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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 express support for the proposed extension of the United States-Italy Memorandum of Understanding. 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 pertain

19 U.S.C. § 2602(e). Therefore the only statutorily mandated factors for the Committee to consider are those that address the four determinations utilized to analyze whether the United States should enter into an initial bilateral agreement with a requesting nation. While Article II of the current Agreement between the United States and Italy sets out several actions that both countries were encouraged to take, these actions are not relevant criteria for the Committee, except to the extent that they relate to one or more of the statutorily-mandated determinations, in considering whether to recommend extension of the agreement.

The first and second determinations focus on whether the cultural patrimony of the requesting nation is subject to jeopardy from pillage and whether the nation is taking steps,

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. I am Distinguished Research Professor at DePaul University College of Law and Director of its Center for Art, Museum and Cultural Heritage Law. I served as a public representative on the Cultural Property Advisory Committee from 2000-2003. This time period did not include the Committee's consideration of Italy's initial request.

consistent with the 1970 UNESCO Convention, to protect its heritage. It is generally acknowledged that Italy is a leader in protecting its archaeological sites and in the effectiveness of its Carabinieri. As a result, 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. Nonetheless, looting of archaeological sites still poses a threat to Italy's cultural patrimony, as, according to one report, there were still fifty-eight discovered examples of illegal excavation just in the past year.² Thus, both the first and second criteria for renewal are satisfied.

In evaluating the third determination, often referred to as the "concerted action" requirement, I seek to inform the Committee concerning recent changes in the status of the various international conventions with respect to Italy. 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 (93/7/EEC of 15 March 1993 and 3911/92 of 9 December 1992, 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, Germany, Austria and Belgium.

The trend toward more ratifications and implementation of the 1970 UNESCO Convention and other conventions that serve the same underlying purpose continues. There are now 119 States Parties to the 1970 UNESCO Convention, eleven of whom joined the Convention since the previous renewal of Italy's bilateral agreement. These new States Parties include several art market nations, such as Germany, New Zealand, Belgium and the Netherlands. Thirty nations are now party to the 1995 Unidroit Convention on Cultural Property.

Probably the most significant art market nation outside of the European Union (other than the United States) is Switzerland. 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.³ Also in October 2008, Switzerland and Greece finalized a bilateral agreement.⁴ 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, given, as Article II of the current MOU recognizes, that ancient cultural and modern political boundaries do not coincide. Finally, eBay has announced that it will no longer offer for sale within Switzerland, Germany and Austria antiquities that do not have proof of legality issued by competent authorities. This restriction

² "Italians recover treasure trove of artifacts, 60,000 looted pieces worth \$239 million were seized in 2009," Star-Ledger, Jan. 15, 2010, at 27. The dollar value of objects recovered is not divided between archaeological objects and other forms of art works.

³ The list may be obtained at:

<http://www.bak.admin.ch/themen/kulturguetertransfer/01985/03211/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.

⁴ See <http://www.bak.admin.ch/themen/kulturguetertransfer/01985/03210/index.html?lang=de>. The list of designated materials is found at the conclusion of the text of the agreement.

applies, in particular, to cultural property that has been designated pursuant to a bilateral agreement (thus including Italy's bilateral agreements with both the United States and Switzerland).⁵

In addition to its agreement with Switzerland, Italy has reached an agreement of cooperation and mutual assistance in combating the illegal trade in antiquities with Greece. The two countries have cooperated in recent years in investigations and the recovery of stolen and smuggled antiquities.⁶ In 2006, Italy and China signed an agreement for cooperation in preventing the smuggling of cultural relics.⁷

As illustrations of law enforcement cooperation between Italy and other nations, 251 ancient artifacts worth approximately \$2.7 million were returned to Italy from an anonymous gallery in Geneva.⁸ In addition, 137 artifacts were returned to Italy from Switzerland that had been in the possession of Zurich-based restorers, Fritz Burki & Son.⁹ At the request of Italian authorities, ten objects, worth an estimated \$350,000, were removed from auction at Bonhams in London on suspicion that they were illegally exported or stolen.¹⁰ Italy was reported to have recovered 39,584 looted archaeological artifacts during 2009.¹¹

Several artifacts of Italian origin were recovered from the market in the United States. At the time of the June 2009 auction sales in New York, ICE agents recovered a Corinthian column krater, dating to 580-570 BC, from Christie's auction house.¹² A few months later, ICE retrieved two additional pots, an Apulian situla and an Attic pelike, stolen from Italy and apparently sold by Christie's in June 2009.¹³ Finally, ICE agents recovered from Christie's a wall fresco fragment that had been stolen from the site of Pompeii.¹⁴ While these artifacts were looted from Italy several years earlier, the continuing desirability of archaeological objects from Italy to the

⁵ eBay to limit sale of cultural artifacts (Oct. 20, 2009), available at http://www.swissinfo.ch/eng/travel/eBay_to_limit_sale_of_cultural_artefacts.html?siteSect=414&sid=11379715&cKey=1256106582000&ty=nd; Neuer eBay-Grundsatz zum Handel mit archäologischen Funden (July 1, 2008), available at <http://community.ebay.de/communitynews/item/show/1165>.

⁶ "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.

⁷ "China, Italy sign agreement on anti-smuggling of cultural relics," Xinhua News Agency (Jan. 20, 2008). The specific agreements between Italy and Switzerland, Greece and China are in 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, which two significant market nations (Belgium and the Netherlands) joined this year, and the 1995 Unidroit Convention.

⁸ Adam L. Freeman, "Swiss Gallery Surrenders EU2 Million in Antiquities to Italy," Bloomberg News, May 19, 2009.

⁹ *Supra* note 2.

¹⁰ Elisabetta Povoledo, "Disputed Artifacts Removed from Auction," N.Y. Times, Oct. 14, 2008

¹¹ *Supra* note 2.

¹² ICE Press Release, Stolen Italian Artifact Smuggled into the United States Found at Auction House (June 1, 2009), available at <http://www.ice.gov/pi/nr/0906/090601newyork.htm>.

¹³ ICE Agents Recover Stolen Italian Artifacts Smuggled into the United States (Oct. 29, 2009), available at http://209.85.229.132/search?q=cache:1a7M64KSMXQJ:www.artdaily.com/index.asp%3Fint_new%3D34189%26int_sec%3D2+apulian+situla+attic+pelike+artdaily&cd=2&hl=en&ct=clnk&gl=uk&client=firefox-a.

¹⁴ ICE Press Release, ICE Seizes a Cultural Artifact Reported Stolen in Italy almost 12 Years Ago (June 1, 2009), available at <http://www.ice.gov/pi/nr/0906/090601newyorkcity.htm>.

market in the United States demonstrates the ongoing need for the MOU to provide a disincentive to the looting of sites in Italy.

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. One purpose of this 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. In light of this purpose, one should focus not on whether loans are made to any particular institution or whether those institutions receiving loans belong to a particular organization, such as the Association of Art Museum Directors. Rather, one should focus on the broader question of 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.

The following is a sampling of loans made by Italy since 2006 to American institutions:

- *Pompeii and the Roman Villa* was on display at the Los Angeles County Museum of Art (May 3-October 4, 2009) and at the National Gallery in Washington, DC (October 19, 2008-March 22, 2009), as well as in Mexico City. The exhibit included 120 works of art, including sculpture, paintings, mosaics, and luxury arts. Many were recent discoveries from around the Bay of Naples and had never before been exhibited in the United States.
- *Pompeii: Tales from an Eruption* was on display at the Museum of Fine Arts, Houston, and the Birmingham Museum of Art in late 2007 and early 2008; it included 479 pieces of painting, sculpture and craft.
- *A Day in Pompeii* between 2007-2009 was on display at the Science Museum of Minnesota; San Diego Natural History Museum; Gulf Coast Exploreum Science Center, Mobile, Alabama; and Discovery Place, Charlotte, NC.
- *From the Temple and the Tomb: Etruscan Treasures from Tuscany*, composed of more than 300 objects from all over Tuscany, mainly from the Archaeological Museum in Florence, as well as the excavations at Poggio Colla, carried out by Professor Gregory Warden of SMU, was on display at the Meadows Museum, Southern Methodist University, Dallas, TX, between January and May 2009; it was the most comprehensive exhibition of Etruscan art ever held in the United States. This exhibit fits not only the Article II description of loans but also Article II, paragraph E.2., which calls for loans of objects excavated by American institutions.
- *In Stabiano*, an exhibit of art works from elite Roman villas near the Bay of Naples, traveled to museums in San Diego, Washington DC, Atlanta, Dallas, Madison, WI, Toledo, Ohio, and Jacksonville, FL. More than three million people saw the exhibit.
- *Ancient Rome and America*, an exhibit of more than 300 artifacts and art works loaned from institutions in Italy and the United States, will be at the National Constitution Center in Philadelphia from February to August 2010.
- *The Chimaera of Arezzo*, an exhibition at the Getty Villa, centered on a spectacular Etruscan bronze sculpture of 400 BC and included other additional loan objects from three Italian museums.

These exhibits are in addition to the long-term loans that Italy has made to those museums that have concluded agreements concerning loans and cooperation in areas of research, excavation and conservation. These loans are again too long to list, but a few include the Roman

Ephebe, a bronze sculpture of a youth holding a candelabrum from the Villa of the Ephebe at Pompeii, and the Apollo Saettante, a bronze statue of Apollo shooting an arrow also from Pompeii. Both sculptures are on loan from the Museo Archeologico Nazionale in Naples to the J. Paul Getty Museum. Furthermore, the unprecedented loan of the priceless Florentine Codex for the Getty's Aztec Pantheon exhibition helped to secure loans of archaeological objects from Mexico and make them available to American audiences for the first time. Italy's generosity in circulating works of the first quality thus has magnified the public's ability to enjoy and learn from ancient art. Similarly, the over-life-sized marble sculpture of the goddess Eirene has been on loan to the Boston Museum of Fine Arts since the fall of 2006. Four ancient vases have been on display at the Metropolitan Museum of Art in New York since late 2006, and in February 2010, the spectacular Moregine silver treasure was loaned to the Metropolitan Museum of Art, the first time that this group of silver vessels has been displayed outside of Italy.

While this is not a comprehensive list of loans from Italy over the past few years, it demonstrates that a wide variety of American institutions in both large and small cities throughout the country have benefited from these loans—to the point that one may conclude that Italy has been very generous to the American public.¹⁵ Italy should be encouraged to continue its generous loan policies and to consider making loans available for even longer periods of time.

In conclusion, LCCHP believes that the criteria for renewal of the US-Italy MOU have been satisfied and supports this extension. I hope that the Committee finds these comments useful, and I thank you for the opportunity to offer them.

Sincerely,

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¹⁵ I am aware of discussion concerning ancient coins among certain interested parties. Numismatic materials should not be treated any differently than other archaeological materials and are eligible for inclusion on the designated list of archaeological materials. It is clear that coins fit the statutory definition of "archaeological materials", 19 U.S.C. § 2601(2)(i). 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. Coins can give a wealth of information concerning ancient economies, including such issues of debasement and inflation. As such, coins hold significant historical and cultural information and clearly meet the requirement of cultural significance under the CPIA. Furthermore, 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.