

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

CUBA

I. Information on the implementation of the UNESCO Convention of 1970

1. Ratification of the Convention

Cuba ratified the Convention on 30 January, 1980.

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

(a) References of the principal national regulations adopted in order to implement the 1970 Convention.

The following legislation implements the 1970 Convention: Law 1 on *Protection of Cultural Heritage* (1977), Decree 118 on *Regulation for Execution of the Law of Protection of Cultural Heritage* (1983), Law 2 on *National and Local Monuments* (1977), Decree 55 on *Regulation for Execution of the Law of National and Local Monuments* (1979), Law 23 *On Municipal Museums* (1979), Law 106 on the *National System of Museums*, and Resolution 57 *From the Minister of Culture*.

(b) Definition of “cultural property” used by the national laws

Decree 118 establishes “cultural property” as those objects that comprise a nation’s cultural heritage.

(c) Specialized units

The police, customs, and the Ministry of Culture work with specialized units to prevent and combat illicit traffic and preserve heritage. The Cultural Heritage Protection Delegation is composed of members from the National Registry of Cultural Objects, the Ministry of Interior, the Customs Bureau, and the Directorate of the Security and Protection of the Ministry of Culture.

(d) Administrative coordination

The Cultural Heritage Protection Delegation convenes to coordinate the actions of each member with respect to their abilities and interests concerning cultural heritage.

(e) Working meetings

The Delegation meets three times a year to analyze the causes and conditions behind the theft and loss of cultural property.

3. Inventories and identification

(a) Inventories

All 318 museums in the country use an inventory system that periodically updates the Register of Entries, Removals, and Transfers, the digitalization of which is currently in progress. The National Register of Cultural Objects is composed of the inventories of all central administrative bodies of the State, organs of local administration, non-governmental organizations, and individuals.

(b) Definition of “cultural property” and “national treasures”

“Cultural property” is identified as objects of cultural heritage or those in museum collections. It is classified by a grade of cultural value (I, II, and III). There exists a Catalog of Grade I cultural property.

(c) Reference to the Object ID standard

The Object ID standard is used in the National Register of Cultural Objects. Reports of stolen, lost, or damaged objects are circulated among provincial registers, the National Police, and the Customs Bureau.

(d) Systems to combat theft and to train staff

The current system encourages training for personnel in museums, archives, and libraries. All institutions that handle cultural objects employ a Security and Protection Plan equipped with security technology and specialized personnel. Plans in case of natural disaster or wartime also exist.

4. Archaeological excavations

(a) Basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force

The basic principles on excavations are articulated in the aforementioned Laws 1 and 2 of national legislation, as well as Decree 55 *On Archaeological Investigations and Others*. The National Monument Commission's Regulation for Archaeology, entered into effect in 2007, improved the organization and control of archaeological activity. Of the 39 applications for excavation between 2008 and 2010, 13 were to export archaeological material to foreign laboratories. All applicants are registered on the National List of Professionals in Archaeology, of which there are currently 65 members.

(b) Illegal excavations

There is not a recurrent problem of illegal excavations.

5. Monitoring of the export and import of cultural property

(a) Estimate of the scale of the illicit export or import of cultural property (statistics)

The illicit import of cultural property is virtually nonexistent. In the years between 2008 and 2010, 30 instances of theft were reported. 176 of the 344 stolen objects (~50%) were recovered. Statistics may be affected by retroactively filed reports or a lack thereof.

(b) Problem of the illicit export of cultural property

The illicit export of cultural property is a recurring problem because of the continuous increase in the number of manufactures and collectors not subject to control. The country's economic situation and an influx of tourists who claim to be ignorant of the law further contribute to the problem. As such, the legal supervision of customs officials and specialists in the Register of Cultural Objects is necessary to prevent the undocumented (export certificate or official sales invoice necessary) exportation of cultural property.

(c) Main rules for monitoring the export and import of cultural property

Resolution 57 [See 2(a)] states that any person looking to export cultural property must apply for an export certificate with the National Register of Cultural Goods or solicit an original sales invoice from the relevant commercial business. Such measures protect all cultural objects, save those handicrafts and other objects that do not constitute cultural heritage.

(d) Rules provided for the restitution of illicitly imported cultural property

Museums may not acquire property unless the legitimacy of its provenance can be established. Transfers of ownership are documented with the Register of Cultural Objects once the "one hundred missing objects" list, Object ID, and registers of un-recovered objects of other countries are consulted.

(e) Obstacles encountered in securing the restitution of illicitly exported cultural property

The primary obstacles to securing restitution are administrative and legal ones. Judges determine the restitution of a stolen and illicitly exported object according to the value paid for it. Given the hefty costs of legal representation, however, filing a claim for restitution is often impractical.

(f) Circumstances in securing the restitution of a stolen cultural object

Cuba has not had success in securing the restitution of stolen objects. In one case, an object was successfully removed from an auction house through legislative intervention, but not recovered.

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

(a) Description of the cultural goods market in the country (financial volume of the market, number and turnover of auction houses including via the Internet).

There is no information concerning this question.

(b) Rules governing trade in cultural goods, measures in place for such trade (maintenance of a police register), in particular through the Internet (reference to the basic measures proposed by UNESCO, INTERPOL and ICOM)

The majority of trade in cultural goods is done by commercial businesses with a license from the Ministry of Culture. Trade in decorative arts over 50 years old is authorized by the Heritage Protection Commission, then stamped, and inscribed in the National Register of Cultural Objects. Independent manufactures, artisans, and painters sell their product directly or through commercial businesses and may be exported with the necessary invoice or export certificate. Cuba does not maintain a police register, as the economic activity of antique dealers is not recognized by the State.

(c) Existing Measures to control the acquisition of cultural property

See 5 (d) above. The insular characteristic of Cuba presents an advantage for controlling illicit importation and exportation.

(d) Existing legal system concerning ownership of cultural property:

The principle of inalienability does apply to the national collections of cultural objects and those objects found as a result of archaeological excavation.

All objects without an owner, those found during legal excavations (terrestrial and maritime, alike), and those found by chance are property of the State. Unauthorized excavation is a crime sanctioned by the Penal Code.

(e) Special rules on the transfer of title deeds with respect to cultural property

The transfer of cultural property is regulated by law. Transfers are authorized by the Notary of Inheritance Adjudication and must be inscribed to the Register of Cultural Objects within 60 days. The Register does not alter the title of the object.

7. Bilateral agreements

(a) Bilateral agreements concluded with other countries on the import, export and return of cultural property

Agreements were concluded with Bolivia and Colombia in 2010. Other proposals are now in progress.

(b) Conditions settled by the importing country with regard to the admissibility of requests for restitution from a country of origin

Both countries must be signatories to the 1970 Convention, and the cultural objects must be inventoried.

(c) Administrative aid or any other type of cooperation with neighbouring countries, particularly with respect to police and customs services?

See Section III below.

II. Code of ethics, awareness raising and education

1. Ethical standards

(a) Application of the UNESCO International Code of Ethics for Dealers in Cultural Property and the ICOM for museums

The ICOM Code of Ethics is used for the application of formation and training programs and in the daily affairs of museum professionals.

2. Awareness raising and education

(b) Dissemination of the “One hundred missing objects” series and the ICOM Red Lists

These lists are used as a mechanism to develop a better understanding of how to preserve historical memory and protect the cultural objects most susceptible to illicit trafficking.

(c) Description of activities carried out to raise the awareness of the authorities and educate the public, children in particular, regarding the serious damage that can be caused by illegal excavations, theft of cultural property and illegal export.
How far can UNESCO contribute to these activities?

Programs established in schools and educational activities specifically dedicated to the protection of heritage raise awareness to the link between the community at large and the prevention of illicit trafficking. The body of Associated Schools works with UNESCO on the topic of heritage protection.

III. Cooperation with other international and regional agencies

Police

(a) State of national cooperation with INTERPOL. Specialized police services to whom the heritage officials can call on for enquiries, legal proceedings and punitive measures

The Operational Cooperation Group provides for coordination between the National Revolutionary Police Directorate, other police services, and INTERPOL. It communicates interests at the national level with the central office of INTERPOL in Havana. Should a specialized police force wish to exchange information or conduct investigations, requests must be made to the National Police.

(b) Check on the INTERPOL database on stolen objects when a cultural object is stolen. Transmission of information on the persons implicated in the theft of cultural property

The INTERPOL database is checked in case of theft. In addition, the relevant information is sent to the Customs Bureau and the National Register of Cultural Objects.

(c) Specific training program for members of police services

Members of police services do not follow a specific training program; rather, they develop skills through courses offered by Cuban specialists.

(d) Punishment of fraud and theft related to cultural property via criminal law provisions. Specialized judges in this field

Illicit excavations and crimes against cultural heritage (damaging cultural objects, illegally removing cultural property from the country, illegal possession, falsifying works of art) are sanctioned by the Civil Code in force. No judges are specialized in the field.

(e) Cooperation with the United Nations Office on Drugs and Crime (UNODC)

Cooperation with the UNODC proceeds with respect to the topic at hand.

Customs

(f) Status of cooperation with the World Customs Organization. Specialized customs services which could assist heritage officials in preventing the illicit export of cultural property
(g) Specific training program for members of the customs administration

Customs officers stationed at borders, ports, and airports must be properly prepared to take measures to combat illicit trafficking. The National Institute of Customs Education promotes knowledge of x-ray technology, artistic appreciation, legislation in force, and the national and international state of illicit trafficking. In cases of illicit activity, relevant information is entered in the WCO database and circulated among local customs officers and the National Customs Bureau, which cooperates with various organs: the System of Customs Council, the National Heritage Council, the National Register of Cultural Objects, the National Library, the Technical Investigative Police, and the Anti-Fraud Sector, among others.

(h) Reference to the UNESCO-WCO Model Export Certificate for Cultural Objects

The National Register of Cultural Objects has used the same export certificate since 1995. It includes many aspects of the UNESCO/WCO model and corresponds with Cuba's current needs and means.

European Union - Application of the Council of the European Communities Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State

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

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

Cuba has not ratified the 1995 UNIDROIT Convention, but recognizes its utility. Cuba has not ratified the 1995 Convention, as it deems the dictates of the 1970 Convention adequate.

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

Cuba has participated in the Intergovernmental Committee as an Observer, most recently in the 15th session.

3. UNESCO Database of National Cultural Heritage Laws – contribution and update

Efforts made in 2005 to contribute legislative texts to the database were ended when Cuba did not find a way to upload the information to the site. UNESCO was informed of the obstacle.

