ANCIENT COIN COLLECTORS GUILD

P.O. Box 911, Gainesville, MO 65655
tel: 417-499-9831 email: director@accg.us

May 12, 2014

Cultural Property Advisory Committee via Regulations.gov

Re: CPAC hearing, MOU with Egypt

Dear Professor Gerstenblith;

On behalf of the Ancient Coin Collectors Guild[1] the following comments are submitted to the Cultural Property Advisory Committee for consideration during its review of the proposed Memorandum of Understanding between the United States of America and the Arab Republic of Egypt.

Although some archaeological blogs on the internet have mistakenly suggested otherwise, the ACCG does not oppose nor lobby against the Convention on Cultural Property Implementation Act—and is not opposing an MOU with the Arab Republic of Egypt. This misunderstanding may be innocent enough in some cases, but is clearly a malicious distortion in others. From its inception, officers of the guild have made it clear on many fronts, including previous testimony before CPAC, that in our view CCPIA properly addresses legitimate concerns about the protection and preservation of cultural property. However, it is a fundamental belief and understanding of the ACCG board and its members that the Act was never intended to be applied to common utilitarian objects such as coins and that the current trend to do so is extralegal. Indeed, the State Department advisor during congressional deliberations on this bill, Mr. Marc Feldman, said as much in unambiguous terms. "In most cases, it is impossible to establish the provenance of a particular coin or hoard of coins. Therefore, there would be no reason for the United States, in most cases, to list coins as one of the categories of objects of archaeological or ethnological interest that would be included in the agreement…. [T]his legislation and ratification of the convention would not have any immediate effect on coins and it is hard for me to imagine a case where we would need to deal with coins except in the most unusual circumstances."[2] Mr. Feldman was not only a key figure in obtaining implementing legislation for the 1970 UNESCO Convention, he served as Chair of the U.S. delegation that framed the terms of that Convention.

Today, the "most unusual circumstances" envisioned by Mr. Feldman are considered the default position of every request. How did that happen? Of course, this concern is not virgin ground. Collector and trade advocates (and even several former CPAC members) have cited this essential fact on previous occasions before this committee—usually to no avail. One can only assume that the original intentions of Congress and the State Department itself carry little weight with the current regime. Yes, times do

change. And when they do, law might sometimes need to change as well. But the Constitution does not provide a vehicle by which mid-level government employees can arbitrarily and unilaterally ignore the letter and intent of law that remains in force. Jury nullification is legal, bureaucratic nullification is not. Miami Law professors Urice and Adler, far from being collector or trade advocates, have written extensively on this subject and boldly criticize recent State Department actions in the administration of CCPIA as "Extralegal".[3] It is especially troublesome when law is perverted by a government agency to disenfranchise the public for whom that law is meant to protect and serve. During the congressional deliberations cited above, Representative Bill Frenzel of Minnesota recommended amendments to the language of CCPIA that would specifically protect the rights and interests of private collectors of ancient coins and the associated legitimate trade. In the record, he is quoted as saying prophetically "…I am much more comforted by law than the possibility of some bureaucratic regulation which attempts to define the congressional intent…".[4] Ironically, bureaucratic rule-making today is creating regulation far more broad than the documented intent of Congress and of the clear specific wording of the law as enacted. This is seen by many in both private and public sectors, including some in academia and museums, as an arbitrary and capricious disregard. It is this overreach that ACCG has, for nearly ten years, strongly and consistently opposed. While federal courts have declined to address the issue, claiming lack of justiciability, the tenancy of that "moral high ground" so often touted by the alliance of academia and bureaucracy is certainly brought into question by the above concerns.[5]

Fortunately, we have not only the past record to examine, but also the more recent attestation of Mr. Feldman. Before a 2010 American Bar Association panel on International Trade in Ancient Art and Archaeological Objects, Feldman explained: "The UNESCO draft tabled in 1970 would have required all States Party to impose export controls on cultural property and to bar imports of any item not licensed for export by the state concerned. The United States opposed this "blank check" system in principle and on the practical ground that no market state could accept the proposed regime. We wanted to help combat pillage of archeological sites but did not wish to discourage international trade in archeological objects or other cultural property."[6] His closing statement before the ABA panel parallels ACCG concerns expressed in a recent Freedom of Information Act lawsuit. "It is not clear how the State Department makes the findings required by law as it has never explained its interpretation of the statute, disclosed the bases for those findings or published the CPAC reports to Congress required by the Act. [7]

Although expressing no opinion on the current MOU request, the ACCG does strongly recommend and request an exemption for ancient coins—as it has for every MOU in which coins have been either specifically or implicitly under consideration. Bolstering this position, the highest German court recently ruled that ancient coins, as a class, are not automatically "archaeological objects"—but only so in individual clearly specified instances. That judgement must consider "…how the concerned object is valued in the trade and whether the same or similar objects are largely the object of trade in which archaeological institutions and collections are not involved, but rather collectors are involved who are not interested in such coins as an 'archaeological' interest but as a desire to collect and acquire said objects for aesthetic value and for other interests." [8]

The German court ruling has direct relevance to the issue of concerted international response. Under that ruling, German Customs was "obligated" to clear the ancient coins in question for export without an export permit. The vast majority of ancient coins sold within the worldwide trade today and preserved in private collections cannot be considered archaeological objects simply because they might once have been found in the ground. In any case, they do not meet the criteria for controls expressly outlined in the CCPIA unless they are proven to have been found in a context within the jurisdiction of the requesting State Party. There are many signatories to the UNESCO Resolution that do not require an export permit for ancient coins. It is incongruous that the United States should impose restrictions on coins being imported from a country that does not impose export restrictions on those same coins—especially when the basis in U.S. law for those import restrictions (CCPIA) mandates a concerted international response before action by U.S. authorities is warranted.

If ever there was an argument for exempting coins from an MOU, the ancient coins of Egypt are high on the list. Coins struck in Egypt during antiquity traveled widely then, and since then, as instruments of monetary exchange and of cultural interest. The work of Margaret Thompson at the American Numismatic Society (cited by Mr. Tompa in his written comment) revealed at least ten countries outside of Egypt where these coins have been found and documented. That number is expanded today by finds in England recorded in the British Portable Antiquities Scheme (also cited by Tompa). For the past 600 years, coins from Egypt have been collected and traded worldwide, normally without any sort of provenance. These coins routinely reappear when old collections are dispersed, museums sell off excess holdings and estates change hands through inheritance. Daily transactions in international trade continue to this day without any requirement for records of provenance. Any future call for recorded provenance must take into account some protection for the millions upon millions of "orphan" coins circulating and in storage around the world which will be very difficult and costly to register.

The only truly "Egyptian" coins from antiquity are a very few controversial coins of the last Pharaoh, Nectanebo II. All other coins issued in Egypt between then and the modern era have been coins of foreign imperialists ruling over that land. First, the Greeks, then the Romans, then the Sasanians, then the Byzantines, then the Arabs and then the Turks. Many, perhaps most, of those coins are not culturally significant to the modern Arab Republic of Egypt. In the eyes of some recent and likely future theocracies, they are anathema and could be destroyed as a sign of faith. Preventing their entry into the United States might well lead to their permanent loss in the melting pots of Egypt. So much for preservation.

It is clear that the government of Egypt does not have the will to rein in looting of public property. But, the solution to that problem is not to impose unreasonable sanctions on American coin collectors who are doing more to elucidate and preserve the art and history of numismatics in Egypt than Egypt itself is doing. It would be far more productive, on many levels, to encourage mutual cooperation with collectors and the trade. We implore you to use this occasion to establish a rational change of course and exempt ancient coins from any Memorandum of Agreement.

Sincerely yours,

Wayne G. Sayles
Executive Director

1. The Ancient Coin Collectors Guild (ACCG) was founded in 2004 as a 501c(4) not-for-profit entity. ACCG's primary constituency is American collectors of coins from antiquity. The guild is a voting member of the International Numismatic Council and a member club of the American Numismatic Association. It is governed by a Board of Directors elected by the general membership. ACCG enjoys the support of 23 Affiliate Member clubs from coast to coast.

2. Statement of Mark B. Feldman, Cultural Property Treaty Legislation: Hearing on H.R. 3403 Before the H. Subcomm. on Trade of the Comm. On Ways and Means, 96th Cong. 8 (1979), p. 8.

3. Adler, Andrew L. and Stephen K. Urice, "Resolving the Disjunction between Cultural Property Policy and Law: a Call for Reform, Rutgers Law Review, Vol. 64, (online at http://www.rutgerslawreview.com/wp-content/uploads/archive/vol64/Adler_%26_Urice_Macro%20Version.pdf)

4. Statement of Rep. Bill Frenzel, Cultural Property Treaty Legislation: Hearing on H.R. 3403 Before the H. Subcomm. on Trade of the Comm. On Ways and Means, 96th Cong. 8 (1979), p. 15.

5. Ancient Coin Collectors Guild v. U.S. Customs and Border Protection, Department of Homeland Security; Commissioner, U.S. Customs and Border Protection; United States Department of State; and the Assistant Secretary of State, Education and Cultural Affairs, Respondents. "On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit. February 12, 2013, (online at www.accg.us/Libraries/Documents/Petition_2.sflb.ashx)

6. Feldman, Mark B. "The UNESCO Convention on Cultural Property: A Drafter's Perspective", Panel: International Trade in Ancient Art and Archaeological Objects, ABA Section of International Law Spring Meeting—New York City, April 15, 2010. P. 2. (online at http://www.gsblaw.com/pdfs/ABA_International_Trade_spring_mtg.pdf)

7. Ibid, p. 10.

8. Bundesfinanzhof (Federal Finance Court) File no. VII R 33, 34/11 December 11, 2012 (certified translation online at http://wgs.cc/German_Court_Ruling.pdf)