

**Comments on MOU Renewal Request from Government of Belize****July 7, 2022**

The Global Heritage Alliance (“GHA”) and the Committee for Cultural Policy (“CCP”)<sup>1</sup> are pleased to comment jointly on a proposed renewal of a Memorandum of Understanding (“MOU”) with Belize.

If that renewal is recommended, any such renewed MOU should be conditioned on limiting the designated list and holding Belize accountable to reasonable benchmarks that address congressionally mandated self-help measures. Moreover, any restrictions must be prospective, limiting detention, seizure and forfeiture to items illicitly exported from Belize after the effective date of any governing regulations. Under no circumstances should restrictions be applied to items that are neither archaeological nor ethnological in character.

**A. Background**

Despite U.S. import restrictions dating back to 2013, proponents of the renewal will claim that it is still necessary for the U.S. to extend import restrictions for yet another five (5) years to combat looting. However, keeping archaeological material out of the hands of US collectors for additional time will not address the root cause of looting, which is rural poverty. An embargo for another five (5) years will simply not change the underlying dynamic. Only targeted efforts in Belize itself can hope to change that picture to the extent that a looting problem actually exists.

Both GHA and CCP condemn looting, but also strongly believe that MOUs and their associated import restrictions must be calibrated to address current looting rather than simply act as a “feel good measure” designed to show support for the archaeological community and local cultural heritage officials. No evidence has been presented about current looting in Belize that would justify an extension of this agreement. Indeed, it appears that this MOU was agreed to for no other reason than to ensure that there were MOUs with all Central American countries. Overall, GHA and CCP submit that that a better course would be to assist professionals in Belize to protect, conserve, publish and display important cultural heritage material than continuing an embargo on broad categories of artifacts the may or may not have originated in the country.

Anthropologist David Matsuda has written extensively about subsistence looting in Central America by poor farmers. He has harshly criticized stereotypes of looters in the popular press as ignorant peasants. David Matsuda, *Subsistence Diggers* in *Who Owns the Past?* 255,

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263 (Kate Fitz Gibbon ed. Rutgers 2005). Instead, he notes that the diggers themselves regard the debate over who owns loot as an aspect of class warfare. He paraphrases the words of one such digger as follows,

Every year the archaeologists dig up the artifacts and take them away. The next year they come back with more money, people and equipment. They talk of our ancestors with reverence, but treat us like ignorant peasants. The excavations are often run like plantations where we are exploited. The archaeologists want strong backs and weak minds. When we work for them, they pay us little and do not treat us with respect. We are never asked what we think, and there is no chance for advancement. The artifacts represent money and power to archaeologists. That is how they make their upper class living. To us, these gifts from our ancestors mean seed corn, food, clothes and security. This is how we live our lower-class lives.

(*Id.* at 264.) To address these concerns, U.S. archaeologists should be encouraged to pay archaeological workers a fair living wage and ensure there is adequate site security during the long off-season.

## **B. U.S. 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. *Id.* § 2605. “Regular” restrictions may only be applied to archaeological artifacts of “cultural significance” “first discovered within” and “subject to the export control” of a specific UNESCO State Party. *Id.* § 2601. There must be some finding that the cultural patrimony of the UNESCO State Party is in jeopardy. *Id.* § 2602. They must be part of a “concerted international response” “of similar restrictions” of other market nations and can only be applied after less onerous “self-help” measures are tried. *Id.* 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.*

Aside from the criteria for entering into agreements, there are also strict limitations on what types of artifacts may be restricted. In particular, 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.*

The definitions of archaeological and ethnological objects limit the scope of any restrictions. Section 2601 defines them as follows:

(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 two hundred and fifty years old; and

(III) was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or underwater; 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 nonindustrial society, and

(II) 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.

The legislative history underscores the fact that “ethnological material” is to be defined narrowly. According to the Senate Report,

Ethnological material" includes any object that is the product of a tribal or similar society, and is important to the cultural heritage of a people because of its distinctive characteristics, its comparative rarity, or its contribution to the knowledge of their origins, development or history. *While these materials do not lend themselves to arbitrary age thresholds, the committee intends this definition, to encompass only what is sometimes termed "primitive" or "tribal" art, such as masks, idols, or totem poles, produced by tribal societies in Africa and South America.* Such objects must be important to a cultural heritage by possessing characteristics which distinguish them from other objects in the same category providing particular insights into the origins and history of a people. The committee does not intend the definition of ethnological materials under this title to apply to trinkets and other objects that are common or repetitive or

essentially alike in material design, color, or other outstanding characteristics with other objects of the same type, or which have relatively little value for understanding the origins or history of a particular people or society.

U.S. SENATE REPORT, 97-564 at 5 (emphasis added).

### **C. GHA and CCP Concerns about the Request**

#### **1. No Showing of Current Looting**

CPIA import restrictions are meant to address current looting not looting that took place decades ago when mores and laws were different. Here, the State Department has not produced any evidence to prove there is a significant current looting problem. Under the circumstances, CPAC should question Belizean authorities closely before CPAC can make the required finding that Belize’s cultural patrimony is in danger.

#### **2. Any MOU Should Be Conditioned on Benchmarks for Self-Help Measures.**

Before any renewal with Belize may be agreed to, CPAC must advise whether “Belize 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).

Here, the 2018 Amendment with Belize requires little on Belize’s side. Accordingly, CPAC should recommend that Belize investigate the creation of a portable antiquity reporting scheme for objects found on private land. Once objects reported under that scheme are registered, landowners 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,<sup>2</sup> could be a model for countries such as Belize, at least as far as common, redundant objects found on private land are concerned.

There are two other areas where self-help measures may address looting at archaeological sites. First, CPAC should recommend that U.S. archaeologists working in Belize ensure there is year-round site security at their sites. This can now be accomplished in a cost-effective manner with the use of cameras and other low-cost electronic security devices. Second, CPAC should recommend that U.S. archaeologists pay their archaeological workers a fair living wage. This will help provide a disincentive for the “subsistence digging” described in Dr. Matsuda’s work.

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<sup>2</sup> For more about the United Kingdom’s voluntary Portable Antiquity Scheme and mandatory Treasure Act, see <https://finds.org.uk/> (last visited January 18, 2022).

### 3. CPAC Should Further Define and Limit the Scope of Any Designated List.

#### a. The Current Designated List Does Not Give Fair Notice to Importers.

Current import restrictions are both exceedingly broad and exceptionally ill-defined in such a way to ensure that they only cover items first discovered within and subject to Belize's export control. 19 U.S.C. § 2601.

The archeological material covered under this agreement originated in Belize, from the following periods: Archaic, Pre-Classic, Classic, Post-Classic, and Early and Late Colonial Periods. The import restrictions apply to archeological material, described below, ranging in date from approximately 9000 B.C. to at least 250 years old, including, but not limited to, objects comprised of ceramic, stone, metal, shell, bone, glass, and wood.

78 FR 14183 (March 5, 2013), available at <https://www.federalregister.gov/documents/2013/03/05/2013-05151/import-restrictions-imposed-on-certain-archaeological-material-from-belize> (last visited July 6, 2022).

These specific categories are then described in mostly general terms:

I. Ceramic/Terracotta/Fired Clay—Unpainted, monochrome, bichrome, and polychrome. Decorative motifs include human, animal, and hybrid figures; curvilinear and rectilinear abstract designs; mythological and historic scenes; and other motifs. Decorative techniques include: painting, fluting, gouging, incisions, and modeling, among others. Forms vary considerably, and may include lids, tripod feet, or other supplementary decoration.

##### A. Common Vessels

1. *Vases and bottles*—(10-50 cm ht).
2. *Bowls*—(5-25 cm ht).
3. *Dishes and plates*—(10-50 cm diam).
4. *Jars*—(10-100 cm ht).
5. *Bottles*—(5-50 cm ht).

##### B. Special Forms

1. *Figurines*—(5-20 cm ht).
2. *Whistles, rattles and flutes*—(5-20 cm ht).
3. *Miniature vessels*—(5-10 cm ht).
4. *Stamps and seals*.
5. *Effigy vessels*—(15-50 cm ht).
6. *Incense burners*—(25-50 cm ht).
7. *Drums*—(10-50 cm ht).

II. Stone—Objects in any type of stone, including jade, greenstone, obsidian, flint, alabaster/calcite, limestone, slate, or other.

- A. *Tools*—forms such as points, blades, scrapers, hoes, grinding stones, eccentrics and, others.
- B. *Jewelry*—forms such as necklaces, earplugs, pendants, beads, and others.
- C. *Monumental Stone Art*—forms such as stelae, round altars, architectural elements, and others.
- D. *Vessels*—forms such as bowls and vases.
- E. *Figurines*—forms such as human, animal, and mythological creatures.
- F. *Masks*—burial masks of variable stone composition.
- G. *Mirrors*—round or rectangular forms composed of pyrite pieces.

III. Metal—Objects in copper, gold, silver, brass, or other. Beaten or cast into shape, often decorated with engraving, inlay, puncturing, or attachments.

IV. Shell—Objects made out of modified shell, often decorated with incisions or inlays.

V. Bone—Objects made out of modified human or animal bone, including tools, such as hooks and punches; jewelry, such as necklaces and pendants; and objects for ritual use.

VI. Glass—Objects made of glass, including utilitarian forms such as bottles, beads, figurines, and others.

VII. Wood—Objects made of wood, including utilitarian forms such as canoes, vessels, tools, and others; and ritual forms, such as crosses, figurines, and others.

*Id.*

GHA and CCP submit that such general descriptions simply fail to meet the fair notice requirements of 19 U.S.C. § 2604, a provision that mandates that designated lists be “sufficiently specific and precise” to ensure that import restrictions “are applied only to the archaeological and ethnological material covered by the agreement” so that “fair notice is given to importers... as to what material is subject to such restrictions.”

**b. The Designated list Should Not be Expanded.**

The renewal of the MOU with Belize also should not be an excuse to expand current import restrictions, particularly to coins.

Although surrounded by Spanish colonies, what is now modern Belize was controlled by the British since the 1600’s. Spanish Colonial and Republican era silver coins primarily from Guatemala circulated in the country from the 17<sup>th</sup> to 19<sup>th</sup> centuries. Some of these coins were countermarked. In 1885, British Honduras became a Crown Colony, and received with its own coins struck in England. After British Honduras became independent in 1973, the Franklin Mint in the United States began striking coins on its behalf.

None of these coins meet the threshold requirements that are necessary for them to be subject to restrictions as a class under the CPIA. They either fail to meet the 250-year threshold requirement for objects of archeological interest and/or are not “normally discovered” within the ground. *See* 19 U.S.C. § 2601(2)(A)(C)(i)(II)(III). Nor do these coins meet the definition of ethnological objects<sup>3</sup>. *Id.* § 2601(2)(B)(C)(ii). These coins simply are not the crafts of tribal cultures, but the products of what at the time were sophisticated industrial practices overseen by European mint workers.

Moreover, it is impossible to assume that Spanish Colonial and/or Republican era coins primarily from Guatemala were “first discovered within” and hence were “subject to export control” by Belize. *See* 19 U.S.C. § 2601 (2) (C). Spanish Colonial coins that circulated in Belize also circulated in other Spanish colonies and elsewhere, especially in the Far East and the United States (to 1857). So did coins later Guatemalan coins struck during the Republican period.

### **C. Conclusion**

If CPAC recommends another agreement with Belize, any such a MOU should be conditioned on limiting the designated list and holding Belize accountable to reasonable benchmarks that address congressionally mandated self-help measures. The designated list should be scaled back to items identifiable as being “first discovered within” and subject to the export control of Belize. Under no circumstances should restrictions be applied to items that are neither archaeological nor ethnological in character, particularly coins.

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<sup>3</sup> The current designated list only includes archaeological objects. Although ethnological objects are not included, should that be subject to change, coins of the sort that circulated in Belize simply do not meet these criteria.