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CHAPTER 14

Educational and Cultural Issues

A. CULTURAL PROPERTY: IMPORT RESTRICTIONS

In 2017, the United States extended four international agreements and imposed emergency import restrictions for one country 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 2017 to protect the cultural property of Peru, Cyprus, Mali, and Guatemala 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.

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. The United States imposed emergency import restrictions on certain archaeological and ethnological materials from Libya in 2017.

1. Peru

Effective June 9, 2017, the MOU Between the Government of the United States of America and the Government of the Republic of Peru Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Hispanic Cultures and Certain Ethnological Material from the Colonial Period of Peru, signed in June 1997, was amended and extended for another five-year period. The text of the MOU is available at <https://eca.state.gov/cultural-heritage-center/cultural-property->

[protection/bilateral-agreements/peru](#). The 1997 MOU with Peru was last extended in 2012. See *Digest 2012* at 446-47. The MOU was amended and extended in 2007 and 2002. See *Digest 2007* at 741-42. The Department of Homeland Security, U.S. Customs and Border Protection (“CBP”), and the Department of the Treasury extended the import restrictions imposed previously with respect to certain archaeological and ethnological materials from Peru. 82 Fed. Reg. 26,340 (June 7, 2017). The Designated List was also amended in 2017 to include Colonial Period documents and manuscripts. *Id.*

2. Cyprus

Effective July 14, 2017, the United States and Cyprus extended for five years their MOU Concerning the Imposition of Import Restrictions on Pre-Classical and Classical archaeological objects, and Byzantine and post-Byzantine ecclesiastical and ritual ethnological materials from Cyprus. The restrictions, which were originally imposed as an emergency measure in 1999 and pursuant to the original MOU in 2002, were last extended in 2012. See *Digest 2012* at 447. The United States and Cyprus previously amended and extended the MOU in 2006 and 2007. See *Digest 2002* at 814-15, *Digest 2006* at 899-901, and *Digest 2007* at 741. The 2017 extension was concluded via exchange of diplomatic notes. The text of the MOU and related documents are available at <https://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements/cyprus>. The Federal Register notice announcing the extension of import restrictions for five years also includes the Designated List. 82 Fed. Reg. 32,452 (July 14, 2017).

3. Mali

Effective September 19, 2017, the United States and Mali amended and extended for five years their MOU Concerning the Imposition of Import Restrictions on Archaeological Material from Mali from the Paleolithic Era (Stone Age) to Approximately the Mid-Eighteenth Century. The United States and Mali entered into their first MOU concerning import restrictions on these materials in 1997 and extended and amended it in 2002 and 2007. See *Digest 2007* at 740-41. The MOU was amended and extended most recently in 2012. See *Digest 2012* at 447-48. The text of the 2017 amended and extended agreement is available at <https://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements/mali>. CBP and the Department of the Treasury further extended the import restrictions imposed previously with respect to Mali. 82 Fed. Reg. 43,692 (Sep. 19, 2017).

4. Guatemala

Effective September 29, 2017, the United States and Guatemala extended for five years their Memorandum of Understanding (“MOU”) Concerning the Imposition of Import Restrictions on Archaeological Objects and Materials from the Pre-Columbian Cultures

of Guatemala. The United States entered into the original bilateral agreement with Guatemala concerning the imposition of import restrictions on archaeological materials from the Pre-Columbian cultures of Guatemala in 1997 and extended it in 2002 and 2007, and amended and extended it in 2012. See *Digest 2012* at 448. The text of the MOU is available at <https://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements/guatemala>. Diplomatic notes were exchanged in 2017 in order to extend the agreement for another five years. CBP and Treasury further extended the import restrictions imposed previously with respect to certain archaeological materials from Guatemala. 82 Fed. Reg. 45,178 (Sep. 28, 2017).

5. Libya

The Government of Libya made a request to the Government of the United States under Article 9 of the 1970 UNESCO Convention, received by the State Department on May 30, 2017, seeking U.S. import restrictions on archaeological and/or ethnological materials representing Libya's cultural patrimony from the prehistoric through Ottoman Era. Notification of the request was published in the Federal Register on June 16, 2017. 82 Fed. Reg. 27,755 (June 16, 2017). Effective December 5, 2017, the United States imposed emergency import restrictions on certain archaeological and ethnological materials from Libya. 82 Fed. Reg. 57,346 (Dec. 5, 2017).^{*} Excerpts follow from the Federal Register notice of the imposition of import restrictions:

On September 22, 2017, the Acting Under Secretary for Public Diplomacy and Public Affairs, acting pursuant to delegated authority, made the determinations necessary under the [CPIA] for the emergency implementation of import restrictions on categories of archaeological and ethnological material from Libya. The Designated List below sets forth the categories of material that the import restrictions apply to. Thus, CBP is amending 19 CFR 12.104g(b) accordingly.

Importation of covered materials from Libya will be restricted for a five-year period until May 30, 2022. Importation of such materials from Libya continues to be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

...The Designated List covers archaeological material of Libya and Ottoman ethnological material of Libya (as defined in section 302 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601)), The archaeological materials represent the following periods and cultures: Paleolithic, Neolithic, Punic, Greek, Roman, Byzantine, Islamic and Ottoman dating approximately 12,000 B.C. to 1750 A.D. The ethnological materials represent categories of Ottoman objects derived from sites of religious and cultural importance made from 1551 A.D. through 1911 A.D.

^{*} Editor's note: On February 23, 2018, the United States and Libya concluded an MOU concerning the imposition of import restrictions on categories of archaeological and ethnological materials of Libya.

B. CULTURAL PROPERTY: LITIGATION

1. *United States v. Three Knife Shaped Coins*

In *United States v. Three Knife Shaped Coins*, No. 13-1183 (D. Md.), the district court granted the U.S. motion for summary judgment as to 15 coins in dispute and granted the motion for summary judgment by the Ancient Coin Collectors Guild (the “Guild”) as to seven coins the United States had agreed to return. The court issued its opinion on March 31, 2017. Excerpts follow from the opinion (with footnotes omitted). The Guild has appealed.

* * * *

In 1970, the United States became a signatory to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the “Convention”). Nov. 14, 1970, 823 U.N.T.S. 231. The purpose of the Convention was to protect cultural property from “the dangers of theft, clandestine excavation, and illicit export.” *Id.* pmbl. The Convention defines the term “cultural property” to mean “property which...is specifically designated by each State as being of importance for archaeology, pre-history, history, literature, art or science.” *Id.* art. 1. Under Article 9 of the Convention, any signatory to the Convention (“State Party”) can request that another State Party take measures to protect its cultural property “from pillage,” including by imposing import and export controls. *Id.* art. 9.

Congress enacted the CPIA to implement the Convention, which was not self-executing. Convention on Cultural Property Implementation Act, Pub. L. 97-446, tit. III, 96 Stat. 2350 (1983) (codified at 19 U.S.C. §§ 2601-2613). The CPIA authorizes the president to impose import restrictions on certain items of cultural property at the request of a State Party. 19 U.S.C. § 2602. When a State Party makes a request, the president must “publish notification of the request...in the Federal Register” and submit information regarding the request to the Cultural Property Advisory Committee (“CPAC”). *Id.* § 2602(f). CPAC is an 11-person committee, appointed by the president, whose members include “experts in the fields of archaeology, anthropology, ethnology, or related areas”; “experts in the international sale of archaeological, ethnological, and other cultural property”; representatives of the interests of museums; and representatives of “the interest of the general public.” *Id.* § 2605(b)(1).

After CPAC receives notice of a request from the president, it is responsible for conducting an investigation and review to determine whether import restrictions are warranted. *Id.* § 2605(f)(1); see *id.* § 2602(a)(1). CPAC then issues a report to Congress and the president that contains the results of this investigation and review, along with certain other findings and its recommendation regarding whether the United States should enter into an agreement or memorandum of understanding to implement Article 9 (“Article 9 agreement”) with the State Party. *Id.* § 2605(f)(1). When CPAC recommends entering into an Article 9 agreement, its report also sets forth the types of material that should be covered. *Id.* § 2605(f)(4). After receiving this report, the president determines whether to enter into such an agreement. *Id.* §§ 2602(a),(f). The existence of an Article 9 agreement is a prerequisite to the imposition of import restrictions under the CPIA. See *id.* § 2604.

The United States has Article 9 agreements with both Cyprus and China. It entered into an agreement with Cyprus in 2002, ... following a period of emergency import restrictions This agreement was amended in 2006, ... and extended in 2007.... After the 2007 extension, CBP promulgated an amended list of material subject to the import restrictions (“designated list”). ...

The United States and China entered into an Article 9 agreement in January 2009. CBP then promulgated a list of articles subject to CPIA restrictions ...

In April 2009, the Guild purchased 23 ancient Chinese and Cypriot coins from Spink, a numismatic dealer in London. ... According to the Spink invoice, each coin was minted in Cyprus or China, had “[n]o recorded provenance,” and had a “[f]ind spot” that was “unknown.” (*Id.*) Pursuant to the parties’ stipulation, the Chinese coins are numbered 1-15, and the Cypriot coins are numbered 16-22. ...

Later that month, the Guild imported the coins to the United States via a commercial flight from London to Baltimore. ... CBP detained the property at the time of entry for alleged violations of the CPIA and its implementing regulations. ...

After months passed without the initiation of forfeiture proceedings, the Guild brought an action against, inter alia, the U.S. Department of State and CBP. ...The government filed a motion to dismiss, which this court granted. ...

The Guild appealed, and the Fourth Circuit affirmed in October 2012. *Ancient Coin Collectors Guild v. U.S. Customs and Border Protection*, 698 F.3d 171, 175 (4th Cir. 2012) (“Fourth Circuit opinion”). As relevant here, the Fourth Circuit held that the State Department and CBP had not “acted ultra vires by placing import restrictions on all coins of certain types without demonstrating that all coins of those types were ‘first discovered within’ China or Cyprus.” *Id.* at 181-82. ...The Guild filed a petition for certiorari with the Supreme Court, which was denied. *Ancient Coin Collectors Guild v. U.S. Customs and Border Protection Agency*, 133 S. Ct. 1645 (2013).

The government initiated this forfeiture action on April 22, 2013, ...and the Guild filed a claim of interest in the defendant property, (Claim for Property, ECF No. 3). This court issued memorandum opinions on June 3, 2014, (ECF Nos. 22-23) (“June 3rd decision”) and February 11, 2016, (ECF No. 63) (“February 11th decision”). Those opinions clarified the scope of the litigation and made various preliminary rulings.

In the June 3rd decision, which granted the government’s motion to strike the Guild’s answer, the court observed that, “it is abundantly clear that [the Guild] seeks to expand the scope of this forfeiture action well beyond the limits set by the Fourth Circuit in its controlling opinion.” (Memorandum of June 3, 2014, at 1.) It clarified that “[t]he Fourth Circuit’s opinion forecloses any further challenge to the validity of the regulations.” *Id.* Quoting from dicta in the Fourth Circuit opinion, the court identified the following burden-shifting framework as applicable in CPIA forfeiture proceedings:

Under the CPIA, the government bears the initial burden in forfeiture of establishing that the coins have been “listed in accordance with section 2604,” 19 U.S.C. § 2610, which is to say that they have been listed “by type or other appropriate classification” in a manner that gives “fair notice ... to importers,” *id.* § 2604. If the government meets its burden, the Guild must then demonstrate that its coins are not subject to forfeiture in order to prevail. See *id.* § 1615.

(*Id.* (quoting *Ancient Coin Collectors Guild*, 698 F.3d at 185).)

The court explained that the importer bears the burden to show that

the article in question was either (1) lawfully exported from its respective state while CPIA restrictions were in effect; (2) exported from its respective state more than ten years before it arrived in the United States; or (3) exported from its respective state before CPIA restrictions went into effect.

(Memorandum of June 3, 2014, at 1-2 (quoting *Ancient Coin Collectors Guild*, 698 F.3d at 183).)

* * * *

Regarding coins 1-6, 12-13, and 16-22, the court finds that the government has satisfied its initial burden to show that the coins are of restricted types. Indeed, the Guild admitted in response to the government’s request for admissions that coins 1-6 and 12-13 are of types that appear on the designated list for coins from China and that coins 16-22 are of types that appear on the designated list for coins of Cypriot type. ...

Regarding coins 7-11 and 14-15, the Guild contends that, “the government has failed to establish its minimal burden to show that certain Chinese coins have been restricted at all.” ... The Guild did not concede in response to the government’s request for admissions that these particular coins are of types that appear on the designated list for China. Rather, it stated that it was “unable to admit or deny whether [the coins] are of types that appear on the Chinese designated list” because it “ha[d] no working knowledge of the Chinese language.” ... The court agrees that the relevant documents, including the Spink invoice, are insufficient to establish that coins 7-11 and 14-15 are of types that appear on the Chinese designated list. Because the government has not produced a Chinese language expert or provided any other evidence showing that the coins are of restricted types, the court finds that the government has failed to satisfy its initial burden regarding coins 7-11 and 14-15.

* * * *

... [T]he government asserts that it is in the process of returning the coins to the Guild and that the Guild’s arguments with respect to those coins “will soon be moot.”

* * * *

As discussed above, the government has made out a prima facie case with respect to coins 1-6, 12-13, and 16-22. The burden therefore shifts to the Guild ...

The CPIA places the burden on the importer to provide specific documentation, either at the time of entry or during the 90-day period following the customs officer’s refusal to release the material, showing that designated archaeological material is “eligible for import” to the United States. *Ancient Coin Collectors Guild*, 698 F.3d at 182 (citing 19 U.S.C. § 2606).

* * * *

The Guild has admitted that it cannot provide the documentation specified in § 2606. (Mot. Prot. Order, Ex. 4, ECF No. 48-5 (May 27, 2009, letter from Peter Tompa).) Instead, in order to satisfy its burden, it relies on the expert testimony ...

The parties dispute whether the Guild may rely on scholarly evidence to rebut the government's prima facie case. ...

The court's previous rulings do not resolve this dispute. ...

Here, it is not necessary for the court to comprehensively delimit the boundaries of these competing provisions because the government is entitled to judgment as a matter of law regardless of which evidentiary standard applies. If claimants in CPIA forfeiture actions are limited to the forms of documentation specified in § 2606, the Guild—which has conceded that it cannot provide such documentation—has failed to satisfy its burden to rebut the government's prima facie case. If, on the other hand, § 1615 permits courts to consider scholarly evidence, the court still must look to the substantive law to determine whether the proffered expert testimony establishes the Guild's entitlement to summary judgment or raises a disputed issue of material fact. Neither [of the Guild's experts'] testimony supports the Guild's claims.

* * * *

In summary, even if 19 U.S.C. § 1615 provides the applicable evidentiary standard and authorizes the Guild to rely on scholarly evidence, that scholarly evidence must be particularized to the coins at issue and either establish that the Guild is entitled to judgment as a matter of law or raise a disputed issue of material fact. The [experts'] testimony regarding the Chinese coins [is] insufficiently particularized, and the [expert] testimony regarding both the Cypriot and Chinese coins fails as a matter of law. The Guild has provided no other evidence or argument that “establish[es], by a preponderance of the evidence, that the property is not subject to forfeiture, or ... establish[es] an applicable affirmative defense.” See *Peruvian Oil*, 597 F. Supp. 2d at 623. Accordingly, the government is entitled to summary judgment as to coins 1-6, 12-13, and 16-22. See *id.*

* * * *

2. *United States v. Twenty-nine Artifacts from Peru*

In a June 2, 2017 opinion, the U.S. Court of Appeals for the Eleventh Circuit affirmed a decision of the district court in 2015 ordering the forfeiture of artifacts CBP had confiscated from Jean Combe-Fritz when he arrived in Miami from Peru. *United States (Plaintiff-Appellee) v. Twenty-nine Pre-Columbian and Colonial Artifacts from Peru, et al. (Defendants), Jean Combe-Fritz (Claimant-Appellant)*. 695 Fed.Appx. 461 (2017). CBP seized the artifacts pursuant to both the CPIA and 19 U.S.C. § 1595a(c), which restricts the importation of items “contrary to law.” The Court of Appeals affirmed that subject matter jurisdiction lies with the district court rather than the Court of International Trade, and that the district court had not abused its discretion in striking and dismissing Combe-Fritz's claims of interest in light of his willful violation of a specific court discovery order. Excerpts follow from the opinion.

* * * *

Mr. Combe-Fritz raises a host of complaints regarding the district court's rulings. As an initial matter, Mr. Combe-Fritz contends that the district court lacked subject matter jurisdiction over the action in its entirety because exclusive jurisdiction lay with the CIT. Additionally, Mr. Combe-Fritz raises challenges to both CBP's procedures and the district court's conduct of the forfeiture litigation—including the striking of his claims of interest, which resulted in the ultimate judgment of forfeiture. We discuss these issues in turn.

A. Subject Matter Jurisdiction

We are obligated to consider, as a threshold inquiry, whether subject matter jurisdiction properly lay with the district court. ...

As a general rule, the federal district courts possess original jurisdiction over forfeiture proceedings, "except matters within the jurisdiction of the [CIT] under section 1582 of this title." 28 U.S.C. § 1355(a). Mr. Combe-Fritz contends that the CIT possessed exclusive jurisdiction over the CPIA-based forfeiture, not as a result of § 1582 but, rather, according to § 1581. Under 28 U.S.C. § 1581(i), the CIT "shall have exclusive jurisdiction of any civil action commenced against the United States ... that arises out of any law of the United States providing for ... (3) embargoes or other quantitative restrictions on the importation of merchandise; or (4) administration and enforcement" of such an embargo or quantitative restriction. 28 U.S.C. § 1581(i)(3), (4) (emphasis added). Mr. Combe-Fritz argues that the CPIA effectively creates an embargo by restricting the importation into the United States of certain foreign goods.

We need not reach the question of whether the CPIA in fact creates an embargo as recognized by § 1581(i)(3) because we agree with the district court that the government's in rem forfeiture action cannot be characterized as a "civil action commenced against the United States," a necessary precondition under the statute. 28 U.S.C. § 1581(i). Regardless of his belief that it is legal fiction to label the twenty-nine items seized under the CPIA as "guilty property," Mr. Combe-Fritz cannot overcome the plain fact that the instant forfeiture proceedings were commenced by the United States, against the defendant property. ...

Therefore, the general rule that district courts have original jurisdiction over forfeiture proceedings brought by the government is properly applied in this case.

B. Rule 37 Sanctions

District courts have broad authority and discretion to fashion sanctions against parties who fail to engage in discovery (e.g., a party's failure to attend its own deposition) or otherwise disobey court orders. See Fed. R. Civ. P. 37(b), (d). Such sanctions include "striking pleadings in whole or in part" or "rendering a default judgment against the disobedient party." Fed. R. Civ. P. 37(b)(2)(A)...

Based on the procedural history ..., we cannot say that the district court abused its discretion in striking and dismissing Mr. Combe-Fritz's claims of interest. ... The facts show that, over the course of more than a year, Mr. Combe-Fritz consistently shirked his obligation to appear for his deposition, depriving the government of a meaningful opportunity to explore his claims of interest. Despite having both the government's assurances that there was no federal criminal investigation pending against him and a limited protective order from the magistrate judge, Mr. Combe-Fritz continued to cite hypothetical self-incrimination concerns as his only reason for not appearing. This was unavailing.

In addition to attempts to accommodate Mr. Combe-Fritz's Fifth Amendment concerns, the district court and magistrate judge repeatedly gave Mr. Combe-Fritz chances to avoid dismissal, exhausting other, less severe sanctions. In response to the government's motion in

limine and motion for sanctions, the magistrate judge ordered that “[Mr. Combe-Fritz] must appear for his deposition within ten days of this Order, or he will be excluded from testifying at trial.” The threat of this lesser sanction was not sufficient, and Mr. Combe-Fritz ignored it. Then, following its order to show cause why the court should not strike Mr. Combe-Fritz’s claims of interest, the district court issued an order compelling his deposition within thirty days, providing him a final opportunity to cure his discovery misconduct. Following well-established law, the district court specifically explained that Mr. Combe-Fritz could not rely on his Fifth Amendment concerns, even if legitimate, to avoid being deposed. . . . And the district court warned that, should Mr. Combe-Fritz fail to appear within thirty days, “it may be grounds for dismissal of his claim.”

As we have already noted, Mr. Combe-Fritz did not sit for his deposition within the thirty-day deadline. Instead he chose to file a motion for reconsideration, in which he again asserted an improper “blanket refusal” to sit in light of his self-incrimination concerns and argued that requiring his deposition would be a “waste of judicial resources.” Consequently, the district court determined that, “[w]hile the issue of whether [Mr. Combe-Fritz] had actually violated a specific Court discovery order may have been at one time ‘at least slightly, ambiguous,’ that is no longer the case. Claimant has willfully violated the Court’s Order to Compel and is solely at fault for the violation.”

* * * *

Moreover, because the district court acted within its discretion in striking Mr. Combe-Fritz’s claims, we need not address Mr. Combe-Fritz’s remaining challenges, both to CBP’s procedures and to the district court’s numerous other rulings. . . .

The district court’s entry of final judgment of forfeiture in the consolidated forfeiture action is therefore affirmed.

* * * *

C. G7 AND UN ACTIONS

1. G7 Ministerial on Culture

The ministers of culture and cultural authorities of the G7 met in Florence in March 2017 for the first such meeting, themed “Culture as an Instrument for Dialogue among Peoples.” The Joint Declaration of the ministerial is excerpted below. The Declaration was signed by government representatives of Canada, France, the United States, the United Kingdom, Germany, Japan, and Italy.

* * * *

Mindful of the importance of concerted international action in the field of the protection of cultural heritage and, in this framework, commending the recent approval by the UN Security Council of its Resolution 2347 (2017);

Taking note of the Milan Declaration adopted on July 31, 2015, during the meeting of the Ministers of Culture of the countries participating in Expo 2015, and of the Abu Dhabi Declaration made during the Conference on Safeguarding Endangered Cultural Heritage on December 2-3, 2016;

We reaffirm our belief that cultural heritage, in all its forms, tangible and intangible, movable and immovable, being an extraordinary link between past, present and future of mankind:

a) contributes to the preservation of identity and memory of mankind and encourages dialogue and cultural exchanges among nations, thereby fostering tolerance, mutual understanding, recognition and respect for diversity;

b) is an important tool for the growth and sustainable development of our societies, also in terms of economic prosperity; and

c) is both a driver and a subject of the most advanced technologies and a context for measuring the potentials and opportunities generated by the digital era;

We express our deep concern at the ever-increasing risk, arising not only from terrorist attacks, armed conflicts and natural disasters but also from raids, looting and other crimes committed on a global scale, to cultural heritage and all related institutions and properties, such as museums, monuments, archaeological sites, archives and libraries;

We express our deep concern about the destruction of cultural heritage sites, as such actions obliterate irreplaceable patrimony, extinguish the identity of targeted communities and erase any evidence of past diversity or religious pluralism;

We affirm the need to promote effective implementation of existing international legal instruments for protection of the world's cultural heritage;

We further call upon all States to take steps to increase their safeguarding and preservation of cultural heritage, including the heritage of religious and ethnic minorities, as well as to identify and share appropriate best practices for fighting every form of illegal activity in this field, including those concerning the protection of endangered cultural heritage in conflict zones;

We also affirm that effective international cooperation facilitates widely accepted solutions for assuring the protection and promotion of cultural heritage and cultural diversity;

We call upon the United Nations, in particular UNESCO and other relevant International Organizations working in this field, to strengthen their activities, within their existing mandates, for the protection of cultural heritage and to continue these activities in a coordinated way, including initiatives undertaken within the United Nations, mindful of the above mentioned UN Security Council Resolution 2347 (2017), that may encompass, where appropriate and on a case-by-case basis, when authorized by the UN Security Council, a cultural heritage protection component in security and peacekeeping missions;

We express our strong support for UNESCO's role in promoting the protection and preservation of cultural heritage, aware that cooperation and dialogue are vital to all efforts in countering violent extremism and radicalization to violence; in this regard, we welcome relevant measures already taken, such as the "Unite4Heritage" campaign, and take note of the Strategy for Reinforcing UNESCO's Action for the Protection of Culture and the Promotion of Cultural

Pluralism in the Event of Armed Conflict and the drawing up of a Plan of Action to make it operational;

We affirm the leadership role of UNESCO in coordination of international efforts within its mandate to protect cultural heritage, working closely with Member States and relevant international organizations;

We call upon all States to take strong and effective measures to combat the looting and trafficking in cultural property from their places of origin, particularly from countries experiencing conflict and internal strife, and to identify and prohibit the trade in looted cultural property that has been trafficked across borders and, as appropriate, to reinforce the monitoring of free ports and free trade zones; we also affirm that closer cooperation and determined action among international judicial and law enforcement authorities is a crucial element in our continuing efforts to preserve and protect cultural heritage worldwide;

We encourage all States to prioritize the safeguarding and enjoyment of cultural heritage, including through the promotion of public awareness and education, in order to preserve the memory of the past for future generations, to foster cultural development, and to encourage cultural dialogue and peace among nations;

We welcome the designation of 2018 as the European Year of Cultural Heritage, with the opportunities it will offer for the protection and valorization of the world's cultural heritage, as a positive example of an initiative supporting the principles expressed by this Declaration;

We stress the role of cultural relations in promoting tolerance for cultural and religious diversity and mutual understanding among peoples, and encourage all States to provide opportunities for cultural exchanges in the spirit of reciprocity and mutual benefit, including at large-scale international events, such as the World Expositions or the Olympic and Paralympic Games;

We encourage the forthcoming Chairs of the G7 to organize future meetings of Ministers of Culture and cultural authorities, in order to monitor the progress of our efforts.

* * * *

2. UN Security Council Resolution 2347

UN Security Council Resolution 2347 on the destruction and trafficking of cultural heritage by terrorist groups and in situations of armed conflict, referred to in the joint declaration above, was adopted on March 24, 2017. Ambassador Michelle J. Sison, U.S. Deputy Permanent Representative to the UN, delivered the statement for the United States on the resolution. Her remarks are excerpted below and available at <https://usun.state.gov/remarks/7721>.

* * * *

Over the past two decades, we have seen damage to and destruction of our shared cultural heritage on an unprecedented scale.

Those engaged in conflict and terror deliberately destroy cultural property to create fear, undermine governments, and cause animosity among different groups within a society. The

wanton devastation by ISIS, Al Qaeda, and others in Iraq and Syria, by the Taliban in Afghanistan, and by other groups elsewhere has taken a devastating toll not only on human lives, but also on our common cultural heritage.

This destruction tears at the very fabric of our societies.

The policy of the United States government is clear: the unlawful destruction or trafficking of cultural heritage is deplorable—we unequivocally oppose it, and we will take all feasible steps to halt, limit, and discourage it.

The United States seeks to hold accountable those who engage in the illegal trade of cultural property and the perpetrators of deliberate cultural heritage destruction.

Enhanced international law enforcement cooperation to counter these destructive and destabilizing activities is already showing results.

For example, the United States shared information with our international partners about the activities of the deceased Abu Sayyaf, a former high-ranking ISIS official who was responsible for financing the group’s terrorist activities, including through the illicit sale of antiquities.

Growing international coordination and cooperation among law enforcement and other agencies enabled the United States to take direct action in order to seek the recovery of these items.

We believe that there are no “one-size-fits-all” strategies for cultural heritage preservation in armed conflict. Complex situations around the world warrant a variety of responses.

Many states have demonstrated the ability to safeguard their cultural treasures in conflict zones during times of crisis.

It is a long-standing U.S. policy to preserve cultural heritage in situ whenever possible, thereby avoiding the need to remove cultural property from its country of origin.

The United States looks forward to strengthened international cooperation, and to finding new channels of cooperation for the protection and preservation of cultural heritage in armed conflicts, in order to preserve this priceless inheritance for future generations.

* * * *

Ambassador Sison delivered further remarks on cultural heritage on November 30, 2017 at a UN Security Council briefing on the destruction and trafficking of cultural heritage by terrorist groups in situations of armed conflict. Her remarks are excerpted below and available at <https://usun.state.gov/remarks/8167>.

* * * *

Even after liberation from ISIS, cultural heritage and antiquities remain under threat as fleeing members of ISIS will likely seek to sell artifacts that could continue to provide a substantial revenue stream. The ability to sell looted goods over the internet has turned a once cost-prohibitive market into one accessible by anyone with a cellphone or a connection to the internet.

The United States has been unwavering in its commitment to protecting and preserving cultural heritage. Our policy is clear: the unlawful destruction of cultural heritage and the

trafficking of cultural property are unacceptable. We join the UN and Council members in affirming that countries have a responsibility to preserve and protect this heritage of universal importance and to prevent its exploitation for terrorist purposes and illicit financial gain. The United States continues robust implementation of our own domestic tools for putting an end to destruction of cultural heritage and the trafficking of cultural property.

The emergency import restrictions on Syrian and certain Iraqi cultural property remain in place and serve as a strong disincentive to would-be traffickers. The United States has also negotiated bilateral agreements with 16 countries to block illegal importation of archaeological and ethnological material into the United States.

We urge other States Parties to the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property whose heritage is in jeopardy to request the same type of protection. The Cultural Antiquities Task Force, created by the State Department, focuses on the recovery and repatriation of looted cultural objects and supports law enforcement agencies in these efforts. The United States FBI maintains the National Stolen Art File, a computerized database of stolen art and cultural property, and makes its information available to law enforcement agencies around the world.

For several years, the U.S. government has provided funding to the American Schools of Oriental Research, ASOR, to continue its important work in Syria and northern Iraq. This year, we have expanded ASOR's work to also include Libya. With this funding, ASOR monitors cultural heritage sites in those areas using satellite imagery, human intelligence, and public information to document evidence of destruction and looting by ISIS and other actors. U.S. funding has also enabled the Smithsonian Institution to train Iraqi cultural heritage professionals so they can be prepared to implement needed interventions when the security situation allows.

We remain fully committed to these efforts and look forward to coordinating with the United Nations and Member States, and with UN and international entities including UNODC, INTERPOL, and the UN 1267 Committee over the coming year on full implementation of Resolution 2347.

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D. EXCHANGE PROGRAMS

1. Fulbright Programs

On March 30, 2017, the United States and Lithuania signed an MOU on the Fulbright Academic Exchange Program. The MOU is available at <http://www.state.gov/s/l/c8183.htm>. On November 27, 2017, the United States and Malaysia concluded an MOU on the Fulbright English Teaching Assistant Program. The MOU is available at <http://www.state.gov/s/l/c8183.htm>.

2. ASSE Litigation

As discussed in *Digest 2016* at 582-83; *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. After the Ninth Circuit reversed the

district court's dismissal and remanded the case, *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059 (9th Cir. 2015), the State Department conducted further administrative proceedings in accordance with the Ninth Circuit's opinion and re-imposed one of the "lesser sanctions," a written reprimand. On June 21, 2017, the district court granted in part and denied in part ASSE's motion to supplement the administrative record and for limited discovery. The district court required the State Department to supplement the administrative record with three categories of information: (1) any other diplomatic security documents that were before the bureau making the decision; (2) any additional "findings" that the bureau made; and (3) intra-agency communications and communications with outside parties concerning the subject matter of the case. The district court denied the request for discovery as well as the request to supplement the record as to certain other categories of documents.**

E. INTERNATIONAL EXPOSITIONS

1. General

The 2017 World Expo in Astana, Kazakhsan, which featured a U.S. Pavilion, closed on September 10, 2017. In October 2017, Secretary of State Rex Tillerson sent a letter to the United Arab Emirates expressing U.S. intent to participate in the next World Expo in Dubai in 2020.

2. Proposed Minnesota World Expo 2023

As discussed in *Digest 2016* at 584, the Minnesota World's Fair Bid Committee developed a proposal to host a world's fair in Minneapolis in 2023 and the committee's president recognized the Minnesota proposal, prompting the Secretary of State to formally request consideration of the proposal by the Bureau of International Expositions ("BIE").

In order for the Minnesota proposal to be considered, the United States had to rejoin the Convention relating to international exhibitions, signed at Paris on November 22, 1928, and supplemented by the Protocols of May 10, 1948, November 16, 1966, November 30, 1972, and the Amendments of June 24, 1982 and May 31, 1988 ("the Convention"). The United States had been a Party to the Convention from 1968 to 2002. On May 9, 2017, Secretary of State Rex Tillerson signed the instrument of accession by the United States to the Convention. The instrument of accession was deposited with the Government of the French Republic, which acts as the depositary for the Convention, thereby bringing the Convention into force for the United States.

** Editor's note: On January 3, 2018, the district court ruled in favor of the State Department on ASSE's second motion to supplement the administrative record. The decision and further proceedings will be discussed in *Digest 2018*.

The Convention created the BIE and established procedures and standards for the registration of international expositions. Expositions that are international and not expressly excepted from the reach of the Convention must be registered or the parties will not participate in them (Article 9). Registration involves submission of detailed plans and rules, which are approved or disapproved in light of the standards agreed to in the Convention and practice under it. Other provisions of the Convention guard against too frequent or overlapping expositions. The Convention provides procedures, including arbitration, for the settlement of disputes (Article 34).

The U.S. accession is subject to one reservation with respect to paragraph (2) of Article 10, which reads:

(2) If the said Government does not itself organise the exhibition it shall officially recognise the organisers for this purpose and it shall guarantee the fulfilment of the obligations of the organisers.

The reservation states that:

...the obligation of the United States thereunder will be to guarantee fulfillment of its own obligations and, with respect to juristic persons officially recognized by it for the purpose of organizing expositions, to make every reasonable effort to ensure the fulfillment by them of their obligations.

The U.S. accession was also subject to one declaration that the United States would not be bound by the provisions of paragraphs (3) and (4) of Article 34 which relate to binding arbitration.

The United States acceded to the BIE Convention pursuant to authority in the "U.S. wants to compete for a World's Expo Act," 22 U.S.C. § 2452b (note). A Senate amendment to the legislation bars State Department employees from fundraising to support U.S. pavilions at expos.

In November 2017, the BIE General Assembly voted for Buenos Aires, Argentina to host the 2023 World Expo.

Cross References

Annual Thematic Resolutions on the 10th Anniversary of the UNDRIP, **Ch. 6.G.4.**