

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

MEXICO

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

1. Ratification of the Convention

Mexico ratified the Convention on 4 October, 1972.

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.

Article 27 of the Political Constitution of Mexico; Article 2 of the National Institute of Anthropology and History Act; Article 27 of the Federal Law of Monuments and Archaeological, Artistic, and Historic Sites; Article 13 of the General Law of National Goods; Article 45 of the General Law of Ecological Balance and Environmental Protection; and Articles 5, 8, 33, 49, and 51 of the General Law of Human Settlement provide for the implementation of the 1970 Convention.

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

The Federal Law on Monuments and Archaeological, Artistic, and Historic Sites defines “cultural property” as the country’s heritage, comprised by Pre-Columbian, Colonial, and objects from the nineteenth and twentieth centuries. This conception of cultural property includes works from every epoch of the country’s history, every ethnic group that has inhabited the country, and the natural objects that promote scientific interest in or contribute to an understanding of the history of Mexico. More and more, the notion of cultural heritage is broadening to include ideas, traditions, customs, languages, beliefs, values, and other intangible expressions of the nation’s identity and its diverse communities.

(c) Specialized units

In November of 2009, the National Institute for Anthropology and History (NIAH), with the Directorate of Security and Intelligence in Defense of Cultural Heritage, charged the National Council of Material Resources and Services with securing the protection of the nation’s cultural and historical heritage. In addition to the Museum Security Committees, specialized groups charged with the prevention of illicit traffic include the National Councils on: Legal Affairs, Archaeology, Cultural Heritage Protection, Museums and Expositions, and NIAH centers.

(d) Administrative coordination

The NIAH coordinates activities with the Secretariat of Foreign Affairs (through the Legal Consul), the Attorney General (through the Director General of International Affairs and INTERPOL), the Specialized Federal Public Ministry, and the General Customs Bureau.

(e) Working meetings

The NIAH does not know of any mechanism that coordinates activities in such instances.

3. Inventories and identification

(a) Inventories

The NIAH creates inventories with the National Identification Program of the Register and Catalog of Movable Historic Monuments, a part of the Prevention of Illicit Traffic in Cultural Objects program. Each catalog is inscribed in a national database that includes a technical, historical, and photographic file of

each object. An example can be seen in the recently created network of twelve inventories related to the temples of indigenous communities. The register of movable objects from each site preserves the respective legends of saints, traditions, and stories linked to each religious sect.

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

See 2(b) above. Mexico does not have a list of national treasures.

(c) Reference to the Object ID standard

The manual edited by the NIAH in 2000 articulates a standard for the minimum information necessary to identify a cultural object. The data required for each is based on the Object ID format.

(d) Systems to combat theft and to train staff

The aforementioned Security Committees [See 2(d) above] work in the museums (5 national, 20 regional, 43 provincial) and sites (36 archaeological, 5 historical, 3 community, 3 metropolitan) under the NIAH's control and decide on actions to prevent the theft of cultural property, both by developing technology and security mechanisms (alarms, surveillance, etc.) and by updating registers of cultural property.

4. Archaeological excavations

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

All excavations are conducted by the NIAH or scientific and morally-upstanding institutions with its prior authorization. The Archaeology Council of the NIAH sets the terms and conditions of the project, supervises the site, and may revoke authorization or impose sanctions for violations of the law.

(b) Illegal excavations

Illegal excavations are a recurrent problem in Mexico, given the country's vast cultural richness. The problem is perpetuated by auction houses aware of what objects can fetch on the black market. At present, only 176 of the 42,991 national archaeological sites are open to the public. The NIAH has been asked to encourage greater amounts of community participation in protecting the many unsupervised sites. National legislation imposes fines and imprisonment for up to 10 years for violations of the law.

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)

1,427 cultural objects were stolen from 2007 to 2010, an average of 357 annually.

(b) Problem of the illicit export of cultural property

In addition to the problems mentioned in 4(b) above, the increased demand for Pre-Columbian artifacts and sacred art from Latin America attracts traffickers to launder objects from clandestine excavations and sell them illegally in auction houses and art galleries.

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

The legal regulations and norms state that the exportation of historic or artistic monuments or private property requires prior authorization from the corresponding authority (NIAH, National Art Institute). Regarding archaeological monuments, exportation is prohibited except in cases of exchanges with or donations to governments or scientific institutions with prior approval of the President.

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

Mexican legislation does not provide for restitution; however, Mexico has concluded international treaties that provide for the conservation, protection, and restitution of cultural property with fellow signatories. Upon Senate approval, each treaty is integrated into the Supreme Law of the Land.

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

The primary obstacles to securing the restitution of illicitly exported cultural property are administrative and legal ones, engendered by a lack of willingness on the part of the importing countries.

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

The NIAH has no awareness of the country's having returned a stolen cultural object to another country between 2007 and 2010.

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).

This information is not within the purview of the NIAH.

(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)

This information is not within the purview of the NIAH.

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

By law, all sales finalized in art and antique galleries must be registered within 30 days of the transaction. Proper attention cannot be dedicated to the observance of the law, however, given the existence of the black market. The NIAH and its affiliated museums have no policy regarding the acquisition of objects of an archaeological nature, as they are federal property and cannot be traded.

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

State-owned archaeological, historic, and artistic monuments are regulated by the General Law of National Goods, which declares such objects inalienable and imprescriptible.

With regard to artifacts yet unfound and those found by chance or during excavations, legislation establishes that only the NIAH may conduct projects for discovery or exploration, with the exception of scientific or morally-upstanding institutions with prior authorization from the NIAH. Archaeological sites are legally defined as those that contain archaeological monuments or are assumed to do so.

(e) Special rules on the transfer of title deeds with respect to cultural property

Federal immovable objects cannot be unincorporated from public domain; however, such objects may be granted to individuals with private rights who have no financial gain in mind and agree to cover the costs of restoration, conservation, and maintenance of the object.

7. Bilateral agreements

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

Mexico has concluded bilateral agreements with the U.S.A. (1970), El Salvador (1990), Belize (1991), Guatemala (1995), Bolivia (1998), and Peru (2002). Through the implementation of these agreements, some 3,900 archaeological and historic objects were returned to Mexico between 2007 and 2010.

(b) Conditions settled by the importing country with regard to the admissibility of requests for restitution from a country of origin

Both parties are obligated to use the legal measures at their disposal to recover the object stolen from the party requesting restitution, after the date the agreement goes into effect. The requesting party is not obligated to pay compensation to the individual in possession of the object in question.

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

In addition to cooperative programs and bilateral agreements, Mexico maintains diplomatic relations with Brazil, Canada, Colombia, Chile, Cuba, Peru, and Venezuela that encourage an exchange of information that facilitates the restitution of illicitly exported cultural objects.

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

According to the UNESCO Code of Ethics, dealers must refrain from participating in transactions of cultural property, knowing that it has been illicitly removed. Concerning the museums that belong to the NIAH, property is acquired not through sales, but excavations, seizures, and donations.

2. Awareness raising and education

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

A presentation of the ICOM Red Lists of Central America and Mexico took place in 2010 at the National Anthropology Museum, organized by experts from relevant countries. The NIAH created seven radio broadcasts to accompany the presentation.

(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?

Beginning in 2009, the Collective Transit System started an exposition series on Cultural Heritage and Its Conservation in the Zócalo subway station to raise public awareness to the problem. The NIAH sponsored a similar exhibition open to the public in July 2010. The National Conservation Council of the NIAH offers informative courses for children in elementary schools on the value of heritage.

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

Thanks to the work of the Attorney General and the NIAH in collaboration with INTERPOL, Mexico has recovered since 2010 14 historical and 160 archaeological objects destined for the black market.

(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 a cultural object is stolen, the Office of International Police Affairs and INTERPOL (a subsidiary of the Attorney General) are immediately notified. All information is sent to update the INTERPOL red files.

(c) Specific training program for members of police services

The NIAH permanent training programs for agents of public ministry, federal police, and corporations instruct on identifying cultural heritage and crimes and knowing how to proceed in different scenarios.

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

A specialized unit of the Attorney General is charged with the investigation of crimes against cultural heritage; however, there is no authority that specializes in prosecuting such crimes in a specific way.

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

This information is not within the purview of the NIAH.

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

This information is not within the purview of the NIAH.

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

For years, training courses on identifying and reporting objects and following security measures have been offered to customs personnel.

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

This information is not within the purview of the NIAH.

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

This information is not within the purview of the NIAH.

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

Mexico has not accepted this Convention, as it establishes criteria for the protection of cultural objects that disagree with Mexican legislation. For example, that the requesting country must compensate the individual in possession of the object it wants recovered conflicts with Mexico's belief that a country should not be required to pay for its original property. Because Mexican legislation upholds that archaeological monuments constitute original, inalienable, and imprescriptible property, it is not possible to subscribe to this Convention.

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

Mexico is currently a member of the Intergovernmental Committee, serving a term from 2009-2013.

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

At UNESCO's request, Mexico contributed in 2009 a list of legislative amendments and retractions to be added to the database.