



October 14, 2017

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

Dear Committee Members,

I am submitting this letter on behalf of the Lawyers' Committee for Cultural Heritage Preservation<sup>1</sup> in support of the proposed extension of the Memorandum of Understanding between the Government of the United States of America and the Government of the Kingdom of Cambodia Concerning the Imposition of Import Restrictions on Archaeological Material from Cambodia from the Bronze Age through the Khmer Era (MOU).

This and similar MOUs are governed by the Convention on Cultural Property Implementation Act (CPIA), the legislation that implements the U.S. ratification of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. 19 U.S.C. §§ 2601–13. The *only* criterion for extension of an agreement under the CPIA is whether the conditions that justified the original bilateral agreement still exist. Section 303(e), 19 U.S.C. § 2602(e). There are four such conditions, called determinations, laid out by the CPIA. Section 303(a)(1)(A)-(D), 19 U.S.C. § 2602(a)(1)(A)-(D).

As discussed below, LCCHP submits that Cambodia currently meets these four determinations, and thus urge the Committee to renew its MOU with the United States.

(1) The cultural patrimony of Cambodia is in jeopardy from the pillage of archaeological materials.

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<sup>1</sup> The Lawyers' Committee for Cultural Heritage Preservation is a nonprofit organization 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.

The first determination addresses the jeopardy posed to the cultural patrimony of Cambodia by the ongoing pillage of archaeological materials covered by the MOU. The Committee is very familiar with the crisis that led the United States to impose import restrictions in 1999 followed by the MOU in 2003. To summarize, as Tess Davis and Simon Mackenzie wrote in 2015:

Fighting erupted between government forces and the communist Khmer Rouge in 1970 and did not end until the 1998 death of Pol Pot and subsequent surrender of his remaining forces. While contemporary accounts and photographs confirm the country's ancient Hindu and Buddhist temples were largely intact before the war, most were then cut off from the outside world for decades, and some remain difficult and even dangerous to reach today due to poor roads, jungles, landmines, and unexploded ordnance (uxo). [...] Calculating how many antiquities have been stolen and their value is thus very difficult. Still by 1993—the same year as the United Nations-sponsored elections that some credit with putting Cambodia on the road to stability—the *Phnom Penh Post* estimated that almost 80% of all temples had been looted. Twelve years later in 2005, noted art historian Helen Jessup went further by stating, 'there is not a single site that is not affected.'<sup>2</sup>

Since the agreement's last renewal in 2013, despite continued progress, Cambodia has also continued to suffer widespread looting. While incredible national and international efforts have been made to secure the greatest temple complexes (including Angkor Wat, Banteay Chhmar, Koh Ker, and Preah Vihear), there are thousands of archaeological sites in the country. Thieves are increasingly targeting those that are more remote and less heavily guarded.

In 2013, Dr. Dougald O'Reilly of Heritage Watch warned that the looting of prehistoric sites had reached "alarming levels" in recent years, with a "sharp increase" in the northwest regions since 2000.<sup>3</sup> The problem is no longer limited to the northwest. Residents of one prehistoric site in the Mekong Delta, Angkor Borei, have taken to digging up their own property in hopes of finding ancient treasure. The area is considered one of Cambodia's oldest cities dating back 2,500 years.<sup>4</sup> Phon Kaseka, Director of Archaeology at the Royal Academy of Cambodia, understands the importance of preserving Angkor Borei. "It has been inhabited since 500 BC during the Iron Age

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<sup>2</sup> Davis, Tess, and Simon Mackenzie. "Crime and Conflict: Temple Looting in Cambodia." *Cultural Property Crime, An Overview and Analysis of Contemporary Perspectives and Trends* (2015): pp. 292- 93. [s3-eu-west-2.amazonaws.com/wpmedia.outlandish.com/trafficking/2015/06/27133117/2015-Crime-and-conflict-in-Kila-and-Balcells\\_unlocked.pdf](https://s3-eu-west-2.amazonaws.com/wpmedia.outlandish.com/trafficking/2015/06/27133117/2015-Crime-and-conflict-in-Kila-and-Balcells_unlocked.pdf). Tess Davis and Simon Mackenzie are members of the Scottish Centre for Crime and Justice Research at the University of Glasgow.

<sup>3</sup> Gharbi, Sylvain. "Khmer Heritage Plundered." *Phnom Penh Post*, 18 Jan. 2013, [www.phnompenhpost.com/7days/khmer-heritage-plundered](http://www.phnompenhpost.com/7days/khmer-heritage-plundered). Accessed Oct. 2017.

<sup>4</sup> Murray, Bennett, and Vandy Muong. "Ancient Treasures in the Backyard." *Phnom Penh Post*, 8 Aug. 2015, [www.phnompenhpost.com/post-weekend/ancient-treasures-backyard](http://www.phnompenhpost.com/post-weekend/ancient-treasures-backyard). Accessed Oct. 2017.

period, at the time of the earliest human inhabitants of the lower Mekong, but the looting and destruction is still going on out there.”<sup>5</sup>

(2) Cambodia has taken measures to protect its cultural patrimony.

The second determination looks to efforts taken by Cambodia to protect its cultural heritage.

The postwar government began drafting new legislation to penalize the destruction, theft, and illicit export of its cultural property in the early 1990s, building on an extensive framework that had existed before the conflict. In 1995, Cambodia established by Royal Decree the Authority for the Protection and Management of Angkor and the Region of Siem Reap (“APSARA”), to safeguard its most famous temple complex.<sup>6</sup> To help with these efforts, the Cultural Heritage Police (CHP) had been created in 1994, and with special training from the French police have guarded the Angkor region since.<sup>7</sup>

In 1996, Cambodia enacted its overarching Law on the Protection of Cultural Heritage, which criminalizes both the looting and unauthorized export of antiquities. This law remains the relevant governing law, supported by a number of decrees, sub-decrees, and regulations. These existing—and extensive—protections will also soon be reinforced and expanded by a new Environmental and Natural Resources Code, which is expected to become law by the end of the year, and includes an entire section on cultural heritage.<sup>8</sup>

Cambodia has also demonstrated it is determined to protect its cultural heritage by joining all of the major relevant international agreements. To date, the country is a party to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (joined 1962); the 1970 UNESCO Convention (joined 1972); the World Heritage Convention (joined 1991); the Convention on Stolen or Illegally Exported Cultural Objects (joined 2002), and the Convention on the Protection of the Underwater Cultural Heritage (joined 2007).

In addition to the cultural heritage police described above, Cambodia is doing much to make sure these protections exist not just on paper but in practice. In 2013, Cambodian police working

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<sup>5</sup> Id.

<sup>6</sup> UNESCO. *Royal Decree establishing the Authority for the Protection and Management of Angkor and the Region of Siem Reap*, 19 Feb. 1995, [www.unesco.org/culture/natlaws/media/pdf/cambodia/cambodia\\_roydec019626\\_engtmo.pdf](http://www.unesco.org/culture/natlaws/media/pdf/cambodia/cambodia_roydec019626_engtmo.pdf).

<sup>7</sup> UNESCO. *Information presented to the Bureau of the World Heritage Committee in 1997*, <http://whc.unesco.org/en/soc/2111>.

<sup>8</sup> Amaro, Yesenia. “Environment Code Due This Year.” *Phnom Penh Post*, 9 June 2017, [www.phnompenhpost.com/national/environment-code-due-year](http://www.phnompenhpost.com/national/environment-code-due-year). Accessed Oct. 2017.

with heritage protection authorities recovered twelve objects stolen from a Siem Reap pagoda.<sup>9</sup> Some of these objects were seized from an antiquities shop in Phnom Penh.<sup>10</sup> And last year, after forestry officials suspected illicit behavior causing them to follow a suspect for several hours, two 10th Century sandstone artifacts in Siem Reap were recovered (also demonstrating that even the well guarded temples of Angkor remain at risk).<sup>11</sup>

In 2015, in another example, the Cambodian National Commission for UNESCO and the International Red Cross organized a summit to train military groups on protecting cultural heritage in times of armed conflict.<sup>12</sup> The Secretary-General of the Cambodian National Commission for UNESCO, Tan Theany, said the purpose of the summit was to “teach the military and other cultural protectors to understand how to take care of our oldest temples and statues.”<sup>13</sup>

In addition, the government is working with nongovernmental organizations like Heritage Watch, whose mission is to “reduce the destruction of Cambodia’s unique cultural heritage.” APSARA has joined with Heritage Watch in its new initiative “Heritage for Kids.”<sup>14</sup> This project is working to raise awareness of the importance of cultural preservation among Cambodia’s youth.<sup>15</sup> It builds on earlier joint efforts aimed at local communities, including school programs and illustrated comic books that explain to villagers why they should help to protect the temples and sites in their midst.<sup>16</sup> APSARA follows a similar model by employing local people as site guards to involve them with the sites and to provide an income for helping protect them.<sup>17</sup>

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<sup>9</sup> Sarom, Kim, and Danson Cheong. “Antiques Shop Raid Nets Loot Stolen from Siem Reap Pagoda.” *Phnom Penh Post*, 24 Jan. 2013, [www.phnompenhpost.com/national/antiques-shop-raid-nets-loot-stolen-siem-reap-pagoda](http://www.phnompenhpost.com/national/antiques-shop-raid-nets-loot-stolen-siem-reap-pagoda). Accessed Oct. 2017.

<sup>10</sup> *Id.*

<sup>11</sup> Phearun, Chhorn. “Two 10th Century Sandstone Artifacts Seized in Siem Reap.” *The Cambodia Daily*, 23 Sept. 2106, [www.cambodiadaily.com/news/two-10th-century-sandstone-artifacts-seized-siem-reap-118348/](http://www.cambodiadaily.com/news/two-10th-century-sandstone-artifacts-seized-siem-reap-118348/). Accessed Oct. 2017.

<sup>12</sup> Reddick, James. “Protecting Antiquities Tops Agenda at Siem Reap Summit in Cambodia.” *Khmer Times*, 28 Aug. 2015, [www.khmertimeskh.com/news/15059/protecting-antiquities-tops-agenda-at-siem-reap-summit-in-cambodia/](http://www.khmertimeskh.com/news/15059/protecting-antiquities-tops-agenda-at-siem-reap-summit-in-cambodia/). Accessed Oct. 2017.

<sup>13</sup> *Id.*

<sup>14</sup> “Project: Heritage for Kids.” *Heritage Watch International*, 2017. [www.heritagewatchinternational.org/projects](http://www.heritagewatchinternational.org/projects). Accessed Oct. 2017.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Rithy, Bouth. “Preserving Cambodia’s Heritage.” Interview with Anthony Anderton. *The Guardian*, 23 Feb. 2009, [www.theguardian.com/world/2009/feb/23/cambodia-heritage](http://www.theguardian.com/world/2009/feb/23/cambodia-heritage).

(3) U.S. import restrictions, either individually or in concert with actions taken by other market nations, would be of substantial benefit in deterring a serious situation of pillage.

The third determination looks to the import trade of the designated cultural materials in the United States and other market nations. The Senate Report that accompanied enactment of the CPIA noted that determining which countries have a significant import trade may be a function of “type and historic trading patterns” as well as of monetary value (Senate Report No. 97-564, 27). The use of the word “similar” (rather than the word “same”) in the statutory language to describe the actions of other nations to be considered indicates that the CPIA only requires that other nations need to take similar actions that serve the underlying purpose of restricting the trade in looted artifacts.

The CPIA’s explicit inclusion of the actions of nations that are not party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (1970 UNESCO Convention) further indicates that the precise form of restriction used by other countries is not relevant. The Senate Report urged that “the formula measuring the presence and worth of a ‘concerted international effort’ 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). The Senate intended this requirement to be interpreted with a significant degree of flexibility on a case-by-case basis. Thus, if a nation restricts the import of such artifacts without the use of bilateral agreements, or even if the nation restricts the trade in such artifacts through a means not including import restrictions, these actions should still be considered as part of the third determination analysis.

Recent developments indicate that the evidence for an international response to the problem of the looting of archaeological sites throughout the world, including Cambodia, continues to increase since the original signing of the Memorandum of Understanding in 2003 and even since its last renewal in 2013. There are now 134 States Parties to the 1970 UNESCO Convention, including thirty-six countries that joined the Convention since the enactment of Cambodia’s initial bilateral agreement. This includes some of the largest market nations, such as Belgium, France, Germany, Japan, the Netherlands, Sweden, Switzerland, and the United Kingdom. In 2015, Austria became the latest large market nation to join, meaning that only one major European country, Ireland, remains a nonmember.

Unlike the United States, many nations view the Convention as self-executing and they have no need to enact implementing legislation.<sup>18</sup> In addition, other nations, such as Australia and Canada, 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, in fact much broader than, any import

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<sup>18</sup> For a recent summary of different methods of implementation of the 1970 UNESCO Convention, see Patrick J. O’Keefe, Commentary on the 1970 UNESCO Convention 98-146 (2d ed. 2007).

restrictions that would be imposed on Cambodian objects by the United States pursuant to the CPIA.<sup>19</sup>

One relevant example of Australia's enforcement of this legislation occurred in 2011 when it returned thirty Iron Age artifacts to Cambodia that had been looted from burial sites.<sup>20</sup> A ceremonial repatriation of the objects was held after Australian officials were notified that an Australian antique dealer listed the artifacts for sale on eBay.<sup>21</sup> Sounry Chum, Cambodian Ambassador to Australia, said the return of the objects "demonstrates the cooperation and understanding between Cambodia and Australia in protecting cultural heritage and combating the illegal trade of cultural property."<sup>22</sup>

Under its implementing legislation, Germany will not allow the import of any illegally exported cultural objects that have been individually classified in an accessible inventory by the country of origin one year prior to removal. In addition, the import of archaeological objects that have been placed on the inventory within one year of the time when the country of origin gains knowledge of the excavation is also prohibited.<sup>23</sup> Last year, in a groundbreaking development, Germany also adopted a revised Act to Protect Cultural Property.<sup>24</sup> Under the Act, imports must have a license proving that the object was legally exported from another State Party to the UNESCO Convention after Germany's ratification date in 2007.<sup>25</sup> The license requirement is to prevent illegal exports of objects that are considered cultural treasures, defined as "national cultural property of outstanding significance for the nation" whose removal would cause a "significant loss."<sup>26</sup> ICOM has praised the legislation, stating each member state has a duty to protect cultural heritage and "the increasing number of ongoing conflicts that are putting cultural heritage at high

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<sup>19</sup> These restrictions are much broader because they apply to *all* illegally exported cultural materials and are not restricted to archaeological materials that are older than 250 years or to specifically designated categories of archaeological and ethnological 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.

<sup>20</sup> Kozlovski, Mary. "Australia to Return Smuggled Treasures." *Phnom Penh Post*, 10 Mar. 2011, [www.phnompenhpost.com/national/australia-return-smuggled-treasures](http://www.phnompenhpost.com/national/australia-return-smuggled-treasures). Accessed Oct. 2017.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Implementation Act of 18 April 2007, section 6(2), sentences 1-3. *See also* Matthias Weller, "Portable Antiquities: The German Legal System", paper presented at conference, "Portable Antiquities in the Modern European Context: Law, Ethics, Policy and Practice" University of Pecs, Pecs, Hungary, July 12-13, 2007 (presentation on file with author).

<sup>24</sup> Gesley, Jenny. "Germany: Act to Protect Cultural Property Passed." *Library of Congress*, 19 July 2016, [www.loc.gov/law/foreign-news/article/germany-act-to-protect-cultural-property-passed/](http://www.loc.gov/law/foreign-news/article/germany-act-to-protect-cultural-property-passed/). Accessed Oct. 2017.

<sup>25</sup> *Id.*

<sup>26</sup> Germany's *Act to Amend the Law on Cultural Property* was entered into force on 6 Aug. 2016. The definition of cultural treasures can be found in Art. 7.

risk around the world requires that we all take responsibility in safeguarding our common past and history against destruction, looting and illicit trafficking in cultural property.”<sup>27</sup>

The United Kingdom has implemented its ratification of the UNESCO Convention by criminalizing the knowing dealing in “tainted cultural objects,” which are defined as objects whose “removal or excavation constitutes an offence.”<sup>28</sup> The offense of dealing in tainted cultural objects includes the import or export of such objects.<sup>29</sup>

In 2002, Cambodia joined the 1995 UNIDROIT Convention to which there are now forty-one States Parties. Unlike the UNESCO Convention, the UNIDROIT Convention focuses on requiring nations to create private rights of action for recovery of stolen and illegally exported cultural objects. Of greatest significance is Article 3(2), which recognizes that all illegally excavated archaeological objects are stolen property, when this is consistent with local law where the illegal excavation took place.<sup>30</sup> This offers a potentially powerful disincentive to trading in archaeological materials in other States Parties. New Zealand, which joined the UNIDROIT Convention in late 2006 and the UNESCO Convention in 2007, enacted comprehensive new legislation that incorporates implementation of both conventions into its domestic law.<sup>31</sup> This legislation prohibits the import into New Zealand of unlawfully exported protected foreign objects. As more nations continue to ratify and implement both of these conventions, these developments indicate that the evidence of an international response to the problem of the looting of archaeological sites has strengthened and will continue to do so.

One of the problems Cambodia faces in protecting its cultural heritage is the failure of Thailand, in particular, to ratify the UNESCO Convention and give greater assistance to stopping the smuggling of Cambodian antiquities across their shared border. However, in 2000, Cambodia and Thailand entered into a Memorandum of Understanding in efforts to “combat criminal activities which involve movable cultural property through the introduction of measures for impeding illicit transnational trafficking in movable cultural property whether or not it has been

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<sup>27</sup> ICOM. *ICOM Statement Concerning the Protection of Cultural Property and the Amendment of the law in Germany*, Press Release, 9 Sept. 2015, [www.icom.museum/news/news/article/icom-statement-concerning-the-protection-of-cultural-property-and-the-amendment-of-the-law-in-german](http://www.icom.museum/news/news/article/icom-statement-concerning-the-protection-of-cultural-property-and-the-amendment-of-the-law-in-german).

<sup>28</sup> Dealing in Cultural Objects (Offences) Act 2003, 2003 Ch. 27, Sections 1 and 2(2), available at <http://www.uk-legislation.hmso.gov.uk/acts/acts2003/20030027.htm>. 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(4).

<sup>29</sup> 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.”

<sup>30</sup> UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995), Art. 3(2).

<sup>31</sup> Protected Objects Act 1975, as revised 2007, available at [http://www.legislation.govt.nz/browse\\_vw.asp?content-set=pal\\_statutes](http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes). “Protected foreign object” includes all cultural objects as defined by Article 1 of the 1970 UNESCO Convention.

stolen.”<sup>32</sup> The two countries furthered their relationship by entering into an agreement in 2012 which emphasized the need to stop illicit trade along the border.<sup>33</sup> The agreement between the countries was carried out soon after the meeting when Thai officials seized fifty Cambodian artifacts which they allowed Cambodian officials to inspect.<sup>34</sup>

(4) Applications of import restrictions would promote the interchange of cultural property among nations for scientific, cultural, and educational purposes.

The fourth determination looks to whether international exchange of the cultural objects that are subject to import restriction can be achieved. Cambodia has a history of sharing its cultural heritage with the world. The National Museum has held exhibitions in countries including Australia, France, Japan, South Korea, and the United States.<sup>35</sup> The United States benefited from the exchange of heritage when in 2010-2011, the National Museum of Cambodia loaned 36 bronze sculptures to American museums, including the J. Paul Getty Museum, in the “Gods of Angkor” exhibit.<sup>36</sup>

In addition to other loans overseas, two major examples have taken place in the United States, since the MOU was last renewed. In 2014, the Metropolitan Museum of Art in New York showcased a number of Cambodian sculptures in the “Lost Kingdoms: Hindu-Buddhist Sculpture of Early Southeast Asia” exhibit.<sup>37</sup> Many of these pieces were “national treasures” that had never before left the country. Finally, another major exhibition is opening this very weekend at the Cleveland Museum of Art, featuring an “unprecedented loan from the National Museum of Cambodia of a section from the sculpted enclosure wall of the great royal temple at Banteay Chhmar.”<sup>38</sup> Cambodia’s willingness to share not only its antiquities, but its most valued masterpieces, demonstrates the country’s full commitment to cultural exchange.

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<sup>32</sup> UNESCO. *Agreement between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand to Combat Against Illicit Trafficking and Cross-Border Smuggling of Movable Cultural Property and to Restitute it to the Country of Origin*, 14 June 2000, [www.unesco.org/culture/natlaws/media/pdf/cambodia/cambodia\\_agreement\\_thailand\\_engtno.pdf](http://www.unesco.org/culture/natlaws/media/pdf/cambodia/cambodia_agreement_thailand_engtno.pdf). Accessed Oct. 2017.

<sup>33</sup> “Cambodian, Thai Governors of Border Provinces Meet to Improve ties.” *CRI English*, 27 Apr. 2012, <http://english.cri.cn/6966/2012/04/27/1461s695965.htm>. Accessed Oct. 2017.

<sup>34</sup> Sithyna, Munny, and Ros Chanveasna. “Cambodian Experts to Inspect Artifacts.” *Khmer Times*, 20 Dec. 2014, [www.khmertimeskh.com/news/7216/cambodian-experts-to-inspect-artifacts/](http://www.khmertimeskh.com/news/7216/cambodian-experts-to-inspect-artifacts/). Accessed Oct. 2017.

<sup>35</sup> National Museum of Cambodia. *Museum History*. [http://cambodiamuseum.info/museum\\_history.html](http://cambodiamuseum.info/museum_history.html).

<sup>36</sup> The J. Paul Getty Museum. *Gods of Angkor: Bronzes from the National Museum of Cambodia*. [www.getty.edu/art/exhibitions/gods\\_angkor/](http://www.getty.edu/art/exhibitions/gods_angkor/).

<sup>37</sup> The Metropolitan Museum of Art. *Lost Kingdoms: Hindu-Buddhist Sculpture of Early Southeast Asia, 5th to 8th Century*. [www.metmuseum.org/press/exhibitions/2014/lost-kingdoms](http://www.metmuseum.org/press/exhibitions/2014/lost-kingdoms).

<sup>38</sup> The Cleveland Museum of Art. *Beyond Angkor: Cambodian Sculpture from Banteay Chhmar*. [www.clevelandart.org/events/exhibitions/beyond-angkor-cambodian-sculpture-banteay-chhmar](http://www.clevelandart.org/events/exhibitions/beyond-angkor-cambodian-sculpture-banteay-chhmar)



For these reasons, we feel that the four statutory criteria have been satisfied and that the CPAC should recommend the extension of the bilateral agreement between the United States and Cambodia.

Sincerely,

A handwritten signature in black ink that reads "Tom Kline". The signature is written in a cursive style with a long horizontal line extending to the right.

Thomas R. Kline  
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