



United States Implementation of the 1970 UNESCO Convention:
The Convention on Cultural Property Implementation Act

In 1970, UNESCO promulgated the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention). The goals of this convention include regulation of the international market in cultural property¹ so as to protect the original contexts of these objects and provide a mechanism for recognition of different countries' import and export controls with respect to cultural objects.

In 1972, the United States Senate gave its unanimous consent to the ratification of the Convention. However, Congress indicated that the Convention would not have any domestic legal effect until implementing legislation was enacted. This legislation, the Convention on Cultural Property Implementation Act (CPIA or CCPIA), did not come into effect until 1983. The United States adopted only two provisions of the UNESCO Convention, Article 7(b)² and Article 9.

Article 9 of the 1970 UNESCO Convention is intended to provide a mechanism by which States Parties provide assistance to each other in cases of pillage of archaeological and ethnological materials.³ The United States' implementation of Article 9 is complex and allows

¹ Article 1 of the 1970 UNESCO Convention defines cultural property as: "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" one of eleven numerated categories. These categories include "products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;" "elements of artistic or historical monuments or archaeological sites which have been dismembered;" "objects of ethnological interest;" "property of artistic interest" and "rare manuscripts and incunabula".

² To implement this article of the 1970 UNESCO Convention, the CPIA prohibits the import into the United States of any cultural object "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 date is later ...". 19 U.S.C. § 2607.

³ The UNESCO Convention does not define the terms of "archaeological" or "ethnological" materials, but the CPIA



the President to impose import restrictions on designated categories of archaeological and ethnological materials pursuant to a request from another State Party to the 1970 UNESCO Convention. Section 303 of the Act⁴ allows the United States to enter into bilateral agreements (or Memoranda of Understanding—MOUs) that are negotiated between the United States and a requesting State Party without the necessity of Senate ratification of a new treaty. Over the twenty-seven years that the CPIA has been in effect, the United States has entered into bilateral agreements with only thirteen nations: El Salvador, Guatemala, Nicaragua, Honduras, Peru, Bolivia, Mali, Italy, Canada, Cambodia, Colombia, Cyprus and China.⁵

A State Party must first bring a request to the United States to enter into a bilateral agreement. The request is referred to the Cultural Property Advisory Committee (CPAC), which consists of 11 members, appointed by the President. Three members represent the interests of the archaeological/anthropological community; three are experts in the international sale of archaeological and ethnological materials, two represent museums, and three represent the

provides the following definitions:

The term "archaeological or ethnological material of the State Party" means--

- (A) any object of archaeological interest;
- (B) any object of ethnological interest; or
- (C) any fragment or part of any object referred to in subparagraph (A) or (B);

which was first discovered within, and is subject to export control by, the State Party. For purposes of this paragraph--

- (i) no object may be considered to be an object of archaeological interest unless such object--
 - (I) is of cultural significance;
 - (II) is at least two hundred and fifty years old; and
 - (III) was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water; and
- (ii) no object may be considered to be an object of ethnological interest unless such object is--
 - (I) the product of a tribal or nonindustrial society, and
 - (II) important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people.

19 U.S.C. § 2601(2).

⁴ 19 U.S.C. § 2602. There are two different numbering systems used for the sections of the CPIA. The numbers in the "300" series correspond to the sections of the bill that originally enacted the CPIA. The CPIA is codified at 19 U.S.C. §§ 2601-13.

⁵ The agreement with Canada was not renewed in 2002.



public. In the past several years, it has become customary (although this is not mandated by the CPIA) for CPAC to invite letters of comment from the public and to hold a public session at which members of the public may address the Committee.

CPAC makes recommendations to a decision maker (generally, an official in the State Department's Bureau of Educational and Cultural Affairs), to whom the President has delegated his responsibilities under the CPIA, concerning the four determinations that the statute outlines. The decision maker decides whether the statutory criteria are satisfied; if they are, the United States enters into negotiations to finalize a bilateral agreement.⁶

Following are explanations of the four statutorily mandated determinations⁷ about which CPAC makes recommendations to the decision maker:

1. Whether the cultural patrimony of the nation that has requested a bilateral agreement is subject to jeopardy from the pillage of archaeological or ethnological materials.
2. Whether the requesting nation has taken measures to protect its cultural patrimony

⁶ While a bilateral agreement is being negotiated, the United States may impose import restrictions unilaterally if the criteria for an "emergency" situation are satisfied. Such import restrictions may last a maximum of five years and can be renewed one time for an additional three years (hence, a maximum of eight years).

⁷ The statutory language of the four determinations is:

(A) that the cultural patrimony of the State Party is in jeopardy from the pillage of archaeological or ethnological materials of the State Party;

(B) that the State Party has taken measures consistent with the Convention to protect its cultural patrimony;

(C) that--

(i) the application of the import restrictions . . . with respect to archaeological or ethnological material of the State Party, if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations (whether or not State Parties) individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage, and

(ii) remedies less drastic than the application of the restrictions set forth in such section are not available; and

(D) that the application of the import restrictions . . . in the particular circumstances is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.

19 U.S.C. § 2602 (a)(1).



consistent with the 1970 UNESCO Convention. Elements that factor into the second determination include whether the nation makes efforts to protect its archaeological sites, for example, through the use of site guards and education of the local population, to train its Customs and other law enforcement entities to prevent the illegal export of archaeological objects, and to design a legal system that protects archaeological sites.

3. Whether other nations that also have an import trade in the types of artifacts for which United States protection is sought also prevent the import of or otherwise restrict the trade in the same undocumented artifacts. For example, Country A has requested a bilateral agreement with the United States to restrict the trade in a particular type of archaeological artifact and Country B also has an import market in the same artifact type. The third determination asks whether Country B is also restricting the trade in that artifact type or whether U.S. import restrictions would be of substantial benefit in deterring the pillage in the requesting country, even if Country B is not also restricting the trade in that artifact type.⁸ Information as to how other nations with a market in antiquities from the requesting nation attempt to control the market in such artifacts is therefore relevant to this determination.
4. Whether imposition of import restrictions is consistent with the interest of the

⁸ This exception to the third determination is embodied in the following statutory provision:
the President may enter into an agreement if he determines that a nation individually having a significant import trade in such material is not implementing, or is not likely to implement, similar restrictions, but--
(A) such restrictions are not essential to deter a serious situation of pillage, and
(B) the application of the import restrictions . . . in concert with similar restrictions implemented, or to be implemented, by other nations (whether or not State Parties) individually having a significant import trade in such material would be of substantial benefit in deterring a serious situation of pillage.

19 U.S.C. § 2602 (c)(2).



international community in the interchange of cultural materials for scientific, cultural and educational purposes. Factors of relevance to this determination include loans of archaeological and ethnological materials to United States museums for short and long-term exhibition, study and conservation purposes and opportunities for U.S. scholars to study these materials through both excavations and access to materials in the requesting nation.

Import restrictions become effective after a notice is published in the Federal Register. The designated categories of archaeological or ethnological materials are listed in this notice. A web site maintained by the Cultural Heritage Center of the State Department (<http://exchanges.state.gov/heritage/culprop.html>) provides information about the import restrictions, including a chart of all import restrictions by country with their effective dates and a database of available images that are illustrative of the designated categories of materials whose import is restricted.

The bilateral agreements, which take the form of Memoranda of Understanding (MOUs), include reasons for the agreement, the list of designated materials whose import is to be restricted, and other provisions, primarily in Article II, concerning mutual cooperation between the United States and the other country in the realm of cultural heritage, the provision of technical assistance, and certain provisions that are specific to the particular country involved. For example, the MOU with El Salvador included the expectation that the national museum would be rebuilt and this was done. The MOU with Italy includes the expectation that Italy will make its best efforts to provide materials that belong to the designated categories on long-term loan to museums in the United States, consistent with current Italian legislation that makes loans available for educational, research and conservation purposes. In response, Italy extended the



period for which art works can be on loan, currently up to a maximum of four years. While these additional provisions of the MOUs provide expressions of the directions in which the relations between the two countries may develop concerning cultural heritage, these undertakings are not prerequisites to the renewal of an MOU, as they are not requirements under the statutory determinations (although, in some cases, they may relate to the statutory determinations).

A bilateral agreement may not last more than five years, but it may be renewed an indefinite number of times. Once import restrictions are in place, objects that fall into the designated categories may be imported into the United States only if they are accompanied by an export certificate from the country of origin or if the importer can demonstrate that they left the country of origin before the effective date of the import restriction. The criterion for renewal is that the same conditions that originally justified the agreement still exist—that is, that the four statutorily mandated determinations are still satisfied.