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Cultural Property Advisory Committee
Cultural Heritage Center
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On behalf the Lawyers' Committee for Cultural Heritage Preservation (LCCHP),¹ I write to express support for the request from the Hellenic Republic of Greece to enter into a Memorandum of Understanding with the United States to impose import restrictions on designated categories of archaeological materials. The Convention on Cultural Property Implementation Act authorizes the negotiation of such an agreement if the President's delegatee in the Department of State determines that four criteria are satisfied. 19 U.S.C. § 2602(a)(1)(A)-(D). My remarks will focus on the third determination, often referred to as the "concerted action" determination.

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" 19 U.S.C. § 2602(a)(1)(C)(i). 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 Greek 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.

The first step is to analyze actions taken by other nations, regardless of whether they are parties to the 1970 UNESCO Convention, to prevent the import of or trade in archaeological materials illegally exported from Greece. There are now 120 States Parties to the 1970 UNESCO Convention, and these include many of the world's largest market nations such as the United Kingdom, Switzerland, Japan, France, Italy, Australia, Canada, Germany, Belgium and the Netherlands. In addition, at the beginning of 2008, Greece became a party to the 1995 Unidroit

¹ The Lawyers' Committee for Cultural Heritage Preservation is an association of lawyers, law students and interested members of the public who have joined together to promote the preservation and protection of cultural heritage resources in the United States and internationally through education and advocacy (*see* culturalheritagelaw.org). I served as a public representative on the Cultural Property Advisory Committee from 2000-2003.

Convention on Cultural Objects, of which there are currently thirty States Parties. Unlike the 1970 UNESCO Convention, the 1995 Unidroit Convention requires that States Parties adopt uniform domestic laws implementing the Convention, rather than leaving the method of implementation to the discretion of each nation. Of greatest significance in the context of Greece's request is Article 3(2) of the Unidroit Convention, which recognizes all illegally excavated archaeological objects as stolen property, when this is consistent with local law where the illegal excavation took place.² This offers a potentially powerful legal tool for Greece to recover looted archaeological materials from the other States Parties.

Many of the nations that ratified the 1970 UNESCO Convention, such as Australia, Canada and, most recently, the Netherlands, have enacted domestic implementing legislation that automatically prevents the import of illegally exported cultural materials from other States Parties. These nations have therefore *already* implemented restrictions that are *similar* to, albeit much broader than, any import restrictions that would be imposed by the United States pursuant to the CPIA.³

Soon after ratifying the 1970 UNESCO Convention, the United Kingdom enacted legislation that criminalizes dealing in archaeological objects that are excavated contrary to local law. Thus, since unlicensed excavation is prohibited in Greece and the products of all excavations are the property of the nation, it is clear that anyone who knowingly deals in or transports archaeological objects from Greece is violating this statute. This legislation is similarly aimed at controlling the same problem of illegal excavation and looting.⁴

As part of the European Union, Greece participates in the regulatory regime established by the European Directive on the return of cultural objects unlawfully removed from the territory of a Member State and the European Regulation on the export of cultural goods (93/7/EEC of 15 March 1993 and 116/2009 of 18 October 2008, respectively). The Regulation requires the presentation of an export license for cultural goods to be exported outside of the area of the European Union, while the Directive provides for the return of cultural objects that have been illegally removed from a Member State. These EU provisions cover several significant market nations, including the United Kingdom, France, Germany, Austria and Belgium.

² In addition to legal provisions regulating excavation of archaeological sites, Greece has had a law vesting ownership of antiquities in the nation since at least 1932. Art. 1, Act No. 5351 of 24 August 1932. State ownership of antiquities is continued in the current law of 2002. Art. 7(1) (vesting ownership of immovable monuments dating up to 1453 in the State); Art. 21(1) (stating that movable ancient monuments belong to the State), Law No. 3028/2002 on the Protection of Antiquities and Cultural Heritage in General.

³ These restrictions are much broader because they apply to *all* illegally exported cultural materials and are therefore not restricted to archaeological materials that are older than 250 years or to specifically designated categories of archaeological materials. *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. The most recent market nation to implement the Convention is Netherlands which broadly prohibits the import of any cultural property that was exported from another State Party in violation of provisions adopted by that State Party pursuant to the Convention or unlawfully appropriated within that nation. Section 3, 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act (12 June 2009), available at: <http://www.wetten.nl>. The primary enforcement mechanism is through a private right of action for a foreign nation that wishes to recover its illegally exported or unlawfully appropriated cultural property, but Dutch officials are also authorized to take such materials into custody when there is suspicion that this provision has been violated, pending the filing of a claim by the foreign nation. *Id.* Section 10.

⁴ Dealing in Cultural Objects (Offences) Act 2003, 2003 Ch. 27, Articles 1 and 2(2), available at <http://www.uk-legislation.hmso.gov.uk/acts/acts2003/20030027.htm>. This provision applies regardless of whether the illegal excavation occurs in the United Kingdom or in a foreign country. Importation of archaeological or ethnological materials in violation of a CPIA bilateral agreement does not result in criminal liability (unless some other law is also violated). The only consequence for violation of the CPIA is the forfeiture of the materials at issue.

Probably the most significant art market nation outside of the European Union (other than the United States) is Switzerland. Switzerland has enacted implementing legislation for the 1970 UNESCO Convention that establishes a system of bilateral agreements, which is similar to the United States' CPIA system.⁵ Switzerland and Greece concluded a bilateral agreement in 2007, although it has not yet entered into force.⁶ This agreement covers a broad range of cultural materials up to either 800 A.D. or 1500 A.D., depending on the particular category of artifact. In addition to its agreement with Switzerland, Greece has reached an agreement of cooperation and mutual assistance in combating the illegal trade in antiquities with Italy. The two countries have cooperated in recent years in investigations and the recovery of stolen and smuggled antiquities.⁷

In assessing the third determination, it is also necessary to keep in mind 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.

19 U.S.C. § 2602(c)(2). 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 U.S. restrictions would still be of substantial benefit in deterring the pillage.

It is clear that many of the world's major market nations, particularly those that are the ultimate market for antiquities from Greece, have now joined the international legal structure for controlling the trade in undocumented antiquities. LCCHP therefore believes that the criteria for entering into an MOU with the Hellenic Republic, particularly with respect to the third determination, have been satisfied. I hope that the Committee finds these comments useful, and I thank you for the opportunity to offer them.

Sincerely,

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⁵ The most significant difference is that the Swiss bilateral agreements do not have an automatic termination date. Federal Act on the International Transfer of Cultural Property, Article 7, *available at* http://www.admin.ch/ch/fr/rs/444_1/index.html.

⁶ See <http://www.bak.admin.ch/themen/kulturguetetertransfer/01985/03210/index.html?lang=en>.

⁷ "Culture Minister Liapis Holds Talks in Rome," Athens News Agency, July 15, 2008; Jason Felch and Ralph Frammolino, "Getty Will Return 2 Greek Artifacts," L.A. Times, July 11, 2006, at A1; Nicholas Zirganos and Daniel Howden, "Greece and Italy team up to recover stolen antiquities," The Independent (London), Feb. 24, 2006, at 23.