

THIRTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

20 11 01

SENATE
S. B. NO. 2123

Introduced by SENATOR EDGARDO J. ANGARA

EXPLANATORY NOTE

Sections 14, 15, and 16 on Arts and Culture in Article XIV of the Constitution are unambiguous, *to wit*:

The State shall foster the **preservation, enrichment,** and dynamic evolution of a Filipino national culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression.

Arts and letters shall enjoy the patronage of the State. The State shall **conserve,** promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations.

All the country's artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the **protection** of the State which may regulate its disposition.

Nowadays, experts calculate that illicit art trade ranks high among illicit trade activities, alongside drug and weapons trafficking. Illicit transactions go hand in hand with theft, looting of archaeological or palaeontological excavation sites and discoveries, destruction of cultural goods, and smuggling. All of which cause countries worldwide to incur massive damage to their cultural heritage.

This measure aims to provide the statutory mechanism that will govern the importation of cultural goods into the Philippines, their transit, export, and return out of the Philippines. With this Act, the Philippine government concretizes its share in the role to maintain the cultural heritage of mankind and to prevent theft, pillaging, and illegal import and export of cultural goods.

This bill, therefore, does it share in giving life to the aforesaid constitutional precepts.

EDGARDO J. ANGARA
Senator

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S. B. NO. 2123

Introduced by SENATOR EDGARDO J. ANGARA

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress duly assembled :

AN ACT PROVIDING MECHANISMS TO REGULATE THE IMPORT, TRANSIT, EXPORT, AND REPATRIATION OF CULTURAL PROPERTY INTO AND FROM THE PHILIPPINES.

1 **SECTION 1. *Short Title.*** This Act shall be known as the "*Cultural Property*
2 *Transfer Act of 2005.*"

3

4 **SECTION 2. *Declaration of Policy.*** It is hereby declared the policy of the State
5 to protect, develop, conserve and promote the nation's cultural heritage, artistic
6 creations and resources as well as safeguard their intrinsic value.

7 It is likewise declared the policy of the State to make a contribution to the
8 maintenance of the cultural heritage of mankind and prevent theft, looting, and illicit
9 import and export of cultural property.

10

11 **SECTION 3. *Definitions.*** For purposes of this Act, the following terms shall
12 be defined as follows:

- 13 1. "*Cultural properties*" are old buildings, monuments, shrines, documents and
14 objects which may be classified as antiques, refers to any significant property
15 from a religious or universal standpoint for archeology, pre-history, history,

- 1 literature, arts or sciences belonging to the categories under Article 1 of the
2 UNESCO Convention of 1970;
- 3 2. *“Cultural heritage”* refers to the entirety of cultural property belonging to one
4 of the categories under Article 4 of the UNESCO Convention 1970;
- 5 3. *“Cultural Institutions”* shall refer to the a) National Museum, its branches
6 and field offices, b) National Library, c) Cultural Center of the Philippines, d)
7 National Historical Institute, e) Records Management and Archives Office,
8 and f) such other museums as are established by Local Government Units
9 (LGUs);
- 10 4. *“Contracting states”* are considered states having ratified the UNESCO
11 Convention of 1970;
- 12 5. *“Description of cultural property”* shall include, among others, a) the object
13 type, material, measurements or weight, motive, inscription, marking or other
14 special characteristic (namely damage and repairs) of cultural property; and b)
15 era or creation date, creator, title of the cultural property to the extent known
16 or that can be established at justifiable expense;
- 17 6. *“Exceptional Events”* shall refer to either a) armed conflicts, b) natural
18 disasters, or c) other exceptional events that endanger the cultural heritage of
19 a country;
- 20 7. *“Illicit import”* refers to an import in violation of an agreement in terms of
21 Section 4, letter C or a measure in terms of Section 4, letter D;
- 22 8. *“Origin or provenance of the cultural property,”* shall refer to the origin of the
23 cultural property as well as place of manufacture, or if the result of
24 archaeological or palaeontological excavations, the place where the cultural
25 property was found;
- 26 9. *“National Museum (hereinafter referred to as the “Museum”)* shall refer to the
27 lead government cultural agency created pursuant to Republic Act No.8492,
28 tasked with preserving and protecting the cultural properties of the country,
29 and which shall implement the provisions of this Act;
- 30 10. *“Philippine Cultural Property Registry or PRECUP”* refers to the registry of all
31 cultural property of the country deemed of significant importance to our
32 cultural heritage;
- 33 11. *“Transfer of cultural property”* refers to the legal transaction against payment
34 in the art trade or auctioning business that transfers ownership of the cultural
35 property to a person;
- 36 12. *“UNESCO Convention of 1970”* or the Convention on the Means of
37 Prohibiting and Preventing the Illicit Import, Export and Transfer of
38 Ownership of Cultural Property.

1 **Section 4. *Establishment of a Philippine Registry of Cultural Property.*** Cultural
2 property of the country deemed of significant importance for the cultural heritage
3 shall be registered in the Philippine Registry of Cultural Property (PRECUP).

4 Said registration shall have the following effects:

- 5 a. Cultural property may neither be acquired by adverse possession nor
6 acquired in good faith;
- 7 b. The claim for return is not subject to a statute of limitation;
- 8 c. The definitive export of the cultural property from the Philippines is
9 prohibited.

10 The registration of cultural property in the PRECUP may be removed, to the
11 extent that:

- 12 a. The cultural property no longer has a significant importance to the
13 cultural heritage;
- 14 b. Consolidation speaks in favor of an ensemble;
- 15 c. The Philippines loses its title to the cultural property or waives the
16 same.

17 The National Museum operates the PRECUP in the form of an electronic
18 database and publishes the same in.

19
20 **SECTION 5. *Import and Export of Cultural Property.***

21 **A. Export Permit for Cultural Property Registered in the Philippine Registry**
22 **of Cultural Property.**

- 23 1. Whoever desires to export cultural property registered in the Philippine
24 Registry of Cultural Property requires authorization of the Board of
25 Trustees of the National Museum.
- 26 2. The application for an export permit must be submitted, at the latest,
27 thirty (30) days prior to the intended export from the Philippines. Said
28 application must include the following: a) the purpose of the temporary
29 export; b) the export date of the cultural property; and c) the repatriation
30 date of the cultural property.

1 The following must be appended to the application: a) a description of the
2 cultural property; b) the inventory of the cultural property in the
3 PRECUP.

4 3. Authorization shall be granted *only* in two (2) instances: a) IF the cultural
5 property is exported on a temporary basis; and b) IF export occurs for
6 reasons of research, conservation, exhibition, or analogous cases.

7 **B. *Philippine Repatriation Claims.*** The Board of Trustees of the National Museum
8 will claim the right of repatriation vis-à-vis all other contracting states should
9 cultural property registered in the PRECUP be illicitly exported from the
10 country. Any compensation and costs will be carried by the Philippine
11 government.

12 **C. *Agreements.*** For the protection of cultural and foreign affairs interests and to
13 secure cultural heritage, Philippines may conclude international treaties with
14 contracting states on the import and repatriation of cultural property
15 (Agreements), *Provided*, That the following conditions are fulfilled: 1) the
16 scope of the agreement must be cultural property of significant importance to
17 the cultural heritage of the contracting state in question; 2) the cultural
18 property must be subject to export provisions in the state in question for the
19 purpose of protecting cultural heritage; and 3) the contracting state shall
20 grant reciprocal rights.

21 **D. *Limited Measures.*** To protect a state's cultural heritage jeopardized by
22 exceptional events, the Museum shall enable the import, transit, and export of
23 cultural property, tie it to conditions, limitations, or prohibitions; or take part
24 in common international actions in terms of Article 9, UNESCO Convention
25 of 1970.

26 Limited measures may also include mandatory permits and notification
27 requirements.

28 In both, the measures must be limited in time.

29 **E. *Repatriation Claims based on Agreements***

30 1. Whoever possesses cultural property illicitly imported into the Philippines,
31 can be sued for repatriation by the country from which the cultural
32 property was illicitly exported. In particular, the country filing suit must

- 1 show that the cultural property is of significant importance to its cultural
2 heritage and was imported illicitly;
- 3 2. The court can suspend the execution of repatriation until such time as the
4 cultural property is no longer in jeopardy during repatriation;
- 5 3. The country filing suit carries the costs for measures necessary for
6 securing, maintaining, and repatriating the cultural property;
- 7 4. Claims for repatriation by a state are subject to a statute of limitation of
8 one year after its authorities gain knowledge of where and with whom the
9 cultural property is located, at the latest, however, 30 years after the
10 cultural property is illicitly exported;
- 11 5. Whoever acquires cultural property in good faith and must return the
12 same, has a claim for compensation at the time of repatriation, oriented to
13 the purchase price as well as necessary and useful expenses for protecting
14 and maintaining the cultural property; and
- 15 6. The state filing suit must pay the compensation. The person required to
16 return the cultural property retains a right of retention of the same until
17 compensation is paid.

18

19 **SECTION 6. *Return Guarantee Clause.***

- 20 **A. *Request.*** Should cultural property of one contracting state be on temporary
21 loan for an exhibition in a museum or another cultural institute in the
22 Philippines, the institution loaning the cultural property may request that the
23 Museum issue a return guarantee to the loaning institution for the period of
24 the exhibition as stipulated in the loan agreement.

25 The request for issuance of a return guarantee must be made, at the latest,
26 three (3) months prior to the intended import of the cultural property into the
27 Philippines.

28 The application must include the following information:

- 29 a. Name and address of the loaning institution;
- 30 b. Description of the cultural property;
- 31 c. As precise a description as possible of the cultural property's origin;
- 32 d. Intended timeframe for the temporary import of cultural property
33 into the Philippines;

- e. Intended timeframe for the export of the cultural property from the Philippines;
- f. Exhibition dates; and
- g. Application dates for the return guarantee.

A copy of the loan agreement with the loaning institution must be appended to the application. The copy must indicate that the cultural property will return to the contracting state from which it was borrowed at the completion of the exhibition in the Philippines or at the completion of a traveling exhibition through multiple countries.

B. *Publication and Procedures for Objections.*

1. The request is published in the PRECUP Gazette. The publication contains a precise description of the cultural property and its origin;
2. If the request clearly fails to fulfill the conditions for issuing a return guarantee, the request will be denied and not published;
3. Parties may file an objection in writing to the Commission body within 30 days. The deadline commences with publication;
4. Failure to file an objection precludes the parties from further action.

C. *Issuance.* The Board of Trustees of the Museum decides on the request for issuing a return guarantee.

The return guarantee may be issued in the event that:

- a. No person claims ownership to the cultural property through an objection;
- b. The import of the cultural property is not illicit; or
- c. The loan agreement stipulates that the cultural property will be returned to the contracting state of origin following the conclusion of the exhibition.

The Museum may establish additional requirements.

D. *Effect.* The return guarantee means that neither private parties nor authorities may make legal claims to the cultural property as long as the cultural property is located in the Philippines.

1 **SECTION 7. *Financial Assistance to the Benefit of Maintaining Cultural***
2 ***Heritage.*** An application for financial assistance to the benefit of maintaining the
3 cultural heritage of another country must be submitted to the National Museum prior
4 to executing the intended action. It may amount to a maximum of fifty percent
5 (50%) of asserted costs.

6 The Philippine government may grant financial assistance a) to museums or
7 similar institutions in the Philippines for the temporary fiduciary custody and
8 conservatory care of cultural property that is part of the cultural heritage of another
9 state and is in jeopardy in that state due to exceptional events; b) for projects to
10 maintain the cultural heritage of other contracting states; or c) under exceptional
11 circumstances to ease the restitution of the cultural heritage of contracting states.

12 **A. Financial Assistance for Fiduciary Care**

- 13 1. Financial assistance for fiduciary custody and custody care may amount
14 to a maximum of Fifty Thousand Pesos (P50,000.00) annually;
- 15 2. Financial assistance will only be granted to museums or similar
16 institutions that are a) active in a significant and recognized manner in the
17 corresponding specialty; and b) orient their activity according to
18 deontological rules of the museum profession.
- 19 3. Financial assistance may only be paid out when the fiduciary custody
20 occurs in agreement with the authorities of the other state; or occurs under
21 the auspices of UNESCO or another international organization for the
22 protection of cultural property.

23

24 **B. Financial Assistance for Projects to Maintain Cultural Heritage.**

- 25 1. Projects to maintain the cultural heritage of another contracting state will
26 be supported with a one-time flat-rate contribution of maximum One
27 Hundred Thousand Pesos (P100,000.00) per project. The amount can be
28 paid in installments.
- 29 2. This amount may be exceeded only under exceptional circumstances.

30

31 **C. Financial Assistance for Projects to Ease Restitution of Cultural Heritage.**

- 32 1. Financial assistance to ease restitution of the cultural heritage of a
33 contracting state is granted exclusively to state authorities and
34 international organizations.

- 1 2. It shall amount to a maximum of Two Hundred Thousand Pesos only
2 (P200,000.00)
- 3 3. It will only be granted when the contracting state provides its own funds
4 commensurate with its financial strength.
- 5 4. It serves to cover a) court, legal, insurance, restoration and transportation
6 costs to the extent necessary for restitution and that are actually incurred;
7 and b) compensation to third parties under exceptional circumstances.

8

9 **SECTION 8. *Conveyance of Cultural Property.***

10 **A. Conveyance to Cultural Institutions.** Cultural institutions are prohibited
11 from acquiring or exhibiting cultural property that 1) was stolen, lost against
12 the will of the owner or illegally excavated; or 2) are part of the cultural
13 heritage of a state and have been illicitly exported from the same.

14 Cultural institutions offered such property must immediately report it to the
15 specialized body.

16 **B. Duty of Diligence.**

- 17 1. In the art trade and auctioning business, cultural property may be
18 transferred: *Provided*, That the person transferring the property may
19 assume, under the circumstances, that the cultural property was neither
20 stolen, lost against the will of the owner, illegally excavated, nor illicitly
21 imported;
- 22 2. Persons active in the art trade and auctioning business are obligated:
 - 23 a. To establish the identity of the supplier or seller and require a written
24 declaration from the same of his or her right to dispose of the cultural
25 property;
 - 26 b. To inform their customers about existing import and export
27 regulations of the contracting states;
 - 28 c. To maintain written records on the acquisition of cultural property by
29 specifically recording the origin of the cultural property, to the extent
30 known, and the name and address of the supplier or seller, a
31 description as well as the sales price of the cultural property;
 - 32 d. To provide to the Museum all necessary information on fulfilling this
33 duty of diligence.

1 The records and receipts must be stored for 30 years.

2 **C. Establishing Identity**

3 1. Cultural institutions as well as persons active in the art trade or auctioning
4 business must establish the identification to the seller or supplier based on
5 the following information:

6 a) For persons and sole proprietors: Last name, first name, birth date,
7 domicile address, citizenship; and

8 b) For legal entities and partnerships: Company name and domicile
9 address.

10 2. Establishing identify is no longer required when previously established.

11
12 **D. Inspection.**

13 1 To inspect adherence to the duty of diligence, the Museum has access to
14 business rooms and storage areas of persons active in the art trade and
15 auctioning business. The Museum shall announce on-site inspections in
16 advance, unless a risk exists that the cultural property or associated
17 documents will be removed from inspection.

18 2 When the Museum has reasonable suspicion that criminal activity is
19 present under this Act, it will file a complaint with the competent criminal
20 prosecution authorities.

21
22 **SECTION 9. Implementing Agency.** The Board of Trustees of the National
23 Museum shall appoint a specialized body for the execution of this Act, specifically
24 assuming the following tasks:

- 25 a. Advising and supporting the enforcement agencies on issues of the transfer of
26 cultural property and coordinating the corresponding work;
- 27 b. Representing Philippines vis-à-vis foreign authorities on issues of the transfer
28 of cultural property;
- 29 c. Working together with authorities from other states to secure their cultural
30 heritage;

- 1 d. Providing information on issues of the transfer of cultural property to persons
- 2 active in the art trade and auctioning business as well as other interested
- 3 circles;
- 4 e. Maintaining a listing of information centers on reported stolen cultural
- 5 property;
- 6 f. Administering the PRECUP in the form of an electronic database and
- 7 publishing the same;
- 8 g. Issuing return guarantees; and
- 9 h. Inspecting compliance to the duty of diligence of persons active in the art
- 10 trade and auctioning business.

11

12 **SECTION 10. *Customs Declaration.*** Customs authorities shall inspect the

13 transfer of cultural property at the border. They are authorized to withhold

14 suspicious cultural property during import, transit, and export, and report it to

15 criminal prosecution authorities.

- 16 a. Whoever imports, transits or exports cultural property must provide the
- 17 following at the customs declaration: i) the cultural property object type; ii) as
- 18 detailed a description as possible on the place of manufacture, or if the result
- 19 of archaeological or palaeontological excavations, the place where the
- 20 cultural property was found.
- 21 b. Whoever imports or transits cultural property must declare at the customs
- 22 declaration that the export of cultural property from a contracting state is not
- 23 subject to a permit under the laws of that state.

24 Arrival of cultural property at customs storage facilities is considered import

25 in terms of this Act.

26

27 **SECTION 11. *Criminal Prosecution Authorities.*** The competent criminal

28 prosecution authorities will order the seizure of the cultural property when suspicion

29 exists that the cultural property was stolen, lost against the will of the owner or

30 illicitly imported into the Philippines.

31 Each seizure must be reported immediately to the Museum.

32

1 **SECTION 12. *International Official and Legal Assistance.*** The Board of
2 Trustees of the Museum may cooperate with competent foreign authorities and
3 international organizations and bodies and coordinate inquiries to the extent that:

- 4 a. It is required for the execution of this Act; and
- 5 b. The foreign authorities, international organizations or bodies are bound
6 by official secrecy or are subject to a corresponding duty to observe
7 secrecy.

8 The Board may request delivery of required data from foreign authorities. In
9 order to receive the data, they may provide data specifically on:

- 10 a. The quality, quantity, destination and location of use, purpose of use as
11 well as the recipients of cultural property;
- 12 b. The persons participating in the delivery or procurement of cultural
13 property; and
- 14 c. The financial arrangement of the transactions.

15 The Board may provide the data pursuant to paragraph 2 on their own
16 initiative or at the request of the foreign state, to the extent that the state in question
17 a) retains reciprocal rights; b) guarantees that data will only be processed for
18 purposes pursuant to this Act; and c) guarantees that the data may only be used in
19 criminal proceedings, if legal assistance in criminal proceedings would not be
20 precluded by the type of crime; in this case, the competent federal administrative
21 authorities consult the Federal Office of Justice in advance on the possibility of legal
22 assistance in criminal proceedings.

23
24 **SECTION 13. *Penal Provisions.*** To the extent that the offense is not
25 threatened with a higher punishment under another provision, violations of this Act
26 may be made by whoever intentionally:

- 27 a. Imports, sells, distributes, procures, acquires, or exports cultural property
28 stolen or otherwise lost against the will of the owner;
- 29 b. Appropriates excavation finds;
- 30 c. Illicitly imports cultural property or incorrectly declares the same during
31 import or transit; or
- 32 d. Illicitly exports cultural goods listed in the PRECUP or incorrectly
33 declares the same during export.

1 Upon conviction, the offender shall pay a fine of not more than Five Hundred
2 Thousand Pesos (P500,000.00) or imprisonment of not more than five (5) years or
3 both upon the discretion of the court: *Provided*, that objects or materials attempted to
4 be concealed from registration or those intended to be exported or excavated in
5 violation of this Act shall be summarily confiscated and forfeited to the National
6 Museum: *Provided, further*, that if the violation is committed by a juridical person, the
7 manager, representative, director, agent or employee of said juridical person
8 responsible for the act shall also be liable to the penalties provided herein; *Provided*,
9 *finally*, That if the acts are committed by the art dealers or the owners or operators of
10 art galleries, they shall suffer, in addition to the penalties provided herein, the
11 automatic revocation of their license to operate.

12 TO the extent that the offense is not threatened with a higher sanction under
13 another provision, a person may be fined up to Two Hundred Thousand Pesos
14 (P200,000.00), who within the art trade or auctioning business a) disregards the duty
15 of diligence; or b) frustrates inspections.

16 There shall be created a division of cultural properties in the National
17 Museum clothed with adequate police power to prosecute violators of this Act.

18

19 **SECTION 14. *Appropriations.*** The sum of Fifteen Million Pesos
20 (P15,000,000.00) is hereby appropriated annually out of the General Appropriations
21 Act, not otherwise appropriated, to carry out the provisions of this Act.

22

23 **SECTION 15. *Disclosure Requirement.*** The customs authorities and the
24 competent criminal prosecution authorities are required to disclose violations of this
25 Act to the specialized body.

26

27 **SECTION 16. *Non-Retroactive Application.*** This Act is not applicable
28 retroactively. In particular, it is not applicable to acquisition activities that took place
29 prior to this Act entering into force.

30

1 **SECTION 17. *Implementing Rules and Regulations*** - The Board of Trustees of
2 the National Museum shall promulgate the necessary rules and regulations for the
3 effective implementation of the provisions of this Act.

4
5 **SECTION 18. *Separability Clause***. Any portion or provision of this Act that
6 may be declared unconstitutional shall not have the effect of nullifying other portions
7 or provisions hereof as long as such remaining portions or provisions can subsist and
8 be given effect in its entirety.

9
10 **SECTION 19. *Saving Clause***. All laws, rules, regulations, other issuances or
11 parts thereof which are inconsistent with this Act are hereby repealed, amended, or
12 modified accordingly. All provisions deemed inconsistent with this Act shall
13 however remain in full force and effect.

14
15 **SECTION 20. *Effectivity***. This Act shall take effect fifteen (15) days from its
16 publication in the Official Gazette or in at least two (2) newspapers of general
17 circulation, whichever comes first.

18
19 *Approved,*