

U.S. Senate Committee on Finance

Comments on S. 1696: The Cultural Property Procedural Reform Act

June 2, 2000

The Society for American Archaeology (SAA) welcomes this opportunity to comment on S. 1696: The Cultural Property Procedural Reform Act. SAA's comments are endorsed by the Society for Historical Archaeology, National Conference of State Historic Preservation Officers, Preservation Action, International Council on Monuments and Sites/U.S. Committee, and the American Cultural Resources Association.

By way of introduction, SAA is an international organization dedicated to the research, interpretation, and protection of the archaeological heritage of the Americas. With more than 6500 members, the society represents professional, student, and avocational archaeologists working in a variety of settings including government agencies, colleges and universities, museums, and the private sector. Since its inception in 1934, SAA has endeavored to stimulate interest and research in American archaeology; advocate and aid in the conservation of archaeological resources; encourage public access to and appreciation of archaeology; oppose all looting of sites and the purchase and sale of looted archaeological materials; and serve as a bond among those interested in the archaeology of the Americas.

I. Introduction

S. 1696, introduced by Senator Daniel Patrick Moynihan on October 6, 1999, seeks to make substantive and procedural changes to the Convention on Cultural Property Implementation Act (CPIA) passed by Congress in 1983. The CPIA enables the United States to implement the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (Convention). The CPIA allows the United States to impose import restrictions on certain categories of archaeological or ethnological material, the pillage of which places a nation's cultural patrimony in jeopardy. The United States Senate Committee on Finance stated in Senate Report No. 97-564, that the purpose of the bill was to promote "U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that not only are of importance to the nations whence they originate, but also to a greater international understanding of our common heritage."

The Convention establishes principles for the control of trade in archaeological and ethnological materials as well as certain other cultural material. It *does not* prohibit trade in archaeological and ethnological materials that have been properly exported; it deals only with artifacts that have been illegally removed and exported. Its purpose is to curtail the illegal worldwide trade in antiquities by discouraging the demand for such items.

Unfortunately if passed, S. 1696 would weaken the United States' ability to continue its leadership role in protecting the world's archaeological record and would also jeopardize the rich and diverse cultural heritage of the United States. The United States' concern for protecting archaeological resources extends back nearly a century to the Antiquities Act of 1906, which was designed to protect archaeological sites on public lands. A broad policy of federal interest in preserving America's historic and prehistoric heritage was stated in the Historic Sites Act of 1935, and extended in the National Historic Preservation Act of 1966, the Archaeological and Historic Preservation Act of 1974, and the Archaeological Resources Protection Act of 1979. Preservation of the nation's cultural heritage has consistently enjoyed strong bipartisan support in Congress.

In addition to strong Congressional support, preservation of archaeological resources also enjoys broad support from the United States public. In a recent poll conducted in March of this year by Harris Interactive, it was revealed that 96% of Americans feel that there should be laws to protect historical and prehistorical archaeological sites. A strong majority (90%) think laws should prevent the general public from importing artifacts from a country that does not want those artifacts exported. This information suggest that the objectives sought by the implementation of the CPIA have broad support from the American public.

II. S. 1696-The Proposed Amendments

The changes that S. 1696 seeks to make would be contrary to the interest of the United States and weaken its ability to protect not only its own cultural heritage, but also that of the world. The adverse provisions of the legislation are examined in the following sections.

A. The purpose of the CPIA and Convention is to protect a State Party's "cultural patrimony," not "particular objects." (Section 2(c)(1))

The purpose of CPIA is to protect the "cultural patrimony of the State Party [that] is in jeopardy from the pillage of archaeological or ethnological materials." The Convention in Article 9 also states this as an essential objective. Section 2(c)(1) of the bill would change the CPIA to protect "*particular objects* of the cultural patrimony... in jeopardy of pillaging..." This would mean that the purpose of the CPIA would no longer be to protect a nation's cultural patrimony, which includes the complete context of archaeological sites and integrated monuments, as well as individual objects. Rather, the CPIA would protect only isolated objects after they have been looted from an archaeological site.

This proposed change in the law is troublesome because once an artifact has been illegally removed from its context within an archaeological site, the cultural patrimony as a whole is irreparably destroyed and the information is lost forever. If the purpose of the law becomes to protect only individual objects, then the purpose of the Convention would be circumvented and the cultural patrimony of many countries lost.

B. "Historical evidence" is necessary in determining the scope and extent of pillaging. (Section 2(c)(2))

The proposed amendments would limit the ability of the Cultural Property Advisory Committee (Committee) to consider historical evidence in determining whether looting has taken place and instead require that evidence submitted to the Committee reflect contemporary pillage. This new standard of proof would present a significant burden for a nation requesting import restrictions on undocumented

archaeological materials because all information by the time it becomes known is “historical” since the events have already taken place.

A serious problem with the illegal trade in antiquities is that it is a clandestine operation, which makes it virtually impossible to gather “contemporary” evidence of pillage. Therefore, the use of historical evidence is necessary in order for the Committee to carry out its duties under CPIA.

C. Procedural changes would force the disclosure of sensitive site information and compromise the U.S.’s ability to negotiate with nations requesting relief under the Convention. (Section 2(a))

The proposed amendments would require the disclosure of confidential information. Specifically, it would require that the Committee disclose to the public “a detailed description of the archaeological or ethnological material that the State Party seeks to protect, and a comprehensive description of the evidence submitted in support of the request,” as well as make public its recommendations to the State Department of what materials should receive protection. The Committee already discloses to the public in the *Federal Register* a brief summary of the notice of the request of a foreign nation. Requiring such a detailed description of the archaeological and ethnographic material might provide an incentive to increase looting before import restrictions are put in place. Also, disclosing sensitive information submitted by a requesting nation might interfere with the ability of the State Department and the President to conduct foreign affairs.

D. Additional requirement of the Committee to annually review existing agreements would curtail its ability to function properly and result in increased staffing and overhead cost. (Section 2(d))

Section 2(d) would require the Committee to review each existing agreement annually. Currently, the agreements automatically expire after a maximum of five years and the Committee is already required to periodically review them for effectiveness. A requirement of annual reviews would place additional unfunded and unnecessary burdens on the workload of the Committee and its staff, thereby limiting its ability to consider new requests.

E. Removing the conflict of interest language and changing the Committee’s membership criteria would lessen the integrity of the Committee. (Section 3(a) and (b))

The bill proposes to change the current requirement that three members of the Committee should “be experts in” the fields of archaeology, anthropology, ethnology, or related areas, and that three members shall “be experts in” the international sale of archaeological, ethnographic, and other cultural property. Section 3(a) would require members of the Committee merely “represent” the above fields and eliminate the need for expertise on the Committee. Eliminating the expert requirement would have disastrous consequences regarding the quality of work performed by the Committee. The issues brought before the Committee are complex and demand a degree of expertise in order to understand the problems and structure solutions.

Section 3(b) of the bill would change the status of Committee members thereby removing the conflict of interest provision applicable to special government employees. This suggested change is improper in light of the sensitive nature of the Committee’s work and also to ensure that Committee members work under the appearance of propriety. Conflict of interest provisions enhance the integrity of the Committee and members should be held to the highest standards. Anything less would undermine the work of the

Committee.

III. Summary

S. 1696 if enacted would have serious consequences for the United States in its efforts to protect its own cultural heritage as well as continue its leadership role at the international level. The CPIA was passed to implement the Convention and an essential principle embedded in both was the notion of protecting a nation's ***cultural patrimony***, not "*particular objects* of cultural patrimony." Making this change to the CPIA would thwart an important objective of the law and Convention.

The United States must assist in protecting the cultural heritage of other countries if it expects other countries to protect the United States' cultural heritage under the guidelines established in the Convention. Protection of cultural resources is an issue that historically has had broad bipartisan support in the United States Congress and as demonstrated by a recent public opinion poll, is a popular cause with the American public.

Sadly, the amendments if adopted would benefit a few individuals who engage in the illicit trade of illegally exported antiquities, thus robbing the world of its rich and diverse cultural heritage. SAA urges the Senate Finance Committee to reject these amendments.

Respectfully submitted,

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