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Collection: Roberts, John G.: Files
Folder Title: JGR/Cultural Property Review Board
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THE WHITE HOUSE

WASHINGTON

October 4, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: Canadian Request for U.S. Import Restrictions
Under the Convention on Cultural Property

The United States, Canada, and many other countries are signatories to the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property. The Convention is designed to protect each country's interest in its own archaeological artifacts and other national art treasures that may be considered to comprise the country's cultural patrimony. In 1983 Congress passed the Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601-2612. That act authorizes the President to enter into bilateral agreements with Convention signatories to restrict the import of cultural property of the other country into the United States. The act set out a procedure whereby requests from other countries for such action are referred to a Cultural Property Advisory Committee for review and recommendation.

Ever since the act was passed State and U.S.I.A. have been feuding over which agency should be delegated authority to perform the various tasks the act assigned to the President. State contends it should receive the delegations because the process involves negotiating an agreement with other countries; U.S.I.A. bases its case largely on the fact that the Cultural Property Advisory Committee is, by statute, based at U.S.I.A.

This dispute is still unresolved, and now the act has been triggered by receipt on October 2 of the first request from another country -- Canada -- for import restrictions. U.S.I.A. Director Wick has written you to request that the President publish notification of the request in the Federal Register, as required by 19 U.S.C. § 2602(f)(1), and send a letter to Wick, authorizing him to release information in the request to the Advisory Committee, so that it might begin its statutory review. The letter Wick would have the President send him also has the President saying he looks forward to Wick taking the lead in response to the Canadian request. In his cover memorandum Wick states that State and U.S.I.A. will submit a request for resolution of their dispute "within the next few weeks."

I think receipt of the Canadian request is an excellent opportunity to force an immediate resolution of the State/U.S.I.A. dispute. I do not think the White House should begin managing the procedures of the act directly, but rather should insist on a prompt delegation to either State or U.S.I.A., or perhaps a delegation of some authorities to one and others to the other. There is no reason the process should take a "few weeks;" according to OMB's John Cooney, the pertinent drafts were ready years ago, with blanks for either "State" or "U.S.I.A." to be inserted. Nor is there any need for immediate action by the President. The statute simply provides that if a request is received the President shall publish notification in the Federal Register and provide information to the Advisory Committee; there is no suggestion that this must happen immediately. I see no reason that an Executive Order delegating the authorities cannot be signed next week, and think the steps required by the statute could then still be taken in a timely manner. (The statute gives the Advisory Committee 150 days to prepare its report, so an extra week delay at the outset cannot be considered significant.)

A memorandum to Wick and Michael Armacost (the State player in the long-running feud) is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

October 4, 1985

MEMORANDUM FOR CHARLES Z. WICK
DIRECTOR, UNITED STATES
INFORMATION AGENCY

MICHAEL H. ARMACOST
UNDER SECRETARY FOR POLITICAL AFFAIRS
U.S. DEPARTMENT OF STATE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Convention on Cultural Property

Director Wick has advised me of the receipt of a request from Canada under the Convention on Cultural Property Implementation Act, and requested that the President publish notice of the request in the Federal Register (as required by 19 U.S.C. § 2602(f)(1)) and sign a letter authorizing the release of pertinent information to the Cultural Property Advisory Committee. I understand that State and USIA have discussed the delegation of the President's authorities under the Act, and have been unable to resolve the matter. Rather than proceeding to involve the White House directly in the administration of this Act, I think it preferable promptly to resolve the delegation dispute, and have the President sign an Executive Order accomplishing the delegations. The Canadian request would then be handled pursuant to the delegation of authorities.

Since this matter has been the subject of discussion between your two agencies for some time, I do not foresee any reason either a resolution or decision memorandum cannot be submitted to OMB in the next few days. If this is done, there is no need for the President to take any direct action. There is no suggestion that the Federal Register notice need be filed immediately, and the fact that the Advisory Committee is given 150 days to submit its report suggests a delay of about one week should not be significant.

Please advise if you have any objection to this proposed course of action.

FFF:JGR:aea 10/4/85

cc: FFFielding
JGRoberts
Subj
Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 / 1 /Name of Correspondent: Charles Wick☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Dept. of Canada requests us Dept. impose
import restrictions

ROUTE TO:

ACTION

DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CU Hall</u>		ORIGINATOR	<u>85,10,02</u>			<u>1</u> / <u>1</u> /
		Referral Note:				
<u>CUat 18</u>		<u>D</u>	<u>85,10,02</u>		<u>S</u>	<u>85,10,03</u>
		Referral Note:				
			<u>1</u> / <u>1</u> /			<u>1</u> / <u>1</u> /
		Referral Note:				
			<u>1</u> / <u>1</u> /			<u>1</u> / <u>1</u> /
		Referral Note:				
			<u>1</u> / <u>1</u> /			<u>1</u> / <u>1</u> /
		Referral Note:				

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOB).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

**United States
Information
Agency**

Washington, D.C. 20547

Office of the Director



October 2, 1985

Dear Fred:

On October 2, the Government of Canada officially requested that the United States Government impose import restrictions on certain endangered Canadian antiquities under the provisions of the Cultural Property Act (PL 97-446).

For more than two years officials of the Department of State and I have discussed whether USIA or State would be delegated the Presidential negotiating functions under the Cultural Property Act. Recently Under Secretary Michael Armacost and I agreed to submit to OMB within the next few weeks a joint brief requesting resolution and a Presidential executive order.

With the arrival of the request from Canada, and the consequent need to act on the request, there are two Presidential functions which should be carried out as soon as possible. One statutory requirement is that the President place a notice in the Federal Register that Canada has officially submitted a request under the Cultural Property Act. The other requirement is that the President authorize handing information on the Request to the Cultural Property Advisory Committee, a Presidential advisory committee, housed at USIA under the Act. Because it is important that these Presidential functions be carried out as soon as possible, I have enclosed two draft documents: a Federal Register notice for the President or his designee to place in the Federal Register and a letter instructing me to hand over the Canadian Request to the Cultural Property Advisory Committee.

On September 28, Ann Guthrie, Executive Director of the Cultural Property Advisory Committee, discussed the matter with David Waller of your staff. He suggested that we send to you a letter explaining the situation and the action we suggest should be taken.

I look forward to hearing from you.

Sincerely,

Charles Z. Wick
Director

Enclosures: As stated

Fred F. Fielding, Esq.
Counsel to the President
The White House
Washington, D.C. 20500

FEDERAL REGISTER ANNOUNCEMENT OF RECEIPT
OF
STATE PARTY REQUEST

Pursuant to Section 303(f)(1) of the Cultural Property Implementation Act (19 U.S.C. 2602(f)(1)), notice is hereby given that the United States is in receipt of a request under Section 303(a)(3) from the Government of Canada, a State Party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. The request is for U.S. import restrictions on certain endangered archaeological and ethnological material to assist Canada in protecting its cultural patrimony.

Dear Charlie:

I understand that Canada has requested that the United States Government impose import restrictions on certain endangered Canadian antiquities. I further understand that this Government is authorized to review, consider and act upon such a request under the provisions of the Cultural Property Act (Public Law 97-446). For the moment, none of the powers vested by the Act in the President have been delegated.

It is important, nonetheless, that the review procedures foreseen by the Act be initiated if our international commitments under the Convention on Cultural Property are to be met. For that reason, I have ordered notice of the request to be published in the Federal Register. In addition, I authorize you to turn over to the Cultural Property Advisory Committee all the information contained in the request which is necessary and desirable for the members of the Committee to meet their advisory responsibilities.

The United States must be seen as being faithful to its commitment to the protection of cultural property against illicit transfers. For this reason, I look forward to seeing you take the lead on behalf of the United States in being responsive to the Canadian request.

Sincerely,

The Honorable

Charles Z. Wick

Director,

United States Information Agency

Washington, D.C. 20547

THE WHITE HOUSE
WASHINGTON

Date 10.24.85

Suspense Date _____

MEMORANDUM FOR: RAH

FROM: DIANNA G. HOLLAND

ACTION

- ☐ Approved
- ☐ Please handle/review
- ☐ For your information
- ☐ For your recommendation
- ☐ For the files
- ☐ Please see me
- ☐ Please prepare response for
_____ signature
- ☐ As we discussed
- ☐ Return to me for filing

COMMENT

Did you ever hear anything
further on this?

N/O
10/25

THE WHITE HOUSE

WASHINGTON

October 4, 1985

MEMORANDUM FOR CHARLES Z. WICK
DIRECTOR, UNITED STATES
INFORMATION AGENCY

MICHAEL H. ARMACOST
UNDER SECRETARY FOR POLITICAL AFFAIRS
U.S. DEPARTMENT OF STATE

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Convention on Cultural Property

Director Wick has advised me of the receipt of a request from Canada under the Convention on Cultural Property Implementation Act, and requested that the President publish notice of the request in the Federal Register (as required by 19 U.S.C. § 2602(f)(1)) and sign a letter authorizing the release of pertinent information to the Cultural Property Advisory Committee. I understand that State and USIA have discussed the delegation of the President's authorities under the Act, and have been unable to resolve the matter. Rather than proceeding to involve the White House directly in the administration of this Act, I think it preferable promptly to resolve the delegation dispute, and have the President sign an Executive Order accomplishing the delegations. The Canadian request would then be handled pursuant to the delegation of authorities.

Since this matter has been the subject of discussion between your two agencies for some time, I do not foresee any reason either a resolution or decision memorandum cannot be submitted to OMB in the next few days. If this is done, there is no need for the President to take any direct action. There is no suggestion that the Federal Register notice need be filed immediately, and the fact that the Advisory Committee is given 150 days to submit its report suggests a delay of about one week should not be significant.

Please advise if you have any objection to this proposed course of action.

FFF:JGR:aea 10/4/85

cc: FFFielding
JGRoberts
Subj
Chron

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User Codes: (A) _____ (B) _____ (C) _____

Subject: Dout. of Canada requests US Dout. impose
import restrictions**ROUTE TO:****ACTION****DISPOSITION**

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<u>CU Hall</u>	ORIGINATOR	<u>85/10/02</u>			<u>1 / 1</u>
	Referral Note:				
<u>CUat 18</u>	<u>D</u>	<u>85/10/02</u>		<u>S</u>	<u>85/10/03</u>
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		<u>1 / 1</u>			<u>1 / 1</u>
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Comments: _____

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**United States
Information
Agency**

Washington, D.C. 20547

Office of the Director



October 2, 1985

Dear Fred:

On October 2, the Government of Canada officially requested that the United States Government impose import restrictions on certain endangered Canadian antiquities under the provisions of the Cultural Property Act (PL 97-446).

For more than two years officials of the Department of State and I have discussed whether USIA or State would be delegated the Presidential negotiating functions under the Cultural Property Act. Recently Under Secretary Michael Armacost and I agreed to submit to OMB within the next few weeks a joint brief requesting resolution and a Presidential executive order.

With the arrival of the request from Canada, and the consequent need to act on the request, there are two Presidential functions which should be carried out as soon as possible. One statutory requirement is that the President place a notice in the Federal Register that Canada has officially submitted a request under the Cultural Property Act. The other requirement is that the President authorize handing information on the Request to the Cultural Property Advisory Committee, a Presidential advisory committee, housed at USIA under the Act. Because it is important that these Presidential functions be carried out as soon as possible, I have enclosed two draft documents: a Federal Register notice for the President or his designee to place in the Federal Register and a letter instructing me to hand over the Canadian Request to the Cultural Property Advisory Committee.

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Director

Enclosures: As stated

Fred F. Fielding, Esq.
Counsel to the President
The White House
Washington, D.C. 20500

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The United States must be seen as being faithful to its commitment to the protection of cultural property against illicit transfers. For this reason, I look forward to seeing you take the lead on behalf of the United States in being responsive to the Canadian request.

Sincerely,

The Honorable

Charles Z. Wick

Director,

United States Information Agency

Washington, D.C. 20547

MEMORANDUM
OF CALL

Previous editions usable

To:

☒ YOU WERE CALLED BY John ☐ YOU WERE VISITED BY

OF (Organization) Ann Guthrie

☒ PLEASE PHONE ☐ FTS ☐ AUTOVON

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

[MIKE KOZACK
DOS]

RECEIVED BY

DATE

TIME

63-110 NSN 7540-00-634-4018

STANDARD FORM 63 (Rev. 8-81)

★ U.S. G.P.O. 1985-461-274/433

Prescribed by GSA
FPMR (41 CFR) 101-11.6

To: John

Date: 10/23

Time: 2:40

WHILE YOU WERE OUT

M: Ann Guthrie

of

Phone: 485-6612

Area Code

Number

Extension

TELEPHONED ☒

PLEASE CALL ☒

CALLED TO SEE YOU ☒

WILL CALL AGAIN ☐

WANTS TO SEE YOU ☐

URGENT ☐

RETURNED YOUR CALL ☐

Message: \$305 problem

Operator



AMPAD
EFFICIENCY®

23-020

THE WHITE HOUSE

WASHINGTON

October 4, 1985

MEMORANDUM FOR CHARLES Z. WICK
DIRECTOR, UNITED STATES
INFORMATION AGENCY

MICHAEL E. ARMACOST
UNDER SECRETARY FOR POLITICAL AFFAIRS
U.S. DEPARTMENT OF STATE

FROM: FRED F. FIELDING ^{Orig. signed by FFF}
COUNSEL TO THE PRESIDENT

SUBJECT: Convention on Cultural Property

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Please advise if you have any objection to this proposed course of action.

FFF:JGR:aea 10/4/85

cc: FFFielding
JGRoberts
Subj
Chron

THE WHITE HOUSE

WASHINGTON

May 29, 1985

MEMORANDUM FOR FRED F. FIELDING

THROUGH: DAVID B. WALLER *DBW*

FROM: HUGH HEWITT *H Hewitt*

On Wednesday, May 29, 1985, David and I met with Thomas Harvey, General Counsel of USIA, and Ann Guthrie, Executive Director of the Cultural Property Advisory Committee. The meeting was held at Mr. Harvey's request in order to provide David with a heads-up on a proposed delegation of Presidential authority to USIA.

Pursuant to the Convention on Cultural Property and the Convention on Cultural Property Implementation Act, P.L. 97-446, 19 U.S.C. 2601 et. seq., the President is authorized to respond to requests from foreign governments for assistance in protecting the historical and cultural properties of those nations. The President can do this by imposing import restrictions on certain art and archeological objects and by negotiating bilateral or multilateral agreements governing the trade in such objects. The Implementation Act created the Cultural Property Advisory Committee to assist the President in this process.

In anticipation of the first request for assistance under the Convention and the Implementing Act, USIA will soon propose a delegation of Presidential authority. The delegation will be sent in two parts.

The first part will concern purely ministerial functions such as the receipt of the request and the publication of the request in the Federal Register as required by statute.

The second proposed delegation goes to the President's authority to negotiate international agreements aimed at redressing the situation that gives rise to the request. USIA will propose that negotiating authority in these cases be delegated to Director of USIA. The State Department is on record as opposing such a delegation. The most recent meeting between the Director of USIA and Under Secretary of State Michael Armacost on April 25, 1985 did not produce a resolution. The parties will submit their views to OMB in the form of companion briefs. State does not oppose the delegation of the ministerial function to USIA.

The USIA's argument in favor of the delegation of negotiating authority proceeds from the location of the Advisory Committee within USIA. The Committee is charged with investigating

requests from foreign governments and providing advice to the President on the appropriate response.

The meeting was only to alert David to the existence of the dispute. The background materials are attached. We will keep you posted.

WHITE HOUSE LAW LIBRARY
ROOM 528 OEOB
(202) 395-3397

Date 10-3-85

To John Roberts

Room No. _____

From For

☒ To Keep

_____ To Borrow (Date Due _____)

_____ Per Your Request/Per Our
Conversation

_____ FYI

Message: the conversion has
not been printed yet or
assigned a TIAS number.
This document is the best
copy available according to
the State Dept. Library office.

COTTON

Articles of agreement of the International Institute for Cotton. Done at Washington January 17, 1966; entered into force February 23, 1966.

17 UST 83; TIAS 5964; 592 UNTS 171.

States which are parties:

Brazil
India
Ivory Coast
Mexico¹
Nigeria
Tanzania
Uganda
United States
Zimbabwe

Amendments:

September 7, 1966 (17 UST 2378; TIAS 6184; 592 UNTS 204).

July 31, 1979 (30 UST 6220; TIAS 9549).

December 9, 1983.

NOTES:

¹ With a statement.

CULTURAL PROPERTY

Statutes of the International Centre for the Study of the Preservation and Restoration of Cultural Property. Done at New Delhi November–December 1956, and revised April 24, 1963 and April 14–17, 1969; entered into force May 10, 1958; for the United States January 20, 1971.

22 UST 19; TIAS 7038.

States which are parties:

Albania
Algeria
Australia
Austria
Belgium
Brazil
Bulgaria
Canada
Chile
Colombia
Cuba
Cyprus

Denmark
Dominican Rep.
Ecuador
Egypt
Ethiopia
Finland
France
Gabon
Germany, Fed. Rep.¹
Ghana
Guatemala
Guinea
Honduras
India
Iran
Iraq
Israel
Italy
Japan
Jordan
Kampuchea
Korea
Kuwait
Lebanon
Libya
Luxembourg
Madagascar
Malaysia
Malta
Mexico
Morocco
Nepal
Netherlands
Nicaragua
Nigeria
Norway
Pakistan
Paraguay
Peru
Philippines
Poland
Portugal
Romania
Somalia
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Syrian Arab Rep.
Thailand
Tunisia
Turkey
United Kingdom
United States
Vietnam
Yugoslavia

NOTES:

¹ Applicable to Land Berlin.

Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property. Done at Paris November 14, 1970; entered into force April 24, 1972; for the United States December 2, 1983.

TIAS

States which are parties:

Algeria
Argentina
Bolivia
Brazil
Bulgaria
Cameroon

Canada
Central African Rep.
Cuba
Cyprus
Czechoslovakia
Dominican Rep.
Ecuador
Egypt
El Salvador
German Dem. Rep.
Guinea
Honduras
Hungary
India
Iran
Iraq
Italy
Jordan
Kampuchea
Korea, Dem. People's Rep.
Korea, Rep.
Kuwait
Libya
Mauritania
Mauritius
Mexico
Nepal
Nicaragua
Niger
Nigeria
Oman
Pakistan
Panama
Peru
Poland
Qatar
Saudi Arabia
Sri Lanka
Syrian Arab Rep.
Tanzania
Tunisia
Turkey
United States¹
Uruguay
Yugoslavia
Zaire

NOTES:

¹ With reservation and understandings.

CULTURAL RELATIONS

(See also WORLD HERITAGE)

Treaty on the protection of artistic and scientific institutions and historic monuments. Signed at Washington April 15, 1935; entered into force August 26, 1935. 49 Stat. 3267; TS 899; 3 Bevans 254; 167 LNTS 279.

States which are parties:

Brazil
Chile
Colombia
Cuba
Dominican Rep.
El Salvador
Guatemala
Mexico
United States
Venezuela

CONVENTION ON OWNERSHIP OF CULTURAL
PROPERTY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION ON THE MEANS OF PROHIBIT-
ING AND PREVENTING THE ILLICIT IMPORT,
EXPORT, AND TRANSFER OF OWNERSHIP OF CUL-
TURAL PROPERTY



FEBRUARY 2, 1972.—Convention was read the first time and, together
with the message and accompanying papers, was referred to
the Committee on Foreign Relations and ordered to
be printed for use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1972

65-118

5385-2

LETTER OF TRANSMITTAL

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to accession, I transmit herewith the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

The illicit movement of national art treasures has become a matter of serious concern in the world community. Many countries have lost important cultural property through illegal exportation. The theft of art objects from museums, churches and collections is increasing. Rising prices for antiquities stimulate looting of archaeological sites, causing the destruction of irreplaceable resources for scientific and cultural studies. In addition, the appearance in the United States of important art treasures of suspicious origin gives rise to problems in our relations with other countries.

The Convention, adopted on November 14, 1970, by a vote of 77 to 1 with 8 abstentions at the Sixteenth General Conference of the United Nations Educational, Scientific and Cultural Organization, is a significant effort at multilateral cooperation to help preserve the cultural resources of mankind. Under the Convention, each state undertakes to protect its own cultural heritage and agrees to cooperate in a number of important but limited respects to help protect the cultural heritage of other states. Perhaps the heart of the Convention from the standpoint of the United States is Article 9, which establishes an important new framework for international cooperation. Under this Article, the states parties undertake to participate in a concerted international effort to determine and to carry out the necessary corrective measures in cases in which a state's cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials.

The Convention also requires states parties to prohibit the import of cultural property stolen from museums, public monuments or similar institutions and to take appropriate steps, upon request, to recover and return such cultural property. In addition, they pledge to take what measures they can, consistent with existing national legislation, to prevent museums and similar institutions within their territory from acquiring cultural property originating in another state party which has been illegally exported after entry into force of the Convention.

I am enclosing the report of the Secretary of State, which more fully explains the Convention and the reservation and understandings we recommend. Certain provisions of the Convention will require implementing legislation, which the Executive Branch will be prepared to discuss during the Senate's consideration of the Convention.

IV

I believe international cooperation is required in order to preserve the priceless heritage of humanity, and I urge the Senate to give prompt advice and consent to United States accession to this Convention, subject to the reservation and understandings recommended in the report of the Secretary of State.

(Enclosures: 1. Report of the Secretary of State. 2. Copy of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.)

RICHARD NIXON.

THE WHITE HOUSE, February 2, 1972.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, November 11, 1971.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with the recommendation that it be transmitted to the Senate for its advice and consent to accession, a copy of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

The Convention is intended to combat the illegal international trade in national art treasures. This problem has become increasingly serious in recent years. The expanding worldwide market for objects of archaeological and ethnological interest has led to wholesale depredations in some countries. Clandestine excavations frequently have destroyed the scientific value of the objects and of the sites themselves. Ceremonial centers and architectural complexes of ancient civilizations have been mutilated, stone sculptures and reliefs have been removed, and churches have been robbed to feed a flourishing international art market. Moreover, as governments have become more aware of the importance of past civilizations to the cultural heritage of their peoples, they have become increasingly disturbed at the outflow of that heritage to foreign lands as a result of illegal operations. Concern about this problem was first expressed in UNESCO at the Eleventh General Conference (1960) which adopted resolution 4.412 calling for preparation of a Report on "appropriate means of preventing the illicit export, import and sale of cultural property, including the possibility of preparing an international instrument on this subject." This initiative led to the adoption of a recommendation by the Thirteenth General Conference of UNESCO (1964) which called upon Member States to "take appropriate steps to exert control over the export . . . [of] . . . movable and immovable property of great importance to the cultural heritage of a country," to prohibit the import of such property until it "has been cleared from any restrictions on the part of the competent authorities in the exporting state," and to "take appropriate steps to prevent the illicit transfer of ownership of cultural property."

The Fifteenth General Conference (1968) adopted resolution 3.334 which authorized the convening of a special committee to draft an international convention on this subject for submission to the Sixteenth General Conference. A draft convention was established by a Special Committee of Governmental Experts convened at UNESCO House, Paris, April 13-24, 1970, by a vote of 44 (US) to 0, with 2 abstentions. The final text was adopted on November 14, 1970, at the Sixteenth General Conference of UNESCO, by a vote of 77 (US) to 1, with 8 abstentions.

SUMMARY OF PROVISIONS

The Convention provides that the states parties recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin and pledge themselves to oppose these practices by a variety of specific measures. The Convention has no retroactive effect. Each state undertakes to protect its own cultural heritage through national services, as appropriate for each country, and to establish an export certificate for cultural property designated by each country as being of importance. The states parties are required to prohibit the import of cultural property stolen from museums, public monuments or similar institutions and to take appropriate steps, upon request, to recover and return such cultural property, provided that the state of origin is prepared to pay just compensation "to an innocent purchaser or to a person who has valid title to that property". Further, in cases of jeopardy to cultural patrimony by pillage of archaeological or ethnological materials, the states parties are to determine and apply controls on an *ad hoc* basis to specific materials.

The states parties to the Convention also undertake "to take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territory from acquiring cultural property originating in another state party which has been illegally exported after entry into force of this Convention in the states concerned." The reference to "national legislation" was inserted in this paragraph to accommodate the problems of governments, such as the United States Government, which do not have legislation regulating the acquisition policy of private institutions. Thus, in the United States this provision would apply primarily to institutions controlled by the Federal Government. It is expected that private institutions would develop their own code of ethics consistent with the spirit of this provision.

The Convention also includes other obligations of a general character that in most cases are subject to the existing legislation of each state party or to the discretion of each such state.

While the specific provisions of the main operative articles and the negotiating history of the Convention make clear that no retroactive effect is intended and that the provisions of the Convention are not intended to be self-executing, to avoid any ambiguity an understanding as follows would be appropriate: "The United States understands the provisions of the Convention to be neither self-executing nor retroactive."

ARTICLE BY ARTICLE ANALYSIS

Article 1

This Article defines "cultural property" for the purposes of the Convention. The text was inspired in part by a desire of some countries to conform the definition to the nomenclature of the 1950 Brussels Convention on Customs Cooperation. Additional categories of cultural property were added, and the whole was made subject to specific designation of cultural property by each state "as being of importance."

The operation of certain later articles depends upon the definition of "cultural property" in Article 1, as property designated by a state "as being of importance for archaeology, prehistory, history, literature, art or science." For example, Article 7(b) obliges a state party

to bar the import and seek the return of "cultural property" stolen from certain institutions. Consequently, to enjoy the benefits of this provision, the United States will designate in its instrument of accession "as being of importance for archaeology, prehistory, history, literature, art or science" all cultural property encompassed by Article 1 of the Convention which has been or shall from time to time be accessioned to the collection of a museum or a religious or secular public monument or similar institution in the United States. No further action would appear necessary to designate United States cultural property more specifically at this time, but the right to do so would be clearly reserved.

Article 2

This Article recognizes the need for international cooperation and national action to achieve the purposes of the Convention. It is not intended to create rights or impose obligations in addition to those specified in subsequent Articles.

Article 3

This Article declares illicit the import, export or transfer of ownership of cultural property contrary to the provisions adopted under the Convention by the states parties. This Article was given varying interpretations by the states that participated in its negotiation. To insure against construction that might affect property rights, it would be advisable to adopt the following understanding: "The United States understands Article 3 not to modify property interests in cultural property under the laws of the states parties."

Article 4

This Article seeks to define the "cultural heritage" of states for purposes of the Convention. The UNESCO Secretariat draft of the Convention originally spoke of "recognition of the ownership vested in states" of the listed cultural property. However, as the Secretariat explained to the Special Committee of Government Experts that met in April 1970, this Article was not intended to alter or even to deal with property rights. Accordingly, the reference to "ownership" was replaced by the concept of "cultural heritage."

Article 5

Article 5 concerns measures that states parties can take internally to insure the protection of their cultural heritage through the establishment of national services. Each state party is to determine in its discretion which of the measures contemplated in the Article are appropriate for it and to what extent. The fulfillment of the obligation of Article 5 should assure that the burdens of enforcing the substantive obligations of the Convention are fairly distributed among the parties to the Convention.

The "National Services" called for in Article 5 exist already to an extent in the United States. The National Park Service of the Department of the Interior is charged with the preservation of historic sites, monuments, antiquities and other objects on government reservations, and through grants-in-aid programs it assists the states in preservation planning, acquisition and development of historic properties. The Park Service maintains the National Register of Historic Places, and is assisted by the Advisory Council on Historic Preservation in protecting these registered properties from the effects of federally approved

activities. The Library of Congress and the National Archives also have responsibilities for the protection of cultural property. Although not government agencies, the National Trust for Historic Preservation and the Smithsonian Institution are chartered by Congress to perform national roles in the preservation and interpretation of historic properties and the national collections.

Article 6

Article 6 requires each state party to the Convention to prohibit the export of cultural property from its territory unless accompanied by an export certificate. It is recommended that the United States make a formal reservation to Article 6 as follows:

The United States reserves the right to determine whether or not to impose export controls over cultural property.

While export controls may one day be deemed desirable, the United States should reserve the right to determine for itself whether or not it shall impose such export controls.

Article 7

Under Article 7(a), a state party undertakes "to take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another state party which has been illegally exported after entry into force of this Convention in the states concerned." The phrase "consistent with national legislation" was inserted at the suggestion of the United States. The United States Delegation to the UNESCO Sixteenth General Conference, which adopted the Convention, made a statement before voting that in its view Article 7(a) is a compromise provision which applies to institutions whose acquisition policy is subject to national control under domestic legislation, and that it does not require the enactment of new laws to establish national control over other institutions, but will exert powerful moral influence on all institutions. No delegation objected to the United States interpretation. It is suggested that an understanding along similar lines be made by the United States in acceding to the Convention, *viz.*, "The United States understands Article 7(a) to apply to institutions whose acquisition policy is subject to national control under existing domestic legislation and not to require the enactment of new legislation to establish national control over other institutions."

The term "illegally exported" in Article 7(a) should be interpreted only to refer to property exported in violation of Article 6.

Article 7(b) obligates states to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution. The import prohibition would create a juridical basis for later actions to recover the cultural property involved. It is not expected that illicit cultural property ordinarily could be discovered by customs authorities at the frontier. In the United States and other countries judicial process frequently would be necessary to effect recovery. The procedures for recovery and return set forth in paragraph (ii) refer only to Article 7(b)(i) property. Article 7(b) would be implemented by appropriate legislation.

Article 7(b) does not affect existing remedies available in state or federal courts. The purpose is to provide a framework for special government cooperation. United States laws prohibit the knowing

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receipt and transportation of stolen property in interstate and foreign commerce. Stolen cultural property frequently can be recovered by normal police cooperation. Moreover, the true owner of stolen property could always bring an action in the appropriate court, and he might be able to recover the property without payment of compensation even if the holder were an innocent purchaser. Article 13(c) of the Convention specifically contemplates such actions. However, if the government is requested to bring a judicial action under Article 7(b)(ii) of the Convention to recover a foreign cultural property from one of its nationals, the requesting state must be prepared to pay "just compensation to an innocent purchaser or to a person who has valid title to that property."

This provision may require compensation in some cases of persons who would not be entitled to it under present American law, for example, the innocent purchaser of stolen property who does not acquire good title as against the true owner. Some countries, however, apparently insist that an "innocent purchaser" must be compensated. In order to ensure that existing remedies are preserved and that anomalies are minimized an understanding should be made as follows: "The United States understands that Article 7(b) is without prejudice to other remedies, civil or penal, available under the laws of the states parties for the recovery of stolen cultural property to the rightful owner without payment of compensation. The United States is further prepared to take the additional steps contemplated by Article 7(b)(ii) for the return of covered stolen cultural property without payment of compensation, except to the extent required by the Constitution of the United States, for those states parties that agree to do the same for the United States institutions."

Article 7(b) is not tied by any reciprocity to Article 6, and a state party may claim its protection even if it has no export certificate system. At the Sixteenth General Conference of UNESCO, which adopted the Convention, the United States Delegate stated before voting that in his view application of Article 7(b), unlike 7(a), does not depend upon the existence of export controls in the state in which the property is stolen.

Article 8

This Article requires states to impose sanctions on persons responsible for infringing the export prohibitions established under Article 6(b) or the prohibition against importing stolen property found in Article 7(b). Article 6(b) will not be applicable to the United States unless and until it determines to apply export controls. With respect to Article 7(b); the laws of the United States, and presumably the laws of most states, prohibit theft and the receipt and transportation of stolen property. (See Title 18, United States Code, Sections 2314-15). Further, Title 18 United States Code, Section 545 would apply to willful violations of Article 7(b) when that provision is implemented by statute.

Article 9

This Article contemplates the application of import or other controls on an *ad hoc* basis to specifically defined archaeological or ethnological materials in situations in which a state's cultural patrimony is in jeopardy from pillage of these materials. Appropriate controls would be determined and applied to specific materials by mutual

agreement of the states parties most directly concerned. The Congress will be asked to enact legislation to establish an appropriate framework for United States participation in these negotiations and controls.

At the UNESCO Sixteenth General Conference, the United States Delegate said before voting that in his view the procedure in Article 9 for determination of concrete measures to deal with pillage of archaeological or ethnological materials will permit the states affected to determine by mutual agreement the measures that can be effective in each particular case to deal with the situation and to accept responsibility for carrying out those measures on a multilateral basis. Two examples of such situations are (1) the case in which the remains of a particular civilization are threatened with destruction or wholesale removal as may be true of certain pre-Columbian monuments, and (2) the case in which the international market for certain items has stimulated widespread illegal excavations destructive of important archaeological resources.

Interested states are to take provisional measures "to the extent feasible" in order to prevent irremediable injury to the cultural heritage of the state concerned.

Article 10

Paragraphs (a) and (b) require states to seek to combat illicit movement of cultural property through means of education. In addition, states are required by paragraph (a) to regulate antique dealers, as appropriate for each country. The language "as appropriate for each country" gives each state considerable discretion to determine what, if any, regulations and/or sanctions should be imposed and in what manner. Since such regulation is normally within the domain of the several States of the United States, and not the Federal Government, the following understanding is recommended:

The United States understands the words "as appropriate for each country" in Article 10(a) as permitting each state party to determine the extent of regulation, if any, of antique dealers and declares that in the United States that determination would be made by the appropriate authorities of state and municipal governments.

Article 11

Article 11 recognizes certain exports of cultural property under compulsion from occupied territories as being "illicit."

Article 12

Article 12 requires states parties to respect the cultural heritage of the territories for the international relations of which they are responsible and to take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories.

Article 13

Article 13 deals in general terms with measures other than import controls to prevent illicit transfer of cultural property and to facilitate the restitution of such property. In the view of the Department of State, the language "consistent with the laws of each State," which applies to all the subparagraphs of the Article, insures that this Article does not require action by any state in conflict with or going beyond its existing laws.

Paragraph (a) is of relevance primarily to the exporting state.

Paragraph (b) contemplates the normal cooperation of law enforcement agencies and cultural services within the framework of existing law. Under United States procedures, the rightful owner of stolen property may be able to recover it through normal police action if issues and interests requiring litigation do not arise.

Paragraph (c) contemplating judicial actions for recovery of lost or stolen property conforms with United States law. The obligation of this Article is procedural, i.e., to provide a judicial remedy for the vindication of a property right if one exists. The action must be brought on behalf of the property owner; the right of a government to bring such an action would be determined by the law of the forum.

As paragraph (d) of Article 13 is worded, each state party must facilitate the recovery of certain cultural property exported illegally from another which has been declared by the latter to be "inalienable". The Chairman of the UNESCO Special Committee of Governmental Experts, in April 1970, said in his remarks on this Article that the obligation of subsection (d) would be satisfied if a state party opened its courts to admit actions for recovery of lost and stolen articles under subsection (c) of Article 13. Presumably, the relevant law in the United States would recognize the validity of foreign legislation declaring certain cultural property within the jurisdiction of a foreign state to be inalienable. Illegal removal of such property without consent of the owner should be recognized as theft. This provision is not self-executing, however, and in the absence of federal legislation, the decision in each case would be governed by state law.

To avoid any appearance of a commitment broader than intended, the following understanding is proposed:

The United States understands Article 13(d) as applying to objects removed from the country of origin after the entry into force of this Convention for the states concerned, and, as stated by the Chairman of the Special Committee of Governmental Experts that prepared the text, and reported in paragraph 28 of the Report of that Committee, the means of recovery of cultural property under subparagraph (d) are the judicial actions referred to in subparagraph (c) of Article 13, and that such actions are controlled by the law of the requested State, the requesting State having to submit necessary proofs.

Article 14

The negotiating history of Article 14 makes clear that the Article is intended to be recommendatory.

Article 17

This Article deals with the role of UNESCO.

Paragraph 5, which authorizes UNESCO to extend its good offices at the request of at least two parties engaged in a dispute over the implementation of the Convention, was proposed by the United States. This provision applies only if two parties in an adversary relationship on the issue make the request, and any procedures initiated or solutions effected apply only to the consenting states.

Conclusion

I believe that the illicit movement of cultural property is a serious problem that warrants action on the international plane. The

UNESCO Convention represents a pragmatic approach that deserves our strong support. Not only is the United States sympathetic to this effort to help other countries stem the illegal outflow of their national art treasures, but in addition we should recognize that accession to this Convention is in our national interest. The destruction of irreplaceable remains of ancient civilizations is a loss to the cultural heritage of all mankind. And the appearance of important art treasures of suspicious origin in the United States gives rise to problems in our relations with other countries. Some countries have reacted to this problem in a fashion which unduly restricts the work of archeologists within their territories as well as the legitimate trade of cultural property. In seeking to prevent the illegitimate trade in cultural property, the Convention should allay the anxieties of these countries and thus encourage the liberalization of laws governing the legitimate trade in such property. Moreover, the Convention should create a climate more conducive to the continued work of American archaeologists abroad. Further, Article 7(b) is of direct benefit to the United States for it would require states to prohibit the import of, and take appropriate steps to recover and return, cultural property stolen from museums, religious or secular public monuments, or similar institutions.

The Convention is a balanced document. It represents an accommodation of the interests of the art importing and art exporting states and contains a realistic allocation of burdens. The Convention recognizes that the primary responsibility for the prevention of illegal export of cultural property rests on the individual state concerned. It recognizes, however, that a multilateral effort to deal with the problem is also required. Thus Article 9 provides a flexible framework for the development of future international cooperation in this area. If special cases should arise in which the multilateral actions contemplated by this Article are not adequate to prevent significant impairment of important archeological materials or sites, the United States Government would remain free to consider what further measures of cooperation it might be able to undertake that could be effective in the circumstances. On the whole, the Convention is a significant effort to deal with a complex problem that does not easily yield to legal solutions. While it is a compromise text and contains several ambiguities, it should be possible to overcome these problems by the reservation and understandings I have suggested.

Concerned private groups have supported the Convention. A lawyers' committee of the American Society of International Law Panel on the International Movement of Art Treasures sent me a letter on October 21, 1970, enclosing its report and recommending that "the United States should approve it [the Convention] with certain explicit reservations and understandings." That general approach has also been supported by the Special Policy Committee of the American Association of Museums. On December 30, 1970, the Archaeological Institute of America passed a resolution by a vote of 103 to 8, with 7 abstentions, supporting the UNESCO Convention "wholeheartedly" and urging ratification by the United States "at the earliest practical moment." The Society for American Archaeology and the College Art Association have also adopted resolutions supporting the UNESCO Convention.

at 1970-11-10 10:00 AM. The text of the resolution is as follows: "The Archaeological Institute of America, in support of the UNESCO Convention, recommends that the United States should approve it with certain explicit reservations and understandings."

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United States accession to this Convention at an early date is, in my opinion, in the interests of the United States, and, in addition, would indicate to other countries our honest desire to deal with the problem of illicit international movement of national art treasures.

Respectfully submitted.

WILLIAM P. ROGERS.

(Enclosure: Copy of Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.)

CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE
ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL
PROPERTY

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 12 October to 14 November 1970, at its sixteenth session,

Recalling the importance of the provisions contained in the Declaration of the Principles of International Cultural Co-operation, adopted by the General Conference at its fourteenth session,

Considering that the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations,

Considering that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting,

Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export,

Considering that, to avert these dangers, it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations,

Considering that, as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles,

Considering that the illicit import, export and transfer of ownership of cultural property is an obstacle to that understanding between nations which it is part of Unesco's mission to promote by recommending to interested States, international conventions to this end,

Considering that the protection of cultural heritage can be effective only if organized both nationally and internationally among States working in close co-operation,

Considering that the Unesco General Conference adopted a Recommendation to this effect in 1964,

Having before it further proposals on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, a question which is on the agenda for the session as item 19,

Having decided, at its fifteenth session, that this question should be made the subject of an international convention,

Adopts this Convention on the fourteenth day of November 1970.

ARTICLE 1

For the purposes of this Convention, the term "cultural property" means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology,

prehistory, history, literature, art or science and which belongs to the following categories:

(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;

(b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;

(c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

(d) elements of artistic or historical monuments or archaeological sites which have been dismembered;

(e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;

(f) objects of ethnological interest;

(g) property of artistic interest, such as:

(i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) original works of statuary art and sculpture in any material;

(iii) original engravings, prints and lithographs;

(iv) original artistic assemblages and montages in any material;

(h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;

(i) postage, revenue and similar stamps, singly or in collections;

(j) archives, including sound, photographic and cinematographic archives;

(k) articles of furniture more than one hundred years old and old musical instruments.

ARTICLE 2

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting therefrom.

2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.

ARTICLE 3

The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit.

ARTICLE 4

The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State:

(a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory;

(b) cultural property found within the national territory;

(c) cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property;

(d) cultural property which has been the subject of a freely agreed exchange;

(e) cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.

ARTICLE 5

To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:

(a) Contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;

(b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;

(c) promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops . . .) required to ensure the preservation and presentation of cultural property;

(d) organizing the supervision of archaeological excavations, ensuring the preservation "in situ" of certain cultural property, and protecting certain areas reserved for future archaeological research;

(e) establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;

(f) taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;

(g) seeing that appropriate publicity is given to the disappearance of any items of cultural property.

ARTICLE 6

The State Parties to this Convention undertake:

(a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations;

(b) to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate;

(c) to publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property.

ARTICLE 7

The States Parties to this Convention undertake:

(a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;

(b) (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;

(ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

ARTICLE 8

The States Parties to this Convention undertake to impose penalties or administrative sanctions on any person responsible for infringing the prohibitions referred to under Articles 6(b) and 7(b) above.

ARTICLE 9

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States

Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irreparable injury to the cultural heritage of the requesting State.

ARTICLE 10

The States Parties to this Convention undertake:

(a) To restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject;

(b) to endeavour by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports.

ARTICLE 11

The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit.

ARTICLE 12

The States Parties to this Convention shall respect the cultural heritage within the territories for the international relations of which they are responsible, and shall take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories.

ARTICLE 13

The States Parties to this Convention also undertake, consistent with the laws of each State:

(a) To prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property;

(b) to ensure that their competent services cooperate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;

(c) to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners;

(d) to recognize the indefeasible right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should therefore *ipso facto* not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.

ARTICLE 14

In order to prevent illicit export and to meet the obligations arising from the implementation of this Convention, each State Party to the Convention should, as far as it is able, provide the national services responsible for the protection of its cultural heritage with an adequate budget and, if necessary, should set up a fund for this purpose.

ARTICLE 15

Nothing in this Convention shall prevent States Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned.

ARTICLE 16

The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.

ARTICLE 17

1. The States Parties to this Convention may call on the technical assistance of the United Nations Educational, Scientific and Cultural Organization, particularly as regards:

- (a) Information and education;
- (b) consultation and expert advice;
- (c) co-ordination and good offices.

2. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative conduct research and publish studies on matters relevant to the illicit movement of cultural property.

3. To this end, the United Nations Educational, Scientific and Cultural Organization may also call on the co-operation of any competent non-governmental organization.

4. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative, make proposals to States Parties to this Convention for its implementation.

5. At the request of at least two States Parties to this Convention which are engaged in a dispute over its implementation, Unesco may extend its good offices to reach a settlement between them.

ARTICLE 18

This Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

ARTICLE 19

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.

2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

ARTICLE 20

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited to accede to it by the Executive Board of the Organization.

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

ARTICLE 21

This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

ARTICLE 22

The States Parties to this Convention recognize that the Convention is applicable not only to their metropolitan territories but also to all territories for the international relations of which they are responsible; they undertake to consult, if necessary, the governments or other competent authorities of these territories on or before ratification, acceptance or accession with a view to securing the application of the Convention to those territories, and to notify the Director-General of the United Nations Educational, Scientific and Cultural Organization of the territories to which it is applied, the notification to take effect three months after the date of its receipt.

ARTICLE 23

1. Each State Party to this Convention may denounce the Convention on its own behalf or on behalf of any territory for whose international relations it is responsible.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation.

ARTICLE 24

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 20, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in Articles 19 and 20, and of the notifications and denunciations provided for in Articles 22 and 23 respectively.

ARTICLE 25

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.

2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force.

ARTICLE 26

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Done in Paris this seventeenth day of November 1970, in two authentic copies bearing the signature of the President of the sixteenth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 19 and 20 as well as to the United Nations.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its sixteenth session, which was held in Paris and declared closed the fourteenth day of November 1970.

In faith whereof we have appended our signatures this seventeenth day of November 1970.

ATILIO DELL'ORO MAINI,

The President of the General Conference.

RENE MAHEU,

The Director-General.

THE WHITE HOUSE
WASHINGTON

Date Oct. 9, 1985

FOR: John
FROM: **DAVID B. WALLER**

ACTION

- ☒ For your information
☐ For your review and comment
☐ As we discussed
☐ For your files
☐ Please see me
☐ Return to me after your review

COMMENT

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News Release

United States Information Agency
Washington, D.C. 20547



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CONTACT: Lois Herrmann
PHONE: (202) 485-2355

CANADA FILES FIRST REQUEST TO U.S. FOR PROTECTION OF ENDANGERED ARTIFACTS

WASHINGTON, Oct. 2 -- The Canadian government has formally asked the United States to impose import restrictions against certain endangered Canadian archaeological and ethnological artifacts. Canada is the first country to submit such a request under the terms of the U.S. Cultural Property Act (PL 97-446).

The request was delivered personally to Charles Z. Wick, director of the U.S. Information Agency, by Dr. Jean Sutherland Boggs on behalf of the Government of Canada. Dr. Sutherland Boggs, special advisor for cultural affairs to the Canadian minister of communications, is a former director of the National Gallery of Canada and has had a long and distinguished career in the museum field. She was accompanied at the presentation by Canadian ambassador to the United States, Allan Gotlieb.

The Cultural Property Act, signed by President Reagan in 1983, implements U.S. acceptance of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The convention received unanimous advice and consent from the U.S. Senate in 1972.

As required by the act, the Canadian written request, with accompanying documentation of need for assistance, will be reviewed by USIA's Cultural Property Advisory Committee before recommendations are submitted to the President for executive action.

(more)

The Cultural Property Advisory Committee, appointed by the President, is made up of experts in archaeology, ethnology, anthropology and the international sale of art, as well as representatives of the museum community and general public. The committee is chaired by Michael J. Kelly, chairman and chief executive officer of Kelco Industries in Woodstock, Ill.

The 1970 UNESCO convention rose from a growing international concern that the high demand for cultural objects in the art market had generated rampant pillaging of archaeological sites, destroying countries' cultural heritages.

Countries that have ratified the 1970 UNESCO Convention are eligible to submit requests for U.S. import restrictions to protect archaeological and ethnological objects that comprise their cultural patrimony. In order to be considered for import restrictions, an archaeological object must be of cultural significance, at least 250 years old, and normally discovered as a result of scientific excavation, accidental digging, or exploration on land or under water. An ethnological object must be the product of a tribal or non-industrial society and important to the cultural heritage of a people.

The President will receive a report on the committee's findings and will make the final decision as to whether the U.S. should enter into an agreement with the requesting country to impose import restrictions against the cultural items in the request.

The U.S. Information Agency, an independent agency within the Executive Branch, is responsible for the U.S. Government's overseas information and cultural programs, including the Voice of America, WORLDNET television service, magazines, exhibitions, and the Fulbright scholarship program. USIA also administers a variety of other exchange activities involving American artists, sports professionals, and high school youths.

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CONVENTION ON CULTURAL PROPERTY IMPLEMENTATION ACT (P.L. 97-446)

FACT SHEET

On January 12, 1983 President Reagan signed the Convention on Cultural Property Implementation Act (P.L. 97-446). This enabled U.S. acceptance of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. With this action, the U.S. became the first major art importing nation to implement the UNESCO Convention. Today there are 56 countries participating in this international concerted effort to curb the illegal movement of cultural property and thereby reduce the incentives for pillage.

Drafted and negotiated with U.S. assistance, the 1970 Convention rose from a growing international concern that the high demand for cultural objects in the art market had generated rampant pillaging, particularly in countries with few resources to protect their cultural heritage. Pillaging has robbed these objects of their provenance, often resulting in mutilation and often destroying forever vital traces of their place in the history of mankind.

U.S. Procedures in Considering State Party Requests

A request for assistance from a State Party (a country that has ratified the 1970 UNESCO Convention) is submitted to the President of the United States or his designee. Under the terms of Article 9 of the UNESCO Convention, such State Party requests are for U.S. import restrictions on archaeological and ethnological material, the pillage of which is jeopardizing the national cultural patrimony of the Requesting Party. The Request must be in the form of a written statement accompanied by factual justification of the following:

- 1) that the Requesting State Party's cultural patrimony is in jeopardy from the pillage of archaeological or ethnological materials; and
- 2) that it has taken measures consistent with the 1970 Convention to protect its cultural patrimony; and
- 3) that import restrictions would be of substantial benefit in deterring a serious situation of pillage "if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations individually having a significant import trade in such material;" that less drastic measures than import restrictions are not available;
- 4) and that the application of import restrictions will be of interest and benefit to "the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes."

In order to be considered for import restrictions, archaeological and ethnological materials must meet certain definitions.

Archaeological material must be:

- 1) "of cultural significance; and
- 2) at least 250 years old; and
- 3) normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water."

Ethnological material is defined as material that is:

- 1) "the product of a tribal or nonindustrial society and
- 2) 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."

While only State Parties to the 1970 UNESCO Convention may file requests for import restrictions, countries other than State Parties may join the U.S. in protecting the endangered materials through the application of similar restrictions or other protective measures.

Responsibilities of the Cultural Property Advisory Committee

The Cultural Property Act establishes the Cultural Property Advisory Committee as a Presidential advisory body. Its function is to review requests from other countries for U.S. assistance in protecting their cultural patrimony that is in danger from pillage.

In response to the receipt of information from the President about each request for import restrictions by a State Party, the Cultural Property Advisory Committee undertakes a review and investigation. The Committee must then submit within 150 calendar days, a report to the President or his designee setting forth its findings and its recommendations as to whether the United States should enter into an agreement (bilateral or multilateral) with the Requesting Party for the purpose of imposing import restrictions under the terms of the Act.

Emergency action: Within 90 calendar days from the day the Advisory Committee receives information on a request for emergency action, or from which an emergency condition may be inferred, the Committee must prepare a report for the President with reasons and recommendations as to whether emergency action should be implemented; or stating and giving the reasons that an emergency condition does not exist.

The Advisory Committee is composed of 11 members appointed by the President. Mr. Michael J. Kelly, a representative of the general public, was designated Chairman by President Reagan in March 1984. Members are appointed to represent one of four categories of membership as designated by Congress in the Cultural Property Implementation Act: (1) experts in archaeology, anthropology and ethnology; (2) experts in the international sale of cultural property; (3) representatives of the interests of museums; and (4) representatives of the interests of the general public. The term for each member is for two years. A member may be appointed for more than one term. (Current members are listed on page 4.)

The Advisory Committee is an independent entity within the United States Information Agency (USIA), the agency responsible for the U.S. Government's overseas information and cultural programs. The USIA provides administrative and technical services, including staff, to the Advisory Committee. The Committee staff is located within the Bureau of Educational and Cultural Affairs.

Responsibilities of the President

All Committee reports are submitted to the President or his designee for consideration and action. Should the Committee Report recommend that an agreement be entered into, the President may take appropriate steps to negotiate such an agreement. However, should the President not enter into such agreement he is obligated by law to submit to Congress a report justifying his action.

The President may enter into a bilateral or multilateral agreement with the Requesting State Party. The Act provides that the President may not enter into an agreement with the Requesting Party unless similar import restrictions are applied within a reasonable period of time by those nations "individually having a significant import trade in such material." The President, however, is not absolutely precluded by this provision from entering a bilateral agreement, especially in the case of a request for emergency action.

Bilateral and multilateral agreements will have an effective period of five years. Emergency measures will also have a five year effective period. At the time an extension of an agreement or emergency measure is requested, the Committee will again undertake to submit a report to the President outlining recommendations and reasons as to whether or not to extend the agreement or emergency measure. Bilateral and multilateral agreements may be extended for five years; however, an emergency measure may be extended for three years. The President, under the provisions of P.L. 97-446, may suspend import restrictions before an agreement has expired.

Enforcement by U.S. Customs Service

After an agreement or emergency action has entered into force under the terms of P.L. 97-446, the Secretary of the Treasury, after consultation with USIA, "shall by regulation promulgate a list of the archaeological or ethnological material of the State Party covered by the agreement or by such action." Fair notice of material subject to restrictions shall be given to importers and other interested persons.

It is the responsibility of U.S. Customs to enforce the import restrictions. "No designated archaeological or ethnological material that is exported...from the State Party after the designation of such material may be imported into the United States unless the State Party issues documentation which certifies that such exportation was not in violation of the laws of the State Party."

In the absence of documentation as specified under the provisions of P.L. 97-446, the material may be subject to seizure and forfeiture by the U.S. Customs Service.

The Convention on Cultural Property Implementation Act is not retroactive; therefore, those objects already in the U.S. that may eventually be placed under import restrictions, are not subject to the provisions of this law. Only those objects that enter or re-enter the U.S. after an agreement or emergency action has entered into force are subject to the conditions of this law.

MEMBERS OF THE CULTURAL PROPERTY ADVISORY COMMITTEE

The following members were appointed in 1984 to the Cultural Property Advisory Committee by President Reagan:

Experts in Archaeology/Ethnology/Anthropology:

- Dr. Clemency C. Coggins, archaeologist, Associate in Pre-Columbian Art, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, Massachusetts
- Dr. D. Fred Wendorf, Jr., archaeologist, Distinguished Professor of Pre-History, Southern Methodist University, Dallas, Texas
- Dr. Leslie E. Wildesen, archaeologist, The State Archaeologist; Deputy State Historic Preservation Officer; Vice President of Colorado Historical Society, Denver, Colorado

Experts in the International Sale of Art:

Mr. James G. Crowley, III, art dealer, Spartanburg, South Carolina
Mr. James Berry Hill, art dealer, Berry-Hill Galleries, Inc.,
New York, New York
Mr. Alfred E. Stendahl, art dealer, Stendahl Art Galleries,
Los Angeles, California

Representatives of the Museum Community:

Dr. Patricia R. Anawalt, Consulting Curator of Costumes and Textiles,
Museum of Cultural History, University of California, Los Angeles
Mr. Arthur A. Houghton, III, Associate Curator for Antiquities,
J. Paul Getty Museum, Malibu, California

Representatives of the General Public:

**Mr. James W. Alsdorf, Chairman of the Board and Director of Alsdorf
International, Ltd., Chicago, Illinois
*Mr. Michael J. Kelly, Chairman of the Board and Chief Executive
Officer of Kelco Industries, Inc., Woodstock, Illinois
**Mr. John J. Slocum, former Foreign Service Information Officer
and former Special Assistant to the Secretary of the
Smithsonian Institution, Newport, Rhode Island

*Chairman

**Vice Chairman

Further information is available from the Cultural Property Advisory
Committee's staff:

Ann J. Guthrie, Executive Director
Maria I. Papageorge, Deputy Director
United States Information Agency (E/B)
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Washington, D.C. 20547
(202) 485-6612

October 1985