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ART; Is the U.S. Protecting Foreign Artifacts? Don't Ask

By JEREMY KAHN

THE rumor swept through the aisles of the Seventh Regiment Armory in New York as art dealers traded gossip with collectors: Dina Powell was going to China.

Normally a routine overseas trip by a government figure -- Ms. Powell is an assistant secretary of state -- would hardly warrant attention from experts on Song dynasty ceramics or Buddhist statuary. But in their minds, this time their very livelihoods were at stake. The fear was that Ms. Powell, who heads the State Department's bureau of educational and cultural affairs, was going to Beijing to announce a sweeping ban on the import of Chinese art and artifacts predating 1911. The Chinese requested the ban in 2004, arguing that an insatiable American demand for such objects was spurring the looting of valuable archaeological sites in China.

As it turned out, the rumor was false: The State Department says that Ms. Powell is not planning a June visit, although it refuses to say when or how the United States will rule on the Chinese request. But the panic sowed by the gossip, in the midst of New York's annual Asia Week sales last month, suggests the high stakes riding on the American decision.

At the center of the controversy is not a ranking official but an obscure State Department advisory panel that has become the *bête noire* of collectors of everything from Roman vases to African statuary. The panel, the Cultural Property Advisory Committee, has been the focus of fierce battles between archaeologists, who say the art market fosters the looting of historic sites, and dealers, who say that broad import restrictions threaten collecting by private individuals and museums in the United States.

Congress established the committee in 1983 to balance the interests of these adversaries, deterring pillage abroad while also protecting the legal antiquities trade. But critics claim that it now tilts heavily in favor of the archaeological lobby, even in cases when the foreign countries seeking import restrictions have not met the criteria set down by the law.

"I don't think the committee has been fulfilling the intent of the original legislation," said Meredith Palmer, a Manhattan dealer in 20th-century art who worked on cultural

patrimony issues at the State Department in the 1970s and helped establish the Cultural Property Advisory Committee, known as C.P.A.C.

Kate Fitz Gibbon, a dealer of Asian art in Santa Fe, N.M., and a former member of the committee, said some members of it now seem to have a full-blown "prejudice against collecting": so much so, she argued in an e-mail message, that they seek to bend the law to "meet a perceived need to end the trade."

Just how did an entity intended as a grand compromise and welcomed by archaeologists and dealers more than 20 years ago come to be seen as the enemy of the commercial art market?

Dealers and collectors argue that the State Department's professional staff has manipulated the nominations process in recent years so that a majority of committee members at any given time lean toward broad import restrictions. Archaeologists counter that unscrupulous dealers are still only too happy to profit from looting by selling items of ambiguous origins, and that import restrictions are an important tool for reining them in.

At the same time it is clear that recent restitution battles by countries like Italy and Egypt have sensitized American officials and the public to the principle of cultural patrimony, the idea that each nation has a right to possess and protect its historical treasures.

The United States government currently has agreements with 11 nations to restrict the import of culturally significant artifacts. To this day it has never failed to grant an initial request for import controls.

But current requests have collectors and dealers up in arms. They argue that China's petition is so broad that it would include 19th-century ceramics that were mass-produced for export. And Cyprus is asking that an existing ban on imports of Classical and Byzantine material be expanded to include ancient coins, a category of artifacts that has not been included in other import restrictions.

Ms. Palmer argues that Congress intended the committee to protect only the most significant artifacts from pillage, not grant broad restrictions on the import of entire categories of objects. James Fitzpatrick, a lawyer who has represented dealers and collectors before the committee, agrees. "There is no attempt by C.P.A.C. today to differentiate between items of great significance and those that are produced in the hundreds or multiple hundreds of items," he said.

But archaeologists say that the import restrictions have been critical in highlighting the problem posed by looting. "It has proven to be a fairly effective tool for raising awareness of looting because the U.S. is such a large art market," said Ricardo Elia, an archaeologist at Boston University.

Renata Holod, a curator at the University of Pennsylvania Museum of Archaeology and Anthropology, said many ancient sites in Iraq and elsewhere now look like "a moonscape" because of all the illicit digging. "That is a feature of the existence of a market in antiquities," she said drily. While the American restrictions do not stop pillaging completely, she added, they do send a message to the rest of the world that the United States opposes the destruction of other countries' cultural property.

In many cases, archaeologists say, Western museums have been willing to turn a blind eye to murky provenances if they could get their hands on uniquely beautiful or rare artifacts. In recent years institutions like the J. Paul Getty Museum and the Metropolitan Museum of Art have agreed to return objects to their countries of origin after being confronted with evidence that the artifacts had been exported illegally.

But dealers and museum curators reply that they oppose looting too, and that archaeologists fail to see that an object's aesthetic value and its safekeeping are at least as important as its cultural or historical significance.

Some dealers say that archaeologists harbor class resentments of monied collectors and are uncomfortable with the idea that history can have a price.

"In a lot of anti-collecting bashing or museum bashing that goes on there is always a background of quasi-socialist sentiment," said William Pearlstein, a lawyer at Golenbock Eisenman Assor Bell & Peskoe in New York who has represented art dealers. "You always hear archaeologists hissing about money."

That collision of worldviews was on vivid display on March 15 in a conference room in Washington where the committee held a public hearing. The issue was an extension of import restrictions on objects from Guatemala and Mali. Speaking in favor was David Friedel, an archaeologist at Southern Methodist University who has carried out excavations of Maya ruins there.

With barely restrained disgust he told the panel that a single Olmec serpentine figure might bring \$70,000 at Christie's auction house. Ripped from its context in a Maya tomb, however, its testimony to how the Maya venerated the earlier Olmec civilization would be lost, he said.

Later in the hearing Claire Hilmer, representing the nonprofit group Saving Antiquities for Everyone, expressed dismay at the high prices ancient statuary from Mali brought at auction. That prompted pointed questioning from James Willis, a dealer in African art who is one of the sales experts on the committee.

"Do you think it is a good or a bad thing that these things are worth the millions that you say they are?" he asked. "If there were no international market and these wealthy people willing to spend this money on these figurines, what would happen to them? If those objects had little to no value, do you think they would survive?"

Under the current law a foreign nation must meet certain criteria to obtain restrictions. It must document the extent to which pillaging jeopardizes important cultural sites and objects. It must provide evidence that it is combating looting inside its borders. It must establish that the American market in these objects is large enough to warrant more control and that other methods to address looting are not available. And the law says that in most cases import limits should be created only if other nations are imposing similar restrictions, so that American dealers and collectors are not unfairly disadvantaged. The committee investigates whether these criteria have been met and issues a recommendation to the State Department, which makes the final decision. The department almost never fails to follow the recommendation.

By law the committee consists of 11 unpaid members appointed by the president: three each from the art trade and archaeologists, three who represent the wider public and two who represent the interests of museums.

But this system has gone awry, according to dealers, collectors, former committee members and others familiar with the committee's workings. While nominally balanced, they say, in practice a number of the museum and public representatives on the panel have been drawn from the archaeological camp.

For instance, the most recent museum representatives on the panel both came from the Field Museum in Chicago. Unlike many other top museums in the United States, the Field sponsors archaeological digs and no longer purchases items on the art market. Asked about the balance on the committee, the State Department referred that question to the White House. Citing a policy of not commenting on personnel matters, a White House spokeswoman, Emily Lawrimore, declined to explain how the president chooses nominees.

The committee's critics also say State Department lawyers have used conflict-of-interest rules to nudge the committee toward import restrictions. James Lally, the noted New York dealer in Asian art, declined a seat on the panel in 2000 after State Department lawyers told him he would not be able to discuss or vote on any petition from a country in whose art he traded. "I was approved after a long process of investigation," he said, "and then they said, 'Oh well, you cannot speak about any Asian art.' This made less than no sense. This is a perversion of the intent of the law."

Archaeologists, on the other hand, have not been asked to recuse themselves from deliberations or votes involving countries where they have taken part in excavations. Yet dealers protest that these are also conflicts of interest, since archaeologists must rely on the good favor of these foreign governments to receive continued permission to dig.

The committee has also been faulted for its secrecy. The State Department classifies almost all material presented to the group to aid its deliberations, including press clippings and information available on the Internet. It also withholds the original petitions for import restrictions that foreign countries submit as well as the recommendations that the committee makes to the department.

Committee members are also told they cannot independently investigate the facts related to a country's petition or discuss the matter with outside experts apart from those who appear at the committee's infrequent hearings.

Patty Gerstenblith, who is chairman of the Archaeological Institute of America's cultural property legislation committee and served as a public representative on the committee from 2000 to 2003, said she saw good reason for the secrecy. She said that as a committee member, she might have felt inhibited from speaking candidly in deliberations if she thought her comments might later become public.

She also said information presented to the committee might, if released, "become a road map for looters" interested in pillaging sites.

But the committee's current chairman, Jay Kislak, a real estate magnate and collector of pre-Colombian artifacts, bristles at the secrecy under which the State Department has the panel work.

"In my opinion the restrictions, regulations and lack of transparency under which we are asked to operate in pursuing our duties at C.P.A.C. are to say the least unusual, and in many cases they are unbearable, immoral and maybe either extra-legal or in contradiction" of the law, he said.

C. Miller Crouch, deputy assistant secretary of state for educational and cultural affairs, said that the law that created the committee explicitly exempted it from public disclosure requirements that apply to similar federal advisory committees.

Given the secrecy surrounding the panel's deliberations, it is difficult to predict how the State Department will rule on China's request. What is certain is that the controversy over the committee is not going away. With looting on the rise worldwide, according to Interpol, the number of countries requesting import restrictions is only likely to grow, and the clash between archaeologists and collectors will continue.