

Comments on MOU Renewal Request from Government of Cambodia

October 13, 2017

The Global Heritage Alliance (“GHA”) is an advocacy organization representing the interests of collectors, museums and the trade in archaeological and ethnological objects. Without collectors, there would be no museums. Without museums, there would be no focal point for the preservation and display of archaeological and ethnological objects, and the appreciation of other cultures that comes with it.

GHA is pleased to comment on a proposed renewal of a Memorandum of Understanding (“MOU”) with Cambodia. If that MOU is renewed, any such a renewal should be conditioned on trimming back the overbroad designated list and holding Cambodia accountable to reasonable benchmarks that address congressionally mandated self-help measures.

A. The Law

The Cultural Property Implementation Act (“CPIA”), 19 U.S.C. §§ 2601 *et seq.* contains significant procedural and substantive constraints on the executive authority to impose import restrictions on archaeological and ethnological objects. The Cultural Property Advisory Committee (“CPAC”) is to provide the executive with useful advice about this process.

Import restrictions may only be applied to archaeological and ethnological artifacts of “cultural significance” “first discovered within” and “subject to the export control” of a specific UNESCO State Party. *Id.* § 2601 (2). They must be part of a “concerted international response” of other market nations, and can only be applied after less onerous “self-help” measures are tried. *Id.* § 2602 (a) (1). They must also be consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes. *Id.*

B. GHA Concerns about the Cambodian Request

1. Overbroad Designated List

Restricted archaeological items dating from the Bronze and Iron Ages (1500 B.C. - 550 A.D.) through the Khmer Era (16th c. A.D.) include categories of artifacts made from stone, metal, ceramic, glass, and bone. The [Designated List](#) (PDF), as published by the Department of Homeland Security in the Federal Register on September 19, 2008, contains the current list of restricted items.

This list has grown dramatically over time. In December 2, 1999, the U.S. first imposed an [emergency import restriction](#) (PDF) on Khmer stone sculpture and architectural elements from Cambodia.

On September 19, 2003, the U.S. and Cambodia entered into a [bilateral agreement](#) (PDF), or MOU to impose import restrictions on certain Khmer archaeological materials in stone, metal, and ceramic. The materials previously protected under the emergency import restriction were subsumed under this agreement, as reflected in the revised [Designated List](#) (PDF) published in the Federal Register on September 22, 2003. Effective September 19, 2008, the two countries extended the [agreement](#) (PDF) for an additional five years, and amended it to apply U.S. import restrictions to archaeological material dating from the Bronze Age to the end of the Khmer Empire. The [Designated List](#) (PDF) was revised again to reflect this amendment, and published on September 22, 2008. The [agreement](#) was again amended and extended for an additional five years, effective September 19, 2013.

In contrast to the broad restrictions that have been promulgated, the CPIA only allows restrictions to be put in place on items of “cultural significance” first discovered within, and hence subject to Cambodia’s export control which were exported from Cambodia after the date any restrictions were first imposed. 19 U.S.C. §§ 2601, 2604, 2606. While GHA acknowledges that certain items on the designated list (like stone statuary and architectural elements) are of cultural significance, many of other objects (like small bronze statues, pottery, cooking utensils and jewelry) are likely not. GHA urges CPAC to exercise its statutory authority (19 U.S.C. § 2605 (f) (4)) to reform the designated list to ensure it only includes items of “cultural significance.”¹

2. Any Further Extension Should Be Conditioned on Benchmarks for Self-Help Measures.

Before any MOU with Cambodia may be extended, CPAC must advise whether “Cambodia has taken measures consistent with the Convention to protect its cultural patrimony.” *Id.* § 2602 (A) (1) (B). The CPIA further requires a finding that “remedies less drastic than the application of the restrictions . . . are not available.” *Id.* § 2602 (A) (1) (C) (ii).

Congress recently reemphasized the need for CPAC to assess self-help measures as part of the MOU renewal process as follows:

Cultural Property.--The Cultural Properties Implementation Act (CPIA) requires countries participating in MOUs restricting cultural property take significant self-help measures. The Committee² urges the Cultural Property Advisory Committee to consider the annual national expenditures on securing and inventorying cultural sites and museums in its annual reviews of the effectiveness of MOUs, as well as

¹ CPAC should not conflate “archaeological interest” with “cultural significance.” Objects of “archaeological interest” still must be of “cultural significance” to be restricted. 19 U.S.C. § 2601 (2).

² The House Committee on Appropriations.

during the reviews required by the CPIA for extension of an MOU. The Committee also requests the Secretary of State review the feasibility of collecting and reporting on the cost of measures taken by partner countries in support of their cultural property MOU with the United States and be prepared to report on such review during the hearing process on the fiscal year 2019 budget request.

House Report 115-253 at 11. Here, there is reason to believe that the Cambodian government has not done all it can do to protect its own cultural patrimony. While Cambodia reports \$2.5 billion in earnings from tourism³ with Angkor archaeological park reaping an astonishing \$75.7 million in ticket sales for the first nine months of 2017 alone,⁴ it is unclear how much money the Cambodian government itself (as opposed to foreign donors) actually spends on protecting its cultural patrimony. According to the Phnom Penh Post, “Cambodia has long relied on foreign countries and donors to support international excavation projects and shows little sign of taking on more funding responsibility.”⁵ Nor is it clear whether foreign archaeological missions pay their workers a fair living wage or take advantage of modern electronic surveillance systems to monitor their sites for looting in the long off season. For that reason, consistent with Congressional directives, GHA requests CPAC to seek information on these issues and to condition any further renewals on Cambodia surpassing ascertainable benchmarks in these areas.

CPAC should also question Cambodian authorities about persistent allegations that elements within the Cambodian military continue to loot out of the way temple complexes of statuary with the help of government heavy equipment.⁶ At a minimum, Cambodian officials should be required to report on what efforts are being made to ensure military discipline directed at discouraging looting by members of the Cambodian armed forces.

³ *Cambodia Earns \$2.5 bn from Tourism*, Bangkok Post (April 15, 2014), available at <http://www.southeastasianarchaeology.com/2014/04/15/cambodia-reports-2-5-billion-earnings-from-tourism/> (last visited Oct. 12, 2017).

⁴ *Cambodia's famed Angkor earns nearly 76 mln USD in 9 months*, Xinhua/English.news.cn (Oct. 1, 2017), available at http://news.xinhuanet.com/english/2017-10/01/c_136653210.htm (last visited Oct. 12, 2017).

⁵ Annie Lee, *Archaeology gets education boost, but pay remains poor*, The Phnom Penh Post (July 1, 2014), available at <http://www.phnompenhpost.com/lifestyle/archaeology-gets-education-boost-pay-remains-poor> (last visited Oct. 12, 2017).

⁶ Simon Makenzie and Tess Davis, *Temple Looting in Cambodia*, 54 *Brit. J. Criminol.* 722, 729-30 (2014). (“In late 1998, rogue Cambodian military surrounded the temple at dawn and blockaded it from the local community, with no explanation. The Cambodian generals responsible no doubt used the country’s ongoing tumult to their advantage, as the Khmer Rouge was disintegrating near simultaneously, just 130 km away from Banteay Chhmar in Anlong Veng. For the next two weeks, heavy machinery was used to break up the complex and when the clamour finally stopped, soldiers loaded an estimated 30 tons of stone—including an entire 30 m of the southern wall, prized for its skilled bas-reliefs of Lokeshvara and Apsaras—onto six trucks and drive off for the Thai border just 15 km away.... While scholars and journalists have described the 1998 heist as unprecedented, we learned instead that it is fairly representative of the history of looting at Banteay Chhmar and just the tip of the iceberg in terms of looting across the country.”); Saing Seenthith, *Army Officer Smuggling Statues into Thailand Caught at Border*, the Cambodian Daily (April 27, 2015), available at <https://www.cambodiadaily.com/archives/army-officer-smuggling-statues-into-thailand-caught-at-border-82692/> (last visited Oct. 12, 2017).

Finally, CPAC should advocate that Cambodia investigate the creation of a portable antiquity reporting scheme for minor objects found on private land.⁷ Once objects reported under that scheme are registered, land owners and/or finders acting with the permission of the landowner should be allowed to retain or sell common objects not necessary for state museums. Such a program, which has been quite successful in the United Kingdom,⁸ should be a model for countries such as Cambodia, at least as far as common, redundant objects found on private land are concerned.

⁷ See Bennet Murray and Vandy Muong, *Ancient Treasures in the Back Yard*, The Phnom Penh Post (Aug. 8, 2015), 2014), available at <http://www.phnompenhpost.com/post-weekend/ancient-treasures-backyard> (last visited Oct. 12, 2017).

⁸ For more about the United Kingdom's voluntary Portable Antiquity Scheme and mandatory Treasure Act, see <https://finds.org.uk/> (last visited Oct. 13, 2017).