

## **Testimony of Dr. Jeffrey H. Altschul on the Proposed MOU between Mongolia and the United States of America**

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Background: I have led multiple cultural heritage and archaeological projects in Mongolia. Although I have not been in-country since 2015, in large part due to the COVID pandemic, I remain connected to colleagues in the US and Mongolia, largely through my affiliation and activity with the American Center for Mongolian Studies. As Senior Principal investigator of the Mongolian International Heritage Team between 2010 and 2015, I led the team that designed the Oyu Tolgoi Cultural Heritage Plan (CHP), which remains Mongolia's basic approach to archaeological and paleontological compliance, heritage tourism, heritage education, and local and state level museums. During my tenure as President of the Register of Professional Archaeologists, the Register enacted its current ethical principle against commercial use of the archaeological record. As a former president of the Society for American Archaeology, I am well aware of the importance and the obligations attached to the US entering bilateral agreements under the Cultural Property Implementation Act (CPIA).

It is with due consideration that, on behalf of myself and Society for American Archaeology, I strongly approve the US entering into a Memorandum of Understanding (MOU) with Mongolia for the protection of Mongolian archaeological heritage. My testimony will focus on the four determinations as outlined in CPIA.

### **1. Is Mongolia's cultural heritage still under threat from looting and pillaging?**

As part of the Oyu Tolgoi CHP, I led scores of local community meetings throughout the South Gobi.<sup>1,2</sup> The meetings helped identify threats to cultural heritage. At almost all meetings, three related threats to cultural heritage were raised:

1. The loss of nomadic culture and traditional customs
2. Increase in damage and/or destruction of historical, paleontological, archaeological, and cultural properties
3. Increase in cultural heritage crime, such as looting archaeological sites and trafficking antiquities.

These concerns are well founded. Public outrage at theft of cultural heritage is a common news item in newspapers, TV, and other media outlets. The most well known of these events took place in 2012 when a nearly complete dinosaur skeleton in New York was auctioned. The sale

was stopped when the president of Mongolia, Elbegdorj Tsakhia, personally intervened, and the skeleton was subsequently repatriated to Mongolia in 2013.<sup>3</sup>

Archaeological artifacts are also at risk. In 2015, for example, the provincial police in Khovd province seized looted antiquities, including mummified organic materials, among which was the world's oldest wooden frame saddle.<sup>4</sup> In 2019, the internal intelligence service seized ancient bronze cauldrons from a smuggler intending to transport the antiquities across the Chinese border.<sup>5</sup> In 2022, four individuals were prosecuted for looting a burial in the site of Gol Mod, Arkhangal aimag.<sup>6</sup> And last year, state-level prosecution began in an antiquities trafficking case involving conspiracy to sell artifacts from a Xiongnu-era (ca. 100 B.C.) elite tomb.

Trafficking in cultural heritage is a product of Mongolia's rich history and well preserved archaeological, historical, and paleontological record. Herein, I will limit my discussion to archaeological and ethnological items covered by CPIA, though it is important to point out that Mongolian law (see below, point 2) covers tangible and intangible cultural heritage, including paleontological fossils, archaeological artifacts, and ethnological and historical items.

Mongolia has many archaeological sites, including impressive monumental Bronze Age burials, tombs of Xiongnu and Turkic cultures, and Mongol Empire-era sites. These sites are well-laden with valuable artifacts, making them attractive targets for looters.<sup>7</sup> Additionally, Mongolian cultural centers and provincial museums contain vast numbers of important historical texts and ethnological items. Provincial museum collections are not well protected and sometimes not well cataloged or curated, and contain items ranging from manuscripts, sutras (prayer texts), thangka (painted silks of Buddhist deities), brass, bronze, and silver ritual items associated with Buddhist ritual practices, coins, musical instruments, jewelry and hair decorations, ceramic devotional items (Tsats), and even decorated architectural pieces from temples (friezes, roof tiles, wall decorations, frescoes, etc.). Ethnological artifacts also include a range of what would be called 'antiques' in the US – old tools, carpets, furniture, etc.

While some organized commercial antiquities trafficking exists, most pillaging of archaeological sites and museum thefts are the result of poverty. Mongolia is a poor country, with great disparities in wealth. Traditional lifeways, such as nomadic herding, are difficult to maintain as large areas are fenced off for mining concessions, highways and railways limit nomadic movement, and water levels due to mining and climate change are dropping, making ground water scarce. Not surprisingly, some turn to looting to supplement their income.

Looting in Mongolia is aided by two factors. First, archaeological monuments are relatively easy to see. Although buried sites exist in alluviated areas, such as river valleys, many archaeological sites have above-ground exposure. Deer stones, for example, are stela-like pillars, whose locations are well known to locals. Many of these sites have no protection. Even those that are registered monuments and encircled by fences have little or no human monitoring. Burial sites,

known as kurgans, dot the landscape with rock mounds and rock features that are easily identified. Ancient cities and ruined Buddhist monastery sites also are well-known locations, with many easily accessed by nearby rural towns and villages.

Second, Mongolia is huge and sparsely populated. The country covers roughly the same area as Alaska. With a population of 3.3 million, of which nearly half [43-45%] live in the capital Ulaanbaatar, Mongolia is sparsely populated with a mere 2 persons per square kilometer. Making the situation worse is the fact that Mongolia has only about 100 trained archaeologists, making it impossible to provide protection of archaeological sites in remote areas. Looters can simply go about their business with little chance of being seen to say nothing of being apprehended.

## **2. Mongolia has taken measures to protect its cultural patrimony.**

Mongolia has a long tradition of protecting cultural heritage. The first law—The Rule of Preserving Ancient Monuments—was enacted in 1924. The Law on the Protection of Cultural Properties of the Mongolian People’s Republic, adopted in 1970, was the first Mongolian law to regulate a wide range of activities involving the classification, protection, utilization, study and promotion of cultural heritage as well as to provide penalties for those who breached the law. Subsequently, the Department of the Restoration of Historical and Cultural Heritage and the Bureau of the Study of Historical and Cultural Properties were established. With the Russian withdrawal in 1992, the Mongolian enacted a constitution, which in Article 1.7 stipulates that items of historical and cultural value as well as those of scientific and intellectual importance to the Mongolian people shall enjoy the protection of the State. In 1994, the “Law on Protecting Historical and Cultural Properties of Mongolia” was enacted, which defines historical and cultural properties in reference to science, art, and legislation. The law stipulates a wide range of activities involved in the exploration, registration, classification, excavation, study, promotion, preservation, restoration, possession, utilization, and exportation of historical and cultural properties. The law was amended in 2001 and then repealed in 2014 so that it could be strengthened. A 2014 version was passed, which has subsequently been amended and strengthened multiple times.<sup>8</sup> Also, looting and selling cultural properties and artifacts is now considered as a serious offense, as stated in the criminal code, with the latest amendments made in 2017 and 2022.

Mongolian historical and cultural items are legally considered national heritage and enjoy state protection. The Ministry of Culture, Sport, Tourism, and Youth is charged with the protection of Mongolian cultural heritage. Within the Ministry, the Department of Cultural Heritage Policy Implementation is responsible for issuing regulations and policies to protect cultural heritage. Five organizations are charged with the protection of tangible cultural heritage: the Institute of Archaeology, Mongolian Academy of Sciences (MASIA); Archaeological Research Center, National University of Mongolia; Chinggis Khaan National Museum; Center for Cultural Heritage;

and Provincial Museums. In 2010, MASIA established a “Conservation Sector” in response to the mining industry’s need to comply with Mongolian cultural heritage laws, which has led to a dramatic increase in archaeological survey and excavation.

Mongolia has strong laws protecting cultural heritage and public support to do so. Unfortunately, it lacks adequate funding, so survey and registration efforts have fallen short. Still, the public strongly favors protecting its cultural heritage. As described above in Point 1, Mongolia has actively prosecuted looters and those who assist them.

In short, the basic problem facing Mongolia in the protection of its archaeological and ethnological record is twofold. First, a rich archaeological record that is easily accessible to a population facing economic hardship as well as ethnological items stored in provincial museums that are not well protected; and second, an insatiable worldwide market for Central Asian antiquities.

### **3. Restrictions on the importation of Mongolian cultural heritage will be of substantial benefit in deterring pillaging and looting.**

The looting of archaeological and ethnological items in Mongolia can be categorized as subsistence looting, or pillaging sites or stealing historical items by individuals or small related groups as an adjunct to other activities (e.g., artisanal gold mining). To stop or slow this type of looting requires; (1) greater funding and capacity for the enforcement of Mongolian law and (2) greater pressure on outside markets. The Mongolian government has taken steps, as outlined in the discussion of the laws in point 2, not only to criminalize antiquities theft, but also to provide specialized training of police and custom agents so that they can properly identify material culture and fossils. It has very little control, however, over the commercial value of Central Asian artifacts. While such items are sought in many parts of the world, it stands to reason that the two most important buyers of Mongolian artifacts and ethnological items are in the US and China (including Hong Kong). China, in particular, poses a major challenge. Mongolian citizens can travel visa free to China and then have access to numerous networks of collaborators in a thriving antiquities trade that includes both organized criminal networks and more informal internet channels to sell artifacts, including eBay, live auctioneers, and ancient touch. It is important to point out that the US and China have an existing CPIA MOU. A MOU between Mongolia and the US would have the added benefit of cutting off the transport of antiquities directly from Mongolia as well as through China. The MOU, then, would likely have an immediate and substantial effect in deterring subsistence looters, particularly if the price of antiquities fell making “sideline” looting activities more dangerous (i.e., greater chance of getting caught as Mongolia steps up prosecution) and less profitable.

#### **4. The application of the import restrictions will not interfere with international interchange of cultural property for scientific, cultural, and educational purposes.**

Mongolia is a state party to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage. Mongolia has incorporated the values, basic principles and requirements of these conventions into its national laws governing the protection of cultural heritage, including cooperatively working with archaeologists, anthropologists, and historians from other countries. Implementation measures specifically support of the preservation of cultural values and the study of historical and cultural properties by any organization, company, and individual which will return historical and cultural properties from abroad.

These laws enshrine Mongolia's long history of encouraging joint archaeological projects with scholars from the US, Korea, Japan, China, Russia, and Germany to name just a few. Many of these projects, including US-Mongolian projects currently in the field, explicitly include training Mongolian archaeologists and assisting the survey and registration of archaeological and historical sites and monuments. Importantly, training opportunities in cultural resource protection and management are designed to build in-country capacity, which as discussed above, is woefully inadequate. A CPIA MOU will only enhance cooperation between US and Mongolian archaeologists, historians, and cultural heritage specialists.

#### Sources

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