

**Statement of the Association of Art Museum Directors
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**Meeting of the Cultural Property Advisory Committee to Review the Request of the
Government of the Hellenic Republic to the United States of America for Imposing Import
Restrictions Under the Cultural Property Implementation Act.**

I. Summary of the Position of the Association of Art Museum Directors

The Cultural Property Advisory Committee (“CPAC” or the “Committee”) is facing perhaps the most complicated and controversial request for import restrictions in its history. Because of this complexity, CPAC should proceed slowly and deliberatively, first tabling the request from Greece until a thorough evaluation of the request and its implications can be made and then, after the process outlined below, holding a second set of public hearings to allow the public to comment on any proposed import restrictions. If import restrictions are to be imposed, because of the proliferation throughout the ancient world of Greek culture, colonies, objects and works of art, CPAC will need to develop a new approach to import restrictions to avoid a sweeping, overbroad and illegal imposition of import restrictions. This process will take time and the good faith efforts of many interested in the subject.

While CPAC is studying the Greek request, Greece should be provided with a list of specific steps, commonly found in Article II of a Memorandum of Understanding (“MOU”), Greece must take before import restrictions are imposed, including:

- Taking action necessary, both administratively and legislatively, to provide long term loans of significant archaeological and ethnological material to museums in the United States;
- Demonstrating its ability and willingness to work cooperatively and responsibly with museums in the United States on exhibitions of works for which import restrictions are sought;
- Modifying its position that all artifacts created in Greece belong to Greece;
- Indicating a willingness to at least consider a licit market for antiquities; and
- Demonstrating its ability and willingness to protect its sites from illicit and unscientific excavation.

II. Introduction

This statement is made on behalf of the Association of Art Museum Directors (the “AAMD”). The AAMD is a professional organization consisting of approximately 200 directors of major art museums in the United States, Canada, and Mexico.

The AAMD deplores the illicit and unscientific excavation of archaeological materials and ancient art from archaeological sites and the destruction or defacing of ancient monuments. The AAMD is also committed to the responsible acquisition of archaeological materials and

ancient art and believes that the artistic achievements of all civilizations should be represented in art museums that, uniquely, offer the public the opportunity to encounter works of art directly, in the context of their own and other cultures, where these works may educate, inspire and be enjoyed by all.

In 1983, Congress passed the Convention on Cultural Property Implementation Act (the “Act”),¹ the enabling legislation in the United States for the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the “Convention”).² The Act permits the President of the United States to enter into bilateral or multilateral agreements with other Convention signatories in order to restrict the import of designated archaeological or ethnological material.³

Before the President can enter into an MOU with another Convention signatory, the Act explicitly requires the President to make four determinations:

- (1) The cultural property of the country applying for protection is “in jeopardy from the pillage of archaeological or ethnological materials” from that country.
- (2) The country applying for protection has “taken measures consistent with the Convention to protect its cultural patrimony.”
- (3) The restrictions would be of “substantial benefit in deterring a serious situation of pillage” “if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations . . . individually having a significant import trade in such material”; and “less drastic” remedies than the import restrictions are not available.
- (4) The application of restrictions is “consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.”⁴

III. Greece Has Not Met the Requirements of the Act

Greece has not taken sufficient measures to protect its cultural property and its efforts towards protecting its archaeological sites to date are not adequate. Even in 2008, Greece was not adequately protecting or maintaining its archaeological sites and museums. The former Minister of Culture, Michalis Liapis, conceded that “The situation at museums and sites around the country is bad[.]”⁵ Recently, the protection of cultural property in Greece has severely suffered as a result of Greece’s debt crisis. Indeed, the current Minister of Culture, Pavlos

¹ 19 U.S.C. §§ 2601-13.

² Nov. 17, 1970, 823 U.N.T.S. 231.

³ 19 U.S.C. § 2602(a)(2).

⁴ 19 U.S.C. § 2602(a)(1).

⁵ See Helena Smith, *Run-down Heritage Sites Embarrass the Greeks*, The Guardian (June 23, 2008) (available at: <http://www.guardian.co.uk/world/2008/jun/23/greece.heritage>).

Geroulanos, has acknowledged that Greece's culture sector remains painfully under-funded.⁶ As Greece's economic crisis deepens, further cuts to the already under-funded Ministry of Culture can be expected. Additionally, Greek bureaucracy has been open to serious charges of corruption, whether due to economic constraints or individualistic issues. As a result of the dire state of the Greek economy and Greece's failed past efforts, Greece's protection of its cultural property is likely to only become worse. Accordingly, the Committee should seriously consider these circumstances in evaluating Greece's request for import restrictions.

Greece's failure to take adequate steps to protect its cultural patrimony is not the only element of the Act that the Committee must consider. Under the Act, the President must make a determination that by imposing the requested import restrictions, the United States would be acting in concert with other nations.⁷ Material of Greek origin is found in virtually every major art market in the world. From London to Paris, from Brussels to Geneva, objects from the Greek culture are for sale virtually every day. To meet the requirements of the Act, a systematic and careful examination of the major art markets and the restrictions that they have implemented will need to be pursued. We hope that no longer will the argument be made that because Greece is a member of the European Union, the existence of the European Union Council Directive 93/7/EEC—a measure to preclude the export of objects—is somehow a “similar restriction”. Nor should the argument that adoption of the Convention alone meets the “similar restriction” mandate of the Act. While the Greek agreement with Switzerland is an element in this analysis, the market is so widespread that many countries will need to cooperate if effective regulation is to occur—a situation that does not currently exist.

IV. A New Approach to MOUs

In the past, MOUs have followed an almost predictable course. A country makes a request to the United States arguing that its entire culture is subject to pillage and sweeping import restrictions need to be imposed by the United States in order to protect the requesting country's cultural patrimony. The United States signs an MOU and creates a designated list of objects, often broad and sometimes less than adequately specific. Over time, that list can even grow as additional requests for import restrictions are made at the time of the MOU's renewal. Somewhere in that process, the United States will require certain actions on the part of the requesting country, usually found in Article II of the MOU, such as requiring the country to make long-term loans of protected property, take steps to protect archaeological sites and educate its citizenry about the benefits of conserving the nation's patrimony.

The problem with the approach that has been taken in the past is that there is no incentive to the requesting country to do anything except pay lip service to the requirements the United States seeks to impose in connection with an MOU. The United States has only declined to renew an MOU in one circumstance (and this would not appear to have been a situation involving a failure to comply with Article II). As a result, there is little fear that failure to comply with Article II will have any real significance. The result is an inevitable creep of objects covered by the MOU's corresponding designated list on the one hand, and a lack of

⁶ See Helena Smith, *Greece's Treasures Fall Victim to €300bn Debt Crisis*, The Guardian (Feb. 26, 2010) (available at: <http://www.guardian.co.uk/world/2010/feb/26/greece-acropolis-debt-crisis-athens>).

⁷ 19 U.S.C. § 2602(a)(1)(C)(i).

compliance by the requesting country as to those goals that the United States wishes to see achieved under the MOU on the other hand.

The course of the MOU with Italy is a telling example. In January 2001, the United States and Italian governments signed an MOU to prohibit the importation into the United States of a vast range of archaeological material originating in Italy. The United States and Italy extended the MOU in January 2006. In exchange for sweeping import restrictions, the Italian government undertook various commitments under Article II of the MOU, including a commitment to make long-term loans to American museums. But almost 10 years after adoption of the first MOU, and almost 5 years after its extension, Italy is only now beginning to discuss possible legislation to allow such long-term loans. Italy's non-compliance with a required provision of the MOU for almost a decade exemplifies the need for the United States to have assurances that a requesting country is willing and able to fulfill its obligations under an MOU, before the United States agrees to impose import restrictions. What is the harm in requiring a requesting country to take steps to show that it can comply with provisions which the United States deems critical to allowing an MOU, rather than waiting for years to pass after an MOU is signed and hoping for voluntary compliance? Indeed, requiring a requesting country to demonstrate its commitment to achieve certain goals under an MOU will facilitate and bolster the protection of that country's cultural patrimony.

V. Greece's Request Should Be Tabled For Further Study

On August 26, 2010 the U.S. Department of State published notification that Greece made a request to the United States under Article 9 of the Convention for import restrictions on archaeological and ethnological material from Greece dating to the Neolithic Era through the mid-eighteenth century.⁸ The notice states, "The specific contents of this request are treated as confidential government-to-government information."⁹ A "public summary" accompanies Greece's request, however it fails to specify key details, including the particular objects upon which Greece seeks import restrictions.¹⁰ How the Committee could make an informed recommendation, based in part on the expertise of the Committee members and expert witnesses from the public, without having a list of the objects to be restricted available for public comment is unfathomable.

For that reason and others detailed herein, the AAMD respectfully requests that the Committee recommend that Greece's request be tabled for further study and the items to be considered for import restrictions be made public. In the interim, the Committee should thoroughly investigate whether the statutory requirements necessary for the imposition of the import restrictions sought by Greece can be satisfied. Further, the AAMD requests the Committee recommend that, in the interim, Greece be required to demonstrate its willingness and ability to achieve specific goals for the protection of its cultural patrimony and to provide the opportunity for the American public to have objects on loan to American museums.

⁸ See Notice of Receipt of Cultural Property Request from the Government of the Hellenic Republic, 75 Fed. Reg. 52582 (August 26, 2010) (available at: <http://exchanges.state.gov/heritage/whatsnew.html>).

⁹ *Id.*

¹⁰ See Public Summary, Request by the Government of the Hellenic Republic to the United States of America for Imposing Import Restrictions to Protect its Cultural Patrimony Under Article 9 of the UNESCO Convention (1970) (available at: <http://exchanges.state.gov/heritage/whatsnew.html>).

While the imposition of import restrictions on Greek objects may be appropriate at some point in the future, the United States should receive certain assurances from Greece before doing so. Before adopting an MOU with Greece, the United States and Greece should enter into a constructive dialogue in order to assure the United States that Greece has demonstrated a willingness and ability to achieve certain goals for the protection of its cultural patrimony, consistent with the general interest of the international community in the interchange of cultural property among nations. Specifically, Greece should be required to prove its commitment and ability to:

- A. Take action necessary, both administratively and legislatively, to provide long-term loans of significant archaeological and ethnological material to museums in the United States.

Greece's current law precludes long-term loans of significant cultural property.¹¹ Furthermore, the current law precludes the loan of any culturally significant objects.¹² While Greece has lent objects for exhibition (see below), long-term loans are the only means to provide museums in the United States with the additions to the collection that allow the museum to present works in context in a manner that is not economically prohibitive. Greece must demonstrate an ability and a willingness to make long-term—at least 10 year—loans of objects of significance to institutions in the United States.

- B. Demonstrate the ability and willingness to work cooperatively and responsibly with museums in the United States on exhibitions of works for which import restrictions are sought.

During the interim period recommended, Greece should demonstrate a willingness to work cooperatively with United States institutions in the development of exhibitions and the process for exhibition loans. These efforts should be based on scholarly and curatorial decisions, not political considerations.

- C. Modify its position that all artifacts created in Greece belong to Greece.

Greece has made overly broad claims to cultural property and this position creates a situation that does not bode well for cooperation between Greek and United States authorities on the identification of objects that would be subject to an MOU. While this rhetoric may have beneficial political ramifications for Greece, it does nothing to advance the dialogue needed to implement effective and intelligent import restrictions.

- D. Indicate a willingness to at least consider a licit market for antiquities.

As the AAMD has discussed with the Committee in the past, a licit market can be an important component in the fight against looting. Should not the Committee convey that consideration of such a market may be an element of Article II of any MOU with Greece and that

¹¹ Greek Law No. 3028 “On the Protection of Antiquities and Cultural Heritage in General,” Art. 25(1) (June 28, 2002) (available at [http://www.ifar.org/upload/PDFLink4909e209d5bccWMK%20-%20Greece%20-%20Law%203028%20of%202002%20Protection%20of%20Antiquities%20and%20Cultural%20Property%20\(Eng\).pdf](http://www.ifar.org/upload/PDFLink4909e209d5bccWMK%20-%20Greece%20-%20Law%203028%20of%202002%20Protection%20of%20Antiquities%20and%20Cultural%20Property%20(Eng).pdf)).

¹² *Id.*

the study of such a market now will be an important consideration for the Committee in deciding on the Greek request?

E. Demonstrate its ability and willingness to protect its sites from illicit and unscientific excavation.

Greece's ability to protect its sites is critical, not only in order to meet the requirements of the Act, but as the first and most important line of defense in the fight against looting. The Committee needs time to see whether Greece can improve its efforts in this regard, especially at a time when Greece's economic situation is more likely to result in a reduced, not increased, level of protection.

Until Greece demonstrates a commitment to undertake the foregoing and implements steps to achieve these goals, an MOU is not authorized by the Act, is premature and will fail to achieve the very purposes intended by the Act.

VI. Conclusion

In evaluating Greece's request for import restrictions on archaeological and ethnological material from Greece dating to the Neolithic Era through the mid-eighteenth century, the Committee must critically evaluate the statutory requirements of the Act. At this time, the Committee cannot make the requisite findings under the Act to support the import restrictions sought by Greece. As a result, the Committee should recommend that Greece's request be tabled for further study. The Committee should thoroughly investigate whether the statutory requirements necessary for the imposition of the import restrictions sought by Greece can be satisfied. In addition, before an MOU can be adopted by the United States, extensive work will need to be done in order to create a designated list that does not sweep objects from all over the Mediterranean world into an effective trade embargo that would preclude the entry into the United States of objects from an extensive list of countries. Finally, the Committee should recommend that, in the interim, Greece be required to demonstrate its willingness and ability to achieve specific goals for the protection of its cultural patrimony and to provide the opportunity for the temporary and long-term loan of objects to American museums.