

14 October 2017

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

Dear Chair and Members of the Committee,

I am writing to urge the Committee to extend 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)*.

While I submit these comments in my personal capacity, I am Executive Director of the Antiquities Coalition, a not-for-profit dedicated to cultural heritage preservation.¹ I am also a member of the New York State Bar and an Affiliated Researcher in the Scottish Centre for Crime and Justice Research at the University of Glasgow.² For over the last decade, as an archaeologist and then lawyer, I have conducted extensive field research on the illicit trade in Cambodian antiquities, as well as legal research on the kingdom's cultural property laws.³

As a result, I am very familiar with the Cambodia-U.S. MOU, and have twice had the honor of presenting oral and written testimony in its support. As the Committee well knows, according to the *Convention on Cultural Property Implementation Act (CCPIA)*, the only criterion for the MOU's extension is whether the four criteria justifying the original agreement remain

¹ "The Antiquities Coalition", *The Antiquities Coalition*, Accessed October 2017, www.theantiquitiescoalition.org.

² "Trafficking Culture", *University of Glasgow*, Accessed October 2017, www.traffickingculture.org.

³ In addition to my work with the Antiquities Coalition and University of Glasgow, I have served as a *pro bono* consultant to the Royal Government of Cambodia and the Manhattan District Attorney's Office on relevant law enforcement investigations and prosecutions. I previously worked for the non-governmental organization Heritage Watch in Cambodia, first as Project Coordinator, and finally as Assistant Director. I write and speak widely on the illicit trade in Cambodian antiquities, having been published in a number of peer-reviewed journals, as well as outlets such as the *New York Times*, *Wall Street Journal*, *Los Angeles Times*, *CNN*, and *Foreign Policy*. In 2015, the RGC knighted me for this work, with the rank of Commander in the Royal Order of the Sahametrei.

present.⁴ Without doubt, these four criteria are still present, and I address each individually below.

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

The Committee is well informed about the tragedies inflicted upon the Khmer people and their rich cultural heritage during the twentieth century. Cambodia, internationally celebrated for its ancient temple of Angkor Wat, peacefully achieved independence from France in 1953, only to be violently drawn into the Vietnam War. Fighting erupted with the communist Khmer Rouge in 1970, and continued through decades of civil war, genocide, and foreign occupation, until the Khmer Rouge surrendered in 1998. As we are seeing now in Iraq and Syria, this conflict triggered organized antiquities looting and trafficking, which then bankrolled further bloodshed. Unfortunately, while cultural racketeering began with the hostilities, it did not end with them: peace opened new doors for business, and once in place, the wartime smuggling networks were hard to shut down.⁵

This recognized crisis led the United States to impose emergency import restrictions on Khmer archaeological material in 1999. These were followed by the formal MOU in 2003 and its renewal first in 2008 and again in 2013. I will focus my comments on developments since then.

In 2013, as part of the "Trafficking Culture" project at the University of Glasgow, Dr. Simon Mackenzie and I conducted extensive ethnographic criminology fieldwork on the illicit trade in Khmer antiquities. This research built on years of previous study by myself, Dr. Mackenzie, and the Trafficking

⁴ Section 303(e), 19 U.S.C. § 2602(e); Section 303(a)(1)(A)-(D), 19 U.S.C. § 2602(a)(1)(A)-(D).

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. "Heritage Watch", *Heritage Watch*, Accessed October 2017, www.heritagewatchinternational.org.

Culture team. Our work on this topic continues and we expect to have our latest publication out within the year.⁶

During our fieldwork, Dr. Mackenzie and I covered some 2,500 kilometers in Cambodia (alongside a local expert whom I will not name due to security concerns). We visited six major archaeological sites, representing a wide range of the country's ancient history, geography and current development. Throughout this journey, we interviewed dozens of individuals who had witnessed firsthand the plunder of the country's heritage, and often played an active part in it.

With this research, our goal was to present a historical case study, and thus we focused on the 1970-1998 conflict. Village elders consistently reported to us that Cambodia's sites had been well protected in the colonial era and early years of independence (1800s-1960s). An organized trade was only remembered as beginning with the start of the Civil War (1970) and was described as remaining closely tied to the conflict for its duration (until 1998).

Our sources included a number of looters and traffickers, but not surprisingly, few were willing to admit current involvement in the illicit trade. Those who claimed to have gotten out of the business explained that sites were now better protected, and moreover, the best pieces had already been stolen or removed for safekeeping. Another common explanation was the growing realization that robbing sacred sites and graves brought bad luck—and even deadly curses—upon themselves and their families.

However, while the situation was not the “free-for-all” of the late twentieth century, remnants of the wartime trafficking networks clearly remained in place. At the 10th century site of Koh Ker, we were told that a statue had recently been discovered and smuggled to Thailand. Even more disturbingly, a Thai dealer offered us any piece in Cambodia, which he promised could be

⁶ Simon Mackenzie and Tess Davis, “Temple Looting in Cambodia”, *Oxford University Press*, Published June 13th 2014, Accessed October 2017, [<http://s3-eu-west-2.amazonaws.com/wpmedia.outlandish.com/trafficking/2014/12/27133117/2014-BJC-Temple-Looting-in-Cambodia-print.pdf>] Joris D. Kila and Marc Balcells, “An Overview and Analysis of Contemporary Perspectives and Trends”, *Koninklijke Brill NV*, Published 2015, Accessed October 2017, [<http://s3-eu-west-2.amazonaws.com/wpmedia.outlandish.com/trafficking/2015/06/27133117/2015-Crime-and-conflict-in-Kila-and-Balcells.unlocked.pdf>]

delivered to us in a month's time (such "theft on demand" had been a common practice in the 1990s).

Indeed, to this day, to my knowledge, from conversations with colleagues still on the ground, some of the most notorious underworld figures involved in the illicit Cambodian antiquities trade remain active on the border and across it in Thailand. Admittedly, for them, cultural racketeering now carries fewer rewards and greater risks than it did previously, and so the bulk of their business is other illicit activities. However, I have no doubt that they and their fellow criminals stand ready to resume looting and trafficking full force should the opportunity ever present itself.

The local press corroborates that this illicit trade continues. Over the past five years, *The Cambodia Daily*, *Phnom Penh Post*, and *Khmer Times* have all extensively reported on incidents of looting, both successful and thwarted by the authorities. However, like in most countries, most cases go unreported. As a director of Cambodia's Heritage Protection Police has said, "If looters find the item before us, it is lost forever."⁷

From these reports, and discussions with colleagues, a general trend has emerged: As Angkor Wat and other temples sites have grown more secure, thieves are now focusing on "softer" targets such as ancient cemeteries, rural pagodas, and even offshore shipwrecks for valuable antiquities and other relics. But there are still criminal networks in place that are willing and able to capitalize on any chance discoveries or momentarily lapses in security at sites and museums.

The entire country is in effect one large archaeological site—and many of these archaeological sites are in turn outdoor museums. It will never be possible to guard all of them all of the time. Protecting Cambodia's heritage is an ongoing battle that requires constant vigilance from all.

(2) Cambodia has taken measures to protect its cultural patrimony.

Despite the country's recent tragedies, and the challenges it still faces, the Royal Government of Cambodia (RGC) has always

⁷ Sylvain Gharbi, "Khmer Heritage Plundered," *Phnom Penh Post*, Published January 18 2013, Accessed October 2017, <http://www.phnompenhpost.com/7days/khmer-heritage-plundered>.

prioritized the preservation of its ancient heritage. Its progress on this front are impressive, even if much remains to be done. I will focus my comments on those developments with which I have the most personal experience.

In the last five years, Cambodia has continued to build on its existing preservation framework, with many successes. In doing so it has increasingly taken a leadership role on the global stage. For example, in June 2013, it hosted the 37th Session of UNESCO's World Heritage Committee in Phnom Penh.⁸ This was a major honor that ranked the city alongside such metropolises as Paris, Saint Petersburg, and Doha.

Having participated in this event, I can think of few better examples of the RGC's commitment. Deputy Prime Minister Sok An himself chaired the proceedings, which were also attended by Prime Minister Hun Sen. At the opening ceremony, UNESCO Director General Irina Bokova held Cambodia out as a beacon of hope for other post-conflict nations, saying "Angkor stands, indeed, as testimony to the power of solidarity and political will. We need the same leadership today, to protect cultural heritage under attack in regions across the globe—in Mali, in Syria, in Central African Republic and elsewhere."⁹

Since then the RGC has continued to play an active role in UNESCO, working closely with the global community to safeguard heritage within the kingdom's borders, and far beyond. It joined the Second Protocol to the Hague Convention in 2013, but was already party to all the other relevant international agreements, and often among their first signatories.¹⁰ To my

⁸ "UNESCO - 37th Session of the Committee", *United Nations Educational, Scientific, and Cultural Organization*, Published June 2013, Accessed October 2017, <http://whc.unesco.org/en/sessions/37COM>.

⁹ "UNESCO - Important Khmer Statues Returned to Cambodia During Opening of World Heritage Meeting in Phnom Penh", *United Nations Educational, Scientific, and Cultural Organization*, Published June 16th 2013, Accessed October 2017, <http://whc.unesco.org/en/news/1029/>.

¹⁰ Cambodia joined the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its First Protocol in 1962 (Hague Convention); 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; the Convention for the Safeguarding of the Intangible Cultural Heritage in 2006; the Convention on the Protection of the Underwater Cultural Heritage in 2007; and again the Second Protocol to the Hague Convention in 2013.

knowledge it is still the only state in East or Southeast Asia to have ratified all of these treaties.

In another example, just this July, Cambodia also marked the addition of the 7th-century temple complex Sambor Prei Kuk to the World Heritage List. The listing was recognized as a "historic event" by Prime Minister Hun Sen and led to nationwide celebrations.¹¹ The site is Cambodia's third to be thus honored, in addition to another eight that are on the tentative list.¹²

Sadly, in March the kingdom did lose a great advocate for this cause, when His Excellency Sok An passed away. Upon his death, Ms. Bokova praised him as "one of the few world figures capable of influencing and enhancing the preservation of natural and cultural sites, far beyond the borders of Cambodia." However, she added that she believed his example will inspire others in the country to do even more, as do I.¹³ Indeed his legacy can be seen in a number of ongoing efforts to safeguard the country's heritage.

One such effort is the RGC's work to protect its cultural resources not just through its preservation laws—which are extensive—but through new environmental laws as well. Since April 2016, I've been honored to participate in the drafting of the *Environment and Natural Resources Code of Cambodia*, which was finalized in January.¹⁴ It is hoped that this law—which went through at least six drafts—will be adopted by the end of the year.¹⁵ It has an extensive section on heritage conservation and

¹¹ Jovina Chua and Kong Meta, "Kampong Thom's Sambor Prei Kuk gets Unesco listing", *Phnom Penh Post*, Published July 10th 2017, Accessed October 2017, <http://www.phnompenhpost.com/national/kampong-thoms-sambor-prei-kuk-gets-unesco-listing>.

¹² "Temple Zone of Sambor Prei Kuk, Archeological Site of Ancient Ishanapura", *United Nations Educational, Scientific, and Cultural Organization*, Published 2017, Accessed October 2017, <http://whc.unesco.org/en/list/1532>.

¹³ "UNESCO Director-General pays Tribute to the Memory of HE Sok An, Deputy Prime Minister of Cambodia, artisan of the Safeguarding of Angkor", *United Nations Educational, Scientific, and Cultural Organization*, Published March 16th 2017, Accessed October 2017, <http://en.unesco.org/news/unesco-director-general-pays-tribute-memory-he-sok-deputy-prime-minister-cambodia-artisan>.

¹⁴ I served on the Working Group for Cultural and Natural Heritage Conservation, under the overall leadership of a joint-Ministry of Environment and Vishnu Law Firm Technical Working Group.

¹⁵ Yesenia Amaro, "Environment Code Due This Year", *Phnom Penh Post*, Published June 9th 2017, Accessed October 2017, <http://www.phnompenhpost.com/national/environment-code-due-year>.

management, which both reinforces and extends existing legal protections.

The Committee may receive testimony from others about challenges now facing the rule of law in Cambodia. Admittedly, since the 2013 general elections, the country's politics have been increasingly volatile. However, the national commitment to heritage preservation is shared by both the ruling and opposition parties, and indeed by all parties. In this divisive time, culture has been a unifying force in Cambodia, and its protection is more important than ever.

(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 in Cambodia.

As demonstrated above, over the last five years, Cambodia has continued to work closely with the international community to deter pillage within its borders.

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. MOU, Cambodia entered a bilateral agreement with Thailand in 2000, which was especially important since Bangkok has still not joined the 1970 UNESCO Convention. Such measures are superfluous with many other countries, however, because a number of the treaty's state parties view it as self-executing.

This is not to undermine the role of the U.S. or the significance of its import restrictions. New York City has long been the center of the art world, even if it originally lagged behind Paris for Khmer pieces. For example, the Metropolitan Museum of Art's 1913 acquisition of an Angkorian head was described at the time as "one of the first three or four fragments of ancient Cambodian sculpture to reach America."¹⁶ Even as late as 1966, the collecting magazine *Oriental Art* lamented that "for those of us who are not privileged to travel

¹⁶ Brodie N and Doole J. "The Asian Art Affair: US Art Museum Collections of Asian Art and Archaeology". *Cambridge: McDonald Institute*, Published 2004, pp. 83-108, Accessed 2017.

to Paris or Phnom Penh our only experience of Khmer sculpture for some time to come will be through the medium of books.”¹⁷

This fear was unfounded, as the Cambodian Civil War would begin just years later, and with it an organized and rampant traffic in the country’s heritage. Khmer art soon flooded American public and private collections. It may surprise the Committee to learn that the situation became so dire, so quickly, that a U.S. “embargo” on Cambodian antiquities was already being considered by 1971.¹⁸

Of course it would be 1999 before emergency restrictions were implemented. With these and the 2003 MOU—in addition to a number of high profile repatriations of masterpieces looted during the Cambodian Civil War—there is no doubt that much of the legitimate market has thankfully improved its practices with regards to Khmer art. However, and unfortunately, not all of the art market is legitimate, and mistakes still happen even with those who do have the best intentions.

Operations by Immigrations and Customs Enforcement have demonstrated that the United States remains a destination for looted Khmer art. My colleagues and I frequently receive tips of potentially illicit pieces available for sale, which we then pass on to law enforcement. Increasingly these are for online sales, and even those that are not held in our country often

¹⁷ *Oriental Art* attributed this to “the policy of the French government which protected the cultural heritage of its colonial empire by restricting the export of works of art from Indo-China,” noting it “has, naturally, been continued since independence by the Cambodian government. Lowry J, “Khmer Sculpture and the Angkor Civilization”, *Oriental Art*, Published 1966, 12 no.3, page numbers 191-192,

¹⁸ The campaign for this was being led by the indefatigable Ardelia Hall, who served as the Fine Arts and Monuments Adviser to the State Department from 1946 to 1962. While Hall is better known for her remarkable work recovering Nazi-looted art—she was one of the Monuments “Men”—she started her career as an Asia specialist at the Museum of Fine Arts in Boston and was closely following the Indochina wars. While she did not live to see the American art market closed to illicit Khmer antiquities, her biographer Victoria Reed writes “Ardelia would probably be gratified, in fact, to see that today the Cambodian government has successfully recovered sculptures that it claims were looted from the temple site at Koh Ker during precisely this period of unrest.” Victoria Reed, “Ardelia Hall: From Museum of Fine Arts to Monuments Woman”, *Cambridge University Press*, Published March 21st 2014, <https://doi.org/10.1017/S0940739113000325>.

target American buyers (for example by advertising fast and free shipping to the United States).

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

It is important to remember the MOU is not an embargo—it 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." Since the war, a number of such exhibits have been held in Australia, Belgium, France, Japan, South Korea, Germany, Switzerland, and the U.S.¹⁹ In recent years, America has benefited from this generosity in particular, as the RGC has increased cultural exchange to the United States. The 2013 "Seasons of Cambodia" arts festival brought 125 performers, filmmakers, and visual artists to New York City.²⁰ In 2014, Cambodia also sent a number of its most treasured masterpieces to New York's Metropolitan Museum of Art for its major "Lost Kingdom" exhibition, many of which had never before left the country.²¹

In a more unusual example, in November 2015, the Ministry of Culture and Fine Arts (MCFA) returned a statue fragment to the Cleveland Museum of Art. Cleveland had first sent the piece (a larger than life hand) to Cambodia believing it was part of a Krishna statue then being restored by the National Museum in Phnom Penh. Subsequent analysis later showed that it was actually part of another Krishna statue still in Cleveland. The National Museum's Director, Dr. Kong Vireak, decided to send the hand back to Cleveland in the hopes that it would "present a new, enhanced opportunity for the public in the United States to

¹⁹ "National Museum of Cambodia: Museum History", *Cambodia Museum*, Published 2013, Accessed October 2017, http://cambodiamuseum.info/museum_history.html.

²⁰ "2015: Acts of Memory", *Season of Cambodia*, Published 2015, Accessed October 2017, <http://www.seasonofcambodia.org/>.

²¹ "Exhibition on Lost Kingdoms, 'Hindu-Buddhist Sculpture of Early Southeast Asia, 5th to 8th Century'", *The Metropolitan Museum*, Published July 2014, Accessed October 2017, <http://www.metmuseum.org/exhibitions/listings/2014/lost-kingdoms>.

see one of the great artistic accomplishments of the Khmer people."²²

The MCFA is also welcoming exchange to Cambodia. From 2012-2016, I helped to organize and direct an annual internship program for international law students to support the MCFA, on behalf of the Tulane-Siena Institute for International Law, Cultural Heritage, and the Arts. While I have not been able to continue my own role in this effort due to other commitments, the internship continues to this day, and a number of participants have had such a good experience that they have returned to Cambodia.

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,

A handwritten signature in cursive script that reads "Tess Davis". The signature is written in dark ink on a white background.

Tess Davis

²² Jamie Elliott, "Statue Fragments Returned to Cleveland Museum", *Phnom Penh Post*, Published November 3rd 2015, Accessed October 2017, <http://www.phnompenhpost.com/national/statue-fragments-returned-cleveland-museum>.