

March 1, 2021

## Transnational Crime Issues: Arts and Antiquities Trafficking

Illegal trade in arts and antiquities, also referred to as trafficking of arts and antiquities or cultural property, is a long-standing practice through which criminal actors profit from the destruction, looting, or theft of culturally significant items. Estimates of the financial value of this illegal trade range from several hundred million to billions of dollars annually. Certain characteristics of the arts and antiquities industries – such as confidentiality, challenges in documenting the provenance (ownership history) of certain items, the use of intermediaries, and inconsistent due diligence practices – may contribute to the illegal trade and enable traffickers to gain access to the U.S. financial system. Congress has sought to strengthen U.S. responses to arts and antiquities trafficking through means including ratifying international agreements, directing executive branch initiatives, and regulating relevant industries.

Since the early 2000s, congressional interest in cultural property trafficking as a national security issue has increased amidst evidence of links to money laundering, sanctions evasion, and terrorist financing, including by the Islamic State. Recent federal government actions appear to frame the issue as a challenge relating to transnational crime, illicit finance, and global corruption and as an opportunity to preserve cultural heritage, strengthen bilateral relationships, and build goodwill.

### International Framework

The United States is a state party to the 1970 U.N. Educational, Scientific, and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Congress implemented the convention in 1983 through the Convention on Cultural Property Implementation Act (CCPIA, P.L. 97-446 as amended). In 2008, the United States became a state party to the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict. The United States expressed understandings and reservations about both agreements, which contained provisions relating to safeguarding cultural property. The United States is also a member of certain inter-governmental entities that, as part of their activities, address arts and antiquities trafficking, including the International Criminal Police Organization (INTERPOL) and the World Customs Organization.

### Selected U.S. Agency Roles

#### The Department of State

The Bureau of Educational and Cultural Affairs (ECA) oversees U.S. efforts to protect and preserve cultural materials. ECA leads public diplomacy efforts and supports third-party anti-trafficking efforts, such as the development of lists of cultural objects at risk with the International

Council of Museums. ECA's Cultural Heritage Center houses numerous anti-trafficking initiatives, including:

**The Cultural Property Advisory Committee (CPAC)** reviews and makes recommendations to the Secretary of State about requests from foreign governments for bilateral agreements to establish U.S. import restrictions of designated archaeological or ethnological material. This work is pursuant to the CCPIA, which authorized such agreements with state parties to the 1970 UNESCO convention in an effort to reduce incentives for pillage. Agreements are subject to certain requirements, including a determination that the requesting state has itself taken steps to protect its cultural property.

**The Cultural Antiquities Task Force (CATF)** was established as directed by H.Rept. 108-401, which accompanied the Consolidated Appropriations Act of 2004 (P.L. 108-199). Originally created to focus on the preservation of Iraqi antiquities, the CATF has grown to coordinate interagency activities to combat antiquities trafficking and support law enforcement trainings.

**The Cultural Heritage Coordinating Committee (CHCC)** was established in 2016 pursuant to the Protect and Preserve International Cultural Property Act (P.L. 114-151). The CHCC coordinates diplomatic and law enforcement efforts to protect cultural property. The CATF became a working group under the CHCC in 2016.

#### Current U.S. Import Restrictions for Certain Categories of Cultural Property

The CCPIA authorizes bilateral agreements for U.S. import restrictions on certain categories of archaeological or ethnological material. Agreements may not last or be extended for more than five years at a time. The CCPIA authorizes the President to apply restrictions without an agreement with a requesting state if the President determines that an emergency condition applies, such as in the case of Yemen. In the cases of Iraq and Syria, Congress authorized the President to apply import restrictions without a request from those states.

**Bilateral agreements (20):** Algeria (2019), Belize (2013), Bolivia (2001), Bulgaria (2014), Cambodia (2003), China (2009), Chile (2020), Colombia (2006), Cyprus (2002), Ecuador (2020), Egypt (2016), El Salvador (1995), Greece (2011), Guatemala (1997), Honduras (2004), Italy (2001), Jordan (2020), Libya (2018), Mali (1997), Peru (1997)

#### Restrictions initiated on an emergency basis (3):

- Iraq (2008), pursuant to the Emergency Protection for Iraqi Cultural Antiquities Act of 2004 (P.L. 108-429);

- Syria (2016), pursuant to the Preserve International Cultural Property Act (P.L. 114-151);
- Yemen (2020), pursuant to CCPIA.

Notes: Years noted mark the year in which import restrictions with the United States first took effect.

The Department of State has also negotiated other relevant agreements - such as a 1970 Treaty of Cooperation between the United States and Mexico – and operates programs, authorized by Congress, that have offered rewards for information relating to cultural property trafficking.

### The Department of Homeland Security (DHS)

DHS has investigatory and law enforcement responsibilities relating to arts and antiquities trafficking. U.S. Immigration and Customs Enforcement's investigative arm, Homeland Security Investigations, operates a Cultural Property, Art and Antiquities program focused on the smuggling of cultural property. U.S. Customs and Border Protection is responsible for enforcing import laws, including those under the CCPIA and customs statutes such as P.L. 92-587, Title II of which addresses regulation of importation of pre-Columbian monumental or architectural sculpture or murals and requires certification by the country of origin for the importation of certain stone carvings and wall art.

### The Department of the Treasury

The Department of the Treasury leads efforts to counter illicit finance, including arts and antiquities trafficking. In October 2020, the Office of Foreign Assets Control (OFAC) published an advisory on sanctions violations risks of dealings of high-value art work. OFAC has also designated individuals on its Specially Designated Nationals and Blocked Persons List whose criminal activities were linked to high-value art purchases.

### Recent Legislative Activity

The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (FY2021 NDAA, P.L. 116-283) contained provisions relating to the illicit trade in arts and antiquities and illicit finance generally. In particular, the FY2021 NDAA amended the Bank Secrecy Act (BSA, 31 U.S.C. 5311 et seq.), which requires certain financial institutions to keep and file certain transaction records that may inform criminal, tax, and regulatory matters. The FY2021 NDAA amended the BSA to apply to dealers in antiquities and required the Secretary of the Treasury, through the Director of the Financial Crimes Enforcement Network, to issue rules to carry out this amendment. Additionally, the FY2021 NDAA required the Secretary of the Treasury to submit to Congress a study on “money laundering and the financing of terrorism through the trade in works of art.”

### Issues for Congress

**Merit of Import Restrictions.** Some observers caution against stringent import restrictions for cultural property. Certain arts and antiquities professionals argue that foreign governments seek restrictions on too broad a range of items and that restrictions could jeopardize the treatment of cultural items, as purchasers in destination countries may be able to provide higher quality care for valuable objects.

Other stakeholders argue that countries that have persecuted minority groups should not receive priority over diaspora communities in debates over ownership of such groups' cultural objects. Congress may want to consider these and other views in its oversight of import restrictions.

### Process for Bilateral Agreements under the CCPIA.

Some observers have criticized the process for import restrictions as too burdensome, asserting that the application requirements for foreign governments, timeline for review by CPAC, and need for renewal have contributed to the limited number of agreements and the need for emergency action for Iraq and Syria. Such critics have proposed amending the CCPIA to default to automatic import restrictions with state parties of the 1970 UNESCO convention or to permit regional pacts, rather than requiring pro-active bilateral agreements. Others commend the current process, suggesting that continued deliberations over common preservation goals can strengthen bilateral relations and improve public sentiment towards the United States. Congress may want to consider conducting oversight of the process for bilateral agreements.

**Potential Application of the BSA to Art Dealers.** The FY2021 NDAA-required report on the art industry may inform debates over whether to extend BSA requirements to art dealers. Certain stakeholders have suggested such a change, including in a Senate Permanent Subcommittee on Investigations report from July 2020. The report focused on Russian oligarchs who evaded U.S. sanctions via anonymous shell companies and high-value art purchases, and recommended that Congress amend the BSA to apply to businesses transacting in high-value art. As Congress considers such proposals, it may also want to consider views from the art industry, which contend that increased regulation could place an undue burden on the U.S. market.

**Report Requirement under P.L. 114-151.** The Preserve International Cultural Property Act required the President to submit to Congress an annual report about U.S. efforts pursuant to certain arts and antiquities trafficking-related statutes, among other provisions. Congress may wish to extend or modify that requirement, which expires in 2022.

### Trafficking of Native American Cultural Property.

Congress may also consider action on trafficking of Native American cultural property. A Government Accountability Office report from 2018 found that Native American tribes faced challenges preventing the overseas sale of their cultural items. The report attributed these challenges in part to the lack of explicit prohibition of the export of such items under federal law and the informal nature of interagency collaboration on the subject.

**Social Media and Online Marketplaces.** Some research suggests that internet platforms may facilitate cultural property trafficking. Online sales may increase traffickers' ability to find unscrupulous purchasers or to mislead good faith consumers. Congress may want to assess the scope of online cultural property trafficking as it considers online platforms and associated consumer education programs.

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