

House Passes Bill to Coordinate U.S. Cultural Property Protection

Article By:

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U.S. efforts at protecting and preserving international cultural property, which currently is spread across no fewer than seven federal agencies, may soon be better coordinated. On June 1st, the U.S. House of Representatives passed the *Protect and Preserve International Cultural Property Act* (H.R. 1493 or the Act), which would establish a new position within the Department of State – the U.S. Coordinator for International Cultural Property Protection (the Coordinator). The House bill sponsors are: Rep. Eliot L. Engel (D-NY); Rep. Christopher H. Smith (R-NJ); Rep. Edward R. Royce (R-CA); Rep. William R. Keating (D-MA); Rep. Albio Sires (D-NJ); Rep. Ted Poet (R-TX); Rep. Brad Sherman (D-CA); Rep. David N. Cicilline (D-RI); and Rep. Juan Vargas (D-CA). Although no corresponding bill has yet been introduced in the Senate, a corresponding bill is anticipated. The Coordinator would work with federal agencies to coordinate and promote their activities – this would include diplomatic, military, and law enforcement activities. The Act would also create a Coordinating Committee on International Cultural Property Protection, which is to be chaired by the Coordinator, with the committee members comprised of representatives of the Department of State, the Department of Defense, the Department of Homeland Security, the Department of the Interior, the Department of Justice, the U.S. Agency for International Development, the Smithsonian Institution, and such other entities as the chair may deem appropriate.

The Act Includes Import Restrictions on Archaeological/Ethnographic Materials from Syria

In a direct substantive move, the Act also directs the President to impose import restrictions on archaeological or ethnological material from Syria. The Act imposition of import restrictions on material emanating from Syria has been controversial. The Association of Art Museum Directors (AAMD) opposed an earlier version of the Act, specifically identifying the Syria import restrictions as a significant source of concern. “[A]ll such material currently in Syria,” the AAMD noted, “would be prohibited from being imported into the United States, even to safeguard the property during a period of violent conflict.”

In response to these concerns, the Act as passed included both a safe harbor provision allowing the temporary import of Syrian material for safeguarding under certain circumstances, and a sunset provision.

Syrian Materials Temporary Importation Safe Harbor

The Act's import restrictions on Syrian archaeological and ethnographic materials may be waived for specified cultural property if the President certifies to Congress that: (i) "the foreign owner or custodian of the specified cultural property has requested that such property be temporarily located in the United States for protection purposes," (ii) "such property shall be returned upon request to the foreign owner or custodian," and (iii) "the grant of a waiver will not contribute to illegal trafficking in cultural property or financing of criminal or terrorist activities."

Syrian Import Restrictions Sunset Provision

The Act also included a sunset provision, which requires that the President annually confirm whether (i) the Government of Syria is incapable of requesting an agreement under Section 303 the *Convention on Cultural Property Implementation Act* (CPIA), which implements in U.S. domestic law the *1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (the 1970 UNESCO Convention), and (ii) it would be against the U.S. national interest to enter into such an agreement with the Government of Syria. If neither of these conditions remains true, then the Syrian import restrictions will terminate five years after the date when the President makes that determination (unless Syria requests an agreement under Section 303 of the CPIA prior to that date).

Protection of International Cultural Property: The Background

A broader background is perhaps helpful to understand how and why U.S. cultural property policy is as complex and diffuse as it currently is, and how the Act proposes to coordinate this policy and facilitate a greater consistency of approach.

The plunder, looting, and illicit removal/export of cultural property (art, antiquities/archaeological materials, and ethnographic materials) have a long history. [For excellent historical discussions of the history of plunder and looting, see Margaret M. Miles, *Art as Plunder: The Ancient Origins of Debate about Cultural Property* (2008) and Jeanette Greenfield, *The Return of Cultural Treasures* (3d ed. 2007).] A tension has long existed between the licit acquisition of objects and their illicit acquisition. It was earliest addressed in the context of plunder, typically by warring and conquering parties, but also plunder by political or occupying authorities. Cicero launched his legal and rhetorical career with his prosecution of Gaius Verres, the Roman governor of Sicily, who plundered his province for his personal collection and profit. Cicero's orations against Verres were published as the *Verrines*, and have been quoted for centuries as examples of the wrongful appropriation of cultural objects.

European interest in collecting Greek and Roman antiquities revived during the Renaissance, spurred by the growth of the Papal collections that formed the foundations of the Vatican Museums, and the unearthing of specimens of ancient statuary, such as the Laocoon, which had a tremendous influence on artists of the day (including Michelangelo). But interest in antiquities (and in collecting them) expanded dramatically in the 18th century with the publication of Johann Joachim Winckelmann's *Thoughts on the Imitation of Greek Works* (1755). The collecting passion for art and antiquities collided with conqueror's plundering in Napoleon's extraction of cultural works from conquered territories during the Napoleonic wars, which booty was meant for the Musee Napoleon, which later became the collections of the Louvre. With Napoleon's defeat at Waterloo, whose 200th anniversary is current being celebrated, the victorious allies, led by the Duke of Wellington and Lord Castelreagh, insisted that the plundered art be returned to its owners. Ironically, this return of cultural

property taken during armed conflict coincided with the U.K. Parliamentary debate and ultimate authorization of the purchase from Lord Elgin of the sculptures he had removed in 1801-1810 from the Parthenon in Athens during his tenure as British ambassador to the Ottoman Empire [See *Miles* at 332] which then ruled the area of Greece, having conquered it roughly 400 years earlier. The challenges and intricacies of cultural property removed during the Age of Empire will be the subject of the final article in this series.

Over the course of the 19th and 20th centuries, plunder and destruction of cultural property during wartime was the subject of national rules and international conventions. But rules governing the protection and preservation of cultural property during peacetime came more slowly. The first national laws protecting cultural property attempted to stop looting of archaeological sites and the illicit removal of cultural property from national borders, often taking the form of national ownership laws, under which the national government took ownership of all unexcavated cultural property.

The 1970 UNESCO Convention and the CPIA

In 1970, under the auspices of UNESCO, “market” nations (nations in which the art and cultural property trade is principally located, particularly the U.S. and the U.K.) and “source” nations (i.e., art and archaeologically rich nations) negotiated the first comprehensive international convention meant to combat looting and illicit exportation of cultural property, the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, Nov. 14, 1970, 823 U.N.T.S. 231 (1972), reprinted in 10 I.L.M. 289 (1970) (the UNESCO Convention). The U.S., which (with the U.K.) is the center of the international art and cultural property market, played a leading role in these discussions.¹ But the UNESCO Convention is not self-executing, and after long delay, the U.S. enacted the *Convention on Cultural Property Implementation Act*, 19 U.S.C. 2601 *et seq.* (the CPIA) in 1983.

The CPIA implements two articles of the UNESCO Convention – (i) Article 7(b), which prohibits the importation of stolen cultural property that has been inventoried by a museum or cultural or religious institution in a state party and requires states parties to take “appropriate steps to recover and return any such cultural property,” and (ii) Article 9, which provides that states parties that have cultural property that is “in jeopardy from pillage” can call upon other states parties to take “necessary concrete measures” to prevent irreparable harm from being done to the requesting state.

Prohibition Against Importation of Stolen Cultural Property

Article 7(b)’s prohibition against the importation of stolen cultural property is implemented by Section 308 of the CPIA, under which “[n]o article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which is stolen from such institution after the effective date of this title, or after the date of entry into force of the Convention for the State Party, whichever is later, may be imported into the United States.” [19 U.S.C. § 2607]

MOUs

Article 9’s provision for states parties to give assistance to other states parties whose cultural property is at risk is implemented by Section 303 of the CPIA, which authorizes the President to enter into bilateral agreements (also known as Memoranda of Understanding or MOUs) with other states

parties to provide for U.S. assistance in the form of import prohibitions on identified categories of cultural objects (as identified on a Designated List). [19 U.S.C. § 2602] However, the CPIA requires that the requesting country must have undertaken its own measures to protect its cultural heritage, and the requested relief must be no more burdensome than necessary. In fact, each MOU has two sections – Article I sets out the U.S. agreement to prohibit importation of specified categories of objects, and Article II sets out a series of concrete actions that the requesting country will take to protect and preserve its cultural heritage, promote scholarship and scientific research, and provide for broader access to such cultural heritage to the American public (particularly through loans of objects to U.S. institutions).

Currently, the U.S. is party to 15 MOUs (with Belize, Bolivia, Bulgaria, Cambodia, China, Colombia, Cyprus, El Salvador, Greece, Guatemala, Honduras, Italy, Mali, Nicaragua, and Peru). Additionally, the U.S. has taken emergency action to restrict importation of specific categories of cultural property from Iraq. A chart identifying current U.S. cultural property import restrictions under the CPIA is available [here](#).

Article 9 is also implemented by Section 304 of the CPIA, which authorizes the President to take emergency action with respect to the protection of at risk international cultural property by imposing import restrictions. The CPIA created the Cultural Property Advisory Committee (CPAC), comprised of 11 members drawn from the archaeological/anthropological community, the art/cultural property trade, the museum community, and the general public. CPAC reviews requests for assistance under the CPIA and advises as to the satisfaction of criteria established under the CPIA. CPAC operates within the Department of State's Bureau of Educational and Cultural Affairs, and so U.S. cultural property policy and the CPIA are aspects of U.S. cultural diplomacy.

Enforcement of import restrictions imposed under the CPIA is carried out by the Department of Homeland Security, through Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP). Under the CPIA, the only enforcement actions available to the government are the seizure and forfeiture of the stolen or illicitly imported cultural property. No individual liability (criminal or otherwise) attaches with respect to such seizures and forfeitures, and the government does not need to establish that the importer had any knowledge of or intent to commit any wrongdoing.

U.S. Cultural Property Policy and Enforcement in Addition to the CPIA

U.S. protection of international cultural property is not the exclusively governed by the CPIA. For example, U.S. obligations under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) are enforced by the Department of the Interior, through the U.S. Fish and Wildlife Service.

The importation into the U.S. of cultural property removed from its country of origin without authorization may also violate U.S. law and result in seizure and forfeiture of the imported object and/or criminal liability for those involved in the importation (including those in possession of the illicitly imported objects). Cultural property importers have run afoul of U.S. law by, among other things, (i) making false statements of an object's value or country of origin (see 18 U.S.C. § 545); and (ii) importing cultural property that was stolen property, including objects illicitly excavated or removed from their country or origin in violation of a country's national ownership law (see 19 U.S.C. § 1595(c)), which may also violate the National Stolen Property Act (18 U.S.C. §§ 2314 and 2315) and in certain circumstances even the Archaeological Resources Protection Act (16 U.S.C. § 470ee[c]).

Illicit Excavation and Export of Cultural Property and the U.S. Market

The tension between past trade, collector, and museum practices and international efforts to combat the illicit excavation and/or exportation of cultural property (particularly archaeological and ethnographic objects) reached a dramatic flashpoint in the late 1990s and early 2000s, in the aftermath of a raid on two Swiss warehouses used by the antiquities dealers Robert Hecht and Giacomo Medici. The raid and subsequent investigation produced photographs showing recently-excavated antiquities (many still covered in earth) and documents tracing a network of illicit diggers, smugglers, middlemen, and dealers through which the objects were extracted from the countries of origin – in this case, chiefly Italy – and laundered into the mainstream antiquities trade. Ultimately, a number of pieces that had been handled by Hecht and Medici in major private collections, as well as the collections of major U.S. and European museums.

As a result of the investigation, the Metropolitan Museum of Art returned a number of objects to Italy, including the Euphronios Krater, which the museum had purchased from Hecht in 1972 for \$1.2 million. Other museums similarly returned objects that were shown to have been looted. The J. Paul Getty Museum not only returned objects, but its curator of antiquities, Marion True,² was indicted by an Italian court and stood trial for “conspiracy [with Hecht] to traffic in tens of millions of dollars’ worth of looted Greek vases, Etruscan bronzes, terracottas, and other objects.” Hecht died before the trial concluded, and the charges against True were eventually dismissed after the applicable statute of limitations lapsed.

Following the Hecht-Medici matter, museums instituted more stringent collecting policies for antiquities, typically requiring evidence that any object the museum was to acquire had been outside of its country of origin (the country of its modern discovery or excavation) before entry into force of the UNESCO Convention.

Nevertheless, looting of archeological sites continues to be a rampant problem.³ In 2011, antiquities dealer Subhash Kapoor was extradited from the U.S. to India to stand trial for alleged looting, and as recently as April of this year the Honolulu Museum of Art returned seven objects acquired through Kapoor, and other museums have similarly returned objects obtained from Kapoor.⁴

Coordinating Mechanism

Since the protection of international cultural property touches on so many different areas, responsibility for various aspects of policy development and enforcement involves multiple departments and agencies, raising the risk of inconsistent, even contradictory actions being taken if a coordinating mechanism is not in place. This coordinating mechanism is what the Act seeks to create. The discussion will now move to the Senate, where a corresponding bill is expected to be introduced.

[1] See Lyndel V. Prott, “Strength and Weaknesses of the 1970 Convention: An Evaluation 40 Years after Its Adoption,” UNESCO 2 (2011), available [here](#). The United States became party to the Convention in 1983, but it took three separate drafts of legislation to implement the Convention in national law before Congress would pass it. Other major market states were even slower to ratify the Convention: France in 1997, Japan and the United Kingdom in 2002, Switzerland in 2003, Germany in 2007 and Belgium and the Netherlands in 2009.

[2] See Hugh Eakin, “Marion True on Her Trial and Ordeal,” *The New Yorker*, Oct. 14, 2010; see also Elisabetta Povoledo, “Case Involving Former Curator Marion True Ends,” *The New York Times*, Oct. 13, 2010, available [here](#); Thomas R. Kline, “The Fall and Rise of Marion True and the Getty Museum,” 13 IFAR J. 1, 54 (2012) (review of Jason Felch and Ralph Frammolino, *Chasing*

Aphrodite: The Hunt for Looted Antiquities at the World's Richest Museum (2011)); Hugh Eakin, "What Went Wrong at the Getty," *The New York Review of Books*, June 23, 2011.

[3] See, e.g., Nicole Winfield, "Italian Authorities Find Looted Art and Antiquities, Worth Millions," *The Christian Science Monitor*, Jan. 21, 2015, available [here](#); "Record 50m hoard of looted Italian antiquities unveiled by police," *The Guardian*, Jan. 21, 2015, available [here](#); "Agreement Paves Way for Artifact's Return to Italy," U.S. Immigration and Customs Enforcement website, June 17, 2012, available [here](#)

[4] Henri Neuendorf, "Australia Returns Stolen Second-Century Buddha," January 5, 2015, *artnet news*, available [here](#); Sarah Cascone, "Toledo Museum of Art Returns Stolen Statute to India," *artnet news*, October 16, 2014, available [here](#)

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