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International Art: Indemnification (1975): Report 01

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BACKGROUND

It has long been recognized that international goodwill and greater understanding of foreign cultures can be effected through the exchange of cultural activities and the sharing by nations of the world of their cultural institutions and national wealth and treasure. Exhibitions of paintings, statues, and other arts and artifacts, whether unilateral in nature or in the form of international exchanges, have long been recognized as an integral part of this nation's foreign policy.

This type of international cooperation not only creates goodwill on a government-to-government basis, but also has a laudable effect of bringing to the people of the country pictures, statues, prehistoric relics, and other items which would not normally be available to citizens unless they traveled to foreign lands.

The practice of loaning and receiving artistic treasures has grown over the years through active participation by this country's museums, on their own initiative and in cooperation with the State Department. In recent years, the frequency of this type of international cooperation has been slowed by one major factor: the cost of insurance. It has been estimated that anywhere from 2/3 to 3/4 of the total cost of an international exhibition is the cost of insuring the material to be exhibited. As Sherman Lee, Director of the Cleveland Museum, testified before the Special Subcommittee on Arts and Humanities:

To cite only one example, the insurance premium for foreign works lent to the Cleveland Museum during the

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Carravaggio and his Followers exhibition of 1971-1972 was \$10,200. for a coverage value of \$3,800,000 in contrast to a premium for a forthcoming exhibition of Johann Liss, organized by the same museum, of \$25,000. for a coverage value of \$4,000,000.

As insurance premiums have risen, exhibitions which had been discussed were not planned, and ones which had been planned were canceled. More importantly, many exhibitions have been reduced in scope because of prohibitive insurance costs. Shows at the Minneapolis Institute of Art, the Detroit Institute of Arts, the Cleveland Museum of Art, the Museum of Modern Art in New York City, and the Boston Museum of Fine Arts have had to be truncated because of the insurance costs.

Museums have turned to special funds or sponsors to arrange shows which could not otherwise have been held. For example, the Museum of Modern Art presently has an exhibition on loan to Australia which was only made possible because the Australian Government provided an indemnity for the exhibit. A show of old masters from the Hermitage in Leningrad will be exhibited in Houston only because a private donor has met the insurance costs.

In the 93rd Congress, the cost of insuring international exhibitions became the subject of special legislation. In furtherance of the nation's foreign policy, two specific exhibitions were announced. To facilitate these exhibitions, special legislation pertaining to indemnification against loss was enacted. Two ad hoc bills provided indemnification and made possible the showing of the Chinese archeological exhibition and the exhibit of Scythian

gold from the Soviet Union. As Dr. Ronald Berman, Chairman of the Federal Council on the Arts and the Humanities, testified: "Were it not for the special legislation that pledged the faith and credit of the United States Government to indemnify works in these exchanges, the insurance costs would have been prohibitive."

With the history of international exhibitions, the pressure of higher insurance costs, and the precedents set by two specific pieces of legislation, the Committee deemed it proper that a generic program of indemnification for international exhibits be established to aid the foreign policy and international relations of the United States.

PURPOSE

This bill establishes a new program administered by the existing Federal Council on the Arts and the Humanities which would indemnify against loss or damage certain art works and artifacts brought into this country.

Items to be covered by an indemnity agreement are defined as works of art, including tapestries, paintings, sculpture, folk art, graphics, and craft arts, manuscripts, rare documents, books, and other printed and published materials, other artifacts and objects (which could include stamps and coins), and photographs, motion pictures, and audio and video tape which are of educational, cultural, historical, or scientific value.

The indemnity agreement shall constitute a contract which is, in effect, guaranteed by the full faith and credit of the United States.

PROGRAM OPERATION

Thirty days following enactment of this legislation, the Federal Council on the Arts and the Humanities would have authority to make indemnity agreements for international exhibitions which are deemed to be in the national interest by the Secretary of State or his designee. This is one of the most important features of this legislation. The requirement of such designation by the Secretary of State will insure that the indemnity program is used for the foreign policy interests of the United States and will guard against the possibility of its becoming a simple insurance relief mechanism.

The indemnity agreement made under this Act would cover the items from the period of time they leave the premises of the lender until they return; in museum terms, this is "wall-to-wall coverage."

An indemnity agreement could be applied for by any person, nonprofit agency, institution, or government. This language is specifically broad due to the fact that the owner of the articles to be exhibited, be it a foreign government, a museum, or a private individual, may wish to have the technical details of dealing with the Federal Council on the Arts and the Humanities attended to by a designated representative in this country. The language does not include profit-making organizations, limiting itself strictly to nonprofit agencies.

The indemnity agreement itself, whether applied for by the owner of the articles or a designated representative, would actually be

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issued to the owner of record. Thus, while a local representative may represent a foreign government, museum, or person, the actual indemnity agreement will be issued to that foreign government, museum, or person.

Private insurance plays an important part in the field of international art exhibitions. Therefore, to insure continued participation by the private insurance industry of the country, there are limitations upon the size of the indemnities which may be issued. There is an aggregate limit of \$250 million of indemnity obligations which may be outstanding at any given time, and no individual indemnity may exceed \$25 million.

The Committee fully understands that many international exhibitions are worth two or three times the individual limitation. However, the Committee believes that private insurance companies should be given an opportunity to participate, and that the Federal Government should not preempt the field of insurance for international exhibitions. Similarly, there is a deductible from coverage for the first \$25,000 of loss, for it is not the Federal intent to pay for the normal wear and tear experienced during an exhibition, such as a broken frame or a piece of chipped glass. It is expected that private insurance companies could be utilized to cover that first \$25,000 of loss.

The \$250 million upper limit should not be viewed as a figure to be aimed at, and the Committee does not envision ten exhibits of \$25 million apiece. The Committee feels that greater emphasis is

needed to expand availability of foreign art works to Americans who previously have not had such an opportunity. A good geographic balance of exhibition sites, and multiple sites for indemnified exhibits are encouraged. Smaller exhibits within the capability of museums in relatively small cities and those serving rural areas should also be important participants under the indemnity authority. Thus, priority should be given to a rational mixture of large and small exhibitions to be held throughout the nation. As Matthew Wilder, Director of the Amon Carter Museum of Western Art in Fort Worth, Texas, testified before the Committee: "While small museums, such as the one I represent, have fewer occasions to require a very large insurance coverage, there is, nonetheless, a real need for aid to our institutions."

The Committee believes that where there is an international exchange of material, each country should provide for a similar type of indemnity. Indeed, an indemnity agreement should not be issued to a party where the country receiving material from the United States will not provide a similar type of indemnity or insurance coverage, unless there were strong overriding reasons why some type of mutual indemnity could not be effected. The Committee recognizes that the Federal Council on the Arts and the Humanities is not necessarily expected to have expertise from an international viewpoint in judging compelling reasons why mutual indemnity cannot be arranged. Should such a question arise, the Council is expected to seek advice from the Department of State.

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In his determination of the national interest of the United States which precedes an indemnity agreement, the Secretary of State or his designee should attempt to provide to the Council relevant information and recommendations on circumstances where mutual and reciprocal indemnity is not possible.

The amount of the indemnity agreement is set by the Federal Council on the Arts and the Humanities after reviewing the value of the items as set by the owner thereof. If the Council disagrees with the value set by the owner, and the owner disagrees with the value set by the Council, no indemnity agreement shall be issued. It is contemplated that the Council shall make liberal use of consultants, both with regard to the valuation and estimation of the article to be covered, and with regard to the packaging, transportation, and exhibition of that article.

Nowhere in the legislation is there found a definition of loss. It is understood that a loss under the indemnity agreement covers partial damage to covered articles as well as loss or complete destruction.

Should a claim of loss be filed under the indemnity agreement where there is a complete loss - where the item has been totally destroyed - the total amount shall be paid. However, where there has been damage but not total loss, there is provision for the use of arbitration with regard to the dollar amount of the loss. Once that figure is agreed upon, the claim covering such loss shall be certified to the Speaker of the House and the President of the

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Senate, who would then approach the Appropriations Committees for an actual appropriation of Federal funds.

ESTIMATE OF COST

It is difficult to estimate the cost of this bill. There will be certain administrative expenses incurred by the Federal Council on the Arts and the Humanities, which will become an agency as defined in title V of the U. S. Code for this purpose, with the ability to hire staff, promulgate regulations, and perform other basic housekeeping functions. Theoretically, there could be a cost of up to \$250 million if every item covered by outstanding indemnity agreements were destroyed. However, experience indicates minimal amounts of loss on this type of exhibition. Testimony presented stated that 90% of the loss in previous exchanges were losses of less than \$1,000. Douglas Dillon, President of the Metropolitan Museum of Art, stated to the Committee:

We have obtained detailed figures showing the British record under this system for the past six years. Works of art valued at approximately \$275 million were indemnified with only one loss of over \$25,000, which amounted to about \$33,500. This is a loss ratio of only slightly over one-hundredth of one percent -- a minute fraction of what the cost of insurance would have been.

This history, in conjunction with the \$25,000 deductible, indicates that the probable cost to the Federal Government would be minimal.

VOTES IN COMMITTEE

The Committee ordered the bill reported by unanimous voice vote. There were no roll call votes on this legislation in the Committee.

CHANGES IN EXISTING LAW

No changes have been effected in existing law.