

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

JAPAN

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

1. Ratification of the Convention

Japan ratified the Convention on 9 September 2002.

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 Law Concerning Controls on the Illicit Export and Import of Cultural Property (Law No. 81) was promulgated and came into force in 2002. This text fulfills legal obligations of the 1970 Convention.

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

Article 2 of the abovementioned law stipulates that the term "cultural property" refers to domestic cultural property and property which a foreign government that is a State Party to the Convention has designated in accordance with Article 1 of the Convention.

The term "domestic cultural property" refers, then, to property which is among items belonging to the categories that are enumerated in Article 1 of the Convention and has been designated in the Law for the Protection of Cultural Properties (Law No. 214, 1950) as:

- "Important Cultural Property" (Article 27, Section 1)
- "Important Tangible Folk Cultural Property" (Article 78)
- "Historic Site, Place of Scenic Beauty or Natural Monument" (Article 109, Section 1)

The term "cultural property" is also defined by this law.

(c) Specialized units

No specialized units have been established; however, the Office for International Cooperation on Cultural Property in the Traditional Culture Division within the Agency for Cultural Affairs is in charge of dealing with relevant issues. The Agency is affiliated with the Ministry of Education, Culture, Sports, Science and Technology (MEXT).

(d) Administrative coordination

Administrative coordination is apparent between MEXT, the Ministry of Foreign Affairs of Japan (MOFA) and the Ministry of Economy, Trade and Industry (METI). Their coordination is stipulated in Article 3 of the Law Concerning Controls on the Illicit Export and Import of Cultural Property.

(e) Working meetings

There are no regular meetings; however, a meeting is held whenever necessary among the 3 organizations mentioned in 2 (d) above.

3. Inventories and identification

(a) Inventories

For example, the Inventory of Important Cultural Property shall describe the title and number of such national treasures or important cultural properties. If they are movable objects, the Inventory shall

describe the size, weight, materials, other features, designation number, custody location and owner's name and address.

(b) Definition of "cultural property" and "national treasures"

The Law for the Protection of Cultural Properties (Law No. 214, 1950) provides a clear definition of national treasures in Article 27. The Inventory of Important Cultural Property includes the information on the title and number of such national treasures or important cultural properties.

(c) Reference to the Object ID standard

Not all cultural properties are references using the Object ID. However, the national treasures and important cultural properties designated by the Ministry of Education, Culture, Sports, Science and Technology under Article 27 of the Law for the Protection of Cultural Properties are identified with specific numbers upon their designation.

(d) Systems to combat theft and to train staff

When a cultural institution, such a museum, acquires foreign cultural property, it is supposed to confirm whether or not such a property is a stolen item designated as "Specific Foreign Cultural Property" defined under Article 3 of the Law Concerning Controls on the Illicit Export and Import of Cultural Property. In addition, as stated in the ICOM Code of Ethics, cultural institutions are supposed to confirm the owner's history of such cultural properties at the time of acquisition.

Moreover, Article 7 of the same Law stipulates that the government shall endeavor, through educational activities and other awareness campaigns, to deepen public understanding of the prevention of the illicit import, export, and transfer of ownership of cultural property and also to obtain public cooperation in this regard.

4. Archaeological excavations

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

In case of excavation at an archaeological site or civil engineering work in an area which probably contains a treasure trove, a notification should be submitted to the local government.

If a treasure trove can be hardly preserved due to a development project, excavation for survey and recording shall be conducted prior to construction with the financial cooperation of the developer. However, if it is not appropriate to require the constructor to share the financial burdens (e.g. individual housing construction), the local government may conduct the research excavation with a government subsidy. If any cultural object is found through excavation, the finder should bring it to a police station as long as the owner is unknown. If the object is recognized as potential cultural property, the head of police shall submit it to the Board of Education in the region which examines whether or not it is truly a cultural object. If the owner of the treasure trove remains unknown, it belongs to the prefectural authority.

(b) Illegal excavations

There is no recurrent problem of illegal excavation in Japan.

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 Agency of Cultural Affairs provides statistics for "Important Cultural Property", "Important Tangible Folk Cultural Property", and "Historic Sites, Places of Scenic Beauty, and Natural Monuments" in Articles 27, 78, and 109, respectively, of the Law for the Protection of Cultural Properties.

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

Exportation

In principle, the export of “Important Tangible Folk Cultural Property” and “National Treasure” is banned under Article 44 of the Law for the Protection of Cultural Properties. The temporary export is exceptionally allowed when the Commissioner for Cultural Affairs deems it especially necessary for international cultural exchange. Article 78 of this Law stipulates that the permission is also required to export “important tangible folk cultural properties”.

Importation

“Specified Foreign Cultural Properties”, as designated under Article 3 of the Law Concerning Controls on the Illicit Export and Import of Cultural Property cannot be imported to Japan without approval. The information on this import prohibition is provided through the Official Gazette and the website of the Agency for Cultural Affairs.

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

Since the ratification of the 1970 Convention, the victim of a theft of cultural property may file for recovery of the object(s) from the possessor within a period of 10 years from the date of the theft (see Article 3, Section 1 of the Law Concerning Controls on the Illicit Export and Import of Cultural Property).

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).

As there are various kinds of cultural property and the volume of trade is very large, the Agency for Cultural Affairs has no information.

(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)

Any person who desires to onerously alienate an object of “Important Cultural Property” or “Important Tangible Folk Cultural Property” designated under the Law for the Protection of Cultural Property shall first file, in writing, the Commissioner for Cultural Affairs an offer of sale of the object to the State, stating therein the person whom it is to be alienated, the estimated remuneration for alienation and any other matters stipulated by a MEXT ordinance (Articles 46 and 83 of the Law for the Protection of Cultural Property).

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

“Specified Foreign Cultural Properties” designated under Article 3 of the Law Concerning Controls on the Illicit Export and Import of Cultural Property cannot be imported to Japan without authorization. The information on this import prohibition is provided through the Official Gazette and the website of the Agency for Cultural Affairs. Importation of such items without approval shall be punished under the Foreign Exchange and Foreign Trade Law or the Customs Law.

When museums and cultural institutions acquire foreign cultural property, they are supposed to confirm whether it is “Specified Foreign Cultural Properties” or not. Moreover, they are also supposed to make sure of the owner’s history of such cultural properties at the time of acquisition in conformity with the Code of Ethics drawn up by ICOM.

(d) Existing legal system concerning ownership of cultural property

Article 4 of the Law for the Protection of Cultural Property stipulates that the general nation shall faithfully cooperate with the measures taken by the central and local governments to achieve the purpose of the

present law. An owner of an object of cultural property and the other persons concerned therewith, being conscious that the cultural property is a valuable national asset, shall preserve it with a good care for the public and promote its cultural utilization, such as opening it to public viewing.

An owner of important cultural property designated under Article 27 of this Law shall take good care of it and nominate an organization, whenever necessary, for management. The government can advise its owner on the proper management. The government should be notified of the transfer of ownership of important cultural property along with the required information. The sale of it should be proposed to the government before private dealings as stated in 6 (b) above.

Archaeological materials of historical and scientific significance can be designated as "Important Cultural Property" under Article 27 of this Law if they are deemed important by the government.

7. Bilateral agreements

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

None

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

Japan has signed the Customs Mutual Assistance Agreement/Arrangement with 20 countries and regions. There is no such aid or cooperation with police services.

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

To raise public awareness, the ICOM Code of Ethics was translated into Japanese and published in a pamphlet about the Law Concerning Controls on the Illicit Export and Import of Cultural Property. This document is available on the website of the Agency for Cultural Affairs.

2. Awareness raising and education

(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?

The Agency for Cultural Affairs produces pamphlets and posters for the public and children. The website for the 1970 Convention and the domestic Law Concerning Controls on the Illicit Export and Import of Cultural Property is another tool for public education.

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

There is no specialized police service which is dedicated only to stolen cultural property in Japan. When the NCB (National Central Bureau) of Tokyo receives requests for issuance of "INTERPOL's Most Wanted Stolen Works of Art" from local police forces or other competent agencies, it makes the necessary arrangements to issue them and share relevant information with other INTERPOL Member countries. NCB Tokyo also serves as a contact point for requests for mutual legal assistance from other countries via ICPO route.

(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

At the request of local police forces, NCB Tokyo registers the information on stolen cultural property in the database and forwards to INTERPOL the information on the persons involved in the theft of cultural property.

(c) Specific training program for members of police services

Japanese police services do not follow such a training program.

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

Theft of cultural property is punishable under Section 235 of the Japanese Penal Code. Such offense shall be punished by imprisonment with work for not more than 10 years or a fine of not more than 500,000 yen. Fraud is punishable under Section 246 of the Japanese Penal Code. Such offense shall be punished by imprisonment with work for not more than 10 years. Transportation, retention or arrangement of disposal of stolen cultural property is punishable under Section 256 of the Japanese Penal Code. Such offense shall be punished by imprisonment with work for not more than 10 years or a fine of not more than 500,000 yen when committed for compensation.

There are no judges specialized in this field. Cases in this area shall be handled the same as cases of fraud and theft related to other property.

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

Japan does not have particular cooperation with UNODC in the field of the illicit import, export and transfer of ownership of cultural property.

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

The information on Customs seizures and offenses is shared among the WCO Members through the database which is a part of a global network known as the Customs Enforcement Network (CEN), developed by the WCO. The information on seizures and offenses relating to cultural heritage is also included in the database. Customs administrations can assist heritage officials through checking the documents required by laws and regulations other than the Customs Laws at the time of examination and inspection on exported/imported cargo.

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

Japan has not ratified the UNIDROIT Convention.

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

A Member state since 2007, Japan participates in all the ICPRCP meetings.

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

The latest update of the database concerning Japanese national cultural heritage law was done in July 2010. Japan had previously checked and revised the database at the written request of the UNESCO Secretariat. The data has been revised to reflect new national legislation, including successive amendments.