

(文化財) (不法 去來)

()

.

. (不法去來) (背景)

1.

. (不法去來) (國際協約)

1. 1954

(戰時)

2. 1970

3. 1995

(Unidroit)

4. UNESCO

.

(限界)

V.

1. 1954

가 (加入問題)

2.

3.

(INTERPOL)

국문 요약

가
 . 2 가 가 가 가
 . 가 가
 .
 (UNESCO) 1954 「
 」, 가
 1970 「
 」, 1995 「
 」 (UN) (UNESCO)
 (the Division of Cultural Heritage)
 , UN 1973 3187
 ,
 ,
 가가 (UNESCO)
 . 가 . 1954
 1970
 ,
 (tangible movable cultural
 property) . 1995
 . 1954
 1972 .
 가 .
 1866 , 36 , ,

가 .
, .
(,) 가
가
1954 1
가
가 .
가 .
, 가
가
, 가
(Interpol)
가 , 가 .
: , , , ,

서론

가 가

가가

가

20

가가

가

가 가

가

가 가

(UNESCO)

가

1954

1970

(Unidroit)

1995 6 7 24

가

(UN)

1973

3187

가가

(UNESCO)

(不法流通)

(防止)

(搬出, export): 가 가 , (搬入, import):
 가 가 , (搬出國): 가 가,
 (搬入國): 가 가, (原産國, country of origin):
 가, (返還: return,
 restitution):
 가 (原狀回復) 가 (回復)

문화재 불법거래의 역사적 배경

2 . “ 가?” 3 가
 (cultural nationalism) (cultural
 internationalism)
 가
 가 , 가 가
 1.
 가 , , , , ,
 가 가

가

가

. 17

가

1940

1944

1874

가

1897

19

18, 19

가

가

1) 19

1876

1) , 『 』 (: , 1997), 17

가 . , , .2)

1945

“ .3) 가 .”

” 가 .4)

5)

가 가 6) 가 3 가

17 가 가

(Vattel) 가 .7)

가 가 가 가

2) , , 17 .
3) , 1996, 17 . : , 202 ~ 222 .
4) 9 5 . “(가) 가 , () .”
5) , 「 - 1 , () . ” : - J, 1995.6.3), 151 .
6) , 50 1997, 85 .
7) E. de Vattel, The Law of Nations (Chitty ed. 1844), pp.368 ~ 369.

1970 「 (UNESCO) 」
 (Unidroit) 1995 「 」
 가 , 가 . ,
 , , ,
 가 .
 , 가 .8)

문화재 불법거래에 관한 국제협약

1. 1954

(UN) 가 , ,
 (UNESCO) (the Division of Cultural
 Heritage)
 1899 1907
 (Hague) 가
 , (UNESCO)
 1954
 (The Convention for the Protection of Cultural Property in the
 Event of Armed Conflict ; 1954)' .9)
 1954
 가
 가
 가

8) , 2003, 『 , pp.22 34.
 9) Gael M. Graham, supra note 4, p.768.

가 (cultural property shall cover, irrespective of origin or ownership : movable or immovable property of great importance to the cultural heritage of every people)' 6가

.10)

1954 1 , 1 (a) (exemplary or illustrative)

가

가

가

1954

가 “

”(of every people)

“ ”(of all peoples jointly)

“

”(of each respective people)

가 .

1954

가

가 ,

1954

가

가

가

가 .

10) 1954 Convention article 1 : *Definition of cultural property*

For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership : (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art of history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above.

가 . 가

가 가 (exporting country) .¹²⁾ 가 , , (가, Kampuchea), (Nauru) 가(가) 가 가 (transit country) . 가 가 , 가 가 3 (importing country) .¹³⁾ 가 가 가 가 가 가 가 가 .¹⁴⁾ 가 가 (UNESCO)가 (UNESCO)

12) 가 가

13) 註 21 가 가

14) Lyndel V. Prott & P.J. O'Keefe, National Legal Control of Illicit Traffic in Cultural Property, UNESCO, (1983), pp. 1-3.

,
 (Convention)
 ,15) , 가
 가 가
 가 가
 , 가 가
 (Belgium - Zaire), - (Netherlands - Indonesia)
 가
 , (consensus)가

가, , 가

(UNESCO) , 가 (a certificate of authorization)

(illicit acquisition)

(UNESCO)

2)

1916 「 」
「 」 5

15) Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954 [hereinafter "1954 Convention"]; Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970 [hereinafter "1970 Convention"]; Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 [hereinafter "1972 Convention"].

가 . 「
 」
 , , 가 ,
 .
 1933 「 」
 가 가 1962 「 」
 가 .
 20 ,
 “ ” ,
 , , ,
 1982 7
 .
 16) , , ,
 .17)
 3) 1970
 1970 가 가 .18)
 가 1 4
 가 . 1
 , , , , 가가
 11가
 .19)

16) 1 .
 17) , supra note 39, p.170.
 18) Eric C. Schneider, "Plunder or excavation? Observations and suggestions on the regulation of ownership and trade in the evidence of cultural patrimony", Syracuse Journal of International Law and Commerce, Vol.9:1, (1982), pp.4-12.
 1970 Convention article 1:For the purposes of this Convention, the term 'cultural property' means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:
 (a)-(k)
 19) 1970 1 e .



가
가
가
가

.20)

가

.21)

7 b) I)

.22) 1970

가

가 가

(in jeopardy from pillage),

가

가

.23)

4)

(1) 가

1970

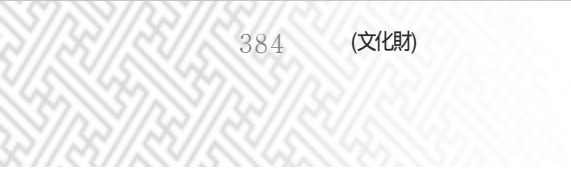
가

20) 1970 Convention article 6 : The States Parties to this Convention undertake: (a)-(k).

21) 1970 7 .

22) 1970 7 .

23) 1970 9 .



가 가 가

가 . “ (as appropriate for each country)”

가 가 가 .

가 .24)

(2)

1970 가 ,

가

6 가 .25)

가 가

가 .

가 , ,

가 가 (許可)

狀) 가

가 가

24) John B. Gordon, supra note, p.547.
 25) 1970 6 .

가 가 가 .26)

(3)

1970

가 .

가 가

. 가

,

가 .

, 가

.

(4)

1970

가 .

,

가 .27)

가 ,

26) John B, Gordon, supra note 47, p.548.

27) , 1989, 「 , 28 ~ 83 .

.28)

28) Treaty of Co-Operation Between the United States of America and the United Mexican States Providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties, July 17, 1970.

3. 1995 (Unidroit)

1)

Unidroit

1995 6 7 24

가 .

2)

(1)

· , , , ,

· , 가, , 가 가

· ()

· , , , 100

· 가

- , , (

-)

- , ,

- , , (,

- , ,)

- ,
- 100 가 29)
3 가
가 3
50 .
3 가 가 75
. 가 , ,
가 가 , 가
. 가
, , 가
. 가
, , 가 가
5 1 가
1 , 3 , 가
3 가
50 가 . 가

29)
30) 1995 Unidrott Convention("1995 ") article3 : (1)-(4).



50 가 .31)

가 가 . 가 가

가 .

.32)

(2)

251 가 가 .

가 가 4 가

가 가

가 가

가 가

가 가

.33)

6 가 가

31) 1995 5 .
 32) 1995 6 .
 33) 1995 4 .



가

.34)

(3)

250 “ 가 2 ”
 , 3 “
 3 , 50
 ”
 3
 가 가 75
 . 가 , ,
 가
 .35)

(4)

.
 78 가
 가 가
 . 3 “
 가 ”
 ,
 4 “ 3
 ”
 5 “ 4 가

34) 1995 6 .
 35) 1995 3 .

가
가 ”
6 “ 가

가 ”
.36)

4. (UNESCO)

(UN) 가 , ,
(UNESCO) (the Division of Cultural
Heritage)

1964 (UNESCO) 「
」 1970 , 가

(International Code of Ethics)

1970
1974
1976 19 「
」 .

가 ,
.37)

1978 20 「 (Intergovernmental
Committee for Promoting the Return of Cultural Property to its Countries of Oriin
or its Restitution in Case of Illicit Appropriation) 」가 20 ,

36) 78 .

37) note, “A brief history of the creation by UNESCO of an intergovernmental committee for promoting the return of cultural property to its countries of origin or its restitution in case of illicit appropriation”, Museum, Vol. 31, No. 1, (1979), p.59.

UN 1973 3187

(UNESCO)

가

1981 「 3664 」 1973 1975 「 3187 3391 」

1981 「 para.

7」 1970 (UNESCO)

.40)

(UNESCO) 가 가

(International Council of Museum : ICOM) 1960

.41)

5 (Mexico), (Panama),

(Peru) (The Australian

Museum Trust) (Papua New Guinea) (The National

Museum and Art Gallery) , 1 (Solomon)

.42) 1978 (The Museum Exchange Progra

m)⁴³⁾ 1976 (UNESCO)가

38) Ibid.,

39) Ibid., p.61.

40) James A. R. Nafziger, "The new international legal framework for the return, restitution or forfeiture of cultural property", New York University Journal of International Law and Politics, Vol. 15, No. 4, (1983), pp.802-803.

41) Luis Monreal, "Problems and Possibilities in recovering dispersed cultural heritages", Museum, Vol.31, No.1, (1979), pp.49-50.

42) Jim Specht, "The Australian museum and the return of artifacts to pacific island countries", Museum, Vol.31, No.1, (1979), pp.28-30.

43) Luis Monreal, supra note 35, pp.49-50.

가
 , 가
 , , (ICOM)
 (UN) (UNESCO) , ,
 (Ad hoc Committee)
 가 ,44)
 (International Center for the Study of the
 Preservation & the Restitution of Cultural Property) 가 ,
 (UNESCO)
 가 ,

국제협약의 한계

1954 가
 “ , ,
 ”45) 1954 1
 1 1 “
 ”(movable or immovable property
 of great importance to the cultural heritage of every people)
 가 가
 “ 가 가 .
 ” 가 가
 가

44) Ad Hoc Committee appointed by the Executive Council of ICOMA, “Study on the principles, conditions and means for the restitution or return of cultural property in view of reconstituting dispersed heritages”, Vol.31, No.1, (1979), p.62.
 45) Nahlik, “On Some Deficiencies of the Hague Convention of 1954 on the Protection of Cultural Property in the Event of Armed Conflict”, 44 Annuaire de l’A.A.A (1974), p.101.

.46) 8 “
”(other immovable cultural property of very
great importance)

1 “ , , , , 1970

”
1995 .

1954 1970
가 . 1954

. 1 (a) 1954

“ ”

, (b) , , .

, (c)

(群) .47) (a)

(b) , (c)

(群) 가 . 1954 1
가

.48)

1970

(tangible movable cultural property)

.49) 1995

1954

1970

1954 1 , 1 (a) (exemplary or
illustrative)

46) Toman, pp.49-50.

47) Toman, p.54.

48) ibid.

49) , 1999, □□ □□ , 97-98 .

가
 . 가
 .
 6 . 50)
 가 가 가
 1970 1954
 . 11 .
 1954

V. 맺는말

1. 1954 가
 1954 2002 4 9 103 가가 1
 85 . , , 가가 1954
 , , , , ,
 가 가 . ,
 가
 가 가가 1954 1
 (未) 가 .
 1954 1 가 ,
 가
 가 1
 ,

50) Toman. pp. 48 49.

2) 가 3)
4) 5)
가 6) 7)
가 .

참 고 문 헌

1.

1) UN

UNGA Records, 3187(), 2006th Plenary Meeting, Agenda Item 110, 1973.
_____, 3391(), 2410th Plenary Meeting, Agenda Item 26, 48-50,
1975.

2) UNESCO

Convention for the Protection of Cultural Property in the Event of Armed Conflict,
1954.

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export
and Transfer of Ownership of Cultural Property, 1970.

Convention Concerning the Protection of the World Cultural and Natural Heritage,
1972.

Convention of Unidroit on the International Return of Stolen of Illegally Exported
Cultural Objects, 1995.

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3)

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_____, Riga 1921(Treaty of Peace between Poland, Russia and the
Ukraine 1921)

_____, st. German 1920(Treaty of Peace between the Allied and
Associated Powers and Austria 1920)

_____, Trianon 1920(Treaty if Peace between the British Empire and
Allied and Associated Powers and Hunfary 1920)

_____, Versailles 1919(Treaty of Peace between the British Empire,

France, Italy, Japan and the United States(the principal Allied and Associated Powers)

Korean National Commission for UNSCO, 2002, 「International Export Meeting on the Return of Cultural Property and the fight against its illicit Trafficking」, .

2.

1)

, 1999, □□ □□, .
, 1993, 『 () , .
, 1984, 『 , .
, 2003, 『 (1954) , .
. .
, 1996, 『 , .
, 2000, 『 , .
, 1997, 『 , .

2)

, 1989, 『 , .
, 1997, 『 , .
. , 1995, 『 -
- 『 , , , 50
. .
, 2003, 『 , .
, 1996, 『
『 , 『 .

3)

. . , 1994, 『 . - 1995
『 , 『 35 2 .

, 1993, 「
」, 「
」, 1965, 「
」, 「
」 7 .

3.

1)

E. de Vattel, *The Law of Nations* (Chitty ed. 1844)

Erikson, Eric. *Childhood and Society*. New York : Norton, 1950.

2)

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An Examination into the Illegal Trade of Cultural Properties

Cho, Boo-Keun

International circulation of cultural assets involves numerous countries thereby making an approach based on international law essential to resolving this problem. Since the end of the 2nd World War, as the value of cultural assets evolved from material value to moral and ethical values, with emphasis on establishing national identities, newly independent nations and former colonial states took issue with ownership of cultural assets which led to the need for international cooperation and statutory provisions for the return of cultural assets. UNESCO's 1954 "Convention for the Protection of Cultural Property in the Event of Armed Conflict" as preparatory measures for the protection of cultural assets, the 1970 "Convention on the Means of Prohibiting and Preventing the Illicit Import and Transfer of Ownership of Cultural Property" to regulate transfer of cultural assets, and the 1995 "Unidroit Convention on Stolen or Illegally Exported Cultural Objects" which required the return of illegally acquired cultural property are examples of international agreements established on illegal transfers of cultural assets. In addition, the UN agency UNESCO established the Division of Cultural Heritage to oversee cultural assets related matters, and the UN since its 1973 resolution 3187, has continued to demonstrate interest in protection of cultural assets. The resolution 3187 affirms the return of cultural assets to the country of origin, advises on preventing illegal transfers of works of art and cultural assets, advises cataloguing cultural assets within the respective countries and, conclusively, recommends becoming a member of UNESCO, composing a forum for international cooperation.

Differences in defining cultural assets pose a limitation on international agreements. While the 1954 Convention states that cultural assets are not limited to

movable property and includes immovable property, the 1970 Convention's objective of 'Prohibiting and preventing the illicit import, export and transfer of ownership of cultural property' effectively limits the subject to tangible movable cultural property. The 1995 Convention also has tangible movable cultural property as its subject. On this point, the two conventions demonstrate distinction from the 1954 Convention and the 1972 Convention that focuses on immovable cultural property and natural property. The disparity in defining cultural property is due to the object and purpose of the convention and does not reflect an inherent divergence.

In the case of Korea, beginning with the 1866 French invasion, 36 years of Japanese colonial rule, military rule and period of economic development caused outflow of numerous cultural assets to foreign countries. Of course, it is neither possible nor necessary to have all of these cultural properties returned, but among those that have significant value in establishing cultural and historical identity or those that have been taken symbolically as a demonstration of occupational rule can cause issues in their return. In these cases, the 1954 Convention and the ratification of the first legislation must be actively considered.

In the return of cultural property, if the illicit acquisition is the core issue, it is a simple matter of following the international accords, while if it rises to the level of diplomatic discussions, it will become a political issue. In that case, the country requesting the return must convince the counterpart country. Realizing a response to the earnest need for preventing illicit trading of cultural assets will require extensive national and civic societal efforts in the East Asian area to overcome its current deficiencies. The most effective way to prevent illicit trading of cultural property is rapid circulation of information between Interpol member countries, which will require development of an internet based communication system as well as more effective deployment of legislation to prevent trading of illicitly acquired cultural property, subscription to international conventions and cataloguing collections.

keyword : Illegal trade of cultural property, The collection and the illicit import, export of cultural property, Convention for the protection of cultural property, The return of cultural property, Interpol.