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Cultural Property Advisory Committee
U.S. Department of State
301 4th Street, S.W.
Washington, D.C. 20547

Dear Committee Members,

I am submitting this letter on behalf of myself and the Lawyers' Committee for Cultural Heritage Preservation¹ in support of the inclusion of coins on the designated list of the proposed extension of the United States-Cyprus Memorandum of Understanding. Rather than referring to the specifics of which categories of coins should be included in the U.S.-Cyprus MoU, I will comment on the issue of whether coins fit the legal definitions of "cultural property" and "archaeological materials" under the Convention on Cultural Property Implementation Act ("CPIA").

Coin dealers and collectors sometimes argue that coins do not qualify as cultural property. They seem to base this argument on the fact that coins were produced in large numbers in antiquity and that they sometimes have relatively low monetary value on

¹ The Lawyers' Committee for Cultural Heritage Preservation is an association of lawyers who have joined together to promote the preservation and protection of cultural heritage resources in the United States and internationally through education and advocacy.

today's market.² Yet neither of these factors is relevant to a legal determination of whether coins can be included as a designated category of archaeological materials under the CPIA. It is necessary to look, instead, to the statutory language of the CPIA itself to determine what artifacts fit the definition of "cultural property" and of "archaeological materials".

How should one determine whether a particular category of artifact type qualifies for protection under sections 303-304 of the CPIA? The place to begin is the definition of "cultural property" given in the CPIA itself, section 302(6), where the following definition is given:

The term "cultural property" includes articles described in article 1(a) through (k) of the [1970 UNESCO] Convention whether or not such article is specifically designated as such by any State Party for the purposes of such article.

19 U.S.C. § 2601(6). The UNESCO Convention includes within its definition of cultural property the following categories:

- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals

UNESCO Convention, Article 1 (c) and (e). This UNESCO Convention definition is *explicitly* incorporated by reference into the CPIA. However, to be designated for import restriction under an MoU or emergency action, the category of material culture must fit one or two additional definitions—that of archaeological or of ethnological material. In the case of ancient coins from Cyprus, therefore, coins must fit the additional definitional requirements of "archaeological material", which include: (1) the object must be of cultural significance; (2) it must be at least two hundred and fifty years old; and (3) it must be "normally discovered as a result of scientific excavation, clandestine or

² Peter K. Tompa, *Ancient Coins as Cultural Property: A Cause for Concern?* 4 J. INT'L L. STUD. 69, 93 (1998) (arguing that "ancient coins - even rare ones - should not be treated like Mayan stela, Byzantine mosaics or even Pre-Columbian pottery"). This argument is refuted, as a general legal matter, by the holding of the Federal District Court for the District of Massachusetts, which held that ancient coins qualify as cultural antiquities and that the coins that composed the Elmali hoard were subject to Turkey's national ownership law. *Republic of Turkey v. OKS Partners*, 1994 U.S. Dist. LEXIS 17032, *3-*6 (D. Mass. 1994). Other sources of international law include coins within their designated or protected categories of cultural materials. The 1995 *Undroit Convention on Stolen or Illegally Exported Cultural Objects* adopts the 1970 UNESCO Convention definition. The European Union's Regulation No. 3911/92 on the Export of Cultural Goods and the EU Directive 93/7/EEC on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State apply to all archaeological objects (defined as more than one hundred years old), which are not subject to any minimum monetary value threshold. As Cyprus is a member of the EU, its coins are protected within the framework of the EU Directive and Regulation.

accidental digging, or exploration on land or under water”. 19 U.S.C. § 2601(2)(i). The second and third criteria are easily met since only coins that are more than 250 years old and only those that are recovered from archaeological context were proposed for inclusion in the U.S.-Cyprus MoU.

The third criterion, that of cultural significance, is also easily satisfied. Coins clearly have significant cultural and historical value. Coins have indications of the place where they were minted and often the ruler and sometimes the specific year in the reign of the ruler. Coins may also mark or commemorate specific historical events of significance. They are one of the best indicators available to archaeologists and historians of an absolute date in the recovery and reconstruction of the past. Finally, coins can give a wealth of information concerning ancient economies, including such issues of debasement and inflation. As such, coins hold a wealth of historical and cultural information and clearly meet the requirement of cultural significance under the CPIA.

Congress reiterated its intent on the eligibility of coins for protection under the CPIA in the enactment of the Emergency Protection for Iraqi Cultural Antiquities Act of 2004.³ In this legislation, Congress granted the President the authority to impose import restrictions on illegally removed Iraqi cultural materials under the CPIA. Coins were clearly included in the categories of cultural materials subject to import restriction, despite the vociferous objection of many in the coin collecting and dealer community. This indicates that Congress intended coins to be eligible for inclusion as designated archaeological materials under the CPIA.⁴

The looting of coins jeopardizes the cultural patrimony of a nation in two ways. The coins themselves are ripped from their original context and their information is thereby lost to those who wish to study and understand the past. But the prospecting for coins, particularly through the use of metal detectors, destroys archaeological context on a larger scale and results in the loss of context for large numbers of other types of cultural materials. As Peter Tompa wrote, “Where hoards were previously uncovered mainly through chance, they are now the target of technologically sophisticated electronic metal detectors.”⁵ The widespread use of metal detectors at archaeological sites throughout the world contributes significantly to the destruction of archaeological sites and of the cultural patrimony of many nations.

³ P.L. 108-429, §§ 3001-03, 118 Stat. 2434.

⁴ Congress also included coins within the protected category of “archaeological resource” for the domestic cultural heritage. The Archaeological Resources Protection Act defines an “archaeological resource” as “any material remains of past human life or activities which are of archaeological interest” and that are at least one hundred years of age. 16 U.S.C. § 470BB(a).

⁵ Tompa, *supra* note 2, at 74.

We therefore believe that coins can and should be included on the designated list of protected archaeological materials from Cyprus. We hope that the Committee finds these comments useful, and we thank you for the opportunity to offer them.

Sincerely,

Patty Gerstenblith
President
Lawyers' Committee for
Cultural Heritage