

**Committee for Cultural Policy and Global Heritage Alliance
Written Testimony submitted to Cultural Property Advisory Committee,
Bureau of Educational and Cultural Affairs, U.S. Department of State,
on the Proposed Extension of the 2020 Memorandum of Understanding
Between the United States of America and the Republic of Ecuador
Submitted May 24, 2024 for Hearing June 4, 2024**

The Committee for Cultural Policy¹ and Global Heritage Alliance² jointly submit this testimony on the Proposed Memorandum of Understanding (MOU) for the renewal of the MOU and import restrictions between the United States and the Government of the Republic of Ecuador (Ecuador) under the Convention on Cultural Property Implementation Act³ (CPIA).

Introduction.

The United States is asked today to renew a 2020 agreement with Ecuador under the Cultural Property Implementation Act (CPIA). In order to evaluate whether renewal is proper, it is essential to review the process that was followed in the original Ecuador MOU: the 2018 request from Ecuador, the writing of a Designated List to inform Customs and Homeland Security of the objects denied entry, and the terms agreed upon between the U.S. and Ecuador defining the country's obligations under the agreement. Each of these elements should be discussed transparently at CPAC's June 4-6, 2024 meeting.

The Ecuador renewal is not the only MOU request being heard. Along with Ecuador, CPAC is scheduled to hear a renewal of equally broad import restrictions on Jordanian cultural property and a comprehensive new request for import restrictions on objects from Ukraine. Each application should be examined with the same care, especially in regard to the requirements of the statute.

The 2018-2020 process.

¹ The Committee for Cultural Policy (CCP)¹ is an educational and policy research organization that supports the preservation and public appreciation of art of ancient and indigenous cultures.

We deplore the destruction of archaeological sites and monuments and encourage policies enabling safe harbor in international museums for at-risk objects from countries in crisis. CCP supports policies that enable the lawful collection, exhibition, and global circulation of artworks and preserve artifacts and archaeological sites through funding for site protection. We defend uncensored academic research and urge funding for museum development around the world. We believe that communication through artistic exchange is beneficial for international understanding and that the protection and preservation of art from all cultures is the responsibility and duty of all humankind. The Committee for Cultural Policy, POB 4881, Santa Fe, NM 87502. www.culturalpropertynews.org, info@culturalpropertynews.org.

² Global Heritage Alliance (GHA) advocates for policies that will restore balance in U.S. government policy in order to foster appreciation of ancient and indigenous cultures and the preservation of archaeological and ethnographic artifacts for the education and enjoyment of the American public. GHA supports policies that facilitate lawful trade in cultural artifacts and promotes responsible collecting and stewardship of archaeological and ethnological objects. The Global Heritage Alliance. 1015 18th Street, N.W. Suite 204, Washington, D.C. 20036. <http://global-heritage.org>

³ The Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601, *et seq.*

The 2018 Ecuador Request pertaining to this agreement was neither fair nor transparent. Ecuador's Request was made public only nine days before public comment was due and only a few weeks before the Cultural Property Advisory Committee (CPAC) was scheduled to hear public commentary on the request.

Regrettably, the process today is not based on the requirements, the definitions, and the plain language of the CPIA statute. Instead, it is based on a process developed within the State Department to generate requests from art source countries, to facilitate their recommendation by minimizing and even disregarding the statutory requirements, and to severely limit the public's access necessary to make informed comments.

CPAC hearings on requests and renewals of MOUs once allowed interested parties to appear in person and lasted three or four hours on a single country request – each country having its own full day of public hearing and CPAC discussion. The scope of the information provided to CPAC is now limited almost entirely to “facts” supplied by the DOS and private information sessions supportive of MOUs. In recent years only one hour has been allotted for public comment per CPAC meeting, no matter how many requests are being heard and how complex the issues. Speakers are allotted only 3-5 minutes within the one-hour period, during which they must address comprehensive import restrictions for multiple countries.

Wildly varying time frames are now set for the public to supply written testimony. The Department of Education and Cultural Affairs, which oversees CPAC, has known for years that several months are necessary for museum organizations that regularly make submissions to CPAC, such as the Association of Art Museum Directors, to poll their many members in order to obtain the information that is essential to making the Four Determinations.

The public responses to the Republic of Ecuador's original request in 2018, from CCP, GHA, and from the Association of Art Museum Directors (AAMD), (the AAMD explicitly refused to comment because of the impossible deadlines set by the ECA), stressed the lack of notice given to the public and the museum community.

In some cases public interest organizations have spent many, many hours and made considerable effort to provide comprehensive reports to CPAC of 20-30 pages or more. Unlike ASOR, which also provides lengthy testimony to CPAC, we are not recipients of State Department grants of hundreds of thousands of dollars. We are always told that CPAC members read every submission. However, we wonder sometimes whether the committee has been given adequate time to do so, especially when a lengthy report raising serious concerns does not elicit a single question at a hearing - or when a committee member's question reveals a basic misunderstanding of law that has been discussed at length in a submission from the museum community.

The inadequacy of current requests from source countries is another major issue. The country requests are no longer made public except in a summary written by the Department of State. In the past, the texts made public at least briefly set forth the reasons why specific types of objects were listed, described the scope of looting or archaeological losses, outlined the law enforcement, site protection, and other efforts by the requesting countries to ameliorate these

losses, and stated what the country had done to enable access to their material culture in the United States.

All these issues are relevant to the Four Determinations that the public testimony is supposed to address. None of this information is made public today; requests are simply lists of the desired import restrictions, often spanning hundreds of thousands or even millions of years.

Also, because there are now import restrictions on more than 30 countries, each renewable after 5 years, there are always two or three country requests for new or renewed import restrictions covered in each one-hour public session. The Committee for Cultural Policy and Global Heritage Alliance ask that CPAC consider the serious harm to the public's interest in so limiting the information provided in public hearings, which inevitably results in a reduction of the scope of the discussion, limits questions on extensive written submissions and does not allow discussion contradictory oral testimony or further a public dialog on the issues. With each new request or renewal today, the public is told it may testify - but testify to a blank wall - without any knowledge of the requesting country's claims or its evidence of the need for the renewal.

Ecuador's original Request.

In its original 2018 request, Ecuador did not identify the reasons the MOU was needed to protect its patrimony. There was no statement from the Ecuadorian government establishing that the United States was a major market for Ecuadorian art and artifacts spanning the 14,000 year period listed in the Request. Ecuador did not outline what it had done to make its cultural riches accessible to the American public to make up for halting the circulation of art. There was no showing that Ecuador met the requirement that import restrictions must be the least restrictive means of ameliorating a serious situation of looting.

The Request was simply a list of proposed restricted objects that included all ancient objects and even "paintings and sculpture that are at least 100 years old....; medallion[s].... tools and utensils with ethnological value.... ; manuscripts more than 50 years old; and certain works by modern artists."⁴

The same lack of information prevails today. This Request, like almost all others now heard by CPAC, appears to be another example of a cultural "mission creep" that has steadily expanded the kinds of art and artifacts embargoed from entry into the United States.

The current MOU and its illegal Designated List.

Among other criticisms in 2018, it was pointed out that the request was legally deficient on its face because it sought import restrictions on modern and 'ethnological' objects that were clearly

⁴ 2018 Public Summary Request by the Government of the Republic of Ecuador to the Government of the United States of America to Impose Import Restrictions to Protect its Cultural Patrimony under Article 9 of the 1970 UNESCO Convention; 1.

not covered by the CPIA statute. By overstepping the boundaries of the law, the CPAC had made it impossible for even organizations that often support MOUs to support Ecuador's request.⁵

Regardless of the shortcomings of Ecuador's 2018 request, an agreement was signed in 2020 with a Designated List that included every known type of object made in Ecuador between 12,000 BCE and 1770 CE.⁶ The list of objects restricted from import covered not only every conceivable ancient artifact but also artworks, manuscripts, books, costumes and textiles of the "colonial period." No date is even given for the end of the "colonial period." It could be 1821 or later. Ecuador became independent initially as part of the Republic of Gran Colombia, which lasted officially from 1821-1831.⁷ Ecuador separated in 1830 but civil war lasting until the mid-19th century. With respect to its failure to state a date for the end of the colonial period, after which import is permitted, the Designated List is legally flawed.

The 2020 Ecuador Designated List did not include coins⁸ or modern art in the items precluded from entry into the US. However, it did include language impermissibly expanding the scope of restrictions in clear violation of the terms of the CPIA: a direction to U.S. Customs to deny entry to objects without a certification of legal export from Ecuador:

"The Agreement **includes, but is not limited to** [*our emphasis*] the categories of objects described in the designated list set forth below. Importation of material on this list is restricted unless the material is accompanied by documentation certifying that the material left Ecuador legally and not in violation of the export laws of Ecuador."

The above directive is a clear violation of the terms and intent of the Cultural Property Implementation Act. Section 2604 of the CPIA states that U.S. Customs and the Treasury Department "may list this such material by type or other appropriate classification, but each listing made under this section shall be sufficiently specific and precise to insure that (1) the import restrictions under Section 2606 are applied only to the archaeological . . . material covered by the agreement . . . ; and (2) fair notice is given to importers . . . as to what material is subject to such restrictions."⁹

The directive in the current MOU also eliminated the provision of the CPIA that allow import of objects that left Ecuador "not less than ten years before the date of such entry." Under the CPIA,

⁵ Statement of the Association of Art Museum Directors concerning the Request by the Government of the Republic of Ecuador to the Government of the United States of America concerning the Imposition of Import Restrictions to Protect its Cultural Patrimony under Article 9 of the 1970 UNESCO Convention, May 2, 2018, <https://aamd.org/sites/default/files/key-issue/Final%202018%20paper.pdf>.

⁶ Import Restrictions Imposed on Archaeological and Ethnological Material From Ecuador, Federal Register / Vol. 85, No. 31 / Friday, February 14, 2020, 8389-8395, <https://www.govinfo.gov/content/pkg/FR-2020-02-14/pdf/2020-03118.pdf>.

⁷ "Gran Colombia," Wikipedia, https://en.wikipedia.org/wiki/Gran_Colombia.

⁸ Ecuadorian coins, like their Spanish and Spanish Colonial counterparts, circulated worldwide, first as items of trade and then as collectibles. Colonial and Republican era coins are not archaeological in nature. Nor do coins meet the definition of ethnological objects. Indeed, such coins were legal tender in the United States until 1857. An Ecuadorian coin circulated in international commerce was famously described in Herman Melville's novel *Moby Dick*, where Captain Ahab nailed an Ecuadorian gold "doubloon" of this period on the ship's mast as an award for sighting the White Whale.

⁹ 19 U.S.C. § 2604

except under limited circumstances, objects that have been outside of Ecuador for ten years or more would not be subject to import restrictions.¹⁰

Together, banning objects without export permits and including the phrase “is not limited to” results in a Designated List that is defined and may be expanded solely at the discretion of the Government of Ecuador, based upon its own national laws, or even by U.S. Customs’ interpretation of what is satisfactory “documentation certifying that the material left Ecuador legally and not in violation of the export laws of Ecuador.”

This is contrary to the U.S. position negotiated with UNESCO in 1970 and adopted by Congress in 1983, in which the U.S. chose not to restrict import based upon a foreign nationalizing law, but instead to reserve the ability of the U.S. to limit imports based on its independent judgement, and according to the criteria set forth in the CPIA. As stated in the Senate Report setting forth the goals and parameters of the CPIA:

“The Committee intends these limitations to ensure that the United States will reach an independent judgment regarding the need and scope of import controls. That is, U.S. actions need not be coextensive with the broadest declarations of ownership and historical or scientific value made by other nations.”¹¹

Congress also narrowly limited the scope of items restricted from import. Congress spoke of archeological objects as limited to “a narrow range of objects...”¹²

As Mark B. Feldman, the chief negotiator for the State Department in crafting the 1983 CPIA stated in 2014:

“The Executive is not authorized to establish import controls without international cooperation unless an emergency condition exists as defined by law, and Congress did not intend to authorize comprehensive import controls on all archeological objects exported from a country of origin without its permission. The purpose of the program is not to keep art at home, but to help protect archeological resources from pillage; the findings required by the CCPIA were established for that purpose.”¹³

Instead of the considered response to specific criteria for import restrictions set forth in the statute by Congress, the Ecuador MOU abandoned the statute’s fundamental purposes and the reasons for U.S. reservations in signing the 1970 UNESCO Convention. The U.S.-Ecuador agreement contradicted Congress’ key purpose in enacting the CPIA - that the United States would establish its own criteria for export restrictions and NOT follow the blanket proscriptions of foreign law.

¹⁰ 19 U.S.C. § 2606(b)(2)(A)

¹¹ U.S. Sen. Rpt. 97-564 (September 21, 1982), 6.

¹² U.S. Sen. Rpt. 97-564 (September 21, 1982), 4.

¹³ Mark B. Feldman, “Reform of U.S. Cultural Property Policy,” Symposium: Reform of U.S. Cultural Property Policy: Accountability, Transparency, and Legal Certainty, Benjamin N. Cardozo School of Law, New York, N.Y. April 10, 2014. <https://culturalpropertynews.org/mark-b-feldman-reform-of-u-s-cultural-property-policy/>

The Designated List also contradicted Congress’ definition of the types of objects that could be included as “ethnological material.”

The 2020 MOU included “Colonial period” religious paintings and other objects that were not encompassed in Congress’ definition of the term “ethnological.” The definition of ethnological material under CPIA is: “[I] the product of a tribal or nonindustrial society, and [II] important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people.”¹⁴

The specific language in the Senate report 97-564 clarifies the meaning of “ethnological” in the CPIA:

“Ethnological material” includes any object that is the product of a tribal or similar society, and is important to the cultural heritage of a people because of its distinctive characteristics, its comparative rarity, or its contribution to the knowledge of their origins, development or history. While these materials do not lend themselves to arbitrary age thresholds, the committee intends this definition, to encompass only what is sometimes termed “primitive” or “tribal” art, such as masks, idols, or totem poles, produced by tribal societies in Africa and South America. Such objects must be important to a cultural heritage by possessing characteristics which distinguish them from other objects in the same category providing particular insights into the origins and history of a people. The committee does not intend the definition of ethnological materials under this title to apply to trinkets and other objects that are common or repetitive or essentially alike in material design, color, or other outstanding characteristics with other objects of the same type, or which have relatively little value for understanding the origins or history of a particular people or society. An agreement or emergency action would also not apply to ethnological material produced by more technologically advanced societies.”¹⁵

Certainly, Colonial Spain cannot be fit into Congress’ definition as “primitive” or “tribal.” Spain’s conquest and exploitation of Mesoamerica spurred one of the greatest periods of commercial expansion in the history of the world. The New World silver and gold that literally flooded into Spain completely changed the nature of the international market, moving its center from the Islamic world to a vastly enriched Europe. In the New World, other industries besides mining flourished. To give just one example, the land’s fertility enabled the building of vast plantations worked by Indians and slaves. This is hardly a “tribal society.” Nor is the Catholic religion “tribal: or “primitive” in character. In fact, early Christian religious art in Colombia, Ecuador and Peru was similar to early American paintings of the same period, reflecting a non-academic, vernacular style. Ecuadorean paintings are no more ‘tribal totems’ than early American painting are - both were simplistic versions of European artistic models.

This failure to adhere to Congress’ specific intent reflects a fundamental misunderstanding of the law by the members of the CPAC committee and a misreading of its purpose by CPAC’s State Department staff - one that CPAC’s administrators cannot fail to be aware of. A similar misreading of the law and its requirements has been used to categorize objects from other

¹⁴ 19 U.S.C. 2601(2)(C)(ii).

¹⁵ U.S. Sen. Rpt. 97-564 (September 21, 1982), 5.

countries inappropriately as “ethnographic.” A striking example is the characterization of Ottoman period material culture as “ethnographic” in MOUs with multiple Middle Eastern and North African countries under the CPIA, despite the fact that the Ottoman Empire was far more sophisticated than much of Europe in the 15th-18th centuries, its people were often better educated and its workshops produced trade goods in greater volume and to a higher standard than the West.

The Four Determinations.

Ecuador’s Request and the only slightly pared down Designated List that was published on February 12, 2020 was an early example of the egregiously overbroad agreements under the CPIA now being recommended by the State Department - and presumably by the CPAC committee.

In recommending the signing of an MOU with Ecuador, the CPAC committee and the administration at State responsible for making recommendations to the President failed to adhere to the criteria set forth in the Four Determinations:

1. The cultural patrimony of Ecuador is in jeopardy;
2. The requesting nation has taken measures to protect its cultural patrimony;
3. U.S. import restrictions, either alone or in concert with actions taken by other nations, would be of substantial benefit in deterring a serious situation of pillage; and
4. Import restrictions would promote the interchange of cultural property among nations for scientific, cultural and educational purposes.

Under US law, every one of these criteria must be met for an MOU to be signed with a requesting country. The following sections address whether or not Ecuador has met the requirements for a request under U.S. law.

An enlightening investigation by an Ecuadorian archaeologist.

There is plenty of evidence that the Ecuadorian government has not done all it can do to protect its own cultural patrimony and has treated archaeological finds as simply another asset to be taxed for centuries. The history of Ecuador’s government’s failure to meet its own legal requirements for cultural property protection has been well documented in its courts, its encouragement of private ownership, and even its acquisition of artifacts for its state museums. The report of an Ecuadorian archaeologist on the history of archeology in Ecuador provides substantive evidence that Ecuador’s government cannot sustain its claims under the Four Determinations.

Ernesto Salazar of the Universidad Católica del Ecuador, an archaeologist who abominates both looting and collecting, has nonetheless provided a frank portrait of Ecuador’s history of self-plunder of its archaeological resources in *The looting of archaeological patrimony in Ecuador*.¹⁶

¹⁶ Ernesto Salazar, “*The looting of archaeological patrimony in Ecuador*”, Sharon, Gonen and Avraham Ronen, Eds. Proceedings of the 20th (1) Congress Suyanggae and Her Neighbors, Haifa, Israel June 2015, 99-107.

Salazar dates the destruction and looting of archaeological sites for treasures as dating to the Spanish colonial period and exposes how it continues “either officially or by tacit government approval” even today.¹⁷ Salazar attributes much early archaeological destruction to a combined desire to gain riches and spread the Catholic religion. The historical archives of Ecuador show how Spaniards sought to destroy sites of pre-Columbian temples and shrines from the 16th century onward – and legalized excavations in archaeological sites in order to collect the 20% tax, called the “royal fifth,” on the emeralds, gold and silver found there.¹⁸

In 1563, the notorious and famously brutal looter Salazar de Villasante, knowing that shaft chambers were typical in the highlands, found masses of gold in one tomb, but refused to pay his co-workers or the tax, and a court case resulted after he almost killed the local chieftain. In the coastal regions, the fabulously wealthy La Tolita site was discovered in 1577 and was still being looted two hundred years later, when a Spanish priest reported on finding gold vessels in 1775. In the eighteenth century, fashionable Spanish-Ecuadorian ladies wore pre-Columbian gold jewelry. Salazar says that by then, the coastal regions had been explored and “the looting of archaeological sites was generalized.”

Salazar’s archival research shows how Indians, who did the work of digging, were abused by a large-scale highlands professional looter who was taken to court in 1653 for failing to pay their share of the finds. Another lawsuit was filed in 1724, this time against mestizo and Indian diggers who failed to turn over objects they discovered. Witnesses testified to finding a huge range of gold jewelry and even gold sandals in graves and sacred sites. Apparently, creating reproductions for the market goes as far back as illicit digging. A large gold vessel turned over to the court in the 1724 case turned out to be a fake and the maker and his selling price were identified.¹⁹

Salazar says that in the new Republican State, the situation worsened and there was even less interest in preserving the pre-Columbian archaeological record.²⁰ Under the Republic, the old ‘royal fifth’ was revived as a tax paid to support national education. It is known that a large high school in the city of Cuenca was built with the proceeds of gold from the site of Chordeleg.²¹

He writes:

“In 1852, the Serrano brothers settled in Chordeleg (southern highlands) to exploit gold mines located in the nearby cerro Fasayñan, a sacred mountain for the local Cañari indians. Fortunately, they didn’t have to leave for any mine, since, they found out, the marketplace of Chordeleg was full of pre-Columbian huacas. They simply found an enormous quantity of gold objects, the nature of which is poorly known, since the objects were melted almost on the spot (Serrano Iñiguez 1979). These fortunes of the Serrano brothers triggered a veritable gold fever throughout the whole province of Azuay. Dozens

¹⁷ Salazar, *Id.* at 99.

¹⁸ *Id.* at 101(as reported by Pedro Arevalo in 1600).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 105.

of sites were looted and thousands of pounds of gold objects were recovered, only to be melted away. A tomb easily yielded 50 to 100 pounds of gold.”²²

The late 19th century saw the emergence of foreign and domestic collectors in Ecuador. Around 1870, Eugène Thirion, the consul of Venezuela, possessed a collection of gold objects from Chordeleg that was described in the French art review *Gazette des Beaux Arts* in 1870. The head of an Ecuadorian religious order sent a collection of artifacts to Chile for an exposition and offered a thousand more if they were needed. Three hundred objects were sent to the Musée Royal des Antiquités of Brussels by a Belgian consul in the 1870s. Edward Whimper, a British climber, collected artifacts during his mountaineering in Ecuador. At the end of the nineteenth century, they went through the Christie collection to the British Museum. Museums in Rome and Florence competed with European and American institutions to obtain the carved stone seats from the coastal Manteño culture and other Ecuadorian artifacts.²³

As domestic Ecuadorian collections of archaeological materials grew, they became the foundations for both private and state museums. Salazar notes that Ecuador’s heritage laws state that all found archaeological objects and all objects still under the ground belong to the state. He says, however, that despite the prohibitions against trade in archaeological items, both state and private museums continued to buy artifacts from diggers, *huaqueros*.²⁴

A law making Ecuadorian cultural patrimony the property of the state was passed in the 1940s. Nonetheless, the collections of the Museum Nacional, originally the Museo del Banco Central, was established on the collection of a foreign resident.

Salazar writes:

“An office of acquisitions was installed for the purchase of more objects brought to the museum by looters from all over the country. In the 80’s, it was something to watch, at the Quito office, on the stairs of a four story building, long lines of looters with bags or boxes containing artefacts for sale... In other words, the republic lets looters grab pre-Columbian antiquities, owned by the state, and subsequently buys them at the National Museum office, owned by the same state! ... Eventually, this practice was abolished, but notwithstanding this, in 2004, the National Museum, and other local state agencies, bought quietly archaeological materials from the looters of Alacao site.”

(Salazar says that it was thought that the archaeological sites of Ecuador had all been plundered, but the huge Alacao finds in 2004 were a major surprise, and were quickly bought up by the state museums and private collectors.)

Salazar wrote in 2016 that the Ecuadorian state had recently begun to seek repatriation, established a patrimonial police group and that its Customs was strengthened and workshops

²² *Id.* at 101.

²³ *Id.*

²⁴ While most diggers are mixed race Meztizos, Salazar states that Indians who are less tied to tradition and to respect for ancestors also looted artifacts. An informer from La Tolita told him that after so many years, “these dead don’t ask for anything.” Salazar says that while a very few huaqueros have metal detectors, most rely on a divining stick and their intimate knowledge of the ground. Salazar, *Id.* at 103.

held to educate the public. However, he says that within Ecuador, “collecting has remained pretty intact. Anybody in Ecuador can have a collection: lawyers, painters, historians, etc., all of them oblivious to the fact that collectors are accomplices of an illicit action.”²⁵

Today, Salazar says Ecuadorian private collectors are regarded as sophisticated persons. The largest and best known of current Ecuadorian collectors is Daniel Jacques Klein Sussmann, who established a Fundación Tolita to preserve and exhibit his collection of some 5000 artifacts from Andean civilizations to the public. This antiquities collection circulates through temporary displays in Museo Casa del Alabado, a stunning private museum in a Spanish colonial home dating to 1671 in Quito that is one of the city’s most vaunted tourist destinations.²⁶

Ecuador’s World Heritage sites.²⁷

Ecuador’s World Heritage sites receive significant support from UNESCO and other world bodies. However, UNESCO’s most recent reports on Ecuador’s five World Heritage sites, none of which are primarily archaeological, demonstrate a lack of urgency in government preservation efforts and a heightened dependence on foreign funding. While the World Heritage Centre commended Ecuador in 2023 for finalization of a City of Quito management plan after many years, it expressed regret that it is still not approved by the government.²⁸ At the Galapagos Islands biological reserve, UNESCO reported that there was illegal, unreported and unregulated fishing and collection of aquatic resources, illegal harvesting of natural resources, unmitigated impact of excessive tourism, and inadequate and ineffective quarantine measures affecting biosecurity, in part due to inadequate implementation of Ecuador’s Special Law on Galápagos.²⁹

In the Qhapaq Ñan Andean Road System, a multinational project with Chile, Colombia, and Peru, there were no reported issues with Ecuador.³⁰ At the Sangay National Park, UNESCO’s World Heritage Center reports poaching, illegal livestock grazing, encroachment along the Park’s perimeter, and unplanned road construction.³¹ At the Santa Ana de los Ríos de Cuenca, 16th century planned Spanish town, inscribed in 1999, UNESCO notes that Ecuador’s Ministry for

²⁵ Salazar, *Id.* at 106.

²⁶ Museo Casa del Alabado, <https://alabado.org/inicio/>

²⁷ UNESCO World Heritage Convention, “Ecuador,” <https://whc.unesco.org/en/statesparties/ec>.

²⁸ City of Quito (historic city), inscribed 1978, previously listed as a World Heritage site in Danger. Notes with satisfaction the stabilization achieved in the underground metro development in the Historic Centre of Quito. The report notes 16 approved requests for international assistance. Funding provided \$391,800. Additional foreign funding grants for metro \$100,000.

²⁹ Galapagos Islands (biological reserve), inscribed 1978, 26 approved requests for international assistance. Funding provided \$627,825. Additional special funding \$3.5 million for introduced species Trust Fund. World Heritage Centre noted progress on fishing monitoring, but lack of government action on other current harms. For terms of the Special Law on Galapagos, see <https://web.mit.edu/12.000/www/m2008/teams/sebas/leyespecial.htm>.

³⁰ There were, however, serious concerns over the impact of a new Cuzco international airport that plans to bring large numbers of tourists to travel the ancient road system. Qhapaq Ñan Andean Road System funding: USD 1,012,810 during the period 2003-2011 under the Spanish Funds-in-Trust; USD 450,000 for management. \$75,000 for risk analysis and application for World Heritage status.

³¹ Sangay National Park, inscribed 1983. UNESCO funding \$80,000, World Heritage funding \$58,500.

Heritage Coordination financed repair work for the roof of the Convent of All Saints and maintenance and conservation of the Ancient Seminary San Louis.³²

Recent discoveries in Ecuador through lidar technology.

Dramatic archaeological discoveries have been made since 2015 in Ecuador utilizing airborne lidar scanning technology.³³ A team of researchers from France, Germany, Ecuador and Puerto Rico, led by Stéphen Rostain of France’s National Centre for Scientific Research, have scanned a 600-square kilometer section of the Upano Valley in southern Ecuador, revealing a network of about 6,000 mounds under the tree canopy.³⁴ The mounds are the remains of homes and plazas of some 15 ancient rural communities connected by the remains of roads. Archaeologists believe that these Kilamope and Upano remains are from farming settlements dating between 500 BCE and 600 CE. A later Huapula culture also lived in the same region between 800 and 1200 CE.

Archaeological work at the sites shows that these farming communities’ buildings were constructed of earth. Southern Ecuador does not contain the sort of riches looted for centuries from sites in northern Ecuador. The few objects that have been found are simple ceramic vessels. Many organic materials would have disintegrated over time and this region does not have the stone available for carving vessels or construction of stele and lintels that were found in other Mesoamerican and Peruvian regions.

Ecuadorian heritage initiatives are led and paid for by the U.S. State Department.

The only report we found on the development of heritage law enforcement inside Ecuador was through a program sponsored by the Department of State’s Cultural Heritage Center and its Cultural Antiquities Task Force (CATF). In February 2023, CATF led a week-long workshop in Ecuador sharing “best practices on investigating cultural property crime, handling and collecting evidence, paths to repatriation, and the importance of preserving heritage.”³⁵

There also appears to be a direct link between offers of U.S. funding and activities that support US-Ecuador cultural agreements. A notice published by the Department of State announced grant funding from \$10,000 to \$500,000 available for year 2024 from the Ambassador’s Fund for Cultural Preservation in Ecuador, stating:

“Additionally, for this year, priority will be given to projects presented that promote security in the country and the region, such as projects to improve security for museums or archaeological sites, or to protect collections, or the involvement of local communities in the

³² At Santa Ana de los Ríos de Cuenca, UNESCO funded \$15,000 in assistance for its designation as World Heritage site.

³³ Garth Harris, Plazas and Pottery: oldest Amazonian cities uncovered in major archaeological discovery in Ecuador, *The Art Newspaper*, Jan 15, 2024, See also Alan Yuhaz and Jesus Jimenez, Remnants of Sprawling Ancient Cities Are Found in the Amazon, *NYT*, Jan 23, 2024, <https://www.nytimes.com/2024/01/23/science/ecuador-amazon-cities-discovery.html>

³⁴ Amanda Heidt, An ancient, massive urban complex has been found in the Ecuadorian Amazon, *Science News*, Jan 11, 2024, <https://www.sciencenews.org/article/ancient-urban-complex-ecuador-amazon-laser>.

³⁵ “Cultural Antiquities Task Force Organizes Law Enforcement Workshops in Cambodia and Ecuador,” April 12, 2023, Bureau of Educational and Cultural Affairs, Department of State, <https://eca.state.gov/highlight/cultural-antiquities-task-force-organizes-law-enforcement-workshops-cambodia-and-ecuador>.

protection of cultural heritage, among others. and that meet one or more of the following criteria:

- Direct support for US bilateral treaties or agreements.
- Direct support to the objectives of the United States Embassy in Ecuador.
- Disaster risk reduction for cultural heritage in seismically active and other disaster-prone areas and/or recovery of cultural heritage after a disaster.
- Complement other programs of the United States Department of State's Bureau of Educational and Cultural Affairs (ECA) ECA or public diplomacy."³⁶

It appears that in Ecuador - and in other countries where funding goes to projects that directly contribute to collecting data and documentation supporting MOUs, the State Department's Cultural Heritage Center is not a neutral administrator of the law. In fact, Cultural Heritage Bureau employees aggressively advocate for heritage agreements, sometimes cutting corners around the CPIA.³⁷

The current unstable situation in Ecuador does not affect antiquities.

Ecuador has long been thought of as one of the safest South American countries and many US citizens live there in retirement. However, Ecuador's US dollar economy, its proximity to major drug cartels in Colombia and their money-laundering activities, and a series of internal political crises culminated in a serious social breakdown in January 2024. Criminal activity of all kinds flourished with looting of stores and eruptions of violence, extortion and threats against the public.

None of the unrest has anything to do with antiquities or art. The chaos in Ecuador is about much larger economic interests and public safety issues. There has been endemic violence arising from conflict between drug lords and their gangs and other criminals. There is also significant public resentment of government and military corruption. In January 2024, Ecuadorans watched gang members take over the main state television studio live on air and put guns to the heads of anchors and staff. Also in January, riots in response to the escape of a notorious gang leader left 125 guards and 14 administrative staff held hostage in prisons across the country while massacres of inmates by opposing gangs took place. At least four candidates in recent presidential and mayoral elections were assassinated by gangs. Ecuador's murder rate is the highest in the Western Hemisphere this year. However, a government crackdown ended Ecuador's State of Emergency in April; police and the military have restored quiet to most areas.

A complete review is the only path to a legal US-Ecuador MOU.

The only legitimate process for a renewal of the US-Ecuador MOU would be for the CPAC committee to review all evidence provided by Ecuador to determine whether it has met the Four Determinations today. CPAC members need to act under the law alone.

³⁶ U.S. Ambassador's Fund for the Preservation of Cultural Heritage (Ecuador), <https://www2.fundsforngos.org/latest-funds-for-ngos/u-s-ambassadors-fund-for-the-preservation-of-cultural-heritage-ecuador/>, last visited 5/20/2024.

³⁷ "U.S. Signs MOU with Yemen. This Time, No Testimony Allowed," Cultural Property News, September 7, 2023, <https://culturalpropertynews.org/u-s-signs-mou-with-yemen-this-time-no-testimony-allowed/>.

Here are key questions to be answered:

- *Is there a significant market in the United States for Ecuadorian antiquities? Is there evidence that the objects currently in trade came into the US recently, or were they legally imported under the exclusions set forth in the Cultural Property Implementation Act?*
- *Is there a domestic market for antiquities inside Ecuador? Is Ecuador taking measures in accordance with the 1970 UNESCO Convention to preserve its archaeological and other historic sites and its national cultural property? Or is the preservation of Ecuador's archaeological history primarily threatened by urbanization and illegal development?*
- *Has the Ecuadoran government funded cultural preservation or is it relying on foreign funding? Are there less drastic remedies available other than the imposition of import restrictions under the MOU? Have Ecuadorian authorities spearheaded conservation efforts and public education campaigns? The CPIA requires that Ecuador's government take steps at home to safeguard its heritage before asking the US to impose import restrictions.*

CPAC should be wary of substituting platitudes, promises of good behavior, and wishful thinking for actual evidence in their review of a country's actions or inaction. State Department claims that its lack of transparency with the public is somehow justified because "looters will take advantage of it" is ludicrous today, when lidar readings showing hundreds of sites hidden in the jungle are published in magazines and newspaper articles. The fact is, antiquities-hunting is the hardest and least economically rewarding criminal activity available in Ecuador today, due to its extreme physical and logistical demands and a shrinking international market that overwhelmingly rejects unprovenanced antiquities.

Conclusion.

At a 2023 CPAC public hearing on a renewal of the MOU with Honduras, a CPAC member asked whether MOUs shouldn't be issued if they might help to stop illicit trafficking in general, asking "What harm does it do?" The response from a museum representative was:

"To the comment of, well why not do an MOU? After all what can it hurt? The answer is that's not the test under the law. The test under the law is whether or not the four determinants have been met before you even get to the point of talking about an MOU..."

If a country can't show that it has taken steps consistent with the 1970 Convention to protect its own cultural patrimony, it is not eligible for a bilateral agreement under the law.

The fact such a question was even asked points to a failure of CPAC's administrators to make clear the terms of the Cultural Property Implementation Act to its sitting members. The CPIA is straightforward and sensible. An MOU is not supposed to cure the ills of the past or to direct US police and customs authorities to make up for the failures of source countries to take

responsibility and care for their own cultural patrimony. Ecuador does not appear to have taken steps consistent with the 1970 UNESCO Convention as is required.

The CPAC's first concern in every MOU or renewal must be to act in compliance with U.S. law, as its members are sworn to do. The Committee can legally recommend extending the MOU with Ecuador only when Ecuadorian authorities demonstrate compliance with all four of the Determination under the CPIA, when all the items on the Designated List are actually threatened by pillage, when the State Department removes language stating that import restrictions "include but are not limited to" listed items, and when the unlawful direction to U.S. Customs to require an export permission from Ecuador is removed.

Thank you for your attention. We look forward to answering your questions at the CPAC hearing in June.

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