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# News Release

United States Information Agency  
Washington, D.C. 20547



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## 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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# The Cultural Property Act

## What It Means for Museums

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*Maria Papageorge Kouroupas  
and Ann J. Guthrie*

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**P**illage and illicit appropriation of cultural property are nothing new. Conquering armies, diplomats, amateur archeologists and tourists have had a hand in it for generations going back to Roman times. But only in the late 1960s and 1970s did the argument that pillaging produces an irretrievable loss to scholarship and strips a nation of its cultural identity gain wide enough attention so that serious consideration was given this insidious problem. The swelling illicit art market has grown, by some estimates, to one billion dollars—second only to the narcotics trade in dollar value.

As the 97th Congress drew to a close, it passed a landmark bill placing the United States at the forefront of the international effort to curb pillaging and illicit trafficking of cultural property. President Reagan signed the bill into law on January 12, 1983—the culmination of more than a decade of debate over proposed U.S. implementation of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Passage of the Cultural Property Implementation Act gives the United States the distinction of being the first major art-importing country in the world to implement the UNESCO Convention. A bold initiative on the part of the United States, this move makes the convention operational for most of the other 54 signatory countries whose national patrimony is in jeopardy from pillage.

By adopting the convention in 1970, member countries of the United Nations Educational, Scientific and Cultural Organization made manifest their constitutional charge: "Preservation and protection of the universal heritage of books, works of art and other monuments of historical and

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MARIA PAPAGEORGE KOUROUPAS is deputy director of the Cultural Property Advisory Committee, administered by the United States Information Agency. She was the AAM/ICOM program coordinator. ANN J. GUTHRIE is executive director of the Cultural Property Advisory Committee of the USIA. She previously worked for the National Endowment for the Arts and on the presidential speechwriting and public liaison staffs in the Reagan White House.



*Warrior Bird, painted wall mural, Teotihuacán, Mexico, 400-700 A.D. Although the Teotihuacán murals had been willed to the Fine Arts Museums of San Francisco, Mexico fought for their repatriation in 1978, and in accordance with an earlier treaty, half the murals were to be returned to Mexico.*

scientific interest." The convention was an international response to the 1960s upsurge in pillaging of archeological sites and of art thefts that paralleled an increased demand in the world art market. The 1970 convention represents a worldwide consensus that this demand has spawned abject destruction of such sites and has led to the creation of a sophisticated illicit network of trade in materials from them. At the same time, museum development programs have grown in countries whose national patrimony is in jeopardy from pillage. New museum projects in the Middle East, North Africa and Asia represent an effort to preserve cultural identity and promote heritage awareness among native populations. Increasingly, countries are taking action on a national level to safeguard their cultural heritage, and in recent years a strengthening of national legislation is evident. For example, Mexico has placed all cultural



patrimony under the control of the state and is now exercising stringent export controls. Canada's Cultural Property Export and Import Act (1978) provides for an export control list protecting Canada's patrimony while at the same time restricting the importation of unlicensed cultural property from countries that are party to the UNESCO Convention.

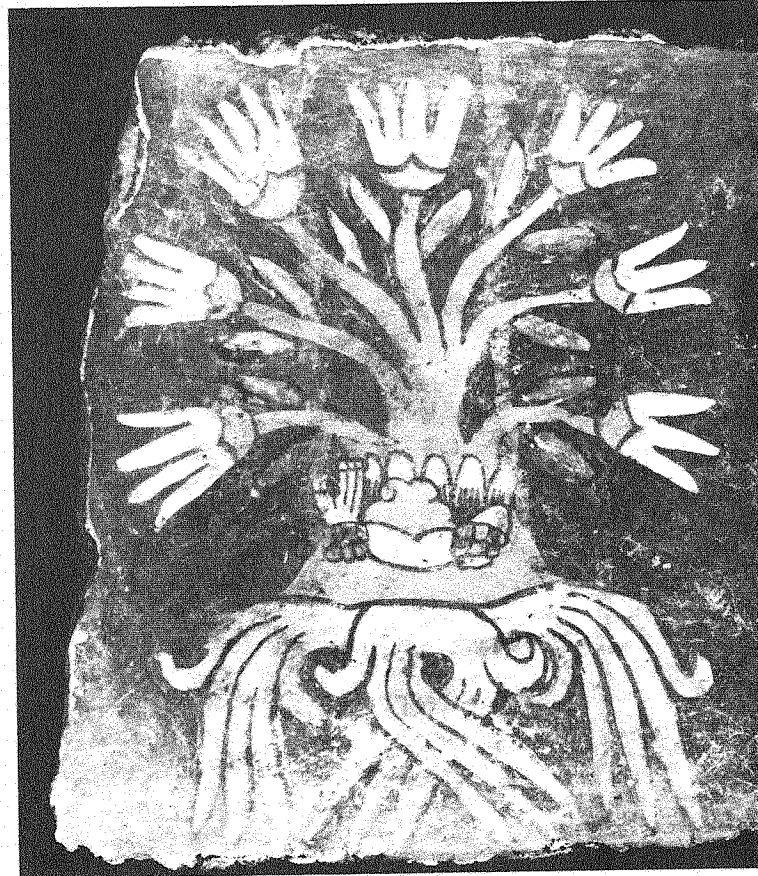
## An Ever-Present Problem

In *Art Theft: Its Scope, Its Impact and Its Control*, Bonnie Burnham asserts that "Art theft is an ever-present problem in the art community, but one that is rarely discussed by experts. . . . 'Stolen' is not a provenance that has been frequently encountered in catalogues raisonn ." Burnham continues, "The worldwide expansion of the art market, manifested in a blossoming of the uses of art objects by an ever-enlarging public, has carried with it consequent multiplication of the risks of collecting, preserving, buying and selling art."

Clemency Coggins, specialist in pre-Columbian art, writing in *Art News* in 1978, characterizes these risks: "One may wonder how buying a Maya polychrome ceramic vessel in New York or Switzerland can be destructive. That purchase serves to support the international market in antiquities and tribal art, which in turn finances the looting of sites and the drain on ethnographic objects from all over the world. In order for a collector to have [such a pot], it is necessary to loot many burials to destroy incalculably valuable cultural evidence and to break the laws of, at the very least, the country of origin."

Referring to revelations Coggins made in a 1969 article about the illicit movement of pre-Columbian art, Paul M. Bator, author of *The International Trade in Art*, wrote, "The cat was thus out of the bag. The respectable part of the art world could no longer pretend that the looting of ancient art was a matter involving only a few obscure peasants, corrupt local officials and unscrupulous dealers. Splendid national treasures, stolen and mutilated, could within a few years find their way into the halls of America's most sumptuous museums." This climate of crisis, combined with U.S. State Department concern about the resultant strain on foreign relations, was the dawn of more than a decade of activity that culminated in the passage of the 1983 U.S. Cultural Property Implementation Act.

It was in 1964 that UNESCO member countries adopted a *Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property*. They called for bilateral and multilateral cooperative arrangements that would effectively address the problems of the illicit movement of cultural property out of the country of origin. With the subsequent adoption of the 1970 UNESCO Convention a framework was established. The United States' participation in the drafting of the document was considerable and



Flowering Trees, painted wall mural, Teotihuacan, Mexico, 400-700 A.D. Both the Fine Arts Museums of San Francisco and the National Institute of Anthropology in Mexico are credited with saving the Teotihuacan murals and both share responsibilities for their care and conservation.

exercised through the Department of State. This, and the Senate's advice and consent to ratification in 1972, set the country on a course that ultimately led to the implementing of the 1983 legislation. In the intervening years the U.S. took independent steps toward amelioration of the problem of pillage.

The U.S. entered into a treaty of cooperation with Mexico in 1971 to protect materials "of outstanding importance to the national patrimony." Each country agreed that on request it would "employ the legal means at its disposal to recover and return from its territory stolen archeological, historical and cultural properties" from the territory of the other. Most important, this treaty authorizes the U.S. attorney general, when necessary, to represent Mexico in any civil action for recovery of such property, giving effect to the ownership laws of the Mexican government.

On the heels of this move, in 1972 the U.S. government passed the Pre-Columbian Monumental and Architectural Sculpture and Mural Statute prohibiting the importation of such material without an export license issued by the country of origin. This statute gives effect to the export laws of Mexico and 12 countries in Central and South



America and the Caribbean, but delimits U.S. protection to pre-Columbian monumental and architectural sculpture and murals.

### The McClain Case

Another dynamic was emerging in the 1970s as victimized countries began to pursue their interests more aggressively under existing U.S. law. Guatemala, in seeking recovery of a pre-Columbian stela, became the first foreign government to sue in an American court. The suit never came to trial, for the FBI seized the stela which had not been properly declared at customs by the importer, Clive Hollingshead. He was indicted by a federal grand jury and subsequently found guilty of transporting stolen property. The piece had undisputedly been documented by archaeologists as belonging to Guatemala. Then in 1977 the Fifth Circuit Court applied the National Stolen Property Act in the *McClain Case* which involved the interstate and foreign transport of pre-Columbian objects valued over \$5,000 that had been exported from Mexico. The court found that the defendants knowingly violated a Mexican statute declaring pre-Columbian objects to be property of the state. The court held that the objects, which the defendants secretly attempted to sell in San Antonio, had been "stolen" since Mexico claimed blanket title to all such material whether discovered or undiscovered. This decision has vexed art dealers, collectors and many museums,

and an attempt to overturn it is underfoot. Subsequent reciprocal agreements between the U.S. and Latin American countries to assist in the recovery of cultural property find their strength in this ruling.

In a separate case in 1978 involving Teotihuacán murals that had been willed to the Fine Arts Museums of San Francisco, Mexico requested that the U.S. attorney general represent it in an effort to recover the murals under the terms of the 1971 treaty with the U.S. The matter was subsequently settled out of court in a manner that brings credit both to the San Francisco museums and Mexico's National Institute of Anthropology. The two institutions agreed that half of the murals would be returned to Mexico. Selection of the half to be returned would be in accordance with ICOM's Study on the Principles, Conditions and Means for Restitution of Cultural Property. It was further agreed that the murals would be subject to a conservation program to which Mexico, known worldwide for its expertise in this area, would provide technical assistance. Both museums agreed to undertake fund-raising responsibility for the project.

By 1980 there was still no U.S. legislation implementing the 1970 UNESCO Convention. In its absence a generation of good-faith measures known as Cultural Property Recovery Agreements were negotiated between the U.S. government and Peru, Ecuador and Guatemala. The Peruvian agreement was inspired by a case involving the seizure at Washington's Dulles Airport of a shipment of freshly dug pre-Columbian objects. The importer, an art dealer, had violated a customs regulation by undervaluing the objects on his declaration. Later, customs officers seized 600 more objects from the dealer's New York apartment.

### Disparate Points of View

In 1972 the U.S. Senate gave its advice and consent to U.S. acceptance of the UNESCO Convention. Since the convention was not self-executing, Congress had to develop special implementing legislation. The stage was set for a protracted debate between two disparate points of view — one advocating unrestricted trade and the other supporting sanctions on illicitly appropriated cultural materials; one promoting access to the world's art for esthetic purposes and the other calling for restricted access as an incentive to reducing the pillage that harms not only the esthetic but the historic resource contained in the cultural material.

Art dealers, many of whom have contributed scholarly publications in their area of expertise, argued that Americans are better at preserving objects, studying them and displaying them for esthetic and educational purposes. Clemency Coggins' response was, "If we are the best caretakers then we must teach others, not despoil them." Dealers and others argued that the U.S. should not be the only art-importing country to implement the convention for that would not serve to reduce pillage, but only enlarge

existing markets, primarily in Western Europe and Japan. Gerald Stiebel of Rosenberg and Stiebel noted in *Art News* in 1978 that "Dealers have an interest that is more than just financial. They are also collectors and they are involved with museums. We want to see the U.S. as important culturally as the countries of Europe, which have not ratified the UNESCO Convention. . . . No dealer in our association [National Antique and Art Dealers Association of America, Inc.] wants to deal in stolen art, but there must be clear and concise definitions . . . as opposed to the rather broad sweep of early bills introduced in Congress."

While some museums found themselves not inclined to support implementing legislation, most did, and voiced their support through professional organizations—principally the American Association of Museums and the Association of Art Museum Directors. Museum leaders joined archeologists and anthropologists in presenting testimony to counter that submitted by representatives of art dealer associations. As recently as 1981, AAM president Craig C. Black, following in the tradition of his predecessors, informed the Reagan administration of the association's posture:

The American Association of Museums has gone on record in strong support of the 1970 UNESCO Convention . . . and in support of legislation to implement the Senate ratification of that Convention. . . . The American Association of Museums is totally opposed to any import of cultural property not in compliance with the laws of the country of origin and with our own laws regulating importation of antiquities. There is absolutely no foundation for the oft-heard statement that compliance with the UNESCO Convention will irreparably harm U.S. museums, and the museum community in this country stands fully behind the Convention.

Only a few years earlier, members of the AAM had unanimously adopted a comprehensive code of ethics that includes the following statement:

Illicit trade in objects encourages the destruction of sites, the violation of national exportation laws, and contravention of the spirit of national patrimony. Museums must acknowledge the relationship between the marketplace and the initial and often destructive taking of an object for the commercial market. They must not support that illicit market. Each museum must develop a method for considering objects of this status for acquisition that will allow it to acquire or accept an object only when it can determine with reasonable certainty that it has not been immediately derived from this illicit trade and that its acquisition does not contribute to the continuation of that trade.

Similar action was taken by the AAMD in 1981 and the Curators Committee of the AAM in 1983. The movement to establish clear standards of professional practices was carried forward as recently as June of 1984 when the AAM's Registrars Committee adopted its own code of ethics. It cautions that "registrars should be aware of, and

not contribute to, the violation of tax, wildlife, import or other laws and regulations governing acquisitions of objects by their museums and other institutions with which they are involved." It urges registrars to "monitor compliance with local, state, national and international laws as well as with their museums' acquisitions policies."

By late 1982 all the points and counterpoints had been made in the legislative arena with regard to the wisdom of U.S. implementation of the 1970 UNESCO Convention. Hill staffers worked with interested groups to develop a compromise measure that was adopted on the last day of the 97th Congress.

## Implementing the Convention

U.S. involvement in the international effort to curb pillage is now entering a new era. Through the Cultural Property Implementation Act the president now has the statutory authority to impose emergency import restrictions on designated archeological or ethnological material illegally exported from the country of origin; or he may negotiate bilateral or multilateral agreements placing U.S. import restrictions and simultaneously accommodating the licit availability of the protected material, such as exhibitions or access to the material by scholars for research purposes. Both avenues of action have the effect of honoring another country's export laws—the strongest protection the U.S. has offered to date. This protection is not automatic and can only be initiated by the submission of a request, under Article 9 of the 1970 UNESCO Convention, from a foreign country that is also a signatory to the convention (see list). Examples of appropriate situations for U.S. action would be: 1) a case in which the remains or record of a particular culture or civilization are threatened with destruction, dismantling, fragmentation or wholesale removal; 2) a case in which the international market for certain items has stimulated widespread illegal excavations destroying important archeological evidence.

Whatever the president's actions, they are to be taken after considering the recommendations provided by the Cultural Property Advisory Committee, 11 private citizens representing the interests of specific groups. As prescribed by law, the committee is composed of three experts in archeology, anthropology and ethnology (Clemency C. Coggins, Fred Wendorf and Leslie E. Wildesen); three experts in the international sale of art (James Berry Hill, Alfred E. Stendahl and James G. Crowley III); two representatives of the museum community (Patricia R. Anawalt and Arthur A. Houghton III); and three members representing the interests of the general public (James W. Alsdorf, Michael J. Kelly and John J. Slocum). Committee members were appointed by President Reagan to two-year terms in 1984. The president designated Kelly as chairman, and vice chairmen Alsdorf and Slocum were elected by the committee. As the act states, administrative and



technical support and staff for the committee is provided by the U.S. Information Agency — the U.S. communications, educational and cultural affairs agency abroad. The committee may, however, call on other agencies for needed personnel and expertise.

The act is also concerned with curbing international trade in stolen cultural property. Since April 12, 1983, it has been illegal to bring into the United States any article of inventoried cultural property stolen from a monument, museum or similar institution located in a state party to the convention. "Cultural property" is defined as being any article of importance for archeology, prehistory, history, literature, art or science. The U.S. Customs Service will aid in recovering such materials.

The Cultural Property Advisory Committee is responsible for advising the president and Congress on the effectiveness of the act. Its primary charge, however, is to review and, if necessary, investigate each request for import re-

strictions referred to it by the president. Within a specified time frame, the committee must then submit a written report of its findings and recommendations regarding the four determinations the president must make before deciding his course of action:

- 1) that the Requesting State Party's cultural patrimony is in jeopardy from the pillage of archaeological and/or ethnological materials described in the Request; and
- 2) that the State Party has taken measures consistent with the UNESCO 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 by those nations having a significant import trade in such material; and that less drastic measures than import restrictions are not available; and
- 4) 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.

The third determination is an attempt to obtain the international cooperation of other art-importing nations that are not party to the convention. The act restricts the president from entering into a bilateral or multilateral agreement unless countries "individually having a significant import trade" in the relevant archeological or ethnological material apply import restrictions similar to those of the U.S. Typical of the labyrinthine nature of the act, however, there is an exception to this restriction so that certain circumstances may indeed pave the way for the president to negotiate a bilateral agreement if similar import "restrictions are not essential to deter a serious situation of pillage," and if he can determine that the application of similar import restrictions by other nations "individually having a significant import trade in such material would be substantial benefit in deterring a serious situation of pillage."

Archeological material, as stated in the act, "must be of cultural significance and at least 250 years old and 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 the product of a tribal or nonindustrial society and is 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." There is no age requirement for ethnological materials.

### Effect on Museums

As long as museums seriously adopt and adhere to self-regulating acquisitions policies that seek to determine the provenance of objects; that require export certificates with objects either donated to or purchased by the museum,

### Signatories to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

Algeria	Jordan
Argentina	Kuwait
Bolivia	Mauritania
Brazil	Mauritius
Bulgaria	Mexico
Cameroon	Nepal
Canada	Nicaragua
Central African Republic	Niger
Cuba	Nigeria
Cyprus	Oman
Czechoslovakia	Pakistan
Democratic Kampuchea	Panama
Democratic People's Republic of Korea	Peru
Dominican Republic	Poland
Ecuador	Qatar
Egypt	Republic of Korea
El Salvador	Saudi Arabia
German Democratic Republic	Socialist People's Libyan Arab Jamahiriya
Greece	Senegal
Guatemala	Sri Lanka
Guinea	Syrian Arab Republic
Honduras	Tunisia
Hungary	Turkey
India	United Republic of Tanzania
Iran	United States of America
Iraq	Uruguay
Italy	Yugoslavia
	Zaire

that encourage fair notice to the country of origin where doubt exists about the legal ownership of an object, their risk to liability, generally, will be vastly minimized.

It is important for museums to understand that the act is not retroactive and blanket import restrictions have not been imposed. The material covered in prospective import bans will be archeological and ethnological material as described above and such restrictions, if applied, would be on a country-by-country basis and would become effective only when a designated list of objects is published in the *Federal Register*. The advisory committee expects that an

acquisitions should contact the International Foundation for Art Research in New York or Interpol to learn what objects have been reported stolen. U.S. Customs can make seizures even after stolen or designated objects have penetrated inspection at the port of entry and, as a general principle of U.S. law, a thief cannot pass title to stolen property.

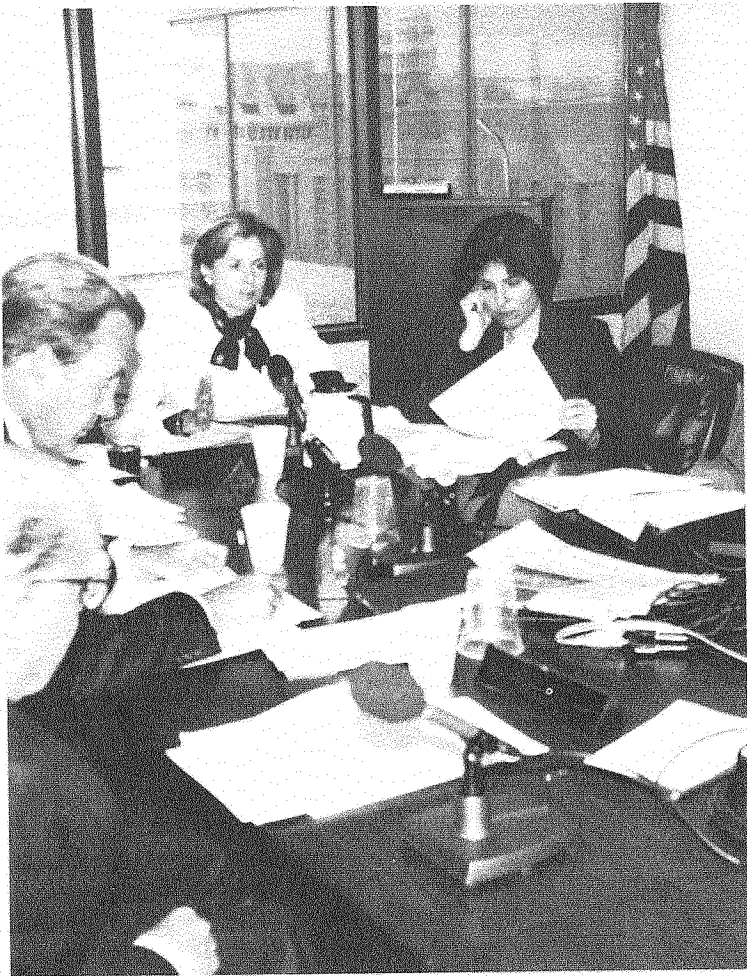
One entire section of the act pertains to the designated material and to those articles of stolen cultural property that are exempt from the provisions of the act. A chief exemption is applied to any such material imported into the United States for temporary exhibition purposes and immunized from judicial seizure by the general counsel of USIA. Other exemptions are itemized in a series of "grandfather clauses" or repose conditions ranging from three to 20 years. These statutes of limitation are activated *only* after the effective date of the designated list of material to be protected (date of *Federal Register* notification), and following the importation into the U.S. of any article of cultural property, whether stolen or on the designated list.

Museums may become involved in the effective implementation of the act in a variety of ways. For example, the act specifically provides that "pending a final determination as to whether any archeological or ethnological material or article of cultural property, has been imported into the U.S. in violation of the Act, the Secretary [of the Treasury] shall, upon application by any museum or other cultural or scientific institution in the United States which is open to the public, permit such material or article to be retained at such institution," provided that the institution takes appropriate precautions.

Museums should be integral to implementing the act's charge that "the president should endeavor to obtain the commitment of the State Party concerned to permit the exchange of its archeological and ethnological materials under circumstances in which such exchange does not jeopardize its cultural patrimony." This perhaps heralds a wave of future international exhibitions and suggests possibilities for other museum-to-museum cultural programming.

The advisory committee has spent its inaugural year being briefed by experts in various aspects of cultural property and establishing internal operating procedures and guidelines for submitting a request. These will be published once they are made final.

The advisory committee has yet to deliberate a request from a state party to the convention. Deliberation of the first request will, of course, establish the precedent the world is anxious to record. It could tell a great deal about the concerns of other nations and U.S. perceptions of those concerns, about the effectiveness of the act and this country's seriousness in applying its provisions, and about the extent of our commitment to lead the international community in effectively reducing incentives for the illicit import and export of cultural property. Δ



*Cultural Property Advisory Committee meeting in Washington, D.C., November, 1984*

additional information mechanism will be used to notify all concerned trade associations that a designated list has been published so that the grassroots constituency may be so informed through these direct channels.

Articles of cultural property stolen from an inventoried collection are not subject to notice in the *Federal Register* since they are treated differently in the act from designated archeological and ethnological material. This provision has been in effect since April 12, 1983. Museums making

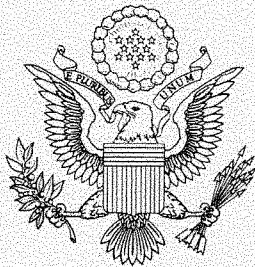




Reprinted from MUSEUM NEWS/June 1985

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**USIA**

INFORMATION ON

CONVENTION ON CULTURAL PROPERTY  
IMPLEMENTATION ACT

(P.L. 97-446)

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UNESCO Convention on the Means of Prohibiting and  
Preventing the Illicit Import, Export and Transfer of  
Ownership of Cultural Property (November 1970)

List of State Parties to the UNESCO Convention

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March 1985

SYNOPSIS OF  
U.S. IMPLEMENTATION OF  
1970 UNESCO CONVENTION  
ON CULTURAL PROPERTY

The United States has joined the international effort to reduce pillage of cultural treasures that are part of a nation's patrimony.

The framework for this U.S. initiative is the Convention on Cultural Property Implementation Act, signed by President Reagan in January 1983. The U.S. instrument of acceptance was deposited with UNESCO and entered into force December 2, 1983. With this action the United States became the first major art importing country to implement the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. To date, there are 56 signatory countries to the UNESCO Convention.

U.S. withdrawal from UNESCO does not affect U.S. obligations under this UNESCO Convention.

Essentially, the U.S. law carries out two major provisions of the UNESCO Convention:

1. Stolen Cultural Property (Article 7(b)): Any article of ~~stolen~~ cultural property documented as belonging to the inventory of a public monument, museum, or similar institution located in a State Party is prohibited importation into the U.S. after April 12, 1983 (or the date the State Party implemented the Convention, whichever date is later). The U.S. Customs Service is responsible for enforcement.
  
2. Endangered Archaeological and Ethnological Materials (Article 9): It establishes a mechanism whereby the President may enter a bilateral or multilateral agreement or take unilateral emergency action to protect, through the imposition of U.S. import restrictions, archaeological or ethnological materials that are part of a country's cultural patrimony and in danger from pillage. Each request for import restrictions from a State Party is reviewed by the Cultural Property Advisory Committee which makes recommendations to the President as to whether action should be taken. The eleven members of the Advisory Committee were appointed by President Reagan in 1984 and are carrying out their responsibilities under this law.

**CULTURAL PROPERTY ADVISORY COMMITTEE**

**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. It joins 55 other countries 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.

Function of the Cultural Property Advisory Committee

The Convention on Cultural Property Implementation 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 the protection of their cultural patrimony that is in danger from pillage. Based on its review, the Committee will prepare and submit reports to the President setting forth recommended courses of action for assistance requested by the other signatory countries to the 1970 UNESCO Convention.

The 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 Committee. The Committee staff reports directly to the Associate Director of the Bureau of Educational and Cultural Affairs.

The Committee is composed of 11 members appointed by the President. They represent 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 reappointed for one or more terms.

**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 through diplomatic channels. Under the terms of Article 9 of the UNESCO Convention, State Party requests will be 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."

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 will undertake a review and investigation. The Committee will then submit within 150 calendar days, a report to the President 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 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.



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 import restrictions or other protective measures.

### Responsibilities of the President

All Committee reports are submitted to the President for consideration and action and to Congress for oversight. 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.

\*\*\*\*\*

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

- \*\*Mr. James W. Alsdorf, Chairman of the Board and Director of Alsdorf International, Ltd., Chicago, Illinois
- Dr. Patricia R. Anawalt, Consulting Curator of Costumes and Textiles, Museum of Cultural History, University of California, Los Angeles
- Dr. Clemency C. Coggins, archaeologist, Associate in Pre-Columbian Art, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, Massachusetts
- 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. Arthur A. Houghton, III, Associate Curator for Antiquities, J. Paul Getty Museum, Malibu, California
- \*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
- Mr. Alfred E. Stendahl, art dealer, Stendahl Art Galleries, Los Angeles, California
- 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

\*Chairman of Committee

\*\*Vice Chairman of Committee

For further information, contact the Cultural Property Advisory Committee staff:

Ann J. Guthrie, Executive Director  
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Bureau of Educational and Cultural Affairs  
United States Information Agency  
301 4th Street, S.W.  
Washington, D.C. 20547  
(202) 485-6612

March 1985

Public Law 97-446  
97th Congress

An Act

To reduce certain duties, to suspend temporarily certain duties, to extend certain existing suspensions of duties, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Convention on  
Cultural  
Property  
Implementation  
Act.  
19 USC 2601  
note.

TITLE III—IMPLEMENTATION OF CONVENTION ON  
CULTURAL PROPERTY

SEC. 301. SHORT TITLE.

This title may be cited as the "Convention on Cultural Property 96 STAT. 2351 Implementation Act".

SEC. 302. DEFINITIONS.

19 USC 2601.

For purposes of this title—

(1) The term "agreement" includes any amendment to, or extension of, any agreement under this title that enters into force with respect to the United States.

(2) The term "archaeological or ethnological material of the State Party" means—

(A) any object of archaeological interest;

(B) any object of ethnological interest; or

(C) any fragment or part of any object referred to in subparagraph (A) or (B);

which was first discovered within, and is subject to export control by, the State Party. For purposes of this paragraph—

(i) no object may be considered to be an object of archaeological interest unless such object—

(I) is of cultural significance;

(II) is at least two hundred and fifty years old; and

(III) was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water; and

(ii) no object may be considered to be an object of ethnological interest unless such object is—

(I) the product of a tribal or nonindustrial society, and

(II) important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people.

(3) The term "Committee" means the Cultural Property Advisory Committee established under section 206.

(4) The term "consignee" means a consignee as defined in section 483 of the Tariff Act of 1930 (19 U.S.C. 1483).

(5) The term "Convention" means the Convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization at its sixteenth session.

(6) The term "cultural property" includes articles described in article 1 (a) through (k) of the Convention whether or not any such article is specifically designated as such by any State Party for the purposes of such article.

(7) The term "designated archaeological or ethnological material" means any archaeological or ethnological material of the State Party which—

(A) is—

(i) covered by an agreement under this title that enters into force with respect to the United States, or

(ii) subject to emergency action under section 304, and

(B) is listed by regulation under section 305.

(8) The term "Secretary" means the Secretary of the Treasury or his delegate.

(9) The term "State Party" means any nation which has ratified, accepted, or acceded to the Convention.

Ante, p. 2349.

(10) The term "United States" includes the several States, the District of Columbia, and any territory or area the foreign relations for which the United States is responsible.

(11) The term "United States citizen" means—

(A) any individual who is a citizen or national of the United States;

(B) any corporation, partnership, association, or other legal entity organized or existing under the laws of the United States or any State; or

(C) any department, agency, or entity of the Federal Government or of any government of any State.

19 USC 2602.

**SEC. 303. AGREEMENTS TO IMPLEMENT ARTICLE 9 OF THE CONVENTION.**

**(a) AGREEMENT AUTHORITY.—**

(1) **IN GENERAL.**—If the President determines, after request is made to the United States under article 9 of the Convention by any State Party—

(A) that the cultural patrimony of the State Party is in jeopardy from the pillage of archaeological or ethnological materials of the State Party;

(B) that the State Party has taken measures consistent with the Convention to protect its cultural patrimony;

(C) that—

(i) the application of the import restrictions set forth in section 307 with respect to archaeological or ethnological material of the State Party, if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations (whether or not State Parties) individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage, and

(ii) remedies less drastic than the application of the restrictions set forth in such section are not available; and

(D) that the application of the import restrictions set forth in section 307 in the particular circumstances is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes; the President may, subject to the provisions of this title, take the actions described in paragraph (2).

(2) **AUTHORITY OF PRESIDENT.**—For purposes of paragraph (1), the President may enter into—

(A) a bilateral agreement with the State Party to apply the import restrictions set forth in section 307 to the archaeological or ethnological material of the State Party the pillage of which is creating the jeopardy to the cultural patrimony of the State Party found to exist under paragraph (1)(A); or

(B) a multilateral agreement with the State Party and with one or more other nations (whether or not a State Party) under which the United States will apply such restrictions, and the other nations will apply similar restrictions, with respect to such material.

(3) **REQUESTS.**—A request made to the United States under article 9 of the Convention by a State Party must be accompa-

nied by a written statement of the facts known to the State Party that relate to those matters with respect to which determinations must be made under subparagraphs (A) through (D) of paragraph (1).

(4) IMPLEMENTATION.—In implementing this subsection, the President should endeavor to obtain the commitment of the State Party concerned to permit the exchange of its archaeological and ethnological materials under circumstances in which such exchange does not jeopardize its cultural patrimony.

(b) EFFECTIVE PERIOD.—The President may not enter into any agreement under subsection (a) which has an effective period beyond the close of the five-year period beginning on the date on which such agreement enters into force with respect to the United States.

(c) RESTRICTIONS ON ENTERING INTO AGREEMENTS.—

(1) IN GENERAL.—The President may not enter into a bilateral or multilateral agreement authorized by subsection (a) unless the application of the import restrictions set forth in section 307 with respect to archaeological or ethnological material of the State Party making a request to the United States under article 9 of the Convention will be applied in concert with similar restrictions implemented, or to be implemented, by those nations (whether or not State Parties) individually having a significant import trade in such material.

(2) EXCEPTION TO RESTRICTIONS.—Notwithstanding paragraph (1), the President may enter into an agreement if he determines that a nation individually having a significant import trade in such material is not implementing, or is not likely to implement, similar restrictions, but—

(A) such restrictions are not essential to deter a serious situation of pillage, and

(B) the application of the import restrictions set forth in section 307 in concert with similar restrictions implemented, or to be implemented, by other nations (whether or not State Parties) individually having a significant import trade in such material would be of substantial benefit in deterring a serious situation of pillage.

(d) SUSPENSION OF IMPORT RESTRICTIONS UNDER AGREEMENTS.—If, after an agreement enters into force with respect to the United States, the President determines that a number of parties to the agreement (other than parties described in subsection (c)(2)) having significant import trade in the archaeological and ethnological material covered by the agreement—

(1) have not implemented within a reasonable period of time import restrictions that are similar to those set forth in section 307, or

(2) are not implementing such restrictions satisfactorily with the result that no substantial benefit in deterring a serious situation of pillage in the State Party concerned is being obtained,

the President shall suspend the implementation of the import restrictions under section 307 until such time as the nations take appropriate corrective action.

(e) EXTENSION OF AGREEMENTS.—The President may extend any agreement that enters into force with respect to the United States for additional periods of not more than five years each if the President determines that—

(1) the factors referred to in subsection (a)(1) which justified the entering into of the agreement still pertain, and

(2) no cause for suspension under subsection (d) exists.

(f) PROCEDURES.—If any request described in subsection (a) is made by a State Party, or if the President proposes to extend any agreement under subsection (e), the President shall—

(1) publish notification of the request or proposal in the Federal Register;

(2) submit to the Committee such information regarding the request or proposal (including, if applicable, information from the State Party with respect to the implementation of emergency action under section 304) as is appropriate to enable the Committee to carry out its duties under section 306(f); and

(3) consider, in taking action on the request or proposal, the views and recommendations contained in any Committee report—

(A) required under section 306(f) (1) or (2), and

(B) submitted to the President before the close of the one-hundred-and-fifty-day period beginning on the day on which the President submitted information on the request or proposal to the Committee under paragraph (2).

(g) INFORMATION ON PRESIDENTIAL ACTION.—

(1) IN GENERAL.—In any case in which the President—

(A) enters into or extends an agreement pursuant to subsection (a) or (e), or

(B) applies import restrictions under section 204, the President shall, promptly after taking such action, submit a report to the Congress.

(2) REPORT.—The report under paragraph (1) shall contain—

(A) a description of such action (including the text of any agreement entered into),

(B) the differences (if any) between such action and the views and recommendations contained in any Committee report which the President was required to consider, and

(C) the reasons for any such difference.

(3) INFORMATION RELATING TO COMMITTEE RECOMMENDATIONS.—If any Committee report required to be considered by the President recommends that an agreement be entered into, but no such agreement is entered into, the President shall submit to the Congress a report which contains the reasons why such agreement was not entered into.

Publication in  
Federal  
Register.  
Submittal to  
Committee.

Report to  
Congress.

Report to  
Congress.

19 USC 2603.

#### SEC. 304. EMERGENCY IMPLEMENTATION OF IMPORT RESTRICTIONS.

(a) EMERGENCY CONDITION DEFINED.—For purposes of this section, the term "emergency condition" means, with respect to any archaeological or ethnological material of any State Party, that such material is—

(1) a newly discovered type of material which is of importance for the understanding of the history of mankind and is in jeopardy from pillage, dismantling, dispersal, or fragmentation;

(2) identifiable as coming from any site recognized to be of high cultural significance if such site is in jeopardy from pillage, dismantling, dispersal, or fragmentation which is, or threatens to be, of crisis proportions; or

(3) a part of the remains of a particular culture or civilization, the record of which is in jeopardy from pillage, dismantling,



dispersal, or fragmentation which is, or threatens to be, of crisis proportions;  
and application of the import restrictions set forth in section 307 on a temporary basis would, in whole or in part, reduce the incentive for such pillage, dismantling, dispersal or fragmentation.

(b) **PRESIDENTIAL ACTION.**—Subject to subsection (c), if the President determines that an emergency condition applies with respect to any archaeological or ethnological material of any State Party, the President may apply the import restrictions set forth in section 307 with respect to such material.

(c) **LIMITATIONS.**—

(1) The President may not implement this section with respect to the archaeological or ethnological materials of any State Party unless the State Party has made a request described in section 303(a) to the United States and has supplied information which supports a determination that an emergency condition exists.

(2) In taking action under subsection (b) with respect to any State Party, the President shall consider the views and recommendations contained in the Committee report required under section 306(f)(3) if the report is submitted to the President before the close of the ninety-day period beginning on the day on which the President submitted information to the Committee under section 303(f)(2) on the request of the State Party under section 303(a).

Report.

(3) No import restrictions set forth in section 307 may be applied under this section to the archaeological or ethnological materials of any State Party for more than five years after the date on which the request of a State Party under section 303(a) is made to the United States. This period may be extended by the President for three more years if the President determines that the emergency condition continues to apply with respect to the archaeological or ethnological material. However, before taking such action, the President shall request and consider, if received within ninety days, a report of the Committee setting forth its recommendations, together with the reasons therefor, as to whether such import restrictions shall be extended.

Extension.

Report.

(4) The import restrictions under this section may continue to apply in whole or in part, if before their expiration under paragraph (3), there has entered into force with respect to the archaeological or ethnological materials an agreement under section 203 or an agreement with a State Party to which the Senate has given its advice and consent to ratification. Such import restrictions may continue to apply for the duration of the agreement.

**SEC. 305. DESIGNATION OF MATERIALS COVERED BY AGREEMENTS OR EMERGENCY ACTIONS.** 19 USC 2604.

After any agreement enters into force under section 303, or emergency action is taken under section 304, the Secretary, after consultation with the Director of the United States Information Agency, shall by regulation promulgate (and when appropriate shall revise) a list of the archaeological or ethnological material of the State Party covered by the agreement or by such action. The Secretary may list such material by type or other appropriate classification, but each listing made under this section shall be sufficiently specific and precise to insure that (1) the import restric-

tions under section 307 are applied only to the archeological and ethnological material covered by the agreement or emergency action; and (2) fair notice is given to importers and other persons as to what material is subject to such restrictions.

19 USC 2605.

## SEC. 306. CULTURAL PROPERTY ADVISORY COMMITTEE.

(a) **ESTABLISHMENT.**—There is established the Cultural Property Advisory Committee.

(b) **MEMBERSHIP.**—

(1) The Committee shall be composed of eleven members appointed by the President as follows:

(A) Two members representing the interests of museums.

(B) Three members who shall be experts in the fields of archaeology, anthropology, ethnology, or related areas.

(C) Three members who shall be experts in the international sale of archaeological, ethnological, and other cultural property.

(D) Three members who shall represent the interest of the general public.

(2) Appointments made under paragraph (1) shall be made in such a manner so as to insure—

(A) fair representation of the various interests of the public sectors and the private sectors in the international exchange of archaeological and ethnological materials, and

(B) that within such sectors, fair representation is accorded to the interests of regional and local institutions and museums.

(3)(A) Members of the Committee shall be appointed for terms of two years and may be reappointed for 1 or more terms.

(B) A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

(c) **EXPENSES.**—The members of the Committee shall be reimbursed for actual expenses incurred in the performance of duties for the Committee.

(d) **TRANSACTION OF BUSINESS.**—Six of the members of the Committee shall constitute a quorum. All decisions of the Committee shall be by majority vote of the members present and voting.

(e) **STAFF AND ADMINISTRATION.**—

(1) The Director of the United States Information Agency shall make available to the Committee such administrative and technical support services and assistance as it may reasonably require to carry out its activities. Upon the request of the Committee, the head of any other Federal agency may detail to the Committee, on a reimbursable basis, any of the personnel of such agency to assist the Committee in carrying out its functions, and provide such information and assistance as the Committee may reasonably require to carry out its activities.

(2) The Committee shall meet at the call of the Director of the United States Information Agency, or when a majority of its members request a meeting in writing.

(f) **REPORTS BY COMMITTEE.**—

(1) The Committee shall, with respect to each request of a State Party referred to in section 303(a), undertake an investigation and review with respect to matters referred to in section 303(a)(1) as they relate to the State Party or the request and shall prepare a report setting forth—

(A) the results of such investigation and review;

(B) its findings as to the nations individually having a significant import trade in the relevant material; and

(C) its recommendation, together with the reasons therefor, as to whether an agreement should be entered into under section 303(a) with respect to the State Party.

(2) The Committee shall, with respect to each agreement proposed to be extended by the President under section 303(e), prepare a report setting forth its recommendations together with the reasons therefor, as to whether or not the agreement should be extended.

(3) The Committee shall in each case in which the Committee finds that an emergency condition under section 304 exists prepare a report setting forth its recommendations, together with the reasons therefor, as to whether emergency action under section 304 should be implemented. If any State Party indicates in its request under section 303(a) that an emergency condition exists and the Committee finds that such a condition does not exist, the Committee shall prepare a report setting forth the reasons for such finding.

(4) Any report prepared by the Committee which recommends the entering into or the extension of any agreement under section 303 or the implementation of emergency action under section 304 shall set forth—

(A) such terms and conditions which it considers necessary and appropriate to include within such agreement, or apply with respect to such implementation, for purposes of carrying out the intent of the Convention; and

(B) such archaeological or ethnological material of the State Party, specified by type or such other classification as the Committee deems appropriate, which should be covered by such agreement or action.

(5) If any member of the Committee disagrees with respect to any matter in any report prepared under this subsection, such member may prepare a statement setting forth the reasons for such disagreement and such statement shall be appended to, and considered a part of, the report.

(6) The Committee shall submit to the Congress and the President a copy of each report prepared by it under this subsection.

**(g) COMMITTEE REVIEW.—**

(1) **IN GENERAL.**—The Committee shall undertake a continuing review of the effectiveness of agreements under section 303 that have entered into force with respect to the United States, and of emergency action implemented under section 304.

(2) **ACTION BY COMMITTEE.**—If the Committee finds, as a result of such review, that—

(A) cause exists for suspending, under section 303(d), the import restrictions imposed under an agreement;

(B) any agreement or emergency action is not achieving the purposes for which entered into or implemented; or

(C) changes are required to this title in order to implement fully the obligations of the United States under the Convention;

the Committee may submit a report to the Congress and the President setting forth its recommendations for suspending such import restrictions or for improving the effectiveness of any such agreement or emergency action or this title.

Report to  
Congress.

5 USC app.

(h) **FEDERAL ADVISORY COMMITTEE ACT.**—The provisions of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. Appendix D) shall apply to the Committee except that the requirements of subsections (a) and (b) of section 10 and section 11 of such Act (relating to open meetings, public notice, public participation, and public availability of documents) shall not apply to the Committee, whenever and to the extent it is determined by the President or his designee that the disclosure of matters involved in the Committee's proceedings would compromise the Government's negotiating objectives or bargaining positions on the negotiations of any agreement authorized by this title.

(i) **CONFIDENTIAL INFORMATION.**—

(1) **IN GENERAL.**—Any information (including trade secrets and commercial or financial information which is privileged or confidential) submitted in confidence by the private sector to officers or employees of the United States or to the Committee in connection with the responsibilities of the Committee shall not be disclosed to any person other than to—

(A) officers and employees of the United States designated by the Director of the United States Information Agency;

(B) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are designated by the chairman of either such Committee and members of the staff of either such Committee designated by the chairman for use in connection with negotiation of agreements or other activities authorized by this title; and

(C) the Committee established under this title.

(2) **GOVERNMENTAL INFORMATION.**—Information submitted in confidence by officers or employees of the United States to the Committee shall not be disclosed other than in accordance with rules issued by the Director of the United States Information Agency, after consultation with the Committee. Such rules shall define the categories of information which require restricted or confidential handling by such Committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice the interests of the United States. Such rules shall, to the maximum extent feasible, permit meaningful consultations by Committee members with persons affected by proposed agreements authorized by this title.

(j) **NO AUTHORITY TO NEGOTIATE.**—Nothing contained in this section shall be construed to authorize or to permit any individual (not otherwise authorized or permitted) to participate directly in any negotiation of any agreement authorized by this title.

19 USC 2606.

**SEC. 307. IMPORT RESTRICTIONS.**

(a) **DOCUMENTATION OF LAWFUL EXPORTATION.**—No designated archaeological or ethnological material that is exported (whether or not such exportation is to the United States) from the State Party after the designation of such material under section 305 may be imported into the United States unless the State Party issues a certification or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

(b) **CUSTOMS ACTION IN ABSENCE OF DOCUMENTATION.**—If the consignee of any designated archaeological or ethnological material is

unable to present to the customs officer concerned at the time of making entry of such material—

(1) the certificate or other documentation of the State Party required under subsection (a); or

(2) satisfactory evidence that such material was exported from the State Party—

(A) not less than ten years before the date of such entry and that neither the person for whose account the material is imported (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than one year before that date of entry, or

(B) on or before the date on which such material was designated under section 305,

the customs officer concerned shall refuse to release the material from customs custody and send it to a bonded warehouse or store to be held at the risk and expense of the consignee, notwithstanding any other provision of law, until such documentation or evidence is filed with such officer. If such documentation or evidence is not presented within ninety days after the date on which such material is refused release from customs custody, or such longer period as may be allowed by the Secretary for good cause shown, the material shall be subject to seizure and forfeiture. The presentation of such documentation or evidence shall not bar subsequent action under section 310.

Seizure and  
forfeiture.

(c) DEFINITION OF SATISFACTORY EVIDENCE.—The term “satisfactory evidence” means—

(1) for purposes of subsection (b)(2)(A)—

(A) one or more declarations under oath by the importer, or the person for whose account the material is imported, stating that, to the best of his knowledge—

(i) the material was exported from the State Party not less than ten years before the date of entry into the United States, and

(ii) neither such importer or person (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than one year before the date of entry of the material; and

(B) a statement provided by the consignor, or person who sold the material to the importer, which states the date, or, if not known, his belief, that the material was exported from the State Party not less than ten years before the date of entry into the United States, and the reasons on which the statement is based; and

(2) for purposes of subsection (b)(2)(B)—

(A) one or more declarations under oath by the importer or the person for whose account the material is to be imported, stating that, to the best of his knowledge, the material was exported from the State Party on or before the date such material was designated under section 305, and

(B) a statement by the consignor or person who sold the material to the importer which states the date, or if not known, his belief, that the material was exported from the State Party on or before the date such material was designated under section 305, and the reasons on which the statement is based.

(d) **RELATED PERSONS.**—For purposes of subsections (b) and (c), a person shall be treated as a related person to an importer, or to a person for whose account material is imported, if such person—

(1) is a member of the same family as the importer or person of account, including, but not limited to, membership as a brother or sister (whether by whole or half blood), spouse, ancestor, or lineal descendant;

(2) is a partner or associate with the importer or person of account in any partnership, association, or other venture; or

(3) is a corporation or other legal entity in which the importer or person of account directly or indirectly owns, controls, or holds power to vote 20 percent or more of the outstanding voting stock or shares in the entity.

19 USC 2607.

**SEC. 308. STOLEN CULTURAL PROPERTY.**

No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which is stolen from such institution after the effective date of this title, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the United States.

19 USC 2608.

**SEC. 309. TEMPORARY DISPOSITION OF MATERIALS AND ARTICLES SUBJECT TO TITLE.**

Pending a final determination as to whether any archaeological or ethnological material, or any article of cultural property, has been imported into the United States in violation of section 307 or section 308, the Secretary shall, upon application by any museum or other cultural or scientific institution in the United States which is open to the public, permit such material or article to be retained at such institution if he finds that—

(1) sufficient safeguards will be taken by the institution for the protection of such material or article; and

(2) sufficient bond is posted by the institution to ensure its return to the Secretary.

19 USC 2609

**SEC. 310. SEIZURE AND FORFEITURE.**

(a) **IN GENERAL.**—Any designated archaeological or ethnological material or article of cultural property, as the case may be, which is imported into the United States in violation of section 307 or section 308 shall be subject to seizure and forfeiture. All provisions of law relating to seizure, forfeiture, and condemnation for violation of the customs laws shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this title, insofar as such provisions of law are applicable to, and not inconsistent with, the provisions of this title.

(b) **ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIAL.**—Any designated archaeological or ethnological material which is imported into the United States in violation of section 307 and which is forfeited to the United States under this title shall—

(1) first be offered for return to the State Party;

(2) if not returned to the State Party, be returned to a claimant with respect to whom the material was forfeited if that claimant establishes—

(A) valid title to the material,

(B) that the claimant is a bona fide purchaser for value of the material; or



(3) if not returned to the State Party under paragraph (1) or to a claimant under paragraph (2), be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

No return of material may be made under paragraph (1) or (2) unless the State Party or claimant, as the case may be, bears the expenses incurred incident to the return and delivery, and complies with such other requirements relating to the return as the Secretary shall prescribe.

(c) ARTICLES OF CULTURAL PROPERTY.—

(1) In any action for forfeiture under this section regarding an article of cultural property imported into the United States in violation of section 208, if the claimant establishes valid title to the article, under applicable law, as against the institution from which the article was stolen, forfeiture shall not be decreed unless the State Party to which the article is to be returned pays the claimant just compensation for the article. In any action for forfeiture under this section where the claimant does not establish such title but establishes that it purchased the article for value without knowledge or reason to believe it was stolen, forfeiture shall not be decreed unless—

(A) the State Party to which the article is to be returned pays the claimant an amount equal to the amount which the claimant paid for the article, or

(B) the United States establishes that such State Party, as a matter of law or reciprocity, would in similar circumstances recover and return an article stolen from an institution in the United States without requiring the payment of compensation.

(2) Any article of cultural property which is imported into the United States in violation of section 308 and which is forfeited to the United States under this title shall—

(A) first be offered for return to the State Party in whose territory is situated the institution referred to in section 308 and shall be returned if that State Party bears the expenses incident to such return and delivery and complies with such other requirements relating to the return as the Secretary prescribes; or

(B) if not returned to such State Party, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

SEC. 311. EVIDENTIARY REQUIREMENTS.

19 USC 2610.

Notwithstanding the provisions of section 615 of the Tariff Act of 1930 (19 U.S.C. 1615), in any forfeiture proceeding brought under this title in which the material or article, as the case may be, is claimed by any person, the United States shall establish—

(1) in the case of any material subject to the provisions of section 307, that the material has been listed by the Secretary in accordance with section 305; and

(2) in the case of any article subject to section 308, that the article—

(A) is documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in a State Party, and

(B) was stolen from such institution after the effective date of this title, or after the date of entry into force of the

Convention for the State Party concerned, whichever date is later.

19 USC 2611.

**SEC. 312. CERTAIN MATERIAL AND ARTICLES EXEMPT FROM TITLE.**

The provisions of this title shall not apply to—

(1) any archaeological or ethnological material or any article of cultural property which is imported into the United States for temporary exhibition or display if such material or article is immune from seizure under judicial process pursuant to the Act entitled "An Act to render immune from seizure under judicial process certain objects of cultural significance imported into the United States for temporary display or exhibition, and for other purposes", approved October 19, 1965 (22 U.S.C. 2459); or

(2) any designated archaeological or ethnological material or any article of cultural property imported into the United States if such material or article—

(A) has been held in the United States for a period of not less than three consecutive years by a recognized museum or religious or secular monument or similar institution, and was purchased by that institution for value, in good faith, and without notice that such material or article was imported in violation of this title, but only if—

(i) the acquisition of such material or article has been reported in a publication of such institution, any regularly published newspaper or periodical with a circulation of at least fifty thousand, or a periodical or exhibition catalog which is concerned with the type of article or materials sought to be exempted from this title,

(ii) such material or article has been exhibited to the public for a period or periods aggregating at least one year during such three-year period, or

(iii) such article or material has been cataloged and the catalog material made available upon request to the public for at least two years during such three-year period;

(B) if subparagraph (A) does not apply, has been within the United States for a period of not less than ten consecutive years and has been exhibited for not less than five years during such period in a recognized museum or religious or secular monument or similar institution in the United States open to the public; or

(C) if subparagraphs (A) and (B) do not apply, has been within the United States for a period of not less than ten consecutive years and the State Party concerned has received or should have received during such period fair notice (through such adequate and accessible publication, or other means, as the Secretary shall by regulation prescribe) of its location within the United States; and

(D) if none of the preceding subparagraphs apply, has been within the United States for a period of not less than twenty consecutive years and the claimant establishes that it purchased the material or article for value without knowledge or reason to believe that it was imported in violation of law.

**SEC. 313. REGULATIONS.**

19 USC 2612.

The Secretary shall prescribe such rules and regulations as are necessary and appropriate to carry out the provisions of this title.

**SEC. 314. ENFORCEMENT.**

19 USC 2613.

In the customs territory of the United States, and in the Virgin Islands, the provisions of this title shall be enforced by appropriate customs officers. In any other territory or area within the United States, but not within such customs territory or the Virgin Islands, such provisions shall be enforced by such persons as may be designated by the President.

**SEC. 315. EFFECTIVE DATE.**

19 USC 2601  
note.  
Publication in  
Federal  
Register.

(a) **IN GENERAL.**—This title shall take effect on the ninetieth day after the date of the enactment of this Act or on any date which the President shall prescribe and publish in the Federal Register, if such date is—

- (1) before such ninetieth day and after such date of enactment; and
- (2) after the initial membership of the Committee is appointed.

(b) **EXCEPTION.**—Notwithstanding subsection (a), the members of the Committee may be appointed in the manner provided for in section 306 at any time after the date of the enactment of this Act.

Approved January 12, 1983.

**LEGISLATIVE HISTORY—H.R. 4566:**

**HOUSE REPORTS:** No. 97-257 (Comm. on Ways and Means) and No. 97-989 (Comm. of Conference).

**SENATE REPORT** No. 97-564 (Comm. on Finance).

**CONGRESSIONAL RECORD:**

- Vol. 127 (1981): Oct. 13, considered and passed House.  
Vol. 128 (1982): Dec. 19, considered and passed Senate, amended.  
Dec. 21, House agreed to conference report.  
Dec. 22, Senate agreed to conference report.

United Nations Educational, Scientific and Cultural Organization  
Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura  
Organisation des Nations Unies pour l'éducation, la science et la culture  
Организация Объединенных Наций по вопросам образования, науки и культуры

**Convention on the means of prohibiting and  
preventing the illicit import, export and transfer  
of ownership of cultural property**

adopted by the General Conference at its sixteenth session  
Paris, 14 November 1970

**Convención sobre las medidas que deben adoptarse  
para prohibir e impedir la importación, la exportación y la  
transferencia de propiedad ilícitas de bienes culturales**

aprobada por la Conferencia General en su decimosexta reunión  
París, 14 de noviembre de 1970

**Convention concernant les mesures à prendre  
pour interdire et empêcher l'importation, l'exportation  
et le transfert de propriété illicites des biens culturels**

adoptée par la Conférence générale à sa seizième session  
Paris, le 14 novembre 1970

**Конвенция о мерах, направленных  
на запрещение и предупреждение незаконного ввоза, вывоза  
и передачи права собственности на культурные ценности**

принятая Генеральной конференцией на шестнадцатой сессии  
Париж, 14 ноября 1970 г.



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 States 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 8 (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 irremediable 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.

*The President of the General Conference*

ATILIO DELL'ORO MAINI

*The Director-General*

RENE MAHEU

Certified copy  
Paris,

*Director, Office of International  
Standards and Legal Affairs,  
United Nations Educational,  
Scientific and Cultural Organization*



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

(Paris, 14 November 1970)

List of States having deposited an instrument

of ratification, acceptance or accession

as at 15 December 1984

(Updated March 25, 1985)

States	Date of deposit of ratification (R) acceptance (Ac) or accession (A)	Date of entry into force
Algeria	24. 6.1974 (R)	24. 9.1974
Argentina	11. 1.1973 (R)	11. 4.1973
Bolivia	4.10.1976 (R)	4. 1.1977
Brazil	16. 2.1973 (R)	16. 5.1973
Bulgaria	15. 9.1971 (R)	24. 4.1972
Cameroon	24. 5.1972 (R)	24. 8.1972
Canada	28. 3.1978 (Ac)	28. 6.1978
Central African Republic	1. 2.1972 (R)	1. 5.1972
Cuba	30. 1.1980 (R)	30. 4.1980
Cyprus	19.10.1979 (R)	19. 1.1980
Czechoslovakia	14. 2.1977 (Ac)	14. 5.1977
Democratic Kampuchea	26. 9.1972 (R)	26.12.1972
Democratic People's Republic of Korea	13. 5.1983 (R)	13. 8.1983
Dominican Republic	7. 3.1973 (R)	7. 6.1973
Ecuador	24. 3.1971 (Ac)	24. 4.1972
Egypt	5. 4.1973 (Ac)	5. 7.1973
El Salvador	20. 2.1978 (R)	20. 5.1978
German Democratic Republic	16. 1.1974 (Ac)	16. 4.1974
Greece	5. 6.1981 (R)	5. 9.1981
Guatemala	14. 1.1985 (R)	14. 4.1985
Guinea	18. 3.1979 (R)	18. 6.1979
Honduras	19. 3.1979 (R)	19. 6.1979
Hungary	23.10.1978 (R)	23. 1.1979
India	24. 1.1977 (R)	24. 4.1977
Iran	27. 1.1975 (Ac)	27. 4.1975
Iraq	12. 2.1973 (Ac)	12. 5.1973

States	Date of deposit of ratification (R) acceptance (Ac) or accession (A)	Date of entry into force
Italy	2.10.1978 (R)	2. 1.1979
Jordan	15. 3.1974 (R)	15. 6.1974
Kuwait	22. 6.1972 (Ac)	22. 9.1972
Mauritania	27. 4.1977 (R)	27. 7.1977
Mauritius	27. 2.1978 (Ac)	27. 5.1978
Mexico	4.10.1972 (Ac)	4. 1.1973
Nepal	23. 6.1976 (R)	23. 9.1976
Nicaragua	19. 4.1977 (R)	19. 7.1977
Niger	16.10.1972 (R)	16. 1.1973
Nigeria	24. 1.1972 (R)	24. 4.1972
Oman	2. 6.1978 (Ac)	2. 9.1978
Pakistan	30. 4.1981 (R)	30. 7.1981
Panama	13. 8.1973 (Ac)	13.11.1973
Peru	24.10.1979 (Ac)	24. 1.1980
Poland	31. 1.1974 (R)	30. 4.1974
Qatar	20. 4.1977 (Ac)	20. 7.1977
Republic of Korea	14. 2.1983 (Ac)	14. 5.1983
Saudi Arabia	8. 9.1976 (Ac)	8.12.1976
Socialist People's Libyan Arab Jamahiriya	9. 1.1973 (R)	9. 4.1973
Senegal	9.12.1984 (R)	9. 3.1985
Sri Lanka	7. 4.1981 (Ac)	7. 7.1981
Syrian Arab Republic	21. 2.1975 (Ac)	21. 5.1975
Tunisia	10. 3.1975 (R)	10. 6.1975
Turkey	21. 4.1981 (R)	21. 7.1981
United Republic of Tanzania	2. 8.1977 (R)	2.11.1977
United States of America	2. 9.1983 (Ac)	2.12.1983
Uruguay	9. 8.1977 (R)	9.11.1977
Yugoslavia	3.10.1972 (R)	3. 1.1973
Zaire	23. 9.1974 (R)	23.12.1974
<b>Zambia</b>	<b>21. 6.1985 (R)</b>	<b>21.9.1985</b>



# Calendar No. 829

97TH CONGRESS  
2d Session

SENATE

REPORT  
No. 97-564

## MISCELLANEOUS TARIFF, TRADE, AND CUSTOMS MATTERS

SEPTEMBER 21 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. DOLE, from the Committee on Finance,  
submitted the following

### REPORT

together with

### ADDITIONAL VIEWS

[To accompany H.R. 4566]

The Committee on Finance, to which was referred the bill (H.R. 4566) to reduce certain duties, to suspend temporarily certain duties, to extend certain existing suspensions of duties, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

#### I. SUMMARY

H.R. 4566, as referred to the committee was ordered favorably reported with amendments which struck everything after the enacting clause and substituted the provisions described herein. Title I of H.R. 4566, as amended contains miscellaneous amendments to the tariff and customs laws of the United States, provisions to implement the extension of the International Coffee and Sugar Agreements and provisions to implement the Nairobi Protocol to the Florence Agreement. Title II of the bill contains provisions implementing the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. Title III of the bill contains the provisions of S. 2094, the Reciprocal Trade and Investment Act of 1982, with a minor amendment. By press releases dated October 19, 1981 and August

and handicapped provided in section 135. This treatment would expire after two and one-half years, except that it may be proclaimed permanently during that period pursuant to section 137(a) and 137(b)(3). Section 137(b)(2) allows, but does not require, similar provisional proclamations for the other covered articles if the President deems it to be in the national interest. Temporary proclamations made pursuant to either subsection for articles included in sections 134 and 135 may be modified under the provisions of section 136.

*Section 138.*—This section is a technical record-keeping requirement intended to ensure that the United States will obtain adequate data regarding trade flows affected by the tariff modifications implemented by section 135 of this bill.

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

*Purpose.*—This bill implements in domestic law the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). The Cultural Property Convention is an international agreement adopted by the United Nations Educational, Scientific, and Cultural Organization on November 14, 1970. It establishes principles for the control of trade in archaeological and ethnological materials as well as certain other cultural material. Although the Senate unanimously gave its advice and consent to ratification in 1972, the Convention is not self-executing and it has not been ratified for lack of the domestic legal means necessary to carry out its obligations. The purpose of this bill is to provide that authority, thereby promoting U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that not only are of importance to the nations whence they originate, but also to greater international understanding of our common heritage.

*The bill.*—S. 1723, as amended by the committee and included in H.R. 4566, implements the essential obligations of the Cultural Property Convention. These obligations generally are: (1) to prohibit the import of cultural material identified as stolen from an institution in another State Party (i.e., a party to the Convention), and to assist in its recovery if it is imported; and (2) to apply specific import or other controls (upon the request of a State Party) to archaeological or ethnological materials specifically identified as comprising a part of a state's cultural patrimony that is in danger of being pillaged. Except in certain emergency situations, the latter obligation normally will be met through *ad hoc* international arrangements. In form and substance, the bill substantially emulates H.R. 5643, implementing legislation passed by the House of Representatives in the 95th Congress. (See H. Rep. No. 95-615, 95th Cong., 1st Sess. (1977)).

Following the short title provided in section 201, section 202 of the bill sets forth definitions for the important terms of art in the legislation.



Sections 203-205 and 207 implement article 9 of the Convention. These sections authorize the President, subject to certain conditions and limitations, to enter into bilateral or multilateral agreements or to invoke emergency import regulations to control the importation of archaeological or ethnological materials that have been illegally exported from another State Party or are in danger thereof. The exercise of this authority is contingent upon a request from a State Party, the cultural patrimony of which is in jeopardy from pillage. The agreements are to serve as the basis for a concerted international effort to thwart the pillage.

Section 208 implements article 7 of the Convention. This section simply declares illegal the importation into the United States of cultural property identified as appertaining to the inventory of a museum, a religious or public monument, or a similar institution in a State Party. This provision creates a juridical basis for actions, authorized in section 210, to recover the property.

Section 206 establishes a Cultural Property Advisory Committee comprised of representatives of the general public, and experts from the academic, museum, and art dealer communities. It is structured similarly to trade advisory committees established by section 135 of the Trade Act of 1974, and will advise the President concerning the requests of State parties for import controls and the scope and operation of such controls.

Sections 210-211 subject to seizure and forfeiture any articles imported in violation of sections 207 or 208. Pursuant to section 209, however, U.S. museums or similar institutions may retain the articles, subject to certain protections, until their final disposition is determined. Under section 212, certain articles are excluded from any controls authorized by this bill because they are entering this country solely for purposes of exhibition or because they have been held in this country for a significant period without challenge to the legitimacy of their procurement.

Sections 213-215 are administrative in nature.

As in the case of the earlier-passed H.R. 5643, this bill reflects the approach to illicit trade in art adopted by the Congress in the Pre-Columbian Art Act of 1972 (Pub. L. No. 92-587) with regard to a particular category of artifacts. The bill takes into account the reservation and understandings accompanying the grant by the Senate in 1972 of its advice and consent to ratification of the Convention. Further, it neither pre-empts State law in any way, nor modifies any Federal or State remedies that may pertain to articles to which the provisions of this bill apply.

#### REASONS FOR THE BILL

*Background.*—The increasing demand in recent years for archaeological and ethnological materials and antiquities has spurred, in most experts' opinions, a great increase in the international exchange of such materials. But unlike other commodities, increased or new production of these articles cannot rise to meet the demand. Instead, the increased supply results from the sales of known artifacts and those newly recovered from archaeological sites. The unique origin and character of these articles raises serious trade

issues distinct from the normal concerns of the reciprocal trade agreements program or U.S. trade law.

No detailed data exist that provide reliable insights into either the precise nature or magnitude of trade in cultural property. As one expert points out: "It is easy to understand why we have little information. Much about the art trade simply is not knowable." Bator, *An Essay on the International Trade in Art* 34 *Stan. L. Rev.* 275, 291 (1982). Professor Bator suggests that this is because of the vast number of undiscovered or unidentified objects; the lack of resources among many nations to develop their cultural resources; and the secret nature of much of the trade. Nevertheless, the testimony to the committee on S. 1723 confirmed the evidence given in various Congressional fora in recent years and in many learned articles: the demand for cultural artifacts has resulted in the irremedial destruction of archaeological sites and articles, depriving the situs countries of their cultural patrimony and the world of important knowledge of its past. Further, because the United States is a principal market for articles of archaeological or ethnological interest and of art objects, the discovery here of stolen or illegally exported artifacts in some cases severely strains our relations with the countries of origin, which often include close allies. As stated by the Department of State in commenting on S. 1723:

The legislation is important to our foreign relations, including our international cultural relations. The expanding worldwide trade in objects of archaeological and ethnological interest has led to wholesale depredations in some countries, resulting in the mutilation of ceremonial centers and archaeological complexes of ancient civilizations and the removal of stone sculptures and reliefs. In addition, art objects have been stolen in increasing quantities from museums, churches, and collections. The governments which have been victimized have been disturbed at the outflow of these objects to foreign lands, and the appearance in the United States of objects has often given rise to outcries and urgent requests for return by other countries. The United States considers that on grounds of principle, good foreign relations, and concern for the preservation of the cultural heritage of mankind, it should render assistance in these situations.

Witnesses before the committee also pointed out that the interest of the United States in this matter extends beyond our import market and our interest in fostering the careful study of foreign cultures. In recent years, the increasing interest in native American, Hawaiian, and Alaskan artifacts concomitantly has spurred the pillaging of U.S. historic sites. The destruction of such sites and the disappearance of the historic record evidenced by the articles found in them has given rise to a profound national interest in joining other countries to control the trafficking of such articles in international commerce.

These concerns led the United States in the late 1960's to participate in negotiations, sponsored by the United Nations Educational, Scientific, and Cultural Organization (UNESCO), to achieve international agreement on the nature and means to address the prob-

lem. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property resulted from these negotiations. The Sixteenth General Conference of UNESCO adopted the Convention on November 14, 1970, by a vote of 77 to 1, with 8 abstentions. It entered into force (but not with respect to the United States) on April 24, 1972. Forty-five countries are now parties to the Convention.

As described by the Committee on Foreign Relations, the Convention generally encompasses the following obligations:

The principle purpose of the convention is to combat the increasing illegal international trade in national art treasures, which in some countries has led to wholesale pillaging. To this end, the parties to the convention undertake to protect their own cultural heritage and to establish an export certificate for cultural property designated by each country as being of importance. They are also 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 a person who has valid title. The parties further agree to take what measures they can, consistently with existing national legislation, to prevent museums and similar institutions within their territory from acquiring cultural property originating in another country which has been illegally exported after entry into force of the treaty.

Senate Committee on Foreign Relations, Exec. Rep. No. 92-29, 92d Cong., 2d Sess. 1 (August 8, 1972). Where a State Party's cultural patrimony is in jeopardy from pillage of identified types of archaeological or ethnological materials, the parties agree to apply import controls or other appropriate corrective measures.

After consideration by the Committee on Foreign Relations, which found no opposition to the Convention, the Senate unanimously gave its advice and consent to ratification on August 11, 1972. The Senate's action included one reservation and six understandings. One understanding made clear that the Convention is not self-executing and will have no domestic legal effect except as defined by implementing legislation.

The Department of State first proposed implementing legislation in 1973 to the 93d Congress, and again in 1975 to the 94th Congress. The House of Representatives approved an amended version of this legislation (H.R. 5643) in 1977, but the bill was not reported by the Committee on Finance. Legislation again was introduced in the 96th Congress, but no action was taken after hearings.

S. 1723 is the successor in this Congress to those earlier efforts. The Subcommittee on International Trade held a hearing on July 22, 1982, and took oral and written testimony from the Administration and representatives from the academic and art dealers' community. This will reflect amendments subsequently agreed to by all of these groups. The Committee adopted the bill, as amended, without objection as part of H.R. 4566 on September 15, 1982.

## SECTION-BY-SECTION ANALYSIS

*Section 201.*—This section provides that this title may be cited as the "Convention on Cultural Property Implementation Act."

*Section 202.*—This section defines the essential terms of art employed in title II.

Only the term "archaeological or ethnological material of the State Party" requires fuller explication here. The Convention does not define this term. The definition is intended by the committee to reflect the understanding of U.S. negotiators that the application of import restrictions under agreements entered into under section 203 or emergency actions taken under section 204 is limited to a narrow range of objects possessing certain characteristics. As defined under section 202(2i), "archaeological material" includes any object which is of cultural significance, which is at least 250 years old, and which normally has been discovered through scientific excavation, clandestine or accidental digging, or exploration on land or under water. Archaeological objects are usually found underground or under water, or are discovered through excavation, digging, or exploration. However, the definition would also include objects which are typically regarded as archaeological (for example, frescoes from buildings), without regard to whether the particular objects are discovered by excavation or exploration.

The committee believes that the 250-year threshold age requirement ensures that the controls authorized by this Act will be applied to objects of significantly rare archaeological stature, while encompassing a range of important artifacts that are of a more recent vintage. For example, archaeological sites of importance in understanding the settlement of North America contain objects not greatly exceeding 250 years in age.

"Ethnological material" includes any object that is the product of a tribal or similar society, and is important to the cultural heritage of a people because of its distinctive characteristics, its comparative rarity, or its contribution to the knowledge of their origins, development or history. While these materials do not lend themselves to arbitrary age thresholds, the committee intends this definition, to encompass only what is sometimes termed "primitive" or "tribal" art, such as masks, idols, or totem poles, produced by tribal societies in Africa and South America. Such objects must be important to a cultural heritage by possessing characteristics which distinguish them from other objects in the same category providing particular insights into the origins and history of a people. The committee does not intend the definition of ethnological material under this title to apply to trinkets and other objects that are common or repetitive or essentially alike in material, design, color, or other outstanding characteristics with other objects of the same type, or which have relatively little value for understanding the origins or history of a particular people or society. An agreement or emergency action would also not apply to ethnological material produced by more technologically advanced societies. The Cultural Property Advisory Committee, as provided in section 206, will render the expert advice necessary to understand these terms in the context of particular cases.

*Sections 203-205 and 207.*—These sections implement Article 9 of the Cultural Property Convention, which states:

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other State 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 irremediable injury to the cultural heritage of the requesting State.

In describing what is contemplated by this provision, the Committee on Foreign Relations stated that—

at the UNESCO 16th General Conference, the U.S. 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.

Exec. Rep. No. 92-29, 92d Cong., 2d Sess. 5 (1972). The latter two situations are addressed in sections 204 and 203, respectively.

Sections 203(a) and (c) together comprise the substantive grant of authority for the President to enter into bilateral or multilateral agreements intended to provide U.S. cooperation towards protecting from the danger of pillage the archaeological or technological materials comprising the cultural patrimony of another State Party. The President, with the advice of the Advisory Committee established in section 206, must make several determinations prior to concluding such an agreement. In general, these are intended to ensure that the requesting nation is engaged in self-help measures and that U.S. cooperation, in the context of a concerted international effort, will significantly enhance the chances of their success in preventing the pillage.

Specifically, after a request by the victimized nation, the President may enter into agreements to apply the import controls authorized by section 207 if he determines the following:

- (1) The cultural patrimony of the State Party is in jeopardy from pillage of its archeological or ethnological materials;
- (2) the State Party has taken measures consistent with the Convention to protect its cultural patrimony;



(3) application of import restrictions, in the context of a concerted international effort, to archeological or ethnological material of the State Party would be of substantial benefit in deterring a serious situation of pillage, and less drastic remedies are not available; and

(4) application of import restrictions in the particular circumstances is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific and educational purposes.

The Committee intends these limitations to ensure that the United States will reach an independent judgment regarding the need and scope of import controls. That is, U.S. actions need not be coextensive with the broadest declarations of ownership and historical or scientific value made by other nations. U.S. actions in these complex matters should not be bound by the characterization of other countries, and these other countries should have the benefit of knowing what minimum showing is required to obtain the full range of U.S. cooperation authorized by this bill.

The concept that U.S. import controls should be part of a concerted international effort is embodied in article 9 of the Convention and carried forward in section 203. In previous years' consideration of various proposals for implementing legislation, a particularly nettlesome issue was how to formulate standards establishing that U.S. controls would not be administered unilaterally. The committee believes that the language now adopted, which amends that contained in S. 1723 and which is agreeable to all private sector parties that have contributed actively to the Committee's consideration of the bill, satisfies the twin interests of obtaining international cooperation while achieving the goal of substantially contributing to the protection of cultural property from further destruction.

The bill reflects the principle of participation in a concerted international effort in the following manner. Under section 203(a)(1)(C)(i), as a precondition to entering into an agreement the President must determine that import restrictions, "if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations (whether or not State Parties) individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage. . . ." Section 203(c)(1) then specifically denies the President the authority to enter into an agreement unless these conditions are satisfied. The determination of which countries have a significant import trade in the material that is in jeopardy of being pillaged, and whether the effort will help to ameliorate the problem, is within the discretion of the President. These decisions inherently preclude precise determination, given the goals of the Convention and the uncertain factual basis for them. For example, whether a country has a "significant import trade" may be a function of not only value of imports, but type and historic trading patterns. Therefore, a measure of Presidential judgment is required. Nevertheless, the committee believes the standards set forth in this section, together with active contributions by the Advisory Committee to the Administration's decisionmaking process,

will ensure that the President will enter into agreements only in accord with the purposes and standards of the bill.

It is the committee's further intent that the formula measuring the presence and worth of a "concerted international effort" not be so mechanical as to preclude the conclusion of agreements under section 203(a) where the purposes of the legislation nevertheless would be served by doing so. Therefore, the Committee adopted in section 203(c)(2) a limited exception to the general requirement laid down by section 203(c)(1). This exception allows the President, once he has identified the significant importing nations the participation of which ordinarily would be expected to comprise a concerted international effort, to enter into agreements without the participation of all such nations. To do so, he must determine with regard to particular such nations that they are not implementing similar import controls but—

(A) such restrictions are not essential to deter a serious situation of pillage, and

(B) the application of the import restrictions set forth in section 207 in concert with similar restrictions implemented, or to be implemented, by other nations (whether or not State Parties) individually having a significant import trade in such material would be of substantial benefit in deterring a serious situation of pillage.

The essential nature of a concerted international effort is thus preserved, while the president is allowed to move forward without the full participation of nations the contributions of which are not essential to amelioration of the problem.

Section 203 contains other limitations on the President's agreement-making authority. Subsections (b) and (e) limit the term of the agreements to five years, with the possibility of extension for additional five-year periods if, after an opportunity for public comment and Advisory Committee review, the President determines that the circumstances warrant an extension. Further, under subsection (d) the President must suspend an agreement if he determines that the circumstances originally constituting the basis for its entry into force no longer obtain.

Section 204 authorizes the President to impose the import restrictions set forth in section 207 on archaeological or ethnological materials of any State Party if he determines that an emergency condition exists with respect to such material. The emergency restrictions may not apply for more than 5 years, although they may be extended for one additional period of not more than 3 years if the emergency persists. Subsection (a) defines "emergency condition" as a situation in which the archaeological or ethnological material of a State Party is one of the following:

(1) newly discovered material important for understanding the history of mankind and in jeopardy from pillage, dismantling, dispersal, or fragmentation;

(2) identifiable as coming from a site of high cultural significance in jeopardy from pillage, dismantling, dispersal, or fragmentation which is or threatens to be of crisis proportions; or

(3) part of the remains of a particular civilization, the record of which is in jeopardy from pillage, dismantling, dispersal or fragmentation which is or threatens to be of crisis proportions.

In addition, the President must determine that application of temporary import restrictions would reduce the incentive for such pillage, dismantling, dispersal, or fragmentation, in whole or in part.

Besides time limitations, subsection (c) imposes two limitations on the emergency authority. First, it prohibits the President from implementing section 204 unless the State Party made a request to the United States as in section 203(a) for assistance under Article 9 of the Convention. However, the State Party need not indicate in its request that an emergency condition exists as a necessary precondition to the use of the emergency authority, although the information provided in its request must support such a finding. Second, before making his decision on emergency action, the President must consider the views and recommendations of the Advisory Committee on the use of the emergency authority if the committee has submitted its report to him within 90 days after the President provides it information on the request of the State Party. The information provided by the President should include any indication by the State Party of an emergency situation.

Section 204(c)(4) provides the President with additional means to continue the emergency import restrictions after an agreement is concluded. This subsection provides that when an agreement is concluded under section 203 or the Senate has given its advice and consent to a treaty, the President may continue to apply the emergency import restrictions to the covered articles, as originally promulgated or as modified, for a period lasting until their expiration under the agreement or treaty.

In order to carry out the import restrictions contemplated by agreements entered into pursuant to section 203 or by the emergency authority granted by section 204, the specific types of archaeological or ethnological materials that will be restricted must be identified. Section 205 authorizes the Secretary of the Treasury to do so by regulation. The Secretary will consult with the Director of the United States Information Agency before promulgating such a list, as the latter is responsible for servicing the work of the Advisory Committee that is expected to contribute heavily to the composition of the list. The Secretary may list such material by type or other classification but each such listing must be sufficiently specific and precise to serve the two purposes of ensuring that (1) the import restrictions are applied only to material covered by the agreement or emergency action (that is, pillage is creating the jeopardy to the cultural patrimony of the State Party found to exist under section 203 or section 204); and (2) importers and other interested persons are provided fair notice of what archaeological or ethnological material is subject to import restrictions.

Section 207 bars the importation of any article designated for restriction under section 205 unless it is accompanied by proper export documentation from the originating State Party, or unless satisfactory evidence is adduced that the export occurred either before the designation or more than 10 years prior to the entry and the importer involved or a "related person" did not acquire an interest in the article prior to one year before entry. Section 207(d) defines "related persons" for this purpose. The committee believes these requirements strike a fair balance between the authority necessary to avoid circumvention of and to enforce "related persons"

to this end. The committee believes these requirements strike a fair balance between the authority necessary to avoid circumvention of and to enforce controls this Government undertakes to implement, and the desire to lessen the burden of such restrictions on normal art trade and on innocent purchasers of art. •

Entries failing to meet the requirements of this section are subject to seizure and forfeiture pursuant to section 210. Indeed, even if an item is permitted to enter the country, it may be seized under section 210 if it was subject to seizure had the facts been known. In order to obtain entry in the first instance, a consignee must present "satisfactory evidence" that these requirements are satisfied. Under section 207(c), such evidence in general consists of a declaration under oath by the consignee attesting to the necessary facts and statements by the consignor to the same effect together with the reasons upon which he bases these statements. The committee understands the latter requirement of providing reasons to mean that the consignor must present to the Customs officer a substantial basis for his assertions in the statement. Although this section thus recognizes the difficulties in obtaining sworn declarations by foreign consignors, it requires more than a superficial meeting of the requirements of "satisfactory evidence."

*Section 206.*—The exercise by the President of the authorities provided in sections 203-205 will require substantial input from knowledgeable representatives of the private sector. Section 206 establishes a Cultural Property Advisory Committee for this purpose.

The eleven members of the Advisory Committee will include two members representing the interests of museums; three archaeologists, anthropologists, or experts in related fields; three persons representing the interests of art dealers; and three representatives of the general public. While following the same division of interests, the committee rejected the formulation in S. 1723 of enumerating specific associations, each of which would nominate a few names from which the President would be required to select his appointments. This approach raises a serious question of unconstitutional infringement of the President's appointment power. Of equal concern would be the deviation from the established practice of creating trade advisory committees adopted in section 135 of the Trade Act of 1974 (19 U.S.C. 2155). While the associations listed in S. 1723 doubtless will provide a rich source of qualified persons for consideration by the President, the committee concluded that to avoid any appearance of unfairness in the appointments process, the pool of qualified nominees should not be arbitrarily restricted to certain private groups.

In other respects also, the committee chose to follow the established structure of trade advisory committees. Under section 206(b)(3), appointments will be on a renewable 2-year basis. Subsection (h) ensures that in operation the Advisory Committee will conform to the strictures of the Federal Advisory Committee Act (5 U.S.C. app. I, sec. 1 *et seq.*). Subsection (c) would establish a limited statutory exception to the Freedom of Information Act, in addition to the exemptions already contained therein. The committee believes this exception is warranted because of its limited nature, the restricted scope of Advisory Committee functions, and the nature of the information involved which, if released, could adversely affect



the President's ability to negotiate agreements authorized by this Act. As the Advisory Committee's role is limited to pre-negotiation determinations, it is expected that this provision will apply to only a small volume of information. Subsection (j) confirms that private sector Advisory Committee members are not expected, on the basis of this legislation alone, to have a role in negotiating agreements to which this bill pertains.

Section 206(d) provides that a majority of the eleven Advisory Committee members shall constitute a quorum, and that it may act by majority vote of those present and voting. As the Advisory Committee is required to adhere to certain time limits if its advice is to be considered by the President, this provision will assist it in proceeding with business in the absence of several members.

Section 206(e) establishes the United States Information Agency as the secretariat of the Advisory Committee. Other agencies, particularly the Departments of State, Justice, the Treasury, and the General Services Administration are expected to facilitate the Advisory Committee's operations in every reasonable way.

Sections 206 (f) and (g) set forth the substantive responsibilities of the Advisory Committee. Under subsection (f), it will report on requests for assistance by other State Parties and whether agreements or emergency measures would be the proper response. The reports are to contain substantive analyses and recommendations, and any dissents. The Advisory Committee will also review existing agreements and emergency controls and report on the need for extending or suspending such agreements or emergency controls. Through this mandate, the committee believes the Advisory Committee will play a prominent role in achieving effective implementation of this bill.

*Section 208.*—Section 208 implements article 7(b)(i) of the Convention, which requires State Parties to undertake 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.

Section 208 prohibits the importation of any article of cultural property stolen from the inventory of a museum or religious or secular monument or similar institution. "Cultural property" is defined to include the categories of articles listed in article 1 of the Convention, whether or not the article is specifically designated by the State Party for this purpose. The term thus is broader than but inclusive of "archaeological or ethnological material." This provision will apply to items of cultural property stolen from a broad range of institutions and public monuments in State Parties. In addition to public museums, the language is intended to cover cathedrals, temples, shrines, and other such edifices or sites open for public visitation or scientific study. Examples include the Wailing Wall in Jerusalem; Pompeii, Italy; Teotihuacan, Mexico; Angkor Wat, Cambodia; the Colosseum, Rome; Arc de Triomphe, Paris, etc. Covered are facades, murals, internal and external ornamentation, statuary, paintings, objects of artistic or religious significance, etc., affixed to, or located in or on such edifices or sites.



An article of cultural property would be covered by section 208 if it were listed in the inventory of a particular institution or if it were affixed to or located in or on an edifice or site which itself is included in an inventory. The committee intends the language "documented as appertaining to the inventory" to be read broadly in the context of the actual practices by which nations identify and maintain their cultural treasures, not only in museums but also those associated with monuments. "Documented," for example, is intended to cover photographic and other types of evidence in addition to formal museum records. Further, "inventory" should be broadly construed where public and religious monuments and similar institutions are concerned.

Section 208 takes effect with respect to any article stolen after the effective date of this act or after the date the convention enters into force for the State Party, whichever is later. This is without regard to whether or not the United States has an agreement under section 203 or has taken emergency action under section 204 to restrict importation of archaeological or ethnological material from that State Party.

*Section 209.*—Section 209 provides for temporary retention of any archaeological or ethnological material or article of cultural property in a public museum or other cultural or scientific institution in the United States pending a final determination of whether the material or article was imported in violation of sections 207 or 208. The Secretary of the Treasury will permit retention upon application by an institution if he finds that the institution will take sufficient safeguards to protect the material or article and will post sufficient bond to insure its return to the Secretary.

*Sections 210-211.*—Sections 210 and 211 contain the provisions for seizure, forfeiture, and disposition of archaeological or ethnological material or of stolen articles of cultural property imported in violation of sections 207 or 208.

Section 210 contains the seizure and forfeiture provisions and the conditions for return to the State Party of protected material or articles which are forfeited to the United States. Subsection (a) provides that any designated archaeological or ethnological material or article of cultural property imported in violation of section 207 or 208 will be subject to seizure and forfeiture. All provisions of law relating to seizure, forfeiture, and condemnation for violation of the customs law apply insofar as they are applicable to and not inconsistent with provisions of this Act.

The Committee agreed to amend S. 1723 to allow both summary and judicial forfeiture proceedings. It accepted the argument of the Administration and others that many articles potentially subject to forfeiture are likely to be small in value, and neither the consignee nor the Government will wish to bear the costs of a judicial proceeding concerning them. Further, the limited resources of the courts should not be diverted to these minor cases if the parties do not wish to undergo such proceedings. Finally, anyone seeking judicial forfeiture may do so by posting a small bond; therefore, eliminating the requirement of judicial forfeiture proceedings does not abridge any rights or opportunities of the defendant.

Subsection (b) specifies that any archaeological or ethnological material imported in violation of section 207 and forfeited to the

United States must first be offered for return to the State Party. The object will be returned if the State Party bears the expenses of return and delivery and complies with any other requirements related to the return prescribed by the Secretary of the Treasury. Otherwise, the object will be disposed of as prescribed for articles forfeited for violation of the customs law, unless the claimant establishes valid title to the material and that he is a bona fide purchaser for value of it.

Subsection (c) specifies that any action for forfeiture of an article of cultural property imported in violation of section 208 is subject to the following alternative resolutions:

1. If the claimant establishes valid title as against the institution from which the article was stolen, forfeiture will not be decreed unless the State Party requesting its return agrees to pay the claimants holding valid title just compensation.

2. If the claimant does not establish valid title but establishes his purchase for value without knowledge or reason to believe the article was stolen, than forfeiture will not be decreed unless (a) State Party to which the article is to be returned pays that innocent purchaser and amount equal to what he paid for the article, or (b) the United States establishes that the State Party as a matter of law or reciprocity would in similar circumstances recover and return an article stolen from a United States institution without requiring payment of compensation.

Implementation of article 7(b) of the Convention affects neither existing remedies available in State or Federal courts nor laws prohibiting the theft and the knowing receipt and transportation of stolen property in interstate and foreign commerce (e.g., National Stolen Property Act, Title 18, U.S.C. Sections 2314-15), including the possible recovery of stolen property for the rightful owner in the courts without payment of compensation. Article 7(b)(ii) of the Convention specifically requires that an offer of just compensation be made to a person holding valid title to, or to an innocent purchaser of, an article of cultural property by the State Party requesting its return. However, innocent purchasers who do not acquire valid title as against the true owner may not be entitled to compensation under applicable municipal laws in the United States. Consequently, the fourth understanding adopted by the Senate in its advice and consent to ratification of the Convention, as reflected in section 210(c), provides that the United States is prepared to return recovered stolen cultural property without payment of compensation if it establishes before the court as a matter of law or reciprocity that the claiming State Party would in similar circumstances recover and return an article stolen from an institution in the United States without requiring payment of compensation. It is considered that reciprocity would have to be shown by a Government decree, proclamation, written commitment, written, opinion, or other such evidence.

Section 211 establishes the evidentiary requirements for any forfeiture proceeding under this Act in which archaeological or ethnological material or an article of cultural property is claimed by any person. Notwithstanding section 615 of the Tariff Act of 1930, the burden of proof will be on the United States in such proceedings to establish that material subject to section 207 has been designated

by the Secretary of the Treasury under section 205 as covered by an agreement with a State Party or by an emergency action. In the case of an article of cultural property, the United States must establish that the article appertains to the inventory of a museum or similar institution in a State Party and was stolen from that institution after the effective date of this Act or after the date the Convention entered into force for the State Party concerned, whichever is later.

*Section 212.*—Section 212 exempts archaeological or ethnological material or article of cultural property from the provisions of the Act under any of the following circumstances:

1. Material or articles imported into the United States for temporary exhibition or display are exempt if they are immune from seizure under judicial process pursuant to 22 U.S.C. 2459. To achieve such immunity, the President or his designee must have determined prior to importation of the object that it is of cultural significance and that its temporary exhibition or display within the United States is in the national interest, and he must have published notice to this effect in the Federal Register.

2. Material or articles held at least three years in the United States by a public institution that openly procured, displayed, or publicized its possession of the objects.

3. Material or articles held in the United States for at least 10 consecutive years from the date of the importation and (a) exhibited for at least 5 years during that period in a recognized museum, religious, or secular monument, or similar institution, or (b), if (a) does not apply, the State Party received or should have received fair notice through publication or other means, to be prescribed by regulation, of its location within the United States during this period.

4. If none of the above apply then the material or articles have been in this country for at least 20 years and the claimant purchased them without awareness of their illegal origin.

The purpose of these exceptions is to provide a time certain when an adequate opportunity to identify and to recover illicitly traded art will have been afforded, and rights to objects can be settled.

*Section 213.*—Section 213 authorizes the Secretary of the Treasury to prescribe rules and regulations as necessary and appropriate to carry out the act.

*Section 214.*—Section 214 provides for custom officers to enforce the Act in the United States customs territory and in the Virgin Islands. The President will designate persons to enforce the act in other United States territories or areas outside the customs territory or Virgin Islands.

*Section 215.*—Section 215 provides for the act to take effect on the 90th day after enactment, or on a prior date after enactment that the President prescribes and publishes in the Federal Register if he has appointed the initial members of the Advisory Committee. The President may appoint the Advisory Committee members any time after the date of enactment of this act.

6-25-85  
Vol. 50

No. 122

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Tuesday  
June 25, 1985

# Federal Register

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United States  
Government  
Printing Office  
SUPERINTENDENT  
OF DOCUMENTS  
Washington, DC 20402

OFFICIAL BUSINESS  
Penalty for private use, \$

SECOND CLASS NEWSPAPER

Postage and Fees Paid  
U.S. Government Printing Office  
(ISSN 0097-6326)

## DEPARTMENT OF THE TREASURY

## Customs Service

19 CFR Parts 12 and 178

(T.D. 85-107)

Interim Customs Regulations  
Amendments Concerning Convention  
on Cultural Property Implementation  
Act

**AGENCY:** Customs Service, Treasury.  
**ACTION:** Interim regulations, solicitation  
of comments.

**SUMMARY:** This document sets forth interim amendments to the Customs Regulations in response to the Convention on Cultural Property Implementation Act. The Convention addressed the problem of illicit importing and exporting of items of cultural property, that is, items of importance for archaeology, prehistory, history, literature, art, or science. These interim regulations are intended to prohibit illicit traffic in cultural property while allowing the exchange of national treasures for legitimate scientific, educational, and cultural purposes. These interim regulations are effective for all importations of cultural property, or archaeological or ethnological material, subject to the Convention on Cultural Property Implementation Act (Pub. L. 97-446, 96 Stat. 2329).

**DATES:** Effective July 25, 1985. Written comments received on or before August 26, 1985, will be considered in determining whether any changes to the interim regulations are required before a final rule is published.

**ADDRESS:** Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Customs Service Headquarters, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:**  
Legal Aspects: Tom Lindmeier, Entry, Procedures and Penalties Division (202-566-5765);

Operational Aspects: Harrison Feese, Duty Assessment Division (202-566-8652); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

## SUPPLEMENTARY INFORMATION:

## Background

Beginning in the late 1960's, the U.S. began participating in negotiations, sponsored by the United Nations, Educational, Scientific and Cultural Organization (UNESCO), addressing the problem of illicit international trade in cultural property. Cultural property was defined as property which, on religious or secular grounds, is specifically designated by a country as being important in the archaeology, prehistory, history, literature, art, or science of that country.

Cultural property, whether archaeological or ethnological in nature, is subject to a unique international trade problem. As demand for cultural property has increased, the supply cannot keep pace in the usual manner of a commodity, that is, increased production. The property is by its very nature of extreme rarity. This situation has resulted in theft of existing artifacts, clandestine excavation of archaeological sites and accompanying illegal importing and exporting.

The value of cultural property is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The educational value of an artifact is forever lost when it is removed from its natural resting place by one motivated by greed rather than scientific curiosity. Similarly, when irreplaceable relics are stolen from museums or other such institutions by one hoping to profit from the black market for such goods, one hoping to profit from the lessons of history is denied his or her chance.

There has been growing concern in the U.S. regarding the need for protecting endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been recent pillaging has, on occasion, strained our foreign and cultural relations with various nations. This situation, combined with the concerns of the museum, archaeological, and scholarly communities, was recognized by the President and Congress. Codes of ethics and professional standards were formally developed by these communities. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in negotiations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export

and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub. L. 97-446, 96 Stat. 2329 at 2350). The spirit of the Convention was enacted into law to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence they originate, but also to greater international understanding of mankind's common heritage. In 1983 the U.S. became the first major art-importing country to implement the 1970 Convention.

It is with these goals in mind that Customs now invites public comment on the following interim amendments to the Customs Regulations designed to carry out the policies of the Convention on Cultural Property Implementation Act. Customs is aware that these regulations will be supplementing existing laws such as the National Stolen Properties Act, 18 U.S.C. 2314, and other bilateral agreements and treaties.

By T.D. 85-53, published in the Federal Register on March 26, 1985 (50 FR 11849), the Customs Regulations were amended by setting forth a list of information collections contained in the regulations and displaying the control number assigned by the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). The list was set forth in a new Part 178 (19 CFR Part 178). The interim regulations in this document are subject to the Paperwork Reduction Act and have been approved by OMB. It is therefore necessary to amend Part 178 by adding OMB Control No. 7515-0147 to the list.

## Comments

Before adopting the interim regulations as a final rule, Customs will give consideration to any written comments (preferably in triplicate) timely submitted to the Commissioner. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.



**Inapplicability of Notice and Delayed Effective Date Provisions**

The Convention on Cultural Property Implementation Act, Pub. L. 97-446, became effective on April 12, 1983, and the provisions relating to the importation of stolen property became effective on that date. The provisions of the Act relating to the importation of listed archeological and ethnological property are fairly detailed and the interim regulations issued pursuant to them create no new legal rights nor affect those provided for in the existing statutory provisions.

The U.S. Information Agency has been approached by several foreign signatories to the Treaty concerning requests for import restrictions on designated archeological and ethnological items. USIA has a strong indication that one or more of these countries is presently preparing to apply formally for U.S. import restrictions. In light of the interest expressed by these foreign governments and the need for the U.S. Government to respond to such requests immediately, interim regulations are necessary to facilitate U.S. response to such requests as required by law pursuant to statutory deadlines.

Therefore, it has been determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are impracticable, unnecessary, and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), it has been determined that good cause exists for dispensing with a delayed effective date.

**Executive Order 12291**

Inasmuch as Customs believes the interim amendment does not meet the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, a regulatory impact analysis has not been prepared.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for these regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601-612) are inapplicable. However any comments submitted with regard to the economic impact of these regulations will be considered before a final rule is issued.

**Paperwork Reduction Act**

The interim regulations are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). Accordingly, applicable sections of the interim regulations have been cleared by the Office of

Management and Budget and assigned control number 1515-0147.

**Drafting Information**

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

**List of Subjects**

*19 CFR Part 12*

Customs duties and inspection, Imports, Exports.

*19 CFR Part 178*

Reporting and recordkeeping requirements, Paperwork requirements, Collection of information.

**Amendments To the Regulations**

Parts 12 and 178 Customs Regulations (19 CFR Parts 12, 178), are amended in the following manner:

**PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS**

1. The authority citation for Part 178 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

**§ 178.2 [Amended]**

2. Section 178.2 is amended by inserting, in proper numerical order, the following entry:

19 CFR Section	Description	OMB Control No.
§§ 12.104c, 12.104e.	Certificates and other documentation relating to the importation of items of cultural property	1515-0147

**PART 12—SPECIAL CLASSES OF MERCHANDISE**

1. The authority citation for Part 12 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624. §§ 12.105-12.109 also issued under 19 U.S.C. 2094. §§ 12.110-12.117 also issued under 7 U.S.C. 136 *et seq.* §§ 12.118-12.127 also issued under 15 U.S.C. 2601 *et seq.*  
 § 12.1 also issued under 21 U.S.C. 371(h);  
 § 12.3 also issued under 7 U.S.C. 135h, 21 U.S.C. 381(b);  
 § 12.4 also issued under 21 U.S.C. 381(b);  
 § 12.6 also issued under 7 U.S.C. 1654, 19 U.S.C. 1303;  
 § 12.10 also issued under 7 U.S.C. 151-162;  
 § 12.15 also issued under 19 U.S.C. 1558;  
 § 12.16 also issued under 7 U.S.C. 1592(b);  
 §§ 12.21-12.23 also issued under 42 U.S.C. 262;

§ 12.26 also issued under 18 U.S.C. 42;  
 § 12.28 also issued under 18 U.S.C. 42, 19 U.S.C. 1527;  
 § 12.34 also issued under 19 U.S.C. 1202 (Sch. 7, 9A, hdnote 1);  
 § 12.37 also issued under 27 U.S.C. 203;  
 §§ 12.39 also issued under 19 U.S.C. 1337, 1623;  
 § 12.40-12.41 also issued under 19 U.S.C. 1305;  
 §§ 12.42-12.44 also issued under 19 U.S.C. 1307;  
 § 12.73 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;  
 § 12.85 also issued under 19 U.S.C. 1623, 46 U.S.C. 4302, 4306, 4310;  
 §§ 12.95-12.103 also issued under 18 U.S.C. 54;  
 § 12.104 *et seq.*, also issued under 19 U.S.C. 2612.

2. All other statutory authority cited at the end of various sections in Part 12 is removed.

3. Part 12 is further amended by adding a new unit titled, "Cultural Property", designated §§ 12.104-12.104i to read as follows:

**Cultural Property**

- Sec.
- 12.104 Definitions.
- 12.104a Importations prohibited.
- 12.104b State Parties to the Convention.
- 12.104c Importations permitted.
- 12.104d Detention of articles, time in which to reply.
- 12.104e Seizure and forfeiture.
- 12.104f Temporary disposition of materials and articles.
- 12.104g Specific items designated by agreements or emergency actions.
- 12.104h Exempt materials and articles.
- 12.104i Enforcement.

**§ 12.104 Definitions.**

For purposes of §§ 12.104 through 12.104i:

(a) The term, "archaeological or ethnological material of the State Part to the 1970 UNESCO Convention" means—

(1) Any object of archaeological interest. No object may be considered to be an object of archaeological interest unless such object—

- (i) Is of cultural significance;
- (ii) Is at least 250 years old;
- (iii) Was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water;
- (iv) Meets such standards as are generally acceptable as archaeological such as, but not limited to, artifacts, buildings, parts of buildings, or decorative elements, without regard to whether the particular objects are discovered by exploration or excavation; or

(2) Any object of ethnological interest. No object may be considered to be an

object of ethnological interest unless such object—

- (i) Is the product of a tribal or nonindustrial society, and
- (ii) Is 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.

(3) Any fragment or part of any object referred to in paragraph (a) (1) or (2) of this section which was first discovered within, and is subject to export control by the State Party.

(b) The term "Convention" means the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization at its sixteenth session (823 U.N.T.S. 231 (1972)).

(c) The term "cultural property" includes articles described in Article 1 (a) through (k) of the Convention, whether or not any such Article is specifically designated by any State Party for the purposes of Article 1.

Article 1 lists the following categories:

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

(2) 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;

(3) Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

(4) Elements of artistic or historical monuments or archaeological sites which have been disassembled;

(5) Antiquities more than 100 years old, such as inscriptions, coins and engraved seals;

(6) Objects of ethnological interest;

(7) 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;

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

(9) Postage, revenue and similar stamps, singly or in collections;

(10) Archives, including sound, photographic and cinematographic archives;

(11) Articles of furniture more than 100 years old and old musical instruments.

(d) The term "designated archaeological or ethnological material" means any archaeological or ethnological material of the State Party which—

(1) Is—

(i) Covered by an agreement under 19 U.S.C. 2602 that enters into force with respect to the United States, or

(ii) Subject to emergency action under 19 U.S.C. 2603 and

(2) Is listed by regulation under 19 U.S.C. 2604.

(e) The term "museum" means a public or private nonprofit agency or institution organized on a permanent basis for essentially educational or esthetic purposes, which, utilizing a professional staff, owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis.

(f) The term "Secretary" means the Secretary of the Treasury or his delegate, the Commissioner of Customs.

(g) The term "State Party" means any nation which has ratified, accepted, or acceded to the 1970 UNESCO Convention.

(h) The term "United States" includes the customs territory of the United States, the U.S. Virgin Islands and any territory or area the foreign relations for which the U.S. is responsible.

#### § 12.104a Importations prohibited.

(a) No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which was stolen from such institution after April 12, 1983, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the United States.

(b) No archaeological or ethnological material designated pursuant to 19 U.S.C. 2604 and listed in § 12.104g, that is exported (whether or not such exportation is to the United States from the State Party), may be imported into the United States unless the State Party issues a certification or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

#### § 12.104b State Parties to the Convention.

(a) The following is a list of States that are a State Party, that is, States that

have deposited an instrument of ratification, acceptance or accession to the Convention.

State Party	Date of entry into force
Algeria	Sept. 24, 1974
Argentina	Apr. 11, 1973
Bolivia	Jan. 4, 1977
Brazil	May 16, 1973
Bulgaria	Apr. 24, 1972
Cameroon	Aug. 24, 1972
Canada	June 28, 1978
Central African Republic	May 1, 1972
Cuba	Apr. 30, 1980
Cyprus	Jan. 19, 1980
Czechoslovakia	Jan. 14, 1977
Democratic Kampuchea	Dec. 26, 1972
Democratic People's Republic of Korea	Aug. 13, 1983
Dominican Republic	June 7, 1973
Ecuador	Apr. 24, 1972
Egypt	July 5, 1973
El Salvador	May 20, 1978
German Democratic Republic	Apr. 16, 1974
Greece	Sept. 5, 1981
Guatemala	Apr. 14, 1985
Guinea	June 16, 1979
Honduras	June 19, 1979
Hungary	Jan. 29, 1979
India	Apr. 24, 1977
Iran	Apr. 27, 1975
Iraq	May 12, 1973
Italy	Jan. 2, 1978
Jordan	June 18, 1974
Kuwait	Sept. 22, 1972
Mauritania	July 27, 1977
Mauritius	May 27, 1978
Mexico	Jan. 4, 1973
Nepal	Sept. 23, 1976
Nicaragua	July 19, 1977
Niger	Jan. 16, 1973
Nigeria	Apr. 24, 1972
Oman	Sept. 2, 1978
Pakistan	July 30, 1981
Panama	Nov. 13, 1973
Peru	Jan. 24, 1980
Poland	Apr. 30, 1974
Qatar	July 20, 1977
Republic of Korea	May 14, 1983
Saudi Arabia	Dec. 8, 1976
Senegal	Mar. 8, 1985
Socialist People's Libyan Arab Jamahiriya	Apr. 9, 1973
Sri Lanka	July 7, 1981
Syrian Arab Republic	May 21, 1975
Tunisia	June 10, 1975
Turkey	July 21, 1981
United Republic of Tanzania	Nov. 2, 1977
United States of America	Dec. 2, 1983
Uruguay	Nov. 9, 1977
Yugoslavia	Jan. 3, 1979
Zaire	Dec. 23, 1974

(b) Additions to and deletions from the list of State Parties will be accomplished by Federal Register notice, from time to time, as the necessity arises.

#### § 12.104c Importations permitted.

Designated archaeological or ethnological material for which entry is sought into the United States, will be permitted entry if at the time of making entry:

(a) A certificate, or other documentation, issued by the Government of the country of origin of such material in a form acceptable to the Secretary, such form being, but not limited to, an affidavit, license, or permit from an appropriate, authorized State Party official under seal, certifying that

such exportation was not in violation of the laws of that country, is filed with the district director; or

(b) Satisfactory evidence is presented to the district director that such designated material was exported from the State Party not less than 10 years before the date of such entry and that neither the person for whose account the material is imported (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before that date of entry, or

(c) Satisfactory evidence is presented to the district director that such designated material was exported from the State Party on or before the date on which such material was designated under 19 U.S.C. 2604.

(d) The term "satisfactory evidence" means—

(1) For purposes of paragraph (b) of this section—

(i) One or more declarations under oath by the importer, or the person for whose account the material is imported, stating that, to the best of his knowledge—

(A) The material was exported from the State Party not less than 10 years before the date of entry into the United States, and

(B) Neither such importer or person (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before the date of entry of the material; and

(ii) A statement provided by the consignor, or person who sold the material to the importer, which states the date, or, if not known, his belief, that the material was exported from the State Party not less than 10 years before the date of entry into the United States and the reasons on which the statement is based; and

(2) For purposes of paragraph (c) of this section—

(i) One or more declarations under oath by the importer or the person for whose account the material is to be imported, stating that, to the best of his knowledge, the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and

(ii) A statement by the cosignor or person who sold the material to the importer which states the date, or if not known, his belief, that the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and the reasons on which the statement is based.

(e) *Related persons.* For purposes of paragraphs (b) and (d) of this section, a

person shall be treated as a related person to an importer, or to a person for whose account material is imported, if such person—

(1) Is a member of the same family as the importer or person of account, including, but not limited to, membership as a brother or sister (whether by whole or half blood), spouse, ancestor, or lineal descendant;

(2) Is a partner or associate with the importer or person of account in any partnership, association, or other venture; or

(3) Is a corporation or other legal entity in which the importer or person of account directly or indirectly owns, controls, or holds power to vote 20 percent or more of the outstanding voting stock or shares in the entity.

**§ 12.104d Detention of articles; time in which to comply.**

In the event an importer cannot produce the certificate or evidence required in § 12.104c at the time of making entry, the district director shall take the designated archaeological or ethnological material into Customs custody and send it to a bonded warehouse or public store to be held at the risk and expense of the consignee until the certificate or evidence is presented to such officer. The certificate or evidence must be presented within 90 days after the date on which the material is taken into Customs custody, or such longer period as may be allowed by the district director for good cause shown.

**§ 12.104e Seizure and forfeiture.**

(a) Whenever any designated archaeological or ethnological material is imported into the United States in violation of 19 U.S.C. 2606, and the importer states in writing that he will not attempt to secure the certificate or evidence required by § 12.104c, or such certificate or evidence is not presented to the district director before the expiration of the time provided in § 12.104d, the material shall be seized and summarily forfeited to the United States in accordance with Part 162 of this chapter.

(1) Any designated archaeological or ethnological material which is forfeited to the United States shall, in accordance with the provisions of Title III of Pub. L. 97-446, 19 U.S.C. 2609(b):

(i) First be offered for return to the State Party;

(ii) if not returned to the State Party, be returned to a claimant with respect to whom the designated material was forfeited if that claimant establishes—

(A) valid title to the material;

(B) that the claimant is a bona fide purchaser for value of the material; or

(iii) if not returned to the State Party under paragraph (a)(1)(i) of this section or to a claimant under paragraph (a)(1)(ii) of this section, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws. No return of material may be made under paragraph (a)(1)(i) or (ii) of this section unless the State Party or claimant, as the case may be, bears the expenses incurred incident to the return and delivery, and complies with such other requirements relating to the return as the Secretary shall prescribe.

(b) Whenever any stolen article of cultural property is imported into the United States in violation of 19 U.S.C. 2607, such cultural property shall be seized and forfeited to the United States in accordance with Part 162 of this chapter.

(1) Any stolen article of cultural property which is forfeited to the United States shall, in accordance with the provisions of Title III of Pub. L. 97-446, 19 U.S.C. 2609(c):

(i) First be offered for return to the State Party in whose territory is situated the institution referred to in 19 U.S.C. 2607 and shall be returned if that State Party bears the expenses incident to such return and delivery and complies with such other requirements relating to the return as the Secretary prescribes; or

(ii) if not returned to such State Party, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

**§ 12.104f Temporary disposition of materials and articles.**

Pending a final determination as to whether any archaeological or ethnological material, or any article of cultural property, has been imported into the United States in violation of 19 U.S.C. 2606 or 19 U.S.C. 2607, the Secretary may permit such material or article to be retained at a museum or other cultural or scientific institution in the United States if he finds that: sufficient safeguards will be taken by the museum or institution for the protection of such material or article; and sufficient bond is posted by the museum or institution to ensure its return to the Secretary.

**§ 12.104g Specific items or categories designated by agreements or emergency actions.**

(a) [Reserved]

(b) A list of specific items or categories designated by agreements or emergency actions as coming under the protection of the Convention will from

time to time, as the necessity arises, be published in the **Federal Register** by means of a general notice.

**§ 12.104h Exempt material and articles.**

The provisions of this section shall not apply to—

(a) Any archaeological or ethnological material or any article of cultural property which is imported into the United States for temporary exhibition or display if such material or article is rendered immune from seizure under judicial process initiated by the U.S. Information Agency, Office of the General Counsel and Congressional Liaison, pursuant to the Act entitled "An Act to render immune from seizure under judicial process certain objects of cultural significance imported into the United States for temporary display or exhibition, and for other purposes", approved October 19, 1965 (22 U.S.C. 2459); or

(b) Any designated archaeological or ethnological material or any article of cultural property imported into the United States if such material or article—

(1) Has been held in the United States for a period of not less than 3 consecutive years by a recognized museum or religious or secular monument or similar institution, and was purchased by that institution for value, in good faith, and without notice that such material or article was imported in violation of this title, but only if—

(i) the acquisition of such material or article has been reported in a publication of such institution, any regularly published newspaper or periodical with a circulation of at least 50,000, or a periodical or exhibition catalog which is concerned with the type of article or materials sought to be exempted from this title,

(ii) such material or article has been exhibited to the public for a period or periods aggregating at least 1 year during such 3-year period, or

(iii) such article or material has been cataloged and the catalog material made available upon request to the public for at least 2 years during such 3-year period;

(2) If paragraph (b)(1) of this section does not apply, has been within the United States for a period of not less than 10 consecutive years and has been exhibited for not less than 5 years during such period in a recognized museum or religious or secular monument or similar institution in the United States open to the public;

(3) If paragraphs (b) (1) and (2) of this section do not apply, has been within the United States for a period of not less

than 10 consecutive years and the State Party concerned has received or should have received during such period fair notice (through such adequate and accessible publication, or other means, as the Secretary or his designee shall prescribe) of its location within the United States; and

(4) If none of the preceding subparagraphs apply, has been within the United States for a period of not less than 20 consecutive years and the claimant establishes that it purchased the material or article for value without knowledge or reason to believe that it was imported in violation of law.

**§ 12.104i Enforcement.**

In the customs territory of the United States, and in the U.S. Virgin Islands, the provisions of these regulations shall be enforced by appropriate customs officers. In any other territory or area within the United States, but not within such customs territory or the U.S. Virgin Islands, such provisions shall be enforced by such persons as may be designated by the President.

**William von Raab,**  
*Commissioner of Customs.*

Approved April 2, 1985.

**John M. Walker, Jr.,**  
*Assistant Secretary of the Treasury.*

[FR Doc. 85-15142 Filed 6-24-85; 8:45 am]

BILLING CODE 4820-02-M





November 4, 1985

Dear Mr. President:

For more than two years the Department of State and the U.S. Information Agency have discussed the issue of which executive agency should be delegated the Presidential functions under the Cultural Property Act (Act) (Public Law 97-446). Both agencies now concur that most of the Presidential functions under the Act should be delegated to the Director of the USIA. The agencies have not been able to agree, however, on which agency should be responsible for negotiating the Act's bilateral and multilateral agreements. We understand that the Department of State and USIA will soon be presenting to Joseph M. Wright, Director of the Office of Management and Budget, their briefs requesting a Presidential executive order on this matter.

The Cultural Property Advisory Committee is comprised of eleven private citizens appointed by you to represent the interests of scholars in archaeology/ethnology/anthropology, dealers engaged in the sale of art, the museum community and the general public. As the Presidential advisory committee responsible for overseeing U.S. actions under the Cultural Property Act, we respectfully submit our unanimous resolution to you recommending that all of the President's functions under the Act be delegated to the Director of USIA.

Our resolution is based on our belief that the expertise and experience of the USIA in international cultural affairs is essential to effectively lead negotiations on executive agreements with other countries under the Cultural Property Act. USIA is responsible for U.S. cultural and educational programs abroad and has a proven record of expertise in negotiating cultural agreements and accords. The Agency can provide the needed emphasis in negotiations on the positive aspects of the U.S. Act - the sharing of scholarly knowledge and the preservation of cultural treasures.

Most importantly we believe the Cultural Property Act would receive the time and attention it requires from USIA's personnel in Washington and abroad who are knowledgeable about the Act and who give priority to cultural issues and agreements. Since early 1984 the Agency's expert Cultural Property staff, headed by Ann Guthrie, formerly of the White House staff, has conducted extensive briefings for domestic and foreign based Agency officers whose expertise will be essential in carrying out the purposes of the Act.

The Honorable Ronald Reagan  
The White House  
Washington, D.C. 20500



In addition, the Cultural Property staff has been working closely with officers at U.S. Customs Service which issued interim regulations for the Act in 1985. They have been aided by the USIA's General Counsel staff, who for the past seven years, have been providing expert advice to the Agency on matters pertaining to the Act.

Since Congress placed the Cultural Property Advisory Committee at the U.S. Information Agency, we believe it intended that all of the Presidential functions should also reside there. According to the Senate Finance Committee Report (97-564), a close relationship between the Advisory Committee and the President's designee is essential. This is apparent upon review of the Presidential functions and the reliance of the executive on the advice of the Advisory Committee. The President (or his designee) must submit to the Cultural Property Advisory Committee information on each Request from another Government under the Cultural Property Act. The Advisory Committee then reviews and investigates it and submits a report of its findings to the President (or his designee).

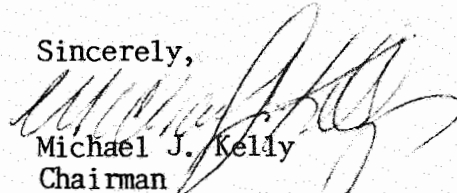
The Committee's report is to include recommendations as to what should be covered in the negotiated agreement and suggestions for educational, cultural and scientific exchange. The President (or his designee) must then decide whether to accept the Committee's recommendations. If the President (or his designee) so determines, negotiations of a cultural property protection agreement would then commence. If the Advisory Committee's recommendations differ from the negotiated agreement, the Act requires the President (or his designee) to submit a report stating the differences and reasons for them to the Congress. The Secretary of Treasury, in consultation with the Director of USIA, then promulgates a list of materials that will be denied entry into the U.S. The Senate Report points out that the Director of USIA is consulted for he "is responsible for servicing the work of the Advisory Committee that is expected to contribute heavily to the composition of the list." A continual review of the effectiveness of the agreement must then be carried out by the Advisory Committee who may recommend the agreement's suspension or extension to the President (or his designee) and Congress.

During the last decade in the absence of implementing legislation for the UNESCO Convention, the Department of State has negotiated three bilateral cultural property recovery agreements in which the U.S. pledged only to uphold existing U.S. laws. These agreements bear no resemblance to the future Cultural Property Act agreements. The Cultural Property Act requires recommendations of a Presidential advisory committee before and after the negotiation of an agreement; it authorizes the imposition of U.S. import restrictions on cultural property; it authorizes unilateral emergency action as well as multilateral and bilateral agreements; and it strongly encourages programs of cultural, educational and scientific exchange that will promote scholarly study and public access to the protected materials.

The Advisory Committee feels that in order for the Cultural Property Act to be effectively carried out, all of the Presidential functions should be delegated to the Director of USIA. It is a matter of common sense, efficient management, and effective implementation of the law. To separate the Presidential functions would be to confuse officials of other Governments and waste federal resources unnecessarily.

We hereby submit our resolution on this matter to you. With best wishes for your continuing success,

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Kelly", written over the typed name and title.

Michael J. Kelly  
Chairman  
Cultural Property Advisory Committee

CULTURAL PROPERTY ADVISORY COMMITTEE  
RESOLUTION

to the President of the United States  
and the Director of the United States Information Agency

in support of

Presidential Delegation to the United States Information Agency  
under the Convention on Cultural Property Implementation Act

Resolution No. 1-84  
November 1, 1984

BE IT RESOLVED THAT:

WHEREAS, the United States Information Agency (USIA) is the lead U.S. Government Agency in the conduct and coordination of the International Cultural Affairs of the United States of America; and

WHEREAS, the USIA is familiar with the legal and technical requirements of the Convention on Cultural Property Implementation Act, and enjoys frequent contact with the groups and entities most closely associated with the Act; and

WHEREAS, the primary interest of USIA in international cultural relations is consistent with the spirit of the protection of cultural patrimony and would not allow such protection to become merely a side issue in the larger foreign relations concerns of the United States; and

WHEREAS, the USIA is charged by the Act with providing technical and administrative support to the Cultural Property Advisory Committee; and

WHEREAS, the intent of the Act to enhance opportunities for cultural, educational, and scientific interchange is best advanced by the ability of the USIA to program in areas related to its responsibilities under the Act and thereby achieve a coherent U.S. policy toward the issue of the protection of cultural patrimony in other countries;

IT IS THEREFORE RESOLVED THAT the Cultural Property Advisory Committee advises the President of the United States and the Director of USIA that the Committee recommends that all of the President's substantive authorities under the Convention on Cultural Property Implementation Act be delegated by Executive Order to the Director of the United States Information Agency. Such substantive authorities shall not include those related to the appointment of the members of this Committee and those clearly delegated to the Secretary of Treasury or his designee, but shall include negotiating authority, which in all cases shall be exercised with the guidance of the Secretary of State, as appropriate.

IT IS FURTHER RESOLVED that the Committee's letters indicate its unqualified support for the position advanced by USIA in the matter of delegation.

PASSED BY UNANIMOUS VOTE of all members of the Cultural Property Advisory Committee at their third meeting, November 1, 1984, in Washington, D.C.

Michael J. Kelly, Chairman  
James W. Alsdorf, Vice Chairman  
John J. Slocum, Vice Chairman  
Patricia R. Anawalt  
Clemency C. Coggins  
James G. Crowley, III  
James B. Hill  
Arthur A. Houghton, III  
Alfred E. Stendahl  
D. Fred Wendorf, Jr.  
Leslie E. Wildesen

THE SECRETARY OF STATE  
WASHINGTON

*Draft from State:*  
*11/1/85*  
*Returned to State*  
*by USIA: 11/1/85*

Dear Mr. Miller:

On January 12, 1983, the President signed into law the Convention on Cultural Property Implementation Act (Title III, P.L. 97-446, the "Act"), enabling the United States to implement the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The Act assigns a number of responsibilities to the President which to date have not been the subject of any delegation of authority because of a difference of opinion between us as to which agency should exercise lead responsibility for the negotiation of international agreements pursuant to the Act. We are now asking that the President resolve this issue by signing one of the two draft Executive Orders attached.

The two drafts are essentially identical except for the delegation of negotiating authority. Each would vest in the Director of the USIA the bulk of Presidential functions under the Act, for example, determining whether a request from another State Party meets the requirements of the Act for initiating negotiations toward an agreement which would impose import controls on cultural property coming from that country. Each would also vest in the Secretary of the Treasury certain functions related to the application and suspension of import restrictions. The Executive Order put forward by the State Department (Tab A) would give the Secretary of State the authority to negotiate and conclude, in consultation with the Director of USIA and the Secretary of the Treasury, international agreements authorized under the Act. The Executive Order put forward by USIA (Tab B) would vest that same

The Honorable  
James C. Miller III, Director,  
Office of Management and Budget.



authority, subject to reciprocal consultation, in the Director of USIA. The Department of State has offered a Memorandum of Understanding assuring USIA of full participation in all phases of negotiations. USIA has indicated it will have no problem cooperating with State.

Secretary Shultz believes it is essential that the authority to negotiate agreements with foreign governments pursuant to the Act be delegated to the Secretary of State for the following reasons:

-- The fragmentation of negotiating authority unnecessarily confuses foreign governments regarding the Secretary of State's responsibility for the conduct of foreign affairs and undercuts the credibility of our Ambassadors abroad.

-- Agreements under the Act will address situations of pillage of archaeological or ethnological materials -- that is, serious threats to the preservation of the national patrimony of another country. Such circumstances can be expected to arouse intense nationalistic feelings and create difficult bilateral problems for the United States. The phenomenon is readily illustrated by the high-level attention given the recovery of individual pre-Columbian pieces by numerous Latin American governments in the last few years. Our management of these sensitive issues is integral to the overall conduct of bilateral relations.

-- Recovery agreements are not mere "cultural" agreements but rather law enforcement cooperation agreements and vehicles for engendering good will, exceeding their cultural content.

-- In contrast to existing recovery agreements, the agreements authorized by the Act will provide an important new law enforcement remedy (import restrictions) in the recovery of cultural property illegally removed from another country. A substantial benefit of that nature -- which can also impinge on relations with third countries -- should be conferred only with due regard for our overall relationship with that country, which it is the responsibility of the Department of State to assess and manage.

-- Department officials have played the dominant role in the negotiation of the Convention and for more than 15 years in cultural property recovery activities.

-- Under the Executive Order proposed by the Department, the Director of USIA would determine in the first instance whether statutory conditions are met for the negotiation of an agreement under the Act. Only the actual conduct of negotiations with a foreign government toward a statutorily authorized objective -- import restrictions -- would be delegated to the Secretary of State. Such a division of functions recognizes in the Director of USIA the important substantive responsibilities of making determinations concerning the cultural property situation in a particular country while preserving the Secretary of State's role as the President's principal representative in the conduct of foreign affairs for negotiating import restrictions with foreign governments.

Director Wick on the other hand believes that it is necessary that the authority to negotiate agreements with foreign governments should be delegated to the Director of the United States Information Agency for the following reasons:

-- The Director of the Agency has been delegated negotiating powers to conclude international agreements for educational and cultural exchanges under the Fulbright-Hays Act as well as for other purposes thereunder, and to conclude international agreements either for the Voice of America or for other informational activities under the Smith-Mundt Act. This negotiating authority vested in him under section 6 of Reorganization Plan No. 2 of 1977 together with the language of Executive Order 12048 underscores the position of the Director as the principal executive agent of the United States for international informational, educational and cultural matters under these statutes and for exercising government-wide policy guidance on these matters. The Agency has negotiated many agreements with foreign governments since its reorganization in 1978 when this function was transferred from the Secretary of State to the Director. During the negotiations, the Director receives foreign policy guidance from the Secretary.

-- This Agency maintains international contacts through its officers stationed overseas with ministries, museums and other institutions whose work involves cultural property. Similarly this Agency maintains strong ties with institutions in the cultural field within the United States. Thus the Agency already has in place its network of experienced foreign service officers in cultural matters both at headquarters and overseas in one hundred and twenty-seven countries.

-- The Agency exercises statutory functions related to cultural property visiting the United States. Pursuant to the provisions of the immunity from seizure statute of 1965 (Public Law 89-259), the Agency's determination vests a foreign exhibition with immunity from judicial seizure while on exhibit within the United States. Objects or exhibits so immunized are exempt from coverage under the Convention on Cultural Property Implementation Act.

-- The Agency also makes determinations of national interest under the Federal Arts and Artifacts Indemnity Act which provides indemnification for foreign exhibits coming to this country.

-- The Cultural Property Implementation Act already vests in the Director the responsibility of providing technical support to the Cultural Property Advisory Committee and of consulting with the Secretary of the Treasury on the designation of archaeological and ethnological materials under the Act.

-- We estimate that since 1978 the Agency has expended more than 16,000 staff hours on activities related to passage or implementation of the Act. Of this total some 10,000 hours have been spent since passage of the Act in December 1982 in providing support to the Advisory Committee and to the Director in matters relating to implementation of the Act.

-- The protection of cultural patrimony and the return of stolen artifacts, while they have an incidental law enforcement aspect, are essentially matters affecting the cultural relations between nations. The Agency's primary focus on international cultural relations insures that these matters will not be lost among the overall bilateral concerns between the United States and another government. The incidental law enforcement matters can be as easily handled by USIA in consultation with the Treasury Department as by the State Department.

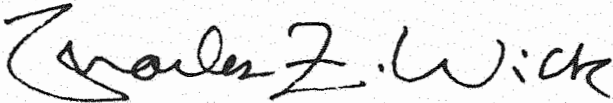
-- The actual responsibilities of this Agency as the principal international agent of this Government for cultural matters as described above, together with its existing negotiating authorities, suggest that its Director should be the natural recipient of the President's delegation.

**RECOMMENDATION:**

That you refer to the President the question of whether the Secretary of State or the Director of USIA should receive the

delegation of authority to negotiate and conclude cultural property recovery agreements with the request that he sign the executive order which reflects his decision.

Sincerely,



---

Charles Z. Wick  
Director  
U.S. Information Agency

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George P. Shultz

Enclosures:

Tab A - Executive Order (State Department)

Tab B - Executive Order (USIA)





EXECUTIVE ORDER No.

PROTECTION OF CULTURAL PROPERTY

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Convention on Cultural Property Implementation Act (Title III of P.L. 97-446; hereinafter referred to as the "Act"), and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. DEPARTMENT OF STATE. The following functions conferred upon the President by the Act are hereby delegated to the Secretary of State, acting in consultation with the Director of the United States Information Agency and the Secretary of the Treasury:

(a) The functions conferred by section 303(a)(2) relating to the negotiation and conclusion of bilateral or multilateral agreements under the Act, subject to the restrictions of section 303(c).

(b) The functions conferred by section 303(a)(4) relating to obtaining a commitment on the exchange of archaeological and ethnological materials from a party to an agreement.

(c) The functions conferred by section 303(d) with respect to the determinations concerning the failure of other parties to an agreement to take any or satisfactory implementation on their agreement.

(d) The functions conferred by section 303(e) relating to the negotiation and conclusion of extensions of agreements under the Act.

(e) The functions conferred by section 303(q) relating to the notification of Presidential action and the furnishing of reports to the Congress.

(f) The functions conferred by section 304(c)(4) to the extent that they involve the negotiation and conclusion of agreements subject to advice and consent to ratification by the Senate.

Section 2. UNITED STATES INFORMATION AGENCY. The following functions conferred upon the President by the Act are hereby delegated to the Director of the United States Information Agency, acting in consultation with the Secretary of State and the Secretary of the Treasury:

(a) The functions conferred by section 303(a)(1) concerning determinations to be made prior to initiation of negotiations of bilateral or multilateral agreements.

(b) The functions conferred by section 303(f) relating to the actions to be taken upon receipt of a request made by a State Party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by the Sixteenth General Conference of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as the "Convention").

(c) The functions conferred by section 304(b) to the extent that they involve determinations by the President that an emergency condition applies with respect to any archaeological or ethnological material of any State Party to the Convention, subject to the limitations of sections 304(c)(1), 304(c)(2), and 304(c)(3).

(d) The function conferred by section 304(c)(3) to the extent that they involve determinations to be made and the receipt and consideration of an advisory report from the Cultural Property Advisory Committee by the President prior to extensions of import restrictions.

(e) The functions conferred by sections 306(f)(6) and 306(g) relating to the reception of reports prepared by the Cultural Property Advisory Committee.

(f) The functions conferred by section 306(h) relating to the determinations to be made about the disclosure of matters involved in the Cultural Property Advisory Committee's proceedings.

Section 3. DEPARTMENT OF THE TREASURY. (a) The following functions conferred upon the President by the Act are hereby delegated to the Secretary of the Treasury, acting in consultation with the Secretary of State and the Director of the United States Information Agency:

(1) Subject to subsection (c) of Section 1 above, the functions conferred by section 303(d) to the extent that they involve the suspension of import restrictions.

(2) Subject to subsections (c) and (d) of Section 2 above, the functions conferred by section 304 to the extent that they involve the application of import restrictions set forth in section 307 and the extension of such import restrictions pursuant to section 304(c)(3).

(b) The functions conferred on the Secretary of the Treasury under section 305 relating to promulgation of import restrictions shall be exercised in consultation with the Secretary of State and the Director of the United States Information Agency.

Section 4. ENFORCEMENT IN TERRITORIES AND OTHER AREAS. The functions conferred by section 314 relating to the enforcement of the provisions of the Act are hereby delegated to the following officials in the geographical areas under their jurisdiction:

1. The Governor of Guam
2. The Governor of American Samoa
3. The Governor of the Northern Mariana Islands
4. The High Commissioner of the Trust Territory of the Pacific Islands with respect to the Federated States of Micronesia, the Marshall Islands and Palau. The functions delegated to the High Commissioner may be redelegated to any

officer of the governments of the Federated States of  
Micronesia, the Marshall Islands and Palau with further power  
of redelegation.

Ronald Reagan

The White House,

                    , 1985





EXECUTIVE ORDER No.

PROTECTION OF CULTURAL PROPERTY

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Convention on Cultural Property Implementation Act (Title III of P.L. 97-446; hereinafter referred to as the "Act"), and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. UNITED STATES INFORMATION AGENCY. The following functions conferred upon the President by the Act are hereby delegated to the Director of the United States Information Agency, acting in consultation with the Secretary of State and the Secretary of the Treasury:

(a) The functions conferred by section 303(a)(1) concerning determinations to be made prior to initiation of negotiations of bilateral or multilateral agreements.

(b) The functions conferred by section 303(a)(2) relating to the negotiation and conclusion of bilateral or multilateral agreements under the Act, subject to the restrictions of section 303(c).

(c) The functions conferred by section 303(a)(4) relating to obtaining a commitment on the exchange of archaeological and ethnological materials from a party to an agreement.

(d) The functions conferred by section 303(d) with respect to the determinations concerning the failure of other parties

to an agreement to take any or satisfactory implementation action on their agreement.

(e) The functions conferred by section 303(e) relating to the negotiation and conclusion of extensions of agreements under the Act.

(f) The functions conferred by section 303(f) relating to the actions to be taken upon receipt of a request made by a State Party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by the Sixteenth General Conference of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as the "Convention").

(g) The functions conferred by section 303(g) relating to the notification of Presidential action and the furnishing of reports to the Congress.

(h) The functions conferred by section 304(b) to the extent that they involve determinations by the President that an emergency condition applies with respect to any archaeological or ethnological material of any State Party to the Convention, subject to the limitations of sections 304(c)(1), 304(c)(2), and 304(c)(3).

(i) The function conferred by section 304(c)(3) to the extent that they involve determinations to be made and the receipt and consideration of an advisory report from the

Cultural Property Advisory Committee by the President prior to extensions of import restrictions.

(j) The functions conferred by section 304(c)(4) to the extent that they involve the negotiation and conclusion of agreements subject to advice and consent to ratification by the Senate.

(k) The functions conferred by sections 306(f)(6) and 306(g) relating to the reception of reports prepared by the Cultural Property Advisory Committee.

(l) The functions conferred by section 306(h) relating to the determinations to be made about the disclosure of matters involved in the Cultural Property Advisory Committee's proceedings.

Section 2. DEPARTMENT OF THE TREASURY. The following functions conferred upon the President by the Act are hereby delegated to the Secretary of the Treasury, acting in consultation with the Secretary of State and the Director of the United States Information Agency:

(1) Subject to subsection (d) of Section 1 above, the functions conferred by section 303(d) to the extent that they involve the suspension of import restrictions.

(2) Subject to subsections (h) and (i) of Section 1 above, the functions conferred by section 304 to the extent that they involve the application of import restrictions set forth in section 307 and the extension of such import restrictions pursuant to section 304(c)(3).

Section 3. ENFORCEMENT IN TERRITORIES AND OTHER AREAS.

The functions conferred by section 314 relating to enforcement of the provisions of the Act are hereby delegated to the following officials in the geographical areas under their jurisdiction.

1. The Governor of Guam
2. The Governor of American Samoa
3. The Governor of the Northern Mariana Islands
4. The High Commissioner of the Trust Territory of the Pacific Islands with respect to the Federated States of Micronesia, the Marshall Islands and Palau. The functions delegated to the High Commissioner may be redelegated to any officer of the governments of the Federal States of Micronesia, the Marshall Islands and Palau with further power of redelegation.

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Ronald Reagan

The White House,  
\_\_\_\_\_. 1985



**United States  
Information  
Agency**

Washington, D.C. 20547



November 4, 1985

Dear John:

On Friday, November 1, Director Wick signed the joint USIA/State brief. It was then hand delivered to Mr. Ely Maurer, Assistant Legal Advisor at State for Secretary Shultz's signature. They assured us that it would be sent to O.M.B. Director Miller today. USIA's approved text is enclosed.

The Cultural Property Advisory Committee has been most concerned about the resolution of this matter and is so advising the President. Today, Mr. Michael J. Kelly, the Committee's Chairman, is sending the Committee's unanimous resolution to the President. A copy of Mr. Kelly's letter and resolution are enclosed.

In addition to the texts of the Cultural Property Act, the UNESCO Convention, and the Interim Regulations issued by Customs, enclosed is the Senate Finance Committee Report. I find the Senate Report and the Customs regulations to be clear statements of how the Act is intended to operate. The Museum News article provides a good history of U.S. policies in this area.

Please call if you have any questions. We look forward to meeting with you in the near future.

Sincerely,

Ann Guthrie  
Executive Director  
Cultural Property  
Advisory Committee

The Honorable John G. Roberts, Jr.  
Associate Counsel to the President  
The White House  
Washington, D.C. 20500