

February 6, 2013

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

Dear Madame Chairperson and Members of the Committee,

I write in support of the proposed second extension of the *Memorandum of Understanding Between the Government of the Kingdom of Cambodia and the Government of the United States of America Concerning the Imposition of Import Restrictions on Archaeological Material from Cambodia from the Bronze Age Through the Khmer Era (MOU)*.

For the past decade, I have devoted myself to fighting the pillage of ancient sites and trafficking of artifacts, particularly in Southeast Asia. While I submit these comments in my personal capacity, I am now a Researcher in the Scottish Centre for Crime and Justice Research at the University of Glasgow, where my work focuses on studying the illicit trade in Cambodian antiquities.¹ Lastly, I'm admitted to the New York State Bar, Third Department.

According to the *Convention on Cultural Property Implementation Act (CPIA)*, the only criterion for extension of the MOU is whether the four criteria justifying the original agreement are still present, and I address each below.²

(1) The cultural patrimony of the requesting nation is in jeopardy from the pillage of archaeological materials.

Cambodia is carpeted by remnants of antiquity. A 2002 project by the Ministry of Culture and Fine Arts (MCFA) and *le Ministère français des affaires étrangères* — “*le Programme de prévention du trafic illicite des œuvres d’art*” — identified more than 2,000 prehistoric and historic sites.³ While this is a staggering number, especially considering the country is only the size of Oklahoma, the MCFA reports it has since doubled to 4,000 as more locations are discovered each year.⁴

¹ The author is part of “Trafficking Culture,” a research program at the University of Glasgow, which “aims to produce an evidence-based picture of the contemporary global trade in looted cultural objects.” See <http://www.traffickingculture.org>.

² Section 303(e), 19 U.S.C. § 2602(e); Section 303(a)(1)(A)-(D), 19 U.S.C. § 2602(a)(1)(A)-(D).

³ *Carte Interactive des Sites Archéologiques Khmers*, <http://www.site-archeologique-khmer.org>.

⁴ Report on file with the MCFA.

This heritage has immense historic, religious, and cultural significance to the Khmer people, and since it attracts millions of tourists each year, is one of the country's most important economic resources. It is also among its most endangered. Looters seeking prized artifacts are decimating Cambodia's past. Bandits hack entire temples to rubble, severing statues and bas-reliefs. Thieves hunting grave goods reduce miles of the terrain to moonscapes. Treasure seekers are even plundering ancient shipwrecks in the Gulf of Thailand.⁵

The Committee is well informed about such past pillage, which led to the imposition of U.S. emergency import restrictions on certain Khmer archaeological material in 1999, the U.S.–Cambodia bilateral agreement in 2003, and the MOU's extension in 2008. I will thus focus my comments on developments in the last five years. While the situation is improving, all heritage sites in the country remain at risk, and will so long as there is a demand for illicit Khmer art.

Highly publicized incidents only hint at the scale of the ongoing problem. Just last month, the Documentation Center of Cambodia reported a failed attempt of theft at the 10th century Rolum temple outside the Koh Ker complex, beyond the reach of its security patrols.⁶ While the site's guards have since been expanded, this serves as a reminder that no amount of policing can fully protect a country as archaeologically rich as Cambodia, because criminals will always find “softer” targets.

Rolum temple is the latest victim, but it is just one of many examples to made the headlines. In 2012, *Asia Life* magazine recounted attempted looting by “six or seven men with trucks and motorbikes” at Phimeneakas in Angkor, noting that the “heist was only unusual because of its location” at the heavily policed archaeological park.⁷ In 2011, two high ranking officials were arrested while smuggling (along with drugs and arms) a 12th-century Angkorian bronze artifact, which authorities suspected had been recently unearthed near the Thai border.⁸ In 2010, archaeologist Dr. Dougald O'Reilly publicly cautioned “We are finding that in rural areas there is quite a lot of [...] heritage destruction at archaeological sites that date especially to the period from 500 BC to 500

⁵ The looting of Cambodia's archaeological sites has been well chronicled in books, academic papers, news articles, and the reports of governmental and nongovernmental organizations. The NGO Heritage Watch, with which the author has worked since 2004, is dedicated to studying and combating the plundering and trafficking of Cambodian antiquities. In addition to conducting its own research, it also serves as a clearinghouse of information from other sources. See www.heritagewatchinternational.org.

⁶ Dene-Hern Chen, “Lion Statue from 10th-Century Temple Found in Preah Vihear,” *Cambodia Daily*, 29 January 2013.

⁷ Michael Sloan, “Traders of the Lost Art, *Asia Life*, March 2012.

⁸ Butth Reaksmeay Kongkea, “Former Governor Gets 12 Years in Jail,” *Phnom Penh Post*, 4 July 2012.

AD.”⁹ In 2009, the International Council of Museums (ICOM) likewise warned that while “looters have targeted Angkorian and Post-Angkorian metal objects and stone sculptural elements for decades,” in recent years “a new tide of destruction has arisen with the looting of Prehistoric cemetery sites across the country.”¹⁰ ICOM may have been referring in part to a notorious incident in 2008 — when extensive looting of gold, jewelry, and other artifacts occurred at Te Touk Pos in Kompong Speu — prompting some 500 villagers to gather near the site and make offerings of apology for the crimes.¹¹

Now that ancient temples are devoid of freestanding statuary — because most has either been stolen or moved elsewhere for safekeeping — even urban pagodas and their sacred relics are under attack. In January 2013, robbers stole 12 artifacts worth some \$5,000 from Wat Bo, a center of the Buddhist community in Siem Reap. While Cambodian authorities have since recovered 5 of these in a raid on a Phnom Penh antique shop, the others may be lost forever.¹² The risk is so great that monks have begun voluntarily entrusting their most precious statues to the Angkor Conservation in Siem Reap or the National Museum in Phnom Penh.¹³

The above cases are unusual, not in their occurrence, but in making the papers. As in most countries, most looting goes unreported.¹⁴ Criminals do not broadcast their activities to the authorities, and likewise, the authorities are hesitant to further publicize known heritage thefts in the media until the endangered sites are fully secured. Therefore, most of the evidence of cultural plunder in Cambodia is anecdotal, and difficult to quantify or qualify.

⁹ Robert Carmichael, “New List Aims to Stem Tide of Cambodian Stolen Artifacts,” Voice of America, March 1, 2010, <http://www.voanews.com/content/new-list-aims-to-stem-tide-of-cambodian-stolen-antiquities-85941807/164729.html>.

¹⁰ ICOM: Red List of Cambodian Antiquities at Risk, http://icom.museum/uploads/tx_hpoindexbdd/RL_CAMBODGIA_UK_ICOM_01.pdf.

¹¹ Bou Saroeun, “Spirit Revenge Rumored,” Phnom Penh Post, June 13, 2008.

¹² While the *Phnom Penh Post* reported the figures used here, officials from the Authority for the Protection and Management of Angkor and the Region of Siem Reap (APSARA) have stated in personal communications that 29 objects were stolen and 8 recovered. The reason for the discrepancy is not known. More important than the number of pieces involved, however, is the fact that all were already listed in a government database of protected cultural property. This should aid in their recovery. Kim Sarom and Danson Cheong, “Antiques Shop Raid Nets Loot Stolen from Siem Reap Pagoda,” Phnom Penh Post, January 24, 2013.

¹³ Khouth Sophak Chakrya, “Buddha Statue Finds Sanctuary in National Museum,” Phnom Penh Post, December 5, 2012.

¹⁴ As Major General Tan Chay, the director of the Heritage Protection Police, has said: “No traceability, no recovery. If looters find the item before us, it is lost forever. Practically, we will have no way to prove they smuggled it out of Cambodia.” Svlvain Gharbi, “Khmer Heritage Plundered,” Phnom Penh Post, January 18, 2013.

This should in no way take away from the severity of the crisis. Again, I have been working in Cambodia for the past decade, and travel there several times a year to conduct fieldwork on the illicit antiquities trade. I've visited and documented looting at countless sites and have spoken with archaeologists, collectors, dealers, looters, traffickers, and government officials. All of these have acknowledged that, while the situation is no longer the "free for all" of the 1990's, protecting Cambodia's heritage is an ongoing battle requiring constant vigilance.

(2) The requesting nation has taken measures to protect its cultural patrimony.

As stated above, protecting heritage is an ongoing battle for Cambodia, which has only recently emerged from decades of civil war, genocide, and foreign occupation. Despite the country's modern history — and the political and economic challenges it still faces — the Royal Government of Cambodia (RGC) has always made preservation a priority. Its successes on this front are impressive, if not downright remarkable, even if much remains to be done.

The Committee is well informed of the RGC's many actions prior to 2008, when the MOU was last extended, so I will not repeat those here. Since that time, however, Cambodia has continued to build on its extensive preservation framework. In recognition of these efforts, it will soon host the 37th Session of UNESCO's World Heritage Committee from June 17–27, 2013 in Phnom Penh.¹⁵ His Excellency Deputy Prime Minister SOK An will serve as Chairperson.¹⁶ This event comes on the heels of last year's Asia-Pacific Regional Meeting on the Protection of Underwater Cultural Heritage, held in Koh Kong, and organized by the MCFA and UNESCO.¹⁷ These honors demonstrate Cambodia's increasing leadership role in the international heritage community.

Cambodia's focus, however, remains Cambodia. The Cultural Heritage Police (CHP) — founded in 1994 to safeguard Angkor — have done much to secure the major temple complexes, which is why looters are now forced to target minor sites, or urban pagodas.¹⁸ In 2009, the National Museum, *l'École française d'Extrême-Orient*, and Heritage Watch

¹⁵ UNESCO World Heritage Centre: 37th Session of the Committee, <http://whc.unesco.org/en/sessions/37COM>.

¹⁶ UNESCO World Heritage Centre: World Heritage Committee, <http://whc.unesco.org/en/committee>.

¹⁷ UNESCO Office in Phnom Penh: Protecting Underwater Cultural Heritage, http://www.unesco.org/new/en/phnompenh/about-this-office/single-view/news/protecting_underwater_cultural_heritage_unesco_holds_a_regional_meeting_in_koh_kong_cambodia.

¹⁸ Special Police Corps for the Protection of Cultural Heritage, http://www.auteuriteapsara.org/en/apsara/about_apsara/police.html.

joined ICOM in publishing a “Red List of Cambodian Antiquities at Risk,” currently one of just 11 such directories in the world.¹⁹ Throughout the last five years, Cambodian law enforcement agents have also partnered on investigations and raids with their foreign counterparts, including the U.S. Immigration and Customs Enforcement (ICE), INTERPOL, and the Thai military and civilian authorities. These joint efforts have resulted in several notable repatriations to the National Museum.²⁰

Within the country, there have also been high profile arrests and convictions, which would have been inconceivable even a decade ago. For example, in 2012, the Phnom Penh Municipal Court convicted former governor Lay Vireak and general Khuon Roewn to 12 and 16 years in jail respectively after they were caught trafficking drugs, arms, and a 12-century Angkorian bronze artifact.²¹ This groundbreaking case demonstrates that once “untouchable” officials are now becoming legally accountable for their actions and the rule of law is improving.

While there have been other successful prosecutions of looters and traffickers, countrywide statistics are unavailable, since criminal records are not centralized in Cambodia.²² To obtain this information, one would have to personally visit not only the offices of the CHP, but also every local and provincial police station and courthouse and then manually search their files. The RGC is working to rectify this problem, but in the meantime, the lack of data should not be misinterpreted as a lack of action on their part.

Having worked on legal development projects in Cambodia, both with the RGC and private attorneys, I’ve witnessed firsthand the difficulties facing the justice system. It is important to remember that between 1975 and 1979, most of the country’s lawyers died in the Killing Fields and its law schools and libraries were destroyed. The subsequent Vietnamese occupation lasted a decade and the Khmer Rouge only surrendered in 1998. Cambodia is still in the process of rebuilding its legal system from the ground up. But again, progress is being made, and I am optimistic.

¹⁹ Red List of Cambodian Antiquities at Risk, <http://archives.icom.museum/redlist/cambodia/en/index.htm>; ICOM: Red List, <http://icom.museum/programmes/fighting-illicit-traffic/red-list>.

²⁰ For a few examples, see Vong Sokheng, “Stolen Artefacts to Be Returned,” Phnom Penh Post, April 13, 2009; Sam Rith, “Summit May See Return of Artifacts,” Phnom Penh Post, January 8, 2010; Embassy of the United States Phnom Penh, Cambodia: United States Returns Looted Antiquities in Ceremony at National Museum, http://cambodia.usembassy.gov/repatriation_ceremony_2010.html.

²¹ Buth Reaksmeay Kongkea, “Ex-Governor Gets 12 Years in Jail,” Phnom Penh Post, July 4, 2012.

²² For one example, see Buth Reaksmeay Kongkea, “Charges for Two Men for Artefact Smuggling,” Phnom Penh Post, November 18, 2010.

Related to this — and required by Article II(F) of the MOU — are the country’s efforts to “reduce corruption that undermines efforts to protect Cambodian cultural patrimony from pillage and illicit trafficking.” The RGC passed a landmark anti-corruption law in 2010 and subsequently established two new institutions to implement it.²³ In 2012, Transparency International (TI) also joined the government in its mission to fight corruption, and now maintains an active office in Phnom Penh.²⁴ While TI admittedly ranks Cambodia 157 out of 176 countries on its Corruption Perceptions Index, this is an unfortunate but unavoidable result of the country’s recent history and current poverty, but more positively an improvement on previous years. On this front, too, my colleagues and I are optimistic. I personally have noticed much progress since I first visited Cambodia in 2003 and lived there from 2004 to 2006. And I expect more to be made as the economy continues to grow.

The measures described above are just those with which I have the most personal experience. The RGC has implemented many others to better protect its cultural heritage. But since the Committee will be hearing from practicing archaeologists, who can speak to these steps firsthand, I will move on to the third determination.

(3) U.S. import restrictions, either alone or in concert with actions taken by other market nations, would be of substantial benefit in deterring the serious situation of pillage.

As demonstrated above, over the last five years, Cambodia has continued to work closely with the global community to deter pillage within its borders. This is not a new development, as Cambodia was already party to the major international agreements for the protection of cultural heritage, and often among their first signatories. It joined the *Convention for the Protection of Cultural Property in the Event of Armed Conflict* in 1962; the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (1970 UNESCO Convention)* in 1972; the *World Heritage Convention* in 1991; the *Convention on Stolen or Illegally Exported Cultural Objects* in 2002; and the *Convention on the Protection of the Underwater Cultural Heritage* in 2007.²⁵

The U.S. import restrictions are part of a worldwide response to Cambodia’s looting crisis and complement similar actions taken by other nations. In addition to the U.S.–Cambodia MOU, the country entered a bilateral agreement with Thailand in 2000, a similar one with Ecuador just this year, and is in the process of negotiating another with

²³ Freedom House: Cambodia, <http://www.freedomhouse.org/report/countries-crossroads/2012/cambodia>.

²⁴ Transparency International: Cambodia, <http://www.ticambodia.org>.

²⁵ These are the dates of actual ratification or accession, not signature, which was often much earlier.

Australia.²⁶ Such measures are superfluous with many countries, however, because they view the 1970 UNESCO Convention as self-executing.

Since the MOU was last extended, seven countries have joined this international agreement, meaning it now boasts 123 State Parties. These significantly include the major market nations of the United Kingdom, France, Switzerland, Germany, and Belgium. The latter's ratification in 2009, particularly, could have a major impact: archaeologists, law enforcement agents, and government officials have long informed me that Brussels is a major shipment point and end destination for illicit Cambodian antiquities.

This is not to undermine the role of the U.S. or the significance of its import restrictions. New York has long been the center of the art world and Khmer art is no exception. While the true scale of the American market, licit and illicit, for Cambodian antiquities is still unknown — though the University of Glasgow is now conducting research on this very topic — operations by ICE and other law enforcement agencies have demonstrated that the U.S. is indisputably a destination for recently looted Khmer art.²⁷

While these government actions often focus on masterpieces, we should not forget the smaller artifacts, as they may be even more important to our understanding of the archaeological record. Here too the U.S. import restrictions have a key role to play. Americans make up the highest percentage of non-Asian tourists to Cambodia and have been known to innocently (or not so innocently) bring antiquities home as souvenirs.²⁸ Dr. Georgina Lloyd of the University of Sydney has studied many such pieces confiscated by the Cambodian authorities from foreign visitors when leaving the country.²⁹ Given that most of these items were small, and therefore easily concealed from customs, it is likely this collection represents just the proverbial tip of the iceberg. U.S. import restrictions thus provide an additional safeguard that such objects will be recovered and returned to Cambodia, as well as a disincentive to Americans tourists who may be considering such behavior.

(4) Import restrictions would promote the interchange of cultural property among nations for scientific, cultural, and educational purposes.

²⁶ Eang Mengleng, "Ecuador, Cambodia Sign Antiquities Agreement," Cambodia Daily, January 24, 2013; Report on file with the MCFA.

²⁷ Embassy of the United States Phnom Penh, Cambodia: United States Returns Looted Antiquities in Ceremony at National Museum, http://cambodia.usembassy.gov/repatriation_ceremony_2010.html.

²⁸ Cambodian Ministry of Tourism: Tourism Statistics Report for November 2012, http://www.tourismcambodia.org/images/mot/statistic_reports/tourism_statistics_november_2012.pdf.

²⁹ Personal communications with Dr. Lloyd.

The MOU does not limit the legal interchange of Cambodia's antiquities, and in my experience, has actually encouraged and enabled the RGC to share its rich heritage with America.

The National Museum has an "active policy of lending objects from its collection for major international exhibitions." In the last 15 years, over a dozen such exhibits have been held in Australia, Belgium, France, Japan, South Korea, Germany, Switzerland, and the U.S.³⁰ We in America have greatly benefited from this generosity, especially since the MOU was last renewed.

In 2010 and 2011, the Freer and Sackler Galleries at the Smithsonian and the Getty Museum enjoyed "Gods of Angkor," a previously unmatched exhibition of 36 bronze masterpieces.³¹ Thousands of Americans, on both sides of the coast, were thus able to see these antiquities in person.³² Spring 2013 will be equally exciting for lovers of Khmer art, as over 125 artists are traveling to New York for "Seasons of Cambodia."³³ While this festival focuses on contemporary art, Cambodia will also be contributing to the Metropolitan Museum of Art's 2014 exhibit "Lost Kingdoms of Early Southeast Asia."

For these reasons, the statutory criteria have been satisfied and the Committee should recommend the extension of the bilateral agreement between the U.S. and Cambodia. I am happy to provide additional information on this issue if requested. I thank the Committee for their time and consideration.

Sincerely,



Tess Davis

³⁰ National Museum of Cambodia: Museum History, http://cambodiamuseum.info/museum_history.html.

³¹ Smithsonian: "Gods of Angkor" at the Sackler Gallery Presents Bronze Masterworks, <http://newsdesk.si.edu/releases/gods-angkor-sackler-gallery-presents-bronze-masterworks>; Getty Center Exhibitions: Gods of Angkor, http://www.getty.edu/art/exhibitions/gods_angkor.

³² Cheang Sophinarath, "Gods of Angkor Exhibit Bids America Goodbye," Voice of America: Khmer, August 17, 2011, <http://www.voacambodia.com/content/gods-of-angkor-exhibit-bids-america-goodbye-127955678/1359985.html>.

³³ Season of Cambodia: A Living Arts Festival, <http://seasonofcambodia.org>.