

Table of Contents

CHAPTER 14	579
Educational and Cultural Issues	579
A. CULTURAL PROPERTY: IMPORT RESTRICTIONS	579
1. Italy	580
2. Colombia	580
3. Greece.....	580
4. Bolivia.....	581
5. Egypt	581
6. Syria.....	581
B. CULTURAL PROPERTY: LEGISLATION	582
C. EDUCATIONAL EXCHANGE	582
D. EXCHANGE VISITOR PROGRAM	582
1. ASSE Litigation	582
2. Ireland.....	583
E. GLOBAL ENGAGEMENT CENTER	583
F. INTERNATIONAL EXPOSITIONS	584
1. 2017 World Expo in Astana, Kazakhstan.....	584
2. Proposed Minnesota World Expo 2023	584
G. IMMUNITY OF ART AND OTHER CULTURAL OBJECTS	585
Cross References	586

CHAPTER 14

Educational and Cultural Issues

A. CULTURAL PROPERTY: IMPORT RESTRICTIONS

In 2016, the United States extended four international agreements, signed one new international agreement, and imposed emergency import restrictions pursuant to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (“Convention”), to which the United States became a State Party in 1983, in accordance with the Convention on Cultural Property Implementation Act (“CPIA”), which implements parts of the Convention. Pub. L. 97-446, 96 Stat. 2351, 19 U.S.C. § 2601 *et seq.*

If the requirements of 19 U.S.C. § 2602(a)(1) and/or (e) are satisfied, the President has the authority to enter into or extend agreements to apply import restrictions for up to five years on archaeological and/or ethnological material of a nation, whose government has requested such protections and which has ratified, accepted, or acceded to the Convention. Accordingly, the United States took steps in 2016 to protect the cultural property of Italy, Colombia, Greece, and Bolivia by extending existing memoranda of understanding (“MOUs”) with these countries, and corresponding import restrictions on certain archaeological and/or ecclesiastical ethnological material from these countries. The United States also entered into a new MOU with Egypt to protect the cultural property of Egypt by imposing import restrictions on certain Egyptian archaeological materials. With the Egypt MOU, the total number of U.S. bilateral agreements to protect cultural property pursuant to the Convention is 16.

Additionally, 19 U.S.C. § 2603(b) provides the President the authority to apply import restrictions on a temporary basis, under certain conditions, where an “emergency condition” pertains. Accordingly, the United States took steps to protect the cultural property of Syria pursuant to legislation adopted in 2016, which enabled the President to implement import restrictions on certain Syrian archaeological and

ethnological material on an emergency basis and without regard to certain limitations set forth in the CPIA.

1. Italy

Effective January 19, 2016, the United States and Italy extended for five years the Memorandum of Understanding (“MOU”) between the Government of the United States of America and the Government of the Republic of Italy Concerning the Imposition of Import Restrictions on Categories of Archaeological Material Representing the Pre-Classical, Classical and Imperial Roman Periods of Italy. See January 15, 2016 State Department media note, available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/01/251323.htm>. The United States and Italy entered into their first MOU to protect Italy’s archaeological heritage in 2001. See *Digest 2001* at 769-72. The MOU has been extended every five years. The text of the 2016 MOU is available at <https://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements/italy>. U.S. Customs and Border Protection (“CBP”) of the Department of Homeland Security and the Department of the Treasury further extended the import restrictions imposed previously with respect to certain archaeological materials from Italy. 81 Fed. Reg. 2086 (Jan. 15, 2016).

2. Colombia

Effective March 15, 2016, the United States and Colombia extended for five years their MOU Concerning the Imposition of Import Restrictions on Archaeological Materials from the Pre-Columbian Cultures and Certain Ecclesiastical Material from the Colonial Period of Colombia. See March 15, 2016 State Department media note, available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/03/254744.htm>. The United States and Colombia entered into their first MOU concerning import restrictions on these materials in 2006. See *Digest 2006* at 897-99. The MOU was amended and extended in 2011. See *Digest 2011* at 442. The text of the extension is available at https://eca.state.gov/files/bureau/combinedusandcodipnotes_2016extension.pdf. CBP and the Department of the Treasury further extended the import restrictions imposed previously with respect to Colombia. 81 Fed. Reg. 13,721 (Mar. 15, 2016).

3. Greece

Effective November 21, 2016, the United States and Greece extended for five years their bilateral agreement, which entered into force on November 21, 2011, concerning the imposition of import restrictions on archaeological materials representing Greece’s cultural heritage from the Upper Paleolithic (beginning approximately 20,000 B.C.) through the 15th century A.D., and ecclesiastical ethnological material representing Greece’s Byzantine culture (approximately the 4th century through the 15th century A.D.). 81 Fed. Reg. 84,458 (Nov. 23, 2016). See *Digest 2011* at 442-43. CBP and the Department of the Treasury extended the import restrictions imposed previously with

respect to Greece for five years. *Id.* The governments of the United States and Greece exchanged diplomatic notes reflecting the extension of those restrictions for an additional five-year period.

4. **Bolivia**

Effective December 4, 2016, the United States and Bolivia extended their bilateral agreement, originally entered into on December 4, 2001, concerning the imposition of import restrictions on certain archaeological objects and ethnological materials. 81 Fed. Reg. 87,804 (Dec. 6, 2016). The extension was effected via an exchange of diplomatic notes. *Id.* See *Digest 2001* at 772-74 regarding the original agreement; *Digest 2006* at 901 regarding the first extension; and *Digest 2011* at 443 regarding the second extension. CBP and the Department of the Treasury extended the import restrictions imposed previously with respect to Bolivia for five years.

5. **Egypt**

On November 30, 2016 U.S. Secretary of State John Kerry and Egyptian Foreign Minister Sameh Shoukry signed a new MOU on cultural property protection at the U.S. Department of State. This was the first such MOU signed with any country in the Middle East and North Africa region. See November 29, 2016 State Department notice, available at <https://2009-2017.state.gov/r/pa/prs/ps/2016/11/264632.htm>. The MOU provides for U.S. import restrictions on archaeological material representing Egypt's cultural heritage dating from 5200 B.C. through 1517 A.D. in order to reduce the incentive for pillage and trafficking. The text of the MOU is available at https://eca.state.gov/files/bureau/egypt_cpia_mou_eng.pdf.

6. **Syria**

On August 17, 2016, the State Department announced the imposition of import restrictions on certain archaeological and ethnological material of Syria. See August 17, 2016 media note, available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/08/261099.htm>. The restrictions were published by CBP and the Treasury in the Federal Register, and were effective immediately. 81 Fed. Reg. 53,916 (Aug. 15, 2016). As explained in the media note:

These import restrictions are intended to reduce the incentive for pillage to better preserve Syria's cultural heritage and to combat profiting from the sale of these artifacts by terrorists and criminal organizations. Syria's ancient and historic sites are the archive of a unique history, the study of which, despite generations of scholarship, has only just begun. Preserving the cultural heritage of Syria will be a vital component in shaping a future for the country based on reconstruction, reconciliation, and building civil society.

The emergency import restrictions were imposed pursuant to the Protect and Preserve International Cultural Property Act of 2016, which was passed by the U.S. Congress and signed by President Obama. The restrictions apply to any cultural property unlawfully removed from Syria on or after March 15, 2011, including objects of stone; metal; ceramic, clay, and faience; wood; glass; ivory, bone, and shell; plaster and stucco; textile; parchment, paper, and leather; painting and drawing; mosaic; and writing.

B. CULTURAL PROPERTY: LEGISLATION

As mentioned above, the United States enacted new legislation in 2016 to protect and preserve international cultural property. The “Protect and Preserve International Cultural Property Act,” P.L. 114-151 (“Act”), recommends the establishment of an interagency committee to coordinate efforts to preserve and protect international cultural property at risk from political instability, armed conflict, natural or other disasters, or for other reasons. The Act specifically authorizes emergency measures to protect Syrian cultural property, which was accomplished by the issuance of import restrictions on August 15, 2016, discussed above. The Act also creates an annual reporting requirement for six years. On August 1, the President delegated the functions and authorities conferred upon the President under the Act to the Secretary of State, in consultation with the Secretaries of Homeland Security and the Treasury, 81 Fed. Reg. 55,105 (Aug. 18, 2016), and the Deputy Secretary of State for Management and Resources delegated these functions and authorities to the Assistant Secretary of State for Educational and Cultural Affairs, 81 Fed. Reg. 54,177 (Aug. 15, 2016).

C. EDUCATIONAL EXCHANGE

On July 6, 2016, the United States and Georgia signed an MOU on the Fulbright Exchange Program. The MOU is available at <http://www.state.gov/s/l/c8183.htm>. On July 8, 2016, the United States and Kosovo signed an MOU on the Fulbright Exchange Program. The MOU is available at <http://www.state.gov/s/l/c8183.htm>. And on December 16, 2016, the United States and Latvia signed an MOU on the Fulbright Exchange Program. This MOU is also available at <http://www.state.gov/s/l/c8183.htm>.

D. EXCHANGE VISITOR PROGRAM

1. ASSE Litigation

As discussed in *Digest 2015* at 611 and *Digest 2014* at 576-79, ASSE International, a program sponsor in the State Department’s J-1 Exchange Visitor Program (“EVP”) challenged in federal court the imposition of sanctions by the Department for ASSE’s violations of EVP regulations. On remand from the Ninth Circuit, the District Court granted the State Department’s motion for voluntary remand to the Department and vacated the lesser sanctions at issue. Following the State Department’s reconsideration

of its initial sanctions determination, the Department again imposed sanctions against ASSE, and ASSE filed an amended complaint on November 14, challenging those sanctions.

Relatedly, on July 21, 2016, ASSE filed for interim fees and costs under the Equal Access to Justice Act (“EAJA”). On November 4, ASSE’s motion was denied by the district court. The court found that the position of the United States was substantially justified and therefore denied ASSE’s motion without reaching other issues raised in the briefing. ASSE has filed a notice of appeal to the Ninth Circuit.

2. Ireland

On December 5, 2016, Assistant Secretary of State for Educational and Cultural Affairs Evan Ryan and Irish Ambassador Anne Anderson signed diplomatic notes at the U.S. Department of State extending (through October 31, 2019) an exchange program between the United States and Ireland known as the “Twelve Month Intern Work and Travel Pilot Program.” This program was originally established by an MOU signed in 2008, and subsequently extended through exchanges of diplomatic notes. The notes signed by Assistant Secretary Ryan and Ambassador Anderson also remove the word “Pilot” from the name of the program, which is now known as the “Twelve Month Intern Work and Travel Program.”

E. GLOBAL ENGAGEMENT CENTER

Section 1287 of the Fiscal Year 2017 National Defense Authorization Act (“NDAA”) directs the Secretary of State, in coordination with the Secretary of Defense and the heads of other relevant federal agencies, to establish a Global Engagement Center, with the purpose of leading, synchronizing, and coordinating “efforts of the Federal Government to recognize, understand, expose, and counter foreign state and non-state propaganda and disinformation efforts aimed at undermining United States national security interests.” The Global Engagement Center had previously been established pursuant to Executive Order 13721 of March 14, 2016, but with a more limited mandate focused on countering the messaging and diminishing the influence of violent extremist groups. The 2017 NDAA also provides the Global Engagement Center with additional legal authorities, including the authority to provide financial support to “civil society groups, media content providers, nongovernmental organizations, federally funded research and development centers, private companies, or academic institutions” in support of its mission. The Act also authorizes the Secretary of Defense, subject to certain conditions, to transfer funds to the Secretary of State to support the Global Engagement Center in Fiscal Years 2017 and 2018.

F. INTERNATIONAL EXPOSITIONS**1. 2017 World Expo in Astana, Kazakhstan**

On August 29, 2016, the authority under the Fulbright-Hays Act (22 U.S.C. § 2452(a)(3)) to provide for U.S. participation at international expositions was delegated from the Secretary of State to the South and Central Asian Affairs Bureau for the Astana Expo. 81 Fed. Reg. 66,321 (Sep. 27, 2016). On September 26, 2016, the Department published a request for proposals seeking an implementing partner for the expo. 81 Fed. Reg. 66,114 (Sep. 26, 2016). U.S. law necessitates an implementing partner due to a statutory funding restriction that prevents the Department from expending its appropriated funds on a U.S. pavilion, or other major exhibit, at an international expo unless expressly authorized and appropriated for such purpose (22 U.S.C. § 2452b). On December 10, 2016, the United States concluded a memorandum of agreement with an implementing partner (“USAP Expo 2017”) to provide for all aspects of the U.S. pavilion at the expo.

2. Proposed Minnesota World Expo 2023

The role of the Federal Government in the hosting of an international exposition in the United States is governed primarily by 22 U.S.C. § 2801 *et seq.* When a proposal to host an expo is submitted to the U.S. government, 22 U.S.C. § 2802(a) requires the Secretaries of State and Commerce to submit reports to the President on the proposed expo. The reports serve as a basis for the President to make a finding of whether federal recognition of the proposed expo is in the national interest.

In 2016, the Minnesota World’s Fair Bid Committee developed a proposal to host a world’s fair in Minneapolis in 2023. In November, the Secretary of Commerce submitted a report to the President pursuant to 22 U.S.C. § 2802(a)(1), indicating that the Minnesota proposal meets certain requirements, including that it has guaranteed financial support from state, local, private, and other sources sufficient to assure the successful development and progress of the expo. The Secretary of State subsequently submitted a report to the President pursuant to 22 U.S.C. § 2802(a)(2), indicating that the Minnesota proposal qualifies for recognition by the Bureau of International Expositions (“BIE”).

On December 9, the President made a finding that federal recognition of the Minnesota proposal was in the national interest and requested that the Secretary of State deliver a letter to the Secretary General of BIE. The Secretary of State then delivered that letter, formally initiating the process of BIE consideration of the Minnesota proposal. The Minnesota proposal will compete with two other bids to host the expo that follows the 2020 World Expo in Dubai. In November 2017, the BIE General Assembly will select one bid for BIE recognition.

G. IMMUNITY OF ART AND OTHER CULTURAL OBJECTS

Chapter 10 discusses the Foreign Cultural Exchange Jurisdictional Immunity Clarification Act, which was signed into law on December 16, 2016, and pertains to artwork in the United States for a temporary exhibit or display and protected under the immunity from seizure statute, 22 U.S.C. § 2459.

Cross References

ICC prosecution regarding cultural sites in Mali, **Chapter 3.C.1.d.**

Foreign Cultural Exchange Jurisdictional Immunity Clarification Act, **Chapter 10.A.2.**

Chabad, **Chapter 10.B.6.b.**