

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 09-114

CULTURAL PROPERTY

**Memorandum of Understanding
Between the
UNITED STATES OF AMERICA
and CHINA**

Signed at Washington January 14, 2009



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“. . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

CHINA

Cultural Property

*Memorandum of understanding signed
at Washington January 14, 2009;
Entered into force January 14, 2009.*

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
CONCERNING
THE IMPOSITION OF IMPORT RESTRICTIONS
ON CATEGORIES OF ARCHAEOLOGICAL MATERIAL FROM
THE PALEOLITHIC PERIOD THROUGH THE TANG DYNASTY
AND MONUMENTAL SCULPTURE AND WALL ART
AT LEAST 250 YEARS OLD**

The Government of the United States of America and the Government of the People's Republic of China;

Acting pursuant to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, to which both countries are States Party; and

Desiring to reduce the incentive for pillage of irreplaceable archaeological material representing the rich cultural heritage of China;

Have agreed as follows:

ARTICLE I

1. The Government of the United States of America, in accordance with its legislation entitled the Convention on Cultural Property Implementation Act, shall restrict the importation into the United States of archaeological material originating in China and representing China's cultural heritage from the Paleolithic Period through the end of the Tang Dynasty (A.D. 907), and of monumental sculpture and wall art at least 250 years old; including categories of metal, ceramic, stone, textiles, other organic material, glass, and painting identified on a list to be promulgated by the United States Government (hereinafter known as the "Designated List"), unless the Government of the People's Republic of China issues a license or other documentation which certifies that such exportation was not in violation of its laws. For the purposes of this Memorandum of Understanding, the restricted Paleolithic objects date from approximately 75,000 BC.

2. The Government of the United States of America shall offer for return to the Government of the People's Republic of China any material on the Designated List forfeited to the Government of the United States of America.

3. Such import restrictions shall become effective on the date the Designated List is published by the Department of Homeland Security in the U.S. Federal Register, the official United States Government publication providing fair public notice.

ARTICLE II

1. Representatives of the Government of the United States of America and representatives of the Government of the People's Republic of China shall regularly publicize this Memorandum of Understanding and the reasons for it through available outlets of communication.

2. The Government of the People's Republic of China shall expand efforts to educate its citizens about the long term importance of safeguarding its rich cultural heritage and that of other countries, a principle embodied in the 1970 UNESCO Convention.
3. The Government of the People's Republic of China shall use its best efforts to make use of surface surveys in order to inventory sites, and to broaden archaeological research and enhance public awareness of its importance.
4. The Government of the People's Republic of China shall use its best efforts to increase funding and professional resources for the protection of cultural heritage throughout the country.
5. The Government of the People's Republic of China shall take measures to improve the effectiveness of its customs officers, in order to: (1) stop the illicit exportation of cultural property at borders and ports; and (2) recognize Chinese archaeological material and its value to the heritage. The Government of the United States of America shall use its best efforts to improve the ability of its customs officers to recognize Chinese archaeological material and, as appropriate, facilitate assistance to China for the training of its customs officers.
6. The Government of the People's Republic of China shall make every effort to stop archaeological material looted or stolen from the Mainland from entering the Hong Kong Special Administrative Region and the Macao Special Administrative Region with the goal of eliminating the illicit trade in these regions.
7. The Government of the United States of America recognizes that the Government of the People's Republic of China permits the international interchange of archaeological materials for cultural, educational and scientific purposes to enable widespread public appreciation of and legal access to China's rich cultural heritage.

The Government of the People's Republic of China agrees to use its best efforts to further such interchange in the following ways:

- (1) promote long-term loans of archaeological objects of significant interest to a broad cross-section of American museums for public exhibition, education, and research purposes;
- (2) promote increased institution-to-institution collaboration in the field of art history and in other humanistic and academic disciplines relating to the archaeological heritage of China;
- (3) promote the exchange of students and professionals in such fields as archaeology, art history, conservation, museum curatorial practices, and cultural heritage management between appropriate Chinese and U.S. institutions; and
- (4) facilitate the granting of permits to conduct archaeological research in China.

8. The Government of the United States of America shall use its best efforts to facilitate technical assistance to the Government of the People's Republic of China in pursuit of preserving its cultural heritage by such means as creating a national preservation strategy, improving rescue archaeology, stabilizing and restoring sites/buildings, enhancing the capacity of museums to preserve and exhibit collections, and strengthening regulation of the "cultural relics" market.

9. The Government of the People's Republic of China shall continue to license the sale and export of certain antiquities as provided by law and will explore ways to make more of these objects available licitly.

10. Recognizing that, pursuant to this Memorandum of Understanding, museums in the United States will be restricted from acquiring certain archaeological objects, the Government of the People's Republic of China agrees that its museums will similarly refrain from acquiring such restricted archaeological objects that are looted

and illegally exported from Mainland China to destinations abroad, unless the seller or donor provides evidence of legal export from Mainland China or verifiable documentation that the item left Mainland China prior to the imposition of U.S. import restrictions. This will apply to purchases made outside Mainland China by any museum in Mainland China and only to the categories of objects representing China's cultural heritage from the Paleolithic Period through the end of the Tang Dynasty (A.D. 907), and monumental sculpture and wall art at least 250 years old, as covered by this Memorandum of Understanding.

11. The Government of the People's Republic of China shall seek to improve regulation of its internal market for antiquities.

12. Both Governments agree that, in order for United States import restrictions to be most successful in thwarting pillage, the Government of the People's Republic of China shall endeavor to strengthen regional cooperation within Asia for the protection of cultural patrimony; and, in the effort to deter further pillage in China, shall seek increased cooperation from other importing nations to restrict the import of looted archaeological material originating in China.

13. To strengthen the cooperation between the two countries, the Government of the People's Republic of China shall regularly provide the Government of the United States with information concerning the implementation of this Memorandum of Understanding; and, as appropriate, the Government of the United States shall provide information to the Government of the People's Republic of China that strengthens the ability of both countries to enforce applicable laws and regulations to reduce illicit trafficking in cultural property.

ARTICLE III

The obligations of both Governments and the activities carried out under this Memorandum of Understanding shall be subject to the laws and regulations of each country, as applicable, including the availability of funds.

ARTICLE IV

1. This Memorandum of Understanding shall enter into force upon signature. It shall remain in force for a period of five years.
2. This Memorandum of Understanding may be amended or extended upon written agreement of the two Governments.
3. The effectiveness of this Memorandum of Understanding shall be subject to review in order to determine, before the expiration of the five year period of this Memorandum of Understanding, whether it should be extended.

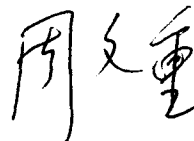
IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed the present Memorandum of Understanding.

DONE at Washington, in duplicate, this 14th day of January, 2009, in the English and Chinese languages, both texts being equally authentic.

**FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:**



**FOR THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC
OF CHINA:**



美利坚合众国政府
和
中华人民共和国政府
对旧石器时代到唐末的归类考古材料
以及
至少 250 年以上的古迹雕塑和壁上艺术
实施进口限制的
谅解备忘录

美利坚合众国政府和中华人民共和国政府作为 1970 年联合国教科文组织《关于禁止和防止非法进出口文化财产和非法转让其所有权的方法的公约》的缔约国，根据该公约采取行动；为减少诱因、使代表中国丰富文化遗产的不可替代的考古材料免遭盗劫，达成协议如下：

第一条

一、美利坚合众国政府依照其题为《文化财产公约实施法》的法律，应限制以下考古材料进口到美国：原产于中国和代表中国的文化遗产、从旧石器时代到唐代结束（公元 907 年）的考古材料和至少 250 年以上的古迹雕塑和壁上艺术，包括将由美国政府公布的清单（以下称为“指定清单”）上所列的各类金属物、陶瓷、石材、纺织品、其他有机物质、玻璃和绘画，但中华人民共和国政府签发许可或其他证件证明这种出口不违反中国法律的除外。本谅解备忘录所指受限旧石器时代物品的时限从大约公元前 75,000 年开始。

二、“指定清单”所列的任何材料一经没收交由美利坚合众国政府处理，美利坚合众国政府即应通知中华人民共和国政府有意让其将之运回。

三、“指定清单”一旦由美国国土安全部在美国政府用于昭示公告的官方刊物《联邦政府纪事》上公布，此类进口限制即告生效。

第二条

一、美利坚合众国政府代表和中华人民共和国政府代表应通过现有通讯渠道定期宣传本谅解备忘录内容及其签署缘由。

二、中华人民共和国政府将加大教育力度，使其公民懂得保护本国及其他国家丰富文化遗产的长远重要意义，这也是 1970 年联合国教科文组织《公约》体现的原则。

三、中华人民共和国政府应尽最大努力利用文物普查，清点遗址、扩大考古研究并提高公众对其重要性的认知。

四、中华人民共和国政府应尽最大努力增加资金和专业资源，用于保护全国各地的文化遗产。

五、中华人民共和国政府应采取措施提高海关人员的效能，以其能够：（一）制止在边境和口岸非法出口文化财产；和（二）鉴别中国考古材料及其对文化遗产的价值。美利坚合众国政府应尽最大努力提高其海关人员鉴别中国考古材料的能力；并酌情适时为协助中国培训其海关人员提供便利。

六、中华人民共和国政府应尽力制止盗劫或偷窃于内地的物物流入香港特别行政区和澳门特别行政区，其目的是杜绝两地区的非法交易。

七、美利坚合众国政府认识到中华人民共和国政府为使广大民众能够欣赏并合法接触中国的丰富文化遗产而准许以文化、教育和科学为目的的考古资料的国

际交流，中华人民共和国政府同意尽其最大努力以如下方式推动此类交流：

- (一) 推动向美国各类博物馆长期借出重要考古物品，用于公开展览、教育及研究；
- (二) 提升与中国考古遗产相关的艺术史及其他人文等学术领域业已增加的机构间合作；
- (三) 促进中美相关机构在考古、艺术史、养护，博物馆策展实践和文化遗产管理领域的学生和专业人员的交流；
- (四) 为到中国进行考古研究所需许可证的签发提供便利。

八、美利坚合众国政府应尽其最大努力在中华人民共和国政府为保护中国文化遗产而采取措施的过程中，为给予技术援助提供便利；这些措施包括：拟订全国性保护策略、改善抢救性考古工作、加固和修复遗址/建筑物、增强博物馆保护和展出馆藏品的能力，以及加强文物市场的管理。

九、中华人民共和国政府应继续依法准许销售和出口某类文物，并为更多地合法提供这些文物探讨途径。

十、中华人民共和国政府认识到美国的博物馆依照本谅解备忘录将受到限制、不能获得某些考古物品，因而同意其博物馆也将同样不谋取原盗劫于中国大陆、后非法出口到国外的此类受限考古物品，除非卖方或捐助者提供从中国大陆

合法出口的证据，或可核查的文件，证明该物品是在美国实施进口限制之前离开中国大陆的。此规定适用于中国大陆任何博物馆在中国大陆地区以外的收购品，且仅适用于依照本谅解备忘录所涉、从旧石器时代到唐代末（公元 907 年）代表中国文化遗产的各类考古物品，以及至少 250 年以上的古迹雕塑和壁上艺术。

十一、中华人民共和国政府应设法改善其文物市场管理。

十二、两国政府同意，为了使美国的进口限制最有效地制止盗劫，中华人民共和国政府应努力加强亚洲的区域合作，以保护文化遗产；同时，为努力制止在中国的进一步盗劫，应寻求加强与其他进口国的进一步合作，对进口从中国盗劫的考古材料加以限制。

十三、为加强两国之间的合作，中华人民共和国政府将定期向美利坚合众国政府提供有关本谅解备忘录执行情况的信息；同时，美利坚合众国政府将酌情适时向中华人民共和国政府提供信息，以加强两国执行相关适用法律和法规的能力，减少文化财产的非法贩运。

第三条

两国政府依照本谅解备忘录承担的义务和进行的活动应遵守本国的适用法律和法规，包括可使用的资金在内。

第四条

- 一、本谅解备忘录自签署之日起即行生效。有效期为五年。
- 二、本谅解备忘录经两国政府书面协议，可修订或顺延。
- 三、本谅解备忘录的成效应在五年期满之前予以审查，以决定是否将其顺延。

以下签署人经各自政府正式授权在本谅解备忘录签字，以昭信守。

本谅解备忘录于二〇〇九年一月十四日在华盛顿签署，一式两份，每份均以英文和中文写成，两种文本同等作准。

美利坚合众国政府代表



中华人民共和国政府代表

