



United Nations
Educational, Scientific and
Cultural Organization



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Due Diligence

The Seventh Session of the Subsidiary Committee of the Meeting of States Parties to the 1970 Convention,
22 May 2019, Paris

Structure of the presentation

- Due diligence
- Due diligence in relations to the 1970 UNESCO Convention
- Tools to exercise due diligence
- Conclusions

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Due Diligence

- ▶ „The **standard of conduct** reasonably expected from a person who seeks to satisfy a legal requirement or to discharge an obligation; with respect to the art market, it refers to the obligation of any prospective buyer (either a professional or a dilettante) **to investigate the origin of the artwork, whether it has been legally dealt with and the status of the transferor** (see Article 4 of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995).
- ▶ It also relates to the procedural constraints imposed on a party and resulting from the duty of due diligence.”

Due Diligence

- A pivotal tool for responding to illicit trafficking in cultural property
- The standard-setting position of the 1995 UNIDROIT Convention

Art. 4(4)

*In determining whether the possessor exercised due diligence, regard shall be had to **all the circumstances of the acquisition**, including the character of the **parties**, the **price** paid, whether the possessor consulted any reasonably **accessible register** of stolen cultural objects, and any other **relevant information and documentation** which it could reasonably have obtained, and whether the possessor **consulted accessible agencies** or took any other step that a reasonable person would have taken in the circumstances.*

Due Diligence

- Due diligence in a normative framework and in an ethical framework (professional self-regulation)
- Due diligence in national legislations
- Due diligence in the Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State

Due diligence and illicit trafficking in objects from conflict areas

- ▶ UNSC Resolution 1483 (2003)
- ▶ UNSC Resolution 2347 (2017)

- ▶ Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq
“there exists reasonable suspicion that the goods have been removed from Iraq without the consent of their legitimate owner or have been removed in breach of Iraq’s laws and regulations”

- ▶ Council Regulation (EU) No 1332/2013 of 13 December 2013 amending Regulation (EU) No 36/2012
“where there are reasonable grounds to suspect that the goods have been removed from Syria without the consent of their legitimate owner or have been removed in breach of Syrian law or international law”

The 1970 UNESCO Convention

- Applicable to cultural objects stolen or illicitly exported after the date of entry into force of the Convention in both States;
- The convention refers to domestic regulations;
- Implementation of the convention is of great importance

1970 UNESCO Convention

- ➔ Due diligence while not directly mentioned in the 1970 UNESCO Convention is indicated by „... **that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property**”.

Art. 7 (b) (ii)

„(ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, **that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property**. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

The 1970 UNESCO Convention

- Due diligence appears in the Operational Guidelines for the Implementation of the 1970 Convention (2014);
- The criteria of due diligence should be used in assessing a purchaser's innocence and validity of titles;
- This document indicates recent practices involving the UNIDROIT standard of due diligence;
- State Parties are encouraged to adopt this standard.

Tools to exercise due diligence

- The Database of National Cultural Heritage Laws (Natlaws)
- Directly searchable and non-directly searchable object-based databases
- INTERPOL's Database of Stolen Works of Art
- The ICOM Red Lists
- WCO ARCHEO
- UNODC SHERLOC (the Sharing Electronic Resources and Laws on Crime)

Risk assessment

- Due diligence is burdened with risks:
- No compensation;
- Forged documentation confirming an ownership chain, forged export permits; statements from a producer confirming that an object constitutes a new product;
- Incomplete object's ownership history;
- Vague/No knowledge of an object or objects by the heirs of collectors
- Rightful owner impossible to establish
- Place of origin (region/country) impossible to verify by experts

Additional current and projected support to cultural actors

- The 1995 UNIDROIT Convention Academic Project (UCAP)
- Responsible Art Market (RAM), Arthemis database governed by the Art Law Centre in Geneva
- *The Social platform on endangered cultural heritage and on illicit trafficking of cultural goods*, created within Horizon 2020 (the EU Research and Innovation programme)
- HeritageHelm – online platform for different stakeholders, with navigation through most important websites, databases and open discussion forum (UNESCO Chair on Cultural Property Law, University of Opole)

Conclusions and Recommendations

- Awareness-building campaigns on international and national levels
- Continuation of building networks (such as EU CULT-NET) and strengthening of existing cooperation as part of the process of preventing the illicit traffic of cultural property
- Creating platforms that could provide a forum for different stakeholders
- Online courses for various stakeholders (MOOC)

Conclusions and Recommendations

- A road map focused on the process of establishing the due diligence obligation in national legal systems needs to be created;
- The important role of periodic reporting and suggestions raised in national reports;
- A new document providing guidance in the implementation into national legislation of the 1970 UNESCO Convention and the regulation of due diligence by State Parties should be drafted;
- Establishing rules of due diligence at national levels would offer significant support in future cases and make the restitution pillar of the 1970 UNESCO Convention more operational;

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Journal edited by the team: Santander Art and Culture Law Review
<http://www.ejournals.eu/SAACLR/>



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