



1875 Connecticut Ave NW  
Washington, DC 20009  
202.798.5245

1 April 2020

Cultural Property Advisory Committee  
U.S. Department of State  
2200 C Street, N.W.  
Washington, D.C. 20522

Dear Chairman and Members of the Committee,

On behalf of the Antiquities Coalition, I am writing in support of the Request From the Government of the Republic of Costa Rica Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and section 303 of the Convention on Cultural Property Implementation Act.

### Protecting Our Shared Heritage *and* the Responsible Art Market

Our not-for-profit organization is dedicated to combating the looting and trafficking of ancient art and artifacts, which is funding crime, armed conflict, and violent extremism around the world.<sup>1</sup>

**Restricting the import of undocumented cultural objects, lacking proof of good title or legal export, fights this *illicit trade* while allowing the *legal* trade to continue and even thrive.**

Indeed, such restrictions protect good faith purchasers, be they individual collectors, market actors, or museums. As with all global problems, all nations have a role to play, from so-called “countries of origin” like Costa Rica to “demand countries” like the United States. However, given our \$28.3 billion USD art market, making up some 44% of the global total, America has a particular opportunity to make a difference.<sup>2</sup>

### An Important Tool: The Convention on Cultural Property Implementation Act

A key tool in the U.S. arsenal is the Convention on Cultural Property Implementation Act (CCPIA). As the Committee is well aware, this law implements the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO Convention).<sup>3</sup> The CCPIA grants the President authority to join the treaty’s other State Parties in a bilateral or multilateral agreements, which prospectively restrict the import

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<sup>1</sup> You can learn more at <https://theantiquitiescoalition.org>.

<sup>2</sup> The statistics in this paragraph refer to the legitimate art market. There are no concrete global statistics on the illicit trade in art, let alone the subset of antiquities, but law enforcement seizures hint at its massive scale and reach. See Clare McAndrew, “Key Findings,” The Art Market 2020, Art Basel & UBS, Accessed April 1, 2020, <https://theartmarket.foleon.com/2020/artbasel/the-global-art-market/>

<sup>3</sup> Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231.

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of undocumented archaeological and ethnological materials into the United States, while promoting responsible cultural cooperation and exchange.

**Cultural objects that are legally exported—as well as those that were *illegally* exported before an agreement goes into effect—are not impacted (but may be covered by other law).** This protects responsible collectors, museums, and other market actors from unknowingly buying stolen property, as well as our shared world heritage.

To reiterate, import restrictions enacted under an agreement will *not* affect the legal status of cultural objects from Costa Rica that are already outside that country, including coins. They will *only* impact those *in* Costa Rica when the agreement goes into effect. This should address the concerns discussed in the IAPN letter, p. 5, and in that submitted on behalf of the Global Heritage Alliance and the Committee for Cultural Policy, p.7.

### The Four Determinations: The Only Legal Criteria for Entering into an Agreement

The CCPIA authorizes the President to enter such agreements so long as four—and only four—determinations are met:

- (1) The cultural patrimony of the requesting country is in jeopardy from the pillage and looting of cultural materials;
- (2) The requesting country has taken measures consistent with the 1970 UNESCO Convention to protect its cultural patrimony;
- (3) The U.S. import restrictions, whether they be alone or in concert with actions taken by other market nations, would be of substantial benefit in deterring the serious situation of pillage; and
- (4) Import restrictions would promote the exchange of cultural property among nations for scientific, cultural, and educational purposes.<sup>4</sup>

As Costa Rica meets these four criteria, we encourage the Committee to support its request.

### The Third Determination: the Global Context

Because the Costa Rican government and other experts will be submitting oral and written testimony supporting Determinations 1, 2, and 4, our remarks will focus on Determination 3. Again, this refers to U.S. import restrictions “applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations... having a significant import trade in such material...”<sup>5</sup> The Third Determination rightly recognizes that since the illicit trade is a global problem, U.S. action is most effective when taken within a multilateral context, and it therefore looks to what steps have been taken by other nations. We will thus update the Committee

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<sup>4</sup> 19 U.S.C. § 2602(a)(1)(A)-(D)

<sup>5</sup> 19 U.S.C. § 2602(a)(1)(C)(i)

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on recent changes in foreign and international law, which may be relevant to your findings with respect to Costa Rica.

**Thankfully, concrete progress at the national, regional, and international levels demonstrates that the global response to the illicit trade in cultural property has continued to strengthen in recent years and even months.** There are now 140 States Parties to the 1970 UNESCO Convention. These include many of the world’s largest market nations—Italy and Canada joined in 1978, France in 1997, the United Kingdom and Japan in 2002, Switzerland in 2003, Germany in 2007, Belgium and the Netherlands in 2009, Austria in 2015, and the United Arab Emirates in 2017. In 2019, Yemen and Latvia became the newest State Parties. Costa Rica joined the treaty in 1996.<sup>6</sup>

**Many of these State Parties have implemented domestic legislation that automatically prohibits the import of illegally exported cultural materials from other State Parties (such as Costa Rica).** Therefore, these countries have already put into effect restrictions *far stronger and broader* than those resulting from the CCPIA. For example, in August 2016, Germany significantly updated its cultural property protection law, strengthening its implementation of the 1970 UNESCO Convention.<sup>7</sup> Germany’s new act is noteworthy because it requires a valid export permit for cultural property removed from State Parties to the 1970 UNESCO Convention after 2007 (the year Germany joined the treaty). If the importer cannot establish when an artifact left the country of modern discovery, German law presumes that the export was after 2007.<sup>8</sup>

Likewise, the United Kingdom, which makes up 20%<sup>9</sup> of global art sales, enacted new criminal legislation in 2003, following its 2002 ratification of the 1970 UNESCO Convention. The U.K. law criminalizes importing and dealing in “tainted” cultural objects, defined to include those whose excavation is illegal under local law (the law of the country of discovery). Other U.K. law allows for the seizure of such objects, including those imported contrary to law. As a result, again, U.K. law goes much further than the CCPIA<sup>10</sup> and will remain the same even after its departure from the European Union.

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<sup>6</sup> The Convention has been ratified by 140 UNESCO Member States. States Parties, <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/states-parties/>, (last accessed March 26, 2020)

<sup>7</sup> Minister of State Prof. Monika Grütters, MP, *Key Aspects of the New Act on the Protection of Cultural Property in Germany*, The German Federal Government, <https://www.bundesregierung.de/resource/blob/973862/388072/9203e94dc88ae9dced8ad9d6db108ac6/2016-09-23-kulturgutschutz-informationen-englisch-data.pdf?download=1>

<sup>8</sup> Cultural Property Protection Act of 31 July 2016 (Federal Law Gazette [BGBl.] Part I p. 1914), [https://www.gesetze-im-internet.de/englisch\\_kgsg/englisch\\_kgsg.html](https://www.gesetze-im-internet.de/englisch_kgsg/englisch_kgsg.html) (last accessed January 6, 2020)

<sup>9</sup> Clare McAndrew, “Key Findings,” *The Art Market 2020*, Art Basel & UBS, Accessed April 1, 2020, <https://theartmarket.foleon.com/2020/artbasel/the-global-art-market/>

<sup>10</sup> Patty Gerstenblith, “Implementation of the 1970 UNESCO Convention by the United States and Other Market Nations,” in *The Routledge Companion to Cultural Property*, 70, 84-85 (ed. Jane Anderson and Haidy Geismar, London: Routledge, 2017).

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Progress is also being made at the EU, which post-Brexit makes up 12% of global art sales.<sup>11</sup> On April 17, 2019, the European Parliament, the EU’s legislative branch, passed Regulation 2019/880 on “the introduction and the import of cultural goods.”<sup>12</sup> Like the CCPIA in the United States, Regulation 880 complements the 1970 UNESCO Convention.

It does this by subjecting cultural objects to uniform import controls throughout the EU, and moreover, prohibits “the introduction of [those] removed from the territory of the country where they were created or discovered in breach of the laws and regulations of that country.”<sup>13</sup> It is important to note that Regulation 880 only applies to cultural property from non-EU states like Costa Rica (as other rules already cover the internal market).<sup>14</sup> It is also critical to stress that as a regulation—in contrast to a directive—880 is binding and self-executing for all Member States.<sup>15</sup>

In addition to its blanket prohibition against the introduction of illegally removed cultural goods, Regulation 880 creates two additional tiers of objects with different rules for each. The first is limited to cultural property removed from archaeological sites and monuments over 250 years old regardless of value (the same age threshold as the CCPIA).<sup>16</sup> For these, with some exceptions, the EU will demand an import license, the application for which will in turn require proof of previous legal export.<sup>17</sup> The second tier includes broader categories of cultural objects—not just antiquities, but fine art, ethnological artifacts, manuscripts, et cetera—that exceed 200 years old *and* have a minimum value of at least €18,000.<sup>18</sup> These will require an “importer statement,” again confirming previous lawful export.<sup>19</sup>

The European Commission, the EU’s executive branch, is still determining how this will work in practice, what will count as proof of export, who tracks this information, et cetera. So, while the regulation has indeed officially entered into force, specific provisions will take time to implement. However, from December 2020 forward, the introduction into the EU of unlawfully removed cultural property is prohibited, with other provisions taking effect from June 2025.<sup>20</sup>

As shown above, other market nations *are* stepping up. And their actions are not only similar to, but stronger than, those required by the proposed United States–Costa Rica agreement. **As a result, if**

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<sup>11</sup> Reflects EU percentage of global sales without the UK. See Dr. Clare McAndrew, *The Art Market 2020*, Art Basel & UBS Report, [https://d2u3kfw92fzu7.cloudfront.net/The\\_Art\\_Market\\_2020-1.pdf](https://d2u3kfw92fzu7.cloudfront.net/The_Art_Market_2020-1.pdf), pg. 46.

<sup>12</sup> Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the Introduction and the Import of Cultural Goods, 2019 O.J. (L 151) 1. [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.151.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.151.01.0001.01.ENG)

<sup>13</sup> Article 3(1).

<sup>14</sup> These are primarily Council Regulation 116/2009 and Directive 2014/60/EU of the European Parliament and of the Council.

<sup>15</sup> Article 288 of the Treaty on the Functioning of the European Union lays out the differences between EU regulations, directives, decisions, recommendations and opinions.

<sup>16</sup> Coincidentally (or not) 250 years old is the same threshold for “archaeological materials” under the CCPIA.

<sup>17</sup> See Article 4 for details on the import license requirements and Part B of the Annex for the goods covered.

<sup>18</sup> See Article 5 for details on the importer statement requirements and Part C of the Annex for the goods covered.

<sup>19</sup> However, for both tiers, these requirements do lessen if the country of origin cannot be determined or if an object was exported prior to the date the UNESCO Convention entered into force (1972). Then, the importer need only document that the piece was lawfully exported from its prior country, so long as it was there for more than five years.

<sup>20</sup> See Article 16.

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**the United States fails to continue its strong tradition of cultural property protection, we risk our markets becoming a safe haven for criminals.**

### Conclusion

Costa Rica—as well as the broader global community—is doing its part to stop the looting and trafficking of cultural property. We hope the United States will continue to do so, as well, by entering into this agreement. International borders are the best defense against any illicit trade, including that in cultural property, a fact well recognized both by law enforcement *and* leaders in the art world. **The proposed import restrictions are fully in line with the art market and museum community’s own existing ethical policies and guidelines.** Proof of provenance, good title, and legal export are all good business and collecting practices, which will only strengthen the legitimate trade in cultural objects and protect it from being misused by criminals or even terrorists.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tess Davis".

Tess Davis  
Executive Director  
The Antiquities Coalition