



May 14, 2014

Cultural Property Advisory Committee
U.S. Department of State
2200 C Street, N.W.
Washington, D.C.
20522

Re: United States- Egypt Memorandum of Understanding

Dear Committee Members:

As President and President-Elect of the Lawyers' Committee for Cultural Heritage Preservation (LCCHP),¹ we submit this letter in support of the request from the Government of the Arab Republic of Egypt (Egypt) to enter into a Memorandum of Understanding with the United States to impose import restrictions on archaeological and ethnological materials. The Convention on Cultural Property Implementation Act authorizes the negotiation of such an agreement if the President's delegate in the Department of State determines that four criteria are satisfied.² LCCHP contends that Egypt meets the four criteria.³

I. The first determination addresses the jeopardy posed to the cultural patrimony of Egypt through continued looting of archaeological and ethnological materials. Cultural heritage pillaging in Egypt is well documented. Since the escalation of political unrest in Egypt in January 2011, the North African state has suffered widespread looting of its rich cultural heritage.⁴ This looting has continued during the past three years. It is estimated that the value of antiquities looted since 2011 is valued between \$3 and 6 billion.⁵ In fact, the cultural heritage destruction has reached such a critical point that the International Council of Museums released an Emergency Red List of Egyptian

¹ LCCHP is a not-for-profit organization that fosters the stewardship of the objects, places, and traditions that define us as societies, nations, civilizations, and even human beings. (<http://www.culturalheritagelaw.org/>).

² Convention on Cultural Property Implementation Act (CPIA), 19 U.S.C. § 2602(a)(1)(A)-(D).

³ *Id.*

⁴ <http://www.theepochtimes.com/n3/648156-the-loss-and-looting-of-egyptian-antiquities/>

⁵ <http://www.al-monitor.com/pulse/originals/2014/04/egypt-stolen-antiquities-looted-treasure-israel.html#>

Cultural Objects at Risk in 2012.⁶ The crisis fueling the black market stems from numerous sources and illuminates the difficulties with Egypt's unilateral attempts to suppress looting. There is a dire necessity for international assistance in the form of import restrictions.

There are a growing number of antiquities thefts occurring, facilitated by political unrest. The increased number of these thefts has been documented by satellite images of pockmarked landscapes, and land violated by looters' shovels and by bulldozers.⁷ Looting in Egypt occurs by individuals and by organized crime syndicates.⁸ Looters use heavy machinery to dig for valuable artifacts destroying archaeological materials in their wake. These methods wipe out all record of the past, and these destructive actions continue as the international market for Egyptian artifacts continues to thrive. As stated by Dr. Monica Hanna,⁹ an archaeologist internationally praised for her work in raising awareness of pillage, "Egyptian history is being destroyed. We need a worldwide collective effort."¹⁰

II. The second determination concerns the measures that Egypt has taken to protect its cultural heritage. Egypt has long played an active role in safeguarding its property through legislation, enforcement, education, creation of inventories, and international cooperation. Egypt's cultural heritage protection laws date back nearly two centuries. Egypt first enacted antiquities laws in 1835 with a decree that banned the unauthorized removal of antiquities from the country.¹¹ In March 1869, the government issued a by-law on "Antiquities items;" this law included a regulatory framework for excavations and the prevention of smuggling.¹² Five years later, a March 1874 by-law specified that all antiquities not yet discovered (those not unearthed) were property of the government.¹³ Article 34 of this bylaw specified that those objects seized were to be confiscated, vesting ownership in the government.

These laws were further strengthened before the turn of the 19th century in an August 12, 1897 decree setting forth penalties for illegal excavations.¹⁴ In addition to penalties, the law stipulated that a judge must order the return of looted antiquities to the government.

⁶ The ICOM Red Lists facilitate the work of law enforcement and customs officials, in addition to other professionals concerned with the protection of cultural property. These lists help to identify the categories of objects that are particularly vulnerable to looting, illegal purchase, smuggling, and black market exchange. The Egyptian alert is available at http://icom.museum/fileadmin/user_upload/images/Redlists/Egypt/120521_ERLE_EN-Pages.pdf

⁷ http://www.nytimes.com/2014/03/15/arts/design/egypt-asks-us-to-impose-sharp-curbs-on-importing-of-antiquities.html?_r=0

⁸ <http://www.theepochtimes.com/n3/648156-the-loss-and-looting-of-egyptian-antiquities/>

⁹ http://www.nytimes.com/2014/04/10/arts/design/taking-on-art-looters-on-twitter.html?_r=0

¹⁰ *Id.*

¹¹ International Council of Museums, available at <http://icom.museum/resources/red-lists-database/red-list/egypt/legislation/>

¹² http://www.unodc.org/documents/treaties/organized_crime/Egypt.pdf

¹³ *Id.*

¹⁴ *Id.*

This is equivalent to modern restitution laws. Then in 1912, Egypt passed three decrees related to pillaged antiquities. Law No. 14 of June 12, 1912, stipulated that an export license can only be granted by the nation's Antiquities Department.¹⁵ This law was strengthened by Ministerial Decree Nos. 50 and 52 of December 8, 1912, which prohibited the export of antiquities out of Egypt absent a license.¹⁶ The Egyptian government continued to update and revise its laws and regulations through a series of decrees and laws made during the first half of the 20th century, including Law No. 14 of January 29, 1931 on the protection of cultural objects found near and around Al Moallaka.¹⁷

On October 31, 1951, Law No. 215 on the Protection of Antiquities was passed.¹⁸ Significantly, this law completely prohibited the removal of antiquities unless there were multiple items that were similar to the antiquity in question, and the Department of Antiquities (in collaboration with museum experts) approved their removal and granted written permission. The law was significant also for heightened penalties that accompanied this legislation.

In 1983, Law No. 117 was passed.¹⁹ This law completely abolished all antiquity exports outside of Egypt. Article 9 of the law stipulated that disposal of any antiquity possessed by an individual within Egypt must be accompanied with written consent from the Antiquities Authority, provided that the disposal does not result in the object leaving Egypt. The law also increased penalties; violators not only faced fines, but incarceration. Licensed trade in antiquities was totally abolished after the law's enactment. This law was amended, in 2010 to prohibit all antiquities trading and to cancel the 10 percent of ownership granted to foreign excavation missions that discovered them, and it is still in effect today.²⁰

Moreover, Egypt actively enforces these laws to prevent looting and preserve cultural objects. Recently, in January 2014, Egypt's Ministry of State for Antiquities announced that more than 1,500 looted artifacts were recovered by police during the raid of a house in a Cairo suburb.²¹ This was not an isolated incident, as Egyptian police forces often are involved the recovery of looted objects.²² Egypt's Tourism and Antiquities

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ <http://www.cemml.colostate.edu/cultural/09476/laws10egyptenl.html>

²⁰ <http://weekly.ahram.org.eg/2010/984/eg3.htm>

²¹ <http://www.reuters.com/article/2014/01/07/us-egypt-antiquities-idUSBREA060EI20140107>

²² See <http://english.ahram.org.eg/NewsContent/9/40/100154/Heritage/Ancient-Egypt/-artefacts-stolen-from-the-Egyptian-Museum-recover.aspx>; <http://www.reuters.com/article/2014/01/07/us-egypt-antiquities-idUSBREA060EI20140107>; <http://english.ahram.org.eg/NewsContent/9/44/88598/Heritage/Museums/Ankhesom-statue-goes-back-to-Egypt-Malawi-Museum.aspx>; <http://english.ahram.org.eg/NewsContent/9/40/85488/Heritage/Ancient-Egypt/Stolen-Ancient-Egyptian-shrine-recovered.aspx>; <http://english.ahram.org.eg/NewsContent/9/40/83434/Heritage/Ancient-Egypt/Stolen-Ptolemaic-mummy-found-in-Egypt-Giza.aspx>

Police provide training and armed security guards to archaeological sites and museums, and train ministry personnel in the use of state-of-the-art security equipment.

In addition to police forces tasked with protecting Egyptian antiquities, the Supreme Council of Antiquities (“SCA”) conserves, protects and regulates antiquities and archaeological excavations in Egypt. Founded in 1859, the SCA and its predecessors were responsible for defining archaeological site boundaries and were the only entities permitted to restore or preserve Egyptian monuments.²³ The SCA also oversaw the recovery of antiquities either stolen or illegally exported from Egypt. Between 2002 and 2008 the SCA successfully retrieved 3,000 looted artifacts.²⁴ The SCA and its predecessors have been active in inventorying objects and sites in Egypt.²⁵ The council is preparing a list of sites deemed at risk, which will be distributed to archaeological institutes throughout the country, and posted on the SCA website to preserve and protect archaeological sites threatened by urban development.²⁶

Not only has Egypt protected antiquities with laws and police enforcement, but the importance of antiquities preservation has even been addressed in the nation’s constitution. The support of the Constitution of 2014 was overwhelmingly strong, with 98.1 percent of voters in favor of the constitutional referendum.²⁷ Included in the Constitution is Article 213, stating, “The Supreme Authority for Heritage Conservation regulates the means of protecting the cultural and architectural heritage of Egyptians, supervises its collection and documentation, safeguards its assets, and revives awareness of its contributions to human civilization.”²⁸

At the international level, Egypt has ratified major agreements on the protection of cultural heritage. These included the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention as well as the accompanying First and Second Protocol; 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage.²⁹

Egypt has also been vocal in the international dialogue on cultural patrimony, and in 2010 organized and hosted the Conference on International Cooperation for the Protection and Repatriation of Cultural Heritage in Cairo.³⁰ Representatives from twenty-two countries

²³ http://en.wikipedia.org/wiki/Supreme_Council_of_Antiquities, citing <http://weekly.ahram.org.eg/2009/938/eg7.htm>

²⁴ <http://weekly.ahram.org.eg/2008/904/he1.htm>

²⁵ <http://english.ahram.org.eg/News/24287.aspx?mid=504>

²⁶ <http://english.ahram.org.eg/NewsContent/9/40/23657/Heritage/Ancient-Egypt/List-of-at-risk-Egyptian-archaeological-sites-to-b.aspx>

²⁷ <http://www.cnn.com/2014/01/18/world/africa/egypt-constitution/>

²⁸ <http://www.egyptindependent.com/news/egypt-s-draft-constitution-translated>

²⁹ ICOM. <http://icom.museum/resources/red-lists-database/red-list/egypt/legislation/>

³⁰ http://www.sca-egypt.org/eng/RST_ICHC.htm

attended the two-day event. At the conclusion of the conference, the attendees drafted the Cairo Communique, a list of recommendations for the ways in which these countries can move forward together to protect and restore their cultural heritage.

Through these various means, Egypt has demonstrated its ongoing commitment to the safety of its cultural heritage in accordance with this statutory requirement.

III. The third criterion concerns the concerted international effort to protect Egypt's cultural objects. The language of the third determination refers to U.S. import restrictions "applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations ... individually having a significant import trade in such material"³¹ One is therefore not restricted to looking to those nations that adopt an identical system of import restrictions pursuant to a supplementary agreement, but rather to whether other nations with a significant import trade in Egyptian cultural materials are also restricting import in a similar manner and one that is calculated to reduce the flow of undocumented cultural materials into the nation. This determination is satisfied for several reasons, as discussed below:

A. International treaties that call for the prevention of illicit trade in cultural objects continue to gain State Parties, including several significant market nations in recent years.

B. Bilateral agreements with Egypt allow countries to implement their treaty obligations and to establish diplomatic relations through cooperative effort and further promotes the effectiveness of the import restrictions in the US-Egypt agreement.

The third determination examines the substantial benefit that U.S. import restrictions, either alone or in concert with actions taken by other market nations, would provide in deterring pillage. Regarding the actions of other market nations, the Senate Report that accompanied enactment of the CPIA noted that identifying which countries have a "significant import trade" may be a function of "type and historic trading patterns," as well as of the monetary value of the imports (Senate Report No. 97-564, 27). The CPIA emphasizes that, in order to be considered part of a "concerted international effort," the measures employed by other nations need only be "similar," as long as they function toward the same goal of restricting illicit trade. The CPIA also explicitly includes the actions of nations that are not party to the 1970 UNESCO Convention, further signaling that the third statutory determination does not require any specific type of import restrictions. This point is reiterated in the Senate Report: "the formula measuring the presence and worth of a 'concerted international effort' [need] not be so mechanical as to preclude the conclusion of agreements under Section 203(a) where the purposes of the legislation nevertheless would be served by doing so." (Senate Report No. 97-564, 28.) There is, therefore, a significant degree of flexibility in the consideration of measures used by nations that serve the purpose of protecting cultural heritage. In supporting this determination, I refer to both the ratification of multinational treaties and the creation of bilateral agreements with Egypt as evidence that countries

³¹ 19 U.S.C. § 2602(a)(1)(C)(i).

have joined in a “concerted international effort” to address the pillage of archaeological sites, both in Egypt and throughout the world.

A. International Treaties

Egypt signed the 1970 UNESCO Convention in 1973, and 110 additional countries have since joined. The current total number of State Parties is 125.³² Some of the largest market nations, such as Switzerland, Denmark, Sweden, and Germany, signed the treaty within the past ten years. Two other large market nations, the United Kingdom and France, joined in 2002 and 1997, respectively. The steady rate at which market nations have accepted the Convention indicates the international community’s respect for cultural patrimony and the shared responsibility to protect the world’s cultural heritage.

Many of the signatories consider UNESCO to be effective within their territories without enactment of implementing legislation. Others, including Australia and Canada, have made UNESCO effective by enacting domestic sanctions for the import of illegally exported cultural materials from any other State Parties.³³ Nations in both of these categories have therefore already implemented restrictions that are similar to, and in fact much broader than, the proposed restrictions on objects from Egypt by the United States pursuant to the CPIA.

Other countries, ones which require legislation to implement UNESCO regulations, have stated that, in enforcing import restrictions, they will apply the country of origin’s law in determining whether the importation of certain objects is illegal. For example, the United Kingdom has criminalized knowingly “dealing in tainted cultural objects,” defined as objects whose “removal or excavation constitutes an offence” in the nation of origin.³⁴ Under UK law, the offense of dealing in tainted cultural objects covers artifacts from Egypt, including the import or export of such objects.³⁵ Likewise, Germany’s implementing legislation forbids the import of any illegally exported cultural objects that have been individually classified in an accessible inventory by the country of origin either one year prior to removal or within one year of the time when the country of origin gains knowledge of the excavation.³⁶

³² UNESCO. <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E>

³³ See, e.g., Canada Cultural Property Export and Import Act, R.S.C. 1985, c. C-51, § 37; Australia Protection of Movable Cultural Heritage Act 1986. These restrictions are much broader because they apply to all illegally exported cultural materials and are not restricted to archaeological materials that are older than 250 years or to specifically designated categories of archaeological and ethnological materials.

³⁴ Dealing in Cultural Objects (Offences) Act 2003, 2003 Ch. 27, Sections 1 and 2(2), available at <http://www.uk-legislation.hmso.gov.uk/acts/acts2003/20030027.htm>. The statute refers to objects removed from “a building or structure of historical, architectural or archaeological interest” or from an excavation either in the United Kingdom or in a foreign country. Section 2(3)(a).

³⁵ Section 4 of the Act gives British Customs the “necessary powers of enforcement where an offence involves the importation or exportation of a tainted cultural object.”

³⁶ See Act Implementing the Cultural Property Convention 2007, Ch. 3, Section 6, available at http://www.wipo.int/wipolex/en/text.jsp?file_id=230663.

B. Bilateral Agreements

Sixteen countries have signed bilateral agreements with Egypt.³⁷ Often, agreements calling for the general promotion of cultural exchange are followed by implementation protocols and memoranda of understanding that explicitly pledge to protect one another's cultural patrimony with provisions for the prevention of excavation, theft, trade, and smuggling of illicit objects. The ratification of multinational treaties and the creation of bilateral agreements demonstrate the existence of a "concerted international effort" as stated in the CIA's third criterion.

C. Exception

Moreover, in assessing the third determination, it is also necessary to acknowledge the exception provided in the statute, as follows:

Exception to restrictions. Notwithstanding paragraph (1), the President may enter into an agreement if he determines that a nation individually having a significant import trade in such material is not implementing, or is not likely to implement, similar restrictions, but--

(A) such restrictions are not essential to deter a serious situation of pillage, and

(B) the application of the import restrictions . . . in concert with similar restrictions implemented, or to be implemented, by other nations (whether or not State Parties) individually having a significant import trade in such material would be of substantial benefit in deterring a serious situation of pillage.³⁸

In accordance with this exception, even if another nation with a significant import trade is not taking similar actions, then the United States may impose its own import restrictions if the restrictions would be of substantial benefit in deterring pillage. Because the United States is one of the world's major market nations for Egyptian antiquities,³⁹ enactment of a US-Egypt memorandum of understanding would be a powerful tool in the fight against looting.

IV. The fourth determination examines whether import restrictions would promote the international exchange of cultural property for scientific, cultural, and educational purposes. Egypt has affirmed its interest in cultural exchange many times, starting in the late 19th century when the collection of the Egyptian Museum was first formed.⁴⁰ Since then, many sites and museums have been designated and operated by SCA,⁴¹ Egypt has lent multiple exhibits that toured the world,⁴² the government has committed to building the

³⁷ The following countries have signed a bilateral agreement with Egypt: Austria, China, Comoros, Cuba, Ecuador, El Salvador, Greece, India, Ireland, Italy, Jordan, Kazakhstan, Maldives, Peru, South Korea, Switzerland. International Council of Museums. <http://icom.museum/resources/red-lists-database/red-list/egypt/bilateral-agreements/>

³⁸ 19 U.S.C. § 2602(c)(2).

³⁹ <http://www.nytimes.com/2014/03/21/opinion/egypts-heritage-plundered-anew.html>

⁴⁰ http://www.sca-egypt.org/eng/MUS_Egyptian_Museum.htm

⁴¹ www.sca-egypt.org/eng/SITE_LIST.htm; www.sca-egypt.org/eng/MUS_List.htm

⁴² www.sca-egypt.org/eng/EXHIB_TRAVEL_MP.htm#

Grand Egyptian Museum in Giza,⁴³ and a human barricade was formed around the Egyptian Museum to protect Egypt's cultural artifacts during the revolution in 2011.⁴⁴ These endeavors demonstrate both Egypt's longstanding commitment to the worldwide sharing of its heritage and the importance of maintaining import restrictions in furtherance of this objective.

LCCHP therefore contends that the four statutory criteria have been satisfied and asks that CPAC recommend entering into an MOU with Egypt. We hope that the Committee finds these comments useful, and we thank you for the opportunity to offer them.

Sincerely,

Diane Penneys Edelman

Diane Penneys Edelman
President, Board of Directors, Lawyers' Committee
for Cultural Heritage Preservation
Professor of Legal Writing and Director of International Programs, Villanova University
School of Law
edelman@law.villanova.edu

Elizabeth C. Varner

Elizabeth C. Varner
President-Elect, Board of Directors, Lawyers' Committee
for Cultural Heritage Preservation
Executive Director, National Museum of Sport
elizabeth.c.varner@gmail.com⁴⁵

⁴³ www.gem.gov.eg

⁴⁴ http://www.nytimes.com/2012/11/01/world/middleeast/revolution-brings-hard-times-for-egypts-treasures.html?_r=0

⁴⁵ The views stated in this letter represent those of LCCHP, and not Villanova University School of Law, Villanova University, or the National Museum of Sport.