

**Statement of the Association of Art Museum Directors  
Presented by Stephen J. Knerly, Jr.**

**Meeting of the Cultural Property Advisory Committee to Review the Proposal To Extend  
the Memorandum of Understanding Between The Government of the United States of  
America and The Government of the Republic of Colombia Concerning the Imposition of  
Import Restrictions on Archaeological Materials from the Pre-Columbian Cultures and  
Certain Ecclesiastical Material from the Colonial Period of Colombia.**

**I. 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 purpose of the AAMD is to support its members in increasing the contribution of art museums to society. The AAMD accomplishes this mission by establishing and maintaining the highest standards of professional practice, serving as a forum for the exchange of information and ideas, acting as an advocate for its member art museums, and being a leader in shaping public discourse about the arts community and the role of art in society.

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. The AAMD recognizes and applauds the United States when it has taken an approach to protection of the world’s cultural heritage that balances encouraging a unified, international solution to the problem while allowing American museums to continue to collect responsibly on behalf of the American public.

In 1983, Congress passed the Convention on Cultural Property Implementation Act (the “Act”),<sup>1</sup> 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”).<sup>2</sup> 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.<sup>3</sup> The Act also allows the President to extend agreements that enter into force with respect to the United States for additional periods of not more than five years each.<sup>4</sup>

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<sup>1</sup> 19 U.S.C. §§ 2601-13.

<sup>2</sup> Nov. 17, 1970, 823 U.N.T.S. 231.

<sup>3</sup> 19 U.S.C. § 2602(a)(2).

<sup>4</sup> 19 U.S.C. § 2602(e).

In March 2006, the United States and Colombian governments signed a Memorandum of Understanding (“MOU”) to prohibit the importation into the United States of certain categories of pre-Columbian archaeological material and of ecclesiastical ethnological material from the Colonial period. On August 26, 2010, the U.S. Department of State published notification that Colombia had informed the United States of its interest in an extension of the MOU between the United States and Colombia.<sup>5</sup>

## **II. The Committee Must Determine Whether Import Restrictions Are Still Required and Effective to Prevent the Pillage of Designated Material**

Before the President may extend the MOU, the Act requires that the President make a determination that the factors referred to in 19 U.S.C. § 2602(a)(1) which justified entering into the MOU still pertain and that no cause for suspension under 19 U.S.C. § 2602(d) exists.<sup>6</sup> The President must determine that the following factors still pertain to Colombia:

- (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.”<sup>7</sup>

The AAMD urges the Cultural Property Advisory Committee (the “Committee”) to utilize the resources of the U.S. Department of State and other agencies to gather all the facts reasonably possible in order to determine whether Colombia has met all the required criteria.

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<sup>5</sup> See Notice of Proposal To Extend the Agreement Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Imposition of Import Restrictions on Archaeological Material From the Pre-Columbian Cultures and Certain Ecclesiastical Material from the Colonial Period of Colombia, 75 Fed. Reg. 52582 (August 26, 2010) (available at: <http://exchanges.state.gov/heritage/whatsnew.html>).

<sup>6</sup> 19 U.S.C. § 2602(e).

<sup>7</sup> 19 U.S.C. § 2602(a)(1).

The AAMD also recommends that the Committee undertake a thorough review of Colombia's obligations under Article II of the MOU. Additionally, the Committee should seriously consider that import restrictions for any specific country under the Act were never intended to be a permanent fixture of the customs laws, but instead a careful recognition of the benefit of striking a balance between temporarily limiting the United States market for cultural goods (when accomplished in tandem with restrictions by other market countries for such goods) and allowing source countries adequate opportunity to pass legislation, coordinate enforcement efforts, and educate its citizenry.

### **III. Revisions and Amendments to the Memorandum of Understanding**

In addition to reviewing Colombia's compliance with the current MOU, the AAMD respectfully recommends that the Committee consider three refinements to the MOU in order to bring the MOU more fully into the spirit and intent of the Convention.

#### **A. Long-Term Loans**

The first and primary role of American art museums is to present, through their permanent collection, the artistic and creative efforts of mankind. While temporary exhibitions of loaned materials are crucial ways of bringing great works of art to the public, they cannot substitute for long-term display in the permanent collection. Only through the permanent collection can museums' publics engage on a regular basis with the objects themselves, with information about the objects, and with the illuminating dialogues that museums create among objects on display. Furthermore, in-depth humanities and scientific research, conservation analysis and treatment, and restoration efforts are greatly enhanced or made entirely possible when objects are committed to the permanent collection and, therefore, under the museum's long-term care and study.

By definition, MOUs curtail the trade in archaeological and ethnological material. In the past, one point of discussion between the AAMD and the Committee has focused on the United States' efforts to assist in conserving the cultural patrimony of other countries through import restrictions and how these efforts oftentimes simply move the market to other countries. We can debate whether other significant market countries have met or will meet the statutory requirement to impose similar restrictions, but no one can seriously contest that the world's art markets have not acted in concert to restrict the sale of the types of material protected by MOUs, such as the one with Colombia. If American museums are to be disadvantaged by prohibiting acquisition of material that can enhance their publics' understanding of the world's great cultures, then the United States must require the countries seeking its assistance to make available for loan objects of cultural significance for display, study, and research on a long-term basis and with reasonable terms.

In lieu of acquiring objects of cultural significance to add to the permanent collection, long-term loans of such objects are a critical alternative to, although by no means a replacement

for, acquisitions by American museums. Such loans respect foreign countries' title and ownership of their cultural patrimonies but allow objects to be in the long-term possession, but not ownership, of American museums. In order to provide the public benefit described above, and due to the very substantial costs that American museums will assume in taking such loans, the loans must truly be "long-term." Each loan involves direct expenses for specialized packing, shipping, usually with the help of a courier and shipping agents, insurance, and, often, the manufacture of unique display cases and mounts. Indirect costs include the time of curators, registrars, designers, conservators, art handlers, educators, and others in order to research and label, ship and track, install, treat, move, and present the object to the public in the permanent collection galleries. Every time a piece is removed from display, most of the same expenses are re-incurred. Given these considerations, a short-term, renewable loan that is subject to renegotiation will often be a disincentive to American museums.

Article II, Section E of the current MOU between the United States and Colombia only addresses loans for temporary exhibitions.<sup>8</sup> Nowhere does the MOU require Colombia to make long-term loans of culturally significant objects to American museums. The Committee should recommend an amendment to Article II requiring that, as a condition to extending the imposition of import restrictions, Colombia allow long-term loans of culturally significant pre-Columbian and ecclesiastical material from the Colonial period to American museums. This will require Colombia to amend its current law that only permits a three-year loan of protected material. While Colombian law apparently does not prohibit renewal of loan terms, that is simply not adequate to meet the interests of the American public.

## **B. Protection of Archaeological Sites**

Second, the AAMD recommends an amendment to Article II, found in many other MOUs, requiring that Colombia vigorously protect its archaeological sites, regardless of where located. Only through rigorous police enforcement at these sites can illegal digging and selling be truly curtailed. Once an object enters the illicit market, retrieval is extremely difficult. Site protection is the best and first line of defense, and the United States should not be asked to be the sole source of enforcement in the protection of Colombian cultural property.

## **C. Compensation of Chance Finds**

Third, the AAMD recommends that Article II be amended to require Colombia to provide fair and adequate compensation for chance finds. Our understanding is that the current system results in finders simply melting gold objects for the gold content rather than turning the objects over to authorities. Colombia must provide an appropriate incentive for these objects to be delivered, intact, to authorities. One way to fund this program is of course to allow a limited legal market in objects.

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<sup>8</sup> The Committee should inquire of Colombia when the last major exhibition of Colombian objects was offered to American museums.

#### **IV. Conclusion**

In evaluating Colombia's request for an extension of the current MOU, the Committee must critically evaluate whether archaeological material from pre-Columbian cultures and certain Colonial ecclesiastical material remain in jeopardy despite the imposition of import restrictions in 2006. If a threat of pillage remains, the Committee should consider whether the import restrictions have been effective in deterring looting or have simply impeded the ability of American museums to bring legally obtained antiquities into the United States without any discernable countervailing benefits. Finally, if the Committee recommends in favor of extending the MOU, the Committee should also recommend amendments concerning long-term loans, the protection of archaeological sites, and the compensation of chance finds in order to bring the MOU more fully into accord with the spirit and intent of the Convention.