

December 7, 2001

Dr. Martin Sullivan  
Chairman, Cultural Property Advisory Committee  
Department of State  
Annex 44  
301 4<sup>th</sup> Street SW, Room 247  
Washington, DC 20547

Dear Dr. Sullivan,

I enclose a report submitted on behalf of the Society for American Archaeology regarding the "Agreement Between the Government of the United States of America and the Government of Canada Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological and Ethnological Materials". This submission is made pursuant to the review of the bilateral agreement of 1997.

Although a member of the Smithsonian curatorial staff, this submission is not made on behalf of the Smithsonian, which has not, at this point, taken a position with regard to the review of this agreement.

The Society for American Archaeology has found that the agreement functions well and accomplishes its dual role of restricting the illegal and unethical movement of archaeological and ethnological materials while at the same time encouraging cooperation between the United States and Canada in areas of archaeological and ethnological research across our shared border. Prehistoric and historic cultures, like many aspects of modern popular culture, do not conform to modern political boundaries.

If we may be of further assistance with this review, please contact me.

Sincerely,

William W. Fitzhugh, Director  
Arctic Studies Center  
Department of Anthropology, and,  
Member, Society for American Archaeology

## **Report to the U.S. Department of State on Protection of Archaeological and Ethnological Material Identified under the 1997 Bilateral Agreement between the United States of America and Canada**

The following statement reflects my personal professional opinion, but I am not speaking on behalf of the Smithsonian Institution.

### **Introduction**

For many years the unregulated movement of cultural properties resulted in the destruction of archaeological sites in many areas of the world, while the loss of ethnographic objects has depleted cultural treasures that should rightfully remain available to peoples in many areas of the world. While there were benefits that accrued from these activities (which were undertaken both by professional archaeologists and clandestine looters) such as the filling of major museums and educational institutions of the world, great harm was also done to cultural patrimony of lesser developed areas of the world. Fortunately, Canada and the United States have not had a history of exploitation, especially in the area of archaeological materials, and for the most part the trafficking in archaeological and ethnographic materials between these two countries is not as extensive and as damaging as in many other situations. Nevertheless, incidents of looting of archaeological sites across the U.S.-Canadian border, sales of stolen or looted and illegally-acquired materials across the border, and illegal and unethical movements of ethnographic materials between Canada and the United States continues. The existence of this bilateral agreement is an important deterrent, and for this reason it should remain in force into the foreseeable future. The agreement has also been an important catalyst to cross-border research and educational collaboration and has facilitated settlement of repatriation and other claims involving cultural materials that have moved across the Canadian and United States border and that should be returned, for a variety of reasons.

### **Archaeological Materials**

Although not as serious as the situation in Latin America, the importation of illegal and unethically-acquired archaeological materials continues to be a problem between the United States and Canada. Canada and its provinces have strong antiquities laws and there is considerably more awareness about the cultural and historical importance of archaeological materials and sites among the public in Canada than in the United States. Consequently there is less looting and despoiling of Canadian sites by Canadians and fewer illegal movements in archaeological materials by Canadians. However, the higher values that can be obtained in the United States for Canadian Native artifacts and for early and frequently rare early European historical artifacts from forts, posts, shipwrecks, and underwater sites has made the export of Canadian archaeological materials into the United States more profitable than selling such materials in Canada. The net result is a drain on Canadian cultural properties and the destruction of archaeological sites that should be, and would eventually be, excavated by professional archaeologists. The lure of shipwreck materials has proven to be the most enticing area of site destruction in Canada

because the cold coastal waters of Canada's coasts provide better preservation of wrecks and their collections than the warmer waters of the United States.

The increased interest in cultural and environmental tourism has placed an additional burden on Canadian sites and cultural properties. Hundreds of vessels and tens of thousands of tourists—most of whom are American—visit the coasts of Canada every summer to enjoy and learn about Canadian history, culture, animals and environments. Many of these visitors are unaware that it is illegal to disturb archaeological or historical sites or to collect archaeological or historical materials. In many cases, for instance in arctic regions, these sites or artifacts are visible on the surface of the ground. Tour companies and their staff need to be informed about the regulations regarding the protection of sites and artifacts they may encounter, and information needs to be promulgated about the illegality of importing finds of this type into the United States. With increasing frequency, Americans are taking advantage of tours or adventure trips to remote regions of Canada, especially to its arctic and subarctic regions; here and in the Canadian Rockies where global warming is resulting in the melting of formerly glaciated or ice-field terrain, the exposure of human remains—'ice men' and their artifacts, animal kills, and ritual materials—adds further enticement for unethical, illegal, and unprofessional collecting.

One of the important 'successes' of recent legislation has been the restriction on the import of whalebone materials into the United States. Whalebone was used extensively by the Thule and later Inuit of arctic Canada for building houses. For a number of years in the 1960s and 70s Canadian Inuit began to collect archaeological whalebone to use as raw materials for manufacturing works of art which were then sold on the international market. The result was a rapid destruction of archaeological sites. The passage of the Marine Mammal Protection Act forbade the importation of whalebone art into the United States and gave Canadian Inuit sites some degree of protection from looting for whalebone. However, it created the unwanted side-effect of restricting the legitimate hunting by Inuit of non-endangered sea mammals and thus caused serious economic harm to a people who have been extremely conscious about the need for wildlife conservation, for centuries and even millennia.

The Marine Mammal Protection Act and Bilateral Treaty considered here overlap in ways that are damaging to a number of legitimate pursuits, such as the importation of ancient or archaeological whalebone needed for scientific study by reputable scientists. These materials that may be imported as parts of ancient archaeological collections permitted by Canadian authorities should not be restricted by an Act whose purpose is to protect living sea mammals.

### **Ethnographic Materials**

There is relatively less problem in the movement of ethnographic artifacts and related materials across the U.S.-Canadian border. While there have been some high-profile cases in which American institutions or individuals have sought to purchase valuable or historic ethnographic collections of importance to Canadian natural patrimony, the existing provisions that allow time for Canadians to attempt to match sales prices abroad

have largely solved the problem of unregulated flow of such materials out of Canada.

Somewhat more troublesome are problems relating to the repatriation of cultural artifacts across the U.S.-Canadian border. Because some Native groups are split in such a way as to have part of their population on either side of the border, or because years ago, a tribe or part of a tribe migrated across the border, requests for repatriation need to be carefully investigated before such transfers take place. Complications can grow even more complex within repatriation cases because the United States and Canada have different protocols for repatriation.

### **Research Collaboration**

The current treaty provides an important incentive for research and educational collaboration between Canada and the United States. Many Americans conduct archaeological and anthropological research in Canada, just as many Canadians conduct such work in the United States. The Canadian Government provides funds for graduate education and research at American universities, grant funds for the publication of books on Canada by American institutions, and offers other incentives. Canadian universities occasionally hire American professors, and while this is still rare, the practice of hiring the best available applicant—irrespective of nationality—by American and Canadian universities is increasing. Such a system has evolved in Scandinavia, where nationality is nearly transparent in university and research hiring practices. While it is in American interests to work for such equality in Canadian-American academic practice, there has to be acute awareness of Canadian sensibilities.

The best solution to promoting joint Canadian and American interests is active collaboration in projects of mutual interest. Canada and the United States share a long and highly interactive border, and this border is of recent origin. Native peoples, archaeological cultures, and educational needs all dictate that we continue to conduct research, educational programs, and public activities in these border regions as collaborative efforts when the subject matter has a trans-border character. There are many examples of constructive collaboration of this type between the U.S. and Canada, such as the recent Smithsonian-Canadian collaboration on the Viking Millennium exhibitions, on National Park Service research, education, and enforcement activities, and on National Science Foundation collaboration with the National Research Council of Canada in joint-funding of research proposals involving trans-border issues.

### **Exhibitions and Public Programs**

Research and educational exhibitions require special consideration under this treaty and are areas where there have been difficulties in the past. It is extremely important that restrictions not be imposed on the movement of archaeological, ethnographic, or cultural properties that are part of legitimate educational programs and exhibitions that need to be seen in different locations across the U.S.-Canadian border. The severe problems that have resulted from restrictions imposed by the Endangered Species Act and the Marine

Mammal Act must not be extended into archaeological or cultural properties that are part of legitimate educational programs and exhibitions. Existing indemnity procedures need to be continued to prevent the seizure of these properties, and current customs regulations are sufficient to ensure that articles in exhibits are returned to their institution of origin and not sold or disposed of while 'on tour'. In like manner,

articles that need to cross borders for purposes of loan for study purposes, technical repair, conservation by specialists, or for inspection and return, should be able to do so, provided that these movements are for the purposes described. Better coordination is needed between regulatory bodies (primarily the U.S. Fish and Wildlife Service) with jurisdictions in these areas since contradictory rules and inconsistent application of rules makes the planning and conduct of international exhibitions of cultural objects complicated, expensive, and problematic. Certainly the laws were not enacted for the purpose of restricting educational enterprise; rather, it would appear advantageous to waive restrictions in cases where the movement of cultural properties across the U.S.-Canadian border is for legitimate educational activities carried on by reputable institutions.

### **Summary**

The field of professional archaeology, anthropology, and museum studies has not encountered problems with the treaty under consideration. While most would prefer to have its effects spread more widely to other countries in the world, if that is not possible, the current bilateral arrangement has been constructive and has caused relatively few problems for museums and the academic profession. Provisions for constructive collaboration between our governments have been beneficial to all parties, in and outside of government, and should continue to grow under the continuance of this treaty. Indeed, United States Government agencies should be encouraged to enhance their cross-border relations and to support activities that produce good collaborative research, enforcement of antiquities and cultural properties laws and regulations, strengthening of educational programs, media coverage of subjects of mutual interest, and restrict the unlawful, unethical, or improper use of archaeological or ethnographic materials.

Finally, note has to be taken of the fact that there can be no distinction between archaeological and ethnographic materials and "art". There is absolutely no way to distinguish between art and these anthropological categories. Art is in the eye of the beholder and can be found anywhere.

The Society for American Archaeology endorses the re-authorization of this bilateral treaty and would be pleased to provide further information and views if necessary.

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and  
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