

# An Overview of the Implementation of the 1970 Convention in Asia

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## I. Introduction

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import,

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Export and Transfer of Ownership of Cultural Property (hereinafter, “the 1970 Convention”) is generally regarded as “le principal instrument multilateral” on the suppression of the illicit traffic in cultural objects.<sup>2</sup> As of the end of May 2012, it has 122 parties. Given that the Convention has been around for more than 40 years, the number is less than impressive, particularly when compared with the 1972 World Heritage Convention (189 parties) and the 2003 Convention on Intangible Cultural Heritage (143 parties).

The problem of illicit traffic in cultural objects and the related question of return or restitution of cultural objects to their countries of origin have acquired an increasingly high profile in recent times. Against such a background, it is high time to look back on the achievements of this “landmark” treaty and discuss the ways and means for a more effective implementation of the Convention in the future.

This report deals with the participation in and implementation of the 1970 Convention by Asian States. According to the classification system used by the United Nations, there are 48 States in Asia, further divided into 5 groups. Since I was not in a position to cover all those States, I focused my attention on three East Asian States, that is, China, Japan and the Republic of Korea (hereinafter, “Korea”) and tried to draw lessons that are applicable to other parts of Asia and beyond.

I will start my discussion by looking at the participation in the Convention by Asian States (II). This will be followed by the recent developments in Asia, in particular, the spectacular growth of the art market in China and its impact on the protection of cultural objects (III). I will go on to discuss the domestic implementation of the 1970 Convention in China, Japan and Korea (IV). By way of conclusion, I will offer a few words on the achievements of the Convention and the future directions to be taken for a more effective implementation of the Convention (V).

## II. The Present State of Participation in the Convention by Asian States

How to define Asia is always a thorny question. In this report, I have adopted the method used by the United Nations system, including its method of dividing 48 Asian States into various regions, that is, Central Asia, Eastern Asia, Southern Asia, South-Eastern Asia and

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<sup>2</sup> Guido Carducci, *La restitution des biens culturels et des objets d'art* (Paris: LGDJ: 1997), pp. 134-135.

Western Asia.

Figure 1 shows that out of 48 Asian States 33 countries are parties to the 1970 Convention as of the end of May 2012. The participation rate is 69%, slightly higher than the global participation rate of approximately 63%.

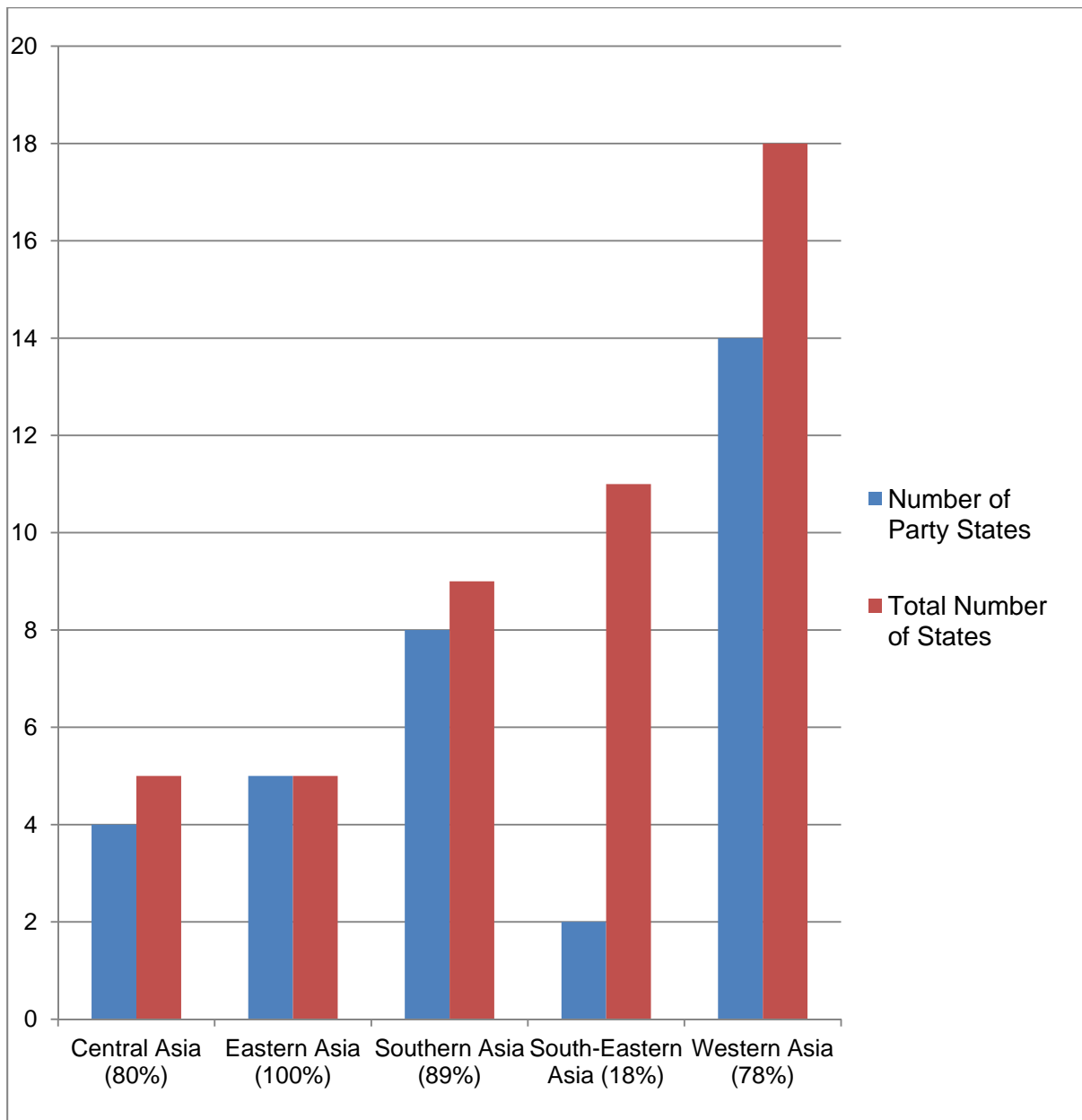
Region	State	Date of Deposit of Instrument	Type of Instrument	No. of Party States	Total No. of States	% of Party States
<b>Asia</b>				<b>33</b>	<b>48</b>	<b>69%</b>
<i>Central Asia</i>	Kazakhstan	09/02/2012	Ratification	4	5	80%
	Kyrgyzstan	03/07/1995	Acceptance			
	Tajikistan	28/08/1992	Ratification			
	Turkmenistan	-	-			
	Uzbekistan	15/03/1996	Ratification			
<i>Eastern Asia</i>	China			5	5	100%
	China, Hong Kong Special Administrative Region	28/11/1989	Acceptance			
	China, Macao Special Administrative Region					
	Democratic People's Republic of Korea	13/05/1983	Ratification			
	Japan	09/09/2002	Acceptance			
	Mongolia	23/05/1991	Acceptance			
	Republic of Korea	14/02/1983	Acceptance			
<i>Southern Asia</i>	Afghanistan	08/09/2005	Acceptance	8	9	89%
	Bangladesh	09/12/1987	Ratification			
	Bhutan	26/09/2002	Ratification			
	India	24/01/1977	Ratification			
	Iran (Islamic Republic of)	27/01/1975	Acceptance			
	Maldives	-	-			
	Nepal	23/06/1976	Ratification			
	Pakistan	30/04/1981	Ratification			
	Sri Lanka	07/04/1981	Acceptance			
<i>South-Eastern Asia</i>	Brunei Darussalam	-	-	2	11	18%
	Cambodia	26/09/1972	Ratification			
	Indonesia	-	-			
	Lao People's Democratic Republic	-	-			
	Malaysia	-	-			
	Myanmar	-	-			

	Philippines	-	-			
	Singapore	-	-			
	Thailand	-	-			
	Timor-Leste	-	-			
	Viet Nam	20/09/2005	Ratification			
<i>Western Asia</i>	Armenia	05/09/1993	Notification of succession	14	18	78%
	Azerbaijan	25/08/1999	Ratification			
	Bahrain	-	-			
	Cyprus	19/10/1979	Ratification			
	Georgia	04/11/1992	Notification of succession			
	Iraq	12/02/1973	Acceptance			
	Israel	-	-			
	Jordan	15/03/1974	Ratification			
	Kuwait	22/06/1972	Acceptance			
	Lebanon	25/08/1992	Ratification			
	Occupied Palestinian Territory	22/03/2012	Ratification			
	Oman	02/06/1978	Acceptance			
	Qatar	20/04/1977	Acceptance			
	Saudi Arabia	08/09/1976	Acceptance			
	Syrian Arab Republic	21/02/1975	Acceptance			
	Turkey	21/04/1981	Ratification			
	United Arab Emirates	-	-			
	Yemen	-	-			

**Figure 1: Participation in the 1970 Convention by Asian States**

When one looks at the participation rate by region, there is a striking fact. While there is no substantial variation in terms of participation rate among Central Asia (80%), Eastern Asia (100%), Southern Asia (89%) and Western Asia (78%), the rate of South-Eastern Asia is as low as 18 %. Out of 11 States, only 2 countries (Cambodia and Vietnam) are parties to the Convention. Given that South-Eastern Asia is far from immune from the problem of illegal excavations of and illicit traffic in cultural objects, this unfortunate gap should be filled promptly.

Figure 3 shows the trend of participation by Asian States. Participation in the Convention was most active in the 1970s (12 States). The following decades register smaller numbers of States ratifying or acceding to the Convention (7, 8 and 6 respectively). In the last temporal category (2001 – present), there were 2 participation each in the years 2002, 2005 and 2012.



**Figure 2: Participation rate by region**

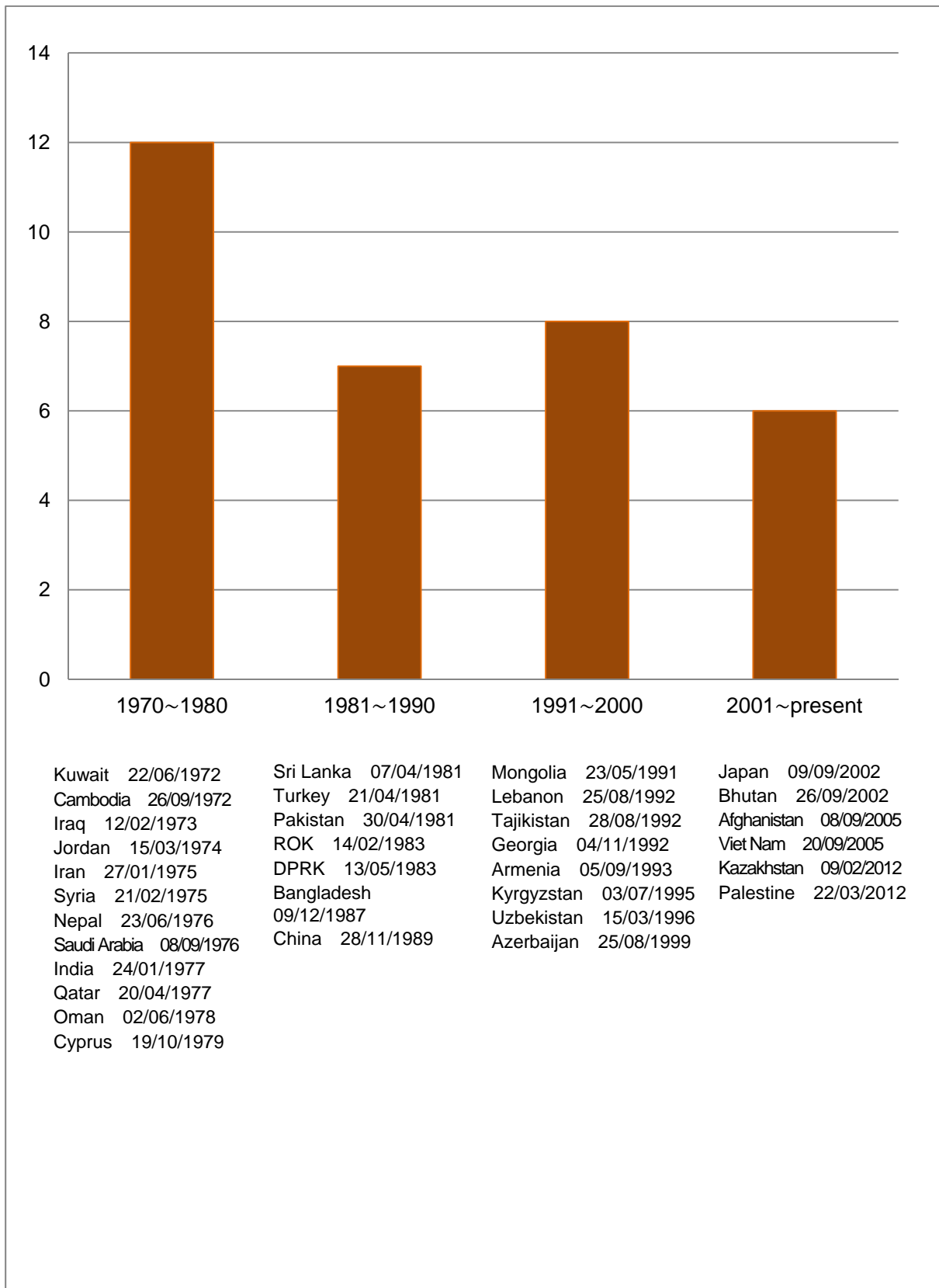


Figure 3: Trend of Participation by Asian States

### III. Recent Developments in Asia: Spectacular growth in the art market and its impact on the protection of cultural objects

In this section, I will discuss the rise of China in the art market and its impact on the protection of cultural objects. Even though the discussion is limited to China, one can safely assume that a similar phenomenon can be replicated in other parts of Asia, if in varying degrees.

#### 1. The Rise of China in the Art Market

The exponential growth of the art market in Asia, in particular in China, is well known. According to the Department of Cultural Market of the Chinese Ministry of Culture, the total amount of art trade in China for the year 2011 is 210.8 billion yuan (out of the total amount, trade by auction represents 97.5 billion yuan and trade by galleries and exhibitions comes to 35.1 billion yuan). According to an article produced by *Artprice* titled “The Global Art Market – An Overview of 2011”, the rise of China is nothing short of breath-taking. According to the article:

The spectacular emergence of Asia and particularly China as of 2007, and that country’s domination of the world’s art market as of 2010, was again confirmed in 2011. With preliminary figures suggesting China accounted for 39% of the global art market during the year, that would imply an increase of 6 percentage points versus 2010, and a 32% rise in art auction in just one year!

China occupied its dominant position in the art market for two years in a row with the United States (25% of global art auction revenue in 2011) and the United Kingdom (20%) claiming the second and the third spot respectively. According to the same source, “Asia not only accounts for the largest volume of global art auction revenue, but is also beginning to generate the best individual auction results” as is exemplified by a painting of Qi Baishi that garnered 57 million US dollars in Beijing, the best individual auction result of 2011. In the same year, “two of the best modern Chinese artists most westerners have never heard of” unseated Pablo Picasso as the (almost constant) holder of the number one position on *Artprice’s* annual ranking of artists sorted by their auction prices; Zhang Daqian at \$506.7 million was number one, followed by Qi Baishi (\$445.1 million) and Picasso (\$311.6 million).

Chinese collectors' interest is not limited to their indigenous artists. They are expanding into Western and contemporary art. It is also to be noted that as the Chinese art market "sizzles", the largest boom has been in Chinese antiquities.<sup>3</sup> As was eloquently demonstrated by the controversy (2009) over the auction of the two bronzes originating from the Yuanmingyuan (more about this later), there has been an acutely high interest in the repatriation of the Chinese cultural objects that had been displaced and scattered all over the world since, in particular, 1860.<sup>4</sup>

## 2. The Shadow of the Rise

The exponential growth in demand for antiquities has far-reaching and serious repercussions on the protection of cultural objects in China. Even before the arrival of the art market boom in China, illegal excavations or thefts of cultural objects were a serious problem. Faced with an increasingly serious problem of illicit traffic in cultural objects, the Chinese State Council promulgated a notice on the Suppression of Illicit Excavation and Smuggling of Cultural Objects in 1987. In its preamble, the Notice observed the high incidence of illicit excavations and smuggling of cultural objects in China and warned about the dangers these illegal activities posed for Chinese society.<sup>5</sup> The Notice also pointed out in its preamble that the existence of an overseas market for the smuggled Chinese cultural objects worked as a stimulant and catalyst for the illegal activities.<sup>6</sup> In 1991, the State Bureau of Cultural Relics already noted that the damage arising from illegal excavations was unprecedented.<sup>7</sup>

With the opening of the Chinese market for cultural objects and the resultant increase in

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<sup>3</sup> "Asian Art Market Sizzles", China Daily (April 6, 2011).

<sup>4</sup> Ibid.

<sup>5</sup> J. David Murphy, *Plunder and Preservation: Cultural Property Law and Practice in the People's Republic of China* (Hong Kong, Oxford and New York: Oxford University Press, 1995), pp. 68-69.

<sup>6</sup> For the text of the Notice, see Xin Zhongguo Wenwu Fagui Xuanbian (Beijing: Wenwu Chubanshe, 1987), pp. 327 – 331.

<sup>7</sup> Murphy, op. cit., p. 69.



demand for them in the market, the already serious problem of illegal excavations and trafficking became even worse. Tomb robbing has become a popular means for “escaping poverty and getting rich” (脫貧恥富), especially in the less developed provinces of China. The magnitude of the problem is proved by such expressions as a “village specializing in tomb robbing” (*daomu zhuanycun*).<sup>8</sup> Such socio-economic phenomenon produced a substantial number of people engaging in the three kinds of “stealing/robbing” (this concept is represented by the Chinese character “*dao*”(盜)), that is, tomb robbing, robbing the shipwrecks and stealing from museums or collections (*daomu, daolao, daoqie*).<sup>9</sup> Of the three ways of stealing/robbing, raiding shipwrecks is regarded as the easiest and safest method.<sup>10</sup> Under the circumstances, it is reported that more than 90 % of the tombs of a major significance have been already illegally excavated.<sup>11</sup> It is estimated that approximately two-thirds of illegally acquired objects end up in foreign hands.<sup>12</sup> Illegal traffic in cultural objects over the internet is also a serious problem.

### 3. Related Question: Return of Cultural Objects of Chinese Origin

In discussing the suppression of illicit trade in Chinese cultural objects, one needs also look at the closely related question, that is, the return or repatriation of cultural objects of Chinese origin. The issue of return or restitution of cultural objects to the countries of their origin has recently acquired a high profile in international society due to, among others, the plunder of the Baghdad National Museum in the wake of the fall of Baghdad (2003), the return of cultural objects displaced during or in connection with the Second World War and the exemplar practice of Italy and other countries in the recent years.

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<sup>8</sup> “Sheizai zousi zhongguo wenwu”, [http://news.sina.com.cn/c/2009-03-10/095117375396\\_6.shtml](http://news.sina.com.cn/c/2009-03-10/095117375396_6.shtml)

<sup>9</sup> Zhongguo wenwu heyi liushi Wu Shu: Sheizai paimai zhongguo?  
<http://news.scj.cn/20110124/023210022375.shtr>.

<sup>10</sup> “Sheizai zousi zhongguo wenwu”, [http://news.sina.com.cn/c/2009-03-10/095117375396\\_6.shtml](http://news.sina.com.cn/c/2009-03-10/095117375396_6.shtml) .

<sup>11</sup> Ibid.

<sup>12</sup> Zhongguo wenwu heyi liushi Wu Shu: Sheizai paimai zhongguo?  
<http://news.scj.cn/20110124/023210022375.shtr>.

However, nowhere has this issue attracted such a heightened attention than in China. In particular, the controversy surrounding the auction of the Yves Saint Laurent and Pierre Bergé collection in the spring of 2009 highlighted the high sensitivity of the question in China. Apprised that Christie's planned to auction off the collection that included two Qing period bronze animal heads (one depicting a rabbit and the other a rat) looted by the British and French "invaders" in 1860, China asked the auction house to stop the sale.<sup>13</sup> 67 Chinese lawyers initiated a lawsuit before a French court requesting that Christie's withdraw the bronzes from the auction. They also asked the court to order the return of the looted artefacts to China. The court rejected their request and the auction proceeded as planned. The objects were auctioned off to a Chinese bidder for the price of 31 million euros. The whole controversy took a further twist when the Chinese collector refused to pay for the sculptures.<sup>14</sup> That this question was more about history than about law is amply demonstrated by an observation of a Chinese lawyer who called the Old Summer Place "[China's] unhealed scar, still bleeding and aching".<sup>15</sup>

It needs to be noted that the controversy broke out in the context of China becoming more active over the issue of return or restitution of cultural objects of Chinese origin. Recently it has become a noticeable trend for Chinese collectors to buy in the West and Hong Kong cultural objects originating from China and repatriate them to China. In October 2002, the Foundation of Chinese Social and Cultural Development which is under the auspices of the Ministry of Culture, established a Lost Cultural Relics Recovery Fund. In July 2003, China also launched a national project on the recovery of the treasures displaced abroad (called "National Treasure Project" (Guobao gongcheng)).<sup>16</sup> Since the middle of the last decade, China has sent experts to Japan and the West to conduct surveys on the cultural objects of

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<sup>13</sup> David Barboza, "China Seeks to Stop Paris Sale of Bronzes", *New York Times* (February 17, 2009).

<sup>14</sup> Tania Branigan, "Chinese Bidder Refuses to Pay for Yves Saint Laurent-owned Artefacts", *Guardian* (March 2, 2009).

<sup>15</sup> Barboza, op. cit.

<sup>16</sup> "More than 10 Million Chinese Cultural Relics Lost Overseas", *People's Daily* (January 30, 2007).  
[http://english.people.com.cn/200701/30/eng20070130\\_345934.html](http://english.people.com.cn/200701/30/eng20070130_345934.html)

Chinese origin.<sup>17</sup> In the autumn of 2009 when the memory of the controversy over the Yves Saint Laurent collection was still vivid, China decided to send a team of experts to make an inventory of the cultural objects taken from the Old Summer Palace.<sup>18</sup> In November 2009, a senior Chinese diplomat posted to the United Nations criticized the auction of the two bronzes from the Old Summer Palace and affirmed that “protecting cultural heritage and promoting the restitution of cultural property to the countries of origin are inalienable and fundamental cultural rights of the people of countries of origin.”<sup>19</sup>

Given such developments, it would not be unreasonable to predict that in the coming decades one will see China more actively promoting the return or restitution of cultural objects (in particular, cultural objects of Chinese provenance) to their countries of origin. Combined with the increasingly high profile of the issue in the international community and the growing practice of return or restitution, China’s policy and practice is likely to have a substantial impact on the future direction of our debate. Whether and (if yes) how to achieve a newly calibrated balance both in substantive and procedural terms with particular reference to the international law of return or restitution of cultural objects to their countries of origin will remain a prominent question for the decades to come.

#### IV. Domestic Implementation of the Convention in Asia

In this section, I will look into the domestic implementation of the 1970 Convention in three East Asian States, that is, Korea, Japan and China. Although my discussion is limited to three States, lessons drawn from this discussion can be applied to other parts of Asia, if with requisite adjustments.

##### 1. Korea

Korea ratified the 1970 Convention in 1983. Instead of adopting a separate law for its

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<sup>17</sup> “Chinese NGO to Recover China’s Lost Cultural Relics from Overseas”, People’s Daily (March 14, 2006). [http://english.peopledaily.com.cn/200603/14/eng20060314\\_250353.html](http://english.peopledaily.com.cn/200603/14/eng20060314_250353.html)

<sup>18</sup> “Les vestiges du Palais d’été recensés”, Le Figaro (October 19, 2009).

<sup>19</sup> “China Opposes Sale of Looted Cultural Relics: Diplomat”, People’s Daily (November 17, 2009), <http://english.people.com.cn/90001/90782/6815371.html>

domestic implementation, Korea amended the relevant parts of the Act for the Protection of Cultural Properties (first adopted in 1962). Most requirements under the 1970 Convention were largely met by the relevant provisions of the Act. Under the pre-amended Act, a gap existed concerning the protection of foreign cultural property. The gap was filled by inserting a new article 78 (in 2007, renumbered as Article 97) titled “protection of foreign cultural property” into the law.

This article provides, among others, the general obligation of protecting foreign cultural property, the competence to impound foreign cultural property upon well-founded suspicion that it is illegally exported from its country of origin and the duty to take necessary measures for the return of foreign cultural property which has been illegally exported. The Act as amended in 1982 reflected an extensive interpretation of the duties imposed by the Convention. For foreign cultural property to be legally imported into Korea, documents establishing that it was legally exported from the foreign country in question should be produced. However, the provision providing to that effect was deleted in 1999 in order to abolish “ineffective administrative practices”.

The Act was extensively amended in 2007. Article 99(4) reflected the spirit of the 1995 UNIDROIT Convention by excluding the rule of *bona fide* purchaser in certain categories of transactions in cultural objects.

## 2. Japan

It was only in 2002 that Japan ratified the 1970 Convention. For the domestic implementation of the Convention, Japan promulgated a piece of new legislation titled “the Act on Controls on the Illicit Export and Import of Cultural Property” and amended some relevant provisions of the Act for the Protection of Cultural Properties. The core provision of the 2002 Act is Article 3 that provides for the designation of “[foreign] cultural property [that] has been stolen from an institution stipulated in Article 7 (b) (i) of the Convention” as “specified foreign cultural property”. This designation takes place by the Minister of Education, Culture, Sports, Science and Technology upon notification by the Minister of Foreign Affairs who has received a notification of theft from a foreign government. Specified foreign cultural property can be imported into Japan only with import approval in accordance

with the provisions of Article 52 of the Foreign Exchange and Foreign Trade Law (Article 4). This means import of the specified foreign cultural property is virtually impossible.

Thus, the coverage of the 2002 law is fairly limited. It applies only to the case of import of cultural property stolen from a museum or other institution. The law does not have within its purview the case of export without an export certificate provided for in Article 6 (b) of the Convention. The 1970 Convention which was the end product of a complicated and difficult compromise suffers from ambiguous drafting. Under the circumstances, it is not surprising that some parties to the Convention take a cautious approach to the coverage of the Convention with particular reference to the interpretation of Article 6.<sup>20</sup>

Article 6 of the 2002 Act provides for an exception to the *bona fide* purchaser rule as stipulated in the Japanese Civil Code. The provision extends the period within which the victim of the theft may claim for recovery of the stolen cultural property up to ten years (under the Civil Code, 2 years).

### 3. China

After 1949, China promulgated a number of laws and regulations relating to the protection of cultural heritage. It was in 1982 that China introduced a comprehensive law on the subject titled "Law of the People's Republic of China on the Protection of Cultural Relics". This law was extensively amended and supplemented in 2002. A series of regulations and supplementary rules have been adopted to facilitate the implementation of the law.

Concerning cross-border movements of cultural objects, the 2002 law provides for chapter 6 titled "Export and Import of Cultural Objects". This chapter, which has 4 articles, is geared largely towards control of export of Chinese cultural objects abroad. On that question, the law puts in place detailed provisions providing for a strict regulation of the outbound flow of Chinese cultural objects. The chapter devotes one article (Article 63) to the inbound flow of foreign cultural objects. The article deals only with the case of temporary import of cultural

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<sup>20</sup> Patrick J. O'Keefe, *Commentary on the UNESCO 1970 Convention on Illicit Traffic* (Leicester: Institute of Art and Law, 2000), pp. 55-56.

objects. A website run by the Central Administration of Customs of the People's Republic of China explains that in China "there is no restriction on the import of cultural objects, whereas strict controls are in place over their export."<sup>21</sup> A highly detailed document titled "the Review Standards on the Exit of Cultural Objects" (promulgated on July 12, 2007) proves the point.

#### 4. Evaluation

The above survey shows that there exists a substantial divergence in the modality of domestic implementation of the Convention. This is due to differing conceptions on the relationship between international and national law with particular reference to the status and effect of international treaties within domestic legal systems. It is also clear that the inherent ambiguity of the Convention text has resulted in different interpretations of the extent of duties imposed by the Convention. Such state of affairs raises a question about where the Convention exists as a set of common rules. Given the fundamental importance accorded to the principle of reciprocity, substantially differing views on the substantive extent of the Convention may work as a hurdle for the smooth operation of the Convention. Another tendency is that the states surveyed focus their attention and efforts on the regulation of export of cultural objects, while taking a less strict attitude to the illicit import of foreign cultural objects. The Convention is founded on the spirit of international cooperation without which it cannot be effectively implemented. A substantial disparity in attitude between the inbound and outbound flow of cultural objects can hardly foster a spirit of international cooperation and solidarity.

#### V. Concluding Remarks

The recent period has witnessed a spectacular growth in the art market (including the market for antiquities) in some parts of Asia. With the socio-economic growth of the region, this trend will continue and spread to other parts of Asia. As has been demonstrated in China, such a development will create a huge demand for cultural objects, thereby increasing drastically the danger of illegal excavations of and trafficking in cultural artefacts. Effective

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<sup>21</sup> Haiguan zongshu jiu wenwu jinchujing shouxudeng dawen, <http://www.customs.gov.cn/publish/portal0/tab7985/info93339.htm> .

response by the international community, including stronger normative measures such as the 1970 and 1995 Conventions, is needed ever than before.

It is beyond doubt that the 1970 Convention has scored a certain degree of success in Asia. First, it sent a strong normative signal against the illicit trade in cultural goods. The year 1970 will be regarded as a very significant turning point in the history of protection of cultural heritage in the region as in other parts of the world (in particular, the United Kingdom and Italy that clearly distinguish between the pre-1970 period and the post-1970 period in evaluating the legality of transactions in cultural objects).

Secondly, the adoption of the Convention has led a number of States in the region to improve substantially their domestic legislation on the protection of cultural heritage, in particular, legislation aiming at the suppression of the illicit traffic in cultural goods.

Thirdly, the adoption and implementation of the 1970 Convention has had a certain trickle-down effect within civil society. As is demonstrated by the responses to the questionnaire handed out by the Secretariat of the UNESCO in 2011, States parties to the Convention have made efforts to sensitize the public to the importance of the issue. Awareness of the professionals working in the field such as curators and art dealers has been raised through training programmes and distribution of various codes of ethics.

Fourthly, the implementation of the Convention has produced an international network of inter-governmental organizations and NGOs working for the common objective.

Fifthly, the Convention has also facilitated the operation of a number of databases where one can check stolen or otherwise legally tainted cultural objects. The influence of these databases is attested by the frequency of their invocation at court proceedings.

The Convention was a product of complicated and difficult compromise born in an era when there was no general consensus within international society concerning the objective and means as formulated by the Convention. In that sense, one should not be grudging in celebrating the achievements of this (at its origin, ambitious) project. However, it is also true that the Convention still faces a number of challenges.

First, even after the Convention has been around for more than 40 years, there are 122 parties to it as of the end of May 2012. In Asia, although the overall participation rate is

slightly above the global rate, the region of South-Eastern Asia stood out with its low rate of participation (only 18%). Absence of a number of countries from the Convention with a universalistic objective is not only morally discouraging. It will work as a stumbling block to an effective regional cooperation. Given that States of South-Eastern Asia often find themselves victims of theft or illegal export of cultural objects, renewed efforts should be made to take these countries on board.

Secondly, the adoption of the 1970 Convention has led many States in the region to introduce implementing legislation. However, one may be justified in questioning the comprehensiveness and effectiveness of the legislation. Ambiguities lurking in the Convention have resulted in differing conceptions of duties imposed by the Convention. Some States have adopted implementing legislation that reflects a restricted view of the duties to be discharged under the Convention. It needs also to be pointed out that the relevant legislation in China, Japan and Korea concerns itself mostly with the outbound flow of cultural objects, while paying much less attention to the inbound traffic.

Thirdly, the problem of illegal excavation of and illicit traffic in cultural objects is widespread in the region. Under the circumstances, regional cooperation at various levels is essential to address the problem. However, there exist no effective institutional mechanisms or arrangements for regional collaboration.

At a more general level, the Convention can be assessed as rich in symbolical significance yet somewhat lacking in substantive specificity and normative bite (as is well known, this problem is addressed by the 1995 UNIDROIT Convention). A closely related question is the lack of substantive uniformity of the Convention. As is exemplified by the implementing legislation of China, Japan and Korea, textual nebulosities of the Convention have resulted in different perceptions of its normative configurations. The lack of a uniform conception of the Convention's substantive extent or scope will place significant hurdles to a smooth operation of the Convention.

Such state of affairs compels one to raise a fundamental question: What is the 1970 Convention to us? Is it just an inspiration or a clarion call for the lofty cause of international protection of cultural objects? Or is it a set of common rules accepted and implemented in good faith? The answer seems to lie somewhere in between. Then our task is to devise the ways and means for moving from the Convention as a sort of a "framework convention" to



the Convention equipped with advanced normative density and effectiveness.

In tackling this daunting task, one should be “cautiously audacious”. However lofty our objective may be, the past 40 years’ experience advises us to be cautious about the “reform” of the Convention. A number of States have been reluctant to embrace the Convention full-heartedly for a variety of reasons, including political, legal and technical/bureaucratic problems. Under the circumstances, the advisability of strengthening the 1970 Convention by a wide-ranging amendment may be called into question by States and other interested parties. It also carries the danger of destabilizing the 1995 UNIDROIT Convention that is intended to clarify some major ambiguities of the 1970 Convention.

On the other hand, it should be pointed out that the 1970 Convention is lacking in a vibrant monitoring mechanism aside from the submission of periodic reports to the UNESCO General Conference. This is a significant institutional deficit especially in light of the fact that a more detailed and effective monitoring mechanism is not hard to find in other international agreements of a similar character, including those adopted within the framework of the UNESCO.

Thus, there seems to be a yawning gap between the enormity of the problems to be tackled by the Convention and the institutional mechanism or infrastructure put in place by the Convention. A vibrant mechanism is needed in order to, among others, monitor a more effective implementation of the Convention, facilitate a more efficient dissemination of relevant information (including information on best practices) and articulate more uniform substantive configurations of the Convention. It requires some audacity and courage to devise and adopt such a mechanism.

One has a highly delicate and complicated task of enhancing the effectiveness of the 1970 Convention without, in so doing, opening a “Pandora’s box”, including fraying the tie between the 1970 Convention and the 1995 Convention. The international community should mobilize its collective wisdom and resources to meet this daunting challenge.