

September 29, 2014

Cultural Property Advisory Committee

U.S. Department of State

2200 C Street, N.W. Washington, D.C. 20522

Re: United States- El Salvador Memorandum of Understanding

Dear Committee Members:

As President, Vice-President, and Executive Director of the Lawyers’ Committee for Cultural Heritage Preservation (LCCHP),[[1]](#footnote-1) we submit this letter in support of the request from the Government of El Salvador to renew its 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]](#footnote-2) LCCHP contends that El Salvador meets the four criteria.[[3]](#footnote-3)

I. **The first determination addresses the jeopardy posed to the cultural patrimony of El Salvador through continued looting of archaeological and ethnological materials.** Cultural heritage pillaging in El Salvador and neighboring Latin American countries is well documented.

Objects from El Salvador, and especially the Cara Sucia region, have historically been extensively looted.[[4]](#footnote-4) The looting of pre-Colombian artifacts, such as those listed on the designated list, have continued to be plundered post-2010, the date of the last extension.[[5]](#footnote-5) United States customs authorities have returned artifacts to El Salvador, as well as to other countries with pre-Colombian artifacts, such as Mexico. In addition, numerous El Salvadoran objects that would be protected under the MOU are currently listed on ICOM’s Red List of Endangered Cultural Objects of Central America and Mexico.[[6]](#footnote-6)

II. **The second determination concerns the measures that El Salvador has taken to protect its cultural heritage.** El Salvador has long played an active role in safeguarding its property through legislation, enforcement, education, creation of inventories, and international cooperation. El Salvador has enacted national laws to protect its cultural patrimony, and the listed objects continue to be protected by the Special Law on the Protection of El Salvador’s Cultural Heritage enacted in 1993.[[7]](#footnote-7) Furthermore, El Salvador’s National Civilian Police work with other international agencies to halt the looting and trade of cultural heritage, and has successfully intercepted attempts to sell plundered objects.[[8]](#footnote-8)

In addition to protecting its cultural patrimony on a national basis, El Salvador ratified or accepted major international treaties on cultural heritage protection. El Salvador ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property[[9]](#footnote-9) as well as the Convention for the Protection of Cultural Property in the Event of Armed Conflict.[[10]](#footnote-10) It also accepted the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage.[[11]](#footnote-11)

In 1987, following a request from the Government of El Salvador, the United States imposed the first import restrictions under the terms of the 1983 Convention on Cultural Property Implementation Act covering pre-Hispanic objects from the Cara Sucia region of El Salvador.[[12]](#footnote-12) These emergency import restrictions were renewed in 1992, and, in 1995, the Governments of El Salvador and the United States entered into a bilateral agreement placing import restrictions on all of El Salvador’s pre-Hispanic archaeological materials and continued without interruption the protection of the Cara Sucia archaeological material.[[13]](#footnote-13) The bilateral agreement was extended in the years 2000, 2005, and 2010.

Through these various means, El Salvador 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 El Salvador’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 ….”[[14]](#footnote-14) In other words, the Committee is not restricted to looking to those nations that adopt an identical system of import restrictions pursuant to a supplementary agreement. Rather, it can also examine whether other nations with a significant import trade in El Salvador’s cultural materials are also restricting import in a similar manner, and one that is calculated to reduce the flow of undocumented cultural materials into that 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 those countries that encompass the Central American region.

B. *Bilateral agreements* with El Salvador allows countries to implement their treaty obligations and to establish diplomatic relations through cooperative efforts and further promotes the effectiveness of the import restrictions in the US-El Salvador 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 support of this determination, we refer to both the ratification of multinational treaties and the creation of bilateral agreements with El Salvador as evidence that countries have joined in a “concerted international effort” to address the pillage of archaeological sites, both in El Salvador and throughout the world.

A. International Treaties

El Salvador signed the 1970 UNESCO Convention in 1978, and 94 additional countries have since joined. The current total number of State Parties is 127.[[15]](#footnote-15) In addition, every country that borders El Salvador has also signed the treaty; Honduras signed in 1979, Nicaragua in 1977, and Guatemala in 1985.[[16]](#footnote-16) The acceptance of the Convention by these nations indicates the Central American community’s respect for its cultural patrimony and the shared responsibility to protect the region’s rich cultural heritage.

B. Bilateral Agreements

El Salvador holds a unique place in the history of cultural heritage preservation, it was the first country in the world to sign an MOU with the US. Since the signing of the first bilateral agreement between the United States and El Salvador, - Guatemala, Nicaragua, Honduras, and Belize have each signed similar agreements. This is the best example of regional cooperation and is to be encouraged because of the benefits to all signatories. This type of concerted action encourages regional cooperation in the protection of cultural patrimony and benefits those countries and the United States. With the exception of Belize, which signed its first agreement in 2013, these agreements were renewed in 2012, 2010, and 2014, respectively. Each agreement calls for general restrictions on the importation of archeological materials, specifically those items that are included in the designated lists each participating country provided to the United States Department of Treasury. [[17]](#footnote-17) Additionally, there are broad provisions for the protection of cultural patrimony as well as the promotion of cultural exchange and intra-governmental co-operation. The ratification of multinational treaties and the creation of bilateral agreements demonstrate the existence of a “concerted international effort” as stated in the CPIA’s third criterion.

IV. **The fourth determination examines whether import restrictions would promote the international exchange of cultural property for scientific, cultural, and educational purposes.** This determination was met when El Salvador explicitly affirmed its interest in cultural exchange by agreeing to provisions D and E in the 2010 revised Article II.[[18]](#footnote-18) Under these provisions, El Salvador and the United States have agreed to exchange archaeological material for temporary loans and exhibitions to academic and non-governmental institutions in order to promote knowledge in El Salvadoran cultural patrimony.

LCCHP therefore urges that the four statutory criteria have been satisfied and asks that CPAC recommend renewing the MOU with El Salvador. We hope that the Committee finds these comments useful, and we thank you for the opportunity to offer them.

Sincerely,

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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/).](http://www.culturalheritagelaw.org/%29) [↑](#footnote-ref-1)
2. Convention on Cultural Property Implementation Act (CPIA), 19 U.S.C. § 2602(a)(1)(A)-(D). [↑](#footnote-ref-2)
3. *Id.* [↑](#footnote-ref-3)
4. <http://www.fundar.org.sv/e_saqueo.html#peritajes> [↑](#footnote-ref-4)
5. <http://www.breitbart.com/Big-Peace/2012/10/26/US-returns-thousands-of-artifacts-to-Mexico>;

<http://www.ticotimes.net/2011/01/06/u-s-museum-to-return-indigenous-artifacts> [↑](#footnote-ref-5)
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 Salvadoran alert is available at <http://icom.museum/resources/red-lists-database/red-list/central-america-and-mexico/> [↑](#footnote-ref-6)
7. <http://icom.museum/fileadmin/user_upload/images/Redlists/Central_America-Mexico/RLCAM_ENG.pdf> [↑](#footnote-ref-7)
8. <http://www.ice.gov/news/releases/1005/100512washingtondc.htm> [↑](#footnote-ref-8)
9. <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha> [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. <http://whc.unesco.org/en/statesparties/> [↑](#footnote-ref-11)
12. <http://eca.state.gov/cultural-heritage-center/international-cultural-property-protection/bilateral-agreements/el-salvador#sthash.1eD9sGb3.dpuf> [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. 19 U.S.C. § 2602(a)(1)(C)(i). [↑](#footnote-ref-14)
15. UNESCO. [http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E](http://www.unesco.org/eri/la/convention.asp?KO=13039&amp;language=E) [↑](#footnote-ref-15)
16. *Id*.

 [↑](#footnote-ref-16)
17. See <http://eca.state.gov/files/bureau/es1995dlfrn.pdf>; <http://eca.state.gov/files/bureau/gt1997dlfrn.pdf>; <http://eca.state.gov/files/bureau/hn2004dlfrn.pdf>; <http://eca.state.gov/files/bureau/ni2000dlfrn.pdf>; <http://eca.state.gov/files/bureau/bz2013dlfrn.pdf>. [↑](#footnote-ref-17)
18. <http://eca.state.gov/files/bureau/sv2010mouextameng.pdf>. [↑](#footnote-ref-18)