

JAPAN

NATIONAL REPORT ON THE IMPLEMENTATION OF THE 1970 CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

2011 - 2015

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

1. Ratification of the Convention

- (a) Has this Convention already been ratified?

Japan has concluded the Convention in September 2002. (Deposit of its instrument of acceptance: September 2002)

- (b) If not, please indicate, where applicable: N/A

- the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term);
- obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;
- the extent to which UNESCO can assist in completing the process?

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

- (a) Give the references of the principal national regulations adopted in order to implement the 1970 Convention?

In order to implement the 1970 Convention, Japan has enacted the “Act on Controls on the Illicit Export and Import and other matters of Cultural Property” in 2002. In addition, all relevant national laws and regulations were amended to ensure the implementation of the Convention.

- (b) A definition of “cultural property” agreeing with the definition proposed by the 1970 Convention is important in order to increase the effectiveness of international cooperation. State what definition is used by the national laws of the country concerned.

The “Act on Protection of Cultural Properties” defines cultural properties as follows (cultural properties that cannot physically be imported, exported, or otherwise transferred are omitted as below):

(1) buildings, paintings, sculptures, applied crafts, calligraphic works, classical books, ancient documents, and other tangible cultural products which are of high historical or artistic value for Japan (including lands and other objects which are combined with them altogether to embody such a value): archaeological and other historical resources of high scientific value (hereinafter referred to as “Tangible Cultural Property”);

(2) (i) manners and customs related to food, clothing and housing, to occupations, to religious faiths, and to annual festivals, etc.;(ii) folk performing arts; (iii) folk skills; (iv) clothes, utensils, houses and other objects used therefor which are indispensable to the understanding of changes in the mode of life of Japan (hereinafter referred to as “Folk Cultural Property”).;

(3) (i) shell mounds, tumuli, sites of fortified capitals, sites of forts, sites of castles, monument houses and other sites, which are of significant historical or scientific value for Japan; (ii) gardens, bridges, gorges, sea-shores, mountains, and other places of scenic beauty, which are of significant artistic or aesthetic value for Japan; (iii) animals (including their habitats, breeding areas and trails), plants (including their self-seeded areas), and geological features and minerals

(including the areas where peculiar natural phenomena are recognizable), which are of significant scientific value for Japan (hereinafter referred to as "Monuments").

- (c) Have specialized units been established in order to prevent and combat trafficking and ensure international cooperation for the protection of cultural heritage? Within the Heritage Department? In other government departments (police, customs)?

The Japanese Agency for Cultural Affairs is the national authority managing cultural properties. Where an illicit import or export of cultural properties occurs, the Agency cooperates with other government bodies such as the Ministry of Foreign Affairs, police and customs authorities.

- (d) Describe briefly the administrative coordination of the activities of these specialized units, especially with the police and customs authorities.

As mentioned in 2.(c), where an illicit import or export of cultural properties occurs, the Agency cooperates with other government bodies such as Ministry of Foreign Affairs, police and customs authorities.

- (e) Are working meetings held to enable police officers, customs officials and ministerial representatives to meet and coordinate their activities?

Where an illicit import or export of cultural properties occurs, relevant authorities such as the Ministry of Foreign Affairs, police or customs authorities meet and cooperate with the Agency for Cultural Affairs.

3. Inventories and identification

- (a) State briefly the extent to which inventories provide for the risks of misappropriation and theft.

Japan has compiled an inventory in accordance with the Act on Protection of Cultural Properties. The inventory of tangible cultural properties consists of "Important Cultural Properties" which are designated by the national government. The inventory includes comprehensive information of the designated cultural properties: the name, the physical features such as size, material and appearance, information on the owner or owners and other identifying facts.

- (b) Specify the degree of precision, at the national level, of the definition of "cultural property" covered by international conventions (see above 1.2(b)). State whether "national treasures" are identified in an official, tentative or exhaustive list.

The provisions of the 1970 Convention cover the cultural properties designated under the Act on Protection of Cultural Properties, as mentioned in Section 2.(b). National Treasures and Important Cultural Properties are identified and listed in an official and exhaustive inventory, as mentioned in Section 3.(a).

- (c) To what extent is the Object ID standard used? Is the standard adapted to the State's needs?

Any property designated as an Important Cultural Property cannot be exported, except when deemed appropriate by the Commissioner for Cultural Affairs. Where the Commissioner has allowed an Important Cultural Property to be exported under special circumstances, a report detailing the identifying facts listed in Section 3.(a). is attached to the Property being exported. Therefore, the Object ID standard is not in use at the present time.

- (d) Are there systems to combat theft and to train museum staff and have specific measures been adopted for libraries, archival and manuscript repositories, and any specialized units established to monitor them?

Professional staff related to cultural properties such as museum and library staff in Japan endeavors to attend training sessions in accordance with the relevant laws and regulations.

4. Archaeological excavations

- (a) Summarize the basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force in the country.

A notice of excavation should be submitted to the Commissioner for Cultural Affairs by the person intending to excavate land containing a potential cultural property. The Commissioner thereafter monitors the excavation process. Where a cultural object without a known owner is discovered during excavation, the discoverer should bring the said object to a police station. Where the object is recognizable as a cultural property, the chief of the police station should submit the said object to the local government for appraisal. Where the owner of the excavated valuable cultural property remains unknown, the said property belongs to the national government.

- (b) Is there a recurrent problem of illegal excavations? If so, what are the reasons and when did it begin? What steps have been taken to combat this scourge?

Most archaeological sites are well preserved and the issue of illegal archaeological excavation is not serious in Japan.

5. Monitoring of the export and import of cultural property

- (a) Give an estimate of the scale of the illicit export or import of cultural property. Are up-to-date statistics compiled on the theft of cultural property?

There is no data or statistics on the illicit export or import of cultural property.

- (b) Is the illicit export of cultural property a recurring problem? If so, for which reasons (lack of financial and human resources, shortcomings in the legal supervision framework, etc.)?

N/A (There is no information on the illicit export or import of cultural property.)

- (c) What are the main rules (administrative and legal) for monitoring the export and import of cultural property (existence of an export certificate, public information about the rules in force)? What categories of cultural property are covered by the rules?

Any property designated as the Important Cultural Property cannot be exported, except when the Commissioner for Cultural Affairs deems it necessary for international cultural exchange or other reasons. In such an exceptional case, the cultural property to be exported is monitored by the customs authority.

Where a cultural property has been illicitly exported from a State Party of the 1970 Convention and the said State Party has notified other State Parties of the features of the illicitly exported property, the government of Japan designates the

property as a specified foreign cultural property and takes appropriate measures to prohibit the import of the said property.

The information on the specified foreign cultural property subject to import prohibition is provided through the Official Gazette and the website of the Agency for Cultural Affairs.

- (d) Do the rules provide for the restitution of illicitly imported cultural property?

Provisions on the restitution of illicitly imported cultural properties have been set down in the civil code and other relevant national laws and regulations.

- (e) What are the main obstacles encountered in securing the restitution of illicitly exported cultural property? What type of obstacles are they (administrative, legal or political) and why do they arise (legal loopholes, unwillingness by importing countries, lack of international cooperation, etc.)?

Where identifying facts such as size, material, and appearance are insufficient, and/or where the quality of the photograph provided is low, it would be difficult to find out whether the said cultural property is illicitly exported or not and it has been an obstacle to deal with the illicitly transferred cultural properties.

- (f) If the country has succeeded in securing the restitution of a stolen cultural object, describe the circumstances and state whether that involved legal proceedings, arbitration or alternative dispute resolution.

N/A (There is no such case.)

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

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

N/A (It is difficult to perceive the cultural goods market in Japan since there are various kinds of cultural property and the volume of trade is too large to grasp.)

- (b) What are the main rules governing trade in cultural goods? Are control measures in place for such trade (maintenance of a police register), in particular through the Internet (for example, reference to the basic measures proposed by UNESCO, INTERPOL and ICOM)?

Regarding internal trade, where an owner wishes to sell a cultural property, the said owner notifies the Commissioner for Cultural Affairs in writing of the intent to sell and the estimated remuneration, in accordance with the Act on Protection of Cultural Properties. The Commissioner then decides whether the State wishes to purchase the said property. Where the State deems it unnecessary to purchase the property and there is a transfer of ownership of the property, the Commissioner is notified of the new owner or responsible manager.

Regarding export of cultural properties based on the 1970 Convention, it should be approved in accordance with Paragraph 3, Article 48 of the Foreign Exchange and Foreign Trade Act. The approval is given only when there is an export permit in accordance with Article 44 etc. of Act on Protection of Cultural Properties. Import of cultural properties based on the Convention should be approved in accordance with Article 52 of the Foreign Exchange and Foreign Trade Act. The approval is given only when there is confirmation by the Minister of Education,

Culture, Sports, Science and Technology in accordance with the Act on Controls on the Illicit Export and Import and other matters of Cultural Property. Foreign Exchange and Foreign Trade Act regulates export and import of goods between Japan and other countries, including trade through the internet.

Concerning secondhand goods deals including Cultural Property, Paragraph 3 of Article 15 of the Secondhand Articles Dealer Act provides an obligation to report illegal goods to the police. Paragraph 5 of Article 19 of the abovementioned Act imposes an obligation to report secondhand goods related to the blacklist of stolen goods to the police. Articles from 21-2 to 21-7 of the abovementioned Act provide matters to be observed for secondhand goods auction dealers such as an obligation to take best efforts to confirm the honesty of those who intend to sell the goods, an obligation to report to the police when there are suspicions that offered goods are stolen, and an order to stop auctions when offered goods are reasonably suspected as being stolen.

- (c) Do measures exist to control the acquisition of cultural property (for example, mechanisms to prevent museums and similar institutions from acquiring cultural property exported illegally from another State)?

Where museums and other cultural facilities in Japan newly acquire a cultural property, they should confirm the history of its owners in accordance with the ICOM Code of Ethics.

- (d) Specify the existing legal system concerning ownership of cultural property:

- is the principle of inalienability applied to cultural items in national collections and objects originating in heritage sites?

No. In accordance with national laws and regulations, an owner of a cultural property endeavors to maintain it properly under the guidance of the Agency for Cultural Affairs. If the status quo is altered including the owner, the former owner must notify the Agency of the alteration(s).

- what is the status of yet unfound cultural objects, of cultural items found by chance and archaeological artefacts found during legal or illegal excavations ?

Where an object excavated or discovered within Japan is found to be a cultural property, police authorities submit the property to the local government for appraisal. Where the owner of the property remains unknown, properties deemed to have an exceptionally high value from the viewpoint of history or science belong to the national government, in accordance with national laws and regulations.

- Are there any due diligence requirements in place?

N/A

- What are the rules governing the search of provenance?

N/A

- (e) Are there special rules on the transfer of title deeds in respect of cultural property? If so, please summarize their content.

Where there is transfer of the ownership of a cultural property, the owner notifies the Agency for Cultural Affairs of the transfer in accordance with national laws and regulations. The new owner will succeed to the rights and duties of the former owner.

7. Bilateral agreements

- (a) List the bilateral agreements concluded with other countries on the import, export and return of cultural property and comment briefly on their results.

None.

- (b) What conditions are set by the importing country with regard to the admissibility of requests for restitution from a country of origin?

N/A

- (c) Apart from these agreements, is there administrative aid or any other type of cooperation with neighbouring countries, particularly in respect of police and customs services?

Japan has concluded Customs Mutual Assistance Agreement with 10 countries and regions.

II. Code of ethics, awareness raising and education

Ethical standards

- (a) Are the UNESCO International Code of Ethics for Dealers in Cultural Property and that of ICOM for museums known to the professionals concerned (in particular, curators, antique dealers, merchants and collectors)? How is their observance checked?

They are disseminated from MEXT or from the Japanese National Committee for International Council of Museums to the professionals concerned on an occasion of, for example, an annual meeting of museum directors, a training seminar for curators, distribution of a relevant pamphlet, and through the Internet.

Awareness raising and education

- (b) Are the "One hundred missing objects" series and the ICOM Red Lists disseminated and read?

They are not disseminated or read.

- (c) Briefly describe 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 to raise awareness and educate the public as well as children. The Agency has also established a website for the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the Law concerning Controls on the Illicit Export and Import of Cultural Property.

III. Cooperation with other international and regional agencies

Police

- (a) What is the state of national cooperation with INTERPOL? What specialized police services can heritage officials call on for enquiries, legal proceedings and punitive measures?

There is no specialized police service which is dedicated to deal with stolen cultural property in Japan.

When NCB (National Central Bureau) 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) If a cultural object is stolen, is the INTERPOL database on stolen objects checked? Is information on the persons implicated in the theft of cultural property transmitted to INTERPOL?

Upon requests of local police forces, NCB Tokyo registers the information on stolen cultural properties in the Interpol Database, and forwards the information on the persons involved in theft of cultural property to Interpol.

- (c) Do members of police services follow a specific training programme?

Japan Police do not have such a training programme.

- (d) Do criminal law provisions allow for the punishment of fraud and theft related to cultural property? Are judges specialized in this field?

Theft of cultural property is punishable under Article 235 of the Japanese Penal Code. Such offence shall be punished by imprisonment with work for not more than 10 years or a fine of not more than 500,000 yen.

Fraud of cultural property is punishable under Article 246 of the Japanese Penal Code. Such offence shall be punished by imprisonment with work for not more than 10 years.

Transportation, retention, receiving with compensation or arrangement of disposal for compensation, of stolen cultural property is punishable under Article 256 of the Japanese Penal Code. Such offence shall be punished by imprisonment with work for not more than 10 years and a fine of not more than 500,000 yen.

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

- (e) Does cooperation exist with the United Nations Office on Drugs and Crime (UNODC)?

There is no particular cooperation with UNODC in the field of the illicit import, export and transfer of ownership of cultural property.

Customs

- (f) What is the status of cooperation with the World Customs Organization and which specialized customs services can assist heritage officials in preventing the illicit export of cultural property?

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

- (g) Do members of the customs administration follow a specific training programme?

Japan Customs has no specific training programme for the 1970 Convention, but the members of the customs administration follow the training programme for customs-related laws and regulations which includes “the Act on Controls on the Illicit Export and Import and other matters of Cultural Property”.

- (h) Is the UNESCO-WCO Model Export Certificate for Cultural Objects used?

No.

European Union

Have particular measures been adopted to apply 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.

N/A

IV. Emergency situations and heritage at risk

- (a) What is the strategy in place in your country to face emergency situations for heritage in case of natural disaster or conflict?

Where an emergency situation arises, the national government and local governments endeavor to cooperate closely with each other to resolve the situation. After the Great East Japan Earthquake in 2011, for example, the Agency for Cultural Affairs formulated the Rescue Programme for cultural properties, including the provision of experts, materials and the storage of saved properties, etc. The Agency has also dispatched Senior Cultural Properties Specialists to the disaster-stricken areas upon the requests of the local authorities for cultural properties.

- (b) More particularly, what are the measures undertaken to implement UNSC Resolution 2199 (paragraph 17, 12 February 2015) for the protection of Syrian and Iraqi cultural heritage?

Japan has not taken specific measures to implement UNSC Resolution 2199 while import restrictions taken for UNSC Resolution 1483, which is included in paragraph 17 of the Resolution 2199, are still valid. Besides, in February 2015, Japan decided to

provide assistance to strengthen Iraq's capacity to protect cultural properties through UNESCO.

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

(a) Has this Convention been ratified, in addition to that of 1970?

No.

(b) If not, please indicate, where applicable:

- the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term) ;

N/A

- obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;

N/A

- the extent to which UNESCO can assist in completing the process.

N/A

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

Describe the extent to which the State concerned is following the work of the UNESCO Intergovernmental Committee (observer, member, State concerned by a case under discussion etc.).

As a member state since 2007, Japan has participated in all the ICPRCP meetings including ordinary sessions, the extraordinary meeting held in Seoul in 2008 and the ad hoc subcommittee in November 2009.

3. UNESCO Database of National Cultural Heritage Laws

Indicate action taken to organize the contribution to the UNESCO Database of National Cultural Heritage Laws and to check whether it contains all historical and existing laws and regulations, including successive amendments.

The latest update of the database on relevant Japanese laws and regulations was done in July 2010. Japan will revise the data, when new relevant national legislation (including successive amendments) is passed.