

92D CONGRESS }
2d Session }

SENATE

{ EXECUTIVE
B }CONVENTION ON OWNERSHIP OF CULTURAL
PROPERTY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

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

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

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1972

LETTER OF TRANSMITTAL

To the Senate of the United States:

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

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

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

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

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

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

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

RICHARD NIXON.

THE WHITE HOUSE, *February 2, 1972.*

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, November 11, 1971.

THE PRESIDENT,
The White House.

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

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

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

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SUMMARY OF PROVISIONS

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

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

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

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

ARTICLE BY ARTICLE ANALYSIS

Article 1

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

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

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

Article 2

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

Article 3

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

Article 4

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

Article 5

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

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

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

Article 6

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

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

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

Article 7

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

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

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

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