



April 22, 2015

The Honorable Ed Royce
Chair, House Foreign Affairs Committee
Washington, DC 50515
c/o Doug Anderson
Doug.Anderson@mail.house.gov

The Honorable Eliot Engel
Ranking Member, House Foreign Affairs Committee
Washington, DC 50515

c/o Mark Iozzi
Mark.Iozzi@mail.house.gov

Dear Congressmen Royce and Engel:

The Association of Art Museum Directors (AAMD) deplores looting and the destruction of the world's cultural heritage. We have spoken out forcefully against the pillaging and damage of ancient art and archaeological materials, have developed strict guidelines to ensure museums do not acquire stolen antiquities, and in instances of conflict around the world have encouraged both the United States and foreign governments to help safeguard these irreplaceable treasures.

We applaud the intentions behind "Protect and Preserve International Cultural Property Act" (H.R. 1493), but we have deep concerns that it will not achieve the desired goal.

One major concern is the restriction this legislation imposes on the importation of Syrian archaeological or ethnological material: all such material currently in Syria would be prohibited from being imported into the United States, even to safeguard the property during a period of violent conflict. The world has already been witness to significant destruction of artifacts, museum objects, and archaeological sites as a result of the civil war in Syria and the wider regional conflict. We vehemently disagree that prohibiting the importation of these materials--and that consigning them to potential destruction, or to looting and sale on the black market--will be a better fate for Syrian archaeological and ethnological artifacts.

We are also significantly concerned that the bill establishes a new government structure to protect cultural property in danger of destruction, a structure that seems both redundant to and in conflict with the current Cultural Property Advisory Committee (CPAC). As a result, in the view of AAMD, the proposed legislation does not improve the protection of cultural property.

Attached you will find a Statement from the Association of Art Museum Directors, which we look forward to discussing with you in greater detail. The AAMD has years of experience in the issues addressed in H.R. 1493 and is eager to work with the committee to assure that the bill achieves its highly desired goal of protecting international cultural property.

Sincerely,

Susan M. Taylor
The Montine McDaniel Freeman Director
New Orleans Museum of Art
President, Association of Art Museum Directors

STATEMENT OF THE ASSOCIATION OF ART MUSEUM DIRECTORS
H.R. 1493

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This statement is submitted on behalf of the Association of Art Museum Directors (the “AAMD”), a membership organization comprised of more than 240 museum directors of major museums in the United States, Mexico and Canada.

I. Executive Summary.

H.R. 1493 was recently introduced in the House of Representatives and, while the AAMD applauds efforts by Congress to protect the world’s cultural heritage, H.R. 1493 presents a number of problems and challenges. The AAMD supports limited import restrictions on cultural property taken from Syria, but not in the form suggested by the Bill. Those restrictions need to be implemented consistent with existing legislation and policy and in a way that helps stop the destruction of objects and sites.

The Bill combines two major, but inconsistent, measures in one piece of legislation. The first part of the Bill seeks to create an executive branch coordinator (the “Coordinator”) and then an executive branch committee (the “Committee”) to oversee threats to cultural property everywhere in the world. The creation of the Coordinator and the Committee contravenes, *inter alia*, long-standing United States policy on the protection of cultural property, as well as the authority of the executive branch and would establish a position and a committee in competition with a committee and a process established by Congress more than thirty years ago. This portion of the Bill requires careful thought, consultation with many executive branch departments, *e.g.*, Department of State, Department of Defense, Department of Homeland Security, etc., and stakeholders, *e.g.*, archaeologists, museums, collectors, dealers, researchers, conservators, etc. All of this will, and should, take time.

The second part of the Bill, which goes into immediate effect, seeks to address a growing problem, looting in Syria. This problem cannot wait for the lengthy Congressional consideration required for the first portion of the Bill and yet, unfortunately, this portion of the Bill is also deficient. It ignores long-standing precedent in addressing looting issues. Worse, it condemns cultural property to isolation in Syria where it can be looted or destroyed by terrorist groups like ISIS. The solution for the Syrian problem is actually relatively straightforward and does not necessitate the elaborate bureaucracy contemplated under the first part of the Bill. Congress should pass legislation delegating to the President the power to implement import restrictions in accordance with 19 U.S.C. § 1603, but subject to the authority of the Office of Foreign Assets Control to issue licenses for the protection or preservation of endangered cultural property.

Set forth below are specific concerns with various portions of the Bill and also some suggested revisions should the House propose to continue consideration of the Bill. Any suggestions should not be viewed as in any way modifying the AAMD’s basic position with respect to the Bill. The Bill simply should not proceed in its current form and the AAMD urges the House to consider a more nuanced approach to the protection of cultural heritage, one that is consistent with existing legislation and long-standing policy.

II. Introduction.

While the substantive portion of the Bill is found in Section 8 and relates to the imposition of import restrictions with respect to archaeological and ethnological material of Syria, that short section is preceded by the creation of an entirely new government structure to address cultural property throughout the world. This sweeping new approach to cultural property is unprecedented in the United States and, for the reasons discussed below, circumvents decades of carefully-measured restrictions imposed under the Convention on Cultural Property Implementation Act (19 U.S.C. § 2601 *et seq.*).

No one can debate the significant threat to the works of art and other cultural property that groups such as Al-Qaeda, the Taliban and ISIS present. The recent videos of destruction of works in the Mosul Museum in Northern Iraq by ISIS is so disturbing because we all feel viscerally the destruction of objects representing the creativity of the human spirit. That visceral reaction is a demonstration of how we connect across modern state borders and the passage of time with mankind's need to create and to express. There are many examples throughout the region, from major ancient sites to more modern structures such as the eighty year old church blown up by ISIS on Easter Sunday in Syria's northeastern province of Hassaka. Unfortunately, the Bill does not protect sites, monuments or objects in Syria from the destruction so graphically reported in recent news reports.

In 1983, Congress passed the Convention on Cultural Property Implementation Act (the "Act"), which requires a careful weighing of many factors before import restrictions can be imposed. The Act also defines the types of material which can be subject to those import restrictions and sets a time frame for review and renewal. The Act also provides for a balanced committee, the Cultural Property Advisory Committee ("CPAC"), to review requests and renewals.

The Bill circumvents the entire process contemplated under the Act and simply imposes import restrictions on a much broader category of cultural property than that contemplated under the Act, bypasses CPAC and its balanced representation and places those restrictions without any review, renewal or end date. This is such a sweeping change in American policy and yet one which will do nothing to stop the wanton destruction of cultural property in Syria by groups such as ISIS.

III. Coordinator and Committee.

The Act established a process for the implementation of import restrictions that required a number of factors to be present before the United States would take any action, i.e., a serious situation of looting, a degree of self-help by the affected country, a concerted international response to the problem and that import restrictions are consistent with international exchange. That has been the policy of the United States since 1983. The Bill declares that the policy of the United States is protect cultural property from pillage, looting, theft, trafficking, etc. and to ensure that all import laws are enforced. While these are worthy goals, they do not contain the other elements of the Act – in fact the Bill is noticeably deficient in addressing any of those other elements.

The Bill then creates a new government structure to effectuate this new policy. Nowhere is the new Coordinator or the Committee empowered to measure the effects of actions taken on

international cultural exchange, on the underlying issues that often drive looting and trafficking – poverty, lack of education, lack of legal markets. Furthermore, unlike CPAC, which is balanced with representatives of four stakeholders, the Committee has no input from any of those constituencies and yet is charged with making policy decisions that have a direct effect on the legitimate activities of many Americans and implementing those decisions. From the AAMD’s standpoint, the Bill could negate the significant efforts that the museum community has undertaken in the past to temper import restrictions imposed under the Act with requirements that countries desiring such restrictions must enter into cultural exchanges with American art museums for Americans to appreciate, study and research the world’s cultural heritage. Nowhere is the Coordinator or the Committee required to consider those issues in what they do.

IV. Syria.

Section 8 of the Bill, which goes into immediate effect, seeks to address the very serious question of looting in Syria, but simply put, fails to do so for many objects and, as outlined above, contravenes long-standing United States policy with respect to looting in foreign countries. Furthermore, the Bill ignores the fact that the United States, when faced with a similar situation in Iraq, simply adopted specific legislation authorizing the President to act in accordance with the Act with respect to a country in need.

When the cultural property of Iraq faced significant threats from looting and destruction, Congress addressed the issue through the Emergency Protection for Iraqi Cultural Antiquities Act of 2004 (Title III of Pub. L. 108-429). The reason for that legislation was that Iraq either could not or would not make the request necessary under the Act. As a result, Congress delegated to the President the power “to exercise the authority of the President under Section 304 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603) with respect to any archaeological or ethnological material of Iraq without regard to whether Iraq is a state party under the Convention on Cultural Property Implementation Act, and without the need for formal request from the Government of Iraq.”¹ Congress can address the significant threat of looting with respect to Syria by making the same delegation of authority to the President as it did for Iraq by limiting imports, but with modifications to address the very different situation occurring in Syria. The President would act only after receiving a report from CPAC and CPAC, as it normally does, would seek public comment. Passing this kind of legislation preserves the integrity of the process, maintains the oversight of CPAC, and avoids establishing an embargo of Syrian cultural property in perpetuity.

Just imposing import restrictions, however, is not the entire answer. The simple imposition of import restrictions as set forth in Section 8 of the Bill prohibits the entry into the United States of cultural property which ISIS is in the process of destroying. Furthermore, it prohibits the entry into the United States of cultural property that may be brought by the thousands of refugees from Syria who may have owned that property for generations, forcing them to leave that property in Syria, most likely to be stolen or destroyed, as they are forced to flee the country.

The United States can be a safe haven for the protection of cultural property, but import restrictions alone will do nothing to achieve that protection. As a result, legislation must allow

¹ See Federal Register: April 30, 2008 (Volume 73, Number 84).

the United States to be a safe haven, even though import restrictions have been imposed. AAMD member museums have already communicated to the Department of State a willingness to offer safe haven for cultural property threatened by destruction, safeguarding the property until it can be returned. Along with the possibility of places in the United States being used as a safe haven for threatened cultural property, there has to be a way to import that property in the face of import restrictions.

Perhaps the easiest way to accomplish this goal is to use the good offices of an organization that is already experienced in granting licenses with respect to the importation of cultural property otherwise prohibited from entry into the United States, the Office of Foreign Assets Control (“OFAC”). Under the various sanctions programs that the United States has in place for countries such as Iran, there is an exception that allows certain types of works of art to enter the United States. Other types of works of art require a special license and OFAC is experienced in granting special licenses. The way to approach this problem, the AAMD submits, is to authorize OFAC to grant licenses as exceptions to the import restrictions imposed by the President under the Act in order to protect that property from destruction, damage or deterioration. Congress can authorize the exceptions and delegate to the President the authority to draft regulations for OFAC in order to allow these types of temporary licenses.

V. Conclusion.

The AAMD supports limited import restrictions on cultural property taken from Syria, but not in the form suggested by the Bill. Restrictions need to be implemented consistent with existing legislation and policy and in a way that helps stop the destruction of objects and sites. Unfortunately, the Bill in its present form will do nothing to stop the destruction occurring in Syria. Also, imposing import restrictions without the input of the many groups whose legitimate activities would be threatened is completely inconsistent with long standing policy and legislation.

Furthermore, since the only remedy for looting and destruction suggested by the Bill, is the imposition of import restrictions, the creation of a new government committee structure will do little to address those problems. Looting and destruction stem from many sources, including lack of education, lack of economic means, lack of legitimate markets and other issues, none of which will be addressed by the formation of another committee.

The AAMD urges the House of Representatives not to proceed with the Bill in its current form. If the House determines to proceed all of Sections 1 through 7 should be removed and placed in a new bill for measured consideration, and hearings, to establish the need for such a Committee and to clearly spell out its mission and state its function. Section 8 should be changed to delegate to the President the power to impose import restrictions on cultural property from Syria in accordance with the Act and after receiving a report from CPAC and to authorize special licenses to be issued by OFAC in accordance with regulations to be promulgated by the Department of the Treasury. Those regulations would allow threatened cultural property to be brought into the United States for safe keeping.