Republic of Korea

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?

- The Republic of Korea deposited the acceptance of the Convention on February 14, 1983.

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

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

- Legal basis for implementation of the 1970 Convention was made through establishing specific provision (Article 20 / previously Article 78) in the revised Cultural Heritage Protection Act on July 1, 1983.

(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 Korean Cultural Property Protection Act (Article 2) defines the term “cultural property” as followings.

Cultural Property Protection Act of the Republic of Korea
Article 2 (Definitions)
(1) For the purpose of this Act, the term “cultural heritage” means national, ethnic, or global legacies of great historical, artistic, academic, or scenic value, which have been formed either artificially or naturally, and fall under any of the following subparagraphs:

1. Tangible cultural heritage: Tangible cultural products of great historical, artistic or academic value, such as buildings, records and books, ancient documents, paintings, sculpture and handicraft; and archeological materials corresponding thereto;

2. Intangible cultural heritage: Intangible cultural products of great historical, artistic or academic value, such as drama, music, dance, game, ritual and craftsmanship;

3. Monuments: Those specified in the following items:
   (a) Historic sites of great historical or academic value, such as temple sites, ancient tombs, shell mounds, ruins of fortresses, palace sites, pottery kiln sites, or relic-bearing strata and monumental facilities;
   (b) Scenic places of great artistic value and outstanding scenic beauty; and
   (c) Animals (including their habitats, breeding grounds and migratory areas), plants
(including their natural habitats), geographical and geological features, minerals, caves, biological products and special natural phenomena which are of great historical, scenic or academic value; and
4. Folklore cultural heritage: Manners and customs regarding food, clothing and shelter, occupation, religious faiths, and annual rites, etc., and the clothing, implements, houses used therefor, which are indispensable for understanding changes in the life of the people.

(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 governments (police, customs)?
- Under the umbrella of the Cultural Heritage Administration, a central governmental agency which has overall responsibilities concerning cultural heritage, there are Cultural Heritage Risk Management and International Cooperation Divisions. The former is responsible for the prevention and combat against the illicit trafficking of cultural property while the latter is in charge of the enhanced international cooperation for the protection of cultural heritage.

(d) Describe briefly the administrative coordination of the activities of these specialized units, especially with the police and customs authorities.
- Cultural Heritage Risk Management Division under the Cultural Heritage Administration conducts investigations for preventing the illicit trafficking of cultural property in close cooperation with the Police Agency.

(e) Are working meetings held to enable police officers, customs officials and ministerial representatives to meet and coordinate their activities?
- Through holding a biannual meeting (April and November) among related organizations, the Korean Cultural Heritage Administration put its efforts for information sharing and discussing cooperative measures concerning the prevention of illicit trafficking of cultural property.
3. Inventories and identification

(a) State briefly the extent to which inventories provide for the risks of misappropriation and theft.
- The Republic of Korea adopts hierarchy in respect to designation and protection of cultural property based on its value as cultural heritage according to Article 23 and Article 70-(1) of the Cultural Heritage Protection Act.
- In order to prevent the theft of central/local government-designated cultural property, the lists of such property are opened to public via the website of Cultural Heritage Administration (www.cha.go.kr).

(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.
- However, unlike the 1970 UNESCO which includes the objects of ethnological interest to the categories of cultural property, the Korean Cultural Property Protection Act excludes human remains from the categories in respect for the dignity of humankind.

(c) To what extent is the Object ID standard used? Is the standard adapted to the State’s needs?
- Since 1999, the Republic of Korea has been producing and distributing Object ID in the Korean language to the museums and cultural property holding institutions around the nation.
- Korean government also commissioned the National Museum of Korea to develop synthetic computerized system, called Standard Collection Management System, to manage art collections housed at each museum and distributing it free of charge.

(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?
- All national museums of the Republic of Korea are required to independently establish Collection Regulations. When a museum acquires an artwork through purchase or a form of gift, its provenance and the history of theft must be searched.
- Combat against the theft is counted as one of the most vital policies of the Korean government as seen from Article 6 of the Museum Promotion Act which stipulates that
the museums bear legal responsibilities of keeping the International Council of Museums (ICOM)'s Code of Ethics.
- The Korean Museum Association provides regular education (twice a year) for the curators on the prevention and combat against the theft.
- Article 16 of the Act also regulates the registration of acquired collection so that local governments can conduct monitoring of the stolen collections housed at the museums.

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.
- For the purpose of strengthening the prevention of excessive excavations and protection of buried cultural property such as tombs and antiquities, the Republic of Korea established and enacted on February 4, 2010 the Protection and Research of Buried Cultural Property Act.
- In specific, Article 11 of the aforementioned Act defines the principle of keeping an original form of cultural property. Accordingly, all excavations are prohibited under this Act unless there is a necessity of excavation permitted by Administrator of Cultural Heritage Administration according to Article 12 of the same Act.
- For construction of the area over 30,000sqm, prior survey must be conducted in order to check whether any cultural property is buried in that area pursuant to Article 6 of this Act.

(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?
- Illegal excavations occur when a person holding property rights damages an archaeological site with the intention of development of such site without obtaining permission from the Cultural Heritage Administration.
- According to Article 31 of Protection and Research of Buried Cultural Property Act, illegal excavations are subject of imprisonment maximum ten years or penalty maximum a hundred million Korean Won (approximately a hundred thousand US dollars).

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?
- Article 39 and 60 of the Cultural Heritage Protection Act states that export of any cultural heritage, regardless of its designation, requires permission from Administrator of Cultural Heritage Administration. Thus, any cultural heritage exported without such permission \ is regarded as illegally exported cultural heritage and subject of forfeiture in
conformity with Article 90 of the Cultural Heritage Protection Act.
- When a foreign government requests the Korean government to return a certain cultural property based on proofs of illegal export, the Korean government considers such property as illegally imported cultural property and is able to seize such property in accordance with the international conventions ratified and accepted by the Republic of Korea.

- Followings are recent statistics of stolen cultural property in the Republic of Korea.

<table>
<thead>
<tr>
<th>Year</th>
<th>State/ Local government-designated cultural property</th>
<th>Non-designated Cultural Property</th>
<th>Total</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>-</td>
<td>4,189</td>
<td>4,189</td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td>1</td>
<td>684</td>
<td>685</td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>25</td>
<td>15</td>
<td>40</td>
<td></td>
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<tr>
<td>2014</td>
<td>2</td>
<td>163</td>
<td>177</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td>-</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>3</td>
<td>188</td>
<td>4,902</td>
<td>5,093</td>
</tr>
</tbody>
</table>

(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.)?
- Considering that the illicit export of cultural property is strictly controlled by the Korean government, illicit export is not a recurring problem to the Republic of Korea.

(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?
- Article 39 and 60 of the Cultural Heritage Protection Act requires a written permission of export from Administrator of Cultural Heritage Administration and thus, any exported cultural property is monitored by the Korean government.
- The Cultural Heritage Administration dispatches cultural property appraiser to fourteen airports and harbors located in Korean peninsula for the purpose of monitoring illicit export and import of cultural property.
- Since 2912, the Cultural Heritage Administration has been utilizing a regular monitoring system on the overseas auction houses dealing Korean cultural property for prevention of illicit export of Korean cultural property.

(d) Do the rules provide for the restitution of illicitly imported cultural property?
- Article 20 of the Cultural Heritage Protection Act stipulates that the illicitly imported cultural property is subject of seizure by Administrator of Cultural Heritage Administration and return to the country of origin.
(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.)?

- Article 7 of the 1970 UNESCO Convention states that the recovery and return of illegally exported cultural property shall be made through diplomatic channel. However, from the perspective of the country holding illicitly imported cultural property, most of such property is a stolen object and accordingly, becomes the matter of judiciary authorities such as police or the prosecution.
- Thus, such matter requires close cooperation between the diplomatic offices and judiciary authorities. In order to prevent illicit import of cultural property, civil and criminal cooperative system needs to be established.

(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.

- A total of ten cultural objects have been returned to Korea through joint investigations between the Cultural Heritage Administration and U.S. Immigration and Customs Enforcement based on the U.S. National Stolen Property Act enacted in 1948.

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).

- According to Article 75 of the Cultural Heritage Protection Act, sales of cultural property in the Republic of Korea require permission from each local government. The number of sales agencies permitted by the Korean government is 949 as of 2015.

(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)?

- Given that the Republic of Korea adopts hierarchism in respect to designation and protection of cultural property based on its value as cultural heritage, sale, purchase and acquisition of state-designated cultural property must be reported to Administrator of Cultural Heritage Administration pursuant to Article 40 of the Cultural Heritage Protection Act.
- Accordingly, sale, purchase and acquisition of non-state-designated cultural property do not require reporting process to the Korean government and internet trade of cultural property is also available.
Article 75 of the Cultural Heritage Protection Act provides legal restraints of sales by stating that a person who sales cultural property shall submit the sales data to the local government.

(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)?
- All national museums of the Republic of Korea are required to independently establish Collection Regulations. When a museum acquires an artwork through purchase or a form of gift, its provenance and the history of theft must be searched.
- Article 16 of the Museum Promotion Act prohibits acquisition of illegally exported cultural property by stating that upon the registration of a museum business, all of its collection shall be registered as well.

(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?
  - Article 66 of the Cultural Heritage Protection Act prohibits establishment and transfer of ownership of all cultural objects excavated from the heritage sites and listed in national collections.
- What is the status of yet unfound cultural objects, of cultural items found by chance and archaeological artefacts found during legal or illegal excavations?
  - The Republic of Korea acknowledges historical title deeds on the cultural items found by chance or during excavations.
  - According to Article 18, 20 and 23 of the Protection and Research of Buried Cultural Property Act, the Cultural Heritage Administration publishes public notice on the excavated items for ninety (90) days. When there is no one who claims for historically appropriate ownership, such items belong to national inventory.
- Are there any due diligence requirements in place?
  - Article 249, Civil Law of the Republic of Korea defines the requirements of good faith acquisition as followings; 1) an object shall be movable, 2) an acquisition of possession shall be made peaceably and openly, in good faith, and without negligence, 3) an acquisition of possession shall be an acquisition by succession, and 4) an object shall not be a stolen or lost object.
  - Article 87, Cultural Heritage Protection Act states three exceptions of good faith acquisition regardless of whether due diligence is fulfilled as followings; 1) state or local government-designated cultural heritage, 2) cultural heritage of which theft or loss is notified, 3) cultural heritage whose important parts or records indicating its origin are
intentionally damaged.

- What are the rules governing the search of provenance?
  - Korean government is currently reviewing the legal measurements for mandatory search of provenance.

(e) Are there special rules on the transfer of title deeds in respect of cultural property? If so, please summarize their content.
  - Transfer of title deeds on the state-owned cultural properties is restricted according to Article 66 of the Cultural Heritage Protection Act which prohibits establishment and transfer of ownership of such properties.
  - Transfer of title deeds of privately owned cultural properties are limited only to the state-designated cultural properties subject to submission of trade reports to Administrator of the Cultural Heritage Administration in accordance with Article 40 of the Cultural Heritage Protection Act.

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.
  - N/A

(b) What conditions are set by the importing country with regard to the admissibility of requests for restitution from a country of origin?
  - When cultural property is illegally exported from a foreign country and imported to the Republic of Korea, the foreign government is required to prove its illicit export and request its return according to Article 20 of the Cultural Heritage Protection Act of the Republic of Korea and international conventions that the Korean government accepted and ratified.

(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?
  - The Korean Cultural Heritage Administration signed Memorandum of Cooperation with the U.S. Immigration and Customs Enforcement concerning cooperation in the protection, recovery and restitution of cultural property in July 2014. This will provide a foundation for U.S.-Korea cooperation for prevention of illegal trade of cultural property.

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 there observance checked?
- In 2008, Code of Ethics Concerning Trade of Cultural Property was voluntarily established and has been implemented by the persons working in the field of trade of cultural property.
- Korean government has been actively promoted and distributed the UNESCO International Code of Ethics in the Korean language to the related institutions.
- Korean government also made a legal basis in Article 6 of the Museum Promotion Act for compliance of the UNESCO International Code.

Awareness raising and education

(b) Are the "One hundred missing objects" series and the ICOM Red Lists disseminated and read?
- Since 2008, the governmental organizations related to cultural heritage such as national museums and Cultural Heritage Administration have been using the One Hundred Missing Objects and ICOM Red Lists for enhancing interest and awareness both of both experts and public on the prevention of illegal trade of cultural property.

(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?
- In 2012, the Overseas Korean Cultural Heritage Foundation was established under the umbrella of the Cultural Heritage Administration and has been actively conducting education programs for both students and teachers on the illicit excavation, theft and export 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?
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(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?

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

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

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?

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

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

European Union

Have particular measures been adopted to apply the Council of the European Communities Directive 93/7EEC of March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.

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?

- The Republic of Korea Cultural Heritage Administration operates ‘Emergency Response Team.’ ERT regularly establishes comprehensive plan for protecting heritages
in case of natural disaster or armed conflict and operates an annual mock exercise.

- In 1982, the Republic of Korea ratified the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of International Armed Conflicts (Protocol I and II) which laid the legal foundation for safeguarding the cultural heritage in armed conflicts. Since 2012, Korean government has also worked on accession to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention) and conducted relevant process including legislation for the implementation of the Convention.

(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?

- The Republic of Korea operates the Cultural Heritage Appraisal Offices at the seventeen (17) airports and ports around the nation in order to strictly prevent and prohibit illegal export and import of cultural heritage.
- According to the Article 20 of the Cultural Heritage Protection Act, the Korean Cultural Heritage Administration keeps an illegally imported cultural heritage in custody.

V. Other legislative, legal and administrative measures taken by the States

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?
- The Republic of Korea has not yet acceded to the 1995 UNIDROIT Convention.

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

• the stage of the ratification process reached by the States concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term);
  - Korean government is reviewing the accession process of the 1995 Convention in the medium-long term and the revision of domestic laws in order to prevent any unconfornity between the 1995 Convention and domestic laws.

• obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;
  - For completing the accession process, revising the provisions of domestic laws which may conflict with the 1995 Convention is necessary. Reviewing all the provisions to
prevent such conflict may take substantial time.

- the extent to which UNESCO can assist in completing the process.
- Detailed information on the implementation of the 1995 Convention including case examples of other countries will be of great help.

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 its following the work of the UNESCO Intergovernmental Committee (observer, member, State concerned by a case under discussion, etc.)
- The Republic of Korea is the Member State of ICPRCP from 2014 to 2017.

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.
- Korean government uploaded a total of ten laws to the UNESCO Database and regularly updates any establishment, revision or amendments of the laws.