

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 Enter
Into a Memorandum of Understanding Between The Government of the United States of
America and The Government of the Republic of Bulgaria Concerning the Imposition of
Import Restrictions on Archaeological Materials**

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 deplors 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 for taking an approach to protect the world’s cultural heritage by balancing a unified, international solution to the problem while allowing American museums to continue to collect responsibly on behalf of the American public.

II. Request from Bulgaria.

The AAMD supports the request for a Memorandum of Understanding from the Republic of Bulgaria with the concerns set forth below. The Convention on Cultural Property Implementation Act (the “Act”) requires the President to make a number of determinations before entering into a Memorandum of Understanding, including a determination that the requesting country has taken measures consistent with the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property “to protect its cultural patrimony.” In this regard, a relatively recent report by the Center for Study of Democracy (the “Center”) is deeply troubling. In a chapter entitled “Antiquities Trade-Dealers, Traffickers, and Connoisseurs” of its Report “Organized Crime in Bulgaria: Markets and Trends 178-197” (2007) (the “CSD Report”) (available at: <http://www.csd.bg/artShow.php?id=9120> (last checked, 10/26/11)), the Center suggests that the

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efforts by Bulgaria to protect its cultural heritage are hampered by government corruption, poor recording and security measures at museums and lack of qualified staff at many levels, including and especially, customs. These hindrances raise concerns about the President's ability to make the determination that Bulgaria has taken measures to protect its cultural patrimony.

Added to this problem is the fact that the Act also requires that other market countries must have similar import restrictions to those contemplated by the United States. The major markets identified by the CSD Report are Germany, Austria, Switzerland, the UK, the Netherlands, U.S. and Canada. The CSD Report indicates that Germany lacks import controls. We have been unable to find any evidence of an agreement between Switzerland and Bulgaria under the Swiss legislation and the UK only has domestic criminal legislation (which requires a finding of dishonesty before any action can be taken), not import restrictions. Furthermore, given that goods circulate freely within the European Union, one must at least question whether there are any effective controls within the EU that meet the requirement of "similar" as required under the Act.

While the AAMD supports restrictions, the CSD Report does raise the issue of whether the Bulgarian request should be tabled until Bulgaria shows progress in addressing these issues.

III. Cultural Exchange.

The first and primary role of American art museums is to present, through both their permanent collections and exhibitions, the artistic and creative efforts of mankind. Both temporary exhibitions of loaned materials and long-term display in the permanent collection are crucial ways of bringing great works of art to the public. By definition, Memoranda of Understanding 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 to restrict the sale of the types of material protected by Memoranda, such as the one proposed for Bulgaria. Given the restrictions in trade, in order to enhance the public's understanding of the world's great cultures, the United States must require the countries seeking its assistance to make available for loan objects of cultural significance for exhibition, display, study, and research on both a short and long-term basis and with reasonable terms.

The Committee should recommend to the President that when and if there is a Memorandum of Understanding with Bulgaria it contain a commitment by Bulgaria to foster cultural exchange with American museums, to not only allow, but encourage, loans of significant objects. Furthermore, the AAMD recommends that Bulgaria be required to create a central point of contact within its government for American museums to arrange for these loans. By doing so, the Committee will be able to evaluate if a Memorandum with Bulgaria is being considered for renewal whether or not Bulgaria has undertaken meaningful efforts to foster cultural exchange.

IV. Conclusion.

Subject to the concerns set forth above, the AAMD supports the request of Bulgaria for a Memorandum of Understanding with the United States.