

# 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

## VIETNAM

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

#### 1. Ratification of the Convention

Vietnam ratified the Convention on 20 September, 2005.

#### 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 Vietnamese government promulgated the Law on Cultural Heritage in 2001 (amended in 2009). Under this Law, a number of decrees have also been adopted, for instance: Government Decree N098/2010/NĐ-CP, dated 21/9/2010, which provides detailed regulations for the implementation of certain articles of the Law on Cultural Heritage and for amendment of some articles of the Law on Cultural Heritage.

In addition, some instructions on the protection of relics and antiquities have been issued, such as: Instruction N005/2002/CT-TTg by the Prime Minister on strengthening management and protection measures of the antiquities at the relics, as well as on preventing illegal excavation and salvage of archaeological objects;

Archaeological Excavation Regulation 2005;

Circular N007/ 2004/TT-BVHTT dated 19/02/2004 by the Ministry of Culture, Sports and Tourism (hereafter MOCST) on regulating order and procedures for the nomination process of relics, antiquities and national treasures (hereinafter referred to as Circular N007);

Circular N013/2010/TT-BVHTTDL dated 30/12/2010 stipulating order and procedures of the nomination process of national treasures (hereinafter referred to as Circular N013).

There are also a number of regulations on management of import and export of cultural products, namely:

- Decree N088/2002/ND-CP dated 07/11/2002 on the management of import and export of cultural products not for business purposes; and,
- Circular N036/2002/TT-BVHTT dated 22/12/2002 guiding the implementation of Decree N088/2002/ND-CP

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

The Law on Cultural Heritage uses definition for the following concepts: cultural heritage, tangible cultural heritage, Relics, Antiquities and National treasures.

In sum, we find that the definitions of “cultural property” used by the Law on Cultural Heritage of Vietnam are basically in accordance with the definition proposed by the UNESCO 1970 Convention. Objects that are indicated in the Handbook guiding the implementation of the UNESCO 1970 Convention are almost regarded as “cultural property” by the Law on Cultural Heritage.

##### (c) Specialized units

The following specialized units have functions of preventing and combating trafficking and ensuring international cooperation for the protection of cultural heritage:

- Department of Cultural Heritage (hereafter DCH) and the Secretariat of the Ministry of Culture, Sports and Tourism (MOCST),
- functional divisions under the Police Ministry,
- General Customs under the Finance Ministry,
- Border guardians under the Ministry of Defense.

In addition, in the 63 cities/provinces throughout the country, there are also cultural management units, such as: Departments of Culture, Sports and Tourism, Museums, Relics Management Departments, Police and Customs, border guardians.

#### (d) Administrative coordination

- Publication of documents by the DCH, listing the regulations under the international and Vietnamese Laws on relics and antiquities. Thousands of copies have been sent to General Customs, Police, and diplomatic delegations, provincial departments of Culture, Sports and Tourism with the purpose of disseminating these legislative provisions on this issue to domestic and international audiences.
- Collaboration between MOCST and the Police Ministry and General Customs to discuss the measures to manage the production of fake antiquities to minimize inaccuracy of the inspection process, as well as to prevent antiquity trafficking.
- Organization of training courses by the MOCST on the inspection of the antique objects with the participation of the Police and Customs.
- Once notification of stolen antiquities has been released, in coordination with the inspectors and A83 unit under the Police Ministry, the DCH raced to the provinces to direct their Department of Culture, Sports and Tourism and other relevant agencies to immediately undertake strict protection of antiquities.
- Police and Customs have many times closely worked with DCH to inspect the antiquities that are illegally traded and exported then transferred the arrested antiquities to the cultural management departments.

#### (e) Working meetings

The above-mentioned actions have basically contributed to minimize illegal trading activities of the antiquities. However, the protection, management and use of antiquities in Vietnam have still appeared complicatedly.

### 3. Inventories and identification

#### (a) Inventories

To date, in Vietnam there are 127 museums, 3.054 national landscapes and over 6.000 provincial relics stretching throughout 63 provinces and cities in the nationwide.

There are around 3 million of objects of antiquities that have been inventoried and registered for management purpose at these museums and relics. DCH has developed the object management software so that the objects' database is accessible to the staff members of museums and relics. However, this project is still in trial stage.

Regarding the antiquities owned by the organizations and individuals that are not classified by museums and relics, MOCST has issued Circular N0 07 and Circular N0 13 aiming at encouraging organizations and individuals to register their own antiquities.

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

With the promulgation of the Law on Cultural Heritage 2001 regulating the registration process of national treasures and Circular N0 13 stipulating order and procedures of the nomination process of national treasures, this country will inscribe objects that demonstrate required criteria on the list of the national treasures.

#### (c) Reference to the Object ID standard

Since 2003, some museums in Vietnam have applied the Object Identification Program. However, due to the shortage of finance, staff capacity and equipments, Object ID has not been widely applied yet in Vietnam. This country wishes to continue to receive the support of the UNESCO and other international partners in implementing this important work.

#### (d) Systems to combat theft and to train staff

Alarm system to combat theft has been installed at some repositories of the museums, libraries and archives. Additionally, police and guardian units are also established to monitor of and protect the precious objects. However, these equipments and human resources need to be increase in order to be more efficient in this matter.

MOCST is in charge of enforcing the implementation of the state management function on the issues of culture, family, sports and tourism throughout the country. It is also responsible for managing and supervising all activities related to the protection of the cultural properties in Vietnam.

### 4. Archaeological excavations

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

Vietnam has a number of regulations on archaeological excavation, namely:

- Decree N<sup>o</sup>86/2005/NĐ-CP dated 08/7/2005 by the Government on the management and protection of underwater cultural heritage;
- Decree N<sup>o</sup>96/2009/NĐ-CP dated 30/10/2009 by the Government on dealing with buried and sunken assets that have been found in the mainland, islands and marine areas of Vietnam;
- Regulations on archaeological survey and excavation (enclosed Decision N<sup>o</sup>86/2008/QĐ-BVHTTDL dated 30/12/2008 by the Minister of Culture, Sports and Tourism).

These regulations can be summarized as follows:

- Prohibition of:
  - the surveys and excavations of archaeological sites that are not permitted by the MOCST (in case of normal excavation), by the Chairman of the Provincial People's Committee (with regard of urgent excavation);
  - illicit searching and digging activities that may distort or destroy archaeological sites and objects; trafficking and illegal transport of archaeological objects are also prohibited.
- Once the archaeological sites and objects are discovered, organizations and individuals are responsible for protecting, keeping them intact and then promptly inform and deliver those archaeological objects to the local authorities.
- Upon the completion of archaeological survey and excavation, organizations and surveyors have to report the outcome of the survey and excavation, as well as propose measures to conserve and promote their values in accordance with the nature and condition of preservation of these archaeological relics and artifacts.

#### (b) Illegal excavations

In recent years, the illegal excavations of archaeological sites can be explained by the following causes:

- Illicit excavation of archaeological sites has not been strictly prevented by the legal authorities. Legal excavations must be undertaken by the functional authorities and permitted by MOCST and People's Committees at the city and province level.
- The investment in the protection of relics and archaeological excavations is still limited. Many archaeological sites are passively excavated after being legally dug.
- The black market of trading antiquities has been in operation for a long time. The illegal trading of antiquities has not been strictly punished. Increasing number of foreigners to Vietnam leads to the higher need of purchasing antiquities. The wrongdoers take this advantage to do business.

The following measures have been taken by the functional authorities to stop the above-mentioned illegal activities:

- To continue to improve national legislative system for the management of illegal archaeological excavation and trading in accordance with international conventions and laws.
- To promulgate and widely disseminate regulations on management and protection of archaeological objects and relics, as stated at section I.2.
- MOCST has continuously directed its functional Departments, Services and Inspection Board to regularly check the major points of illegal trade and excavation in the nationwide.
- To coordinate with other functional agencies, such as Police, Customs and Defense in information exchanging, staff training, arresting and punishing illegal trade of archaeological objects.
- To regularly monitor and examine archaeological 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 illegal excavation and stealing antiquities at the relics and archaeological sites is still a concerned issue. The incomplete statistics show that from 2006 to 2008, in Vietnam, there have been 117 cases of illegal excavations, thousands of artifacts was illegal owned, 153 cases of stealing antiquities and valuable art works, 39 cases of illegal trafficking.

The statistics of 53 out of 63 provinces and cities in Vietnam demonstrate that from 2009 to October 2010, there have been 53 cases of breaking and stealing artifacts. The total of stolen artifacts is 158. In addition, the security forces have detected 35 cases of illegal trading and arrested 41 artifacts. There have been 27 cases of illegal excavations, 53 cases of stealing artifacts, 35 cases of illegal trading (of which one case had been requested to be prosecuted in Ho Chi Minh City).

### **(b) Problem of the illicit export of cultural property**

The illegal export of antiquities is complicated because of the following reasons:

- Inadequacy of the legislative provisions in the Vietnamese law on this issue (hence, it needs to be continuously improved),
- Insufficient awareness of people, authorities at all levels, professional agencies, executive and justice institutes in terms of the significance and value of antiquities,
- Overlapping in decentralized administration at local level,
- Limitation of the professional skills and capacity in inspecting antiquities of staff members at local level and customs officers at the border gates,
- Inexistence of a common national database that can be shared by different sectors, such as culture management units, police, and customs. Therefore, notification of stolen artifacts is not timely informed.

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

The principles on monitoring the import and export of cultural property are provided in the following legislative documents:

- Law Cultural Heritage in 2001 (amended in 2009);
- Decree N<sup>o</sup>98/2010/NĐ-CP dated 21/9/2010 by the Government on the detailed regulations to implement some articles of the Law on Cultural Heritage;
- Decree N<sup>o</sup>88/2002/NĐ-CP dated 7/11/2002 by the Government on the management of export and import of cultural products not for business purposes;
- Circular N<sup>o</sup>36/2002/TT-BVHTT dated 22/12/2002 guiding the implementation of the government's decree N<sup>o</sup>88/2002/ND-CP dated 7/11/2002 on the management of export and import of cultural products not for business purposes.

The cultural properties that are mentioned in the above legislative documents include cultural properties indicated in section I.2.b and other types of cultural products, such as: Books, newspapers, magazines, documentation, catalogues, pictures, photos, posters, calendars and maps; All kind of audio and video tapes and disks, films, magnetic tapes, floppy disks, hard disks and optical already recorded disks; other products of the audio-visual technology already recorded with information in form of scripts, sounds or images; Fine-art works.

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

There are difficulties to find solutions to get antiquities founded in foreign countries (which most of them are members of the 1970 Convention) back to Vietnam. The obstacles are: the lack of legislative basis and information about the artifacts and shortage of international collaboration and willingness of the countries that imported these artifacts.

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

Her are the circumstances of restitution of the Ngu Ho Pagoda's bell in Bac Ninh province.

- 1940s: Japanese army occupied Bac Ninh province and employed Ngu Ho pagoda as a wooden manufacturing workshop. Recognizing the precious value of the bell in this pagoda, they took the bell and brought it to Japan.
- September 1977: in Tokyo, Mr. Watanabe Takuro (a Japanese Lawyer) found a nice and valuable bell hanging at an antique shop in Ginza Street. He discovered that this was a valuable bell of Vietnam and belonged to Ngu Ho pagoda. Once information spread, many Japanese who love Vietnamese Culture had appealed to people throughout Japan for donating money to buy the bell and retribute it to the Vietnamese people.
- 15<sup>th</sup> November 1977: at a press conference in Tokyo, a broad movement had been widely launched throughout Japan with an expectation of collecting 7 millions JPY by the end of January, 1978 in order to send it back to Vietnam on the occasion of the traditional lunar New Year 1978 to show the solidarity between Japan and Vietnam. Within only two months, the Ancient Bell Restitution Society had succeeded in raising an amount of 9.6 millions JPY.
- During a half of the year afterward, there have been praying ceremonies in different places in Japan like Tokyo, Kyoto, Nara, Osaka and Kobe to pray the bell could be safely delivered to its original country, Vietnam.

### **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 not information on this issue is not available.

(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)

There is not specific rule dealing with trading antiquities. According to the Vietnamese law, organizations and individuals have the right to their own antiquities trading shops. However, by the end of 2010, none of them has been officially registered their operation.

There is enough information about stolen objects to publish the Red Lists as what the ICOM has done.

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

Vietnam is a developing country so the antiquities are mainly illegally exported. Illicit import of antiquities is rare. Moreover, we have rules that strictly prohibit illegal trading, exchange of relics, antiquities and national treasures with illegal origin.

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

Applicability of the principle of inalienability applied to cultural items in national collections

The Law on Cultural Heritage of Vietnam prohibits the following activities: illegal trading, exchange or transport of relics, antiquities or national treasures from historical-cultural sites or scenic landscapes that have its illegal origin; illegal shipping of relics, antiquities and national treasures to the overseas.

Status of yet unfound cultural objects, of cultural items found by chance and archaeological artefacts found during legal or illegal excavations

Vietnamese regulations on this issue can be summarized as follows:

- Organizations and individuals who discover archaeological sites and objects have the responsibility to protect and keep these sites intact and timely inform, then hand over these objects to local governments or provincial Department of Culture, Sports and Tourism or the nearest Units of Culture and Information.
- When the organizations and individuals informed the discovery of archaeological sites and objects or handed objects, the functional authorities have the responsibility to nominate staff to receive and adequately record information and timely arrange the protection and maintenance of the objects.
- All relics, antiquities and national treasures found in the process of archaeological surveys or excavations, or discovered by organizations or individuals, must be submitted to the provincial museum at the discovery area for temporary storage. The provincial museum is then responsible for receiving, managing and then reporting to MOCST.
- Based on the value and preservation requirements of the relics, antiquities and national treasures, MOCST shall decide to transfer these properties to appropriate national museums for management purpose.

## 7. Bilateral agreements

To date, Vietnam hasn't signed any bilateral agreement with any country on this subject.

## 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

These instruments are not legislative documents and not compulsory. Therefore, it is very difficult to examine the implementation of this regulation. However, Vietnamese government has issued a number of legislative documents on this issue, such as: Regulations on Object ID for the museums (enclosed Decision N<sup>o</sup>70/2006/QĐ-BVHTT dated 15/9/2006 by MOCST); Circular N<sup>o</sup>18/2010/TT-BVHTT dated 31/12/2010 by MOCST on the organization and operation of the museums.

### 2. Awareness raising and education

#### (b) Dissemination of the "One hundred missing objects" series and the ICOM Red Lists

About the "One hundred missing objects", Vietnam heard about these publications during discussions at some international conferences but has not officially received them.

In terms of ICOM Red List, we have recently heard about the Red List that has been set up by the ICOM for the objects of Cambodia. However, we have only received this information by email and had to visit the website of ICOM to check it out.

(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 Cultural management authorities have actively collaborated with media to disseminate information about the protection of antique objects and archaeological sites. “Friendly school, dynamic pupils” program has been launched; a number of training courses on heritage education have been held, for example: training course on “Cooperating with school to organize heritage education activities at the museums, relics and cultural sites in Ha Noi” sponsored by UNESCO office in Ha Noi.

It is expected that UNESCO will continue to support Vietnam in implementing education programs on cultural heritage protection at schools; as well as provide curriculums and experts to share experiences and examples on this issue from other countries in the world.

### **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 stolen objects are listed and then the support from INTERPOL will ask to trace them with expectation that these objects will be soon returned Vietnam.

Vietnam does not have any specialized police dealing with this issue.

(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

When information on the persons implicated in the theft of cultural property is confirmed, if INTERPOL’s support is needed, the information is relayed to them.

(c) Specific training program for members of police services

MOCST organized several short training courses on antiquities’ assessment for members of police services.

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

Law provisions do allow for the punishment of fraud and theft related to cultural property. Criminal law and decree on financial sanctions in cultural sector are a case in point.

With regard of judges, there are People’s Courts at central and local levels.

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

Ministry of Police has established INTERPOL Office in Ha Noi in order to coordinate with UNODC in dealing with this issue.

#### **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

Vietnamese Custom has regularly exchanged information with WCO and Customs in other countries to transmit or receive information about the incidents that need their collaboration in investigation aiming at stopping illicit export of cultural properties.  
Vietnam does not have any specialized customs in this field.

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

MOCST has organized a several short training courses on antiquities' assessment for members of the customs.

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

Vietnam has its own regulations on this issue but does not completely follow the UNESCO-WCO Model.

**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

Vietnam has not signed any mutual agreement with European countries on this issue.

#### **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**

Vietnam has not ratified the 1995 UNIDROIT Convention but the ratification process is actively under preparation. In this regard, it would be helpful if UNESCO would support DCH in translating documents and organizing workshops on this issue.

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

Information about this issue is not available.

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

A number of Decrees, Regulations and Circulars on cultural heritage have been issued. However, these documents are only presented in Vietnamese. It would be very helpful, if UNESCO could help us to translate these documents into English.