CONVENTION ON OWNERSHIP OF CULTURAL PROPERTY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILICIT IMPORT, EXPORT, AND TRANSFER OF OWNERSHIP OF CULTURAL 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.

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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.


RICHARD NIXON.

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.
The Convention provides that the states parties recognize that the export, 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 the 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
As 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
Art. VI

Article VI 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 VI 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 should impose such export controls.

Art. VII

Under Article VII(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 VII(a) is a compromise provision which applies to institutions whose acquisition policies are 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 VII(a) to apply to institutions whose acquisition policy is subject to national control under domestic legislation and not to require the enactment of new legislation to establish national control over other institutions."

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

Article VII(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 VII(b)(i) property. Article VII(b) would be implemented by appropriate legislation.

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

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

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

Article 8

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

Article 9

This Article contemplates the application of import or other controls on an ad hoc basis to specifically defined archaeological or ethnological materials in situations in which a state’s cultural patrimony is in jeopardy from pillage of these materials. Appropriate controls would be determined and applied to specific materials by mutual
Agreement of the states parties must directly concerned. The Congress will be asked to enact legislation to establish an appropriate framework for United States participation in these negotiations and controls.

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

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

**Article 10**

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

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

**Article 11**

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

**Article 12**

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

**Article 13**

Article 13 deals in general terms with measures other than import controls to prevent illicit transfer of cultural property and to facilitate the restitution of such property. In the view of the Department of State, the language "consistent with the laws of each State," which applies to all the subparagraphs of the Article, insures that this Article does not require action by any state in conflict with or going beyond its existing laws.
Paragraph (a) is of relevance primarily to the exporting state.
Paragraph (b) contemplates the normal cooperation of law enforcement agencies and cultural services within the framework of existing law. Under United States procedures, the rightful owner of stolen property may be able to recover it through normal police action if issues and interests requiring litigation do not arise.
Paragraph (c) contemplates judicial actions for recovery of lost or stolen property conforms with United States law. The obligation of this Article is procedural, i.e., to provide a judicial remedy for the vindication of a property right if one exists. The action must be brought on behalf of the property owner; the right of a government to bring such an action would be determined by the law of the forum.

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

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

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

Article 14

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

Article 17

This Article deals with the role of UNESCO.

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

Conclusion

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

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

Concerned private groups have supported the Convention. A lawyers' committee of the American Society of International Law Panel on the International Movement of Art Treasures sent me a letter on October 21, 1970, enclosing its report and recommending that "the United States should approve it [the Convention] with certain explicit reservations and understandings." That general approach has also been supported by the Special Policy Committee of the American Association of Museums. On December 30, 1970, the Archaeological Institute of America passed a resolution by a vote of 103 to 8, with 7 abstentions, supporting the UNESCO Convention "wholeheartedly" and urging ratification by the United States "at the earliest practical moment." The Society for American Archaeology and the College Art Association have also adopted resolutions supporting the UNESCO Convention.
United States accession to this Convention at an early date is, in my opinion, in the interests of the United States, and, in addition, would indicate to other countries our honest desire to deal with the problem of illicit international movement of national art treasures.

Respectfully submitted.

WILLIAM P. ROGERS.

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