

CONVENTION ON CULTURAL PROPERTY IMPLEMENTATION ACT

HEARING
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
NINETY-FIFTH CONGRESS
SECOND SESSION
ON

H.R. 5643

AN ACT TO IMPLEMENT THE CONVENTION OF THE MEANS OF
PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EX-
PORT, AND TRANSFER OF OWNERSHIP OF CULTURAL
PROPERTY

S. 2261

A BILL TO IMPLEMENT THE UNITED NATIONS CONVENTION
ON THE MEANS OF PROHIBITING AND PREVENTING THE
ILLICIT IMPORT, EXPORT, AND TRANSFER OF OWNERSHIP
OF CULTURAL PROPERTY

FEBRUARY 8, 1978



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CONVENTION ON CULTURAL PROPERTY IMPLEMENTATION ACT

WEDNESDAY, FEBRUARY 8, 1978

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE OF THE
COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2221, Dirksen Senate Office Building, Hon. Abraham Ribicoff presiding.

Present: Senators Ribicoff and Moynihan.

[The committee press release announcing this hearing and the text of the bills, H.R. 5643 and S. 2261, follow:]

[Press Release]

FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE TO HOLD HEARINGS ON THE ACT TO IMPLEMENT THE UNITED NATIONS CONVENTION ON CULTURAL PROPERTY (H.R. 5643)

The Honorable Abraham Ribicoff, (D., Conn.) Chairman of the Subcommittee on International Trade of the Committee on Finance, today announced that the Subcommittee will hold public hearings on the Act to implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. The hearings will be held at 10 a.m., Wednesday, February 8, 1978, in Room 2221 of the Dirksen Senate Office Building.

Requests to testify.—Chairman Ribicoff stated that witnesses desiring to testify during these hearings must make their requests to testify to Michael Stern, Staff Director, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C. 20510, not later than Wednesday, February 1. Witnesses will be notified as soon as possible after this date as to when they are scheduled to appear. If for some reason the witness is unable to appear at the time scheduled, he may file a written statement for the record in lieu of the personal appearance.

Consolidated testimony.—Chairman Ribicoff also stated that the Subcommittee strongly urges all witnesses who have a common position or the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the Subcommittee. This procedure will enable the Subcommittee to receive a wider expression of views than it might otherwise obtain. Chairman Ribicoff urged very strongly that all witnesses exert a maximum effort to consolidate and coordinate their statements.

Legislative Reorganization Act.—In this respect, he observed that the Legislative Reorganization Act of 1946 requires all witnesses appearing before the Committees of Congress to "file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument." Chairman Ribicoff stated that in light of this statute, the number of witnesses who desire to appear before the Committee, and the limited time available for the hearings, all witnesses who are scheduled to testify must comply with the following rules:

1. All witnesses must include with their written statements a summary of the principal points included in the statement.

2. The written statements must be typed on letter-size paper (not legal size) and at least 75 copies must be submitted before the beginning of the hearing.

3. Witnesses are not to read their written statements to the Subcommittee, but are to confine their 10-minute oral presentations to a summary of the points included in the statement.

4. No more than 10 minutes will be allowed for the oral summary.

Witnesses who fail to comply with these rules will forfeit their privilege to testify.

Written statements.—Witnesses who are not scheduled to make an oral presentation, and others who desire to present their views to the Subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearings. These written statements should be submitted to Michael Stern, Staff Director, Senate Committee on Finance, Room 2227, Dirksen Senate Office Building not later than Wednesday, February 15, 1978.

[H.R. 5643, 95th Cong. 1st sess.]

AN ACT To implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Convention on Cultural Property Implementation Act".

SEC. 2. AGREEMENTS TO IMPLEMENT ARTICLE 9 OF THE CONVENTION.

(a) AGREEMENT AUTHORITY.—If the President determines, after request is made to the United States under article 9 of the Convention by any State Party, that—

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

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

(3) the application of the import restrictions set forth in section 6 with respect to archaeological or ethnological material of the State Party would be of substantial benefit in deterring a serious situation of pillage, and remedies less drastic than the application of such restrictions are not available; and

(4) the application of such 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, cultural, and educational purposes;

the President may enter into—

(A) a bilateral agreement with the State Party to apply the import restrictions set forth in section 6 of that archaeological or ethnological material of the State Party the pillage of which is creating the jeopardy of the cultural patrimony of the State Party found to exist under paragraph (1); 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 comparable restrictions, with respect to such material.

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 AND EXTENSION OF AGREEMENTS.—The President may not enter into any agreement under subsection (a) which has an effective period beyond the close of the 5-year period beginning on the date on which such agreement enters into force with respect to the United States. Any such agreement may be extended by the President for such additional periods of time as the President deems reasonable.

(c) PROCEDURES.—If any request described in subsection (a) is made by a State Party, or if the President proposes to extend any agreement entered into under such subsection, 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 (including, if applicable, information from the State Party with respect to

the implementation of emergency action under section 3) or proposal, that is appropriate to enable the Committee to carry out section 5(f); and

(3) consider, in taking action on the request or proposal, the views and recommendations contained in the Committee report required under section 5(f) (1) or (2), if the report is submitted to the President before the close of the 120-day period beginning on the day on which the President submitted information on the request or proposal to the Committee under paragraph (2).

(d) **INFORMATION ON PRESIDENTIAL ACTION.**—In any case in which the President enters into or extends an agreement pursuant to subsection (a) or (b), or applies import restrictions under section 3, the President shall, promptly after taking such action, submit to the Congress a document containing a description of such action (including the text of any agreement entered into), 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 the reasons for any such difference. 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 document which contains the reasons why such agreement was not entered into.

SEC. 3. EMERGENCY IMPLEMENTATION OF IMPORT RESTRICTIONS.

(a) **DEFINITION.**—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, 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, or fragmentation which is, or threatens to be, of crisis proportions; or

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

and application of the import restrictions set forth in section 6 on a temporary basis would, in whole or in part, reduce the incentive for such pillage, dismantling, 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 6 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 2(a) to the United States; but this section may be so implemented whether or not the State Party indicated, in such request, 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 5(f) (3) if the report is submitted to the President before the close of the 60-day period beginning on the day on which the President submitted information to the Committee under section 2(c) (2) on the request of the State Party under section 2(a).

(3) No import restriction set forth in section 6 may be applied under this section to the archaeological or ethnological materials of any State Party after whichever of the following days first occurs:

(A) The last day of the 2-year period beginning on the date on which the request of the State Party under section 2(a) is made to the United States

(B) The day on which an agreement is entered into under section 2(a) with such State Party pursuant to such request.

SEC. 4. DESIGNATION OF MATERIALS COVERED BY AGREEMENTS OR EMERGENCY ACTIONS.

After any agreement is entered under section 2, or emergency action is taken under section 3, the Secretary, after consultation with the Secretary of State, by regulation shall promulgate, and when appropriate shall revise, a list of the archaeological or ethnological material of the State Party covered by the agree-

ment 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 restrictions under section 6 are applied only to the archaeological 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.

SEC. 5. CULTURAL PROPERTY ADVISORY COMMITTEE.

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

(b) **MEMBERSHIP.**—The Committee shall be composed of 9 members appointed by the President as follows:

(A) One member from among two nominees selected by the College Art Association.

(B) Two members from among four nominees, two of which shall be selected by the American Association of Museums and two of which shall be selected by the Association of Art Museum Directors.

(C) Two members from among four nominees, two of which shall be selected by the Archaeological Institute of America and two of which shall be selected by the Association for Field Archaeology.

(D) Two members from among four nominees, two of which shall be selected by the American Association of Dealers in Ancient, Oriental, and Primitive Art and two of which shall be selected by the Art Dealers Association of America.

(E) Two members who shall represent the interests of the public.

(2) (A) No individual is eligible for nomination or appointment under paragraph (1)(E) if the individual is an officer or employee of, or is otherwise related in an official capacity to, any organization listed in paragraph (1)(A) through (D).

(B) No individual is eligible for nomination or appointment under paragraph (1) unless the individual is specially qualified to serve on the Committee by virtue of the individual's education, training, or experience.

(C) Appointments and nominations made under paragraph (1) shall be made in such manner so as to insure fair representation of the various interests of the public sectors and the private sectors in the international exchange of archeological and ethnological materials, and that within such sectors, fair representation is accorded to the interest of regional and local institutions and museums.

(3) (A) Except as provided in subparagraph (B) members of the Committee shall be appointed for terms of 3 years.

(B) Of the members first appointed—

(i) three shall be appointed for terms of 1 year,

(ii) three shall be appointed for terms of 2 years, and

(iii) three shall be appointed for terms of 3 years, as designated by the

President at the time of appointment.

(C) Any individual appointed as a member of the Committee is eligible for reappointment for one additional term (whether or not consecutive); except that any member initially appointed to the Committee for less than a full term is eligible for reappointment for two additional terms.

(D) 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.**—(1) Seven 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.

(2) A Chairman and Vice Chairman of the Committee shall be elected by the members.

(e) **STAFF AND ADMINISTRATION.**—(1) The Secretary of State shall provide the Committee with such administrative and technical support services as are necessary for the effective functioning of the Committee.

(2) The Administrator of General Services shall furnish the Committee with such offices, equipment, supplies, and maintenance services as are necessary.

(3) Upon the request of the Committee, the head of any 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.

(f) **REPORTS BY COMMITTEE.**—(1) The Committee shall, with respect to each request of a State Party referred to in section 2(a), prepare a report setting forth—

(A) the results of its investigation and review with respect to any matter referred to in section 2(a) (1) through (4) as it relates to the State Party or the request; and

(B) its recommendation, together with the reasons therefor, as to whether or not an agreement should be entered into under section 2(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 2(b), prepare a report setting forth its recommendations, together with the reasons therefor, as to whether or not such agreement should be extended.

(3) The Committee shall, in each case in which the Committee finds that an emergency condition under section 3 exists (whether or not the State Party indicated in its request under section 2(a) that an emergency condition exists), prepare a report setting forth its recommendations, together with the reasons therefor, as to whether or not emergency action under section 3 should be implemented. If any State Party indicates in its request under section 2(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 2 or the implementation of emergency action under section 3 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.** The Committee shall undertake a continuing review of the effectiveness of agreements entered into under section 2, and of emergency action implemented under section 3, and if the Committee finds, as a result of such review, that—

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

(2) changes are required to this Act 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 improving the effectiveness of any such agreement, action, or this Act.

SEC. 6. 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 effective date of the regulation listing such material under section 4 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 10 years before the date of such entry and—

(i) no United States citizen or permanent resident of the United States contracted for or acquired an interest, directly or indirectly, in such material during the 10-year period preceding such date of entry, and

(ii) the State Party received, or should have received, fair notice of the location of the material by means of exhibition, publication, or other circumstances occurring after its exportation from the State Party; or

(B) on or before the effective date of the regulation prescribed under section 4 which lists such material,

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 90 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 judicial forfeiture.

(c) The term "satisfactory evidence" means—

(1) for purposes of subsection (b)(2)(A), one or more declarations under oath by the consignor or shipper and the importer or consignee which state that the material was exported from the State Party not less than 10 years before the date of entry into the United States, which names those persons having an interest in the material during the 10-year period preceding such date of entry and declares that they are not United States citizens or permanent residents thereof, and which shows compliance with regulations issued by the Secretary with respect to exhibition, publication, or other circumstances relating to fair notice of the location of the material after exportation from the State Party, together with certified copies of exporting documentation (including but not limited to bills of sale after exportation, catalogs of dates of exhibition, copies of publication, and export or import documents); and

(2) for purposes of subsection (b)(2)(B), one or more declarations under oath by the consignor or shipper and the importer or consignee which state that the material was exported from the State Party on or before the effective date of the regulation prescribed under section 4 which lists such material, together with certified copies of exporting documentation (including, but not limited to, the kind described in paragraph (1)).

SEC. 7. STOLEN CULTURAL PROPERTY.

No article of cultural property 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 Act, 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.

SEC. 8. TEMPORARY DISPOSITION OF MATERIALS AND ARTICLES SUBJECT TO ACT.

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 6 or section 7, 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.

SEC. 9. 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 6 or section 7 shall be subject to seizure and judicial forfeiture. All provisions of law relating to seizure, judicial forfeiture and condemnation for violation of the customs laws shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this Act, insofar

as such provisions of law are applicable to, and not inconsistent with, the provisions of this Act.

(b) **ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIAL.**—Any designated archaeological or ethnological material which is imported into the United States in violation of section 6 and which is forfeited to the United States under this Act shall—

(1) first be offered for return to the State Party and shall be returned if the State Party bears the expenses incurred incident to such return and delivery and complies with such other requirements relating to the return as the Secretary shall prescribe; or

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

(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 7, 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 7 and which is forfeited to the United States under this Act shall—

(A) first be offered for return to the State Party in whose territory is situated the institution referred to in section 7 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. 10. EVIDENTIARY REQUIREMENTS.

Notwithstanding the provisions of section 615 of the Tariff Act of 1930 (19 U.S.C. 1615), in any forfeiture proceeding brought under this Act 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 6, that the material has been listed by the Secretary in accordance with section 4; and

(2) in the case of any article subject to section 7, that the article—

(A) appertains 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 Act, or after the date of entry into force of the Convention for the State Party concerned, whichever date is later.

SEC. 11. CERTAIN MATERIAL AND ARTICLES EXEMPT FROM ACT.

The provisions of this Act 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 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; or

(B) if paragraph (A) does 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 shall by regulation prescribe) of its location within the United States.

SEC. 12. REGULATIONS.

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

SEC. 13. ENFORCEMENT.

In the customs territory of the United States, and in the Virgin Islands, the provisions of this Act 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. 14. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated after September 30, 1978, such sums as may be necessary to carry out this Act.

SEC. 15. DEFINITIONS.

For purposes of this Act—

(1) The term "agreement" includes any amendment to, or extension of, any agreement entered into under section 2.

(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 500 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 similar society,

(II) at least 50 years old, and

(III) 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 5.

(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 is covered by an agreement entered into under section 2(a), or subject to emergency action under section 3, and listed by regulation under section 4.

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

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

(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 any of the United States; or

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

SEC. 16. EFFECTIVE DATE.

(a) IN GENERAL.—This Act shall take effect on the 90th 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 90th 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 5 at any time after the date of the enactment of this Act.

Passed the House of Representatives October 17, 1977.

Attest:

EDMUND L. HENSHAW, JR.,

Clerk.

[S. 2261, 95th Cong., 1st sess.]

A BILL To implement the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Convention on Cultural Property Implementation Act".

SEC. 2. AGREEMENTS TO IMPLEMENT ARTICLE 9 OF THE CONVENTION.

(a) AGREEMENT AUTHORITY.—If the President determines, after request is made to the United States under article 9 of the Convention by any State Party, that—

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

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

(3) the application of the import restrictions set forth in section 6 with respect to archaeological or ethnological material of the State Party would be of substantial benefit in deterring a serious situation of pillage, and remedies less drastic than the application of such restrictions are not available; and

(4) the application of such 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, cultural, and educational purposes;

the President may enter into—

(A) a bilateral agreement with the State Party to apply the import restrictions set forth in section 6 of that 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); 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 comparable restrictions, with respect to such material.

In implementing this subsection, the President should endeavor to obtain the commitment of the State Party concerned to permit the exchange of its archaeo-

logical and ethnological materials under circumstances in which such exchange does not jeopardize its cultural patrimony.

(b) **EFFECTIVE PERIOD AND EXTENSION OF AGREEMENTS.**—The President may not enter into any agreement under subsection (a) which has an effective period beyond the close of the 5-year period beginning on the date on which such agreement enters into force with respect to the United States. Any such agreement may be extended by the President for such additional periods of time as the President deems reasonable.

(c) **PROCEDURES.**—If any request described in subsection (a) is made by a State Party, or if the President proposes to extend any agreement entered into under such subsection, 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 (including, if applicable, information from the State Party with respect to the implementation of emergency action under section 3) or proposal, that is appropriate to enable the Committee to carry out section 5(f); and

(3) consider, in taking action on the request or proposal, the views and recommendations contained in the Committee report required under section 5(f) (1) or (2), if the report is submitted to the President before the close of the 120-day period beginning on the day on which the President submitted information on the request or proposed to the Committee under paragraph (2).

(d) **INFORMATION ON PRESIDENTIAL ACTION.**—In any case in which the President enters into or extends an agreement pursuant to subsection (a) or (b), or applies import restrictions under section 3, the President shall, promptly after taking such action, submit to the Congress a document containing a description of such action (including the text of any agreement entered into), 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 the reasons for any such difference. 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 document which contains the reasons why such agreement was not entered into.

SEC. 3. EMERGENCY IMPLEMENTATION OF IMPORT RESTRICTIONS.

(a) **DEFINITION.**—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, 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, or fragmentation which is, or threatens to be, of crisis proportions; or

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

and application of the import restrictions set forth in section 6 on a temporary basis would, in whole or in part, reduce the incentive for such pillage, dismantling, 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 restriction set forth in section 6 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 2(a) to the United States; but this section may be so implemented whether or not the State Party indicated, in such request, 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 5(f) (3) if the report is submitted to the President before the close of the 60-day period beginning on the day on which the President submitted information to the Committee under section 2(c) (2) on the request of the State Party under section 2(a).

(3) No import restriction set forth in section 6 may be applied under this section to the archaeological or ethnological materials of any State Party after whichever of the following days first occurs:

(A) The last day of the 2-year period beginning on the date on which the request of the State Party under section 2(a) is made to the United States.

(B) The day on which an agreement is entered into under section 2(a) with such State Party pursuant to such request.

SEC. 4. DESIGNATION OF MATERIALS COVERED BY AGREEMENTS OR EMERGENCY ACTIONS.

After any agreement is entered into under section 2, or emergency action is taken under section 3, the Secretary, after consultation with the Secretary of State, by regulation shall promulgate, and when appropriate shall revise, a list of the archaeological and 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 restrictions under section 6 are applied only to the archaeological 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.

SEC. 5. CULTURAL PROPERTY ADVISORY COMMITTEE.

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

(b) **MEMBERSHIP.**—(1) The Committee shall be composed of 9 members appointed by the President as follows:

(A) One member from among two nominees selected by the College Art Association.

(B) Two members from among four nominees, two of which shall be selected by the American Association of Museums and two of which shall be selected by the Association of Art Museum Directors.

(C) Two members from among four nominees, two of which shall be selected by the Archaeological Institute of America and two of which shall be selected by the Association for Field Archaeology.

(D) Two members from among four nominees, two of which shall be selected by the American Association of Dealers in Ancient, Oriental, and Primitive Art and two of which shall be selected by the Art Dealers Association of America.

(E) Two members who shall represent the interests of the public.

(2) (A) No individual is eligible for nomination or appointment under paragraph (1) (E) if the individual is an officer or employee of, or is otherwise related in an official capacity to, any organization listed in paragraph (1) (A) through (D).

(B) No individual is eligible for nomination or appointment under paragraph (1) unless the individual is specially qualified to serve on the Committee by virtue of the individual's education, training, or experience.

(C) Appointments and nominations made under paragraph (1) shall be made in such a manner as to insure fair representation of the various interests of the public sectors and the private sectors in the international exchange of archaeological and ethnological materials, and that within such sectors, fair representation is accorded to the interests of regional and local institutions and museums.

(3) (A) Except as provided in subparagraph (B), members of the Committee shall be appointed for terms of 3 years.

(B) Of the members first appointed—

(i) three shall be appointed for terms of 1 year,

(ii) three shall be appointed for terms of 2 years, and

(iii) three shall be appointed for terms of 3 years,

as designated by the President at the time of appointment.

(C) Any individual appointed as a member of the Committee is eligible for reappointment for one additional term (whether or not consecutive); except that any member initially appointed to the Committee for less than a full term is eligible for reappointment for two additional terms.

(D) 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.**—(1) Seven 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.

(2) A Chairman and Vice Chairman of the Committee shall be elected by the members.

(e) **STAFF AND ADMINISTRATION.**—(1) The Secretary of State shall provide the Committee with such administrative and technical support services as are necessary for the effective functioning of the Committee.

(2) The Administrator of General Services shall furnish the Committee with such offices, equipment, supplies, and maintenance services as are necessary.

(3) Upon the request of the Committee, the head of any 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.

(f) **REPORTS BY COMMITTEE.**—(1) The Committee shall, with respect to each request of a State Party referred to in section 2(a), prepare a report setting forth—

(A) the results of its investigation and review with respect to any matter referred to in section 2(a) (1) through (4) as it relates to the State Party or the request; and

(B) its recommendation, together with the reasons therefor, as to whether or not an agreement should be entered into under section 2(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 2(b), prepare a report setting forth its recommendations, together with the reasons therefor, as to whether or not such agreement should be extended.

(3) The Committee shall, in each case in which the Committee finds that an emergency condition under section 3 exists (whether or not the State Party indicated in its request under section 2(a) that an emergency condition exists), prepare a report setting forth its recommendations, together with the reasons therefor, as to whether or not emergency action under section 3 should be implemented. If any State Party indicates in its request under section 2(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 2 or the implementation of emergency action under section 3 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.**—The Committee shall undertake a continuing review of the effectiveness of agreements entered into under section 2, and of emergency action implemented under section 3, and if the Committee finds, as a result of such review, that—

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

(2) changes are required to this Act 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 improving the effectiveness of any such agreement, action, or this Act.

SEC. 6. 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 effective date of the regula-

tion listing such material under section 4 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 10 years before the date of such entry and—

(i) no United States citizen or permanent resident of the United States contracted for or acquired an interest, directly or indirectly, in such material during the 10-year period preceding such date of entry, and

(ii) the State Party received, or should have received, fair notice of the location of the material by means of exhibition, publication, or other circumstances occurring after its exportation from the State Party ; or

(B) on or before the effective date of the regulation prescribed under section 4 which lists such material,

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 90 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 judicial forfeiture.

(c) The term "satisfactory evidence" means—

(1) for purposes of subsection (b) (2) (A), one or more declarations under oath by the consignor or shipper and the importer or consignee which state that the material was exported from the State Party not less than 10 years before the date of entry into the United States, which names those persons having an interest in the material during the 10-year period preceding such date of entry and declares that they are not United States citizens or permanent residents thereof, and which shows compliance with regulations issued by the Secretary with respect to exhibition, publication, or other circumstances relating to fair notice of the location of the material after exportation from the State Party, together with certified copies of exporting documentation (including but not limited to bills of sale after exportation, catalogs of dates of exhibition, copies of publication, and export or import documents) ; and

(2) for purposes of subsection (b) (2) (B), one or more declarations under oath by the consignor or shipper and the importer or consignee which state that the material was exported from the State Party on or before the effective date of the regulation prescribed under section 4 which lists such material, together with certified copies of exporting documentation (including, but not limited to, the kind described in paragraph (1)).

SEC. 7. STOLEN CULTURAL PROPERTY.

No article of cultural property 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 Act, 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.

SEC. 8. TEMPORARY DISPOSITION OF MATERIALS AND ARTICLES SUBJECT TO ACT.

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 6 or section 7, 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.

SEC. 9. 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 6 or section 7 shall be subject to seizure and judicial forfeiture. All provisions of law relating to seizure, judicial forfeiture and condemnation for violation of the customs laws shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this Act, insofar as such provisions of law are applicable to, and not inconsistent with, the provisions of this Act.

(b) **ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIAL.**—Any designated archaeological or ethnological material which is imported into the United States in violation of section 6 and which is forfeited to the United States under this Act shall—

(1) first be offered for return to the State Party and shall be returned if the State Party bears the expenses incurred incident to such return and delivery and complies with such other requirements relating to the return as the Secretary shall prescribe; or

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

(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 7, 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 7 and which is forfeited to the United States under this Act shall—

(A) first be offered for return to the State Party in whose territory is situated the institution referred to in section 7 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. 10. EVIDENTIARY REQUIREMENTS.

Notwithstanding the provisions of section 615 of the Tariff Act of 1930 (19 U.S.C. 1615), in any forfeiture proceeding brought under this Act 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 6, that the material has been listed by the Secretary in accordance with section 4; and

(2) in the case of any article subject to section 7, that the article—

(A) appertains 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 Act, or after the date of entry into force of the Convention for the State Party concerned, whichever date is later.

SEC. 11. CERTAIN MATERIAL AND ARTICLES EXEMPT FROM ACT.

The provisions of this Act 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 archeological or ethnological material or any article of cultural property imported into the United States if such material or article—

(A) 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; or

(B) if paragraph (A) does 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 shall by regulation prescribe) of its location within the United States.

SEC. 12. REGULATIONS.

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

SEC. 13. ENFORCEMENT.

In the customs territory of the United States, and in the Virgin Islands, the provisions of this Act 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. 14. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated after September 30, 1978, such sums as may be necessary to carry out this Act.

SEC. 15. DEFINITIONS.

For purposes of this Act—

(1) The term "agreement" includes any amendment to, or extension of, any agreement entered into under section 2.

(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 500 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 archaeological interest unless such object—

(I) the product of a tribal or similar society,

(II) at least 50 years old, and

(III) 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 5.

(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 owner-

ship 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 is covered by an agreement entered into under section 2(a), or subject to emergency action under section 3, and listed by regulation under section 4.

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

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

(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 any of the United States ; or

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

SEC. 16. EFFECTIVE DATE.

(a) In General.—This Act shall take effect on the 90th 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 90th 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 5 at any time after the date of the enactment of this Act.

Senator RIBICOFF. The committee will be in order.

Today we will hear testimony on H.R. 5643 and S. 2261, identical bills, intended to implement article 7(b) and 9 of the UNESCO Convention on Cultural Property, a convention to which the Senate gave its advice and consent in 1972, and the implementing bill seeks to combat illegal trade in cultural property.

Due to the weather conditions, a number of scheduled witnesses, including Mr. McLanathan of the American Association of Museums, have indicated that they will not be able to attend today's hearings. Because there are many witnesses here who have traveled great distances, we will proceed with the hearing. We will consider the written statements of people who were unable to appear, and will insert those statements in the hearing record.

Our first witness will be Mr. Mark Feldman.

STATEMENT OF MARK B. FELDMAN, DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE

MR. FELDMAN. Mr. Chairman, Senator Moynihan, I am Mark Feldman, Deputy Legal Adviser of the Department of State and I am pleased to have the opportunity to appear this morning to express the administration's support of H.R. 5643 and S. 2261, bills to implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. I am accompanied this morning by Mr. Stephen Weglian, on my right, of the Criminal Division of the Department of Justice and Mr. Ely

Maurer of the Office of the Legal Adviser. Mr. Abbey of the Customs Bureau is with us also, just arriving.

Mr. Chairman, these bills represent 7 years of effort to implement the Convention on Cultural Property adopted by UNESCO in November 1970, and we are grateful to this committee for acting so promptly to consider the matter. The Senate gave its unanimous advice and consent to that convention on August 11, 1972, and the first administration proposal to implement the convention was sent to Congress in June 1973.

Over the past 4 years, the original legislation has been refined and improved in extensive consultations with all interested elements of the art, museum and scientific community. The bills before you have the support of the major museum, art and archeological associations. H.R. 5643 was approved unanimously by the House of Representatives on October 17, 1977, after public hearings and markup.

Nevertheless, there are dissenting voices among certain dealers and collectors. I believe their concerns are based in part on misunderstandings and misinformation. Therefore, I would like to take the 10 minutes allotted this morning to present the issues we are dealing with and to try to put them in perspective.

The UNESCO Convention and the bills before you respond to a worldwide problem of theft of cultural property, depredation of archeological sites, and the illegal removal of art treasures which are important to the cultural patrimony of the countries concerned. Clandestine excavations of archeological sites and the pillage of ancient monuments destroy the record of past civilizations and diminish the cultural heritage of mankind.

Wholesale removal of cultural artifacts may deprive a country of important elements of its cultural identity. These practices are encouraged by the high monetary value placed on those objects by the art market where the pillaged remains of ancient civilizations are freely traded, often without regard to the means of their acquisition.

The appearance in the United States of foreign art objects of dubious origin irritates U.S. relations with the countries concerned and makes it difficult for American archeologists to work in those countries. In the United Nations and in the Organization of American States, we have been confronted with demands for the restitution of all art illegally removed from countries of origin and for the establishment of a comprehensive system of export and import controls on all cultural property.

In this context, the State Department decided in 1969 that the United States could no longer ignore this situation and opened a dialog with the art and scientific community to develop a new policy. After much discussion, a consensus emerged which is reflected in the convention and in the legislation before you.

The basic premise of that policy is that the United States would cooperate with foreign countries to inhibit despoliation of their cultural patrimony by applying import controls in the future to carefully defined classes of cultural property; no import controls would apply retroactively and we would not agree to a comprehensive system of import controls applicable to all cultural property.

Fortunately, we were able to persuade other governments to accept

this position. Accordingly, the convention is much more modest than its proponents originally intended.

It contains two principal obligations that require implementing legislation. The first is the obligation under article 7(b) of the convention to prohibit the import of cultural property stolen from museums or religious or secular public monuments or similar institutions and to take appropriate steps to recover and return such property. Section 7 and section 9(c) of the legislation before you implement this provision. The terms of these legislative provisions have been carefully refined and are essentially noncontroversial.

The other obligation, Mr. Chairman, implemented by this legislation is that set forth in article 9 of the convention to participate in a concerted international effort in cases in which a state party's cultural patrimony is in jeopardy from pillage of archeological or ethnological materials.

At U.S. insistence, this provision is limited to archeological and ethnological material; it does not apply to "fine" art or other cultural property.

Again, at U.S. insistence, the provision requires negotiation on a case-by-case basis of the specific materials to which import controls are to be applied. The authority to negotiate and to enforce such controls is set forth in sections 2, 6, and 9 (a) and (b) of the bills before you.

Numerous safeguards have been incorporated in these provisions to insure that import controls would not be applied indiscriminately and that the burden on the United States would not be onerous. Under these provisions, import controls would only be applied to specific categories of archeological or ethnological objects from particular countries and only after agreements had been negotiated with those countries and detailed regulations issued by the Treasury.

Before making such agreements, the President is required to seek the advice of a strongly constituted advisory committee representative of all interested sectors of the community. He must make several specific findings spelled out in section 2(a) of the bills and he must report his action to the Congress.

In certain emergency situations, the President may take provisional action for 2 years without an agreement, but he must seek still the views of the advisory committee and report these and his action to the Congress. Further, section 11(2) of the bills contains a general statute of limitations which will protect from the application of the legislation any object that remains in the United States for 10 years under specified conditions likely to give notice to the country concerned.

In recent years there has been a profound change of attitude in the U.S. community concerning the acquisition of illicit art. Many institutions have adopted codes of ethics that would preclude future acquisition of objects illegally removed from countries of origin, and the community has supported international cooperation to protect man's cultural heritage from pillage.

I would comment that with respect to those codes adopted by institutions, they go much further in their scope than the legislation before you.

With this support of the community, the United States concluded a bilateral treaty—TIAS 7088—with Mexico in 1970 for judicial assist-

ance in the recovery of important national art treasures and in 1972 the Congress enacted Public Law 92-587 (19 U.S.C. 2091) that prohibits the importation of all pre-Columbian monumental or architectural sculpture and murals removed from the country or origin without its consent. The UNESCO Convention would apply the same policy to other areas of the world. Thirty-five nations have already become parties to the convention and we hope that others will follow the U.S. example.

Before closing my remarks, Mr. Chairman, I should like to say a few words about one question that will be raised today. Why should the United States shut its doors to pillaged art before other major art-importing countries do so? There are three basic answers to that question.

First, it is in the national interest of the United States to help preserve the record of past civilizations. The U.S. art market is a major consumer of pillaged treasures. To the extent it provides an incentive for clandestine excavations and despoliation, we have a responsibility to act. Further, this legislation requires the President, before acting, to determine that U.S. action will be of substantial benefit in deterring a serious situation of pillage. Thus, if the U.S. art market is not a significant factor and if other countries will not cooperate, we will not act.

Second, as in the case of bribery in international commerce—which is a subject with which this committee is extremely familiar—there is a moral obligation to act. We hope and expect other nations to follow our example, but we cannot continue to provide a marketplace for illicit art.

Third, we recognize our action may not be fully effective if other countries do not cooperate. It is up to the countries we assist to obtain that cooperation from others. Therefore, section 6 of the legislation, provides that the import ban under the new agreements will not apply to any object that is removed to a third country and remains outside the country of origin for 10 years under certain conditions, and if there has been adequate notice for that country to claim the object.

Mr. Chairman, this concludes our presentation. We believe that the—

Senator RIBICOFF. I wonder, Mr. Feldman, if we could ask you to step aside temporarily. Congressman Mikva, who has a very busy schedule in the House, is here and I would like to accord him the courtesy of testifying.

We will call you back as soon as Congressman Mikva has concluded.

Mr. FELDMAN. It is a pleasure to defer to Congressman Mikva.

Senator RIBICOFF. Congressman Mikva, we are delighted to have you here.

Mr. MIKVA. Thank you very much, Mr. Chairman. I appreciate your accommodation of my complicated schedule. It is no busier, or even as busy, as yours, but it is complicated.

STATEMENT OF HON. ABNER J. MIKVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. MIKVA. I am pleased to appear before the Subcommittee on International Trade to speak in support of what was in the House H.R.

5643 and here in S. 2261 which provides legislation necessary for the U.S. implementation of the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.

In a way, it pleased me that the House was, in fact, following the great lead of the Senate, which initially ratified that treaty.

This convention was adopted in 1970. It was ratified by the Senate of the United States and legislative bodies of 35 other nations, as Mr. Feldman has indicated, and this bill is an attempt to, in effect, put our money where our mouth is in so far as the treaty is concerned. This is to implement the treaty and to make sure that it accomplishes the high and noble purposes that we talked about when the treaty was first ratified.

The legislation that I sponsored in the House of Representatives was passed by a voice vote on October 17, 1977. While, by the time it came up for final passage, I think we had removed a substantial portion of the controversy, I do not want to suggest to you that the road was easy. There have been extensive hearings in the Ways and Means Committee. Testimony was received from all segments of the art, museum and archeological communities. The academic community was well-represented in the hearings, as well as the State Department and Treasury Department of our administration.

During the markup of the bill, there was a kind of unique experience for the Ways and Means Committee; we had an open markup where the representatives of the art community and dealer interests were able to reconcile some of their objections and some of their divergent views on provisions of the bill and agree to various amendments to the bill that were proposed in the hearing. The language and concepts of the bill which emerged from the Ways and Means Committee represented the collective views and positions agreed upon by a substantial portion of the art community, the administration and Members of Congress, working together to fashion the best approach to what we all agree is a desirable and necessary act; to combat pillage and illegal trade in cultural property.

What has happened in some nations rich in cultural heritage has been the absolute mutilation of ceremonial centers and architectural complexes of ancient civilizations, the removal of stone sculptures and reliefs, the robbing of churches, burial mounds, and ritual sites, all through clandestine operations.

The nations affected, of course, are most of the developing nations in Africa, Latin America and the Middle East and they have become increasingly disturbed at the jeopardy to their cultural patrimony from pillage and the draining away of their cultural heritage to foreign collections.

And it should not surprise us that most of those nations have already ratified the treaty and sought to implement it.

But unfortunately, most of them cannot do anything about the problem without our help. An all-too-common example was related to me by Ricardo Quesada Lopez-Calleja of Costa Rica who explained that country's situation. Every year more than \$30 million of cultural patrimony is taken away.

They do not have an army. They have a small police force. Costa Rica is absolutely unable to control the operations of those individuals

who are robbing that country of its archeological and ethnological links to its own heritage.

The approach that the convention takes is to frankly eliminate the market for these cultural properties and, therefore, remove a great deal of the desire and temptation to rob these countries of their cultural patrimony.

What this bill does, simply, is provide the machinery to implement the convention regarding import. It allows the President to enter into bilateral and multilateral agreements with other members of the convention regarding those items which will not be imported. Those agreements will list specific items of archeological or ethnological nature which are in jeopardy and will require the nations that sign those agreements with us to endeavor to protect their own cultural property.

The Ways and Means Committee responded to some of the concerns in the art community by setting up an advisory committee which will be made up of members of the public, the museum, art dealer and archeological communities to advise the President on the appropriateness of the items in the agreements and to carry on a kind of a continuing oversight on how the art import situation is working.

The bill also provides authority for the President to halt the importation of items outside the agreements if there is a serious situation of pillage that has been discovered.

Now, there is still opposition to this bill, Mr. Chairman and members of the committee. I recognize that some of the art dealers and private collectors argue that the people of the United States have a right to these materials as "citizens of the world" and that if the United States is not allowed to import these art works, they will still continue to be taken and go to other countries instead.

I must say that that argument troubles me. What it says is that since other nations and other people are going to be immoral, we have to keep up with the other immorals in order to preserve our role in the world.

Clearly, the United States is the major art importing nation in the world, and if we do not exercise this kind of moral leadership, who will? If we do not create an example for other countries to implement this convention, who will implement it?

If we don't engage in those preliminary actions to put us on the side of the convention which we have already ratified, how can we expect other countries to do it?

Clearly, we cannot eliminate pillage or prevent illicit traffic in antiquities alone. Closing the American art market, however, to illegal trade should create a significant deterrent and take a meaningful step toward real international cooperative effort.

Let me say again what we are talking about here is art and objects that are illegally taken from the country of origin and it seems to me that as a leader of the civilized world, as a country that proclaims its own morality, we ought to do whatever is necessary to help those countries that want to help themselves.

Mr. Chairman, with your consent, I would like to include in the record an article from the Chicago Tribune which describes the problems which many nations face in trying to protect their national treasures. I think it demonstrates in dramatic terms the scope of the problem and the urgent need for a solution.

I urgently commend this bill to the committee's attention.

Senator RIBICOFF. Thank you. I have no questions.

Senator MOYNIHAN. I have none, Mr. Mikva—I only wish to welcome our distinguished brother from the House.

Senator RIBICOFF. Thank you very much. I am delighted to have you here.

Mr. MIKVA. Thank you. It's a pleasure to have been here.

[The prepared statement and Tribune article of Mr. Mikva follow:]

TESTIMONY OF U.S. CONGRESSMAN ABNER J. MIKVA

Mr. Chairman, I am pleased to appear before the Subcommittee on International Trade to speak in support of S. 2261, which provides legislation necessary for the United States implementation of the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. This Convention, adopted in 1970, and ratified by the Senate of the United States and legislative bodies of thirty-three other nations, is an attempt to combat the increasing illegal international trade in national art treasures.

I sponsored similar legislation in the House of Representatives which passed by a voice vote on October 17, 1977, after extensive hearings in the Ways and Means Committee. Testimony was received from all segments of the art, museum, and archaeological communities, as well as from the State Department and Treasury Department. During markup of the bill, the administration and representatives of museum, archaeological, and dealer interests were able to reconcile the widely divergent views on provisions of the bill, and agree to various amendments to the bill that were proposed in the hearing. The language and concepts in the bill which emerged from the Ways and Means Committee represented the collective views and positions agreed upon by the art community, the administration and Members of Congress working *together* to fashion the best approach to combat pillage and illegal trade in cultural property.

One of the unfortunate results of the expanding world-wide market for objects archaeological and ethnological interest has been the wholesale pillaging of some countries. What has happened in some nations, rich in cultural heritage, has been the mutilation of ceremonial centers and architectural complexes of ancient civilizations, the removal of stone sculptures and reliefs, the robbing of churches, burial mounds, and ritual sites through clandestine operations. The nations affected—most of the developing countries in Africa, Latin America, and the Middle East—have become increasingly disturbed at the jeopardy to their cultural patrimony from pillage and the draining away of their cultural heritage to foreign collections.

Until now, however, most of these nations have been unable to do much about preventing the export of artifacts. An all too common example was related to me by Ricardo Quesada Lopez-Calleja of Costa Rica, who explained that country's situation: Every year more than \$30 million of cultural patrimony is taken away. Without an army, and with only a meager police force, Costa Rica is unable to control operations of those individuals who are robbing the country of its archaeological and ethnological links to its own heritage. The approach that the convention takes is to eliminate the market for these cultural properties, and therefore remove the desire to rob these countries of their cultural patrimony.

This bill provides the machinery to implement the convention regarding imports. It allows the President to enter into bilateral and multilateral agreements with other members of the Convention regarding those items which will not be allowed to be imported into this country. Those agreements will list specific items of an archaeological or ethnological nature which are in jeopardy, and require that the nations involved endeavor to protect their own cultural properties. The Ways and Means Committee responded to concerns in the art community by setting up an advisory committee made up of members of the public, the museum, art dealer, and archaeological communities to advise the President on the appropriateness of the items in the agreements and to carry on a continuing oversight of the art import situation. The bill also provides authority for the President to halt the importation of items outside the agreements if a serious situation of pillage is discovered and reported by the affected nation.

The opposition to this bill has come mainly from a few art dealers and private collectors, who argue that the people of the United States have a right to these materials as "citizens of the world," and that if the United States is not allowed to import these art works they will still continue to be taken from the cultural sites and will merely go to other art-collecting countries. Clearly, the United States, as the major art-importing nation in the world, must exercise moral leadership and create an example for other countries through implementation of the Convention. Although United States action alone will not eliminate pillage or prevent illicit traffic in antiquities, closing the American art market to illegal trade should create a significant deterrent and take a meaningful step toward international cooperative efforts to assure the preservation and protection of the cultural heritage of all nations.

TREASURES OF THE MAYA

(By Ron Yates)

The city of Oxhintonk is silent, its crumbling buildings protruding from the parched earth like the coppery knuckles of an ancient, half-buried hand. There are only piles of stone now, vague pyramidal forms grown over with weeds and colonized by snakes and iguanas.

But man was here once. He came and cleared the land in this part of Mexico's Yucatan Peninsula and unfurled Oxhintonk (pronounced Osh-in-tok), with its temples, marketplaces, pyramids, observatories, intricate causeways and streets, and prismatic frescoes, all now dim projections of a people who called themselves the Children of Time—the Maya.

This was their city—just one of perhaps 20,000 they built in Yucatan, many at a time when Europeans were still wearing bearskins and Rome was a dusty village. Magnificent cities that stretched for 10, 15, even 20 miles. Huge cities that turned gold at dusk when the fading light of the Yucatan sun hit limestone facades. Cities with aqueducts transporting fresh water, with terraced gardens for crops. Cities that were home to a people who devised a calendar more accurate than the one we use today, who timed the orbital revolution of Venus and erred by only 14 seconds, who developed intricate systems of mathematics and writing that we have only recently begun to understand.

Oxhintonk was such a city once. Built in the twilight years of the Mayan civilization (between 700 and 900 A.D.), it was home for as many as 50,000 people. But like most Mayan cities, Oxhintonk was, for some mysterious reason, abandoned and left to decay. In a few years it was virtually gone, consumed by the inexorable maw of the earth that eventually reclaims all of man's dreams.

Some 1,000 years after Oxhintonk was forsaken, impoverished descendants of the Maya, living in a dusty, parched village just a mile away, told archeologists from the Carnegie Institute about the remains of "an ancient city nearby." That was 40 years ago. Word of Oxhintonk spread faster than a scalding Yucatan wind, and with it came the tales of tombs laden with gold, of magnificent obsidian and jade statues, of delicately painted vases, of towering stelae (pillars) bearing chiseled, indecipherable Mayan hieroglyphics.

The archeologists hurried to Oxhintonk, hoping to get there before the ancient city could be ransacked by looters, before its stelae could be sawed into chunks and shipped to collectors in the United States and Europe, before its buildings could be dynamited by men in search of treasure, myopic men oblivious to the real treasure—the city itself.

But they were too late. The looters had been there already, maybe 10 years before. They had come and cut up most of the stelae. They had bored into the floors of tombs and poked about the ruins of pyramids. Then they had gone, perhaps never finding what they were looking for—the gold, the statues, the intricate pottery, the secret places of the Maya that may still be somewhere in the sprawling ruins.

* * * * *

We were making our way across a plain strewn with uneven heaps of stone, weeds, and cacti—the plain of Oxhintonk. A lead-blue sky spread out like an ancient Mayan cape, and an igneous sun beat down on the ancient stones of Oxhintonk so fiercely that you could almost smell the heat. Up ahead our two Mayan guides paused to sharpen their machetes. The sound of whetstones sliding across steel blades sent a shrill whistle through the dead city.

"There are a lot of snakes around here, so be careful where you step," warned Eric von Euh, a Swiss archeologist from Yale who had consented to lead our tiny expedition into Oxhintok, where he has worked off and on for the last five years. The two guides slid their whetstones into their pockets and with what seemed a minimum of exertion began clearing a path through the thick, 7-foot-high weeds. Both carried forked sticks to pin down any diamondback rattlers or coral snakes they might disturb. Soon, there appeared the remains of a pyramid. Stones that once had been set carefully into place by ancient architects had long since crumbled into ignominious heaps.

"Nobody but archeologists and looters comes to Oxhintok; it is not even listed in the most detailed guidebooks," said von Euh. Indeed, even though Oxhintok is only an hour or so by car south of Merida, the capital of the Mexican state of Yucatan, it is so far off the beaten track you need an experienced guide to find it. To get here we had traveled miles on a tiny, single-lane road and then more miles on a dirt cowpath that meandered over several hills before finally emptying us onto Oxhintok's vast plain.

"When the people from the Carnegie Institute got there, they found 26 stelae that the looters hadn't touched," von Euh said. "The looters apparently took the best ones and left what they considered to be the worthless ones for science."

As in other Mayan ruins, the looters had come with power saws and sliced the 7-foot high stelae into more manageable 3-foot-high chunks. Such chunks were often shipped clandestinely out of Mexico, possibly to Miami, a favorite point for stolen Mayan artifacts, where stelae could be reassembled and sold for as much as \$40,000 each.

"Saws today are much better than the ones they used 40 year ago," von Euh said. "In fact 40 years ago it was not uncommon to come upon beautiful stelae that had been hacked into pieces by some incompetent with a hammer and chisel."

Stelae are the silent chronicles of the Maya. Often 7 or 8 feet high and weighing several tons each, they are the message of a vanished people, bearing names and dates and histories. They tell of droughts, celebrations, and celestial events, of kinds and priests and sorcerers.

All but four Mayan codices, however, were destroyed during Spain's 16th-Century conquest of Mexico, and for archeologists such as von Euh who are still struggling to understand the complex Mayan writings, every hieroglyphic inscription is an indispensable part of an ancient puzzle. "Each glyph we lose, each stela cut up, is another piece of the puzzle that we have lost forever," said von Euh.

Ahead there loomed a rectangular building with its walls still intact and a large mound of dirt piled just outside the door. "You see that?" asked von Euh. "Looters. They have been here recently and dug up the inside of that building. Probably tore up the floor looking for artifacts."

Inside the building, we could see a hole had been chopped in the floor with pick and shovel. The structure had served as a tomb (in most Mayan homes dead family members were buried under the floor of the house), and it had obviously been looted. Von Euh climbed down into the hole. Except for tiny pieces of broken pottery, everything had been removed. Other buildings we examined in Oxhintok had been similarly defiled.

"It is hard to blame the men who do these things," von Euh said. "They are usually poor Indians who have heard they can make some money by selling artifacts to collectors' agents here in Yucatan. They don't understand the scientific value of a place like this. They just understand survival. The real criminals are the collectors and dealers in the United States and Europe who sponsor organized looting expeditions into cities unexplored by archeologists. They wreck everything."

* * * * *

In Merida later, Roberto Gonzales, head of the Mexican National Institute of Anthropological History for Yucatan, shook his head solemnly as he talked about his ongoing battle with looters, who by some estimates are removing from \$20 to \$50 million in ancient Mayan artifacts from Yucatan and Guatemala each year.

"I can't stop it . . . there is just too much looting, it is just too organized, too well-financed," Gonzales said, leaning on his desk. Hanging on the wall behind him was a stunning beautiful photograph of the ancient Mayan city of Tulum on the east coast of Yucatan, the early morning sun shrouding the ruins in gold while the turquoise sea lashed the rocky shore.

"We've done all we can do here in Mexico. I've even asked for the help of the Mexican army to patrol known sites of Mayan ruins, and we have registered

the collections of all known collectors in Mexico so we know just what they have and can tell immediately during a spot check if they have added anything they should not have.

"Nevertheless, it all seems so futile," he continued. "Especially when you go to a newly discovered ruin and you see the holes hacked in the floors of buildings, when you see whole majestic pyramids that have been blasted into rubble with dynamite by men who will destroy everything for one valuable artifact. It makes me sick." Gonzales paused and leaned across his desk. "Did you know there are even contractors who send in teams of men to gather the stones of ancient cities so they can grind them up for gravel? Think of the history destroyed by these madmen."

But it is the looter, not the occasional contractor looking for gravel fodder, that has Gonzales and other archeologists worried. It is the looter with his sophisticated equipment, his portable generators, his prefab huts, his power tools, his metal detectors, his army of heavily armed guards that Gonzales is waging his war against.

"These people come into the jungle and spend maybe a week looting a ruin, and if you should stumble upon one of their camps by accident, they will kill you," Gonzales said. "So be careful. These people play for keeps. In fact, if I ever came upon a camp of looters, I'd run like hell."

A few years ago archeologist Ian Graham of Harvard and his party stumbled upon looters ripping apart a ruin in La Naya, Guatemala. The looters opened fire, killing Graham's assistant, Pedro Arturo Sierra. Tony Andrews, another archeologist working out of Merida, has heard the sounds of firefights deep in the Guatemalan jungles as government troops fight it out with looters. "It's a regular war down in Guatemala," said Andrews, noting that battles between government troops and looters last for days. Casualties are high on both sides, mainly because the looters are so brazen about their lucrative occupation that they refuse to run and leave valuable artifacts behind. "There is big money involved," Andrews added. "Big enough to die for, apparently."

Where is the "big money" coming from? Who finances these excursions that cut the delicate links to the Mayan past? Mostly, Gonzales explained, it is wealthy art dealers and collectors in major cities of the world. They provide the capital for the boats that cruise the Gulf of Mexico just off the Yucatan coast like hungry piranha, waiting for looting parties to bring aboard literally tons of artifacts.

"What they do with the stuff after they get it back to the States, or wherever they take it, we aren't sure," Gonzales said. "But most major museums in the United States are now afraid to deal in contraband artifacts for fear of being caught, so I think most of it is going to private collectors who selfishly stick the stuff in their homes to show a handful of friends."

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A short time later von Euh indicated the lengths to which looters will go: "About three years ago I was working in some ruins in central Yucatan called Calakmul, and a Maya I had employed told me about a large group of Americans who used to build landing strips in the jungles and then fly in old DC-3 cargo planes to carry out artifacts. Later, I traced one of the men responsible for this looting operation to New York. He is one of the city's largest art dealers."

Prosecuting men such as the one von Euh tracked down is a complicated procedure involving international law and extradition. Unless someone is caught looting a ruin or selling or buying looted artifacts, there is little that can be done. At the moment, however, that was precisely what Gonzales and the American consulate in Merida were working on.

"An informer called the American consulate and told of a plan to remove an ancient Mayan statute made of solid gold and weighing some 80 pounds from a ruin deep in the jungle, then ship it illegally to the United States," said Gonzales. "Somebody in Florida is supposed to be making the buy. U.S. customs officials and the Mexican police have been alerted, and we are waiting to pounce. But the thieves are being very cautious, especially since that statute could be worth \$1 million and could conceivably be the most unique piece of Mayan art yet found."

While few Mayan statues are worth \$1 million, they are all considered quite valuable, and figurines and vases sell for as much as \$25,000 each on the black market. These are usually exquisitely preserved pieces that have been sealed in airtight tombs and thus have escaped the eroding effects of time. They are pieces garnished with intricately brushed figures of dancers, birds, jaguars, and other

animals. They are often inlaid with jade, and the colors usually are as vivid as when Mayan artisans painted them.

At midday, a blazing sun is high over the ruins of Uxmal. The limestone Pyramid of the Magician glows like a chunk of white-hot steel, and an arid wind whips around its rounded edges. Uxmal, which means "thrice built," is a collection of bone-white buildings, some of which look as if they could have been plucked from ancient Greece. It is a prime example of Mayan building at its finest. Built in about 600 A.D., Uxmal was first discovered in 1841. Since then only about one-fifth of the city has been excavated; most of Uxmal (like ancient Chichen Itza 100 miles away) stretches untouched under miles of thick green jungle.

Both Uxmal and Chichen Itza are heavily visited each year by tourists who tramp over their plazas, climb the pyramids, and marvel at what the Maya accomplished. Few realize that deep in the Yucatan jungles, even larger, more imposing cities have been discovered—cities archeologists are trying to keep secret and decipher before looters strip away all meaning.

"We may discover someday that places like Chichen Itza and Uxmal were relatively minor cities in the scheme of things," said Marc Thompson, who, along with his archeologist wife, Maria, has spent months probing the ruins of a huge Mayan city called Becan in central Yucatan.

In a few hours it will be dusk, the vociferous tour groups will depart, and silence will fall over the ancient stones shaped so long ago by the Children of Time. The great riddles of the Maya will still remain unsolved, but the answers to those riddles are out there, waiting to be discovered in the thousands of ruins still concealed by the Yucatan rain forests.

Or are they?

Senator RIBICOFF. Mr. Feldman, you may resume.

STATEMENT OF MR. FELDMAN—Resumed

Mr. FELDMAN. We believe that the legislation before you is balanced legislation, which represents an accommodation of conflicting views and is deserving of your support. My colleagues and I will be pleased to answer any questions.

Senator RIBICOFF. Mr. Feldman, name the countries that are the basic art importing countries of this type of art which we are talking about.

Mr. FELDMAN. Mr. Chairman, I do not have any specific statistics on that, but I would assume that the major art importing countries are the major developed countries of the world, including the Federal Republic of Germany and the United Kingdom, possibly Japan. There are certainly major art markets in Switzerland and France.

It is possible that acquisitions are growing by the newly oil-rich countries of the world, too, but I do not really have any firm data on that.

Senator RIBICOFF. But there is a worldwide market and it is getting larger, especially with inflation, is it not? For art objects?

Mr. FELDMAN. That is my understanding.

Senator RIBICOFF. And the United States is one of many?

Mr. FELDMAN. We are one of many, but it is my understanding, although I have no statistics to support it, that we would be, perhaps, the single largest factor in terms of consumption, as we are in so many other fields.

Senator RIBICOFF. Well, I mean, after all, as I read the financial pages, Japan with its large surpluses and West Germany with its large surpluses, and Saudi Arabia with its large financial surpluses, have individuals who question the value of the dollar. My understanding is that people are buying antiquities and works of art as the best hedge against inflation.

Mr. FELDMAN. I have read similar commentary, Mr. Chairman, and I have also heard recently that there has been some problem in certain auctions in London in disposing of collections of archeological objects, clouded as to the consent of the country of origin as to their removal.

I think, frankly, that the dealer community would be in a better position to provide any specific information on current patterns in trade.

Senator RIBICOFF. All right. We will ask them when they testify.

Now, is the United States the only major country in the process of implementing this convention?

Mr. FELDMAN. I do not have any current information on most of the other countries. Canada, I know, has already enacted legislation and is ready to deposit its instruments of ratification. My impression is that few of the other major industrial countries are giving serious consideration to it, although at the time that we worked on the convention in UNESCO the Federal Republic of Germany appeared quite interested in moving ahead on it.

I believe that they will have little incentive to cooperate on this issue until the United States takes a position.

While the Senate very clearly gave its advice and consent to the convention, the United States has not yet actually deposited its instrument of ratification. Because some of the treaty obligations require the application of import controls, we thought it would be appropriate to have legislation on the books to implement those commitments before we deposited our instrument of ratification.

Therefore, I think, it is too early to tell what kind of influence our moral leadership would exert.

Senator RIBICOFF. Let me ask you, what moral leadership do we have at UNESCO?

Mr. FELDMAN. It is not just a question of UNESCO. It is a question of the relations between the other importing countries and the affected countries once the United States has indicated that it is prepared to take effective action. Will they not come under like pressure from the countries concerned to follow our example?

In fact, I am hopeful that a constituency is growing slowly among the museum, and particularly archeological communities in those other countries. I am told, again this is informally, that there is a general increasing consciousness in Europe as well as in the United States among the acquiring institutions as to this problem. I would tell you, quite candidly, that I think that the decisions that are made by the institutions themselves are the most important solution to the problem.

Mr. Chairman, one misconception that is commonly stated is that this legislation could result, or would result, in a total blockage of the import of art to this country. That is, I think, just a fundamental misunderstanding of the legislation on several counts.

First, the scope of the legislation, the import bar, is very limited: it applies only to archeological and ethnological material.

Second, import bars would apply only to particular categories of objects. They would be negotiated over time, and it would take a long time, and they would be discrete—that is to say, they would be circumscribed by the terms of the agreement.

Finally, everyone who is familiar with the problem knows that the legislation is not a panacea—that the convention and the legislation are not a panacea—that it is extremely difficult to establish the prove-

nance of many objects and that they would not be caught in the net of the legislation.

So we are going to do the best we can, but it is a gross exaggeration that this legislation either would solve the problem in its entirety or would ultimately lead to a total or even very substantial ban on the movement of archeological material into this country.

Senator RIBICOFF. But if the United States did sign this and agreed to this convention, this would not, in any way, stop the importation to Switzerland, France, Japan, West Germany, Saudi Arabia, South America?

Mr. FELDMAN. Not—well, Saudi Arabia is already a party to the convention and so are some of the other oil-rich countries.

Senator RIBICOFF. Yes, but the rich Saudis have homes in London, Paris, New York—

Mr. FELDMAN. That is a point.

Senator RIBICOFF. What would stop them from buying—they do buy art objects not for their homes in Riyadh, but for their homes in Paris and London.

Mr. FELDMAN. It is true, Mr. Chairman, that the U.S. action would not, in itself, affect those art markets. I have, in my testimony, provided the reasons why we think that the United States has its own independent national interests and principles to consider.

Furthermore, the legislation, as I pointed out, does not exclude from the U.S. art market treasures which are sold to third countries, if they remain there under conditions where the country of origin can have notice of it, as specified in the bill. After 10 years they could be sold in the U.S. art market.

Senator RIBICOFF. Let me ask you, what is the minimum that the United States has to do to legally implement the UNESCO Convention? Does this bill go beyond the minimum requirements of the convention?

Mr. FELDMAN. It approaches the convention in a slightly different way than article 9. I would not say that it necessarily goes beyond it, although it could in some cases.

If we become parties to the convention, we will be obligated to participate in a concerted international effort.

Now, if you look at that language of the convention, it would mean a concerted effort of the parties to the convention. We thought, frankly, that the U.S. might be able to take more control over the negotiations and to make a better deal, one more satisfactory to the United States and to the country concerned, if we had authority, as well, to do bilateral agreements.

It would be different if we had already in place a very broad participation of the countries you mentioned in the UNESCO Convention. But I would expect that bilateral arrangements, while they are not specifically contemplated by the convention, may not go as far as a multilateral arrangement negotiated under UNESCO auspices would go.

So we feel that it is in the U.S. interests to have an opportunity to negotiate bilaterally with a number of countries.

But it is also part of our policy to give leadership and to encourage other countries, including particularly the art importing countries, to accede to this convention and to cooperate. We think the lead should

be taken, diplomatically, by the countries who have the problem. We will say to them, we are prepared to help you. You should ask the same cooperation of others and against the case that you fail to get their cooperation, we are going to keep our market open to objects which are sold in those third countries.

Senator RIBICOFF. Could you not do that by putting a reservation or a condition that this would go only into effect on the proviso that countries X, Y, and Z also would agree to this?

Mr. FELDMAN. If we did that, Mr. Chairman, I think we would preclude the United States from protecting its own national interests—from deciding that it is in our interests, regardless of what anyone else does, to cooperate with other countries and protect the record of ancient civilizations.

Our art market does have a major influence on the art market. There are things we can do alone. It is very much like the bribery problem that the Senate and the Congress have been concerned about. The argument can be made that this is something that should wait, for action, upon an international solution.

—I am personally involved in trying to obtain international action on that problem. But the Congress, in its wisdom, and the administration, supported it, decided that we had to take our own stand first, regardless of what anyone else did.

These are basic moral principles and it was in the national interest in terms of the preservation of our institutions that we took that action. We feel that the same argument is applicable here.

Senator RIBICOFF. I have many more questions and we have a long witness list today, and I will submit many of these questions to you in writing and would appreciate receiving back from you a response to the questions.

Mr. FELDMAN. We would be very happy to do that.

[The following was subsequently supplied for the record:]

DEPARTMENT OF STATE,
Washington, D.C., March 1, 1978.

HON. ABRAHAM RIBICOFF,
*Chairman, Subcommittee on International Trade,
Committee on Finance,
U.S. Senate.*

DEAR MR. CHAIRMAN: I am enclosing herewith the State Department's answers to the written questions on H.R. 5643 submitted to the Department under cover of your letter of February 15. We hope that these answers will satisfy the concerns of the Committee, and we will be pleased to provide any further information the Committee may desire.

We hope the Committee will take into account the fact that this implementing legislation is not simply a State Department proposal, but represents the product of months of consultation with the interested American community, and is supported by the major archaeological museum and art associations and by important collecting institutions and interested academics. We would be pleased to work with the Committee on any modifications it deems necessary, but believe it would be a great mistake to condition United States ratification of the Convention, to which the Senate has given its advice and consent, upon ratification by any other country.

Sincerely,

DOUGLAS J. BENNET, JR.,
Assistant Secretary for Congressional Relations.

Question 1. In its sectional analysis of H.R. 14171, 94th Congress, the State Department indicated import controls on cultural property were an "extreme measures" to be used only in serious situations. The Ways and Means Committee re-

port explaining the requirement in section 2 that the President find a "serious situation of pillage" before entering into an agreement is vague. The Committee intended the "serious situation" criteria to prevent the use of section 2 "to deal with the general problem of illegal exportation of large amounts of cultural objects . . ." At the same time, the Committee intended a serious situation to be something less than "pillage . . . of such widespread and critical scale as to be nearly at the point of irremediable damage" (H. Rept. No. 95-615, 95th Cong., 1st Sess. 6 (1977)). What criteria does the Administration propose to use to distinguish the "general problem" of large-scale exportation from a "serious situation", within the meaning of section 2? Use examples of actual pillage situations to describe the application of your criteria.

Answer 1. It does not appear feasible to establish in advance precise criteria to define a "serious situation of pillage." The Department of State would expect to rely in large measure on the judgment of the advisory committee established under the Act. Examples of a serious situation of pillage would include well-documented deprivations of Myan sites in Mexico and Central America and wholesale removal of the artistic objects produced by native peoples in certain Pacific Islands, as testified to during the recent hearings. In general, consideration should be given to the significance of the material that is being pillaged in terms of its scientific or artistic value or its importance to the national patrimony of the country concerned, as well as to the extent of such pillage or the threat thereof.

Question 2. Section 2 requires a finding that United States import restrictions would be of "substantial benefit in deterring a serious situation of pillage." What criteria does the Administration propose to determine whether a specific import restriction would be of "substantial benefit." Would import restrictions be of substantial benefit if the market for affected archaeological or ethnological materials is demonstrably a worldwide market?

Answer 2. In determining whether an import restriction would be of "substantial benefit in deterring a serious situation of pillage," it would be necessary to consider whether the United States is a significant market for the objects being pillaged and/or whether an import bar by the United States would encourage such action by other countries which provide a market for the objects. Where the U.S. market is an important factor in a worldwide market, closing the U.S. market to pillaged objects could be of substantial benefit in deterring pillage.

Question 3. Why does section 2 not follow Article 9 of the Convention by requiring a "concerted international effort"? What, in your opinion, was contemplated by the drafters of the Convention in requiring a concerted international effort? What would be the result of requiring a concerted international effort under section 2?

Answer 3. Section 2 was drafted to afford the United States flexibility to achieve the purposes of the Convention in the manner most consistent with U.S. national interests by authorizing (1) bilateral agreements with other states parties to the Convention, and (2) multilateral agreements protecting the patrimony of such states and including the participation of states whether or not party to the UNESCO Convention. Article 9 as drafted reflects the judgment that a concerted international action is the most effective means of dealing with the problem. However, a concerted international action limited to the parties to the UNESCO Convention might not be effective if certain key countries do not become party, and the United States might be subject to demands in a negotiation with all parties to the UNESCO Convention that it would not wish to accept without the participation of other states not party to the Convention. In those circumstances, it could be more advantageous for the United States to negotiate bilateral agreements with the countries directly concerned, and where feasible to encourage similar arrangements involving other states with major art markets whether or not they are parties to the UNESCO Convention. A revision of Section 2 requiring a concerted international effort in every case would deprive the United States of the authority to conclude a bilateral agreement which might be satisfactory both to the country concerned and to the interested United States community.

It is important to emphasize that United States policy and H.R. 5643 are predicated on the assumption that it is in the United States national interest to act, even unilaterally in some cases, to help avert the destruction of the cultural heritage of mankind. Such action will also be in the foreign relations interest of the United States. Under this legislation the United States Government will determine, with the advice of the interested sectors of the com-

munity, what action should be taken. The Bill as presently drafted contains a number of restrictions on the authority of the Executive Branch to make the decision to go forward and procedural safeguards that will ensure that the burden on the United States is not onerous.

Question 4. Do you expect any other major art importing countries to adhere to the Conventions? If so, when?

Answer 4. We would expect some other major art importing countries to adhere to the Convention in due course. We have been advised that Canada's accession to the Convention is imminent. The attitude of other countries will depend on the level of public consciousness in those countries of the seriousness of the illicit traffic in ancient art and of the impropriety of dealing with stolen and smuggled goods. We would hope that United States action on this matter would provide strong impetus for action by other countries. Those countries whose cultural patrimony is being exploited will be motivated by their own self-interest to seek the cooperation of other art importing countries. Moreover, we are advised that there is growing concern among archaeologists and museum personnel in Europe. However, the Department cannot give the committee specific assurances as to which other countries may accede to the Convention in the near future.

Question 5. What should the United States do if within 5 years or so there is no meaningful implementation of the Convention by other major importing nations?

Answer 5. The United States should not necessarily alter its position if other countries do not follow our example. We should define now those actions that we are prepared to take on their own merit in our own national interest without regard to the actions of other countries. If there are additional actions that the United States would be prepared to take only in cooperation with other countries, appropriate contingent authority could also be provided.

It is our estimate that evolving public opinion in the United States will not permit any responsible institution in this country to continue a policy of acquiring objects of cultural property which are illegally removed from their countries of origin. Thus, the only beneficiaries of non-action by the United States Government are likely to be those particular collectors and dealers who may not have the same moral compunctions.

Question 6. In light of Articles 5 and 10(b) of the Convention, what efforts should the United States require of State Parties to protect their cultural patrimony before the United States takes measures to aid in protecting what property? What standards should countries be held to in this regard, and how will the United States judge whether there has been compliance with these standards?

Answer 6. The United States should inquire of the state party requesting U.S. assistance as to what measures it is taking to protect its cultural patrimony. At a minimum, the system will not work unless the country has enacted legislation in this field. In addition, the country should be prepared to take appropriate measures to enforce that legislation and to conserve its cultural heritage. However, many of the countries seriously affected do not have resources or facilities that are adequate for this task. In many cases, dedicated public officials do not have the support of other officials, particularly customs officials. Frequently existing conditions of poverty make temptation irresistible for the people in the countryside. There are no specific standards that the United States can or should apply to the actions of other countries, but the sincerity of other countries is obviously relevant to our own determinations. We should be reluctant to cooperate with a country in the return of objects which are openly marketed for export without interference by local authorities.

Question 7. How are the import restraints contained in the bill going to be administered? What is the volume of importations of the covered art? Do you expect a customs inspector or import specialist to be able to determine whether an article is on the restricted list issued by the Secretary of the Treasury?

Answer 7. It is difficult to estimate the volume of importations of covered art. However, we would expect such volumes to be very limited as the agreements to be negotiated would apply only to carefully defined categories of archaeological and ethnological material. Moreover, it would take many years to negotiate and implement these agreements. Thus, the burden on the customs service should not be great. There are customs specialists who will be able to identify objects in particular cases, but we may not be able to catch these objects upon entry. The Government would rely for enforcement principally upon the provisions for seizure and judicial forfeiture which provide procedural safeguards for all parties concerned. The Convention and the legislation should act as an effective deterrent. Where deterrence fails, we would expect the matter to be

brought to the attention of U.S. authorities by the foreign government if an object of importance illegally removed from a foreign country appears in the United States.

Question 8. If a country requests U.S. action, the bill says the President "should endeavor" to get a commitment from that country to permit the exchange of cultural property with the United States under circumstances which do not jeopardize the country's cultural patrimony. Why should the bill not require such exchange as a precondition to U.S. action?

Answer 8. The State Department fully supports the policy objective of encouraging other countries to liberalize their export laws with respect to cultural property and to promote exchanges of cultural property with the United States, including both temporary exhibitions in museums and permanent exchanges of material where that is feasible. However, the legislation of foreign countries does not always permit such cooperation and the Convention to which the Senate has given its advice and consent does not condition obligations of the States Party upon such cooperation. Therefore, the Department does not believe that the legislation should require such cooperation as an absolute condition of U.S. action.

Question 9. What kinds of property are covered by this bill? For example, the bill refers to cultural patrimony, cultural property, archaeological material, and ethnological material. What are the relationships between these terms? Are they defined so that persons trading this property and administering the law can know what property is covered by each term?

Answer 9. The UNESCO Convention uses different terminology in different contexts. The terms "cultural patrimony" is not defined. It is used in Article 9 in connection with the pillage of archaeological and ethnological materials, which explain its content. The term "cultural property" is defined in Article I of the Convention, and that definition is incorporated by reference in H.R. 5643. This term is relevant under the legislation only to those sections pertaining to the importation of material stolen from museums, monuments, and similar institutions. The terms "archaeological" and "ethnological" material are defined in the legislation. Moreover, the particular objects or categories of objects to be precluded from import will be further defined by particular international agreements to be negotiated and specifically defined for purposes of administration of the law in regulations to be issued by the Secretary of the Treasury. Those regulations will be so drafted so as to give adequate notice to all persons trading in this property.

Question 10. What is the minimum the United States must do to legally implement the UNESCO Convention? In what respects does the bill go beyond the minimum?

Answer 10. H.R. 5643 and S. 2261 go beyond the minimum requirements of the Convention in two respects. First, consistent with the understanding incorporated in the Senate's resolution of ratification of the Convention, Section 9(c) of the Bill limits the compensation payable to a purchaser who does not hold valid title to a stolen object under U.S. law subject to reciprocity by the foreign country concerned. Second, as described in paragraph 3 above, Section 2 of the Bill authorizes bilateral agreements as well as the multilateral agreements contemplated under Article 9 of the Convention. However, the various restrictions and safeguards prescribed by the Bill will ensure that the substance of U.S. action will be reasonable, and possibly less than the expectations of the drafters of Article 9. These restrictions and safeguards include (1) the findings required by Section 2(a); (2) the Advisory Committee procedure established by Section 5; (3) the definition of archaeological and ethnological material set forth in Section 15(2); (4) the specification of materials required by Section 4; and (5) the periods of limitation established in Sections 6(b)(2) and 11(2).

Senator RUBINOFF. Senator Moynihan?

Senator MOYNIHAN. I hope I will not try your patience, but I have about 6 or 7 minutes of questions. I will say good morning to you, Mr. Feldman, and let me first state that I speak as someone who is more than sympathetic to your purposes. I am chairman of the board of trustees of the Hirshhorn Museum, and we have dealt with this problem at some length and successfully so—I hope.

I was Ambassador to India when some of these matters were of very large and pressing concern, the Nataraja Shiva being only the most

conspicuous and serious one, and yet I would have to say that I am troubled by your testimony.

First of all you speak on page 5 and then on page 7 of "illicit art." Now, are you talking about pornography?

Mr. FELDMAN. No; Mr. Chairman—excuse me, Senator Moynihan—and let me say at the outset that I well remember speaking with you about these issues in a prior incarnation and I know of your personal familiarity and interest in them.

No; the UNESCO Convention basically establishes the principle that the removal of objects without the consent of the country concerned is illicit. Now, we have taken—

Senator MOYNIHAN. Yes; but, Mr. Feldman, this is the point. I want to get to the problem of language here. There is nothing illicit about the art. Its mode of acquisition is illicit, is that right?

Mr. FELDMAN. You are entirely correct.

Senator MOYNIHAN. Terminological exactitude, Mr. Feldman. We are dealing with treaties here. The art is not illicit; the mode of acquisition is.

But, you see, the language of your testimony, if I may say it most gently, is surfeited with guilt and the language of self-abasement. This is how the West has come to speak about and look upon the technologically backward nations of the world in the last few years. You speak of the pillaged remains of ancient civilizations, of despoliation of their cultural patrimony, of pillage of archeological and ethnological materials. That, sir, is the language of guilt.

If any pillaging has been taking place, it may be said with perfect confidence that if you go to any country in the world and find the people who are there, they are the people who pillage the archeological remains of their predecessors—including the white men who arrived in our own hemisphere.

But what is so striking about our age is that people started preserving things. Like most things good and bad, it started in the West, it started in England and France. Western men stopped pillaging things and melting them down for gold. Rather, they grabbed them and put them in museums. The Elgin marbles would have been burnt for lime if Elgin had not gotten there when he did. Nothing has been more striking than the respect which Western countries have shown for the archeological and ethnological artifacts of other countries.

For the first time in history one culture has shown respect for another culture. In the past, cultures were much more confident, and their idea of regard for their predecessors was but to cut off their heads, burn down their temples, and melt down their jewelry.

Now, I do not think we should go into this convention with the sense of our own guilt. Thirty-three countries have ratified it, sir. Of that 33 I count 30 dictatorships.

There used to be a rule, Mr. Chairman, in the International Labor Organization, that you could make an inverse correlation between the number of international labor conventions a country had signed and the labor standards there. I mean, if you looked at the ILO Conventions, there were only two decent places to live in the world. One was Bulgaria and the other was Nicaragua.

It is much the same with UNESCO. I have to say that I find UNESCO suspect in this matter. Not long ago I had a chance to sit

and talk at some length with Mr. M'Bow, who is the Director of UNESCO, about the UNESCO charge that the Israeli's were despoiling religious places of other cultures in their own archeological explorations in Jerusalem.

On the surface, I did not believe it, because those Israeli archeologists are like Western archeologist—they do not despoil. UNESCO said they did. I went to see the Director General of UNESCO and said, well, you have appointed a Belgian archeologist, a very distinguished man to inquire into this and he has given a report to UNESCO. Why do you not make the report public?

The Director General gave me some gibberish about professional ethics, making it very clear that he knew nothing about professional ethics. When a professor does an inquiry for a public organization, his findings are public. That is the whole point about science, and even archeological science.

I would like very much to endorse the proposal Senator Ribicoff, the chairman, has made: that we go about this when a certain number of other countries have. It seems odd to me for the United States to enter into a self-denying ordinance of this kind in the face of other countries' reluctance to do it. Meaning no disrespect, Mr. Chairman, I am not surprised that the French have not signed this treaty. The French do not do things like that.

But we can think of countries where this kind of conscience weighs more heavily in the public atmosphere—the Netherlands for example. You will not find a country more animated by a sense of what is fair, with their colonial past and involvement in these things. The Netherlands have not signed it, Sweden has not signed it. Or what of Denmark and Norway and Great Britain—surely the British are close to us in this.

It seems to me that the task of the State Department—I will stop my speech here, Mr. Chairman—is to organize our diplomacy and get us all to do this in concert. For example, let us get two-thirds of the members of the OECD to do it. We are not going to gain the respect of anybody by being the only ones to do this. If we think it is a good thing for us, then it is a good thing for France and Germany and Britain and Switzerland and the other members of the OECD.

Mr. Chairman, as you know, the regents of the Smithsonian have promulgated standards, a very careful set of standards, and all the major museums of this country adhere to them. We have already privately undertaken to abide by the standards of this convention in our major museums in this country.

No other nation has done as much as we have done, and it seems to me, Mr. Chairman, that until we can persuade the other importing countries to act in this matter, we ought not to do so unilaterally. I would support your suggestion.

Senator RIBICOFF. Let me ask if the Senator would yield. The United States is the least influential country in UNESCO. We pay about 25 to 30 percent in the carrying charges and we are continuously maligned and downgraded. Now, this is a UNESCO Convention and every country in UNESCO has more influence than the United States.

Why does UNESCO not undertake to use its influence on something worthwhile, if they think this is worthwhile, to convince some of their

members to go along? Because, generally, I do not see where UNESCO is accomplishing anything worthwhile.

I look at some of the countries that have signed this convention, like Bulgaria, Libya, Iraq, and East Germany and Zaire, Tunisia, Syria—do you think they will change their policy toward the United States by the United States' signing this convention? These countries that I have named?

Mr. FELDMAN. Mr. Chairman, may I try to answer your question and Senator Moynihan's question?

Senator RIBICOFF. Certainly.

Mr. FELDMAN. First of all, there is a great deal that Senator Moynihan said that I would agree with wholeheartedly, as I think he knows, and I regret it if any imprecision in my language implied that I feel that there is any particular guilt of the United States associated with the problem.

Senator MOYNIHAN. Mr. Chairman, may I just interject to say that I have had the privilege of working with some fine Foreign Service officers and none, in my experience, have been more protective of the interests in this country, or more hardheaded about realities, than Mr. Feldman. I would like to make that clear.

Mr. FELDMAN. I am very grateful for that.

The point that I wanted to make is that pillage is an appropriate word for what is happening out there. It is true that in most cases it is the citizens of the country itself which are actively involved in doing it. But when we saw the reports of American archeologists on the condition of the Mayan ruins and the loss to mankind—and I think there are witnesses here who are prepared to testify on some of the particulars—the Congress reacted, without regard to what any other country in the world was doing, by passing a statute which prohibited absolutely the importation into the United States of any pre-Columbian monumental or architectural sculpture without the consent of the country of origin. We thought that there was a tragedy happening in Guatemala and the other countries that they could not control by themselves.

It was not out of a sense of guilt. It was out of a sense of need to take action to do whatever we could do to help preserve that record from absolute and total destruction and we felt, I think, from a moral point of view, that it was improper and unacceptable that objects looted off sites in Guatemala should be freely traded in the U.S. art market. It is from that point of view that we approach the problem.

Now, to take two questions. First, the specific question of accession of other countries to the convention. We do not have control over the policy of other countries. The Senate has already given its unanimous advice and consent to the ratification of the convention. We could have deposited our instruments of ratification and then come back, under the pressure of negotiations under the UNESCO convention with specific proposals for treaties, or legislation to implement the convention.

We thought that was not the hardheaded way to go about it, that we should have a national debate, that we should clear the air, that we should decide what our policy is and lay down how far we would go by statute before we would go into any multilateral negotiations under the UNESCO convention for exactly the reason that you have implied.

And we have also, as you pointed out, provided for bilateral negotiations as an alternative which could be more satisfactory to us.

So what I would suggest is that if, upon reflection—and I would urge that the committee reflect very carefully on this—there is a problem perceived by the committee as to unilateral U.S. action that we deal with it by deciding what things we are prepared to do alone and to provide that authority in this legislation.

Senator RIBICOFF. Personally, I think that every country should have a right to preserve its antiquity and its artifacts. I think it is tragic that they should be deprived.

But you have a very big issue here. I think that both Senator Moynihan and myself saw eye to eye, that we should have suspended our relationship with ILO, and I have made a considerable study of UNESCO and it is one of the most moribund of all institutions.

Now here is a great opportunity for UNESCO to prove itself, and I would like to put UNESCO to the test. UNESCO is invariably against the United States on everything, and the U.S. influence gets weaker and weaker every year, as they shift the various chairmanships of standing committees. The number of committees that we chair or vice-chair is going down, and those of Soviet Union and the Third World countries are going up.

If this means so much to UNESCO and if this is within the orbit of what UNESCO is designed to do, let there be a great debate in UNESCO to see if UNESCO can now use its influence on all these countries that are invariably voting against the United States on every issue, irrespective of what it is.

If it means so much to them, let's try to do something in this legislation to put UNESCO to the test. The big countries who buy art with the United States, and also these countries that are concerned with what is happening to their antiquity, let them put the pressure on these countries. Let's see if they will use their influence.

I think the question that has bothered Senator Moynihan over the years in different capacities, including that of Ambassador to the United Nations, and that bothers me, is the declining influence of the United States in international organizations and the utilization of international organizations to make foreign policy in an international field which prevents the United States from acting either unilaterally or bilaterally.

We become subject; and so much legislation, so much policy is now being made in all of these international organizations. Here is an opportunity for you and the State Department to use your influence in UNESCO, and UNESCO itself to say whether it wants to go to bat for this principle.

Mr. FELDMAN. Mr. Chairman, I would like to respond. May I take a moment.

Senator RIBICOFF. No; I think this is very important. Frankly, I think what Senator Moynihan and I are talking about is much more important, basically, than the piece of legislation we have before us, because here is an opportunity to take an issue which I think that most civilized men can agree is a basically good position.

Again, I do not think the United States, acting unilaterally, will achieve anything, because nations will act on their selfish points of

view, and their selfish point of view is looking the other way on an issue such as this.

We will not influence anybody and nobody will follow us.

If we do this—and I think we should—I would want to see other nations put to the test to do likewise. Now here is an opportunity to try to get a piece of legislation which we indicate we are for, basically. Well, let's put other nations to the test to see if they will follow the American lead. If they do not, then it does not go into effect.

I think there is a bigger issue that the State Department has to address itself to, because over the years, the State Department, which they admit, has been indifferent to what has been happening to the politicizing of international organizations, and invariably against the basic interests of the United States, and we find ourselves in issue after issue completely isolated.

Now, I am against our unilaterally isolating ourselves. So this is the problem we face here. Here is one issue, and I think we should be addressing ourselves to every international issue involving international organizations, whether it is ILO or UNESCO. UNESCO is one of the worst of all of the international organizations in its attitude toward U.S. policy. I am more concerned with this than the arguments between museums and big museums and small museums and American dealers and non-American dealers. That does not interest me as much as the basic problem we are facing here.

It is a bigger one, and I think Senator Moynihan philosophically feels the same way.

Mr. FELDMAN. Mr. Chairman, I do not disagree that that is a much larger problem. I am concerned that we may lose sight of the specific and useful objective of this legislation in trying to undertake some very fundamental objectives that you are addressing yourself to.

In the field of cultural property, first, you made several different points, and I am not equipped to respond to the broad questions about the U.S. role in international organizations. I do think, however, that we can—

Senator MOYNIHAN. Would you accept the point that you, perhaps, are not authorized. You surely are equipped. You are one of the most distinguished men over there.

Mr. FELDMAN. Well, I would like to answer a couple of the points that are easier to manage in the time we have available. First, can we be effective?

I think we can be effective to a degree, particularly where it is determined that the U.S. art market is the preponderant influence.

Second, I think—you asked whether these countries would change their attitude. I think with the assistance of the United States and our encouragement, countries like Mexico, for example, have stepped up their own program of domestic enforcement and are doing much more about the despoliation of sites.

You mentioned Syria as one of the countries. There is a new site in Syria, for example, which has the remains of the ancient city of Ebla. The tablets found there are entirely new material of great Biblical importance. We feel that that is a very good example where there is an independent U.S. interest in doing whatever we can to help Syria protect that site from clandestine excavation in order to preserve, not

the objects themselves, but their scientific value. In this case, that is very much integrated with the objects. But I am talking about their value not only as art, but as a scientific record of mankind.

Now, as to the UNESCO organization, I really do not think that the bill we have before us should be conceived of as raising a question of international organization policy. We began this negotiation, I will agree, in UNESCO 7 years ago in a different world as far as diplomacy is concerned. I have been very concerned about that as we have come through these phases. And it is for that reason that we have put an increasing emphasis on the bilateral approach and on the emergency measures, which are the absolute irreducible minimum, the core of our substantive concerns in this legislation, where we can act unilaterally.

Moreover, the sections of the bill respecting the recovery of objects stolen from museums, which is a totally different problem from that of archeological exploration, are very much in the U.S. interest considering all of the collections in the United States. There are large portions of this bill that I would hope that the committee would endorse regardless of its reservations.

Perhaps we could work with the committee on the other aspects of this concern about what other nations will do in UNESCO which the committee will want to consider. You may feel that the authority that we have is too broad without the participation of others. You may want to add other things.

But I would hope that the committee would authorize the United States, would support the community, in taking certain measures on our own or bilaterally which are determined to be in our own national interest.

I know there are a lot of witnesses waiting to speak, so I will make only one more point. If we were to throw the issue open to UNESCO, and the issue is open there, and it is open in the General Assembly, the demand that is being made, for which they can get the overwhelming majority that you are familiar with, is for restitution for all of the collections from all around the world. Now, they can pass those resolutions over our votes, but they cannot make us do it.

But it is important, I think, in the political sense and in the substantive sense, that we take a positive and creative stand, that we take a position against those practices which we regard as contrary to our interests, that we apply measures prospectively and that we try to stabilize the situation.

It was on that basis that we have attracted the support over the years, not just of archeologists, but of the major museum associations and many museums as well. So there is a very hardheaded U.S. interest here.

We are confronted with sweeping demands that we would not wish to accede to even if the Netherlands or other countries—who are not likely to—would agree.

So what we are trying to do is to define in this bill what the U.S. national interest is in unilateral action, and there is some difference about it, but there is a surprising measure of consensus. After all, the bill did pass the House without dissent, and I would hope that the committee would address it.

Senator RIBICOFF. Well, I would say that by voice vote it was probably put in and no one outside the manager of the bill had the slightest idea what was in it.

Mr. FELDMAN. Well, I cannot comment on that, but I would say that I appeal to the committee to work with the bill and that we are prepared to work with members of the staff if changes are felt necessary, but it seems to me that it would be a tragic mistake for us to turn our backs on the convention as a whole after such a long time.

We turned that convention around. I feel personally committed, because I helped organize a diplomatic effort which succeeded. I do not know whether it would have succeeded in 1978, but it succeeded in 1970. The convention adopted by UNESCO incorporates the much more modest position recommended to us by the art and museum community, and that effort was a cooperative effort in which, for example, the Mexicans and the Germans and the French were very active at that time.

It was a hard-fought diplomatic success. I do not know when we will have another one in UNESCO.

Senator RIBICOFF. Thank you very much, Mr. Feldman.

We now have a panel representing the American Association of Dealers of Ancient, Oriental and Primitive Art: Mr. Douglas Ewing, Mr. Andre Emmerich, Mr. Peter Marks and Mr. Alan Brandt.

Gentlemen while you seem to be restricted on time, all witnesses are. Senator Moynihan and other members of the committee and myself will read your statements, read them carefully. I think it is a measure that we are both interested in, so we will ask some questions we have in mind, so would you present your position to us? Your full statement will go into the record as if read.

Mr. EWING. Mr. Chairman, we will be glad to waive reading our full statements. We would like to point out that we have offered some amendments for your consideration.

Senator RIBICOFF. All right.

[The following was subsequently supplied for the record:]

AMENDMENT TO H.R. 5648 RE INTERNATIONAL RESPONSE

PROPOSED AMENDMENT

Amend Section 2(a), Agreement Authority, by adding the following new subsection to line 15, page 2:

"(5) an agreement with a State Party under the provisions of this act would be part of a concerted international effort under the Convention of major art importing nations to control the pillage of archeological or ethnological materials of the State Party."

EXPLANATION OF THE AMENDMENT

The UNESCO Convention which is implemented through this legislation contemplates that there will be "a concerted international effort" of major art importing countries to respond to the request of any State Party to control the asserted pillage of its archeological or ethnological materials. The Convention further recognizes that "the protection of cultural heritage can be effective only if organized nationally (i.e., within the requesting State Party itself) and internationally among states working in close cooperation."

Notwithstanding the fundamental principle that an international response is essential to control or limit commerce of any cultural goods in the world art market, H.R. 5648 permits the United States to undertake unilateral restrictions to deny entry of particular archeological and ethnological materials to its own

shores. This deficiency should be corrected; the Bill should be amended to require that the President find, before entering into an agreement with a complaining State Party, that United States action will be part of a world-wide effort to control the allged pillage. If the United States acts unilaterally, such action will simply divert the flow of art away from the United States to other major importing countries such as Germany and Japan. No other major art importing country has passed similar legislation; it is extremely unlikely that they will do so. Certainly, they will not do so if they see that they will be the prime beneficiaries of unilateral United States action.

Even the State Department does not contest this fact—that there can be no certainty that there will be a significant diminution in international commerce in cultural properties without concerted action. Nevertheless, the State Department has asserted, and apparently the House has agreed, that the United States should take this unilateral action—which is far beyond the Convention's demands for concerted international efforts—solely on "moral grounds." Although the House acknowledged that the proposal of requiring a multi-national response was a "legitimate one," it agreed to give the State Department the power to Act unilaterally.

We believe that the action required by the Convention is for signatory parties to engage in a concerted international response involving art importing countries to an asserted claim of pillage. There is no requirement under the Convention for one country to act unilaterally, to the grave detriment of its own citizens. The amendment proposed above is consistent with the Convention.

AMENDMENT TO H.R. 5643 RE McLAIN DECISION

PROPOSED AMENDMENT

Amend Section 7, Stolen Cultural Property, by adding the following to page 16, line 11:

"The provisions of the National Stolen Property Act, 18 U.S.C. §§ 2314 and 2315, shall apply to any cultural property stolen from such institutions and transported or sold or received in this country as prohibited by that Act, provided however, that no property shall be considered as stolen, converted or taken by fraud within the meaning of section 2314, or stolen, unlawfully converted or taken within the meaning of 18 U.S.C. § 2315, where the alleged act of stealing, conversion or taking is based upon a taking away of such property from a foreign government or country and the claim of ownership of such property by the foreign government or country is based solely upon a declaration of national ownership, without such property having been reduced to possession by such foreign government or country."

PURPOSE OF THE AMENDMENT

This Amendment is designed to reconcile the policy and procedure of this Act with certain oppressive and extreme decisions under the National Stolen Property Law. First, the amendment makes clear that any stolen cultural property under Section 7 is subject to the provisions of the National Stolen Property Act. However, the amendment would further make clear that one cannot be prosecuted for transporting, selling or receiving stolen property under the National Stolen Property Law simply on the basis that a foreign country has determined that all archeological or ethnological goods are "stolen" under its laws, if they are exported from that country—even by the owner of the property itself—without a formal export permit.

Such an amendment is necessary to give effect to the essential policy determinations under the Cultural Property Act.

The legislative history of this Act makes clear that all art exporting nations will or have declared all articles of archeological or ethnological interest to be the property of the state, no matter in whose hands they may reside, and deny the transfer of such property. However, it is the clear policy of this statute that the United States will *not* recognize such broadside foreign laws. Rather, this statute contemplates a careful, case by case and item by item negotiation and determination by our officials to determine what materials in particular should be barred entry.

Thus, it is quite likely that the designation and listing of archeological and ethnological materials covered by implementing agreements under the Cultural

Property Law, as provided in Section 4, will be much more limited than the blanket designation of "stolen property" under foreign law.

It will be perfectly legal under this act for persons to import archeological and ethnological materials which are not listed under Section 4. However, there is the clear possibility that those very same materials could be "stolen property" under such decisions as *United States v. McClain*, 545 F.2d 988 (5th Cir. 1977). That case held that one could be convicted of transporting and receiving "stolen" property without proof that a good was "stolen" in any common law sense; rather it was considered to be "stolen" simply because the provisions of a broadside foreign law said that any goods of a particular category henceforth were the property of the foreign government and could not be shipped out of the country without an export permit.

It is quite clear that this line of decisions under the National Stolen Property Act would essentially vitiate the determination of Congress in passing this act and those of the Executive Branch in implementing this Act. The proposed amendment is designed to deny the binding effect of blanket foreign laws in the enforcement of the National Stolen Property Act, just as the Cultural Property Law rejects the binding authority of such foreign law in negotiating agreements.

Mr. EWING. We would be delighted to try to answer any questions that you may have.

STATEMENT OF DOUGLAS C. EWING, PRESIDENT, AMERICAN ASSOCIATION OF DEALERS IN ANCIENT, ORIENTAL, AND PRIMITIVE ART, ACCOMPANIED BY ANDRE EMMERICH, PETER MARKS, ALAN BRANDT, AND JAMES FITZPATRICK

Mr. EWING. My name is Douglas Ewing. I am president of the American Association of Dealers in Ancient, Oriental, and Primitive Art. To my left is Mr. Andre Emmerich; to my right, Mr. James Fitzpatrick, our counsel, from the firm of Arnold & Porter. To his right is Mr. Alan Brandt and to his right is Mr. Peter Marks.

Senator RIBICOFF. You may proceed.

Mr. EWING. You asked us not to read the statement, sir.

Senator RIBICOFF. Oh, no, no. Not to read the full statement, but you can make some points. You have—we have assigned 10 minutes to you to make any points that you would like.

Mr. EWING. I think that we can do it in 10 minutes.

For the association, for collectors, for virtually all museums, for scholars, and for the public at large, we believe that the impact this bill will be disastrous. Exposure of the Western World to most of the types of art with which this bill deals began only comparatively recently, and I believe that this bill's effects on the world trade of ancient and primitive art will greatly lessen future study, academic and otherwise, of these fields.

I would like to discuss the three amendments that we have to offer to you.

The major flaw of H.R. 5643 is not in phrases and clauses included but in a clause excluded. The UNESCO Convention, which this bill is implementing, specifically calls for a "concerted international effort." We maintain that the only way that this bill will have any effect on the problems to which it is addressed is with an international effort.

The bill rejects that approach and permits and encourages the United States to act unilaterally.

We would close our borders to art objects and they would find their way only to collections elsewhere. No other major art importing country has ratified the convention and none is likely to do so. Certainly the other major art importing countries in Europe, the Near East, and the Far East will have no incentive whatsoever to pass legislation—

Senator RIBICOFF. Do you gentlemen have any indication or any figures of what other countries are the basic importers of this type of art and antiquities and how it breaks down? Are there any figures anywhere available?

Mr. EMMERICH. Statistics are hard to come by.

Senator RIBICOFF. Generally, from your experience.

Mr. EMMERICH. The European countries and Japan are the great art importing countries in terms of ethnographic and archeological art.

Particularly, with the weakening of the dollar, the economics are already such that a very great deal of art now goes to Western Europe and Japan rather than here, simply on an economic basis.

We can no longer as easily afford it as we once could.

Senator RIBICOFF. The comment that the United States represents about 50 percent of the world market, is that true?

Mr. EMMERICH. That was true up to about 5 years ago. I think today the figure would be more accurately, in the field of archeology and ethnography, 25 to 35 percent, in there.

Senator RIBICOFF. What do you find? After all, people do come to your showrooms and to your auctions. Who is buying this art today?

You have a pretty good idea who is buying it, who is buying? Americans, Saudis, Japanese, French, Italians? Who is buying this in the marketplace?

Any of you. You are all dealers. You can all answer.

Mr. BRANDT. Sir, statistics, as Mr. Emmerich says, are hard to come by. I do know that in five trips per year I am constantly buying in competition with Swiss, Germans, French, Belgians, and Japanese. That my offer is competitive with theirs, and that they buy at auctions equally with any of us and it is difficult to discern in the buying situation that America dominates in any way.

Senator RIBICOFF. In this field, where are the major auction markets, what countries?

Mr. BRANDT. England, the United States, and France are the major auction centers and at the French, whether it is Paris, Sotheby's in London or Parke-Bernet in New York, you will see the Europeans very much in attendance bidding actively and successfully against us.

Senator RIBICOFF. Mr. Ewing?

Mr. EWING. Mr. Chairman, rather than proceed with this statement which is before you, I would like to ask Mr. Peter Marks to tell you about a situation which has recently come to our attention.

Mr. MARKS. I am Peter Marks, 9 East 84th Street, and have been a dealer in antiquities and oriental art for the past 17 years. I had originally intended to read a statement suggesting that the primary responsibility for the protection of cultural properties lies in the country of origin, illustrating how Japan had developed a simple, realistic and effective system of classification and export licenses.

However, late last week, information of an appalling cultural disaster reached a colleague of mine, Mr. William Wolfe, a New York

dealer who shares my interest in ancient Khmer art of Cambodia. Mr. Wolfe received a letter from a Swiss collector, Dr. Rene Russek, which I would like to read, in part.

Yesterday, January 28th, I had the visit from Professor Dr. Robert Jera-Bezard, of the Sorbonne University in Paris, who is connected with the Musee Guimet.

I used this opportunity to question this French scholar about Angkor. Because if anybody in the West ought to know anything about Angkor and its fate, then it is the French, who for decades restored Angkor and concerned themselves with Khmer art. Here is what Dr. Jera-Bezard reported as true facts:

Angkor was occupied during the entire war by the Khmer Rouge. Some fighting took place with the result of some damage; however, there was horrible vandalism in Phnom-Penh. When the Red Khmer entered the city—the greatest part were wild teenagers—they did not only evacuate this million-inhabitant city and its suburbs. The troops also broke into the world famous Albert Sarraut Museum and pillaged it as follows:

In their delusion to break with the past and to create a new Communist paradise, they knocked over all the beautiful Khmer and pre-Khmer sculptures and threw them into the nearby Mekong River. The sculptures which were firmly secured on their bases were hacked off so that today in that museum there are only a few bases with their feet.

It will be the task for future generations to fish the Mekong River for the remnants of these are treasures.

This may not be the last time senseless destruction of art objects will happen in a country living in isolation, but it is the last time anyone will ever see these treasures again.

Thank you.

Mr. EMMERICH. I would like to respond to one particular point that Mr. Feldman made and which is in my submission, on the question of thefts.

Mr. Feldman spoke of "true thefts," thefts under our concept of thefts from collections and museums. The American art community and existing American laws have long been able to cope responsibly with the relatively few crises and thefts which have occurred. As examples may be cited the severe looting of the Cyprus museum in the wake of the recent Turkish military occupation of the northern half of the island, or the wholesale depredations undertaken by the Nazis all over Europe during World War II.

Stolen objects, Nazi-stolen objects, have been successfully recuperated again and again through the normal legal processes and the art community in this country has energetically assisted these. I, myself, in my gallery, have helped recoup a number of genuine thefts with the help of the police and the FBI.

Senator RIBICOFF. What is your gallery?

Mr. EMMERICH. My gallery is called Andre-Emmerich Gallery in New York.

Senator MOYNIHAN. Mr. Emmerich, may I interrupt to say that that was a startling letter Mr. Marks read. It just makes your stomach sink.

I did not know that you had that letter. But observe—what the letter describes has been the practice of all previous civilizations, including whatever you might call the Khmer Rouge. They destroy the past and see it as a threat to their own legitimacy. Ours is the first civilization to preserve the past.

Here we are in the U.S. Senate reading a letter from a Swiss collector about a French professor who saw what has happened in Phnom Penh. My God, it is horrible.

Mr. Emmerich, we were all impressed by your Op-Ed article in the Washington Post the other day. I just have one particular question. If someone steals an artifact in the possession of some other person or institution, brings it to the United States, is it legally imported?

Mr. EMMERICH. U.S. Customs cannot, of course, necessarily distinguish whether an object—

Senator MOYNIHAN. Yes; but if U.S. Customs finds out that this is a stolen object—

Mr. EMMERICH. No reputable dealer will handle it.

Senator MOYNIHAN. Right.

Mr. EMMERICH. And the police and the law, under existing law, restitute it. You cannot pass good title to a stolen object, and there have been cases again and again under which works of art stolen from previous owners have been restituted under existing U.S. law, like stolen cars, like stolen anything.

Senator MOYNIHAN. You cannot pass good title to a stolen object under the common law. When you bring a stolen object into this country and sell it to somebody, the police will come get you and the object. It may take years to return the object, and the effort required to do it may be miserable. But it is against the law now to import stolen objects. We need no treaty to protect foreign owners from the theft of things that may be imported into this country. That is right, is it not?

Mr. EMMERICH. That is exactly right.

Senator RIBICOFF. Some of these countries, I mean, the mention was made about a new excavation in Syria. Can the Syrian Government not protect those excavations to assure that what the finds in those excavations are kept in the Syrian museums and not sold to the United States, Japan or England or France?

Mr. EMMERICH. That is a complicated question. There is, first of all, a basic legal difference. We regard subsoil property, like oil, coal, gas, as property of the landowner. Foreign countries often regard subsoil rights as belonging to the state, including coal, oil, gas.

Some countries have a seminationalization, like Mexico, which authorizes private ownership of pre-Colombian objects up to the point when they are exported. Then they are suddenly declared national property.

It is very difficult to find one's way through the maze of foreign legal interpretations. It is very simple under American law: you own the land and you own what is in it, on it, under it. You do not under many foreign legislations.

Senator RIBICOFF. But these countries can pass laws to protect their antiquities, and they do, do they not?

Mr. EMMERICH. Many countries do. Many countries, such as Japan, for example, very effectively control them. The Egyptians also, with fairly sensible export laws under which the museum authority of the country or the art authority of the country has the right to pass on all exports and exercise a right of preemption where necessary, and some let the others go.

Mr. Marks' paper details the Japanese system, which has worked splendidly for a generation.

Mr. FITZPATRICK. Senator, in further reference to your question about stolen property, one of the three amendments that we submitted

for the committee's consideration involves an attempt to reconcile the idea of stolen that you have just spoken of—traditionally taking something from another person's possession—with some decisions under the National Stolen Property Act, in which the idea of stolen, the term "stolen," does not relate to any common law definition of stolen. In contrast "stolenness" comes from transporting in this country a good that had been exported from a foreign country in violation of that country's laws, when that property had never been reduced to possession in the foreign country.

As Andre indicated, a number of countries say that anything that comes out of the country—no matter if the owner, in our sense, takes it out of that country—anything that goes out of that foreign country without an export permit, is stolen property under the foreign country's jurisprudence.

That concept, which we believe is quite contrary to our idea of stolen property and the stolen property statute, has found expression in two or three court of appeals decision which are, we believe, at right angles with the philosophy of this bill and the idea of stolenness as is reflected in section 7 of the bill.

There is a notorious decision in the arts community called the *Mc-Clain* decision. I have provided to the committee staff an amendment attempting to reconcile that idea of stolenness with the more traditional common law approach.

Senator RIBICOFF. Any other comments?

Mr. FITZPATRICK. There was one last amendment. We will not describe it; we tendered it to the committee. It relates to the question of satisfactory evidence under section 6. Mr. Brandt's statement had gone into the question. If we are going to have a bill and if we are going to have property out of the country of origin for 10 years, the issue then is the customs requirements to get that perfectly legitimate item into this country.

Our amendment describes Mr. Brandt's statement and Mr. Ewings' statement details the almost impossible hurdle that section 6 of this bill raises of one attempting to bring perfectly legitimate, perfectly licit, art objects into this country. We have provided, for the committee's consideration, a documentary standard which we think is reasonable and does not contain problems that the bill does.

For example, the bill requires that the importer certify that an American had never, directly or indirectly, in a prior 10-year period, had an interest in the object abroad. This is something the importer—it is impossible for the importer to swear to that fact.

There are a number of other technical details in this documentation requirement that makes it virtually impossible to bring totally appropriate goods into this country. We have submitted that amendment for the committee's consideration.

Senator RIBICOFF. All I can say is that this is very complex, and I think we recognize that. It is a question of policy considerations, legal considerations, and the committee and the staff will study this bill very, very carefully.

Thank you very much, gentlemen.

Senator MOYNIHAN. Mr. Chairman, may I just say one thing? I wish to tell these gentlemen that they appear before this committee as respected and honored members of a profession which has done more,

perhaps, to conserve and preserve the art objects of this world than all the museums put together—well, I do not want to put you in conflict, but we would like you to know that we respect what you do, we honor it.

I wonder, is Mr. Feldman still in the room? Is it not possible to have the U.S. representative in UNESCO take up the barbaric behavior of the Khmer Rouge in destroying the Albert Sarraut Museum. It is one of the great museums, and it is one of the most decent things France did in Southeast Asia. To have it destroyed, what a tremendous loss. Even the Louvre does not have more distinguished things; it has more things that are distinguished.

Senator RUBINOFF. On that, you see, the point that was made by Senator Moynihan is very important. The complaint against Israel's excavation along the wall, I went and looked at it myself and they were really excavating almost on their hands and knees, to preserve every pebble, every shard, every pot, every step, every drawing.

Now, here is an opportunity in Cambodia, of what is going on. If they want to preserve, UNESCO with all of these countries, these Third World countries who are concerned about the spoilation, let them try to start something, a movement, to save these art objects all over the world.

Thank you very much, gentlemen.

[The prepared statements of the preceding panel follow:]

STATEMENT OF DOUGLAS C. EWING

My name is Douglas C. Ewing, and my address is 159½ East 94 Street, New York, New York 10028. I am President of the American Association of Dealers in Ancient, Oriental and Primitive Art. This Association comprises dealers in a wide range of art—classical Greek and Roman, ancient Near Eastern, the arts of China, Japan, Indian and Southeast Asia, pre-Columbian art, primitive art from Africa, the Pacific Basin and North America. I believe this Association represents the most important source of ancient, oriental and primitive art to the public museum collections in the United States.

My own professional field is the native arts of North America, the present countries of the United States and Canada, and my personal business will be largely unaffected by the passage of the bill. However, for most other members of the Association, for collectors, for virtually all museums, for scholars, and for the public at large, the impact of this bill will be disastrous.

The exposure of the Western world to most of the types of art with which this bill deals begin only comparatively recently, and I believe that this bill's effect on the world's trade in ancient art will greatly lessen future study, academic and otherwise, of these fields.

This may not seem like a cultural disaster to those not intimately involved with what we call "art," but its effect will be far-ranging. Our only knowledge of people who once inhabited most of this planet is derived from the material remains of their cultures. Our reactions to these artifacts, and our determinations about them, are the raw material not only for the ethnologist, but for the historian, the sociologist, the anthropologist, the artist, and the philosopher. Our understanding of our place in this world today and in the future is based upon a study of what went before us.

Before proceeding to a more detailed discussion of the bill, I would like to restate the obvious—that this Association does not condone, encourage or practice looting, pillage or theft. Because the bill is ostensibly concerned with these problems, and because we strongly opposed the bill in its present form, it has been implied that we support unethical or illegal activities. I would like to state for the record that this is not the case. We oppose this bill because in its present form it would not only have no effect on the problems to which it is addressed, but would penalize and effectively end the importation into this country of broad classes of works of art, works which had not been "pillaged," "looted," or "stolen." It should be pointed out that most of the objects in question are not

monumental "masterpieces," but small, intimate works which have been in European collections for many years.

Now to the bill itself. The major flaw of H.R. 5643 is not in phrases and clauses included, but in a clause excluded. The UNESCO Convention, which this bill is implementing, specifically calls for a "concerted international effort" to respond to crisis situations. We strongly maintain that such an international effort is the only method by which such problems can be dealt with. However, this bill rejects that approach and permits and encourages the United States to act unilaterally. Unquestionably, the United States' unilateral action would merely be tilting at windmills. We would close our borders to art objects; they would merely find their way to Swiss collections or Japanese museums or German institutions.

Nor other major art importing country has ratified the Convention, and they are unlikely to do so because they recognize that it is to the grave detriment of their own citizens and institutions. Certainly, the other major art importing countries in Europe, the Near East, and the Far East, will have no incentive whatsoever to pass legislation because as long as the United States acts unilaterally, there will be every benefit to them from the added flow of art from U.S. actions.

We believe that this bill should be amended to require that U.S. action be taken only as part of a concerted international response, and would like to submit that amendment for the Committee's consideration.

Moreover, this bill gives the Executive Branch—read State Department—broad and virtually unlimited powers to regulate the importation of art objects into the United States. And the State Department considers this power as a useful weapon for diplomatic, not for cultural, purposes. The expert Advisory Committee to the State Department described in Section 5 of this bill will be rendered ineffective by an unusually high quorum requirement (7 of 9 members), an extremely short reporting period, and by the fact that its findings can be totally disregarded by the State Department when negotiating art agreements.

We believe that a mechanism such as Congressional review or some other form of public accountability will lessen the possibility of the misuse of State Department powers under this art bill for political and diplomatic purposes. We know from history that powers unreviewed are those most likely to be abused.

Indeed, these considerations raise the most serious questions whether it is necessary, or sound policy, for Congress to grant a blank check in this bill to the Executive Branch, particularly when Congress has shown its willingness to act on an ad hoc basis by enacting specific legislation to respond to crisis situations. That happened in 1972 when Congress promptly passed specific legislation to respond to the call of several Latin American countries to help protect against the destruction of monumental Mayan sites in Central America.

However, if legislation is to be enacted, the present documentation requirements of the bill are so rigid and unrealistic as to completely shut down the legitimate and completely appropriate trade in art objects that have been out of the country of origin for ten years or more. That would include the great bulk of objects that come into this country from European and other collections and museums.

To get the object past U.S. customs, the bill requires that one must have sworn statements from both the shipper and the importer that at no point in that ten-year period had any American citizen or resident directly or indirectly acquired an interest in that object. That is a requirement that cannot be satisfied. Certainly, the importer will be unable to swear to these facts.

Beyond that, one must swear that the objects have either been on public display or that the country of origin had been notified by the foreign collector or museum so they could be retrieved. This simply will never happen.

If these totally unrealistic requirements aren't enough deterrent, the sanctions provision in the bill will be. If one can't persuade customs officials that the documents accompanying the work of art are "satisfactory," the customs official seizes the object and it is forfeited to the United States. It is not returned abroad to the sender. No sensible businessman or museum abroad will take a chance and send a work to this country, where on the whim of customs officials, it can be forfeited with no compensation.

I have no idea how such prohibitive restrictions were conceived; I do know that no foreign dealer would reveal his sources in the documents contemplated; few foreign private owners would announce their sale of an object; and is citizenship so much a matter of public knowledge that it can be determined from an available work of reference?

We would suggest, as an alternative, that the importer be assumed innocent under the law and not have to prove his lack of guilt. We believe that a statement, including immediate source, price, and a clause to the effect that to the best of the importer's knowledge the object had a legitimate and legal presence where it was acquired, should constitute "satisfactory evidence" for importation. We would be happy to submit an amendment to that effect for the Committee's consideration.

My final specific criticism of H.R. 5643 is directed at Section 7, Stolen Cultural Property. At first reading, this section is simple, straightforward and not controversial; but a recent decision in *United States v. McClain*, 545 F.2d 988 (5th Circuit 1977), transforms this paragraph into what may in the future be the most complex and troublesome part of the entire bill.

The decision in *United States v. McClain* held that one could be convicted of transporting and receiving "stolen" property under the National Stolen Property Law, without proof that an object was "stolen" in any common law sense; rather, it was considered to be "stolen" simply because a foreign law asserted that any goods of a particular category or source were the property of the government in question.

In order to reconcile the *McClain* notion of "stolen" with what is clearly another, and more accurate notion, presented in this bill, we propose an amendment to Section 7 which we will tender for the Committee's consideration.

This amendment, we submit, does not alter the clear intent of Section 7, but does make it more specific and easy to administer.

Our Association would like to express its very sincere gratitude to this Committee for its hearings and consideration of our suggestions. From the beginning of the controversy over this bill, I have firmly believed that there were not two sides to the question, but rather two different approaches to the same solution. We believe that our suggestions for improvements to this bill would maintain the commitments of the United States as a signatory to the UNESCO treaty, and at the same time satisfy the legitimate interests of the American public and others affected by H.R. 5643.

STATEMENT OF ALAN BRANDT

My name is Alan Brandt, and I reside at 44 West 77th Street, New York, New York 10026. I have been a dealer specializing in African and Oceanic Art for seventeen years.

I wish to comment on the provisions of H.R. 5643 which concern the requirements for the import of works of art into this country and their release by U.S. Customs officials to the importer of the works.

I recognize the need for some international system which protects national interests in cultural properties. However, my experience convinces me that the bill's import requirements, applied in the manner indicated, will simply create an embargo against the importation into the United States of most art objects which have in no sense been pillaged or stolen from the countries of origin.

Section 6 of the bill prevents the importation of an art object which was exported from its country of origin more than ten years prior to its proposed entry into the United States. However, the required documentation which would prove satisfactory to Customs officials simply will not be available.

In most instances foreign dealers offering objects for sale obtain this material piece by piece from collections known to them. These dealers would consider it commercial suicide to provide a purchaser, such as myself, with the names of their sellers, thereby allowing me to approach their sellers directly for material which they might wish to resell in the future. Furthermore, foreign collectors most frequently are unwilling to provide documentary acknowledgment of their having sold objects due to foreign tax consequences.

In general, it is no more uncommon for a collector to be secretive about what he owns or has sold than it is for others to be discreet about bank balances or stock holdings. Certainly, the proliferation of art thefts has caused many foreign collectors to avoid publication of their possessions, many of which they have owned for decades.

As a reputable citizen and dealer, my sworn statement is accepted in any legal process. Is it not consistent that a sworn statement from me would be considered "satisfactory evidence" of the facts concerning an art object under Section 6 of the bill? I am aware that perjury under such circumstances would be a felony. Reputable foreign dealers are similarly aware of this.

I have been gratified to provide art objects to major museums, smaller museums, and University and private collections. Objects worthy of acquisition by

the discriminating American buyer are very hard to come by and are acquired by American dealers in intense competition with collectors or dealers of other nations. Foreign dealers, not finding it convenient to provide the documentation that would satisfy U.S. Customs under the provisions of this law, would undoubtedly choose to sell to Swiss, German, Japanese, or, indeed, clients of any nation other than the United States.

The net effect of this bill will be to destroy the legitimate commerce of art objects coming into this country, to the great detriment of our citizens.

STATEMENT OF PETER MARKS

I am Peter Marks, 9 East 84th Street, New York, New York, and I have been a dealer in antiquities and Oriental Art for the past seventeen years. I am opposed to the UNESCO legislation as now drafted.

I would like to talk about the "international effort" so rightly called for by the UNESCO Convention to deal with the problem of cultural properties. To paraphrase an old adage: International effort begins at home.

To my mind, such efforts cannot be created and sustained by treaties alone. They must be begun by responsible governments within their own countries acting realistically toward their own cultural heritage; serious, systematic and energetic preservation on the one hand, and on the other, respect for people of other countries who have a legitimate need to know and share that heritage by collecting and preserving works of art from many lands.

Unfortunately, the record of self-preservation in art exporting countries is characterized by a lack of concern for preservation of their own cultures. The United States has been the greatest preserver of cultural properties from every country in the world, even in the days when these "cultural properties" were considered cultural garbage in their countries of origin.

There are precious few nations rich in antiquities which deal rationally with preservation and export of cultural properties. Israel is one—a country with an enlightened policy toward archeological treasures; a country that was expelled from UNESCO during the most ignominious and degraded hour of that organization's history.

Japan is the only other non-Western European country that has achieved an orderly and rational policy concerning the export of art. It works like this:

Since about 1880, the National Board of Education has appointed a registration committee composed of scholars who have sought out and recorded the whereabouts of the major portion of cultural properties in Japan. Top quality works are designated national treasures or important cultural properties.

Private collectors, dealers and institutions seeking export permits for objects submit them to the registration committee. Export licenses are routinely granted if the committee is satisfied that the national collections already possess one or two comparable examples.

It sounds simple. It is. And it works. It insures the orderly and legal export of important art objects that are eventually housed in the world's great museums, including the Freer Gallery in Washington. It works with the cooperation of scholars, dealers and government officials in Japan and with the international community of their colleagues.

It works because it is reasonable and fair. It works because the Japanese have a deep regard for their artistic heritage shown by their systematic registration of cultural properties and their eagerness to share this cultural wealth with the world.

Other countries who have signed the UNESCO Convention have similar laws on the books. But that is where they remain—on the books. Objects theoretically *may* be exported, but they simply are not exported. If an export permit is requested, either the permit is denied or the object is confiscated. Still, the object *may* be exported. Which ones? Potsherds? And when? Fifty years from now? And while countries rich in archaeological and ethnographic art hold out cultural carrots to a legitimate world demand, they call upon the world—they call upon us—to do for them what they won't do for themselves.

Every country—from Algeria to Zaire—must do now what Japan began to do nearly a century ago. Dedicated and energetic preservation and sensible export laws within each art-rich country, combined with a multinational consensus among all art-importing nations would produce the kind of international effort that would lead to worldwide and realistic controls. That kind of sensible self-interest by all those nations would obviate the need for a bill of this sort. Congress could respond, as it did in 1972, to individual crisis situations.

STATEMENT OF ANDRE EMMERICH

My name is Andre Emmerich. I have been a dealer in contemporary art as well as ancient and especially pre-Columbian art for 23 years. I am past President of the Art Dealers Association of America. I am also the author of many articles on pre-Columbian art and of two books on the subject. One is entitled "Art Before Columbus," published by Simon and Schuster, New York, 1963, and is a guide to this field for the education layman. The second one is "Sweat of the Sun and Tears of the Moon: Gold and Silver in Pre-Columbian Art" published by the University of Washington Press, Seattle, 1965. This is still the leading scholarly book on the subject of precious metallurgy in pre-Columbian America and has been reprinted in a second edition.

I also served for many years as a member of the Panel on the International Movement of National Art Treasures of the Society for International Law 1970-71.

The fundamental question before this Committee it seems to me is whether the moral imperative claimed by the bill's proponents has a valid basis. Well-meaning, honorable citizens are being led to a hasty judgment through the misuse of slogans such as "stolen art" and "looted global treasures."

To begin with, there is much confusion about the nature of the materials involved here. Archaeological objects consist largely of tomb furnishings—the offerings placed in the graves of dignitaries by early cultures all over the world. Field archaeologists urge that such tombs are a non-renewable, exhaustible natural resource that should be preserved for exploration by trained professional scientists. Theoretically and abstractly they are, of course, right. Unfortunately, their view of an ideal world remains a fantasy. Population explosions, intensified farming, construction and advancing industrialization, topped by governmental neglect in once backward parts of the world, all conspire to destroy remaining archaeological sites at a far faster rate than the widely deplored depredations of independent explorers.

This sad but little publicized fact has been attested to quietly by archaeologist after archaeologist. To protect and police all of the literally thousands of sites in just one country such as Mexico would require an army—probably the entire standing army of each of the countries involved. In practice these sites have been and will continue to be destroyed for the reasons outlined above, reasons deeply embedded in the fabric of life of the countries involved. All we can do is encourage the preservation of those objects which miraculously survive the inevitable depredations of our advancing contemporary civilization. In the real world—as opposed to the utopia of which some academics dream—this is best done by endowing such objects with sufficient monetary value to ensure their preservation.

All societies preserve the things they value and allow to be destroyed those which they do not value. The great contribution which this country's free enterprise economy has made to the entire field of archaeology has been exactly this aspect of enhancing the value of ancient art and thereby ensuring its preservation from otherwise certain neglect and destruction. This is also, of course, the practical morality.

The other kind of objects to which the bill addresses itself is "ethnological material." This consists largely of abandoned tribal ritual art such as masks, shields and other ceremonial objects which have outlived their religious function. If they were not sold to foreign markets, such things would simply be left to rot. Essentially, those who work with ethnological material handle the abandoned garbage of other cultures and civilizations. In virtually all cases the works of art salvaged by dealers, collectors and museums continues to exist at all only because of these acts of salvage.

Proponents of import restrictions point to the desirability of leaving early art in its original location. They endorse the stance of many art-rich nations who wish to maintain a nationalistic monopoly, who do not wish to share access to their art with the world, and who denounce as "stolen" any work thought to be from their soil which enters the international art market.

A curious point about this is that the population of many regions whose early cultures flourished today consists of the descendants of the invaders who destroyed the very cultures whose remnants their modern governments now so jealously claim as exclusively their. Turkey's Adriatic coast is rich in ancient Greek art—but a generation ago the remnant of its Greek population was expelled under the threat of genocide. Most modern Latin Americans are the descendants of Spanish conquistadores who destroyed the Aztec and Inca empires and all their works within reach. Do these descendants have a better moral claim

to the buried artifacts of earlier civilizations than the rest of mankind? And as Americans, a people consisting of immigrants and the descendants of immigrants, do we not have a particular moral right to a decent share of our common ancestral patrimony?

In this context it is useful to recall that as American museums and collectors have over the generations purchased a part of this international heritage, American scholarship has more than requited the ethical obligation connected with such acquisitions. For example, in pre-Columbian art alone better than half the existing scientific literature has been produced in the United States.

The terms "stolen" and "pillaged" are also often found emblazoned on the moralist banners hoisted in this debate. They raise the interesting question of the conflicting concepts inherent in Anglo-American common law and in foreign laws concerning subsoil rights. Although I am not a lawyer, it is my understanding that under our legal system land ownership has included such underground wealth as coal, oil, minerals, etc. Abroad, legal systems derived from feudal times assign subsoil property to the crown or the state. The United States, however, has traditionally refused to regard as a crime in this country acts permitted under our own laws but which are forbidden abroad. For example, our freedom of the press laws make it possible to publish here works which were smuggled out of totalitarian countries where these writings are prima facie evidence of crimes against their respective states. Thus, it seems unreasonable to call "stolen" objects which may be "purlined" under foreign legal concepts but which under our own system of law and equity were conveyed with perfect propriety from an excavating landowner (the original source of a conservatively estimated 85% of archaeological materials) through the chain of the market into the hands of dealers, collectors, and museums. The defenders of Common Law rights struggled for many centuries in Britain and the United States to defend the rights of individuals from encroachments. This hard-won heritage should not lightly be surrendered now in a misguided effort to adapt to alien systems. Particularly, as the American art community—and existing United States law—have long been able to cope responsibly with the relatively few genuine crises that have actually occurred. As examples may be cited the severe looting of the Cyprus Museum in the wake of the recent Turkish military occupation of the northern half of the island, or the wholesale depredations undertaken by the Nazis all over Europe during World War II.

As a practical matter, the "treasures" yielded by excavated tombs are generally remarkably repetitive. Even the inventive ancient Greeks only developed 32 different forms of ceramic offertory vases and cups. Most early tombs contain the cultural equivalents of Coca Cola bottles, Seven-Up cans and mass-produced rosary beads. As a result, museums in ancient regions are filled to overflowing with repetitive material, far beyond the capacity of their display halls as well as their vast storerooms. Sadly, any American scholar who has visited the back rooms of museums, even in major centers such as Rome, Athens, Cairo, Mexico City or Lima, can testify to this. Objects are badly preserved under conditions which result in their being defaced or destroyed. Under locally prevailing systems, however, it is politically dangerous if not impossible for officials to grant export permits even in the face of redundancy. What would be invaluable and instructive additions to the collections of many American museums are simply left unseen and endangered on local premises supposedly dedicated to their preservation.

Remarkably, some U.S. museums have seen fit to support one-sided American import restrictions. Closer examination of their ranks discloses that these museums consist overwhelmingly of older institutions which have long been gorged with more material than they can hope to display. These museums are in a very different position from museums in newer, growing areas such as Texas and California, not to mention the many developing art centers in smaller cities across the entire country.

The prime proponent of this legislation is the United States Department of State. Its reasons have been stated publicly and consist of a desire to use a self-imposed art import embargo as a useful trading chip in negotiations with foreign powers on issues the Department considers more important than art, culture and scholarship. The wish to accumulate such bargaining counters is a perfectly normal expression of the ever-present drive for increased powers on the part of the Executive Branch. However, this familiar drive should not be confused with the issue of morality.

It is the obligation of the Senate to review carefully the presumed ethical imperatives that have been cited before being led into passing a law which, as it now stands, is as unwarranted as it is injurious to our country's enlightened self-interest. The errors embedded in the bill now before the Senate can still be amended. This country's commitment under the UNESCO Convention can be fully honored without introducing arbitrary, draconian restrictions beyond the scope of the Convention itself, restrictions which are all too reminiscent of the "noble experiment" of Prohibition. Excessive legislation can only result in a recurrence of evils similar to those produced by the Volstead Act which during its existence gave us speakeasies, rum-runners, paid informers, and a Mafia legacy.

Senator RIBICOFF. Mr. Sherman Lee?

You may proceed, sir.

**STATEMENT OF SHERMAN LEE, DIRECTOR, CLEVELAND MUSEUM,
ON BEHALF OF COLLEGE ART ASSOCIATION AND THE ASSOCIATION
OF ART MUSEUM DIRECTORS**

Mr. LEE. Mr. Chairman, I am Sherman E. Lee, director of the Cleveland Museum of Art, chairman of the legislative committee of the Association of Art Museum Directors and trustee representative of the College Art Association of America. In speaking here, I represent both professional bodies and myself as director of the Cleveland Museum of Art.

We support S. 2261 in principle and in almost all details. We recommend its passage by this committee in belated implementation of the UNESCO Convention regarding the illicit traffic in works of art ratified by the Senate on August 11, 1972. The position taken in this proposed legislation strikes a judicious balance between the extremes of total license and total prohibition advocated by the most extreme proponents of positions contrary to the already ratified convention.

Arguments proposing total laissez faire ignore the clear and present danger to museums, temples, and sites posed by the plundering of their contents for profit. Arguments proposing total prohibition of a legitimate traffic in antiquities and ethnological objects ignore the legitimate needs of humanity to understand its past, wherever that may have been.

What is needed is judicious control of situations dangerous to all, and subject to effective control, however, minimal. The proposed legislation provides this with adequate legal safeguards for those confronted with questionable situations.

The College Art Association and the Association of Art Museum Directors support this bill recognizing that changes in wording may be required in matters of implementation, but not in substance. We have been active both directly and indirectly in conference draft meetings and other labors resulting in the final form of the UNESCO Convention.

We have worked in close collaboration with our related professional organizations and with the State Department in the drafting needed to produce effective enabling legislation. We have been particularly anxious to see that the legitimate educational and cultural needs of the American people be satisfied, but without continuation of the indefensible destruction of cultural sites caused by robbery and pillage.

We have spent at least 6 years in responsible study of this subject and have arrived at a position where the varying views of the American Association of Museums, the Association of Art Museum Direc-

tors, the Archaeological Institute of America, the Anthropological Society, and the Smithsonian Institution could be reconciled and full support could be given to this proposed legislation.

However, we would again point out that the bill omits a major matter clearly proposed by the UNESCO Convention. We refer to the protection of the cultural heritage of the United States and to the desirability of having some form of export control so that American museums may have the same protective rules as their counterparts in Canada, England, France, Japan, and other states.

While we fully realize that this is not contemplated in the present legislation, we urge that it be considered and proposed in the near future.

The provisions of the proposed legislation and their implications have been strongly attacked by the dealers and collectors of this country. Ill-founded and even erroneous interpretations of the bill are widely current. I urge the Congress and its staff to do everything in their power to provide accurate information about, and clear interpretations of, the proposed legislation for those affected by it. Such information will, I am confident, persuade those with legitimate concern for works of archeological, historical or ethnographic significance, that the proposed legislation will provide a minimum but effective means of furthering the preservation and constructive use of the material heritage of mankind.

The contrary argument that none of the major Western nations intend to subscribe to even a minimum observance of the principles of the UNESCO Convention is both erroneous and beside the point, for we have no official and/or reliable information that this is true, and more importantly, no control in these "consuming" states will ever be forthcoming until a first step is taken by one.

The concept behind the convention and the proposed enabling legislation is clearly right and desirable, even mandatory for the preservation of the world's cultural heritage, and a first step in the provision of reasonable regulation for this purpose becomes a matter of honor and integrity.

If others will go no further, then neither should we, but the effort must be made, else nothing will be tested. The professional organizations I represent affirm their support of the principles of the convention and of the legislation under consideration.

May I add three specific notations with regard to wording that might get into the record.

One, under sections 3 and 5, the time allowed to act by the Advisory Committee seems a little too brief—60 days is not really enough to carry out scholarly study, and to find affirmatively that something dangerous is going on. Certainly, a longer period would be indicated.

Second, section 11(2) subparagraph (d), there should be some kind of further protection for a U.S. collector or dealer, owner, who gains good title under local or State law, but loses the object under the convention. If compensation is not available to him because it has been waived under section 9(c) (1) (B), his rights to go against his vendors should be preserved by this bill.

As the local statute of limitations governing such claims may well have expired, the provision allowing Federal jurisdiction on the point should perhaps be increased for perhaps a period of 1 year for the claimant to pursue his claim.

And, finally, I would like to carry forward in the implementing legislation the same language that appears in the UNESCO Convention by adding in section 7 to say "no article of cultural property documented as pertaining to the inventory" thus making the distinction very tight and precise.

That ends my prepared statement. I would be happy to try to answer your questions, if I can.

Senator RUBINOFF. Thank you very much, Mr. Lee.

Mr. Stibel, National Antique & Art Dealers Association.

STATEMENT OF GERALD G. STIEBEL, PRESIDENT, THE NATIONAL ANTIQUE & ART DEALERS ASSOCIATION OF AMERICA, INC., ACCOMPANIED BY JOHN S. MONAGAN, WHITMAN & RANSON

Mr. STIEBEL. Mr. Chairman and Senator Moynihan, I am Gerald Stibel, president of the National Antique & Art Dealers Association, and I am with Mr. John Monagan of the firm of Whitman & Ransom.

Our association was founded about 25 years ago with 46 members who were brought together in order to help protect the interests of those who buy, sell, and collect works of art. We are also very interested in education through art and as members of the International Confederation of Art Dealers, we sponsored an exhibition at the Metropolitan Museum with 130 dealers from 10 of CINO's 14 countries.

I personally am a dealer in old master paintings, French 18th century furniture, Renaissance and medieval art, and, as such, should theoretically not be affected by this bill. My association and I, however, are most concerned with the precedent that this bill will set.

Now, we are, like the other people here, in full agreement with the sections that will restrict the import of works of art stolen from foreign museums, secular institutions, and religious institutions. But we are most concerned about the definition of stolen.

Stolen seems to mean, in other countries, any work of art that, after export, the Government reconsiders that they should have maybe kept it, and that is called stolen. About 15 years ago a statue, a Greek bronze youth, was exported from Italy and for at least the last 6 years the international art community has known where that bronze was located.

Last year, the Getty Museum in Malibu, Calif. bought that bronze for several million dollars and only then the Italian Government turned around to make a claim that it had been stolen. This called political attention to the issue not necessarily the attention of the Italian art community, that they would care for the object.

Now, as has been said here often before, no other major art importing country has passed this legislation, even though many of these countries have far more archeological and ethnological art than we have. A few of our major museums have this kind of art, but, per capita and per square mile I will venture to say that we are quite poor.

We have heard a great deal in recent years from the black community regarding their heritage and what has come to be known popularly as Roots. Now we have a law here which will effectively ban African art, ethnological art, and they will not be able to see any more of their heritage come into this country.

I am not one to believe that any one single piece of legislation will put an end to culture in this country, the art market, the art community, but there are 10 laws before the Congress now regarding the arts and we must not look at them individually, but as a body of laws.

There is a law regarding wildlife which will stop ivory from being imported into this country and no exception is made for works of art in ivory.

Dr. Lee previously mentioned the question of export restrictions, and there has been some discussion about that. Let me just take this opportunity to say that certain investment groups abroad refuse to buy American art because there is no international market for American art. As opposed to restricting exports in this country, we should be shipping it out wholesale to get other countries to know this great art we create here.

Senator MOYNIHAN. We lost "Blue Poles," if you remember.

Mr. STIEBEL. Yes; but there are other Jackson Pollocks here.

It is most important that not only the scholars, but the public, have original works of art to learn from. They cannot just learn from textbooks and slides.

Now, there is a loophole in the bill. There is a provision that will allow works of art that would be otherwise banned to be imported for special exhibitions, but I cannot believe that under the vagaries and complexities of this bill that anyone will take a chance of sending this kind of work of art into the country. It will be up to a single customs agent, who I doubt has the art historical knowledge to know whether this work of art should be imported or not, and then if he does not accept it, does not accept the documentation, he does not return it to the owner, but confiscates it.

What will then happen to this confiscated art? Are we going to burn it as a dangerous substance, or are we going to start a new museum for seized art in this country? There has been no answer to this so far.

The bill also sets up an advisory panel with many eminent associations sending members to it. If this bill is passed, I would hope that our association would be included as we have a wider range of dealers in various fields who would know about some of the possible reinterpretations of this bill down the road, and it seems to be open to quite a number of interpretations as it is now written.

But, most importantly, I think that this advisory panel must have decisionmaking powers, because without being allowed to make decisions, they become just another bureaucratic group adding to the paper load in Washington. And also, being able to make decisions would add, as a check and balance to the State Department so that this treaty is not given as a sop to any Third World nation for more immediate important goals, trade goals, such as oil or arms.

It is very easy for the State Department to give away art. The art is not in this country yet. It is very easy to say that we will not import art that we do not have, but the opportunity to regain these works of art that we lose in this fashion—that God forbid they should be destroyed, as has occurred earlier—these opportunities will not come again.

Now, art has traditionally been an international basis for communication. In recent years, we had the exhibition from China. Next year,

we will get works of art from East Germany and we have sent a very fine exhibition of American art to Russia.

I would hope that our Congress, the Senate here in particular, will not pass any legislation that will put another block in the wall of communications between nations, because it is through art that peoples speak to each other.

Thank you.

Senator RIBICOFF. Thank you very much, sir.

[The prepared statement of Mr Stiebel follows:]

STATEMENT OF GERALD G. STIEBEL, PRESIDENT, THE NATIONAL ANTIQUE & ART DEALERS ASSOCIATION OF AMERICA, INC.

SUMMARY

I am Gerald G. Stiebel, President of The National Antique & Art Dealers Association of America. I represent forty-six of the most prestigious dealers throughout the country. They have helped to create international interest and understanding through art by arranging exhibitions, lectures and making financial contributions to the arts.

We support H.R. 5643 as it regards works of art stolen from museums and religious or secular monuments. We are, however, concerned by the precedent this legislation will set. Words such as "stolen", "archeological" and "ethnological" all need to be defined more carefully. The word stolen has come to have meanings in other countries that we do not traditionally recognize here i.e. any work of art that a government decides, after export, it should have retained is considered stolen.

This law must not be seen in a vacuum but as part of a body of laws which will have a detrimental effect on art and culture in this country. H.R. 5643 is purely negative in its impact and will have little effect as a deterrent. Foreign collectors and museums will not send art to this country for fear it will be confiscated at the discretion of a single customs official under the vague and complicated regulations of this bill.

Both scholars and the public need original works to learn about and appreciate art . . . their human heritage. Perhaps this is the consideration which has prevented other nations from adopting this legislation even though they have had a substantial head start on the United States in collecting.

It is imperative that The Cultural Property and Advisory Committee established by H.R. 5643 have decision making powers. The Committee should include our Association as the most representative of the various art fields. It is too easy for our State Department to give away art when negotiating for oil or other more obviously useful materials.

The Unesco Convention suggests import controls only as part of an international effort (which is not now present) and then only after the country of origin has made every possible effort on its own behalf. Art is an international basis for communication e. g. the exchange of exhibitions between the United States and communist countries. Through art people speak to each other . . . let us keep these lines of communication open.

STATEMENT

I am Gerald G. Stiebel, President of The National Antique & Art Dealers Association of America, Inc. I represent a membership of forty-six of the most prestigious art and antique galleries throughout the country. Our Association is a non-profit organization of dealers mutually pledged to safeguard the interests of those who buy, sell or collect antiques and works of art. Our Association is a member of La Confédération Internationale des Négociants en Oeuvres d'Art (The International Confederation of Dealers in Work of Art) consisting of associations from fourteen countries. Under the auspices of C.I.N.O.A. we put on an international exhibition called "The Grand Gallery" at the Metropolitan Museum of Art. Over one-hundred and thirty dealers from ten countries cooperated in putting on this non-commercial exhibition. The three-hundred page catalogue is in demand today, three years later. C.I.N.O.A. has set up an annual award of five-thousand dollars for the publication of a thesis by an art historian and each year our Association contributes to this fund and chooses a nominee from the United

States. We have also made contributions to the Metropolitan Museum for travel grants and to the New York Public Library for the care of their books in the Art and Architecture department. In the interest of public education, we have also given a lecture series at the Metropolitan Museum and have just established a Speakers and Lecture Bureau to lecture on art around the country. We are totally involved in art and thus our Association's motto, "Life Devoted to Art."

Most of our dealers will be directly affected by the passage of the "Convention on Cultural Property Implementation Act" and all are seriously concerned about the precedent this bill will create. I must inform you that I am also Vice-President of Rosenberg & Stiebel, Inc. dealers in old master paintings and drawings, French eighteenth century furniture, continental porcelain and renaissance and medieval art. Now that H.R. 5643 has been amended to include definitions of Archeological and Ethnological Art, it is my understanding, that none of the areas I deal in should be directly affected. My Association and I are concerned, however, that this bill will establish a precedent which could also ban import of works of art such as the Carolingian Ivory just bought and imported by the Metropolitan Museum of Art. There is certainly no art that is rarer or more important to the world's culture and reading the current bill it seems that it could be interpreted to refer to other fields of art either now or in the future.

None of our members would ever knowingly handle any work of art that had been stolen. We think of the word stolen as meaning an object unlawfully taken from another rightful owner and we fully support the provisions of this bill which would prohibit the import of works of art illegally taken from a museum, religious or secular monument. Other countries, however, have come to place other definitions on the word stolen. For instance, any work of art that a government decides, after export, it should have retained is then considered stolen. The famous Greek Bronze Youth bought for several million dollars by the Getty Museum has been on the market for many years and the international art community has known who owned it for at least five years. Only after this fine work of art entered an American Public Collection the Italian government decided that they would try to reclaim it as theirs. I am not discussing here the merits of their case but only that it has become known that under a very wide moral umbrella it is easy to gather support in this country for any such claim, but this is not so in Europe where the bronze resided previously.

No other major art importing country has passed a law in support of the Unesco Convention and one must consider the reasons why they have not done so. Last year I attended in Paris an Art Theft Conference under the Auspices of The International Confederation of Dealers in Works of Art to which I am a delegate. Jean Chatelain, ex Director of the Museums of France, addressed the convention. After calling for international cooperation on the problem of art theft, he told of a work of art which the Spanish government was claiming had been stolen from their country and was now in France. Mr. Chatelain saw no reason for the French government to interfere. He felt this was the problem of the Spanish and he added an aside that after all this was a very beautiful object which the French would like to hold on to. No other country wishes to lose the opportunity of becoming custodians of important works of art. After all, we do not really acquire these cultural heirlooms but we are merely entrusted with their care for future generations.

Less than a handful of museums in this country have been able to show Archeological or Ethnological art in their collections. These are the very few large museums that have been in existence for the longest period of time and have inherited collections from their benefactors. The vast majority of the museums all over this country do not have such collections to show the public. The institutions in Europe, however, have a head start of many centuries.

Today we prevent one type of art from coming into this country then tomorrow another. There is legislation on the books and being introduced in the congress which could conceivably stop not only the import but the interstate transport of works of art in ivory. This is, of course, legislation which is meant to protect wildlife but the bill makes no exceptions for works of art. There has also been talk of legislation to stop the export of American Art. I realize that we are not here to discuss other legislation but I wish to point out that H.R. 5643 should not be viewed in a vacuum. No one law will put an end to cultural exchange and knowledge of art in this country but we seem to be building a body of laws which together will have a very profound effect on what our children and their children will learn and behold of the art of other cultures. We cannot approach each piece of legislation without regard for other legislation and the total effect on the future of culture in this country.

The administration has called for free trade in all areas and now we have here a bill which clearly seeks a restrictive isolationist policy. There has been a great deal of interest in the Black Community in this country during the last few years in exploring its heritage. This is, of course, founded in African Art that this legislation would ban from import as ethnological. Art does not belong to one government but to all peoples everywhere who often share a common heritage. If we can afford to buy art in this country, we can also afford to house, conserve and present it to the public and the world at large.

As written this legislation does not seem to be beneficial to anyone. Certainly, the dealers, museums, collectors, students and the public in this country will be the poorer if this bill is passed as it now stands. Surely we already have laws on the books which prohibit trafficking in stolen art. H.R. 5643 is supposed to act as a deterrent to theft but it will do very little to help retrieve works of art that have already left the country of origin. The latter must have the responsibility of protecting and caring for their art. Supporters of this bill say that it is paternalistic and immoral to say that we will take care of archeological and tribal art better than the people of the country of origin. Clemency Coggins in an article in the February, 1978 issue of Art News claims that this attitude is similar to saying I will take better care of my neighbor's car so I will take it. This is emotional morality and rhetoric which does not respond to the question at hand of proper trade practices and care of art. Without the proper care these objects will not survive. It does not solve the problem to have neighbor number three (not mentioned in Mr. Coggins' example) confiscate the car in order to prevent future car theft. We send our experts in archeology and museology to the third world countries to teach them how to care for their heritage and this is a positive gesture not a negative one. Here we are literally trying to close the barn door after the horse has been stolen. If a work of art has been stolen steps must first be taken in the country of origin.

This bill includes a "loophole" for exhibitions whereby the President may make an exception for archeological and ethnological art, otherwise banned, to come into this country. The legislation is so complicated, cumbersome and vague that it is difficult to imagine anyone taking the risk of confiscation of their art. After all, it is being left to the individual customs agent whether the proper documentation has been submitted to allow import. I would venture that very few customs agents, especially outside of the large art centers, would have the training to make such art historical judgments. If no proof of theft has been received it would seem to make more sense to deny entry and return a work of art to the place from which it was sent rather than confiscating it. If an object is confiscated by customs and not returned to its country of origin under the appropriate provisions of this bill is it then put up in a customs auction? destroyed as a dangerous substance? or will customs start its own museum for seized art?

This also brings up the question as to whether we are not creating another market in certificates. Also, "winking" at the law for compensation is a situation that is well known in countries such as Italy where art export and import regulations are exceedingly stringent. These laws do not curb the art traffic they just allow the business to come into the hands of the unscrupulous as opposed to those serious about art. We are then creating an industry of corruption.

A Cultural Property Advisory Committee is established by H.R. 5643 and we were quite surprised that our Association was not asked to play a role on this committee. Our members deal in a wider range of the arts than any other reputable association. Our members have generations of experience behind them and years of study making them recognized authorities in their various art fields. We have several dealers in carpets and I wonder whether the ramifications of this law on the import of tribal carpets has been considered. Two of our dealers in pewter have brought up to me the question of Scandinavian pewter being ethnological according to the definitions presented. If this law is passed we feel very strongly that as many sides of the art world that might be affected should be part of this committee. No matter who is appointed, however, without any binding powers this committee is impotent and all the work and reports they may make will have no import. Without any decision making powers the committee's validity comes into question and you just add to a bureaucracy of paper work. When the President is negotiating vital issues such as trade, oil or even peace the arts will seem very easy to give away in comparison to these more immediate issues. For it is simple to give away something

not already in hand but the opportunity to acquire the art that we lose in this manner will not come again. We cannot expect our State Department to put art at the head of any list; it will become the sop to every third world country to whom we want to give something that is worth nothing to our government.

The art dealer believes in art and the culture it brings with it. He has always been the custodian of art from one generation to the next and helped to develop the interest, personal pride and awareness of a people in their art. The dealer is often the third, fourth or fifth generation who has seen and felt history go through his hands and wants to bring this knowledge to the widest possible public. You cannot separate the dealer and the museum because the museum is the client of the dealer and the latter acts as agent between owners. We are proud of the art we have sold to the great museums in this country. Without the dealers there would be nothing there, a country barren of foreign culture. The works of art in these museums are there for the public and scholars to see and learn from on all levels. They cannot learn from slides, textbooks and reproductions . . . the originals must be available for study.

H.R. 5643 has been drawn up in order to implement the 1970 Unesco Convention which puts the burden of policing its art on the country of origin and only secondarily on import controls of other countries. Import controls were recommended by the convention as part of an international effort which has not come about. H.R. 5643 makes no demands on the other countries involved. The convention asks these countries to make known which specific works of art have left their country illegally; no such demands are made by this bill. It is too simple and too damaging to this country culturally to just ban whole categories of art. This seems to me to be the ultimate in paternalism to try to retroactively assist another country in policing the art which they neither know how to care for or much less have the means to exhibit. Art has always been international in scope. It is the one commodity that has been freely traded through out time. It has been an international basis for communication e.g. exhibitions in this country from China and East Germany as well as our exchanges of exhibitions with Russia. It would be a shame to put this one last block in the wall which only allows governments to speak to governments. Through art peoples speak to each other.

Senator RIBICOFF. The next group is the Archaeological Institute of America and I understand Prof. Karen Vitelli will speak on behalf of the Archaeological Institute of America and the Association for Field Archaeology.

Are there any other members representing either one of those organizations?

Are you speaking for both of those organizations?

Ms. VITELLI. I will try, I am afraid Professor Wiseman was snowed into Boston, as was Dr. Coggins, and Professor Mascarella is snowed into New York. Their testimony will arrive as soon as the mails start moving again.

Senator RIBICOFF. And their testimony will be made a part of the permanent record. If there are any specific questions, we will communicate with them by letter.

All right, Professor Vitelli, you may proceed.

[The statements of Professor Wiseman, Clemency Coggins, and Oscar Mascarella follow:]

STATEMENT OF PROFESSOR JAMES R. WISEMAN OF BOSTON UNIVERSITY AND THE ASSOCIATION FOR FIELD ARCHAEOLOGY

SUMMARY

The bill should be passed because it is the best feasible step that the United States can take at the present time towards international cooperation in the protection of the world's cultural heritage.

Considerations

1. Most of the antiquities concerned were illegally removed from the country of origin.

2. Most of the antiquities were removed by clandestine diggers who, by their activities, destroy the context of the objects' deposition on which much of the historical and sociological significance is based.

3. U.S. taxpayers have been placed into the position of subsidizing the illegal activities mentioned in 1-2.

4. Most of the arguments that have been advanced by opponents of the bill ignore the ethics that are involved.

5. The art public is deluded by forgeries and by the falsification of the provenience of many of the objects.

6. Art plunder has grown to a critical level in recent years; ancient sites are a vanishing resource.

7. There should be greater representation of archaeologists and ethnographers on the Advisory Committee established by the bill.

STATEMENT

This statement is to express both my personal support for the Senate counterpart of HR 5643 and the support of the Association for Field Archaeology (AFFA). My qualifications for appearing before your Subcommittee at this time, in addition to being a concerned citizen of the United States, are as follows. I am the Editor-in-Chief of the Journal of Field Archaeology, which is published for AFFA by Boston University where I am also Professor of Fine Arts and of Classics. For nearly 20 years I have been teaching and conducting research in ancient art and archaeology. This work has included extensive archaeological field experience, especially in Greece and Yugoslavia.

AFFA is a non-profit, national organization devoted to "the discussion of and action concerning the recovery, restoration, and primary interpretation of excavation material and the protection of antiquities." (The quotation is from Article II of the Constitution and By-laws of the Association.) The illicit traffic in antiquities has been a central concern of AFFA since its founding in 1970. This concern has been demonstrated in a number of published papers, colloquia and other activities, and in "The Antiquities Market," a regular feature by Professor Karen D. Vitelli for the Journal of Field Archaeology.

The bill now before the Subcommittee is important not only to the citizens of the United States, but to all the populations of the world, for it deals with the world's cultural heritage. That heritage is a vanishing resource—an "endangered species," as my colleague, Dr. Oscar White Muscarella, has remarked—and it is vanishing rapidly chiefly because unscrupulous or unthinking people are plundering ancient sites around the world in order to supply antiquities to an international market. Americans are the principal purchasers in that market.

It is the hope of AFFA that the bill will become law: it is urgently needed. The following comments are offered as matters to consider during your deliberations regarding this legislation.

1. The majority of antiquities that reach this country were either removed illegally from their context (whether from below the ground or the sea), and almost all were removed illegally from the country of their origin. These are facts that I doubt even those who oppose the bill will dispute. The objects, then, move from clandestine digger to the smuggler, and from the smuggler to, eventually, a reputable, even distinguished person who happens to be a collector, or dealer, or a purchaser for a museum. Between the smuggler and the final purchaser may stand any number of individuals through whose hands the art objects may pass and be "laundered" en route. But in the end, it is the money paid by the dealers and collectors that subsidizes the illegal activities of the treasure hunters and the smugglers.

2. If a collector later donates to a museum the antiquities thus gathered, he may claim the appraised value as a tax-deduction. As a result, the American taxpayer and the United States Government—to be sure, without their knowledge—become supporters of those who rob tombs and other ancient sites, and those who smuggle such objects across international boundaries.

3. Even the illicit search for objects to place in the market is destructive, because the unknowing, uncaring, and undocumented digging (or sea-diving) that is required destroys for all time the ancient context of the object. Once an object has been removed from its place of deposition, it possesses only its inherent value: we cannot recover all the historical, sociological, and other information about its existence that could have been learned by examining the object and its relation to the ancient surroundings.

Some have argued that, since the context is destroyed by the illicit search and removal, we might as well buy the object, once it is out of the ground, and, as it were, make the best of a bad show. But such an argument overlooks the fact that the purchase is what finances the thievery, the smuggling, the destruction. The argument itself, in fact, must give encouragement to those prepared to plunder ancient sites, for they know that if they can just get the material out of the ground and out of the country, there are people in America and other countries ready to buy.

Opponents of this bill also argue that if we Americans do not buy the objects, the Japanese, or Germans, or others will buy them and Americans will thereby be deprived of some "right". I find the argument cynical: it is in part a defense of a "right" to purchase stolen goods, and ignores completely the ethics that are involved. The possible actions of the Japanese or others in this instance are irrelevant to the basic question that we face. Representative Abner J. Mikva, the sponsor of the House bill, has put it succinctly: "We're either a moral nation or we're not." ("The Pillaging of Global Art Treasures," *The Washington Post*, May 18, 1977.)

4. The antiquities market contributes directly not only to the destruction of the world's cultural heritage, but also to misrepresentation and confusion in our understanding of art history and the history of ancient cultures. Consider: we have pointed out that the historical and sociological significance of an artifact is based largely on its ancient context, not merely on the object itself. But no one can be sure of the precise origin of an object that was removed illegally; the provenience claimed is based on the word of a smuggler or plunderer of an ancient site. Context and provenience to such people are only aspects that affect the market value of an object. And there are many reasons why they might not identify the true origin of an object. For example, since it is a financial advantage to do so, one may claim that an art object was found at Famous City X when it was actually stolen from Unheard-of City Y. Who is to dispute their claim? Labels on many art objects tell only part of the story: "Gold vessel, said to be from . . ." "Luristan" bronzes, "Tanagra" figurines, the "Ziwijs" treasure: there is no way to determine the real origins of many of the art objects for which such famous origins are claimed.

The falsification of provenience is only one aspect of the problem: the object itself can be a forgery. In a sense, the latter is less destructive than the other because at least manufacture of a forgery does not involve pillaging an ancient site or robbery. Unfortunately, some scholars still treat statements of provenience in a sale catalog as fact; and determining authenticity can be an expensive and time-consuming task. What all this means is that the ancient art that reaches us through the antiquities market is of uncertain provenience, and some of it is not ancient; scholars, collectors, museums, the art public have all been victimized.

5. Art plunder has increased in recent years to such an extent that we are in danger within this century of seeing the last ancient site destroyed by clandestine diggers. And art plunder extends beyond the ancient sites: it has been estimated that, since 1945, 44,000 art objects have been stolen from Italian museums and churches: few have been recovered. ("Antiquities Dealers Fearing Suits Restrict Activities," *New York Times*, December 31, 1974.)

6. Mr. André Emmerich, an outspoken opponent of this bill, has been quoted as follows.

"I beg the obvious fact that the art of mankind—the art of ancient mankind—is part of mankind's cultural heritage, and does not belong exclusively to that particular geographic spot where ancient cultures flourished. I think that this country more than any other has a special claim to the arts of all mankind. . . . American institutions have bought the objects they have acquired, and have not only paid with money, but we have paid the debt with scholarly contributions. . . ." (Karl E. Meyer, *The Plundered Past*, New York, 1973, p. 28.)

We agree that the citizens of the United States share the cultural inheritance of the past; we should, indeed, want to learn more about it and preserve it. One step in that direction would be to enact this bill since it will at least discourage some of the plundering of antiquities. But we find unacceptable the argument that wealth and a desire (surely not a "right") of some Americans to own ancient art objects is a proper substitute for the sovereign rights of other nations.

7. This bill will help to create an atmosphere in which the antiquities-rich countries may be willing to relax some of their restrictive laws regarding the export of antiquities. That is, if the United States undertakes to cooperate with

those countries as specified in the bill, it is conceivable that duplicate objects with documented provenience might be made available to public institutions, and that long-term loans of exhibits might be arranged.

8. The bill could be improved by altering the makeup of the Advisory Committee (Article II). Specifically, a specialist in the study of ethnographic materials should be added as well as a representative of a New World archaeological organization, e.g., the Society of American Archaeology or the Society of Professional Archaeologists. They might take the place of one of the representatives of dealer organizations and one of the unspecified public representatives.

The bill is not perfect, and it will not put an end to the pillaging of ancient sites, since it does not address itself directly to that problem. But the bill is an important step towards international cooperation in the protection of our cultural heritage. The bill is a useful and appropriate piece of legislation. We urge its adoption by the U.S. Senate.

Sincerely,

JAMES R. WISEMAN.

PEABODY MUSEUM OF ARCHAEOLOGY AND ETHNOLOGY,
Cambridge, Mass., February 7, 1978.

Senator ABRAHAM RIBICOFF,
Chairman, Subcommittee on International Trade,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR RIBICOFF: This testimony is given in support of the Senate bill (S2281) to implement the Convention on Cultural Property. I represent the Archaeological Institute of America and the Peabody and Fogg Museums of Harvard University in supporting the legislation. My personal involvement with this legislation began in 1969 when I served on a committee of the American Society of International Law which considered the United States response to the initial UNESCO proposals. At that time there was little, if any, documentation of the increasing severity and destructiveness of the looting of archaeological sites.

My work with the remains of ancient Maya civilization in Guatemala and Mexico had made it possible for me to document a small part of this world-wide problem. It was clear that the crisis in the more inaccessible Maya regions was relatively recent and thus both quantifiable and to a certain extent legally verifiable as to both the original location and the ultimate destination of the monuments. Most of the looted sculpture, which was then the principal type of object sought, ended up in the United States. (Photographs of the mutilation involved in the reduction of three of these sculptures can be seen in the accompanying off-print "Archaeology and the Art Market", *Science*, vol. 175, pp. 263-66).

After nine years it is surely no longer necessary to point out the incalculable losses brought about by this pillage. These monuments are work of art, but they are also cultural documents, and they are historical texts. Once broken, or at best reduced in sized, and ripped from their cultural context they become crippled works of art, cultural enigmas, and violated history.

Those who oppose this legislation are supporting this status quo. They say this horrible situation is better than that amelioration envisioned in this legislation. But we have evidence that legislation can help. The United States treaties with Mexico and with other Latin American countries, including Guatemala, now protect Maya *monumental* sculpture and as a result its importation into the United States has slowed dramatically.

Antiquities dealers content that this apparent success is illusory since the monuments are now going to Europe—this is possible, and it is likely that they know since many of the dealers who once imported these monuments into the United States have since opened businesses in Europe. But they do not know of the hopeful interest and lively support now generated among European archaeologists who hope to follow the example of the United States in educating the public and in pressing for similar legislation once it becomes operative in this country. Thus this legislation will serve not only to restrict the importation into the United States of carefully defined categories of the endangered cultural property of the world, it will also serve as the second such an effort since Canada has passed the first such legislation; many countries have, however, ratified the convention. The United States initiative, and that of Canada, are of particular significance since it is, in this crisis situation, a necessary function of government to weigh immediate demand against future supply; to weigh short-sighted market-inspired strategies against the irreplaceability of the historical record.

The success of this legislation rests, however, on the ability of the Cultural Property Advisory Committee, described in section 5, to function effectively; with the currently projected composition of the committee it is unlikely that it will do so. There are nine members of whom only two are of archaeological affiliation. Five represent collecting interests, including two antiquities dealers' organizations. Collecting is best represented by museum and art historical organizations, and possibly by one or two collectors who could be included in the category designated as—"the public". It is inappropriate that narrowly commercial interests should be on the committee at all. There should rather be some professional representation of the seriously endangered archaeological resources of this hemisphere, and there must be some professional representation of the ethnographic materials that are included in the legislation, but currently unrepresented on the Committee.

In the hope that this legislation will be enacted quickly, and very soon in force, while we still have anything left to save.

Yours sincerely,

CLEMENCY COGGINS,
Research Fellow, Peabody Museum, Chairman, Sub-committee on the Preservation of Archaeological Resources, Archaeological Institute of America.

[Reprinted from *Science*, Jan. 21, 1972]

ARCHEOLOGY AND THE ART MARKET

(By Clemency Coggins)

An illegal international trade in antiquities is obliterating the record of ancient American civilization.

In 1971, the international antiquities market became a major destructive force in world civilization. A handful of men specializing in what seems an almost scholarly trade are financing the wholesale destruction of the remains of a number of ancient civilizations and primitive cultures. In the Old World, the apparently limitless archeological riches of the shores of the Mediterranean have been coveted and exploited since the Renaissance and they continue to serve as a major source of antiquities. In other parts of the world, a new sophistication has led dealers and collectors into an appreciation of all art-producing cultures, ancient and modern. This eclectic taste has created an expanding art market that has only in recent years turned its disastrous attentions to Southeast Asia, India, and the pre-Columbian cultures of Mexico, Guatemala, and Peru.

Despite a new public awareness of the gravity of the situation created by the illegal traffic in antiquities, despite a UNESCO (United Nations Educational, Scientific, and Cultural Organization) convention designed to alleviate the problem, and despite U.S. legislation restricting certain aspects of this commerce, there are more and more sites plundered and more and more illegal excavations made. Unlike many natural resources, our archaeological resources are not renewable. Once a site has been worked over by looters in order to remove a few salable objects the fragile fabric of its history is largely destroyed. Changes in soil color, the traces of ancient floors and fires, and the imprint of vanished textiles and foodstuffs, the relation between one object and another, and the position of a skeleton—all of these sources of fugitive information are ignored and obliterated by archeological looters. The casual destruction of a site produces perhaps a few pots, jades, or even sculptures, for which the robbers are paid very little but for which an American collector pays a great deal. The collector buys a beautiful object about which he knows virtually nothing, and no one ever mentions to him the devastation that was created in order to deliver it.

Most of the stelae have been cut up and shipped out. The large, stucco facade panels . . . have been torn apart and often completely removed. And the vandalism of pot hunters, who travel in large gangs and methodically destroy architecture in search of tombs and caches, is incredible. Hormiguero, which was until recently untouched, was exploited by such a gang in recent weeks—and now looks like a lunar landscape.

This description, by E. Wyllys Andrews, an archeologist at Tulane University,¹ refers to the situation on the Yucatan Peninsula in Mexico, part of the territory of the ancient Maya.

¹ The late E. Wyllys Andrews, personal communication (1969).

THE LOOTING OF MAYAN SITES

The remains of ancient Mayan civilization lie in the jungles of northern Guatemala and southeastern Mexico. The Maya built ceremonial centers with elaborate, stucco-covered stone pyramids, temples, and palaces between about A.D. 300 and 900. They had evolved a beautiful system of writing, which is still largely undeciphered, as well as a complicated and extraordinarily accurate calendar. Their consummate skill in sculpture is evidenced by carved stelae. (A stela is a slab of stone that was erected commemoratively and was usually carved with one or more figures and inscriptions. Stelae may be as high as 7 meters, by about 1½ meters wide and 1 meter thick, although they are generally smaller. They weigh many tons.) The Maya were also skilled painters, but very few frescoes remain, and their style of painting is known principally from polychrome ceramics and from two very late manuscripts.

The Maya organized and oriented their ceremonial centers according to strict astronomical and religious principles, and their stelae were erected, for historic and dynastic reasons, in highly symbolic locations. The long inscriptions on each stela relate to the astronomical and historical significance of both the monument and its erection. When these stelae are removed from their context, they lose much of their historical meaning in relation to the ceremonial center. As the result of modern plundering, they are losing a great deal more.

Stelae are much too heavy to remove intact from a site. They are usually found in remote jungle areas that must be reached by mule or dugout. For this reason they must be cut or broken up. The robbers, with varying degrees of skill, use power saws (Fig. 1), chisels, acid, or, more primitively, heat in order to crack the stone into pieces (Fig. 2). If a stela is in good condition, the aim is to saw off the sculptured face of the stone (Fig. 3). This common method, even at its most efficient, sacrifices the inscriptions, which are found on the sides of the stela and sometimes on the back as well. When this method does not work, a frequent occurrence, the face of the stela is left a pile of chips on the ground—with any salable bits removed.

How do we know that this is happening? In the past 10 years, American museums and collectors have been buying the broken and sawed fragments of Mayan stelae—some of them well-known monuments that, even in their reduced state, bear eloquent, and legally verifiable, testimony to their original locations. Such evidence of the traffic comes from those objects that have been traced to collections. Much more abundant evidence comes from the reports of those who find one archaeological site after another that has been recently plundered. These reports come from all parts of Guatemala and Mexico, as well as from the countries to the south. I have emphasized the Mayan area only because it is the one segment of the problem that has been documented.

As a result of the recent effort to document the nature and the extent of the traffic in monumental Mayan sculpture, the United States and Mexico ratified on 10 February 1970 a treaty that ensures the return to Mexico of any important sculpture or frescoes, stolen after the date of the treaty, that Mexico requests. Legislation with similar provisions that will apply to other Latin American countries has been submitted to Congress. As a result of the Mexican treaty, there has been a sharp drop in the number of stelae and other important pre-Columbian sculpture available on the New York art market. This was its intention. There have, however, been a few unforeseen consequences.

PRE-COLUMBIAN ART AND THE MARKET

In the past few years, a number of major exhibitions of pre-Columbian art have been held in New York and in Europe. These have created a lively demand for pre-Columbian objects. Art dealers are making every effort to fill that demand, as they are legally free to do in this country, with whatever small, portable objects are not covered by the treaty with Mexico. While the excavations that these objects come from are illegal, and while exporting them from their countries of origin is illegal, once these objects reach the United States, they may be sold legally (as they may in most European countries).

In order to compensate for the loss of major sculpture, art dealers have increased their volume in ceramics and jade, and they have raised the prices of these small objects to those once asked for sculpture. Now there is big money in pots. Not long ago, there were very few fine Mayan polychrome vessels on the market. A beautifully painted potsherd once brought a good price. Now, suddenly, there are a great many fine whole vessels available. Last spring in New York,

there was a stunning exhibition that included 40 or 50 carved and polychrome vessels of the highest quality. All of them were, of course, without any indication of the places of origin. Each of them probably represents one largely destroyed building, although it is more likely that such a concentration of superlative objects represents countless unproductive excavations and burials discarded at the site by looters. Whole vessels and jades can be found in tombs and caches that are usually buried well inside buildings. The wanton destruction that is inevitable in the search for small objects is in many ways worse than the plundering of larger monuments.

Most collectors of pre-Columbian art are primarily concerned with the beauty of the object they have bought; they are encouraged by the dealer to consider it a wise investment—the more expensive the wiser—and, finally, if they have any museum connections, they may consider it a potential tax-deductible gift. There are few people who explain to the collector what the object may mean in terms of its own civilization and how much has been lost in the process of robbing it from its historical context. Are there then no specialists associated with museum collections who will emphasize the more scholarly values that underlie museum collecting?

As far as many American museums are concerned, a bird in the hand is worth everything. Museum people are schooled in the acquisition, conservation, and practical esthetics of objects in relation to museum collections. They believe that any object which is acquired by a museum is necessarily in a better place than it was before, in the jungle or in a tomb. Actually, no Mayan stelae, nor even their fragments, have reached the art market in as good condition as they were in the jungle. Few ceramic vessels survive exportation without inexpert mending jobs.

THE SCHOLAR AND THE ART DEALER

Many museum curators and archaeologists serve in advisory roles to art dealers and collectors, in a relationship that emphasizes the esthetic and monetary values of objects on the market. Recently, however, the nature and the success of the antiquities business has imposed a great strain on that relationship, which has, in the past, been largely benign and cordial. There is a sense of betrayal, and of confusion, on the part of many archeologists and art historians whose contacts with dealers have always been correct and carried on in an atmosphere of both antiquarian scholarship and esthetic pleasure in the objects involved. Their opinions, freely given, have usually been offered in the hope of enhancing the objects in an historical sense and ferreting out forgeries. In return for such information, art dealers have traditionally kept such specialists informed on the location of important pieces. They have given them photographs, and, not infrequently, they have given them objects for their collections as well. Somehow this time-honored symbiotic relationship has gone bad.

The size, the destructiveness, and the money now involved in what used to be a relatively innocuous trade have turned the scholar, who would only authenticate an object, into an accomplice. His opinion, however cautiously given, may determine the object's market value. For many people who have mediated for years between dealers and collectors or museums, the new turn this relationship has taken is a source of agonizing and perhaps insoluble conflict, often compelling a choice between abstract ethical points and long-term friendships. The time, however, has come for all those who have contact with the antiquities trade to re-evaluate the relationship. Is it possible to give opinions or authentications without setting prices and without encouraging an expanding market, with all its consequences? Is it possible to accept works of art, photographs, and secret information from dealers without contracting obligations, no matter how subtle? Finally, is one's personal obligation to an archaeological area and its culture, greater or less than one's obligation to a museum collection, or to the acquisition of beautiful objects? This last question is apparently considered infrequently and is seldom, if ever, mentioned to students as a potential hazard in the fields of archaeology, ethnology, and art history.

Surely a sense of obligation to a country's cultures, past and present, should be developed in students. Most American art historians and many American archaeologists and ethnologists must depend on the hospitality and aid of those foreign countries whose cultures provide their livelihood. If a specialist is willing to live off the ancient or modern culture of another country and then to cooperate in the illegal traffic of that country's art, his can only be termed exploitative scholarship. One disastrous corollary of such exploitation arises when the ag-

grieved country retaliates by excluding American scholars, as has happened selectively in Turkey and may soon happen in India.

TOWARD A SOLUTION

No one pretends that there are easy solutions to this problem. UNESCO has struggled for decades with the irreconcilable national attitudes and laws that must be considered in creating any sort of solution. Last year, a UNESCO Convention was passed which included many admirable provisions for reform as well as a recognition of those positive factors inherent in the legal international trade in antiquities. It is important to emphasize that it is the destructive aspects of this commerce that must be curbed, not the beneficial interchange of cultural properties. The UNESCO Convention must, however, be ratified by the legislatures of all signatory countries, and no one anticipates that it will be in effect in the near future.²

Within the United States in the past year, a number of professional organizations in archeology, art, and the museum field have concerned themselves with the antiquities market and have passed resolutions supporting the UNESCO Convention. These symposiums and resolutions followed the University of Pennsylvania's announcement on 7 April 1970 of a new acquisitions policy. The policy stated that the University Museum would no longer buy works of arts that do not have a pedigree (legal export papers and information about previous owners and place of origin). It went on to state that such information would be made public. The decision to make acquisition information public is of paramount importance. If all museums were to adopt such a policy, there would be a significant diminution of the number of illegally exported objects acquired by museums. Perhaps more important, there would be a radical change in the relationship between museum curators and art dealers. Finally, the availability of information on acquisition enhances the historical significance of an object, thus increasing its value for all scholars.

Until recently, no other museum had followed the lead of the University of Pennsylvania, and its action has been received with a certain amount of cynicism by many American museums. It was pointed out that the Pennsylvania statement spoke only of purchased objects, even though the University Museum, as an academic institution, buys objects infrequently, relative to the number they receive as gifts or acquire through exchange and excavation. It is important to note that such a policy, in order to be most effective, must refer to the acquisition of *all* objects, not just those that are purchased.

Harvard University has recently worked out an acquisition policy that went into effect as of 30 November 1971. Harvard's policy is particularly significant because it applies to a number of very different Harvard institutions and collections, not just to the Peabody Museum of Archaeology and Ethnology. All collections are included, as well as libraries, the Fogg's Museum of Art and Dunbarton Oaks, a Washington, D.C., collection of Mediterranean and pre-Columbian antiquities. Because the Harvard policy is only the second of its kind, and because its provisions have been so carefully devised, it is given below as a potential source of discussion, and perhaps as a stimulus to other museums.³

HARVARD POLICY

(1) The museum director, librarian, curator, or other University officer (hereinafter to be referred to as "Curator") responsible for making an acquisition or who will have custody of the acquisition should assure himself that the University can acquire valid title to the object in question. This means that the circumstances of the transaction and/or his knowledge of the object's provenance must be such as to give him adequate assurance that the seller or donor has valid title to convey.

(2) In making a significant acquisition, the Curator should have reasonable assurance under the circumstances that the object has not, within a recent time, been exported from its country of origin (and/or the country where it was last legally owned) in violation of that country's laws.

(3) In any event, the Curator should have reasonable assurance under the circumstances that the object was not exported after July 1, 1971, in violation of

² For a review of the UNESCO convention and of the action taken by different organizations, as well as for a brief bibliography of the topic, see A. Zelle [*Mus. News* 49 (No. 8), 19 (1971)].

³ *Harv. Univ. Gas.* 66 (No. 89), 4 (1971).

the laws of the country of origin and/or the country where it was last legally owned.

(4) In cases of doubt in making the relevant determinations under paragraphs 1-3, the Curator should consult as widely as possible. Particular care should be taken to consult colleagues in other parts of the University whose collecting, research, or other activities may be affected by a decision to acquire an object. The Curator should also consult the General Counsel to the University where appropriate; and, where helpful, a special panel should be created to help pass on the questions raised.

(5) The University will not acquire (by purchase, bequest, or gift) objects that do not meet the foregoing tests. If appropriate and feasible, the same tests should be taken into account in determining whether to accept loans for exhibition or other purposes.

(6) Curators will be responsible to the President and Fellows for the observance of these rules. All information obtained about the provenance of an acquisition must be preserved, and unless in the opinion of the relevant Curator and the General Counsel to the University special circumstances exist in a specific instance, all such information shall be available as a public record. Prospective vendors and donors should be informed of this policy.

(7) If the University should in the future come into the possession of an object that can be demonstrated to have been exported in violation of the principles expressed in Rules 1-3 above, the University should, if legally free to do so, seek to return the object to the donor or vendor. Further, if with respect to such an object, a public museum or collection or agency of a foreign country seeks its return and demonstrates that it is a part of that country's national patrimony, the University should, if legally free to do so, take responsible steps to cooperate in the return of the object to that country.

In the broadest sense, the problem is two-sided: on one hand, the increasingly destructive nature of the international trade in antiquities must be controlled; on the other hand, every effort must be made to create a healthy, if diminished, legal market. The United States accounts for a large percentage of the illegal market—perhaps we can reduce that percentage, but we cannot expect the entire world to change entirely on the basis of our example. It is time that we stopped holding meetings to acquaint ourselves with the problem and started mobilizing public and scholarly opinion for real action. One important first step is the description and documentation of the problem within any particular cultural area. Not until the anatomy of the problem is understood can constructive action be taken. In order to do this, it will be necessary to cooperate with specialists in each cultural area throughout the world. Then it will be necessary to study all of the laws and exporting systems within the countries affected and to work to develop imaginative and locally acceptable legislation. There is no doubt that such efforts will meet with innumerable obstacles, but since no such cooperative ventures have been attempted in the past, there is reason for hope.

SUMMARY

The illegal antiquities market is financing the destruction of the remains of pre-Columbian civilization. In the United States, this process has often been aided by museums, collectors, and scholars who have unwittingly collaborated. Recently, initiatives toward reform have been taken by UNESCO, professional organizations, and two academic institutions. Further organized actions is recommended.

RESOLUTION OF THE ACQUISITION OF CULTURAL PROPERTY PASSED BY THE COUNCIL OF THE ARCHAEOLOGICAL INSTITUTE OF AMERICA

Recognizing that Museums, whatever be their specialty, have a communality of interests and concerns, which comes into particularly sharp focus in matters of ethics and professional behavior, and that they are the custodian of man's material heritage and of that part of his natural heritage which he has collected for study and transmission to future generations;

Be it resolved that the Archaeological Institute of America cooperate fully with the United States Government and foreign countries in their endeavors to preserve cultural property and its documentation and to prevent illicit traffic in such cultural property.

The Archaeological Institute of America believes that Museums can henceforth best implement such cooperation by refusing to acquire through purchase,

gift, or bequest cultural property exported subsequent to December 30, 1973, in violation of the laws obtaining in the countries of origin.

We further believe that the governing bodies, directors and curators of Museums should, in determining the propriety of acquiring cultural property, support and be guided by the policies of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property and the implementing provisions adopted by the signatory states.

It is recommended that all nations establish effective export laws and develop proper controls over export so that illicit traffic may be stopped at its sources. However, wherever possible, within the limits of national law, consideration should be given to legitimate and honorable means for the acquisition of cultural property. It is hoped that nations will release for acquisition, long term loan, or exchange, cultural property of significance for the advancement of knowledge and for the benefit of all peoples.

In order to augment and clarify further the intent of this resolution and determine methods of accomplishing its aims, the governing body of a museum should promulgate an appropriate acquisition policy statement commensurate with its by-laws and operational procedures, taking into consideration the International Council's of Museums' recommendations of "Ethics of Acquisition".

STATEMENT OF OSCAR WHITE MUSCARELLA, CHAIRMAN, COMMITTEE ON PROFESSIONAL RESPONSIBILITIES, ARCHAEOLOGICAL INSTITUTE OF AMERICA

Gentlemen, I address you on behalf of the Archaeological Institute of America, of which I am the Chairman of the Committee on Professional Responsibilities. I have also been a field archaeologist since 1957 and a museum curator since 1964.

In the brief time allotted to me I shall discuss some of the objections to H.R. 5643 raised by antiquity dealers in testimony before Congress and in letters and public statements.

1. Dealers claim that most of the material leaving antiquity producing nations results from accidental finds by peasants working their gardens or through house and road building activity. The claim is belied by the facts: numerous antiquities, the great majority, reach the West because of the conscious looting both encouraged and financed by dealers and their agents in the field. Every peasant in the world knows that dealers eagerly purchase antiquities, no matter how they are acquired, and they work vigorously to supply the never ending demand. Moreover, every antiquity producing nation has its professional itinerant gangs of treasure hunters who destroy countless tombs and mounds in order to supply dealers with material for sale abroad. One need only refer to Karl Meyer's book, *The Plundered Past* for documentation of these facts or talk to any archaeologist.

I myself have seen the results of the destruction in Turkey and Iran; and I have witnessed the subversion of poor and basically honest workmen employed on archaeological excavations.

Allow me to cite only one of numerous examples of organized plunder in order to give the lie to dealers' dismembering:

An Italian archaeologist recorded 550 Etruscan tombs at the ancient cemetery of Cerveteri: of these 550 tombs, 400, that is 73 percent of the total, had been looted and destroyed. Further, the archaeologist bitterly recorded that at least one-half of the tombs' contents had been wantonly destroyed.

The contents of these tombs, and thousands of others, as well as of countless mounds, have been dispersed around the world to be sold by dealers: and the archaeological and historical contents of their deposition are lost for all time.

My colleague will speak more on this; here I only wish to point to the actual method whereby antiquities are acquired.

2. We are told that antiquity producing nations do not protect their own sites: why then should we take action to protect them?

Actually, these nations are aware of the problems and are increasing the number of guards and police at ancient mounds; at great expense, I might add: Iran, Turkey and Iraq, for example.

However, few of these nations can afford the great expense involved in guarding all their sites; and the logistical problem is overwhelming. Moreover, it is intolerable for the United States to tell these nations that if they do not—or cannot—protect all their sites it naturally follows that we have a right to plunder them.

Further, the term "their sites" is a dissimulation. These sites belong to all of us and are an integral part of all mankind's cultural heritage: And this is why students and others in all nations study ancient civilizations and their artifacts.

It is our ancient history, our heritage, we are discussing, and not merely the contents of tombs and mounds located in some far off land.

The sites we seek to protect contain the repositories of our history and culture; we cannot casually assume that the duty to protect them lies solely with the nations in which they geographically exist.

HR 5643 states that the United States is concerned with saving the past for the future and that its taxpayers will be less involved in supporting the destruction of this past.

3. We are also told that HR 5643 represents a unilateral action on the part of the United States, that European museums and collectors will buy what is denied our citizens.

(a) First, let it be said that even if this were true, the United States should not be reluctant to accept leadership in this important cause. It has already taken the lead in stopping the import of skins and furs of endangered animals: why not take the lead in stopping the importation of endangered antiquities?

(b) Secondly, I have been in contact with foreign colleagues who inform me that there is a steadily growing awareness of the problem abroad. Moreover, I have been told that if the United States and the AIA take action on the antiquity problem it will make it easier for them to do the same in their own countries. In short, if HR 5643 is passed, European nations will take note of it and equally address themselves to the problem.

At the risk of being called gratuitous, I believe that some of the opponents of HR 5643 know this and that is one of the reasons they are vigorously fighting it.

4. It has been argued that art rich nations do not share their art and we in the United States have a right to it, no matter what the means.

But in fact these nations have shared and continue to share their art. In recent years, continuing to the present, our citizens by the millions have viewed exhibitions of Anatolian, Islamic, Iranian, Mesopotamian, Scythian, Thracian, Irish, pre-Columbian and Egyptian art, all sent to us by the very nations who, the dealers insist, do not want to share their art!

Millions of Americans visit foreign museums annually; scores of American teams of archaeologists dig abroad annually and they publish in popular and scholarly fashion the results of their work.

I submit that there is the strong possibility that both exhibitions and excavation will be cut back or eliminated if the West does not cease to plunder the countries that send the exhibitions and permit the excavations. That this may already have occurred is indicated by the refusal of the Greek government to send its Cycladic material to a German museum exhibition which showed many plundered artifacts.

The AIA is working on a plan to get antiquity producing nations to share more of their art with the West by loans and better divisions with archaeologists; and also by sale of multiple artifacts. What prevents the dealers, the American Association of Museums, and other groups, not excluding the United States government, from working together to negotiate on these issues?

I believe that this can and should be done: but we cannot tell the antiquity producing nations that if they do not give us more loans, more divisions, or sell us surplus material, we will get it by plundering.

5. One final point. It has been argued that HR 5643 will keep all art, not merely that which is plundered, from our shores.

This is simply not true; and all dealers, museum personnel, archaeologists, collectors, and interested citizens know otherwise. In fact, the bill will unfortunately allow much plundered art to reach our shores.

No one can possibly object to un plundered art coming to the United States and even a casual reading of HR 5643 demonstrates that this is not the aim nor will it be a result of the bill should it be passed.

I submit that passage of the bill will allow the free flow of art, art honestly and honorably acquired, to continue to come to the United States.

Rejection will inform the world that the United States is not concerned with plunder; by implication rejection will suggest that it is condoned.

STATEMENT OF PROFESSOR KAREN D. VITELLI, UNIVERSITY OF MARYLAND ON BEHALF OF ARCHAEOLOGICAL INSTITUTE OF AMERICA AND ASSOCIATION FOR FIELD ARCHAEOLOGY

Ms. VITELLI. I have not seen their testimony, but I will do my best to summarize major points which we have discussed a number of times.

First of all, both organizations strongly support this legislation and hope that it will be acted on quickly and enacted quickly. We think that it is the best step that we can take at this point in the interests of preserving our international heritage.

The points first of all, most of the antiquities that we are concerned with which would be addressed by this legislation are objects which were illegally exported from their country of origin, and the laws of those countries exist, they may not be called into play until an object appears on the market, but the laws exist there and I do not think we can rewrite them from here, the laws of other countries.

Second, they have not only been exported from their country of origin illegally, but they have been removed from the ground and from the sea illegally. They have been excavated in uncontrolled situations, unrecorded, undocumented, which means that they have lost their context, they have lost the background which gives them their significance.

There are good reasons for those laws to exist, and I think the argument about protecting the context of the objects is the main issue, the most important point of this bill, and I will try to illustrate it, perhaps with a simplistic example, but at least something we are all familiar with.

In this Baltimore-Washington area recently we have heard a great deal about the King Tut exhibit, the treasures from King Tut's tomb. They are indeed splendid objects. The exhibit was quite spectacular, but they are not the most glorious objects that have ever come out of tombs. There are equal objects from Egypt and from other parts of the world.

What has been so exciting and so significant and has attracted all the attention to the King Tut exhibit is the fact that it was from King Tut's tomb, that the objects all came from one site, one group, that they could be associated with a single historical personage. And for that reason, we learned a great deal and had a marvelous experience by having those treasures available.

If those pieces had shown up piecemeal one at a time, scattered in museums around the world, or even just around the United States without being associated with King Tut, we would have lost all of the attraction, all of the scholarly historical and artistic information that came with them.

And yet, that is what happens more often than not. King Tut's tomb is the rarity. Most of the objects that are included do not have any name attached to them which they might have had had they been properly excavated. That is what we are trying to save. That is what is being lost.

I understand that Dr. Coggins was going to come equipped with photographs which show pillage, plunder and destruction every bit as barbaric as we just heard about by the Khmer Rouge done purely to

provide artifacts for the art market and, in the process of producing those artifacts, destroying an infinite amount of information.

Senator RIBICOFF. From your information, are important sites being supported now to supply the art market?

Ms. VITELLI. They are.

Senator RIBICOFF. Would you give us some specific examples of where some of these deprivations are taking place?

Ms. VITELLI. Central and South America is full of sites. I am afraid I am not familiar with that part of the world and so I cannot name specific sites, but Dr. Coggins' testimony will contain examples of that and photographs, besides. And, I believe, you have also received from other archeologists a number of articles addressing exactly that point.

The site of Ebla, which has already been mentioned, in Syria—

Senator RIBICOFF. What I am wondering, suppose the United States passes this convention. Is that going to stop the traffic in art objects?

Ms. VITELLI. No, it is not going to stop it. First of all, it is only addressing a very small part of the problem. Only those sites that are declared emergencies and that go through the whole elaborate process. But, what it will do, is give us—the United States will have taken a stand. It is a starting point.

We are prepared, in the various professional societies of archeologists and anthropologists to go to work, we have committees already functioning and programs ready to go, to bring in our colleagues in other countries and other nations, to work with them to bring more members into the UNESCO Convention, to develop their own implementing legislation in their own countries, to provide better and broader facilities for legal exchange and sale of archeological items.

Senator RIBICOFF. Let me ask you, from your experience as an archeologist—these sites that are supposed to be pillaged, is there not complicity between the sellers of these objects and governmental authorities in some of these countries? And are they getting part of the proceeds of these sales?

Ms. VITELLI. I understand that that is often the case. That does not make it right.

Senator RIBICOFF. I know that. How do you control the situation where the governmental authorities are corrupt? How do you judge what is right and what is wrong, which objects are coming through properly if you have governmental complicity or governmental officials?

Ms. VITELLI. There are many things that we cannot control from here, that there is nothing that the United States can do about specifically right now. We can set our own standards and make our own effort to preserve a past which is vanishing rapidly. Once it is gone, it is gone. It is not a renewable resource.

Senator RIBICOFF. As I understand, the archeologists are really an international fraternity. You know one another irrespective of the country of your origin.

Ms. VITELLI. Yes.

Senator RIBICOFF. Now, why can the American archeologists not enlist the support of West Germans and English and French and Swiss and Japanese archeologists and see that their countries also become involved in scientific ventures?

Ms. VITELLI. We are doing that. One of the problems that we run into is that they suggest—they want to wait and see what we are going to do, which I have heard here today.

Senator RIBICOFF. Well, I know, but if UNESCO is supposed to be an organization to speak for the world and you are all influential and this is a very interesting issue, suppose this were made a part of a full-fledged debate at UNESCO?

Ms. VITELLI. I hope it will be.

Senator RIBICOFF. No, I mean if the U.S. Senate, or if the U.S. Congress, would pass a convention making it a condition that it would go into effect when a certain number of other major countries also would sign and pass such a convention, would that not be a takeoff point that would make it possible or encourage other countries, that you archeologists would have something to really talk about?

Ms. VITELLI. I suppose that would be better than nothing at all, but I would still prefer to see us work quickly and take a stand for something which is right, moral, necessary. The sites are being destroyed while we are waiting to see what is going to happen. The artifacts are being destroyed. The information is gone.

There are fruit trucks right now taking objects from Mycenaean tombs across the border. The tombs are being robbed. There is nothing we can do about it.

The thing is materially disappearing and we cannot just sit here, because it is not going to be there anymore. It is going.

Senator RIBICOFF. Well, if the country of origin does not want to save it, then, as Senator Moynihan said, historically they would be destroyed and used not for art or museum purposes. This way they are going to find their way into museums where they would be preserved for posterity.

Ms. VITELLI. But what if we preserved—if we ended up with a pot and have lost the possibility of identifying it as part of the accoutrements of King Agamemnon?

Senator RIBICOFF. All right, but who is responsible for removing those objects now?

Ms. VITELLI. Local people who are supplying a larger market.

Senator RIBICOFF. All right. What is the Government doing?

Ms. VITELLI. They have laws to prevent it. They have a certain number of people working to police the area, but they cannot possibly police the entire area.

Senator RIBICOFF. Well, if the Government cannot protect its own national objective and its own national property and it is going to be done, do you not think from your experience if the United States closes off a market that will find its way into Japan or West Germany or England or France or some other country?

Ms. VITELLI. We are not closing off the market. We are attacking a very small part of it. There are still plenty of things that are going to move. We have plenty of objects already which we could do much more creative exhibition with.

Somewhere, sometime, somebody ought to say stop. Just because everybody else is doing it, because the countries cannot totally control it themselves, because the materials are still going to go to other countries, does not mean that we might as well throw up our hands and join in the crowds.

Senator RIBICOFF. No, but if your organization has influence, and we try to use this influence by getting other people to join us, then maybe something will happen.

Ms. VITELLI. That is what we are hoping. We feel that—

Senator RIBICOFF. Well, it will not happen this way, because the other countries will not do it. They will say, OK, the Americans, good for them.

Ms. VITELLI. I have had a number of inquiries—I am editor of a section on the antiquities market for the *Journal of Field Archaeology*, and in that capacity have had inquiries from West Germany and from France and from Italy asking what is the progress of this legislation in this country. They are very interested in it, they are following it, planning to publish articles in their periodicals and I understand they are hoping to be able to use that as a takeoff point to develop similar legislation in their own countries.

Senator RIBICOFF. Well, suppose we said that—you say you have received inquiries from West Germany. Suppose we said, this will go into effect provided West Germany will also join in the convention. Do you think that West Germany then would do it? Would that give them a greater goal, a greater leverage?

Ms. VITELLI. I cannot testify to that.

Senator RIBICOFF. Yes.

Are there any other comments that you would like to make?

Ms. VITELLI. A number of things that I assume will show up in the written testimony. We did want to suggest slight changes in the composition of the advisory committee, to point out, as I believe the American Archaeological Association did also that there is no expert on ethnography, ethnographic material, represented on that committee and there clearly should be. And there is not a representative on archeology from the New World, concerned with the New World. And it seems that that is also an unfortunate omission and there are several organizations, the Society of American Archaeologists, the Society of Professional Archaeologists, which might be asked to nominate members to that panel in that capacity.

Senator RIBICOFF. Thank you very much, Ms. Vitelli.

[The following was subsequently supplied for the record:]

ANCIENT STUDIES, UMBC,
Baltimore, Md., February 11, 1978.

MICHAEL STERN,
Staff Director, Senate Committee on Finance,
Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: I would like to voice once again my strong support for HR 5643 the Cultural Property Implementation Act. I have been following the progress of this bill for some time and have studied its contents carefully. I testified on behalf of AFFA and the AIA at the hearings.

As a field archaeologist, with 10 years of experience in excavation and artifact analysis, primarily in Greece, my major concern with this bill is its effort to provide some protection to the archaeological and ethnological sites and materials which are rapidly being destroyed in order to provide objects for the art market.

I would point out that, contrary to much of the discussion at the hearings on February 8, this bill does not pretend to address all the problems of the illicit market in archaeological and ethnological materials—such as objects and sites vandalized in war zones, or those destroyed by bulldozers for “progress”. Rather, it addresses one small but significant aspect of site/information destruction: pillage for the art market (Sec. 2(a) (3 and 4). The bill even requires determination of likelihood that the U.S. embargo of specific objects would have the effect of deterring the plunder.

The other part of the illicit market addressed in this bill (Sec. 7), objects stolen from museums and other public institutions, may already be covered by existing laws, as suggested during the oral testimony. The clarification of procedural points specifically pertaining to antiquities might still be useful. Traffic in such stolen objects is, nevertheless, ongoing. Indeed, I believe that "no reputable dealer would handle such objects" when it is widely known that they are stolen. It is to be hoped that the work of organizations such as the International Foundation for Art Research and publications such as the "Antiquities Market" (offprints enclosed) in the *Journal of Field Archaeology* will make it more widely known what objects have been reported stolen, thus lessening the market for them. It may be that Section 7 of the bill is redundant. The protection of archaeological and ethnological sites and their contents in situ is, however, vital.

What is lost for all time when antiquities are clandestinely removed from the ground is all the historical, cultural, economic, and social information which archaeological methods have painstakingly evolved the means to recover. When we excavate and record the position in which each object is found in relation to all other objects, to buildings and other features, we are able to reconstruct when, by whom, under what circumstances, and sometimes even why the object came to be deposited there. This in turn allows us to develop an understanding of the process of cultural change and development: how and why human societies interact.

When we find a tomb intact, with all its furnishings, with all the objects as they were left after the funeral, we are often able, as in the case of King Tut's tomb, to identify the owner, to reconstruct the ceremony and the beliefs at the time of burial, the status of the owner, the cause of death, and on and on. When the objects from that same tomb are, instead, removed by untrained diggers without careful recording of where each object sat, etc., the possibilities for reconstruction are lost forever. Many smaller or less attractive items, often the most important archaeologically but of little value on the market, are destroyed or carelessly moved from their original resting place and, thus, lose their potential information as well. Large objects are often cut up and badly mutilated for easier clandestine transport. Even though some of the individual objects may survive to be admired in a private collection or public museum, it is at the expense of a great deal of more valuable information and knowledge which is irretrievably lost.

In countries such as Greece, where archaeological activity has been extensive for many years, there are still large blocks of time about which we have little knowledge, still many important questions we cannot answer. But the loss is perhaps more great in those parts of the world where relatively little archaeological activity has gone on. The history of the New World, including North America, is sketchy at best. The history of Africa and much of the Far East is poorly detailed. Many artifacts on the market, without context or secure provenance, cannot even be assigned with certainty to a specific century, much less be seen in the social and cultural context which produced them. Archaeological sites are limited in number. They are a non-renewable resource. While we debate they are being eliminated at a fearsome rate. Even in our own country this is happening.

Prof. Saul Weinberg suggested at the hearings that we adopt a positive approach to the antiquities problem, that we work to liberalize and make active use of existing legal ways of exporting antiquities. He drew particular attention to the masses of sometimes poorly cared for duplicate objects in museum and excavation storerooms. I think this is a fine idea. I have personally been working on this approach. I think it should be encouraged, I stated as much in my own testimony. The duplicates in excavation storerooms would be particularly useful for teaching and exhibit purposes because they come from excavated contexts. They have the additional information which illicitly acquired objects do not. They have trustworthy provenances which illicitly acquired objects do not, hence they would not mislead and distort history and understanding as illicitly acquired objects with false provenances regularly do. But this approach is not an alternative to the proposed legislation which is before us. Even if liberal export laws became the rule tomorrow, it would be some time before they had any deterrent effect on the despoliation of sites—and that is the focus of this legislation.

It is a small step to say we will not permit the import of a few items from specific plundered sites. Look at the limitations prescribed in this legislation! So few items are likely to ever actually be embargoed that one might well wonder

why we feel it is an important piece of legislation at all. Yet we do think it is very important.

We might actually save a few sites from plunder. There is a great deal of information in even one small site. Even if no other major importing country joined us in the embargo, we might save something. And we are strong enough to bring other countries into action with us if we choose to do so. Certainly it would be easier for archaeologists and anthropologists working in other countries to encourage them to join us if we could point to action by our own government. It would be far easier to bargain for legal export privileges if we could point to our cooperation in attempting to control the illegal export market.

The embargo of those few objects will not significantly deprive the American public, or, more honestly, the collecting, investing, tax-deducting public. I have never seen an Ebla tablet, except in a slide, yet I and my students have been mightily excited by the information already coming out of the scholarly studies of the tablets and their excavation. Several U.S. museums have included information about the important finds at the Franchthi Cave in Southern Greece in their exhibits on prehistory, yet none of them has any actual objects from those excavations. Many Americans have been able to see and be excited by the objects from King Tut's tomb without having to own them.

It would be shameful to kill this legislation, and the archaeological knowledge with it, out of pique on UNESCO. Surely that organization can be dealt with in other ways. It would be equally shameful to avoid unilateral action simply because it might remain unilateral. This is an important world cultural issue, although a relatively small group may be all that realizes it at the moment. Someone must take the first big step. I urge that the U.S. be the one.

I urge prompt enactment of HR 5643.

Yours,

KAREN D. VITELLI,
Assistant Professor, Ancient Studies, UMBC,
Editor, "Antiquities Market" JFA.

The Antiquities Market

The Antiquities Market is a regular feature of the *Journal of Field Archaeology*. Its aim is to provide just what is stated in the sub-title: news and commentary on the illicit traffic in antiquities. The presence of this feature in the *Journal* reflects one of the central concerns of the Association for Field Archaeology, that is, the proper recovery and the protection of antiquities. Readers are urged to send items for publication to Karen D. Vitelli, Ancient Studies, University of Maryland Baltimore County, 5401 Wilkens Avenue, Baltimore, Md. 21228.

Market Alert

Theft of Archaeological Items from Cyprus

Authorities in Cyprus report that a large number of artifacts discovered during archaeological excavations disappeared from the museums in Famagusta during the disturbances of August, 1974 and September, 1975. The items were apparently stolen and exported. Anyone with information concerning the missing artifacts should contact the Chief of Police, Nicosia (Interpol Nicosia) and the I.C.P.O., Interpol General Secretariat, 26 rue Armengaud, 92210 Saint Cloud (Interpol Paris SG). In the United States, information should be directed to Louis B. Sims, Chief, Interpol Washington, Department of the Treasury, Room 1116, Washington, D.C. 20220. Telephone: (202) 393-6400.

Photographs of some of the articles (courtesy of Interpol, Paris, France) and a descriptive catalogue with the appropriate museum references follow.

Catalogue of Missing Objects

Famagusta District Museum, Cyprus

JEWELRY

1. Gold earring of "mulberry" type from Enkomi (Tomb 5/48).
2. Gold frontlet from Enkomi (Tomb 8/54).
3. Gold frontlet from Enkomi (Tomb 8/35).
4. Gold pin from Enkomi. L. 6.5 cm. (Tomb 27; J.79).
5. Two pairs of gold, boat-shaped earrings from Enkomi. L. 6.5 cm. (Tomb 28; J. 72).
6. Pair of gold earrings, twisted, with overlapping ends. From Enkomi. D. 3 cm. (Tomb 55; J.66).
7. Gold earring in the form of bull's head, granulated. L. 3 cm. From Enkomi. (Tomb 43; J.78).

8. Pair of gold spiral earrings with overlapping ends. D. 3.5 cm. From Enkomi (Tomb 27; J.56).
9. Gold frontlet embossed with "herring-bone" lines. L. 10 cm. From Enkomi. (Tomb 25; J.20).
10. Gold mouth-piece embossed with rosettes. L. 7 cm. From Enkomi (Tomb 43; J.23).
11. Circular sheet of gold from Salamis. D. 6.3 cm. (Tomb 1/149).
12. Rectangular sheet of gold from Salamis. L. 6 cm. (Tomb 1/150).
13. Circular sheet of gold from Salamis. D. 6 cm. (Tomb 1/152).
14. Circular sheet of gold from Salamis. D. 6 cm. (Tomb 1/154).
15. Silver ring. Salamis (Tomb 1/4).
16. Gold frontlet from Aphendrica. L. 12 cm. (Tomb 36/3).
17. Silver earring from Kantara (Tomb 1/117).
18. Gold boat-shaped earring. D. 2 cm. From Yenagra (Tomb 1/41).
19. Gold crescent-shaped earring. D. 2.1 cm. From Yenagra (Tomb 1/42).
20. Gold boat-shaped earring. D. 1.7 cm. From Yenagra (Tomb 1/43).
21. Pair of gold earrings of plain wire. D. 1.7 cm. From Yenagra (Tomb 1/44).
22. Pair of gold earrings of plain wire. D. 1.1 cm. From Yenagra. (Tomb 1/45).
23. Gold earring of plain wire. D. 1.4 cm. From Yenagra. (Tomb 1/46).
24. Gold earring of plain wire. D. 1.2 cm. Yenagra. (Tomb 1/47).
25. Gold earring of plain wire with a disc in front. D. 1.4 cm. From Yenagra. (Tomb 1/48).
26. 63 gold myrtle leaves belonging to a wreath. From Trikomo. (1960/111-14/2).



Figure 1. Ivory blinkers. Cat. no. 128.

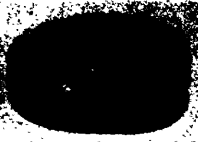


Figure 3. Scarab of black steatite. Cat. no. 126.



Figure 4. Glass amulet with face of Isis. Cat. no. 124.



Figure 2. Ivory spatula. Cat. no. 112.



Figure 5. Ivory comb. Cat. no. 93.



Figure 6. Ivory comb. Cat. no. 113.



Figure 7. Ivory comb. Cat. no. 114.



Figure 8. Ivory disk. Cat. no. 95.



Figure 9. Ivory disk (fragmentary). Cat. no. 96.



Figure 10. Gold leaf. Cat. no. 11.



Figure 11. Gold leaf. Cat. no. 12.



Figure 12. Gold leaf. Cat. no. 13.



Figure 14. Gold leaf. Cat. no. 14.

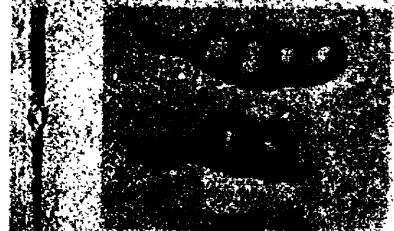
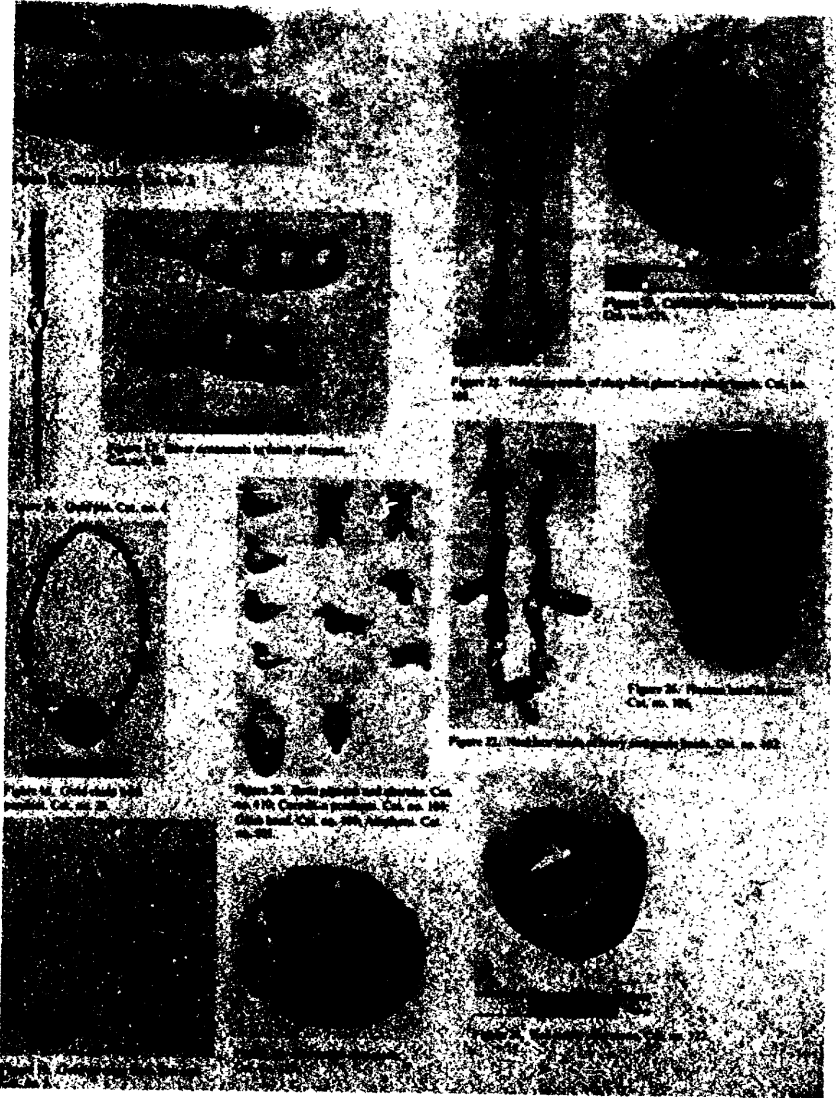


Figure 11 - [Illegible text]



Figure 12 - [Illegible text]



Figure 13 - [Illegible text]

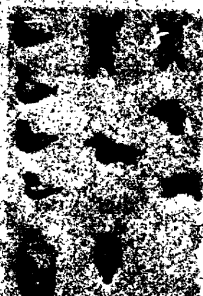


Figure 14 - [Illegible text]



Figure 15 - [Illegible text]

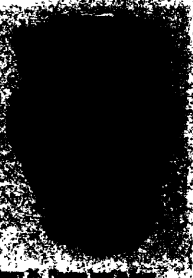


Figure 16 - [Illegible text]

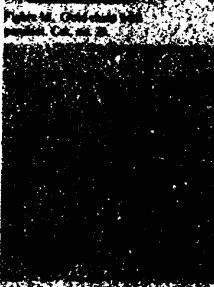


Figure 17 - [Illegible text]

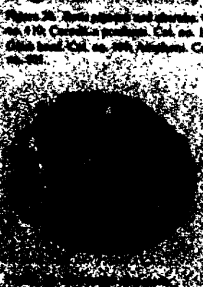


Figure 18 - [Illegible text]

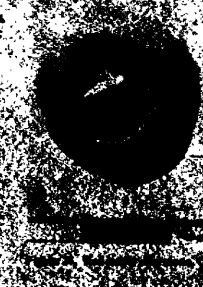


Figure 19 - [Illegible text]



Figure 20 - [Illegible text]



Figure 21 - [Illegible text]

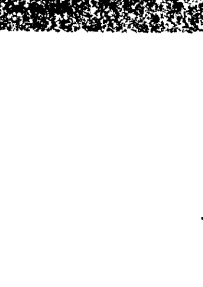


Figure 22 - [Illegible text]



Figure 23 - [Illegible text]



Figure 24 - [Illegible text]

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27. 35 gold myrtle leaves belonging to a wreath. From Trikomo. (1961/1-27/1).
 28. Silver pendant in the shape of lotus bud. H. 2 cm. From Ayios Varnavas (1964/VI-10/2).
 29. Gold chain with pendant from Ayios Serghios (Tomb 1/16).
 30. 2 Silver ornaments in form of serpents from Ayios Serghios (Tomb 1/CH).

COINS

31. Silver stater of king Euelthon (H.C.1).
 32. Silver stater of king Euelthon (H.C.2).
 33. Silver tetrobol of king Euelthon (H.C.3).
 34. Silver tetrobol of king Euelthon (H.C.5).
 35. Silver diobol of king Euelthon (H.C.6).
 36. Silver obol of king Euelthon (H.C.8).
 37. Silver obol of king Euelthon (H.C.11).
 38. Silver 1/4 obol of king Euelthon (H.C.17).
 39. Silver obol of king Euelthon (1942/IV-9/1).
 40. Silver obol of king Euelthon (H.C.12).
 41. Silver diobol of king Euelthon (H.C.13).
 42. Silver diobol of king Euelthon (A. 30).
 43. Silver obol of king Euelthon (L. H.).
 44. Silver obol of king Euelthon (L. H.).
 45. Silver diobol of king Gorgos (A. 103).
 46. Silver diobol of king Gorgos (H.C.14).
 47. Silver tetrobol of king Nicodamos (A. 23).
 48. Silver tetrobol of king Nicodamos (A. 40).
 49. Silver obol of king Nicodamos (A. 31).
 50. Silver obol of king Nicodamos (H.C.16).
 51. Silver diobol of king Euanthes (A. 48).
 52. Silver diobol of king Audemon (H.C.19).
 53. Silver diobol of king Audemon (A. 59).
 54. 1/2 obol of king Audemon (H.C.18).
 55. Silver diobol of king Audemon (H.C.17).
 56. Silver diobol of king Euagoras I (1942/IV-9/2).
 57. Silver diobol of king Euagoras I (H.C.26).
 58. Silver tetrobol of king Euagoras I (H.C.25).
 59. Silver tetrobol of king Euagoras I (A. 63).
 60. 1/10 of gold stater of king Euagoras I (H.C. 21).
 61. 1/10 of gold stater of king Euagoras I (1966/II-11/2).
 62. 1/10 of gold stater of king Euagoras I (H.C.23).
 63. 1/10 of gold stater of king Nicocles (H.C. 29).
 64. 1/10 of gold stater of Euagoras II (H.C.30).
 65. Silver obol of king Euagoras II (1942/V-9/1 (a)).
 66. Silver obol of king Euagoras II (H.C.31).
 67. Bronze coin of king Euagoras II (H.C.38).
 68. Bronze coin of king Euagoras II (H.C.35).
 69. Bronze coin of king Euagoras II (H.C.39).
 70. Bronze coin of king Euagoras II (H.C.41).
 71. Bronze coin of king Euagoras II (H.C.51).
 72. Bronze coin of king Euagoras II (H.C.50).
 73. Silver didrachm of king Pnytagoras (A. 120).
 74. Silver didrachm of king Pnytagoras (H.C.45).
 75. Silver didrachm of king Pnytagoras (1966/IV-2/1).
 76. Silver tetrobol of king Pnytagoras (1942/1-23/1).
 77. Silver tetrobol of king Pnytagoras (1942/1-23/2).
 78. Silver tetradrachm of Demetrios Potiorcetes (1949/III-22/15).
 79. Silver tetradrachm of Demetrios Potiorcetes (1949/III-22/35).
 80. Bronze coin, inscribed "Alexanorou Basileos" (in Greek characters) 1964/VI-10/1).
 81. Bronze coin, inscribed "Alexanorou Basileos" (in Greek characters) (H.C.54a).
 82. Bronze coin, inscribed "Alexanorou Basileos" (in Greek characters) (H.C.49).
 83. Bronze coin, inscribed "Alexanorou Basileos" (in Greek characters) (H.C.52).
 84. Bronze coin, inscribed "Alexanorou Basileos" (in Greek characters) (A. 411).
 85. Bronze coin, inscribed "Alexanorou Basileos" (in Greek characters) (A. 402).
 86. Bronze coin, inscribed "Alexanorou Basileos" (in Greek characters) (H.C.54).
 87. Bronze coin, inscribed "Alexanorou Basileos" (in Greek characters) (H.C.53).
 88. Silver tetradrachm of Ptolemy V (1939/VI1-29/10).
 89. Silver tetradrachm of Ptolemy V (H.C.133).
 90. Silver tetradrachm of Ptolemy XI (H.C.171).
 91. Silver tetradrachm of Ptolemy XI (1964/III-20/1).
 92. Bronze coin of emperor Trajan (O.C.).

SMALL OBJECTS

93. Ivory Comb from Enkomi (Tomb 18/13).
 94. Fragmentary bone handle from Enkomi (Tomb 18/92).
 95. Bone disk from Enkomi (Tomb 18/46).
 96. Engraved bone disk from Enkomi (Tomb 18/83).
 97. Bone pin from Enkomi (Tomb 7/18).
 98. Bone disk from Enkomi (Tomb 7/18).
 99. Two small disks from Enkomi (Tomb 7/17).
 100. Bone disk from Enkomi (Tomb 7/68).
 101. Glass pendant in the form of amphora. Aphendrica (T.36/13).
 102. Necklace of bone beads and pendants from Aphendrica (Tomb 36/21).
 103. Bone bead from Aphendrica (Tomb 36/16).
 104. 3 pendants of carnelian stone in the form of horse, hare and dolphin (Tomb 36/14).
 105. 12 fragments of ivory (Tomb 36/9).
 106. Human head in bone. H. 5.2 cm. (Tomb 36/15).
 107. Necklace of 6 bone and paste beads mounted on silver wire (Tomb 36/11).
 108. Necklace of 65 paste and glass beads (Tomb 36/4).
 109. Glass pendant in the form of human head (Tomb 36/5).
 110. 6 bone pendants: 2 in the form of cupids, 4 in the form of pigeons (Tomb 36/12, 22).
 111. Bone handle from Salamis (Tomb 1/148).
 112. Ivory spatula from Salamis (Tomb 1/13).
 113. Ivory comb from Salamis (Tomb 1/51).
 114. Ivory comb from Salamis (Tomb 1/52).
 115. Ivory bead from Ayios Philon (FM N:163).
 116. Glass bead from Ayios Philon (FM N: 215).

117. Glass knuckle from Ayios Philon (FM N:280).
118. Ringstone of amethyst: Apollo holding lyre (1966/XII-9/1).
119. Carnelian ringstone: Daniel in the lions' pit (1960/XII-2/1).
120. Carnelian ringstone: seated Satyr (1960/XII-2/2).
121. Carnelian ringstone: Athena holding Nike (1963/V-27/2).
122. Ringstone of red jasper: Gryllus (1963/V-27/5).
123. Ringstone of red jasper: Zeus seated on throne (1963/V-27/6).
124. Glass amulet in the form of Satyr's head (1959/IV-11/1).
125. 3 paste amulets.
126. Scarab of black steatite. Engraved: lion attacking stag. L. 2.1 cm. From Lysi (1962/XI-13/1).
127. Stone seal, engraved: horned animal and tree (1964/X-6/1).
128. 2 Ivory blinkers from Salamis (Tomb 1/162).

Gordion Antiquities Recovered

Peter Kuniholm and Keith DeVries have both written with news that some of the antiquities from Gordion, which we reported stolen in our last issue, have been recovered. The recovery was announced in the *Hürriyet* newspaper of July 18, 1976. Police seized two of the thieves, and 25 of the stolen pieces, including the cauldron with siren attachments and the bust of King Midas with the donkey's ears, buried along the bank of the Maeander. Other people involved in the theft and 16 pieces of jewelry and fibulae are still being sought.

It is very encouraging to see that when people know how to report and publicize a theft of antiquities, act promptly, and get good cooperation from all sides it is possible to recover the material. Peter Kuniholm, Bay Raci Temizer, the Turkish Police, and the American Embassy are all to be thanked and congratulated for their actions.

Peter is looking into the possibility of getting something like a CB radio set up for the Gordion Museum so that the guard might contact police immediately should a similar situation ever arise. It seems a good idea, and one that might be applied in other similarly vulnerable museums.

KAREN D. VITELLI

Legislation and the UNESCO Convention

The office of Mr. John M. Martin, Jr., Chief Counsel of the Committee on Ways and Means, has informed the *Journal of Field Archaeology* that since last summer,

no further action has been taken by the Subcommittee on Trade on H.R. 14171, the proposed legislation to implement the UNESCO Convention. The staff of the subcommittee will be working on changes in the bill to reflect comments received from the public for consideration by the Subcommittee early in the next Congress.

Readers who would like a printed copy of the *Written Comments on H.R. 14171*, send requests to the Subcommittee on Trade of the Committee on Ways and Means, Rayburn House Office Building, Washington D.C. 20515.

Central Archive for Stolen Art

The International Foundation for Art Research in New York City is currently sponsoring a special project, the Central Archive of Stolen Art, and has recently begun to collect information on art theft in order to establish a comprehensive archive on this subject. The archive will consist of permanent, reliable records of art thefts: descriptions and provenance of objects lost, circumstances of theft and of recovery. The archive's purpose is to make it possible to identify stolen works which reappear on the market, or to trace the original owners of objects which are recovered.

Photographs and detailed descriptions of objects reported lost are maintained in an open file at the Archive. Information concerning owners, circumstances of thefts, or sources of reports is kept confidential. By means of a detailed questionnaire, the Foundation is currently polling museum directors and registrars to find out the extent of their experience of theft, what kind of records they have kept of losses, and whether they would be willing to contribute available documentation to the Central Archive of Stolen Art.

If you would like a copy of the questionnaire, or more information about the Archive project, you may write to Ann Marie Cunningham, Research Associate, Central Archive of Stolen Art, International Foundation for Art Research, 654 Madison Avenue, New York, N.Y. 10021.

Mr. Donald Mason has joined the staff of the International Foundation for Art Research, Inc. as Special Consultant to the Central Archive of Stolen Art project, a two-year study on international art theft sponsored by the Jerome Foundation, St. Paul, Minnesota. Mason recently retired from 24 years' service as senior art crime investigator for the FBI, and until two years ago, was the only FBI investigator in this special area.

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His investigations have taken him to cities throughout the United States and abroad, and he estimates that he has been personally responsible for recovering \$2-3 million in stolen art objects annually. Mason's chief responsibility will be to evaluate and to promote law enforcement support of an archive of stolen works of art which would be accessible to law enforcement personnel and specialists alike, as well as conducting seminars on the special problems of identification and recovery of stolen works of art.

Special Reprint Offer

For persons and groups concerned about the illicit traffic in antiquities, and particularly for teachers of archaeology courses, who would like to bring the attention of their students and others to recent attempts to protect the world's cultural heritage, reprints are available of "The Antiquities Market" published in *JFA* 3, Number 2 (1976). The section includes the following items.

- 1) The U. N. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.
- 2) The U. N. Convention for the Protection of the World Cultural and Natural Heritage.
- 3) The bill introduced into the U.S. House of Representatives (H.R. 14171) to implement the UNESCO Convention.
- 4) Resolutions introduced by several groups in support of the U.S. legislation.
- 5) A list of countries having national antiquities laws whose texts are available upon request.
- 6) Account of recent thefts at Gordion (some of the antiquities have since been recovered).

The cost of the reprints is 75¢ per copy, postage paid. Orders should be sent to the following address:

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 Boston University
 745 Commonwealth Avenue
 Boston, Massachusetts 02215

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The Antiquities Market

News and Commentary on the Illicit Traffic in Antiquities

Karen D. Vitelli

The Antiquities Market is a regular feature of the *Journal of Field Archaeology*. Its aim is to provide just what is stated in the sub-title: news and commentary on the illicit traffic in antiquities. The presence of this feature in the *Journal* reflects one of the central concerns of the Association for Field Archaeology, that is, the proper recovery and the protection of antiquities. Readers are urged to send items for publication to Karen D. Vitelli, Ancient Studies, University of Maryland Baltimore County, 5401 Wilkens Avenue, Baltimore, Md. 21228.

Market Alert

Antiquities Stolen from Gordion Museum

On the night of 5-6 May 1976 the museum at the ancient Phrygian capital city of Gordion, Turkey, was broken into and robbed of 41 objects, some dating back to the 8th century, B.C. Since 1950 Gordion has been the site of excavations conducted by the University of Pennsylvania.

The missing artifacts, some unique and irreplaceable, include a large bronze cauldron with four sphinx protomes, bronze omphalos bowls, fibulae, trefoil-mouthed bronze jugs, a bronze ladle, bronze bowls with spool and bolster attachments, gold jewelry, an askos with checkerboard designs, and the well-known terracotta bust of King Midas with his ass's ears and Phrygian cap.

Because these objects may soon appear on the illegal antiquities market, anyone suspecting their presence in his country is requested to contact immediately the nearest Turkish or American Embassy or Consulate as well as the appropriate local civil authorities.

Catalogue of Missing Objects

The photographs of the missing objects that accompany this catalogue were taken from a circular sent to the Editor. Normally, the Journal of Field Archaeology does not reproduce illustrations from photocopies because they do not provide the photographic quality we prefer. In this case, however, the importance of the issue prompted us to reproduce the illustrations directly from the circular.

1. Bronze cauldron with two pairs of inward-facing siren protomes, loop handles missing. H. 50 cm. D. at mouth 38 cm. (Inv. 44.37.66 4749 B 786).

2. Deep bronze bowl, 2 ring-handles on riveted T-shaped attachments. H. 16.2 cm. Max. D. 15.9 cm. D. at Mouth 21.9 cm. (Inv. 13064 4787 B 801).

3. Similar to #2. H. 16 cm. Max. D. 14.5 cm. (Inv. 18342 4052 B691).

4. Bronze bowl, spools and bolsters. Two ring-handles pendent from spools. D. 24.7 cm. (Inv. 18653 5109 B 1042).

5. Bronze ladle. L. 19 cm. D. of bowl 8.5 cm. (Inv. 18868 4377 B 730).

6. Pottery 4-legged askos, checkerboard beige and brown paint. Handle broken. H. 20 cm. (Inv. 19466 6269 P 2364).

7. Terracotta bust of King Midas with ass's ears. Wears Phrygian cap. Pink paint. Hollow. H. 9.5 cm. W. 9.3 cm. (Inv. 18374 2098 T 32).

8. Two-handled bronze bowl, bolsters and straps. D. 24.7 cm. (Inv. 18611 4820 B 814).

9. Bronze fibula, 5 hemispherical rivets on bow, 2 rows of 3 small rivets at either terminal separated by reels. L. 4.9 cm. (Inv. 18952 4967 B915).

10. Similar to #9. (Inv. 18923 4969 B 917) L. 4.8 cm.

11. Bronze fibula. Plain bow octagonal in section. Pairs of double reels at either terminal. L. 4.5 cm. (Inv. 18933 5015 B 963).

12. Bronze fibula. 5 reels at center of bow. Squared terminals. L. 4.9 cm. (Inv. 18945 5043 B 991).

13. Bronze fibula, plain bow. Triple reels at either terminal. L. 5.8 cm. (Inv. 18968 5069 B 1017).

14. Similar to #13. L. 5.6 cm. (Inv. 18966 5074 B 1022).

15. Similar to #13. L. 5.4 cm. (Inv. 18960 5076 B 1024).

16. Bronze omphalos bowl with petals. D. 22.1 cm. (Inv. 18618 4928 B 879).

17. Similar to #16. D. 17.5 cm. Depth 4.6 cm. (Inv. 18903 4907 B 858).

18. Similar to #16. D. 22 cm. (Inv. 18603 4941 B 892).

19. Similar to #16. D. 17.8 cm. (Inv. 18627 4933 B 884).

20. Bronze omphalos bowl, concentric ribs. D. 204 cm. (Inv. 18497 4836 B 830).

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21. Similar to #20, 6 concentric ribs. D. 18.3 cm. (Inv. 18492 4840 B 834).

22. Bronze omphalos bowl. D. 18.5 cm. D. 5.4 cm. (Inv. 18387 4055 B 694).

23. Similar to #22. D. 14.6 cm. Depth 4 cm. (Inv. 13074

4368 B 721).

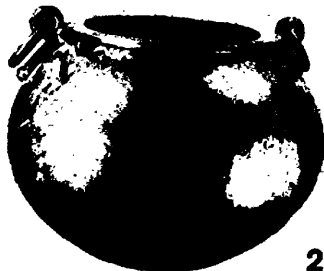
24. Similar to #22. D. 18 cm. (Inv. 18491 5121 B 1054).

25. Similar to #22. D. 17.4 cm. (Inv. 18679 5117 B 1050).

26. Shallow bronze bowl. D. 14 cm. (Inv. 18400 4817 B 811).



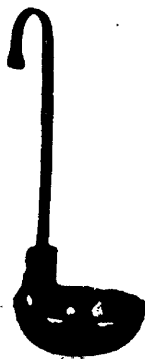
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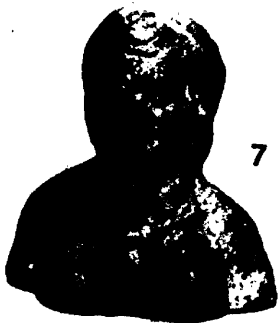
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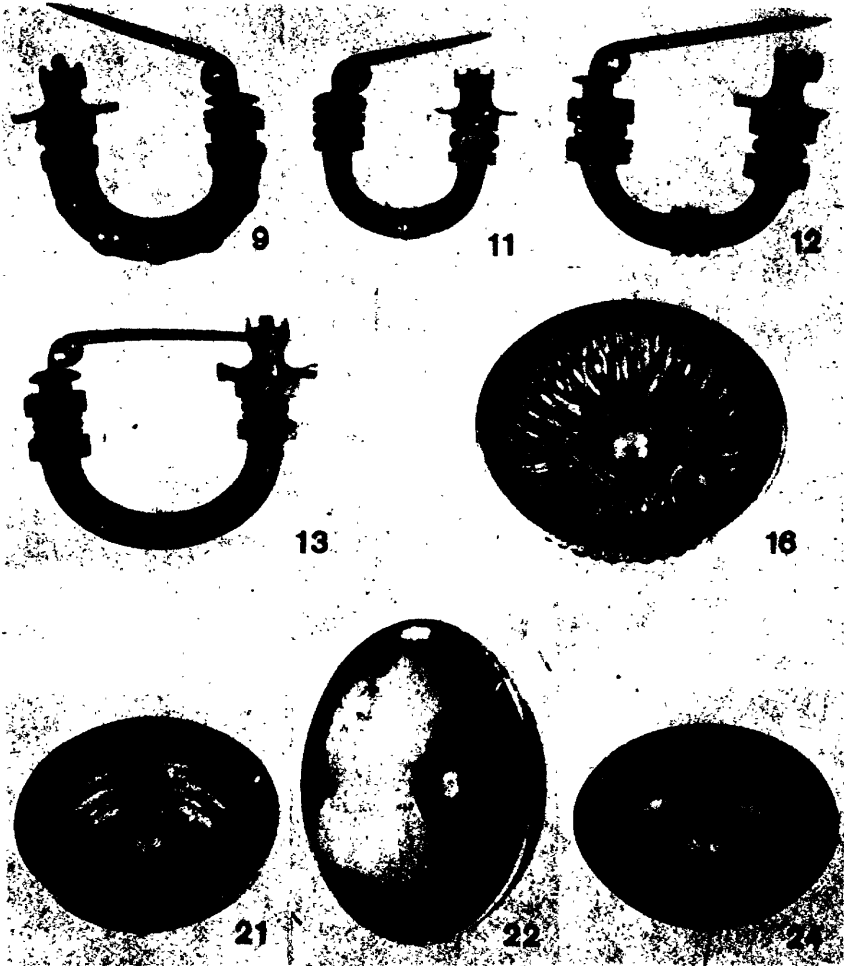
27. Bronze trefoil-mouthed juglet, high flaring neck, high-swing handle riveted to body. H. 17.5 cm. D. 12.7 cm. (Inv. 13078 4378 B 728).

28. Similar to #27. H. 10 cm. D. 9.5 cm. (Inv. 18870 4376 B 729).

29. Similar to #27. H. 17.5 cm. D. 12.7 cm. (Inv. 18398 4375 B 728).

30. Similar to #27. Bottom right rivet missing. H. 17.5 cm. D. 15.5 cm. (Inv. 18869 5164 B 1094).

31. Similar to #27. Concentric rings in relief around belly



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and where neck joins body. H. 9 cm. D. 11 cm. (Inv. 19110 5165 B1073).

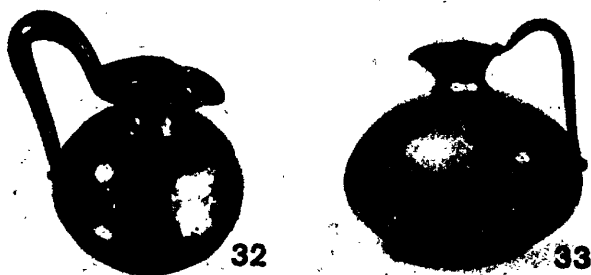
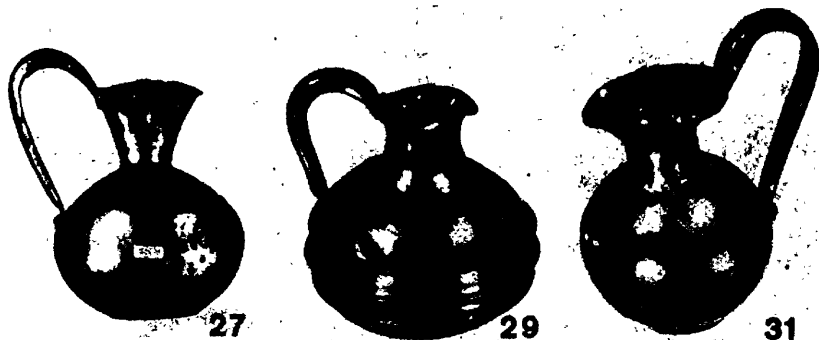
32. Similar to #27. H. 19 cm. (Inv. 18656 5152 B 1082).

33. Bronze jug, similar to #27. H. 28 cm. D. 30.5 cm. (Inv. 13062 4772 B 795).

34. Similar to #33. H. 28.3 cm. D. 28 cm. (Inv. 13063 4768 B 791).

35. Gold lion-headed ring. Wt. 2 gr. (Inv. 12847 2375 J 78).

36. Gold ring with rectangular plate. Chain border and



granule decoration. W. 2.3 cm. Wt. 6.450 gr. (Inv. 19060 5792 J 120).

37. Gold ring with two lion-head terminals, engraved ringlets of hair on shoulders. W. 2.5 cm. H. 2.4 cm. (Inv. 44-58-66).

38. Gold crescent. 3-ribbed loop. Wt. 5.050 gr. (Inv. 18747 4535 J 109).

39. Plain gold wire ring. D. 2.2 cm. Wt. 1.920 gr. (Inv. 12760 250 J 50).

40. Similar to #39. D. 2.2 cm. Wt. 1.500 gr. (Inv. 12762 1092 J 52).

41. Brown agate bead. H. 1.3 cm. W. 1.7 cm. (Inv. 44-50-66 1675 ST 136).

The following is an excerpt from a letter received by the Editor of the "Antiquities Market" concerning the robbery.

Thursday morning [May 6] the report came in about the robbery. That day an on-site inspection was made, checking inventory, fingerprints, etc. Friday we pulled catalogue cards and printed 500 photographs which went out immediately to police, customs, border people, ICOM and UNESCO.

Yesterday I went into the United States Information Services office here, and nine hours later emerged with 500 of these flyers [see preceding pages] which I then carried to Raci Temizer, the Director of the Ankara Museum. These will be sent around today to all the cultural attachés in town for immediate passing along to their representative ministries, museums, auction houses, etc. This way no one can plead ignorance if he buys this material.

PETER IAN KUNIHOLM
AMERICAN RESEARCH INSTITUTE IN TURKEY
ANKARA

Peter adds that the American Ambassador, William B. Macomber, and the Counsellor for Public Affairs, U.S.I.S., were extremely helpful and cooperative: U.S.I.S. printed the 500 flyers and photographs without charge and had them ready for distribution only four days after the theft. We heartily and gratefully commend this quick action and cooperation among international government officials and public and private persons. Because of their quick and dedicated work there is good chance that the Gordion material will be quickly recovered.

In Support of the Proposed Legislation

Just before our printing deadline, the Journal learned that the proposed legislation has moved into Committee, that its number is HR 14171, and that deliberations on the bill begin June 28.

The proposed legislation to implement the Convention on the Means of Prohibiting and Preventing the

Illicit Import, Export, and Transfer of Ownership of Cultural Property has, already, a long history. The United States Senate gave its advice and consent to ratification of the Convention on August 11, 1972, by a vote of 79-0. Implementing legislation was first proposed on June 8, 1973. The revised bill, reprinted here, was resubmitted on July 31, 1975. In the House, it has been referred to the Subcommittee on Trade of the Ways and Means Committee.

The Subcommittee has taken no steps to introduce the matter, no hearings have been scheduled, and the proposed legislation has not even been printed as a bill. Several people have suggested that in an election year we are not likely to see this condition changed. The issue, they contend, is not of vital interest. Yet, looking only at the few pages on the "Antiquities Market" in the last issue of this journal, we learn that "close to one billion dollars worth of stolen or smuggled works of art are presently in circulation," that "in Italy alone 11,000 art objects were stolen last year," and that during the two years of controlled excavations at Ban Chiang in Thailand a score of similar sites in the area have been utterly destroyed to supply the illicit market with Ban Chiang pots. The problem of the illicit traffic in antiquities is of vital interest on an international level.

The professional archaeologist, more than anyone else, has the responsibility to recognize this fact and to make the public and the Congress aware of it. As sites are being plundered to meet the demands of the art market, as antiquities are ripped from their contexts and even destroyed, the nonrenewable resource of our past is fast disappearing. If we do not make it clear that this is a vital issue, if we throw up our hands in despair at the complexities involved, we are not only witnessing but giving tacit approval to "the equivalent of the burning of the library in Alexandria by the Romans."

The proposed legislation would not stop the destruction of archaeological sites. It would probably not substantially curb the illicit traffic in antiquities, and it takes no steps toward establishing a legal trade in antiquities. It cannot be, and is not, touted as a cure-all.

If enacted it would, nevertheless, be significant. Primarily, it would serve notice that the United States is cognizant of the problem and recognizes its responsibility, as one of the major importing countries, to help design solutions. It would also provide a framework for future negotiations and cooperation on the international level, which is clearly necessary if substantial changes are ever to take place. Prohibiting the importation of specific categories of objects — those from endangered sites (Sections 1-4), and those from the inven-

1. Karl Meyer, *The Plundered Past: The Story of the Illegal International Traffic in Works of Art*. (New York 1973) 12.

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toried collections of museums and public monuments (Sections 5-6) — is probably less significant than the fact of taking a stand at all. If we can generate the public awareness and concern necessary to bring the proposed legislation out of committee, we will have taken an important step toward the eventual development of a legitimate and constructive antiquities market.

I urge my colleagues to read the proposed legislation, to bring it to the attention of their colleagues and the general public, and to give it their strong support. Those of us who are also teachers might inform our students not only of the evidence of archaeology, art, and history, but of its current destruction as well. Perhaps a more aware generation will also be more concerned and responsible.

Immediately, we should write to the Subcommittee

on Trade asking its members² to schedule hearings in the near future on the proposed legislation to Implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.

K. D. VITELLI
UNIVERSITY OF MARYLAND, BALTIMORE COUNTY

2. The members of the Subcommittee on Trade of the Ways and Means Committee are the following: Representatives Green (Pennsylvania) Chairman; Archer (Texas); Conble (New York); Duncan (Tennessee); Fisher (Virginia); Frenzel (Minnesota); Gibbons (Florida); Helatoski (New Jersey) Jones (Oklahoma); Karth (Minnesota); Landrum (Georgia); Mikva (Illinois); Pike (New York); Rostenkowski (Illinois); Vander Jagt (Michigan); VanderVeen (Michigan). The members of the Subcommittee may be contacted at the Rayburn House Office Building, Washington, D.C.

Bill to Implement the UNESCO Convention**A BILL****To Implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property**

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. Whenever the President determines that (1) the cultural patrimony of a State Party to the Convention is in jeopardy from pillage of archeological or ethnological materials, (2) the State Party has taken measures for the protection of its cultural patrimony, (3) import controls by the United States with respect to designated objects or classes of objects would be of substantial benefit in deterring such pillage, and (4) the establishment of such import controls 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 enter into an agreement with the State Party, and with other governments as appropriate, to restrict the importation of such designated protected objects, or classes of objects, of archeological or ethnological interest for a period considered required to achieve the purposes of the Convention. In making these determinations and in formulating appropriate restrictions to propose for inclusion in such agreements, the President shall consider the advice of a panel of experts, which he shall appoint for that purpose, representing the interested art, museum, and scientific communities and qualified to advise on the particular problem.

SECTION 2. The Secretary of the Treasury, after consultation with the Secretary of State, by regulation shall promulgate, and when appropriate shall revise, a list of protected objects of archeological or ethnological interest within the meaning of paragraph (b) of Section 9 of this Act. Such objects may be listed by type or other classification deemed appropriate by the Secretary.

SECTION 3. (a) No protected object of archeological or ethnological interest listed by the Secretary of the Treasury pursuant to Section 2 of this Act that is exported (whether or not such exportation is to the United States) from the country of origin after the effective date of the regulation listing such object may be imported into the United States unless the government of the country of origin of such

object issues a certificate which certifies that such exportation was not in violation of the laws of that country.

(b) If the consignee of any protected object of archeological or ethnological interest is unable to present to the appropriate officer of the customs at the time of making entry of such object—

(1) the certificate of the government of the country of origin required under paragraph (a) of this section; or

(2) satisfactory evidence that such object was exported from the country of origin on or before the effective date of the regulation listing such object pursuant to Section 2 of this Act;

the appropriate officer of the customs shall refuse to release the object 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 certificate or evidence is filed with such officer. If such certificate or evidence is not presented within ninety days after the date on which such object is refused release from customs custody, or such longer period as may be allowed by the Secretary for good cause shown, the object shall be subject to seizure and judicial forfeiture.

(c) Pending a final determination as to whether an article has been imported into the United States in violation of Section 3 or Section 5 of this Act, the Secretary of the Treasury shall, upon application, and provided that he finds (i) that sufficient safeguards will be taken for protection of such article and (ii) that a sufficient bond is posted to ensure its production, permit such article to be retained at any museum or similar art or scientific institution in the United States which is open to the public.

SECTION 4. (a) Any protected object of archeological or ethnological interest imported into the United States in violation of Section 3 shall be subject to seizure and judicial forfeiture. All provisions of law relating to seizure, judicial forfeiture and condemnation for violation of the customs laws shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as applicable, and not inconsistent with the provisions of this Act.

(b) Any protected object of archeological or ethnological interest forfeited to the United States under this Act shall —

(1) first be offered for return to the country of origin and shall be returned if that country bears the expenses incurred incident to such return and delivery and complies with such other requirements relating to the return as the Secretary of the Treasury shall prescribe; or

(2) if not returned to the country of origin, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

SECTION 5. No article appertaining to the inventory of a museum or religious or secular public monument or similar institution in a State Party to the Convention which is stolen after the effective date of this Act, or after the date of entry into force of the Convention for the state concerned, whichever is later, may be imported into the United States.

SECTION 6. (a) Any article imported into the United States in violation of Section 5 shall be subject to seizure and judicial forfeiture. All provisions of law relating to seizure, judicial forfeiture and condemnation for violation of the customs laws shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as applicable, and not inconsistent with the provisions of this Act.

(b) In any action for forfeiture under this section where the claimant establishes valid title to the article, under the 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 (i) the State Party to which the article is to be returned pays the claimant the amount the claimant paid for the article or (ii) the United States establishes that said 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.

(c) Any article forfeited to the United States under this Act shall —

(1) first be offered for return to the State Party to the Convention in whose territory is situated the institution referred to in Section 5 of this Act 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 of the Treasury shall prescribe; or

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

SECTION 7. Notwithstanding the provisions of Section 615 of the Tariff Act of 1930, as amended (19 U.S.C. 1615), in any forfeiture proceeding brought under the provisions of this Act where the property is claimed by any person the United States shall establish, in the case of objects subject to the provisions of Section 3, that the object has been listed by the Secretary of the Treasury in accordance with Section 2 and, in the case of articles subject to the provisions of Section 5, that the article appertained to the inventory of a museum or religious or secular public monument or similar institution in a State Party to the Convention and that it was stolen from such institution after the effective date of this Act, or after the date of entry into force of the Convention for the State Party concerned, whichever is later.

SECTION 8. The Secretary of the Treasury shall prescribe such rules and regulations as are necessary and appropriate to carry out the provisions of this Act.

SECTION 9. For the purposes of this Act —

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

(b) The term "protected object of archeological or ethnological interest" means any object of archeological or ethnological interest, including any fragment or part thereof, which is subject to export control by the country of origin and is encompassed by an agreement

with the country of origin made pursuant to Section 1 of this Act.

(c) The term "country of origin," was applied to any protected object of archeological or ethnological interest, means the country where such object was first discovered.

(d) The term "the 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 Organizations at its sixteenth session.

(e) The term "consignee" means consignee as defined in Section 483 of the Tariff Act of 1930, as amended (19 U.S.C. 1483).

SECTION 10. In the Customs Territory of the United States, and in the Virgin Islands the provisions of this Act shall be enforced by appropriate Customs officers. In any other territory or area subject to this Act, the provisions shall be enforced by such persons as may be designated by the President.

April 1, 1975

Sectional Analysis

Section 1. This section establishes part of the machinery required to implement Article 9 of the UNESCO Convention. That article allows any state party to the Convention whose cultural patrimony is in jeopardy from pillage of archeological or ethnological materials to call upon other states parties who are affected. The states parties undertake to determine and carry out the necessary concrete measures, including the control of the exports and imports and international commerce in the specific materials concerned. Section 1 authorizes the President to enter into agreements with the state party, and with other governments as appropriate, to restrict importation of specifically designated objects or classes of objects of archeological or ethnological interest for a period of time considered required to achieve the purposes of the Convention. Prior to entry into any such agreement, the section requires that the President determine that the cultural patrimony of a state party is in jeopardy from pillage of archeological or ethnological materials, that the state party has taken measures for the protection of its cultural patrimony, that import controls by the United States with respect to designated objects or classes of objects would be of substantial benefit in deterring such pillage, and that the establishment of import controls in the particular circumstance is consistent with the general interest of the international community in the interchange of cultural property. In making these determinations and in formulating appropriate restrictions, the President is to consider, but is not bound by, the advice of a panel of experts representing the interested art, museum and scientific communities and qualified to advise on the particular problem which he shall appoint for that purpose. The requirement that the President make these findings prior to entering into an agreement is meant to ensure that a factual situation does indeed exist where such extreme measures as import controls are appropriate, that less drastic measures are not available, and that import controls by the United States would have the intended effect in remedying the situation. It is anticipated that the authority provided in this section would be used only in serious situations and the President would not use this authority to conclude general agreements prohibiting the entry of all objects of archeological or ethnological interest regardless of size, cultural or scientific importance or monetary value or for prohibiting the entry of such objects when they are not in danger. Generally, specific categories of material would be agreed to by the President.

Section 2. This section provides for the public notice required to make the provisions in sections 1 through 4 of the implementing legislation effective. After the findings required by Section 1 have been made, and after the President has entered into an agreement under that section, this section provides for the promulgation of regulations listing the covered materials. The proposed regulations would be published with a request for comments prior to their effective date in accordance with the provisions of the Administrative Procedure Act. The import of these materials is prohibited by section 3.

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Section 3. Section 3 prohibits the import of the materials listed pursuant to section 2 of the draft bill. In addition, the section requires that the material in question must have been exported from the country of origin after the effective date of the regulation listing such object and that the export of that object was in violation of the laws of that country. In the case of the importation of an object listed pursuant to section 2, if the consignee is unable to present satisfactory evidence that the object was exported on or before the effective date of the regulation or a certificate of the country of origin certifying that such exportation was not in violation of its laws, the object shall be refused release from custody and so held for an additional period of 90 days (which may be extended for cause) during which the consignee may still present evidence that the object in question meets the requirements for release from custody. If such certificate or evidence is not presented within the 90 day period or any extended period, the object shall be subject to seizure and judicial forfeiture. However, under section 3 (c) the Secretary of the Treasury, pending a final determination on whether importation has been in violation of sections 3 or 5, may allow a museum to retain its object if certain conditions are satisfied.

Section 4. This section provides that protected objects of archaeological or ethnological interest (those objects listed in a regulation promulgated pursuant to section 2 of the draft bill) imported into the United States in violation of the bill (that is, the prohibition contained in section 3) shall be subject to seizure and judicial

forfeiture under the customs laws relating to seizure, judicial forfeiture and condemnation.

This section also provides for the disposition of protected objects which are judicially forfeited to the United States. Such objects shall first be offered for return to the country of origin and shall be returned if that country bears the expenses incurred incident to such return and delivery and compliance with such other requirements relating to the return as may be prescribed. If the object is not returned to the country of origin, either because that country does not accept the offer for return or is unwilling to bear the expenses of return or meet other relevant conditions, the object shall be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

Section 5. This section and the following section implement Article 7 (b) of the Convention, requiring the prohibition of imports of cultural property stolen from a museum or a religious or secular public monument or similar institution in another state party to the Convention after the entry into force of the Convention for the states concerned. The requirement that the article in question appear in the inventory of such an institution will allow appropriate documentation that it was stolen from such an institution. This section prohibits the importation of such objects, and the following section provides the conditions for seizure, judicial forfeiture, and return of such objects.

Section 6. Paragraph (a). This paragraph provides that any article imported into the United States in violation of section 5 shall be subject to seizure and judicial forfeiture under the customs laws

AFFA: A Proposed Resolution

The following resolution is currently being submitted for approval by mail ballot to the membership of the Association for Field Archaeology.

Be it resolved that the Association for Field Archaeology

fully supporting the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property as a useful instrument for the preservation of the material heritage of mankind and a necessary expression of national responsibility before the nations of the world

and cognizant of the action of the United States Senate in giving its advice and consent to ratification of this convention on August 11, 1972 by a vote of 79 to 0

expresses its concern over the delay of legislation to implement this convention in the Congress

and calls upon its members and all American archaeologists to seek the speedy introduction and passage of such legislation in the House of Representatives and the Senate.

Resolution from Cornell

We the undersigned members of the Intercollegiate Program in Archaeology of Cornell University strongly support the proposed legislation to implement the UNESCO Draft Convention on illicit traffic in antiquities. This legislation is an important measure to discourage the pillaging of archaeological sites in many countries and it merits the full support of all archaeologists, regardless of their particular areas of speciality.

John E. Coleman, Associate Professor of Classics
 Andrew Ramage, Assistant Professor of the History of Art and Co-Director, Intercollegiate Program in Archaeology
 W. Willson Cummer, Assistant Professor of Architecture
 John F. Scott, Assistant Professor of the History of Art
 John S. Henderson, Assistant Professor of Anthropology
 Ellen Herscher, Instructor of Archaeology
 Thomas F. Lynch, Professor of Anthropology and Archaeology and Co-Director, Intercollegiate Program in Archaeology

relating to seizure, judicial forfeiture and condemnation, subject to the limitations of Section 6 (b). The paragraph parallels section 4 (a). However, as only stolen items are covered under this paragraph, a regulation listing prohibited objects is not required. It should be noted that the language of this paragraph, as well as the language of the parallel Section 4 (a), dealing with judicial forfeiture would give to the federal courts jurisdiction to decide all the questions of law and fact involved and that there are to be no summary forfeitures permitted under this bill.

Paragraph (b). This paragraph provides limitations on the forfeiture of articles falling under paragraph (a). The first sentence implements the requirement in Article 7 (b) (ii) that an offer of just compensation be made to one holding valid title to the article by the state requesting return of the article. The second sentence relates to the claimant who does not establish title, but is an innocent purchaser. Article 7 (b) (ii) of the Convention provides that an offer of just compensation must be made to such an innocent purchaser. However, as such persons generally would not be compensated under the applicable municipal law in the United States, sub-paragraphs (i) and (ii) of Section 6 (b) of the bill now provide, in accordance with the fourth understanding adopted by the Senate, that the State Party must offer compensation in the amount of the purchase price to the innocent purchaser unless the United States 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 the payment of compensation. It is considered that reciprocity would have to be shown by a government decree, proclamation, written commitment, written opinion or other written document.

Paragraph (c). This paragraph provides for the return of objects forfeited in accordance with the previous paragraphs of this section. The paragraph parallels section 4 (b).

Section 7. This section establishes the burden of proof on the United States in forfeiture proceedings brought for violations of sections 3 and 5 of the Act.

Section 8. This section authorizes the promulgation of rules and regulations necessary and appropriate to carry out the provisions of the draft bill. For example, such regulations will be required under sections 2, 4 (b), and 6 (c).

Section 9. This section provides definitions for the purposes of this Act.

Section 10. This section provides for enforcement in certain areas by customs officials and in other areas by persons designated by the President.

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 at 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.

218 *The Antiquities Market***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 State 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 6 (b) and 7 (b) above.

Article 9

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent 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.

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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.

Ratified by Ecuador, Bulgaria, Nigeria, Central African Republic, Kuwait, Cameroon, Khmer Republic, Yugoslavia, Mexico, Niger, Libyan Arab Republic, Argentina, Iraq, Brazil, Dominican Republic, Arab Republic of Egypt, Panama, German Democratic Republic, Poland, Jordan, Algeria, Zaïre, Iran, Syrian Arab Republic, Tunisia.

CONVENTION FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

The General Conference of the United Nations Educational, Scientific and Cultural Organization meeting in Paris from 17 October to 21 November 1972, at its seventeenth session,

Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction,

Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world,

Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific and technical resources of the country where the property to be protected is situated,

Recalling that the Constitution of the Organization provides that it will maintain, increase and diffuse knowledge, by ensuring the conservation and protection of the world's heritage, and recommending to the nations concerned the necessary international conventions,

Considering that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong,

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole,

Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the States concerned, will serve as an effective complement thereto,

Considering that it is essential for this purpose to adopt new provisions in the form of a convention establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods,

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

Adopts this sixteenth day of November 1972 this Convention.

I. DEFINITIONS OF THE CULTURAL AND THE NATURAL HERITAGE

Article 1

For the purposes of this Convention, the following shall be considered as "cultural heritage":

monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

Article 2

For the purposes of this Convention, the following shall be considered as "natural heritage":

natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;

geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;

natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

Article 3

It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above.

II. NATIONAL PROTECTION AND INTERNATIONAL PROTECTION OF THE CULTURAL AND NATURAL HERITAGE

Article 4

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

Article 5

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

- (a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;
- (b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions;
- (c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of countering the dangers that threaten its cultural or natural heritage;
- (d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and
- (e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field.

Article 6

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property rights provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.
2. The States Parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and preservation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request.
3. Each State Party to this Convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other States Parties to this Convention.

Article 7

For the purposes of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage.

III. INTERGOVERNMENTAL COMMITTEE FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

Article 8

1. An Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Committee," is hereby established within the United Nations Educational, Scientific and Cultural Organization. It shall be composed of 15 States Parties to the Convention, elected by States Parties to the Convention meeting in general assembly during the ordinary session of the General Conference of the United Nations Educational, Scientific and Cultural Organization. The number of States members of the Committee shall be increased to 21 as from the date of the ordinary session of the General Conference following the entry into force of this Convention for at least 40 States.
2. Election of members of the Committee shall ensure an equitable representation of the different regions and cultures of the world.
3. A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre), a representative of the International Council of Monuments and Sites (ICOMOS) and a representative of the International Union for Conservation of Nature and Natural Resources (IUCN), to whom may be added, at the request of States Parties to the Convention meeting in general assembly during the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization, representatives of other intergovernmental or non-governmental organizations, with similar objectives, may attend the meetings of the Committee in an advisory capacity.

Article 9

1. The term of office of States members of the World Heritage Committee shall extend from the end of the ordinary session of the General Conference during which they are elected until the end of its third subsequent ordinary session.
2. The term of office of one-third of the members designated at the time of the first election shall, however, cease at the end of the first ordinary session of the General Conference following that at which they were elected, and the term of office of a further third of the members designated at the same time shall cease at the end of the second ordinary session of the General Conference following that at which they were elected. The names of these members shall be chosen by lot by the President of the General Conference of the United Nations Educational, Scientific and Cultural Organization after the first election.
3. States members of the Committee shall choose as their representatives persons qualified in the field of the cultural or natural heritage.

Article 10

1. The World Heritage Committee shall adopt its Rules of Procedure.
2. The Committee may at any time invite public or private organizations or individuals to participate in its meetings for consultation on particular problems.
3. The Committee may create such consultative bodies as it deems necessary for the performance of its functions.

Article 11

1. Every State Party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance.
2. On the basis of the inventories submitted by States in accordance with paragraph 1, the Committee shall establish, keep up to date and publish, under the title of "World Heritage List," a list of

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- properties forming part of the cultural heritage and natural heritage, as defined in Articles 1 and 2 of this Convention, which it considers as having outstanding universal value in terms of such criteria as it shall have established. An updated list shall be distributed at least every two years.
- The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute.
 - The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of "List of World Heritage in Danger," a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects, destruction caused by changes in the use or ownership of the land, major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions, changes in water level, floods, and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately.
 - The Committee shall define the criteria on the basis of which a property belonging to the cultural or natural heritage may be included in either of the lists mentioned in paragraphs 2 and 4 of this article.
 - Before refusing a request for inclusion in one of the two lists mentioned in paragraphs 2 and 4 of this article, the Committee shall consult the State Party in whose territory the cultural or natural property in question is situated.
 - The Committee shall, with the agreement of the States concerned, co-ordinate and encourage the studies and research needed for the drawing up of the lists referred to in paragraphs 2 and 4 of this article.

Article 12

The fact that a property belonging to the cultural or natural heritage has not been included in either of the two lists mentioned in paragraphs 2 and 4 of Article 11 shall in no way be construed to mean that it does not have an outstanding universal value for purposes other than those resulting from inclusion in these lists.

Article 13

- The World Heritage Committee shall receive and study requests for international assistance formulated by States Parties to this Convention with respect to property forming part of the cultural or natural heritage, situated in their territories, and included or potentially suitable for inclusion in the lists referred to in paragraphs 2 and 4 of Article 11. The purpose of such requests may be to secure the protection, conservation, presentation or rehabilitation of such property.
- Requests for international assistance under paragraph 1 of this article may also be concerned with identification of cultural or natural property defined in Articles 1 and 2, when preliminary investigations have shown that further inquiries would be justified.
- The Committee shall decide on the action to be taken with regard to these requests, determine where appropriate, the nature and extent of its assistance, and authorize the conclusion, on its behalf, of the necessary arrangements with the government concerned.
- The Committee shall determine an order of priorities for its operations. It shall in so doing bear in mind the respective importance for the world cultural and natural heritage of the property requiring protection, the need to give international assistance to the property most representative of a natural environment or of

- the genius and the history of the peoples of the world, the urgency of the work to be done, the resources available to the States on whose territory the threatened property is situated and in particular the extent to which they are able to safeguard such property by their own means.
- The Committee shall draw up, keep up to date and publicize a list of property for which international assistance has been granted.
 - The Committee shall decide on the use of the resources of the Fund established under Article 15 of this Convention. It shall seek ways of increasing these resources and shall take all useful steps to this end.
 - The Committee shall co-operate with international and national governmental and non-governmental organizations having objectives similar to those of this Convention. For the implementation of its programmes and projects, the Committee may call on such organizations, particularly the International Centre for the Study of the Preservation and Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN), as well as on public and private bodies and individuals.
 - Decisions of the Committee shall be taken by a majority of two-thirds of its members present and voting. A majority of the members of the Committee shall constitute a quorum.

Article 14

- The World Heritage Committee shall be assisted by a Secretariat appointed by the Director-General of the United Nations Educational, Scientific and Cultural Organization.
- The Director-General of the United Nations Educational, Scientific and Cultural Organization, utilizing to the fullest extent possible the services of the International Centre for the Study of the Preservation and the Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN) in their respective areas of competence and capability, shall prepare the Committee's documentation and the agenda of its meetings and shall have the responsibility of the implementation of its decisions.

IV. FUND FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

Article 15

- A Fund for the Protection of the World Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Fund," is hereby established.
- The Fund shall constitute a trust fund, in conformity with the provisions of the Financial Regulations of the United Nations Educational, Scientific and Cultural Organization.
- The resources of the Fund shall consist of:
 - compulsory and voluntary contributions made by the States Parties to this Convention;
 - contributions, gifts or bequests which may be made by:
 - other States;
 - the United Nations Educational, Scientific and Cultural Organization, other organizations of the United Nations system, particularly the United Nations Development Programme or other intergovernmental organization;
 - public or private bodies or individuals;
 - any interest due on the resources of the Fund;
 - funds raised by collections and receipts from events organized for the benefit of the Fund; and
 - all other resources authorized by the Fund's regulations, as drawn up by the World Heritage Committee.
- Contributions to the Fund and other forms of assistance made available to the Committee may be used only for such purposes as the Committee shall define. The Committee may accept contributions to be used only for a certain programme or project, provided that the Committee shall have decided on the implementation of such

programme or project. No political conditions may be attached to contributions made to the Fund.

Article 16

1. Without prejudice to any supplementary voluntary contribution, the States Parties to this Convention undertake to pay regularly, every two years, to the World Heritage Fund, contributions, the amount of which, in the form of a uniform percentage applicable to all States, shall be determined by the General Assembly of States Parties to the Convention, meeting during the sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization. This decision of the General Assembly requires the majority of the States Parties present and voting, which have not made the declaration referred to in paragraph 2 of this Article. In no case shall the compulsory contribution of States Parties to the Convention exceed 1% of the contribution to the Regular Budget of the United Nations Educational, Scientific and Cultural Organization.

2. However, each State referred to in Article 31 or in Article 32 of this Convention may declare, at the time of the deposit of its instruments of ratification, acceptance or accession, that it shall not be bound by the provisions of paragraph 1 of this Article.

3. A State Party to the Convention which has made the declaration referred to in paragraph 2 of this Article may at any time withdraw the said declaration by notifying the Director-General of the United Nations Educational, Scientific and Cultural Organization. However, the withdrawal of the declaration shall not take effect in regard to the compulsory contribution due by the State until the date of the subsequent General Assembly of States Parties to the Convention.

4. In order that the Committee may be able to plan its operations effectively, the contributions of States Parties to this Convention which have made the declaration referred to in paragraph 2 of this Article, shall be paid on a regular basis, at least every two years, and should not be less than the contributions which they should have paid if they had been bound by the provisions of paragraph 1 of this Article.

5. Any State Party to the Convention which is in arrears with the payment of its compulsory or voluntary contribution for the current year and the calendar year immediately preceding it shall not be eligible as a Member of the World Heritage Committee, although this provision shall not apply to the first election.

The terms of office of any such State which is already a member of the Committee shall terminate at the time of the elections provided for in Article 8, paragraph 1 of this Convention.

Article 17

The States Parties to this Convention shall consider or encourage the establishment of national, public and private foundations or associations whose purpose is to invite donations for the protection of the cultural and natural heritage as defined in Articles 1 and 2 of this Convention.

Article 18

The States Parties to this Convention shall give their assistance to international fund-raising campaigns organized for the World Heritage Fund under the auspices of the United Nations Educational, Scientific and Cultural Organization. They shall facilitate collections made by the bodies mentioned in paragraph 3 of Article 15 for this purpose.

V. CONDITIONS AND ARRANGEMENTS FOR INTERNATIONAL ASSISTANCE

Article 19

Any State Party to this Convention may request international assistance for property forming part of the cultural or natural heritage of outstanding universal value situated within its territory. It shall submit with its request such information and documentation provided for in Article 21 as it has in its possession and as will enable the Committee to come to a decision.

Article 20

Subject to the provisions of paragraph 2 of Article 13, sub-paragraph (c) of Article 22 and Article 23, international assistance provided for by this Convention may be granted only to property forming part of the cultural and natural heritage which the World Heritage Committee has decided, or may decide, to enter in one of the lists mentioned in paragraphs 2 and 4 of Article 11.

Article 21

1. The World Heritage Committee shall define the procedure by which requests to it for international assistance shall be considered and shall specify the content of the request, which should define the operation contemplated, the work that is necessary, the expected cost thereof, the degree of urgency and the reasons why the resources of the State requesting assistance do not allow it to meet all the expenses. Such requests must be supported by experts' reports whenever possible.

2. Requests based upon disasters or natural calamities should, by reason of the urgent work which they may involve, be given immediate, priority consideration by the Committee, which should have a reserve fund at its disposal against such contingencies.

3. Before coming to a decision, the Committee shall carry out such studies and consultations as it deems necessary.

Article 22

Assistance granted by the World Heritage Committee may take the following forms:

- (a) studies concerning the artistic, scientific and technical problems raised by the protection, conservation, presentation and rehabilitation of the cultural and natural heritage, as defined in paragraphs 2 and 4 of Article 11 of this Convention;
- (b) provision of experts, technicians and skilled labour to ensure that the approved work is correctly carried out;
- (c) training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage;
- (d) supply of equipment which the State concerned does not possess or is not in a position to acquire;
- (e) low-interest or interest-free loans which might be repayable on a long-term basis;
- (f) the granting, in exceptional cases and for special reasons, of non-repayable subsidies.

Article 23

The World Heritage Committee may also provide international assistance to national or regional centres for the training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage.

Article 24

International assistance on a large scale shall be preceded by detailed scientific, economic and technical studies. These studies shall draw upon the most advanced techniques for the protection, conservation, presentation and rehabilitation of the natural and cultural heritage and shall be consistent with the objectives of this Convention. The studies shall also seek means of making rational use of the resources available in the State concerned.

Article 25

As a general rule, only part of the cost of work necessary shall be borne by the international community. The contribution of the State benefiting from international assistance shall constitute a substantial share of the resources devoted to each programme or project, unless its resources do not permit this.

Article 26

The World Heritage Committee and the recipient State shall define in the agreement they conclude the conditions in which a programme or project for which international assistance under the terms of this Convention is provided, shall be carried out. It shall be the respon-

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ability of the State receiving such international assistance to continue to protect, conserve and present the property so safeguarded, in observance of the conditions laid down by the agreement.

VI. EDUCATIONAL PROGRAMMES

Article 27

1. The States Parties to this Convention shall endeavour by all appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect by their peoples of the cultural and natural heritage defined in Articles 1 and 2 of the Convention.
2. They shall undertake to keep the public broadly informed of the dangers threatening this heritage and of activities carried on in pursuance of this Convention.

Article 28

States Parties to this Convention which receive international assistance under the Convention shall take appropriate measures to make known the importance of the property for which assistance has been received and the role played by such assistance.

VII. REPORTS

Article 29

1. The States Parties to this Convention shall, in the reports which they submit 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.
2. These reports shall be brought to the attention of the World Heritage Committee.
3. The Committee shall submit a report on its activities at each of the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization.

VIII. FINAL CLAUSES

Article 30

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

Article 31

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 32

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 by the General Conference of the Organization to accede to it.
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 33

This Convention shall enter into force three months after the date of the deposit of the twentieth instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments of ratification, acceptance or accession 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 34

The following provisions shall apply to those States Parties to this Convention which have a federal or non-unitary constitutional system:

- (a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal States;
- (b) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of individual constituent States, countries, provinces or cantons that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

Article 35

1. Each State Party to this Convention may denounce the Convention.
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. It shall not affect the financial obligations of the denouncing State until the date on which the withdrawal takes effect.

Article 36

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 32, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, or accession provided for in Articles 31 and 32, and of the denunciations provided for in Article 35.

Article 37

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 38

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 twenty-third day of November 1972, in two authentic copies bearing the signature of the President of the seventeenth 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 31 and 32 as well as to the United Nations.

Ratified by United States of America, Egypt, Iraq, Bulgaria, Sudan, Algeria, Australia, Zaïre, Nigeria, Niger, Iran, Tunisia, Jordan, Yugoslavia, Ecuador.

National Antiquities Laws

For our readers who would like to learn the details of antiquities laws in various countries the UNESCO-ICOM Documentation Centre, 1 rue Miollis, 75015, Paris, France has a file of national legislations on the protection of cultural heritage. The appropriate legislation of the countries listed below is available on microfiche for cost and postage: in most cases, only a few dollars.

Country	Number	Language	Country	Number	Language
Afghanistan	1	English/French	British Honduras	1	English
Republic of South Africa	1	English	Hong-Kong	1	English
Albania	1	French	Hungary	2	French
Algeria	1	French	Mauritius	1	English
German Federal Republic	1	German	Solomon Islands	1	English
Argentina	1	Spanish	India	2	English
Australia	1	English	Indonesia	1	English/Dutch
Austria	1	German	Iraq	1	English
Bahrain	1	English	Iran	1	French
Belgium	2	French/Flemish	Israel	1	English
Burma	1	English	Ireland	1	English
Bolivia	1	Spanish	Northern Ireland	1	English
Brazil	1	Portuguese	Italy	1	Italian
Brunei	1	English	Japan	1	English
Bulgaria	1	Polish/French/English/ Bulgarian	Jordan	2	English
Burundi	1	French	Kenya	1	English
Cambodia	1	French	Kuwait	1	English
Cameroons	1	French	Lebanon	1	French
Canada	4	English/French	Libya	1	English
Ceylon	2	English	Lesotho	1	English
Chile	2	Spanish	Luxembourg	1	French
China, Republic of	1	English	Republika Malagassy	1	French
Cyprus	1	English	Malaysia	1	English
Colombia	1	Spanish	Malawi	1	English
Congo Brazzaville	1	French	Mali	1	French
Korea	2	English	Malta	1	English
Costa Rica	1	Spanish	Morocco	1	French
Cuba	1	Spanish	Mauritania	1	French
Dahomey	1	French	Mexico	2	Spanish
Denmark	2	Danish/English	Monaco	1	French
Egypt	1	French	Nepal	1	English
El Salvador	1	Spanish	Nicaragua	1	Spanish
Ecuador	1	Spanish	Nigeria	1	English
Spain	4	Spanish/English	Norway	1	Norwegian
United States	2	English	New Zealand	1	English
Ethiopia	1	English	Uganda	1	English
Fiji	1	English	Pakistan	1	English
Finland	1	French/English	Panama	1	Spanish
France	2	French	Papua & New Guinea	1	English
Gabon	1	French	Netherlands	1	English/Dutch
Gambia	1	English	Peru	1	Spanish
Ghana	1	English	Philippines	2	English
Great Britain	1	English	Poland	1	English/French
Greece	1	French/English	French Polynesia	1	French
Guatemala	1	Spanish	Portugal	1	Portuguese
Haiti	1	French	Dominican Republic	1	Spanish
Honduras	1	Spanish	Rhodesia	1	English
			Rumania	1	French/Romanian

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Country	Number	Language
Sierra Leone	1	English
Sudan	1	English
Sweden	1	Swedish/English/French
Switzerland	1	French/German
Syria	1	French
Tanzania	1	English
Chad	1	French
Czechoslovakia	1	French/Czech
Thailand	2	English
Turkey	1	French
Uruguay	1	Spanish
Venezuela	1	Spanish
Viet Nam, Republic of	1	French
Yugoslavia	1	English/Slovene
Zaire	1	French
Zambia	1	English

Archaeometric Clearinghouse

Curt W. Beck

The ASTM Directory of Commercial Testing Laboratories

The first "Archaeometric Clearinghouse" (*JFA* 2 [1975] 169-178) listed the names and addresses of physical scientists who had declared their interest in working on archaeological finds. While most of the respondents were in academic or research institutions, the roster included a number of commercial firms which will carry out specific analyses or tests on a fee basis. There are, of course, many such firms and their services will be useful to archaeologists who are willing and able to pay commercial fees and who understand that fee testing differs fundamentally from the scholarly collaboration which ideally exists between the archaeologist and the archaeometrist. Within these limitations, commercial laboratories can supply a needed service, and a listing of such firms will be a useful resource.

Between 1927 and 1947 the Bureau of Standards in the U.S. Department of Commerce published the *Directory of Commercial and College Testing Laboratories*. In 1954 the American Society for Testing and Materials (ASTM) assumed this responsibility, and the current sixth edition of the directory was published in 1975 as *ASTM Special Publication 333D*.

Since its establishment as a non-profit corporation in 1898, the primary activity of the American Society for Testing and Materials has been the development of standards on the characteristics and performance of materials, products, systems and services. The term standards includes test methods, definitions, recommended practices, classifications and specifications. The materials covered range from raw materials to every conceivable industrial product. Accordingly, the *Directory of Testing Laboratories* includes a large variety of services which can be of no interest to archaeologists, from the weather resistance of paint to the acoustical properties of materials of construction and the serviceability of bicycles. But the directory includes many laboratories which will analyze materials of the kind

found in archaeological contexts and it provides the most convenient way to locate these.

The directory lists 440 commercial and institutional laboratories, 39 of which have a total of 480 branch offices. Most of the entire are of American firms, but there are about 50 firms or branches in Canada, Western Europe (largely Great Britain), Asia, Africa and Australia, and even one in Eastern Europe (Yugostavia).

The services offered by each laboratory are given in a two-element code: one to indicate the materials tested and one to show the type of tests performed. The materials code contains nine broad categories identified by capital letters from A to K: thus A stands for Animal and Plant Products, D for Non-metallic Minerals, and E for Metals. These large groups are further sub-divided into 45 more specific terms which carry Arabic numerals. For example, the broad category E (=Metals) includes the sub-divisions 22 for Metal Ores, 23 for Ferrous Alloys and Steels, 24 for Non-ferrous Metals and Alloys, etc. A testing laboratory which deals with all metals will be identified only by the letter E; one which will test only non-ferrous metals will be identified by the number 24, not by E24.

The second element of the code uses lower-case letters from a to z to describe the kind of testing offered. The categories of particular interest to archaeologists include c for chemical analysis by wet, electrochemical or spectroscopic methods, m for microscopic examination, n for non-destructive testing, o for metallurgical techniques, x for x-ray and radiographic work, and y for radioactive and radioisotope analysis.

Thus 24/c means the chemical analysis of non-ferrous metals and alloys; 19/n the non-destructive analysis of glass; D/x the x-ray or radiographic examination of non-metallic minerals in general.

The task of finding an appropriate firm is made quite simple by a very useful index arranged by the broad materials categories, A to K, and sub-divided

The Antiquities Market

News and Commentary on the Illicit Traffic in Antiquities

Karen D. Vitelli

The Antiquities Market is a regular feature of the *Journal of Field Archaeology*. Its aim is to provide just what is stated in the subtitle: news and commentary on the illicit traffic in antiquities. The presence of this feature in the *Journal* reflects one of the central concerns of the Association for Field Archaeology, that is, the proper recovery and the protection of antiquities. We welcome reports on thefts and other items related to the illegal antiquities traffic, and contributions will be treated confidentially, if the author so desires. Readers are urged to send items for publication to Karen D. Vitelli, Ancient Studies, University of Maryland Baltimore County, 5401 Wilkens Avenue, Baltimore, Md., 21228.

Survey for Art Theft Archive

The Art Theft Archive, a special project of the International Foundation for Art Research, has begun the first nationwide art dealer survey on stolen art.

A questionnaire is being mailed to a sample of 300 of the more than 2500 fine arts and antiquities galleries throughout the U.S.

The Archive is asking for information on the experience of theft, on the incidence of traffic in stolen works, and for suggestions for disseminating descriptions and photographs of objects reported stolen.

This survey is being conducted as part of a two year study to determine the feasibility of establishing a comprehensive index of international art thefts. Such an Archive would catalogue and cross-index records of stolen art in order to aid art, law enforcement, and insurance communities involved in the recovery of art objects. The Archive will also serve as a documentary resource to be consulted in preventing the sale of stolen objects.

The Archive recently completed a survey of 240 American museums to determine the extent of their experience and concern with art theft. A legal study has also been carried out by the Volunteer Lawyers for the Arts in conjunction with the Archive.

BONNIE BURNHAM
BETH HERZ
ART THEFT ARCHIVE
NEW YORK CITY

Progress Report on H.R. 5643

H.R. 5643, A Bill to Implement the Convention on Cultural Property, is not only still alive but is making comparatively swift progress through the U.S. Congress. As a result of the several meetings of concerned parties and the staff of the Subcommittee on Trade in May, 1977,¹ the Subcommittee itself was able to complete its work on the bill at a mark-up session in late summer. The Subcommittee reported the bill to the full Committee on Ways and Means at its opening session on September 15, 1977. The Committee accepted the bill with some amendments, but without debate and reported it directly to the House of Representatives.

The staff hopes that the bill will come up for discussion on the House floor on October 3, 1977. Copies of the amended bill are not yet available, but the sudden progress of H.R. 5643 is encouraging.

K.D.V.

1. See *JFA* 4 (1977) 247-254.

The Antiquities Market

News and Commentary on the Illicit Traffic In Antiquities

The Antiquities Market is a regular feature of the *Journal of Field Archaeology*. Its aim is to provide just what is stated in the subtitle: news and commentary on the illicit traffic in antiquities. The presence of this feature in the *Journal* reflects one of the central concerns of the Association for Field Archaeology, that is, the proper recovery and the protection of antiquities. We welcome reports on thefts and other items related to the illegal antiquities traffic, and contributions will be treated confidentially, if the author so desires. Readers are urged to send items for publication to Karen D. Vitelli, Ancient Studies, University of Maryland Baltimore County, 5401 Wilkens Avenue, Baltimore, Md., 21228

Market Alert

Recent Thefts in Italy and Greece

Information on the following objects reported stolen from Italian archaeological sites and from the archaeological museum on the Greek island of Naxos was kindly provided by Bonnie Burnham of the International Foundation for Art Research, Inc.

Italy

1. On November 2, 1976, a painted plaster floor depicting the Head of Medusa was stolen from the House of Julius Polybius in the Pompeii Excavations. The stolen portion measures 0.30 m. x 0.30 m. The central part of the picture is broken into five fragments.
2. On October 24, 1976, a marble mask (FIG. 1) height 0.29 m., was stolen from the House of Amorini, *Reg. VI, Ins. XVI*, in the Pompeii Excavations.
3. Between November 29 and 30, 1976, a late Roman marble head and a fragment of a marble relief sculpture of a female torso were stolen from Torri in Sabina (Rieti).

Naxos, Greece

Thirty Cycladic marble figurines were stolen from the Archaeological Museum on the Aegean island of Naxos, Greece between 28 and 29 November, 1976. Please send any information on these figurines directly to Photeini Zapheropoulos, Ephor of the Cyclades, Philhellenon 32, Piraeus, Greece.

Catalog

1. Early Cycladic female idol, slightly damaged on the left shoulder. The hands are folded below the breasts; short legs with articulation of toes. The neck is undeveloped and the pubic area is clearly indicated. On the middle of the back a deep groove reaches to the feet. H. 0.23 m. *Provenance: Spedos, 1948. Museum Cat. No. 162.*
2. Early Cycladic female idol with reattached head at the base of the neck; the legs are also reattached at the knees. Plastic treatment of the pubic area and rather developed breasts. On the middle of the back a vertical groove marks the spinal column. H. 0.27 m. *Provenance: Spedos, 1948. Museum Cat. No. 163 (FIG. 2a).*
3. Early Cycladic female idol similar to No. 163, but more elongated in form. The legs are missing from the knees. The head is reattached at the base of the neck and hands are folded under the breasts. H. 0.135 m. *Provenance: Spedos, 1948, Museum Cat. No. 164.*
4. Large Early Cycladic female idol of remarkably fine workmanship. The head is reattached at the base of the neck; right leg reattached at the knee. The hands are folded under the chest. The breasts are clearly indicated. On the middle of the back a vertical groove marks the spinal column. H. 0.455 m. *Provenance: Spedos, 1948. Museum Cat. No. 165.*
5. Early Cycladic female idol. The legs are broken at the knees. The thighs are closely joined together, but the lower legs are separated. The spherical protruding abdomen is defined at the lower boundary by an incised line. The lower part of the body bends back. The arms are folded on the chest, the neck is elongated, the pubic area is rendered by an incised triangle. H. 0.50 m. *Provenance: Phiontas, 1948. Museum Cat. No. 166.*
6. Early Cycladic female idol. The legs are joined together,



Figure 1. Marble mask stolen from Pompeii

the neck is slightly swollen, the spherical protruding abdomen is defined at its lower boundary by a gently curving horizontal line. The pubic area is rendered by an incised triangle. H. 0.30 m. *Provenance*: Phiontas, 1948. *Museum Cat. No.* 167 (FIG. 2a).

7. Early Cycladic female idol. The left foot is missing and the head is broken at the base of the neck. Similar to No. 167, but with a flat abdomen. H. 0.225 m. *Provenance*: Phiontas, 1948. *Museum Cat. No.* 168 (FIG. 2a).

8. Early Cycladic female idol. The head is broken at the base of the neck. The back is rectangular in shape; similar to No. 168. H. 0.18 m. *Provenance*: Phiontas, 1948. *Museum Cat. No.* 169 (FIG. 2b).

9. Early Cycladic female idol. Intact. The legs are closely joined together. An incised line under the abdomen. H. 0.15 m. *Provenance*: Phiontas, 1948. *Museum Cat. No.* 170 (FIG. 2b).

10. Early Cycladic female idol. The feet are missing and the head is reattached at the base of the neck. Of better workmanship than the other idols from the same site. Exceedingly high neck. *Provenance*: Phiontas, 1948. *Museum Cat. No.* 171 (FIG. 2b).

11. Early Cycladic female idol. The head is reattached at the base of the neck; legs reattached at the knees. The feet are missing. H. 0.42 m. *Museum Cat. No.* 194 (FIG. 3).

12. Early Cycladic female idol. The head is reattached at the base of the neck; lower part of the body reattached at the thighs. H. 0.48 m. *Museum Cat. No.* 195 (FIG. 4).

13. Early Cycladic female idol. The head is broken at the base of the neck and the legs are missing below the knees. There are indications of ears and an incision on the back of the neck. The breasts and abdomen are plastically rendered in a more successful way than in the rest of the idols. H. 0.205 m. *Museum Cat. No.* 196.

14. Early Cycladic female idol. The legs are missing below the knees. Incised line below the abdomen. The neck broadens slightly downwards. The hands are folded below the breasts. H. 0.31 m. *Museum Cat. No.* 197.

15. Early Cycladic female idol. The neck is reattached at the base of the neck. The legs are closely joined together; the hands are folded below the breasts; three vertical grooves on the back; indication of fingers and toes. H. 0.21 m. *Provenance*: Aplomata, 1951. *Museum Cat. No.* 205 (FIG. 2b).

16. Early Cycladic squatting and steatopygous female idol. One arm is restored. The arms are on the chest. The nose is plastically rendered. The fingers are indicated by incisions; vertical groove on the back. H. 0.095 m. *Provenance*: Sagri. *Museum Cat. No.* 210.

17. Large Early Cycladic female idol. Intact, except for slight and recent abrasions on both heels. The head has been recently broken off and is reattached. The body and the thighs are rather flat. The hands are folded under the chest, the nose and the breasts are plastically rendered. The fingers and the toes are indicated by incision, the head is lyre-shaped. H. 0.58 m. *Provenance*: Keros, 1967. *Museum Cat. No.* 4181.

18. Large Early Cycladic idol, intact. Traces of red color are preserved on the neck and of black at the eye. The hands are folded under the breasts. The nose and the breasts are plastically carved, the abdomen is slightly protruding. The fingers, toes and pubic area are indicated by incision. Vertical groove on the back. H. 0.42 m. *Provenance*: Confiscated (from Mich. Galanis). *Museum Cat. No.* 4674. (FIG. 5).

19. Early Cycladic female idol with reattached lower legs. Traces of color on the chest, shoulders, back, and knees. H. 0.20 m. *Museum Cat. No.* 4678 (FIG. 6).

20. Early Cycladic female idol. The right leg is missing below the knee (restored). Traces of red color at base of the neck on the back. The arms are folded under the breasts. H. 0.23 m. *Provenance*: Confiscated (from Mich. Galanis). *Museum Cat. No.* 4694.

21. Early Cycladic female idol. Intact. H. 0.204 m. *Provenance*: Aplomata, 1971. *Museum Cat. No.* 5460.

22. Early Cycladic female idol. The front part of the left foot is missing. H. 0.214 m. *Provenance*: Aplomata, 1971. *Museum Cat. No.* 5461.

23. Early Cycladic female idol. Intact. H. 0.204 m. *Provenance*: Aplomata, 1971. *Museum Cat. No.* 5462.

24. Early Cycladic female idol. The left foot is missing; surface is corroded and yellowish. H. 0.217 m. *Provenance*: Aplomata, 1971. *Museum Cat. No.* 5463 (FIG. 7).

25. Early Cycladic female idol. The left foot is missing; lower half of body is corroded on surface. H. 0.16 m. *Provenance*: Aplomata, 1971. *Museum Cat. No.* 5464 (FIG. 8).

26. Early Cycladic female idol. The left leg is reattached at

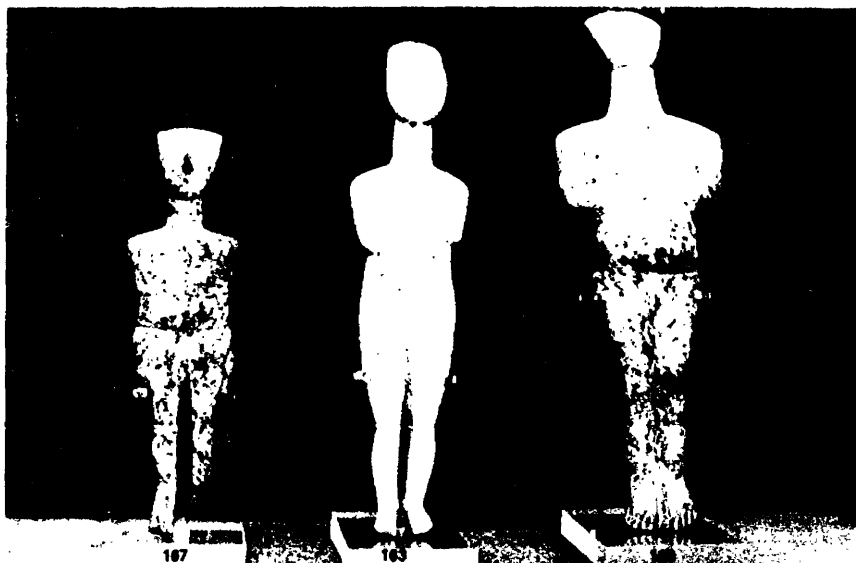


Figure 2 Cycladic marble figurines stolen from Naxos Museum. Top, a; bottom, b

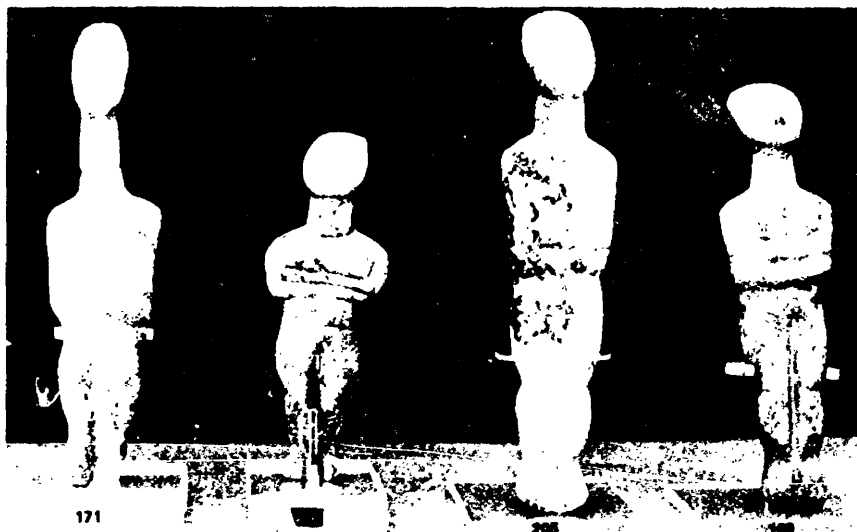




Figure 3. Cycladic figurine No. 194.



Figure 4. Cycladic figurine No. 195.



Figure 5. Cycladic figurine No. 4674.

the knee; both feet are broken off. The front surface is very corroded; the marble is yellowish. H. 0.169 m. *Provenance:* Aplomata, 1971. *Museum Cat. No.* 5465 (FIG. 9).

27. Early Cycladic female idol seated on stool. The arms are folded under the breasts. The head is broken and has been reattached. Small parts of the head in front are missing. H. 0.17 m. *Provenance:* Aplomata, 1971. *Museum Cat. No.* 5466 (FIG. 10).

28. Early Cycladic female idol seated on stool. The arms are folded under the breasts. The right leg is reattached at the knee; slightly damaged under the left shoulder. H. 0.171 m. *Provenance:* Aplomata, 1971. *Museum Cat. No.* 5467 (FIG. 11).

29. Early Cycladic female idol seated on chair with high back. The cross-bars of the back are curved; the left foot and the back of the chair are reattached. H. 0.14 m. *Provenance:* Aplomata, 1971. *Museum Cat. No.* 5468 (FIG. 12).

30. Early Cycladic female idol seated on stool. The legs are extended forward and are slightly bent. The feet are placed one upon the other, the arms are on the chest, and the head is turned upwards. H. 0.105 m. *Provenance:* Aplomata, 1971. *Museum Cat. No.* 30. (FIG. 13).



Figure 8. Cycladic figurine No. 5464.



Figure 9. Cycladic figurine No. 5465.

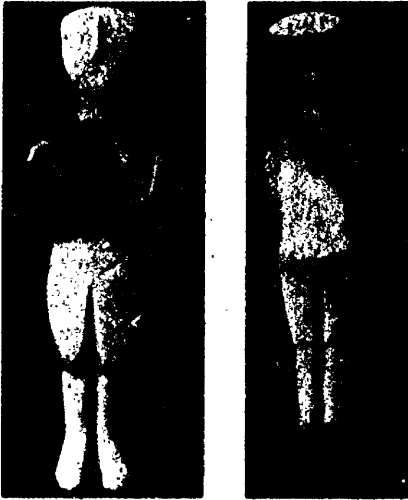


Figure 6. Cycladic figurine No. 4678; a) front view; b) back view.

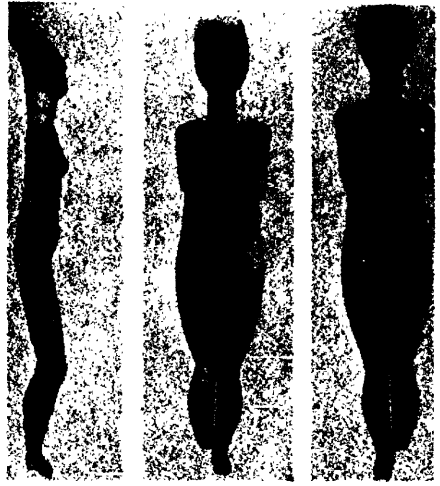


Figure 7. Cycladic figurine No. 5463; a) side view, b) back view; c) front view.



Figure 10. Cycladic seated figurine No. 5466.



Figure 11. Cycladic seated figurine No. 5467.



Figure 12. Cycladic seated figurine No. 5468.



Figure 13. Cycladic figurine No. 30.

Market Alert

Roman Sculpture Stolen from Aphrodisias

During the night of February 12 to 13, 1976, unknown persons entered the storeroom at Geyre (Aphrodisias), Turkey, and made off with eight pieces of sculpture from the Aphrodisias Excavations. The list of missing items was compiled by the excavation Director, Professor Kenan T. Erim, and was confirmed by assistants from the General Directorate of Antiquities and Museums of the Ministry of Culture of Turkey.

All of the pieces are carved out of Aphrodisias marble, which is generally medium- to coarse-grained, and white, when fresh, to white-yellow and/or white with gray or blue-gray overtones. None of the material has yet been recovered. Anyone with information about these pieces of sculpture is requested to contact Professor Kenan T. Erim, Director, Aphrodisias Excavations, Department of Classics, New York University, 700 Rufus D. Smith Hall, Washington Square, New York, New York 10003; Telephone (212) 598-3265.

Catalogue of Missing Sculpture

1. Inv. No. 64-7. *Fragmentary herm*. Possibly part of a table or



leg of some similar furniture. Youthful, probably female head tied with fillet over forehead and hair. The ends of the fillet fall on either side of the head and over the shoulders of the bust. About half of the pillar portion of herm preserved. Face is damaged, chipped; nose and portion of chin broken. On either side of herm, below bust, two rectangular insertion slots. H. 0.34 m. W. 0.08 m. Th. 0.135 m.

2. Inv. No. 65-442. *Figural Corinthian revetment plaster capital*. Framed by acanthus leaves, standing on egg-and-dart moulding and her head within a flower or leaf, the figure of Praziteles' Aphrodite of Knidos occupies the center of the capital. Left arm of the figure was restored. Surface encrusted. H. 0.30 m. W. 0.42 m. Th. 0.085 m. (Photo also published in *Archaeology* 20 [1967] 26, fig. 16.)



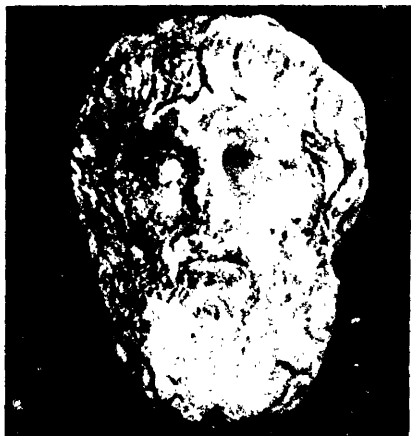
3. Inv. No. 66-87. *Figural Corinthian revetment plaster capital*. Similar to item above (65-442) and found within same archaeological context. Framed by acanthus leaves, standing on egg-and-dart moulding, his head in center of flower or leaf, the figure of Apollo occupies the middle of the capital. His



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right hand (broken) is stretched out, his left hand rests on a lyre, which is strapped to his torso and placed on a tripod with intertwined snake. Head wreathed and slightly turned to left. Various chips and breaks on surface. H. 0.29 m. W. 0.43 m. Th. ca. 0.06m.

4. Inv. No. 68-468. *Bearded male head.* Probably a poet or philosopher. Hair bound by rolled band, diadem or *taenia*. High cheek-bones, deep-set eyes with pupils indicated as half-



moon cuts. Beard and moustache flowing in long, regularly wavy strands. Long hair brushed forward over forehead; curls form a fork over center of forehead which is marked by furrows. Equally long curls falling over temples and ears (mostly concealed) frame face. Back of head more roughly finished. Hair starts at crown from a central point in a rough starfish pattern. Surface on right half of face deeply encrusted and stained. Fragment of beard below mouth broken. Nose, upper left brow, also broken. Various chips and stains all over face and back. H. 0.35 m. W. 0.23 m. Th. 0.235 m.

5. Inv. No. 69-66. *Figural Corinthian-type revetment pilaster capital.* Above a flurry of leaves, acanthus, acorns and pinecones, framed by outward, curving leaves, figure of a boy sits



on its left haunch, right leg brought forth, in a sort of shell-like arrangement of leaves and branches. Hands of the figure rest on these leaves to the right, as if engaged in some unclear activity, perhaps pruning or throwing dice. The boy could conceivably be an Eros, but there are no indications of wings. Restored from several fragments. Right corner repaired. Surface encrusted and stained. Lower leaves and branches broken. Face of boy stained. H. 0.30 m. W. 0.375 m. Th. 0.095 m.

6. Inv. No. 69-67. *Figural Corinthian-type revetment pilaster capital.* Similar to item listed above (69-66) and found in same



archaeological context, but obviously carved by a different hand. In this capital, figure of boy less chubby, face more delicately detailed. Restored from several fragments. Part missing on lower left side. Upper right corner also broken, as well as edges of shell-like arrangement of leaves. Upper moulding decorated with a wave pattern. H. 0.275 m. W. 0.290 m. Th. 0.029 m.

7. Inv. No. 70-534. *Small statue of Eros*. Eros, arms bound behind his back by a cloak (?), which falls on either side, leans against a pillar. His small wings are also spread out on either side of pillar. This fragment may be part of some small architectural decoration or marble furniture. Head slightly turned left; weight on left leg; right leg, now missing, was thrust forward. Face battered and dark-stained. Feet, right leg (from lower thigh), piece of left shoulder, penis missing. Recomposed from three fragments. H. 0.63 m. W. 0.18 m. Th. 0.22 m. Photo at right, top and bottom.

8. Inv. No. 70-637. *Fragmentary herm*. Probably part of a table or leg of small furniture or architectural decoration. Head of herm is that of a long, curly-haired, smiling child, possibly an Eros. Whole herm rests against a pillar which extends above head of child. At level of arms, on either side, rectangular insert-holes. Hole also on top of pillar. Face of Eros battered and chipped, nose and chin broken, as well as part of



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left lower shoulder. Lower portion of the whole item missing.
H. 0.465 m. W. 0.11 m. Th. 0.19 m.

KENANT.ERIM
NEW YORK UNIVERSITY

Thieves Take Gold from University Museum

Twenty-five Panamanian gold objects were stolen from the University Museum in Philadelphia between January 26 and 27, 1977. Dr. Ellen Kohler, Registrar of the Museum, provided the photographs and descriptions of the missing objects. Anyone with information about the pieces should call Dr. Kohler at (215) EV 6-7400, extension 212. Call collect.

Description of the Missing Gold Objects*13 Gold Earrods (FIG. 1)*

- No. 40-13-54 Tubular, without tips; L. 13.1 cm., weight 10.1 g.
No. 40-13-56 Tubular, without tips; L. 13 cm., weight ca. 8.7 g.
No. 40-13-60 Tubular; L. 13 cm. weight ca. 9.25 g.
No. 40-13-62 Earrod ferrule, lower closed end; L. 5.4 cm., weight 3.13 g.
No. 40-13-65 Earrod ferrule, lower closed end; L. 4.7 cm., weight 3.40 g.
No. 40-13-66 Earrod ferrule, crushed. L. 4.6 cm., weight 0.93 g.
No. 40-13-70 Earrod ferrule, anterior tubular end; L. 3.9 cm., weight 2.1 g.
No. 40-13-72 Earrod ferrule, anterior, with tip; L. 4.9 cm., weight 5.30 g.
No. 40-13-76 Earrod ferrule, lower closed end. L. 4.4 cm., weight 1.66 g.
No. 40-13-77 Earrod ferrule, lower closed end; L. 4.5 cm., weight 3.28 g.
No. 40-13-78 Earrod.
No. 40-13-82 Earrod.
No. 40-13-188 Earrod.

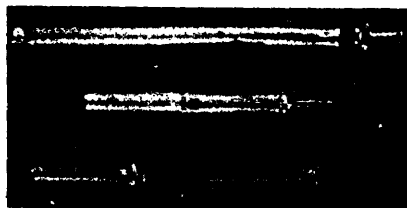


Figure 1. Gold earrods.



Figure 2. Gold disc. Inv. No. 40-13-7.

3 Gold Discs

- No. 40-13-7 (FIG. 2) Small, thin, bent disc. Two pairs of horizontal suspension holes near head. Human figure central: large rectangular head, large oval mouth full of rectangular teeth; short nose, oval eyes with horizontal slits; rectangular headdress on three sides with nine-rayed vertical crest; pendant ears or ear ornaments over shoulders; human arms with large five-fingered hands (no thumb) grasping bar; human legs with five toes; from waist a projection becoming body of a fish (?). D. 10.5 cm. x 10.3 cm.
No. 40-13-24 Gold disc.
No. SA 2809 Gold disc.

4 Gold Bead Necklaces (bearing the numbers listed)

- No. 40-13-39
No. 40-13-42 (two)
No. 40-13-43

5 Miscellaneous Fragments

- No. 40-13-94 (FIG. 3) Gold nose ornament; H. 1.6 cm., D. 2.2 cm.



Figure 3. Gold nose ornament. Inv. No. 40-13-94.

- No. 40-13-104 Gold bell.
 No. 40-13-165 Gold onlay.
 No. 40-13-176 Gold cap for whale's tooth, crushed.
 No. 41-5-7 Human figure, Veracruz.

The San Antonio Case: Convictions Overturned

Our colleagues in Texas have provided us with news clippings, summarized here, on recent developments in the important legal case known variously as The San Antonio or The Simpson Case. The case has specific relevance for all involved in the collection of Mexican antiquities. It could affect the future of all antiquities legislation and its enforcement in the U.S.

On August 21, 1974, Joseph M. Rodriguez, of Calexico, California, held a private sale of his collection of Mexican art objects and antiquities at a motel in San Antonio. He had acquired the collection in Mexico between 1964 and 1969 and had checked the objects through both Mexican and U.S. customs.

Four art dealers, William Clarke Simpson, his wife Ada, Michael Bradshaw, and Patty McClain decided to take the objects on consignment to sell. They say that they received prior assurance from the FBI office in San Antonio that the artifacts were not stolen, and from an attorney that it was legal to deal in the objects.

All five were arrested by an FBI agent posing as "Joe Dooley, an interested buyer," and were charged with interstate transportation of stolen merchandise. On June 22, 1975, in District Court in San Antonio, they were all convicted on several counts of conspiracy in the theft of artifacts from Mexico. At that trial, a Mexican official, citing a Mexican law of 1897, explained that the Mexican government considers all pre-Columbian artifacts recovered within its boundaries and exported since that date, without specific permission from the Mexican government, to be stolen.

In March, 1971, the United States and Mexico had entered into a treaty of cooperation "Providing for the Recovery and Return of Stolen Archaeological, Historical, and Cultural Properties."¹ The defendants in the San Antonio Case claim that the FBI singled them out to make a test case of this new treaty.

The convictions were appealed to the 5th U.S. Circuit Court of Appeals in New Orleans, Louisiana, which overturned the convictions of four of the defendants, and directed the District Court to rehear charges against Patty McClain. Fifth Circuit Justice John Minor

Wisdom ruled that the District Court was wrong to assume that every pre-Columbian artifact taken from Mexico was stolen. He wrote that "museum directors, art dealers, and innumerable private collectors throughout this country must have been in a state of shock when they heard the news—if they did—of the convictions of the five defendants in this case."

Judge Wisdom was correct in that statement. Interstate loans of pre-Columbian artifacts by U.S. museums, for example, have been at a virtual standstill pending the decision in the appeal of this case. The story, however, is not yet over: U.S. Attorney John Clark has said that his office will retry the case unless an appeals court sets aside the ruling in which the convictions were overturned.

K.D.V.

Antiquities Legislation to be Renewed

As with all pending legislation that was not acted upon by October 2, 1976, when Congress adjourned, H. R. 14171, *A Bill to Implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property*¹ has, once again, died. Mary Jane Wignot, a member of the Professional Staff of the Subcommittee on Trade of the House Ways and Means Committee, reports that a new bill, with some changes reflecting the criticisms addressed to H.R. 14171, will be introduced in a future session. The *JFA* will inform its readers when the Subcommittee is intending to hold hearings or solicit written comments on the new bill.

Most of the written comments on H.R. 14171,² including letters from the Association for Field Archaeology, the Archaeological Institute of America, the Association of Art Museum Directors, and the National Endowment for the Arts, expressed support for, and urged immediate passage of, the legislation. Other letters opposed or recommended changes in H.R. 14171. Since we are told that the new bill will reflect some of the criticisms and suggestions expressed in those letters, it seems appropriate to reprint some of them here so that our readers may consider in advance and deliberate on the possible changes to the previous bill.

K.D.V.

1. For the text of the treaty see Karl Meyer, *The Plundered Past: The Story of the Illegal International Traffic in Works of Art* (New York 1973) Appendix E, 271-273.

1. See "The Antiquities Market," *JFA* 3 (1976) 209-224 for full text and commentary.

2. "Written Comments on H.R. 14171," Committee Print for the

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Statement of the American Association of Dealers in Ancient, Oriental and Primitive Art

For the reasons set forth in this Statement, the American Association of Dealers in Ancient, Oriental and Primitive Art ("the Association") strongly opposes H.R. 14171. Because of the threat which this bill poses to the enjoyment of art by the United States public, the Association urges that the Subcommittee schedule full hearings on the bill so that members of the museum-going public, collectors, and members of the museum community may make known their objections to H.R. 14171.

The Association is comprised of dealers in a wide range of art—classical Greek and Roman art, ancient Near Eastern art, the arts of China, Japan, India and Southeast Asia, pre-Columbian art, and primitive art from a wide variety of cultures. These dealers sell not only to private collectors but also, and more importantly, to museums throughout the United States. They may well represent the most important source of ancient, oriental, and primitive art to public museum collections in the United States. They share the view expressed by Mr. Douglas Dillon in his letter to this Subcommittee on behalf of the Metropolitan Museum of Art that "[i]t is self-evident that legitimate movement of art across national lines benefits the public of all nations by allowing them the privilege of seeing the art of other cultures."

The Association's opposition to the bill, which should be fully explored at a hearing before the Subcommittee, is based primarily on the following factors:

1. H.R. 14171 needlessly confers upon the Department of State a "blank check" which could be employed to embargo the importation into the United States of almost *all* significant works of ancient, oriental and primitive art. Passage of the bill in its present form could cripple the growth of public museum collections in the United States and result in a severe cultural deprivation of the American public.

2. Although this bill is described as legislation "[t]o implement" the UNESCO Convention, the broad authority which this bill would confer upon the State Department is hardly required either by the spirit or the letter of the UNESCO Convention. The Association's opposition to H.R. 14171 is not based upon opposition to the principle [of] the UNESCO Convention. On the contrary, it is based upon the conviction that the bill is an extraordinarily ill-advised means of implementing that Convention—a means which needlessly poses

severe hazards to the enjoyment of art in the United States. As set forth below in detail, there are alternative and much more sensible means to implement the UNESCO Convention.

3. The State Department, the author of H.R. 14171, has not adequately taken into account views received from interested individuals and groups on a previous bill (H.R. 11754) introduced in the 93rd Congress to implement the Convention. Despite the fact that the prior bill and State Department drafts of the present bill were the subject of symposia sponsored by interested groups throughout the United States, the State Department has thus far failed adequately to respond to the central criticism directed against the bill—that it vests in the State Department an authority to curb imports of art and antiquities which is needlessly broad and which could and inevitably would be used for purposes completely unrelated to the purposes of the UNESCO Convention. The only concession which the State Department has made to this criticism is to require somewhat more complete "findings" by the Executive Branch before entering into agreements to ban the importation of art. However, the requirement of these findings provides no realistic check on the actions of the State Department.

4. Because of the highly controversial nature of this bill, the Committee should afford all interested parties a full and complete opportunity to present their views at a public hearing. There is certainly no urgent need for enactment of the bill. Indeed, the State Department has in effect allowed its proposed legislation to lay dormant for three years and should have no objection to a public airing of criticisms of the bill.

The Association sets forth below a more detailed explanation of its reasons for disapproval of H.R. 14171.

1. The Proposed Legislation Provides the Executive Branch with an Overly Broad Authority to Embargo Works of Art

The UNESCO Convention, to which the Senate gave its advice and consent on August 11, 1972, represented a compromise between the competing desires of art-exporting countries such as Iraq, the Khmer Republic, and Mexico and art importing countries such as England, France, and the United States. Originally, the art-exporting countries urged blanket export and import controls which would have effectively eliminated international art movement. The United States "resisted vehemently" this approach and emphasized the need of the United States and other art importing countries to provide their citizens with an appreciation not only of their own art and culture but also that of other

times and of other countries.¹ On the other hand, the United States recognized the need to deter trade in "mutilated art" which was the product of the despoliation of archaeological sites.

The United States urged that the problem of competing interests should be resolved through (1) efforts to restore objects stolen from museums and through mutual assistance in identification of cultural property, (2) through a "crisis" provision authorizing import controls on an ad hoc basis to deal with major problems of depredation where a state's cultural heritage "is jeopardized by the removal . . . of items of cultural property of great importance to the national patrimony."² Basically, this approach was adopted in the final draft of the Convention.³ Article 9 of the UNESCO Convention, the so-called "crisis provision," provides that a state whose cultural patrimony is jeopardized may "call upon other State Parties . . . 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."

The provisions of H.R. 14171 to which the Association objects purport to implement Article 9 of the UNESCO Convention. However, H.R. 14171 vests in the State Department a power to ban the importation of art into the United States which is far more sweeping than anything needed to fulfill the letter and the spirit of the UNESCO Convention. H.R. 14171 provides that the President, after making certain findings subsequently discussed, may enter into agreements with any state Party to the UNESCO treaty—

*** to restrict the importation of *** designated protected objects, or classes of objects, of archaeological or ethnological interest for a period considered required to achieve the purposes of the convention. (Section 1).

On the basis of such agreements, the Secretary of the Treasury, after consultation with the Secretary of State, is directed to promulgate a list of "protected objects of archaeological or ethnological interest ***" (Section 2). Section 3 (a) of the proposed legislation provides

1. Rogers & Cohen, *Art Pillage-International Solutions*, in DuBoff, *Art Law Domestic and International* 317 (1975); see, *The Legal Response to the Illicit Movement of Cultural Property*, 5 *Law & Pol. Int'l Bus.* 932, 949 *et seq.* (1973).

2. See, *The Legal Response*, *supra*, 5 *Law & Pol. Int'l Bus.* at 958.

3. Rogers & Cohen, *supra*, at 318. It should be noted that Article 7 of the Convention also required efforts to prevent the acquisition of stolen property. The provision implementing this Article is contained in Section 4 of the proposed legislation. The Association has no objection to this provision.

that no such protected object may be imported into the United States—

*** unless the government of the country of origin of such object issues a certificate which certifies that such exportation was not in violation of the laws of that country.⁴

It is important for the Subcommittee to recognize that export certificates are almost never granted in the case of archaeological and ethnological objects of any significance whatsoever and, in the case of some countries, are never granted at all. The proposed legislation could thus be used to halt the flow of ancient, oriental and primitive art into the United States except where the objects could be proved, say, to have been held in a European collection prior to the date of the regulation in question. *As a practical matter, broadly drafted regulations would terminate the importation of such art into the United States. This would merely deflect the flow of such art to other art-importing nations, which have declined to adopt the Convention.*

As previously emphasized, the extraordinarily broad authority which the proposed legislation thus vests in the executive branch—and, realistically, in the Department of State—is not required by the UNESCO Convention itself. Judged in terms of Article 9 of the UNESCO Convention, the proposed implementing legislation suffers from a double defect.

First, the implementing legislation is not limited to "crisis" situations and can be employed to provide for blanket restrictions on the importation of ancient, oriental and primitive art.

Second, the implementing legislation is not predicated upon concerted international action, but, on the contrary, contemplates action by the United States alone. However, unilateral import restrictions would in effect penalize the museum-going public in the United

4. The above-quoted provision is the heart of the proposed legislation, but it is supported by additional sections which provide that the consignee, absent an export certificate, may nevertheless obtain a protected object if he can prove that it was exported from its country of origin prior to the date of the regulation covering such object. If the consignee is unable to present to customs' officials an appropriate export certificate or "satisfactory evidence" of exportation prior to the effective date of the regulation listing the object, the object shall not be released from custody and, after 90 days, shall be subject to seizure and judicial forfeiture. (Section 3 (b)).

In a forfeiture proceeding, all that the United States would be called upon to establish is that the object had been listed by the Secretary of the Treasury. (Section 6). After this token showing, the burden of proof would shift to the consignee who, absent an export certificate, would have the burden of demonstrating that the object was exported from its country of origin prior to the date of the pertinent regulation. The difficulty of sustaining this burden would be enhanced by the fact that in many cases the country of origin of the object will itself be a matter of serious dispute.

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States without at the same time making any meaningful contribution to the preservation of art elsewhere.

The United States is the only major art-importing nation which has professed an interest in implementing the UNESCO Convention,⁵ and, if the United States acts alone in imposing import restrictions, it will not put an end to world trade in the art which it embargoes but will succeed only in rerouting the flow of art from the United States to such countries as Switzerland, West Germany, England, France and Japan.

II. The Requirement that the Executive Branch Make "Findings" Provides no Check on the Unwarranted Exercise of Its Authority

The only concession which the State Department has made to criticisms that its proposed implementing legislation confers excessive authority on the Executive Branch is to revise Section 1 of the bill to require somewhat more complete "findings" by the Executive Branch before it enters into agreements to ban the importation of art. The revised Section 1 thus provides for findings that: "the cultural patrimony of any State Party is in jeopardy from pillage of archaeological or ethnological materials;" that "such State Party has taken measures for the protection of its cultural patrimony;" that "import controls by the United States * * * would be of substantial benefit in deterring such pillage;" and that "the establishment of such import controls * * * is consistent with the general interest of the international community in the interchange of cultural property among nations * * *."

The requirement for such findings appears to recognize the interest of the United States in a reasonably free flow of ancient, oriental and primitive art across national lines. The problem, however, is that the bill provides no assurance whatsoever that the exercise of power by the Executive Branch will in actuality be restrained by the intent of the UNESCO Convention and by the spirit which the enumerated findings at least attempt to suggest. There is no requirement for a public hearing. There is no provision for an appeal from the findings. The findings are to be made after considering

the advice of a "panel of experts," but these experts are to be appointed by the Executive Branch and in any event the advice of the panel would not be binding. Under these circumstances, the making of findings as a prerequisite to Executive action can be expected to be ritualistic and pro forma in nature. *In sum, whatever language may be contained with respect to findings in H.R. 14171, the bill contains no objective and effective check on the discretion of the State Department.*

Nevertheless, the State Department's position is that the changes which it has made in the various findings required by Section 1 should mollify critics of the proposed legislation. Its position is that these changes make it clear that the legislation will be implemented only in critical situations and with a sensitive understanding of the legitimate interest of the United States in the importation of art. As set forth in its proposed Sectional Analysis to the draft of H.R. 14171 dated April 1, 1975, the State Department asserts that "[t]he requirement that the President make these findings * * * is meant to ensure that a factual situation does indeed exist where such extreme measures as import controls are appropriate * * *" and that "[i]t is anticipated that the authority provided * * * would be used only in serious situations." As previously emphasized, however, the requirement of findings contained in Section 1 of H.R. 14171 provides no such assurances. *As a practical matter, the nature of the diplomatic process coupled with the broad authority conferred by the proposed legislation means that the legislation will be implemented with relatively little discrimination.*

It is the Department of State which will make the findings and conclude the agreements called for by Section 1 of the proposed legislation. The Department of State, however, is not primarily interested in fostering the enjoyment of art by citizens of the United States. On the contrary, its primary responsibility is to foster better international relations. This overriding interest of the Department makes it almost inevitable that the powers conferred upon it by the proposed legislation will be employed as much for purposes unrelated to the preservation of art as it will be to fulfill the purposes of the UNESCO Convention. Indeed, the State Department could and undoubtedly would employ its powers under the proposed legislation as a counter in diplomatic negotiations on matters far removed from the protection of art objects and archaeological sites. Moreover, once the United States has agreed to bar imports from one nation, it will find it diplomatically untenable not to grant similar concessions to other nations

5. The Convention was adopted in November, 1970. Nevertheless, we understand that the present signatories are limited to Ecuador, Bulgaria, Nigeria, the Central African Republic, Cameroon, Kuwait, the Khmer Republic, Yugoslavia, Mexico, Niger, Libya, Argentina, Iraq, Brazil, the Dominican Republic, Egypt, Panama, the German Democratic Republic, Poland, Jordan, Zaire, Algeria, Iran, Tunisia and Syria. These nations will be joined by the United States once implementing legislation has been enacted.

which are arguably in a similar position. The nature of the diplomatic process coupled with the sweeping authority conferred by the statute thus make it entirely likely that the powers conferred upon the State Department by the proposed legislation, if enacted, will be used exhaustively rather than selectively.

III. Legislation Implementing the UNESCO Convention need not Provide a Blank Check to the Executive

The legitimate interests of the United States in the enjoyment of ancient and primitive art can be protected—and the letter and the spirit of the UNESCO Treaty implemented—by a careful tracking of the language of the Convention itself. Article 9 of the UNESCO Convention contemplates a "call" to other State Parties by a party to the Convention whose cultural patrimony is in jeopardy from pillage. In response, the other states are then to undertake "a concerted international effort to determine and to carry out the necessary concrete measures" which may be required to deal with the particular archaeological or ethnological crisis in question. What the Convention appears to envision is a crisis of the type reflected by the destruction of monuments of Mayan sites in Mexico, Guatemala and Honduras—a case in which the United States did indeed respond at the call of several Latin American countries by specific legislation (19 U.S.C. §§ 2091, *et seq.*) which was unopposed by interested persons in the art world. See H.R. Rep. No. 92-824, 92nd Cong., 2d Sess. (Feb. 2, 1972).

It is submitted that Article 9 of the UNESCO Convention might appropriately be implemented by legislation which directs the President, at the call of other State Parties, to participate in a concerted international effort to determine and to carry out measures to relieve genuine crisis situations affecting archaeological and ethnological treasures and, where necessary, to recommend legislation to the Congress designed to remedy such crisis situations through limited import controls or otherwise. This type of legislation would implement Article 9 of the UNESCO Convention in exact accordance with its terms and yet would reserve to the Congress the discretion to impose import controls only in genuine crisis situations and to limit such controls to those essential to meeting such crises. In addition, Congress would thus reserve the right to make certain that the United States would act in conjunction with other art-importing nations rather than alone and at the cost of its own museum-going public.

Alternatively, Article 9 of the UNESCO Convention might appropriately be implemented by legislation which similarly directs the President to participate in a concerted international effort to determine and carry out measures to relieve such genuine crisis situations and, where necessary, (i) to conclude international agreements containing specific import restrictions on the part of the United States, and (ii) to submit such agreements for ratification by the Senate. This type of legislation should also contain standards which would assure that import restrictions were limited to emergency situations and did not continue indefinitely once a "crisis" had abated.

In this connection, the Association supports the suggestion of the Metropolitan Museum of Art that—whatever international agreements may be reached—art objects be permitted to be imported into the United States if they were exported from their country of origin five or more years prior to the date of importation. In addition, legislation authorizing executive agreements should contain assurances that the United States will act cooperatively and meaningfully with other art importing nations in meeting "crisis" situations and will not fruitlessly determine to go it alone. The international agreements authorized by the legislation might thus lapse by their own terms within a specified period unless substantially similar import restrictions were adopted by other significant art-importing nations.

This type of legislation would also implement Article 9 of the UNESCO Convention and yet would provide assurances that the exercise of power of the Executive Branch was restrained by the need for Senate approval and by statutory standards designed to limit the exercise that of power to emergency situations in which the United States would be acting in conjunction with other art-importing nations.

Overall, either of these approaches would provide a Congressional check against the use of broad power by the State Department to bargain away as a diplomatic counter the public's right to the enjoyment of art for reasons unrelated to the protection of art. Nevertheless, when representatives of the Association suggested these approaches to the State Department, they were informed that it is contrary to the policy of the State Department to present legislation to the Congress which would in turn require further action by either the House or the Senate. The State Department should not be permitted, however, to make an inflexible adherence to its own internal policies a means of frustrating a sensible implementation of the UNESCO Convention.

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Archaeological Institute of America,
New York, N.Y., June 24, 1976

John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Martin: On the advise of our President and in support of his letter to you of June 18, 1976, the undersigned members of a duly designated sub-committee of the Executive Committee of the Archaeological Institute of America wish to urge upon you the strengthening of HR 14171 in the following ways:

1. The thrust of Section 5 which refers to designated protected objects or classes of objects of archaeological or ethnological interest potentially illicitly imported appears rather more narrow than is desirable. Section 5 as written is restricted to the protection of licitly excavated objects forming parts of inventoried collections. The UNESCO Convention itself is broader in this regard: see for example Article 1 (c) and (d) where cultural property is defined in part as (c) products of archaeological excavations (including regular and clandestine) or archaeological discoveries; (d) elements of artistic or historical monuments or archaeological sites which have been dismembered. It is our belief that tombs and mounds are, *ipso facto*, "monuments" and should be so deemed explicitly. The inventories of tombs and mounds which by nature are not public information should be explicitly prohibited notwithstanding the broad protection afforded them under Sections 2, 3 and 9. Moreover, the word "stolen" used of objects throughout the bill should be expanded to read "stolen and pillaged" following UNESCO Convention Article 9.

2. With respect to the Presidentially appointed panel of experts we note with concern that no specific procedure for their appointment is established nor are their duties and obligations set forth. We would welcome procedures for appointment and the establishment of duties and obligations along the following lines:

a. That the President of the United States of America actively consult with the various major archaeological organizations in this country in making his appointments.

b. That the duties and obligations of the panel include, among other things: authorization to oversee the determination of the authenticity of the certificates of licit export mentioned in Section 3 (a) and 3b (2) whenever the validity of such certificates or the "satisfactory evidence" submitted in lieu thereof is called into question by any responsible party.

3. With respect to the return to the State Party of objects that have been duly determined illicitly exported

Section 6, paragraph (b) states that "just compensation" shall be the amount paid by the purchaser regardless of what the market value of the object is. No responsibility or liability for the acquisition of illicitly exported objects is assumed by the purchaser. We suggest that the Presidentially appointed panel might play some role in determining what "just compensation" can reasonably be assumed to be in the United States.

4. Finally, we feel strongly that objects impounded by the United States Customs Service pending final determination as to whether or not said articles have been imported in violation of Section 3 of HR 14171 should not be placed on public display until their licit import has been established. (See Section 3(c)).

While we support in principal H.R. 14171, we trust that when the final drafting of this legislation is being worked out we will be permitted to raise these and other questions.

Thank you for your time and attention to these matters.

Respectfully,
Mary Kathleen Brown,
Executive Director.
Oscar White Muscarella,
Member of the Executive Committee
Elizabeth A. Whitehead,
General Secretary

Edward H. Merrin Gallery,
New York, N.Y., July 27, 1976.

Mr. John M. Martin, Jr.,
Chief Counsel of the Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Martin: I am writing in reference to HR 14171 which is now before the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, 94th Cong., 2nd Sess. It is very important that you know that this bill is extremely controversial and not one to be glanced over for the following reasons:

1. The United States is the *only* collecting country that is considering such action (much to the delight of all the European collecting countries).

2. The only effect the bill will have is its being detrimental to the United States alone in that we would be the only collecting country unable to improve its museums.

3. The only way in which this bill, if one did see some positive aspects, could possibly work, is for all of the

collecting countries to be signatories. Without all of the countries being signatories only the citizens of the United States will suffer.

Of all the major free world countries why is it necessary for the United States to be the only enforcer [sic] of the third world countries laws when they do nothing to protect their sites themselves? Why must we continually make the citizens of the United States suffer when the only other countries that are signatories are the iron curtain countries, some of the Arab countries, African countries and Mexico who is increasing their shipment of drugs into the U.S. and are castigating Israel for the attack on Entebbe.

I would appreciate your opinion on this matter.

Sincerely,
Edward H. Merrin.

The Metropolitan Museum of Art,
New York, N.Y., June 24, 1976.

Mr. John M. Martin, Jr.,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

Dear Mr. Martin: At the suggestion of the Department of State, The Metropolitan Museum of Art welcomes the opportunity to comment on H.R. 14171, which was introduced to the House by Representative William Green on June 3rd.

The Metropolitan Museum has been most interested and concerned about this implementing legislation since the UNESCO Convention was approved by the Senate in 1972. In fact, counsel for the Museum have been meeting and discussing the form and content of this legislation with Mr. Mark Feldman, Deputy Legal Adviser to the Department of State, over the past several years. The Bill as it has now been introduced reflects some of the suggestions which were brought up in these discussions.

As President of the Metropolitan Museum of Art, I would like to register our full support for the objectives of this legislation and to urge its enactment in slightly modified form. We would suggest two changes which, if incorporated, would, in our opinion, greatly improve the bill.

The first suggestion is that Section 3 (b) (2) be amended by striking all the language following the word "origin" and inserting in its place new language reading "at least five years prior to the date of importation into the United States or before the effective date of the regulation prescribed pursuant to Section 2 which lists such object, whichever the case may be".

This new and additional language would still cause the import bar to be effective by refusing importation under Section 2 during the period of crisis, but would also give recognition to the fact that once an object has left the country of origin and has been elsewhere for at least five years, prevention of its importation into the United States would not accomplish the objective of Section 2.

The Museum's other suggestion is that agreements between the United States and individual State Parties should be in the form of treaties to be submitted to the Senate for ratification. It is self-evident that legitimate movement of art across national lines benefits the public of all nations by allowing them the privilege of seeing the art of other cultures. When such movement is to be restricted as is provided for in Section 1, a great many interests, both in this country and abroad, will inevitably be involved. Under these circumstances, it would seem wiser that such an agreement be submitted as a treaty for ratification by the Senate, rather than take effect as an Executive Agreement, to insure that the great interest of the United States in promoting cultural exchange through legitimate international movement of art, be fully recognized.

We urge the Committee on Ways and Means to consider inclusion of these two additions to H.R. 14171 and feel that with their inclusion the purposes and objectives of this bill, which the Metropolitan Museum strongly supports, would be better achieved.

Sincerely,
Douglas Dillon, President.

New and Short Contributions

Reports from the Field

Excavations at Kommos, Crete, 1976:

Summary

After years of complex negotiations, and with the full cooperation of many foreign and Greek colleagues, excavations at the site of Kommos, Crete, began in summer, 1976. The aim of this first campaign, conducted on slightly more than nine *stremmata* (9,000 sq. m.) of land expropriated from a consortium planning a hotel-bungalow complex, was to investigate by means of trial-trenches the chronological range, size, and state of preservation of this Minoan settlement. The site was first identified by Sir Arthur Evans.¹ It was not tested by trenching, however, until our group began an excavation campaign lasting from 25 June through 25 August.²

The excavation was conducted under the auspices of The American School of Classical Studies at Athens through arrangement with the Greek Archaeological Service. The project was sponsored by the University of Toronto and the Royal Ontario Museum, supported generously by the Canada Council and with the aid of the SCM Corporation. The staff was backed up by 20 local workmen (George Beladakis, foreman) from the neighboring town of Pitsidia and consisted of 10 persons, among whom were Mrs. Maria C. Shaw of Scarborough College and a number of present and former students at the University of Toronto, as well as Professors Vance Watrous of the State University of New York at Buffalo and Phillip Betancourt of Temple University. Dr. John Hayes of the Royal Ontario Museum and Professor and Mrs. Peter Warren from the University of Birmingham provided valuable advice and help during a portion of the campaign. Many distinguished visitors also contributed from their rich ex-

perience. Because of the potential danger of storing antiquities at a site as remote as Kommos, facilities for storage and treatment of recovered materials have been established at the small town of Pitsidia, some 4 km. inland.

The site of Kommos, a modern name incorrectly transliterated as "Komo" by Evans, lies along the shore of the Messara Plain, SW of the important Minoan sites of Hagia Triadha and Phaistos (FIG. 1). It borders a wide, extremely picturesque strip of open, still undeveloped shoreline (FIG. 2). The property, the expropriation of which was paid for by the Excavation Project, is centered on the southernmost of a series of hills referred to locally as *Tou Spanou Ta Kephalia* ("Bald Heads") because of their general lack of covering growth. During the six weeks of actual digging in 1976, three fairly large and four quite small areas were opened. These have subsequently been plotted by our



Figure 1. The Aegean area showing the relative position of Kommos.

1. *The London Times* (London, October 16, 1924) 15; see also A. Evans, *The Palace of Minos II* (London 1928) 87f.

2. A full report on the first season (1976) is scheduled to appear in *Hesperia* during 1977.

The Antiquities Market

The Antiquities Market is a regular feature of the *Journal of Field Archaeology*. Its aim is to provide just what is stated in the subtitle: news and commentary on the illicit traffic in antiquities. The presence of this feature in the *Journal* reflects one of the central concerns of the Association for Field Archaeology, that is, the proper recovery and the protection of antiquities. We welcome reports on thefts and other items related to the illegal antiquities traffic, and contributions will be treated confidentially, if the author so desires. Readers are urged to send items for publication to Karen D. Vitelli, Ancient Studies, University of Maryland Baltimore County, 5401 Wilkens Avenue, Baltimore, Md., 21228

Market Alert

Etruscan Sculpture Stolen

The Italian authorities have reported that during daylight hours on 3 August, 1976, an Etruscan limestone head (7.8 cm. x 7.8 cm.) was stolen from the Archaeological Museum in Arezzo, Italy. The hair is encircled with a diadem and the almond-shaped eyes protrude. The left side of the nose and part of the base are broken away. The ears are large and thick, and the lips are very full. The head dates from the 6th century B.C.

If found or if anything is known about this head, please inform the Ufficio Centrale Italiano di Polizia Criminale Internazionale — INTERPOL, Direzione Generale di Pubblica Sicurezza, Ministero dell'Interno, 00144 ROMA 10, EUR (INTERPOL ROME) (reference No. 123/5.15.24 of 4th October 1976) and the I.C.P.O.—Interpol General Secretariat, 26 rue Armen-gaud, 92210 Saint Cloud (INTERPOL PARIS SG).

Armed Robbery in Naples

On 20 Feb. 1977 some 6,000 coins, Roman Republican and Early Imperial in date, were robbed at gun point from the National Archaeological Museum in Naples, Italy. Long famous as the repository of the archaeological treasures of ancient Campania, particularly Pompeii and Herculaneum, the museum has recently been undergoing extensive renovation; the new galleries devoted to the Villa of the Papyri at Herculaneum were opened in 1975. The present theft is the latest in a series of incidents that have included robberies at Pompeii and Herculaneum. Photographs of the stolen coins have been circulated to coin dealers and police throughout the world in the hope of recovering the lost material.

R. ROSS HOLLOWAY
BROWN UNIVERSITY
PROVIDENCE, RHODE ISLAND



UNESCO Convention on Cultural Property: Implementing Legislation

Since the United States Senate unanimously ratified the UNESCO Convention on Cultural Property' on August 11, 1972, many steps have been taken toward providing the enabling legislation that is necessary to make the United States a State Party to the Conven-

1. For the text of the UNESCO Convention and other discussion of previous implementing legislation see *JFA* 3 (1976) 213-224.

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tion.² Two previous bills have died for lack of final action by the Congress. This year's version of an implementing bill, H.R. 5643 (text follows), was referred to the Subcommittee on Trade of the House Ways and Means Committee after being introduced by Congressman Abner J. Mikva (Illinois) who will be largely responsible for guiding it through the various committee and House debates.

In a press release dated April 13, 1977, the Subcommittee Chairman, Charles A. Vanik (Ohio), announced that public hearings on 41 miscellaneous tariff and trade bills would be held April 26 - 28. Number 40 on the list, which included duty determinations on such items as bicycle parts, shoe lasts, and competition bobbeds, was H.R. 5643, *The Convention on Cultural Property Implementation Act*.

Few people learned of the hearing, and fewer were able to prepare and submit testimony by the Subcommittee's deadline. Eleven witnesses spoke at the April 26th hearings, three in support of the bill (Joseph D. Duffey, Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State; Douglas Dillon, President of the Metropolitan Museum of Art; and Sherman Lee, Director of the Cleveland Museum of Art and Chairman of the Cultural Property-Legislative Committee of the Association of Art Museum Directors), and eight spoke in opposition to it (Lee Moore, Dealer in Pre-Columbian Art, Miami, Florida; Alan Brandt, Dealer in African and Oceanic Art, New York City; Edward H. Merrin, Dealer in Ancient Art, New York City; Andre Emmerich, Dealer in Contemporary and Ancient, especially Pre-Columbian, Art, New York City; Douglas C. Ewing, President of the American Association of Dealers in Ancient, Oriental, and Primitive Art, New York City; Merrill C. Rueppel, Art Advisor and Consultant, former Director of the Dallas Museum of Fine Art, and the Museum of Fine Arts, Boston; Michael D. Coe, Professor of Anthropology, Curator of Anthropology, Peabody Museum of Natural History, Yale University, speaking as a private citizen; Gillett G. Griffin, Curator of Pre-Columbian Art, The Art Museum, Princeton University).

Both at and subsequent to the hearing, protest was made that insufficient notice had been provided to insure full and representative testimony. The Subcom-

mittee responded to these protests with the unusual move of inviting a small number of representatives of interested organizations to participate in the mark-up session when amendments to a bill are considered and voted on by the Subcommittee.

The first mark-up session took place on May 12. In addition to representatives of groups who had testified at the hearings, the Archaeological Institute of America was represented by Oscar White Muscarella, Metropolitan Museum of Art; and the Association for Field Archaeology was represented by James Wiseman, Boston University, and Karen D. Vitelli, University of Maryland Baltimore County. Several amendments were discussed and voted on before the congressmen had to adjourn the Subcommittee meeting to attend the session of the House. The invited participants stayed on through the afternoon to discuss with the Subcommittee staff some of the remaining areas of disagreement in the hope of arriving at some consensus to convey to the Subcommittee to speed their action on the bill. A consensus was reached on a few points, and the group was to meet again on May 24th to continue their discussions.

Because the Ways and Means Committee is already scheduled to hold hearings on the President's energy bill and other major legislation, the Subcommittee is not likely to reconvene for mark-up of the Cultural Property bill until mid-July. Written testimony on H.R. 5643 may be submitted to the Subcommittee³ until that time. Once the Subcommittee has completed its mark-up of the bill and it has been examined by the Legislative Counsel, the bill must be considered by the full Ways and Means Committee, where further amendment is possible. If voted out of Committee, it must then proceed to the House floor, and then through the Senate. The road ahead is long and, the Chairman of the Subcommittee predicts, rocky. Passage may not come this year, but substantial progress toward eventual enactment is being made.

K.D.V.

3. Written statements, in triplicate, should be sent to John M. Martin, Jr., Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515. The identifying number of the bill, H.R. 5643, should be included in the statement.

2. To date, 30 countries have ratified the convention: Ecuador, Bulgaria, Nigeria, the Central African Republic, Cameroon, Kuwait, the Khmer Republic, Yugoslavia, Mexico, Niger, Libya, Argentina, Iraq, Brazil, the Dominican Republic, Egypt, Panama, the German Democratic Republic, Poland, Jordan, Zaire, Algeria, Iran, Tunisia, Syria, Nepal, Bolivia, Saudi Arabia, India, and Czechoslovakia. Joseph J. Duffey, representing the Department of State, noted in his testimony to the Subcommittee that "many countries are awaiting U.S. action before they take steps for ratification."

The text of H.R. 5643 which follows is that currently being considered and amended by the Subcommittee on Trade. Thus, it is likely to be modified considerably before it reaches the House floor. Nevertheless, the

editors have elected to publish the text so that our readers may supply reasonably informed statements to their congressmen.

95th Congress, 1st Session, H.R. 5643

In the House of Representatives, March 28, 1977, Mr. Mikva introduced the following bill; which was referred to the Committee on Ways and Means.

A BILL

To Implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Convention on Cultural Property Implementation Act".

Sec. 2. Agreements to Implement Article 9 of the Convention.

(a) Agreement Authority.—If the President determines, after request is made to the United States under article 9 of the Convention by any State Party, that —

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

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

(3) the application of the import restrictions set forth in Section 5 with respect to archaeological 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) the application of such 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, cultural, and educational purposes, and the findings include a determination that the State Party in question has taken action to permit the interchange of cultural property among nations under circumstances where such interchange would not in fact jeopardize its cultural patrimony,

the President may enter into an agreement, or agreements, with the State Party and other States, whether or not party to the Convention, to apply the import restrictions set forth in section 5 to such archaeological or ethnological material of the State Party as may be appropriate to carry out the purposes of the Convention.

(b) Procedures After Requests by State Parties.—If any request described in subsection (a) is made by a State Party, the President shall —

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

(2) submit to the Committee such information, regarding the request, that is appropriate to enable the Committee to carry out section 4(f); and

(3) shall consider, in taking action on the request, the views and recommendations contained in the Committee report required under section 4 (f), if the report is submitted to the President before the close of the 120-day period beginning on the day on which the President submitted information on the request to the Committee under paragraph (2).

(c) Information on Presidential Action.—If the President considers, pursuant to subsection (b) (3), the Committee report required under section 4 (f) in taking action on any State Party request, the President shall —

(1) if an agreement is entered into with the State Party under subsection (a), thereafter promptly submit to the Congress a document containing —

(A) the text of the agreement, and

(B) a statement setting forth the differences, if any, between the provisions of the agreement and the views and recommendations contained in the Committee report, and the reasons for such differences, or

(2) if no agreement is entered into with the State Party, and the Committee report recommended that an agreement be entered into, submit to the Congress a document setting forth the reasons why such an agreement was not entered into.

Sec. 3. Designation of Materials Covered by Agreements

After any agreement is entered into under section 2, the Secretary, after consultation with the Secretary of State, by regulation shall promulgate, and when appropriate shall revise, a list of the archaeological or ethnological material of the State Party covered by the agreement. Such material may be listed by type or other classification deemed appropriate by the Secretary.

Sec. 4. Cultural Property Advisory Committee.

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

(b) Membership.— (1) The committee shall be composed of 11 members as follows:

(A) One representative of each of the following organizations appointed by such organization:

(i) The American Association of Museums.

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(ii) The Association of Art Museum Directors.

(iii) The Archaeological Institute of America.

(iv) Harvard University (The Fogg Art Museum and The Peabody Museum of Archaeology and Ethnology).

(v) The Smithsonian Institution.

(vi) The Metropolitan Museum of Art, New York City.

(vii) The American Association of Dealers in Ancient, Oriental, and Primitive Art.

(viii) The Art Dealers Association of America.

(B) Three members appointed by the President as follows:

(i) One member appointed from a group of three nominees selected jointly by the organizations listed in clauses (i), (ii), and (iii) of subparagraph (A).

(ii) One member appointed from a group of three nominees selected jointly by the organizations listed in clauses (iv), (v), and (vi) of subparagraph (A).

(iii) One member appointed from a group of three nominees selected jointly by the organizations listed in clauses (vii) and (viii) of subparagraph (A).

(2) (A) No individual is eligible for appointment under paragraph (1) (B) —

(i) if the individual is an officer or employee of, or is otherwise related in an official capacity to, any organization listed in paragraph (1) (A); or

(ii) unless the individual specially qualified to serve on the Committee by virtue of the individual's education, training, or experience.

(B) The President shall insure that the membership of the Committee appointed under paragraph (1) (B) fairly represents the various interests of the public sectors and the private sectors in the international exchange of cultural property.

(3) (A) Members of the Committee shall be appointed for terms of 2 years.

(B) Any individual appointed as a member of the Committee is eligible for reappointment to any number of terms (whether or not consecutive).

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

(c) Compensation and Expenses.—The members of the Committee, who are not employed by the Federal Government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties for the Committee.

The members of the Committee shall be reimbursed for actual expenses incurred in the performance of such duties.

(d) Transaction of Business.—(1) A majority 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.

(2) A Chairman and Vice Chairman of the Committee shall be elected by the members.

(e) Staff and Administration.—(1) The Secretary shall provide the Committee with such administrative and technical support services as are necessary for the effective functioning of the Committee.

(2) The Administrator of the General Services shall furnish the Committee with such offices, equipment, supplies, and maintenance services as are necessary.

(3) Upon the request of the Committee, the head of any 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 function.

(f) Reports on State Party Requests.—The Committee shall, with respect to each request of a State Party referred to in section 2 (a), prepare a report setting forth—

(1) the results of its investigation and review with respect to any matter referred to in section 2(a) (1) through (4) as it relates to the State Party or the request;

(2) its recommendation, together with the reasons therefor, as to whether or not an agreement should be entered into under section 2 with the State Party; and

(3) if the Committee recommends that an agreement should be so entered into—

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

(B) a suggested period of time in which such agreement should be in effect, and

(C) such other terms and conditions which it considers necessary or appropriate to include within such agreement for purposes of carrying out the intent of the Convention.

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

(g) Committee Review.—The Committee shall undertake a continuing review of the effectiveness of

agreements entered into under section 2 and if the Committee finds, as a result of such review, that—

(A) any agreement is not achieving the purposes for which entered into; or

(B) changes are required to this Act 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 improving the effectiveness of any such agreement or this Act.

Sec. 5. 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 effective date of the regulation listing such material under section 3 may be imported into the United States unless the State Party issues a certificate 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 10 years before the date of such entry; or

(B) on or before the effective date of the regulation prescribed under section 3 which lists such material,

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 90 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 judicial forfeiture.

Sec. 6. Stolen Cultural Property.

No article of cultural property appertaining to the inventory of a museum or religious or secular public

monument or similar institution in any State Party which is stolen after the effective date of this Act, 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.

Sec. 7. Temporary Disposition of Materials and Articles Subject to Act.

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 5 or section 6, 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 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 article, and

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

Sec. 8. 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 5 or section 6 shall be subject to seizure and judicial forfeiture. All provisions of law relating to seizure, judicial forfeiture and condemnation for violation of the customs laws shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this Act, insofar as such provisions of law applicable to, and not inconsistent with, the provisions of this Act.

(b) Archaeological and Ethnological Material.—Any designated archaeological or ethnological material which is imported into the United States in violation of section 5 and which is forfeited to the United States under this Act shall—

(1) first be offered for return to the State Party and shall be returned if the State Party bears the expenses incurred incident to such return and delivery and complies with such other requirements relating to the return as the Secretary shall prescribe; or

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

(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 6, if the claimant establishes valid title to the article, under applicable law, as against the

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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 6 and which is forfeited to the United States under this Act shall—

(A) first be offered for return to the State Party in whose territory is situated the institution referred to in section 6 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. 9. Evidentiary Requirements.

Notwithstanding the provisions of section 615 of the Tariff Act of 1930 (19 U.S.C. 1615), in any forfeiture proceeding brought under this Act in which the material or property, 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 5, that the material has been listed by the Secretary in accordance with section 3; and

(2) in the case of any article subject to section 6, that the article—

(A) appertains 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 Act, or after the date of entry into force of the Convention for the State Party concerned, whichever date is later.

Sec. 10. Regulations.

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

Sec. 11. Enforcement.

In the customs territory of the United States, and in the Virgin Islands, the provisions of this Act 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. 12. Authorization of Appropriations.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

Sec. 13. Definitions.

For purposes of this Act—

(1) The term "agreement" includes any amendment to, or extension of, any agreement entered into under section 2.

(2) The term "archaeological or ethnological material of the State Party" means any object of archeological or ethnological interest, or any fragment or part thereof, which was first discovered within, and is subject to export control by the State Party.

(3) The term "Committee" means the Cultural Property Advisory Committee established under section 4.

(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 Organizations at its sixteenth session.

(6) The term "cultural property" includes articles described in Article 1 (a) through (b) of the Convention.

(7) The term "designated archaeological or ethnological material" means any archaeological or ethnological material of the State Party which is covered by an agreement entered into under section 2 with the State Party and listed by regulation under section 3.

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

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

(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.

Sec. 14. Effective Date.

(a) In General.—This Act shall take effect on the 90th 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—

(A) before such 90th day and after such date of enactment; and

(B) 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 4 at any time after the date of the enactment of this Act.

Editorial Comment

Those of us who are concerned about the illicit traffic in antiquities and the massive destruction of archaeological and ethnological sites and materials, which that traffic so often entails, are well aware that no single piece of national legislation is going to remedy the situation. But something must be done, and quickly. The current state of the traffic is intolerable. Those who oppose the legislation on the grounds that it would deprive the American public of its right to enjoy art are neglecting the fact that it is plundered art, without the context which could provide its historical, social, economic, political, cultural (etc. *ad infinitum*) meaning in its original setting. The act of removing the art objects from their context without professional excavation and documentation has destroyed the context itself and lost irrevocably the information such objects may have yielded. The looting of ancient sites permanently deprives us all of the right to learn about, and from, our collective past.

H.R. 5643 addresses two very specific types of illicit traffic in antiquities and ethnological materials by imposing an embargo on the import into the U.S. of the following.

1). Specific categories of objects from a country of origin which is a State Party to the UNESCO Convention if all the conditions of Section 2 are met—and then probably for only a few years. An amendment which seems likely to be passed by the Subcommittee suggests the embargo last five years, with possible renewal for

another five years. There are other provisions for exceptions (Section 5(b) (2) (A) (B)).

2). Articles of cultural property appertaining to the inventory of museums or public institutions of a State Party and stolen from such institutions after the effective date of the bill or the date of entry into force of the Convention for the State Party (Section 6) (emphasis added).

These would seem to be minimal first steps toward preserving the cultural heritage of the world. Those in opposition to the bill argue that it will simply divert the flow of art to other nations which are not Party to the Convention and will be particularly harmful to the newer American museums. This is the same old threadbare argument that "if I don't buy it, someone else will," which only ensures that the market will continue to grow. Someone in a position of power and authority has to say NO to the whole illegal and destructive process because it is wrong; this should be someone in a position to encourage others to take the same stand. Who better than the United States? How long can our museums expect to thrive on antiquities stolen from the earth? The sites are not limitless. Pompeii, Ban Chiang, and Ebla cannot be regrown. Shall we wait until they are all gone before we realize what we have done?

A strong bill to implement the aims of the UNESCO Convention is desirable. A number of the amendments under consideration by the Subcommittee on Trade would weaken the bill by catering to the economic interests of a few. We shall oppose those amendments vigorously. Regardless of the form in which the bill finally leaves the Subcommittee, it is important to get it through the Congress and enacted. It is an important first step; and to accomplish it and to ensure that once passed it will be effective, archaeologists must become active in their support for it.

Most Congressmen lack detailed knowledge about archaeology and anthropology. They, and the public generally, do not realize what is lost in the case of an object without a provenience, or of artifacts from a hoard which is broken up for sale, or of a stake hacked into pieces for transport and sale. We have to tell them, and graphically. Tell Congressman Mikva, who will be guiding the bill through the House debates. Tell the members of the Subcommittee on Trade, the House

1. Members of the Subcommittee on Trade, whose mail may be addressed to the House Office Buildings, Washington, D.C. 20515, are: Charles A. Vanik (Chairman, D., Ohio), Benjamin Rostenkowski (D., Illinois), James R. Jones (D., Oklahoma), Abner J. Mikva (D., Illinois), Joseph L. Fisher (D., Virginia), Otis Pike (D., New York), Kenneth Holland (D., South Carolina), Edward Jenkins (D., Georgia), William Steiger (R., Wisconsin), Bill Archer (R., Texas), Gey Vander Jagt (R., Michigan), Bill Frenzel (R., Minnesota), Sam M. Gibbons (D., Florida).

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Ways and Means Committee,¹ the Congressmen and women from your district. If you think your own experience is isolated or limited, read Karl Meyer's *The Plundered Past* (Atheneum 1973); better yet, read it to your students. Part of our obligation in teaching of the recovery of the past is, surely, to teach of its destruction as well.

We will have to be active and vocal if this bill is to pass. And if it is to be genuinely effective, we shall have to approach our colleagues in other countries that have not yet become Party to the Convention and encourage them to urge their governments to do so. The United States can make an important contribution by being the first major art-importing nation to become a State Party to the Convention; but if no one else joins us, the effect will be minimal, and we shall certainly end up withdrawing our support.

We must also begin steps toward protecting and conserving our American cultural heritage. We currently have no laws governing the export of American archaeological and ethnological materials. Yet, thefts from our own museums and sites are all too common, and the foreign market for these objects is growing rapidly.

Think about it. And act.

K. D. VITELLI

2. Members of the Ways and Means Committee, in addition to those on the Subcommittee, are: Al Ullman (Chairman, D., Oregon), James A. Burke (D., Massachusetts), Omar Burleson (D., Texas), James C. Corman (D., California), Joe D. Waggoner (D., Louisiana), J. J. Pickle (D., Texas), Charles B. Rangel (D., New York), William R. Cotten (D., Connecticut), Fortney H. Stark (D., California), Andrew Jacobs (D., Indiana), Martha Keys (D., Kansas), Harold E. Ford (D., Tennessee), William M. Brodhead (D., Michigan), Richard A. Gebhardt (D., Mississippi), Jim Guy Tucker (D., Arkansas), Laymon F. Lederer (D., Pennsylvania), Barber B. Conable (R., New York), John J. Duncan (R., Tennessee), Philip M. Crane (R., Illinois), James O. Martin (R., North Carolina), Skip Bafalis (R., Florida), William M. Ketchum (R., California), Richard Schulze (R., Pennsylvania), Willis D. Gradison (R., Ohio).

Convictions Reversed and Remanded in Antiquities Trial

The following article provides additional information on the San Antonio Case, concerning which K.D.V. reported in JFA 4 (1977) 117.

As reported in the *AAA Newsletter* of September 1975 (Vol. 16, No. 7:6) five U.S. Citizens were con-

victed of theft of precolumbian artifacts from Mexico. These convictions have now been reversed by the Fifth U.S. Circuit Court of Appeals and remanded for retrial.

In an opinion dated 24 January 1977, Judge Minor Wisdom of the United States Court of Appeals, Fifth Circuit, reversed the results of the 1975 trial. The prosecution had been based on the contention that the persons involved had allegedly violated the National Stolen Property Act by importing precolumbian artifacts from Mexico into the U.S. without a permit from the former government. This was in alleged violation of an 1897 Mexican statute.

Reversal was on the grounds that the statute did not formally declare *all* precolumbian materials in Mexico to be property of the state, but that erroneous instructions, to the effect that the statute did so, had been given to the jury. Furthermore, the jury had not been instructed that, in fact, a declaration of ownership of *all* precolumbian artifacts had not been made by the Mexican government until 1972.

A 1934 Mexican statute does declare that all vestiges of aboriginal civilization dating from before completion of the (Spanish) Conquest shall be considered as archaeological monuments. All immovable archaeological monuments belong to the Mexican nation. What is more, "... objects found (in or on) immovable archaeological monuments are considered immovable property and therefore they belong to the nation."¹

If the artifacts in question were exported from Mexico before 1972, but after 1934, it is necessary to demonstrate that the artifacts in question were found in or on an immovable archaeological monument. Since no instruction to determine the date of exportation was given to the jury, this was found to be prejudicial to the defendants and the instructions in error.

In the words of the decision:

"The convictions are reversed. The cases are remanded for further proceedings not inconsistent with the opinion."²

In short, the convictions were reversed on the basis of procedural and citational errors in the trial. The principles of law under which the prosecution was initiated, however, were sustained. A declaration of ownership by a foreign government "... combined with a restriction on exportation without consent of owner is suf-

1. *Minor Wisdom, United States of America vs. Patty McLain, Joseph M. Rodriguez, Ava Evelyn Simpson, William Clark Simpson and Mike Bradshaw, No. 75-3268, United States Court of Appeals, Fifth Circuit (West Publishing Co., St. Paul, Minnesota 1977) 1036.*

2. *Ibid.*, 1044.

ficient to bring the (National Stolen Property) Act into play."³

It seems likely that a retrial will take place.

R. E. W. ADAMS
THE UNIVERSITY OF TEXAS AT SAN ANTONIO

3. *Ibid.*, 1026.

The Coin Market Versus the Numismatist, Archaeologist, and Art Historian

In the following discussion Alan Walker maintains that ancient coins must be given special consideration when we discuss setting up controls of the illicit market in antiquities. We hope that our readers will give careful attention to his points and share with us their reactions, both positive and negative, that these pages may provide a forum for the discussion of this and the many other complex issues of the antiquities market. K.D.V.

An ever more serious problem for excavators and museum people is the astounding increase in the market value of the objects with which they are involved. A great deal has been said in these pages about the need for stringent legislation on and control of the illicit export of antiquities. The solutions are far less clear cut than many people realize. A rigid *noli me tangere* stand on the part of numismatics *vis à vis* collectors and dealers, as dictated by many recent resolutions in this *Journal* and others could be totally disastrous for the study of ancient coins. What I wish to do in this article is to describe the functions of the coin market and show how it can be controlled and used properly to the best advantage of all those concerned.

I. Coins in General

Unlike the vast majority of ancient objects, coins are mass-produced as 'multiples' rather than as numerous similar but singular artifacts. Thousands of pots, superficially the same, will each differ slightly in detail. Coins, however, were struck by a pair of dies which could last for up to 10,000 strikings before developing flaws serious enough to preclude further use.¹ Numerous exact duplicates, like modern pennies, may be indistinguishable save for the date and mint mark. The study of die identities and the links between obverse

1. D. O. Sellwood, "Some Experiments in Greek Minting Technique," *NC* (1963) 217-31.

and reverse dies has enabled whole series to be put in the proper order of striking and then to be placed in the correct chronological sequence (FIG. 1). Since the

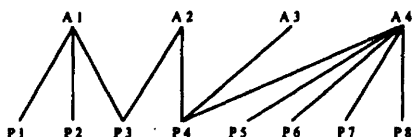


Figure 1. This figure shows four obverse (anvil) dies and eight reverse (punch) dies. A 1 manages to last through three reverse dies. It would have slowly developed cracks which would widen through use, and minor details would fill up with metal from the coins themselves. Since the reverse dies receive the full force of the hammer they tend to break sooner. When A 1 finally became unusable it was replaced. The sequence is obvious since the combination A 1-P 3 will invariably show P 3 in a less deformed state than A 2-P 3. A 3 may have had a manufacturing defect. This relative sequence can be absolutely dated if a mint fresh example of A 4-P 8 turns up in a hoard with, for example, an equally fresh specimen of a datable regal issue. This gives a *terminus ante quem* for A 4-P 8. If the earlier dies are closely related stylistically the whole series can only be pushed back a few years prior to the striking of A 4-P 8.

majority of ancient coins can only be relatively dated by their contexts within groups, large assemblages such as hoards are vital. Unfortunately, hoards are usually not found under controlled conditions.

II. Circumstances of Discovery

Almost every ancient site produces coins in greater or lesser numbers (the Athenian Agora has given up over 70,000). Most of these coins were simple losses, accidentally dropped and not noticed. Hoards are occasionally found in city sites. It follows that if major ancient sites are below modern habitations any present day building activities may reveal coins as well as other objects. If the site is below farm land the plow will also turn up a scatter of coins. The steady trickle of single coins on to the market derives solely from the sharp eyes of workers and farmers. Paradoxically many major hoards seem to appear far from any ancient habitation whatsoever, in the midst of fields with no previous history of ancient objects being found there in large numbers. This can easily be explained by the presence, in ancient times, of a distinctive natural landmark such as a large tree, which would have served as a marker for the individual who buried the hoard. Such hoards, found far from public observation, only enter public collections or official archaeological records through the honesty or good will of the modern day finder. In general, finders will only turn in their discoveries if motivated by a reward which they can be assured of obtaining.

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III. The Market, Part 1

Coins initially enter the marketplace, usually illegal in the 'producer' countries of the Mediterranean, through a travelling buyer. These are minor dealers who visit their home village and the surrounding areas several times a year usually just after plowing and after the harvest. Major private collectors also visit small villages throughout their countries in order to persuade the local populace toward giving them first refusal. The coins then move to the nearest major city and are either sold there or are exported. Major hoards are treated differently: a dealer or collector will be directly contacted by the finder soon after the hoard's discovery. The finder will then try to sell the whole lot at one time or, as is becoming more common, will divide the lot up and slowly release the coins onto the market.

IV. The Market, Part 2

The domestic markets in the producer countries are a minor part of the whole sequence. Real profits are only to be found abroad and the coins are almost invariably exported. The major initial markets are in Germany, Switzerland and England, whence they are re-exported throughout the world. Coins are fairly easy to transport and elaborate organization, allegedly 'mafia' or otherwise, do not really exist in the numismatic world. Single, superlative coins may go out diplomatically; a few coins, minor or not, go out in the baggage of tourists; but the vast majority of illicitly exported coins go with nationals of the producer countries, either professional smugglers or just 'gastarbeiters' taking out that little extra something to remind them of home.

V. Prices

The reason the whole situation has become so serious is the astounding rise in the value of ancient coins. This is dangerous for the archaeologist not only because of smuggling but because excavation coins are now worth stealing. A few examples may help to clarify this point. Ten years ago a silver tetradrachm of Alexander the Great (the most common large silver coin of all the Greek kings) could be had for less than \$50.00 in excellent condition. Today the price is close to \$400.00. Minor Greek bronze and copper coins which could be purchased in Greece in 'the old days' for about 25¢ are now selling for at least \$15.00. Roman silver denarii of Hadrian in nice condition (not scarce ones and certainly not rare ones) are selling for well over \$100.00 and one was seen for \$425.00. Archaic and Classical Greek silver coins of finest style and condition now commonly sell for over \$1000.00 and figures over \$10,000.00 are not scarce. One Roman gold coin of Diadumenianus

recently sold for over \$75,000.00. These prices help to explain several of the more spectacular robberies of underappreciated, under-guarded and under-insured collections both in the U.S. and abroad. Perhaps this will force those in charge to realize that coins are just as important as painted pottery and sculpture, and are far more portable. The way of thinking which allows some of us to consider coins as some sort of minor object unworthy of serious study by the art historian will just have to change. Archaeologists must also take care not to be blinded by the relative commonness of coins found in their excavations. In many cases excavations are rich in rare material: the Agora has over one hundred coins of the Byzantine emperor Philippicus, and one can become rather blasé about them. In fact, the Agora has the largest collection of them in the world and they are probably worth about \$250.00 each. The excavator must never allow unidentified coins to pile up, but should clean, catalogue, and record every coin found as fast as possible. They should also be kept in a securely locked storage place.

The knowledge of the prices paid for coins is not a great secret known only to a select few: copies of the illustrated monthly list put out by one of the Swiss firms turn up in villages that have no electricity, and there are no longer ignorant peasants selling rarities for a pittance. A hoard of coins is worth a tractor, a car or a new barn, and the farmers know that. The pressure to smuggle coins abroad rather than turn them in grows with each passing year.

VI. Good Dealers and Bad Dealers

With the increasing interest in coins the number of sellers has increased by leaps and bounds. Until the early 1960s ancient coins were a rather esoteric commodity, of interest to a narrow circle of people and absurdly low-valued compared to modern coins. This resulted in dealers who were, for the most part, extremely knowledgeable about their wares and anxious to maintain close relations with scholars in the field. Hoards would be turned over to museums for recording, and individual pieces of scholarly interest would often be sold at no profit. The firm of Baldwin's in London has had an intimate relation with the major numismatic collections in England and the U.S. for a very long time, and many hoards have been reconstructed by their efforts in searching throughout the world market. Given the immense profits to be made in coins today, the ever-increasing number of dealers entering the markets is not motivated by any feeling of archaeological or historical interest; rather, they would usually prefer to disperse hoards or groups with known provenances as quickly as possible, with no questions asked or answered. It

should be remembered that coins are now treated as investments. The numismatist on an excavation should definitely know who the dealers are in the country in which he excavates. By being somewhat friendly he can often record major groups before dispersal; a foreign numismatist may well be trusted rather than a member of the nation's archaeological service. Excavation numismatists can also purchase coins (if funds are provided) from workers and farmers in the surrounding areas. These coins can then be incorporated into the excavation collection, under 'X' section, and may be quite helpful for the general history of the area involved (this is especially true if the actual identification of the site excavated is in doubt. The predominant coin found in the area may be that of the city under excavation or that of the dominant city in the region). Finally, the excavation numismatist may be asked by the national numismatic museum of the country involved to purchase coins on its behalf. Knowing who the dealers are also provides a security check: a sudden drop in the numbers found in excavation can be easily explained by the appearance of a dealer near your site.

VII. Collectors

A surprising number of people in the field of Classical Studies collect ancient coins. There is nothing wrong with that, though present circumstances force many of them into unfortunate rationalizations for their activities, viz. "If I didn't buy them some tourist would have." "They're not really antiquities, they're coins." Etc. Nevertheless, foreign collectors are the real market for smuggled coins whether they are learned professionals or just amateurs. Major collectors are a help when working on corpora of the more important series, but archaeologists should only be concerned with those in the countries in which they work. Local 'antiquaires' exist in almost every region and can often be a vital source. Many of them are very concerned with the history of their areas and deliberately buy any coin found within it. A simple druggist in Amphissa is slowly publishing all the coins he has acquired from that neighborhood; all this is of some importance since the site has never really been excavated. Major collectors in the 'producing countries' can be divided into two main types: the 'pack-rat' who buys everything he can and collects it all in bags or jars, and the extremely knowledgeable one. The latter is the one of concern to the archaeologist. He usually is very wealthy and tends to have only a small chosen area of interest. He can give you vital help in identification before you enter the field by looking at the excavation coins and showing you his collection. You in turn generally can show excavation

coins to such people with no qualms whatsoever: stealing coins from you is simply 'not done.' Of course, he may not be talking to your workers about the weather. . . . A famous instance of this occurred at an excavation (which shall remain nameless here) when a foreigner resident in that country approached the excavator and remarked that if anything in his area happened to appear and *not* go into the excavation collection, well, . . . currency of any variety could be supplied in any country chosen by that, now rather furious, archaeologist. End of scene with ". . . exit, hurriedly pursued by bear."

VIII. What Can Be Done

Collecting can not be banned, so it must be lived with and controlled. Since 95% of all coins were intended to be used by ordinary people in antiquity (as were 95% of all ancient objects) it is rather cavalier to maintain that only specialists should be able to possess them today. While the coins mentioned above sell at great prices, it should be pointed out that this is true only for those in finest condition and of highest quality. Ancient coins and the vast majority of ancient artifacts in general (lamps, painted pottery of poor quality, fibulae, etc.) are well within the financial range of ever-increasing numbers of collectors. It is no longer the preserve of a few wealthy individuals. One well-known shop on 57th Street in New York City even goes so far as to have clearance sales and 'specials of the week' in its antiquities department. Rumor has it that plans are afoot to merchandise ancient bronze coins in German supermarkets: The Democratization of Antiquity. The profits of the coin trade should be channeled into the numismatic branch of the antiquities service of the source country rather than just the pockets of middlemen and Swiss Gnomes. A system could be devised as follows.

1. All national collections should be fully catalogued and recorded, if not published, so that all actual holdings can be rapidly ascertained. Duplicate coins should be sold. By duplicates, I mean coins from the same pair of dies in the same state. This is not at all difficult. Take the Podalis hoard as an example: the Istanbul museum possesses 28 specimens of die combination a9-p17, 18 of a10-p17 (both of the Dynast Trbbenimi), and of Perikle, 37 of a1-p1.² Ad-

2. N. Okeay and O. Mørholm, "The Coin Hoard From Podalia," *NC* (1971) 1-29. This hoard has been used as an example because of its exemplary international publication. It may be worthwhile to point out that many coins found in Turkey and other Near Eastern countries used to go out, quite legally, through Beirut. Whether this will be the case in the future remains to be seen. Oddly enough, a great deal of the Podalis Hoard was dispersed through Athens. Greek hoards rarely are dispersed through Istanbul.

mittedly, there may be variations of die wear which may be important for chronology but at least 40 of the 83 coins described could be safely discarded. This situation is by no means uncommon.

2. The money initially raised by the sale of duplicates (representative sets could be sold specifically to foreign museums and universities) could be used to pay to the finders rewards that equal or approach the actual market value.

3. If all finders would turn in their discoveries for recording, an immense amount of information would no longer be lost as it is at present. The government would then have the option of keeping all or part of the find, and paying a suitable reward, or giving it back to the finder. The government involved could also enter into an agreement with the finder to sell the coins for him in return for a percentage, perhaps 50%. This would stop disasters such as the almost immediate export of the 1972 Cilicia Hoard,³ which contained about 5,000 large silver coins thought to have been buried ca. 140 B.C. Coins from this hoard have been dispersed all over the world making the analysis and final publication (being done in Germany) all the more difficult. Had they stayed in Turkey publication would have, hopefully, been easier and several thousand of them could then have been sold by the government on the behalf of the finder and itself. Since these coins sell for an average of \$1000 each the benefits for the finder and the antiquities service would have been immense.

4. Safeguards would have to exist to prevent coins from being sold if unrecorded, purely as a way of raising funds for the state. Excavation coins should never be sold unless under special circumstances (i.e. if a stratified coin is from the same pair of dies and is of equal condition as one from a disturbed or modern level the latter can be *discarded* after being recorded). Duplicates should be kept if intended for future analysis.

This may all be condemned as being much too simplistic but the simple fact is that unless there is some form of legalized control over the export of coins, and all other antiquities for that matter, there will be no control. The collecting of coins and antiquities is now a major business in the West. Stringent resolutions obeyed by archaeologists are all very well, but the people buying the vast majority of these objects neither know nor care the slightest about them.

ALAN WALKER
AGORA EXCAVATIONS, ATHENS

3. Cited in *Coin Hoards I* (1975) as number 87A.

Senator RIBICOFF. Mr. Ronald Kuehta?

Mr. RHODES. Mr. Chairman, my name is Reilly Rhodes. Mr. Kuehta is in Syracuse, snowed in, and he could not be here. But I did have the opportunity to speak to him on the telephone yesterday. He did read the testimony to me that he had, and I also understand that 75 copies of his testimony should be arriving today.

STATEMENT OF REILLY P. RHODES, MUSEUM DIRECTOR, BOWERS MUSEUM

Mr. RHODES. I am the director of the Bowers Museum, which is a department of the city of Santa Ana, Calif. Our museum is an art history and natural science institution and this bill, H.R. 5643 is considered to be fairly important to my museum and we suggest that it be viewed from the vantage point of the UNESCO Convention as well as from the vantage point of language and methodology outlined in H.R. 5643.

The main objection we see with this bill is that it fails to supply explicit, detailed information concerning definitions and provisions related to the methods which are presumably to be defined by the U.S. State Department and Treasury Department at a given time, without notice or satisfactory reasoning for the American people.

In addition, H.R. 5643 fails to address the specific procedures, definitions and provisions set forth in the various sections of the bill. These inefficiencies include items referred to by the majority of witnesses supplying testimony before the hearings of the House on April 26. Douglas Dillon, president of the Metropolitan Museum of Art, was the first to point out, in his statement, that the proposed legislation fails to address a satisfactory definition of the term stolen, pointing out that the concern for the need to distinguish between the U.S. court's traditional acceptance of the conventional meaning of this term as opposed to the external laws of foreign nations which, as we have already heard in previous hearings, is a mechanism which is unsuitable and a wholly unreliable definition and which is unnecessary now that it is possible for the U.S. Congress to formulate the specific language of this bill, as well as to spell out clearly and completely the implications of our proposed legislation relative to the UNESCO Convention.

It should be the objective of this legislation to achieve a workable concept in terms of accommodating the legislative needs of museums, the academic community, scientific community and the art dealers as well as to provide for the obligations of the Congress to adopt legislation which will implement a sound treaty in which we pledge our full faith and credit as a country to help the signatory countries protect their national patrimony.

This, in the belief of Bowers Museum, cannot be reached in H.R. 5643. There must be a more complete and specifically outlined program proposed by process of a treaty which will negate the critical implications invested in resolution of H.R. 5643, whereby the power of the purse is invested in certain executive authorities in the U.S. State Department, Treasury Department, and the U.S. Customs Service which will appear to focus on, as stated by Michael Cole of Yale University, diplomatic agreements with other countries rather than with the interests of the constituency. This is not to purport that diplomacy

should be dismissed as a consideration in the drafting of legislation, but it cannot serve as the guiding tool to impose laws upon a constituency which has a tendency to be depressive upon our society.

It is a known fact that the majority of ethnographic and archeological material in this country and abroad have lost their documented provenance, in some cases over several centuries of history through wars, governmental change, social development and change, et cetera. This material, which has value, should not be denied presence in museum collections simply because of its discrediting history of provenance. Many of the objects existing in collections in this country and abroad exist only today because of their early extraction from their countries of origin. There exists a clear need for international cooperation and exerted effort to deal with the problem of treasured materials and it is only the United States that can provide for leadership in this area and to generate programs which will seek to end this global problem of desecration.

But we must realize that the open trade, sale and exchange of cultural property, while it may be necessary to be subject to certain procedures, it certainly must not be prohibited as described in the methods presented in this proposed legislation.

The most sought-after African objects today are those in middle Europe which have been extracted from the African continent by missionaries as early as the 16th century. This material was removed from primitive tribal regions for purposes of demonstrating to European nations that pagan societies existed and that funding was necessary to convert these people from their pagan beliefs to their Christian doctrine.

Because of the problem relating to provenance, authentication, originality of these cultural areas, it has been the European countries which, today, possess the market resource of African art, not the African countries, where materials today are being produced for monetary gain rather than the previously produced material created for spiritual purpose.

In addition to being director of the Bowers Museum in the city of Santa Ana, I serve as a member of the Balboa Arts Conservation Center on its board of directors in San Diego. The BACC operates with a grant from the Mellon Foundation and the National Endowment for the Arts. The BACC is concerned about the preservation of works of art, primarily those existing in the Southwest and Western regions in the United States.

The Balboa Arts Conservation Center is similar to many regional arts conservation centers throughout the United States and is a consortium effort of museums to preserve our own national heritage, as well as the heritage of other countries, which we are protecting in our collections.

I bring this matter to the attention of the committee for the purpose of illustrating the fact that conservation efforts in the United States does preserve much of the works of the cultural patrimony of many nations, and to testify that most other nations do not have such provisions. This is a most serious concern as a matter of importance to the Senate subcommittee to realize, if there is not to be an effort of foreign nations to be responsible for the physical presence of art treasures in their country, important not only to their nation but to the rest of the

world for centuries to come, some specific programs must be required to establish the measurable, acceptable standards of the conservation industry, directed by professional associations which exist throughout the world, such as the International Institute for Conservation of Artistic and Historic Works.

Such programs should be integrated into national or government-organized museums throughout the world. This provision would establish a reason for the United States to believe its specific measures are being met by the signatories to the convention as a program designed to cooperate for art preservation and protection.

The attached memoranda to my testimony, one signed by a Peruvian-born resident of the United States, documents the deteriorating conditions in the South American countries caused by the government situation which is similar in other developing nations.

The Bowers Museum recommends that consideration be given to the amendment of the new section 11 proposed by Douglas Dillon of the Metropolitan Museum, whereby provisions may be made for objects to enter the United States for temporary inspection prior to acquisition—and I add for the purpose of conservation.

This measure, made in good faith, would do much to avoid deterioration of important artifacts throughout the world and may prevent, or bring to a stop, deteriorating conservation practices, which could only increase or, perhaps worse, be neglected, should this provision not be allowed.

It should be understood that conservation is also a responsibility where amendment provisions must be made if we are truly going to protect our artifacts for future world generations. This provision is perfectly in order, as the UNESCO Convention specifically recommends that protective measures must be taken to protect their properties.

Many nations do not have conservation provisions and must look to other countries for help. It is also to be encouraged that all nations take a responsibility of protecting the artifacts they hold, both for their own heritage and for the heritage of other nations. For this reason, we should allow objects from all nations to enter the United States to assure their continued existence.

Permission of the country of origin would be exempt from this provision.

Senator RIBICOFF. Mr. Rhodes, your time is up. Why do we not put the rest of the statement into the record as if read?

We still have a number of witnesses and there is going to be a Senate vote at 12 o'clock. Thank you very much.

[The prepared statement of Mr. Rhodes follows:]

STATEMENT OF REILLY P. RHODES, DIRECTOR, THE BOWERS MUSEUM,
CITY OF SANTA ANA, CALIF.

SUMMARY

The Bowers Museum is a general museum owned and operated by the City of Santa Ana, California, with collections of art, history and natural science material. We have collections and changing exhibits of ethnic material from all over the world. Bowers is the largest of six museums in the County, serving 1,722,094 residents with 63.4% of the total population within ten miles of the museum. The Orange County, California, area we serve is larger in population size than 18 states and 23 countries. The programs at the Bowers Museum directly serve cer-

tain needs of our population with social services relating to the understanding and knowledge of various world peoples and cultures.

We are opposed to Bill H.R. 5643 because it grants powers to the State Department that would deprive us from experiencing the cultural richness of ancient and primitive art of other cultures. Minority groups in the United States would not be able to see many great works that are an integral part of their heritage. We feel strongly that this bill does nothing to protect the art of other countries, but will penalize the American citizen by diverting art elsewhere. We recommend that no action be taken on Bill H.R. 5643 and that additional clarification of the following concerns be made.

The excessive restrictions outlined in H.R. 5643 does not address the specific procedures and conditions, nor are the terms of the bill defined or properly identified in a clear and complete manner. In addition, there is serious concern for the justification of certain stipulations of the bill not called for by the UNESCO Convention while at the same time certain important measures called for in the Convention are not addressed in the proposed legislation. These measures specifically include:

Failure of the bill to consider correct legislation whereby the term "stolen" shall be defined in compliance with the United States Court's traditional acceptance of the conventional meaning of the term as opposed to external statutes which, as we have already heard in previous hearings that this mechanism is an unsuitable and wholly unreasonable definition; failure of the bill to consider the interest of a constituency by the State Department and the United States Treasury Department in favor of higher concerns of "diplomatic agreements" with other countries; failure to specify the broad categories of archaeological and ethnographical material; failure to stipulate provenance and documentation of clear title; failure to consider or stipulate certain measures which indicate a satisfactory effort on the part of foreign nations to protect and preserve their cultural property; failure to recognize the cultural needs of American museums, particularly in the South, Southwest and Far West, related to cost and expense of obtaining loan materials as opposed to the more economical and long lasting aspect of purchasing artifacts; failure to recognize the need to permit certain exceptions to the convention requirements in order to meet the need of many nations and that is to preserve and restore objects as well as provide for ample opportunity to study and further document materials through inspection and other means necessary for the well-being of all state parties; and the need to allow for procedures which legitimately permit free movement throughout the world for study, conservation, inspection, exhibit or loan.

STATEMENT

My name is Reilly Rhodes. I am the Director of the Bowers Museum, a Department of the City of Santa Ana, California. The Bowers Museum is owned and operated by the City of Santa Ana, a municipal corporation. All of the operating money are derived from City tax support while at the same time private contributions are received from a special support group, the Bowers Museum Foundation, Inc. All moneys received by the Foundation are used for the acquisition of objects to the museum's collections or for support of special programs and exhibits of particular interest to the museum and Foundation. The Bowers Museum is a general museum with collections of art, history and natural science. We have collections and changing exhibits of ethnic material from all over the world. Recent exhibitions have included Tunisian Mosaics on loan from the Bardo Museum, the Art of the Oriental Rug, Pre-Columbian Art of Mexico and Central America, Colonial and Revolutionary Firearms and Engraved Powder Horns, 16th-19th Century Russian Icons, Asian Stone Sculpture from Thailand and Cambodia, North American Indian Baskets, Arts of Oceania/Shells of Oceania and presently an exhibition of Egyptian "Fayum" Mummy Portraits on loan from the St. Louis Art Museum, the University Museum, University of Pennsylvania, the Royal Ontario Museum and the Santa Barbara Museum of Art. Bowers is the largest of six museums in the County serving 1,722,004 residents with 63.4% of the total population within 10 miles of the museum. Our programs directly serve certain needs of our population with social services related to the understanding and knowledge of various world peoples and cultures.

H.R. 5643 poses certain serious concerns to the Bowers Museum as a young growing institution dedicated to a large population of people in need of access to ethnographical material, antiquities and contemporary art as well as a large amount of interpretive educational programs concentrating on human values. Ex-

hibitions and divisions of activities at the Bowers Museum include history, archaeology, anthropology, paleontology, marine biology, oology, conchology, literature, art and science. Rare collections and specimens in these disciplines comprise a collection of more than 2,580,000 individual objects--one of the largest collections in Southern California.

The challenge of the museum has been in the past four and a half years a community institution dedicated to improving the social quality of life, stimulating and leading the community of nearly two million people to a better understanding and appreciation of human values. In order to achieve this goal, the museum realizes that our programming efforts must develop a sense of pride in the institution which serves so many needs to the cultural and educational elements of these people.

Perhaps, unlike other institutions in our profession (museums), the Bowers Museum is located in an amusement park area of the world with a large public market for such national and international public attractions as Disneyland, Knott's Berry Farm, Lion Country Safari, etc. This market calls for strong deviation from the normal museological activities and techniques generally followed to reach and effect a constituency. Bowers Museum concentrates greatly on efforts of attracting the temporary or visiting audience of the community into the museum while, at the same time, placing the heaviest commitment on the central county community area primarily through educational institutions (local school districts, colleges and universities). Bowers Museum is truly a public institution not a privately controlled institution. As a member of the Southern California Visitors Bureau, the Buena Park and Anaheim Convention Bureaus, we attract national and international visitors and activities to the museum primarily through the utilization of the convention centers and local industrial organizations and associations. In addition to the Bowers Museum physical plant, activities are conducted away from the museum through mobile museum units and staff and volunteer participation in the 28 city school districts as well as in the unincorporated county areas through the Orange County park ranger system. In terms of the points of view which have been earlier raised in the hearings before the Subcommittee on Trade of the Committee on Ways and Means of the House of Representatives on April 26, 1977, I think it is important for the Committee to realize that a small museum has a very real interest in acquiring works of art from cultures different from the geographic locations in which we are situated. This is particularly true for our institution, the Bowers Museum, which is a young, maturing institution in the second or third fastest growing county in the United States, where we have large mixed ethnic populations, particularly of Spanish and Asian decent. While I can share with my colleagues a great concern for the preservation of works of art and to bring to an abrupt halt the desecration of archaeological sites throughout the world, I am also very much concerned that the prohibitive elements of H.R. 5643 will end our ability to expand and grow if we must be dependent upon limiting acquisitions to non-archaeological or ethnographical art. Our experience in purchasing documented published works of art, of which we have some, has been an extremely costly experience in terms of monetary measure.

It is generally known that a published work of art is preferred by collectors and institutions since a published piece will serve as an example to measure against and has often been selected by a recognized scholar as a prime example. In addition, there has been some difficulty for museums to borrow objects of art from foreign countries unless large sums of money can be made available for contributions usually attributed to the preservation and conservation needs of the collection. I am submitting for information purposes only letters which document this situation for the better understanding of the Committee as to how the international agreements are reached in relation to lending material to the United States. This same situation has occurred in some of the major exhibitions circulating throughout the United States in our larger institutions, but with much greater sums required as contributions for preservation and conservation purposes. I have, on good authority from one museum curator, information that one major exhibition, which has been referred to as "the exhibit of the century," currently circulating throughout the United States, has a price tag of \$100,000 for a three month period. This fee, although staggering, may be well worth it, except to consider that other major expenses must be incurred in any exhibition for installation, security, environmental adjustments, travel, shipping, promotional activity, etc. The Peruvian Gold show referred to in the submitted letters may cost the Bowers Museum as much as \$50,000 for a ten week showing which is a great deal of money for an institution with a \$300,000 annual operating budget.

Now, it should be pointed out that most communities (publics) prefer not to pay admission charges to museums, especially a small, young, maturing museum located in a county which in itself is growing, busy with so many other attractions of a non-cultural nature, i.e., recreation, and yet there is still a need to establish a justification for any tax moneys being used to operate a cultural public program.

H.R. 5643 is a bill to implement Articles 7(b) and 9 of the UNESCO Convention on Cultural Property, which seeks to combat illegal trade in national art treasures. The Senate gave its advice and consent to the U.S. ratification of a convention in August 1972.

The bill authorizes the President to enter into agreements with other parties to the Convention to restrict importation of archaeological and ethnographical material following their request for assistance in deterring pillage. A committee composed of interested members of the art community would advise the President on such agreements. Importation of cultural properties stolen from the inventory of museums or similar institutions in parties to the Convention would be prohibited.

The Bowers Museum considers this an important bill and suggests that it be viewed from the vantage point of the UNESCO Convention itself as well as the vantage point of the language and methodology proposed in H.R. 5643.

First, to review briefly the intention and scope of the UNESCO Convention, the aim of the Convention is to prevent and, as pointed out by Sherman Lee, Director of the Cleveland Museum of Art, "unless other consumer nations are persuaded to cooperate, the depredations will continue regardless of our unilateral activities," but as Mr. Mikva, author of the bill points out, we have a signed treaty in which there is a need to implement the terms of the treaty in a way that does not cheat us out of what we can obtain legitimately under the provisions of the UNESCO Convention. Mr. Mikva has indicated in the House hearings that the introduction of H.R. 5643 should avoid driving art dealers (and for that matter, the efforts of museums) out of business; but that the United States has an obligation to carry out those mandates outlined in the UNESCO Convention treaty. This position has been further amplified by the museum profession through the American Association of Museums and the International Council of Museums' recommendations on ethics of acquisition. However, although it is recognized that museums, in the search for collections have engaged or tolerated, on the part of others, activities often detrimental to the integrity of their mission. Certain basic principles need to be adopted by the governing bodies of these organizations through their boards and professional staff members in the acquisition of cultural properties and although a cooperative effort has been generally acceptable by museums to implement a program of refusing to acquire through purchase, gift or bequest, cultural property exported in violation of the recommendations and policies of the UNESCO Convention, there exists now a real danger that the needs of the American museum community will suffer due to the extensive provisions outlined in H.R. 5643 concerning matters not intended to be addressed originally in the policies or provisions of the Convention.

Because this situation exists, and since there is apparently a premature understanding of the implications this Act will have upon the collecting community, the Bowers Museum opposes H.R. 5643 in the form in which it now exists.

The main objection of this Bill is that it fails to supply explicit detailed information concerning definitions and provisions related to the methods which are presumably to be defined by the United States State Department and/or Treasury Department at any given time without notice or satisfactory reasoning to the American people. In addition, H.R. 5643 fails to address the specific procedures, definitions and provisions set forth in the various sections of the bill. These inefficiencies include items referred to by the majority of witnesses supplying testimony at the hearings before the Subcommittee on Trade of the Committee on Ways and Means of the House of Representatives on Tuesday, April 26, 1977. Douglas Dillon, President of the Metropolitan Museum of Art, was the first to point out in his statement that the proposed legislation fails to address a satisfactory definition of the term "stolen", pointing out the concern for the need to distinguish between the U.S. Court's traditional acceptance of the conventional meaning of the term as opposed to external laws which, as we have already heard in previous hearings that this mechanism is an unstable and wholly unreliable definition, and which is unnecessary when it is now possible for the U.S. Congress to direct the language of the bill as well as to spell out clearly and completely the implications of our proposed legislation relative to

the UNESCO Convention. It should be the objective of this legislation to achieve a workable concept in terms of accommodating the legislative needs of museums, the academic communities, the scientific community and art dealers as well as to provide for the obligations of Congress to adopt legislation which will implement a sound treaty in which we pledge our full faith and credit as a country to help the other signatory countries protect their patrimony. This, in the belief of the Bowers Museum, cannot be achieved with H.R. 5643 in its present form.

There must be a more complete and specific outlined program proposed by process of a treaty which will negate the political implications invested in resolutions of H.R. 5643 whereby the "power of the purse" is invested in certain executive authorizations; the U.S. State Department; Treasury Department and U.S. Customs Service which appear to focus on, as stated by Michael Coe, Professor of Anthropology, Peabody Museum of Natural History, Yale University, "diplomatic agreements" with other countries rather than with the "interest of a constituency." This is not to purport that diplomacy should be dismissed as a consideration in the drafting of legislation, but it cannot serve as the guiding tool for imposing laws upon a constituency which has a tendency to be depressive upon our society, i.e., the act of prohibition on such vast amounts of material in the broad categories of archaeological and ethnographical material with unfair stipulations for provenance and documentation of clear title from the country of origin is presented with the implications that this material exists only through clandestine activities which is virtually untrue as is documented through historic happenings as well as anthropological studies relating to the movement of such cultural property; e.g., at this moment there is an outstanding exhibition at the Metropolitan Museum of Art entitled "Age of Spirituality." In this exhibition there exist examples of archaeological material on loan from European museums which are not of the "country of origin," but have a legitimate presence in this country as well as in the countries where the objects are loaned from.

It is a known fact that a majority of ethnographic and archaeological material in this country and abroad have lost their documented provenance in some cases over several centuries of history through wars, governmental change, social development, etc. Early excavations in Egypt revealed that prior to the 9th century A.D., tombs in the great pyramids had been looted or robbed and that possible extractions from these sites were made even during the Egyptian and Roman occupation of the Nile regions. This material which has value should not be denied presence in museum collections because of its discrediting history. Many of the objects existing in collections in this country and abroad exist today only because of the early extraction from their countries of origin. Most of the material from the Mexican Tlatilco and Chupicuaro sites are preserved in collections today because they were removed prior to destruction of these sites for environmental and various other purposes. As was earlier pointed out in the House hearings on H.R. 5643, the conditions in South Sea Island cultures and African countries have made it impossible for this material to survive. In addition, developing nations in this century, as well as in the past, have attempted to discourage the local peoples from producing, worshiping and depending on the pagan artifacts they produced and, instead, emphasize the need to civilize their cultures to measurable amounts in the ideals of the modern world. This caused some nations to destroy and dispose of their national treasures of native crafts and objects considered by modern society as primitive art. Much of this material was and is still sold by governments only to later be reclaimed in resolutions placed before the United Nations assembly.

There exists a clear need for international cooperation and an exerted effort to deal with the problem of treasured materials and it is only the United States that can provide for leadership in this area and to generate programs which will seek to end our global problem of desecration.

But we must realize that the open trade, sale and exchange of cultural property, while it may be necessary to subject to certain procedures, it must not be prohibited as described with the methods of this present proposed legislation.

The most sought after African art objects today are those in middle Europe which have been extracted from the African continent by missionaries as early as the 16th century A.D. This material was removed from primitive tribal regions for the purpose of demonstrating to the European nations that pagan societies existed and that funding was needed to convert these peoples from their pagan beliefs to Christian doctrine. Because of the problems relating to provenance, authentication and originality of these culture areas, it has been the European

countries which today are considered to possess the market resource to African art—not African countries where material is today produced for monetary gain rather than the previously produced material created for spiritual purpose.

In addition to being Director of the Bowers Museum, I also served as a member of the Board of Directors of the Balboa Art Conservation Center in San Diego which is housed in the Fine Arts Gallery of San Diego. The BACC operates with a grant from the Mellon Foundation and the National Endowment for the Arts. The BACC is concerned for the preservation of works of art, primarily those existing in the southwest and far west regions of the United States. The Balboa Art Conservation Center is similar to many regional conservation centers throughout the United States and is a consortium effort to preserve our own national heritage as well as the heritage of other countries which we are protecting in our collections. I bring this matter to the attention of the Committee for the purpose of illustrating the fact that conservation efforts in the United States do preserve much of the works and cultural patrimony of many nations and to testify that most other nations do not have such provisions. This is both a serious concern as well as a matter of importance for the Senate Subcommittee to realize that if there is to be an effort for foreign nations to be responsible for the physical presence of art treasures in their country, important not only to their nation but to the rest of the world, some specific programs should be required and established with measurable acceptable standards of the conservation industry directed by the professional associations which exist throughout the world, e.g., International Institute for the Conservation of Artistic & History Works. Such programs should be integrated into national or government operated museums throughout the world. This provision would establish reason for the United States to believe that specific measures are being met by the signatories to the Convention as a program designed to cooperate for art preservation and protection. Other similar measures can be outlined and required as demonstrating "satisfactory evidence" of provenance by foreign nations wanting to protect their own national treasures.

The attached memorandum signed by Enrique Escudero, a Peruvian born resident in the United States (Director of Latin American Affairs for a Los Angeles based engineering firm), documents the deteriorating conditions in South American countries caused by the government situation which is a similar problem in other developing countries.

The Bowers Museum recommends that consideration be given to the amendment of a new Section 10, proposed by Douglas Dillon of the Metropolitan Museum of Art, whereby provision is made for objects to enter the United States for temporary inspection prior to acquisition or for purposes of conservation in which objects if for purchase purposes, may be present in this country for a period of approximately 120 days and whereby material being submitted for conservation treatment may be permitted to stay for the required period needed to conduct such laboratory work and inspection. This measure, made in good faith, will do much to avoid deterioration of important artifacts throughout the world and may prevent or bring to a stop detrimental conservation practices which will only increase should this provision not be allowed. It should be understood that conservation is also a responsibility where amendment provisions must be made if we are truly going to protect our artifacts for future world generations. This provision is perfectly in order, as The UNESCO Convention specifically recommends that protective measures be taken to protect their properties. Many nations do not have conservation provisions and must look to other countries for this help. It should also be encouraged that, (for restoration purposes only) all nations take the responsibility of protecting the artifacts they hold, both of their own heritage as well as the heritage of other nations. For this reason, we should allow objects from all nations to enter the United States to assure their continued existence. Permission of the country of origin would be exempt with this protective provision.

In conclusion, the Bowers Museum recommends that H.R. 5643 be redrafted to include the provisions discussed in this statement, and that consideration be given to a provision issuing license or permit for importing or exporting of objects for legitimate purposes of study, conservation, inspection, exhibit or loan; and that clear procedures proposed by the United States State Department and Treasury Department, specifically related to the provisions of the UNESCO Convention treaty, be clear and fully identified; and that definitions of all terms and procedures be supplied. It is further recommended that, as suggested in the House Subcommittee hearings, that a statute of limitations be adopted as a proper legal procedure.

CITY OF SANTA ANA,
Santa Ana, Calif., October 28, 1977.

MIGUEL MUJICA GALLO,
Museo del Oro
Lima, Peru.

DEAR SENOR MUJICA GALLO: A mutual friend, Luis Ortiz de Zevallos, has informed me of the existence of your collection of Peruvian gold treasures currently on loan to the United States and presently on view at the American Museum of Natural History in New York City. The Bowers Museum is extremely interested in the possibility of hosting a display of this magnificent collection following the exhibition in San Francisco, California. Dr. Thomas D. Nicholson, Director of the American Museum in New York, kindly provided me with information concerning the exhibition in relation to the arrangements between our two countries. Dr. Nicholson informed me that it would be necessary for a Presidential Decree to be extended to include the Bowers Museum should we be considered for an exhibit site and that an extension to the National Council on the Arts, Art Indemnity Act would be necessary in order to meet the insurance protection requirements. Dr. Nicholson also mentioned a loan fee of \$18,500 per month as a contribution arrangement by the participating museums to the Museo del Oro in Lima.

Publicity, security and installation costs would be added expenses to be borne by the City of Santa Ana which owns and operates the Bowers Museum as a City department. In addition, educational programs and activities, including lectures, film and slide presentations, would be added to the exhibit activity provided primarily by U.C.L.A. in Los Angeles. The Bowers Museum would concentrate extensively on promoting attendance from the Los Angeles, San Diego and Southwestern United States areas, particularly through collaborative efforts with other museums, universities and associations interested in the heritage of Peru and pre-Columbian cultures.

Since our museum will also be responsible for shipping charges through a participating arrangement and because other expenses will be incurred, we ask that the Bowers Museum, which operates on a budget of approximately \$300,000 annually (and which employs a staff of 30 full-time people provided through additional federal funds), be considered for a reduction in the contribution fee. We hope that negotiations will be possible in order to allow us to participate in the circulating tour of the collection. We hope that it might be possible to establish a lower fee with the hope of increasing our contribution through private voluntary donations made by museum visitors to the Museo del Oro. It is my desire to exhibit the collection for a period of approximately six to eight weeks, preferably the latter, at an agreed sum not to exceed four or five thousand dollars in total, to be budgeted from the Bowers Museum tax funds.

We are extremely interested in the presentation of your splendid collection and we hope that you will seriously consider the Bower Museum as a possible location for loan prior to the collection's return to Peru. We desire, in addition, that it will be possible for us to make arrangements in consultation with the Peruvian Embassy for festive events to take place at the opening of this exhibition. We would attempt to coordinate activities such as a museum members' tour to Peru in conjunction with the exhibition. I look forward to your reply in regard to these matters concerning the exhibition of "Peru's Golden Treasures" in our 1978 schedule.

Sincerely,

REILLY P. RHODES, *Museum Director.*

AUGUSTO BOUBONCLE ROYNAFARGE,
Lima, Peru, October 11, 1977.

Director, REILLY P. RHODES,
The Bowers Museum,
2002 North Main Street, Santa Ana, Calif.

DEAR SIR: We were very pleased to receive your letter of October 28 and we are very proud of your interest.

As you may know we are the promoters of the gold collection of Mr. Miguel Mujica. Our activity consists of the design and promotion of cultural exhibitions to be shown around the world, contributing in this way to the diffusion of our culture overseas.

Respect to the above mentioned collection, our exhibition program has finished to give place to our new program.

From the experience gathered around the world with our exhibition we have concluded there is a pressing need to offer a more complete and integrated panorama of Preinca and Inca culture, and in order to improve the quality of our exhibitions we have designed a new program that, we hope, will fulfill these requirements.

For the designing of the program we have got in touch with the Peruvian Art Museum, the Anthropological Museum, the Amano Museum and the Mrs. Cohen collection among others, these museums having the best collection items in Peru. The selection of the items for our exhibition has been made in consultation with leading Peruvian Archaeologists and Anthropologists.

This exhibition will offer the more representative Gold, textile and pottery items for our Preinca and Inca cultures and we are sure it will create lots of expectation and interest.

As to the fee it is the usual \$18,500.00 per month it is impossible for us to consider any lower offer of this fee.

We will be very happy to receive your ideas and suggestions in order to realize the exhibition of our collection in your museum.

Yours faithfully,

AUGUSTO BOURONCLE.

JANUARY 27, 1978.

Subject: Bill H.R. 5643 scheduled for hearings 8-2-78 (Unesco Convention on Cultural Property).

I am a U.S. Resident born in Lima, Peru; and as such I am very interested in everything that can influence better relationships between our countries, as well as benefiting and improving the way of life down south; whether this may be economically, politically, or culturally.

It is in this last context that I am writing to you to express some ideas that may help during the hearings scheduled for February 8, 1978.

Supposedly the Bill has been proposed to help some foreign countries in order to preserve and protect their cultural (mostly ancient) resources, to stop being shipped to large markets like the US, where they are sold for profitable amounts, I have seen the basic aspects of the proposed bill and I am extremely concerned that if approved by Congress with the articles and wording as it exist now; it will create more problems than solutions, and in my opinion, it will defeat the basic purpose and good ideas behind this Bill.

SUGGESTIONS

From an underdeveloped country's view point, and talking specifically about Latin America; I am sure you are aware of the fact that most of those governments cannot or are not in a position, both economically nor technically, to improve the existing situation of protecting their ancient monuments. They are in a lesser position to take the necessary means of conservation; and they are in a poor situation to develop, upgrade, or improve their technical capabilities on this matter.

As an example I can say that one of the best government museums in Lima, Peru; where Pre-Columbia ceramics and textiles are of a fabulous quality and quantity; have an incredibly low yearly budget of US \$8,000. Their collection of textiles are kept mostly in a warehouse where the high humidity and moths are destroying and eating up these beautiful pieces, due to lack of funds to carry on proper measures of conservation, research, and display.

If you visit some of the existing ruins, you will actually find them in ruins because of the same problem.

There are many answers to this problem, one of them is to convince those governments to divert some of their economical resources away from non-productive expenses and into these cultural areas. Another way could be through the Bill that is now being discussed by the Ways and Means Committee before it goes to Congress.

But lets be practical, none of these measures (as they now exist) will solve the existing situation of lack of funds and of technology. The proposed Bill will not change the lack of conservation; and those governments are not going to make the necessary changes due to a Bill passed by Congress nor on their own initiative; unless some additional approach can be built into the Bill.

One way to get down to the core of the problem and make a real and practical contribution could be to include the following ideas in the Bill:

1. Promote Museums exhibitions in the US from these underdeveloped countries; as a means to provide them with additional funds that will go directly onto their Museum budget, without being diverted into other government programs. I am sure that an arrangement can be worked with those governments to benefit their museums directly. As an example, a US medium size museum could afford to pay \$5,000 or \$6,000 for a 2 to 3 month exhibition. This amount is close to the yearly budget of the example of Peru I presented before. The exhibition could be arranged to continue to other US museums, therefore obtaining additional amounts (on a one or two year US tour) that will give the foreign museums a working capital to develop conservation, research and technical programs.

2. US citizens as well as foreigners could take advantage of these US promoted exhibitions from diverse foreign cultures while touring the US, thus enabling a cultural exchange for both people living in the US as well as tourist who are temporary in this Country.

3. Congress could appropriate some funds to promote scholarships to upgrade and train foreign personnel in specialized US Institutions, in museology, conservation measures and techniques, etc.

4. Teaching, research, and extension services and programs could be developed in those foreign countries as a result of all these measures.

These are a few suggestions that could help in a practical way those countries who need it most; and will make everybody happy; that is, US citizens as well as citizens of the so called underdeveloped world. Other countries of the developed industrialized world will follow the US lead and positive solution; in their own ways and according to their own means and ideology.

It is in this last context (ideology) that I have seen quite a lot of discussion with different and sometimes opposing view points among US citizens, who feel that their rights as individuals, to their lawfully or otherwise acquired properties (in the antiquities); is being questioned and probably jeopardized by the proposed Bill.

Not being a US citizen I do not feel it is proper for me to expand on this subject; nevertheless I believe some viewpoints might help. The US is considered by most people of the underdeveloped world, as the bastion of freedom and liberty of ideas, movement, speech, religion, etc.

The US is also considered to be the bastion of free enterprise, of free business, where the laws of offer and demand are applied; where the law respects the individual rights to among other things hold personal properties.

Anything that the US could do in a direction that opposes these ideas is seen as weakness; unfortunately the lack of proper communications and understanding from other countries toward the US creates this simplistic way of measuring the strength or weakness of a country.

I feel that if on top of the suggestions I have previously made (1 through 4), the Bill will propose that in regards to Art and Antiquity of ancient times created by ancient civilizations on foreign countries; the US will respect the existing ownership and free trade of all material which are actually outside of those countries, but will oppose and consider unlawful to bring into the US any material that could be exported (without the consent of those countries) starting a certain date, that could be immediately after the Bill is approved by Congress and signed by the President of the United States.

In this manner the US will be contributing tremendously and in a constructive way toward the conservation, improvement, research, and spreading of ancient cultures from other parts of the world; helping those countries to construct a solid income to manage and upgrade their technical capabilities.

Last but not least US citizens will have their rights to ownership and free trade protected, and the US will continue to show determination of good practical sense, as well as reinforcing its ideologies of free enterprise and constructive influence on the world. I do not want to make this letter any longer; if some of these ideas are considered convenient and with proper improvement could be useful during the February 8 hearings, I will feel extremely satisfied on this small and possibly naive contribution.

I am willing to discuss more details and expand some of the above items if it could be of interest. In that case please feel free to contact me at your convenience.

Sincerely yours,

ENRIQUE ESCUDEDO.

Senator RIBICOFF. I am just curious how many of the remaining witnesses are here so that I can determine what we do with the remainder of our time?

Professor Davenport, are you here?

Mr. Monroe Morgan?

Mr. Sal Weinberg?

Mr. Charles Cleland?

Mr. Lee Moore?

Well, let's start with Professor Davenport, and let's see what happens.

STATEMENT OF WILLIAM DAVENPORT, CURATOR, UNIVERSITY MUSEUM, UNIVERSITY OF PENNSYLVANIA ON BEHALF OF AMERICAN ANTHROPOLOGICAL ASSOCIATION

Mr. DAVENPORT. My name is William Davenport and I represent the American Anthropological Association. I am a fellow of that organization and professor of anthropology at the University of Pennsylvania. I am also curator for oceania at the university museum.

The Council of the American Anthropological Association in 1973 and the executive board in 1976, voted to support the UNESCO Convention and its implementation by suitable U.S. legislation. It supports the act, H.R. 5643, but urges some alterations to the present wording.

The act is concerned with two kinds of cultural patrimony: Archeological and ethnological materials. In the writing of the bill and the act, more careful attention has been paid to the archeological than to the ethnological category.

For this reason we have suggested some alteration in the wording. I am not going to read them because I understand they are part of the record.

Senator RIBICOFF. Instead of reading the wording, why do you not give us your opinion.

Mr. DAVENPORT. Thank you.

One of the omissions in this bill—I am going to depart from my prepared text—is that there does not seem to be adequate representation on the advisory committee of ethnologists. This was brought up by Dr. Vitelli. The archeological definitions and the archeological advice and expertise are well provided for, but not the ethnological. We urge that one member, at least, nominated by the American Anthropological Association be included on the committee, because the association is the largest and most representative of ethnologists.

Other changes we suggest have to do with definitions that would more properly cover ethnological materials. As now written these definitions are more appropriate to archeological materials.

Another definition we would like to change has to do with time periods.

These are really not specifications that legislation of this kind should include as written. They are universal kinds of time periods which are not applicable all over the world. I would like to see those time periods struck from this wording and if this were to become law, in the negotiations with each country, that particular time periods be specified that are relevant to the countries concerned.

For instance, where I work, in the Southwest Pacific, a 500-year period is irrelevant because the archeological period really starts about 1940 and extends backward from there. The country was not penetrated by the explorers or administrators until very recently. That is an extreme example.

The other point that I want to address, since I now know the drift of the testimony, is whether the United States should take this legislative action or not. This is the major issue here. From the ethnological point of view—although pardon the dramatic comparison—the traffic in ethnological materials is similar to the drug market.

For 20 years, I have worked among micronations of the Southwest Pacific, and in that 20-year period I have seen the growth of the market in so-called primitive ethnological art. Many of those areas have been stripped, literally stripped, in a very short period.

Senator RIBICOFF. Where are those art objects going?

Mr. DAVENPORT. They are going, almost always, directly to galleries.

Senator RIBICOFF. Of what countries?

Mr. DAVENPORT. I would say 75 percent come to this country eventually. The art market is however an international market. It is not exactly the Americans who buy all of this, but in the New York market, as in the Paris market, the Swiss market, people from all over the world purchase objects.

Senator RIBICOFF. What do you think would happen, from your experience, if the American market were closed off? Do you think these objects—they would stop taking them, or would they end up in West Germany and Switzerland and London and Tokyo?

Mr. DAVENPORT. My feeling is that if the American market were controlled, not necessarily cut off, a large percentage of this material would stay in situ and would be protected there.

Now, I agree totally with the argument that the art dealers have saved enormous amounts of material that otherwise would have been destroyed by time, and so on. But the problem coming up now is that new nations are not always able to police their own laws, because the demand for these materials is very great, as it is with drugs; consequently, there are always people who find ways to export commodities of great monetary value.

If we could recognize that some materials are permitted and some materials should stay in the countries of origin and exert some kind of control, and assist these countries in controlling this flow—

Senator RIBICOFF. You work in the field?

Mr. DAVENPORT. I do indeed, sir.

Senator RIBICOFF. Let me ask you, from your experience, who comes in and acts in complicity with someone in the host country to strip these items? How is that organized?

Mr. DAVENPORT. The way it is organized, it is usually organized by individuals, not men who operate galleries—absolutely, I do not accuse any of the men here today of having any—

Senator RIBICOFF. What is the organization? How does that work?

Mr. DAVENPORT. They usually work alone and they come into an area, posing as an anthropologist, or they may befriend a local administrator or some such ruse. They collect material from the local people who want the money badly, who are in need of this kind of income.

Usually, export permits are arranged for, and, sometimes, there are actual lies, fabrications of what is in the cases to be exported.

Sometimes there is an arrangement with Customs not to inspect shipments as they go out, and shipments usually arrive with some type of certification.

Senator RIBICOFF. All right. So somebody in the host area is being paid off?

Mr. DAVENPORT. Usually that, or—

Senator RIBICOFF. So even if you pass this law, the same thing will take place? I mean, if there is bribery or dishonesty or complicity with someone trying to sweep the market, they will always be able to get one of these officials and work it out with them.

Mr. DAVENPORT. But the way it works out right now is that these countries are not—that is, the legislators of these countries—very often are not aware of what is going on. As you know, there is this sort of thing in all governments.

They do not now have recourse to request of the United States the return of these materials. If it does not end up in a museum—and most of it does not these days, because most museums refuse to purchase this kind of material—it is not possible to come to the United States and ask for the return of the material. If it does end up in a museum, very often they can say, "We want this object from this museum. It was obtained illegally."

Often objects are returned. That is, my museum, other museums such as mine, like to do this if it is possible. It is good for us, it is good for the United States. But it is not always possible for other countries to designate where a valued object is located. If it is in some private individual's hands, the U.S. Government is very chary of asking an individual to give up something that he or she lawfully purchased in a gallery and were led to believe was obtained correctly and legally.

I think that we do have —

Senator MOYNIHAN. May I say, sir, that the Government may be reluctant, but it does happen. I was Ambassador to India when one of the richest men in the world was put under very considerable pressure by the U.S. Government over a Dravidian bronze, and that bronze is not in the United States anymore.

Mr. DAVENPORT. Yes, and I know of other cases, too, actually, from Southeast Asia where similar pressure has been brought, to bear. But I am speaking specifically of ethnological materials now, which are not always quite so important as noteworthy antiquities. They are not so famous, but there is a much more widespread and broadbased demand for these things: African masks, African carvings, New Guinea carvings, and so on. There is a tremendous market for the so-called art objects.

These areas are still producing objects, or still have available objects of some value and they are coming out through the United States and other countries. Very often if it does not sell in New York in 6 months it is simply shipped to another gallery in Europe.

I have been watching a shipment of material that came out from underneath my very research nose, which I had catalogued and documented for the Solomon Islands Government. Within 3 months this material was whisked out of the country, the Solomon Islands, a protectorate of the United Kingdom at the present time, but which will be independent next year.

At first it was divided up in Paris. Very shortly the bulk of the material appeared in a gallery on Madison Avenue, and it has been shuttling back and forth across the Atlantic with the prices rising commensurate with inflation. Believe me, sir. These were pieces that were purchased for in the range of \$4 and \$5 a piece. The asking prices are over \$15,000 in contemporary money. This is what is at stake. There is a great deal of incentive to bring this material out.

Now, I do not say that they are always sold for this sort of profit, but this is the kind of thing that frequently happens. It is also the reason why materials can be held for a long time in certain galleries, and shuttled back and forth, and so on.

Now, please, I do not wish to impugn the representatives here from the dealers, certainly, but there is an awful lot of chicanery that goes on, and I think that regulation is needed. As I understand this bill, it is up to the President or the State Department to negotiate with each country the specifics of each agreement. The fact that some sort of regulation would be of assistance to other countries in the recovery and the regulation of the flow of this patrimony seems clear.

Senator RIBICOFF. Thank you very much.

We are halfway through a vote. We have to get there to vote. We will take a 10-minute recess.

Mr. DAVENPORT. Thank you very much.

Senator RIBICOFF. Thank you very much.

[The prepared statement of Mr. Davenport follows:]

STATEMENT OF THE AMERICAN ANTHROPOLOGICAL ASSOCIATION

The American Anthropological Association, founded in 1902, is composed of both national and international anthropological community, and is the largest professional organization of anthropologists in the world. We are affiliated with the American Association for the Advancement of Science, the American Council of Learned Societies, the Social Science Research Council, the Scientific Manpower Commission, and the Consortium of Social Science Associations; we maintain close ties with the National Academy of Sciences/National Research Council, the International Union of Anthropological and Ethnological Sciences, and a wide range of anthropological and multidisciplinary organizations.

The Council of the Association in 1973 and the Executive Board in 1976 voted to support the UNESCO Convention and its implementation by suitable United States legislation.

The Convention on Cultural Property Implementation Act in its present form is acceptable to the Association except for four matters which seem to require clarification or modification.

(1) Sec. 3 (a) Whenever the phrase "pillage, dismantling, or fragmentation" appears, we suggest adding "or destruction" so that the phrase reads (four times) "pillage, dismantling, fragmentation, or destruction." As now written in the Act, the phrase is most applicable to rather durable archaeological remains. Addition of "destruction" broadens the coverage to include cases where cultural objects suddenly lose their value to their society of origin and are at risk from discard and neglect. Such situations are not uncommon at present as pagan communities convert to world religions and as local economic tastes shift from traditional objects to imports from the industrial world.

Nevertheless, such objects may remain of enormous ethnological interest and of great importance as part of the patrimony of the larger culture or national state.

(2) Sec. 3(a)(3). We urge revision of this paragraph so that it reads: "a part of the remains or patrimony of a particular civilization, tribal group, or nonindustrial society, the record of which is in jeopardy" (etc.). This change makes the section as suitable to ethnological materials as to archaeological materials.

(3) Sec. 5(1)(b). Membership. We strongly urge the necessity of including at least one member from among nominees selected by the American Anthropological Association. As now written, the Committee represents the interests and

expert knowledge of archaeologists, art historians, museum professionals (dealing largely with art and archaeology collections), and commercial dealers in antiquities and art. There is no assurance for representation of those professionally concerned with objects of ethnological interest, which is one of the two major categories of cultural properties the Act is written to protect. A majority of the members of the American Anthropological Association are ethnologists and there is no other professional society which adequately represents them.

(4) Sec. 15. Definitions. The definition of an "object of archaeological interest" on p. 22 lines 17-24, should be changed to eliminate subsection (II), reading "is at least 500 years old." This requirement conflicts with the UNESCO Convention which defines "antiquities" as more than one hundred years old." More seriously, it is an arbitrary figure apparently based on the situation in the Mediterranean and adjacent regions. In many other parts of the world objects of archaeological interest are much more recent. For example, the Aztec civilization was overthrown only in 1521; Hawaii was discovered by Europeans in 1778; Benin was sacked in the late 19th century; interior Papua-New Guinea was not penetrated by European explorers until the 1940's.

The definition of an "object of ethnological interest" on p. 23 lines 3-10 should be changed to read:

"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, traditional use, or its contribution to the knowledge of the origins, development, or history of that people.

(III) However, not to be included as of ethnological interest are objects or works of art that were manufactured or produced either on commission for export or expressly for sale or gift to foreigners, within 50 years from the date of import into the United States."

In the original, "tribal or similar societies" is an inadequate designation. The definition of "tribe" is currently a matter of argument among anthropologists; in the U.S. the legal definition of "tribe" is narrow and currently before the courts; in some other parts of the world, the definition is affected by the political considerations. Addition of "nonindustrial society" will include peasant and folk societies, and politically complex "tribes" with populations in the millions, and will be more consistent with modern definitions in ethnology. The deletion of the 50 year old requirement is recommended because many objects made within this span of time are of enormous ethnological and national interest and are irreplaceable because of very recent shifts in technology and cultural ideology. In III (II above) we suggest adding "traditional use" to the list in order to take account of the social values often attributed to objects through customary usage or because of the pedigree of a specific example. The new section III will exclude from the Act, better than the current wording, "tourist" or "airport" art the production and sale of which is often economically important, and which neither the Convention nor the Act is meant to discourage or control.

A fundamental argument against the act as a whole turns on the question of whether the art and antiquities market in the United States actually saves cultural properties for humanity at large as well as for countries which are at the moment unable to protect their own cultural patrimonies. It is true that many objects are preserved in this way. The cost of this sort of preservation is the stripping away of the cultural, historical, and scientific information which gives to objects of this kind their special importance. Without information from their specific contexts, these objects lost most of their cultural and historical value. In many cases, too, associated materials are even destroyed in order to obtain portable and saleable artifacts—e.g., inscriptions on Maya stelae are ruined in cutting off sculptures. High market interest may bring out objects more quickly than would otherwise be the case, but this is at the expense of the general cultural patrimony of mankind. Most such objects would otherwise ultimately become available for study and exhibit—even though not within the current generation—and with a strong possibility of recovery in the future under circumstances that would preserve their context and the associated information. The emergency provisions of the Act seem to provide the means whereby materials in jeopardy can be rescued.

[A brief recess was taken.]

Senator RIBICOFF. The committee will be in order.

Mr. Monroe Morgan?

**STATEMENT OF MONROE MORGAN, CHAIRMAN, ETHNIC ARTS
COUNCIL OF LOS ANGELES**

Mr. MORGAN. My name is Monroe Morgan. I am appearing as chairman of the Ethnic Arts Council of Los Angeles. I live in Santa Monica, Calif.

I would like to highlight our written statement and our recommended changes to the act. A complete copy has been furnished to the committee, and I understand that it will be included in the record.

Senator RIBICOFF. It will all be part of the permanent record.

Mr. MORGAN. Thank you.

The Ethnic Arts Council is an independent, nonprofit organization of more than 200 members. It was formed in 1966. It conducts its own ongoing educational program and cooperates with southern California museums in their programs. Again, there is a complete story of the council in the material.

Our suggestions are :

First : We urge the committee to consider the definition of "stolen" as it relates to this act. We believe that it is not fair nor equitable to U.S. citizens to have objects that we have been talking about today subject to seizure at some future date. This has been well covered by other witnesses.

Second : Although much of the emphasis in the hearings is on archeological and ancient objects, there is also the problem of ethnographic and cultural materials more recent in origin. For example, it is possible to buy carved wooden dance masks and other folk art in Mexico that were made yesterday and also to buy ones that were made, say, in 1900. The problem of administering the entry of these items at the border seems very difficult to us.

I do not think that we can expect the participating countries to be able to furnish specific lists of such material that will be of real use to the American tourist and citizen traveling abroad and the customs inspector. We urge the committee seriously to consider the sections dealing with this to insure a workable and reasonable law.

Third : Add a third category under section 11 to specifically exempt materials in the United States before the effective date of the regulations so that they can be transferred, exported, and possibly reimported into the United States at some future date by future owners without being burdened with the terms of this act.

Our other suggested changes generally duplicate those offered earlier and are included in the material submitted, so I will not repeat those.

Thank you.

Senator RIBICOFF. All right.

Well, we have some constructive suggestions and the staff and ourselves will study this. This has been a very interesting hearing. There are certainly conflicting philosophies and none of it is simple.

There is a problem. It is the question of fairness. It is a question of how do you achieve your objectives. While your testimony has been confined, I want you all to know that Senator Moynihan and I are deeply concerned, and we are going to try to make some sense out of this, if we can. So your contributions, all of you, are very valuable.

They are conflicting, but it gives us something to think about. We are not going to decide it today or the day after, I assure you.

Thank you very much, Mr. Morgan.

Mr. MORGAN. Thank you.

[The prepared statement of Mr. Morgan follows:]

**STATEMENT OF MONROE MORGAN, CHAIRMAN, ETHNIC ARTS COUNCIL OF
LOS ANGELES**

My name is Monroe Morgan. I am appearing before the Committee as Chairman of the Ethnic Arts Council of Los Angeles. I live in Santa Monica, California.

The Ethnic Arts Council is an independent, nonprofit organization of more than 200 members that conducts its own ongoing educational program and cooperates with Southern California museums in their programs, including the Los Angeles County Natural History Museum, the Los Angeles County Museum of Art, Southwest Museum, UCLA Museum of Cultural History, Bowers Museum and the Craft and Folk Art Museum.

Since the forming of the Council more than ten years ago, our objectives and programs have included financial assistance for exhibitions and for public institutions, as well as events for the general public and for members that aim to increase appreciation and support of the ethnic arts. In addition, the Council disseminates pertinent information through research, publications and lectures. A complete listing of the major events sponsored and the publications issued by the Council is included with the material submitted to the Committee.

The Council wishes to offer amendments which we believe are within the spirit of the Bill but which we believe will clarify some of the meanings and the documentation requirements.

We are concerned with the protection of the national treasures and archeological sites; but we are also concerned, as United States Citizens, with the possible effects of this bill on the title to objects of ancient and cultural art acquired in good faith prior to this time by such citizens and museums.

One, we urge the Committee to consider the definition of "stolen." We believe it is not fair nor equitable to U.S. citizens, many of whom purchased objects in the country of origin with no objection from that country, to have such objects subject to seizure at some future date because a foreign country declares, at some future date, that all objects of 500 years of age or more are "stolen from the country." In our opinion, this goes against U.S. laws and seems to imply seizure without just compensation. We concur with the comments on this subject of Secretary Douglas Dillon in his testimony in connection with HR 5648, April 26, 1977, in which he recommends the addition of a new section to the Act which would prevent a foreign nation from instituting a claim against such material in this country solely on the basis of a broad national patrimony statute.

Two, though much of the emphasis in the hearings on the House Bill was on archeological and ancient objects, there is the problem of ethnographic and cultural materials more recent in origin. For example, in Mexico it is possible to buy carved wooden dance masks and other folk art that was made yesterday and, also, to buy ones that were made in 1900. The problem of administering the entry of these items at the border would seem to be very difficult, not only for the Customs Department but for the individual American citizen who is returning from travel abroad with some souvenirs. Can the participating countries reasonably be expected to be able to furnish specific lists of such material that will be of use to the American tourist and the customs inspector? We urge the Committee to study the sections dealing with this to ensure clarification so that emerging craft industries and American visitors to foreign countries are not adversely affected by the passage of this law that is primarily directed toward the preservation of national treasures.

Three, we urge the Committee to consider a time limit of three years on this act that would terminate the U.S. participation if the number of signing countries is not sufficient to show some progress toward the objectives of site protection and reduced illicit traffic in treasures.

In addition, we propose the following amendments which are submitted in the material distributed to the Committee:

1. Consider the reduction of the ten-year period to five years in Section 6(b) (2) (A).

2. Consider the reduction of the quorum of this committee from seven to five members.

3. Consider changing the description of the term "satisfactory evidence" in Section 6(c) Page 15 Line 3 in order to state more specifically what is acceptable.

4. Consider the description of the documentation on Section 6(c) Page 15 Line 21. The documentation is necessary to establish the dates of the material's absence from the State Party and is not strictly "exporting documentation."

5. Consider adding a third category under Section 11 to specifically exempt materials in the U.S. before the effective date of the regulations.

Thank you very much.

Enclosures: List of Proposed Amendments to S-2261.

PROPOSED AMENDMENTS TO S-2261 AS SUBMITTED BY THE ETHNIC ARTS
COUNCIL OF LOS ANGELES

The Ethnic Arts Council of Los Angeles proposes amendments along with the reasons for such changes as follows:

That Line 6 of Page 10 of the Act be amended so that five members of the Committee shall constitute a quorum.

Reason for the Proposed Amendment: It will be frequently difficult to assemble seven members of the Committee, particularly if some of the members are not residents of the Eastern part of the United States. It is desirable that there be representation on the Committee from various parts of the United States, some of which may be distant from the place of meeting.

That Lines 3 and 8 of Page 14 and Lines 8 and 10 of Page 15 of the Act be amended so that the 10-year period for material under Section 6(b) (2) (A) be reduced to a five-year period.

Reason for the Proposed Amendment: A five-year period before the date of entry, together with the requirement of fair notice to the State Party, affords sufficient opportunity for the State Party to claim the material, and such shorter period would lessen the impact of the restriction on cultural interchange.

That Section 6(c) at Line 3 through Line 20 of Page 15 of the Act be amended to the following:

(c) The term "satisfactory evidence" means—(1) for purposes of subsection (b) (2) (A), one or more declarations under oath by the consignor or shipper and the importer or consignee which state that the material was exported from the State Party not less than 10 years before the date of entry into the United States, which names those persons having an interest in the material during the 10-year period preceding such date of entry and declares that they are not United States citizens or permanent residents thereof, and which shows compliance with regulations issued by the Secretary with respect to exhibition, publication, or other circumstances relating to fair notice of the location of the material after exportation from the State Party, together with certified copies of documentation (which documentation shall be allowed to include, but shall not be limited to bills of sale after exportation, catalogs of dates of exhibition, copies of publication, and export or import documents from any country); and

Reason for the Proposed Amendment: The present language is not clear and has received different interpretations. The documentation is desired to establish dates of the material's absence from the State Party. It is desired perhaps to substantiate the declarations insofar as the catalogs and publications for "fair notice," although the use of the same kind of documentation for subsection (b) (2) (B), where "fair notice" is not an element, would not so indicate. In any event, the documentation is not strictly "exporting documentation."

Also, does the present language "including but not limited to" require bills of sale, catalogs of exhibition, copies of publication, and/or export or import documents? It cannot, because there reasonably may not have been catalogs, publication, etc. Therefore, the language "including but not limited to" means that the enumerated items must be accepted as evidence, while other forms of evidence may also be produced. The desired evidence which must be accepted are bills of sale after exportation, catalogs of dates of exhibition, copies of publication, and export or import documents. Presumably, these exports or import documents could relate to exporting other than from the State Party, for import documents into another country would be accepted.

It is respectfully submitted that the Proposed Amendment removes the ambiguity of the present language.

That Section 6(c) at Line 21 of Page 15 through Line 3 of Page 16 of the Act be amended to the following: (2) for purposes of Subsection (b) (2) (B), one or more declarations under oath by the consignor or shipper and the importer or consignee which state that the material was exported from the State Party on or before the effective date of the regulation prescribed under Section 4 which lists such material, together with certified copies of documentation (which documentation shall be allowed to include, but shall not be limited to bills of sale after exportation, catalogs of dates of exhibition, copies of publication, and export of import documents from any country).

Reason for Proposed Amendment: The present language is not clear and has received different interpretations. The documentation is desired to establish dates of the material's absence from the State Party and is not strictly "exporting documentation."

Also does the present language "including but not limited to" require bills of sale, catalogs of exhibition, copies of publication and/or export or import documents? It cannot, because there reasonably may not have been catalogs, publications, etc. "Notice to the State Party" is not required as regards materials under Subsection (b) (2) (B). Therefore, the language "including but not limited to" means that the enumerated items must be accepted as evidence, while other forms of evidence may also be produced. The desired evidence which must be accepted are bills of sale after exportation, catalogs of dates of exhibition, copies of publication, and export or import documents. Presumably, these export or import documents could relate to exporting other than from the State Party, for import documents into another country would be accepted.

It is respectfully submitted that the Proposed Amendment removes the ambiguity of the present language.

That a third category be added to the materials and articles exempt from the Act under Section 11 as follows:

SECTION 11 CERTAIN MATERIALS AND ARTICLES EXEMPT FROM ACT

The provisions of this Act shall not apply to—(3) any designated archaeological or ethnological property which was in the United States before the effective date of the regulation listing such material under Section 4, which status may be established by prima facie evidence (which evidence shall be allowed to include, but shall not be limited to bills of sale, photographs, insurance documents, declarations of witnesses under oath, and export or import documents from any country), when such prima facie evidence is not disputed by clear and convincing evidence to the contrary within 30 days of the date of its presentation to United States Customs authorities preliminary to possible export of said material.

Reason for proposed amendment:

S-2261 is completely silent in regard to materials in the United States before the effective date of the regulation listing such material under Section 4. Insofar as it is an Act relating to the import, this silence can be construed as meaning that the law will have no effect upon such items. However, the title of the Act also speaks of exporting and transferring ownership, although in reference to the Convention. Perhaps the transferring of ownership relates only to importing and exporting items and perhaps the importing and exporting only applies when there is a transfer of ownership; probably the Act only applies to importing, however, all of this is not made clear. In the absence of specific reference in the Bill to items which are in the United States before the date of the law, complications could arise. For example, would there be any problem in a United States citizen selling such an object within the United States to another United States citizen? Most likely not. However, would that United States citizen be able to export the item to another country? Would he be able to bring the item back into the United States without complying with the Section 6 Import Restrictions? Would such an item, after being taken out of the United States, be allowed reentry by a purchaser who consummated the transaction outside of the United States without complying with Section 6 Import Restrictions? This would be the situation if an attempt were made to have the item auctioned in London by Sotheby-Parke Bernet and, further, if a different American citizen were to immediately or ultimately purchase the item.

The many individuals who purchased in good faith such material which was in the United States before the effective date of the regulation on such material, should not be burdened with proof—and neither should United States Customs—

unless and until the individual wishes to establish the exempt status for reasons such as possible export.

**MEMORANDUM ACCOMPANYING STATEMENT BY MONROE MORGAN, CHAIRMAN,
ETHNIC ARTS COUNCIL OF LOS ANGELES, FEBRUARY 8, 1978**

WHAT IS THE ETHNIC ARTS COUNCIL?

The Ethnic Arts Council of Los Angeles was founded in 1966 by a group of collectors, dealers, scholars and enthusiasts who had helped develop the Pre-Columbian Hall at the Los Angeles County Museum of Natural History. They felt there would be value in a continuing organization dedicated to increasing interest in African, American and Northwest Coast Indian, Oceanic and Pre-Columbian art.

An independent, nonprofit corporation, the Council cooperates on a continuing basis with the Natural History Museum, Los Angeles County Museum of Art, the Southwest Museum, and the UCLA Museum of Cultural History. It has also aided projects at other Southern California institutions.

The Council has a Board of Directors of not more than twenty-five members, eight of whom are honorary Professional appointees: the Director or Chancellor of each of the four institutions with which the Council works, and the curator or member of each staff directly concerned with the Ethnic Arts.

An Executive Committee composed of officers and certain committee chairmen directs the Council's activities.

Funds are raised through annual dues of \$100.00 for each membership (an individual or husband and wife) and through occasional additional contributions by individual members.

WHAT DOES THE ETHNIC ARTS COUNCIL DO?

Our objectives and active program include financial assistance for exhibitions and public institutions; events for members and for the general public to increase appreciation and support of the ethnic arts; dissemination of pertinent information through research, publications and lectures. Part of our program has been to assist new groups to start similar groups in other cities. Our support has gone to ethnic art groups in San Francisco, Seattle and Portland.

The first major effort in 1967 involved the opening of the Pre-Columbian Hall at the Natural History Museum. Much of the material on display was given or loaned by Council members. The following year, the Council helped finance the catalog for the "Art of New Guinea" exhibition at UCLA.

In 1969 when the Los Angeles County Museum of Art presented "Master Craftsmen of Ancient Peru," the Council provided the accompanying public lectures and films.

For "Sculpture of Ancient West Mexico . . . the Proctor Stafford Collection," shown at the Museum of Art in 1970, the Council provided the public lecture series and helped financially with the catalog.

In 1971 and 1972, the Council staged two major public exhibitions at the Natural History Museums: "Ancient Art of Vera Cruz" and "Anecdotal Sculpture of Ancient West Mexico" with accompanying catalogs. Council members organized the exhibitions, selected material from members' collections and from institutions, wrote or arranged for the catalog texts by recognized scholars, and did much of the photography and editing.

Members loaned material and served as consultants when the Los Angeles County Museum of Art inaugurated Black-African and Pre-Hispanic Galleries, and the Council financed a brochure for the African Gallery which was available to the public without charge. Other financial contributions were made to UCLA for its "Image and Identity" mask exhibition and to extend the showing of the Yoruba Art exhibition: "Block Gods and Kings."

Projects for 1973 include the refurbishing of the Natural History Museum's Pre-Columbian Hall with new decor and exhibits; a two-day symposium of internationally known scholars exploring the genesis of ancient Meso-American civilization, organized by the Council at UCLA; and a financial contribution to UCLA's exhibition depicting "Music in the Visual Arts" through time and space.

Our program since 1973 has included:

1974: "Pre-Columbian Animal Sculpture," an exhibition at the Museum of Natural History, March through September. KOET filmed a documentary on this which was shown in Southern California and made available to the Public Broadcast System.

"African Perspectives" symposium at UCLA February 23-24. Financing of "African Arts Magazine" devoted to coverage of the symposium.

Changing exhibitions in the African and Pre-Hispanic Halls of the Los Angeles County Museum of Art.

1975: Donation to publication of "Study of Shaft-Tomb Figures." Southwest Museum of American Indian.

Funds raised from membership for the refurbishment and sound system in the permanent hall of Pre-Columbian at the Los Angeles Museum of Natural History.

Changing exhibitions in the African and Pre-Hispanic Halls of the Los Angeles County Museum of Art.

Symposium on "Traditions and New Perspectives of Northwest Coast Art" at UCLA on February 22-23 (Publication in process).

1976: Publication of "Origin of Religious Art and Iconography in Pre-Columbian Meso-America."

Underwrite publication of "Asian Puppets—Wall of the World" at UCLA.

Changing exhibitions in the African and Pre-Hispanic Halls of the Los Angeles County Museum of Art.

1977: Publication of "Moche Iconography" in conjunction with UCLA.

Symposium on aspects of Peruvian Art.

Changing exhibitions in the African and Pre-Hispanic Halls of the Los Angeles County Museum of Art.

There is a continuing program of public lectures (about six to ten per year). The exhibits and programs are well publicized and available to the general public. Estimates of the number of students participating in the museum visitation programs range upwards from 10,000 students per month.

Council funds have been used for a scholarship grant through UCLA to a graduate student studying conservation of ethnic material and financial aid for curator and faculty research, including archaeological expeditions.

For Council members, there are lecture meetings held in members' homes or in galleries in conjunction with current exhibitions. Seminars deal with aspects of ethnic art in greater depth. A travel program has offered group trips to British Columbia, Mexico, Peru and New York, and chartered bus excursions to visit pertinent exhibitions in Southern California. A newsletter dispatches information about community lectures and events concerning ethnic art as well as Council activities.

WHO ARE THE MEMBERS OF THE ETHNIC ARTS COUNCIL?

The more than 200 members of the Ethnic Arts Council are people who enjoy the Ethnic Arts and wish to share their enthusiasm. The traditional membership policy has been neither to solicit nor reject applications for membership. The members of the Council include citizens from many walks of life, including the directors of the museums mentioned, prominent California artists, writers and scholars, as well as individuals representing a wide range of interests within the broad field known as Ethnic Arts.

Senator RIBICOFF. Mr. Weinberg?

STATEMENT OF SAUL S. WEINBERG, DIRECTOR EMERITUS, MUSEUM OF ART AND ARCHAEOLOGY, UNIVERSITY OF MISSOURI—COLUMBIA

Mr. WEINBERG. Mr. Chairman, I am Prof. Saul Weinberg of the University of Missouri, Columbia. During 40 years as a field archeologist and 30 years as a professor of classical archeology and 20 years as the director of the Museum of Art and Archaeology, I have had a deep and continuous interest in the problems of illicit traffic in antiquities.

As early as 1939 I was one of a group which proposed a comprehensive system for legal export to the director of antiquities in Greece. After World War II I was one of the very few archeologists given a permit for export of antiquities from Greece; these for our museum. Later, I received similar permits from Iran and from Israel.

For 2 years as director of the archeological museums in Jerusalem, I had important experience with legal export from the other side, as it were.

All of it has convinced me that the solution to the problem lies in providing legal channels to replace the illicit ones, not in trying to police the latter. I have learned that the source countries are ready to give up their antiquities if they can receive, in turn, things which they need.

I have exchanged books for antiquities in Cyprus, Vienna, Chile, when they did not have the foreign exchange to acquire American archeological publications.

I have directed excavations in both Cyprus and Israel and received a large share of the finds for our museum. The museum has given funds to other excavations and received, in return, antiquities from Cyprus and Egypt.

I have also learned that the Mediterranean countries seldom are ready to exchange their antiquities for those of other places, for, with the exception of Israel, they are not yet interested in what lies outside their own domain.

Knowing well the antiquities laws of most of these countries, I can assure you that they almost invariably provide for the export of antiquities. Many of these laws are based on the prewar British and French mandate laws.

What is lacking in most of these countries is the will to implement these laws. Only in Israel is this done properly.

Most of the countries, with the exception of Greece, used to share finds with the excavators, but only Israel still does so. In many, antiquities were sold in the national and local museums. These were duplicates not needed for the national collections.

In all of these countries, the storerooms of antiquities departments and museums are choked with materials from their own and other excavations. The officials complain that they cannot possibly care for all of this material properly and they do not. We are told that objects from illicit excavations lose their value since they are not documented. Unfortunately, this is also true for most of the objects from legal excavations after they have lain long enough in these storerooms.

In sum, there is a vast quantity of material that can be put into the antiquities trade without in any way depriving the source countries of one bit of their national heritage. They know this as well as we do, but inertia, lack of staff, and local politics are largely responsible for keeping them from doing so.

We must encourage them. We must make it a condition for some of the many things they ask of us. We should, and must, do this largely because this material is, in a real sense, part of our cultural heritage as well as theirs. We need it for our teaching purposes, for training historians, archeologists, art historians.

We need it to teach the public at large about their heritage through exhibits at our museum.

An occasional exchange exhibition will help, to some extent, in the latter case, but does no good with respect to our ongoing educational program.

Let us concentrate on making operable the existing legal channels for the export of antiquities. I am convinced that it can be done. I am

equally sure that the negative approach of this bill dependent upon prohibition and policing, is doomed to failure.

Thank you.

Senator RIBICOFF. You say try to not do the negative but do the positive. How do we do that?

Mr. WEINBERG. I have lived for many years in many of these countries. I know that the chief difficulty is that nobody says do it. Really, they are ready to do it.

I have had the Director of Antiquities in Cyprus say I would love to be able to do it, if only my government would let me. But since Cyprus became independent, they are not allowed to do it.

This is what always happens in the first flush of nationalism. It is something which our State Department can do. It is merely a suggestion that their state departments say to their minister of education that he hand this down. It is that kind of thing.

There is no need to change the law. We are not interfering in any way with their laws. The laws are already made. I can recite them to you. I know them very well.

You can export things legally from all of these countries. But there is just an inertia which keeps it from being done.

Senator RIBICOFF. Have you ever talked with Mr. Feldman?

Mr. WEINBERG. No; I have never met Mr. Feldman, but I would love to.

Senator RIBICOFF. I do not want to tell you and Mr. Feldman what to do for lunch, but I think Mr. Feldman, you might invite Professor Weinberg to lunch. You could buy him a cheese sandwich downstairs here, but it is a pretty commonsense approach.

This is one suggestion where everybody could be a winner. I am trying to find a commonsense solution. I have great sympathy against the despoiling and pillage of antiquity. Many of these things, they get to be a drag on the market, and yet they could be used. There is a lot of commonsense in your suggestion. I do not know how you can work it out.

Mr. FELDMAN. Mr. Chairman, I would speak, but—

Senator RIBICOFF. No; go ahead. His time is up. I am going to give him extra time for you to speak on it.

Mr. FELDMAN. I will be very brief to say that this concept is an established part of U.S. policy. It is a very difficult thing to do. The bill before you does have an injunction from the Congress that we should endeavor to facilitate the liberalization of export controls in exchange—I forget exactly the phraseology, but the principle of exchange, I think it focuses on, in this text, as a part of our negotiations.

I think the negotiating authority that we have here would give us something to trade for such liberalization.

Now, I frankly do not want to overemphasize the possibilities though, because I actually got that written into, for example, our treaty with Mexico, but it has not been—in a general way, and it has not been productive.

Furthermore, with all due respect, there are certain countries that have an absolute prohibition on the export. I think Turkey, for example, is one of them, and where it is very difficult, because of the political problems. It is the archeologists, generally, the more sophisticated people, who are willing to do it, and the political leaders are not willing to take the heat on doing it.

But with the legislation, with something to trade, with an authority to negotiate bilaterally, it is possible that we may have some success.

Senator RIBICOFF. I think—you are not an archeologist. You are a lawyer with good intentions. But here is the man with more than 40 years' experience, and it has worked as far as he personally is concerned, apparently, in various fields.

If you do not want to buy him lunch, take him for a ride to the State Department.

I would suggest, just talk to Mr. Weinberg.

Mr. FELDMAN. I agree. It is a very serious proposal and it is one that, as I say, is part of our program.

Mr. WEINBERG. Mr. Chairman, as I may say, in our full text, you will see a statement that says, "There is a mild effort in early drafts of the UNESCO Convention to encourage the source countries to expedite the source of their antiquities. They were soon eliminated."

If you look back at the first draft, they very definitely said this. They are nowhere appearing any more in the UNESCO Convention Senator RIBICOFF. Why?

Mr. WEINBERG. They just gave it up, in other words. This is where the emphasis ought to be. It is encouraging them to help this export.

Senator RIBICOFF. Now, here UNESCO is supposed to be an organization to preserve the cultural, scientific, and educational resources of the nation. You would think that you would try to do this to preserve what they have themselves and yet share their culture with the rest of the world, and at the same time, save what they want themselves. And if there is value, it gives them a chance to earn substantial sums of money, legitimately, instead of having it stolen, pirated.

Mr. WEINBERG. I would like to say, too, Mr. Chairman, that, as has been said several times, the amount of money that the person at the source gets for all of these things is so small that any nation can pay that person the same amount or more to acquire these things for the nation, if they want them. This is what is done in Israel; I know it from personal experience. But it does not seem to work anywhere else.

It costs them much more to police a market than it would be for them to get the objects.

And then, if they are not sufficiently interested in purchasing them for small amounts for the national collections then they certainly ought to let them be exported.

Senator RIBICOFF. Well, thank you very much. As I say, I have learned something from every witness. I do not know how I am going to synthesize it.

[The prepared statement of Mr. Weinberg follows:]

STATEMENT OF SAUL S. WEINBERG

Long experience as field archaeologist, professor of Classical archaeology and museum director has convinced me that the solution to the current problems of illicit traffic in antiquities lies in creation of legal channels for their export. In most source countries, the laws governing such export already exist and need only conscientious implementation, now lacking everywhere but in Israel. Our efforts should be concentrated on encouraging proper implementation, as well as a return to practices which existed widely until World War II: these are the sharing of finds with the excavators; careful patrolling of antiquities dealers with the idea of acquiring anything deemed worthy of being in the national collections, whatever not thought good enough should be given permission for both sale and export; cleaning out of the vast quantities of duplicates now choking

the storerooms in almost all museums in source countries and placing these on sale in the national and local museums; holding auction sales periodically for those objects too costly for across-the-counter sale, with museums given priority. These are all systems which can be implemented without harming in any way the national collections of the source countries, or what is called their national heritage, for each country would always retain the unique or highly desirable objects.

The system of prohibition proposed in H.R. 5643 cannot possibly be successful since we are acting unilaterally, with little prospect of support from any other importing country. The only result of this will be the impoverishment of our museums and educational programs. We need this material to back up these programs, for the teaching of historians, archaeologists, art historians. We also have a certain right to it, for it is our cultural heritage as well, most Americans having come from Europe and the Near East. We should be able to have it legally, and that is possible.

TESTIMONY IN OPPOSITION TO H.R. 5643.—A BILL TO IMPLEMENT THE CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT, AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

As a field archaeologist since 1934, as a Professor of Classical Archaeology at the University of Missouri-Columbia for thirty years, as the creator of the Museum of Art and Archaeology at that University and its director for twenty years, and as one who has been actively involved in trying to find a solution to the problem of the illicit traffic in antiquities, I am strongly opposed to the legislation now being considered. Having excavated in Greece during the '30s, I was one of a group that suggested a plan for the legal export of antiquities to the then Director of Antiquities of Greece. While that plan did not in itself meet opposition from the Department, when it was found that all income would revert to the General Fund and Archaeology could not benefit, despite the extra work involved, the plan was dropped. Following World War II, I was back in Greece again and was one of the very few persons given a permit by the Archaeological Council to export a group of antiquities for the newly formed Museum at the University of Missouri. Later, in 1963, I requested and received permission for the export of another group of antiquities from Iran. I have many times received permission to export antiquities for the Museum from Israel. On other occasions, the Museum has exchanged books for antiquities with Austria, Chile and Cyprus. The Museum conducted excavations in Cyprus at the time when it was still sharing finds with the excavator. In addition, we have given funds to other excavations and have in this way received further antiquities from both Cyprus and Egypt. I have thus had long and wide experience in the legal acquisition or antiquities from the source countries. It is on the basis of this experience that I believe firmly that the only way to undercut and eliminate the illicit traffic in antiquities and ethnographic art is to replace it with legal channels.

This is exactly opposite to what H.R. 5643 will attempt to do. I feel strongly that this bill is arbitrary in the extreme and that it is doomed to failure. The latter is true, in the first place, because action is being taken unilaterally and there seems no likelihood at present that any of the large importing states—those of Western Europe as well as Japan—have any intention of taking similar action now or in the foreseeable future. The UNESCO convention, which this bill purports to support, was meant to be based on a multi-national effort, for it was realized that otherwise there is no hope for effective action. What we do not buy will be grabbed up in other countries and the effect on looting and pillaging will be nil. The only real effect will be the impoverishment of our museum collections and the resultant loss of their value as educational institutions. It has been argued that we should show the moral leadership of the United States; one cannot be a leader if there are no followers!

What I oppose even more in the proposed legislation is that it depends on prohibition, an area in which we have massive negative evidence. It was long ago pointed out in the Greek press that trying to police the antiquities market was as futile as trying to police drug traffic—certainly no policing has done any good thus far—and that the market can be controlled only by making it as profitable for the small man at the beginning of the chain to sell his finds legally as to sell them illicitly. Therein lies the whole solution, and from there on there must exist legal channels right through to the export market. In fact, legal channels already exist in most of the exporting countries; what is lacking is the will to implement these laws and that is what should be encouraged in any legislation. There was a mild effort in early drafts of the UNESCO convention to encourage

the source countries to expedite the export of their antiquities, but they were soon eliminated. Nothing is left of such efforts in either the convention of H.R. 5643 except by implication in the mention of "export permits."

It was as head of the archaeological museums of Jerusalem for two years (1969-1971) that I was on the other side of the process and could watch its operation in the one country where the laws, which are just the same as those in most other Mediterranean and Near Eastern countries, are properly implemented. The Israel Department of Antiquities grants export permits, usually at once, to almost everyone who requests one; in the rare instance where permission is not granted, other antiquities are given in place of the objects which it is felt must be kept for the national collections. If such an attitude were taken in the other source countries, the illicit market in antiquities could be quickly eliminated. Not only is permission granted readily for export of antiquities from Israel, but a constant watch is kept on material for sale by dealers, and anything felt necessary for the national collections is purchased. The dealers cooperate, give reduced prices to the local museums in most cases and, in fact, are proud to have their objects go to the national museum. Although they do license dealers in antiquities in other countries, registering and stamping the objects which are allowed to be sold, the other countries almost always stop short of allowing their export, even though their laws spell out in detail the procedures for so doing. In the vast majority of cases, these are objects which could not possibly be wanted or needed for the national collections.

I see as proper procedures by source countries, all within already existing laws, the following: 1) Fair compensation by the government for all chance finds, including a policy of purchase of antiquities by the local museums from the local market of anything deemed worthy to be in the national collections; this must be done at the prevailing market price, which is usually quite low at that level. If the national museum does not think an object worth acquiring for its collections, then it should, and must, be given permission for export. In my two years in Jerusalem, we kept exactly two objects for which an export license was requested, and for these fair compensation was given; all other requests were granted. 2) A close watch on all dealers must be kept by members of the Department of Antiquities and by curators in the museums with the purpose of acquiring for the national collections any unique or otherwise desirable objects. We did this regularly in Israel. The dealers knew us, respected us, liked to have their objects bought for the national museum, asked our advice about objects and our help in conserving them when necessary. It was a good relationship that served both sides because confidence was built up over many years. Funds must be made available for this purpose and the curators must be able to make quick decisions about purchase; the small local dealer cannot be asked to wait for his money, as does the large international operator. In the case of objects of high value, for which governments funds may not be available, the solution used in Israel, and applicable to other countries as well, was to ask friends of the museums, foreigners or local, to buy the object for their collections, with the stipulation that they be given ultimately to the national collections; we almost always found a person to do so. In this way, little of worth got away. The system can work in any source country, but only if the national government wants it to and will provide the relatively small amount of funds needed, certainly less than required to finance police action to prevent illegal export.

Excavators must be given a share of the finds from their excavations, after the Director of Antiquities has skimmed off whatever is needed for the national collections and a representative collection from the finds is deposited with the Department. One of the chief purposes of such an arrangement is to save the finds from the fate that usually is theirs if once they get into the storerooms of the local museums, where they are neglected, their identity often lost, and often even the objects themselves lost or allowed to disintegrate. There is hardly a source country that can afford the burden of storing and preserving properly the vast quantities of material that come from excavations within their boundaries. Israel, for instance, takes what it wants of the choice objects, gets its representative collection in order to be able to show anyone who inquires what has been found at any site, and then virtually says: "Get the rest of it out of here so we don't have to store and care for it; we don't have the space or funds to do so." What they do keep they care for well and one can find and see what one wants; this they do by keeping the amount within possible limits. The excavator can take his share back to his institution, where it is most useful both for teaching and exhibition. This is by no means a new suggestion. During the years of the British and French mandates in the eastern Mediterranean, this was the universal sys-

tem; when the separate countries achieved independence, they almost invariably revoked this system in the first flush of nationalism; Israel is the one exception. But there is a move back to the old system, especially where countries are pressed to do vast salvage operations and need international assistance, as in the case of Egypt and the High Dam. The return to the system of sharing finds with the excavator should be encouraged in every way possible, for it in no way impoverishes the source country, which always has the first choice. An indication of the move in this direction came only last week with the news that Jordan is allowing the export of a number of tomb groups from the American excavations at Bab edh-Dhra; groups of from ten to more than one hundred objects will be placed on permanent loan in museums and institutions, chosen from among those now filing their requests. Such a trend should be encouraged.

The vast numbers of duplicates which accumulate in any source country, and which are a great burden to it, with the result that they are usually neglected and are seldom available for study, should be put on sale in museums at a fair market price; again, this was standard practice before World War II; Egypt and Cyprus were excellent examples. The sale should automatically imply permission to export. Those objects too valuable for across-the-counter sale should be auctioned at regular intervals, with priority given to museums and then to dealers and the public. This was the scheme which actually found favor in Greece in 1939, but was never implemented. It should be possible for countries to arrange for channeling funds from such sales to the Department of Antiquities for the care of the nation's monuments and for further excavation, research and publication, all of which are in sore need in just about every Mediterranean country.

The suggestions made above are not only legal, within *existing* laws, but in most cases they are old practices which have only recently gone out of use, largely since World War II. Some of the Directors of Antiquities of these countries have expressed themselves as wishing it were possible to return to the old practices, which their governments do not now allow. The United States should be encouraging them to do so, not trying to solve their problems for them in ways that are impossible of implementation.

All our efforts at the University of Missouri have been made in order to have teaching collections for the Department of Art History and Archaeology. The exporting countries cannot claim exclusive right to their cultural heritage, for it is very much ours as well. We are a nation of people who came very largely from Europe and the Near East; our culture is based on theirs. We must have some right to this heritage and we must be able to teach it effectively, which we cannot do without artifacts from these countries. No one can argue that the supply of such artifacts is so limited that any damage would be done at the source by the export of limited amounts; we know how overloaded their storerooms are and how incapable they are of caring for what they have; they admit it. In fact, what comes to American museums is much better cared for and preserved than what remains behind; we are doing a better job than they in caring for our common cultural heritage.

Nor can it be claimed that an occasional exhibition of material sent on temporary loan by one of the source countries is sufficient for our educational purposes; it definitely is not. We cannot educate generations of historians, archaeologists, art historians on the basis of an occasional limited exhibition. Moreover, Greece, one of the main sources of our cultural heritage, never allows any objects out of the country, even on temporary loan. I believe that we have a moral right to demand that this heritage, ours as well as theirs, be shared with us; I am confident that this can be done with no harm to them. Our diplomatic offices should be encouraging them to return to, or inaugurate, sharing of finds with foreign archaeological expeditions; they should be prompting the archaeological services of source countries to implement their laws on the export of antiquities in a more proper way. They do not hesitate to ask much of us by way of assistance, and this is little enough to ask in return. In so doing, we should be proposing a far better way than that embodied in either the UNESCO convention or the bill being considered here to solve the problem of illicit export of archaeological materials.

Respectfully submitted,

SAUL S. WEINBURG,
Professor of Classical Archaeology, University of Missouri-Columbia, Director Emeritus, Museum of Art and Archaeology, University of Missouri-Columbia.

Senator RIBICOFF. Mr. Charles Cleland?

**STATEMENT OF CHARLES CLELAND, CURATOR OF ANTHROPOLOGY,
MICHIGAN STATE UNIVERSITY AND PRESIDENT, SOCIETY OF
PROFESSIONAL ARCHAEOLOGISTS ON BEHALF OF COORDINATING
COUNCIL OF NATIONAL ARCHAEOLOGICAL SOCIETIES AND THE
SOCIETY OF PROFESSIONAL ARCHAEOLOGISTS**

Mr. CLELAND. Mr. Chairman, my name is Charles Cleland, curator of anthropology, Michigan State University, and I would like to offer testimony in support of this legislation on behalf of the Coordinating Council of the National Archaeological Societies and the Society of Professional Archaeologists, of which I am currently president.

I would like to try to reemphasize a point that was made and a point which I think is of considerable importance in understanding the intent and the orientation of people that have spoken, pro and con, in this matter.

The artifact is really a two-sided kind of an article in a conceptual way and in a very real dimensional way. In the conceptual way of looking at an artifact, it can be something which is unique. It can be something which is exotic. It can be something which is appreciated for its intrinsic beauty.

In this case, it becomes a collectible item. In this case, it enters the marketplace. In this case, and some instances, it enters art museums.

But there is another way to look at the artifact, and in that way, it has extrinsic value. This artifact gives meaning to a particular site. This artifact gives meaning to the cultures of a people, and it is in this context, I think, that most American archeologists are looking at this legislation.

A clay figure dug from an ancient archeological site by an unskilled worker or a dance mask that is bought from non-Western peoples by collectors not only diminishes our understanding of the artifact itself, but it impairs our ability to understand the culture of which the artifact is a part, and this is a great concern of American archeologists.

We are in a situation where the market in artifacts, dealing and trafficking in artifacts, is destroying nonrenewable archeological resource, a nonrenewable cultural resource, namely, these sites of great antiquity. These cannot ever be revitalized. Once a market situation exists which simulates local people to go into the field to dig into these ruins and to remove the artifacts from their cultural context which gives them meaning, then our total understanding of culture process, of culture change, which affects us all as human beings is diminished.

We think that this bill is a small step, perhaps, but nonetheless a step, to protect the cultural integrity of artifacts and we urge that in some version, perhaps with some fairly major kinds of changes, that it be passed. We think that it is ironic that at this time in the history of our own Nation when we are expending very large sums of money, an immense effort to protect our own archeological sites, our own rich cultural heritage, that we cannot seem to understand the importance of sites and artifacts when they are part of the cultural heritage of other nations.

Senator RIBICOFF. As Mr. Weinberg points out, many of them are being destroyed anyway. Is there a method that could make this legal and do it on the positive side?

Mr. CLELAND. I am not sure I understand your question, Senator.

Senator RIBICOFF. You are an archeologist and Mr. Weinberg is an archeologist—

Mr. CLELAND. Well, sites are destroyed by national means, through erosion. They are destroyed by means of building, by progress, by building buildings and roadways. They are destroyed, in fact, by archeological excavation.

It is just to maximize the site. The best chance that we have to understand it is to have that excavation done by skilled professionals. That is what the end is that we wish to promote.

Senator RIBICOFF. Thank you very much, Mr. Cleland.

[The prepared statement of Mr. Cleland follows:]

STATEMENT OF CHARLES E. CLELAND, PH. D.

The following testimony is offered in support of S.B. 5643, a bill to implement the UNESCO Convention on Cultural Properties, now before the Subcommittee on International Trade.

I offer this testimony on behalf of the Coordinating Council of National Archaeological Societies, which represents a combined membership of thirteen thousand professional and avocational archaeologists of the United States, and the Society of Professional Archaeologists of which I am currently President. Members of the Society of Professional Archaeologists are bound by subscription to the Society's Code of Ethics to follow the UNESCO convention prohibiting illicit import, export, and transfer of cultural properties (Code of Ethics 1.1e).

One of the primary interests of American archaeologists is the preservation of the archaeological and cultural resources that constitute the patrimony of the people of the United States. Many of our members who work in other countries have an equally intense interest in preserving and conserving the cultural and archaeological resources which are the key to understanding the heritage of other nations and are, likewise, the rightful heritage of these nations and their peoples.

It is necessary to understand that archaeological and cultural resources, whether they be artifacts recovered from archaeological sites, ethnographic materials, examples of architecture, or the data obtained from archaeological investigation, have by far their greatest meaning in the context of the circumstances in which they were manufactured, built, or collected. If the artifact has meaning for understanding the site, then the site has far more meaning in understanding the artifact. It is for this reason that responsible archaeologists are convinced that the physical separation of cultural things from their cultural context greatly diminishes our ability to investigate, understand, and interpret the remaining remnants of man's journey from the past to the present.

Archaeological and cultural materials that are collected anywhere in the world should be collected in a way that is consistent with the principles of conserving the fragile and rapidly dwindling cultural resource base. At a time when the Congress of the United States has enacted several major laws that protect our indigenous cultural resources (Antiquities Act of 1906; Historic Site of 1935; Historic Preservation Act of 1966; National Environmental Policy Act of 1969; Archaeological and Historic Preservation Act of 1974; Executive Order 11598), we continue to condone trafficking in antiquities and ethnographic and artistic objects from other countries. These objects are often collected without regard to the laws of other nations and exported and imported with similar disregard. Of more lasting harm, however, is that the existence of a thriving antiquities market in the United States results in the looting and pillaging of countless foreign sites of archaeological and historic significance. It is noteworthy that the major targets of this cultural exploitation are the poor and developing nations of Latin America, Asia, and Africa which can ill-afford to protect their own cultural resources. Actions by U.S. citizens, acting directly or indirectly, should not deprive or diminish the rights of citizens of other nations to enjoy the material aspects of their own cultural heritage. We must be certain that the

objets d'art on American coffee tables were not gained at the expense of leaving gaping holes in the material evidence of human history.

The Coordinating Council of National Archaeological Societies and the Society of Professional Archaeologists find it ironic that we in the United States save gone to considerable legal and economic lengths to preserve our own cultural resources yet seem reticent to apply the same principles when the cultural resources of other nations are concerned. It seems to us that S.B. 5648 does, in fact, go a long way towards extending our conception of the importance of archaeological and cultural resources and preserving the integrity of the context of material objects. We support the intent of this legislation and recommend its passage into law.

Senator RUBICOFF. Mr. Lee Moore?

STATEMENT OF LEE MOORE, MIAMI, FLA.

Mr. MOORE. Mr. Chairman, honorable members of this committee, my name is Lee Moore, from Miami, Fla. I would like to ask you to overlook a few typographical errors that you might find in my statement that I submitted. I prepared it rather hastily.

Senator RUBICOFF. The staff will take care of the typographical errors when we reproduce it.

Mr. MOORE. Thank you.

I have come before you today representing myself as a knowledgeable, concerned citizen, that will be directly affected by proposed bill H.R. 5648, and believe that my opinion is that of the majority of the art appreciating public of our country.

I have been an art dealer for 15 years and have come from Miami, Fla., to endure your cold weather to testify before you today. In the time allotted me, I would like to go on record to oppose any further legislation that will impose import restrictions on works of art and primitive arts—of ancient arts and primitive arts—that we all appreciate for our enjoyment and edification.

I feel that this legislation would serve no constructive purpose but rather would needlessly force the American people to be denied their right to enjoy and appreciate the beautiful works of art left behind by the ancient civilizations and primitive cultures, as well as hinder our knowledge of those peoples that occupied these nations before they were taken from them.

Restrictions on the importation of cultural objects into the United States will not deter the flow of the so-called illicit traffic of art and cultural objects for which purpose the bill was designed, but would only cause these objects to be diverted to other eastern and European nations to enjoy.

The United States will then take a stand alone to become the only nation in the world to deprive its people of the right to enjoy such objects. Not only would the art appreciating public suffer, but the small museum institutions with incomplete exhibition material will be deprived the opportunity of building their institutions for the edification and appreciation of the public.

The art dealers of the world are, and have been, the most important source of ancient and primitive art to private collections and public institutions, without which our knowledge and appreciation of these ancient people would be virtually void.

I would like to point out that there already exists legislation protecting architectural material and stone monuments in the form of

Public Law 92-587, as well as the National Stolen Properties Act which is in effect, and I strongly support these existing laws.

However, if further legislation on the subject must be imposed upon us, I feel that there are key defects of this bill which should be considered for amendment, in which case this bill will become acceptable.

I would go into these, but we are short of time here. I leave them in my written statement.

No matter how just or unjust the laws of another nation, the United States should not be requested, or required, at the expense of the American people to enforce the laws of those nations which do not affect the American people, or should we take a stand alone among the nations of the world solely on a moral issue only because the State Department decides that it is immoral for us not to stand alone to protect what they call national patrimony.

It should not be the intent of this Congress to create legislation to enforce the laws of other countries if they are unable to enforce, or attempt, to protect themselves. It should be the intent of this Congress to create laws for the benefit of its people, for which purpose we have an elected Congress to represent us.

My point on this statement will be detailed in full in my full statement which I have presented for the record. The culture left behind by these civilizations in the form of artwork is, and should, remain the heritage of all the peoples of the world and not be considered solely the property of a few that now occupy the land of these aboriginal cultures who now claim it categorically as national patrimony which they do little or nothing to preserve and share with the world.

I might point out that I was present, and testified, in the House Ways and Means Committee on this bill, and that although their opposition against this bill outweighed those in favor, it has still come before the Senate for final consideration, which is why I am here today.

If a bill must be imposed upon us, it is my hope that this committee will take into consideration amending the sections of the bill that I have mentioned in my full statement and will give us something that we can live with.

Mr. Chairman and members of this committee, I respectfully submit my full statement for the record, and I thank you for your consideration.

Senator RIBICOFF. Your full statement will go into the record as if read.

[The prepared statement of Mr. Moore follows:]

STATEMENT OF LEE MOORE

Mr. Chairman and honorable members of this committee: I come before you today representing myself as a knowledgeable and concerned citizen that will be directly affected by proposed Bill H.R. 5643 or S. 2261 and believe that my opinion is that of the majority of the art appreciating public of our country. I have been an art dealer for 15 years and have come from Miami, Florida enduring your cold weather to testify before you.

In the time allotted to me I would like to go on record to oppose any further legislation that will impose more import restrictions on works of Ancient and Primitive arts that we all appreciate for our enjoyment and edification. I feel that this legislation would serve no constructive purpose; but, rather would needlessly force the American people to be denied their right to enjoy and appreciate the beautiful works of art left behind by ancient civilizations and primitive

cultures as well as hinder our knowledge of those peoples that occupied those nations before they were taken from them.

Restrictions on the importation of "Cultural Objects" into the United States will not deter the flow of the so called, "Illicit Traffic of Art and Cultural Objects", for which purpose this bill was designed, but would only cause these objects to be diverted to other Eastern and European nations to enjoy. The United States will then stand alone to become the only nation in the world to deprive its people the right to enjoy such objects.

Not only would the art appreciating public suffer but the small museum institutions with incomplete exhibition material will be deprived the opportunity of building their institutions for the edification and appreciation of the public.

The art dealers of the world are and have been the most important source of 'Ancient and Primitive Art' to private collections and our public institutions, without which, our knowledge and appreciation of these ancient peoples would be virtually void.

I would like to point out that there already exists legislation protecting architectural material and stone monuments in the form of Public Law 92-587. As well, the 'National Stolen Properties Act' is in effect and I strongly support these existing laws.

However, if further legislation on this subject must be imposed upon us I feel that two key defects of this bill should be considered for amendment in which case this bill will become acceptable. These defects are:

Amend Section 2(a), on 'Agreement Authority' to require a concerted international effort under the convention rather than the United States stand alone among the art importing nations in restricting importations of cultural material.

Also Section 7 on 'Stolen Cultural Property'. The term 'Stolen Property' should be clarified and 'Proof of Ownership' defined. The term 'Stolen' should be applied to only such objects that can be determined that they were the property of an individual or institution by proper documentation and that those objects are no longer in possession of the owner as a result of fraud or theft and have been properly reported stolen with hope of recovery. Or, such objects provided for under the aforementioned legislation. An object should not be considered stolen merely because a nation takes it upon themselves to declare any and all sub-soil material the property of the 'State Party' and not the property of the individual who worked for and discovered or purchased that object if not previously reported 'Stolen'.

No matter how just or unjust the laws of another nation, the United States should not be requested or required, at the expense of the American People to enforce laws of those nations which do not affect the American People. Nor should we take a stand alone among the nations of the world solely on a 'Moral Issue' only because the 'State Party' decides that it is immoral for us not to stand alone to protect what they call 'National Patrimony'.

It should not be the intent of this Congress to create legislation to enforce the laws of other countries that they are unable to enforce nor attempt to protect themselves. It should be the intent of this Congress to create laws for the benefit of its people for which purpose we have elected a Congress to represent us. My point on this statement will be detailed in my full statement which I have presented for the record.

The culture left behind by these civilizations in the form of 'Art Works' is and should remain the heritage of all peoples of the world and not be considered solely the property of a few that now occupy the land of these aboriginal cultures who now claim it categorically as, so called, 'National Patrimony' which they do little or nothing to preserve and share with the world.

We are in the evolution of a new governmental administration that I hope will not take away our 'Human Rights' to the enjoyment of the arts and the edification of the aborigines who inhabited the land before we occupied it.

I might point out that I was present and testified before the 'House Ways and Means Committee' on this bill and that although the opposition against this bill outweighed those in favor it has still come to the Senate for final consideration which is why I am here today.

CONCLUSION

If a bill must be imposed upon us it is my hope that this committee will take into consideration amending the sections of this Bill that I mentioned and will give us something that we can live with.

Mr. Chairman and members of this committee; I respectfully submit my full statement for the record and thank you for your consideration.

Respectfully yours,

LEE MOORE.

FULL STATEMENT OF LEE MOORE TO SUPPLEMENT THE ORAL TESTIMONY
BEFORE THE SUBCOMMITTEE

The United States Government should not be obliged to take upon itself to enforce the laws of other countries, no matter how just or unjust, at the expense of denying its own people their rights to the enjoyment of this 'Cultural and Educational Art'. If the signatories of the 'UNESCO convention' are unable or unwilling to enforce its own laws, the United States should not be expected to undertake this task or responsibility for them. Also we should not be expected to stand 'morally' alone among the art importing nations if they are not willing to join in a concerted international effort to stand with us.

I have personally witnessed willful and needless destruction of 'Cultural Material' by the very 'State Parties' requesting the United States to protect it for them.

In Mexico I have seen government-contracted road builders bulldoze thru ancient Mayan temples with no attempt being made to go around or preserve their contents. Such contents are considered a crime in that country to remove and export to a country that will place it in a museum for posterity. I have seen large stone monuments, which we now protect, thrown into rock crushers to be used as road beds. This kind of discrimination should be taken into consideration.

The Fresco murals of 'Bonampak' is a classic example of neglect or a 'could care less' attitude. They have been allowed to decay away and are now almost lost to the world and will be lost completely in a few more years if not already too late. I personally made a trip there in October of last year.

In Tikal, Guatemala, the great stelae (stone monoliths) are exposed to the elements and have been allowed to erode to an almost illegible state. No attempt has been made to preserve them. All we have now are photographs and drawings of what they were like in their original state when first discovered.

In Peru, there are hundreds of mummy bundles of the Ancient "Paracas" culture rotting away in the basement of the government museum. No attempt to study or preserve them has even been made. They are presently being consumed by rats and mould. The only attempt to study or preserve has been thru art dealers providing museums and private collections. The only examples of the great textiles this culture produced are found in Museums in this country and Europe. The "Paracas" culture of Peru is one of the most ancient and is known for their finely designed textiles in which these mummies are wrapped. Being well preserved for almost two thousand years in the dry deserts of Peru, these mummies have only been excavated and placed in a mouldy basement of the 'State Museum' only to rot away and be lost to the world forever.

These are only a few examples that I can bring to your attention.

If the signatories of the "UNESCO Convention" will not take steps to preserve their own "Patrimony" then it is useless for the United States to pass a law that would not serve this purpose. What law can we apply here that will preserve or deter export of these artifacts, when, in fact, if such artifacts happen to be confiscated by officials in the signatory countries, those same artifacts are found the very next week in galleries in other parts of the world. I speak from experience. Why should we be expected to deny our art-appreciating public their "Human Right" to enjoy art by passing a law to protect the laws of other countries that they do not even respect themselves.

Important discoveries and knowledge of these ancient cultures has been obtained thru these very objects of, so-called, "Illicit Art" which has become incorrectly termed "Stolen Property".

The term, "Stolen Objects", has been improperly applied and, taken in its context, has a deceiving implication that can be misunderstood by those who are not intimately familiar with the professional world of the "Art Trade". These, so-called, "Illicit Cultural Objects" purchased by the art dealer of the trade at premium market value are in no way to be mistaken as "Stolen".

These "Cultural Objects" designated for, so-called "Protection" are generally small clay, stone, or metal objects found by poor off-season farmers which they sell to local dealers of the trade to supplement their meager income that they badly need. These objects sold to the dealers in the "State Party" are then offered

to the world market. These "Dealers", many times, are the very same government officials for whom you are being asked to enact this proposed legislation.

It is my opinion and belief that this committee is being asked to pass this discriminatory legislation based solely on information from a small but well-meaning group of idealistic archaeologists who are not in touch with the real world and lack the understanding of the rest of the American people.

If any legislation must be enacted at all, then the proposed import restrictions in Section 3 should be limited only to such 'Stolen' material as described in Section 6. Such objects as clay, terracotta, small stone objects, metal objects of gold, and other moveable material should not be prohibited entry into the U.S. with the time limits or otherwise. Section 5 is totally unreasonable and unacceptable by proposing a 10 year limit to such material.

The signatory 'State Parties' have never and will never have the intention of authorizing export permission of such 'Cultural Material' that we speak of.

I fully support seizure and return of known, registered and positively identifiable-inventoried-works of art, and monuments that have been removed from institutions, shrines, national monuments and private collections, to which they have the justifiable right to title as 'National Patrimony'.

By 'Positive Identification', I mean, showing positive proof that such known objects of question have been in possession of the claimant by means of previous publication or registry by photographic or accurately documented descriptions by reliable professional scholars or registrars of official capacity. Such identifiable objects must be known to have existed if it can be 'Reported Stolen' and thereby recovered.

I am proud to go on record as having been instrumental in assisting in the recovery of such small 'Stolen Property' on several occasions. Whenever possible, I will continue to assist in deterring such indiscriminate acts of theft and destruction of such 'Cultural Material'. Such acts as these have been responsible for the questionable reputation of the Professional Art Dealer.

The import restrictions of 'Cultural Artifacts' as proposed in Bill H.R. 5643 is a drastic measure which should be considered seriously and very carefully. If passed in its present drafted form, it would have a devastating impact and a long-lasting effect on our cultural society, of which I believe most of us are a part. The only beneficiaries will be the non-signatory Western and Middle East nations and only the American posterity will suffer.

It would not only be unjust to our society but would also be a first step in the direction of depriving our society its right to 'Cultural Artifacts' which it so urgently needs to preserve in these times of changing culture.

In closing, I respectfully request that this Committee take into consideration my statement which I have submitted today and give us something in the way of legislation with which we can all live...

STATEMENT OF INFORMATION FOR THE RECORD

Reference: H.R. 5643.

For attention of: House Ways and Means Committee and Subcommittee on Trade.

Subject: The following points are intended to point out that H.R. 5643 is an unnecessary legislation and will serve no further purpose of implementing the existing laws which now protect the 'Cultural Property' of other countries.

I. The National Stolen Properties Act (NSPA) Title 18 U.S. Code—Sections 2314-15

Already covers everything proposed in this Bill H.R. 5643 in Sections 6-9. It has been in effect and enforced for many years. (See enclosed newspaper articles as evidence)

II. Public Law 92-587 (Mills Law—1972 H.R. 4678)

Also regulates the importation of Pre-Columbian Monuments not covered under the (NSPA). (See enclosed copy of this law.) This has also been in effect and enforced and covers the protection of 'Cultural Property' proposed in H.R. 5643. (See enclosed newspaper articles as evidence.)

CONCLUSION

The enactment of further legislation would be of no useful purpose to the American People or the countries concerned.

Those who would be affected by the proposal of H.R. 5643 fully agree with, support and cooperation with the two above mentioned laws which appear to be sufficient. Further legislation would only complicate and confuse already existing laws which fully cover everything proposed in H.R. 5643.

NOTE.—In many News Publications, reference is made to 'Illegally Imported' or 'Smuggled' Artifacts into the U.S.

This should be clarified: All artifacts, unless in violation with the aforementioned existing laws, are "Free Entry and Duty Free" as provided for by the U.S. Customs Antiquities Statute.

It is only reasonable to assume that the term, 'Smuggling' should only be applied to prohibited contraband items into the United States. If an object is 'Duty Free' and a legal import into the U.S. Customs then there is no logical reason to assume that these objects are 'Smuggled' into the United States.

(Re: Enclosures U.S. Treasury Dept., U.S. Customs Memo)

[Public Law 92-587, 92nd Congress, H.R. 4678, October 27, 1972]

AN ACT To provide for the free entry of a carillon for the use of the University of California at Santa Barbara, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to admit free of duty a carillon imported June, 1969, for the use of the University of California at Santa Barbara.

SEC. 2. If the liquidation of the entry of the article described in the first section of this Act has become final, such entry shall be reliquidated and the appropriate refund of duty shall be made.

SEC. 3. (a) Subpart B of part 1 of the appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting immediately after item 907.45 the following new item:

" 907.50 Caprolactam monomer in water solution (provided for in item 409.70, part 1B, schedule 4)	Free No change ¹	On or before December 31, 1972. "
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(b) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouses, for consumption on or after the date of the enactment of this Act.

(c) Upon request therefor filed with the customs officer concerned on or before the ninetieth day after the date of the enactment of this Act, the entry or withdrawal of any article—

(1) which was made after August 15, 1972, and before the date of the enactment of this Act, and

(2) with respect to which there would have been no duty if the amendment made by subsection (a) applied to such entry or withdrawal.

shall, notwithstanding the provisions of section 514 of the Tariff Act of 1930 or any other provision of law, be liquidated or reliquidated as though such entry or withdrawal had been made on the date of the enactment of this Act.

TITLE II—REGULATION OF IMPORTATION OF PRE-COLUMBIAN MONUMENTAL OR ARCHITECTURAL SCULPTURE OR MURALS

SEC. 201. The Secretary, after consultation with the Secretary of State, by regulation shall promulgate, and thereafter when appropriate shall revise, a list of stone carvings and wall art which are pre-Columbian monumental or architectural sculpture or murals within the meaning of paragraph (3) of section 205. Such stone carvings and wall art may be listed by type or other classification deemed appropriate by the Secretary.

SEC. 202. (a) No pre-Columbian monumental or architectural sculpture or mural which is exported (whether or not such exportation is to the United States) from the country of origin after the effective date of the regulation listing such sculp-

ture or mural pursuant to section 202 may be imported into the United States unless the government of the country of origin of such sculpture or mural issues a certificate, in a form acceptable to the Secretary, which certifies that such exportation was not in violation of the laws of that country.

PRE-COLUMBIAN MONUMENTAL AND ARCHITECTURAL SCULPTURE AND MURALS

12.105 Definitions.—For purposes of sections 12.106 through 12.109:

(a) The term "pre-Columbian monumental or architectural sculpture or mural" means any stone carving or wall art listed in paragraph (b) of this section which is the product of a pre-Columbian Indian culture of Bolivia, British Honduras, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Panama, Peru, or Venezuela.

(b) The term "stone carving or wall art" includes:

(1) Such stone monuments as altars and altar bases, archways, ball court markers, basins, calendars, and calendrical markers, columns, monoliths, obelisks, statues, stelae, sarcophagi, thrones, zoomorphs;

(2) Such architectural structures as aqueducts, ball courts, buildings, bridges, causeways, courts, doorways (including lintels and jambs), forts, observatories, plazas, platforms, facades, reservoirs, retaining walls, roadways, shrines, temples, tombs, walls, walkways, wells;

(3) Architectural masks, decorated capstones, decorative beams of wood, frescoes, friezes, gyps, graffiti, mosaics, moldings, or any other carving or decoration which had been part of or affixed to any monument or architectural structure, including cave paintings or designs;

(4) Any fragment or part of any stone carving or wall art listed in the preceding subparagraph.

(c) The term "country of origin," as applied to any pre-Columbian monumental or architectural sculpture or mural, means the country where the sculpture or mural was first discovered.

12.106 Importation prohibited.—Except as provided in section 12.107, no pre-Columbian monumental or architectural sculpture or mural which is exported from its country of origin after (the effective date of this regulation) may be imported into the United States.

12.107 Importations permitted.—Pre-Columbian monumental or architectural sculpture or mural for which entry is sought into the Customs territory of the United States will be permitted entry if at the time of making entry:

(a) A certificate, issued by the Government of the country of origin of such sculpture or mural, in a form acceptable to the Secretary, certifying that such exportation was not in violation of the laws of that country, is filed with the district director of Customs; or

(b) Satisfactory evidence is presented to the district director of Customs that such sculpture or mural was exported from the country of origin on or before (the effective date of this regulation); or

(c) Satisfactory evidence is presented to the district director of Customs that such sculpture or mural is not an article listed in section 12.105.

12.108 Detention of articles; time in which to comply.—If the importer cannot produce the certificate or evidence required in section 12.107 at the time of making entry, the district director shall take the sculpture or mural 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 sculpture or mural is taken into Customs custody, or such longer period as may be allowed by the district director for good cause shown.

12.109 Seizure and forfeiture.—(a) Whenever any pre-Columbian monumental or architectural sculpture or mural listed in section 12.105 is detained in accordance with section 12.108 and the importer states in writing that he will not attempt to secure the certificate or evidence required, or such certificate or evidence is not presented to the district director prior to the expiration of the time

provided in section 12.108, the sculpture or mural shall be seized and summarily forfeited to the United States in accordance with Part 162 of this chapter.

(b) Any pre-Columbian monumental or architectural sculpture or mural which is forfeited to the United States shall in accordance with the provisions of Title II of Public Law 92-587:

(1) First be offered for return to the country of origin, and shall be returned if that country presents a request in writing for the return of the article and agrees to bear all expenses incurred incident to such return; or

(2) If not returned to the country of origin, be disposed of in accordance with law, pursuant to the provisions of section 609, Tariff Act of 1930, as amended (19 U.S.C. 1609), and section 162.46 of this chapter.

U.S. CUSTOMS SERVICE, CUSTOMS INFORMATION EXCHANGE

ORR Ruling: 78 0275.

December 10, 1978.

Bureau File: RES-2-33.

Date: July 9, 1978.

Reference: Public Law 92-587 (Title II); 12.105-12.109, Customs Regulations.

Subject: Pre-Columbian monumental and architectural sculpture and murals.

Your letter of asks if Public Law 92-587 would prohibit the importation of the following pre-Columbian art:

a. clay figurines

b. clay pottery

c. clay pendants and beads; shell and stone beads and pendants; bone beads and pendants; obsidian articles; metal objects such as small copper bells and tweezers—all of Mexican pre-Columbian origin.

As you realize, the law is directed at pre-Columbian monumental or architectural sculpture or murals, and is intended to help Latin American countries deter the plundering of archaeological sites and ceremonial centers of ancient Indian cultures.

Enclosed is a copy of sections 12.105 through 12.109 of the Customs Regulations, as it appeared in the Federal Register of May 2, 1973.

We agree that the general description of the items you are interested in would not seem to be subject to the import restrictions on Pre-Columbian sculpture and murals. However, if those items had been a fragment or part of protected artwork, as defined in the regulations, they would be so subject under section 12.105(b)(4).

From time to time, we expect to receive additional information in this area from the Department of State and will make it available for assistance to local Customs officers and the public.

Sincerely yours,

RAYMOND E. TURNER,

Director, Entry Procedures and Penalties Division.

Identifying data has been deleted pursuant to Section 103.5(b), Customs Regulations.

[News Release]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Miami, Fla., May 22, 1975.

MAYAN ARTIFACT RETURNED TO MEXICO BY MIAMI U.S. CUSTOMS

Miami's District Director of Customs, James E. Townsend, today in a brief ceremony returned a Mayan artifact to Mexico's Assistant Attorney General for Defense of Cultural Patrimony, Dr. Alejandro Gertz Manero. Dr. Manero stopped in Miami to receive the item valued in this country at approximately \$20,000.

The artifact, referred to as a "stucco mask", is almost the life size shape of a human head only flat in the rear portion. Experts called in to review the item identified it as an authentic Mayan artifact from the Palenque area of Mexico. Palenque is known as one of the most beautiful of the Mayan ruins and is a registered site dated at the year 650 A.D. It is regarded as one of the most beautiful due to the fact that it is unique in that it is not of the traditional fortress type of ruin but is more classical in its structure.

The artifact was found by a Miami Customs Import Specialist when he opened a shipment of two boxes which had entered into the United States on November 11, 1974, at San Ysidro. The boxes, containing 68 pieces in all, were not opened at that time, but were forwarded under Customs bond to Miami by air where they arrived on December 4, 1974. At the time they were opened for Customs inspection, the one artifact was felt to be authentic and possibly in violation of Customs laws prohibiting the importation of authentic artifacts without a certificate from the Mexican government allowing its exportation from that country. Dr. Manero is the head of that arm of the Mexican Government which authorizes such certification. Since there was no accompanying certificate, the importer was given 90 days in which to produce it. Upon the failure to do so, the artifact was officially seized by Customs on March 20, 1975. Negotiations were entered with Mexico to authenticate the item and have it returned.

The case is under investigation by Customs Special Agents for violations of Customs regulations. In January of this year, an ancient 400 pound stone carving used by the Olmec culture in Mexico, over 2,000 years ago, was located by Customs Special Agents at the request of the Mexican Government. The monolith was found in a Manhattan warehouse. The owner, who had imported it legally into the United States, cooperated fully in returning the sculpture to Mexico. Customs regulations issued in June 1973 now prohibit the importation of pre-Columbian monumental and architectural sculpture, and murals from Mexico, Central and South American countries without proper export documents from the country of origin.

District Director Townsend stated that this is one of the more gratifying aspects of the Customs function in enforcing the more than 200 laws for more than 40 Federal agencies; in addition to, the Customs laws. Few people are aware of the scope of the Customs role.

CARVING GOES HOME

Somebody stole a life-size Mayan carving of a human head from some undisclosed location in Mexico a few months back, and it has turned up in Miami. The carving, dating from about 650 A.D. and reportedly worth \$20,000, was intercepted by Customs officials after its importer was unable to produce the necessary documentation for the removal of any authentic artifact from Mexico. In a brief ceremony Thursday, Customs returned the carving to a Mexican assistant attorney general, who came here to claim it.

ARTIFACTS DUE FOR RETURN TRIP

A Florida man who dug up some old artifacts in Central America and brought them home probably will escape any penalty, U.S. Customs investigator Richard L. Trindle said Thursday in Jacksonville. Naturally, he will lose the collection valued at \$25,000.

The man—his name is being withheld, and he lives somewhere else—is not a collector nor an archeologist and probably didn't know what he had, Trindle said. The collection was brought into this country about a year ago and discovered only when its finder offered it for sale at \$2,500.

British Honduras, where the artifacts of a Mayan culture dating between 200 and 800 A.D. were found, will determine what happens to the collection.

[From the New York Times, July 18, 1970]

U.S. AND MEXICO SIGN PACT FOR RETURN OF STOLEN ART

(By Juan de Onis)

MEXICO CITY, July 17.—The United States and Mexico today signed a treaty designed to protect archeological monuments, colonial churches and historical archives from thieves of antiquities.

The treaty, the first of its kind signed by the United States with any country, provides legal mechanisms for recovery by Mexico of national art treasures stolen and smuggled to the United States.

The plundering of pre-Columbian archeological sites, such as the Mayan ruins, and of colonial churches by thieves who sell to museums and private collectors is a major problem affecting Mexico's cultural heritage.

A similar problem exists in Peru, seat of the Inca culture, in Guatemala and other Western Hemisphere countries, which are expected to seek similar treaty arrangements with the United States.

The treaty, which must be ratified by the Senates of both countries, was signed by Foreign Minister Antonio Carrillo Flores of Mexico and by Robert H. McBride, the United States Ambassador.

Mark Feldman, a legal adviser of the State Department, negotiated the treaty, which was proposed by Mexico during a meeting between President Lyndon B. Johnson and President Gustavo Díaz Ordaz of Mexico in 1967.

The text has been submitted for comment to museum directors and art dealers, and United States sources said no major objections had been raised.

The application of the treaty is limited to pre-Columbian objects, religious art and artifacts of the colonial period, and documents from official archives up to 1920 that are "of outstanding importance" to the cultural treasure of either country and are public property.

PROVIDES FOR RETURN

If such objects are removed illegally from Mexico, the treaty obliges the United States Attorney General's office to take judicial action under laws applying to stolen property for their recovery and return to Mexico.

Although the treaty is not retroactive, Mr. Carrillo Flores said Mexico would continue to seek the recovery of objects removed illegally in the past.

An example of the smuggling of cultural treasures from Mexico came to light last year when an American citizen, whom the Mexicans declined to identify, offered the Metropolitan Museum in New York a carved stone facade from a Mayan temple.

The facade, more than 30 feet long, had been discovered in the jungles of Quintana Roo, sawed into sections, and transported by helicopter to a seaport, where it was shipped to New York. The asking price was \$500,000.

The directors of the Metropolitan notified Dr. Ignacio Bernal, director of Mexico's Museum of Anthropology, who identified the facade as Mayan.

Threatened with legal action, the discoverer of the facade agreed to its return to Mexico. It is now on display at the Modern Anthropological Museum here in Chapultepec Park.

One objective of the treaty is to promote joint archeological work and cultural exchange in antiquities.

The National Institute of Anthropology in Mexico and several regional institutes work with limited funds. There are only about 50 graduate anthropologists and archeologists working in Mexico.

Antiquities are in great demand for home decorating among wealthy Mexicans, and dealers here have well established connections with outlets not only in the United States, but also in France, West Germany, Britain and Japan.

"Any one of these dealers can put up more capital to dig at a site, which may be ruined in the process, than our National Institute has to preserve our sites," said Dr. Jose Lorenzo, director of the Institute of Anthropology.

MEXICO'S CRACKING DOWN ON SMUGGLERS OF CULTURE

Mexico City—(UPI)—The recovery of a half-million-dollar Mayan head smuggled out of Mexico last year is the first fruit of a dramatic effort to halt the systematic rape of Mexico's archeological heritage.

Dr. Ignacio Bernal, director of Mexico's Anthropology and History Institute, blamed the theft on an organized "Mafia" of at least 11 persons—seven Mexicans and four Americans. "There may be more involved, however," he said.

They did an expert job. The head (believed to have been discovered in the southeast Mexican territory of Quintana Roo) was removed intact. Then they photographed it, cleaned it perfectly, cut it into 100 pieces and packed them in boxes."

The boxes were shipped overland by truck through Mexico City and across the U.S.-Mexican border, Dr. Bernal believes the gang bribed border guards. "It must have cost them at least \$150,000 just to remove the piece from Mexico," he added.

Once the extraordinary archeological find was safely in the United States, an intermediary offered to sell it to the New York Metropolitan Museum of Art for \$500,000.

Museum authorities spoiled the smugglers' dream by notifying Mexican anthropology authorities and local police. The intermediary was arrested but the gang

got away. After secret U.S.-Mexican negotiations, the Mayan head was returned to Mexico.

On Feb. 24, the Mexican Museum of Anthropology announced the exhibition of the reconstructed piece in its Mayan section. Despite any doubt about its authenticity, the museum admitted that it did not know its origin or age.

[From the San Antonio Light, Friday, August 15, 1975]

MEXICO GETS BLAME

(By K. Mack Slisk)

A federal judge said Mexico "needs to clean up its own act" if it wants to prevent pre-Columbian artifacts from being smuggled out of the country.

U.S. District Judge John H. Wood made the statement Thursday after sentencing four U.S. citizens for allegedly attempting to peddle Mexican art treasures which were removed from Mexico in violation of a 1897 Mexican law making such artifacts property of the government.

Wood said he had received numerous telephone calls, most of them anonymous from persons purporting to be citizens of Mexico urging him to "throw the book at" the four persons arrested by the FBI last year.

A jury on June 22 convicted the four and a California man for allegedly attempting to sell more than 100 art objects some more than 2,000 years old and dating back to the Mayan and Olmec civilizations in southern Mexico and Guatemala, to an FBI agent posing as an art collector.

Wood pronounced three-year prison terms, with six months to be served, plus five-year probation periods for William Clark Simpson, 44, San Antonio, Patty McClain, 36, Houston, and Michael Bradshaw, 28, Toledo, Ohio. He gave Mrs. Simpson, 41, a three-year suspended sentence and five years probation.

Also convicted, but not yet sentenced, was Joseph M. Rodriguez, 60, Calexico, Calif.

The four defendants asked for leniency saying they received an opinion from Mrs. McClain's Houston attorney that they legally could deal in the artifacts and that Simpson talked the situation over with the FBI beforehand and was not told the transaction was illegal.

"We did everything a layman could do to stay within the law," Simpson said.

Wood said it was common knowledge, and he had witnessed it himself in Allende, Mexico, that Mexican citizens constantly sell to tourists what are purporting to be ancient artifacts.

The convictions were made for interstate transportation of stolen property based on the 78-year old Mexican law which forbids removal of the art treasures from Mexico, making them stolen merchandise. Defense lawyers said Thursday only one other such case had been tried in California, and it involved a U.S. citizen who removed the artifacts from Mexico himself.

Testimony showed the defendants purchased the figurines, stone masks and stoneheads taken from a Mayan temple and clay pots and dishes in this country.

Wood allowed the defendants to remain free on bond while they appeal to the 5th U.S. Circuit Court of Appeals.

[From the Houston Chronicle, Friday, Aug. 15, 1975]

U.S. CITIZENS SENTENCED—MEXICO URGED TO ACT ON ARTIFACT SMUGGLING

San Antonio—A federal judge, urged to deal harshly with four U.S. citizens convicted of peddling Mexican art treasures, said Mexico "needs to clean up its own act" if it wants to prevent the smuggling of artifacts.

U.S. District Judge John H. Wood made the statement after sentencing the four for attempting to peddle Mexican art treasures which were removed from that country in violation of an 1897 Mexican law making such artifacts property of the government.

Wood said he had received several telephone calls, most of them anonymous, from persons purporting to be citizens of Mexico urging him to "throw the book at" the four persons arrested by the FBI last year.

But Wood said it was common knowledge, and he had witnessed it himself in Allende, Mexico, that Mexican citizens constantly sell tourists purported artifacts.

"It occurs to me the Republic of Mexico should clean up its own act in some respects," he said. "There's apparently been no effort by the Mexican government to prevent these sales."

He also said Mexico should pass laws preventing sales of fake pre-Columbian art.

A jury on June 22 convicted the defendants and another man for trying to sell more than 100 art objects, some more than 2,000 years old and dating back to the Mayan and Olmec civilizations in Southern Mexico and Guatemala, to a FBI agent posing as an art collector.

Wood pronounced three-year prison terms, with six months to be served, plus five-year probation periods for William Clark Simpson, 44, of San Antonio, Patty McClain, 36, of Houston, and Michael Bradshaw, 28, Toledo, Ohio. He gave Simpson's wife a three-year suspended sentence and five years probation.

Also convicted, but not yet sentenced, was Joseph W. Rodriguez, 60, Calexico, Calif.

The four defendants asked for leniency. They said McClain's Houston attorney told them such sales are legal.

Testimony showed they purchased the figurines, stone masks and stoneheads taken from a Mayan temple and clay pots and dishes in this country.

Wood allowed the defendants to remain free on bond while they appeal to the 5th U.S. Circuit Court of Appeals.

Senator RIBICOFF. I want to thank all of you ladies and gentlemen for your contributions. This is a very complex subject and we will give it very serious consideration.

Thank you very much. The committee will stand in recess.

[Thereupon, at 12:45 p.m., the subcommittee recessed to reconvene at the call of the Chair.]

[By direction of the chairman, the following communications were made a part of the record:]

STATEMENT OF HON. WILLIAM D. HATHAWAY

Mr. Chairman, I very much appreciate the opportunity to testify before you this morning.

I introduced S. 2261 because of my respect for Rep. Abner Mikva and for the tremendous amount of work which he has put into H.R. 5643, to which my bill is the Senate companion.

The bill provides legislation necessary for implementation of the UNESCO convention which the Senate approved on August 11, 1972, but which, specifically, is not self-executing.

The problem of pillage and illicit trade on antiquities and cultural objects is not a new one.

For as long as mankind has existed, there has been war between nations, plunder by the victors, and subsequent trading of the spoils in normal commercial channels. And there has been peace-time exploitation of antiquities, as well.

Although this bill cannot end these acts, it is clear that we must take steps to curb the growing trade in national art treasures.

The demand for art objects has grown. And since, by definition, there is only a finite supply of antique artifacts, their scarcity is met by increasingly aggressive practices by which they may be acquired.

This puts increased pressure on archaeological sites which, when pillaged, are robbed of the knowledge which the object in its ancient repository, might have imparted to us.

This bill gives the President a defined sphere of authority, under which he may enter into bilateral or multilateral agreements with other nations whose cultural patrimony is endangered by pillage. The President is also given emergency powers to restrict the importation of such artifacts where a foreign state requests it.

Although the bill enjoys wide support, the art constituency is a complex one with a wide variety of interests, goals and problems. So in order to help the President address the situation, section 5 of the bill establishes a Cultural Property Advisory Committee.

The bill also prohibits the importation of cultural property stolen from a museum and there are provisions dealing with recovery, return, seizure and judicial forfeiture of such artifacts. The bill is prospective in its operations.

Finally, Mr Chairman, I want to underscore my belief that this bill presents us with an excellent opportunity to effect some long-needed reforms. The bill as it stands may well benefit from whatever modifications the Committee and the Senate may choose to make to it in the interest of clarity and practicality.

GENERAL COUNSEL OF THE U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., December 20, 1977.

HON. RUSSELL B. LONG,
Chairman, Committee on Finance,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department on H.R. 5643, an Act

"To implement the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property."

If enacted, H.R. 5643 would authorize the President, pursuant to the provisions of the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, to enter into agreements with foreign governments to prohibit importation into the U.S. of archaeological or ethnological property unless the exportation of such property has been approved by the foreign government. The proposed legislation also would provide for enforcement of the import prohibitions and for seizure and forfeiture of any property which is imported into the United States in violation of the import prohibitions.

The Department of Commerce supports the purpose of H.R. 5643 to prohibit and prevent the illicit import, export, and transfer of ownership of cultural property. Since the articles involved are cultural, i.e., archaeological or ethnological, in nature, and are not commercial trade products, we do not believe the enactment of the proposed legislation would have any effect on U.S. industry or international trade policy. We defer to the Department of State regarding the technical aspects of the bill.

In the event this legislation were enacted it would have no impact on the revenues to, or the administrative costs of this Department.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

C. L. HASLAM,
General Counsel.

EVERSON MUSEUM OF ART,
Syracuse, N.Y.

Re: H.R. 5643.

To: Finance Subcommittee on International Trade.

As director of a medium-sized museum in a medium-sized city which has within recent years experienced considerable cultural development, I'm opposed to H.R. 5643 since its effect would certainly limit the growth of certain collections. It would probably deprive Americans of African and Latin American extraction of proper representation of their heritages in relation especially to European cultures in our country's museums. Collections of material from these two areas of the world are underdeveloped in most of our smaller museums and have been growing in interest only within fairly recent times.

While many of our larger museums in the largest metropolitan areas have collections which have accumulated over the past 100 years or so, the vast majority of our country's art museums have only emerged in the past 20 or 30 years and with increasingly growing support from larger segments of their communities have collections which are very much still in the stages of being developed.

Unilateral action by the U.S. on this issue will only mean that cultural material which otherwise might be offered to our museums and collectors will go elsewhere—to Germany, Japan, Switzerland, Italy. In my opinion, the Bill gives the State Department too much power to prohibit the importation of art and thus deprive our people of the cultural enjoyment and education benefits which would otherwise be theirs. Perhaps restrictions on the importation of art and

artifacts could be applied for reasons that in reality might have nothing to do with the existence of art pillage in other countries. The effect of such restrictions would make our smaller and medium-sized art museums poorer and discourage their growth in certain areas. It would also discourage private collections from being formed and would inhibit the exhibition and acquisition of the material culture of black and brown Americans especially.

The Bill could be described in the long run as encouraging racism and a greater bureaucracy to deal with foreign art plus a discouragement to the broader dissemination of cultural artifacts and thus of understanding and appreciation of some cultures.

RONALD A. KUCHTA,
Director.

HARMER ROOKE NUMISMATISTS, LTD.,
New York, N.Y., February 10, 1978.

MICHAEL STERN,
Staff Director Committee on Finance, 2227 Dirksen, Washington, D.O.
Re: Finance Subcommittee on International Trade.

GENTLEMEN: I am sorry that I was unable to testify in person, due to the adverse weather conditions. Please enter this letter into the official record.

I strongly oppose the passage of Bill S2261 on several points. It is an unnecessary piece of legislation that will have far reaching, detrimental effects and can not possibly succeed in it's noble purpose.

The Bill proposes to bring to a halt the illicit trade in antique and ethnological objects. This is an admirable objective and one that I support. There is not a responsible person interested in relics, who would want to see tombs, graves, temples, and the like looted or destroyed, but neither do they want to be shut off entirely from the cultural and educational benefits to be derived from studying and owning legally obtained objects.

The concept of S2261 is written broadly, in so that its' net effect will be to halt all trade in antiquities—legal as well as illegal. There is not another country that is sponsoring the Unesco Convention, that is a collecting country. How can this bill stop grave pillaging, when the European and Asian markets are stronger than ever? Objects will be purchasable there, for a fraction of their value, and the prices of pieces already found on the American market will sky rocket. This could only result in more and not a lesser amount of smuggling and pillaging.

Anyone knowledgeable in this field, is all too familiar with the deprecation carried out against archaeological sites by uncaring governments and avaricious citizens in their countries.

Let us for a moment consider Tepe Giyan in Iran, a rich source of archaeological material and knowledge for the entire world. This is a site which was excavated with the aid and abetment of the Iranian government. Objects from Tepe Giyan have been carefully excavated, preserved, and revered the world over, as well as legally bought and treasured by museums and collectors everywhere. Yet today, Tepe Giyan though still rich in artifacts, is abandoned, left uncovered, open to the elements—littered with broken objects, destroyed by wind and weather—utterly abandoned by the Iranian government, which is too callous and uncaring to protect the site. S2261 would enforce a ban on such objects despite the utter disregard of the government which has jurisdiction over the site.

To continue, for years the Mexican peasants used their pre-Columbian artifacts for target practice, children's toys, or household pots. They have literally destroyed millions of them, until they discovered that Americans were willing to pay money for them. Suddenly, the pieces were treasured, not for cultural value, but for the dollar. This commercial fact of life is responsible for the preservation of countless numbers of objects which would have otherwise been ground underfoot into oblivion, by uncaring people. How then is a law passed in Washington going to stop native treasure hunters in the Yucatan?

How can the United States enforce such a law?

Will there be a team of experts at every port of entry into the United States to determine if an object is an enterable worthless fake or an exiled, genuine object d'art? The dollar cost in terms of jobs, loss of taxes, and the actual implementation of the bill, is staggering and an unnecessary expense to the American people.

In summary, the proposed Bill S2261, covers a spectrum of unnecessary without a clause of discrimination. The precious objects of the world will end up in

eternal dead storage in museum basements; instead of being used to serve their only remaining purpose—the peoples' education and appreciation. S2261 can only lead to an increase in illicit trade while crippling legal and necessary trade.

S2261 would be a detrimental action against both the American businessmen and advocates of our civilizations and their rich and varied arts.

Sincerely,

HOWARD S. ROSE.

SANFORD J. DURST,
New York, N.Y., February 10, 1978.

Mr. MICHAEL STERN,
Staff Director, Senate Committee on Finance,
Dirksen Senate Office Building,
Washington, D.C.

DEAR MR. STERN: I appreciate your recent invitation to appear and testify at the Senate Sub-Committee hearings on H.R. 5643 concerning cultural property entry into the United States.

Unfortunately the heavy snowfall in New York and its resulting lack of transportation made it impossible for me to attend.

I would appreciate therefore, since I was invited to testify, that the following statement be entered into the official proceedings and records of this Sub-Committee as a permanent part thereof:

My name is Sanford J. Durst. In addition to being an active numismatist, I am a leading publisher of books relating to the collecting of coins, medals, tokens, paper money, and related items. As well, I am a founder and Vice President of the Foundation for Numismatic Education, Inc., and a member of eight societies fostering the cultural and educational values of coin collecting. Further, I am a practicing attorney in the State of New York.

I oppose the passage of H.R. 5643 and present the following arguments and facts to support this position and convince you of the negative aspects of this legislation should it become effective.

(1) The purpose of the bill is to eliminate illicit transport of cultural property of another nation which has requested that the United States police the transfer of such property into the United States. Illicit activity will always continue so long as the laws prohibiting it have no teeth. Such is the case here where maximum penalty is forfeiture of the goods. If you are to eliminate such illegal activities, fines and criminal penalties against the true criminal will be of greater benefit. Foreign countries requesting our assistance in such cases are not required to take efforts on their own behalf to eliminate illegal activity. In essence you will be enforcing a UNESCO treaty by putting the onus on the United States to enforce the loosely enforced or unenforced laws of foreign countries against American citizens. The result is that this law probably would be enforced against the average citizen who has cultural as well as economic rights to own, study, transfer and otherwise use chattels which might "arbitrarily" be deemed the cultural property of another nation. Must we adhere to their definitions which for reasons mentioned below may be induced by reasons other than cultural preservation?

(2) The law supposedly applies to "tribal" nations. What is a tribal nation is not clearly defined. It could be a nation from Central Africa, a Pacific Island, or a South American nation with an ancient culture. But all of Europe can claim tribal heritage, as its nations once housed the Celts, the Goths, the Franks, the Macedonians, etc. Australia is tribal (the aborigines), Japan (the Samurais, etc.) Are the present day Italians the successors to the Etruscans? Are the Greeks standing in the shoes of the Macedonians? Are the Norwegians the successors to the Vikings? The point simply is ALL nations are in fact "Tribal", by definition, or can claim to be successors to a "tribal" culture. The law therefore can be affected vis a vis coins by any nation in the world for current political, social or economic purpose (such as currency restrictions), and this is not the purpose of the legislation at hand. Our laws should not be couched in such in such terms so as to enforce a foreign nation's restrictions.

(3) Property covered by the law is poorly defined. Two categories exist: a) Archeological—items over 500 years old and, b) Ethnological—items over 50 years old. Russia can thereby claim that any item predating its 1917 revolution is cultural property, and deprive a United States citizen of the right to import and own such an item. Question: What items are ethnological? A relatively common Russians 5 ruble gold coin of 1897 could fit the bill. Deprive me of

the right of owning this and you have deprived me of owning gold, a right you granted me but three years ago, as well as the right to own a piece of Eastern European history which has always been legal in the United States.

(4) America itself is a "tribal" country, and aside from the artifacts of our own Indian culture, which we have been known to improperly protect, and in fact destroy upon occasion, our entire culture based on ethnic identity. The Blacks, the Jews, the Slavs, French, English, Germans, etc. all have a right to preserve, protect and defend their cultural history. This clearly includes the right to own, study, preserve and transfer artifacts including coins, medals, tokens or stamps which pertain to their history of both the recent past and distant past. To deprive an American citizen of these rights is to deprive him of his fundamental rights under the Declaration of Independence and the Constitution. I humbly state that the laws of no foreign nation may transcend this basic fundamental on which our nation's foundation rests.

(5) Who is the real protector of cultural property? Most countries which this law was designed to protect neither have the desire (many being military dictatorships, whose primary aim is to enrich the ruling class); the funds; the knowledge; to preserve cultural artifacts; or the ability to study these items and enrich their culture thereby. The testimony before the House of Representatives includes numerous specific cases of items being taken from the ground only to be either intentionally destroyed or left to rot, subject to the whims of the elements. Only recently in the field of numismatics did a significant case come to light. A gold coin was issued to commemorate the independence of Swaziland, once a part of South Africa. Only 2000 were produced. It is estimated that three-quarters of them were ultimately melted for their gold content when the price of gold moved up in 1974. Did Swaziland care for its cultural heritage when it destroyed en masse a commemorative of its independence? America has been and continues to be a focal point of world culture. Our people are enlightened, literate and more studious than in many societies, especially those whom this bill was designed to "protect". Treatment of cultural property is significantly more protective and more culturally productive than in many of the places in the world, especially those nations to which the law in question refers. In fact, it can be reasonably stated that their culture will probably be better preserved here than in their own country at this point in history. Is not the Crown of St. Stephan in guardianship in the United States perhaps an excellent case in point? If it were not in United States hands when the Russians entered Hungary in 1945, would it be back in Hungary today? Or even exist?

(6) The law includes provisions that it be proven that an item declared cultural property has been out of the country for origin in excess of ten years, to be admissible in the United States. This is a difficult if not impossible provision to comply with. Two things will happen: a) Items will continue to flow from the countries this law is designed to protect, but instead of to the United States, they will flow to other countries, not signators to the treaty—to remain there permanently or for the prescribed ten years, thereafter entering the United States at substantially higher prices, and b) Fraud in the documentation of items flowing here will abound. Too, items will be "represented" as possible counterfeits, to by-pass the law, a "tongue-in-cheek" fraud.

(7) Coin, token, medal, and paper money collecting is among the most culturally important and significant hobbies in this country, actually participated in by millions, young and old. This law if passed and effected could put the source of important items beyond the reach both legally and economically for many millions of American citizens who enjoy this useful, educational, and certainly peaceable past-time. A good friend of mine, and good American, whose family came from Transylvania collects coins of that era and area of Hungary. I might even note, on a humorous vein, that he has spoken at many societies resulting in dispelling fears of the notorious and evil past of Transylvania so diligently promoted by motion picture and TV industries. Would you deprive him of the right to own, study and learn about his past culture and history? You might if you persist in the passage of this legislation. Why should a Jew be deprived of the right to study coins of the revolts against the Romans, or for that matter, of being the receptacle of concentration camp money, once fifty years have passed since those terrible days. Do they not have the right to remember? Clearly coins, tokens and paper money of another nation were not intended to be covered by this legislation and should be specifically excluded.

(8) Enforcing of this law can also prove to be both costly and difficult. The customs force, probably overworked at this point due to increased overseas commerce and travel, will have to decide if an item is covered by the law, (and they

are not experts on archeological items, or ethnological items), perhaps confiscate the item resulting in storage problems and paperwork, be open to litigation for improper confiscation, and possible money damages due to improper storage, or loss of ownership and use of the goods during the time held. The defense of these claims will be costly. All this in the cause of "ostensibly" trying to be a good guy for the benefit of another nation.

Furthermore the bill provides for no method of appeal or review of improper or arbitrary decisions of either the Executive Branch or the customs authorities. Given the constitutional and practical matters discussed above, the law is just not justified.

(9) Finally, a general comment on the legislative philosophy behind this and other laws which have come up in the recent past. Our legislature has taken the posture that laws must be passed to further restrict the lifestyle of the American people, to tell our citizens either that they may not do something or telling them how they must do it. This is reaching the point where Americans are downright irritated, annoyed and frustrated. Legislatures are not elected to be policemen on our lifestyles. Rather they are elected to be our advisors, leaders and the protectors of our freedom.

The passage of this law will be one more nail in the coffin of American freedoms, which our legislative efforts seems slowly bent on burying.

Take a stand against this law and you will be taking a stand for the freedoms for which our founding forefathers fought and have been defending in every generation since.

Most sincerely,

SANFORD J. DURST.

STATEMENT OF DR. RICHARD McLANATHAN, EXECUTIVE DIRECTOR, AMERICAN ASSOCIATION OF MUSEUMS

This testimony is in support of S. 2261 with certain amendments. These changes concern 1) the countries with which the President may make agreements; 2) the procedures and time requirements for Presidential action; 3) the composition of the President's advisory panel; 4) the question of "country of origin" and "State Party"; and 5) the ten-year rule. Notice is also made of the importance of enacting legislation to safeguard the cultural property of the United States of America, so far unprotected by law.

The AAM has had a continuing professional concern with the matters expressed in the UNESCO Convention regarding cultural property. At its 1978 annual business meeting, the membership of the AAM unanimously passed a resolution in support of legislation to implement that Convention (see Appendix 2). Furthermore, the Association took an official position regarding HR 14184 in the 94th Congress. That position, which I expressed last April 26th in my testimony regarding HR 5643, which dealt with the same matter, was unanimously approved by the Executive Committee of the AAM at its meeting the following day. Since the texts of HR 5643 and S 2261 are identical, that officially approved position, which follows, is equally applicable to the bill under consideration today.

My comments are fundamental. There are significant differences between HR 14174, which the AAM approved, and S 2261. These differences, as I see them, may lessen the United States participation in the goals of the UNESCO convention and in our implementation of the convention.

These areas of concern are:

(1) HR 14174 provided that, when the President determined that the conditions of the UNESCO convention had been met, he could enter into agreements with the State Party concerned, "and with other governments as appropriate", to restrict importation of the objects in questions. S 2261 leaves out the significant words "and with other governments as appropriate". If, to illustrate, the looted objects of Ruritana are never imported in the United States directly from Ruritana, but the looters launder the objects through Graustark, and other countries, HR 14171 authorized an agreement with Graustark and such other countries, to cover the Ruritanian objects. As we read S 2261, this is now forbidden. Only an agreement with Ruritana is possible.

(2) HR 14171 provided a simple, flexible procedure. The President, in determining to impose the import controls, was to consider the advice of a panel of experts whom he was to appoint, but he was not to be bound by their advice (HR 14171, Section 1, see page 15 of the August 3, 1976 written comments on HR 14171). This would permit speedy action by the United States when a crisis situation arose abroad. S 2261 abandons this in favor of a more rigid and lengthy pro-

cedure during which the looters are told, by publication in the *Federal Register*, of the projected restriction on imports, which may well stimulate maximum shipments of looted objects into the United States before the restrictions are adopted. Please note that we are not against publication in the *Federal Register* per se, but only in the suggested sequence of procedures which makes it an early warning for those indulging in illicit traffic.

The new procedure in S 2261 is:

- (A) a public notice in the Federal Register,
- (B) submission to an advisory committee,
- (C) a 100-day waiting period for a committee report,
- (D) submission of the report to the President and to the Congress,
- (E) consideration of the report by the President,
- (F) action by the President.

Clearly, this does not permit immediate action, as did HR 14171.

(3) HR 14171 in a few lines provided for a panel of experts to advise the President, and to be drawn from the "art, museum and scientific community". S 2261 devotes 117 lines to an "advisory committee" that includes the commercial importing community as well, and authorizes a possible lifetime sinecure in a compensated post, eligible for reappointment in perpetuity.

(4) HR 14171 referred to illicit exports from the "country of origin" of the article. S 2261 refers to the State Party with whom the agreement is negotiated. May there not be a difference, in complicated multiple laundering cases, between the country of origin and the state with which the agreement is negotiated? Which is the preferable rule?

(5) HR 14171 permitted importation only if the article had been reported before the date the regulations went into effect. S 2261 makes a fundamental change, permitting importation if the article is exported after the date of the regulation and if it has been out of the country of exportation for ten years. This is an open invitation to export illicitly, secrete the article for ten years, and then have free access to the United States importation.

This point came up in connection with HR 14171, and we were satisfied with a ten-year rule, provided the secreting of the article was excluded. If the article is on public view or its location is published so that the country in question had ten years time in which to take action to recover it and did nothing, importation should not be forbidden. That provision should be added to page 10, lines 5 and 6, (Section 5 (b) (1) (A)). The actual language of the resolution of the council of the AAM is appended for your information.

The American Association of Museums has put itself on record as approving HR 14171, with the above changes. That Bill, in my opinion, is superior to S 2261, and I have tried to indicate some of the reasons for the opinion. It would be my hope that S 2261 would be amended by the committee so that, in the areas I have indicated, it returns to the language of HR 14171. In closing, in the context of a discussion of legislation implementing the UNESCO Convention, I feel obligated to call attention to the fact that there is, as yet, no legislation protecting our own American cultural heritage, despite massive exportation of unique artistic, ethnic, and related collections of irreplaceable material. It is a situation that museum professionals deplore, and a matter of sufficient concern so that I would predict that the AAM will shortly take a firm and definite stand.

Appendices to the statement of Richard McLanathan, Executive Director of the American Association of Museums before the Senate Finance Committee.

Appendix 1: A letter to the Honorable Al Ullman from Paul N. Perrot, Secretary of the AAM, relaying the AAM Council's resolution of January 14-15 regarding HR 14171 (introduced in the 94th Congress) and subsequent Council action.

Appendix 2: Text of the resolution passed unanimously by the AAM membership at its 1973 annual business meeting. The resolution recommends that all nations establish export laws and develop proper controls so that illicit traffic may be stopped at its sources. It also encourages museums to be guided by the UNESCO Convention in determining the propriety of acquiring cultural property.

Appendix 3: A letter to the Honorable Abner J. Mikva from Dr. McLanathan informing him of the unanimous support by the Executive Committee of the AAM on Dr. McLanathan's stand regarding Mr. Mikva's bill HR 5643, to which Mr. Hathaway's bill S 2261 directly corresponds.

Appendix 4: A letter to the Editor of the Washington Post supplying further detail as to the stand of the AAM in regard to legislation to implement the UNESCO Convention.

Appendix 5: Mailgrams from (A) Mike Mayfield, and (B) Cindy Sherrell, of the AAM Professional Standing Committee on Small Museums in support of legislation to implement the UNESCO Convention.

Appendix 1

AMERICAN ASSOCIATION OF MUSEUMS,
Washington, D.C., April 20, 1977.

HON. AL ULLMAN,
Chairman, Committee on Ways and Means, House of Representatives, Department of State, Washington, D.C.

DEAR MR. CHAIRMAN: At the mid winter meeting of the American Association of Museums held in New Orleans, Louisiana on January 14-15, the Council unanimsously approved the following resolution in support of HR 14171:

"That the AAM reaffirm its long-standing commitment to the principles of the UNESCO Convention of 1970; that it support the provisions of HR 14171 and instruct the President of the AAM to testify on behalf of this legislation, either directly or through his designee, and participate in any negotiations that might occur concerning changes to the text, mindful of the Council's endorsement of its main provisions;"

It was further resolved "that the AAM supports the reservations contained in the resolution of Ratification and in the proposed instruments of implementation and strongly opposes any statute of limitation and proposes that the effective date coincide with the deposition of the instruments of ratification."

In response to the concern expressed by certain members of the profession and by the Association of Art Museum Directors, that the intent of that part of the resolution relating to the exclusion of any time limit was too broad and because this appeared to be a legitimate concern, the President of the AAM agreed to consult with the Council concerning altering that part of the motion starting with the words, "strongly opposes," and ending with "ratification."

The Council agreed to substitute a clause to the effect that a time limit of ten years subsequent to adequate publication and/or reasonably continuous public display be included after which an object would be free and clear of any claim resulting from the Convention.

The Council was polled on March 16th and of 47 members, 34 responded affirmatively to the proposed change with 3 in opposition. No word has yet been received from 10 members.

Unquestionably, the Council and Executive Committee of the Association view the matter presented in HR 14171 as being of the utmost seriousness, and the American Association of Museums stands ready to offer its expertise and testify as may be required, when hearings are held concerning HR 14171.

Sincerely,

PAUL N. PERROT,
Secretary.

Appendix 2

"Recognizing that Museums, whatever be their specialty, have a communality of interests and concerns, which comes into particularly sharp focus in matters of ethics and professional behavior; that they are the custodian of man's material heritage and of that part of his natural heritage which he has collected for study and transmission to future generations; and further recognizing that, in their search for collections, Museums have in the past either engaged in, or tolerated on the part of others, activities often detrimental to the integrity of their mission, the representatives of the organizations listed below recommend that the following statement of basic principles be adopted by the governing bodies of these organizations to guide Museums, their boards and their staffs in the acquisition of cultural properties;

"Be it resolved that the organizations listed below cooperate fully with foreign countries in their endeavors to preserve cultural property and its documentation and to prevent illicit traffic in such cultural property.

"These organizations believe that Museums can henceforth best implement such cooperation by refusing to acquire through purchase, gift, or bequest cultural property exported in violation of the laws obtaining in the countries of origin.

"They further believe that the governing bodies, directors and curators of Museums should, in determining the propriety of acquiring cultural property, support and be guided by the policies of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property and the implementing provisions adopted by the signatory states.

"It is recommended that all nations establish effective export laws and develop proper controls over export so that illicit traffic may be stopped at its sources. However, wherever possible, within the limits of national law, consideration should be given to legitimate and honorable means for the acquisition of cultural property. It is hoped that nations will release for acquisition, long term loan, or exchange, cultural property of significance for the advancement of knowledge and for the benefit of all peoples.

"In order to augment and clarify further the intent of this resolution and determine methods of accomplishing its aims, the governing body of a museum should promulgate an appropriate acquisition policy statement commensurate with its by-laws and operational procedures, taking into consideration the International Council of Museums' recommendations on *Ethics of Acquisition*."

Appendix 3

AMERICAN ASSOCIATION OF MUSEUMS,
Washington, D.C., May 23, 1977.

Representative ABNER J. MIKVA,
Skokte, Ill.

DEAR MR. MIKVA: I am writing to let you know that the Executive Committee of the American Association of Museums, at its last meeting here in Washington on April 27th, voted unanimously to approve the position which I took in my testimony presented on April 26th before the Subcommittee on Trade, Ways and Means Committee, regarding your Bill, HR 5648, to implement the UNESCO Convention. May I ask that this fact be entered in the Committee Record?

As you are aware, over a year ago, the AAM most strongly urged by vote of Council and by subsequent actions of its President, Mr. Joseph Veach Noble, the Director of the Museum of the City of New York, the preparation and passage of such legislation. Because of this past history and the recent vote of the Executive Committee of the AAM, it is clear that the American museum community is most strongly against the pillaging of historic sites and the illegal traffic in stolen artifacts. Though it may prove true, as some critics of your Bill maintained, that passage of this legislation would merely cause the removal of such markets elsewhere, and though there may be differences of opinion as to details and provisions of the Bill, American museum professionals, by the forthright actions mentioned above, have signified that they cannot condone such practices on either moral or legal grounds, and are in favor of the passage of appropriate legislation effectively to prevent them. On their behalf, I offer any assistance I can provide to help in the preparation and passage of this Bill.

With best wishes,
Cordially,

RICHARD McLANATHAN,
Director.

P.S.—Please note that on Page 2, No. 2, of my testimony (a copy is enclosed), we are not against publication in the Federal Register per se, but only in the suggested sequence of procedures which makes it an early warning for those indulging in illicit traffic.

Appendix 4

AMERICAN ASSOCIATION OF MUSEUMS,
Washington, D.C., May 21, 1977.

THE EDITOR,
The Washington Post,
Washington, D.C.

DEAR SIR: Your May 21st editorial, "The Pillage Problem," effectively made the point that the issue of the looting of archeological sites and the traffic in stolen objects is not only a legal matter, but a moral one as well.

The press coverage of the hearings on the bill sponsored by Representative Abner J. Mikva (D-Ill.), HR 5648, to implement the UNESCO Convention, has given much attention to the position against the bill taken by representatives of the associations of dealers in ancient and primitive art. Little if any attention has been paid, however, to the position taken by the American museum community through its professional association, The American Association of Museums, and the Association of Art Museum Directors. More than a year ago, the AAM, by vote of Council and subsequent action of its President, Joseph Veach Noble, Director of the Museum of the City of New York, urged in strongest terms

the preparation and passage of legislation to implement the UNESCO Convention. A result was Representative Green's HR 14171, which the AAM Council endorsed, but which unfortunately died in the last Congress.

As Director of the American Association of Museums, I testified on April 26th, with certain suggested revisions, on behalf of Representative Mikva's bill, along with Messrs. Sherman Lee, Director of the Cleveland Museum of Art, speaking for the Association of Art Museum Directors, and Douglas Dillon, appearing for the Metropolitan Museum in New York. Subsequently my position was unanimously approved by vote of the Executive Committee of the American Association of Museums.

Though disagreements may remain as to certain provisions of the bill, there can be no doubt as to the position of the American museum community in opposition to the pillaging of historic sites and the illicit traffic in cultural objects, not only on legal, but also on moral grounds. Since the passage of such legislation might, as some critics of the bill have maintained, make it very difficult for museums to acquire objects in the categories usually involved in such operations, the responsible and ethical stand taken by American museums, both large and small, deserves, in my opinion, not only respect, but also recognition in the press.

RICHARD MOLANATHAN,
Director, American Association of Museums.

[MAILGRAM]

Appendix 5

MAY 23, 1977.

Dr. RICHARD MOLANATHAN,
*Executive Director, American Association of Museums,
Washington, D.O.*

In the process of master planning the new regional museum to exhibit cultures of our Latin American neighbors the Hillsborough County Dept. of Museums during the past three years has received offers of major exhibits of art, historical materials, and prehistorical artifacts from a number of embassies and/or other Latin American governmental officials including the following: Bolivia, Chile, Colombia, Ecuador, Guatemala, Haiti, and Mexico, as well as from Canada to the north.

As a representative of the Partners of the Americas, Florida-Colombia Program, I met with Colombian museum officials in Bogota, Villa Dupar and Barranquilla last December, as well as with SRA Gloria Vea de Uribe, Executive Director of Colcultura (the Colombian National Institute of Culture) and with representatives from the Colombian Minister of Government to discuss potential exchanges of museum collections and exhibits. All officials were most receptive to these proposed exchanges, if conducted within the constraints and regulations of Colombian and American Antiquities Acts. Since that time, our museum has received gifts from the Colombian Government in the form of a collection of representative works of two Colombian artists. Presently, exhibit exchange programs of the Florida-Colombia Partners and the Alliance Colombia-Florida programs are being organized to be implemented within a few months.

The success of our international program is largely due to our policy of compliance with recommendations of the UNESCO convention on the means of prohibiting and preventing the illicit import-export, and transfer of ownership of cultural property.

I wholeheartedly support the enactment of HR 5648 to implement national controls in cooperation with the UNESCO convention.

MIKE MAYFIELD,
*Director, Hillsborough County Department of Museum and Trustee,
Partners of the Americas, Florida-Colombia Partner Program.*

[MAILGRAM]

MAY 23, 1977.

Dr. RICHARD MOLANATHAN,
*Director, American Association of Museums,
Washington, D.O.*

The small museums of the United States are firmly behind the adoption of the UNESCO convention and would completely support appropriate legislation. This

matter is of vital concern to all of us in the small museums committee. We endorse any action that will protect the cultural heritage of all peoples and countries.

CINDY SHERRELL,
*Chairman, National Small Museums,
 Committee Director of Museum Services,
 Texas Historical Commission.*

JORGE A. EUAN,
San Francisco, Calif., February 6, 1978.

SUBCOMMITTEE ON INTERNATIONAL TRADE,
*U.S. Senate,
 Washington, D.O.*

GENTLEMEN: The presence of ancient art in our museums signifies the preservation of such objects for the peoples of the world. In many cases the existence of these objects would have never been known had it not been for museums, dealers and/or private collectors, not only of this country but of those abroad; and those countries seem not eager to even recognize the existence of the UNESCO Convention on Cultural Property.

It has been my belief that art, ancient or otherwise, belongs to the people. Must we be excluded from this right? The passage of H.R. 5643 seems to do just that.

Sincerely,

JORGE A. EUAN.

 DARTMOUTH COLLEGE,
Hanover, N.H., January 24, 1978.

MICHAEL STERN,
*Staff Director, Senate Committee on Finance,
 Dirksen Senate Office Building,
 Washington, D.C.*

DEAR MR. STERN: I am writing to you to urge strongly the prompt passage by the Senate of H.R. 5643, the Cultural Property Implementation Act (for the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property).

As a person concerned with the study of, and teaching about, the ancient world, I am very interested in minimizing by whatever means possible the continued destruction and spoliation of ancient sites by treasure hunters who find a ready market for looted antiquities in the United States. The more that such sites are ruined, the more difficult it obviously becomes for archaeologists to reconstruct the material environment of ancient man. This environment is a valuable resource of all human beings; we must act to prevent further attempts to obliterate it by a relatively small number of profiteers. It is high time that the United States, of all countries, should pass legislation to cut down on the trade in illegally obtained art objects. I very much hope that H.R. 5643 as it now stands will be passed by the Senate in the near future.

Sincerely,

EDWARD M. BRADLEY,
Chairman.

 DARTMOUTH COLLEGE,
Hanover, N.H., January 24, 1978.

MICHAEL STERN,
*Staff Director, Senate Committee on Finance,
 Dirksen Senate Office Building,
 Washington, D.O.*

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relatively small number of profiteers. It is high time that the United States, of all countries, should pass legislation to cut down on the trade in illegally obtained art objects. I very much hope that H.R. 5643 as it now stands will be passed by the Senate in the near future.

Sincerely,

NORMAN A. DOENGES,
Professor of Classics.

DARTMOUTH COLLEGE,
Hanover, N.H., January 24, 1978.

MICHAEL STERN,
Staff Director, Senate Committee on Finance,
Dirksen Senate Office Building,
Washington, D.C.

DEAR MR. STERN: I am writing to you to urge strongly the prompt passage by the Senate of H.R. 5643, the Cultural Property Implementation Act (for the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property).

As a person concerned with the study of, and teaching about, the ancient world, I am very interested in minimizing by whatever means possible the continued destruction and spoliation of ancient sites by treasure hunters who find a ready market for looted antiquities in the United States. The more that such sites are ruined, the more difficult it obviously becomes for archaeologists to reconstruct the material environment of ancient man. This environment is a valuable resource of all human beings; we must act to prevent further attempts to obliterate it by a relatively small number of profiteers. It is high time that the United States, of all countries, should pass legislation to cut down on the trade in illegally obtained art objects. I very much hope that H.R. 5643 as it now stands will be passed by the Senate in the near future.

Sincerely,

MATTHEW I. WIENCKE,
Professor of Classics.

DARTMOUTH COLLEGE,
Hanover, N.H., January 24, 1978.

MICHAEL STERN,
Staff Director, Senate Committee on Finance,
Dirksen Senate Office Building,
Washington, D.C.

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CHRISTINE PERKELL,
Assistant Professor of Classics.

DARTMOUTH COLLEGE,
Hanover, N.H., January 24, 1978.

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Sincerely,

JAMES TATUM,
Associate Professor of Classics.

Harmer-Rooke Numismatists, Ltd.

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We, the undersigned concerned VOTERS, are unalterably opposed to the passage in the Senate of the UNESCO CONVENTION on CULTURAL PROPERTY known as H.R. 5643. This bill, aimed at stopping illicit trade in antiques and antiquities and any object over 50 years of age will, instead, halt the legal trade in these objects, cost thousands of jobs, millions in taxes, and untold more millions in implementation, which may not even be possible, and serves no useful purpose to the people of the United States of America.

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HARVARD LAW SCHOOL,
 Cambridge, Mass., March 6, 1978.

Mr. MICHAEL STERN,
 Staff Director, Senate Committee on Finance,
 Dirksen Senate Office Building,
 Washington, D.C.

DEAR MR. STERN: This is in response to Senator Ribicoff's invitation of January 11, 1978, for comments on S. 2261 (H.R. 5643), the bill to implement the UNESCO Convention on Cultural Property.

I would like to express warm support for the passage of a strong bill to implement the UNESCO Convention. That Convention addresses serious and real problems. It does so through measures which are, on the whole, reasonable and practical—largely due to the fact that we, the United States, were able to persuade a majority of the participants to reject impractical and radical solutions. The Convention thus represents a compromise, one in the framing of which we were highly instrumental.

Five years have now passed since the Senate ratified the Convention. It is time for us to take the final steps to honor the commitments we have made.

S. 2261 seems to me to represent a good start in the direction of fulfilling these commitments. It includes what are the essential minimum elements of a good bill:

(a) It grants agreement authority to the President to invoke import embargoes (pursuant to Article 9 of the Convention) without the necessity of further legislation.

(b) It gives the President narrow emergency powers to invoke such embargoes unilaterally in crisis situations.

(c) It implements Article 7(b) by barring from the United States materials stolen from churches, museums and monuments in other countries.

Although I support the general approach of S. 2261, I think it can be improved and tightened. The enclosed memorandum discusses the details of the bill and makes specific suggestions for improvement. In general these suggestions would somewhat narrow the powers granted to the President by the legislation, and would give some additional protection to United States collectors and museums. I do not think, however, that these suggestions would dilute the effectiveness of the bill in helping to control to destructive looting of sites and monuments.

I would be grateful if this letter and the accompanying memorandum could be included in the record of your hearing.

Yours sincerely,

PAUL M. BATOR,
Professor of Law,
Harvard University.

Enclosure.

MEMORANDUM ON H.R. 5643 BY PAUL M. BATOR, PROFESSOR OF LAW,
HARVARD LAW SCHOOL

I. IMPLEMENTING ARTICLE 9

A. Background

H.R. 5643 implements Article 9 of the UNESCO Convention by giving the President authority to embargo the import of certain archeological and ethnological materials.

-In evaluating H.R. 5643, the following general criteria should be kept in mind:

(1) *Substantive predicates for import controls.*—The imposition of import controls against works of art, on the ground that their export violates the laws of some other country, should be restored to only in cases of great necessity. Such import barriers endanger interests and values important to the United States and to the international community generally. Consequently, it has consistently been the position of the United States that import barriers should be regarded as an "extreme measure" to be used only in "serious situations." (See State Department sectional analysis of H.R. 14171, a predecessor of H.R. 5643, July 31, 1975.)¹ More specifically, import controls should be imposed only in emergency situations, where it is demonstrated that (i) illegal exports have fueled the destructive looting of sites and monuments to such an extent that there is a critical threat to the preservation of an important category of artistic treasure or archeological remains; or (ii) export of certain types of materials would inflict irreparable damage to a significant constituent of what we are prepared to recognize as another country's legitimate national patrimony.

(2) *Scope of coverage: The problem of breadth.*—Second, import controls should be imposed only if they can be enforced without the creation of an impractical and unfair customs regime. This means that the category of material whose import is prohibited must be reasonably narrow and specifically definable, so that interdiction does not lead to a huge customs apparatus. Further, the category must be such that it can be described with reasonable precision, so that enforcement is confined to prohibited items (rather than inviting exploratory roaming searches) and so that museums, dealers and collectors have fair notice of what is prohibited.

(3) *Reciprocity.*—The imposition of import controls should be used as an occasion for influencing art exporting countries to narrow their export schemes—schemes which in many cases are not only utterly impractical and unenforceable, but which totally ignore the interests of the United States and of the international community generally in having a legitimate trade in and exchange of art. We should use our willingness to help other countries to enforce their export regulations as a bargaining counter in persuading these countries to adopt more balanced, equitable and sensible export rules.

¹ Also noteworthy are the recommendations of the Panel on International Movement of National Art Treasures of the American Society of International Law. These recommendations formed the basis of the Pre-Columbian Art Act of 1972, which is a model for H.R. 5643, and were highly influential in the formulation of the United States' position on the UNESCO Convention. The panel, a broadly representative and distinguished group including members of the bar, representatives of museums, dealers, collectors, archeologists and scientists, recommended legislation enabling the President to impose import embargoes against works "constituting an essential part of the national cultural heritage of" another country, where such a step is "necessary to prevent serious jeopardy" to that country's cultural heritage. (For a full text of the Panel's recommendations, see Cong. Rec., June 18, 1970, p. 69276.)

(4) *Procedural safeguards*.—A delegation to the President of the power to bar imports of art should be surrounded by safeguards to assure that its will be limited in accordance with the criteria just discussed. More particularly, it is important that a decision to impose import controls should be made only after consulting a wide sampling of representative views, and should be subject to some oversight to prevent abuse.

(5) *Repose*.—Interests of finality and repose should not be overlooked in creating an import control scheme. (i) Import restrictions should obviously not apply retroactively to materials exported before a particular embargo is promulgated. (ii) Moreover, even after an embargo is adopted, material thereafter exported to other (third) countries should, after a certain interval, lose their "taint" and become importable to the United States; there is no sound public policy against the import of material which has had a long undisturbed existence in another country after it was first smuggled out of its country of origin. (iii) Finally, possible action against those holding illegally imported material, particularly if they are innocent purchasers, should be limited by a reasonable statute of limitations.

I turn now to the question of how H.R. 5643 measures up against these criteria. In the comments which follow, I analyze H.R. 5643 and make suggestions for change and improvement; I assume, however, that the basic structure and language of H.R. 5643 are to be retained, and my suggestions are premised on changing as little as possible. It should be noted, however, that H.R. 5643 is extremely intricate and will become ever more so as it is further refined and improved. At the end of this memorandum I have, therefore, included, as Appendix A, an outline of what would be a rather different approach to the whole problem of implementing Article 9, which, if accepted, would have the effect of simplifying H.R. 5643 considerably. It would, however, involve fairly fundamental departure from the structure of H.R. 5643.

B. Substantive predicates for import controls

Under Section 2 of H.R. 5643 the President may adopt import barriers only if he finds that "the cultural patrimony" of another state "is in jeopardy from the pillage of archeological or ethnological materials." (This language tracks Article 9 of the Convention.) He must also find that the adoption of such barriers would be of "substantial benefit in deterring a serious situation of pillage," and that remedies "less drastic" than import barriers are "not available."

Do these provisions paint an adequate picture that import restrictions are to be imposed only in cases of a critical threat to important cultural values? I'm concerned that, in view of some unfortunate language in the House Ways and Means Committee Report,² there will be a tendency to equate every situation of widespread pot hunting with a situation of "jeopardy" to some country's artistic patrimony. Import barriers *should* be limited to "exceptional" cases, and H.R. 5643 should be clarified to make it clear that they may be adopted only where there is great necessity, where the jeopardy to mankind's cultural heritage is critical.³

The State Department has argued that, if the United States restricts its import barriers to cases of "critical" or "serious" jeopardy, this would violate our obligations under the Convention. Its argument relies on the fact that the UNESCO Committee of Experts, which drafted the Convention, eliminated, by a 24-23-2 vote, the word "critical" from the wording of Article 9 as proposed by the United States (which had referred to "critical jeopardy"). This argument seems to me unsound. It overlooks the fact that many delegations specifically

² "Your committee did not accept the view advanced by the dealers in ancient art that exercise of the section 2 agreement authority should be limited only to exceptional cases of an extraordinary and critical nature or of crisis proportions. The findings require a 'serious situation of pillage' and the authority is not intended as a means to deal with the general problem of illegal exportation of large amounts of cultural objects from many countries. However, the restrictive interpretation proposed by the dealers is not supported by the language of and obligations accepted by the United States under the Convention and would, in effect, condone pillage unless of such widespread and critical scale as to be nearly at the point of irremediable damage." (p. 6.)

³ My concern is compounded by the language in the House Report at p. 6, which states that the embargo authority is "to be resorted to only if other, less drastic alternatives are not available to the United States to remedy the situation." Why "to the United States"? The language of Section 2(a) (3) should be read to allow import bars only where less drastic alternatives are not available through action by others (including the exporting country) as well as the United States; and the Senate's Report should make this clear. The United States should never accept a unilateral responsibility to end pillage in another country.

stated that they were willing to eliminate "critical" because in their language it is redundant of "jeopardy." It overlooks the chaotic and haphazard voting procedures of the Committee of Experts and gives absurd weight to a vote which was, for practical purposes, evenly divided. *Most important, it totally overlooks the crucial fact that H.R. 5643 creates obligations for the United States which in any event far exceed anything required by the Convention.* Article 9 of the Convention imposes obligations on the United States only if there is a "concerted international effort" to help control pillage in another country. H.R. 5643 completely dispenses with this condition—it allows the President to impose import barriers on the basis of bilateral or multilateral agreements without waiting for any semblance of "concerted international effort." H.R. 5643 does this because it seems clear that Article 9 would remain a dead letter if it could operate only where there exists a "concerted international effort." Important art importing countries other than the United States (e.g. Switzerland; Japan; England) are simply not interested in import barriers and will not join in a concerted effort. The State Department, and the House, have concluded that the United States should take a leadership role and exercise a moral authority even if there is no "concerted international effort." *I agree with that approach; we should not in fact wait for a concerted international effort. But if the United States is to act as a leader, unilaterally among the importing countries, it can and should insist on the right to do so according to criteria it considers justified—that is, only in cases of critical necessity. And a Congressional determination to allow embargoes only in cases of critical jeopardy cannot be regarded as violative of Article 9 under circumstances where the terms of Article 9 are in any event inoperative because no "concerted international effort" is underway. Nor will it do for the State Department to urge the Congress on the one hand voluntarily to undertake obligations much broader in scope than the Convention requires, and then at the same time insist on a woodenly literal reading of the Convention to prevent Congress from exercising an independent judgment on the scope of these obligations.*

In sum, it would no more violate Article 9 to restrict our import barriers to cases of "critical" jeopardy than it does to restrict their application to those categories of archeological and ethnological materials which are covered by the definition of those terms in Section 15(2) of H.R. 5643—narrowing definitions which have no warrant in the text of the Convention.⁴ Congress should feel free to decide for itself when import restrictions should be imposed by the United States, at least in the absence of "concerted" international action.

Recommendation.—In order to maintain scrupulous technical compliance with the Convention, Section 2(a) should be changed so that a finding of "jeopardy" to the cultural patrimony of a requesting state be deemed sufficient where there is a "concerted international effort"; but that there be a requirement of "critical" jeopardy whenever the United States undertakes to act without a concerted international effort. This can be easily accomplished by adding a new, fifth, finding to the enumeration of necessary findings in Section 2(a) of H.R. 5643, as follows:

"(4) . . . ; and

(5) that the application of such import restrictions by the United States would constitute part of a concerted international effort to carry out necessary concrete measures to end such pillage; *provided* that no such finding that a concerted international effort exists shall be required if the President finds that the jeopardy referred to in paragraph (1) hereof is of critical proportions;"⁵

C. Scope of coverage

I have no criticisms of H.R. 5643 on the score of vagueness or overbreadth. It seems to me that Section 4, when combined with the definitional provision of Section 15(2), does a good job in making sure that embargoes are reasonably narrow and specific.

D. Reciprocity

In a previous Committee draft of H.R. 5643, the finding required by Section 2(a)(2) read as follows: "the State Party has taken measures consistent with

⁴ In fact the Committee of Experts defeated all attempts by the United States to narrow the definition of "cultural property" in Article 1.

⁵ In the definitional section it might be wise to make explicit the important point that "concerted international effort" includes participation by other art-importing countries whether or not parties to the Convention.

the Convention to protect its cultural patrimony, *but permits the exchange of its archeological or ethnological materials with other nations under circumstances in which such interchange does not jeopardize its cultural patrimony.*" Subsequently, at the urging of the State Department, the underlined words were eliminated, and, instead, at the end of Section 2(a), it was provided 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 . . . (etc.)."

The effect of this change is to water down drastically the insistence that the Executive branch, in return for helping other countries by adopting import embargoes, bargain for reciprocal concessions. I am not at all surprised that the State Department, given its institutional perspectives, should be uncomfortable about such an insistence. But the *Congress* should feel quite free to put pressure on the Executive branch to protect our interests even if this creates some danger of ruffled feelings in other countries. And the fact is that it *is* to our interests—as well as to the legitimate interests of the international community as a whole—to create pressures for narrowing the absurd and impractical export embargoes which many countries attempt—fruitlessly—to enforce.*

Recommendation.—(i) I urge restoration of the language eliminated from Finding 2 in Section 2(a). (ii) In the alternative, if this is thought too rigid and impractical—(it does require the other State to act *first* in narrowing its export scheme)—the Finding required by Section 2(a)(2) should read as follows:

"(2) the State Party has taken measures consistent with the Convention to protect its cultural patrimony; and that it is prepared to make a reasonable commitment that it will permit the exchange of its archeological and ethnological materials under circumstances in which such interchange does not jeopardize its cultural patrimony."

(iii) At a minimum, if the finding required in Section 2(a)(2) is left as is, the word "should" should be replaced with the word "shall" in the language now forming the end of Section 2(a), so that it would read: "In implementing this subsection, the President *shall* endeavor to obtain the commitment of the State Party concerned . . . (etc)."

E. Procedural safeguards

On various previous occasions I and others have urged that embargoes promulgated by the President should be referred to Congress before taking effect and should be made subject to a one-House or two-House veto. (On the other hand, I have consistently felt that the dealers' position, that every embargo require affirmative Congressional legislation or treaty ratification, should be rejected.) In my personal opinion, such provision for Congressional oversight would constitute a wise institutional accommodation. Nevertheless, it is the fact that there exists a constitutional question about the validity of such a provision; and the State Department has grave objections to it. And I am persuaded that the structure of H.R. 5643 now generally provides for reasonably adequate protection against executive abuse, and for reasonable systems of review and oversight, even without provision for Congressional veto. However, in two respects H.R. 5643 needs to be strengthened:

(1) *Renewal of embargo agreements.* In the complicated negotiations leading to H.R. 5643, the notion that embargoes should have a limited life, and that their renewal should be accompanied by renewed opportunity for comment, criticism and review, was an important element in persuading many of us to abandon the idea of a one-House or two-House veto provision. This notion was embodied in a provision that agreements which form the basis of embargoes expire after 5 years, and may be extended for additional periods of *not more than 5 years each* (each extension providing a renewed opportunity for Advisory Committee consideration).

This scheme was radically altered after the first mark-up in the Ways and Means Committee, presumably at the *in camera* suggestion of the State Department. Section 2(b) now provides for expiration after the first five years, but then goes on to say that "any such agreement may be extended by the President for such additional periods of time as the President deems reasonable."

*It is again noteworthy that the American Society of International Law Panel recommended import embargoes only in cases where the "export programs and policies of the country of origin fairly take into account . . . the legitimate interests of the United States and other nations in the movement of [art] works. . . ."

This change seems completely unjustified. It gives the President authority to impose import embargoes in *perpetuity*; it excludes the representative Advisory Committee from oversight after the first five-year period; it runs against the recent and beneficial tradition of Congressional insistence that broad delegations to the Executive be subject to procedures for periodic review and reconsideration.

Recommendation.—Section 2(b) should be revised so that its last sentence reads:

"Any such agreement may be extended by the President for additional periods of not more than 5 years each."

(2) *Advisory Committee Reports.* The Advisory Committee created by Section 5 must report within 120 days of a Presidential request; otherwise, under Section 2(c) (3), the President need not consider its views. If the President seeks to take emergency action under Section 3, the relevant time period under Section 3(c) (2) is 60 days. These are short and rigid deadlines for a 9-person committee which requires a quorum of 7, which may have to pass on complex and highly controversial matters, and which provides the only representative and expert input the President receives on whether or not to adopt import embargoes. More flexibility should be provided.

Recommendation.—In both Section 2(c) (3) and Section 3(c) (2), the "if" clause (referring to time deadlines) should be replaced with the following:

". . . . , unless no such report is timely submitted."

Section 5(f) should then be amended by adding the following new subsection (7):

"(7) (A) The Committee shall submit any report required by paragraphs (1) or (2) hereof not later than the close of the 120-day period beginning on the day on which the President submitted information to the Committee under Section 2(c) (2), *provided* that the President may, for good cause shown, grant an extension of not more than 60 days for the submission of such report;

(B) the Committee shall submit any report required by paragraph (3) hereof not later than the close of the 60-day period beginning on the day on which the President submitted information to the Committee under Section 2(c) (2), *provided* that the President may, for good cause shown, grant an extension of not more than 30 days for the submission of such report."

F. Policies of Repose

Generally, H.R. 5643 is carefully drawn to prevent retroactive application. Import embargoes promulgated under Section 4 apply to material exported after the effective date of the regulation listing such material (see Section 6(a)). Oddly, the burden of proof on the issue of when export occurred is, by virtue of Section 6(b) (2) (B), on the *importer*; in contrast, under Section 10, when property stolen from a foreign museum is imported, the United States has the burden of proving that the theft occurred after the effective date of the Act.

In a number of respects, the time deadlines contained elsewhere in H.R. 5643 need strengthening.

(1) *The 10-year detoxification provision.* Section 6(b) (2) (A) adopts the sensible principle that if an illegally exported item rests for a long period undisturbed in a third country, after a time its import into the United States should no longer be barred by an import embargo promulgated under Section 4. It does so, however, in a provision which is so absurdly complicated and so narrow that it will have virtually no application, and which can lead to harsh and arbitrary results. For instance, if a United States citizen who is a bona fide permanent resident of Switzerland or France buys an artifact which is embargoed by the United States (but not by Switzerland or France), and keeps it there for 25 or even 50 years, a United States museum or dealer or collector still cannot buy and import that artifact. Further, even if it is a Swiss or French collector who owns such an artifact for 25 or 50 years: If he does not publish or exhibit it, it cannot be imported into the United States, since the exporting country had no "notice"—albeit such notice would have been pointless since the artifact was legally imported into Switzerland or France!

Section 6(b) (2) (A) suffers from the commonly committed drafting error of trying to think of every possible contingency in advance and providing for it in excruciating detail. It should be simplified and broadened. On the other hand, the time of detoxification should be lengthened from 10 to 15 years.

Recommendation: Section 6(B) (2) (A) should be revised to read as follows:

"(A) not less than 15 years before the date of such entry, and that neither the consignee (nor any member of his family or firm or institution) contracted

for or acquired an interest, directly or indirectly, in such material during the 15 year period preceding such entry."

(Note: this language would replace both (i) and (ii) of § 6(b)(2)(A).)

(2) *The Statute of Limitations Problem.* The 10 year period of limitations provided for in Section 11(2) applies only to cases where an illegally imported item has been subsequently exhibited in this country for 5 years (subsection (A)) or has been otherwise published or publicized (subsection (B)). Except in these cases, H.R. 5643 contains no periods of limitations whatever. The House Committee Report also casts an unfortunate and unnecessary cloud over the question whether the general statute of limitations contained in § 1621 of the Tariff Act, 19 U.S.C. § 1621, which limits forfeitures to five years after the alleged offense was discovered, would apply to material imported in violation of H.R. 5643. (See p. 17.)

The effect of all this is to give some protection to museums and dealers, but to leave private collectors, who often do not publish or exhibit their possessions, in *perpetual* peril of forfeiture, even in cases where such a collector is a wholly innocent purchaser. This seems unduly harsh. It also creates a major problem for all innocent purchasers of these smuggled goods: although they are liable to suits for forfeiture for at least 10 years after importation, their own rights against their vendors (for restitution of the purchase price) continue to be governed by state law and would normally have expired four years after the purchase under the U.C.C. This latter problem is most effectively solved by providing that relevant state statutes of limitations should be tolled during the period the United States can seek forfeiture under this Act, so that actions over can be brought for a reasonable time *after* forfeiture. (This is a minimal interference with state law; it simply extends the *time* for suit, leaving state substantive law fully operational.)

Recommendation: (i) Section 11(2) should be amended by adding a new paragraph (C), as follows:

"(B) . . . ; or"

(C) if paragraphs (A) or (B) do not 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."

(ii) In addition, Section 9 should be amended by adding the following new subsection (d):

"(d) If an article of designated archeological or ethnological material or article of cultural property is forfeited under the provisions of this Act, a subsequent action by a claimant to such article against a previous owner, possessor or consignee shall not be barred by any statute of limitations if—

(1) such action is brought in a proper court, federal or State, not later than one year after a judicial declaration of forfeiture hereunder becomes final; and

(2) the claimant establishes in such court that it purchased the article for value without knowledge or reason to believe that it was imported in violation of law; and

(3) such claimant is not entitled to compensation under subsection (c)(1) hereof."

(iii) In addition, the Senate should make clear by Committee report that the limitations period of § 1621 of the Tariff Act applies to all actions for forfeiture brought under H.R. 5643.

II. IMPLEMENTING ARTICLE 7(b)

H.R. 5643 also implement Article 7(b) of the UNESCO Convention, by barring the import of cultural property stolen from a museum, church or public monument in another country.

I have two concerns about this aspect of H.R. 5643:

A. *The question of documentation*

Article 7(b) of the Convention requires the parties to prohibit the import of "cultural property" stolen from museums, etc., "provided that such property is documented as appertaining to the inventory of that institution." Section 7 of H.R. 5643 prohibits the import of stolen cultural property "appertaining" to the inventory of a museum, etc., but omits the reference to documentation. The omission may be inadvertent, but it is not minor or technical. Cultural property is very broadly defined (see Section 15(6), referring to the all-inclusive listing in the Convention's Article 1, and dispensing—without explanation—with the Conven-

tion's requirement that the object be "specifically designated" by the exporting country as being "of importance"); and the range of the institutions, theft from which can trigger Section 7, is also very broad (see the House Report, p. 14, on this). It is thus critical that there be documented proof that the disputed item really did come from one of the relevant institutions.

Recommendation: Section 7 should be revised by adding the words "documented as" in line 1, between "cultural property" and "appertaining," so that it reads:

"No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution . . . (etc.)."

A conforming change should be made in Section 10(2) (A) so that it reads:

"(A) is documented as appertaining to the inventory of. . . (etc.)."

B. Compensation

Section 9(c) of H.R. 5643 provides for forfeiture of items stolen from foreign museums, churches, etc., and imported in violation of Section 7. It requires compensation in case the United States claimant establishes valid title. Even where the United States claimant does not have title, it requires compensation to an innocent purchaser for value, as contemplated by the Convention; but it waives the right to compensation if the exporting state would, on a reciprocal basis, permit forfeitures without compensation with respect to objects stolen from United States museums.

A major question is how these provisions relate to various periods of limitation in the United States. Assume that a U.S. museum is an innocent purchaser of an object stolen from a foreign museum. Eight years after the object is imported (or indeed, 18 years after it is imported, if it was not exhibited for 5 years) the United States may seek forfeiture, and its action is timely under Section 11 of H.R. 563. Suppose that under relevant *state* law an action of conversion or restitution would no longer be timely, so that under such state law the museum would in effect have title by prescription. Does the foreign government have to pay the compensation? Or is compensation waivable under Section 9(c) (1) (B) ?

If the answer to this is that compensation does *not* have to be paid, a severe injustice may result, particularly if the museum in the meantime has lost the ability to recover what it paid for the property from its vendor.

Recommendation: Section 9(c) (1) should be clarified by adding the words "including title by prescription" in line 4, after "valid title," so that it reads:

"(1) In any action for forfeiture under this section regarding an article of cultural property imported into the United States in violation of Section 7, if the claimant establishes valid title (including title by prescription) to the article, under applicable law, as against (etc.)."

APPENDIX A

AN ALTERNATIVE APPROACH TO IMPLEMENTING ARTICLE 9

A complicating feature of H.R. 5643 is that *both* Sections 2 and 3 create obligations for the United States which go beyond the terms of the Convention itself. This approach then places inevitable emphasis on the question of how the powers granted in Sections 2 and 3 are to be circumscribed, substantively and procedurally, and leads to complicated and elaborate protective provisions in both sections.

A simpler approach would be this:

(A) The agreement authority to implement Article 9 given by Section 2 should be strictly limited to those cases contemplated by Article 9, that is, cases where the United States would be participating in a "concerted international effort." In fact such a concerted international effort is extremely unlikely to take place; if it ever does, it will occur only in cases where there is a world-wide consensus that emergency action is needed. Consequently, if the agreement authority is limited to such cases, the necessity for further elaborate substantive and procedural limitations simply disappears. The agreement authority could thus be premised on three simple findings: (1) that the jeopardy contemplated by Article 9 exists; (2) that the requesting state has taken steps in accordance with the Convention to protect its patrimony; and (3) that import controls would constitute part of a concerted international effort to deal with the situation. (Again, it must be made

clear that "concerted international effort" must include important art importing countries whether or not parties to the Convention.) The Act should still call for an Advisory Committee report with respect to these three matters; and that Committee should periodically review these agreements. But, beyond this, I would see no need for further elaborate findings or for the sunset provisions now contained in § 2(b).

(B) In addition, the President should be given authority to invoke import restrictions on a unilateral basis and without an international effort, but only in cases of acute emergency. This provision should be modeled roughly on existing Section 3. It should provide for findings very much like the ones now provided in Section 3¹; it should require an Advisory Committee report; and it should limit the life of these embargoes to five-year terms, renewable for further five year terms (with an Advisory Committee report each time; but not tied to any agreement authority which has to be renegotiated).

The theory of this proposal is to simplify H.R. 5643 by tying the agreement authority more precisely to Article 9 (thus dispensing with the need for complicated findings and procedural protections); and then creating special emergency powers which would give the President a substantively narrow authority to deal with exceptional cases of crisis—in effect allowing us to do just the kind of thing we did in the Pre-Columbian Art Act of 1972.

This approach would entail redrafting Sections 2 and 3, but would require no further substantial changes in Sections 4-15 (subject to the suggestions made in the body of this memorandum).

Philadelphia, Pa., February 2, 1978.

MICHAEL STERN,
Staff Director, Senate Committee on Finance,
Dirksen Senate Office Building, Washington, D.C.

DEAR SIR: I am submitting this letter as written testimony in support of H.R. 5643, the Cultural Property Implementation Act for the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.

As a registered Democrat in the Commonwealth of Pennsylvania and a professional archaeologist, I feel strongly that the passage of this bill is in the best interest of the American public, art lovers, and anyone who respects history, interest groups which I hope are not mutually exclusive.

The traffic in antiquities which exists at present encourages robberies from art and archaeology museums and collections, both public and private, the looting and destruction of archaeological sites, and the sequestering of cultural material which by all rights should be on public view.

A specific example of the two latter occurrences concerns the Porticello shipwreck, discovered in 1969 near the town of Porticello in the province of Calabria, Italy. The fisherman who discovered the wreck systematically removed from it hundreds of ancient artifacts and sold them on the black market. Fortunately, antiquities authorities in Calabria learned of the situation before the site had been completely destroyed. The looting was halted and a team of trained archaeologists from the University Museum of the University of Pennsylvania was able to excavate scientifically the remains on the sea bed. I was a member of this team and am now responsible for the scholarly publication of the results of our work. Material shedding important new light on maritime trade in the late 5th century B.C., Greece's golden age, has been revealed by our salvage work. Considerably more would have been learned from the site had it not been violated by treasure-seekers.

I have learned that the life-sized head, in bronze, of a youth was found on this wreck and sold to a private collector. I have no idea whatsoever where this priceless object is now hidden. If this information were known, the owner would be required by Italian law to return it to the superintendent of antiquities in Calabria, where it could be exhibited for the world to study and enjoy. Greek bronze monumental sculptures were produced by the hundreds in the Classical period, but those that have survived to this day can be counted on the fingers of one hand. The loss of the youth from the Porticello wreck is incalculable.

¹ I would suggest that in (a) (1), the word "serious" or "critical" be added before "jeopardy"; and that in (a) (2), instead of "any site", the reference be to "a site or sites".

Situations such as this are appallingly commonplace, but can be mitigated by the enactment of H.R. 5643. I encourage its passage.

Sincerely yours,

CYNTHIA J. EISEMAN.

SMITHSONIAN INSTITUTION,
Washington, D.C., February 8, 1978.

HON. ABRAHAM RIBICOFF,
Chairman, Subcommittee on International Trade, Committee on Finance, U.S.
Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to take this opportunity to comment on H.R. 5643, a bill to implement the Convention of the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. The Senate gave its advice and consent to the Convention on August 11, 1972, but official notice of ratification has been deferred pending passage of legislation necessary to establish national procedures for carrying out United States Convention obligations.

The principal purpose of the Convention is to combat the increasing illegal international trade in national cultural treasures. Two major avenues of cooperative action are required to state parties. Under Article 9 of the Convention, parties agree to participate in international efforts to determine and carry out necessary corrective measures when a state's cultural patrimony is in jeopardy from pillage of archeological or ethnological materials. Article 7(b) of the Convention requires parties to prohibit the importation of cultural property stolen from a museum or religious or secular public monument of a state party, and to establish procedures for the recovery and return of such property. H.R. 5643 sets forth procedures for complying with the Convention, and these pertain mainly to implementation of Articles 9 and 7(b).

The Smithsonian Institution strongly endorses the principles embodied in the Convention and reflected in H.R. 5643. In May, 1973, the Board of Regents of the Smithsonian adopted a policy statement on museum acquisitions. The policy formalized for the whole Institution the ethical guidelines that the various components of the Smithsonian had been observing informally. It states that the Institution will not acquire objects and specimens which have been stolen, unscientifically gathered or excavated, or unethically acquired from their sources; repudiates the illicit traffic in such objects; and undertakes to cooperate with government authorities and other institutions in their efforts to protect their natural and cultural heritage. Other institutions have adopted similar policies, but implementation of the Convention through legislation is necessary.

The Smithsonian supports H.R. 5643 and respectfully recommends its approval by the Subcommittee.

Sincerely yours,

JOHN F. JAMESON,
Acting Secretary.

AMERICAN ANTHROPOLOGICAL ASSOCIATION,
Washington, D.C., February 7, 1978.

MICHAEL STERN,
Staff Director,
Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. STERN: The American Anthropological Association supports the Convention on Cultural Property Implementation Act, but urges the following modifications:

1. Sec. 3(a) Whenever the phrase "pillage, dismantling, or fragmentation" appears, we suggest adding "or destruction" so that the phrase reads (four times) "pillage, dismantling, fragmentation, or destruction."

2. Sec. 3(a)(8) Revision to read "a part of the remains or patrimony of a particular civilization, tribal group, or nonindustrial society, the record of which is in jeopardy" (etc.).

3. Sec. 5(1)(b) Membership. We strongly urge the necessity of including at least one member from among nominees selected by the American Anthropological Association. This recommendation is made to assure representation of professional ethnological interests.

4. Sec. 15. Definition. The definition of an "object of archaeological interest" on p. 22 lines 17-21 should have (II) deleted.

5. Sec. 15. Definition. The definition of an "object of ethnological interest" on p. 23 lines 3-10 should read:

"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, traditional use, or its contribution to the knowledge of the origins, development, or history of that people.

"III. However, not to be included as of ethnological interest are objects or works of art that were manufactured or produced either on commission for export or expressly for sale or gifts to foreigners, within 50 years from the date of import into the United States."

Sincerely,

EDWARD J. LEHMAN,
Executive Director.

[Western Union Mailgram]

LOS ANGELES, CALIF.,
 February 8, 1978.

SUBCOMMITTEE ON INTERNATIONAL TRADE.

*Finance Committee,
 Dirksen Senate Office Building,
 Washington, D.C.*

This message is in reference to Bill No. S. 2261.

As members of the Ethnic Art Council we are opposed to the proposed Bill No. S. 2261. We have all collected ethnic objects in good faith, there is no reason why we should be restricted to selling or exchanging them internationally. It has been the acquisition of ethnic art by collectors which has preserved the art and has created a new era of respect and understanding both here in the United States and in the countries of origin. Those objects in private hands usually are donated to museums and help the minority groups relate to their own country of origin through enriched ethnic collections here, we must have an international exchange and circulation of art to keep these ideas alive. We must have an international exchange and circulation of art. We are a democracy where the private acquisition and circulation of art objects needs to be kept open. This proposed bill will put a stop to all flow of art into the United States and divert it to other countries that will never propose such a bill as the above. Please include this on the written record.

Respectfully submitted,

DR. AND MRS. RICHARD BAUM.

NEW YORK, N.Y., February 5, 1978.

SUBCOMMITTEE ON INTERNATIONAL TRADE,

*Dirksen Senate Office Building,
 Washington, D.C.*

DEAR SIR: I would like to ask your cooperation in voting against bill H.R. 5643. I would also like to have my letter written into the record.

There is a group of people who are determined to mislead the American people into thinking all art is "stolen" or "pillaged" . . . a group that probably isn't aware that the very things they themselves collect such as china, silver, stamps, rare books, war relics and other treasures are among the items which could be restricted from entering our country by this bill.

Why the State Department has seen fit to use this cultural material which probably has done more to promote interest and understanding in the people of far away places as a pawn in international politics is hard to believe. Our system of free enterprise recognizes the right of an individual to own property and to dispose of it, and so why should we deny this right to the citizen of another country?

In the game of one-up-manship, we have gone far beyond the contemplated UNESCO agreement, which no other nation seems to plan to sign. It seems unfair to deny our country a chance to import art and related materials which will undoubtedly be diverted to a black market abroad.

Sincerely,

MARIE BIRILLO.

FEBRUARY 6, 1978.

SUBCOMMITTEE ON INTERNATIONAL TRADE.

H.R. 5643: Please to include the following in the printed record of the Subcommittee on International Trade.

DEAR SIR: I have read the arguments in regard to H.R. 5643 and feel the need to further a few more. The implications of such legislation has been amply catalogued by many, both in person and in writing, and all in sound reason bear witness to the incalculable loss to American culture should H.R. 5643 pass. However, besides the immediate affect of curtailing American collections (private and public); stunting their growth and effectiveness as complete essays on varied facets of art—I am very much concerned about ramifications affecting the American people.

The greatest loss will be in education and the understanding of ourselves and our culture. Also, not as trivial as it may appear, the frightening prospect of finding oneself returning from vacation only to have purchased souvenirs or treasured family keepsakes confiscated as suspected objects of pillage by custom clerks of our country.

Passage of H.R. 5643 would be a cultural disaster!

ROBERT V. KOVACIC,
Art History Instructor,
San Francisco Community College.

NEW YORK, N.Y., February 8, 1978.

Re concerning UNESCO legislation covering antiquities.

SUBCOMMITTEE ON INTERNATIONAL TRADE,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SIR: I am a trustee of The Metropolitan Museum of Art, a member of its Acquisition Committee and a trustee of the Archaeological Institute of America.

However, I would like to emphasize that I am not speaking for any of these institutions. What I express here are my personal views, based on my experience in the field of antiquities going back more than 30 years.

I would like to elucidate the consequences in the area of education if the proposed bill is adopted.

Our electronic age has made instant communication possible, but have all these gadgets contributed to a better understanding among nations with civilizations which are different from ours?

The majority of members in the United Nations are what we call developing countries. There are more than 2000 ethnic groups or tribes in Africa alone, each of which has its own language, culture and identity. What do we know about them? What means do we have to understand their tradition? Only original artifacts which men have created since prehistoric times can tell us something about their civilization and iconography. A Dogon mask, a Mayan stela, a Coptic textile or an Islamic bowl from Nishapur can tell us more about the different cultures and lifestyles.

Every object of antiquity is a witness to history. The more we know about their historical background, their religious meaning and symbolism the better we will be equipped to understand why people are acting or reacting in a certain manner.

Unfortunately, the great encyclopedic collections in our museums are only located on the eastern seaboard—The Metropolitan Museum of Art and the Museum of Fine Arts in Boston. But what about the remainder of the country, the middle west, the southwest, southeast, etc.? Of course, there are splendid collections in other museums, but rather imbalanced. Cleveland is strong in Medieval and Far Eastern art, the Los Angeles County Museum has a fine collection of Indian art, but none of these institutions shows a comprehensive survey of the cultures of the ancient world.

Another problem is the many college museums and art departments in our universities. How is the history of art and civilization taught in our universities? Just with the help of flat 2-dimensional color slides, a method unacceptable for 3-dimensional objects. How can a student visualize a Greek vase or an Egyptian sculpture? Those fortunate students living in Cambridge, Boston or New York have the great advantage of being able to study the originals in great museums nearby.

What about a student in Albuquerque, New Mexico or Oshkosh—why should he be deprived of the exhilarating experience of viewing and studying a pre-Colombian mask with all its religious mystery?

If the intended bill is adopted I am afraid it will be practically impossible to acquire examples of original works of art which are so essential for teaching the iconography and history of other cultures.

The proposed bill reminds me of a similar one which was enacted when China chose a communistic regime. The law prohibited dealing with the enemy. All the valuable antiques which left China at that time were bought for foreign museums and the art market in Europe. We have to buy them back now at inflated prices.

We have an illusion that if this bill is passed those countries rich in antiquities will cooperate and share their enormous inventories with us. American taxpayers have for years supported scientific excavations in many lands by spending millions of dollars unselfishly just for the advancement of scholarly research.

Some years ago a division of the finds was possible, but not any longer. I was the Chairman of the Friends of Sardis, a fund raising organization for the Harvard expedition at Sardis, the ancient Lydian capital in Turkey. After 20 years of excavation and reconstruction of the architectural finds and a rather large investment, the Turkish government has not offered one tiny terra cotta fragment to Harvard's Fine Arts Department for teaching purposes.

Let's talk about Greece. Enormous funds have been invested in excavating many sites. The Agora, the ancient market place in Athens, has been excavated and reconstructed exclusively by American tax money.

About three years ago the museum in Karlsruhe, Germany organized the first international exhibition of Cycladic art after years of preparation. A scholarly catalogue of great scientific value was published. Everybody knows that the Cycladic Islands belong to Greece. It was only natural that the National Museum in Athens was asked to lend a few key pieces to this important survey of their own heritage. Not only did the Greek government refuse, but it even prohibited a private collector in Greece, Madame Gourlandis, who has a fine collection of Cycladic art, to lend some of her objects.

The bill presupposes that illegal digging and export would be stopped. Are we going to police the movement of antiquities when those countries cannot or will not protect their own heritage? Let me give you an example:

Some years ago I visited, with a young archaeologist, Knidos, a tiny fishing village on the west coast of Turkey. Knidos, with its twin harbor, was an important Greek trading center from the 6th to the 3rd Century. The day before we arrived two fishermen had found a lifesize Hellenistic marble torso dating back to the 4th Century B.C. We could only view the fragments because they had destroyed it with sledge hammers in order to burn it to lime so that they could paint their houses white. How much good this torso could have done in Oberlin College!

There are storehouses full of ancient material in all of these countries. What is displayed in museums is just the tip of the iceberg. Literally hundreds of thousands of terra cottas, bronzes, marble, limestone reliefs and other objects are stored away. Some of them have not seen the light of day for more than half a century. They gather dust, and some even deteriorate because those countries have neither the manpower nor the funds to preserve them.

This enormous inventory does not contribute one iota to the advancement of knowledge. It is as if these objects never existed because only through publication do they come to life so that our scholars can, by further research, add another link to the unending chain of human history.

I would support this bill if our State Department can negotiate an agreement with those countries on the basis of reciprocity—that is to say, if they are willing to license antique dealers in their own countries and dispose of some of their huge surplus for the benefit of the rest of the world. Nobody will expect export permits for unique masterpieces, but duplicates or triplicates—or even fragments, can certainly be made available.

I would further suggest that these countries assemble a number of traveling collections for our universities on an extended loan to give our students an opportunity to see examples of original artifacts made by other cultures. We will exhibit them, research them, publish them and most of all—preserve them.

Sincerely yours,

NOBERT SCHIMMEL.

THE METROPOLITAN MUSEUM OF ART,
New York, N.Y., February 8, 1978.

Re Comments on Behalf of The Metropolitan Museum of Art on S. 2261* to Implement the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.

Mr. MICHAEL STERN,
Staff Director, Senate Committee on Finance, Dirksen Senate Office Building,
Washington, D.C.

DEAR MR. STERN: As Chairman of the Board of The Metropolitan Museum of Art, I am pleased to have the opportunity to offer comments to the Senate Finance Committee on the substance of S. 2261 as introduced by Senator Hathaway. The Metropolitan Museum has been very interested and concerned about this implementing legislation for a number of years and in fact I appeared before the Subcommittee on Trade of the House Ways and Means Committee to comment on the bill April 26, 1977. The Museum also submitted a memorandum, which was printed as part of the record of the April 26th hearing. During the mark-ups on the House bill, H.R. 5643, representatives of the Metropolitan Museum made additional comments and suggestions to the Committee and its staff. Some of the ideas and suggestions which the Museum was urging at that time have now been adopted in whole or in part in S. 2261. However, we believe that there are a number of further changes which can and should be made at this time in order to better define the scope of the bill and remove unnecessary ambiguity from some of its provisions.

The Metropolitan is especially troubled by those provisions of the proposed legislation which would permit the forfeiture of cultural property without compensation from a museum which in good faith innocently purchased the property for value. Trustees of museums are charged not only with the duty of protecting the museum's assets, but also to provide America's art viewing public, through acquisitions and exchange, an opportunity to see and experience cultural objects from all parts of the world. At the same time, the Metropolitan Museum continues to be sympathetic with the goal of the UNESCO Convention to help remedy a serious situation of pillage which is creating jeopardy to the cultural patrimony of a State Party. But it is appropriate and possible for S. 2261 to accommodate both legitimate American interests as well as those of State Parties. For this reason, the Metropolitan Museum recommends certain new provisions relating to: 1) the periods of limitation applicable to the seizure of cultural property within the United States, and 2) compensation to bona fide purchasers for value from a fund to be established under the proposed Act.

Other recommendations are designed to make the Act reflect more closely the dimension and scope of the Convention itself, and to improve it in several other areas: requests of State Parties; the exchange of archaeological and ethnological materials by State Parties; the duration of extensions of embargo agreements; the documentation of cultural property appertaining to the inventory of an institution; and the definitions of "archaeological material" and "bona fide purchaser for value".

These recommendations and comments will be discussed below in the order in which they appear in S. 2261.

SEC. 2. AGREEMENTS TO IMPLEMENT ARTICLE 9 OF THE CONVENTION

1 Neither section 2 nor section 3 requires that the request of the State Party be made in writing or by diplomatic cable, telex or other means that result in a printed or written request. Since the embargo which may be imposed as a result of such a request may impose onerous burdens on United States institutions, citizens and residents, it should not be sufficient for a State Party to make an oral request to the Department of State. The State Party should be required to include in its request under section 2 the facts which would support the findings by the President required by section 2(a) (1) and (2). Similarly, the request of the State Party under section 3(c) should specify that "an emergency condition exists" and the facts which support this statement.

Not only would the State Party itself be the best source of the information necessary to support its allegation, but such detailed requests would greatly

*The companion bill passed by the House of Representatives is H.R. 5643.

expedite the work of the Advisory Committee in making its independent findings, particularly in view of the time constraints within which the Committee must file its report under section 2 or 3

Furthermore, such detailed requests would constitute some evidence that the State Party is itself taking measures to protect its cultural patrimony.

This recommendation could be accomplished by inserting in section 2(a) at page 3, after line 2, the following sentence:

"Any such request by any State Party shall be made in writing or by cable, telex or other means that result in a printed or written request and shall include the facts which the State Party believes would support the findings required by paragraphs (1) and (2) of this subsection (a)."

Conforming changes would be required as follows:

in section 2(c) (2) on page 3, omit the phrase "if applicable."

in section 5(f) (3) on page 11, lines 16 through 18, omit the phrase "(whether or not the State Party indicated in its request under section 2(a) that an emergency condition exists)."

2. It would be "consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes" [the finding required by section 2(a) (4)] to require State Parties, benefiting from the embargo imposed pursuant to the proposed legislation, to permit the exchange of its archaeological and ethnological materials. In section 2(a), page 3, lines 3 and 4, the word "shall" should be substituted for the phrase "should endeavor to." Such a mandatory provision would be of particular importance to the Metropolitan Museum and our nation's other cultural institutions.

3. Although section 2(b) provides that any agreement under subsection (a) may not be effective for a period of more than 5 years, any such agreement "may be extended by the President for such additional periods of time as the President deems reasonable." This would permit an extension of unlimited duration. Section 2(b) of the Subcommittee on Trade, Committee on Ways and Means print of H.R. 5643 dated July 15, 1977, had provided that "any such agreement may be extended by the President for additional periods of not more than five years each." Sections 2(c) and 5(f) (2) require the President to obtain the view and recommendation of the Advisory Committee with respect to each proposed extension. It is respectfully suggested that the above quoted provision from the July 15, 1977 Subcommittee Print of H.R. 5643 be restored so that the President and the art community will have the benefit of the Advisory Committee's periodic review and recommendation as to the effectiveness of the import restrictions in deterring a serious situation of pillage. The Metropolitan Museum considers the input of the Advisory Committee to be essential to a balanced and effective administration of the Act, and would regret the dilution of its role by extension agreements of long duration.

SEC. 3. EMERGENCY IMPLEMENTATION OF IMPORT RESTRICTIONS

For the reasons previously set forth in the prior discussion of Sec. 2, the request of the State Party should be made in a written or printed form and the State Party should be required to specify that an emergency condition exists and to detail the facts which support this statement. Section 3(c) should be modified to eliminate, at page 6, lines 10 through 12, the phrase, "but this section may be so implemented whether or not the State Party indicated, in such request, that an emergency condition exists," and the following phrase should be substituted: "but this section may not be so implemented unless such request by the State Party alleges that an emergency condition exists and sets forth the facts which support this statement."

SEC. 4. DESIGNATION OF MATERIALS COVERED BY AGREEMENTS OR EMERGENCY ACTIONS

Under section 4, after an agreement is entered into under section 2, or emergency action is taken under section 3, the Secretary of the Treasury, after consulting with the Secretary of State, promulgates regulations listing the archaeological or ethnological material of the State Party covered by the agreement or emergency action. As drafted, section 4 on page 7, lines 11 and 12, permits the Secretary of the Treasury "when appropriate" to revise the list. It should be made clear that this phrase will not permit the Secretary of the Treasury to enlarge the categories of materials listed, but that the list may only be revised if necessary to give fair notice to importers and others. It is thus recom-

mended that the phrase "and when appropriate shall revise" be modified to read: "and when appropriate shall revise in order to make more specific and precise."

SEC. 7. STOLEN CULTURAL PROPERTY

Section 7 of S. 2261 implements Article 7(b) of the Convention whereby the States Parties to the Convention undertake "to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution . . . provided that such property is documented as appertaining to the inventory of that institution." (Emphasis added.) Section 7 of S. 2261 omits the requirement that such cultural property be documented; yet, a State Party is obliged to take measures to protect its cultural patrimony, and a documented inventory should be considered basic to a State Party's fulfillment of this duty. Thus, section 7, at page 18, lines 5 and 6, should be modified as follows:

"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 . . ."

SEC. 9. SEIZURE AND FORFEITURE

S. 2261 (and H.R. 5643) contemplate only the seizure and forfeiture of the articles of cultural property imported into the United States in violation of the Act, and unlike the customs laws do not permit Customs action against the cultural property and/or the value of such cultural property. This could lead to the inequitable result that an article of cultural property may be seized and judicially forfeited from a bona fide purchaser for value without just compensation under the Act, while the intermediary who may not have acted in good faith is exempt from penalty and may even be entitled to keep the fruits of his wrongdoing.

If the act were modified to permit Customs to seize the article or material and also to give Customs the option to recover the proceeds thereof from any importer, seller or other person or persons who are not bona fide purchasers for value, the Act would be a stronger deterrent to illegal imports, and at the same time would make it feasible for the United States to compensate bona fide purchasers for value for the purchase price or the value of the object (whichever is less) for articles or material forfeited and returned to the State Party.

Such a modification would not require extensive redrafting and would help to make the Act consistent with the policies of the United States now embodied in its general customs laws which do not permit the seizure of goods from bona fide purchasers for value. Customs Regulations, 19 C.F.R. section 162.41(a).

If this recommendation is adopted, section 9 would be revised to insert the italicized language as follows:

SEC. 9. 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 6 or section 7 and/or the proceeds thereof shall be subject to seizure and judicial forfeiture. All provisions of law relating to seizure, judicial forfeiture and condemnation for violation of the customs laws shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this Act, insofar as such provisions of law are applicable to, and not inconsistent with, the provisions of this Act.

(b) ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIAL.—Any designated archaeological or ethnological material which is imported into the United States in violation of section 6 and which is forfeited to the United States under this Act shall—

(1) first be offered for return to the State Party and shall be returned if the State Party bears the expenses incurred incident to such return and delivery and complies with such other requirements relating to the return as the Secretary shall prescribe;

(2) if not returned to the State Party, be returned to a claimant from whom the material was forfeited where the claimant establishes valid title to the material or that it is a bona fide purchaser for value; or

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

(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 7, 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 by the State Party, in which event the United States shall pay the claimant an amount equal to the amount which the claimant paid for the article or the then value thereof, whichever is less.

(2) Any article of cultural property which is imported into the United States in violation of section 7 and which is forfeited to the United States under this Act shall—

(A) first be offered for return to the State Party in whose territory is situated the institution referred to in section 7 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;

(B) if not returned to such State Party, be returned to a claimant from whom the article was forfeited where the claimant establishes valid title to the article or that it is a bona fide purchaser for value; or

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

(d) **SEIZURE OF PROCEEDS AND DISPOSITION.**—(1) *The proceeds of any designated archaeological or ethnological material or article of cultural property which is imported into the United States in violation of section 6 or section 7, as the case may be, shall be subject to seizure and judicial forfeiture by the United States from the importer, consignee, seller or any other person who received such proceeds, regardless of whether or not such material or article has been seized or forfeited.*

(2) *One-half of any proceeds forfeited to the United States under this Act shall be used to establish a fund from which the compensation required by paragraph (c)(1)(B) of this section 9 shall be paid, and from which payments shall be made by the United States to any claimant who:*

(i) *is a bona fide purchaser for value of designated archaeological or ethnological material imported into the United States in violation of section 6;*

(ii) *forfeited such material pursuant to this Act, which material has not been returned to claimant under paragraph (b)(2) of this section 9; and*

(iii) *establishes that it is impossible or impracticable to recover the purchase price from the person from whom the material was purchased.*

Such claimant shall be paid an amount equal to the amount which the claimant paid for such material or the then value of such material, whichever is less.

SEC. 10. EVIDENTIARY REQUIREMENTS

In order to carry forward the comments made with regard to section 7, section 10(2) (A) should read:

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

If the recommended changes to section 9 are adopted, the phrase "or the proceeds thereof" should be inserted in section 10, page 19, line 11, after the word "article", and a new section 10(3) should be inserted as follows:

"(3) In the case of any proceeds subject to the provisions of section 9(a) and 9(d), that such proceeds were received by such importer, consignee, seller or person, and it shall not be necessary to establish that the proceeds are still in the possession of such importer, consignee, seller or person."

SEC. 11. CERTAIN MATERIALS AND ARTICLES EXEMPT FROM ACT

The Metropolitan recommends that if a United States museum or similar institution which is a bona fide purchaser for value displays an article of cultural

property or archaeological or ethnological material for a period of three consecutive years, such article or material would not be subject to seizure and forfeiture. Public display for a three year period would be adequate notice to the State Party. In addition, if forfeiture occurs within such three year period, the museum or other institution would have adequate time to assert its claim to recover the purchase price of the forfeited article or material from the vendor within the 4-year (from date of purchase) statute of limitation generally applicable under the Uniform Commercial Code. New paragraph (C) should be inserted in Section 11 (2) as follows:

"(C) has been within the United States and has been exhibited for a period of not less than 3 consecutive years by a recognized museum or religious or secular monument or similar institution in the United States open to the public which has purchased such material or article for value, in good faith, and without notice that such material or article was imported in violation of this Act."

In order to eliminate the perpetual possibility of forfeiture [forfeiture by the Customs Service under the Act is apparently permitted at any time within 5 years after discovery of the alleged offense], a new paragraph (D) should be inserted as follows:

"(D) if paragraphs (A), (B) or (C) do not apply, has been within the United States for a period of not less than 20 consecutive years."

Since the person illicitly bringing the cultural property into the United States may escape criminal prosecution because the statute of limitations under 18 U.S.C. § 3283 for criminal violation of the customs laws is five years from the date of commission of the offense, it would seem reasonable to allow the elapse of 20 years after the object has entered the country to remove all taint from such illegally imported material or article.

SEC. 15. DEFINITIONS

S. 2261 assumes that with respect to each "archaeological" object, it is known in which State Party it was first discovered. However, widespread commerce in the arts since antiquity has in many instances blurred and made impossible proof of the country of artistic origin as distinct from the country of discovery.

If the definition of such archaeological material were made more precise by limiting it to objects discovered within a State Party during the last fifty years, as a factual matter it would be more possible to prove where the object was discovered and thereby facilitate the administration of the Act. This would in all likelihood reduce the possibility of conflicting claims between the country of artistic origin (for example, Greece) and the country of discovery (for example, Italy). The definition of the term "archaeological or ethnological material of the State Party" appearing at section 15 (2) on page 22, line 7, should be rephrased as follows:

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

(A) any object of archaeological interest . . . which was discovered during the last fifty years within, and is subject to export control by, the State Party."

A conforming change in section 15 (2) (1) (III) on page 22, line 14, should also be made:

"(III) was discovered during the last fifty years as a result of scientific excavation, clandestine or accidental digging, or exploration on land or underwater; . . ."

In order to facilitate the drafting of the provisions recommended in the discussion of section 9, the following new definition should be added to section 15:

"(12) The term 'bona fide purchaser for value' means a claimant who purchased the designated archaeological or ethnological material or article of cultural property, which is imported into the United States in violation of section 6 or 7, as the case may be, for value without knowledge or reason to believe that such material was imported into the United States in violation of section 6 or that such article was stolen and imported into the United States in violation of section 7, and such term shall include the donees, legal representatives, heirs, legatees and successors of such claimant."

We hope the foregoing comments will be helpful to the committee in its consideration of the bill.

Sincerely,

DOUGLAS DILLON,
Chairman of the Board of Trustees
of The Metropolitan Museum of Art.

OREGON VOLUNTEER LAWYERS FOR THE ARTS, INC.,
Portland, Oreg., January 24, 1978.

Re HR 5643—A bill to implement the UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property.

Mr. BOB CASSIDY,
*Dirksen Senate Office Building,
Washington, D.C.*

Dear MR. CASSIDY: Enclosed, please find transcripts of panels which have considered the enabling legislation under the UNESCO Convention. Both of these pieces have been published; the first in the *Syracuse Journal of International Law and Commerce*, and the second in the proceedings of the American Society of International Law. I respectfully submit these pieces for inclusion in the hearing on the bill. In addition, I would like you to consider Chapter 4 of the text entitled, *The Deskbook of Art Law* published by Federal Publications, Inc., 1725 "K" Street, Northwest, Washington, D.C. 20006. This chapter deals with the problem of international protection of cultural property and, in particular, the UNESCO Convention.

I would be pleased to supply any additional information you might desire regarding the treaty and its enabling legislation. I have been active in studying the problem of international protection of cultural property for some time.

Sincerely,

LEONARD D. DU BOFF,
Professor of Law.

Enclosures.

**THE INTERNATIONAL PROTECTION OF
CULTURAL PROPERTY**

Reprinted from the PROCEEDINGS of the 71st Annual Meeting of
THE AMERICAN SOCIETY OF INTERNATIONAL LAW
April 21-23, 1977

indeed add some leverage to certain situations. On the other hand, a number of factors suggest per se illegality. The most important is that secondary boycotts, as we see in the Arab boycott, expand conflict and in this respect cut against the basic principles underlying the norms of neutrality. This suggests that secondary boycotts might be proscribed as illegal per se because they are more apt to expand conflict than primary or even extended primary boycotts. As to human rights, because of the ambiguity surrounding the term "Zionist sympathizers," there is a kind of generalized chilling effect on human rights. We even know of circumstances, for example, in which a firm may have been blacklisted partly because of an exercise of free speech in the United States by sponsoring programs on network television that were interpreted as tilting against the Arab position. That kind of chilling effect on free speech may be present even if ethnic-racial-religious factors are not the basis for discrimination.

Another member of the audience asked Professor Moore to assume a declaration that the United States would use secondary boycotts. Professor Moore's diagrams, he contended, had failed to examine the relative positions of the United States and the Arab countries. The boycott from the Arab side has been based on their position as importers of capital or goods and technology. The United States, on the other hand, controls the export of goods, technology, and with the Trading with the Enemy Act impliedly in the background, of investment capital management. He suggested that the way to define the difference in the primary and secondary boycott is not just the diagram line and urged that what Professor Moore calls an extended primary boycott should be redefined to include the concept that a foreign power cannot force the United States to influence economic activity in another country. The *Bechtel* compromise, which really is a territorial compromise, conforms to that suggestion.

Professor MOORE responded that the principle inquiry is where to draw the line on the legality or policy aspects of boycotts. Whether it should be prior to extended primary or after extended primary yet before secondary should be examined from the standpoint of the world-order differences that in fact make secondary boycotts more dangerous than extended primary boycotts. Moreover, there is little hope of drawing the line to include an extended primary boycott. For example, the Arab countries have repeatedly stated that their boycott is not aimed at the United States. Yet our legislation provides for extended primary boycotts, and it is difficult to convince the Arab Governments to draw the line there.

Mr. Oppenheimer had suggested, in response to the Arab boycott, that the United States first proceed diplomatically to negotiate an international rule. A question from the floor inquired what the rule should be. For example, if the Arabs maintained only an extended primary boycott, if they simply said they would sell oil to any country that would certify no product made by that petroleum or which was made by use of that petroleum, would be for export to Israel, this would simply be an extended primary boycott. Yet it would in fact be rather devastating in terms of consequences. Mr. OPPENHEIMER was skeptical whether it is possible

to find or define a rule of law that will, in general, cover all situations. He referred to the question of propriety in using violence. In situations where a country is convinced that its survival is at stake, which is the case now in both the Arab states and Israel, measures are taken that are deemed to be essential; he did not see how a general rule might be formulated. When the question does not affect the deep-seated emotions of national survival, he would go back to what he was taught by his first teacher in international law: that one should leave private property and private business transactions alone.

Professore MOORE added that he had not intended to suggest a line above which everything would be lawful and below which everything is illegal. Rather, the inquiry was one of per se prohibition of a particular weapon, the secondary boycott, because of special conflict-broadening characteristics of this weapon. On the merits of the lawfulness of a particular application of any boycott, one should develop a broader approach, looking to fundamental norms of world order and conflict management.

ROBERT S. NOREEN*
Reporter

THE INTERNATIONAL PROTECTION OF CULTURAL PROPERTY

The seminar was convened at 2:30 p.m., April 22, 1977, by its moderator, Professor Leonard D. DuBoff of the Northwestern School of Law of Lewis and Clark College.

Professor DUBOFF opened the panel by observing that "art-rich" nations have become increasingly concerned with protecting cultural property within their borders, while "art-poor" nations would like to maintain the free flow of cultural property among nations. Whether nations have a right to restrict the free flow of cultural property poses a dilemma: on the one hand, irreplaceable antiquities may be of great national value, not only from an economic point of view, but from a cultural, folkloric perspective as well. On the other hand, mankind is interested in the free exchange of cultural objects. In this context, it should be noted that art may serve as a bridge to greater mutual understanding and appreciation among the people of the world. Thus, the solution seems to lie in striking some kind of balance between the interests of "art-rich" and "art-poor" nations. One of the objects of the panel is to explore the conflicts which attend efforts to strike this balance.

REMARKS BY JOHN MERRYMAN**

Even in relatively peaceful times, works of art travel from one part of the world to another under circumstances that raise important ethical and

* Staff Judge Advocate's Office, The Presidio.

** Stanford Law School.

legal questions. Is it enough that the authorities of a nation have decreed that certain kinds of objects must remain within its boundaries, or may we ask what interests are protected by such measures?

There is, first, a concern about wrenching a work of art from the culture in which it is embedded and thus depriving the society of benefits that seem to be real, even though they may be difficult to measure and their articulation may require the use of vague terms, such as "cultural importance." A notorious example is the *Afo-A-Kom*, a statue of religious importance to the Kom, a tribe in the Cameroon, which turned up in late 1973 in a Madison Avenue dealer's shop in New York and was eventually returned to the tribe after considerable international activity and wide publicity. The First Secretary of the Cameroon Embassy in Washington conveys the point: "It is beyond money, beyond value. It is the heart of the Kom, what unifies the tribe, the spirit of the nation, what holds us together. It is not an object of art for sale and could not be."

The *Afo-A-Kom* for the Kom of Cameroon, the Crown of St. Stephen for the Hungarians, the Liberty Bell for the Americans, are merely obvious examples of objects that have cultural importance for one nation or society quite distinct from their value as works of art, as antiquities, or as materials of scholarship. Most works of art, archaeological monuments, and artifacts share this quality to some extent, although not always so obviously as the examples I just gave. They have something to do with cultural specification. They tell a people who they are, remind them of what they have in common, help to satisfy a basic need for identity, and symbolize shared values and experience.

The distance between this sort of consideration, which we might refer to as "specific cultural value," and some other kinds of concerns is not very great. Where does one draw the line between protection of "specific cultural value" and aggressive or invidious nationalism? We might wish to respect the former but not the latter. The problem is basic to our area of concern and not easily resolved.

A more frequently expressed consideration is the desire to prevent destruction of the records of a civilization. The example most widely discussed is the looting of Mayan sites in Mexico and Central America. The best remaining record of the Mayan civilization, which is little understood and whose writing is not yet even deciphered, is an integral part of the monumental architecture and sculpture of the archaeological sites and derives some of its significance and reveals some of its information to scholars only while it remains in place. The mere fact of removal of a part takes it out of context and reduces its meaning as a record of a civilization. Further, in the case of the Mayan stelae, the act of removal frequently results in the physical destruction of remaining parts of the site and even of the stelae themselves because of the crudeness of the methods sometimes employed. The matter would be less serious if the sites had been fully excavated, photographed, and documented, but they typically have not been. What is lost frequently is irretrievably lost; destroyed in the process of looting; removed from its context; or made anonymous by the unscholarly nature of its removal, the lack of

documentation of its origin, and the clandestine nature of its movement in the national or international market:

Let us focus on the integrity of art work, that is, the desire to keep the parts of a work of art together in the belief that they lose some part of their aesthetic, cultural, or archaeological value if the work is dismembered. The fundamental notion is that the whole of a work of art is greater than the sum of its parts. The most notorious historical example is the Parthenon in Athens. Much of the sculpture that ornamented the exterior of the famous Greek temple was taken from it by Lord Elgin's party near the beginning of the 19th century and shipped to England where it is now displayed in the British Museum as the "Elgin Marbles." Byron fulminated about this episode in the *Curse of Minerva* and in *Childe Harold*. Periodically the Greek Government requests that the marbles be returned to the Greek people, and discussion of the matter is revived in the British Parliament and the British press. There are reasonable arguments on all sides of this question and some of them have nothing to do with the point now under discussion, but the integrity of the Parthenon as a work of art continually suggests itself as one important and legitimate consideration. It could, of course, be remedied by transporting the rest of the Parthenon to London and there reuniting it with the sculptures, but then the argument might be made that the Acropolis itself is the sort of ensemble that we have been talking about and that its artistic integrity would be destroyed if the temple were removed from it. No one has yet seriously suggested that the entire Acropolis be moved to the British Museum. Accordingly, if the marbles and the temple are ever to be reunited, it should probably be in Athens, rather than in London.

Although "integrity of the work of art" is a significant consideration, it is not the only one. Returning to the Elgin Marbles for the moment, one often hears that they would have been destroyed or badly damaged—by negligence or deliberate vandalism under the Turks, by the action of the elements, more recently by smog—if they had been left in place. Taking them to the British Museum, according to this argument, has preserved them. Such an argument can be made with greater or lesser force in a variety of situations. It has been claimed that the removal of Mayan stelae from their sites and preservation of them in private collections or in museums in the United States and Europe protects them against a variety of hazards. Such reasoning has even been used to justify the theft of paintings from decrepit Italian churches and from seedy provincial museums elsewhere.

Of course, concern for the safety of art more readily cuts the other way to justify limitation of the traffic in art treasures. One of the arguments against the current looting of Mayan monuments in Mexico and Central America is the fearful damage that is done to the works themselves in the process. The process of moving a work of art entails a variety of hazards. All of us can recall the enormous care involved in bringing the Michelangelo *Pieta* to the United States for the New York World's Fair and the precautions taken to protect it while it was here. Indisputably, then, concern for the safety and preservation of the work may justify some form of limitation of its movability.

Finally, there is a concern about the appropriate international distribution of artistic and cultural treasures. The tendency is for such works to flow from the poorer to the more wealthy nations; one could parade the spectre of a world denuded of all artistic and cultural treasures in order to stock the museums and private collections of one or a few wealthy nations. At an earlier time, the French seemed to have assumed that it was not only desirable, but proper, that major works of art find their proper home in France, regardless of their place of origin or *situs*. In October 1796, in a petition to the Directoire signed by almost all the great French artists of the day, the following language appears: "The French Republic, by its strength and superiority of its enlightenment and its artists, is the only country in the world which can give a safe home to these masterpieces." And, at about the same time, a lieutenant emphasized to the Convention that works of art in other countries had been "soiled too long by slavery" and that "these immortal works of art are no longer on foreign soil. They are brought to the homeland of art and genius, to the homeland of liberty and sacred equality, the French Republic." Napoleon himself wrote from Milan in 1796: "All men of genius, all those who have attained distinction in the republic of letters, are French no matter in what country they may have been born."

Such sentiments are seldom used today to justify the movement of the art treasures of one society to the collections and museums of another. Instead, the motivating force is economics: dealers, collectors, and museums in wealthy countries are prepared to pay high prices for art works and cultural treasures. It is not unreasonable for art-rich, but economically poor, countries to express concern about the size and rate of the flow. The prospect of a world in which all major art works and other cultural treasures are found in a few nations, with others culturally impoverished as a result, is unpleasant to contemplate. Still, many would agree that we have a long way to go before anything like that happens. Meanwhile, the fortunes of nations and societies rise and fall; art traffic moves in one direction for a time and then in another.

The legitimacy of any of the concerns I have identified will vary according to the facts of the case, and this is not the place to undertake that sort of examination. They are seldom the only concerns. For example, John Canaday, writing in the *New York Times*, urged that "art should be spread around, not kept at home." He was quite properly responding to the suggestion that the United States establish restrictions on the export of major works by American artists. The suggestion arose shortly after a major painting by Jackson Pollock, *Blue Poles*, was sold to an Australian museum. How many Americans felt culturally deprived by the movement of this admittedly great work to Australia? No greater artistic work has been dismembered in order to permit movement of this painting. The work itself is not threatened with destruction. The United States is hardly in danger of impoverishment of the New York School. On the contrary, as Mr. Canaday argues, it might serve our interests better if there were wider distribution abroad of works of art by distinguished American artists. We are badly represented in the world's collections; the sale of *Blue Poles* is therefore a step in the right direction. It may be possible to generalize

from Mr. Canaday's article about the Jackson Pollock case to a broader proposition that might go something like this: if international understanding and tolerance are desirable ends, they are likely to be more readily achieved if works of art are distributed, studied, and seen. If parochialism is a sickness, a freer trade in artistic and cultural treasures is a part of the cure.

Professor DUBOFF noted that the Afo-A-Kom was reported to be again on the international art market. He queried whether the value of this piece was not economic, rather than cultural, and whether the accounts of its Odyssey had not been distorted.

REMARKS BY PATRICK MACRORY*

I will treat the important recent decision in *United States v. McClain*.¹ The facts are these: Rodriguez, one of the defendants in the case and a resident of California, brought a U-Haul truck filled with Mexican pre-Columbian art to San Antonio with the apparent intent of selling them. In his efforts to place these objects, he began calling local museums, among them, the Mexican Cultural Institute. As luck would have it, the Institute was operated by the Mexican Government, which contacted the FBI. Mr. Rodriguez and four others who had agreed to help him sell the pieces were arrested and charged with the transportation and receipt of stolen goods under the National Stolen Property Act. At trial, the government made no effort to show when and where the property was stolen, but relied instead on the testimony of the Mexican Deputy Attorney General for the Recovery of National Property that, under the applicable Mexican statutes, all pre-Columbian art had been the property of the Government of Mexico since 1897, and, if exported without the government's permission, constituted stolen property. The judge accepted this evidence of Mexican law and instructed the jury accordingly. The jury found that the defendants had not secured the necessary permission to export the objects and convicted them.

The decision sent shock waves throughout the museum community. If read broadly, the opinion could mean that every piece of Mexican pre-Columbian art imported into the United States since 1897 was a stolen good, and every recent acquisition could be prosecuted. Furthermore, transporting any of these particular objects, even if they had been in the country for many years, could theoretically result in fresh charges. Not only that, but civil suits instituted by Mexico and countries with similar statutes to recover pieces could be expected. The net result of the decision was the cancellation of planned exhibitions of pre-Columbian art and a flurry of criticism unleashed by numerous associations.

In arguing the case before the Court of Appeals for the American Association of Dealers in Ancient, Oriental and Primitive Art, as *amicus*

* Of the District of Columbia Bar.

¹ 545 F. 2d 988 (5th Cir. 1977), *rehear'g denied*, 551 F. 2d 52 (April 26, 1977).

curiae, I took the position that federal stolen property laws should not be applicable to "legal abstractions" such as the Mexican legislation claiming ownership of the disputed property. In this particular case, there was no evidence of any attempt by the Mexican Government to take possession of the pieces, and it was not uncommon for Mexicans to own private collections of similar objects. Thus, it was proposed that "stolen" meant "stolen" within its traditional meaning.

Moreover, we argued that the decision was contrary to expressed U.S. policy. The United States has repeatedly adhered to the doctrine that it is not illegal to import something simply because it was exported illegally from the country of origin. The court's opinion would come very close to reversing this doctrine.

On appeal, the case was reversed on the narrow ground that the trial court was mistaken in its application of Mexican law. The Court of Appeals held that until 1972 Mexican law only purported to cover *immovable* monuments together with movables found on such monuments, and no evidence was adduced at trial establishing the date the movables at issue entered the country.

The prosecution filed for a rehearing, on the ground that another provision of the 1934 Mexican Act was overlooked which clearly establishes that property, such as that at issue, is presumed to come from "on or in" immovables.² The statute talks about objects already found by the date of its enactment so that the question then becomes whether there is a continuous presumption that the provision applies to all cultural property discovered subsequently. There is no savings clause in the statute that replaced the 1934 Act.

The case highlights several problems. First is the use of foreign law as a basis for a domestic criminal prosecution. This is problematic because of the inaccessibility to foreign law, the lack of translated material, and because those translations that are available are frequently unreliable and inaccurate. This provided a distinct handicap in the defendants' examination of Dr. Gertz in the proceedings for the court did not have the statutes in Spanish. To conclude, I question basing a criminal conviction on ambiguous translations. Moreover, the 1972 amendments to the Mexican statutes had been challenged as unconstitutional in Mexico itself, and a U.S. court is not qualified to pass on these types of questions.

The key to *McClain* is a requirement of a declaration of ownership by the foreign government. The problem with this requirement is that it has the bad effect of permitting foreign countries to determine the extent to which U.S. law can be used to back up their own restrictions on exportation, which is contrary to previous U.S. policy. An absolute ban on exportation of antiquities, such as Mexico's, is generally agreed to be undesirable, since it forecloses legitimate exportation and encourages black market operations. The court in *McClain* quoted Professor Nafziger as authority for this proposition.

² The Court of Appeals subsequently denied the rehearing in a short *per curiam* opinion issued on April 20, 1977, *supra* note 1.

The United States has not been totally unresponsive to the problem of the looting of antiquities; in 1972 it enacted a law banning the importation of monumental pre-Columbian art. Furthermore, a treaty between Mexico and the United States protects stolen pieces of national significance. In addition, the UNESCO Convention responds to objects stolen from museums.

To ameliorate the impact of its decision, the *McClain* court implied that prosecutorial discretion would be available against unwarranted criminal charges for the importation of cultural property. The museums, however, may not find this conciliatory language too comforting and are likely to cut back on their acquisitions. Only people willing to take the risk will continue purchasing and this trend will also encourage a black market.

Professor DUBOFF noted that the Organization of American States (OAS) recently opened for signature the Convention of San Salvador.³ This Convention embodies many of the portions of the UNESCO Draft Convention which the United States declared would violate its public policy. In particular, the new Convention provides that parties to it must recognize and enforce foreign national treasures acts. Professor DUBOFF asked whether *McClain* may have misled the OAS into believing that U.S. public policy now favors the strict enforcement of foreign national treasures acts in the United States.

REMARKS BY MARK B. FELDMAN*

Counsel for art dealers take a risk when they interpret the policy of the United States-Mexico Treaty. It explicitly refers to archaeological material removed from Mexico. The policy of the United States, which the legislative history of the treaty makes clear, is that under the common law, with state law restrictions, U.S. citizens are unable to affirm a valid title to stolen pre-Columbian art works as against the true owner. Thus, whether the property belongs to the foreign country claiming it becomes a matter of foreign law for determination in accordance with state choice-of-law rules. On the other hand, it is also U.S. policy to encourage countries to bring their own litigation in domestic courts. As to criminal law, the correct policy would be to indict individuals who conspire to steal or distribute stolen objects, not to prosecute museums or other purchasers of art objects after they come to rest in interstate commerce. Within this framework, a museum acquiring art works in good faith should not have any trouble; it is the art dealers who have cause to worry about the repercussions of the *McClain* case.

With respect to the UNESCO Convention, an initial draft was introduced which called for no movement of cultural property unless accompanied by a certificate. The United States refused to accept this language but agreed to a compromise which would require negotiations on an ad hoc basis. This requirement could become an administrative

³ 15 ILM 1350 (1976).

* Deputy Legal Adviser, Department of State.

problem, but it expresses a substantive position, the United States can support. The United States has nevertheless refused to ratify the Convention until Congress enacts enabling legislation. Over the years, three bills have been introduced which, among other matters, call for returning stolen property to the country of origin. The provisions regulating the importation of material illegally excavated in the country of origin have remained controversial. Supporters and sponsors of the bills have witnessed four or five years of constant frustrations; the bills have been revised several times with better procedural safeguards drafted each time, but until this week no hearing had been scheduled within the Congress.

The pending bill to implement the UNESCO Convention seeks to strengthen provisions in an earlier version that would create an advisory committee to the executive branch. These provisions are elaborate and, too cumbersome. They could, furthermore, be controversial with respect to unspecified institutions and their provision for substantial funds to support the advisory committee. A technical problem with the bill is its rejection of multilateral agreements, notwithstanding the importance of encouraging other art-importing nations to negotiate them with this country. Restraints on U.S. collectors may simply lead to a diversion of art to other countries in the absence of greater international commitment.

A proposed statute of limitations is controversial. It would exempt archaeological objects which had been removed from countries of origin for more than ten years. The bill should provide, in addition, that the statute of limitations will not run if domestic interests have purchased the objects within the ten-year period. Archaeologists, on the other hand, feel that ten years is much too short and have proposed a twenty-five year period with notification to the interested country. (Another proposal would provide that, if the object enters the United States and is on continuous exhibition for ten years, the statute of limitations would apply; if the concerned government does not make a claim within that period, it would be foreclosed from making it thereafter.) It is important to note that the pending bill does not purport to foreclose any existing state remedies or to modify state law.

Professor DUBOFF inquired whether the UNESCO Convention would have any vitality if other importing nations did not become parties to it. In addition, he asked if corporations which buy and sell art might not become ten-year depositories for stolen property and thus serve as instruments to bypass the statute of limitations.

REMARKS BY PAUL M. BATOR*

Mr. Feldman is associated with the government and Mr. Macrory is one of the attorneys responsible for drafting the *amicus* brief filed in the *McClain* case. All lawyers associated so intimately with the issue should

* Harvard Law School.

be taken with a grain of salt. The *McClain* opinion does not seem to me as disastrous as Mr. Macrory suggests. Judge Wisdom emphasized that an additional element to be proven in cases of this nature is intent. The defendant must have knowledge that the particular piece of property at issue was stolen. It is true the opinion is quite vague on this point and it is difficult to know exactly what it means. One possibility is that the decision requires proof that the defendant knew about the particular legislation that vests ownership in the country of origin of an allegedly stolen piece of art. This would be quite difficult to prove. What is more likely to emerge is that the aggrieved government will have to show that the defendant knew there was a *wrongful* deprivation of ownership. It is difficult to be very cheerful about the case. For example, the domestic criminal statute simply did not contemplate international thefts of antiquities, as defined by foreign law. It seems inappropriate to use an essentially domestic criminal statute to punish someone when the sole proof of title is foreign blanket vesting legislation and the foreign government has made no effort otherwise to control this conduct within its own borders. The case does attenuate the burden of proof on the foreign government by stating that proof of a "taking" is not necessary. The federal stolen property act should be used in only extreme cases, where it is more appropriate.

McClain turned too much on technical details of foreign law. I agree with Mr. Feldman that a more appropriate vehicle of international control would be the UNESCO Convention, which is specifically designed to deal with these types of cases. The Convention deserves great moral support and efforts to make it viable. Art dealers should be dealt with under it. Given, however, that the dealer community has tried to postpone and take the teeth out of the implementing legislation drafted to deal with the problem and has persisted in refusing to give any moral support to the Convention, the *McClain* opinion is good medicine.

Implementing legislation by Congress has been stuck, partly because the Department of State is insensitive to the failure of that legislation to guard against abuse by the executive branch, which has not been put under sufficient pressure to keep the emergency provisions at a minimum. Thus, one of the current major issues is whether it is going to be possible for the President to convert Article 9 of the UNESCO Convention into a blanket embargo provision. The new draft seems to address some of these issues, but the question remains whether it goes far enough in dealing with the question of abuse. Also, the failure of the interested constituencies to understand each other's point of view has contributed to much confusion, indecisiveness, and stalemate about the UNESCO Convention.

DISCUSSION

Professor DUBOFF commented on a recent article in *Newsweek* announcing that the Mexican official who had been in charge of the

protection of Mexico's cultural property had been recently appointed to the department charged with regulating the illicit drug traffic. There are reports that Mexico has used drug enforcement as a *quid pro quo* for U.S. assistance in protecting Mexican cultural property. Professor DUBOFF asked whether the appointment is further evidence of this *quid pro quo*.

Mr. MACRORY addressed Mr. Feldman's comments by saying that the provision in the United States-Mexico Treaty relating to the recovery of objects found in the United States for Mexico referred only to objects of "national significance." Furthermore, according to Mr. Feldman, the legislative history of that treaty shows that it was designed to protect illegally excavated property; at trial in the *McClain* case there had been no showing that the pieces had been illegally excavated.

With regard to Professor Bator's comments, Mr. MACRORY agreed that the views of attorneys involved in the case should be taken with a grain of salt. As to the issue of the *McClain* defendants' scienter, the court had in fact acknowledged that it is a possible defense to the applicable foreign law. The trouble with the opinion, however, is that the only evidence before the trial court on this issue related to the defendants' knowledge that Mexican law made exportation illegal without a permit; there was no evidence that they knew that the Mexican Government also had a claim of ownership. Although this point was raised on appeal, the Court of Appeals chose not to address it. The motion for a rehearing requested the court to consider the resulting confusion.

Professor MERRYMAN disagreed with Mr. Macrory's characterization of the alleged problem in proving foreign law. He noted that he was often retained as an expert witness on matters of foreign law, and that within his experience, the "hardship" of obtaining foreign law reflected more the naïveté of counsel, since it is actually rather easy to obtain copies of statutes in question and accurate translations of them. He suggested that the difficulty lay more in the quality of the attorney's preparation than in the inapplicability of the federal stolen property law merely because of foreign law questions. Professor MERRYMAN emphasized that the most interesting problem involved sovereign attempts to convert property to its possession. It was a travesty to allow Mexico's National Museum of Anthropology to store duplicates of material and refuse to release them for foreign exhibit. Mexico's policy is shortsighted and the first step toward the flourishing of a black market.

Professor DUBOFF added that countries with strict export controls often are not very cooperative themselves when requested to return cultural property to other nations. He cited the example of the Mexican national anthropological museum, which has on exhibition two copies of sacrificial pre-Columbian knives, while the originals are in Egypt. Egypt refused to honor requests by Mexico to return the originals.

Mr. MACRORY responded to Professor Merryman by inquiring whether the latter had not been an expert witness in civil cases where, more than likely, substantial funds were available for gathering and translating foreign statutes. *McClain*, on the other hand, was a criminal case where

there had been no funds available, and the attorneys for the defense had been court appointed. A further aggravating circumstance in that case had been the refusal of the court to appoint an expert in Mexican law.

One member of the audience, noting the principle of comity, commented on the refusal of the *McClain* court to accept the interpretation by high Mexican officials of Mexican law. Professor DUBOFF said he also had been bothered by this and did not recall any other case where the evidence of the expert witness had been rejected. Professor BATOR interjected that, while he was unfamiliar with the principle of comity, he thought it would be monstrous to accept, sight unseen, the Mexican Government's claim of ownership if that was the ultimate issue in dispute in the case. Mr. MACRORY added that this point had special relevance in *McClain*, as Dr. Gertz' testimony with regard to the content of the applicable Mexican law had been clearly wrong. The panel was asked hypothetically what weight should be accorded to the testimony of the Mexican President, had it been presented. No one knew.

A member of the audience referred to a recent Canadian statute of limitations dealing with the importation of cultural property. It had been designed to commence running against foreign claimants the moment the property was imported. She noted, however, that the Canadian statute would not run until the affected government knew that the property had been hidden to avoid the statute.

Mr. FELDMAN noted that in the United States two different statutes were being considered; neither would purport to affect the operation of American civil remedies. He personally would support the idea of a limitation that would run while the object was being continuously exhibited in a notorious fashion. Finally, he observed that a criminal remedy could be awkward. On the other hand, the interest of the United States requires that it give effect to foreign law but he noted that, if the foreign law is ambiguous as to ownership, it would be difficult to prove scienter.

Asked whether the Final Act of Helsinki which calls for cooperation with UNESCO lent support to the Department of State's position in favor of the UNESCO Convention, Mr. FELDMAN replied that he did not know, but that he would look into it.

A question concerning the Elgin Marbles was then posed. The questioner noted that Great Britain had taken the position that, before it was required to return the Elgin Marbles to their homeland, if ever, there should be an international agreement requiring the return of all cultural property to their national patrimonies, as an expression of the concept of a universal cultural heritage of mankind. Professor BATOR responded that it was unrealistic to talk about the formal "property of mankind." However, it might be feasible to create an international regime that would recognize its spirit. Effective regulation would be assisted if art-rich nations would abandon their insistence upon import controls.

Professor DUBOFF closed the panel by mentioning that the United States had negotiated with the People's Republic of China for a traveling exhibit of recent archaeological finds. The pieces were insured by the U.S. Government under special legislation enacted expressly for

this show. This exhibit proved so successful that Congress enacted the Museum Loan Act, which may be used to fund traveling exhibits without the necessity of enacting special legislation in individual instances. Numerous traveling shows are being planned under the new law.

ALINA GONZALEZ ALDAPE*
Reporter

ANNUAL DINNER

Friday, April 22, 1977, at 7:30 p.m.

The President of the Society, Walter Sterling Surrey, greeted the members and their guests and introduced the speaker for the evening, Herbert L. Hansell, the Legal Adviser, U.S. Department of State.

Address by Herbet L. Hansell

Thank you for your kind words, but as you know, candor is the motif in international affairs these days, and candor compels that I acknowledge many in the audience who are more qualified than I to represent or even speak about the Legal Adviser's Office. I identify several of my distinguished predecessors and three of my present colleagues, Mark Feldman, Arthur Rovine, and John Boyd, with whom I am privileged to work. It is a splendid, dedicated, and highly qualified group of lawyers, and any of them could, I think, tell you a good deal more about the operations of that office than can I at this early stage. I will relate an anecdote to you which describes as well as I can the difficulties involved in this kind of transition to a new working assignment. I had occasion to describe to an old and dear friend the evening paperwork that I customarily carry home in my brief case because of the difficulty of dealing with it all during the day, a problem of course familiar to all of you. After I had somewhat graphically described the problem, my friend's nine-year-old daughter, who happened to overhear the conversation, turned to her mother, pointed to me and said: "Mommy, maybe they should put him in a slower group!"

I am encouraged to have the opportunity to share with you tonight some remarks regarding several goals of the new Administration in its foreign affairs. The Administration has come into office with rather inspiring goals for our foreign policy. It seeks "a world order that is more responsive to human aspirations, one that is stable, just, and peaceful." To achieve these goals, the Administration proposes to rely upon an open process involving both wide consultation within the executive branch and a close coordination with the Congress. Such a foreign policy

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contemplates public decisionmaking, a clear commitment, and firm foundations in both domestic and international law. To say that these tasks challenge the Department's lawyers is putting it mildly. We very much want and need the support of interested members of the bar, as represented by this distinguished Society.

Consider, for example, what is implied by the President's assurance that we will continue our firm commitment to promote respect for human rights, here and abroad. This commitment, which ultimately is based on a sense of morality, will of course be shaped by specific legal texts. There is authority and guidance in the Universal Declaration of Human Rights, as well as other reliable sources. Development of a widely integrated body of law in the field of human rights, and an international machinery to apply it, is, however, very much in its early stages. First, the President has insisted upon a review of our own behavior to ensure that it complies with the standards we believe in. This initiative has resulted in the lifting of the last U.S. restrictions on foreign travel by U.S. citizens, restrictions which were clearly incompatible with our view of facilitating freer movement across borders, as stipulated in the Helsinki Accords.

Equally complicated questions are being addressed in reviewing the status of visitors to this country. A particularly poignant human rights problem is presented by undocumented aliens in the United States. Some of them have been here for many years and have become thoroughly Americanized at their jobs and in their families. Yet they must live in sufferance, in constant fear that they will be detected and deported, a status which makes them highly vulnerable to private exploitation. The President has stated his desire to end the outlaw status of deserving, long term, undocumented residents and to undertake comprehensive measures to diminish further influx of them.

We have a very specific concern about the rights of another group: over 2000 U.S. citizens now in foreign prisons. Often U.S. citizens incarcerated in other countries are not told of their rights, are left to await trial for several years, or are kept in overcrowded or unsanitary conditions. The Department of State has made vigorous efforts to improve the condition of these prisoners. Recently signed treaties with Mexico and Canada, now before the Senate, would permit prisoners to elect to serve their sentences in their home countries.

The Administration has studied the several human rights conventions that implement the international commitments set forth in the UN Charter to promote and encourage increased respect for human rights and fundamental freedoms. As this audience knows, the Genocide Convention is the senior of those documents, having been placed before the Senate Foreign Relations Committee by President Truman in 1949. The Administration has stated its intention to press for its ratification. The Convention on the Elimination of Racial Discrimination and the International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights, are also high on our agenda, as is the American Convention on Human Rights prepared within the framework of the Organization of American States (OAS).

SYRACUSE JOURNAL OF INTERNATIONAL LAW AND COMMERCE

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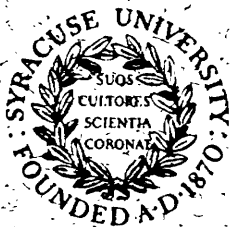
Alexander Korthals Altes

Proceedings of the Panel on the U.S. Enabling Legislation
of the UNESCO Convention on the Means of Prohibiting
and Preventing the Illicit Import, Export and
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NOTE

COMMENTS

BOOK REVIEWS



**PROCEEDINGS OF THE PANEL ON THE U.S.
ENABLING LEGISLATION OF THE UNESCO
CONVENTION ON THE MEANS OF PROHIBITING
AND PREVENTING THE ILLICIT IMPORT, EXPORT
AND TRANSFER OF OWNERSHIP OF CULTURAL
PROPERTY***

Leonard D. DuBoff**

James A.R. Nafziger

André Emmerich

Mark B. Feldman

James McAlee

Paul M. Bator

PREFATORY REMARKS BY PROFESSOR DUBOFF

The concern over art looting and the destruction of archaeological sites is not of recent origin; it can be traced to the dawn of civilization.¹ While there have been some attempts to regulate the international movement of art and artifacts, they have not been very successful. Perhaps the reason for the failure of the statutes and treaties which were designed to curtail the illicit traffic in cultural property is their limited applicability.

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property² (UNESCO Convention) was designed to con-

* Held in Washington, D.C., on December 28, 1975, under the joint sponsorship of the Association of American Law Schools Section on Law and the Arts and the American Society of International Law.

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André Emmerich is Art Dealer for André Emmerich Galleries in New York and Galerie André Emmerich in Zürich.

Mark B. Feldman is Deputy Legal Advisor for the United States Department of State; Member, American Society of International Law.

James McAlee is a partner, Arnold and Porter, Washington, D.C.

Paul M. Bator is Professor and Associate Dean, Harvard University Law School.

1. See generally *Chapter Two: International Movement of Art*, in L. DuBoff, *THE DESK BOOK OF ART LAW* (1976).

2. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 10 INT'L LEGAL MAT'LS 289 (1971) [hereinafter cited as UNESCO Convention].

trol the illicit international traffic in works of art while ensuring legitimate cultural exchange. It is believed that the UNESCO Convention will be ineffective unless the major art importing nations adhere to it. The 25 nations³ that have thus far either ratified or adopted it are not among the major art importers.

On August 11, 1972, the United States Senate gave its advice and consent to the ratification of the UNESCO Convention;⁴ however, it set forth a number of reservations and understandings. The most important of these is the understanding that the UNESCO Convention will not enter into force until enabling legislation is approved by Congress. Thus far, attempts to enact legislation which will reconcile the often inconsistent goals and desires of the members of the United States art community have been unsuccessful. The most recent draft of this important legislation was the subject of a panel presented at the annual convention of the Association of American Law Schools (AALS).

The presentation, which took place on December 28, 1975, in Washington, D.C., was jointly sponsored by the AALS Section on Law and the Arts and the American Society of International Law. The speakers were chosen because of the roles they have played in the development of the UNESCO Convention and its enabling legislation. Each represented a different attitude toward the pending legislation and has served as an articulate spokesman for his respective position. Their contributions should add a good deal to the body of knowledge being developed in this very important area of art law.

PANEL DISCUSSION

PROF. NAFZIGER: I've been asked to comment upon the enabling legislation,⁵ viewed against both the terms and history of the UNESCO Convention. Let me note that Mark Feldman was present at the creation and could give us a first-hand report on the history

3. Algeria, Argentina, Brazil, Bulgaria, Cameroon, Central African Republic, Dominican Republic, Ecuador, Egypt, German Democratic Republic, Iran, Iraq, Jordan, Khmer Republic (formerly Cambodia), Kuwait, Libya, Mexico, Niger, Nigeria, Panama, Poland, Syria, Tunisia, Yugoslavia, Zaire.

4. 118 CONG. REC. 27925 (1972).

5. The enabling legislation as originally introduced was S. 2677, 93d Cong., 1st Sess. (1973) [hereinafter cited as Original Bill]. The Original Bill was then revised and reintroduced as H.R. 14171, 94th Cong., 2d Sess. (1976) [hereinafter cited as Revised Bill]. For the text of the Revised Bill, see Appendix, *infra*. The Revised Bill was referred to the Subcommittee on Trade of the House Ways and Means Committee, and is currently being redrafted to "reflect comments received for consideration in the next [95th] Congress." Letter from John M. Martin, Jr., Chief Counsel, House Ways and Means Committee, to Leonard D. DuBoff, Sept. 30, 1976.

of the UNESCO Convention.⁶ With his assistance, I shall attempt to highlight those developments and features which are most significant to the enabling legislation.

Until the past decade, international controls over the flow of cultural property were generally limited in their application to periods of armed conflict. Examples of these controls are the 1907 Hague Convention Respecting the Laws and Customs of War on Land⁷ and the 1954 UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict.⁸ Otherwise, there was only a hodgepodge of municipal legislation and litigation at the service of any progressive legal development.⁹ Much of the litigation was *sui generis*, especially that related to Nazi confiscations and Allied occupation seizures during and after the Second World War.¹⁰ In 1960, however, a resolution of the UNESCO General Conference¹¹ called attention to the need for controlling the illicit import, export, and sale of cultural property. The General Conference decided to draft an international convention.¹² It then solicited the recommendations of Member States and, in 1968, established a special committee of experts charged with the responsibility of drafting a convention to regulate the transnational flow of cultural property—a flow which was rapidly becoming a serious global problem.¹³

The UNESCO effort was not only substantively productive but educational in itself. Many countries began to see, or to see more

6. See, e.g., Report of the U.S. Delegation to the Special Committee of Governmental Experts to Examine the Draft Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (April 13-24, 1970) [hereinafter cited as Report].

7. Convention with Other Powers Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277 (1909), T.S. No. 539.

8. Convention for the Protection of Cultural Property in the Event of Armed Conflict, done May 14, 1954, 249 U.N.T.S. 215 (effective Aug. 7, 1956).

9. See generally B. HOLLANDER, *THE INTERNATIONAL LAW OF ART* (1959); see also *ART LAW: DOMESTIC AND INTERNATIONAL* (L. DuBoff ed. 1975).

10. See, e.g., *Menzel v. List*, 49 Misc. 2d 300, 267 N.Y.S.2d 804 (Sup. Ct. 1966), modified as to costs, 28 App. Div. 2d 516, 279 N.Y.S.2d 608 (1st Dep't 1967); *Princess Paley Olga v. Weiaz*, [1929] 1 K.B. 718 (C.A. 1928); *De Keller v. Maison de la Pensée Française* (Civ. Trib. Seine, France 1954), reported in 82 J. DU DROIT INT'L 119 (1955); *Two Dutch Paintings*, 3 OB 351/53 377, N.R. 136, *Entscheidung Vom*. 27 (Sup. Ct., Aus. 1953).

11. Res. 4.412, 11th Sess. (1960); see SENATE COMM. ON FOREIGN RELATIONS, *CONVENTION ON OWNERSHIP OF CULTURAL PROPERTY*, S. EXEC. REP. No. 29, 92d Cong., 2d Sess. 17 (1972) [hereinafter cited as *OWNERSHIP OF CULTURAL PROPERTY*].

12. See Res. 4.413, UNESCO, Records of the 12th General Conference 51-52 (1962).

13. Note, *The Legal Response to the Illicit Movement of Cultural Property*, 5 LAW & POL. INT'L BUS. 932, 949 (1973) [hereinafter cited as *Legal Response*].

clearly, how vital their cultural property was to them and how limited were the means of effectively regulating the outward flow of that property. Meanwhile, with traditional art becoming less available and with increased affluence and new tastes, the leeching of national patrimonies was becoming worse.¹⁴ To no one's surprise, therefore, a draft convention on the illicit export, import, and transfer of cultural property followed rather quickly in 1969.¹⁵

From a political standpoint, it is important to note that the drafting process had been flawed by a failure to include representation of the United States on the committee.¹⁶ Thus, the United States was given its first opportunity to formally voice substantial objections to the draft at a plenary conference in April 1970.¹⁷ Since it should have been, and in fact was to some degree, apparent that regulatory success was dependent upon U.S. cooperation, American inclusion on the drafting committee could have saved much wasted time and energy.

The first draft convention¹⁸ was very ambitious. It was based upon a system of export certification,¹⁹ to be undertaken by every State Party, accompanied by the draconian requirement that each State Party bar the importation of specifically described cultural property which was not accompanied by an export certificate.²⁰ Second, questionable penalties,²¹ administrative sanctions,²² and com-

14. On increases in looting, see M. ESTEROW, *THE ART STEALERS* (1973); K. MEYER, *THE PLUNDERED PAST* (1973) [hereinafter cited as K. MEYER, *PLUNDERED PAST*]; Carley, *Archaeological Objects Smuggled at Brisk Rates as Their Prices Soar*, *Wall St. J.*, June 2, 1970, at 25, col. 1. On the new attitude towards art, see R. RUSH, *ART AS AN INVESTMENT* (1961); J. EAGLE, *BUYING ART ON A BUDGET* (1968); see also *Chapter Eight: Art as an Investment*, in L. DUBOFF, *THE DESK BOOK OF ART LAW* (1976).

15. Preliminary Draft Convention Concerning the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property, UNESCO Doc. SHC/MD/3 Annex (1969) [hereinafter cited as Preliminary Draft].

16. American Society of International Law, Panel on the Regulation of International Movement of National Art Treasures, Draft Meeting Summary, Oct. 20, 1969, at 4 (on file with the American Society of International Law in Washington, D.C.) [hereinafter cited as Summary].

17. Final report prepared in compliance with Article 10.1 of the Rules of Procedure Concerning Recommendations to Member States and International Conventions, UNESCO Doc. SHC/MD/5 (1970). For the replies see Replies to Circular Letter CL/2041 and to Document SHC/MD/3, UNESCO Doc. SHC/MD/5 Annex I (1970).

18. Preliminary Draft, *supra* note 15; see also *Legal Response*, *supra* note 13; Report, *supra* note 6.

19. Preliminary Draft, *supra*, note 15, art. 7(b).

20. *Id.* art. 7(c).

21. *Id.* Criminal sanctions were imposed by Article 7(i).

22. *Id.* art. 7(e).

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penetration²³ for bona fide purchasers were to be arranged by State Parties for violations of these and other provisions. In order to be effective, such a program obviously would have involved very substantial state intervention. Third, each State Party was required to establish a national service²⁴ which, among its other duties, was to have undertaken an inventory of all cultural property important to the country's cultural heritage. Although some countries²⁵ have undertaken this task, the development of such inventories is extraordinarily expensive and time-consuming for both art importing and exporting countries. Finally, antique dealers were to be required by each State Party to keep records²⁶ on the source of all acquisitions and the circumstances of acquisition.²⁷

The first draft of the UNESCO Convention quite predictably was unacceptable to the United States and other importing countries, without whose cooperation the Convention would be meaningless. Therefore, an alternative draft was prepared²⁸ which relaxed the restrictions of the first draft convention.

Under the leadership of Mark Feldman, the United States took a very active part in promoting the adoption by UNESCO of a second draft convention which struck a compromise between the very rigid regime advocated by the exporting countries and the less restrictive, multi-valued approach advocated by the importing countries, including the United States.²⁹

The initial draft convention,³⁰ which conformed to the initial approach within UNESCO, had emphasized the protection of the national patrimony, according to each country's own definition of that patrimony. Its uni-dimensional approach ignored a considera-

23. *Id.* art. 7(g).

24. *Id.* arts. 5, 6.

25. For example, France and Japan have begun such lists. See Gordon, *The UNESCO Convention on the Illicit Movement of Art Treasures*, 12 HARV. INT'L L. J. 537, 544 (1971).

26. Preliminary Draft, *supra* note 15, art. 7(h).

27. Some countries already require such records. See, e.g., Ordinance No. 67-281 of Dec. 20, 1967 Regarding Excavation and Protection of Historic Monuments and Sites (Algeria); National Museums Decree, 1969, and Regulations, 1969 (Ghana); Antiquities Ordinance of Dec. 31, 1929, Antiquities Rules of 1930, *as amended* (Israel); for others see *Appendix: Comparative Chart of National Legislation*, in L. DUBOFF, *THE DESK BOOK OF ART LAW* (1976).

28. See Summary, *supra* note 16, Oct. 20, 1969, at 1, and Dec. 8, 1969, at 1; see also *The United States Alternate Draft*, available at the Office of the Legal Advisor, U.S. Dep't of State; Revised Draft Convention Concerning the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, UNESCO Doc. SHC/MD/5 Annex III (1970).

29. Report, *supra* note 6.

30. Preliminary Draft, *supra* note 15.

tion of other implicated values. Professor Paul Bator managed to define some of these other values which were, of course, important to the United States and certain other delegations to the UNESCO Convention.³¹ Thanks to the preliminary work of Professor Bator and others, the UNESCO Convention recognizes values such as those of the collector and those favoring the sharing of cultural property outside the geographical confines of a particular national patrimony. More importantly, and very much to the credit of Professor Bator, Mr. Feldman, and others, the UNESCO Convention accommodates and harmonizes diverging and typically conflicting values.

So it was that UNESCO did adopt a convention, endorsed by the United States, which seemed compatible with both the interests of the United States and its nationals, as well as the interests of others. The Senate gave its advice and consent to the ratification of the UNESCO Convention in 1972, by a vote of 79 to 0.³²

Enabling legislation prepared by the State Department³³ was introduced in Congress.³⁴ This draft legislation has had a dismal career. It experienced the worst of Washington paralysis; after being almost completely ignored by Congress for over two years, the enabling proposal has been revised for reintroduction to Congress during this past term.³⁵ The focus of our discussion today is on this revised version.

It is my general impression that the revised version does not represent a very marked change from the earlier bill. There are additions,³⁶ there are some alterations in language,³⁷ and there is

31. Professor Bator has identified the following values: the preservation of works of art and the associated values of integrity and visibility, the preservation of archaeological evidence, the preservation of the national patrimony, nationalistic and reciprocal considerations served by international movement of art, and the "supervening values" related to the tension between internationalism and liberty. P. Bator, *The International Movement of National Art Treasures*, Oct. 10, 1969 (unpublished paper presented to the Panel of the American Society of International Law on the International Movement of National Art Treasures; summarized in *Harv. L. Rec.*, Feb. 5, 1970, at 7, col. 1); Bator, *International Trade in National Art Treasures: Regulation and Deregulation*, in *ART LAW: DOMESTIC AND INTERNATIONAL* 296 (L. DuBoff ed. 1975).

32. 118 CONG. REC. 27925 (1972).

33. See Rogers & Cohen, *Art Pillage—International Solutions*, in *ART LAW: DOMESTIC AND INTERNATIONAL* 315 (L. DuBoff ed 1975).

34. Original Bill, *supra* note 5.

35. Revised Bill, *supra* note 5.

36. For example, in Section 1, the following phrase is added:

(4) the establishment of such import controls 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

some further elaboration on the process by which the United States will see to the return of consigned property that has ostensibly been stolen from public institutions and museums abroad;³⁸ but the major provisions of the enabling legislation remain the same. I submit, therefore, that a productive inquiry into the enabling legislation cannot ignore the political process in which this legislation has been wrapped.

What does the UNESCO Convention provide? Basically, it continues to rely upon a system of export certification³⁹ and import checks.⁴⁰ The United States has entered a reservation in this regard, establishing that each State Party may determine whether it will impose export controls.⁴¹ The United States has also submitted six understandings.⁴²

Some provisions in the Original Bill were omitted in the Revised Bill. For example, the Revised Bill does not include Section 3(b)(3) of the Original Bill, which stated that the failure to present the following would be grounds for taking the object into customs custody:

satisfactory evidence that such object is not covered by the list promulgated under section two of this Act

37. For example, in Section 3, the Original Bill stated that "the appropriate officer of the customs shall take the object into customs custody," whereas the Revised Bill states "the appropriate officer of the customs shall refuse to release the object from customs custody."

38. Storage of the item during litigation is provided for by Section 3(c) of the Revised Bill. For the text of Section 3(c), see Appendix, *infra*. Objects subject to the provisions of Section 3(c) must meet the requirements for documentary proof in Section 7 of the Revised Bill. For the text of Section 7, see Appendix, *infra*.

39. UNESCO Convention, *supra* note 2, art. 6.

40. *Id.* art. 7(b).

41. OWNERSHIP OF CULTURAL PROPERTY, *supra* note 11, at 9.

42. The full text of the reservation and the understandings follow:

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

The United States understands the provisions of the Convention to be neither self-executing nor retroactive.

The United States understands Article 3 not to modify property interests in cultural property under the laws of the states parties.

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 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.

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

Besides requiring export certification, the UNESCO Convention establishes an emergency measure permitting signatories to call upon one another for assistance to control the flow of jeopardized property;⁴³ obligates parties to the Convention to return property stolen from museums, monuments, or other institutions;⁴⁴ regulates antique dealers "as appropriate for each country" (an obvious loophole);⁴⁵ and imposes the rather mild requirement that signatories undertake "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."⁴⁶ The qualifying phrase "consistent with national legislation" has been interpreted by the United States understanding as referring to property that is acquired by an institution whose acquisition policies are already under governmental control, limited in this country to national collections such as those in the Smithsonian Institution.⁴⁷ Contraband items are recoverable on demand by the country of origin, so long as it pays "just compensation" to innocent purchasers,⁴⁸ a provision which would run afoul of this country's property laws were it not for the qualifying understanding.⁴⁹

The United States was instrumental in promoting the adoption of Article 9 of the UNESCO Convention,⁵⁰ a very important provision to which the enabling legislation is directly tied. Article 9 provides for cooperation on an ad hoc basis by State Parties with other

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.

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.

Id.

43. UNESCO Convention, *supra* note 2, art. 7(b).

44. *Id.* art. 7(b)(ii).

45. *Id.* art. 10(a).

46. *Id.* art. 7(a). For a commentary on Article 7(a) see Nafziger, *Article 7(a) of the UNESCO Convention*, in *ART LAW: DOMESTIC AND INTERNATIONAL* 387 (L. DuBoff ed. 1975).

47. See note 42 *supra*; see also Nafziger, *supra* note 46.

48. UNESCO Convention, *supra* note 2, art. 7(b)(ii).

49. See note 42 *supra*.

50. Compare this article with the United States Alternate Draft, *supra* note 28, art. 6.

State Parties whose cultural property of importance to its national patrimony is in jeopardy. Specifically, if a State Party deems that its cultural patrimony "is in jeopardy from pillage of archaeological and ethnological materials," it may call upon other State Parties to cooperate in taking concerted action to respond to the problem.⁵¹ Article 9 is seen by the United States primarily as a means of establishing ad hoc agreements between this country and other countries.⁵² Once an agreement has been reached, then certain measures can be taken in accordance with the enabling legislation.⁵³

The Convention has been amply discussed in several law review articles;⁵⁴ thus, it will not be necessary to devote any more time to it. Since the other panelists will be focusing on the present draft of the enabling legislation, I shall point out only the items which have concerned me. One is the degree of discretion which it would vest in the President of the United States to undertake agreements, make determinations, establish restrictions, and, through the Secretary of the Treasury, promulgate lists of protected foreign cultural objects as requested by foreign governments.⁵⁵ In doing so, the President must only "consider" the advice of a committee of experts.⁵⁶ Once these measures are taken by the President, objects become specially protected under the terms of the UNESCO Convention.

The force of the committee's advice and the criteria for its selection should be spelled out so as to assuage the genuine fears of American dealers, collectors, and museums that too much discretion will be vested in the President and that the entire operation of the legislation will be at a level unresponsive to them. The legislation should be amended to provide clearly that the President may not simply ignore the advice of the experts without a full review by Congress.

Finally, the property that is to be particularly protected under the legislation is that of the "country of origin," and the term "country of origin" is applied to any protected object of archaeological and

51. UNESCO Convention, *supra* note 2, art. 9.

52. See *Legal Response*, *supra* note 13, at 958.

53. UNESCO Convention, *supra* note 2, art. 9.

54. See, e.g., *Legal Response*, *supra* note 13; Gordon, *supra* note 25; Comment, *New Legal Tools to Curb the Illicit Traffic in Pre-Columbian Antiquities*, 12 COLUM. J. TRANSNAT'L L. 316 (1973) [hereinafter cited as *New Legal Tools*]; Comment, *Legal Approaches to the Trade in Stolen Antiquities*, 2 SYR. J. INT'L L. & COM. 51 (1974) [hereinafter cited as *Legal Approaches*].

55. Revised Bill, *supra* note 5, §§ 1, 2.

56. *Id.* § 1.

ethnological interest where such object was "first discovered."⁵⁷ There may be some problems in the use of this definition. Remember, for example, the Elgin Marbles, which were "first discovered" in Greece and later transported to where they enchant visitors to the British Museum in England.⁵⁸ The UNESCO Convention clearly would not support a Greek claim for their return from England; but suppose, for some reason, those Elgin Marbles were illicitly exported from Great Britain into this country. As I understand the enabling legislation, it would be difficult for any country other than Greece, as the "country of origin," to invoke the UNESCO Convention effectively for return of the Marbles from this country. This is so even though, under Article 4 of the UNESCO Convention, the Marbles would clearly form a part of England's cultural heritage.⁵⁹

PROF. DUBOFF: Thank you, Professor Nafziger. Our next speaker will be Mr. André Emmerich, member of the American Association of Dealers of Ancient, Oriental, and Primitive Art and past President of the Art Dealers Association of America.

MR. EMMERICH: I speak as a non-lawyer, an art dealer, and a man long involved in archaeological art, especially the ancient art of the New World. I feel very much like Daniel in the lion's den, being the only non-lawyer in a world of lawyers which, like each profession, believes in the efficacy of its own medicine. If you have a medical problem and you go to a surgeon, he will probably want to operate. If you go to a physiotherapist, he will give you a water treatment. A lawyer will resort to law as his cure-all. I fear this after years of debating many of these same points with my friends Mr. Mark Feldman, Professor Jim Nafziger, and Professor Paul Bator, on committees which have considered the very issues we are discussing today. I fear that lawyers in general, and American attorneys in particular, believe the world can be made, if not safe for democracy, at least legislatively wholesome for the good of all. This is an illusion, I fear; one of the points I would like to discuss is the real world background of the UNESCO Convention.

57. *Id.* § 9(c).

58. For a report of the Elgin Marbles Affair, see W. ST. CLAIR, *LORD ELGIN AND THE MARBLES* (1987).

59. Article 4(b) of the UNESCO Convention, *supra* note 2, provides:

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:

(b) cultural property found within the national territory

My own impression of the UNESCO Convention is that it is essentially a political sop within UNESCO and the United Nations to the economically undeveloped, art-rich nations. They felt threatened because their internal markets were weak, and the best items were exported.

Such a sop seems to be a useless gesture. Its futility is documented by a resolution, passed by the General Assembly of the United Nations, called the *Restitution of Works of Art to Countries Victims of Expropriation*,⁶⁰ sponsored by Egypt, Greece, and several African countries. The Resolution states, among other things:

Convinced that the promotion of national culture can enhance a people's ability to understand the culture and civilization of other peoples and thus can have a favourable impact on international co-operation⁶¹

The point is, that by guarding your own culture and having your own culture around, you will presumably better understand other, very different, cultures.

The Resolution:

1) *Affirms* that the prompt restitution to a country of its *objets d'art*, monuments, museum pieces, manuscripts and documents by another country, without charge, is calculated to strengthen international co-operation inasmuch as it constitutes just reparation for damage done⁶²

The Resolution also calls on all countries to return to the country of origin everything originally exported from it.⁶³ This would denude our collections: there would go all our museums' Rembrandts, all our Greek vases, and any other art object of any age and value which originated abroad and is now in a public collection.

Give them a finger, they'll want a hand; give them a hand, they'll want an arm. We are facing a bottomless well. Cultural appeasement isn't going to work. It isn't working now, and this Resolution is a monument to its failure.

Now let's talk a moment about archaeology. Very few people understand archaeology. All early cultures had a firm belief in a concrete afterlife.⁶⁴ Therefore, the bodies of great chiefs and lesser

60. G.A. Res. 3187, 28 U.N. GAOR Supp. 30A, at 9, U.N. Doc. A/RES./3187 (1974).

61. *Id.*

62. *Id.*

63. *Id.*

64. See generally W. COOKE, *THE POPULAR RELIGION AND FOLKLORE OF NORTHERN INDIA* (2d ed. 1896); E. HOPKINS, *ORIGIN AND EVOLUTION OF RELIGION* (1923).

chiefs were accompanied by what are called "grave goods." This originally included slaughtered wives, servants, and horses.⁶⁵ I don't know how many of you remember the Kennedy funeral and the black gelding brought to the graveside;⁶⁶ that is the same as the old Indo-European warrior's horse, slaughtered at the graveside so the warrior would have his horse in the hereafter.⁶⁷ The custom lives on, although we've forgotten its significance. Reputedly, the custom of "suttee" still survives in India where the living widow is immolated on the funeral pyre of her husband.⁶⁸

The next step taken by civilization was to substitute clay, wooden, or stone servants and wives in the burial site.⁶⁹ The deceased is dressed in all his jewelry, finery, and textiles.⁷⁰ In desert climates, like Egypt and Peru, these items are well-preserved for archaeologists. As a Mexican peasant is reputed to have said, "Our ancestors must have loved us very much to bury so many beautiful things for us to find."

Once discovered, however, another unfortunate rule prevails: Only valuable items are preserved. Our art deco furniture was dumped in junkyards and destroyed,⁷¹ until suddenly its value was recognized; now the remaining furniture of the 1930's, as well as the old cars and radios, are preserved, carefully refurbished, and sold at high prices. They are valuable; therefore they are preserved.⁷²

- And so on down the line. Fashion tends to go through cycles of being old-fashioned, and then antique, and therefore valuable. When artifacts don't have present economic value, they are destroyed. We are hence concerned with preserving items which, although now of no particular value, may, at a later date, become priceless.

Now let's see what really happens in archaeologically rich countries such as Turkey, Greece, Egypt, Peru, or Mexico. Each of these

65. W. COOKE, *supra* note 64, at 186; J. GONDA, CHANGE AND CONTINUITY IN INDIAN RELIGION 35-37 (1965); T. RICE, THE SCYTHIANS 88 (2d ed. 1958); A. VAN GENNEP, RITES OF PASSAGE 153 (1960).

66. Wicker, *Crowd is Hushed*, N.Y. Times, Nov. 25, 1963, at 1, col. 5.

67. See note 65 *supra*.

68. W. COOKE, *supra* note 64, at 186; J. FARQUHAR, MODERN RELIGIOUS MOVEMENTS IN INDIA 401-02 (1915).

69. See notes 64, 65 *supra*.

70. *Id.*

71. Other destruction includes Hitler's destruction of the works of Impressionists. See *Art: The Victim of War*, 1 AM. HIST. REV., April 1945, at 437-60; 2 G. REITLINGER, THE ECONOMICS OF TASTE: THE RISE AND FALL OF OBJETS D'ART PRICES SINCE 1750 (1963).

72. *Id.*

countries has a law that when you find treasure you must stop digging and call the archaeological service and they will dig it up for you, and, of course, take possession of it.⁷³

How are these old graves found? They're often found when very heavy rains cause graves to collapse, leaving a hole in the ground. More often such discoveries occur when a highway, housing development, or new barn is built, or a well is sunk.⁷⁴ Then the archaeological service should be notified; they'll put up a fence, stop your work, and the site will eventually be excavated. Of course, in these poor countries, the archaeological services are underfinanced and very slow. In the meantime the police will come and grill you and your staff, demanding to know what you have stolen already.

What really happens is that nobody wants to disclose a find. It is bulldozed under.⁷⁵ However, if the pots and figurines found in the graves have value, they will be removed; innocently perhaps, but they will be dug up and they will be preserved. To be sure, some quite valuable archaeological evidence will be destroyed, but much will be preserved.⁷⁶ It seems to me better half a loaf than no loaf at all.

In the United States after World War II, there was an enormous explosion of interest in various kinds of art, modern as well as archaeological.⁷⁷ Consistent with the law of supply and demand, this interest raised the prices of art in this country enormously, including archaeological art from all over the world.⁷⁸ Although this interest originated in the United States, it spread all over the world, including the relatively less-developed countries.⁷⁹ As a result, dur-

73. Antiquities Law No. 1710 of 1973 (Tur.); Antiquities Law No. 5351 of Aug. 24, 1932 (Greece); Law No. 215 on the Protection of Antiquities of Oct. 31, 1951, as amended by Law No. 529 of 1953 and Law No. 24 of 1965 (Egypt); Law No. 6634 of June 13, 1929, for the Defense and Conservation of Archaeological Monuments, implemented by the Decree No. 6938 of Nov. 15, 1930 (Peru); Federal Law Regarding Monuments and Archaeological, Artistic and Historic Zones of May 6, 1972 (Mex.).

74. See generally K. MEYER, *PLUNDERED PAST*, *supra* note 14.

75. *Id.*; see also Reinhold, *The Maya Crisis*, N.Y. Times, March 26-28, 1973; Brew, *The Menace of the Bulldozers*, UNESCO Courier, Jan. 1965, at 33.

76. See, e.g., the discussion of the episode of Lord Elgin's Marbles in *Chapter Two: International Movement of Art*, in L. DuBOFF, *THE DESK BOOK OF ART LAW* (1976).

77. See 2 G. REITLINGER, *supra* note 71; see also R. RUSH, *supra* note 14.

78. See 2 G. REITLINGER, *supra* note 71; R. RUSH, *supra* note 14; see also Carley, *supra* note 14.

79. See 2 G. REITLINGER, *supra* note 71; R. RUSH, *supra* note 14; Carley, *supra* note 14; see also Shirey, *Japanese Step Up Quest for Art in United States*, N.Y. Times, Jan. 24, 1973, at 34, col. 1; Hodgins & Parker, *The Great International Art Market*, FORTUNE, Dec. 1955, at 118. and Jan. 1956, at 122.

ing the 1950's and the 1960's prices for archaeological treasure rose dramatically in all these countries. Thus the export of objects was curbed to a large degree by better domestic markets in the countries of origin for items of national patrimony. It's a truism that Egyptian art in Cairo in the licensed shops is more expensive than in London or Paris. I've seen the same phenomenon occur in Peru, Columbia, and Mexico in recent years.

Export is not really the problem; it is a very convenient whipping boy for the endemic corruption existing in the originating countries themselves,⁸⁰ and especially for their previous indifference to their heritage. This is another charge to lay on the shoulders of the much-despised *gringo*.

One more aspect of archaeology which is very important is that newspapers like to depict archaeological treasures as priceless masterpieces. In fact, most cultures are not very inventive, but are highly repetitive. There are only 32 different forms of Greek vases. The pre-Hispanic figurines produced by various Indian cultures repeat and repeat.⁸¹

The basements of national museums in Ankara, Mexico City, Cairo, and Lima are filled to overflowing with repetitive artifacts.⁸² What would be a great treasure in many American museums is simply another repetitive example in the countries of origin. There are, of course, exceptions, such as the Mayan stelae,⁸³ the great architectural monuments erected in front of temples; however, the usual tomb finds are not so unique. These typical pieces are 99 percent of what the UNESCO Resolution is aimed at.

I have a profound fear of the Executive bartering and regulating the import of art in exchange for cotton quotas, military bases, help in drug legislation, and the like.⁸⁴ I don't think the Executive worries very much about art; I don't think most people do. Art has always

80. See generally K. MEYER, *PLUNDERED PAST*, *supra* note 14.

81. See generally M. HIRMER & P. ARIAS, *A HISTORY OF GREEK VASE PAINTING* (1962).

82. *Id.*

83. See Isenberg, *The Stela: Piecing It All Together*, L.A. Times, Feb. 2, 1976, § IV, at 1, col. 3.

84. The U.S. and Mexico have maintained substantial programs of cooperation in law enforcement matters along our common boundary. The Mexican Government asked that the cooperation given to the United States for the return of stolen motor vehicles be extended to stolen Mexican art treasures brought to the United States.

SENATE COMM. ON FOREIGN RELATIONS, *RECOVERY AND RETURN OF STOLEN ARCHAEOLOGICAL, HISTORICAL AND CULTURAL PROPERTIES*, S. EXEC. REP. No. 1, 92d Cong., 1st Sess. 5 (1971) [hereinafter cited as *RECOVERY OF CULTURAL PROPERTIES*]. See also *Legal Response*, *supra* note 13.

been something which appeals to relatively few individuals.

There's another important point about the importation of art. The proposed legislation would tend to remove the United States from the flourishing international art market, which is going to continue to flourish whether or not we adopt stringent implementing legislation. If we adopt stringent legislation, the art market will simply shift elsewhere, to Europe or Japan, as it has to some extent already.⁸⁵

This is not the first meeting to deal with this problem. Many of the panel members speaking today participated in committee meetings held at the Institute for Inter-American Relations in New York and in Washington, D.C. Those meetings considered the UNESCO Convention and the special treaty with Mexico.⁸⁶ In these panels and committees, the institutions which were represented were overwhelmingly the old eastern institutions, like the Metropolitan Museum, which already have large collections. It seems to me the interest of the smaller, less-developed museums were consistently ignored. The remarkably empty museums of Texas and California were slighted. The whole southern United States has very few museums, and it is there that museum growth would occur. It is there that we are likely to cut off access to much material.

The institutions represented on previous panels were not concerned with expansion problems, since they had their fill of artifacts from prior acquisitions. That covers my main points.

PROF. DUBOFF: Thank you, Mr. Emmerich. Our next speaker will be Mr. Mark Feldman, Deputy Legal Advisor for the United States Department of State.

MR. FELDMAN: It's always a pleasure to come together with people who are interested in this very important subject. I've always enjoyed the spirited discussions we've had with André Emmerich, but I've never thought of him as being Daniel in the lion's den, except to fear for the lions!

To put the implementing legislation in perspective, I would like to recall what may be inferred from the other speakers' remarks: that this legislation,⁸⁷ and the UNESCO Convention it implements, represent a compromise between two conflicting approaches. It also represents the result of very long discussions with various

85. Meyer, *The Plundered Past* (Pt. 1), *NEW YORKER*, March 24, 1973, at 104; *Legal Approaches*, *supra* note 54.

86. See note 84 *infra* and accompanying text.

87. Revised Bill, *supra* note 5. For the text of the Revised Bill, see Appendix, *infra*.

interested American communities as to what the Government's position should be. As a matter of fact, I have a feeling of *déjà vu* today as we revisit these first principles André Emmerich has dwelt on in his discussion. The first of the two conflicting positions which had to be reconciled is the traditional position of developing countries. I suppose it remains their position, as the U.N. General Assembly Resolution⁸⁸ indicates. Developing countries feel they have been victimized by circumstance and foreign exploitation, resulting in the exportation of priceless, irreplaceable national treasures which have depleted forever the cultural patrimony of the future generations of those countries.⁸⁹ As a result, they conclude that the international community should make a comprehensive effort to preclude the future outflow of any cultural property without the concerned country's consent.⁹⁰ In addition, they feel that the international community should restore the collections already removed.⁹¹ The second, and conflicting, position is the traditional American attitude that the Government should not endeavor in any way to help other countries enforce their own laws when the activities involved enrich our collections without violating any of our nation's laws.⁹²

Around 1969 and 1970, it became apparent to a great many thoughtful people in the art-collecting, scientific, and government communities that the then-current U.S. position was no longer viable in the face of increasing international consciousness of the importance of archaeological objects. The maintenance of such a position, it was felt, would cause increasing difficulty for the United States Government and for American art and scientific interests. On the basis of Professor Paul Bator's study⁹³ and the work of the American Society of International Law panel, we all came to appreciate the complexity of this issue with the various differing values involved. There evolved a broad consensus that the U.S. Government should change its position. André Emmerich and his colleagues participated in this evolution, at least as to two of the three

88. Restitution of Works of Art to Countries Victims of Expropriation, G.A. Res. 3187, 28 U.N. GAOR Supp. 30A at 9, U.N. Doc. A/RES/3187 (1974).

89. See RECOVERY OF CULTURAL PROPERTIES, *supra* note 84, at 1, 5-6.

90. See note 88 *supra*.

91. *Id.*

92. U.S. courts are reluctant to defer to the laws of another nation where they prejudice the rights of the United States or the rights of its citizens, *Emory v. Grenough*, 3 U.S. (3 Dall.) 369 (1797), or where the law contravenes an established policy (such as encouraging importation of ancient artifacts), *Loughian v. Loughian*, 292 U.S. 216 (1933).

93. See note 31 *supra*.

changes we proposed. The first step was a bilateral treaty with Mexico⁹⁴ and the second a statute on pre-Columbian architectural and monumental pieces,⁹⁵ both of which are in force and operating.

Today, the essence of the U.S. position is that we should cooperate with foreign countries to put some limitation on the illicit traffic in cultural property, and that we should seek actively to encourage these countries to liberalize their legislation where it unduly restricts the international circulation of cultural property.⁹⁶ We place a high value on the international movement of cultural property through legitimate channels. The question is how best to effect a balanced international trade program in the face of deeply-divided opinions on the matter.

The first item decided was that any conclusion reached and any action taken would not be retroactive. This principle is embodied in the UNESCO Convention⁹⁷ and in the implementing legislation.⁹⁸ In passing, I might say that this feature deals with Professor Nafziger's point about the Elgin Marbles. The Marbles are not covered by any legal restraints flowing from the UNESCO Convention, since they were exported from the country of origin prior to the effective date of these regulations. I might also add that the United States has not yet ratified the UNESCO Convention. We hesitate to accept the obligations of that Convention before Congress has authorized implementation of those obligations. While the Senate has given its advice and consent to the ratification of the UNESCO Convention,⁹⁹ we are withholding the deposit of instruments of ratification until implementing legislation is approved.

But, as Professor Nafziger pointed out, the original UNESCO draft contemplated the comprehensive regulation of international movement of any cultural property. We managed, through active participation in that meeting and with the assistance of effective delegates like Professor Bator, to negotiate a compromise draft predicated on the principle of non-retroactivity.¹⁰⁰ Moreover, the

94. Treaty of Cooperation with the United Mexican States Providing for the Recovery and Return of Archaeological, Historical and Cultural Properties, July 17, 1970, [1971] 1 U.S.T. 494, T.I.A.S. No. 7088 (effective March 24, 1971).

95. Importation of Pre-Columbian Monumental or Architectural Sculpture or Murals, 19 U.S.C. §§ 2091 *et seq.* (Supp. II, 1972).

96. Examples of restrictions which may be termed excessive can be spotted easily in *Appendix: Comparative Chart of National Legislation*, in L. DuBoff, *THE DESK BOOK OF ART LAW* (1976).

97. UNESCO Convention, *supra* note 2.

98. See Appendix *infra*.

99. 118 Cono. Rec. 27925 (1972).

100. See note 28 *supra*; see also Nafziger, *Article 7(a) of the UNESCO Convention*, in

draft has a very limited set of obligations. It has very broad principles, but the actual duties imposed on the art-importing states are very narrow. The first such obligation for which we seek implementing legislation is to provide for the recovery and return of objects stolen from collections in museums, public monuments, and similar institutions.¹⁰¹ Items thus returned should be specifically designated and identifiable. There is relatively little controversy over this obligation. We have had a little difficulty agreeing on the proper procedures, but I think the problem has been solved in the revised draft legislation.

The other obligation that is important for enforcement over the long term is the duty under Article 9¹⁰² which, as Professor Nafziger pointed out, applies only to archaeological and ethnological objects. This reflects the second principle achieved in the negotiation (in addition to non-retroactivity) which narrows the field of export/import controls from any cultural property to archaeological and ethnological property.

The third principle in our negotiations was that we were not prepared to give the rest of the world a blank check in that we would not automatically enforce, through import controls, whatever export controls were established by the other country. Thus, Article 9 is a general undertaking that when a State Party to the UNESCO Convention believes that its cultural patrimony is jeopardized by the pillage of archaeological or ethnological materials, it may call upon the other State Parties to engage in an international effort to rectify the situation, including the establishment of import controls. The enabling legislation, Section 1, establishes an agreement to agree, and a process permitting us to negotiate, bilaterally or multilaterally, with individual states on particular items to be covered by the import/export control.¹⁰³ It permits us to require a certain demonstration of necessity for control by the other countries. It permits us to be flexible in extending cooperation, weighing the propriety of controls by whether it is in our interest to do so, whether there is a proper attitude towards art values, and whether reciprocity will be given. We have an element of choice in the matter. The result will be a program which can be implemented over time with a gradual increase of controls. At most, these controls could theoretically

ART LAW: DOMESTIC AND INTERNATIONAL 387 (L. DuBoff ed. 1975).

101. UNESCO Convention, *supra* note 2, art. 7(b)(ii); Revised Bill, *supra* note 5, § 4.

102. UNESCO Convention, *supra* note 2, art. 9; Revised Bill, *supra* note 5, § 1.

103. Revised Bill, *supra* note 5, § 3.

cover archaeological material from all foreign countries. But realistically, what will result is a series of negotiated arrangements dealing with specific categories of archaeological and ethnological materials with those friendly countries that can demonstrate the need for this cooperation.

From the American standpoint, this is more than a sop to developing countries. There is a consensus that there are important American interests involved here. The first is to take steps toward creating international conditions which will eliminate the incentive for the destruction of archaeological sites to export artifacts for the international art market. We recognize that the effects of our regulation can be only imperfect until there is widespread support of these measures in other countries, but we feel that the United States has a responsibility to put its own house in order to the extent that the American art market is a major, if not the single most important, incentive for this despoliation.¹⁰⁴ Secondly, we do, of course, have foreign relations problems with other countries arising from the presence in this country of culturally important objects allegedly illegally exported.¹⁰⁵ There are also serious problems for American archaeologists in these countries, which we hope to relieve through such a program.¹⁰⁶

But to protect other values relevant to this problem, we have drafted legislation with certain safeguards designed to ensure that the measures taken are consistent with our overall interests. First of all, the general scheme is to seek Congressional authorization to cooperate under certain conditions with foreign countries that impose export controls. Congress will determine the standards and the required procedures. We expect Congress to allow the executive branch to administer this law as it does all other laws. We could not ask Congress to pass on the application of these standards to particular objects. Such requests would not be an economical use of congressional time nor consistent with the division of responsibilities between the lawmaking and the administrative arms of our Government.

104. See generally K. MEYER, *PLUNDERED PAST*, *supra* note 14.

105. Although the foreign countries are not always accurate in allegations of illegal export, relations still become strained. See, e.g., Gage, *Italians Seek FBI Aid on a Greek Cup*, N.Y. Times, March 2, 1973, at 42, col. 2 (about a Greek cup allegedly removed from an archaeological dig. The Italian government later withdrew the charges). See also *United States v. Hollingshead*, 495 F.2d 1154 (9th Cir. 1974).

106. Archaeologists may be denied permits to excavate on the basis of the illicit art market in the United States. K. MEYER, *PLUNDERED PAST*, *supra* note 14, at 70.

The President must make three findings. First, he must determine that the cultural patrimony of the State Party to the UNESCO Convention is jeopardized by pillage of archaeological and ethnological materials.¹⁰⁷ Second, he must find that the state concerned has taken measures for the protection of its own cultural property.¹⁰⁸ It should not only have established export controls but also be making a serious effort to solve the problem itself. Third, the President must establish that import controls by the United States with respect to designated objects or classes of objects would be of substantial benefit in deterring such pillage.¹⁰⁹ This is one change in the bill which beefs up this legislative standard.¹¹⁰ We recognize that if American efforts are not going to have a meaningful impact on the problem, it probably would be unwarranted for us to stop the flow of art to this country through international cooperation. But we do recognize that there will be times when, even though other countries don't at first follow our lead, the American controls themselves will be beneficial and will tend to dampen the despoliation of archaeological sites.

The fourth required finding, new in the revised bill, is also designed to meet the anxieties of the art-importing community. The President must find that "the establishment of such import controls 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"¹¹¹ The idea is to have the legislation reflect our general support for the international movement of art. Thus, the President would have to determine that in this instance limited cooperation would be consistent with that overall policy.

Having made those findings, the President would authorize the negotiation of an international agreement. Under the legislation, we would establish an advisory panel representing the interested scientific, cultural, and artistic communities with the necessary expertise to advise the executive branch both as to the justification for these

107. Revised Bill, *supra* note 5, § 1(1).

108. *Id.* § 1(2).

109. *Id.* § 1(3).

110. Compare Section 1(3) of the Revised Bill, "import controls by the United States with respect to designated objects or classes of objects would be of substantial benefit in deterring such pillage," with Section 1(3) of the Original Bill, "import controls by the United States would help deter such pillage." (Emphasis added.)

111. Revised Bill, *supra* note 5, § 1(4).

findings and as to the terms of an arrangement to be negotiated.¹¹² The scheme that we imagine requires that the agreement specify those categories of archaeological and ethnological objects precluded from import into the United States. Regulations would be issued after the agreement enters into force, describing with precise detail those categories of objects which are banned from import, and giving fair notice to all importers. The ban would apply only to those articles removed from the country of origin after the date of the regulations. Now, that, it seems to us, is a balanced, fairly conservative approach to the problem. Our major museums have already begun to adopt codes of ethics for acquisition which go well beyond this legislation.¹¹³

Under the pressures of awakening public consciousness, spearheaded by the press and commentators, it is clear that any institution with any measure of public accountability is no longer going to be in a position to casually acquire objects which were removed illegally from countries of origin. I do not approach this problem as a moralist, but when all is said and done, the fundamental policy question is whether it is acceptable in these times for institutions in the United States to continue to accept objects, illegally exported, which may be stolen property under the laws of the countries concerned. I get the impression from my conversations with people over the last few months that most collecting institutions will support the legislation.

To the best of my knowledge, the only opponents of the legislation in its present, limited form are those who have a direct interest in the trade that is involved. That is not to cast aspersions on anyone, nor to say that there aren't two points of view about the merits of this legislation. I do want to say that this measure deserves the support, not only of archaeologists and others who have strong convictions about the principle involved, but also of those in the collecting world who have an interest in seeing a balanced program come about.

PROF. DUBOFF: Thank you, Mr. Feldman. Our next speaker will be Mr. James McAlee of the Washington, D.C., law firm of Arnold & Porter.

112. *Id.* § 1.

113. See, e.g., copies of acquisitions policies from the Smithsonian Institution, The Field Museum of Natural History and others in the *Appendix*, in *ART LAW: DOMESTIC AND INTERNATIONAL* (L. DuBoff ed. 1975).

MR. McALEE: I have several criticisms of the proposed legislation. I do not quarrel with the merits of the UNESCO Convention itself. On the contrary, I congratulate Mr. Feldman and his co-workers on the job they did in hammering out Article 9 of the UNESCO Convention. It is a compromise with which we can all live. The proposed implementing legislation, however, in both its original and revised form, is open to serious objection.

The basic criticism has already been exposed by Professor Jim Nafziger. The proposed legislation vests tremendous discretion in the Executive.¹¹⁴ That discretion is so sweeping in nature that it could conceivably be used to place an embargo on the importation into the United States of almost all significant ancient and primitive art. I doubt very much if such a baneful result is intended; but, I suggest that in Washington, D.C., it is prudent to assume that a variation of Parkinson's Law operates in terms of power: When power is granted, it will inevitably be exercised in a way that stretches whatever limits have been placed upon it.

As Mark Feldman has noted, after making certain findings, the President may enter into agreements with any State Party to the UNESCO Convention "to restrict importation of . . . designated protected objects, or classes of objects, of archaeological or ethnological interest."¹¹⁵ On the basis of this agreement, the Secretary of the Treasury, after consultation with the Secretary of State, shall promulgate a list of these protected objects.¹¹⁶ Section 3(a), the heart of the implementing legislation, provides that no protected object on this list, exported from the country of origin after the effective date of the list, may be legally imported into the United States without a certificate from the exporting country stating that exportation was not in violation of the exporting country's laws.¹¹⁷

I have noted that the President must make certain findings before entering into an embargo agreement.¹¹⁸ However, once these findings are made, the Executive's authority to ban importation is virtually unlimited. I do not think such broad authority is required by the terms of the UNESCO Convention. On the contrary, as I understand it, the delegates to the UNESCO Convention conceded

114. This is seen by language like "(w)henever the President determines" (emphasis added). Revised Bill, *supra* note 5, § 1.

115. *Id.*

116. *Id.* § 2.

117. *Id.* § 3(a). For the text of Section 3(a), see Appendix, *infra*.

118. *Id.* § 1.

the impracticality of broad export/import restrictions and basically sought to compensate for the lack of such broad restrictions by provisions governing the return of material stolen from museums, acquisitions control by state-operated museums, and "crisis provisions."¹¹⁹

Professor Nafziger has briefly described the crisis provisions of Article 9 of the UNESCO Convention. They provide that if a state's cultural patrimony is jeopardized, it may

call upon other States Parties . . . to participate in a concerted international effort to determine and carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned.¹²⁰

Given the terms of Article 9, I suggest that the proposed implementing legislation suffers from a double defect. First, the implementing legislation is not limited to crisis situations. It can in fact be employed to provide for blanket restrictions on the importation of ancient and primitive art. Second, the implementing legislation is not predicated upon concerted international action. On the contrary, as I read it, the proposed legislation seems to contemplate action by the United States alone. Unilateral import restrictions would penalize the American museum-going public without making any meaningful contribution to the preservation of art elsewhere. André Emmerich has already commented upon the consequences of persisting in gallantly going it alone. Since the United States is the only major art-importing nation professing an interest in implementing the UNESCO Convention, adopting this legislation will divert this flow of art to other art-importing countries in Europe and Asia.

Mark Feldman argues that the various findings required by Section 1 of the implementing legislation are safeguards against capricious action by the Executive. However, a recitation of findings which are a prerequisite to executive action all too frequently function primarily to allay fears and diminish opposition to legislation rather than to seriously limit the Executive's discretion when the legislation is enacted. Indeed, I think you will find many practitioners in Washington, D.C., who will be glad to testify that findings by departments or administrative agencies are all too often ritualistic and pro forma in nature. If the administrator believes in the end

119. See *Legal Response*, *supra* note 13, at 961.

120. UNESCO Convention, *supra* note 2, art. 9.

which he wants to achieve, then he makes the requisite findings as a matter of course. The problem is compounded in the present bill, since there is no objective check on the Executive's discretion. No mechanism for an appeal from the findings has been provided. Indeed, a challenge to the integrity of these findings would face an uphill battle in the courts.

Finally, André Emmerich has touched on another important point. While the proposed legislation refers to actions by the President, it is basically the Department of State which will make the findings and conclude the agreement called for by the implementing legislation. The Department of State is not primarily interested in fostering the enjoyment of art among citizens of the United States. The Department's primary responsibility, as I understand it, is to foster better international relations. This overriding interest of the Department—indeed its assigned task—ensures that the proposed legislation will be employed for purposes unrelated to the preservation of art, as much as it will be used to preserve art.

I wish I could believe that the State Department would use the power granted by the implementing legislation with a surgical precision and with a deep appreciation for the importance of art to the American public. Realistically, however, it must be admitted that such powers could, and undoubtedly would be employed as a counter in diplomatic negotiations on matters far removed from the preservation of art objects and archaeological sites.¹²¹ Moreover, I suspect that once the United States, in such bargaining, has agreed to bar imports from one nation, it is going to be diplomatically untenable not to agree to make similar concessions to other nations. In my view, the nature of the diplomatic process itself, coupled with the broad authority the implementing legislation seeks to vest in the State Department, makes it likely that the proposed legislation, if enacted, will be used exhaustively rather than selectively.

PROF. DUBOFF: Thank you, Mr. McAlee. We will next hear from Professor Paul Bator of Harvard Law School.

PROF. BATOR: I'd like to devote most of my time to the specific legislation Mr. McAlee talked about. But I do want to start out by making one observation about André Emmerich's characteristically delightful, engaging, and seductive remarks. By the way, like Mr. Feldman, I was particularly enchanted by the image of Daniel and the lion's den. I've seen Mr. Emmerich surrounded by lawyers many

121. See note 86 *supra*.

times, and the zoological parable that comes to my mind is the fox in the chicken coop.

I just want to say one thing about what Mr. Emmerich said. I do think it's very important to understand that some modest effort by the United States to help deal with this problem—and I think it has to be modest and narrow and restricted and practical—should not be seen simply as a way of appeasing third world countries or as a kind of sop to interests other than our own. I think that real and important American interests, and even more general world interests, or cultural interests of all of mankind, are involved. To some extent this is symptomized by the fact that there are many serious Americans who, from their own point of view, think that it's terribly important that the United States participate in an effort to help solve this problem. In other words, it isn't the case that the collecting community or the dealer community represent all American opinion. American archaeologists feel that it's terribly important to their work, to their discipline, to their scholarship, that something be done. The scholarly community in general has a very deep stake in the question of whether the past is obliterated or not. So this should not simply be seen as a kind of political chip in a poker game we play with Egypt and Greece. Our own interests are involved, although Mr. Emmerich, as always, made sense when he said that we have a lot of different interests, and the problem is to accommodate as many as possible.

Now we get specifically to the draft legislation. This would allow the President, after consulting with an outside committee of experts (that is meant to represent broadly the interests engaged in this problem, including dealers, collectors, museum people, archaeologists, scholars, and so on), and after he makes findings that a certain category of archaeological or ethnological art is endangered, to put that category on an embargo list. That is the basic structure of the legislation, and the real issue, I think, between Mr. McAlee and the drafters is whether the legislation gives the President too broad an authority and whether the authority could or would be converted from what it was designed to be, which is a narrow provision directed to particular "crises," into what Mr. McAlee calls "blanket" provisions.

Now I am somewhat torn on this. I do think that Mr. McAlee's criticism of the legislation is far too extreme and overdrawn. What he has done is to read into the legislation an absolute parade of horrors. The draft, he says, enables the President to embargo al-

most all ancient art; it gives him powers which are virtually untrammelled.

I just don't agree with that. First, it is simply not the case that it is an inevitable rule that the necessity of making findings is nothing but boilerplate. Sometimes it is. The real questions are, what kinds of findings, and what is the role of those findings in the interplay of bureaucratic and public opinion processes that then take place. The President doesn't just "make findings" in a vacuum. Mr. Feldman doesn't just go in his office and sit down and write out a set of findings. The legislation carefully provides that there has to be consultation with a panel.¹²² The question whether the necessary findings can be made in a given situation will be put to that panel, and the panel will make a public report. Of course the President doesn't have to accept the panel's report, but the bureaucratic and political interplay between the findings of the panel and what the President does will be very, very important. There will be a major role here for publicity, for public opinion, and for professional opinion. All the interest groups will be heard. This will not be a secret operation.

I think, in other words, that it's quite unlikely (unless you have a completely runaway President again) that this statute can be converted into a general embargo on all ancient art. I think that the process—the interplay between the necessity of making findings, of conducting negotiations, and relying on an outside panel—creates real, not just boilerplate, channeling of the power granted.

Nevertheless, I risk annoying Mr. Feldman by avowing that the concern expressed by Mr. McAlee does carry some weight for me as I read this legislation. I do wish the bill could have been clearer and more explicit on its face. I think the drafters have relied too much on the supplemental explanatory memorandum,¹²³ which accompanies the draft legislation, to allay concerns. I do wish some of the language in that supplemental memorandum, which explains that this is meant to give the President authority to act in cooperation with another country in a crisis, could have been put into the text of the legislation itself, particularly with respect to the findings about what kind of jeopardy to cultural patrimony has to be shown.¹²⁴ I think that would have been a help, because it would

122. Revised Bill, *supra* note 5, § 1.

123. Supplemental explanatory memorandum to Revised Bill, *supra* note 5.

124. Revised Bill, *supra* note 5, § 1(1).

make the legislation speak more clearly. It would exhibit more specifically what the purpose of the statute is, which is a narrow "crisis" provision rather than an authority to impose a blanket embargo.

Another point on which I find myself in some residual sympathy with Mr. McAlee is on the question of institutional arrangements. This legislation provides for a panel of experts,¹²⁵ and then the President acts,¹²⁶ and that's the end. Mr. McAlee says that's not enough. He suggests that the embargo not operate until the specific items to be embargoed are themselves made part of a treaty which is then subject to Senate ratification. In other words, he would require further legislative action before any of these crisis embargoes could go into effect.

I don't agree with that suggestion. I think that that would just kill this legislation, because in terms of the timetable of the Senate of the United States, it would mean a three-year delay. It's just absolutely hopeless to get the Senate to deal with these specific narrow situations. I don't think that's what's needed here. Yet, what I keep puzzling about is whether there could be some institutional arrangement which would—Mr. McAlee used the striking phrase which I rather like—provide an "institutional appeal" from the President's findings. I agree with Mr. McAlee that you can't take this to a court. There is one idea I've had on this which I have put to Mr. Feldman, but he has rejected it on essentially bureaucratic grounds. He tells me that on account of rather rigid intergovernmental and separation of powers principles the Department of State is simply not permitted to suggest any such thing. But when the matter gets to Congress, I think one possibility would be to work out some kind of "lay it on the table" arrangement. This would be analogous to what happens with the Federal Rules of Civil Procedure.¹²⁷ That is to say, the President would promulgate an embargo on a certain category of art, and further legislation would not be necessary to make it effective. But the statute would provide that before the embargo goes into effect, it must lie "on the table" for 90 days before both Houses of Congress. At that point you can play it in a variety of ways. The way to narrow the President's power most completely is then to provide that either House can "veto" the going into effect of that particular embargo list. Or you can say that

125. *Id.* § 1.

126. *Id.*

127. 28 U.S.C. (1970).

both Houses, by joint resolution, can prevent the effectiveness of the embargo. The point is to allow Congress a look at the presidential action and a chance to "veto" it without further full legislative action.

This type of procedure has been used in many, many fields. It is the position, nevertheless, of the State Department and the Justice Department (based on various rather cabalistic theories of constitutional law which are both too boring and too long to explore in detail here) that this is improper. To me, it's simply institutional "fine tuning" done in a way which has proved very useful, and I would think it should be seen as rather attractive here. What this would do is to enable the forces of public opinion—the opinion of the museum community, the dealer community—to complain if it is found that a given embargo is too broad or if a finding that a crisis exists is a phony pushed upon us by a State Department too ready to appease third world countries. "Laying on the table" gives an opportunity for the political process to operate, and allows us to negate the President's power more easily than what the existing draft would require, which is a new statute. That is, as the State Department has drafted it, a presidential embargo could be upset only by a new statute, which would in turn have to be signed by the President. It seems to me that's too tough a requirement; it doesn't restrict the President's power enough.

PROF. DUBOFF: Thank you, Professor Bator. Mr. Mark Feldman has a few remarks to add, and then we will open the discussion to the audience and to those panelists who wish to rebut prior arguments.

MR. FELDMAN: I would like to reply very briefly to the three points that Mr. McAlee made and Professor Bator expanded upon.

The first is the suggestion that the draft legislation exceeds the intent of the UNESCO Convention. It is alleged by the previous speakers that Article 9 of the UNESCO Convention deals with crisis situations and that the implementing legislation is broader. I just don't think there is any basis in fact for either proposition. In the first place, the word "crisis" does not appear in the language of the UNESCO Convention or in the legislative history. The closest thing we have is the concept of jeopardy. As Professor Bator will remember, we wanted the clause to read "serious jeopardy" (assuming that that phrase has any meaning in the English language, which I'm not sure it does). We lost by one vote, so all we have is "jeopardy."

So, I don't think we're talking about crisis situations in any technical sense. What is meant is situations that are serious in the

sense that there is jeopardy from the pillage of archaeological or ethnological material. The universe is narrowed to those two types of material. We know pillage is the problem. We also know the solution we're discussing is ad hoc controls to be applied where persuaded by the values articulated in the findings. That seems to me to be the framework contemplated by the UNESCO Convention. The legislation cannot be construed as opening the way to blanket restrictions, because it is ad hoc, country by country and it contemplates designated objects or classes of objects. We're not going to have blanket designation of all archaeological objects. That the designation might be broader in a particular case than art collectors or dealers would wish is a probability. I'm not going to dismiss the anxiety of the dealers as being irrelevant. Dealers have good reason to be anxious because this country is moving towards a public policy different from the public policy of recent years in which the illicit trade has flourished. But we *do* hope to use the authority responsibly and to limit it to specifically designated classes of objects where it can be demonstrated that jeopardy does exist, and where American interests—art and other diplomatic interests—justify such measures.

Having covered that topic, I would like to deal briefly with presidential discretion. I'm somewhat amused by Professor Bator's dismissal of the constitutional concerns here: He says it's bureaucratic and cabalistic. But I had thought that the Constitution and the concept of the separation of powers is even more important than importing art, as important as that is. There certainly are procedures that could be established that would avoid constitutional difficulties, such as letting agreements lie on the table for a period of time. But our view is that the Congress cannot act except by legislation and cannot act constitutionally through the concurrent resolution process. This device developed in the 1930's with the Government Reorganization Act.¹²⁸ At first it was used sparingly, and it has now come under judicial challenge. But in any event, it would be an absurd use of congressional resources to review executive branch determinations as to particular classes of objects for particular countries that are to be subject to import restraints under this legislation.

128. Reorganization Act of 1939, ch. 36, § 5, 53 Stat. 561, provided that a reorganization plan promulgated by the President would take effect in 60 days unless the Congress passed a concurrent resolution "stating in substance that the Congress does not favor" the plan.

In terms of congressional priorities, I cannot put art on the same level as atomic energy cooperation agreements. The Congress has an ample opportunity in the lawmaking process to decide what the standards are and how far the Executive should go. I don't see any justification for involving Congress in a case-by-case review.

If further argument is needed in support of that view, I think it's demonstrated by the fact that we've had these measures before the Congress for three years¹²⁹ and haven't even been able to get a hearing scheduled in the House Ways and Means Committee. As far as I know, there's no substantive objection in the House Ways and Means Committee, but that committee is entrusted with other serious responsibilities such as tax, welfare, national health insurance, and other matters that have occupied its time during this economic crisis. The committee hasn't even considered the bill. I doubt if the committee would want to be required to review the findings on a regular basis. I might add my one experience on the Senate side is when we brought the Mexico treaties to Senator Fulbright—he was very sarcastic about being asked to pass on such measures when, in his view, the committee was not being given the opportunity to pass on foreign policy issues of concern to us. So I think we do have the right constitutional approach in asking Congress to consider now what our policy ought to be and to decide on what machinery should be used to enforce it.

The one issue that I think merits concern is the question of unilateral controls and the risk of deflecting the trade to other countries. That is a reality which we must take into account. First of all, let me reiterate, I reject the idea that the legislation exceeds the intent of the UNESCO Convention in this regard. It may seem so superficially, but the obligations of the UNESCO Convention are a concerted effort. Unfortunately, it wouldn't be hard for three or four developing countries (there are already some 25 of them that are parties to the UNESCO Convention)¹³⁰ to develop a concerted effort which would meet the legal requirements of the UNESCO Convention. This concerted effort wouldn't be any comfort as a practical matter.

Moreover, I strongly support preserving the bilateral option in this field in the interest of American art interests. Frankly, we began our work in a different international climate five years ago. Today,

129. The Senate ratified the UNESCO Convention in 1972. See note 4 *supra*.

130. See note 3 *supra*.

action on a multilateral basis through the U.N. system looks less and less promising from the standpoint of American interests. We might be able to make more effective progress in some cases by negotiating on a bilateral basis. This shouldn't exclude the possibility of using multilateral channels where we see the possibility of bringing other importing countries into the cooperative effort. But there may be other, more efficient ways of achieving this goal. We do agree with the dealers that this is a legitimate American interest. Other countries, ultimately, will be slow to follow our program once we set the pattern, but they will be under great pressure to do so. For example, Canada has legislation which provides for comprehensive cooperation with foreign countries in this field.¹³¹ Canada's approach is a little different from ours. Its law speaks in terms of "specifically designated objects,"¹³² but this includes *all* cultural property. It remains to be seen how Canada will implement the law.¹³³

The issue of participation by other countries is important, but ultimately the United States must determine its own share of responsibility. We have tried to do this by requiring a finding, mentioned earlier, that American cooperation will have an impact that is meaningful. That is not fine tuning but it seems to me to be a sound policy.

QUESTION: What constitutes a sufficient showing that a U.S. embargo would be a deterrent?

MR. FELDMAN: The statutory language as proposed requires that U.S. import controls must be of substantial benefit in deterring the pillage.¹³⁴ This might involve a showing that a significant part of the flow was coming to the United States and that the country of origin intends to follow a policy that encourages similar cooperation from other nations. Bearing in mind that these agreements would cover a period of years, I would think that an indifference to continued outflow of objects to other parts of the world would cause us to reconsider renewing such agreements.

PROF. NAFZIGER: I have a couple of questions for Mr. Feldman. I'm concerned about the apparent legislative paralysis in the last few years. There was a flurry of activity when the UNESCO Con-

131. Cultural Property Export and Import Act of 1975, c. 50 (Can.).

132. *Id.*

133. To be effective, the above law must have a set of regulations enacted delineating the official method of enforcement.

134. Revised Bill, *supra* note 5, § 3.

vention was adopted¹³⁵ and the Senate gave its advice and consent to its ratification.¹³⁶ At that time also, Congress enacted measures to control importation into this country of pre-Columbian monumental art,¹³⁷ and we also entered into a bilateral agreement between the United States and Mexico.¹³⁸

There have been no further bilateral agreements of this nature. Two explanations for this have been advanced by the State Department. First, it is argued that the agreement with Mexico was *sui generis*, and that similar agreements with other countries were never planned. The second, more reasonable explanation is that the State Department is awaiting the passage of the enabling legislation which would provide the Government with clear authority to enter into such bilateral agreements. In view of the legislation's uncertain future, however, it is fair to ask whether the Government should not be proceeding with the negotiation of additional bilateral agreements. The politics surrounding the enabling legislation should not inhibit us from undertaking alternative efforts. Finally, I wonder, perhaps naively, whether there isn't some means of introducing the bill itself through a committee of Congress that would give it a fairly prompt airing.

I also have a technical question. The definition of country of origin is still a problem to me.¹³⁹ If the Elgin Marbles fit within a category on a protected list and thus could not be imported, to which country—England or Greece—should they be returned?

MR. FELDMAN: I don't believe the non-retroactivity provisions of the UNESCO Convention would apply. They certainly would apply if Greece brought a claim against England. But Article 4 of the UNESCO Convention specifically provides that the term "cultural heritage" includes all cultural property found within the national territory whether it originated there or not. England can claim the Marbles, because they would constitute a part of its cultural heritage as defined by the UNESCO Convention.

Let me respond very briefly on the first point of the posture of the legislation and the delay. For two years, the bill lay on the table

135. Gordon, *supra* note 25; Nafziger, *Regulation by the International Council of Museums: An Example of the Role of Non-Governmental Organizations In the Transnational Legal Process*, 2 *DESV. J. INT'L L. & POL.* 231 (1972).

136. See note 4 *supra*.

137. *Importation of Pre-Columbian Monumental or Architectural Sculpture or Murals*, 19 *U.S.C. §§ 2091 et seq.* (Supp. II, 1972).

138. *Treaty of Cooperation with the United Mexican States Providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties*, July 17, 1970, [1971] 1 *U.S.T.* 494, T.I.A.S. No. 7068 (effective March 24, 1971). On the background of the Treaty see *RECOVERY OF CULTURAL PROPERTIES*, *supra* note 84, at 1-2.

139. Section 9(c) of the Revised Bill, *supra* note 5, defines the term "country of origin" as "the country where [any protected object of archaeological or ethnological interest] was

in the Ways and Means Committee. Every effort made to obtain a hearing was frustrated by the committee's priorities. We weren't pushing the bill; in fact we wasted some time, for which I take responsibility, because I was hoping we would get a hearing where we could hammer out any changes necessary and get the bill adopted. When it became clear that the legislation would have to be reintroduced, I undertook extensive discussions with various art interests, and especially the museum community. As a result, I believe several improvements have been made in the bill, particularly from the procedural point of view. That consumed another year. Now the bill has been sent up to the Hill again, and referred to the House Ways and Means Committee and the Senate Finance Committee. It has not yet been introduced in either House. We are trying to get it introduced, but so far we've had no success. I expect that it will be introduced eventually.¹⁴⁰

Now, if I may pass for a moment to the question of procedures and burden of proof, which is the area of one of the great improvements in the bill. I do want to clarify a matter which involves a difference of interpretation between the art dealers and the State Department. One of the major changes made in the legislation was to alter the presumption normally applied in customs cases putting the burden of proof on the Government in most particulars. One issue where the burden of proof is placed on the Government is to demonstrate that the object fits within the proscribed list. The Government must show both that it fits in the proscribed category and that it comes from the country making the agreement. So the burden of proof of provenance is on the Government, a burden which I don't think has been appreciated by all the critics of the legislation. This means that in a significant number of cases it will not be possible to require an object's return. Now this is a policy judgment. The burden of proof of provenance could have been placed on the importer, which would preclude importation where the provenance could not be established. We have not gone that far; it may be that the Congress, when it focuses on this issue, will decide otherwise. To put the burden of proof of provenance on the importer may be the only truly effective way of avoiding the importation of objects illegally removed from their countries of origin. But we in the State Department have not promoted that solution, recognizing that

first discovered." (Emphasis added.)

140. The Revised Bill, *supra* note 5, was introduced in the second session of the 94th Congress. 122 CONG. REC. H 5304 (daily ed. June 3, 1976).

where the facts are obscure, U.S. collectors should not be precluded from competing for the material.

Professor Nafziger raised a second question regarding the term "country of origin" as applied to the Elgin Marbles. That question does not arise under the proposed legislation with respect to objects in museum collections. The term "country of origin" is not the operative concept in that context. The problem does exist with respect to material that is excavated and is *not* accessioned to a collection but may be in some private collector's safe for 100 years. The only country that would have the right to claim such an object under the bill is the country where it was first discovered. It would have to be established that the object was removed from the country of origin after the date of the regulation.

I think that answers Professor Nafziger's questions, except to make one reference to Article 4 of the UNESCO Convention, which may conceivably give rise to difficulties. The term "cultural heritage" used in Article 4 of the UNESCO Convention does not appear anywhere else in the UNESCO Convention and has no operational significance *per se*. It is one of the many imperfections in the UNESCO Convention resulting from the fact that the UNESCO Convention was revised over a two-week period. One result is that we have an article which has no specific operating reference. This may raise definitional issues. We can try to deal with this by designating objects in American collections, for purposes of Article 7, when we deposit our instrument of ratification. We will expect assurances of reciprocity from other State Parties to the UNESCO Convention.

MR. MCALEE: There is one matter which we might profitably discuss: the precise purpose of the implementing legislation. I had thought the dimensions of my dispute with Mr. Feldman had been correctly defined by Professor Bator. I thought we were all in accord that basically Article 9 of the UNESCO Convention was aimed at "crisis" problems, that is, problems relating perhaps to the despoliation of important archaeological sites. Further, I thought my disagreement with Mr. Feldman was basically whether it was desirable to trust the Executive to carry out the spirit of Article 9 with precision and an appreciation of the importance of art to the U.S. public. However, listening to your remarks, Mr. Feldman, I find a disturbing ambiguity. You seem to be saying that Article 9 should not be restricted to crises, but should be given a broader interpretation. As I listened to your remarks, it seemed to me that you were saying that the public and the museums will have to revise their attitude toward acquisitions. Now they cannot import objects

which have been exported in violation of another country's export restrictions.

It is very important to examine precisely what this legislation proposes to accomplish. I agree controls should be imposed where there are very serious problems of archaeological despoliation. I think we all agree that these are problems which must be solved. The issue then turns on the precise means of implementation.

But I wonder if you are not extending the controls further than to "crises." I wonder if you are not saying that this implementing legislation should have a wider purpose and be used to mollify those countries which believe that too much of their own art is flowing out of their country.

Mr. Feldman, would you please describe what you see as the basic purpose of the implementing legislation.

MR. FELDMAN: I didn't really think there was that much ambiguity about my position. The purpose of the legislation is to implement the obligations of the UNESCO Convention. The word "crisis" has no precise or mutually agreed upon definition. It is not a word that is found in the UNESCO Convention or its legislative history. I don't know what it means. The language of the legislation tracks that of the UNESCO Convention; the concept of cultural patrimony of a state being in jeopardy from the pillage of archaeological or ethnological materials. And I suppose that involves, at a minimum, two considerations: One is the destruction of irreplaceable cultural resources through the illicit excavation of sites or the dismantling of ceremonial centers, which we've seen around the world in recent years;¹⁴¹ the other is the loss of a cultural patrimony through the outflow of important artistic objects. The question is what demonstration would be necessary to show jeopardy. And what remedies should be provided? What we have negotiated is the right to participate in those judgments on a case-by-case basis with the countries concerned. This procedure requires the foreign country to demonstrate jeopardy and ensures that any embargo will be responsive to a specific situation. In addition, the panel of experts will give an assessment of the "crisis" involved and the effect of any embargo on American interests.

PROF. BATOR: A quick word, first on a substantive matter and then on an institutional one. I think one difficulty here is that one can't read this legislation as if it were a real estate conveyance.

141. See generally K. MEYER, *PLUNDERED PAST*, *supra* note 14; Reinhold, *supra* note 75.

However it comes out, it's going to be a rather broad "mood piece" which gives a sense of direction to the executive branch and to the people who administer the statute. So it really isn't significant whether the specific word "crisis" is used or not. Reading the legislation, and in particular reading Mr. Feldman's own sectional analysis of it, I think makes it perfectly clear that the power to place import controls on art was seen as an extreme and drastic step to be used only in cases of great necessity. Call it "serious jeopardy" or "jeopardy" or "crisis" or whatever you want, the power is *not* to be resorted to as a generalized way of dealing with the fact that a large amount of illegal art goes out of a lot of countries. I think that what is troubling people is that the legislation on its face doesn't paint enough of a picture about its own philosophy. The bill doesn't use the word "crisis," the word "extreme," or the word "drastic." Some of those words are used in the explanatory memo. I think it would be helpful if Mr. Feldman would be willing to consider painting a picture in the text of the legislation which would give the sense that embargo is meant to be a very special step, and more particularly, that the mere fact that a large amount of illegal export goes on should not trigger this legislation. There really has to be some specific showing that illegal export is destructive to some important category of art.

The other point here is the institutional one. It seems to me that the one thing Mr. Feldman has not provided for here is the possibility of abuse of power. He says we're all reasonable; we all understand the purpose of these words; as long as we understand the spirit here, the President will use this in the right way, the State Department will do it in the right way. He says that we all understand that this is to be a narrow, ad hoc kind of thing, and it will be so administered.

Mr. McAlee answers: But what if, in a given circumstance, the people in charge are willing to abuse their power? As we've all learned, that's not impossible, it might happen. Is there some way of guarding against abuse? I think what Mr. McAlee does is to guard so hard against it that he makes all action impossible, by saying that nothing can be embargoed unless there is new legislation. For the reasons Mr. Feldman mentioned, I think once it is written into this bill that the embargo does not operate until there is further legislative action by the Congress, you have killed it. You've killed any real prospect of any modest help by the United States in this situation.

I think that the challenge here to the draftsmen and the nego-

tiators is to see whether we can work out some institutional scheme which helps allay fears of abuse of power without imposing the necessity of further legislation. I think on this there is room for negotiation and thought and ingenuity.

QUESTION: I understand that the United States position has been not to enforce the criminal laws of other countries. Obviously, this proposed legislation doesn't follow that principle and possibly for good reasons. To what extent is this ratification of the UNESCO Convention going to be used as leverage for other negotiations that the State Department is conducting? Another question I have concerns the definition of terms used in the bill. Will these terms be defined using common law definitions? I do not see, for example, any definition of the term "pillage." Will these terms require an act of larceny?

MR. FELDMAN: Well, that's a number of questions. I think that the most interesting one, really, is the first one, which is the question of negotiating policies. I cannot see any deliberate governmental policy to utilize this tool . . . to obtain the cooperation of other states on other issues. I just don't think it gives enough leverage to be exploitable in that fashion. The Government is sensitive to the anxieties of American collectors in this regard. On the other hand, the Government is not and should not be immune to pressures relating to other important United States interests. Our relations with various countries are a tapestry of many interests. For example, we have an agreement with Mexico for the reciprocal recovery of stolen automobiles.¹⁴² Back in 1969, Mexico told us in fairly blunt terms that a similar arrangement should be considered for cultural material, or they might not be able to continue their law enforcement cooperation.

The Mexican agreement is a unique procedure extending a program of law enforcement cooperation along a common frontier to the area of cultural property. In the future, our programs of cooperation in this area will be based on the draft legislation which contemplates import controls subject to important safeguards.

Turning to Paul Bator's point, I agree that this is an extreme remedy. Yet, I would not mislead the art dealers. They are probably right in anticipating more embargoes than they would like to see. I

142. Convention with Mexico for the Recovery and Return of Stolen or Embezzled Motor Vehicles, Trailers, Airplanes or Component Parts of Any of Them, Oct. 6, 1936, 50 Stat. 1333 (1936), T.S. No. 914 (effective June 19, 1937).

think, frankly, that there are many countries with serious pillage problems. Professor Nafziger has a valid point that there will be pressures to extend the embargo granted one country to another country's goods. The issue will be what requirements we establish to demonstrate need and linkages with the U.S. market: One factor will be the concern of the archaeological community as represented in the panels of experts about the situation in that particular country.

Frankly, I look for negotiating opportunities. I can't guarantee this, but I can imagine bilateral arrangements where the United States obtains preferred access in return for its special cooperation. That kind of precedent would also have the beneficial effect of providing an incentive for other countries to cooperate in controlling the flow.

As to questions regarding specific conventions, it would be difficult for me to try to justify or even explain the precise terminology of the UNESCO Convention since it was drafted by a committee of nearly 60 representatives with different objectives and no agreed upon conceptual design. The delegates didn't know until the end what the UNESCO Convention would provide. Consequently, the State Department has avoided reference in the enabling legislation to obscure terms such as "cultural heritage," or the term "cultural property" which has a very broad definition that we do not want to track. Article 9 of the UNESCO Convention uses the word "materials," and we have used this word in our legislation. The term is intended to be broad, since archaeological concerns are broad.

As far as the concept of pillage is concerned, I don't think that's really much of a problem. Everyone has a pretty good idea of what constitutes pillage of archaeological sites and centers.

PROF. DUBOFF: Thank you gentlemen.

APPENDIX

H.R. 14171

IN THE HOUSE OF REPRESENTATIVES

June 3, 1976

Mr. Green introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To Implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. Whenever the President determines that (1) the cultural patrimony of a State Party to the Convention is in jeopardy from pillage of archeological or ethnological materials, (2) the State Party has taken measures for the protection of its cultural patrimony, (3) import controls by the United States with respect to designated objects or classes of objects would be of substantial benefit in deterring such pillage, and (4) the establishment of such import controls 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 enter into an agreement with the State Party, and with other governments as appropriate, to restrict the importation of such designated protected objects, or classes of objects, of archeological or ethnological interest for a period considered required to achieve the purposes of the Convention. In making these determinations and in formulating appropriate restrictions to propose for inclusion in such agreements, the President shall consider the advice of a panel of experts, which he shall appoint for that purpose, representing the interested art, museum, and scientific communities and qualified to advise on the particular problem.

SECTION 2. The Secretary of the Treasury, after consultation with the Secretary of State, by regulation shall promulgate, and when appropriate shall revise, a list of protected objects of archeological or ethnological interest within the meaning of paragraph (b) of Section 9 of this Act. Such objects may be listed by type or other

classification deemed appropriate by the Secretary.

SECTION 3. (a) No protected object of archeological or ethnological interest listed by the Secretary of the Treasury pursuant to Section 2 of this Act that is exported (whether or not such exportation is to the United States) from the country of origin after the effective date of the regulation listing such object may be imported into the United States unless the government of the country of origin of such object issues a certificate which certifies that such exportation was not in violation of the laws of that country.

(b) If the consignee of any protected object of archeological or ethnological interest is unable to present to the appropriate officer of the customs at the time of making entry of such object—

- (1) the certificate of the government of the country of origin required under paragraph (a) of this section; or
- (2) satisfactory evidence that such object was exported from the country of origin on or before the effective date of the regulation listing such object pursuant to Section 2 of this Act;

the appropriate officer of the customs shall refuse to release the object 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 certificate or evidence is filed with such officer. If such certificate or evidence is not presented within ninety days after the date on which such object is refused release from customs custody, or such longer period as may be allowed by the Secretary for good cause shown, the object shall be subject to seizure and judicial forfeiture.

(c) Pending a final determination as to whether an article has been imported into the United States in violation of Section 3 or Section 5 of this Act, the Secretary of the Treasury shall, upon application, and provided that he finds (i) that sufficient safeguards will be taken for protection of such article and (ii) that a sufficient bond is posted to ensure its production, permit such article to be retained at any museum or similar art or scientific institution in the United States which is open to the public.

SECTION 4. (a) Any protected object of archeological or ethnological interest imported into the United States in violation of Section 3 shall be subject to seizure and judicial forfeiture. All provisions of law relating to seizure, judicial forfeiture and condemnation for violation of the customs laws shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as applicable, and not inconsistent with the provisions of this Act.

(b) Any protected object of archeological or ethnological interest forfeited to the United States under this Act shall—

(1) first be offered for return to the country of origin and shall be returned if that country bears the expenses incurred incident to such return and delivery and complies with such other requirements relating to the return as the Secretary of the Treasury shall prescribe; or

(2) if not returned to the country of origin, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

SECTION 5. No article appertaining to the inventory of a museum or religious or secular public monument or similar institution in a State Party to the Convention which is stolen after the effective date of this Act, or after the date of entry into force of the Convention for the state concerned, whichever is later, may be imported into the United States.

SECTION 6. (a) Any article imported into the United States in violation of Section 5 shall be subject to seizure and judicial forfeiture. All provisions of law relating to seizure, judicial forfeiture and condemnation for violation of the customs laws shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as applicable, and not inconsistent with the provisions of this Act.

(b) In any action for forfeiture under this section where the claimant establishes valid title to the article, under the 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 (i) the State Party to which the article is to be returned pays the claimant the amount the claimant paid for the article or (ii) the United States establishes that said 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.

(c) Any article forfeited to the United States under this Act shall—

(1) first be offered for return to the State Party to the Convention in whose territory is situated the institution referred to in Section 5 of this Act 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 of the Treasury shall prescribe; or

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

SECTION 7. Notwithstanding the provisions of Section 615 of the Tariff Act of 1930, as amended (19 U.S.C. 1615), in any forfeiture proceeding brought under the provisions of this Act where the property is claimed by any person the United States shall establish, in the case of objects subject to the provisions of Section 3, that the object has been listed by the Secretary of the Treasury in accordance with Section 2 and, in the case of articles subject to the provisions of Section 5, that the article appertained to the inventory of a museum or religious or secular public monument or similar institution in a State Party to the Convention and that it was stolen from such institution after the effective date of this Act, or after the date of entry into force of the Convention for the State Party concerned, whichever is later.

SECTION 8. The Secretary of the Treasury shall prescribe such rules and regulations as are necessary and appropriate to carry out the provisions of this Act.

SECTION 9. For the purposes of this Act—

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

(b) The term "protected object of archeological or ethnological interest" means any object of archeological or ethnological interest, including any fragment or part thereof, which is subject to export control by the country of origin and is encompassed by an agreement with the country of origin made pursuant to Section 1 of this Act.

(c) The term "country of origin," as applied to any protected object of archeological or ethnological interest, means the country where such object was first discovered.

(d) The term "the 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

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Cultural Property Convention

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Cultural Organization at its sixteenth session.

(e) The term "consignee" means consignee as defined in Section 483 of the Tariff Act of 1930, as amended (19 U.S.C. 1483).

SECTION 10. In the Customs Territory of the United States, and in the Virgin Islands the provisions of this Act shall be enforced by appropriate Customs officers. In any other territory or area subject to this Act, the provisions shall be enforced by such persons as may be designated by the President.

Re Bill S-2261.

SUBCOMMITTEE ON INTERNATIONAL TRADE, SENATE FINANCE COMMITTEE,
Dirksen Senate Office Building, Washington, D.C.

DEAR SIR: Dedicated U.S. archaeologists & ethnologists have recently discovered proof of an enormously widespread system of free-trade that existed throughout the whole area of ancient Mesoamerica. This documentation reveals that such a tremendous healthy interchange of economic, scientific, and artistic styles & traditions were the basis for the magnificent cultural achievements of these ancient civilizations. The accomplishment of this ancient inter-territorial unification is most astounding and one can only deplore the present bill which very clearly precludes any such enlightened action.

One must also deplore the hostile attitude of the Mexicans in power today, who by no means whatsoever are the same people who created the ancient cultural materials which are the issue of this bill. Mexico very jealously refuses any acknowledgement of our sensational discoveries, even one which has revealed an entire hierarchy of rules, with birth & accession dates at one of the greatest Mayan sites in their whole country. Guides in the famed National Museo of Anthropology have been strictly forbidden to disseminate this knowledge which so emphatically enhances the importance of their national treasures. Mexico professes to be without funds and well trained technical personnel to cope with the great number of their important site, yet they refuse to allow highly competent foreign archaeologists & private institutions to assist jointly in financing & excavating. This conceit and covetousness has resulted in their leaving great sites neglected and unprotected so that many of them are deteriorated beyond recognition. Their importance thus has been lost not just to Mexico but to the interests of world culture.

There has been much constructive work by countries seriously concerned with preservation of their ancestral and surviving arts. Japan, especially and the Mediterranean countries & others have enlightened legislation for this protection which also permits exportation of much other very highly valued cultural materials to foreign institutions and private collectors. These countries in no way feel that their cultural patrimony is being thus threatened or that each export might provoke a "national emergency" such as Bill S-2261 would have us believe.

There has never been legislation in the U.S. to preclude exportation of ancient American Indian artifacts since our national policy stressed that such sharing of native arts was highly beneficial to our foreign cultural relations. Bill S-2261 proposes just the opposite along with a confusing policing effort on the part of the Executive Branch and the State Department, at our own expense, to prevent the importation of *other* countries ancient native arts into *our* country!

Any foreign nation, if it so desires, can by its own action render it illegal to allow the exportation of its own ancient & primitive art. Why therefore must our nation involve itself in this ambiguous unilateral legislation, undertaking embargoes, seizure and confiscation risks, as well as the mountainous litigation that will certainly ensue!

It is presumptuous to assume that Bill S-2261 can in any realistic way control pillage of cultural material in countries we will supposedly be protecting when it is largely nationals within these countries who are themselves the illegal excavators. Since the constant supply of this newly-found material banned from the U.S. will of necessity be channeled to the museums, educational institutions and private collections of the other major art importing nations . . . our own country will be cut-off from the continuity of archaeological and ethnological knowledge and all of the cultural benefits of the world's art.

In considering the few constructive but many destructive aspects of this controversial legislation which is increased with unavoidable elements of aesthetics and a great rising cultural awareness that has never previously existed at the height it has reached today, the Committee should be obliged to consider carefully the tremendous force of public opposition this bill has raised.

I respectfully request that my letter of opposition be read into and made part of the official record.

Very sincerely,

LEROY C. CLEAL.

LONDON T. CLAY,
Boston, Mass., February 3, 1978.

Attention of Mr. David Foster.

SUBCOMMITTEE ON INTERNATIONAL TRADE,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SIR: I would like to appear before the Committee to testify against the so-called bill implementing the UNESCO Convention on cultural property. However I will not be able to appear on February 8th, and would like to submit this statement for the record.

In way of introduction, I am a Trustee of the Museum of Fine Arts in Boston, Massachusetts; an institution which has been in existence for over 100 years. The Museum's collection of European, Asiatic, especially Japanese, and early Egyptian art are world renowned. Unfortunately due to cultural tastes over this period, the Museum has shown little interest in acquiring or exhibiting the art of American cultures. Only in the last decade has an effort been made to collect and exhibit Mesoamerican art.

The bill, as I understand it, would unfairly discriminate against the Boston Museum as an institution, and all Americans interested in acquiring or educating themselves concerning Mesoamerican art. Museums serve a clearly recognized role in displaying art and educating the public. But this bill works against the role of museums as owners of last resort in the gradual transfer of works of art from private to public hands.

This proposed legislation unfairly discriminates against Americans. A Mayan mask offered for sale in Switzerland could be purchased by a European institution, a German, Italian or Japanese individual, but not by an American and brought home.

On the other hand, an Eskimo mask might be purchased in Alaska and taken home by anyone in the world. The legislation is lopsided and unfair.

I strongly urge you to reject this proposal.

Sincerely,

LONDON T. CLAY.

SAN FRANCISCO, CALIF., February 5, 1978.

SUBCOMMITTEE ON INTERNATIONAL TRADE,
U.S. Senate,
H.R. 5643

GENTLEMEN: Again the United States will be acting *alone* and the people of the United States are being asked to give up their right to share in the arts of the world with little or no cooperation from other nations.

The passage of H.R. 5643, as it now stands, will gain nothing for the art-rich countries and will do only irreparable harm to our own art facilities. Private collectors would be denied access to material which reaches the people at a future date and, by that token, helps to protect the art of the world.

To act unilaterally would be a great mistake. Before such a bill is enacted by this country *all* nations must act cooperatively for only by *multinational* response can there be any kind of fair answer to the art problem as put forward by the UNESCO Convention.

I request that this statement be made a part of the record.

Sincerely,

W. DOUGLAS HAGUE.

PEABODY MUSEUM,
HARVARD UNIVERSITY,
Cambridge, Mass., February 5, 1978.

THE SENATE SUBCOMMITTEE ON INTERNATIONAL TRADE,
Washington, D.C.

GENTLEMEN: I write to express my support of the Bill implementing the UNESCO Convention on Cultural Property, S. 2261.

If you will permit comments on the situation underlying the introduction of this Bill, I should like to refer to two aspects only. First of all, arguments against the Bill have been made by Mr. Andre Emmerich in a letter to *Archaeology* magazine (November 1977), a letter which has been photocopied and cir-

culated by opponents of the proposed legislation. Passing over passages in this letter that are contradictory, and others that could be disputed, I refer to the statement ". . . intensified farming, construction activities, [etc.] . . . all conspire to destroy remaining archaeological sites at a far faster rate than the widely deplored deprivations of independent explorers. This sad but little published fact has been quietly attested to by archaeologist after archaeologist.'

Now, I too am an archaeologist, and my work has taken me to almost every part of the Maya area during annual expeditions of three to four months in each of the last twenty years. I have covered hundreds of miles on foot through the jungle-covered heartland of the Classic Maya civilization, an area liberally strewn with published and unpublished ruins. Perhaps, therefore, I am qualified to comment on the statement of Mr. Emmerich and his pair of anonymous archaeologists (I take it there were two of them), and I declare it to be utter nonsense. Over the last fifteen years, in 99 cases out of 100, monuments have been broken up, and tombs destroyed, by those so delicately referred to as 'independent explorers,'—though they are more commonly and accurately termed looters.

To give an example: in northern Guatemala there have been very few cases indeed of archaeological destructure attributable to construction or farming. On the other hand, when an important site west of Tikal, provisionally named El Zotz, was first visited by legitimate archaeologists late last year, it was the scene of radical excavation by about 40 men, housed in 10 huts, and directed, one may suppose, by an 'independent explorer' who was not innocent of contacts on Madison Avenue.

My second comment concerns the argument often presented that restriction imposed on U.S. museums and collectors will do no more than divert the flow of antiquities to Germany, Japan, and other art-importing countries, without diminishing that flow. The falsity of this argument in respect of pre-Columbian antiquities was demonstrated last summer, when a collection of artifacts that had been smuggled out of Guatemala was offered at auction in London. Abstention by U.S. buyers, in the shadow of the McClain decision, resulted in near-failure of the sale: three-quarters of the lots were bought in, having failed to make the reserve price.

Respectfully yours,

IAN GRAHAM,
Assistant Curator, Peabody Museum.

FRIENDS OF ETHNIC ART,
P.O. Box 22487,
San Francisco, Calif.

Re Bill S-2261.

SUBCOMMITTEE ON INTERNATIONAL TRADE,
*Senate Finance Committee,
Dirksen Senate Office Building, Washington, D.C.*

DEAR SIRS: We, the undersigned members of Friends of Ethnic Art wish to express our strong opposition to the above proposed bill. Our organization, founded to provide a focus in the San Francisco Bay Area for advancement of cultural interest in the arts of the Americas, Oceania and Africa, has a firm cooperating relationship with universities, other educational institutions and museums of Northern California. Our membership, which includes academicians, artists, museum professionals, private collectors and ethnic art enthusiasts, has as a continuing concern the support of research and the implementation of programs to widen knowledge and increase sensitivity to the ethical and philosophical considerations relating to collecting, preserving and presenting ethnic art materials by public institutions and private individuals.

We oppose this legislation which places arbitrary embargoes on importation of all types of ancient and primitive art and enforces such embargo by seizure and confiscation of individual art objects without effective consideration as to whether is in reality pillaged art from its country of origin. So implicated and confusing is the documentation required under this bill that it precludes the importation of art work into the United States, including that which may have been out of the country of origin for decades, as well as it would effect ethnic art made just yesterday. No foreign collector or dealer would risk having his property seized and forfeited for want of the prescribed documentation and as a direct consequence the implementation of this bill will divert the entire flow

of art away from the United States to other major art importing countries such as Japan, Switzerland, Belgium, West Germany, England and France.

The UNESCO Convention did not require nor even contemplate so radical an urgency as bill S. 2261 requesting Emergency Powers: Section 3, granting the Executive Branch extraordinary power to bar the importation of art for a period of two (2) years in order to respond to an "emergency"! It does not seem prudent that the present issue should be placed in the hands of the President and the State Department where it could so easily be juggled around and made use of for some political advantage of the moment altogether unrelated to the UNESCO Convention and pillage of art. There is no urgent need to require a blanket authority for the State Department since the Congress can respond on an ad hoc basis in any crisis as it did in Public Law 92-586, Customs Regulations: Pre-Columbian Monumental & Architectural Sculpture & Murals.

This bill would deny the people and cultural institutions of this nation their right to acquire a legitimate share of the cultural patrimony of our world.

We respectfully request that our letter of protest be read into and made part of the official record of your Committee.

Yours sincerely,

JOYCE HELLER,
(And 52 others).

LEWIS AND CLARK COLLEGE,
NORTHWESTERN SCHOOL OF LAW,
Portland, Oreg., February 6, 1978.

HON. ABRAHAM RIBICOFF,
Chairman, Subcommittee on International Trade,
U.S. Senate, Washington, D.C.

DEAR SENATOR RIBICOFF: We, the undersigned, are students in a seminar on Art Law taught by Professor Leonard D. Du Boff at Lewis and Clark Law School. The purpose of this letter is to endorse heartily legislation implementing the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

We believe that this issue is one upon which the United States should demonstrate good faith to the art-rich nations of the world as well as moral leadership to the world's major art importing countries. We feel this may be best achieved through the Senate's passage of S. 2261.

Please include our endorsement of S. 2261 in the printed record of the Senate hearings.

Sincerely,

WINSHIP C. DENTON,
(And 9 others).

770 EL CAMINO DEL MAR, San Francisco, Calif.

Re Bill S-2261.

SUBCOMMITTEE ON INTERNATIONAL TRADE,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SIRs: It is an ill-conceived legislation that begins with a retroactive policing action against the people of its own nation and then proceeds to lay the groundwork for a lucrative international black market with the very materials it would deprive them of. There is no way the U.S. can prohibit illegal excavation in the countries Bill 2261 supposedly would protect when, in actuality, the illegal diggers are nationals of the same countries. Indeed, the gravest loss to ancient art is not thru illegal excavation but due to inadequate maintenance and indifferent governments. Recent visits to Greece and other eastern nations show the very devastating effect increasing smog and atmospheric fouling has had upon such monuments as the Acropolis in Athens. One can only be grateful for the foresight of independent parties that rescued some of this patrimony from the neglect and utter decay in which it lies in its country of origin and glad we are able to go to another country where, preserved with great care, some of that ancient glory can still be appreciated.

Bill S-2261 by precluding entry of cultural material into the U.S. is a threat against the traditional freedoms of our great scientific traditions and advanced American scholarship since it will unjustly diminish the import flow of sup-

portive new material upon which the advancement of these traditions are dependent.

This bill must require an express Congressional ratification of all State Department recommendations and a formal review so the Congress can prevent an insensitive and foolish bureaucracy, interested only in its existence and an extension of its own power, from misusing this "emergency power" for devious political ends totally unrelated to the protection of cultural material.

This is an ill-advised bill and should be defeated. Please enter this letter of protest as part of the official record of your Committee.

LEWIS K. LAND.

KIMBELL ART MUSEUM,
Fort Worth, Tex., February 3, 1978.

SUBCOMMITTEE ON INTERNATIONAL TRADE,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SIRS: Below (inset) is the text of telegrams I have sent to members of the Senate Committee on International Trade who will be hearing testimony on A Bill to Implement the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (H.R. 5643) on February 8, 1978. I would like to request that the text of my statement be printed in the printed record of the hearings.

"Upon careful consideration of United Nations Convention on Cultural Property Implementation Act I urge it not be approved. It will fail in stated purpose because of uncontrolled conditions in other State Parties. It far exceeds obligations required by the Convention. It will result in embargoes against U.S. thereby depriving Americans access to cultural objects. Such properties will divert to all other art importing nations which have no intention of enacting similar legislation. Bill promulgated primarily for political purposes and system designed for control is weighted against U.S. citizens educational interests. It is hypocritical and unfair therefore to newer smaller cultural communities across America. Political insistence on passage despite above reasons against it result in bill now incomprehensible and dubious of equitable interpretation. These absurd complications themselves will inhibit trade in cultural properties because of insecurity about U.S. controls. Lack of built-in recourse to all legal due process discriminates against bona fide innocent importers of cultural properties. At best it is bad lawmaking. I urge courage to draw a new bill protecting cultural properties within U.S. which provides quid pro quo agreement with other individual state parties and therefore enables conformance to U.N. Convention."

With many thanks for your kind attention to this matter,

Yours sincerely,

RICHARD F. BROWN, *Director.*

COLLEGE STATION, TEX., February 2, 1978.

MR. MICHAEL STERN,
Staff Director, Senate Committee on Finance, Dirksen Senate Office Building,
Washington, D.C.

DEAR MR. STERN: I would like to write in support of passage of the bill, which, if passed, would be the "Convention on Cultural Property Implementation Act."

Those familiar with Karl E. Meyer's *The Plundered Past* may recognize my early stand on this matter. About ten years ago, when I was a curator at the University Museum of the University of Pennsylvania, I was asked by the head curator if I would like to publish a hoard of "Trojan jewelry" that the Museum had recently purchased from a dealer. Naturally, I jumped at the opportunity to have such interesting research, and at the same time to enhance my reputation as a Bronze Age specialist.

By the time I had written my article on the jewelry for the *American Journal of Archaeology*, however, I realized that something was terribly wrong:

1. There was no way of proving that the jewelry was authentic, and thus I could have been wasting my time, and also misleading other scholars reading my article.

2. There was no way of knowing if the jewelry was, even if authentic, from the region of Troy.

3. There was no way of knowing if the hoard was, if authentic, even found in the same place, or if pieces from different areas had been mixed together to make

it "more interesting;" in fact, it did point to "relations between Troy and Sumer" that would otherwise have been "unknown."

4. The Museum, by buying the hoard, had in its way encouraged the looting of similar hoards—if the hoard was authentic.

I ended my article, therefore, with the statement that the hoard might not be authentic, and with the plea that museums stop purchasing such things from dealers. The editor of the *American Journal of Archaeology* thought this editorial ending inappropriate, and deleted it. The editor of the *British Journal, Antiquity*, however, learned of the ending from me, and published it as an editorial comment in its entirety. At the time, I feared that my colleagues and the director of the University Museum would be quite angry at me for so opposing established museum practices. I was proud and surprised, therefore, to learn that the University Museum decided that it would purchase no more antiquities that lacked a legal "pedigree."

We knew that this stand would not stop the looting of archaeological sites, but we took what we considered a moral stand for what was "right."

You know, of course, of the rampant looting of sites, as well as museum robberies, throughout the world; during one of the years that I excavated in Turkey, a watchman at the Izmir Museum was murdered by an international group of thieves who stole a coin collection from the museum. Obviously they planned to sell the coins to museums and/or private collectors.

My speciality since 1960 has been the excavation of shipwrecks, especially in the Mediterranean. Because of looting, most easily discovered shipwrecks in many Mediterranean countries will soon have disappeared forever. During a 1973 survey of the Turkish coast, I dived on 17 ancient shipwrecks, and all but one had been looted to some extent; in one case dynamite had been used to break apart the cargo of wine jars. During a survey of the west Sicilian coast I never saw a wreck that had not been looted completely; each site was a bare expanse of sand. Properly excavated, these sites could have revealed a great deal about the history of ship construction, but looters tear the wood apart to get at artifacts.

We know that man was able to cross the Aegean Sea 10,000 years ago. Thus there were sailors before they were farmers or shepherds in the Aegean area, and the study of their watercraft is as important for the study of man's history as the study of the origins and spread of agriculture and domestic animals. We could scarcely imagine man's history without ships: empires rose and fell based on naval battles (Salamis, the Roman defeat of Carthaginians at Sea, the defeat of the Spanish Armada, Trafalgar, Yorktown), and ships made possible the discoveries and colonization of the Americas and Australia. Yet we know far less about these early ships than we do of coins, pottery, architecture, sculpture, etc., of their periods.

The destruction of shipwrecks by looters cannot be stopped by passage of the bill in question, for many of the finds are sold in the countries where the ships lie. But we should start somewhere by taking a moral stand. It is certainly less fashionable now to shoot rare animals in Africa than it was only a few years ago, and we should hope for the day when it is no longer "fashionable" for people to have private collections of illegally excavated objects.

We located with sonar and a two-man submarine in 1967, off the Turkish coast, a wreck lying 300 feet deep that had yielded two Classical bronze statues to fishermen's nets; these statues are in the Bodrum (Turkey) Museum, where anyone can see them; we hope soon to excavate the wreck, thereby dating the statues, which will greatly enhance their value to students of art history. A third bronze, however, was netted at the site and smuggled out of Turkey (in a truckload of oranges, I am told); many of my Turkish friends saw the statue before it left the country. When it finally appears in a private collection or museum, it will have far less true "value" since no one will know if it is authentic, and no one will be able to know its date other than from stylistic guesses.

My colleague David Owen, from our excavation team in Turkey, was invited by Italian authorities to excavate a wreck in the Straits of Messina that had been looted by its discoverers. Some of the priceless bronze statues were recovered by the local authorities, but at least one bronze head made its way to a Swiss Museum, where still a third colleague saw it in the museum storeroom and reported it to Dr. Owen. The museum denied, at first, knowing anything of the statue when approached by Dr. Owen, but later confessed that they "had had it, but had decided not to purchase it." No one now knows where it is. Yet

the shipwreck is well dated by its pottery, and the confiscated statues prove to be earlier than most art historians had dated them on stylistic grounds.

I could write many, many pages about such instances, but these examples will show, I hope, how bad the situation is in the field of nautical archaeology.

Antiquities dealers argue that it is up to the countries in question to protect their own sites and control their export. I am sure that the statue in Turkey could not have been exported without at least some official participation, and it is true that many countries could do more to protect their sites (including the United States; one of General Cornwallis' ships in the York River, Virginia, was badly looted by amateur divers, within sight of patrolling Park Police, before our group began its excavation). But is dealing in stolen antiquities any better than dealing in stolen television sets, just because the dealer did not himself steal them?

Some dealers say that archaeologists are against "free enterprise," as if we were somehow unpatriotic Americans. Nonsense. I believe strongly in free enterprise for archaeology, and all of my work in the past five years has been funded by private sources who want nothing in return but the knowledge that they have helped expand man's knowledge of his past.

This June, 10,000,000 subscribers will be able to read in the National Geographic Magazine about my latest excavations in Turkey, of an ancient shipwreck with a cargo of glass. We are terrified that before we can return to the site it will have been destroyed by looters, for just one of the intact bottles we uncovered (out of over 30) would sell at a good auction in New York for about \$50,000 (according to the former director of a major glass museum who visited us). Before we had even left the site, a Belgian yacht filled with diving equipment came to the bay in which we were working, and then illegally fled the country before the Turkish patrol boat that was following it could catch it. Should 10,000,000 people be denied the right to read about these finds and see pictures of them simply for the personal gain of a few Belgian divers?

Years ago, museums offered the public the only means of seeing antiquities. Today, with mass publications, television, movies, and relatively easy and cheap overseas flights, there can no longer be the same rationale for gathering these materials far from their places of origin.

I write all this as an interested individual, but for identification purposes I am president of the American Institute of Nautical Archaeology (which is actively engaged in field work on four continents), and a professor of anthropology at Texas A&M University.

Sincerely,

GEORGE F. BASS.

WOODLAND HILLS, CALIF., January 16, 1978.

Subject: Art and Antiquities Legislation Proposed Bill: H.R. 5643 (or S. 2261).
SUBCOMMITTEE ON INTERNATIONAL TRADE,
SENATE FINANCE COMMITTEE,
Dirksen Senate Office Building, Washington, D.C.

GENTLEMEN: As educators we emphatically disapprove of the bill proposed by the "UNESCO Conventional on Cultural Property" and wish to enlist your aid in defeating such an ill-conceived measure.

This foreign and politically motivated and instigated bill will result in an embargo and confiscation of ancient and ethnographic art into the United States with many negative ramifications. Because the U.S. is the only major nation considering this dangerous bill, art and antiquities will not be able to enter the U.S., yet these same artworks will continue to flow unabated into European and other world marketplaces at our sacrifice, defeating the plan's very purpose.

If this bill is approved it will most certainly culturally penalize future generations of Americans. It will have compounding negative effects upon the general public and particularly our museums, universities, and art collections (public and private).

Fine Art is for the appreciation and enjoyment of all and it should recognize no arbitrary time framework or boundaries. Art and cultural education should continue to be encouraged through our country's successful "open door" policy, as it rightfully has been in the past. Our present policy must be preserved for our citizens' cultural nourishment and welfare.

Public museums and universities have access to most private collections for objects desired for exhibition. These institutions rely upon donations and long

term loans from collectors, for which we all become the beneficiaries, especially persons of minority extraction seeking their homeland's cultural contributions.

By drastically limiting the circulation of art, this treacherous bill will inevitably result in the:

1. Curtailment of most new acquisitions due to dried up sources.
2. Loss of material to the country of origin, where commonly conservation and restoration is ignored or of very low quality and the objects are poorly displayed, if at all.
3. Reduction of traveling exhibitions, because European museums will be reluctant to release material in fear of confiscation.

As the import country, the U.S. shall suffer due to a gradual loss of interest in the arts and cultural stagnation. Therefore, the defeat of this bill becomes important. Objects collected in good faith by individuals and museums must be allowed to remain with these rightful owners and continue to be exchanged on the international market. Our own great Amerindian and Eskimo art has been allowed to float freely on the world market with no ill effects. Contrary to this bill, our State Department should be fostering the appreciation of art and the dissemination of information to improve international relations.

Acquisition by collectors (both private and public), in fact, has been the preservation of ethnographic art and has also created an international interest and respect for such art—only too often totally unappreciated, neglected and/or destroyed in the very territory of origin.

We believe that our existing laws and practices are generally effective inasmuch as the countries involved have preventative laws and measures. Enforcement is surely their problem and responsibility and not ours! Unnecessary major expenditures upon our part would be required to enforce this impractical bill. The U.S. public should not be required to finance another country's police duties. We certainly do not want to compound the problems of our already understaffed customs people with the enforcement of unrealistic and unnecessary regulations. Their concentration and energy should be devoted exclusively to our nation's cancerous problems, such as narcotics and illegal immigration.

Please note that this bill is misdirected, as it ignores archaeological sites: a key element in the solution to these countries' problems.

Realistically, the crux of the problem is money, and has little to do with their professed idealism. If the few countries involved were sincerely concerned about their "national heritage" they could treat art like other expendible items (oil, coal, gold, fish and game, etc.), declaring their art/antiquities as a "natural resource" for government revenue purposes (detailed plan upon request).

The United States Government has pursued an open door policy which has had the long range effect of enriching our museums with culture created throughout the world. Please aid us in maintaining that policy.

Most respectfully,

ROBERT D. COREY, Jr.
Annual Imports,

ARACADIA, CALIF., *January 27, 1978.*

Subject: Bill H.R. 5643 scheduled for hearings 8-2-78 (Unesco Convention on Cultural Property).

SUBCOMMITTEE ON INTERNATIONAL TRADE,
Dirksen Senate Building, Washington, D.C.:

I am a U.S. Resident born in Lima, Peru; and as such I am very interested in everything that can influence better relationships between our countries, as well as benefitting and improving the way of life down south; whether this may be economically, politically, or culturally.

It is in this last context that I am writing to you to express some ideas that may help during the hearings scheduled for February 8, 1978.

Supposedly the Bill has been proposed to help some foreign countries in order to preserve and protect their cultural (mostly ancient) resources, to stop being shipped to large markets like the US, where they are sold for profitable amounts. I have seen the basic aspects of the proposed bill and I am extremely concerned that if approved by Congress with the articles and wording as it exist now; it will create more problems than solutions, and in my opinion, it will defeat the basic purpose and good ideas behind this Bill.

Suggestions.—From an underdeveloped countries view point, and talking specifically about Latinamericana; I am sure you are aware of the fact that

most of those governments cannot or are not in a position, both economically nor technically, to improve the existing situation of protecting their ancient monuments. They are in a lesser position to take the necessary means of conservation; and they are in a poor situation to develop, upgrade, or improve their technical capabilities on this matter.

As an example I can say that one of the best government museums in Lima, Peru; where Pre-Columbian ceramics and textiles are of a fabulous quality and quantity; have an incredibly low yearly budget of U.S. \$8,000. There collection of textiles are kept mostly in a warehouse where the high humidity and moths are destroying and eating up these beautiful pieces, due to lack of funds to carry on proper measures of conservation, research, and display.

If you visit some of the existing ruins, you will actually find them in ruins because of the same problem.

There are many answers to this problem, one of them is to convince those governments to divert some of their economical resources away from non-productive expenses and into these cultural areas. Another way could be through the Bill that is now being discussed by the Ways and Means Committee before it goes to Congress.

But lets be practical, none of these measures (as they now exist) will solve the existing situation of lack of funds and of technology. The proposed Bill will not change the lack of conservation; and those governments are not going to make the necessary changes due to a Bill passed by Congress nor on their own initiative; unless some additional approach can be built into the Bill.

One way to get down to the core of the problem and make a real and practical contribution could be to include the following ideas in the Bill.

1. Promote Museums exhibitions in the U.S. from these underdeveloped countries; as a means to provide them with additional funds that will go directly into their Museum budget, without being diverted into other government programs. I am sure that an arrangement can be worked with those governments to benefit their museums directly. As an example, a U.S. medium size museum could afford to pay \$5,000 or \$6,000 for a 2 to 3 month exhibition. This amount is close to the yearly budget of the example of Peru I presented before. The exhibition could be arranged to continue to other U.S. museums, therefore obtaining additional amounts (on a one or two year U.S. tour) that will give the foreign museums a working capital to develop conservation, research and technical programs.

2. U.S. Citizens as well as foreigners could take advantage of these U.S. promoted exhibitions from diverse foreign cultures while touring the U.S., thus enhancing a cultural exchange for both people living in the U.S. as well as tourist who are temporary in this Country.

3. Congress could appropriate some funds to promote scholarships to upgrade and train foreign personnel in specialized U.S. Institutions, in museology conservation measures and techniques, etc.

4. Teaching, research, and extension services and programs could be developed in those foreign countries as a result of all these measures.

These are a few suggestions that could help in a practical way those countries who need it most; and will make everybody happy; that is, a U.S. citizens as well as citizens of the so-called underdeveloped world. Other countries of the developed industrialized world will follow the U.S. lead and positive solution; in their own ways and according to their own means and ideology.

- It is in this last context (Ideology) that I have seen quite a lot of discussion with different and sometimes opposing viewpoints among U.S. citizens, who feel that their rights as individuals, to their lawfully or otherwise acquired properties (in the antiquities); is being questioned and probably jeopardized by the proposed Bill.

Not being a U.S. citizen I do not feel it is proper for me to expand on this subject; nevertheless I believe some view points might help. The U.S. is considered by most people of the underdeveloped world, as the bastion of freedom and liberty of ideas, movement, speech, religion, etc.

The U.S. is also considered to be the bastion of free enterprise, of free business, where the laws of offer and demand are applied; where the law respects the individual rights to among other things hold personal properties.

Anything that the U.S. could do in a direction that opposes these ideas is seen as weakness; unfortunately the lack of proper communications and understanding from other countries toward the U.S. creates this simplistic way of measuring the strength or weakness of a country.

I feel that if on top of the suggestions I have previously made (1 through 4), the Bill will propose that in regards to Art and Antiquity of ancient times created by ancient civilizations on foreign countries; the U.S. will respect the existing ownership and free trade of all material which are actually outside of those countries, but will oppose and consider unlawful to bring into the U.S. any material that could be exported (without the consent of those countries) starting a certain date, that could be immediately after the bill is approved by Congress and signed by the President of the United States.

In this manner the U.S. will be contributing tremendously and in a constructive way toward the conservation, improvement, research, and spreading of ancient cultures from other parts of the world; helping those countries to construct a solid income to manage and upgrade their technical capabilities.

Last but not least U.S. citizens will have their rights to ownership and free trade protected, and the U.S. will continue to show determination of good practical sense, as well as reinforcing its ideologies of free enterprise and constructive influence on the world. I do not want to make this letter any longer; if some of these ideas are considered convenient and with proper improvement could be useful during the February 8 hearings, I will feel extremely satisfied on this small and possibly naive contribution.

I am willing to discuss more details and expand some of the above items if it could be of interest. In that case please feel free to contact me at your convenience.

Sincerely yours,

ENRIQUE ESCUDERO.

P.S.—I work with an Engineering Co. with headquarters in Los Angeles. My position is Director for Latin American Affairs. This letter is written as an individual and not as a company employee. It is a personal letter expressing my concern. Could you please have this letter recorded in the hearings.

LOS ANGELES, CALIF., *January 27, 1978.*

Re S-2261.

SUBCOMMITTEE ON INTERNATIONAL TRADE,
Senate Finance Committee,
Dirksen Senate Office Building, Washington, D.C.

If the Senate feels that such legislation has become a necessity for the consolidation of the cultural heritage of any foreign country, then perhaps parallel legislation should be initiated to preserve indigenous American arts. For example: American colonial furniture, Appalachian folk art, all American Indian art, original manuscripts, all American paintings prior to 1978, i.e.—any and all cultural properties made by hand, by American citizens or residents prior to 1978.

The above objects should be banned from international trade and in addition, from interstate trade within the United States of America.

Any artist, living or dead, who wishes to denounce his or her individuality, ownership of property, Sovereign State's Rights, or anything in general and who can prove by publication, exhibition, or by export permits that all of the above is true, and who will swear under oath that their cultural properties will be destroyed or at least not be available to the world, then these properties will be allowed to cross international and state boundaries.

Sincerely,

BARRY A. KITNICK.

LOS ANGELES, CALIF., *January 27, 1978.*

SUBCOMMITTEE ON INTERNATIONAL TRADE,
Senate Finance Committee,
Dirksen Senate Office Building, Washington, D.C.

I am against Senate Bill S-2261.

I find that this bill is controversial and introduces grave moral and philosophical questions concerning our role in the exchange of cultural properties in a free society. I believe that the entire law is suspect and is politically motivated by individuals and institutions who have no understanding of the market in ancient arts, folk art, or the "tourist arts."

Fair distinctions between cultural properties already outside of the country of origin and those properties still in situ have not been made in the wording of S-2261. The constitution of reasonable and facile proof for the individual that individuals outside of the country of origin have owned a particular cultural property prior to this bill is untenable—since such objects, whether publicly displayed or not, are seldom published. Also, distinctions between cultural properties worth several dollars or several million dollars are not made.

To legislate that a difference between public and private property does not exist is tantamount to the repression of human rights.

I believe that S-2261 is dangerous, unconstitutional, and lacking in foresight.
Respectfully.

BARRY A. KITNICK.

WILLIAM H. WOLFF, INC.,
New York, N.Y., January 26, 1978.

Re HR 5643 "The Cultural Property Implementation Act"
Companion Bill S. 2261.

SUBCOMMITTEE ON INTERNATIONAL TRADE,
Dirksen Senate Office Building,
Washington, D.C.

Although this letter might be judged self-serving, as I am a dealer in artifacts, I would like to point out to you some of the flaws of that law.

This law will have no effect whatever on the trade of antiquities if the major art importing countries, Germany, England, France, and Japan, do not implement similar laws. If they do, the purpose of this law might be realized.

In order to propagandize their creating the same prohibition, our law should be made dependent on these four countries establishing the same prohibition.

As the law now stands, we would be able to buy in Europe or elsewhere any antiquity which has been in an intermediary country for more than ten years. This means that an American museum will be able to buy the left-overs, the shelf-warmers, and the third quality pieces which were unsaleable for ten years. Our museums will sink to low level institutions or to dead mausoleums where no interesting objects are ever being added. No new collections will be able to be assembled and be of high quality. The Europeans are looking forward to our instituting this law, as they hope it will leave the market to them.

But the greatest flaw is the words "pillaged" and "stolen". With this law we recognize the argument of the exporting countries that the works of art are either pillaged or stolen, which is not true.

A damaged artifact cannot be worshipped in the Hindu religion or the Buddhist religion, because no idol can be worshipped if not in perfect condition. Only 50 years ago bronze sculptures of highest quality were sold in India for the weight of the bronze, only because they suffered a slight damage after being worshipped for hundreds of years. Only the interest of the Western world raised the value of these objects. An abbot of a temple would sell a damaged piece in order to raise money to repair his roof or repaint the temple.

If we now recognize the term "stolen" for such objects, there is no reason whatever for the exporting countries not to appear at the door of any of our museums and insist that entire collections, assembled with great skill, research, and investment, be returned to the country of origin.

This law as it stands is wrought with flaws and danger and should be rejected.

Respectfully yours,

WILLIAM H. WOLFF.

P.S.—I ask you kindly to include this letter in the printed record of the hearings.

JOHN FORD ASSOCIATES, INC.,
FAR EASTERN ART,
Baltimore, Md., January 25, 1978.

SUBCOMMITTEE ON INTERNATIONAL TRADE,
Dirksen Senate Office Building,
Washington, D.C.

I am making a request that you vigorously oppose H.R. 5643 which implements the UNESCO Convention on cultural property. That bill passed the

House late in the last session. Hearings are now being held before the Senate subcommittee chaired by Senator Ribicoff. I am writing to him as well but hope that you will lend your support at the right time during this crucial hearing period.

As a collector and dealer primarily in Oriental antiquities in the last twenty years, I am concerned that our government may establish another misuse of power. The serious faults in the bill as passed by the House can and should be corrected by the Senate. If they do not, future importation of art works into this country may be eliminated which will surely impoverish the majority of our smaller museums and collectors, as well as having a depressing impact on future exhibitions of art works in this country.

The negative features of the bill are:

1. That it fails to require a multinational response to the problem of art pillage as contemplated by the UNESCO Convention. The House bill is content that our State Department act unilaterally, irrespective of whether other countries request our intervention. Without multinational response, implementation of this legislation will simply divert the flow of art away from the United States to other major art importing countries such as Germany and Japan.

2. The bill contains no mechanism to review arbitrary or improper decisions of the Executive Branch.

3. The Emergency Powers Section (3) grants extraordinary power to the Executive Branch to bar art importation for a period of two years to respond to an "emergency".

4. The documentation required under the bill is so burdensome as to effectively preclude the importation of art works.

5. This legislation fails to deal with certain very oppressive decisions under the National Stolen Property Law.

I have observed through the years, after having visited most of the countries of the East, that U.S. museums, dealers and collectors have performed a great service for the benefit of all art lovers, archaeologists, preservationists and for the promotion of the free enterprise system by protecting and preserving art works which would otherwise face certain neglect or destruction. There is a real practical morality in this observation which should enhance our efforts to see that the door is not shut to art objects by legislative blunder.

Very truly yours,

JOHN G. FORD.

MRS. PAUL FUTTERMAN,
New York, N.Y., January 30, 1978.

SUBCOMMITTEE ON INTERNATIONAL TRADE,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SIR: I am implicitly against passage of bill H.R. 5643. I believe the only result of this bill will be to divert the flow of art to Europe and Japan. I do not think it will have the slightest effect on the problem of art pillage as contemplated by the UNESCO Convention. I strongly urge the committee to take a stand against this bill. I would like to have this statement included in the printed record of the hearings.

Very truly yours,

RITA L. FUTTERMAN.

LAW OFFICES OF SILVER AND McWILLIAMS,
Wilmington, Calif., January 25, 1978.

Re S-2261 "UNESCO Convention on Cultural Property".

SUBCOMMITTEE ON INTERNATIONAL TRADE,
Senate Finance Committee,
Dirksen Senate Office Building, Washington, D.C.

DEAR SIR: It is earnestly submitted that the objectives of the above Bill are contrary to the advancement of culture and human rights in every signatory country, and its enactment would be injurious to the progress of civilization. There are existing laws in every nation pertaining to the theft of private and public property and these laws should be enforced and honored. Especially, there should be increased efforts to prevent desecrations and thefts at archeological and religious sites.

Some countries have enacted laws which prevent the exportation of substantially all cultural objects, whether they are privately or publicly owned, or laws which in effect declare all cultural objects to be public property. We should not honor those laws to the extent that they are inconsistent with what we recognize as "public property" in the United States, anymore than we would recognize here a bigamous marriage or a confession obtained by torture, although legal elsewhere. Our public policy should continue to be that of freedom of cultural interchange.

Cultural interchange is vital to democratic societies. Those nations which have prevented or censored the introduction, circulation, and exit of the cultural products of their own and of other nations, have caused cultural stagnation and repression in their own people. It is not coincidence that those nations which repress cultural exchange also repress human rights.

The people of this country have benefited tremendously from the introduction of other cultures, and other cultures have benefited from ours. Is the next step to nationalize, insofar as exportation, all cultural objects in each and every country so that all countries may be culturally isolated from each other? Who is to say that we have had enough benefit and that the introduction should be stopped? Those museums, especially in the Eastern United States, which have accumulated great collections, can be holy and magnanimous. What would their attitudes be if the introduction of foreign cultural objects had been stopped seventy or fifty years ago? What would our country be without the presence and influence of Oriental, European, Meso-American, Middle-Eastern, African, and other art and cultural objects? Is an occasional traveling exhibit of a few cultural objects a sufficient exposure for healthy interchange?

Also important, it has been the appreciation of other cultures and of their products which has most frequently caused those cultural products to be saved, preserved, and esteemed by all peoples, including those of the countries of origin. If African, Oceania, Pre-Columbian and other cultural and tribal art objects had not received acclaim from artists, museums, and collectors of the Western World, many of these objects would have been destroyed or left to deteriorate by the societies which were rushing away from the concepts which had created those objects. Donations from private collectors provide a continuous flow of these cultural objects into museums, where they develop pride in our people who have antecedents from the countries of origins, and create respect in our other groups. Some of these museums have donated or exchanged items with museums in the countries of origin, and there is every reason to believe this will increase in the future, if there remains a climate of international cultural freedom and interchange.

It is urged that S-2261 is a short-sighted and dangerous law.

Most respectfully,

EDWIN SILVER.

SUBMISSION OF JAMES M. SILBERMAN, A.S.A., CONSULTING MUSEUM
CURATOR, WASHINGTON, D.C.

A. PROJECTED STAFFING AND BUDGET REQUIREMENTS TO IMPLEMENT H.R. 5643

1. *Budgeting and manpower experience upon which projections are based*

The staff and cost projections below are based on over 30 years of experience in Federal agency budgeting and manpower projections at senior policy levels of the Agency for International Development (State), Department of Labor, Peace Corps, for the Office of the President, and by inter-agency agreement for the Department of Defense. Also, the projections on the movement of art objects is based on my professional museum services performed for 32 museums and art foundations in the past ten years.

2. *Program workload to implement UNESCO convention*

Approximately 71,000 covered cultural properties are estimated to be imported annually into the U.S. from 13 geographic regions as follows:

<i>Region</i>	<i>Annual Imports, in Objects</i>
Central America.....	5,000
South America.....	4,500
Sub-Sahara Africa.....	10,000
North Africa, Egypt, and Ethiopia.....	5,000

Region	Annual Imports in object
Mediterranean	9, 000
Central Asia.....	2, 000
India, Pakistan, Afghanistan, and Nepal.....	8, 000
Indo-China Peninsula.....	6, 000
China and Japan.....	4, 000
Oceania	2, 500
Europe	10, 000
Canada and N. American Indian Tribes.....	2, 000
Indonesia, Malaysia.....	3, 000

For workload and manpower projection purposes, imports are calculated to enter the U.S. in lots of 12 articles. The 12-lot figure does not affect or alter calculations.

3. Section-by-section projections of manpower needs

(a) Section 2

Functions:

(a) Preagreement determinations..

(b) Post State Party request notifications, reports to the Committee, recommendations of the Committee.

(c) Reports to Congress on Agreement texts, differences between Agreement and Committee recommendations, and reports on non-agreements.

Manpower requirements:

	Positions
2 professionals for each of 13 geographic regions.....	26
8 clerical (at rate of 1 for 3 professionals).....	8
Subtotal	34

(b) Section 3 and section 9(a)

Functions:

(a) Designation of materials covered by State Party Agreements.

(b) Agreements on controlled objects..

(c) Provide cultural object expertise to the general staff.

Manpower requirements:

	Positions
3 professional art specialists per region, to cover all sub-regional cultures, styles, objects, and object variants (3 x 13).....	39
12 clerical (at rate of 1 to 3 professionals).....	12
Subtotal	51

The above projection is based on an estimated inclusion as covered cultural objects of half of the 71,000 imported articles, falling into about 56,000 different object-style categories.

(c) Section 4(a)

Function: Cultural Property Advisory Committee.

Manpower requirements:

	Positions
1 Coordinator plus 11 members at one-third time (professionals).....	5
4 clerical.....	4
Subtotal	9

(d) Section 4(b)

Function: Advisory Committee Staff. Committee reports on State Party requests, actions, properties covered by agreements, time periods for agreements; Committee disagreement reports.

Manpower requirements:

See Secs. 2, 3 and 9 staffs.

Subtotal	0
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(e) Section 4(e)

Function: Committee continuing review of agreement effectiveness and recommendations on changes.

	Positions
Manpower requirements:	
Field operation evaluators.....	8
4 clerical (at 1 per 2 field staff).....	4
Subtotal	12

(f) Section 5

Import restrictions: (Calculations are on the basis of average 12-article import lots.)

Function and Manpower requirements:

Man-hours:

5(a) Documentation check of lawful exportation.....	6
5(b) 10-year period evidence or alternative option check.....	6
5(c) Verification of identity of property in evidentiary publication....	12
5(d) Bonding arrangements—16 manhours applied to 25 percent of imported lots.....	4
5(e) 90-day period correspondence, negotiations, verification, determination—320 manhours applied to 25 percent of imported lots....	80
5(f) Appeals, reviews, court litigation—160 manhours applied to 20 percent of imported lots.....	32
Total manhours.....	140

Professional positions:

Converting manhours to positions: All imported properties of 71,000 ÷ 12-lot units = 5,917 import units. 140 × 5,916 ÷ 40-hour workweek ÷ 224 weeks/year =	92
Clerical staff (at 1 to 5 professionals).....	20
Total positions.....	112

(g) Section 6: Stolen property controls

Functions:

Control of entry.

Inventory of stolen items and inventory of institutions affected.

Coordination with museums, dealers. Interpol, collectors, police.

Manpower requirements:

	Positions
Professional	8
Clerical	3
Subtotal	11

(h) Section 7: Temporary disposition of cultural articles or properties

Functions:

Canvassing multiple museums to find placement.

Negotiations on placement.

Investigating museum eligibility.

Safeguard assurances.

Bonding and insurance arrangements

Manpower requirements:

Professional manhours per 12-lot group.....	80
Clerical manhours per 12-lot group.....	40

Total manhours per group..... 120

Basis 120 manhours × 5 percent of all imported groups: 120 × .05 × 71,000 ÷ 40 ÷ 224 = 48 positions.

(i) Section 8: Seizure and Forfeiture

Functions:

8(a) Legal provisions for seizure, judicial forfeiture and condemnation.

8(b) Offer return to State Party, arrangements, packing, certification, audits.

8(c) Alternative dispositions.

8(d) State Party reimbursement arrangements.

8(e) State Party recovery without reimbursement.

Manpower requirements:

Seizure and forfeiture manhours per lot:

Professional	160
Clerical	80

Projections at 2 percent seizures of total imports: Manhours 240
 240 manhours $\times .02 \times 71,000 \div 40 =$ subtotal of 38 positions.

(j) Section 9: Evidentiary requirements

Functions:

9(a) Listing all associated categories of controlled objects
 9(b) Listing all closely comparable but excepted objects to make positive the identity and determination of controlled objects.

9(c) Listing and maintaining stolen and museum inventory property.

Research, technical selection of broad style-object categories, descriptions, photography, editing, make-up, periodic maintenance of this manual. (Excluded are data on ranges of objects in categories and variances.)

Analysis indicates all 13 regions possess about 56,000 basic object categories, of which 50 percent will be contained in "included and comparable" categories.

All above functions per entry—

Hours profession.....	4
Hours clerical.....	2
Hours publication.....	2

Total manhours/entry..... 8

Manpower requirements:

8 manhours $\times 50$ percent $\times 56,000 \div 40 \div 224 =$ subtotal of 25 positions.

B. SUMMARY

<i>Personnel Requirements:</i>	<i>Positions</i>
Section 2.....	34
Sections 3 and 9(a).....	51
Section 4(a).....	9
Section 4(b).....	12
Section 5.....	112
Section 6.....	11
Section 7.....	11
Section 8.....	38
Section 9.....	25
Subtotal staff.....	340
Plus 20 percent State overhead supervision.....	68
Total positions.....	408

Budget: $408 \times \$19,279$ (average State/Customs/Justice salary).

Salaries	\$7,865,832.00
Plus 80 percent for benefits, travel, rent, printing, other services, supplies and equipment.....	6,292,666.00
	<u>14,158,497.00</u>

Thus, \$14,159,497.00 is the projected annual cost to implement the UNESCO cultural property convention, with a minimum staff of 408 persons.

This is 86 percent of the non-grant cost of the National Foundation on the Arts and Humanities in 1976, which was \$16,400,000.00.

SUPPLEMENTAL STATEMENT OF JAMES M. SILBERMAN

Re impact on U.S. museums of the short-term destructive effects of H.R. 5643 on American antiquity galleries.

The relationship of U.S. museums and the long established U.S. antiquity gallery industry is one of close interaction, interdependence, and mutual benefit.

The rapidity with which H.R. 5643 will destroy the largest part of the in-

dustry—within 3 to 5 years—will have corresponding adverse effects on American museums and the American public they serve.

The present bill has a number of provisions which are incompatible with the economic realities of both museums and the gallery industry and which will threaten (1) the continued existence of this industry, (2) the building of serious art collections they make possible, and (3) the eventual donations of the art to museums in every State of the Nation.

If passed, the bill will have ever widening consequences in choking off the cultural patrimony of our nation.

It is not solely the continued existence of the antiquities gallery industry that concerns the American Museum. It is the chain effect which H.R. 5643 will produce.

The loss of the largest part of the industry, like the precipitous fall of investor confidence in a recession period, will bring art collecting in these fields to a halt.

Interest in the collecting, purchase, and donation of these art objects will disappear.

As has already happened since the U.S. treaty with Mexico and the failure of the State Department to take equitable action after the Mexican government abrogated the treaty provisions, the reaction of U.S. collectors will be bitter.

Instead of continuing to donate the remainder of their collections to U.S. museums, they will send them off to Europe to be sold—as they have already done in reaction to the Mexican treaty morass.

The patrimony laws of most other nations leave virtually no hope for any exchange of art in trade in the foreseeable generations.

In contrast, the exceedingly small populations in prehistoric and historic North America and Eskimo populations left us with an American cultural patrimony minute in size, in contrast to the size of the cultural patrimony of Latin America, the Mediterranean, Asia, Egypt, and Africa.

Yet we continue to export the little we have, while seeking to exclude that of other nations to the point where there is more of our patrimony abroad than in the U.S.

With respect to the economics of the U.S. antiquities industry, the most serious deficiencies of H.R. 5643 are in the prospective 5 to 10 year periods in which American adherence to the Convention will continue prior to review of the program by the Congress and prior to any predictable corrective action by the State Department.

By the time such review will be made, the largest part of the antiquities industry will have been destroyed.

The following are the economic factors determining the continued existence of the industry:

1. The average turnover of inventory in the typical antiquity gallery is within 3 calendar years, with annual sales approximately one-third of inventory.
2. Importation into the U.S. historically accounts for an average of 60 percent of the inventory purchased by galleries in a given year.
3. Only some 10 percent of the objects sold in a given year return to the marketplace for resale; the remainder go into permanent collections and donations to museums.
4. Less than 5 percent of total world-wide inventory of galleries outside the U.S. which furnish objects for importation to the U.S. gallery industry has provable provenance of 10 years or over.
5. Thus in 5 years time—the shortest period now under consideration under the bill for review of the proposed import restrictions—galleries will be able to replenish their inventory by 25 percent rather than the 167 percent necessary to maintain business viability. Under the proposed bill the gallery owner will be able to import only 5 percent of the available objects (see paragraph 4) for each of the 5 years, or a total of 25 percent. In contrast, to maintain his inventory, he must import 33 percent of the inventory in each of the 5 years, a total of 167 percent.
6. The small business structure of this industry; the capital short situation of the average firm; the high interest cost of maintaining excessive inventory; and the shortage of inventory stock throughout the world preclude pre-stocking to maintain business life through the 5 years prior to possible correction of inequities in the bill.
7. Gallery art stock will decline 55 percent of the normal one-third of inventory usually imported and produce an inventory shortage of 18.3 percent the first year of the bill.

8. There will be another 18.3 percent shortfall the second year and a 18.3 percent loss the third year accounting for a cumulative shortage of 55 percent of inventory after 3 years.

9. This will leave the average gallery with an untenable inventory of less than half that normally required to support his operations, and this remainder inventory will consist of the less saleable items.

10. Since the typical establishment is very small scale industry and lacks any capital reserve, it is clear that in 3 to 5 years the large majority of firms will be forced out of business by the bill.

11. Only a very small percentage of firms can continue for a longer period to await possible corrective action by the Congress or repeal of U.S. participation in the UNESCO convention.

12. In equity to American Museums, American antiquity collectors, and the American antiquity industry the bill should be revised to:

(a) provide for annual review by the Congress and GAO.

(b) each State Party agreement with State should be concluded only after notice, open hearings, and a reasonable period for implementation and the preparation of evidentiary documents.

(c) If after 2 years, France, Great Britain, Belgium, the Netherlands, Italy, and Switzerland do not join the convention, U.S. adherence should automatically be limited solely to stolen cultural property and stone appurtenances of monumental structures.

BROWN UNIVERSITY,
Providence, R.I., January 24, 1978.

Re written testimony in support of S. 2261.

Mr. MICHAEL STEEN,
Staff Director, Senate Committee on Finance,
Dirksen Senate Office Building, Washington, D.C.

DEAR SIR: The Senate should pass S. 2261 as enabling legislation in support of the U.N. Convention on illicit traffic in cultural property, which, you will recall, was unanimously ratified by the U.S. Senate on August 11, 1972. The participation of the U.S. is important not merely on moral and academic grounds, but in order to make the U.N. Convention meaningful; this is the case because of the predominant role that our country plays in the world-market for such materials.

Opponents of the House version of the bill (H.R. 5643) laid heavy emphasis on the value of letting Americans appreciate the technical and esthetic heritage of other peoples throughout the world. I heartily agree. Unfortunately, they neglected to mention what I consider a much more fundamental aspect of that value, namely: letting Americans appreciate those heritages in a way that communicates meaning beyond the mere esthetics of the artifacts. What is at stake here is not merely the proprietary claim of populations to the patrimony that reflects their ancestral background. What is at issue is nothing less than the wholesale destruction of unwritten chapters in the history of mankind!

Enclosed is a copy of an article I wrote on this subject a few years ago, based on long-term intensive study of the illicit traffic in antiquities (in Costa Rica, while I was a "Fulbright scholar"). The crucial point, with reference to S. 2261 is that: "irreparable damage is done in looting the past, [and] . . . restrictions can probably be more effectively imposed among consumers than among producers."

Sincerely yours,

DWIGHT B. HEATH,
Professor of Anthropology.

[From *American Antiquity*, July 1978]

ECONOMIC ASPECTS OF COMMERCIAL ARCHEOLOGY IN COSTA RICA

(By Dwight B. Heath)

(Abstract: Illicit excavation of archaeological materials for sale to collectors and museums is widespread and damaging. Details on the scale of this activity in Costa Rica are discussed, as well as various ways in which it affects the economy and life-style of the contemporary population. Department of Anthropology, Brown University, September, 1972.)

GRAVE-ROBBING and the collecting of antiquities are activities that can be traced throughout much of the span of written history; and as disturbing as the idea may be to archaeologists, I see no reason to doubt that they were practiced on a smaller scale in prehistoric times as well.

It is clear that everyone who has an interest in archaeology as a historical enterprise shares a deep concern for the irreparable damage that is done in looting the past—scientific damage in terms of destroying potentially important clues to prehistory, diplomatic intercultural damage in terms of creating ill will among peoples of different nations, and so forth. As a culture historian and sometimes archaeologist, I deplore illicit excavation and traffic in antiquities as much as anyone. At the same time, as a social anthropologist, I am concerned to understand the functional values that such a widespread and large-scale pattern of behavior must have, in view of its persistence and diffusion, even in the face of legal as well as moral sanctions.

It is obvious that, rightly or wrongly, prehistoric artifacts have become economic goods. In these terms, it makes sense to speak of production (by commercial archaeologists), distribution (by dealers), and consumption (by collectors and museums). The functions that this illicit trade serves for the distributors appear obvious—immense economic gain is undoubtedly primary; prestige, good-will, and standing among colleagues and clients may also be involved; subtler interpretations I leave to others. Similarly, few would question that for the consumers, the trade functions to satisfy aesthetic, acquisitive, prestige, competitive, and perhaps other needs. For the producers, economic functions are obvious, but on the basis of a year's research among the producers in Costa Rica, I feel that the importance of this—and the presence of other values—is often underestimated, even by otherwise knowledgeable people who have had no significant contact with this business at what is, quite literally, the grass-roots level.

It has been interesting to read in the recent rash of newspaper articles on this subject the wide range of estimates of the "value of the trade" to a particular country, but I have not yet seen any basis for such estimates. What I have attempted to do in this paper is simply to show the variety of ways in which the illicit trade in antiquities affects the economic structure and life-style of the population in one Central American nation, and to suggest some conservative and plausible extrapolations from specific quantitative data.

Costa Rica has been recognized for more than 50 years as a meeting-place of styles, media, and other influences from 2 major zones of pre-Columbian "high civilization" in the Americas. Nevertheless, scientific archaeological investigation has been carried out there on a scale that is insignificant in comparison with work done in Mesoamerica to the north or in the Andean region to the south. The relative lack of research—and associated publications, exhibitions, and general publicity—is one of the reasons why Costa Rican antiquities do not enjoy the broad popularity or command the enormous prices paid for materials from Peru, Guatemala, or Mexico, even when they are comparable in technological sophistication, aesthetic impact, age, size, uniqueness, condition, and other factors that generally affect values in this peculiar international market.

Even so, this little country has more huaqueros (which can be translated crudely as "grave-robbers," euphemistically as "commercial archaeologists," or, conveniently as "looters of the past") than there are professional/scientific/academic archaeologists in the entire world! I call it a little country literally and with no deprecation—its 19,600 mi² make it comparable to New Hampshire and Vermont in area, and its 1.6 million people make it comparable to Detroit, Michigan, in population. The illicit trade in artifacts probably totaled at least U.S. \$500,000 in 1968-69; only 10% of the country's manufacturing establishments produced as much! The roughly 4400 people involved are almost exactly 1% of the total economically active population and more than twice the number of medical personnel in the country (including M.D.'s, nurses, dentists, and pharmacists as well). It is, in crass economic terms, a profitable kind of industry for a predominantly agrarian nation—nearly 70% of the sales are to foreigners, and that infusion of wealth gets remarkably well spread around through wages, royalties, commissions, film-films, graft, and other kinds of exchanges.

It is important for me to explain briefly the quality and sources of my data. There are no "official" statistics on huaquerismo; in fact, illicit excavation is an offense against the Republic, as is the exportation of antiquities without a permit (although permits are easy to secure and inexpensive, roughly 95% of the foreign trade I know about was smuggled out). The data were compiled, bit by bit, on the basis of a huge number of specific events that I observed while I was

visiting Professor of Anthropology at the University of Costa Rica (under the auspices of the Fulbright-Hays program), conducting close and sustained research on various aspects of huaquerismo. This involved some documentary investigation and interviews, but the predominant method was participant-observation, or more precisely, participation-as-observer. This does not mean that I "became" a huaquero and took an active part in illicit excavation, but that I made friends with as many huaqueros as I could, generally "hung around" as much as possible in various phases of the trade, asked a lot of questions (in an informal conversational manner), and kept my eyes and ears open. I make it clear from the outset that I was a North American and an anthropologist, that I had done some systematic archaeological work, that I deplored unsystematic excavation, that I was "making a study, trying to understand what huaqueros do, and how and why." Without going into details concerning approaches and rapport, suffice it to say that, however curious my status may have been, no one in the business declined to talk with me at length. Few showed any reluctance to let me see and hear their various illegal or other "shady" activities, and many even took extraordinary pains to provide information or experiences that were important in rounding out the picture. Geographic breadth, historical depth, and specific detail on such varied fronts as techniques of exploration and excavation; methods of repair, restoration, and falsification; channels for marketing; patterns in which the goods were found, and theories about them; considerations in determining prices (from the initial asking price through successive changes due to commissions, haggling, and so on); aesthetic judgments and technological expertise; the "psychology" of the various individuals—and types of persons—involved; the quasi-genealogical links among huaqueros based on teacher-apprentice relations were given. It would be absurd to say they were always frank and honest, but misrepresentation was never commonplace, and quickly lessened as they learned that I was "learning the ropes," and not just trying to buy things cheaply. My peculiar position made me "friend of both god and the devil"—that is a common phrasing of the fact that I enjoyed cordial relationships (and often very detailed confidences) of such "natural enemies" as the museum staff, university professors, the men who actually seek out and dig antiquities, the dealers, the police, and so forth.

Throughout my study. I kept track of all those instances where antiquities changed hands for prices over 50 colons (approximately U.S. \$7.30). I have not yet reviewed those data in full, but it is noteworthy that during the first 2 months, those instances, involved \$235,000 (more U.S. \$35,000). Using those as "average months" would justify the *extremely conservative* extrapolation to an annual value exceeding \$1.40 million, or about U.S. \$250,000. Most illegal businesses are like icebergs, however, with the major volume below surface—it appears to be the case in this connection, as illustrated in some of the "big deals" that came to my attention later in the year, including one that apparently was worth more than all those I had witnessed in my first 2 months. The biggest shipment that I know of took place during the so-called "new control" of 1969, when a special crackdown was supposedly in force. It comprised 732 pieces, weighed 1465 kg when packed, and was insured for U.S. \$80,000. To be perfectly frank, I expected the shipment to "disappear" conveniently in transit, the fact that it did not and that the high insurance premium was thus "lost"—rather than being repaid with interest—I take as a strong indication that the "true value" of the goods may well have been not too much below the \$80,000 declared.

A couple of other cases (not in my 2-month sample) illustrate the scale of operations that I found amazing. Two men took gold and jade to New York on consignment; they spent 30 days "living high" (spending nearly U.S. \$7500); paid off U.S. \$11,500 to the 6 huaqueros who had entrusted them with the goods, and each of them still had U.S. \$4000 (that is, a month's profit of U.S. \$7750 each!). On another occasion, the same men operated in a very different but also effective way. Having invested U.S. \$650 in buying gold in Costa Rica, they spent 60 days selling it in New York (and spending "only U.S. \$3,000"), returning to San Jose with \$3,800 each (or, a margin of nearly U.S. \$1,535 per month each).

This kind of information raises serious questions about the validity of averaging over time. For obvious reasons, I can lay no claim to exactness, but I suggest that my original extremely conservative estimate based on relatively small-scale transactions observed early in the research be doubled, in which case looting the past would be a U.S. \$500,000 industry. Whether that sum is literally true is, in a sense, beside the point; it certainly appears not to be inflated. Another

computation, for the month of the "big shipment," yielded nearly 3 times as many transactions and nearly 8 times the value of those first 2 months! What is important is that even these fragmentary data reveal a broad system of distribution of wealth, in which commercial archaeology is an important part of the economic system of Costa Rica—particularly in the impoverished rural northwest. In the sample of transactions that I have analyzed in detail so far, around 70 percent of the sales were to foreigners, with over half of the total being to collectors and dealers in the U.S. That was prior to the "Cultural Olympics" (held in Mexico, in association with the International Olympic Games) where an impressive loan exhibition was expected to stimulate a broader market for Costa Rican antiquities, some of which (especially ceramics) seem to be more esteemed by local collectors than by people abroad. Within the capital city there are about 25 "major collectors"—by which I mean people whose collections might value U.S. \$10,000 or more. (I hesitate to assess large collections, but one was recently sold to the government for an undisclosed sum, consistently rumored in the local press to be U.S. \$1,500,000.) Obviously, this is big business—in a country where the annual budget of the National Museum (combining art, natural history, and history, as well as anthropology) was only U.S. \$50,000 that year.

The superficially simple question, "How many people are involved?" is truly complex. The business involves not only the huaqueros, the men with shovel in hand (many of whom are also part-time carpenters, farmers, truck-drivers, and so forth), but also "dealers," "collectors," and "the Museum." For that matter, even that classification is slippery, since some "collectors" are also amateur huaqueros in the sense that they occasionally dig, and "dealers" in the sense that they are ready to sell pieces to any visitor who admires them. Furthermore, many of the huaqueros become "dealers" when they arrive in the city with their merchandise; and a few members of the Museum staff and administrative board buy and sell archaeological pieces, although that is illegal.

In a couple of recently published papers, I explained in detail how I arrived at a fairly confident estimate of 4330 as the likely number of huaqueros active in Costa Rica in the 1960's. In this connection, it was a surprise to me that the evidence supported my informants in the trade; I at first thought their estimates of "3000" to "5000" extremely exaggerated. However, working from permits issued by the National Museum—omitting those known to be other-than-huaqueros, and extrapolating with consistently conservative indices that were developed on the basis of extensive and intensive interviews with a select sample of 74 known huaqueros, I am satisfied that 4330 is close to the number of huaqueros, and I need add only a couple of specialists in restoration, a dozen dealers, and as many "runners" (who are often middle-men in the final sale of expensive pieces), and sundry policemen, customs agents and shippers who take large bribes, to arrive at the round figure of 4400 for those Costa Ricans who derive more than half of their income from the traffic in antiquities.

To put these figures in perspective, we are talking about a country where a recent presidential election was lost (or won) by 1000 votes, where there were only 740 M.D.'s and 200 dentists; and where only 80 manufacturing establishments had more than 50 employees. We are speaking of a region where a family of 5 can meet the rent on a tiny hut and eat rice and beans (the staple foods) on about U.S. \$34 a month, but where an unskilled laborer must be both industrious and lucky to earn much more than that, and where the highest paid teacher earned U.S. \$102 a month. In such a situation—however unfortunate the consequences—it is quite understandable why huaqueros speak of antiquities as "the national patrimony," *not* meaning by that an invaluable and inviolable heritage, but rather a rich resource to be exploited, as minerals are mined, and why they were not dismissed as absurdly egocentric when they protested restrictions on excavation as economically unsound in view of the impact those restrictions would have on both unemployment and the balance of payments.

It would be misleading to speak of "typical" excavations without first noting the considerable range of variation. Small-scale operators include the homesteader who accidentally discovered a pit while farming. He now spends part of his weekends casually digging up everything within 100 yd of his house, selling whatever he finds to a nearby rancher, who just happens to like them as curios but has no idea of their market value. Over 5 months time, the homesteader earns about as much as he would have by "hiring out" at normal day-wages, but is happy to have been able to do it "on his own time," and right near home. Similarly, one old timer regularly comes out of the Talamanca Mountains twice a year, with enough pre-Columbian gold to let him live high for a week in the capital,

and then to underwrite his minimal expenses for months he spends alone in the jungle.

At the other end of the scale, all huaqueros savor the recollection of the "big strike"—when 3 men got gold worth U.S. \$12,400 in a single day, and the same men got U.S. \$13,800 worth in the next 4 weeks; that is about U.S. \$8735 for that month for each of them!

The most complex dig did not pay off nearly as well, and better reflects the facts that looting the past is not always easy money, and that the investment is widespread. Tools and equipment for an experienced huaquero (as dig foreman) and for 2 unskilled peons cost about U.S. \$120 (and have a life expectancy of about 3 months); wages for the peons were U.S. \$2.35 per day (double the standard wage for unskilled but legal work—plus food and cigarettes, worth about U.S. 60 cents a day)—that is U.S. \$34.40 weekly for the 2 whose job was just to move rocks and dirt as fast as possible. The foreman was one of the most experienced huaqueros in the country, widely esteemed for both his archaeological know-how and his (relative) honesty; his salary was U.S. \$83 weekly. At least once a month, interested friends provided transportation for the sponsor (and, on the return trip, prime material from the site) at no more cost than gasoline and a couple of meals—about U.S. \$6. Intact pieces were washed by a long-time employee "inherited," with the shop, from the sponsor's father. The employee was dull but honest; his skill in occasionally repairing jewelry more than covered his small wage; the low rent of the small salesroom was similarly covered by occasional sales and repairs of jewelry, a desultory business running on nothing more than the habit of a few old timers who didn't realize that the man who sponsored the dig (Enrique) was making no effort or investment to sustain the reputation that his father had established for the shop. But there were many and substantial "hidden costs." Enrique had confided to one of the peons that he should pocket any gold or jade that he found, so that the landlord and the dig-foreman wouldn't know, and Enrique negotiated clandestinely with him for the "premium stuff" that was hidden. I was amazed the first time I saw him pay U.S. \$130 for such a cache—to be sure, within a week he had realized a 500% profit on that sum, but he boasted as if it were *net* gain, ignoring the fact that he had sustained that much in costs in supporting the dig that month.

The plot still thickens! By this time, you will probably have guessed that Enrique had a similar arrangement with the dig-foreman, and paid a bonus for exceptional pieces (including ceramics and stone) that he hid—not from the peons, but from the landlord. The reason for this was that the landlord had been promised a royalty of 50% of the value of whatever came from the site—needless to say, he saw only little of it, and was underpaid for that, accepting in ignorance and good faith the absurdly low appraisals Enrique made. Even with all the deception, however, the landlord got U.S. \$50–\$200 a month—more than the market value of the land! It should be no surprise that the national police also came in for a cut—the chief of the local detachment got a regular U.S. \$140 a month to ignore the dig—about double his salary. After a few months, however, he began confiscating choice pieces whenever he visited the site, and had a little success selling them. (His model was presumably a captain in the provincial capital who impressed everyone by flying to Switzerland with the pieces that he had amassed over a year's time and bringing back goods and a change in life-style that make his boast of a U.S. \$47,000 sale seem wholly credible.)

The restoration of broken pieces—in both stone and ceramic—is in the hands of a few craftsmen (I am tempted to say "artists") who enjoy considerable prestige, as well as the convenience and satisfaction of working at their own pace at home, and earning incomes that compare favorably with those of middle level bureaucrats—increasing the overhead of dealers who selectively invest in restoration.

Pieces were exhibited in Enrique's shop and sold to anyone who offered to buy at a good price, but at least as much business was done out of the shop by "runners"—middle-men who know the special interests of local collectors, and take appropriate pieces to them, in exchange for a commission of 10%—the seller sets a minimum base price (most runners try to get more and pocket the difference).

In listing the overhead costs of a fairly large and long-term dig, I do not mean to imply that it was unprofitable. To be sure, the curious cost-accounting of the sponsor overlooked many of those costs, so that he was genuinely bewildered when, at the end of nearly every one of the 8 months, he was nearly broke—but he ate and drank lavishly during those brief periods when he did

have cash, and enjoyed buying and selling, the leisure he shared with others, and the zest of his quest for the elusive "El Dorado."

Few digs last that long; however; more often 1 or 2 men will expore for a week or 2, dig at a promising site for a couple of weeks, and return to the capital—whether disgusted and empty-handed, or with goods to sell and tales to tell during a few weeks' break. During the year when I was there, more than 30 such ventures varied in outcome from losses of nearly U.S.\$200 (in connection with which the men themselves stressed almost equally the discomfort of heat, thirst, insects, and snakes) to profits of thousands of dollars (in which event the sufferings, which are realistic enough and not just melodramatic, tended to be much less emphasized). The crucial point for our purposes is never to lose sight of the fact that each of these men, virtually without exception, earned more from looting the past (in any 6-month period) than he could have earned in any legal activity. And they view huaquerismo as a kind of mining—certainly not a criminal activity. Illegal only for the last few years, it is at worst a "crime without victims" in their eyes, and there has been little effort (in contrast with Mexico, for example), to convey to them the loss that "science" or "future generations" will suffer.

There are also some who do no exploration, but who just do desultory digging when they have free time or when they want quick cash. Rather than explore for virgin sites, some men regularly "poach" on known sites, or buy from farmers who accidentally find the pieces but do not know their value.

Apart from the monetary gains, there are other less obvious rewards connected with commercial archaeology. Most of the men involved are not just gamblers but also philosophers: they cherish their independence and freedom "to come and go as we please," and to "have no boss"; show a real devotion to "the hunt," and sometimes even evince remarkable appreciation of the aesthetics of the material (an appreciation which sharpens rather than dulls their enthusiasm for selling, I hasten to add).

The idol of the runners and the dealers is a man who made such a success at selling antiquities that he abandoned his outstanding law practice to devote full time to the business. He makes 2 or 3 trips a year to the United States; freight rates are cheap, and so are Costa Rican customs officials, so pieces are flown to him in Miami where he has a station wagon, in which he tours the country for 2-3 months at a time, visiting collectors and museums for whom he often gets specific kinds of material on request. He is one of the few people in the business who declined to give me any economic data. Similarly, a former member of the staff of the National Museum who is generally recognized as a knowledgeable authority on the authenticity and age of artifacts, is said to sell regularly to visiting foreigners; he claimed that his many purchases are "just for my collection," and asked me not to quote any of his detailed discussions about the museum and about huaquerismo—a limitation that I deeply regret but that I honor nevertheless.

Intimately associated with the traffic in antiquities are a variety of other shady dealings. Flim-flams that came to my attention were perpetrated by only a few of the huaqueros, and were deplored by most. In 1 instance, a North American businessman was enticed into underwriting a dig (to the tune of U.S.\$835)—his "working-partner" went to the lowlands for a month of carousing and returned outwardly disappointed and apologetic but inwardly chuckling, with about U.S.\$60 worth of run-of-the-mill pots and a story that someone else had inexplicably beat him to it, although he had earlier characterized the site as incredibly rich and utterly secure. Another North American had just bought some valuable jade, with the assurance that he could, with impunity, just take it out of the country in his suitcase; less than an hour later, he was "shaken down" by a supposed "plain clothes policeman" who visited his hotel room and threatened to arrange for his arrest if he didn't pay U.S.\$100. On another occasion, a North American was in fact arrested in a similar situation, and the U.S.\$3500 worth of jade that the police confiscated has apparently not yet found its way to the National Museum (as it should), although the case was closed a year ago.

The traffic in fakes deserves a monograph in itself—for the moment, let me just mention a completely falsified pot that brought U.S.\$2400 from a North American; then, adding insult to injury, a copy of that fake brought U.S.\$1000 in Panama.

While discussing the "easy money" side of the business let me interject another example of royalties that illustrates the impressive scale of some operations and the value of these goods even in a country where pre-Columbian art is

relatively uncommercialized. One big landholder has several cemeteries on his land that have been so rich as to attract professional huaqueros on a 60/40 "sharing-cropping" basis—he has guards who oversee the work to minimize theft, and he knows enough about the market to get realistic evaluations. He still fondly recalls the time when 4 men unearthed 226 pots in 12 days; they brought about U.S.\$5330, that is, more than U.S.\$235 per day for him—far more than his cattle ranching, mechanized cotton farming, or even illicit rum distillation.

Needless to say, dealers in Paris, Zurich, New York, and elsewhere, probably at least double their money on any Costa Rican antiquities they handle. A few enterprising individuals capitalize on the combined romance of sailing and archaeology and offer seaborne "expeditions" out of Los Angeles or New Orleans—the most recent cost U.S.\$2000 per person for "6 to 8 weeks," and advertised (inaccurately) that their permits were already in order.

But my concern is with the economic impact that looting the past has within Costa Rica. If I am correct that it is a U.S.\$500,000 industry, of which 70 percent is exported, that makes it an appreciable source of foreign currency. Furthermore, the approximately 4,400 people who derive more than half of their income from commercial archaeology (a full 1 percent of the labor force) are scattered throughout the country, and represent a broad spectrum of ages, racial, educational, and socio-cultural backgrounds.

Although I am by no means an apologist for the unfortunate deprecation wrought by looting the past, I submit that we must recognize it as serving important economic and other functions for many people in areas of the world where opportunities are sharply limited. This is one reason why it is difficult to assign culpability to those who actually do the damage, with shovel in hand. This is also one reason why restrictions can probably be more effectively imposed among consumers than among producers.

Acknowledgments. An earlier version of this paper was read at the Society for American Archaeology/American Association for the Advancement of Science symposium "Looting the Past: An International Scandal," held in Philadelphia, Pennsylvania, December 29, 1971. Research was conducted in 1968-69, under the auspices of a Fulbright-Hays grant. Among the most helpful informants were Carlos Aguilar, Mario Escalante, Fabio Gongora, Jorge Linares, Carlos Meléndez, Jaime Solera, Doris Stone, and the staff of the Museo Nacional de Costa Rica.

[Reprinted from *American Anthropologist*, March 1975]

(The Plundered Past: The Story of the Illegal International Traffic in Works of Art. KARL E. MEYER. New York: Atheneum, 1973. xxv + 353 pp., photographs, tables, notes, 7 appendices, bibliography, index. \$12.95 cloth).

(Reviewed by Dwight B. Heath, Brown University)

Most so-called "popular" books written by "laymen" on "anthropological" topics are exaggeratedly sensational in their tone; many are grossly inaccurate in their contents as well, and virtually none of them provide information that is useful to serious researchers. *This volume is an outstanding exception* to each of those generalizations. It is well-written, accurate, far more comprehensive than anything else available on the subject, and useful in ways that scholars can build on.

Long before there was any controversy among professional anthropologists over "the new archaeology," or about scientific approaches as contrasted with descriptive or qualitative treatment of the remains of prehistoric peoples, there was a clear and fairly hard line drawn between what might be roughly characterized as "antiquarian-aesthetic" interests on the one hand, and "academic-interpretive" interests on the other. Those contrasting interests have come increasingly into conflict in recent years, as excavated materials have taken on different values. It may not matter whether archaeology is "science," "a social science," "a corpus of methods, or something else, as has been so hotly debated in recent years. All of that may turn out to be virtually irrelevant if we don't recognize and pay attention to the fact that it is also big business. Meyer puts it succinctly and pointedly: "We face a future in which there may be no past beyond that which is already known and excavated" (p. xv).

The theme of this book is that, for better or for worse, archaeology artifacts are goods that have a variety of values, quite apart from their scientific value. The fact that they may serve as sources of historical information, or as data for testing hypotheses about social and cultural dynamics, is largely eclipsed by their economic value in a booming international art-market, their emotional

value as foci of the heritage of a people, or their prestige value among museums and collectors who are vying to outdo each other in terms of spectacular holdings.

The author (a professional writer, with considerable research experience on archaeological subjects) has a clear and enjoyable style, and he neatly alternates forceful general statements with detailed illustrative data. The following themes are treated in considerable breadth: the recently expanded international art market; case-studies of smuggling and misrepresentation of antiquities among dealers, collectors, and museums; the overwhelming predominance of acquisitive over curatorial concerns among professed patrons of the arts; the motives and methods of commercial archaeologists and of dealers; the conflicting interests of land-developers, scholars, collectors, and nationalists; international treaties, the UNESCO convention, and related promising areas of collaboration toward stemming the illicit traffic; and others. Among the specific cases which he discusses in some detail are: the Grolier Club codex, the "Dorak affair," the Elgin marbles, the calyx krater that focused popular attention on this subject when a *New York Times* reporter effectively uncovered successive misrepresentations on the part of the Metropolitan Museum of Art, and others.

Unlike the abbreviated version that appeared as a series in *The New Yorker* magazine, this book is carefully footnoted, and also contains a remarkably comprehensive bibliography of scattered and diverse sources on this topic that has only recently been the subject of more-than-anecdotal treatment. Furthermore, nearly one-third of the book is devoted to documentation of a sort that will make the work of other interested researchers much easier. Some of the several appendices effectively underscore what had been said before with respect to specific acts of depredation, and others deal with ways in which some people are trying to stem the international traffic in antiquities. One brief appendix lists sites in El Peten, Guatemala, and another lists Maya sites in Mexico; each list indicates items that are known to have been looted from each site, and "comment" (often indicating the present ownership of the looted material, including many major museums). One may well wonder why these specific cultural and areal units were selected, but they are probably as dramatic as any in demonstrating the way in which monumental pieces are wrenched from context, often defaced or destroyed, and sold to avid collectors (both individual and institutional) around the world. Other more comprehensive appendices include: major art thefts since 1911; a table of national protective laws; copies of the early statements of curatorial responsibility (by the University Museum, Harvard University, the Field Museum of Natural History, and the Brooklyn Museum); resolutions and reports by the Archaeological Institute of America, American Association of Museums, and Association of Art Museum Directors; United States legislation and treaties concerning antiquities; the UNESCO convention on ownership of cultural property, and official U.S. comments on it; and a transcript of the television show on which the Euphronios krater was "unveiled."

Obviously, this book is both ethnocentric and dated in terms of some of its emphases. Nevertheless, it is valuable as the nearest we have to an encyclopedic coverage of this important topic.

HARRY A. FRANKLIN GALLERY,
Beverly Hills, Calif., January 11, 1978.

ABRAHAM RIBICOFF,
Chairman, Subcommittee on International Trade, Senate Finance Committee,
2227 Dirksen Senate Office Building, Washington, D.C.

DEAR SIR: We strongly urge the Committee to vote against Senate Bill #2281 or H.R. 5643, and we request that this statement be made part of the official record.

Sincerely,

RUTH FRANKLIN,
JOAN C. SCHIMMEL,
HARRY A. FRANKLIN,
VALERIE B. FRANKLIN.

PALOS VERDES ESTATES, CALIF., January 25, 1978.

Hon. ABRAHAM RIBICOFF,
Chairman, Subcommittee on International Trade, Senate Finance Committee,
2227 Dirksen Senate Office Building, Washington, D.C.

DEAR SIR: I am writing to protest the above proposed legislation. I believe it to be an ill-conceived measure with negative ramifications. Our country will be

seriously hampered concerning art acquisitions for both private and museum use, and I do not feel we need to serve as a police force for other countries' art.

I hope you will consider voting against this measure.

Respectfully,

STEVE NELSON.

NEW YORK, N.Y., *January 25, 1978.*

SUBCOMMITTEE ON INTERNATIONAL TRADE,
2227 Dirksen Senate Office Building,
Washington, D.C.

DEAR SIR: I wish to register my opposition to bill HR 5643, for the following reasons. The American tradition has always been one of a free market place for art. We in this country, have never had and do not contemplate having restrictions on the export of our own primitive or cultural art, namely American Indian artifacts.

Some of the largest collectors of this material are Europeans. We have always held to the principle that whoever can afford them, can purchase them with no restrictions as to being taken out of this country by foreign museums or collectors. It is unfair and against our tradition that American collectors and museums should be forbidden to purchase comparable primitive or cultural art from other countries.

As to the legal aspects, I see no reason why this country should accept foreign definition of stolen objects when according to U.S. law similar objects originating in America are not considered stolen. We do not consider American Indian artifacts as property of the state and stolen from the United States when exported. Why then should we honor a foreign country's status of their own primitive art?

In reference to the preservation of archeological sites from looting or pillage, many of the governments of countries where these sites exist sound very righteous about these depredations; however have ben known to build housing developments over important sites. They have also been known to build dams, creating lakes which flood other sites which have not been fully explored or excavated. This has happened in spite of strong protest by their own archeologists. One can see how much they really value their archeological sites when they stand in the way of commercial or agricultural expansion.

I would appreciate it if this letter be included in the printed record of these hearings.

Very truly yours,

ALLAN LONG.

MARINA DEL REY, CALIF., *January 18, 1978.*

Re: UNESCO convention on cultural property S. 2261 and/or H.R. 5643.

HON. BOB PACKWOOD,

Subcommittee on International Trade, Senate Finance Committee, 2227 Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR PACKWOOD: I strongly advocate that you defeat the above-mentioned proposed legislation. I feel that it is an unjust measure that is certain to have devastating effects on American museums and collectors.

Please give this bill your most urgent attention and consideration.

Sincerely,

SUMI VELLA.

LOS ANGELES, CALIF., *January 17, 1978.*

Re: UNESCO convention on cultural property S. 2261 and/or H.R. 5643.

HON. ABRAHAM RIBICOFF,

Chairman, Subcommittee on International Trade, Senate Finance Committee, 2227 Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR RIBICOFF: I urge you to defeat the abovementioned proposed legislation. I feel it is an unjust measure that would have incalculable ill-effects on museums and collectors in this country.

Please give this bill your immediate attention.

Sincerely,

RUTH SACHS.

LOS ANGELES, CALIF., January 17, 1978.

Re: UNESCO S. 2261 and/or H.R. 5643.

HON. ABRAHAM RIBICOFF,
*Chairman, Subcommittee on International Trade, Senate Finance Committee,
2227 Dirksen Senate Office Building, Washington, D.C.*

DEAR SENATOR RIBICOFF: I strongly advocate that you defeat the UNESCO Convention on Cultural Property No. S-2261 and/or No. HR-5643. This is an unjust measure that would have a disastrous effect on American museums and collectors.

Please give this proposed legislation your most urgent attention and consideration.

Sincerely,

CHERYLE L. SALTZMAN.

INTEGRATED DESIGN ASSOCIATES, INC.,
Los Angeles, Calif., January 16, 1978.

Re UNESCO convention on cultural property S. 2261 and H.R. 5643.

HON. ABRAHAM RIBICOFF,
*Chairman, Subcommittee on International Trade,
Senate Finance Committee, Washington, D.C.*

DEAR SENATOR RIBICOFF: We urge you to defeat UNESCO Bill S-2261 and/or H.R. 5643. This is an ill-conceived measure that would have devastating effects on museums and collectors in this country.

We thank you in advance for giving your serious consideration and immediate attention to the above-mentioned proposed legislation.

Sincerely,

RICHARD KRAMER, *President.*

INDIANA UNIVERSITY ART MUSEUM,
Bloomington, Ind., February 1, 1978.

*Subcommittee on International Trade,
Dirksen Senate Office Building, Washington, D.C.*

On my return from the winter meeting of the Association of Art Museum Directors last week I was promptly snowed in by the Midwestern blizzard. Now that we have extricated ourselves, I am writing to advise you that I am sufficiently satisfied with the efforts of Dr. Sherman Lee is making to assure that H.R. 5643, while implementing the UNESCO Convention, will seek to protect American museums and the cultural interests of the American public from arbitrary and unnecessary limitations in the import of qualified archaeological and ethnographic material.

I should like it made a matter of record that, as the director of this university art museum, I feel that the law, if enacted, must carefully restrict the term that the President or the State Department may implement by agreement with a State Party the Convention. Any renewals of an agreement with a State Party should not be permitted without proper review by Congress and the Committee provided for under this bill. Further, I do not think sufficient emphasis can be placed upon the obligation of the State Party to protect its patrimony prior to seeking import restrictions by treaty with the United States.

I am sending a copy of the above observations to Dr. Lee so that he will have them in hand for the hearings February 8.

THOMAS T. SOLLEY, *Director.*

LEWIS AND CLARK COLLEGE,
NORTHWESTERN SCHOOL OF LAW,
Portland, Oreg., February 6, 1978.

HON. ABRAHAM RIBICOFF,
*Chairman, Subcommittee on International Trade,
U.S. Senate, Washington, D.C.*

DEAR SENATOR RIBICOFF: We, the undersigned, are students in a seminar on Art Law taught by Professor Leonard D. du Boff at Lewis and Clark Law School. The purpose of this letter is to express our reservations on legislation implementing the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.

Although we support the ends sought to be achieved by H.R. 5643, we perceive grave deficiencies in that legislation which we hope the Senate will not repeat. We believe that the problem of illegal trade in cultural property is one which requires a multi-national response on the part of art importing nations. Absent such a response, restrictions on the importation of art may become merely self-effacing.

We also caution against the creation of a new class of possessory crime, the enforcement of which will involve new threats to Fourth Amendment rights.

Please include our statement in the printed record of the Senate hearings.

Sincerely,

J. MACK SHIVELY.

J. W. LUNDUN.

NEW YORK, N.Y., February 1, 1978.

SUBCOMMITTEE ON INTERNATIONAL TRADE,
2227 Dirksen Senate Office Bldg.,
Washington, D.C.

I am writing to you today concerning the bill H.R. 5643 implementing the UNESCO Convention on cultural property. It is my understanding that hearings on this legislation by the Senate Subcommittee on International Trade will begin on February 8th.

I wish now to state my most emphatic opposition to this proposed legislation as it now stands. If voted into law by the United States Senate in its present form, this legislation will, in my opinion, have nothing short of a disastrous effect on the future of collecting and acquiring ancient and ethnographic works of art to enrich museums and collections in this country. I am a dealer of antiquities and ethnographic works of art, established in New York City since 1941. As a dealer I cannot ignore the possible effects of this law. However, I shall try to overcome by subjective involvement and offer only objective criticism.

A simple reading of the text of this proposed legislation shows that it is filled with ambiguities and contradictions, besides being extremely naive in trying to morally influence the other importing nations to follow the example this law might set for the United States. In my opinion this will never happen. Antiquities and ethnographic works of art will continue to be offered for sale, with museums and collectors outside of the United States having a chance to buy them to the loss of the museums and collectors in this country. Perhaps this is a good time to mention that so far only thirty-three countries have accepted this UNESCO Convention. Please note also that none of the principal importers of works of art and antiquities, such as Germany, Switzerland, Japan, Great Britain, etc., are amongst the signatories of this Convention.

Perhaps my most serious objection is the utter futility of this proposed legislation. It is hoped by the proponents of this law that nations having their own artistic patrimony will do their utmost to protect their treasures. I cannot believe that this will occur, since most of these nations are not signatories to the Convention. They will make no effort to control surreptitious exportation. They have had laws for many years forbidding the exportation of works of art with practically no effort ever made to enforce these laws. Even if the present legislation bars antiquities and ethnographic works of art from being imported to the United States, the exodus of such works of art from their various countries of origin will not be slowed down but will be directed simply to markets elsewhere.

I believe that, before contemplating any legislation like the present law, a committee should be created with the definite purpose of establishing a list of important archaeological sites and monuments and invite the cooperation of the various countries where these sites and monuments are situated in order to protect them from destruction and plunder. Also, let us remember that the fact that an object of art is 1,000, 2,000 or 3,000 years old or that an ethnographic object was carved perhaps a generation ago, does not mean that such an object is of unique importance and therefore should be made the subject of such rigid legislation.

Another point in economics should also be made. The effect of this legislation, if voted into law as it is now written, will mean very serious losses to the commercial life of cities like New York, Chicago and Los Angeles, where a number of dealers now are established. None of them will be able to continue, meaning the closing of shops, the loss of rental income, unemployment and last but not least the serious loss of tax income (sales tax, income tax, etc.).

I sincerely hope that my remarks together with objections that you will undoubtedly receive from other well qualified sources will induce your committee to reconsider and completely reconstruct this proposed legislation in a more logical and clearly defined as well as less rigid manner.

Finally I would be grateful, if my objections and remarks expressed in this letter will be included in the printed record of your hearings.

Yours sincerely,

MATHIAS KOMOR.

SEATTLE ART MUSEUM,
Seattle, Wash., February 3, 1978.

Hon. ABRAHAM RIBICOFF,
Senator for the State of Connecticut, Chairman, Subcommittee on International Trade, U.S. Senate, Washington, D.C.

DEAR SENATOR RIBICOFF: I am writing to express my deep concerns regarding a Bill, now pending before your Subcommittee, to Implement the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (HR5643). While I sympathize with the high sentiments and motives which led to the introduction of the Bill, I also fear that the legislation in its present form will seriously hamper American museums, collectors, dealers and the art community, to the great detriment of all our citizens.

As a museum professional, associated with one of our Country's foremost museums, I do not oppose the Bill as such, nor its aims. However, I strongly urge that certain amendments be incorporated in the language of the Bill in order to protect our country's art community and art organizations against certain major flaws contained in the Bill. I am afraid that without such amendments, the Bill will seriously impede, if not eliminate, future importation of large classes of works of art into this country: The Bill may also have a potentially damaging effect on future exhibitions of imported works of art in this country. My opposition to the Bill is based on the reasons given below:

1. A major deficiency in the Bill is the fact that it fails to require a multinational response to the problem of art pillage, as defined by the UNESCO Convention. The Convention calls for an "international effort" to respond to a country's call for assistance. The House, while acknowledging our position on the question of a multinational response as a legitimate one, nevertheless gave the State Department the power to act unilaterally. The House Committee stated that this action was taken because the United States "should take a moral stand and exercise its leadership as the major art importing country by implementing the Convention . . . irrespective of whether other countries continue to tolerate such illegal trade".

I am convinced that it will be impossible to uphold the moral goals set forth above. No other major art importing country will ever pass similar legislation and, as a result, passage of the legislation in its present form will simply divert the flow of art from the United States to other major art importing countries such as Japan and Germany.

2. The Bill provides no proper mechanism for review of arbitrary or improper decisions taken by the Executive Branch. The State Department would have full authority to enter into any treaty barring the importation of art objects for foreign policy reasons, regardless of whether there exists or does not exist a problem of art pillage. It would seem essential that the Bill incorporate a mechanism for review of unfavorable or arbitrary decisions made for non-art purposes.

3. The emergency powers section (Section 3) grants extra-ordinary power to the Executive Branch to bar the importation of works of art for a period of two years to respond to an "emergency". The UNESCO Convention does not contemplate any such powers or suggest that they be given.

4. The documentation required under the Bill is so complicated and cumbersome as to hinder seriously the importation of works of art, including those which have been outside the country of origin for many years, and even decades.

The above summarizes my very serious reservations about the effectiveness and wisdom of the pending Bill, which I believe would make the import of works of art into the United States vastly more difficult. Unless amended to correct the deficiencies cited above, we will be denying ourselves—our museums, collectors and dealers—access to some of the most important works of art available to us.

The art community, which represents an important aspect of our daily lives and of our cultural heritage, should be free and unhampered to participate successfully in a highly competitive and complex international art market. The Bill, as it stands, would severely handicap the art community and would seriously undermine the professional responsibilities, notably in the area of collecting, of our Country's great museums and public institutions. For this reason I am adding my voice to that of many of my colleagues in the museum profession who strongly oppose the pending legislation in its present form.

I hope that you and other members of the Senate Subcommittee, will give this matter your very careful and considerate attention, for it will affect all of us who are dedicated to the attainment of the highest professional standards for our Country's art community and the institutions which it serves.

Respectfully,

HENRY TRUBNER,
Associate Director.

EDWARD H. MERRIN GALLERY,
New York, N.Y., January 11, 1978.

Senator RUSSELL B. LONG,
*Chairman, Committee on International Trade, Senate Finance Committee,
Dirksen Senate Office Building, Washington, D.C.*

DEAR SENATOR LONG: I'm writing this letter in opposition to Bill S-2261 (HR-5643). The bill, as written, will have one effect and one effect only—and that is the prevention of ancient art from being imported into the United States. It will have no other effect on the flow of art from one country to another. The UNESCO convention states clearly that the treaty be by multi-national agreement. Yet the United States is willing to sign it unilaterally and be the only collecting nation willing to do so. Obviously, therefore, the treaty will have no effect.

The bill and United States Customs states that the only proof of an object being out of the country of origin for 10 years is if it was shown in a museum for 5 years or published in a catalogue with photographs 10 years before. If this is the case, I am sure that 99.9% of the objects in the Cleveland Museum and the Metropolitan Museum could not meet these standards. If the Cleveland Museum and the Metropolitan Museum do not collect another object they will still be great museums, but what if a museum in Wyoming or Nebraska or Alaska wishes to start collecting, it will be categorically impossible.

Japan and France have worked out internal methods of protecting their art, which all people in the art world believe to be almost 100% effective, and neither country asks the United States to impose restrictions on its population.

As written, the bill will make the American citizen buying art guilty until proven innocent. Those private collectors already in the United States, rather than be put up for public auction in the United States, will flee to London so they can be assured of no trouble with U.S. Customs.

I do feel this bill should be voted down as written.

Sincerely,

EDWARD H. MERRIN.

FIELD MUSEUM OF NATURAL HISTORY,
Chicago, Ill., January 30, 1978.

MICHAEL STERN,
*Staff Director, Senate Committee on Finance, Dirksen Senate Office Building,
Washington, D.C.*

DEAR MR. STERN: As museum professionals we wish to register our strong support for the provisions of the Implementation Act for the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, now before the Senate Subcommittee on International Trade.

Certain constituencies—art dealers, commercial collectors, and some museum personnel—are at present lobbying vigorously for weakening or tabling the bill.

We feel the concern of the first two groups is understandable: their profits will suffer if the supply of looted and illicitly obtained art objects is cut off. However, we fail to comprehend or sympathize with the opposition of museum curators and directors.

Professional ethics should prevent any conscientious museum employee from having a financial interest in the smuggler's art market. But what other interest do they have, that makes them so vehement? Fear of embarrassment after ad-

vising backers of their museums to invest in illicit works of art? Or simple acquisitiveness for their museums' sake?

Those museums that have continued to acquire material from illicit sources tend to justify themselves through three spurious arguments. (1) They say that other countries are irresponsible in protecting their cultural patrimony and that the objects in question should therefore be brought to this country by any means possible, even though bribery, smuggling, or actual theft are involved. (2) They claim that European and Japanese museums will reap a bonanza if U.S. museums are excluded from the illicit market. And (3) they state that "have-not" museums in this country will be unjustly prevented from building up their collections to equal those of the wealthy "have" museums which, according to opponents to the UNESCO Convention, are usually situated in large cities of the Northeast.

Our museum is not in the Northeast and is not wealthy. Yet we reject the above arguments. We believe that the present trade in illicit antiquities is irresponsible, unethical, destructive of priceless historical information, and contrary to the national interest of the United States.

It is not true that the artistically important but less developed countries are incapable of caring for their cultural patrimony. Removing art objects from their original environment frequently destroys them, even in the most museologically advanced nations. Further, many of the countries that have unwillingly become major exporters of ancient and ethnological art—for instance, India, Mexico, Iran, Peru, Turkey, Thailand, and Nigeria—possess museums and national conservation services that are as technically competent as their counterparts in the United States. Many U.S. museums (and almost all U.S. collectors and dealers) are in fact less competent to carry out complex conservation procedures than are museums in the exporting countries. If opponents of the bill are serious in advancing the conservation argument, they should be willing to see improperly cared for objects from their own museums confiscated.

As for the supposed bonanza to be reaped by European and Japanese museums, we feel such arguments are irrelevant. Japanese and Soviet refusals to subscribe to international whaling limits do not justify continued whaling by Americans, and Nepalese acquiescence in the destruction of snow leopards has not been considered by Congress as a justification for continuing to import fur coats made from that vanishing species. We doubt, in fact, that European and Japanese museums *would* benefit from passage of a bill regulating the import of antiquities. If the United States took an uncompromising stand, other countries would be forced to do the same.

Lastly, we do not believe that passage of the bill will work a significant hardship on either the "have-not" museums or the general museum-going public. "Have" museums, with substantial collections of ancient and ethnological art, are numerous and exist in all parts of the country: in at least five Southern, nine Western, six Midwestern, and eight Eastern states, as well as in Hawaii, Alaska and the District of Columbia. Many of these museums make frequent loans to other institutions, and both "have" and "have-not" museums regularly receive the opportunity to mount one or more of the five major travelling exhibition of foreign-held ancient art that visit this country annually.

Few Americans are deprived of the opportunity to see such objects. Few "have-not" museums are seriously interested in acquiring ancient and ethnological material, and even fewer are in a position to bid for them in the inflated illicit market. In point of fact, the museums most vehemently opposed to the UNESCO Convention are not the poorer and more underprivileged institutions. Rather, they are almost uniformly wealthy "have" museums which already possess good collections and want more. Their plans for the future might be affected by passage of the bill. But the museum-going public will not suffer.

Thus, we are wholeheartedly in favor of the bill. We wish to offer you our support in your sponsorship of it. If we can assist you in any way, by providing technical information or by discussing the subject with colleagues in other museums, please call on us at any time.

Very truly yours,

BENNET BRONSON, Ph. D., Associate Curator, Asian Archaeology and Ethnology; GLEN COLE, Ph. D., Curator, Prehistory; DONALD COLLIER, Ph. D., Curator Emeritus, South and Middle American Archaeology and Ethnology; ROBERT FELDMAN, M.A., Staff Researcher, South American Archaeology and Ethnology; PHILLIP LEWIS, Ph. D., Curator, Primitive Art and Melanesian Ethnology;

MICHAEL MOSELEY, Ph. D., Associate Curator, South and Middle American Archaeology and Ethnology; PHYLLIS RABINEAU, M.A., Custodian of Collections; JAMES W. VANSTONE, Ph. D., Curator, North American Archaeology and Ethnology; RONALD L. WEBER, Ph. D., Staff Researcher, Native American Archaeology and Ethnology.

UPPER NYACK, N.Y., February 17, 1978.

Kindly Include In The Printed Record:

(I refer below to H.R. 5643, but I intend these remarks as a commentary on "An act to implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property" however it may be technically retitled or renumbered when submitted to the Senate Subcommittee on International Trade for consideration.)

*Subcommittee on International Trade,
2227 Dirksen Senate Office Building,
Washington, D.C.*

DEAR SIR: I suggest the following revisions to HR 5643 recently approved by the House and now before the Senate Subcommittee on International Trade. The House passed the bill as though it were moral and responsible legislation, as it pretends to be, instead of that which it really is: a weird thing dredged up by the State Department from the political quagmire of UNESCO. Not enough thought has been given the long-term consequences of enactment, especially to the unnecessary hardship to be inflicted on American museums, scholars, collectors and art dealers. Four changes should be made to HR 5643 to minimize this damage to American art interests, changes which can at the same time increase the laws' effectiveness as an instrument of conservation and do it without disrupting worldwide distribution of cultural property.

1. If this proposed law is not just governmental moral posturing, then it should be designed to effect a change in world attitudes and in worldwide traffic, not just designed to savagely penalize innocent persons and institutions in the United States. To this end, it is essential that the bill be rewritten to put off the effective date of the law until all members of the UNESCO convention have passed similar and equally stringent enabling legislation. Only concerted action on the part of all members of the convention is going to have the desired effect. It is hopelessly naive to assume that anything worthwhile will be achieved by having the United States set a moral example by making a self-damaging commitment all by itself. It should be obvious that the stated goal of discouraging illicit excavation and traffic will not be gained this way, even in part, because objects will continue to be dug and exported from the "countries of origin" and sold to all the other art buying countries in the world. The achievement will be to have the United States suffer the loss of art material rich and essential for our own cultural good, and lose it to no purpose. That is not just unnecessary; it is stupid.

The United States can, however, achieve some of the bill's stated aims if only it will prove its good intentions and set an example for other nations by passing a well-considered law, but with the proviso that actual application of the new law would be contingent upon the passage by other convention countries of similar legislation. Then the pressure groups in this country, in the "countries of origin" and in UNESCO which have been pushing so hard for this legislation can exert pressure on other nations to join the effort and they can cite the new law as proof of the willingness and readiness of the United States to move. But it would be the act of temporarily withholding final and forceful United States action that would be by far the most effective argument to use in urging other nations to move in the right direction. To give up that leverage in an initial grand gesture makes no practical or moral sense at all. Leave the United States in a position to preach, cajole and threaten and other nations may be obliged to take notice. And if other nations do pass similar enabling legislation, all well and good, illicit traffic should begin to die out.

But the key to success in general compliance. A few countries signing up will not be enough; objects will continue to bleed from the "countries of origin" as long as there are major art buying countries still in the market. Only a truly effective general compliance will result in the one thing that is really desirable: that pressure finally be brought to bear on the "countries of origin" where pressure should have been applied in the first place. And pressure will build there with the collapse of the international market and the concurrent drop in cash value na-

tionally of antiquities and ethnological material. Unneeded and unwanted objects will begin to accumulate until museum storerooms and university basements and local shops are inundated. There will be a loud squawk from those who have profited greatly all along from forbidden commerce in these things and, finally, there will be recognition on the part of the governments involved that a prestigious and valuable national resource, a source of substantial income, is being squandered. Income which could and should be directly channeled into conservation efforts, site maintenance, museum building, training of archeologists and the like. We might see at long last the development of national policies which will permit the regulated and taxed export of all that vast body of material which is not unique or in some other way essential to national studies, material which is still of quality and great cultural interest to other nations, material which is of little collecting or study value to the "countries of origin" and which should have been made available all along to the world cultural community. And this is the best longterm result that could be hoped for because it is these "countries of origin" whose obstinancy and flat refusal to share cultural material, masterpieces and tourist pieces alike, who created the need, the rational and the justification for the illegal traffic that now exists.

2. The bill should be changed so as to eliminate the threat of confiscation by customs of objects sent to the United States but found unqualified to enter under the terms of the law. Even shippers of legitimate and properly documented material will be scared off by the risk of unjustified confiscation. A simple refusal of entry permission to unqualified material is adequate to satisfy the intent of the bill. Send such material back to the shipper at his expense. Immigration does not seize the hordes of citizens from these "countries of origin" who arrive undocumented at the border; they just don't let them come in.

3. Establish a rational standard of documentation for objects which will be allowed to enter the United States under the terms of the law, eliminating unrealistic requirements that objects have been previously published or publicly exhibited. An immense quantity of desirable objects already abroad right now which left the "countries of origin" long ago has never been either published or publicly exhibited. In the case of objects in private hands, sworn statements of previous owners along with the like of invoices, shipping, storage or insurance records should be considered adequate to clear any given object for entry. In the case of objects coming from museums or other public institutions, deaccessioned by trade or outright sale, a formal declaration of previous ownership should be enough to satisfy United States Customs. Why should regulations hastily and too harshly drawn be permitted to exclude a very great quantity of antiquities and ethnological pieces which is emphatically not fresh from the tomb and which could be once in the United States, of real importance to American collecting and scholarly interests?

4. A distinction must be made in the law between cultural property truly stolen—that which is taken from a specific owner, a specific museum or other institution or site—and that which is simply declared to be "stolen" by a "country of origin" just because it falls into some category of export restriction. No one quarrels with the right of any owner to the return of any object stolen from him, but one has every right to resist the blanket label of stolen when arbitrarily placed on whole categories of art and ethnological works which have never been owned in any real or legal sense by the government in question. H.R. 5643 should include a section aimed at correcting this abuse of the definition of "stolen" and thus put an end to "countries of origin" claiming the right to the return of property supposedly stolen but which, in fact, they have never owned. It should be stipulated in the law that the United States Stolen Property Act cannot be used by a foreign nation to force the return of such material. If the threat of misuse of American law in this regard is not corrected in this bill, and in the Stolen Property Act itself, no American cultural institutions or their benefactors will risk acquiring anything which may later lead to litigation. And the material with which they will not risk involvement includes all that body of art already in this country legally, whether in the hands of private collectors or dealers, which would ordinarily wind up in public institutions. If that material cannot be collected without risk here, then it will most certainly be sold abroad, and that would represent a loss both appalling and unnecessary to American cultural interests.

Yours sincerely,

JOHN A. STOKES, JR.

STATEMENT OF DAVID L. GANZ

Chairman Ribicoff and distinguished members of the Sub-Committee on International Trade, my name is David L. Ganz and I would like to thank you for the opportunity for permitting me to submit this statement on those hearings on the Bill implementing UNESCO Convention on cultural property (H.R. 5643, 95th Congress 1st Session).

My purpose in making this statement Mr. Chairman is not to oppose implementation of the United Nations Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, but rather to clarify the precise terms of H.R. 5643, which has already been considered by the House, passed, and sent to the Senate and your Sub-Committee for due consideration.

I am sure you are aware, Mr. Chairman, of the history of the UNESCO Convention to which the Senate had given its advice and consent on August 11, 1972. It undertakes the very worthwhile goal of attempting to put a stop to the wholesale pillage of archeological and ethnological art treasures in the broadest sense of all of those words. It is my understanding that to date some 33 countries have either ratified or accepted the Convention. (H.R. Report No. 95-615 95th Cong. 1st Sess. 2 (1977)). The reason that I am making this statement, Mr. Chairman, is that a substantial amount of concern has been raised on the part of many individuals who are actively engaged in the pursuit of co'n collecting about the possible effect of implementation of the proposed legislation on their hobby. A key concern that has been advanced is the possibility of use of this Convention to foreclose the collection of ancient coins, medieval coins and other items that are not truly ethnological or archeological properties.

Under the UNESCO Convention, of course, it is quite clear that as a general proposition coins would be included. Specifically, Article 1 paragraph (e) states that "antiquities more than 100 years old such as inscriptions, coins, and engraved seals" are all important cultural properties that would be covered under the terms of the Convention. (Written comments on H.R. 14171 before the Sub-Committee on Trade for the House Committee on Ways and Means 94th Cong. 2 through 3 (1976) (Committee Print)).

In the version that is currently under consideration by the Committee, the definitional section of H.R. 5643 states in Section 15 that "no object may be an object of archaeological interest unless such object (1) is of a cultural significance, (2) is at least 500 years old and (3) was normally discovered as a result of scientific excavation. . ."

This does vary slightly from the definition in the UNESCO Convention. However, the more important fact is that in order to implement the key provision of the convention, Sec. 9, which relates to seizure and forfeiture, which in turn relates to Sec. 6 pertaining to import restrictions, it is necessary for the President of the United States to initially determine that the cultural patrimony of the party state is in jeopardy from *pillage*, secondly, that the state itself has taken measures to protect this cultural patrimony and several other items found on page two of the Bill.

In my extensive reading of the 143 page UNESCO Convention on Cultural Property Hearing that the sub-committee on Trade had and in an examination of previous hearings, it is made clear that this convention relates principally to prevention of pillage. Rep. Abner Mikva, the representative who introduced the legislation makes it clear that they are not aiming at preventing any and all ancient articles (and thereby including medieval coins) from being exported from a country, and thence to the United States.

The House Committee on Ways and Means did not accept the view that the legislation was intended to deal with the general problem of illegal exportation of large amounts of cultural objects from many countries. (See H.R. Report 95-615 at page 6.)

Based upon the analysis of the Committee on Ways and Means it is necessary for five steps to be undertaken prior to bringing an item under the scope of the Convention:

1. The object must have been first discovered in a State Party to the Convention.
2. The State Party must have imposed an export control on the object or category of objects, i.e., made exportation a violation of the country's laws.
3. The State Party must have requested assistance from the United States under Article 9 of the Convention to help it enforce its laws and protect its cultural patrimony, and the United States must have entered into an agreement

with that country or taken temporary emergency action, subject to the finding of sections 2 or 3 and advice from the Advisory Committee, including their recommendations on the types of objects to be covered.

4. Only objects which have been or are threatened to be pillaged (i.e., plundered or looted from their traditional setting), creating jeopardy to the cultural patrimony of the State Party, can be subject to import restrictions under an agreement or emergency action. [Emphasis added]

5. The Secretary of the Treasury must have issued regulations published in the Federal Register and provided U.S. Customs a listing with sufficient specificity and precision to provide fair notice to importers and other interested parties that a particular type of object is subject to import restrictions.

Mr. Chairman, one of the organizations of which I am a life member, the American Numismatic Association, with 33,000 is the largest educational and cultural organization of its type in the world, and which organization was chartered by Congress in 1912 to study the scientific, educational and cultural aspects of coin collecting is deeply concerned about one interpretation that has been offered on the proposed legislation inasmuch as the same appears to posit a situation under which any and all coins produced can be seized.

I am a lawyer by trade, a numismatist by advocate and over the course of the last twelve years I have written more than 1200 articles concerning various aspects of coins, coin collecting and the science of numismatics. During the last four years I have testified extensively before the House Banking and Currency Committee and the pertinent sub-committee dealing with legislation designed to have an effect on the nation's coinage.

It is my belief, Mr. Chairman, based upon my experiences as an attorney and as a numismatist, and as a collector of rare and unusual coins that any position taken which would permit seizure of any and all rare coins imported into the United States, is beyond the scope of what is intended by this Convention and would hope for the reasons set forth herein and below that this Committee will act decisively to set forth the legislative history which will make it clear now and in the future that such is not intended by this Committee.

Unquestionably, Mr. Chairman, there is a great deal of importance in preventing the illicit import, export, and transfer of ownership of cultural properties. In general, it seems clear that the UNESCO Convention will serve a worthwhile purpose. However, I think that it is of the utmost importance to recognize in the legislative history of the enacting legislation of the UNESCO Convention that the preservation of cultural properties by this Convention principally relates to items which are either being pillaged, plundered, or looted from their traditional setting on an ongoing, or current basis—as opposed to actions which may have taken place in the past. My own concern is principally with the Convention as it might apply to Numismatic items. I am not advocating, at this time, a total elimination of coinage per se from the proposed implementing legislation, however, this is predicated on the view that as a general proposition coins are not, and would not be included as being an item subject to plunder, looting, or pillage. (See Hearings on H.R. 5643 (UNESCO Convention on Cultural Property) before the Sub-Committee on Trade of the House Committee on Ways and Means, 95th Cong. 1st Sess., Serial 95-28(1977) at 47 through 49).

In conclusion, Mr. Chairman, the position that I am advocating this morning is that the Convention has indeed a worthwhile purpose, but if it were to be applied to coins and related numismatic items on an unconditional and unilateral basis, without having applicable that critical fourth elements—that the items be subject or threatened with pillage, plundering or looting—a wholly undesirable situation which I believe is beyond the scope intended by this Committee would be created.

I thank the Chair for its time and kind attention.

DAVID L. GANZ—VITAE

Member of the firm of Barkhorn, Ganz & Towe, attorneys at law, Flushing, New York.

Author: "Towards Revision of the Minting and Coinage Laws of the United States," 26 Cleveland State Law Review 175 (1977)

"The United Nations and the Law of the Sea" 26 International and Comparative Law Quarterly 1(1977)

"America's Bicentennial Coinage: A legal and legislative history of 31 USC 324 d through 324 i (1976)."

Congressional Testimony

Testimony presented to House Committee on Banking and Currency, March, 1974; September 1975; April, 1977; June, 1977.

Testimony presented to Senate Banking Committee, February, 1976.

Honors

Appointed by the President to the 1974 Annual Assay Commission pursuant to 1 Stat. 246 (31 U.S.C. § 363).

Memberships

Member of the American Bar Association, N.Y. State Bar Association, Life Member of the American Numismatic Association, Associate Member of the American Numismatic Society.

