

**Statement of the Association of Art Museum Directors concerning the Proposed Extension of the Memorandum of Understanding between the Government of the United States of America and the Government of the Hellenic Republic concerning the Imposition of Import Restrictions on Categories of Archaeological and Byzantine Ecclesiastical Ethnological Material through the 15<sup>th</sup> Century C. E. of the Hellenic Republic**

**Meeting of the Cultural Property Advisory Committee**

**May 24, 2016**

**I. Introduction**

The Association of Art Museum Directors (“AAMD”) respectfully submits this statement for consideration by the Cultural Property Advisory Committee (the “Committee”) in connection with the proposed renewal of the *Memorandum of Understanding between the Government of the United States of America and the Government of the Hellenic Republic concerning the Imposition of Import Restrictions on Categories of Archaeological and Byzantine Ecclesiastical Ethnological Material through the 15<sup>th</sup> Century C. E. of the Hellenic Republic* dated July 17, 2011 (the “MOU”). Pursuant to the Cultural Property Implementation Act (the “CPIA”), the Government of the United States of America and the Government of the Hellenic Republic (“Greece”) entered into the MOU in order to protect certain archaeological material specifically from the Upper Paleolithic Period through the 15<sup>th</sup> century C. E. and Byzantine ecclesiastical ethnological material from approximately the 4<sup>th</sup> century through the 15<sup>th</sup> century C. E. for a period of five years, subject to interim review by the Committee.

**II. Preliminary Statement**

AAMD member museums have a long history of exhibition and other cultural exchanges with their colleagues in Greece. For some time, those exchanges have been hampered by bureaucratic obstacles and governmental policies. The recent Greek financial crisis has only exacerbated these problems and the future is not bright for Greece’s compliance with a robust program of cultural exchange or the CPIA determinants. One certainly can argue that many of the problems facing Greece are not solely of its making, but that does not excuse compliance with the determinants or with its obligations under the current MOU.

AAMD representatives met recently with Greek officials, in an effort to voice AAMD’s concerns and explore ways that Greece could facilitate cultural exchange. Many of the recommendations found in this statement are reflective of that meeting as well as input from members. The Committee can enhance cultural cooperation between Greece and the United States by tailoring Article II of the MOU in order to reflect steps that should be taken in order to accomplish the goal of cultural exchange, while similarly affording protection commensurate with Greece’s needs.

### III. Executive Summary of AAMD Position

Under the CPIA, the Committee is required to make recommendations as to whether the United States should extend the MOU.<sup>1</sup> In order to recommend extending the MOU, all four determinants must be satisfied.<sup>2</sup> While there are questions on a number of those determinants, there are significant concerns about two in particular: (1) measures taken by Greece to protect its cultural patrimony do not appear to be commensurate with the protection required<sup>3</sup> and (2) the causal connection between the MOU and deterring a serious situation of pillage, even when applied with any similar restrictions by countries having a significant import trade in Greece's cultural patrimony, has not been demonstrated.<sup>4</sup> While the AAMD supports renewal of the MOU, the current situation in Greece presents a significant problem for the Committee in recommending renewal. Greece's ability or willingness to protect its sites, to actively police potential looting and to punish those who are guilty of violating the law would seem, under the terms of the CPIA, to militate against renewal. That the situation has only worsened in the last five years should be self-evident, which raises a significant question as to whether the MOU is having any effect on looting and destruction in Greece. The AAMD recommends that the Committee set specific benchmarks for Greece over these next five years and establish at least one, and preferably two, sessions of the Committee in order to review compliance with the benchmarks. If the situation today does not materially improve over the next five years, then the AAMD will be hard pressed to support renewal of a provenly ineffective MOU.

The AAMD also recommends that the Committee discuss the merits of the government creating and administering a program in support of a legal market for select archaeological and ethnological material covered by the MOU, and issuing export permits in order to assist in funding Greece's efforts to protect its cultural patrimony. This is admittedly a long-term potential benefit, but the current efforts clearly are not working despite best intentions.

### IV. Review of CPIA Determinants and Compliance with the MOU

In order to recommend extending the MOU, the Committee must determine (1) that Greece's cultural patrimony is in jeopardy from the pillage of archaeological or ethnological materials; (2) that Greece has taken measures consistent with the 1970 UNESCO Convention (the "Convention") to protect its cultural patrimony; (3) that (a) the application of the import restrictions set forth in the MOU, 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, would be of substantial benefit in deterring a serious situation of pillage, and (b) remedies less drastic are not available; and (4) that applying the import restrictions set forth in the MOU 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>5</sup> Unfortunately, Greece falls short on at least the second and third determinants.

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<sup>1</sup> 19 U.S.C. § 2605(f)(2).

<sup>2</sup> 19 U.S.C. §§ 2602(a)(1) and 2605(f)(2).

<sup>3</sup> 19 U.S.C. § 2602(a)(1)(B).

<sup>4</sup> 19 U.S.C. § 2602(a)(1)(C)(i).

<sup>5</sup> 19 U.S.C. §§ 2602(a)(1) and 2605(f)(2).

A. Protection of Cultural Patrimony and Best Efforts to Protect Archaeological and Ethnological Resources

Greece is required to take measures consistent with the Convention to protect its cultural patrimony under the second determinant. Greece is also required under the MOU to “continue best efforts to protect its archaeological and ethnological resources through the enhanced enforcement of its cultural heritage protection legislation.”<sup>6</sup> Regardless of Greece’s intent to comply with this requirement, its success in doing so is lacking. Considered one of the most culturally rich regions of the world, Greece spends less on heritage preservation than any European Union country.<sup>7</sup> In 2013, spending on culture was 0.2% of public expenditure in Greece, the lowest share of any European Union Country.<sup>8</sup> “The economic crisis . . . is limiting or preventing the preservation and conservation of Greece’s archaeological sites. A 35% budget cut, causing at least 2,500 cultural job losses; strikes; and even riots are closing cultural heritage sites and museums . . . .”<sup>9</sup> This crisis leaves “cultural heritage sites vulnerable to natural damage and decay . . . [and] vulnerable to looting.”<sup>10</sup>

As a result of the financial crisis, “[a]ntiquities smuggling is a pervasive problem in Greece, particularly since the early years of the economic crisis.”<sup>11</sup> There is barely enough money to hold “rescue” excavations and some sites are in jeopardy of being destroyed due to economic sprawl or abandonment.<sup>12</sup> Eliminating many archaeologist jobs with the Ministry of Culture and closing sites due to personnel shortages created a situation whereby legitimate archaeology is being replaced with looting.<sup>13</sup> This is aptly demonstrated in recent field reports.<sup>14</sup> Private collectors are even placing “custom orders” directly with looters.<sup>15</sup>

Moreover, arrests and sentencing appear to be only sporadically applied and ineffective in deterring looters. Despite widespread looting and smuggling, in 2014 there were only dozens

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<sup>6</sup> MOU, Art. II(3).

<sup>7</sup> “The Necessity of Culture,” *The Economist* (March 12, 2016).

<sup>8</sup> *Ibid.*

<sup>9</sup> Samuel Andrew Hardy, “10 Signs of Disintegration in Greece; and its Archaeology and Looting Crisis,” *Conflict Antiquities* (February 11, 2012), <https://conflictantiquities.wordpress.com/2012/02/11/greece-crisis-archaeology-looting/> (accessed April 14, 2015).

<sup>10</sup> *Ibid.*

<sup>11</sup> Nikoleta Kalmouki, “Greek Man Arrested for Illegal Possession of Ancient Coins,” *GreekReporter.com* (September 30, 2014), <http://greece.greekreporter.com/2014/09/30/greek-man-arrested-for-illegal-possession-of-ancient-coins/> (accessed April 20, 2015).

<sup>12</sup> Cherkea Howery, “The Effects of the Economic Crisis on Archaeology in Greece,” *Journal of Eastern Mediterranean Archaeology and Heritage Studies*, 1:3 (2013), 230.

<sup>13</sup> Leigh Phillips, “Cuts leave Greek Heritage in Ruins,” *Nature* 486 (June 21, 2012). Phillips further states, “While legitimate archaeology is being hampered, looting is on the rise. The country is pockmarked with holes dug by the poor and desperate hoping for ‘buried treasure’, and organized criminals perform more professional excavations.”

<sup>14</sup> One such example is a 2015 field report completed for the Nemea Center for Classical Archaeology by Marvin Morris, a Classical Civilizations Major at the University of California at Berkeley. In summarizing a field dig in Aidonia, Morris states that “work was completed on recovering what was left” of a tomb that “had been looted in modern times.” Looters “made off with untold amounts of artifacts, removing them illegally from their original archaeological contexts, and destroying forever the possibility of gaining additional knowledge about this enclave of Mycenaean civilization, about which we know precious little.”

<sup>15</sup> Nick Romeo, “Strapped for Cash, Some Greeks Turn to Ancient Source of Wealth,” *National Geographic News* (August 2015), <http://news.nationalgeographic.com/2015/08/150817-greece-looting-artifacts-financial-crisis-archaeology/> (accessed September 28, 2015).

of arrests.<sup>16</sup> Deficient law enforcement coupled with inconsistent sentencing – characterized as ranging from “a joke” to life imprisonment – do nothing whatsoever to solve the problem.<sup>17</sup>

#### B. “Consideration” of Increasing Police Capacity and Regulating Metal Detectors

As a specific goal under the second determinant, Greece is required in the MOU to “consider increasing” capacity within the Hellenic Police to monitor and protect cultural sites throughout the country as well as to “consider improving” existing metal detector regulations.<sup>18</sup> Whatever consideration Greece is giving to these matters is insufficient. As discussed herein, looting remains a widespread problem. For example, one simple step to ameliorate the situation would be to create a publicly available database of stolen or illegally exported works. While some works are reported and listed on the Interpol Database for works of art, there is often a delay between the reporting and the appearance of the work on the list (sometimes up to twenty-three years), and the number of items reported is low.<sup>19</sup> Through a central database, police and customs officials could easily research objects stopped at the border and potential buyers could conduct effective provenance research. In concept, this is merely a subset of the list Greece is required to keep under Article 5(b) of the Convention – unfortunately, another determinant Greece has not met. Creating such a database would at least be a start.

Greece’s metal detector policy, if any, is not readily apparent on the Ministry of Culture’s website. Perhaps as a direct result, Greek businesses appear to be exacerbating a bad situation by selling 3,000 metal detectors annually.<sup>20</sup> Though these figures cannot be confirmed, estimates as high as 2.5 to over 3 million people engaging in treasure hunting of some sort have been made.<sup>21</sup> A specific example is the remarkable issuance of a permit to “survey” a water well containing liras, amounting to nothing more than a thinly disguised treasure hunt.<sup>22</sup> As Great Britain has shown, a well-regulated metal detector law and policy can result in greatly increased reporting of finds, but the AAMD is unable to determine if the Greek regulations contain similar provisions to the British Treasure Act and the Portable Antiquities Scheme or if they do, whether they are enforced.

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<sup>16</sup> Nikoleta Kalmouki.

<sup>17</sup> Liv Westring, “Greece Sets Example in Sentencing Looters to Life?” *LivWestring.com* (January 4, 2013), <http://livwestring.com/greece-sets-example-in-sentencing-looters-to-life/> (accessed April 20, 2015).

<sup>18</sup> MOU, Art. II(2). As a preliminary matter, if the Committee were to recommend an extension of the MOU, it should also recommend deleting the word “consider” from Article II(2). Doing so imposes an actual obligation on Greece to enhance police protections and tighten restrictions on metal detectors, as opposed to merely considering these actions.

<sup>19</sup> For example, several Protocycladic figures stolen from Paros in 1992 were not reported to Interpol until 2015. See Interpol Case No. 2015/17424-1.3, 5-7, 10-13.

<sup>20</sup> Samuel Andrew Hardy.

<sup>21</sup> Βαγγέλης Τριάντης, ““ Ένας Κυνηγός θησαυρών εξομολογείται: Λίρες, πλάκες χρυσού και θρύλοι” *Huffington Post Greece* (May 31, 2015) [http://www.huffingtonpost.gr/2015/05/31/xrysos-kynigi-lires-\\_n\\_7478588.html](http://www.huffingtonpost.gr/2015/05/31/xrysos-kynigi-lires-_n_7478588.html) (accessed April 20, 2016).

<sup>22</sup> “Θράκη: Όλο και περισσότεροι «Ιντιάνα Τζόουνς στο κυνήγι του χαμένου θησαυρού,” *Ελλάδα* (October 27, 2014) <http://www.protothema.gr/greece/article/421504/thraki-olo-kai-perissoteroi-idiana-tzoouns-sto-kunigi-tou-hamenou-thisaurou/> (accessed April 29, 2016).

### C. Cooperation and Agreements with Other Mediterranean Countries

Greece is required “to strengthen cooperation among states within the Mediterranean Region for the protection of the cultural patrimony of the region; and [to] seek increased cooperation from art-importing states to restrict illicit imports, in an effort to deter further pillage.”<sup>23</sup> Despite this plain requirement, only one such agreement appears to have been concluded since the MOU – with the Republic of Turkey. Laudable as the Greek/Turkey Agreement is, it does not satisfy the MOU requirement. If the MOU is renewed, the next five years must bring with them greater improvement in the form of multiple, verifiable agreements with other Mediterranean countries.

### D. Loans

Exhibition and long-term loans are of paramount importance to AAMD members. Despite collegial relationships with many Greek counterparts, both exhibition loans and long-term loans are nowhere near the numbers or facility of process that not only should be expected of a country like Greece, but can be shown to exist with many other countries. Other European lenders have been very generous with loans of their signature items. By way of example, Italy, with all of the issues identified by the AAMD in its April 8, 2015 Statement with respect to the renewal of the Italian MOU, has long permitted loans of iconic antiquities. Greece nevertheless withholds the more major works from numerous exhibitions.

The process of obtaining export permits and other government permissions is convoluted, bureaucratic, slow, and opaque. For even the most sophisticated museums, the process is overly time consuming and quixotic. Greek museums will sometimes agree to lend objects, only to have the Ministry of Culture refuse to issue an export permit or deny the loan.

Another problem that seems minor but, in fact, is a significant source of frustration is the restrictions on photography. The MOU requires Greece to broaden “permissions to academicians and museum curators ... to photograph material in Greek museums, and revis[e] regulations that would reduce fees for the reproduction of images for use in cultural, educational, and scientific contexts.”<sup>24</sup> This has not occurred or appears to have occurred only sporadically. American curators’ ability to photograph objects in Greece and then consider them in the context of an exhibition or permanent loan upon return to their museum is critical. Many Greek museums, however, prohibit photographs and, even when the purpose of the photography is explained, are unwilling or unable to waive the prohibition. Furthermore, even finding the right office or person to obtain permission is often difficult or impossible. For example, the Ministry of Culture on its website has a procedure for obtaining permission to photograph, but individual museums require their own permissions. Greece should allow photography for noncommercial purposes or, if broad permission is not granted, provide a rational, transparent, system for obtaining permission to photograph objects for exhibition and loan purposes.

Another obstacle is Greece’s desire to have “packaged” loan exhibitions rather than individual loans of works. Major American museums create their exhibitions carefully with multiple sources and specific educational or scientific goals. Greek museums need to be

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<sup>23</sup> MOU, Art. II(5).

<sup>24</sup> MOU, Art. II(7)(b).

encouraged to allow loans of individual works, rather than staunchly adhere to the one-size-fits-all approach that predominates today.

Determining what objects would be available for loan is also a significant challenge. A central database with listings of objects (preferably with images available) for loan would greatly facilitate the process. That website could also set forth the procedures for obtaining permission for loans, as well as the steps that need to be taken for export permits.

Cultural exchange is, of course, just that, exchange. For American museums lending to Greece, the absence of immunity from seizure law in Greece places an additional, unnecessary, risk analysis burden on the lending museum. Many European countries have adopted immunity laws, *e.g.*, Austria, Belgium, the Czech Republic, France, Germany, Lichtenstein, Switzerland, the United Kingdom, and even Russia. Greece is an outlier on this issue.

All of the foregoing concerns apply to both exhibition and long-term loans, but long-term loans are further hampered by the Greek law prohibiting loans in excess of five years. Long-term loans should be for at least five, preferably ten, years; and, if the law cannot be changed as to the terminal maximum, at least the law should specifically permit renewal of existing loans without first having to return the object to Greece.

#### E. The Designated List

Attempting to protect Greece's culture through import restrictions is difficult, but the Designated List hardly rises to the challenge. Objects of Greek origin can be found throughout the Mediterranean Basin. Simply describing massive amounts of material without any more specific definition of type, quality, or findspot does not enhance protection. Greek works, especially coins, traversed the Mediterranean Basin many times over. The Committee must either find some way to identify works found in Greece, even taking into account broad categories, or the objects on the Designated List must be confined to truly significant works whose likely source is Greece. For example, "Attic" vases as a description on the Designated List is unhelpfully broad as a notice to customs officials and importers since many Attic vases come from other countries, notably Italy.

## V. Recommendations

If the Committee determines to recommend extending the MOU for an additional five years, it should do so only with several modifications to Article II and to the Designated List, which, if implemented, will help ensure that the spirit and intent of the Convention and the CPIA are honored.

### A. The MOU Should Implement Specific Measures to Streamline Cultural Exchange.

Based on the collective experience and input of AAMD members, there are several areas in which the Committee should improve the MOU in order to better streamline and facilitate cultural exchange with Greece. Specifically, Article II of the MOU should be amended to provide:

- Immunity from Seizure. Greece will promulgate an immunity from seizure law.
- Publish Objects Available for Exhibition Loans. Greece will establish a centralized database or clearinghouse (*e.g.*, the office of the Minister of Culture) providing information regarding objects that are available for exhibition loans.
- Publish Objects Available for Long-Term Loans. Greece will establish a centralized database or clearinghouse (*e.g.*, the office of the Minister of Culture) providing information regarding objects that are available for long-term loans.
- Publish Procedures to Request Exhibition Loans. Greece will publish on a Ministry of Culture website the procedures, contact addresses and requirements for American museums to request exhibition loans.
- Publish Procedures to Request Long-Term Loans. Greece will publish on a Ministry of Culture website the procedures, contact addresses and requirements for American museums to request long-term loans.
- Consistent and Prompt Outbound Approval Process. Greece will endeavor (a) to establish and publish a uniform outbound long-term loan and exhibition loan approval process across all of Greece, and (b) to adhere to a prompt review of requested outbound loans and exhibitions.
- Minimize Photographic Restrictions. Greece will allow photography of objects for non-commercial use with minimal bureaucratic interference and minimal or no fees, including for purposes of research in connection with possible long-term or exhibition loans.

B. The MOU Should Implement Specific Measures for the Protection of Greece’s Cultural Property.

Article II of the MOU should also be amended to provide that:

- Database of Stolen and Illegally Exported Objects. Greece will create a database, with images, of objects that have been stolen or illegally exported and make that list available publicly.
- Reporting Metal Detector Finds. Greece will adopt regulations requiring the reporting of metal detector finds (e.g., as a condition to obtaining permitting) and a system of payment for finds considered significant.
- Promote Legal Market. The Greek government will explore creating and administering a legal market in Greece, accompanied by a viable system for issuing export permits, with the proceeds of such permits and any taxes imposed upon the trade to be used for further protection of Greece’s cultural property.

C. The Designated List

As outlined above, the Designated List is too vague to place customs officials tasked with enforcing the MOU and importers on reasonable notice of potential violations. The fact that a vase is “Attic” means nothing in the context of import restrictions for Greece, and there should be no presumption that “Attic” unequivocally means “from Greece.” Either more refined descriptions need to be employed in the Designated List or the objects need to be confined to those that are truly significant and can be demonstrated to come exclusively or predominantly from Greece.

**VI. Conclusion**

There is a perception that MOU’s, once implemented, are perpetual and immutable. This is not the intent behind the CPIA. The Committee should scrutinize carefully Greece’s request to extend the MOU. A reasonable objective analysis of Greece’s efforts over the past five years demonstrates that they have not complied with the MOU and their cultural patrimony is more in jeopardy today than before the MOU was adopted. If the Committee determines to extend the MOU, it should do so only after implementing the revisions set forth above. Doing so will only increase the effectiveness of the MOU and, in turn, help ensure that the spirit and intent of the Convention and CPIA are honored.

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The AAMD is a professional organization consisting of approximately 240 directors of major art museums throughout 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.