

## HOW BILATERAL AGREEMENTS (MEMORANDA OF UNDERSTANDING) ARE CLOUDING THE PICTURE

Bilateral agreements called **Memoranda of Understanding (MoUs)** have been increasingly clouding the picture in the United States as items are seized by customs and returned to their countries of origin. This is not because a crime has been committed, but because the MoU grants the country of origin exceptional powers to reclaim items.

MoU terms effectively reverse the burden of proof when it comes to cultural property. In other words, you're guilty until proven innocent. Importers to the United States of cultural property subject to a specific MoU must be able to show clear documentary proof of its original legal export from the source country, regardless of when that was. This applies to items that may have been in circulation in the market or prominent in museum collections for centuries. Without such proof, the item will be seized and sent back to the source country unless that country states that it is content that the item was originally legally exported. This is exceptionally unlikely to happen, as the source countries have made the MoUs with the United States in order to reclaim these items because they do not have the evidence to show that they were illegally exported in the first place.

Most media and the public are unaware of these MoUs and so erroneously believe that objects are seized because they have been looted and trafficked when this is not the case. This creates an image of active trafficking – damaging to the art market – which is not taking place.

This inaccurate picture is further aggravated by vexatious claims from source countries that are trying to impose domestic policies on the global stage. The most vocal nation is arguably Mexico, which deems any sale of cultural property that has originated within its borders as “illicit”, regardless of whether it was sold and exported legally. In November 2021, Mexico's Culture Minister Alejandra Frausto stated: “According to Mexican law, any piece of national heritage that is permanently outside the country, not temporarily for an exhibition or cultural cooperation, comes from an illegal act.” She claimed Christie's were selling Mexican artefacts in Paris illegally but provided no evidence to show this.<sup>[28]</sup>

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### Footnotes

[28] Mexico's heritage 'not for sale,' culture minister says France 24, November 4, 2021  
<https://www.france24.com/en/live-news/20211104-mexico-s-heritage-not-for-sale-culture-minister-says>