

July 15, 2015

Report by Denmark on the implementation of 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

I. Information on the implementation of the UNESCO Convention of 1970 (with reference to its provisions)

1. Ratification of the Convention

The Convention has been ratified by The Kingdom of Denmark on March 26th 2003. It entered in to force 26th June 2003 in the country of Denmark. The convention entered into force in Kalaallit Nunaat (Greenland) 27th of August 2004 and in Føroyar (the Faroe Islands) 17th of July 2008.

The instrument of ratification contained a declaration concerning the geographical application of the convention, and the following declaration:

'The property designated as "of importance for archaeology, prehistory, history, literature, art or science", in accordance with Article 1 of the Convention, are the properties covered by the Danish legislation concerning protection of cultural assets and the Danish Museum Act.

Act on Protection of Cultural Assets in Denmark

The Act on Protection of Cultural Assets in Denmark came into force on 1 January 1987. According to section 2(1) in the Act on Protection of Cultural Assets in Denmark the Act applies to the following cultural assets which are not publicly owned:

- Cultural objects of the period before 1660;
- Cultural objects older than 100 years and valued at DKK 100,000 or more;
- Photographs (regardless of age) if they have a value of DKK 30,000 or more.

In exceptional cases the Minister of Culture can decide that the Act is also applicable to other objects of cultural interest.

Coins and medals are the only cultural objects explicitly exempted from the regulations of the Act.

The above-mentioned assets must not be exported from Denmark without permission from the Commission on Export of Cultural Assets.

Museum Act

According to section 28 of the Museum Act, any person who finds an ancient relic or monument, including shipwrecks, cargo or parts of such wrecks, which at any time must be assumed lost more than 100 years ago, in watercourses, in lakes, in territorial waters or on the continental shelf, but not beyond 24 nautical miles from the base lines from which the width of outer territorial waters is measured, shall immediately notify the Minister of Culture. Such objects shall belong to the State, unless any person proves that he or she is the rightful owner. Any person who gathers up an object belonging to the State, and any person who gains possession of such an object, shall immediately deliver it to the Minister of Culture.

According to section 30 of the Museum Act objects of the past, including coins found in Denmark, of which no one can prove to be the rightful owner, shall be treasure trove (danefæ) if made of valuable material or being of a special cultural heritage value. Treasure trove shall belong to the State. Any person who finds treasure trove, and any person who gains possession of treasure trove, shall immediately deliver it to the National Museum of Denmark.

According to section 31 of the Museum Act, a geological object or a botanical or zoological object of a fossil or sub-fossil nature or a meteorite found in Denmark is fossil trove (danekræ) if the object is of unique scientific or exhibitional value. Fossil trove shall belong to the State. Any person who finds fossil trove, and any person, who gains possession of fossil trove, shall immediately deliver it to the Danish Museum of Natural History" (see letter LA/Depositary/2003/12) "

2. Implementation in the national legal system and in the organization of services

Legislation

The Convention is considered to be implemented by the pre-existing national legislation, which has been amended after the entry into force of the convention, and further expanded by the ratification of the UNIDROIT Convention, and the national legislation implementing that convention.

The legal regime outlined in the declaration following the ratification is still in force, and has been amended in some respects.

The main legal instruments relevant to the 1970 Convention are:

- The Museum Act (lov nr. 473 af 7. juni 2001 with amendments in consolidation act no. 358 of 8. April 2014)
- The Act on Protection of Cultural Assets in Denmark (Act no. 332 of 4. june 1986, with amendments)
- The Act on Return and Transfer of Stolen or Illicitly Exported Cultural Objects (Act no. 521 of 26. may 2010)

- The Act on Return of Cultural Objects Unlawfully Removed from the Territory of a Member State.

Definition of Cultural Objects

The definition of Cultural Objects is outlined in the Act on Protection of Cultural Assets in Denmark and in the Act on Return and Transfer of Stolen or Illicitly Exported Cultural Objects.

§ 2 of the Act on Protection of Cultural Assets in Denmark contain the following definition:

"This act applies to the following cultural assets, which are not public property:

- 1) cultural objects older than the year 1660 AD,
- 2) cultural objects with a value exceeding 150.000 DKR, and which are more than 50 years old.

Stk. 2. Irrespective of the above, the act applies to all photographs with a value exceeding 30.000 DKR.

Stk. 3. The act does not apply to coins and medals.

Stk. 4. The Minister of Culture can decide that the act shall apply to objects not meeting the above criteria, upon proposal by the Danish Commission on the Export of Cultural Assets."

The value limits are adjusted annually by regulation of the Ministry of Culture. This took place most recently by regulation 231 of 22th February 2015, setting the value limit for cultural objects at 164.000 DKR.

§ 3 of Act on Return and Transfer of Stolen or Illicitly Exported Cultural Objects, contains the following definition:

"For the purposes of this act, the term "Cultural Object", means an object which is an object which is of importance for archeology, prehistory, history, literature, art or science and which belongs to one of the categories listed in Annex 1 to this Act."

Annex 1 contains a comprehensive list of object categories.

Organization

The Danish Ministry of Culture has the general responsibility for the regulatory activities directed at illicit trade in cultural objects. The ministry undertakes coordination between the specialized unit for cultural assets, museums, the police, the customs authority, EU, UNESCO, the armed forces and other relevant bodies. The ministry is responsible for the national legislation, EU-legislation and international treaties in the field.

The enforcement is divided between several government bodies.

The Minister of Culture has established a specialized unit responsible for issuing export licenses for cultural objects in accordance with the national legislation and EU legislation applicable to the area - The Danish Commission on the Export of Cultural Assets. This commission is composed of, *inter alia*, executive staff from the national institutions in the fields of art, cultural history, libraries, archives and natural history.

The customs authority is responsible for the enforcement of restrictions on import of cultural objects and export of cultural goods to third countries.

The police are responsible for enforcement in relation to cultural objects stolen or illicitly traded in Denmark.

The cooperation between the Danish Commission on the Export of Cultural Assets and the customs authority is regulated by a formal agreement between the two bodies, and both bodies have appointed liaisons for the purpose of this cooperation.

Coordination meetings between the Danish Commission on the Export of Cultural Assets and the customs authority are held annually and *ad hoc*.

The cooperation between heritage authorities and the police in the day to day work is undertaken by the pertinent regional police departments. Cooperation with INTERPOL is maintained by the national investigation centre within the national police, which have the functions of the National Central Bureau (NCB) in the international police cooperation.

3. Inventories and identification

All public and publicly authorized museums keep mandatory inventories in a central national register, which contain *inter alia* the Object ID metadata.

The national inventory is in accordance with SOA principles, which potentially facilitates data mapping to Object ID or other registration standards.

There is no public list of national treasures. Important objects considered national treasures are covered by internal, confidential security procedures.

The Ministry of Culture maintains an advisory board on security issues, see: <http://kum.dk/om-ministeriet/organisation-og-institutioner/bestyrelser-naevn-raad-og-udvalg/udvalg/kulturministeriets-sikringsudvalg/> (in Danish).

The advisory board covers museums, archives and libraries.

4. Archaeological excavations

Most archaeology in Denmark is financed by developers working on the land or sea territory. The Museum Act provides for state ownership of all finds of cultural objects in the applicable territory, which covers the land territory, the territorial waters, and the contiguous zone, which is the sea territory within 24 nautical miles from the baselines in accordance with the UNCLOS.

The Museum Act provides for archaeological investigations being undertaken by authorized personnel before development projects are commenced, as well as the temporary suspension of ongoing works, if archaeological objects are found, until authorized archaeological investigations have taken place.

Whenever an activity with the potential to interfere with cultural heritage is to be undertaken on land or at sea, there is a hearing among all relevant authorities, including the heritage authorities before a license is granted. In some cases, there are mandatory public hearings, where private parties, including NGOs can comment on an application for an activity, before the decision is taken, or alternatively make a petition when the decision has been taken.

Some large public development projects, i.e. new bridges, highways or railroads, are regulated by specific legislation. In these cases, the cultural heritage aspects are considered in cooperation between the relevant ministries.

There is not a general recurrent problem of illegal excavations in Denmark. The legal framework for archaeology and the regulation of finds is considered to be well known by the community of amateur archaeologists, including divers.

5. Monitoring of the export and import of cultural property

The surveillance of the art and antiques market in Denmark is not within the area of responsibility of The Ministry of Culture. The customs authority monitor the international trade in cultural objects, in the same manner as e.g. control of trade in endangered species covered by the CITES convention.

In this context, there is an ongoing cooperation with INTERPOL and the customs union. INTERPOL notifies the police and customs of any increased risk, which has been the case recently in regard to stolen or illegally excavated artifacts from Syria.

The Act on Protection of Cultural Assets in Denmark (Act no. 332 of 4th of June 1986, with amendments), the Act on Return and Transfer of Stolen or Illicitly Exported Cultural Objects and the Act on Return of Cultural Ob-

jects Unlawfully Removed from the Territory of a Member State and the Museum Act all apply to cultural property.

The Act on Protection of Cultural Assets in Denmark contains provisions on export control of cultural assets of any origin. The Act on Return and Transfer of Stolen or Illicitly Exported Cultural Objects, which implement the UNIDROIT Convention in Denmark have provisions for return of cultural objects to the countries of origin removed after the entry into force of the convention in Denmark, in accordance with the convention. The Act on Return of Cultural Objects Unlawfully Removed from the Territory of a Member State contains the scheme applicable to cultural goods removed from an EU member state from 1st of January 1993 or later.

There are no recent cases of restitution of stolen cultural property in Denmark. There have been several cases of return of cultural property removed in earlier times being returned their country of origin on amicable terms. Among the more notable cases are a large basalt lion from the National Museum of Denmark removed from Syria in the 1930's, which was returned to Hama in Syria in 1999, formally as a long term loan, and a large bronze lion originating in a part of Denmark, which is now a part of Germany, which has been returned to its original location in Germany in 2011.

Before Denmark ratified the UNIDROIT Convention, there was a notable case involving Chinese and pre-Columbian artifacts. The charges were dismissed on the grounds of lack of legal basis for the prosecutors claim for the return of the artifacts to the relevant country of origin, and lack of evidence of the objects being stolen or illicitly removed from their countries of origin. Subsequently, amicable solutions were reached between the collector and P.R. China concerning 156 Chinese artifacts which were returned to China and between the collector and Mexico, Peru, Colombia, Costa Rica and Ecuador concerning 644 pre-Columbian artifacts which were returned to their countries of origin.

After the implementation of the UNIDROIT Convention in Denmark, there are few legal obstacles to the restitution of illicitly exported cultural property. Moreover, restitutions are sometimes agreed on amicable terms, also in situations, where the original export has not been illicit, or when the legislation does not apply to the object in case for other reasons.

6. System for trade-in, acquisition, ownership and transfer of cultural property

The surveillance of the art and antiques market in Denmark is not within the area of responsibility of The Ministry of Culture, and no reliable market data for this segment is available at present.

The Danish Commission on the Export of Cultural Assets is monitoring auction catalogues, in order to notify the auction house of any reservations in regard to the possibility for buyers to export the object in question.

The rules applicable to the arts and antiques market in Denmark are considered to be well known by all major market agents.

Museums are required to comply with the ICOM code of ethics, i.e. in relation to acquisitions. According to section 33 of The Museum Act, all museums are prohibited from acquiring any object, which has been illicitly exported from another country in violation of the laws of that country, and where an international agreement (ie. The UNIDROIT convention) applies.

Property rights

As stated above, all archaeological objects, including yet unfound objects on land or at sea belong to the state, following the Museum Act. There is a scheme for compensation of the finder.

Provisions on return of cultural objects generally contain a scheme for economic compensation for the owner, provided that the owner has observed due diligence in the acquisition of the object.

The requirement for due diligence in cases with respect to the scheme of directive 2014/60/EU will be harmonized by 18th of December 2015. All market agents are required to exert due diligence in all acquisitions.

There is no absolute rule of inalienability for cultural objects, but deaccessions of objects from the collections of publicly funded museums are subject to an approval procedure with the Ministry of Culture.

In the event of export restrictions being imposed on cultural objects, the Danish Commission on the Export of Cultural Assets has an obligation to offer the owner to buy the pertinent object for its estimated market value.

7. Bilateral agreements

Bilateral agreements concerning return of cultural objects are primarily undertaken by the owners or museums. In the case of deaccession from a public museum collection, the deaccession is subject to an approval procedure, but deaccessions normally occur on the grounds of objects deemed of little or no scientific importance.

On some occasions the state has entered into agreements concerning return of cultural objects, as referred to above in section 5.

There are no available statistics on bilateral return agreements.

II. Code of ethics, awareness raising and education

Ethical standards

The UNESCO International Code of Ethics for Dealers in Cultural Property is not perceived to be universally known, though its principles seem to be generally observed.

The ICOM code of ethics for museums are well known in the Danish museum community, and public museums and publicly authorized museums are required to comply with the code, in accordance with section 33 of The Museum Act.

Awareness raising and education

The “One hundred missing objects” series and the ICOM Red Lists disseminated and read in a very limited extent.

A few years back, the Ministry of Culture, the Ministry of Foreign Affairs and the customs authority made a joint campaign titled “Do you have a treasure in your suitcase”, which was aimed at tourists in risk of bringing home souvenirs, which were part of the cultural heritage of the country of origin.

It is indeed possible, that UNESCO could make valuable contributions to future awareness campaigns in the field.

III. Cooperation with other international and regional agencies

Police

The national investigation center in the national police is liaison to INTERPOL. The national investigation center holds the functions of the National Central Bureau (NCB) in the international police cooperation.

In the event of suspected illicit trade in cultural goods, the relevant district police will undertake the investigation, aided by the national investigation center and the heritage authorities.

Criminal law provides for punishment of fraud and theft related to cultural property, and all judges can undertake offences related to cultural objects. There are penal provisions in the penal code as well as in the sector legislation.

The use of the INTERPOL database is decided on a case to case basis.

There are no formal cooperation with the United Nations Office on Drugs and Crime (UNODC), but if offences related to cultural objects are suspected in relation to drug offences or offences related to human trafficking, the relevant police department can contact the cultural authorities directly.

Customs

The customs authority cooperates with WCO and with customs authorities in other EU countries in particular, as well as with the police.

Customs officers have knowledge in this field, but there is no specific training program concerning cultural heritage in a customs context.

The format of the export licenses follows the rules of Commission Implementing Regulation (EU) No 1081/2012 of 9 November 2012, for the purposes of Council Regulation (EC) No 116/2009 on the export of cultural goods.

European Union

As a member of EU, Denmark has implemented the directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State from the original deadline for implementation, and the directive has been in force since 1993. The directive is applicable to all cultural objects removed 1st of January 1993 or later.

The Council Regulation (EEC) No 3911/92 of 9th December 1992 on the export of cultural goods as amended, has been in force since 1st of April 1993, and is directly applicable in the country of Denmark.

The Danish Commission on the Export of Cultural Assets is the executive body responsible for the administration of export licenses for cultural goods to be exported from the customs territory of the European Community to third countries. In this context the commission is also processing cases initiated by other EU member states, concerning cultural goods originating from Denmark, which are sought to be exported from other EU member states to third countries outside the community customs territory.

Neither Greenland nor the Faroe Islands are members of EU, and the EU legislation does not apply in these territories.

The EU return procedure has been implemented as a separate act from the outset. As a consequence of the recast directive 2014/60/EU, Denmark is in the process of passing new legislation, to reflect the changes following the new directive.

IV. Emergency situations and heritage at risk

Natural disasters and armed conflicts are part of the risk assessments carried out by museums, as part of their security management.

The Ministry of Culture advisory board on security issues monitors the security of all institutions covered by the Danish national indemnity scheme.

Denmark has ratified the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its first protocol (1954) and is presently considering accession to the second protocol as well. The second protocol is however, neither applicable to Iraq nor Syria, since neither have acceded to this protocol.

The Security Council Resolution 2199, the European Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq, the European Council Regulation (EU) No 1332/2013 of 13 December 2013 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria and the European Council decision (2013/760/CFSP) of 13 December 2013 amending Decision 2013/255/CFSP concerning restrictive measures in view of the situation in Syria are all applied in Denmark.

At a Nordic Council meeting in the Faroe Islands held on 12th of May 2015, the Nordic culture ministers adopted a declaration calling for action to be taken to fight against the illegal trade in cultural objects from Iraq and Syria. In their public statement they stressed that the looting and smuggling of objects of historical and cultural significance from Iraq and Syria is a very serious problem and they strongly urged the Nordic academic and professional communities – e.g. collectors, traders, art dealers, antique shops and museums – to exercise extreme caution. To alert market agents and to share information and knowledge the ministers agreed on convening a Nordic conference to be held in Norway this autumn.

The cultural heritage authorities, the police and the customs authorities are all aware of Security Council Resolution 2199, which is in line with the trade restrictions in force before the resolution. The police have an increased vigilance towards cultural heritage from Iraq and Syria, and upon finding suspected cultural objects from these countries, the cultural heritage authorities facilitate contact to i.e. classical archaeologists, with working experience from the area.

V. Other legislative, legal and administrative measures taken by the State

1. Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was ratified by Denmark 1st of January 2011, and came into force in Denmark 1st of July 2011.

To meet the requirement of this convention, the Act on Return and Transfer of Stolen or illicitly Exported Cultural Objects (Act no. 521 of 26. may 2010) was passed in 2010, which came into force 30th November 2010.

Claims addressed to Denmark for the restitution, or requests for the return of cultural objects brought by a State under Article 8 in the Convention are to be submitted directly to the courts of Denmark.

The 1995 UNIDROIT convention does not at present apply to Greenland and the Faroe Islands.

2. Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Denmark is not currently member of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Country of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP). The work of the committee is followed by the permanent Danish delegation to UNESCO, and in the context of state party meetings for the 1970-Convention and other relevant conventions.

3. UNESCO Database of National Cultural Heritage Laws

The legal staff of the Danish Agency for Culture has reviewed the present entries from Denmark into the UNESCO Database of National Cultural Heritage Laws, and found that an update to the entries is needed. This will be undertaken in the near future.

4. The 1954 Hague Convention and the Rome Statute

Denmark is party to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the 1st Protocol to this convention. Denmark is also a party to the Rome Statute of the International Criminal court. As a consequence of this, any violation of the Hague convention can be enforced by Danish military forces as war crimes, in the event Danish forces taking part in an armed conflict as defined in international law.