

CURRENT AFFAIRS COMMENTARY

IMPLEMENTING THE UNESCO CONVENTION: A CHALLENGE FOR ARCHAEOLOGISTS

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Many of you are probably aware, if only vaguely, of a piece of pending congressional legislation, clumsily titled "On the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property," that is designed to implement the UNESCO Convention. Few archaeologists have given much attention or active support to the bill, perhaps because at first glance it would not appear to be a controversial one in need of support. After all, who supports the concept of illicit trade? Indeed, the U.S. Senate gave its unanimous advice and consent to the Convention in August 1972. Why, then, eight years after the Senate vote do we still have no implementing legislation to give bite to the vote?

The bill currently under consideration is H.R. 3403 (S. 9302), "The Convention on Cultural Property Implementation Act." As did its three stillborn predecessors, this bill would attempt to curb illicit trade by providing guidelines for temporary embargoes on certain categories of pillaged ethnological and archaeological materials. Because these activities involve U.S. interaction with foreign nationals, the Department of State is concerned. Because importing and exporting involves U.S. Customs, the Department of the Treasury is concerned. Because international trade is involved, the bill must pass through the subcommittees on trade of both the powerful and busy Committee on Ways and Means, in the House, and the Committee on Finance, in the Senate. Thus, many of the delays have had little or nothing to do with the issue of illicit trade in artifacts. The interested opposition to the legislation—art dealers, collectors, and some museums—has taken full advantage of these and other extraneous issues.

The real issue is one of fundamental concern to archaeologists. The UNESCO Convention, and hence the implementing legislation, is based on international concern and recognition that pillaged objects have irretrievably lost their contexts, are by definition severely damaged, and are curios—pretty, perhaps, but dumb. The loss to cultural understanding caused by "saving" the individual object at the expense of its cultural environment is equally antithetical to the goals of historic preservation. In fact, since HCRS makes natural conservation a federal bedfellow of historic, or heritage, conservation it is worth noting that good archaeological excavation today recovers and preserves important evidence for the evolution and history of the *natural*, as well as the cultural environment.

H.R. 3403 recognizes the principle that archaeological and ethnological materials derive significance from their contexts. When that context lies beyond U.S. borders the U.S. cannot legislate protection at the source of the supply. The first place over which U.S. law has jurisdic-

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0002-7316/80/030558-04\$0.90/1

tion is at the point of entry into the U.S. Thus, we place an embargo there on the import of pillaged materials. This action cuts off a major portion of the market for the materials. A reduced market reduces demand, which in turn reduces the pillage which supplies the demand. Legislation providing for any embargo, however limited, would put the force of law behind the principle. Once the principle is law, it is easier to expand on appropriate actions. That is why this legislation is important. That is why the dealers are worried and fighting the bill all the way, no matter how many compromising amendments are incorporated.

When this principle becomes law and forces public recognition, and when we, as archaeologists, present ourselves as a unified profession with common interests, we can expect to convince the "consumers" of artifacts that pillaged artifacts are suspect. The objects which they buy may well be, and frequently are, fakes, since only a well-documented archaeological context can provide a guarantee of authenticity. These expensive investments—"hedged against inflation"—are defective without their social, economic, religious, and environmental contexts. Indeed, they are poor investments. Finally, it will not be legislated embargoes, but educated buyers who will stop the demand for pillaged artifacts.

The legislation, however, is a useful educational tool. When passed, it will be useful for impressing on the public the seriousness and reality of the problem. Furthermore, the legislative process itself is a useful educational tool for us to evaluate and respond to the public misconceptions of archaeology, which the opposition both represents and exploits. H.R. 3403 presents us with a useful opportunity to observe and learn from the opposition's skill in legislative tactics, skills that are increasingly necessary for archaeologists to learn, as laws and politics both inside U.S. borders and beyond affect our work at every turn.

The dealers see any legislation, however weak, any embargo, however limited, as a threat to their livelihood. For all their protestations about not dealing in illicit art, they are very worried about a ban on it.

They have found legal experts to testify, as disinterested parties, on every conceivable legal problem that this legislation might evoke. They have found sponsors for seminars and lectures where they suggest disastrous consequences should this "misguided" legislation become law—they never attack their opposition: we are always "well meaning but naive." They cite such spurious legislative parallels as Prohibition—this bill would create a black market in antiquities—or the embargo placed on ivory to stop the murder of elephants, which incidentally stopped the import of eighteenth-century furniture with ivory inlay. I'm not sure what parallel is suggested here, but it certainly caused one congressman to worry about his innocent purchases while on vacation abroad. They have, thus, convinced museums and private collectors (of coins, antiques, and any other art form, relevant or not) that their innocent hobbies and treasured investments are threatened by this bill.

Lesson number one: broaden the base of support, the more diverse the better. This lesson is one of particular importance at a time when archaeologists and anthropologists are intent on splitting off into ever more specialized groups and cannot even recombine to speak as excavators, much less as a broader coalition.

Lesson number two: know the legislative process. Archaeologists should study not just the sequence of drafting, introducing, hearing, and eventually enacting legislation, but also the cultural and environmental factors that accompany that process. (Hey . . . that's our game. Another lesson?)

The dealers who testify at the hearings are on a first name basis with the congressmen. That suggests regular, personal contact, backing up the massive letter writing campaign from constituents. At the last hearings on H.R. 3403, the panel of dealers giving testimony had themselves formally introduced to the subcommittee by their own congressman with the full complement of "distinguisheds," with the subcommittee in return expressing its appreciation to a busy fellow representative for taking time to appear before them. The coin collectors had their concerns conveyed to the subcommittee by yet another congressman, to whom equal gratitude was expressed for making this effort on behalf of his constituents.

In selecting their comments and preparing numerous amendments, the dealers have shown a sly sensitivity to the mood of the Congress. They say, in effect, "There is too much unnecessary and overlapping federal legislation. This bill is not necessary because existing law already governs traffic in stolen goods." Given the mood of the Congress, this is a potentially persuasive argument. When we are concerned with archaeological and ethnological materials, however, the premise is false. Most congressmen appear to know little about these materials, so they are unlikely to know that most foreign states rich in these materials claim state ownership of all cultural property originating within their borders. Thus, any object leaving their borders without the expressed permission of the state is, by their definition, stolen. U.S. Antiquities laws apply only to materials deriving from federal property; ordinarily they do not regulate materials excavated from privately owned lands. There are other points of law involved. The net result is that cultural property is not necessarily protected by existing law.

Another argument of the dealers is that the executive branch must not be granted excessive powers, that we must write into this legislation clear congressional balances to the powers given to the executive branch. The "excessive power" referred to here is the power to place an embargo on specific endangered materials, after consultation with an Advisory Committee, and after determining a long list of considerations to be true. The excessive power argument stalls both the current deliberations in the Congress and any eventual embargo. Given the limitations already imposed within the legislation, this is an excessive argument.

Unilateral action by the U.S., without consultations with other governments, is currently a popular item for criticism. It is a particularly effective stalling maneuver when levied at this bill. This line of reasoning argues that the bill would allow the U.S. to place a unilateral embargo on certain (pillaged) items. Only Americans would be deprived of their right to enjoy these (pillaged) materials (whose illicit import, under terms required for an embargo, destroys the cultural patrimony of the state of origin). The dealers suggest that we should not impose an embargo until we have persuaded other importing nations to join us in doing the same . . . by which time, and with who knows what other unrelated riders and conditions, there would be little point left to an embargo. And they purport to be worried about the abuse of this legislation by the State Department!

But they know what is on the congressional mind. They know smart timing and useful and effective tactics. They have recognized that Washington is where the action is, and that the action is important enough to them to produce financing for regular and active representation in Washington.

At every opportunity the dealers present their crucial point that any embargo will eventually stop the flow of all art to the U.S. Our museums and collectors, who take so much better care of these (pillaged) materials than any other country, will suffer. Our scholars will be deprived of materials to study. Our poor people who cannot afford to travel abroad will be deprived of their right to learn about their heritage.

If we who call ourselves archaeologists and preservationists allow these fallacious arguments to prevail, we will have seriously failed our calling.

H.R. 3403 is currently (February) under revision by staff members of the Subcommittee on Trade of the House Ways and Means Committee. Copies of the latest draft, as well as of the very instructive printout of the September 27, 1979, Hearings (Serial 96-52), are available from the subcommittee (Longworth House Office Building, Washington, D.C. 20515, phone 202-225-3943) and from the Government Printing Office. The text of the UNESCO Convention is published in the *Journal of Field Archaeology* (1976:217-224), which also published an earlier version of the implementing legislation (214-217). The original text of H.R. 3403 was identical to its immediate predecessor, H.R. 5643, published in *JFA* (1977:249-253).

Read the bill, share it with a colleague, assign it to a class for discussion, talk about it with whatever local group is looking for a topic or a speaker. See how diverse a group you can interest in this legislation. How about those ethnic groups who are "going to be deprived of their heritage"? Keep handy a list of the names, addresses, and phone numbers of your representatives and let them know your thoughts on the legislation. Who knows what else we might gain by

developing a broad and diverse base of informed support. While you are at it, think of the advantages of having one office in Washington with the latest information on proposed and actual legislation and law affecting archaeology. Think how such an office could be financed.

We may not have implementing legislation for the UNESCO Convention from this election-year Congress, but if we learn our lessons and realize that our own livelihood is at stake, we can implement the Convention in the next Congress. When we do, both we and the archaeological sites will have a better chance of survival, and our discipline and each of us practicing it will be stronger for the efforts we have made.

FURTHER COMMENT BY THE ASSOCIATE EDITOR

But is "our" livelihood at stake? After all, a majority of SAA members are U.S. oriented. My answer is a strong "yes." We must get involved because, even though most of us are not working with a gun pointing at our own heads, we are working against a time bomb—one which inevitably will explode, if not among us, among all of our children. Most SAA members who read this article shortly after it is written will live out their professional lives unbothered by the disease which the UNESCO legislation is endeavoring to prevent; certain individual members, however, will become acutely aware of its debilitating effects. But unless all of us take action now, subsequent generations will likely feel a close affinity to the Mandans who had European smallpox introduced among them.

The greatly increased market value of an illegally obtained Mediterranean vessel directly affects the value of a similarly obtained Mimbres bowl or Hopewellian pipe or even that of a plainware Mississippian jar. Think about it.

Are not the basic cultural data that could be derived from properly excavated sites in Italy, Africa, the Near East, or wherever, relevant to an understanding of, if not the difference between Adena and Hopewell, the difference between hunting and gathering and more complex societies? Think about it.

Legitimate transfer of objects representing segments of the human past will always be in the public interest. Illegal excavation and conveyance of such items never can be. The UNESCO enabling legislation is designed to enable each of us and the general public to express our mutual concern that illegal activities involving archaeological objects should not be condoned by signatory nations. To not support the worldwide application of that principle would be the height of shortsightedness.

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