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CHAPTER 14

Educational and Cultural Issues

A. CULTURAL PROPERTY: IMPORT RESTRICTIONS

In 2015, the United States took steps to protect the cultural property of El Salvador and Nicaragua by extending import restrictions on certain archaeological and/or ecclesiastical ethnological material from those countries. These actions were based on determinations by the Department of State's Bureau of Educational and Cultural Affairs that the statutory threshold factors permitting entry into an agreement were met, or that the factors permitting entry into the initial agreement still pertained. 19 U.S.C. §§ 2602 (a)(1) and (e), respectively. In 2015, the United States extended two agreements 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, and pursuant to the Convention on Cultural Property Implementation Act, which implements parts of the Convention. See Pub. L. No. 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 or ethnological material of a nation which has requested such protections and which has ratified, accepted, or acceded to the Convention.

1. El Salvador

Effective March 8, 2015, the United States and El Salvador amended and 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 El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological Material from the Prehispanic Cultures of the Republic of El Salvador.

Cooperation to protect the cultural property of El Salvador began in 1987 when the United States imposed emergency import restrictions to curtail the pillage and illicit trafficking of El Salvador's archaeological heritage. The United States and El Salvador entered into their first MOU to protect El Salvador's archaeological heritage in 1995. See *II Cumulative Digest 1991–1999* at 1795-97. The MOU has been amended and extended every five years. The text of the 2015 MOU is available at <http://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements>. See also the March 10, 2015 Department of State media note, available at <http://www.state.gov/r/pa/prs/ps/2015/03/238734.htm>. 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 El Salvador. 80 Fed. Reg. 12,080 (Mar. 6, 2015).

2. Nicaragua

Effective October 15, 2015, the Agreement between the Government of the United States of America and the Government of the Republic of Nicaragua Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Hispanic Cultures of the Republic of Nicaragua was extended for a period of five years. The October 6, 2015 State Department media note announcing the extension is available at <http://www.state.gov/r/pa/prs/ps/2015/10/247957.htm>. The original agreement with Nicaragua was entered into in 2000 and was previously extended in 2005 and 2010. See *Digest 2010* at 565; see also *II Cumulative Digest 1991–1999* at 1800-01 and *Digest 2005* at 775–76. The Federal Register notice of the final rule continuing the import restrictions was published on October 6, 2015. 80 Fed. Reg. 60,292 (Oct. 6, 2015). The text of the agreement is available at <http://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements>.

B. PROTECTION OF WORLD CULTURAL AND NATURAL HERITAGE

On September 29, 2015, Deputy Secretary of State Antony J. Blinken spoke at the Metropolitan Museum of Art in New York on the endangered patrimony of Iraq and Syria. His remarks are excerpted below and available at <http://www.state.gov/s/d/2015/247646.htm>.

* * * *

Carving caverns of inhumanity in its wake, ISIL has murdered, raped, and enslaved its way into Syria and Iraq—towns, villages, cities. They have not only killed, but as you all know, they

sought to erase the identity of those they have killed. To supplant centuries of culture and history with their own ideology of nihilism and terror.

The Assyrian winged bulls in Nineveh. Historic lions in Raqqa. The great city of Palmrya.

Each satellite image of scorched earth, each photo of barren land that shows what we have lost and lost potentially forever gnaws at our hearts.

It was in this region, a cradle of civilization, that our roots first came together—roots that bind us not only to our ancestors but also to each other. Without the enduring reminders of our past, the ground beneath our feet feels a little less certain and the world we will pass onto future generations becomes greatly impoverished.

* * * *

These ancient coins, stone, glass, and mosaic fragments travel organized routes through black markets in the Middle East, Europe, and the Persian Gulf. The profits return to line the pockets of these extremists—funding more savagery, more terror, and more devastation.

This afternoon, you'll hear from my colleagues as they offer details on ISIL's ongoing destruction—including some information that has not been made public until today. In the face of this truly unprecedented crisis, it is vital that all of us—governments, international organizations, museums, auction houses, and collectors—take concrete action to both reduce the demand on the world market and cut off the supply.

That's why the United States has developed Red Lists with the International Council of Museums to help law enforcement officials recognize looted objects.

It's why we have stepped up our efforts through the Global Coalition to Counter ISIL to encourage greater action against the illicit trade.

It is why the United States seeks reelection on the UNESCO Executive Board this November, so that we can continue to promote coordination and action at the highest levels.

And that it's why we are working so closely with international law enforcement agencies here in the United States and around the world.

I think many of you know something called the Rewards for Justice program. It encourages people to provide information that prevents terrorist acts or helps put terrorists behind bars. Today, on behalf of Secretary of State Kerry, I am pleased to announce that the Rewards for Justice program will offer—for the first time ever—up to \$5 million for information leading to the significant disruption of the sale and/or of the trade of antiquities by, for, or on behalf of ISIL.

This is one more step in bringing the weight of justice down on those who seek to advance ISIL's destructive agenda—and in opening the eyes of the public to this unprecedented menace.

In this effort, we're grateful for the active involvement of two giants of the art market, Christie's and eBay, which are both represented here today. Their determination to educate their clients and the general public can serve as an example for dealers and collectors around the world.

We also welcome discussions among collectors, museums, auction houses, [and] online marketplaces about collectively pledging to maintain the highest standards in handling

antiquities—especially from regions in crisis like Iraq and Syria. Refusing to deal in conflict antiquities is both a moral imperative and a legal obligation.

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On September 30, 2015, the State Department issued a fact sheet on “Uniting Against Threats to Cultural Heritage in Iraq and Syria,” which is available at <http://www.state.gov/r/pa/prs/ps/2015/09/247616.htm>, and excerpted below.

* * * *

The terrorist group known as ISIL, or Daesh, is continuing its campaign of destruction and looting at historic sites in Iraq and Syria. These sites have been preserved for millennia in both Iraq and Syria, whose people are suffering enormous human hardships and losing cultural legacies of universal importance.

ISIL’s damage and looting of historic sites in Syria and Iraq have not only destroyed irreplaceable evidence of ancient life and society but have also helped fund its reign of terror inside those countries. [Documents and items seized during a raid on the compound of ISIL Senior Leader Abu Sayyaf](#) provided further evidence that ISIL – beyond its terrorism, brutality, and destruction – also engages in a wide variety of criminal activity, including systematic looting and profiteering from the [illegal antiquities trafficking](#) under the direction of its senior leadership.

Working together with other nations and private organizations in the preservation of cultural heritage, the United States is committed to disrupting the illegal trafficking of antiquities, and proving that ISIL’s tactics of murder and destruction will not erase Iraq and Syria’s rich history and cultures.

The State Department is the largest contributor to [The American Schools of Oriental Research’s Cultural Heritage Initiative](#) – providing over \$1.5 million since 2014 to document damage, promote global awareness, and plan emergency and post-war responses in Syria and Iraq. This [work is being placed online](#) as part of a global collaboration to halt the trade in conflict-region antiquities.

At a [program](#) yesterday at the Metropolitan Museum in New York, the State Department [announced](#) that its [Rewards for Justice](#) program will reward up to \$5 million dollars for information leading to the significant disruption of the sale and/or trade of antiquities and oil by, for, on behalf of, or to benefit ISIL.

Working in partnership with the International Council of Museums, the State Department has funded the publication of notices to educate customs officials and legitimate art dealers, the [Emergency Red List of Iraqi Cultural Objects at Risk](#) and the [Emergency Red List of Syrian Cultural Objects at Risk](#).

The United States joins with the international community to urge all parties in Iraq and Syria and the international community to respect and protect archaeological, historic, religious,

and cultural sites, including museums and archives, and reaffirm that all those who destroy important cultural property must be held accountable.

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On December 16, 2015, the State Department issued a media note announcing a partnership with the International Council of Museums to fight illicit traffic of Libyan cultural objects. The media note, excerpted below, is available at <http://www.state.gov/r/pa/prs/ps/2015/12/250691.htm>.

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The U.S. Department of State and the International Council of Museums (ICOM) have launched the [Emergency Red List of Libyan Cultural Objects at Risk](#). The Emergency Red List alerts law enforcement and the collecting community to the types of Libyan cultural objects that are vulnerable to being looted and trafficked. It serves as an important tool in the fight against trafficking by transnational crime organizations and Foreign Terrorist Organizations, such as ISIL.

The United States joins with the international community to urge all parties in Libya and worldwide to respect and protect archaeological, historic, religious, and cultural sites, including museums and archives, and reaffirm that all those who damage or destroy important cultural property must be held accountable. For the past ten years, the State Department has been engaged with private sector partners in several projects to protect and preserve the archaeological heritage of Libya.

The illicit traffic in cultural goods is not a new practice; however, conflicts in the Middle East and Northern Africa have increased its severity. Significant damage and destruction has been done to cultural heritage sites, particularly by ISIL, feeding the networks through which stolen and looted objects travel. In order to fight illicit traffic, we must constantly adapt to emergency situations and new practices, such as internet sales.

The State Department's support of the Red List reflects the United States' commitment to cultural preservation and respect for world heritage. In addition to the Libya Red List, the State Department has supported the publication of lists for [Syria](#), [Iraq](#), Afghanistan, Egypt, Cambodia, China, Central America and Mexico, Haiti, Colombia, and Peru, with more on the way.

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C. EDUCATIONAL EXCHANGE

On February 2, 2015, the United States and Andorra signed an MOU on the Fulbright Exchange Program. The MOU is available at <http://www.state.gov/s/l/c8183.htm>. On February 11, 2015, the United States and Portugal signed an agreement continuing the Commission for Educational Exchange between the United States and Portugal. The

U.S.-Portugal agreement is also available at <http://www.state.gov/s/l/c8183.htm>. On February 19, 2015, the United States and Estonia signed an MOU on the Fulbright Program, which is also available at <http://www.state.gov/s/l/c8183.htm>. For background on the Fulbright Program, see *II Cumulative Digest 1991-1999* at 1807-08.

On June 15, 2015, the Ministry of Foreign Affairs of the Republic of Cyprus confirmed by letter to the Chair of the Fulbright Commission that the 1962 Agreement between for financing and conducting educational exchanges between the United States and Cyprus had been terminated and the Commission for Educational Exchange had been dissolved. The 1962 Agreement was terminated by exchange of diplomatic notes. The June 15, 2015 letter is available at <http://www.state.gov/s/l/c8183.htm>.

D. EXCHANGE VISITOR PROGRAM

As discussed in *Digest 2014* at 576-79, a United States district court granted the U.S. Department of State's motion to dismiss claims brought by ASSE International, a program sponsor in the Department's J-1 Exchange Visitor Program ("EVP"), relating to sanctions imposed by the Department for ASSE's violations of EVP regulations. ASSE appealed the district court's ruling. The U.S. Court of Appeals for the Ninth Circuit reversed the district court's finding that sanctions actions against EVP sponsors are judicially unreviewable and its holding that ASSE was provided adequate process. *ASSE Int'l Inc. v. Kerry*, 803 F.3d 1059 (9th Cir. 2015). Though the Court of Appeals agreed with the Department that due process does not mandate trial-type proceedings in the imposition of sanctions for violations of EVP regulations, it held that the Department did not provide adequate procedural protections to ASSE in this case. The Court of Appeals reasoned that the issues in this case had only a "weak connection to foreign policy." The Court of Appeals remanded to the district court for further proceedings to determine whether ASSE has a property interest at issue, and, if so, whether the due process violation suffered was harmless error. The Department has filed a motion in the district court seeking remand to the Department for further proceedings within the agency consistent with the Ninth Circuit's opinion.

Cross References

ICC prosecution regarding cultural sites in Mali, **Chapter 3.C.1.c.**
Syria, **Chapter 17.B.2.**