be extended to police forces, public authorities, commercial entities and private individuals.

**(f) Self-regulation: codes of practice and ethical guidelines**

96. Self-regulatory statements are a common feature of modern cultural activity, both within and beyond the realm of cultural objects.<sup>29</sup> They have the virtue of being the product of consent, emanating from negotiation rather than compulsion. They also place fewer demands on the public purse than legislative change or the public policing of transactions.

**(i) Trade codes**

97. Codes of practice have been promulgated by UK trading entities (or groups of entities) since at least 1984, when the art trade collectively published its Code of Practice for the Control of International Trading in Works of Art. Other examples are the rules of the International Association of Dealers in Ancient Art (1993) and of the Confédération Internationale des Négotiants en Oeuvres d'Art. The two codes on due diligence formulated by the Council for the Prevention of Art Theft (1999) are also an important step forward.

99. These documents are sometimes disparaged as lacking both legal and punitive force. Even so, there is evidence that such codes are influential in educating their subscribers as to the unacceptable forms of malpractice and in creating a culture of compliance.

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<sup>28</sup> R Thornes, *Protecting Cultural Objects in the Global Information Society* (The Getty Information Institute, 1997).

<sup>29</sup> As to contemporary attitudes of reputable trading entities to questions of provenance see Annex A, paragraphs 2 and 8 (and note 9).

98. Most recently the British Art Market Federation has published its 'Principles of Conduct of the UK Art Market'. The members of BAMF include individual companies, trade associations and professional bodies that represent a wide diversity of art market businesses throughout the UK.<sup>30</sup> We welcome this statement and have reproduced it at Annex H.

(ii) Museum codes

100. The Museums Association's Code of Practice for Museum Governing Bodies requires museums to impose an extensive ban on the purchase or other acquisition by museums of unlawfully removed cultural objects. Paragraph 2.6 states: 'The [Museum's] Collections Management Policy should ensure, through appropriate documentation, that the Museum does not acquire or exhibit any stolen or illegally exported works.' The complementary Code of Conduct for People who Work in Museums states in paragraph A5: 'Museums should not accept on loan, acquire, exhibit, or assist the current possessor of, any object that has been acquired in, or exported from, its country of origin (or any intermediate country in which it may have been legally owned) in violation of that country's laws.'<sup>31</sup>

101. Infringements can be penalised by the Museums Association, which has the power to cancel the membership of a delinquent museum. Such action would be likely to trigger action by Resource, which administers the Registration Scheme for Museums and Galleries in the UK. Based on the Museums Association Code of Practice, a requirement of the registration scheme is that 'The museum will not acquire, whether by purchase, gift, bequest, or exchange, any object or specimen unless the governing body or responsible officer is satisfied that the museum can acquire a valid title to the item in question, and that in particular it has not been acquired in, or exported from, its country of origin (or any intermediate country in which it may have been legally owned) in violation of that country's laws.' Removal of a museum from the register would adversely affect the ability of the museum to benefit from public funds, including lottery funds. In addition to the Museums Association's codes, the Trustees of the British Museum have recently issued a Statement on the Acquisition of Antiquities.<sup>32</sup>

(iii) Codes as a future weapon against the illicit trade

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<sup>30</sup> The following are members of BAMF: Antiquarian Booksellers' Association, the Antiquities Dealers' Association, Bonhams, the British Antique Dealers' Association, Christie's, The Fine Art Trade Guild, LAPADA, The Association of Art and Antique Dealers, Phillips, The Royal Institution of Chartered Surveyors, the Society of Fine Art Auctioneers, The Society of London Art Dealers and Sotheby's.

<sup>31</sup> The Museums Association's Codes are currently under revision and a revised code is expected to be issued in early 2002.

<sup>32</sup> Reproduced by C Renfrew, *Loot, Legitimacy and Ownership* (London, 2000), pp. 124-5.

102. A weakness of the existing codes is their understandable focus on sectional interests or activities. They tend to run on separate (if parallel) lines and only rarely engage. In our opinion, much can be gained by a general and collective restatement of ethical principles, which seeks to reflect the interests of all relevant parties: not only trading entities but private collectors, museums and others. We also believe that there is a need for such a code to recommend that auction catalogues and dealers' lists should as a general rule include provenances of the objects, as this would play a major role in allaying suspicion that such objects were illicit (see above, paragraph 81). **We believe that the DCMS should take the lead in facilitating the formulation of such a statement and in encouraging compliance. This could be undertaken as part of the campaign of education to raise awareness of these issues that we also recommend (below, paragraph 118).**

103. Adoption of an acceptable cross-disciplinary set of ethical guidelines may be achieved by incentives. Subscription to such a code might, for example, relieve a trading entity of the notification proposals set out in our next section.

104. UNESCO has devised an International Code of Ethics for Dealers in Cultural Property. There is also the recent 'Principles of Conduct of the UK Art Market' adopted by members of the British Art Market Federation which we welcome (see above, paragraph 98 and Annex H). But we continue to believe that there is much to be said for the evolution of a general cross-disciplinary code in the UK. We emphasise the need for professional candour on such matters as the terms of the codes, the procedure for complaints and the penalties of infraction. Whereas we do not feel that codes alone will ever offer a complete solution we acknowledge the part which they have to play within a package of reforms.

(iv) Statutory regulation of the market in art and antiques

105. Parliament is currently considering the Kent County Council Bill and the Medway Council Bill. These Bills enable the councils concerned to regulate the market in secondhand goods (including art and antiques) in their administrative areas. Eight similar provisions have been enacted through the private Bill procedure since 1980 and another similar Bill, promoted by the City of Newcastle upon Tyne, is also currently before the House. While we support the aim of these Bills in giving powers to councils concerned to regulate this market, we are very concerned about the piecemeal implementation of such private legislation which is likely to result in variations in regulatory régimes between different council areas. We believe that this would be extremely confusing and highly undesirable. **The Panel has noted the Special Report of the Parliamentary Committee on the Kent and Medway Bills and agrees with the Committee's conclusion that 'the Government should reconsider the case for public legislation to regulate the market in second-hand goods' and that 'such legislation should be introduced at an early stage'.<sup>33</sup>**

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<sup>33</sup> *House of Commons Session 1999-2000. Committee on the Kent County Council Bill [Lords] and the Medway Council Bill [Lords]. Special Report, 20 November 2000.*

### (g) Sale of goods legislation

106. Most contracts for the acquisition of chattels are contracts for the sale of goods. Within the UK, such contracts are conventionally governed by the Sale of Goods Act 1979 which, through its régime of implied contractual terms, grants significant rights to buyers of unlawfully-removed objects. Those terms operate regardless of whether the seller has acted in good faith and regardless of whether such guarantees have been expressly articulated in the contract. They are imposed on commercial and private sellers alike. Liability for breach of them cannot be excluded or restricted.

107. These terms, which can compel a seller to indemnify a buyer who is forced to surrender the object to a third party with a better right to possession, seem at first sight to offer a substantial deterrent to transacting in unlawfully-removed cultural objects. It would be an irresponsible seller who courted the risk of liability under these provisions. It would also be an irresponsible buyer who courted the risk of liability in conversion to a third party (see paragraph 24), merely on the strength of the 'knock-on' redress afforded by the 1979 Act; for when the time came to invoke that redress the seller may be inaccessible or insolvent, or the limitation period may have expired. By far the most prudent expedient for both parties, whenever there is the slightest doubt as to title, is to avoid transacting at all.

108. In theory the statutory terms should encourage buyers to demand, and sellers to give, the fullest possible factual assurance on all questions of the seller's title, the object's freedom from charges and encumbrances, and the buyer's future quiet possession. The true position is slightly more complicated.

109. Stolen objects present little difficulty in this regard. They are objects which the seller does not have the right to sell and in respect of which the seller can be liable to the buyer under sub-sections 12(1), 12(2)(a) and 12(2)(b) of the 1979 Act. Broadly the same is true of objects which the seller owns but which are subject to an undisclosed charge or encumbrance. Illegally excavated objects raise more complex questions, because the operation of the statutory implied terms will depend on the remedy, if any, available to a third party in respect of the excavation. If the illicit nature of the excavation enables the third party (such as an overseas country) to exert against the buyer some legal right in relation to the object, the buyer should at least be entitled to redress under sub-section 12(2)(b) when that right is exerted. The position with regard to illegally exported objects is even less certain because illegal export may be committed by an owner and English common law courts have refused to order the return of such objects to the country from which they were exported where, under the local legislation, that country has no title.<sup>34</sup> At first sight that would suggest that the buyer has nothing to fear from the tort of conversion in buying such objects and that the seller has nothing to fear from the Sale of Goods Act in selling them. But the buyer who wishes to re-export such an object may have difficulties in the country of destination and the third party may get a declaration

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<sup>34</sup> *Attorney-General of New Zealand v. Ortiz* [1984] AC 1, HL; and see *Kingdom of Italy and Italian Government v. De Medici Tornaquinci* [1918] 34 TLR 623.

that the goods were illegally exported.<sup>35</sup> Such complications may entitle the buyer to a remedy under sub-section 12(2)(b) of the Act if his quiet possession is disturbed.

110. **We believe that many of those who transact in cultural objects would profit from greater awareness of these terms.** Increasing awareness could be part of the campaign of education we recommend below (paragraph 118). Clients of the art market sometimes entertain a misguided belief that, if the seller of a work refuses to guarantee title or quiet possession, the buyer cannot insist. Such misconception might be countered in several ways:

- a. by a general campaign of education directed towards trading entities, museums and collectors, concerning the content and effect of the implied terms;
- b. by a mandatory and standard form explanation of those terms, written in plain English, to be exhibited by way of notice on vendors' premises and/or to be incorporated into all written contracts for the disposition of interests in cultural objects (as defined by the Annex to the EU Directive);<sup>36</sup>
- c. and by amending the Sale of Goods Act 1979 to provide that the statutory obligations as to right to sell, freedom from charge or encumbrance and quiet possession shall (as the case may be, and in appropriate circumstances) be broken where there is a sale of any cultural object (as defined by the annex to the EU Directive) which has been stolen, illicitly excavated, or unlawfully removed from a monument or wreck, in circumstances matching those which would trigger the proposed criminal offence.

#### **(h) Public contracts**

##### **(i) Government Indemnity Scheme (GIS)**

111. The scheme provides a form of insurance to public museums and galleries within the UK. Its purpose is to facilitate public access to items of an artistic, historic, scientific or technological nature. The scheme covers loans made accessible to the public in a temporary exhibition, or on long-term loan or made available to the public for study.

National Institutions

112. The National Museum Directors' Conference (NMDC) *Statement of Principles on Spoliation of Works of Art during the Holocaust and World War II Period* is supported by all 26 national museums and galleries. One of the actions in this *Statement of Principles* is that museums do not 'exhibit any stolen or illegally exported works'. It is understood that a paragraph will be included in the forthcoming revision of the GIS guidelines on the need to check provenance of potential loans to reduce the risks of third-party claims. The guidelines will then be fully in line with the NMDC's recommendations. **The Panel welcomes the NMDC Statement and looks forward**

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<sup>35</sup> *Kingdom of Spain v. Christie Manson and Woods Ltd.* [1986] 3 All ER 28.

<sup>36</sup> We append examples of the form of wording which might be used in Annex I.

**to its implementation, consistently with its own recommendations.**

#### Non-national Institutions

113. Resource: the Council for Museums Archives and Libraries operate the GIS for non-national institutions and requires all applicants to sign an undertaking in which they agree, 'To take steps to confirm to the best of our knowledge that the owners of items offered on loan have legal title to them and that such items have not been wrongfully taken or illegally exported.' At the time when this was introduced in 1998 all non-national users of the scheme were informed of its introduction and reminded specifically of its application to illegally exported items and items with an unsecured provenance between 1933 and 1945. **The Panel recommends that this continue and be fortified by such further institutional checks of loaned objects by borrowing and other institutions as appear necessary from time to time.**

#### Third party claims

114. UK law does not grant immunity from seizure by the UK courts as a result of a third party claim to cultural property on loan from a public institution. The Department has always resisted calls to provide indemnity against immunity from seizure or third party claims, including any legal fees required to fight the claims. In this way the independence and fairness of the UK courts can be seen to be maintained. **It was not within the Panel's terms of reference to examine such immunity and accordingly it recommends no change to the present position. However, the Panel notes that the lack of such immunity underlines the need for careful provenance checks when objects are loaned into the UK.**

#### (ii) Acceptance in Lieu (AIL)

115. This is a tax scheme whereby the Inland Revenue will, with the approval of the Secretary of State for Culture Media and Sport, accept an offer of high quality items (paintings, decorative objects and archives) in place of Inheritance Tax. Once accepted, ownership of the items passes from the taxpayer to HM Government which then allocates the items to museums, galleries or public record offices. In some cases the objects may then be loaned back to a house where they have a particular significance, if the property provides the appropriate level of public access. This is termed an *in situ* arrangement.

116. The Acceptance in Lieu Panel informed the principal agents through whom most offers in lieu are made that from April 1999 offers where the provenance gave rise to suspicion might not be recommended for acceptance to the Secretary of State. Given that most offers come from families with a long history in this country and have been inherited down the generations, most items offered in lieu have a long and clear provenance in British private collections. The procedures are, however, in place to deal with any item which might have been more recently acquired. With the agreement of the Inland Revenue, to whom all offers in lieu are formally made, those who make offers are required to answer a number of questions relating to their title to the object and the provenance of the item (see Annex J). **The Panel endorses this approach as consistent with its general recommendations and further recommends that the present régime be maintained and fortified as appropriate.**

#### (iii) Conditional Exemption

117. This is a tax relief, introduced in 1898, which defers any Inheritance Tax payable on an object if the person who is inheriting the object gives an undertaking to look after the object and not to let it out of this country. The tax is deferred until the undertaking is broken. Although sometimes confused with acceptance in lieu, there are many differences, the most important of which is that there is no change to the legal ownership of the object. The scheme is administered by the Inland Revenue. The current legislation makes no reference to any criteria other than the quality of the object for which exemption is being claimed, although, a priori, it would be necessary for the claimant to have good title to the object for the claim to proceed. **The Panel recommends that the Inland Revenue should require all those who seek to claim tax relief under the Conditional Exemption scheme to complete a questionnaire along the same lines as that drawn up for the Acceptance in Lieu scheme (Annex J).**

**(i) Campaign of education**

118. While the measures recommended above will, when taken together, be a major step in preventing and prohibiting the illicit trade, we believe that perhaps the most important single initiative that would help to achieve this end is a campaign of education to raise awareness of the issue. This is, in any case, a requirement of the UNESCO Convention (article 5). All the members of the Panel, who are drawn from a wide variety of interests, have found the experience of taking part in its deliberations highly educational and agree that it is necessary to spread the benefits of this much more widely. The agreement that the Panel has reached on these issues will, we hope, serve as model for establishing a much broader consensus about how these issues should be tackled. Although archaeological and museums interests have recently sought to raise public concern about the illicit trade, we believe that a joint approach by all those bodies concerned in the trade - Government, enforcement agencies, dealers, legal interests, archaeological bodies and museums - would be the most effective way forward. Such a campaign might usefully seek to secure agreement for a new Code of Practice to be followed by all parties (above, paragraph 102) and raise awareness of the contractual terms of the Sale of Goods Act 1979 and their application to cultural objects (above, paragraph 110). **We therefore recommend that the DCMS should fund and co-ordinate a campaign of education, to include all interested parties, in order to raise awareness about the illicit trade in cultural objects.**



## ANNEX A

### THE SCALE OF THE ILLICIT TRADE IN CULTURAL OBJECTS

#### (a) Forms of unlawful removal

1. Before setting out the available information on the scale of the illicit trade it is necessary to define exactly what is meant by this term. The Select Committee Report identified the need to differentiate three separate elements (para. 8):

- a. The illegal export of an object by its rightful owner. The Report noted that countries with particularly extensive controls on exports, such as Italy, suffer from the problem of rightful owners seeking illegal exportation because objects can command a better price in a foreign, more open market.
- b. The trade in identified objects stolen from an identified owner, such as a private individual or a museum.
- c. The trade in objects illicitly removed from archaeological sites or monuments. The Select Committee Report noted that while such objects have an owner and a victim - usually a State or a landowner - their entry into and passage through the market is more difficult to trace and quantify.

2. A further preliminary point should be made about recent changes in policy and practice. Evidence of past attitudes in relation to provenance may not be a reliable guide to contemporary behaviour. Trading entities and museums have become increasingly aware of the role of ethical considerations as a factor in the acquisition of cultural objects and of the importance of title and provenance. So much can be seen from the emerging reluctance of museums to accept loans of unprovenanced objects for exhibition,<sup>1</sup> and from the mounting concern about potential Holocaust-related episodes in the history of objects in public and private collections.<sup>2</sup> These and other developments<sup>3</sup> suggest that the importance of provenance has only recently been fully appreciated. That transformation affects all sections of the art community and suggest that cases of past neglect are not necessarily representative of contemporary *mores*.

#### (b) Legal decisions

3. Three legal decisions during the past decade have involved objects illegally removed from overseas countries which later entered the UK art market. A brief account of these decisions will indicate the types of cultural object in respect of which claims are made and the general record of success which overseas claimants have enjoyed in the English courts.

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<sup>1</sup> See, for example, Colin Renfrew, *Loot, Legitimacy and Ownership* (London, 2000), pp. 34-5 and 79-80.

<sup>2</sup> Cf. the comment made by G Bartrum in the context of checking provenances of objects acquired by the British Museum between 1933 and 1945: 'Purchase invoices have rarely been kept, and correspondence concerning acquisitions has only survived in exceptional circumstances' (G Bartrum, 'Research into wartime provenance at the British Museum', *British Museum Magazine* 37 (Summer 2000), pp. 13-16). Of course failure to retain records does not imply that the necessary checks were not carried out.

<sup>3</sup> As to dealers, see paragraph 8 and note 9.

- a. In *Bumper Development Corporation Ltd. v. Commissioner of Police of the Metropolis and others*<sup>4</sup> a landless labourer excavating for sand found a twelfth-century bronze sculpture of Siva, King of the Dancers, known as the Nataraja. The location of the find was either immediately adjacent to, or formed part of, the site of a ruined Hindu temple at Pathur in the State of Tamil Nadu. The Nataraja passed through various hands until it was acquired in good faith by the Bumper Development Corporation. In the present proceedings, the Court of Appeal held that the Hindu Temple, being a juristic entity under Indian law, could sue in the English court for its return.
- b. In *De Préval v. Adrian Alan Ltd.*<sup>5</sup> the claimant successfully sought recovery of a pair of nineteenth-century de Barye candelabra which were stolen from her in France in 1986. The defendant was a dealer who acquired them at some time between October 1986 and June 1989. The court held that the dealer could not defeat the claim by relying on section 4(2) of the Limitation Act 1980 because he had not established the necessary purchase by him in good faith. Although no challenge was made as to the dealer's reputation, the court held that a dealer of his experience should have realised the unique character of the objects, should have been put on notice that their provenance might be questionable and should not have acquired them without undertaking verification of the vendor's title.
- c. In *City of Gotha v. Sotheby's and Cobert Finance SA*<sup>6</sup> the Federal Republic of Germany successfully sued in the English court for the recovery of Joachim Wtewael's painting 'Holy Family with Saints John and Elizabeth' (1603), which had been taken to the Soviet Union some time in 1946, probably by the 'official' Soviet trophy brigade, during its looting of the museum of the ducal family of Saxe-Coburg-Gotha at Schloss Friedenstein in the City of Gotha. The painting was later sold at Sotheby's in 1989 to Cobert Finance who did not buy in good faith. A defence based on the expiry of the German limitation period failed.

### (c) Some distinctions

4. We have divided the discussion that follows into (a) the theft of objects within the UK and the illegal outflow to overseas destinations of objects found in or originally situated in the UK (paragraphs 14-32) and (b) the inflow into the UK of stolen and/or illegally excavated and/or exported objects from overseas (paragraphs 33-51).

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<sup>4</sup> [1991] 4 All ER 638, CA. The case also raised limitation period issues which were not reported. See generally Ruth Redmond-Cooper in N E Palmer (ed.), *The Recovery of Stolen Art* (London, 1998), chapter 7.

<sup>5</sup> [1997] unreported, 24 January, Arden J. See Ruth Redmond-Cooper, *op. cit. supra*.

<sup>6</sup> [1998] unreported 9th September, Moses J. See generally N E Palmer, *Museums and the Holocaust* (2000), pp. 74-8 and 222-29.

5. It is also necessary to distinguish between antiquities and other types of cultural goods for the purposes of this exercise. The third element of the illicit trade identified above effectively applies only to antiquities, although antiquities, in common with other types of cultural goods, may also be stolen from identified owners or be illegally exported by their rightful owners.<sup>7</sup>

- a. First, estimates exist for the total size of the licit art market, both worldwide and in Britain, as well as for that part of it which is concerned with antiquities (paragraphs 6-10). These provide evidence for the overall size of the licit art market, against which any estimates of the illicit market should be set, but they do not of course in themselves provide any evidence for the size of the illicit market.
- b. Secondly, some law enforcement agencies maintain statistics of stolen cultural objects which have been reported to them or seized by them (paragraphs 11-13). However, these figures relate only to that proportion of the illicit market which comes to the attention of the authorities: it is probable that only a very small proportion of illegally exported and illicitly removed objects do so.
- c. Thirdly, these figures can be supplemented by documented cases of illegal outflow to overseas destinations of objects found in or originally situated in the UK (paragraphs 14-22). So far as thefts within the UK are concerned, there are insurance industry statistics, as well as figures supplied by the victims of theft (paragraphs 23-32).
- d. Fourthly, there are documented cases of the inflow into the UK of stolen and/or illegally excavated and/or exported objects from overseas. There are also examples of detailed studies of different types of artefact (Apulian vases, Cycladic figurines and hoards of ancient Greek coins) which provide an estimate of the overall numbers of such objects on the market and the proportion of them that are likely to be illicit (paragraphs 33-51).
- e. Lastly, and most cogently, is the evidence that exists on the ground for the destruction of archaeological sites worldwide caused by looters seeking antiquities to sell (paragraphs 52-5).

### **(1) Total size of the licit market**

6. The open and observable art market is, in effect, a number of different markets in terms both of the categories of objects bought and sold (pictures, furniture, sculpture, jewellery, vintage cars etc.) and its many geographical locations.

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<sup>7</sup> The main category of antiquities currently traded may be sub-divided into classical antiquities originating from the Mediterranean basin and the ancient Near East; antiquities from Asia; pre-Columbian antiquities from the Americas; ethnographic and archaeological material from Africa and elsewhere and some coins.

Because this is an overt market it can be analysed in detail. Although it gives no precise information as to the scale of the illicit market, an assessment of the size of the open market may help to put the problem of the illicit market into perspective.

7. **In 1999 the total UK market is estimated to have been worth £4.5 billion and to have accounted for 30 per cent of the global art market, which was valued at \$US 20.56 billion. The UK art market provides full- and part-time employment for 37,000 people.** The US market accounted for 40 per cent of the global market. The UK market grew by 40 per cent between 1994 and 1998. This compares with a European average growth of 26 per cent and US growth of 81 per cent.<sup>8</sup>

8. However, it seems that the open and observable market in antiquities account for only a small proportion of the overall art market. The Antiquities Dealers Association (which has 32 dealer members in the UK)<sup>9</sup> estimates the total turnover for the licit trade in classical antiquities in 1999 to be in the region of £15 million; this forms part of an overall estimate of £58.7 million for the worldwide trade in classical antiquities for the same year (and £41.4 million for the worldwide trade during the previous year).<sup>10</sup> For oriental and South Asian items the annual turnover in the UK is believed to amount to £40 million, although this figure includes all items and not just excavated material. On the other hand, the size of the UK market for pre-Columbian antiquities and ethnographic material is believed to be very small indeed.

9. No figures exist for the value of the UK coin market, although US trade statistics provide some evidence, as these record separately the value of coins imported from the UK.<sup>11</sup> In 1996 this was US \$5.6 million, in 1997 \$7.8 million and in 1998 \$8.8 million. The USA is only one destination for coins exported from the UK, although it is probably the principal one. It is certain that the UK is one of the leading centres of the coin trade, together with the US, Switzerland, Germany and France. The four leading auction houses offered a total of 13,242 lots for sale in 1999 (many lots comprise more than one coin, but only a minority of the coins offered for sale would count as antiquities). In addition there are 68 members of the

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<sup>8</sup> Information from David Kusin and Company, Art Economics, Dallas, Texas.

<sup>9</sup> The Antiquities Dealers Association requires its members to exercise due diligence when acquiring objects. The members routinely check all objects over £2,000 with a stolen art database, and require vendors to give a warranty that the object in question is legally located on the market. Members refuse to buy objects illegally exported from other countries and both members of the ADA on the Panel have told us of examples where they have done this. These measures have had a clear effect on the size of the UK market. Dealers and auctioneers are aware of the importance of a published provenance, though it is not always possible to give this for sound commercial reasons.

<sup>10</sup> Information from David Kusin and Company: the statistics are based on data from auction houses and dealers in the USA and Europe (including the UK).

<sup>11</sup> Cited in N Brodie et al., *Stealing History. The Illicit Trade in Cultural Material* (Cambridge, 2000), p. 24.

British Numismatic Trade Association. From this, it would appear that the market in coins in the UK might be as large as, if not larger than, that for antiquities.

10. Therefore, although the market in antiquities forms only a minor part of the overall art market, the UK remains a major player in the worldwide licit trade in antiquities, probably third behind the USA and Switzerland. The weight of the available evidence further suggests that the licit art market is growing:

- the UK art market as a whole grew by 40 per cent between 1994 and 1998;
- David Kusin's data on the worldwide licit trade in antiquities found that there had been a 42 per cent increase between 1998 and 1999;
- the US trade statistics pointed to a 57 per cent increase in the total value of coins imported from the UK between 1996 and 1998.<sup>12</sup>

## **(2) Data from law enforcement agencies**

### **(a) Metropolitan Police**

11. In evidence to the Panel, DI Bamford of the Art and Antiques Unit said that the squad had detained cultural goods valued at £22 million during the last year (July 1999-2000). However, some members of the Panel examined the Metropolitan Police's main store of seized goods and believe that the value of those items of relevance to the Panel is likely to amount to about £1 million. DI Bamford also noted a recurrent connection between the illicit trade and money laundering. This evidence has been confirmed by DS Oldman, also of the Art and Antiques Unit.

### **(b) Interpol**

12. DC Jones of Interpol's London bureau reported to the Panel that during 1999 Interpol London dealt with 132 cases connected with the trafficking of stolen cultural goods (out of a total of 11,263 new cases in all) and dealt with the bureaux of 26 countries in respect of these cases.

### **(c) H M Customs and Excise**

13. H M Customs and Excise provided data on all seizures of cultural goods between June 1995 and June 1999. These amounted to 113 in all, valued at a total of £20.3 million. Eleven consignments are believed to have contained antiquities and these were valued at a total of £943,000. It should be noted, however, that in 108 cases the objects in question were returned to their consignors because the seizures related to procedural problems rather defects in title. In 36 cases the goods were restored to their consignors free of charge; in a further 67 cases, the goods were restored after payment of a fine. Two consignments of antiquities have been

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<sup>12</sup> Against this, is the evidence for the shrinkage in the market in Apulian vases (see below, paragraph 43); this may perhaps be accounted for by a reduction in supply, or by changing attitudes within the trade in the UK.

<sup>13</sup> This case is worth describing for the light it sheds on the nature of the illicit trade. In October 2000 Customs and Excise officers at Gatwick airport were alerted by check-in staff to an eastern European national, who was passing through the UK on his way to the USA, and who was carrying a large quantity of medical items. When searched he was found to be carrying

detained this year and one case was linked with an attempted importation of class C drugs.<sup>13</sup>

### **(3) Theft of objects within the UK and the illegal outflow from the UK**

#### **(a) Case studies: non-archaeological objects**

14. In several legal decisions over the past two decades or so, UK-based claimants have failed to recover cultural objects unlawfully taken from them and sold overseas. In this section we concentrate on two cases involving non-archaeological objects; others could be cited. In the first case the objects were later returned to the UK and the unsuccessful claim was brought before the English court. In the second case the unsuccessful claim was brought before a Dutch court.

##### **(i) Winkworth case**

15. In *Winkworth v. Christie Manson and Woods Ltd.*<sup>14</sup> the claimant owned Japanese netsuke objects which were stolen from his home in Oxfordshire and later bought in Italy. Italian law would give the buyer a good title provided he bought in good faith. The objects were later consigned for sale at Christie's in London and the claimant sued both Christie's and the Italian buyer for their return. The court held that Italian law, as the law of the country in which the objects were situated at the time of relevant purchase, governed the question of title, even though the objects had now returned to England. The claim accordingly failed. The position would have been otherwise had the buyer not bought in good faith or had the Italian law been contrary to English public policy, but neither of those exceptions applied here.

##### **(ii) Rector of Stowlangtoft case**

16. In the case of the Rector of Stowlangtoft, Flemish carved panels were stolen from a church at Stowlangtoft, Suffolk, and taken to the Netherlands, where they passed through the hands of several acquirers and eventually came to rest in the possession of the defendant. A claim before the Dutch court for their return failed. The court applied Dutch law as the law of the country where the carvings were situated at the time of relevant acquisition and concluded that under Dutch law the acquirer had gained a good title, overriding the former title. It is understood that the carvings were later returned to the church through the intervention of a well-wisher.

#### **(b) Case studies: archaeological objects**

##### **(i) The Wanborough Hoard**

17. Following an initial discovery of a few Iron Age coins which was reported by the finders, this site was systematically looted by other detector users in 1984-5, a number being arrested on site and found to be in possession of coins. 1,041 coins in all were recovered but it is believed that the total find may have consisted of at

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substantial quantities of a banned class C drug, and some 9,750 ancient coins, valued at £50,000. These were seized by Customs (it should be noted that Customs were only able to seize the coins because they had not been declared for VAT purposes; the fact that the individual found in possession of them was unable to produce a valid export licence was not relevant) and it is hoped to return the coins to the relevant authorities.

<sup>14</sup> [1980] Ch. 496.

least 9,000 coins and these rapidly became widely dispersed in the trade. Many coins of the same, distinctive types appeared in dealers' lists abroad, including the USA and Switzerland. The site has been frequently raided since then. Although, under the terms of the Treasure Act which came into force in 1997, it is likely that the coins would have been treasure, this fact would not in itself have prevented their illegal removal or illegal export.

(ii) The Icklingham Bronzes

18. A group of important bronze sculptures of the Roman period is believed, on strong circumstantial evidence, to have been looted at a site at Icklingham in Suffolk, which belongs to Mr John Browning, in 1982. Photographs of 16 objects were shown to the British Museum at the time. In 1988 five objects came to light at the Ariadne Galleries in New York, having been acquired from a Swiss private collection in Basel. They lacked export licences and their export was therefore illegal. These pieces were purchased by two prominent US collectors. Mr Browning was unsuccessful in his attempts to recover the objects and in 1993 a settlement was finally reached whereby the collectors concerned agreed to leave the objects to the British Museum in their will. Mr Browning's land has since been repeatedly raided by metal detector users. The Treasure Act would have made no difference to the status of these objects.

(iii) The Salisbury Hoard

19. In 1985 two metal detector users discovered a unique deposit of over 535 artefacts of the Bronze and Iron Ages in a field near Salisbury while searching without the permission of the landowner. The hoard was sold to a dealer who then subsequently sold the objects on to other dealers and they rapidly became widely dispersed in the trade, many being illegally exported abroad. The British Museum acquired one group of objects from the hoard and the curator, Ian Stead, subsequently tracked down the origin of this group and was able to carry out an archaeological investigation of the site which, unusually, enabled him to prove exactly where the objects had been found. As a result of his detective work the two detector users were convicted of theft. Although over 300 objects from the hoard have now been acquired by the British Museum, the remainder, a third of the total, have been dispersed in trade and cannot be recovered.<sup>15</sup> The Treasure Act would have made no difference to the status of these objects.

(iv) Coin Hoards

20. The three cases cited above represent the most notorious cases of objects looted from this country in recent years; many more are known or suspected. But in most cases once antiquities have been removed from the soil, or the waters, of the UK and appear on the market without provenance it is impossible to prove that they originated in this country. Only in certain cases, such as coins of the Iron Age period which effectively only circulated within England, can such an inference be made. Accurate quantification is, therefore, generally impossible. However, the British Museum keeps records of coin hoards, and also receives reports of undeclared finds.

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<sup>15</sup> I M Stead, *The Salisbury Hoard* (Stroud, 1998).

While a high proportion of treasure finds are reported, as a result of the provisions of the Treasure Act 1996, a significant number of hoards are sold illegally. Coins from undeclared hoards are now increasingly being offered for sale on the Internet (see below). Within the last seven years reports have been received of 20 such cases (this compares with 337 hoards that have been reported in the proper way) and it is certain that many more finds will have been dispersed without ever coming to the attention of the British Museum. It is a matter of concern that in a number of recent cases where information about such finds has been passed on to coroners, who have responsibility for enforcing the Treasure Act in the first instance, that the information has not been followed up.

(v) Metal detecting tours in the UK for foreigners

21. Metal detecting tours for foreigners, chiefly from the USA, are openly advertised on the Internet. One tour organiser does apply for licences on behalf of his clients and it is clear that large numbers of objects are being discovered: a single three-week tour may produce 7,000 finds, all of which would require export licences, of which perhaps 1,200 would be of sufficient archaeological interest to be recorded. It would seem likely that large numbers of objects are being exported from the UK without licences since many fewer export licence applications are being received in respect of such finds than would be expected given what is known about the number of objects that can be found on such tours. In February 1999 HM Customs and Excise at Heathrow Airport seized some 300 objects being taken out of the country by a US citizen and these have now been passed on to Norfolk Museums Service. While the publicity surrounding this seizure has led to an increase in requests for export licences from US detector users, further corroboration of the fact that objects are still being illegally exported from the UK to the USA is provided by the fact that 'English Style Metal Detecting Rallies' that include objects found in Britain are openly advertised on the Internet.

(vi) Objects offered for sale over the Internet

22. In the course of our research we found a number of Internet sites where dealers and private individuals offered for sale antiquities and coins, often with UK provenances. In a number of cases the objects were priced in US dollars, implying that it was likely that they would be exported. In no cases were vendors advised that export licences were required for any archaeological objects found in the UK.

**(c) Statistics for theft of cultural objects within the UK**

(i) Home Office statistics

23. The Home Office does not keep separate statistics for theft of cultural objects. In September 1998 - 1999 464,000 offences of domestic burglaries were recorded, 474,100 non-domestic burglaries and 2,219,800 thefts (thefts of and from vehicles accounted for 1,072,200 of this figure). Police evidence given to the Panel noted that personal effects, including jewellery, was the third largest category of goods stolen in domestic burglaries, after cash and electrical goods.

(ii) The insurance industry

24. Analysis of insurance claims resulting from domestic theft gives a further indication of the scale of the problem in the UK. The majority of smaller losses are covered within household insurance policies. Specialist art insurance is largely written by the Lloyd's market or by high value household policies insured by Lloyd's



syndicates. The Association of British Insurers (ABI) recorded 571,000 domestic claims for the period October 1998 to September 1999. Gross incurred claims totalled £551 million giving an average claim of £964. The majority of domestic claims involve opportunist burglaries of cash, personal items of jewellery and electrical goods. No breakdown of this figure is available to give the precise value of art claims, but it is thought to represent less than one quarter of total household claims, that is less than £138 million. Generally the composite insurance companies apply a limit on unspecified individual items covered under household insurance policies and also limit the maximum coverage for any one item (usually £5,000 per item).

25. Works of art of high individual value are commonly insured by specialist insurers at Lloyd's of London. Lloyd's is the worldwide centre for this market and it is thought that worldwide pure art insurance generates an annual premium of £100-£150 million worldwide. During 1999 losses as a result of fine art theft in the United Kingdom totalled approximately £16.5 million, of which £14 million was accounted for by one claim. The Lloyd's figures are not included within the ABI analysis. The weight of opinion in the insurance market estimates that annual specialist art theft insured losses in the UK total approximately £50 million, and a total of insured losses of perhaps £175 million. It should, however, be noted that not all losses will be insured. The discrepancy among previously published estimates may be partially explained by the definition of 'collectibles', personal property, modern jewellery etc., all of which are included in theft claims under general household policies.

### (iii) Other data on thefts

#### (a) Historic Houses

26. A survey was carried out by the Council for the Prevention of Art Theft of thefts from homes that are open to the public between September 1990 and 1995. Information was received from 150 properties. During this period two-thirds of the properties had experienced a theft or attempted theft and almost 1,000 items were stolen, the total value of which was nearly £15 million. Only 8 per cent by quantity and 2 per cent by value of these objects have been recovered.

#### (b) Museums and Galleries

27. Resource: the Council for Museums, Archives and Libraries records incidences of theft from museums and galleries. During a six year period between 1994 and 2000 a total of 308 cases were recorded, an average of about fifty a year, although not all cases of theft from museums and galleries are reported to Resource. In one case a painting stolen from the National Maritime Museum was recovered from the Netherlands.

#### (c) Churches

28. Figures were received from Ecclesiastical Insurance which insures 92 per cent of Anglican property. During the years 1991 to 1999 they report 287 claims for theft, covering 614 items valued at a total of £1,190,006.

(d) Art Loss Register

29. At the Panel's request the Art Loss Register kindly carried out an analysis of some 450 cases in which they have been involved. Of these some 80 per cent concerned items stolen in, or recovered in, the UK. Of the items stolen overseas, some 13 per cent of the recoveries were made in the UK; this compares with 9 per cent of items stolen overseas being recovered in the UK. The Art Loss Register concludes that there are no clear indications from these statistics that London, as an art market, is handling a very large number of items stolen overseas and marketed in the UK.

(e) Some examples

30. A survey of newspaper reports of thefts of objects from UK institutions over the decade 1988 to 1997 may help to put the situation in perspective.<sup>16</sup> Institutions which fell victim to theft include:

- the British Museum,
- the National Maritime Museum,
- the Peterborough Museum,
- Rutland County Museum,
- the Bernard Leach Museum at St Ives,
- the Salford Art Gallery,
- the Corinium Museum at Cirencester,
- the Royal Carriage Museum at Windsor Castle,
- the Gloucester Waterways Museum,
- the Darlington Museum,
- the Rochdale Museum,
- Wakefield Cathedral,
- Lincoln's Inn,
- Longleat House
- and numerous National Trust properties and historic houses.

31. Objects stolen included:

- an Iron Age sword,
- 42 pieces of Bernard Leach pottery,
- a Titian painting;
- a Lowry painting,
- a rare model leopard belonging to the Queen,
- a portrait by Joshua Reynolds,
- a Jack Yeats painting,

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<sup>16</sup> N E Palmer (ed.), *The Recovery of Stolen Art*, (London, 1998), pp. 1-4.

- an antique fireplace,
- a penny-farthing bicycle,
- a Logie Baird television,
- a tombstone from a Scottish island and
- numerous statues.

32. There is no evidence that the situation has changed significantly over the past three years. The past year alone has witnessed (for example) the theft of an uninsured work by Cézanne from the Ashmolean Museum and the removal from Scotland and subsequent sale in Germany of important dinosaur fossils.

#### **(4) Inflow of illegally excavated and/or exported objects into the UK**

##### **(a) Some examples**

33. There are numerous examples of illicit objects that have appeared on the market in recent years and, since a number of recent publications provide detailed information about them, it is not necessary to rehearse them all here.<sup>17</sup> We shall just cite some of the best-known and most glaring examples in order to illustrate the nature of the problem.

##### **(i) Legal decisions in the UK**

34. As in other areas, legal decisions afford some evidence of the range of cultural objects within this category. Aside from the examples given elsewhere, attention might be drawn to two decisions, one involving a Goya painting and one involving Egyptian antiquities.

35. In *Kingdom of Spain v Christie Manson and Woods Ltd.*<sup>18</sup> the Kingdom of Spain sought a declaration that the Goya painting 'Marquesa de Santa Cruz' had been exported from Spain by the use of forged export documents. It raised no claim as to title.<sup>19</sup> On a preliminary issue, the court decided that the Kingdom of Spain had a sufficient interest in the matter for a declaration to be awardable in principle. It is understood that the Kingdom of Spain later bought the work.

36. In *R v Tokeley-Parry*<sup>20</sup> the Court of Appeal upheld the conviction of the appellant Tokeley-Parry on charges of handling stolen Egyptian antiquities which were imported into the UK. We consider the decision to be particularly worthy of note because the handling offence related to objects stolen overseas and not within the UK (see Report, paragraph 23).

37. Outside the UK, important title proceedings have occurred in relation to the

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<sup>17</sup> See, for example, N Brodie et al., *Stealing History: The Illicit Trade in Cultural Material* (Cambridge, 2000) and Colin Renfrew, *Loot, Legitimacy and Ownership* (London, 2000).

<sup>18</sup> [1986] 3 All ER 28.

<sup>19</sup> Cf. *Attorney-General of New Zealand v. Ortiz* [1984] AC 1, HL; *Kingdom of Italy and Italian Government v. De Medici Tornaquinci* [1918] 34 TLR 623.

<sup>20</sup> [1999] Crim. L. R. 578.

Sevso Treasure (see below).

(ii) Other examples

38. Numerous examples exist of objects that have been illegally excavated and illegally exported appearing on the market in western Europe and the USA.<sup>21</sup> For example, in 1995 police raided four warehouses in the Geneva Freeport in Switzerland and discovered 10,000 unprovenanced antiquities valued at £25 million (although there is no evidence that any of these objects had passed through the UK). At the end of the Gulf War in 1991 at least 3,000 antiquities are known to have been looted from museums in Iraq and many have since been appearing on the market, some in the UK. Certain types of artefact that are available on the market, such as Khmer sculptures or Malian terracotta statuettes, that must without exception have been illegally exported and illegally excavated from their countries of origin. Coin dealers in the UK openly advertise for sale hoards of coins that have been illegally exported from their countries of origin in eastern Europe or the eastern Mediterranean.

39. The Panel received evidence relating to another case concerning illegally-exported objects which came to light in the UK which has not hitherto received publicity in the press. Following information received in 1995, the police visited an address in the west of England and found, in the home of a private individual, a large quantity of Chinese artefacts, including bronze horsemen, ceramics, terracottas and some large stone headstones. Many of these objects were laid out in the garage of the individual concerned and the police were informed that he was planning to hold a private auction sale the following day. In all the police removed three lorry-loads of objects. Although no prosecution occurred in this case, because of the difficulty of proving an offence of handling stolen goods, the great majority of the goods seized have now been returned to China.

40. Another case concerning pre-Columbian artefacts from Peru demonstrates that the UK can be used as a convenient transit point for those involved in the illicit trade. The case concerned a quantity of Moche antiquities from Sipan which had been illegally exported from Peru and which were destined for sale in the United States.<sup>22</sup> Under the terms of the Convention on Cultural Property Implementation Act 1983 the US has imposed an import ban on cultural property from Peru (see Report, paragraph 83). The smugglers sought to circumvent this ban by exporting the objects to the UK and then re-exporting them to US, where the objects would not be subject to the same checks from the US Customs Service as if they had been directly imported from Peru.

(iii) The Sevso Treasure

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<sup>21</sup> See works cited in note 17 above.

<sup>22</sup> S D Kirkpatrick, *Lords of Sipan* (New York), pp. 99-103; the author notes that the UK was used as a transit point 'because England was not a signatory to any of the international agreements protecting the cultural heritage of countries like Peru'.

41. This is perhaps the most outstanding example of an unprovenanced find to have appeared in London in recent years. This magnificent collection of late Roman silverware was offered for sale by Sotheby's in 1990 on behalf of the Marquis of Northampton and it is believed that it was valued at £40 million. The treasure had Lebanese export licences which subsequently proved to be false and, while it was on a promotional tour to New York, three countries (Lebanon, Croatia and Hungary) lodged claims for its return. None of these countries, however, was able to prove that the treasure had been found within their territories. Possession therefore remained with the Marquis of Northampton, who later sued his legal advisers for wrongly advising him on the authenticity of the Lebanese export licences.

**(b) Three case studies**

42. In three cases scholars have carried out detailed studies of different types of artefact which provide an estimate of the overall numbers of such objects on the market and the proportion of them that are likely to be illicit. Not all of these will have appeared on the market abroad; many will have stayed in their country of origin.

**(i) Apulian vases**

43. An archaeologist, Dr Rick Elia, has studied the corpus of nearly 14,000 Apulian vases published by Trendall and Cambitoglou.<sup>23</sup> These vases were made in the Puglia district of southern Italy in the 5th and 4th centuries BC and the great majority are found in tombs within this area. The corpus consists of two parts: the first part includes 9,423 vases known as of 1979: of these the majority (91 per cent) were in museums or private collections and only 9 per cent were recorded in trade. The second part of the corpus consists of 4,295 additional vases that surfaced between 1980 and 1993. Virtually all of these additional vases were recorded in the trade and are undocumented and unprovenanced and it is likely that the majority have been looted from Italian sites. The largest market for vases during that period was the UK. Further research by the Panel has shown that the number of Apulian vases being sold at auction in London has declined in recent years. A total of 1,937 such vases have been offered between 1980 and 1999, 645 between 1980 and 1985, 453 between 1986 and 1989, 618 between 1990 and 1995 and 221 between 1995 and 1999. A number of possible explanations for this decline have been suggested to us: it may reflect the fact that most tombs have now been ransacked or it may reflect changing attitudes within the trade in the UK.

44. Further evidence for large-scale looting of archaeological sites in Puglia is provided by the fact that between 1993 and 1997 more archaeological artefacts from clandestine excavations were recovered from that region than from any other part of Italy.

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<sup>23</sup> R Elia, 'Apulian vases' in N Brodie, J Doole and C Renfrew (eds.), *Papers Presented at the Symposium 'Illicit Antiquities: the Destruction of the World's Archaeological Heritage'*, October 1999 (Cambridge, 1999, pre-circulated conference papers, final publication forthcoming), pp. 21-35. It is fair to remark, however, that the conclusions reached by Elia have been contested by Dr Dyfri Williams, a noted expert, in written comments circulated to the Panel.

45. The scale of destruction that lies behind the recovery of these vases is likely to be very great. While Dr Elia's estimate that for every vase recovered at least ten tombs must have been opened may be too high, there can be no doubt that the destruction must have been very great. Such looting will certainly have resulted in the irrevocable loss of tomb types and of assemblages of grave goods and with it the possibility of correlating grave offerings with the age and sex of deceased family groups, besides evidence about burial customs and population densities, as can be derived from controlled archaeological excavations.

(ii) Cycladic figurines

46. A study of the prehistoric figurines that are found on the islands of the Cyclades in Greece estimated that the total corpus of such objects amounts to about 1,600.<sup>24</sup> Of these 143 were recovered by archaeologists and perhaps 50 more were casual finds; the remainder, some 1,400 (87.5 per cent), appeared on the market without provenance and it is likely that the great majority of these will have been illicitly excavated. A substantial proportion of these, perhaps as many as 200, may be modern forgeries, created to satisfy the demand for such objects. As in the case of the Apulian vases, Cycladic figurines are generally found in tombs and again the scale of destruction must have been very great.

47. For the most part these figurines first appeared in the 1960s and 1970s, at a time when attitudes on the part of both archaeologists and the trade were markedly different. If such objects were to appear today they would have great difficulty in entering the licit market, as academics would now refuse to publish them. Research by the Panel showed that only seven Cycladic figurines have appeared in the UK licit market during the last five years, all of which have previously been recorded.

(iii) Hoards of Greek Coins

48. For the last 25 years the Royal Numismatic Society has been recording hoards of Greek coins, updating an inventory published in 1973. 766 hoards were published in *Coin Hoards I - VII* (1975-85); a further 556 in *Coin Hoards VIII*<sup>25</sup> and another volume is in press.

49. Analysis of the hoards published in volume VIII shows that, of the 389 hoards discovered since 1970, 276 were seen in trade (71 per cent) and 113 were recorded from archaeological excavations or from museums in the country of origin (29 per cent).<sup>26</sup> The hoards come from the countries of the eastern Mediterranean - Italy, Greece, Turkey, Syria, Israel and Egypt - and of the Balkans, especially Bulgaria and Russia. The implications of this are that, at most, only 30 per cent of all finds of

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<sup>24</sup> D Gill and C Chippindale, 'Material and intellectual consequences of esteem for Cycladic figurines', *American Journal of Archaeology* 97 (1993), pp. 601-59.

<sup>25</sup> Ed. U Wartenberg, M J Price and K MacGregor, (London, 1994).

<sup>26</sup> It is not possible to specify how many of these hoards passed through the UK market.

Greek coins are likely to be reported to the authorities and recorded properly; the remainder find their way onto the market. In reality the figure is likely to be much higher, as many more such finds are likely to be dispersed in trade before any record can be made. All those hoards seen in trade may be assumed to have been illegally exported and the great majority are also likely to have been illegally excavated.

50. The proportions are the same in volume IX, which covers hoards recorded since 1994: out of 232 hoards, 166 were recorded in trade (72 per cent) and 66 from excavations or museums (28 per cent). It should be noted that none of the coin hoards that have been recorded from excavations or in museums in the country of origin are likely to appear on the market and, since all those countries in which Greek coins are found, have laws that restrict the export of such objects, it may be assumed that all those coins that are newly appearing on the market (apart from a relatively small proportion that derive from old collections) have been illegally exported.

#### (iv) Conclusions

51. The three case studies cited above all give a broadly consistent picture: where attempts have been made to quantify all examples of a particular class of antiquity, the great majority of objects appear on the market without any stated provenance. The lack of stated provenances in auction catalogues and dealers' lists presents a problem. In the absence of evidence to the contrary it is reasonable to suspect that a proportion of such unprovenanced objects have been illegally excavated and illegally exported. This suspicion could be allayed if there were more systematic recording of provenances in sales lists (see Report, paragraph 81).

### (5) Destruction of sites

52. The most cogent evidence for the illicit trade in antiquities is provided by the evidence of the destruction of archaeological sites world-wide in order to feed the demand for antiquities for the illicit market. Although there are many factors that can cause the destruction of sites worldwide, particularly development,<sup>27</sup> destruction caused by the search for antiquities is of particular concern to us. Although the worst cases occur abroad the UK is not immune from the problem.

#### (a) Destruction of sites in the UK

53. In England, Wales and Scotland it is lawful to search for antiquities with the permission of the landowner, except on scheduled ancient monuments, and metal detecting is a popular activity. However, there are a number of scheduled monuments and other sites, which are not protected by law, which are regularly attacked by treasure hunters who do not have the permission of the landowner, the so-called 'nighthawks'. Three such sites, Wanborough, Salisbury and Icklingham have already been mentioned; there are others, such as Corbridge in Northumberland where a log of illicit detecting maintained over a period of four and a half years between 1989 and 1994 recorded 24 separate incidents.

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<sup>27</sup> A particularly serious example being the current destruction of the Roman city of Zeugma in Turkey by the damming of the river Euphrates.

(b) Destruction of sites abroad

54. The destruction of sites abroad by looters seeking to recover artefacts has been well documented and in some countries the destruction has reached epidemic proportions.<sup>28</sup> A few examples will serve to show that this is occurring worldwide:

- a. In Cambodia the destruction of the unique temple complex of Angkor Wat since 1975 is all too well known. UNESCO estimates that sculptures and reliefs are currently being illegally removed at the rate of one a day.
- b. A survey of one district in northern Pakistan showed that nearly half of Buddhist shrines, stupas and monasteries had been badly damaged or destroyed by illegal excavations searching for antiquities.
- c. Terracotta statuettes found in Mali became popular in the western art market in the 1960s and 1970s when many thousands appeared on the market. Not a single example was recovered in an archaeological context until 1977. Their recovery has proved to be extremely destructive. Between 1989 and 1991 archaeologists surveyed an area of 125 square miles and found that 45 per cent of the 834 sites they discovered had been damaged by looting.
- d. In Iraq the destruction of the palace of the Assyrian king Sennacherib in Nineveh came to the attention of the American archaeologist who had recorded it in 1990 when five years later he was offered a relief that had been stolen from it.
- e. In Turkey there were no fewer than 17,500 official police investigations into stolen antiquities between 1993 and 1995.
- f. The looting of the rich archaeological heritage of Italy has already been referred to; excavations of the ancient city of Crustumerium near Rome have been continuing since 1987 and 80 tombs have been opened by archaeologists; during the same period the tomb-robbers (*tombaroli*) looted some 1,000 tombs and the distinctive pottery found in these tombs has been openly sold on the US market.
- g. In many countries of eastern Europe icons are being systematically stolen from churches: in Bulgaria 5,000 icons disappeared in one year alone (1992).

55. We note that in a number of the foregoing examples, such as Angkor Wat, many of the problems involved in transacting in such objects could be avoided by a database of unlawfully removed cultural objects, as we have recommended. In those countries with little written history, such as Mali, archaeology provides the only evidence for their past, so that the wholesale destruction of the archaeological heritage of such countries can literally deprive them of their history. Whereas we accept that all responsible and scrupulous members of the UK market refuse to transact in such objects, we nevertheless acknowledge that in its present condition UK law does not appear adequate to protect such objects from those who might be tempted to behave less scrupulously. Our recommendations, as we have noted, are designed in part to reduce the risk that dealers will succumb to such temptation and that such objects will not pass through the UK market.

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<sup>28</sup> See note 17 above.



## ANNEX B

### THE CURRENT EXPORT LICENSING LEGISLATION, POLICY AND PROCEDURES

1. There are currently two licensing régimes in place: one under UK legislation and the other under an EU Regulation. The two systems are operating in tandem (ie licences required under both régimes); and the UK system has been adapted so that exporters need obtain only one **specific individual** export licence from DCMS, either under UK law (a UK licence) or EU law (an EU licence). Such a licence may cover more than one object.

#### UK LEGISLATION

2. The current UK legislation is the Import, Export and Customs Powers (Defence) Act 1939 (the 1939 Act). This is a piece of emergency World War II legislation which relates not only to the export of cultural objects but also to all other goods (eg arms, computers). Following the Scott Inquiry into the export of arms to Iraq, the current Government (and the previous administration) has given a commitment that the 1939 Act will be replaced in due course, as and when the Parliamentary timetable permits.

3. Under the 1939 Act, the Secretary of State may make an Order (ie secondary legislation) specifying which goods require a licence for export from the UK and the Isle of Man. In relation to cultural objects, the current Order (the Export of Goods (Control) Order 1992) states that a licence is required for all goods manufactured or produced more than 50 years before the date of exportation with certain limited exceptions (ie postage stamps, personal papers and goods manufactured by the exporter). **Thus, current UK law requires an export licence (either Open or specific - see paragraphs 4 to 9 below) for most cultural objects over 50 years of age but note the operative words 'manufactured or produced' as this excludes such objects as, for example, fossils which are not man-made.**

#### Open Licences

4. In order to reduce the burden on would-be exporters, the Government has issued a number of Open Licences, which permit the export of certain specified objects without the need to obtain an individual UK licence from DCMS. There are currently two types in operation: the Open General Export Licence (OGEL) and the Open Individual Export Licences (OIELs).

#### Open General Export Licence (OGEL)

5. The OGEL, which can be used by any exporter, permits the permanent export of those objects valued at or below specified financial thresholds. These financial thresholds were set following the recommendations of a Working Party especially constituted to consider the subject, and after lengthy consultations with all interested parties. This Working Party used to review these thresholds approximately once every eighteen months with a view to an increase or decrease depending on inflation, market trends and the potential financial value of nationally important objects. Such a review has not, however, taken place since the introduction of the EU Regulation (see paragraph 17 below) on 1 April 1993.

6. The OGEL also permits the export (for up to three months) of some common temporary exports and the re-export of some common temporary imports. Further,

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in order to avoid the need for exporters to obtain an individual UK licence from DCMS, the OGEL also permits the export of a cultural object (which would otherwise require an individual UK licence) where an EU licence has been granted by DCMS or another Member State.

7. **The OGEL does not permit the permanent or temporary export of:-**
- a. **archaeological material found in UK soil or territorial waters;**
  - b. **manuscripts, documents and archives; or**
  - c. **architectural, scientific and engineering drawings produced by hand;**
- regardless of their monetary value.** Full details of exports permitted under the OGEL are attached at Annex C.

### **Open Individual Export Licences (OIELs)**

8. An OIEL is granted to a named individual, company or institution, to permit either permanent or temporary export of specified objects. No OIEL is granted by DCMS without the agreement of the relevant Expert Advisers in the national museums and galleries (NMGs); and all of them have conditions attached (eg keeping records of when the OIEL is used and providing access to these records for DCMS, on request). They are normally valid for three years from the date of issue and can be renewed after the expiry date.

Otherwise an individual export licence is required from DCMS.

9. **None of these provisions can over-ride any requirement to obtain an individual licence under the EU Regulation (for exports to destinations outside the European Customs Union) - see paragraphs 13 to 17 below.**

### **EUROPEAN UNION (EU) LEGISLATION**

10. Following the introduction of the Single Market on 1 January 1993, and the removal of internal borders allowing the free movement of goods (and hence the lack of Customs to enforce national export controls), Member States were concerned that a cultural object could move freely (and possibly illegally) from one State to another and then be freely exported outside the EU from the second State. As such, two measures were introduced to help to prevent this: the Regulation on the export of cultural goods and the Directive on the return of cultural objects unlawfully removed from a Member State.

11. The Regulation operates in addition to any national export controls in place. National controls continue to apply to intra-Union movements and to extra-Union exports which are not covered by the Regulation or which relate to 'national treasures'.

12. Although the removal of internal borders was aimed at the free movement of goods, Article 36 of the Treaty of Rome (now renumbered to Article 30 by the Treaty of Maastricht) permits Member States to retain their national export controls for:-

'...the protection of national treasures possessing artistic, historic or archaeological value...'

## **REGULATION ON THE EXPORT OF CULTURAL GOODS**

13. The Regulation came into effect on 1 April 1993; and, as a Customs regulation, it is also applicable to non-EU members of the European Customs Union (ECU). A list of the members of the ECU is attached at Annex D. The Regulation requires an individual export licence to be obtained for the export of certain categories of cultural object (specified in an annex to the Regulation) to destinations outside the ECU, said licence being valid for presentation to Customs in any ECU state to enable export to an extra-ECU destination. Details of the annex to the Regulation are set out in Annex E.

14. Although the Regulation's annex (at E) requires a licence to be obtained for:-  
'Archaeological objects more than 100 years old which are the products of:  
a) excavations and finds on land or under water  
b) archaeological sites  
c) archaeological collections'

the Regulation provides a derogation:-

'...the Member State...may not require export licences for the cultural goods specified in the first and second indents...where they are of limited archaeological or scientific interest, and provided that they are not the direct product of excavations, finds and archaeological sites within a Member State, and that their presence on the market is lawful.'

15. Archaeological material, in relation to both UK legislation and the Regulation is dealt with as a separate issue in paragraphs 27 to 37 below.

16. The Regulation does not permit the UK to grant a licence (under the Regulation, for export outside the ECU) for an object specified in the Regulation's annex (list at Annex E) if it was exported from another Member State (either directly to the UK or indirectly via a third country) on or after 1 January 1993 in contravention of the national laws in place in the originating State.

17. The Regulation is subject to triennial review. In particular, the Regulation states:-

'...the Council [*ie Culture Ministers in the Member States*], acting on a proposal from the Commission, shall examine every three years and, where appropriate, update the amounts indicated in the annex on the basis of economic and monetary indicators in the Community.'

However, the review due in 1996 did not take place. The European Commission finally started a review of the Regulation last year but has declared its intention not to make proposals for revision of the financial thresholds set out in the annex. It is due to this lack of a review by the European Commission that the UK monetary limits have also not been reviewed.

## **DIRECTIVE ON THE RETURN OF CULTURAL OBJECTS UNLAWFULLY REMOVED FROM THE TERRITORY OF A MEMBER STATE**

18. The Directive provides a mechanism for one Member State to request the return of a cultural object from another Member State where said cultural object was illegally exported from the requesting Member State on or after 1 January 1993. The requested cultural object must also fall within the scope of the annex to the Directive (the annex is identical to that in the Regulation - see Annex E) OR form part of an inventoried public collection or ecclesiastical institution AND be a 'national treasure' as defined in the national legislation of the requesting State. The definition of 'national treasure' varies from State to State. In the UK, a 'national treasure' would be an object which satisfies one or more of the Waverley criteria. Once a cultural object has been requested/notified as found, a Member State has one year in which to institute proceedings for its return.

### **THE OPERATION OF UK LEGISLATION AND THE REGULATION IN TANDEM**

19. For some categories of objects the financial thresholds at which an individual export licence is required under UK and EU law varies (see Annex F). When the Regulation came into effect, an attempt was made to rationalize the requirements for an individual UK licence as far as possible to fall into line with the requirements under the Regulation. For example, prior to the Regulation, an oil painting (excluding a British Historical Portrait) required an individual UK licence if valued at or above £115,000. The Regulation specifies a financial threshold of £119,000 so, given the marginal difference, the UK's monetary limit was increased to correspond accordingly. However, in certain instances, the difference between the financial limits was such that this rationalization would have conflicted with already established UK policy. Two examples here are:-

- textiles (excluding carpets and tapestries): EU limit - £39,600, UK limit - £6,000 (retained); and
- drawings: EU limit - £11,900, UK limit - previously £35,000, rationalized to £39,600.

### **UK POLICY ABOUT WHICH LICENCE APPLICATIONS ARE REFERRED TO THE EXPERT ADVISERS IN THE NATIONAL MUSEUMS AND GALLERIES**

20. The UK individual licensing requirements guide the DCMS's policy on which licence applications are referred to the Expert Advisers in the National Museums and Galleries (NMGs). The intention is to refer to an Expert Adviser (for consideration as to national importance) only those objects which would have been referable prior to the introduction of the Regulation. Therefore, the following objects are not referred to the Expert Advisers:-

- those which would previously have been exportable under the OGEL (see Annex C); and
- those which would previously have been exportable under an OIEL (see paragraphs 8 to 9 above).

Normally objects which have been imported within the last 50 years are not referred to the Expert Advisers.

## **POLICY ON OBJECTS WHICH HAVE BEEN IMPORTED WITHIN THE LAST 50 YEARS**

21. Current policy is to normally grant an export licence for any object which has been imported (from any country other than the Channel Islands) within the last 50 years. **This policy does not apply to EU licences if an object has been illegally exported from a Member State of the European Customs Union on or after 1 January 1993 (see paragraph 25 below).**

### **Current procedures in dealing with objects imported within the last 50 years**

22. It is in the interests of a would-be exporter to declare when and from where an object has been imported, and to provide the appropriate documentation, since licences for such objects would (under the Export Licensing Unit's (ELU) Code of Practice) usually be granted within five working days of receipt as opposed to the several weeks or months (and potential refusal of a licence) where an application is referred to an Expert Adviser to advise on national importance and thus potential referral to the Reviewing Committee on the Export of Works of Art.

23. Proof of import may be, for example, an Airway Bill or an invoice proving purchase overseas. The staff of ELU may also accept a declaration, although this will not necessarily apply in all cases. Generally speaking, a declaration would be accepted from a known and reputable member of the art trade (such as one of the major auction houses or a member of one of the professional associations) or from a firm of solicitors but not from persons unknown. A false declaration or false paperwork is a criminal offence and can be subject to:-

- (a) on summary conviction to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years, or to both.

24. **There is currently no legal requirement to check that an object has been legally exported from its country of origin if the object has come from a non-ECU country, ie no checks are made on objects from non-ECU countries. In the case of objects from the ECU the DCMS is obliged under the EU Regulation to make such checks for objects which are licensable under the Regulation (see Annex E) for exports to destinations outside the ECU. There is no obligation to check objects from the ECU if the licence is under UK law, which covers all intra-ECU movements and some exports outside the ECU.**

### **THE REQUIREMENT TO CHECK LEGAL EXPORT FROM A MEMBER STATE OF THE EUROPEAN CUSTOMS UNION**

25. As mentioned in paragraph 21 above, the Regulation does not permit the DCMS to grant an EU licence for an object which has been illegally exported from another ECU Member State (either directly or indirectly via a third country) on or after 1 January 1993. Therefore, where an exporter has declared that something has been imported (directly or indirectly), the staff of ELU will check the paperwork to ensure that the export controls of the originating State have not been breached. Where this is unclear from the paperwork and/or information retained by DCMS (eg the legislation in force in the originating State), the position would be verified with the originating State.

## **REQUESTS FOR RESTITUTION UNDER THE DIRECTIVE**

26. To date, the DCMS has not received a request for restitution under the Directive; and, so far as the DCMS is aware, this is also the case in other Member States. There was, however, one potential case in the UK. It is understood that the required legal procedures were initiated but never taken forward as the case was settled amicably out of court with the objects being returned to their homeland.

## **ARCHAEOLOGICAL MATERIAL**

### **The UK licensing requirements**

27. Individual export licences are required from DCMS, under UK law, for:-
- all objects over 50 years of age recovered from UK soil or territorial waters regardless of their monetary value, except for some individual coins or related groups of coins worth less than £600 (as these may be exported under an OIEL); and
  - a non-UK archaeological object if over 50 years of age and valued at £39,600 or more. Objects below this value may be exported under the OGEL.

### **The licensing requirements under the Regulation**

28. Under the Regulation, an export licence is required for:-
- 'Archaeological objects more than 100 years old which are the product of:
1. excavations and finds on land or under water
  2. archaeological sites
  3. archaeological collections.'

However, the Regulation also provides:-

'...the Member State...may not require export licences for the cultural goods specified in the first and second indents...where they are of limited archaeological or scientific interest, and provided that they are not the direct product of excavations, finds and archaeological sites within a Member State, and that their presence on the market is lawful.'

29. The UK is operating this derogation; and guidance (see Annex G) on what constitutes 'limited...interest' was drafted by a Working Party especially constituted for that purpose, in order to clarify which objects may be exempted from the Regulation's licensing requirements. It should be stressed that 'limited...interest' does not (and cannot) constitute a financial threshold below which the licensing requirement is removed under the Regulation. It may be the case that an object worth £100 requires a licence where another valued at £5,000 does not. Nor can 'limited...interest' override the UK's own licensing requirements.

### **How the 'limited...interest' category is monitored**

30. In the case of auction houses, and those dealers who produce catalogues, the catalogues are vetted in advance by the Expert Advisers to flag up which items will require a licence; and the auction house or dealer is informed of this in advance of sale. There is no specific requirement in the guidance that the Expert Advisers should also flag up potentially looted and/or illegally exported material; but the DCMS

would hope that the Expert Advisers would, in any case, do so.

31. Where there are no catalogues, which generally applies to the smaller dealers who export very few items, they are required to submit a quarterly return giving details of those objects which have been exported under the derogation.

### **Summary of which archaeological objects require an individual export licence from DCMS and how they are processed**

32. **For destinations within the ECU**, an individual licence is required for:-

- a) all objects recovered from UK soil or territorial waters, with the exception of some coins worth less than £600 (which may be exported under an OIEL); and
- b) any non-UK archaeological object valued at or above £39,600.

33. If objects from either category have been imported within the last 50 years (and this may apply to an object from category (a) if it has previously been legally exported and returned to the UK), a licence would normally be granted. Otherwise, the application will be referred to an Expert Adviser.

34. **For destinations outside the ECU**, an individual licence is required for:-

- a) any archaeological object recovered from UK soil or UK territorial waters;
- b) any archaeological object more than 100 years of age which is the product of an archaeological collection, or the direct product of excavations, finds and archaeological sites within an ECU Member State;
- c) any other archaeological object over 100 years of age and worth less than £39,600 which does not fall within the 'limited...interest' category; and
- d) any other archaeological object over 50 years of age which, regardless of whether it is of 'limited...interest', is valued at or above £39,600.

35. Objects from category (a) are referred to an Expert Adviser, except where they are coins worth less than £600 which would otherwise (ie prior to the introduction of the Regulation) have been exportable under an OIEL or they have been imported (following a previous legal exportation).

36. Objects from category (b) and (c) are not referred to an Expert Adviser since they would otherwise (ie prior to the introduction of the Regulation) not have required an individual export licence.

37. Objects from category (d) are referred to an Expert Adviser, except where they have been imported within the last 50 years.

## ANNEX C

### EXPORTS PERMITTED UNDER THE OPEN GENERAL EXPORT LICENCE (OGEL)

<b>Permanent exports</b>	<b>Valued at less than (£)</b>
A photographic positive or negative or any assemblage of such photographs	£6,000
A textile (excluding carpets and tapestries)	£6,000
A portrait or likeness of a British Historical Person (ie someone listed in the <i>Dictionary of National Biography</i> or <i>Who Was Who</i> )	£6,000
A firearm between 50 and 100 years of age and any other arms or armour	£20,000
A firearm more than 100 years of age	£39,600
A painting in oil or tempera (excluding portraits of British Historical Persons)	£119,000
Any other item over 50 years of age (excluding archaeological material found in UK soil or UK territorial waters; manuscripts, documents and archives; and architectural, scientific or engineering drawings produced by hand)	£39,600
Any object which has been granted an export licence under the EU Regulation	Not applicable
Any foreign registered motor vehicle which has been imported for less than three months for social, domestic and pleasure purposes	Not applicable
Any musical instrument which has been imported for less than three months for use in the course of work by a professional musician	Not applicable
<b>Temporary exports</b>	
Any motor vehicle being exported for less than three months for social, domestic and pleasure purposes	Not applicable
Any musical instrument being exported for less than three months for use in the course of work by a professional musician	Not applicable



## **ANNEX D**

### **MEMBER STATES OF THE EUROPEAN CUSTOMS UNION (ECU)**

#### **Member States of the European Union (EU)**

Austria  
Belgium  
Denmark  
Finland  
France  
Germany  
Greece  
Ireland  
Italy  
Luxembourg  
Netherlands  
Portugal  
Spain  
Sweden  
United Kingdom

#### **Non-member States of the EU who are members of the ECU (for export licensing purposes)**

Andorra  
Canary Islands  
Channel Islands  
French Overseas Departments of:-  
    Guadaloupe  
    Martinique  
    Reunion  
Monaco  
Mount Athos (Greece)

## ANNEX E

### ANNEX TO THE REGULATION AND DIRECTIVE

		Valued at or above (£) (see note 2 below)
1.	Archaeological objects more than 100 years old which are the products of: – excavations and finds on land or under water – archaeological sites – archaeological collections	£ zero
2.	Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding 100 years	£ zero
3.	Pictures and paintings, other than those in category 3A or 4, executed entirely by hand, on any medium and in any material (see note 1 below)	£119,000
3A.	Water-colours, gouaches and pastels executed entirely by hand in any material (see note 1 below)	£23,800
4.	Mosaics in any material executed entirely by hand, other than those falling in categories 1 or 2, and drawings in any medium executed entirely by hand on any material (see note 1 below)	£11,900
5.	Original engravings, prints, serigraphs and lithographs with their respective plates and original posters (see note 1 below)	£11,900
6.	Original sculptures or statuary and copies produced by the same process as the original, other than those in category 1 (see note 1 below)	£39,600
7.	Photographs, films and negatives thereof (see note 1 below)	£11,900
8.	Incunabula and manuscripts, including maps and musical scores, singly or in collections (see note 1 below)	£ zero
9.	Books more than 100 years old, singly or in collections	£39,600
10.	Printed maps more than 200 years old	£11,900
11.	Archives, and any elements thereof, of any kind or any medium which are more than 50 years old	£ zero
12.	Collections and specimens from zoological, botanical, mineralogical or anatomical collections;	£39,600
(a)		
(b)	Collections of historical, palaeontological, ethnographic or numismatic interest	£39,600
13.	Means of transport more than 75 years old	£39,600
14.	Any other categories of antique item not included in categories 1 to 13, more than 50 years old	£39,600
NOTES		
1. Which are more than 50 years old and do not belong to their originators.		
2. The figures given in sterling are a conversion from the former European Currency Unit (based on the exchange rate on 1 January 1993) rounded down to the nearest sensible figure.		

## ANNEX F

### COMPARISON OF THE FINANCIAL THRESHOLDS AT WHICH AN INDIVIDUAL EXPORT LICENCE IS REQUIRED UNDER UK LAW AND THE EU REGULATION

(over 50 years of age applies except where otherwise stated)

Category	UK	EU
Any object over 50 years of age, from a category not shown below	£39,600	£39,600

Archaeological material found in UK soil or UK territorial waters	£zero	£zero
Archaeological material from outside the UK	£39,600	£zero
Elements forming an integral part of artistic, historical or religious monuments, which have been dismembered, and which are:		
– more than 50 years of age but less than 100	£39,600	No licence required
– more than 100 years of age	£39,600	£zero
Incunabula	£39,600	£zero
Manuscripts, including maps and musical scores, singly or in collections	£zero	£zero
Archives and any elements thereof, of any kind, on any medium	£zero	£zero
Architectural, scientific and engineering drawings produced by hand	£zero	£11,900
Firearms more than 50 years of age but less than 100	£39,600	£39,600
Firearms more than 100 years of age and any other arms or armour	£20,000	£39,600
Textiles (excluding carpets and tapestries)	£6,000	£39,600
Mosaics (other than those falling in the archaeological or monument categories above)	£39,600	£11,900
Drawings executed entirely by hand, on any medium and in any material (other than the architectural, scientific and engineering drawings mentioned above)	£39,600	£11,900
Original engravings, prints, serigraphs and lithographs, and their respective plates and original posters	£39,600	£11,900
Photographs, films and negatives thereof	£6,000	£11,900
Printed maps which are:		
– more than 50 years of age but less than 200	£39,600	No licence required
– more than 200 years of age	£39,600	£11,900
Original sculptures or statuary, and copies produced by the same process as the original (other than those which fall within the archaeological category)	£39,600	£39,600

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Books which are:		
– more than 50 years of age but less than 100	£39,600	No licence required
– more than 100 years of age	£39,600	£39,600
Collections and specimens from zoological, botanical, mineralogical or anatomical collections	No licence required	£39,600
Collections of historical, palaeontological, ethnographic or numismatic interest	No licence required	£39,600
Means of transport which are:		
– more than 50 years of age but less than 75	£39,600	No licence required
– more than 75 years of age	£39,600	£39,600
Portraits or likenesses of British Historic Persons	£6,000	£119,000
Paintings in oil or tempera (excluding portraits of British Historic Persons)	£119,000	£119,000
Watercolours, gouaches and pastels (excluding portraits of British Historic Persons)	£39,600	£23,800

## ANNEX G

### GUIDANCE TO EXPORTERS OF ANTIQUITIES (INCLUDING NUMISMATIC ITEMS)

1. This note sets out the requirements of the EC Regulation on the export of cultural goods (Number EEC 3911/92) in respect of the export outside the European Community of archaeological items. It also deals with the need for an export licence under UK domestic legislation in cases where no EC licence is required.

2. The general purpose of the EC Regulation is to ensure that cultural goods falling within the Annex to the Regulation are not exported without an export licence issued by the appropriate Member State. More detailed guidance on the provisions of the Regulation and its relationship to UK domestic legislation is given in *Export Licensing for Cultural Goods* issued by the Department for Culture, Media and Sport.

3. Article 2 of the Regulation requires an export licence for the export of cultural goods outside the EEC of items listed in the Annex to the Regulation. Category A1 of the Annex comprises:

'Archaeological objects more than 100 years old which are the products of:

- excavations and finds on land or under water
- archaeological sites
- archaeological collections

There is a zero value limit for this category of archaeological artefact. The category would, therefore, cover all such archaeological items (including numismatic items) regardless of monetary value and regardless of the location of the archaeological site from which they were excavated.

4. However, Article 2(2) of the Regulation allows Member States to exclude objects of limited archaeological or scientific interest from the need for an EC export licence. The Article provides that:

'the Member State ... may not require export licences for the cultural goods specified in the first and second indents of category A1 of the Annex where they are of limited archaeological or scientific interest, and provided they are not the direct product of excavations, finds and archaeological sites within a Member State, and that their presence on the market is lawful.'

5. The UK has decided to exercise its discretion under Article 2(2) by excluding the following categories of archaeological objects as being of limited archaeological or scientific interest:

- (a) numismatic items of a standard type which are published in a reference work on numismatics;
- (b) objects, other than numismatic items, which possess no special or rare features of form, size, material, decoration, inscription or iconography and which are not in an especially fine condition for the type of object.

6. Objects falling within paragraph 5 above will not require an export licence under the Regulation provided that:

- (a) they do not form part of a recognised archaeological collection of special

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historical significance;

(b) they are not the direct product of excavations, finds and archaeological sites within a Member State, ie, they have not come straight onto the market after being recently discovered;

(c) they are lawfully on the market. Objects which are stolen would not qualify; or

(d) they do not fall within any other category of the Annex. Category A2 in particular may be relevant. That category covers elements forming an integral part of a dismembered monument more than 100 years old.

7. Where an EC licence is required then the application for a licence should be made on the standard EC form to the Department for Culture, Media and Sport. In considering the application the Department will also take into account the need for a licence under the UK domestic legislation. Any EC licence granted will also qualify as a licence under UK domestic legislation.

8. Where no EC licence is required (either because the object is to be exported only inside the Community or because the object falls within the categories set out at paragraph 5) exporters need to bear in mind the need to obtain a licence under UK domestic legislation. This requires a licence for any archaeological material from UK soil or UK territorial waters regardless of monetary value and regardless of destination. In addition, archaeological objects from a non-UK source require licences if they are worth £39,600 or more. Applications for licences under UK domestic legislation are made on UK application forms obtainable from the Department for Culture, Media and Sport.

## ANNEX H

### PRINCIPLES OF CONDUCT OF THE UK ART MARKET ADOPTED BY THE BRITISH ART MARKET FEDERATION

*(Adopted by the British Art Market Federation, 2000)*

The Members of The British Art Market Federation ('BAMF') believe it is important to restate the principles that guide their business practices. BAMF comprises individual companies, trade associations and professional bodies (referred to below as 'Members') that represent a wide diversity of art market businesses throughout the United Kingdom. These businesses range from international and regional auction houses to larger dealing companies and sole proprietorships. Each type of business faces problems and concerns unique to its particular sector of the market and has practices and codes which reflect these differences. However, Members have voluntarily agreed to abide by certain basic professional standards of operation.

Below is a distillation of the common principles shared by the various codes, some of which have been in place for over 15 years. It should be noted that while the principles below are common to all Members, some Members have additional policies and rules tailored to the specific sector of the art market in which they operate. It should also be noted that the principles set forth below do not in any way supersede the previously existing codes of practice, which remain in effect. Finally, as used below, 'Members' indicates that either the individual company, or the trade association or the professional body on behalf of its individual dealer or auction house members has adopted the following principles.

#### **Good title, Illegal export and Illegal excavation**

Members undertake not to purchase, sell or offer any item of property that they know has been:

- stolen
- illegally exported; or
- illegally excavated.

Member will not purchase or sell such property unless the irregularity has been corrected.

#### **Confirmation of Good Title**

Members have agreed to ask sellers to confirm in writing that they own the property concerned and have the right to sell it free of any encumbrances.

#### **Sellers' details**

Members have agreed to record sellers' details, such as name and address.

#### **Stolen property**

Members have agreed to take appropriate steps if they know, suspect or have reason to believe that they are in possession of stolen property. Such steps may include conducting further inquiries by checking with a registry of stolen art, or reporting the concern to appropriate legal advisers or law enforcement authorities.

**Anti-money laundering**

Members have agreed to make themselves aware of relevant anti-money laundering laws and regulations and where applicable to report suspicions of money laundering to appropriate authorities and/or in-house anti-money laundering officers.

**Catalogue searches**

Members agree to make their catalogues available to an appropriate law enforcement authority and/or to a registry of stolen art.

**Breach of these principles**

Violations of Members' respective codes will be rigorously investigated to ascertain if a breach has occurred. The appropriate party (such as senior management, a compliance department or committee, or the disciplinary body of a trade association or professional body) will evaluate any infractions and sanction the individual or company, as each case may require. Sanctions may include a warning, suspension, termination of employment or expulsion from membership of a trade association or professional body, as appropriate.



## ANNEX I

### MODEL SALE OF GOODS NOTICES

*(See Report, paragraph 110.)*

A. When buying a work of art and antiquity you should be aware of the possibility of claims by third parties. Overseas countries, for example, may be entitled to recover works which have been stolen or otherwise unlawfully removed from their territory. If a claim is made against you, you may have a right to compensation from your seller under the Sale of Goods Act 1979. If you sell an unlawfully removed object before a claim is made, you are in danger of being sued by your own buyer under the Sale of Goods Act 1979 if a claim is made later. You are advised to inquire about provenance.

B. The Sale of Goods Act 1979 gives you certain guarantees when you buy works of art and antiquity. The seller must have the right to sell the object, it must be free of charges and encumbrances and you must get undisturbed enjoyment. If the object has been unlawfully removed before you bought it, and a claim is brought against you, you may seek compensation from your seller. If you sell the object to another person, and a successful claim is made against him, he may have rights against you under the Sale of Goods Act 1979. You are advised to inquire about provenance.

## ANNEX J

### ACCEPTANCE IN LIEU: DUE DILIGENCE

*This is the questionnaire that all those who seek to offer objects under the Acceptance in Lieu Scheme are required to complete.*

#### **Ownership History**

It is the recent wave of ownership cases in America and Europe by descendants of the Holocaust victims that has brought the issue of provenance to the attention of museums, collectors and the public. Now more than ever, we must reduce the risk of objects with defective title entering the collections of national and non-national institutions.

In making a recommendation to the appropriate Secretary of State, the Acceptance in Lieu Panel must show that it has exercised due diligence in establishing the provenance of works offered in lieu. The most effective way to achieve this is for the Panel to obtain the fullest possible information about the ownership history of an object particularly with regard to the years 1933-1945.

We should be grateful therefore if you would complete, to the best of your knowledge, the following questionnaire and sign and date it at the bottom of the page.

#### **Questionnaire**

- 1 Do you have written confirmation from the executors (or other relevant persons) that they have unencumbered title to the object and are able to transfer that title? If so, please supply the original signed confirmation.
- 2 Can you confirm that there are no third party claims against the object?
- 3 Can you confirm, to the best of your knowledge, that no claims are likely to exist?
- 4 When was the object acquired?
- 5 Can you supply evidence of the means of original acquisition of the object (ie bill of sale, letter, documentary or photographic evidence, publication in a reputable source, etc)? If so, please supply a copy of all the evidence available.
- 6 If the object was acquired after 1933, are you able to supply proof of the ownership history between 1933 and 1945? If so, please supply a copy of all the evidence available.
- 7 If the object was obtained abroad, was it brought to the UK before 1970?
- 8 If the object was obtained from abroad after 1970, do you have an export licence from the country of origin? If so, please supply a copy of the licence.

## **ANNEX K**

*Note: those individuals with asterisks before their names gave evidence to the Panel in person.*

### **LIST OF ORGANISATIONS AND INDIVIDUALS CONSULTED BY THE PANEL**

#### **Other Government Departments and Public Bodies**

Department for Trade and Industry  
Foreign and Commonwealth Office  
H M Customs and Excise  
Home Office  
Lord Chancellor's Department  
Scottish Office  
Welsh Assembly  
Environment and Heritage Agency, Northern Ireland  
Metropolitan Police (\*DI Maxine Bamforth and \*DS Gary Oldman)  
National Criminal Investigation Service

#### **Other Organisations**

Art Loss Register  
Association of British Insurers  
British Museum (\*John Cherry; Jill Cook; Dr John Curtis; Dr Brian Durrans; Dr Catherine Johns; Robert Knox; Dr John Mack; Dr Jeffrey Spencer; Dr Leslie Webster; Dr Dyfri Williams; Dr Jonathan Williams)  
British Numismatic Trade Association (Chris Martin and John Pett)  
Cadw, Welsh Historic Monuments (Dr Richard Avent)  
Catholic Church Insurance Group (John Rogers)  
Council for British Archaeology (Alex Hunt)  
Council for the Prevention of Art Theft (Sir Thomas Ingleby Bt, Dr Robin Thornes and \*Mark Dalrymple)  
Council of Museums in Wales (Dr E Ritchie)  
Ecclesiastical Insurance Group (Ian J Simpson)  
English Heritage (D Batchelor)  
Illicit Antiquities Research Centre (Dr Neil Brodie and Jenny Doole)  
Invaluable (\*Dick Ellis)  
Lloyds of London  
Museum of London (John Clark and Karen Fielder)  
National Museums & Galleries of Wales (Dr R Brewer)  
National Trust (David and Caroline Thackray and Peter Gough)  
National Trust for Scotland (John Batty)  
Resource (Dr Richard Hobbs and Iain Slessor)  
Reviewing Committee on the Export of Works of Art (\*Sir John Guinness and \*Professor Rosemary Cramp)  
Salvo (Thornton Kay)  
Treasure Trove Advisory Panel, Scotland (Alan Saville)  
Ulster Museum (Dr Richard Warner)  
UNESCO (\*Lyndel Prott)

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### **Individuals**

Peter Adler

\*Dr Nicholas Bamforth, The Queen's College Oxford

John Eskenazi

Claude Hanks-Drielsma

Barbara Harding

Sara Plumbly

Emily Pocock, Institute of Art and Law

Dr E Proudfoot, St Andrews University

Nicole Rudolf

Tristan Shek, Institute of Art and Law

Dr Ian Snaith, Leicester University

Rupert Wace

Dr Barbara Zeitler