



1785 Massachusetts Avenue, N.W.
Washington, D.C. 20036-2117

March 20, 2015

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

Re: Renewal of United States—Italy Memorandum of Understanding

Dear Committee Members,

As Directors of the Lawyers' Committee for Cultural Heritage Preservation (LCCHP),¹ we submit this letter in support of the proposed five-year extension of the United States-Italy Memorandum of Understanding (MOU). Section 303 of the Convention on Cultural Property Implementation Act (CPIA) establishes the following as the criterion for the extension of a bilateral agreement:

(e) Extension of agreements. The President may extend any agreement that enters into force with respect to the United States for additional periods of not more than five years each if the President determines that--

(1) the factors referred to in subsection (a)(1) which justified the entering into of the agreement still pertain²

The *only* criterion for extension of an agreement under the CPIA is that the conditions that justified the original bilateral agreement still exist.³ The four statutory determinations that the requesting nation must demonstrate are: (I) that the cultural patrimony of the requesting State Party is in jeopardy from the pillage of archaeological materials; (II) that the State Party has taken measures to protect its cultural patrimony; (III) that (i) U.S. import restrictions, if applied in concert with similar restrictions implemented by other nations having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of looting,

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 CPIA, Section 303(e), 19 U.S.C. § 2602(e).

³ CPIA, Section 303(a)(1)(A)-(D), 19 U.S.C. § 2602(a)(1)(A)-(D).

and (ii) that less drastic remedies are unavailable; and (IV) that applying import restrictions is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.⁴

As discussed below, LCCHP submits that Italy currently meets the four criteria to qualify for an extension of its bilateral agreement with the U.S. Consequently, we urge this Committee to renew the U.S.-Italy MOU when it expires on January 19, 2016.

I. The cultural patrimony of Italy is in jeopardy from the pillage of archaeological materials.

It is generally acknowledged that Italy has long-suffered from the impact of looting and pillaging due to its vast quantity of archaeological materials. While the number of looted sites, the number of looted artifacts recovered, and the monetary value of stolen and looted archaeological artifacts and other art works have decreased in recent years, looting and pillaging of archaeological materials continues to threaten Italy's cultural patrimony.

In September 2013, Italian police discovered extensive looting at the Castelli Romani, a group of towns located southeast of Rome.⁵ Investigators found tools typically associated with illicit activity, namely metal detectors and two-way radios.⁶ The diligent work by police resulted in the preservation of five marble architectural elements, coins, building ruins, and over 24,000 ancient terracotta fragments.⁷ In the months leading to the discovery of looting at Castelli Romani, investigators commented that "500 cultural works ha[d] been seized and five people charged in unrelated operations to protect Italy's heritage."⁸ In January 2013, a clandestine excavation in the area of Vulci came to the attention of authorities after a man died from suffocation caused by a landslide that buried him in his quest for an Etruscan tomb.⁹ In March 2014, looters haphazardly removed and stole an Artemis fresco from a house at the archaeological site of Pompeii.¹⁰ Police reported that experts were responsible for the theft that occurred in an area of the open-air museum that is not publicly accessible.¹¹

However, expert tomb raiders, or *tombaroli*, are not the only threat to Italy's cultural heritage, and the negative impact of looting is not always immediately apparent. For example, Italian authorities uncovered a hoard of Etruscan artifacts in Perugia in 2013 that had been looted

⁴ *Id.*

⁵ *Ancient site found near Rome, 'tomb raiders' foiled*, GAZETTA DEL SUD (Sept. 4, 2013), <http://www.gazzettadelsud.it/news/english/60266/AncientsitefoundnearRometombraidersfoiled.html>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Lynda Albertson, *Recapping the Villa Giulia Symposium - Italy's Archaeological Looting, Then and Now*, ARCBLOG (Jan. 27, 2013), <http://art-crime.blogspot.com/2013/01/recapping-villa-giulia-symposium-italys.html> citing *Vulci, muore travolto da una frana durante uno scavo clandestino*, IL MESSAGGERO (Jan. 4, 2013), http://www.ilmessaggero.it/viterbo/tombaroli_vulci_montalto_scavi_clandestini/notizie/241982.shtml.

¹⁰ *See Fresco Stolen From Pompeii*, ARCHAEOLOGY (Mar. 18, 2014), <http://www.archaeology.org/news/1910-140318-italy-pompeii-fresco>. *See also Artemis fresco stolen from Pompeii*, LA GAZZETTA DEL MEZZOGIORNO (March 18, 2014), <http://www.lagazzettadelmezzogiorno.it/english/artemisfrescostolenfrompompeiiino702848>.

¹¹ *Id.*

by average people who found the items while digging to build a garage.¹² The thieves chose to divide the illicit artifacts—taken from a buried tomb—and hold the items for several years until an opportunity to sell the goods arose.¹³ The police art squad team confiscated the looted objects before the amateur looters sold them, though the archaeological context of the objects was destroyed.¹⁴ This example illustrates the negative impact that past lootings cause and unequivocally shows that Italy’s cultural heritage still suffers at the hands of looters.

In January 2015, the Carabinieri unit charged with handling art theft and recovery held a press conference announcing the repossession of over 5,000 illegally looted objects with an estimated worth of 50 million Euros.¹⁵ The Carabinieri discovered the archaeological trove in a Swiss warehouse belonging to a Sicilian former art dealer who had been accused of participating in an antiquities trafficking network involving *tombaroli* in southern Italy, dealers, and international buyers.¹⁶

These are but a few examples of the looting that continues to plague Italy and puts the country’s cultural patrimony in jeopardy. Therefore, it may be concluded that Italy meets the first criterion to qualify for renewal of its MOU with the U.S.

II. Italy has taken measures to protect its cultural patrimony.

Even in a period of economic instability, the Italian government proactively seeks to combat looting by implementing protective measures through legislation, international agreements, maintaining an expert Carabinieri task force, and installing security defenses at the endangered archaeological sites throughout the country.

After the theft of the Artemis fresco from Pompeii, the Italian government immediately responded by adding thirty specialized security staff to increase protection.¹⁷ Subsequently, the Italian government partnered with Finmeccanica, a technology group that develops high-tech monitoring tools, to increase surveillance measures at the ancient ruins of Pompeii.¹⁸ The advanced monitoring system tracks soil shifts through sensors and satellite images, and any vandalism or structural damage triggers alarms that notify site security officials.¹⁹ These extensive efforts complement The Great Pompeii Project, an enormous undertaking to preserve

¹² Elisabetta Povoledo, *Tales of Glorious Art and Not So Glorious Thieves: Etruscan Artifacts Looted by Amateurs Are Prize Objects*, N.Y. TIMES (July 5, 2013), <http://www.nytimes.com/2013/07/06/arts/design/etruscan-artifacts-looted-by-amateurs-are-prize-objects.html>.

¹³ *Id.* General Mariano Mossa, the Commander of the Carabinieri for the Protection of Cultural Property, stated that the longevity with which the looters held onto the objects indicated that they were amateurs—as opposed to classic tomb robbers—because *tombaroli* would have quickly passed the goods to middlemen to sell.

¹⁴ *Id.* The seized objects included 21 travertine marble urns from the Hellenistic period.

¹⁵ Nicole Winfield, *Italy unveils record haul of antiquities from Swiss raids*, THE COLUMBIAN (Jan. 21, 2015), <http://www.columbian.com/news/2015/jan/21/italy-unveils-record-haul-antiquities-swiss-raids/>.

¹⁶ *Id.*

¹⁷ *Fresco Stolen From Pompeii*, *supra* note 10.

¹⁸ Antonella Cinelli, *Satellites and sensors to halt crumbling of Italy’s Pompeii*, REUTERS (Apr.3, 2014), <http://www.reuters.com/article/2014/04/03/us-italy-pompeii-idUSBREA321JQ20140403>. Finmeccanica is a private company that is donating its technology free for three years, an investment valued at \$2.75 million.

¹⁹ *Id.*

the historic site.²⁰ The Great Pompeii Project covers the entire archaeological region, including Herculaneum, Oplontis, Boscoreale, Pompeii and Stabia.²¹ The project entails surveying and investigating the sites, gathering relevant data, identifying needs, and conserving the area.²² It also includes plans for strengthening video surveillance of the sites.²³

The Italian government also works with domestic businesses in an effort to restore other endangered archaeological sites. The Special Superintendence for Archaeological Heritage of Rome partnered with Tod's Group to begin a 25 million Euro restoration project of Rome's famed Colosseum in 2013.²⁴ The initial phase involves extensive cleaning of the structure, replacement of elements, and installation of new fences.²⁵ The second phase, scheduled for completion in 2016, includes the construction of a Service Center and excavation of the embankment around the Colosseum.²⁶ Additional projects aimed at preserving Italy's cultural patrimony include restorations at both the Spanish Steps²⁷ and the Trevi Fountain in Rome.²⁸

In furtherance of its efforts to protect cultural patrimony, the Italian government supports a specialized task force responsible for combating art and antiquities crimes, namely the Carabinieri Nucleo Tutela del Patrimonio Culturale (Special Unit for the Protection of Cultural Patrimony).²⁹ The Carabinieri Art Squad, established in 1969, performs essential functions by leading anti-looting and recovery efforts.³⁰ The specialized team employs a variety of methods to safeguard Italy's cultural heritage: using helicopters and night vision devices to monitor

²⁰ *Italian government steps up Pompeii security*, ARCHAEOLOGY NEWS NETWORK (Mar. 19, 2014), <http://archaeologynewsnetwork.blogspot.com/2014/03/italian-government-steps-up-pompeii.html#.VObnUfnF9oI> citing ANSA.it. For more information on The Great Pompeii Project, *see* <http://www.pompeiiites.org/Sezione.jsp?titolo=The+project&idSezione=1385>.

²¹ *Id.*

²² Cinelli, *supra* note 18.

²³ *Italian government steps up Pompeii security*, *supra* note 20.

²⁴ Eric Sylvers, *Rome's Colosseum Gets a Badly Needed Restoration*, WALL ST. J. (Apr. 25, 2014) <http://www.wsj.com/articles/SB10001424052702304518704579521583112244014>. Information on the project is available at <http://www.amicidelcolosseo.org/>.

²⁵ *See Intervention Plan*, AMICI DEL COLOSSEO, *available at* <http://www.amicidelcolosseo.org/2014/index.php?lang=en>.

²⁶ *Id.*

²⁷ Bulgari, an Italian jewelry and luxury goods company, responded to government pleas for financial assistance and donated 1.5 million Euros to the Spanish Steps restoration project. *See* Hannah McGivern, *Bulgari 'adopts' Rome's Spanish Steps*, ART NEWSPAPER, (Mar. 27, 2014), <http://www.theartnewspaper.com/articles/bulgari/32270>.

²⁸ Famed fashion house, Fendi, provided 2.18 million Euros for the Trevi Fountain restoration project slated for completion in 2015. *See* Nicole Winfield, *Rome's Trevi Fountain Gets \$2.9 Million Restoration Thanks to Fendi*, HUFFINGTON POST (Jan. 28, 2013), http://www.huffingtonpost.com/2013/01/28/romes-trevi-fountain-restoration_n_2568109.html.

²⁹ Italy Country Page, ECA.STATE.GOV, <http://eca.state.gov/cultural-heritage-center/international-cultural-property-protection/bilateral-agreements/italy> (last visited Feb. 15, 2015). *See also* *Carabinieri for the Protection of Cultural Heritage*, CARABINIERI *available at* <http://www.carabinieri.it/cittadino/tutela/patrimonio-culturale/introduzione> (last visited Feb. 18, 2015).

³⁰ Stephanie Gruner, *In a Land Where Looting Is Rife, Italy's Special Carabinieri Unit Fights for Law and Order*, WALL ST. J. (Apr. 11, 2006), <http://online.wsj.com/news/articles/SB11447085710422259>. *See also* *Report on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, UNESCO, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/italy_2010-11natrep_1970_en.pdf [hereinafter UNESCO Report].

archaeological sites and track illegal activity; conducting dives to prevent illicit underwater excavations; going directly to antique shops and auction houses to ensure lawful compliance; and cataloguing missing objects in a massive database.³¹ Moreover, the Carabinieri Department for the Protection of Cultural Heritage publishes an annual bulletin titled *Art Held Hostage* that provides a detailed account of stolen works of art, including archaeological objects.³² As the preface states, “Such a catalogue has proved to be an effective aid in the fight against national and international illegal art trade.”³³

In April 2013, the Carabinieri reported a 29% decrease in looting over the previous year and a 6% increase in the number of people reported for cultural heritage crimes.³⁴ The Guardia di Finanza, Italy’s police force, recovered over 874,163 archaeological works from 2011 to 2013.³⁵ These statistics indicate that Italy’s law enforcement is making progress in effectively combating looters. The Italian police seized over 50,000 items of cultural property by monitoring internet sites, and seized more than 2,000 archaeological artifacts from a smuggling ring that law enforcement officials successfully apprehended.³⁶ By broadening their investigations on the international level, the Carabinieri successfully obtained the return of illicitly exported items in 149 countries.³⁷ The Carabinieri performs an impressive amount of duties that serve to protect archaeological sites and interrupt the illicit trade.

The Art Squad also joins forces with U.S. law enforcement when necessary, specifically HSI, ICE, and CBP. Italian artifacts continue to surface in American museums resulting in a constant flow of repatriations back to the country of origin.³⁸ The Carabinieri reported the return of 200 antiquities from the U.S. in 2012, all of which were obtained through illegal excavation or theft.³⁹ A short list of successful operations achieved by the collaboration between these law enforcement agencies illustrates their effectiveness: in 2009, ICE returned a Corinthian column krater and a Pompeian wall fresco to Italy, both of which were listed as stolen objects in the

³¹ *Id.*

³² Carabinieri Department for the Protection of Cultural Heritage, *Art Held In Hostage N. 35*, (2013) available at http://tpcweb.carabinieri.it/tpc_sito_pub/bollettini.jsp.

³³ *Id.*

³⁴ Paul Barford, *Italy: Looting cases down 29%, forgery cases up*, (Apr. 26, 2013), <http://paul-barford.blogspot.com/2013/04/italy-looting-cases-down-29-forgery.html>, citing *Carabinieri, furti d’arte ma più falsi sul mercato. Bilancio del Comando tutela Patrimonio Culturale*, DARING TO DO (Apr. 24, 2013), <http://www.daringtodo.com/lang/it/2013/04/24/carabinieri-meno-furti-darte-ma-piu-falsi-sul-mercato-bilancio-del-comando-tutela-patrimonio-culturale/>.

³⁵ Amanda Ruggeri, *Stolen Treasures*, BBC (Jun 19, 2013), <http://www.bbc.com/travel/story/20130617-see-the-story-behind-italys-stolen-treasures>.

³⁶ Barford, *supra* note 34. The smuggling bust involved thirty-five people charged with receiving stolen goods and unlawful appropriation of archaeological material. Police arrested both the looters and the purchases.

³⁷ *Id.*

³⁸ *New Wave of Returns: Hundreds of Looted Antiquities Recovered from the Met, Princeton and Others*, CHASING APHRODITE (Jan. 24, 2012), <http://chasingaphrodite.com/2012/01/24/new-wave-of-returns-hundreds-of-looted-antiquities-recovered-from-the-met-princeton-and-others/> citing *Restituiti dagli Usa eccezionali reperti archeologici di provenienza furtiva e da scavo illecito in Italia*, MINISTERO DEI BENI E DELLE ATTIVITÀ CULTURALI E DEL TURISMO (June 20, 2012), http://www.beniculturali.it/mibac/export/MiBAC/sito-MiBAC/Contenuti/MibacUnif/Comunicati/visualizza_asset.html_7901052.html. The “first wave” of returns to which the article title references occurred in the mid-2000s and involved repatriations made by The Metropolitan Museum of Art, the J. Paul Getty Museum, and the Museum of Fine Arts, Boston.

³⁹ *Id.*

Carabinieri's database,⁴⁰ as a result of four investigations, ICE returned several stolen works important to Italian heritage in 2012,⁴¹ in 2013, in response to an extensive investigation performed by ICE, HSI, and HSI's Rome attaché, the Toledo Museum of Art agreed to return a rare fifth-century B.C. Etruscan black-figure kalpis that had been smuggled into the country with falsified documentation;⁴² and in 2014, HSI seized a Roman sarcophagus lid identified as stolen by the Carabinieri Art Squad.⁴³ The cooperative efforts demonstrated by the Carabinieri's work with the U.S. government displays Italy's determination to combat looting and pillaging to safeguard its cultural heritage. Additionally, the sheer volume of objects and parties involved with the reported repatriations provides support for the imperative need to renew the bilateral agreement with Italy. The U.S. art market has time and again proven to be a destination for illicit trade and it can hardly be questioned that U.S. import restrictions help stem the flow of trafficking archaeological materials.

The Carabinieri Art Squad also works closely with INTERPOL by exchanging information among its 188 member countries concerning investigations on art crime cases.⁴⁴ The Carabinieri contributes information on stolen art to the INTERPOL database and maintains "points of contact in foreign countries dealing with illicit traffic."⁴⁵ In an effort to educate the public on proper due diligence and procedures for provenance research, the Carabinieri disseminates information from INTERPOL within Italy.⁴⁶ The staff of the Carabinieri's *Stolen Works of Art* database regularly crosschecks the INTERPOL database during criminal investigations and for any issues arising from auction house catalogues and internet sales.⁴⁷

The factors enumerated above illustrate Italy's determination to combat looting and pillaging to safeguard its cultural patrimony. For these reasons, Italy meets the second criterion for renewal of the U.S.-Italy agreement.

III. U.S. import restrictions, applied in concert with similar restrictions implemented by other market countries, substantially benefits in deterring the serious looting afflicting Italy, for which no less drastic remedies are available.

The U.S., as a leading market nation, occupies a unique position in its ability to safeguard cultural heritage through import restrictions. Restricting archaeological materials from entering

⁴⁰ *ICE returns stolen artifacts to Italy*, IMMIGRATION & CUSTOMS ENFORCEMENT (Dec. 2, 2009), <http://www.ice.gov/news/releases/stolen-antiquities-returned-italy>.

⁴¹ *ICE returns stolen and looted art and antiquities to Italy*, IMMIGRATION & CUSTOMS ENFORCEMENT (Apr. 26, 2012), <http://www.ice.gov/news/releases/ice-returns-stolen-and-looted-art-and-antiquities-italy>.

⁴² *Agreement paves way for artifact's return to Italy*, IMMIGRATION & CUSTOMS ENFORCEMENT (June 18, 2012), <http://www.ice.gov/news/releases/agreement-paves-way-artifacts-return-italy>. See also *Transfer ceremony clears way for looted ancient vessel to be returned to Italy*, IMMIGRATION & CUSTOMS ENFORCEMENT (Jan. 8, 2013), <http://www.ice.gov/news/releases/transfer-ceremony-clears-way-illegally-looted-ancient-vessel-be-returned-italy>.

⁴³ Ricardo A. St. Hilaire, *U.S. v. One Ancient Roman Sarcophagus Lid: Prosecutors Present Legal Arguments in Support of Forfeiture and Offer Exhibit B*, CULTURAL HERITAGE LAWYER (Mar. 6, 2014), <http://culturalheritagelawyer.blogspot.com/2014/03/us-v-one-ancient-roman-sarcophagus-lid.html>.

⁴⁴ UNESCO Report, *supra* note 30.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

our borders illegally helps deter looting by clearly delineating that stolen artifacts will be seized upon discovery. The third criterion is satisfied for several reasons, as discussed below:

- A. Italy's membership in the European Union and its obligation to abide by EU Directives results in a concerted international effort to deter the illicit trade in archaeological materials.
- B. 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.
- C. Bilateral agreements with Italy, many of which have been created in the past decade, allow countries to implement their treaty obligations and to establish diplomatic relations through cooperative efforts.
- D. The enforcement of bilateral agreements through implementing legislation and cultural exchange programs further promotes the effectiveness of the import restrictions in the US-Italy 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 the serious situation of 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.⁴⁸ 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."⁴⁹ 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 Italy's membership within the European Union, ratification of multinational treaties, and creation of bilateral agreements as evidence that market countries have joined in a "concerted international effort" to address the pillage of archaeological sites, both in Italy and throughout the world.

A. *European Union*

As part of the European Union, Italy 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.⁵⁰ The Regulation requires the presentation of an export license for cultural goods to be exported outside of the area

⁴⁸ S. REP. NO. 97-564, at 6 (1982).

⁴⁹ *Id.* at 7.

⁵⁰ See Council Directive 93/7/EEC, (Mar. 15, 1993), O.J. (L 074), and Commission Regulation 3911/92, (Dec. 9, 1992), O.J. (L 395) respectively.

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, Germany, Austria and Belgium.

B. *International Treaties*

Italy signed the 1970 UNESCO Convention in 1978, and 90 additional countries have since joined.⁵¹ The current total number of State Parties is 127, seven of which have joined the Convention in the four years since the 2011 extension of the US-Italy agreement.⁵² The U.S. was the first major market country to become a State Party in 1983. Other market nations subsequently ratified the Convention: France (1987); China (1989); Japan (2002); United Kingdom (2002); Sweden (2003); Denmark (2003); Switzerland (2003); and Germany (2007). 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 implementing domestic sanctions for the import of illegally exported cultural materials from any other State Parties.⁵³ Nations in both of these categories have, therefore, already implemented restrictions that are *similar* to, and in fact much broader than, the import restrictions imposed on objects from Italy 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.⁵⁴ Under UK law, the offense of dealing in tainted cultural objects, covers artifacts from Italy, including the import or export of such objects.⁵⁵ Likewise, Germany's implementing legislation, which also encompasses looted Italian materials, forbids the import of any illegally exported cultural objects that have been individually classified in an accessible inventory by the country of origin either

⁵¹ UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231 (1972), 10 I.L.M. 289 (1971). The current list of State Parties to the UNESCO Convention is available at <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E> (last visited Feb. 15, 2015).

⁵² The full list includes, in chronological order, Kazakhstan, Palestine, Swaziland, Lesotho, Myanmar, Bahrain, and Chile.

⁵³ 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 specifically designated categories of archaeological and ethnological materials.

⁵⁴ Dealing in Cultural Objects (Offences) Act 2003, Ch. 27, Sections 1 and 2(2), *available at* <http://www.legislation.gov.uk/ukpga/2003/27/contents>. 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).

⁵⁵ 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."

one year prior to removal or within one year of the time when the country of origin gains knowledge of the excavation.⁵⁶

The 1995 UNIDROIT Convention reinforces this focus on the law of the exporting country. The Convention requires State Parties to create private rights of action for the recovery of stolen and illegally exported cultural objects, and identifies in Article 3(2) *all* illegally excavated archaeological objects as stolen property when consistent with the law in the country of origin.⁵⁷ In 1999, Italy joined the UNIDROIT Convention, to which there are now thirty-six State Parties; Denmark and Sweden are among the newest members, both having signed in 2011.

By applying the domestic law of the exporting country to actions in the destination country, the UNIDROIT Convention creates a potentially powerful deterrent to the trade of archaeological materials in other State Parties, particularly when there is strong evidence that looting or pillage has occurred.⁵⁸ The United States has ratified the UNESCO Convention, but not the UNIDROIT Convention. However, the UNIDROIT Convention represents an example of “similar” measures taken by other countries to protect the cultural objects at issue, as required under the CPIA.

C. *Bilateral Agreements*

Fourteen countries have signed bilateral agreements similar to the MOU that currently exists between the US and Italy.⁵⁹ 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. Several of these agreements have been signed in the last few years, and this series of bilateral agreements demonstrates the existence of a “concerted international effort” to apply “similar restrictions” as stated in the CPIA’s third criterion.

Additionally, Italy formalized independent agreements with several countries in furtherance of its dedication to protect the country’s cultural heritage. Italy secured agreements with Russia (2003), China (2006), Switzerland (2006), and Egypt.⁶⁰ Italy formed additional

⁵⁶ See Act Implementing the Cultural Property Convention, May 18, 2007, Ch. 3, Section 6, *available at* http://www.wipo.int/wipolex/en/text.jsp?file_id=230663.

⁵⁷ UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, *available at* <http://www.unidroit.org/instruments/cultural-property/1995-convention>. Article 3(2) states: “For the purposes of this Convention, a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place.”

⁵⁸ New Zealand, for example, has enacted legislation that incorporates implementation of both conventions into domestic law, prohibiting the import into New Zealand of unlawfully exported protected foreign objects. See Protected Objects Act 1975, as revised 2007, *available at* <http://www.legislation.govt.nz/act/public/1975/0041/latest/DLM432116.html>. “Protected foreign object” includes all cultural objects as defined by Article 1 of the 1970 UNESCO Convention.

⁵⁹ The list of countries and their respective bilateral agreements is available at <http://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements>.

⁶⁰ *Recovery of Illegally Exported Works*, ITALIAN MINISTRY OF FOREIGN AFFAIRS, http://www.esteri.it/MAE/EN/Politica_Estera/Cultura/RecuperoOpereArte.htm (last visited Feb. 15, 2015). See also UNESCO Report, *supra* note 30. The specific agreements between Italy and Switzerland, Greece and China are in

agreements with the Joint Police and Customs Cooperation Centre of Mondane in France and Ponte Chiasso in Switzerland.⁶¹ Furthermore, Italy reached an agreement of cooperation and mutual assistance in combating the illegal trade in antiquities with Greece.⁶² The two countries have cooperated in investigations and the recovery of stolen and smuggled antiquities.⁶³ A treaty with Libya, executed in 2008, provided for the return of cultural objects illegally removed from Italy during World War II.⁶⁴ Italy also implemented agreements with several U.S. museums in accordance with the 1970 UNESCO Convention that prohibits the importation of undocumented archaeological objects from Italy.⁶⁵

The agreement with Switzerland is noteworthy given that the country is the primary international market for smuggled Italian works.⁶⁶ In October 2008, pursuant to its bilateral agreement with Italy, Switzerland published its list of designated archaeological materials and ancient art, which is similar to the list in the US-Italy agreement, although the Swiss agreement covers a broader range of materials that are subject to import restriction.⁶⁷ Also in October 2008, Switzerland and Greece finalized a bilateral agreement.⁶⁸ The Switzerland-Greece agreement covers comparable types of archaeological objects and ancient art works to those found in Italy, thus assisting indirectly the protection of the Italian cultural patrimony.

D. Significance of Bilateral Agreements to the Third Determination

The recent proliferation of agreements with Italy provides several insights that are relevant to the CPIA determination related to the proposed MOU extension. The *first* is that other market countries have undertaken agreements similar to the United States' Memorandum of Understanding in both purpose and scope; renewal of the import restrictions at issue would therefore not place the U.S. at an economic disadvantage to these other potential destinations for Italian cultural objects. The *second* is that the international community shows a growing interest in enforcing the principles of cultural patrimony and promoting cultural exchange not only through multinational treaties and domestic legislation, but by establishing bilateral agreements;

addition to the protection given to the Italian cultural patrimony through its membership in the European Union, and its adherence to the 1970 UNESCO Convention and the 1995 UNIDROIT Convention.

⁶¹ See UNESCO Report, *supra* note 30.

⁶² See David Gill, *Greece and Italy Agree Joint Policy over the Smuggling of Antiquities*, LOOTING MATTERS (July 16, 2008), <http://lootingmatters.blogspot.com/2008/07/greece-and-italy-agree-joint-policy.html> citing *Culture Minister Liapis Holds Talks in Rome*, ATHENS NEWS AGENCY (July 15, 2008).

⁶³ *Id.*

⁶⁴ See UNESCO Report, *supra* note 30.

⁶⁵ *Id.* The museums include the Metropolitan Museum of Art, the Getty Museum, the Cleveland Museum of Art, and the University of Virginia Art Museum among others.

⁶⁶ *Recovery of Illegally Exported Works*, *supra* note 60. Switzerland played a key role in the case involving Giacomo Medici, an Italian antiquities dealer who was convicted in 2005 for receiving stolen goods, illegal export of goods, and conspiracy to traffic. The Carabinieri, working with Swiss authorities, raided Medici's storerooms in Geneva where they located 3,800 objects and artifacts from Italy (constituting the majority), Egypt, Syria, Greece, and Asia. See Neil Brodie, *Giacomo Medici*, TRAFFICKING CULTURE (Nov. 28, 2012), <http://traffickingculture.org/encyclopedia/case-studies/giacomo-medici/>.

⁶⁷ The list is available at <http://www.bak.admin.ch/kulturerbe/04371/04377/04380/index.html?lang=en>. The Swiss agreement covers all materials up to a date of AD 800 and some up to a date of AD 1500, whereas the U.S. agreement covers materials only through the Roman Imperial period.

⁶⁸ See <http://www.bak.admin.ch/kulturerbe/04371/04377/04379/index.html?lang=en>. The list of designated materials is found at the conclusion of the text of the agreement.

the effectiveness of U.S. import restrictions should therefore be considered in conjunction with the restrictions implemented by other countries against Italian imports, and the probability that similar agreements will follow. The *third* relates more directly to the second determination, that Italy has adopted extensive bilateral agreements to further its broader goal of protecting its own cultural heritage. As a party to an extensive array of bilateral agreements, Italy has signaled its interest in limiting the market for cultural objects and thereby discouraging looting within its territory; by taking an active role in reaching out to the international community for cooperation, Italy reinforces the effectiveness of the U.S. restrictive measures.

The import restrictions applied to the archaeological materials listed in the U.S.-Italy agreement put border patrol agents on notice and make it more difficult to illegally import these objects into the U.S. market, thereby reducing the incentive to loot. For the above reasons, Italy clearly meets the third criterion for renewal of the U.S.-Italy MOU.

IV. Applying import restrictions to enumerated archaeological materials from Italy is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.

The fourth determination focuses on whether the imposition of import restrictions will further cultural interchange in ways that do not threaten the cultural patrimony of the requesting nation. Italy undoubtedly reigns as a global leader in cultural interchange. By collaborating with other countries, Italy shares its heritage with the international community through traveling exhibits, loans, and archaeological exchange programs. Notably, the Italian government recently made a major modification by extending its long-term loan period to four years.⁶⁹

One purpose of the fourth provision is to ensure that archaeological materials that are subject to import restriction will still be available to the American public through loans for exhibition. More specifically, the question is whether loans are made to a variety of institutions located throughout the country and in a variety of larger and smaller cities—which is the best way to ensure that the American public has access to these archaeological materials.

Italy's cooperation with the U.S. government has resulted in extensive interchange between the two countries, mainly due to the effectiveness of the U.S. import restrictions outlined in the bilateral agreement. In 2010, Italy awarded the Cleveland Museum of Art with four antiquities on long-term loan after the Museum repatriated fourteen looted objects.⁷⁰ The Cleveland Museum subsequently benefitted from showcasing the exhibit, *Sicily: Art and*

⁶⁹ Maria P. Kouroupas, *Preservation of Cultural Heritage: A Tool of Int'l Public Diplomacy*, in CULTURAL HERITAGE ISSUES: THE LEGACY OF CONQUEST, COLONIZATION, & COMMERCE 332 (Nafziger & Nicgorski eds., 2009).

⁷⁰ Steven Litt, *Cleveland Museum of Art's new galleries include antiquities on loan from Italy*, CLEVELAND (June 20, 2010), http://blog.cleveland.com/ent_impact_arts/print.html?entry=/2010/06/cleveland_museum_of_arts_new_g.html.

Invention Between Greece and Rome,⁷¹ following its display at the J. Paul Getty Museum.⁷² The Indianapolis Museum of Art announced a long-term loan of several ancient sculptures from the National Museum of Rome in 2010.⁷³ In 2013, Italy, in exchange for the return of six looted antiquities, loaned an entire installation of works from the Ferrara archaeological museum to the Dallas Museum of Art.⁷⁴ The Princeton University Art Museum recently received long-term loans with assistance of the Ministero per i Beni e le Attività Culturali (Ministry of Cultural Heritage and Activities).⁷⁵ Furthermore, the Italian Ministry of Foreign Affairs organized *2013: Year of Italian Culture in the United States*, an enormous initiative that offered an array of events, exhibits, and seminars related to Italian culture.⁷⁶ The exhibit entitled *A Day In Pompeii* was on display at four institutions before joining *Year in Culture*.⁷⁷

International interchanges also occur through the opportunities made available for researchers, archaeologists, and students. Italy authorizes numerous American museums and universities to excavate sites throughout the country. The following is a partial list of American universities with students or faculty currently conducting archaeological work in Italy, including Sicily: Colorado University; Drew University; Duke University; Durham University; Oberlin College; Syracuse University; University of Cincinnati; University of Michigan; University of

⁷¹ *Sicily: Art and Invention Between Greece and Rome*, CLEVELAND MUSEUM OF ART, <http://www.clevelandart.org/events/exhibitions/sicily-art-and-invention-between-greece-and-rome> (last visited Feb. 15, 2015). This exhibit developed in conjunction with the celebration of the *Year of Italian Culture* sponsored by Italian Ministry of Foreign Affairs, discussed *infra*. It was on view at the Cleveland Art Museum from Sept. 29, 2013 through Jan. 5, 2014. *Id.*

⁷² *Sicily: Art and Invention Between Greece and Rome*, GETTY, <https://www.getty.edu/art/exhibitions/sicily/> (last visited Feb. 15, 2015).

⁷³ *Italy to Loan Roman Sculptures to the Indianapolis Museum of Art*, INDIANAPOLIS MUSEUM OF ART (June 7, 2010), <http://www.imamuseum.org/sites/default/files/VignaCodiniFinal.pdf>. The works formed an exhibit titled *The Tomb of Vigna Codini II*, which lasted from February 2011 until January 2013. *See* <http://www.imamuseum.org/exhibition/tomb-vigna-codini-ii>.

⁷⁴ *First Display of Excavated Etruscan Tomb to Open at the Dallas Museum of Art*, DALLAS MUSEUM OF ART (Oct. 31, 2013), <http://www.dallasmuseumofart.org/press-release/first-display-excavated-etruscan-tomb-open-dallas-museum-art>.

⁷⁵ *New loans from Italy on view at the Princeton University Art Museum*, PRINCETON.EDU (Mar. 18, 2013), <http://artmuseum.princeton.edu/about/press-room/press-release/new-loans-italy-now-view-princeton-university-art-museum>.

⁷⁶ Information about *2013: Year of Italian Culture* is available at http://www.esteri.it/mae/en/sala_stampa/archivionotizie/approfondimenti/2012/08/20120808_annocultura.html and http://www.italyculturemonth.org/programs_2013.htm. A complete guide to *2013: Year of Italian Culture* was previously available at <http://www.italyinus2013.org/en/>. The following is a short list of institutions that were granted exhibits (loans of exceptional antiquities are noted): Museum of Natural Science, Houston; Los Angeles Bowers Museum; Los Angeles County Museum of Art; Morgan Library, New York; Telfair Museums, Savannah, GA; Ringling Museum, Sarasota, FL; Museum of Fine Arts, Boston (*Dream of Rome: Capitoline Brutus*); Rhode Island School of Design; Kimbell Museum, Fort Worth, TX; Muscarelle Museum of Art, Williamsburg, VA; The Frick Collection, New York; Cleveland Museum of Art (*The Last Days of Pompeii*); Montclair State Univ., Newark, NJ; Rutgers Univ., New Brunswick, NJ; San Diego Museum of Art; The National Gallery, Washington DC (*Dream of Rome: The Dying Gaul*); The Phillips Collection, Washington DC; The Metropolitan Museum of Art; The Nelson Atkins Museum of Art, Kansas City (*Dream of Rome: Fauno Rosso*); Field Museum, Chicago; Oklahoma City Museum of Art; Emory Univ., Atlanta; Art Institute of Chicago; and Florida Int'l Univ., Miami Beach.

⁷⁷ *A Day in Pompeii* traveled to the following locations: the Science Museum of Minnesota; the San Diego Natural History Museum; the Science Center in Mobile, Alabama; and the Discovery Place, Charlotte, North Carolina.

Pennsylvania; and University of Virginia.⁷⁸ These significant scholarly opportunities show Italy's continual support of scientific archaeological research.

These endeavors demonstrate both Italy's longstanding commitment to the worldwide sharing of its heritage and the importance of maintaining import restrictions in furtherance of this objective, thereby satisfying the fourth and final criterion.

For the forgoing reasons, LCCHP asks that CPAC recommend extension of the bilateral agreement between the United States and Italy. We hope that the Committee finds these comments useful, and we thank you for the opportunity to offer them.

Sincerely,

Elizabeth Varner
President, Board of Directors, Lawyers' Committee for Cultural Heritage Preservation
Executive Director, National Art Museum of Sport⁷⁹
elizabeth.c.varner@gmail.com

Diane Edelman
Vice President, Board of Directors, Lawyers' Committee for Cultural Heritage Preservation
Professor of Legal Writing and Director of International Programs, Villanova University
School of Law⁸⁰
edelman@law.villanova.edu

Leila A. Amineddoleh
Executive Director, Lawyers' Committee for Cultural Heritage Preservation
Partner, Galluzzo & Amineddoleh, LLP⁸¹
leila.alexandra@gmail.com

⁷⁸ A description of each university's program may be accessed through the school's respective online portal.

⁷⁹ The views stated in this letter represent those of LCCHP, and not the National Art Museum of Sport.

⁸⁰ The views stated in this letter represent those of LCCHP, and not Villanova University School of Law or Villanova University.

⁸¹ The views stated in this letter represent those of LCCHP, and not Galluzzo & Amineddoleh LLP.