
The Philippines unique geographical position (photo of Southeast Asian Region) has made it of interest in geopolitics. It is the crossroads of sea and air travel and is a practical and sometimes necessary transshipment point for legitimate goods. It is thus significant in concerns of trafficking of any nature.

The Philippines has recently experienced a surge in interest in conservation of cultural property. Two years ago, the Philippine Senate tabled for discussion the ratification of the 1954 Convention for the Protection of Cultural Property In the Event of Armed Conflict. Though it has not yet been ratified, this is taken as a significant step in the right direction.

It is not a signatory to the 1970 Convention and has not ratified it. However, the Philippine Constitution contains an incorporation clause which states:

“Art. II Section 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations” (emphasis provided)


As we may have it, in 2009, the Legislature enacted Republic Act 2009 or the National Heritage Act. This law contains provisions that execute much of the basic requirements of the 1970 convention even without the Philippine commitment to be a signatory to or ratify the same.

The 1970 Convention requires its States Parties to take action in these main fields:

- **Preventive measures:**
  Inventories, export certificates, monitoring trade, imposition of penal or administrative sanctions, educational campaigns, etc.

- **Restitution provisions:**
  Per Article 7 (b) (ii) of the Convention, States Parties undertake, at the request of the State Party "of origin", to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. More indirectly and subject to domestic legislation, Article 13 of the Convention also provides provisions on restitution and cooperation.
International cooperation framework:
The idea of strengthening cooperation among and between States Parties is present throughout the Convention. In cases where cultural patrimony is in jeopardy from pillage, Article 9 provides a possibility for more specific undertakings such as a call for import and export controls.


Agencies:

In the Philippines, cultural property is administered, protected and monitored by the National Commission for Culture and the Arts and several coordinating cultural agencies. The Commission, was created in 1992 to create and implement policy on culture and arts as well as to regulate activities inimical to the conservation and preservation of Philippine cultural heritage (Republic Act 7356 Sec. 13 (k). It supervises the other cultural agencies with (Executive Order 80 ca 1998) specific tasks on conservation, these are:

1. The National Museum
2. The National Historical Commission of the Philippines
3. The National Archives
4. The National Library
5. The Commission on Philippine Language
6. The Cultural Center of the Philippines

These agencies are coordinated through the National Commission for Culture and the Arts. The illicit trafficking of cultural property is under the jurisdiction of the National Museum.

Definition of Cultural property

The Philippine Congress passed, the Cultural Heritage Act of 2009, the primary law for the protection of cultural property. It defines cultural property as:

“Cultural Property” shall refer to all products of human creativity by which a people and a nation reveal their identity, including churches, mosques and other places of religious worship, schools and natural history specimens and sites, whether public or privately-owned, movable or immovable, and tangible or intangible.

Compliance with the provisions of the 1970 Convention

I. Preventive measures:
   Inventories, export certificates, monitoring trade, imposition of penal or administrative sanctions, educational campaigns, etc.
On preventive measures: inventories

The new legislation provides for the inventory and registration of cultural property. It states:

SECTION 14. Establishment of a Philippine Registry of Cultural Property (PRECUP). - All cultural property of the country deemed important to cultural heritage shall be registered in the Philippine Registry of Cultural Property.

The Commission, through the appropriate cultural agencies and local government units, shall establish and maintain this Registry within three (3) years from the effectivity of this Act. The guidelines in the registration of cultural property are as follows:

(a) All cultural agencies concerned shall individually maintain an inventory, evaluation and documentation of all cultural properties it has declared according to their category and shall submit the same to the Commission. For cultural property declared as Immovable Cultural Property, the appropriate cultural agency shall, after registration, give due notice to the Registry of Deeds having jurisdiction for annotation on the land titles pertaining to the same;

(c) Both cultural agencies concerned and local government units shall continuously coordinate in making entries and in monitoring the various cultural properties in their respective inventory;

(d) All government agencies and instrumentalities, government-owned and/or controlled corporations and their subsidiaries, including public and private educational institutions, shall report their ownership and/or possession of such items to the pertinent cultural agency and shall register such properties within three (3) years from the effectivity of this Act;

(e) Private collectors and owners of cultural property shall register such properties, within three (3) years from the effectivity of this Act. The private collectors and owners of cultural property shall not be divested of their possession and ownership thereof even after registration of said property as herein required.

In essence, the law requires the National Commission for Culture and the Arts to administer the Philippine Registry of Cultural Property. It is composed of the inventories and registries of the various cultural agencies such as the National Historical Commission whose predecessors (and itself) had declared or recognized historical sites, monuments, landmarks and heritage houses. This also includes the registry of the National Museum for its list of declared national cultural treasures and important cultural property and the National Archives for its documents collection.

The Commission likewise has embarked on a National Inventory of Government-owned or possessed Cultural Property to locate and document these, conserve them or prevent their loss. This inventory will also be included in the registry.

Finally, local government units are also required to assist the Commission in conducting an inventory of intangible cultural heritage for registry. Following the principle that the tangible and the intangible are irreversibly linked, this allows the commission to also locate movable or immovable property whose significance lies in the intangible. (Sec. 16 and 19 RA 10066).

Export Certificates:
SECTION 23. Export of Cultural Property. – Whoever desires to export cultural property registered in the Philippine Registry of Cultural Property shall adhere to the following requirements:

(a) Authorization from the Commission through the appropriate cultural agencies;

(b) Application for export permit shall be submitted thirty (30) days before the intended export from the Philippines; and

(c) Application for export permit must include the following: (1) the purpose of the temporary export; (2) the export date of the cultural property; (3) the repatriation date of the cultural property; (4) a description of the cultural property; and, (5) the inventory of the cultural property in the Philippine Registry of Cultural Property.

The grant of export permit shall be based on the following conditions: (i) the cultural property is exported on a temporary basis; and (ii) export of cultural property is necessary for scientific scrutiny or exhibit.

All cultural property exported requires an export permit. Although the rule provides that only cultural property that is registered is subject of these said export permits, Sec. 5 of the same law provides for property that is considered important cultural property. This section allows for unregistered or undeclared property to be subject of protective measures, including permits for when they are to be exported.

Pursuant to this, the Commission and the cultural agencies may closely monitor and produce statistics for the tracking of movements of cultural property that leave the country.

**Imposition of Penal or Administrative Sanctions**

The new law states:

**ARTICLE XII**

**PENAL PROVISIONS**

SECTION 48. Prohibited Acts. - To the extent that the offense is not punishable by a higher punishment under another provision of law, violations of this Act may be made by whoever intentionally:

(c) Explores, excavates or undertakes diggings for the purpose of obtaining materials of cultural historical value without prior written authority from the National Museum. No excavation or diggings shall be permitted without the supervision of a certified archaeologist;

(d) Appropriates excavation finds contrary to the provisions of the New Civil Code and other pertinent laws;

(e) Imports, sells, distributes, procures, acquires, or exports cultural property stolen, or otherwise lost against the will of the lawful owner;

(f) Illicitly exports cultural property listed in the Philippine Registry of Cultural Property or those that may be categorized as such upon visitation or incorrectly declares the same during transit; and,
(g) Deals in cultural property without proper registration and license issued by the cultural agency concerned.

SECTION 49. Penal Provisions. - Upon conviction, the offender shall be subject to a fine of not less than Two Hundred Thousand Pesos (P200,000.00) or imprisonment for a term of not less than ten (10) years, or both upon the discretion of the Court: Provided, That any cultural property attempted to be concealed from registration or those intended to be encumbered or excavated in violation of this Act shall be summarily confiscated and forfeited in favor of the Commission: Provided further, That if the violation is committed by a juridical person, the president, manager, representative, director, agent or employee of said juridical person responsible for the act shall also be liable for the penalties provided herein: Provided furthermore, That if the acts are committed by dealers, they shall suffer, in addition to the penalties provide herein, the automatic revocation of their license to operate: Provided finally, That if the offender is an alien, he shall be placed under the custody of the Bureau of Immigration for the appropriate proceedings under this Act, and shall be summarily deported after serving his/her sentence.

Heads of departments, commissions, bureaus, agencies or offices, officers and/or agents found to have intentionally failed to perform their required duty as prescribed by the deputization order under Section 28 of this Act shall be liable for nonfeasance and shall be penalized in accordance with applicable laws.

If the offense involves the non-registration of a cultural property such as those referred to in Section 14, and the non-registration occurs upon or after proper notification by the Commission or the cultural agency concerned, the offender shall be subject to a fine of not less than ten thousand pesos (P10,000.00) but not more than one hundred thousand pesos (P100,000). 

The concerned head of agency, officer and/or employee of the government entities mentioned in Section 31 shall be held liable for failure to consult and coordinate with the Commission for the damage to the cultural property resulting from the implementation of the entity’s program/project, and shall be meted the penalty mentioned in the first paragraph of this section: Provided, That the offender/s shall likewise be asked to pay for the repair or rebuilding of what has been damaged.

Aside from specifically identifying the acts that constitute illegal trafficking of cultural property, the penalty imposition has been increased from a mere TEN THOUSAND PESO (P10,000.00) fine or about TWO HUNDRED DOLLARS ($200.00) to TWO HUNDRED THOUSAND PESOS (P200,000.00) or about FOUR THOUSAND DOLLARS ($4000.00).

Educational campaigns

The law also states:

ARTICLE X

CULTURAL EDUCATION

SECTION 38. Incorporation of National Cultural Treasures and Important Cultural Property in the Basic Education System. - Within one (1) year from the effectivity of this Act, the Department of Education in
coordination with the Commission’s Philippine Cultural Education Program shall formulate the cultural heritage education programs both for local and overseas Filipinos to be incorporated into the formal, alternative and informal education, with emphasis on the protection, conservation and preservation of cultural heritage property.

The Philippine Registry of Cultural Property shall likewise be incorporated into the formal, alternative, and informal education by the provincial and local governments.

SECTION 39. Cultural Heritage Education Program. - Within one (1) year from the effectivity of this Act, the Department of Education, the Technical Education and Skills Development Authority and the Commission on Higher Education in consultation with the Commission shall set forth in its teaching programs nationwide the following cultural heritage education programs with emphasis at the provincial, city and municipal levels:

(a) Protection, conservation and preservation of cultural heritage properties;

(b) Instructional materials in print, film and broadcast media on the cultural and historical significance of cultural properties; and

(c) Visitation, public accessibility and information dissemination on designated local cultural properties.

In addition to the foregoing, the same law provides for the creation of Sentro Rizal Information centers all over the world to provide cultural information and educational materials to overseas Filipinos.

II. Restitution provisions:

Per Article 7 (b) (ii) of the Convention, States Parties undertake, at the request of the State Party “of origin”, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property.

More indirectly and subject to domestic legislation, Article 13 of the Convention also provides provisions on restitution and cooperation.

Although the Philippines has not yet ratified the 1970 Convention, it has anticipated its entry by incorporating into its municipal law, provisions for restitution. It states in Republic Act 10066:

SECTION 29. Power to Recover Cultural Properties. – The Commission is empowered to recover or retrieve cultural properties which are under the custody of foreign nationals or entities and to bring these properties back to Philippine custody.

SECTION 32. Institutional Linkages of the National Cultural Agencies. - The cultural agencies and other national government agencies, as listed below, shall consult, coordinate and work closely with the Commission in the implementation of their respective programs/projects in the context of this Act. Furthermore, the Commission may link up with other agencies and institutions, as it may deem appropriate, as a way of dealing with conservation on a holistic manner.

x x x

(m) The Office of the Special Envoy on Transnational Crimes which shall have the oversight and operational capacity to go after illicitly trafficked and stolen cultural treasures.
The National Commission for Culture and the Arts has recently been accepted as a member of the National Law Enforcement Coordinating Committee which allows the agency law enforcement capability in order to capacitate the Philippine National Police, the National Bureau of Investigation and other law enforcement agencies as well as the Coast Guard, the Armed Forces of the Philippines the Department of the Environment and Natural Resources to assist in the arrest of violators of the Heritage Act. In addition to this, it partners with the Department of Foreign Affairs and the Office of the Special Envoy on Transnational Crimes to go after the illicit export of cultural property in order to facilitate their return.

III.

International cooperation framework:
The idea of strengthening cooperation among and between States Parties is present throughout the Convention. In cases where cultural patrimony is in jeopardy from pillage, Article 9 provides a possibility for more specific undertakings such as a call for import and export controls.

The Convention states:

Article 9

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.

As a member of the National Law Enforcement Coordinating Committee which includes among its members, the Bureau of Customs, the Commission has begun talks to formalize the obligations of the country under the Convention pursuant to the protection of other nations’ cultural property within the country. This includes the proposal to create rules for the capture of traffickers and repatriation of seized cultural property.

Summary

With the passage of RA 10066, much of the important provisions of the Convention have been localized despite the lack of its ratification.