

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

USA

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

1. Ratification of the Convention

USA ratified the 1970 Convention in September 1983.

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.

Convention on Cultural Property Implementation Act, 19 U.S.C. 2601 et seq – a Federal implementing statute.

This Act implements Article 9 of the Convention and Article 7 (b)(i).

The promulgation on the U.S. *Federal Register* of Designated Lists of categories of the types of archaeological or ethnological material restricted from entering the U.S. unless accompanied by an export certificate issued by the country of origin or other appropriate documentation. Promulgation of such import restrictions is contingent upon the existence of a bilateral agreement that has entered into force between the United States and another State Party to the Convention seeking such restrictions and also upon certain statutory requirements having met.

The implementing statute enables the president to impose important restrictions in response to a request (following the article 9) from another State Party to the Convention. This action to impose import restrictions is based on specific steps set forth in the implementing statute and is only taken on a country by country basis.

In order for such import restrictions to be imposed, the implementing statute requires first that the president (or his designee) make certain statutory determinations before entering into a bilateral agreement with the Requesting State, or a determination that a particular emergency situation exists.

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

For purposes of implementing Article 9 of the Convention, the Act noted above defines the archaeological and ethnological material that may become subject to specific U.S. import restrictions. The definition for these two broad categories can be found in the Act (19 U.S.C. 2601).

For purposes of implementing Article 7 (b)(i) of the Convention, the Act adopts the definition of cultural property found in Article 1 of the Convention itself.

(c) Specialized units

The Department of Homeland Security (DHS) is the arm of the U.S. government that enforces import restrictions that may be imposed pursuant to the Act in implementation of UNESCO Convention. The relevant branches of DHS are immigration and Customs Enforcement (ICE) and CBP (Customs Border Patrol).

Other U.S. government entities that engage in the investigation, recovery and repatriation of cultural property illicitly entering the U.S. from abroad include – the FBI Art Crime Team, the Department of Justice, and the National Park Service which has responsibility over cultural sites on federal lands.

(d) Administrative coordination

Each of these entities has independent status and separate jurisdictional authority. As a result of training and joint investigations, there are frequent opportunities for cooperation and coordination.

(e) Working meetings

Interagency working groups are often useful in this regard.

3. Inventories and identification

(a) Inventories

The development of carefully compiled inventories by individual institutions, acting independently, is an integral part of professional responsibility among all museums and all national and regional entities with responsibility to protect archaeological sites. Such information mitigates the loss of cultural property due to looting of sites or theft from museum collections.

(d) Systems to combat theft and to train staff

There are thousands of such institutions, public and private. Each is responsible for taking appropriate measures consistent with the recommendations of their professional associations. These associations play an important role in developing standards and guidelines.

4. Archaeological excavations

(b) Illegal excavations

The looting of Native American sites has been a preoccupation for decades. The U.S. National Park Service and other federal agencies have reconnaissance and enforcement systems in place to combat this problem. Strict laws are applied and those found guilty pay fines and/or are sentenced to prison.

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 U.S. National Park Service maintains such statistics with regard to domestic looting. Because of the clandestine nature of the movement of cultural property across borders, it is difficult to quantify this activity.

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

See response to 2(a) above for the import of cultural property. Although the movement of U.S. cultural property across domestic and international boundaries is governed by state and federal law, the U.S. does not have specific export controls.

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

If there is a violation of an import restriction or other Customs statutes of applicable law, objects may be seized, forfeited and returned to the country of origin in accordance with certain administrative procedures.

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

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

As the U.S. is a federal sovereign State, most of the museums in the United States are private institutions that are established under the law of their resident states and exist in the public trust as non-profit institutions. Such museums are not regulated by the federal government. The professional museum associations in the U.S. have adopted guidelines with respect to acquiring cultural property that recognize 1970 as the threshold year after which they will require documented provenance.

As noted, there are U.S. import restrictions in place on behalf of many countries party to the 1970 Convention that have gone through the request procedures prescribed under the Act. There are also other Customs laws that govern the entry into the U.S. of cultural property.

7. Bilateral agreements

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

The U.S. has bilateral agreements with: China, Cambodia, Cyprus, Italy, Mali, Guatemala, El Salvador, Nicaragua, Honduras, Peru, Ecuador, Bolivia; and, a special emergency import restriction for all Iraqi cultural property.

Greece recently filed a cultural property request seeking import restrictions pursuant to an agreement with the U.S. It is pending.

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

The U.S. has sponsored special security training workshops in Central America, Mexico, Nicaragua, Guatemala, Peru, Colombia, Cyprus, Cambodia and Thailand.

II. Code of ethics, awareness raising and education

2. Awareness raising and education

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

Red Lists are disseminated. The U.S. has sponsored the development and distribution of ICOM Red Lists for Iraq, Afghanistan, Haiti, Mexico and Central America, Peru, Colombia, Cambodia and China. These are produced in multiple languages.

(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 U.S. National Park Service has an ongoing public awareness campaign using various media.

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 U.S. is a member state of INTERPOL.

Through Mutual Legal Assistance Treaties, Customs Cooperation Agreements, and other means of seeking the assistance of U.S. law enforcements entities, there are many opportunities to call upon the assistance of the U.S. law enforcement community.

(c) Specific training program for members of police services

Yes

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

Yes, depending on the facts of a particular case.

Judges are not specialized in this field, but some judges have had the opportunity to hear multiple cultural property cases.

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

Yes

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 U.S. is a member of the WCO. Immigration and Customs Enforcement (ICE) and Customs Border Patrol (CBP) as well as the FBI Art Crime Team, all have experience in the unlawful movement of cultural property.

(g) Specific training program for members of the customs administration

Yes

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

The U.S. does not have specific export controls for cultural objects, therefore it does not issue such export certificates. Unlawful export of such objects is governed in other ways.

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

No

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

The United States was a Member State of this Committee (until 2011).

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

The United States has funded the development and implementation of this Database.