

Statement of the Association of Art Museum Directors Concerning Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Ecclesiastical Ethnological Material from the Conquest and Colonial Periods of Guatemala

Meeting of the Cultural Property Advisory Committee

March 21, 2017

I. Introduction

The Association of Art Museum Directors (the “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 Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Ecclesiastical Ethnological Material from the Conquest and Colonial Periods of Guatemala* (the “MOU”). Pursuant to the Cultural Property Implementation Act (the “CPIA”),¹ the Government of the United States of America and the Government of the Republic of Guatemala (“Guatemala”) entered into the MOU in order to protect objects dated from approximately 2000 BCE to 1821 CE including pre-Columbian polychrome ceramic vessels, figurines, whistles, and stamps; pre-Columbian objects of jade, obsidian, flint, alabaster, calcite, shell, and bone; and Conquest and Colonial Period ecclesiastical ethnological objects of sculpture, painting and metal.

II. Preliminary Statement and Background

Protecting Guatemala’s cultural heritage under the CPIA began with its request for protection due to an “emergency condition.”² On April 15, 1991, the United States imposed emergency import restrictions on “Maya archaeological artifacts from the Petén region of Guatemala.”³ The restrictions were extended in 1994⁴ and a bilateral agreement (MOU) was entered into on September 29, 1997.⁵ Import restrictions were extended beyond the original restrictions by

¹ Unless otherwise stated herein, all “Section” references are to the CPIA.

² 19 U.S.C. §2603.

³ U.S. Department of Treasury, Customs Service, “Import Restrictions Imposed on Archaeological Artifacts from Guatemala,” *Federal Register* (Washington, D.C., April 12, 1991), <https://eca.state.gov/files/bureau/gt1991eafnrn.pdf>.

⁴ U.S. Department of Treasury, Customs Service, “Extension of Import Restrictions on Maya Artifacts from the Petén Region, Guatemala,” *Federal Register* (Washington, D.C., November 1, 1994), <https://eca.state.gov/files/bureau/gt1994eaextfrn.pdf>.

⁵ “Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on

adding pre-Columbian archaeological artifacts from and throughout Guatemala.⁶ The MOU was extended for an additional five years on September 29, 2002⁷ and again, by amendment, on September 29, 2007.⁸ New requirements were also added, including collaboration, registration and digitization of cultural patrimony, enforcement of laws, and protection of cultural heritage sites as well as working with other Central American countries to protect the region's cultural heritage. Once again, the MOU was extended on September 29, 2012⁹ and restrictions were expanded to include ecclesiastical ethnological materials of the conquest and colonial periods (1524-1821 CE).¹⁰

While AAMD supports renewal of the MOU, it recommends that the Committee review carefully the concerns of the art community, which hopes to be able to continue supporting renewals of the MOU, assuming progress is made in two areas: (A) improving measures taken by Guatemala to help ensure that its cultural property is adequately protected; and (B) improving the exchange of cultural property.¹¹ In an effort to advance these matters, AAMD further recommends that Article II of the MOU be further amended, and the Designated List revisited in connection with any renewal.

Archaeological Objects and Materials from the Pre-Columbian Cultures of Guatemala," *Bilateral Agreement* (Washington, D.C.: U.S. Department of State, Bureau of Education and Cultural Affairs, September 29, 1997), <https://eca.state.gov/files/bureau/gt1997mou.pdf>.

- ⁶ U.S. Department of Treasury, Customs Service, "Import Restrictions Imposed on Archaeological Artifacts from Guatemala," *Guatemala 1997 Designated List, Federal Register* (Washington, D.C., October 3, 1997), <https://eca.state.gov/files/bureau/gt1997dlfrn.pdf>.
- ⁷ "Extension of the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Objects and Materials from Pre-Columbian Cultures of Guatemala," *Diplomatic Note* (Washington, D.C.: U.S. Department of State, Bureau of Education and Cultural Affairs, September 20, 2002), <https://eca.state.gov/files/bureau/gt2002mouext.pdf>.
- ⁸ "Memorandum of Understanding Between the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Objects and Material From the Pre-Columbian Cultures of Guatemala," *Diplomatic Note* (Washington, D.C.: U.S. Department of State, Bureau of Education and Cultural Affairs, September 29, 2007), <https://eca.state.gov/files/bureau/gt2007mouextr.pdf>.
- ⁹ "Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Ecclesiastical Ethnological Material from the Conquest and Colonial Periods of Guatemala," *Diplomatic Note* (Washington, D.C.: U.S. Department of State, Bureau of Education and Cultural Affairs, September 13, 2012), <https://eca.state.gov/files/bureau/gt2012mouextr.pdf>.
- ¹⁰ U.S. Department of the Treasury, Customs Service and Department of Homeland Security, "Extension of Import Restrictions on Archaeological and Ethnological Materials from Guatemala," *Designated List, Federal Register* (Washington, D.C., September 28, 2012), <https://eca.state.gov/files/bureau/gu2012reviseddlfrn.pdf>.
- ¹¹ 19 U.S.C. §2602(a)(1)(B).

III. Function and Limitation of CPIA

Current import restrictions under the MOU are broad and cover a period spanning an incredibly long time frame. Legislative history shows that bilateral agreements permitted under the CPIA were intended to apply *only* to a “narrow range of objects possessing certain characteristics.”¹² The current MOU includes objects created, in some instances, over a period in excess of four thousand years without any limitation as to archaeological sites, geographical location, or cultural identity. In addition, there is no exception for common or repetitive ethnological objects, which goes beyond the intention of the framers of the CPIA:

The Committee does not intend the definition of ethnological materials under this title to apply to trinkets and other objects that are common or repetitive or essentially alike in material design, color, or other outstanding characteristics with other objects of the same type, or which have relatively little value for understanding the origins or history of a particular people or society.¹³

The intention stated in the legislative history is also borne out in the statute: “No object may be considered to be an object of ethnological interest *unless* such object is.....important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people.”¹⁴ While arguments could be advanced that *any* product of an ancient civilization contributes to the history of a people, doing so renders the limitation language of the statute a nullity.

The limitations expressed in the CPIA and its legislative history were meant to preserve the delicate balance between the United States’ interest in supporting the international market for art against situations where protection is needed due to jeopardy from the pillage of archaeological and/or ethnological material. A designated list as broad, undefined, and comprehensive as that of Guatemala certainly raises questions as to whether that balance has been or can be achieved. These limitations are not confined to ethnological material, but also to archaeological material which by statute is to be of “cultural significance.”¹⁵ When definitions are as broad as those in the designated list, one must ask if there is any limitation on “cultural significance?”

¹² “Implementing Legislation for the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property,” *U.S. Senate Report 97-564* (Washington, D.C.: U.S. Senate, 1982), 4, <https://eca.state.gov/files/bureau/97-564.pdf>. “Only the term ‘archaeological or ethnological materials of the State Party’ requires fuller explication here. The Convention does not define these terms. The definition is intended by the committee to reflect the understanding of U.S. negotiators that the application of import restrictions under agreements entered into under Section 203 or emergency actions taken under Section 204 is limited to a narrow range of objects possessing certain characteristics” (Ibid, 4). A copy of the report can be found at the following link: <https://eca.state.gov/files/bureau/97-564.pdf> (accessed March 2, 2017).

¹³ Ibid, 5.

¹⁴ 19 U.S.C. §2601(2)(C)(ii)(II).

¹⁵ 19 U.S.C. §2601(2)(C)(i)(I).

IV. Executive Summary of AAMD Position

Pursuant to the CPIA, the Committee is required to make recommendations as to whether the United States should extend the MOU.¹⁶ In order to recommend extension, all four determinants for implementing the MOU must be satisfied.¹⁷ The Committee is also required to determine whether the MOU is achieving the purposes for which it was entered into or implemented.¹⁸ While there are questions on a number of those determinants, significant concerns exist about two of them, specifically: (i) measures taken by Guatemala to protect its cultural patrimony, which does not appear to be commensurate with the protection required¹⁹ and (ii) whether the import restrictions under the MOU are consistent with the general interest of the international community in the interchange of cultural property.²⁰ Unfortunately, Guatemala falls short on both of these determinants and it is questionable whether the MOU is achieving its stated purpose. The AAMD nevertheless supports MOU renewal, provided that Article II of the MOU is concurrently amended in order to address known and reasonably deducible deficiencies set forth below with specific concerns and recommendations.

A. Cultural Exchange under Section 2602(a)(1)(D)

In order to renew the MOU, the Committee must find that the import restrictions are consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.²¹ That interchange includes the exchange of cultural property, which should be reviewed by the Committee in determining whether to extend the MOU.²² Because the Committee must also consider whether the MOU is achieving its stated purpose,²³ the Committee necessarily must determine not only whether exchange will be fostered under the MOU, but also whether exchange has been fostered.

The MOU contains only one provision with respect to the exchange of cultural property, which is found in Article II, Section D:

The Government of the Republic of Guatemala shall use its best efforts to facilitate the exchange of its cultural property under circumstances that do not jeopardize its cultural patrimony, such as temporary and long-term loans to museums and educational institutions for exhibition purposes and scientific examination.

¹⁶ 19 U.S.C. § 2605(f)(2).

¹⁷ 19 U.S.C. §§ 2602(e)(1) and 2605(f)(2).

¹⁸ 19 U.S.C. § 2605(g)(2)(B).

¹⁹ 19 U.S.C. 2602(a)(1)(B).

²⁰ 19 U.S.C. 2602(a)(1)(D) and 2602(e)(1).

²¹ 19 U.S.C. § 2602(a)(1)(D).

²² 19 U.S.C. §2605(f)(2).

²³ 19 U.S.C. § 2605(g)(2)(B).

Despite revisions to this section undertaken as part of the 2012 extension of the MOU,²⁴ meaningful infirmities persist. On its face, Section D provides hardly any basis for a meaningful review by the Committee of Guatemala's actions. By the time the language has been parsed to identify "best efforts . . . under circumstances that do not jeopardize its cultural patrimony," the language is so vague as to enable almost any activity—or none at all—to satisfy the requirement. Nevertheless, the AAMD has information to provide to the Committee which not only shows areas of concern, but also hopefully provides a factual basis to amend Article II in such a way that its intended purpose can be more readily achieved and measured.

A number of AAMD member museums expressed a great deal of interest in both long-term and exhibition loans, but to accommodate these interests, current barriers to borrowing need to be reduced or eliminated. Loans from Guatemalan institutions to the United States, whether they are for exhibition purposes or on a long-term basis (and there are long-term loans of Guatemalan materials to American museums), suffer from a number of deficiencies. For example:

- Negotiations with the Guatemalan government and the government approval process are extremely burdensome and not widely known or publicized. In fact, it has been noted that the procedures seem to *change* from year to year.
- The process for museum loans is outlined in documents that are shared only *after* an initial meeting with the National Museum of Archaeology and Ethnology. There is no credible argument for such a protocol, which amounts only to an unnecessary barrier to legitimate loan inquiries.
- Where requests for museum loans are made, they often languish unaddressed perhaps because of the volume of competing requests and limited in-country resources necessary to process them.
- Financial requirements for collaborative reciprocal programs, sometimes required by Guatemalan institutions as part of loan agreements, are uncertain when the value of the reciprocal loans by American institutions is based on the insurance value of the object(s) to be loaned by Guatemalan institutions. This creates budgeting problems for American institution because the insurance value of the object(s) to be loaned by Guatemalan institutions often is not provided by Guatemalan institutions until very late in the loan process (most problematically *after* American museum budgets have been established).
- The duration of long-term loans (not more than three years) from Guatemala is too short for such loans to be meaningful (although three years may be an acceptable amount of time for an exhibition loan). Unlike exhibition loans, long-term loans often form the cornerstone of much larger endeavors in American institutions. For example, long-term loans often are accompanied by

²⁴ Such revisions included expanding the scope of the section to include all cultural property, and not just archaeological objects and material, as well as to include long-term loans.

corresponding educational or public programming, or special showings of complementary works (perhaps on loan from other institutions or even countries). Long-term loans, therefore, are more complex and expensive by their nature, which complexity and expense must be offset by some assurances that the loans themselves will be of sufficient duration to warrant the accompanying investment of time and resources. The relatively abbreviated long-term loan period in Guatemala, particularly without assurances of extension, strains the bounds of feasibility in this regard. This effectively—albeit, perhaps, unintentionally—dissuades American institutions from pursuing such loans.

The practical impact of the foregoing is to frustrate legitimate efforts to study and educate Americans about Guatemala’s cultural patrimony and to risk chilling what otherwise should be a wonderfully collaborative, open, and on-going arrangement with Guatemala.²⁵ These impediments contravene the very plain requirement that import restrictions be applied in a manner consistent with the interchange of cultural patrimony among nations for scientific, cultural, and educational purposes.²⁶

B. Ensuring a Purposeful MOU

The stated purpose of the MOU is to “reduce the incentive for pillage of irreplaceable archaeological objects and materials representing the Pre-Columbian cultures and ecclesiastical ethnological materials representing the Conquest and Colonial periods of Guatemala.”²⁷ In order to fulfill this purpose, Article II of the MOU sets forth obligations and undertakings on the part of Guatemala, several of which merit the Committee’s attention. The AAMD’s concerns fall generally into two categories: obligations and undertakings lacking meaningful data or information to evaluate, and obligations and undertakings known to be problematic.²⁸

1. Obligations and Undertakings Lacking Meaningful Data to Evaluate

Several of Guatemala’s obligations under the MOU present questions of compliance in various areas into which, the AAMD respectfully submits, the Committee should inquire in determining whether to extend the MOU. AAMD identifies four areas lacking meaningful data to evaluate whether Guatemala is adhering to the provisions set forth in Article II of the MOU.

²⁵ Importantly, success stories do exist detailing cooperative efforts of U.S. and Guatemalan archaeologists; however, they are relatively sparse when compared to the level of interest in Guatemalan cultural property, see “Discovery of Stone Monument at El Peru-Waka Adds New Chapter to Ancient Maya History,” *Washington University of St. Louis*, July 16, 2013, <https://source.wustl.edu/2013/07/discovery-of-stone-monument-at-el-peruwaka-adds-new-chapter-to-ancient-maya-history>.

²⁶ 19 U.S.C. § 2602(a)(1)(D).

²⁷ MOU, Preamble.

²⁸ Several, if not all, of these issues were raised by the AAMD in connection with the Committee’s interim review of the MOU.

First, the AAMD has been unable to determine if Guatemala has registered and digitized all known archaeological and ethnological material into a searchable database.²⁹ For example, the Guatemalan Ministry of Sports and Culture’s website directs a search for such registry to the Guatemalan National Library, which, in turn, provides little information. Guatemala nevertheless should be recognized for its ongoing registration of archaeological sites, registration of works in the collection of the National Museum of Archaeology and Ethnology, and establishing a system to register excavated material with the Ministry of Culture and Sports (though such registries are not available online and appear available only by appointment).

Second, the AAMD recognizes the creation of the Department of Prevention and Control of Illicit Traffic in Cultural Property as well as the creation within the National Civil Police, the Division of Protection of Nature (DIPRONA).³⁰ Except for these two newly established interagency departments, AAMD has been unable to determine whether Guatemala is coordinating intra-government efforts tasked with combating looting or is cooperating with agencies monitoring drug trafficking, a practice that can accompany the illicit export of cultural property.³¹ Such measures are especially necessary considering the level of crime in the country (as discussed below).

Third, Guatemala is party to bilateral agreements with Mexico and Belize, but the AAMD has been unable to determine whether Guatemala is working with other important Central American countries to protect its cultural property or is even seeking further cooperation from other countries with import trade in its archaeological and ethnological material.³² This is especially relevant with respect to El Salvador, which shares a border with Guatemala in one of its most problematic areas, *Cara Sucia*.³³

Finally, and as largely demonstrated above, whether Guatemala has sufficiently informed the United States of the steps it took in order to fulfill its obligations under the MOU is unknown.³⁴ Guatemala is not only *required* to take such steps, but also to advise the United States of the results of those efforts in advance of any renewal. The AAMD encourages the Committee to

²⁹ MOU, Art. II(B) requires Guatemala to register “all known archaeological and ethnological material in the country, and [to] work to digitize the Registry in the form of a searchable database.”

³⁰ “Capacitan a Agentes de La PNC en La Protección de Nuestro Patrimonio Cultural,” *Ministry of Culture and Sports*, August 12, 2014, <http://mcd.gob.gt/capacitan-a-agentes-de-la-pnc-en-la-proteccion-de-nuestro-patrimonio-cultural/>.

³¹ MOU, Art. II(E) requires Guatemala to “use its best efforts to coordinate intra-governmental efforts in protecting its cultural property, including by forming an inter-agency commission to combat the looting of archaeological and ethnological sites and by cooperating with agencies that monitor drug trafficking.”

³² MOU, Art. II(H) requires Guatemala to work with other Central American countries to protect its cultural patrimony and to solicit cooperation from other countries “having an import trade in Guatemalan archaeological and ethnological material.”

³³ This issue, as it relates to El Salvador, was addressed in AAMD’s position statement to the Committee in connection with El Salvador’s request to extend its bilateral agreement in 2014.

³⁴ MOU, Art. II(I).

make public as much of that information as is possible to ensure the integrity of the process and the public's confidence in the Committee's work. If no such information has been provided to the Committee or the information is insufficient, the Committee should so advise the president and Congress.

2. Obligations and Undertakings Known to be Problematic

Guatemala falls short in connection with its obligation to continue the enforcement of laws protecting cultural property, with an emphasis on the prosecution of offenders in order to reduce the incentive for looting archaeological sites and ethnological material.³⁵ In 2013, according to one report, 98% of *all crimes* went unprosecuted.³⁶ The lack of prosecution manifests itself in prolific crime that can have a direct impact on the country's cultural property. In the rare event of an arrest, works are usually not recovered and are often lost to illicit markets.

The theft of paintings by the 18th century Guatemalan artist, Tomás de Merlo, illustrates this point. In February 2015, Guatemalan officials arrested two men accused of entering a church in February 2014 and stealing—at gunpoint—six paintings by Tomás de Merlo. The men are believed to be involved in a criminal ring “that robs houses and religious buildings, often by dressing as police officers and impersonating investigators [,];” the works were not recovered at the time of the arrest and are believed to have already been smuggled out of the country.³⁷ The loss of these paintings is significant and considered to be a great tragedy for the country. This is not an isolated incident.

In May 2015, approximately 300 pieces of Colonial era Guatemalan artifacts were stolen from a church in Antigua.³⁸ Churches or ecclesiastical buildings, especially those located in rural areas, lack any meaningful security³⁹ and often contain cultural property that is of great interest to traffickers. Even Museums are not safe. On May 16, 2015, over 200 Colonial and Republican objects were stolen from the *Museo Guatemalteco de Arte*.⁴⁰ The museum houses

35 MOU, Art. II(F).

36 Lianne Milton, “Life is Worth Nothing in Guatemala,” *Newsweek*, December 2, 2013, <http://www.newsweek.com/life-worth-nothing-guatemala-207586>.

37 James Bargent, “Guatemala Nabs Art Thieves but Paintings Disappear into Black Market,” *Insight Crime*, February 25, 2015, <http://www.insightcrime.org/news-briefs/guatemala-nabs-art-thieves-but-paintings-disappear-into-black-market>. The paintings believed to be stolen are a selection of six Passion of Christ paintings from the 18th century by Tomas de Merlo. See also Donna Yates, “Den of Thieves: When Art is Stolen from a Latin American Church It's Everyone's Loss,” *Anonymous Swiss Collector*, March 6, 2014, <http://www.anonymousswisscollector.com/2014/03/denofthieves.html>.

38 Alicia Álvarez, “Se Roban Piezas de Arte en Antigua Guatemala,” *Contrapoder*, May 31, 2015, <http://contrapoder.com.gt/2015/05/31/se-roban-piezas-de-arte-en-antigua-guatemala/>.

39 El Saqueo del Patrimonio Cultural de Guatemala, *El Blog de Carlos*, February 15, 2014, <https://tenacarlos.wordpress.com/2014/02/15/el-saqueo-del-patrimonio-cultural-en-guatemala/>.

40 Donna Yates, “Over 200 Colonial and Republican Objects Stolen from Guatemalan Museum,” *Anonymous Swiss Collector*, June 1, 2015, <http://www.anonymousswisscollector.com/2015/06/over-200-colonial-objects-stolen-from-guatemalan-museum-official-records-and-photos.html>.

the Palacios-Weymann collection; an important collection that is part of Guatemala's artistic heritage.⁴¹

Apparently, thefts are even being committed with specific items in mind – the result of orders and special requests from buyers on the illicit market.⁴² Despite the laws and restrictions imposed to protect cultural patrimony, the rate of thefts in Guatemala, especially of ecclesiastical property, is still on the rise. Based on available information, Guatemala appears not to be prosecuting cultural property crimes to an extent that deters future offenses. Moreover, *El Periódico* reports that looters count on Guatemala's "blind" borders to facilitate the transfer of items, which is a significant indicator that there is a lack of presence or visibility of border patrol or law enforcement to deter looting.⁴³

Finally, cartels and gangs even use cultural patrimony as collateral for drug and gun sales.⁴⁴ Gang related crime is so rampant that in 2015, the Director-General of UNESCO focused on preventing violence in Guatemala.⁴⁵ According to Samuel Franco, chairman of Blue Shield Guatemala, an emergency response agency for culture, "[w]e have a major enemy in the drug lords" who "[a]ccording to UNESCO . . . are looting archaeological sites to launder money."⁴⁶

V. The Designated List

At the time of the renewal of the MOU in 2012, Ecclesiastical Ethnological Material was added. At that time, the AAMD identified a number of problems that could arise if such material were added in a generic manner – specifically because of the confusion with three different categories of ecclesiastical material found in the former Spanish colonies (1) objects created in the subject country, (2) objects created in Spain and imported into the subject country and (3) objects created by immigrant artists in the subject country. *Only the first category can be subject to import restrictions under the CPIA, but the Designated List does not make this critical distinction.* As a result, importers and, more importantly, officials of U.S. Border and Customs Protection are not put on any notice to distinguish between these categories of property when considering imports into the United States.

41 Palacios-Weymann Collection," *Fundación para las Bellas Artes y la Cultura Guatemala*, 2015, <http://funbaguayatemala.org/en/coleccion-palacios-weymann/>.

42 "Banda se Dedicar a Robar Pinturas 'Por Encargo'," *El Periódico* (February 24, 2015), <http://www.elperiodico.com.gt/es/20150224/pais/9056/Banda-se-dedica-a-robar-pinturas-%E2%80%9Cpor-encargo%E2%80%9D.htm> (accessed August 28, 2015); see also James Bargent, "Guatemala Nabs Art Thieves but Paintings Disappear into Black Market."

43 "Banda se Dedicar a Robar Pinturas 'Por Encargo'."

44 James Bargent, "Guatemala Nabs Art Thieves but Paintings Disappear into Black Market."

45 "The Director-General Emphasized the Role of Prevention for the Elimination of Violence in Guatemala," *UNESCO*, January 18, 2015, <http://en.unesco.org/news/director-general-emphasized-role-prevention-elimination-violence-guatemala>.

46 "Global Collaboration Fights Cultural Destruction," *BBC.com*, May 1, 2015, sec. Magazine, <http://www.bbc.com/news/magazine-32526030>.

One can argue that a close reading of the CPIA would be sufficient to draw these distinctions, but the very purpose of the Designated List is to serve as a stand-alone document putting people on succinct notice of what is prohibited and what is not. By simply describing broad, generic categories, *e.g.*, “paintings illustrating figures, narratives, and events relating to ecclesiastical themes, usually done in oil on wood, metal, walls, or canvas (linen, jute, or cotton)” without any qualification as to the artist or place of creation, a significant potential for confusion at the border exists. The purpose of the CPIA is to prevent illicit import of cultural property, not to confuse those tasked with enforcing it or otherwise to impede wholly-legitimate undertakings.

This is of course a separate, but no less important, problem in the other definitional hurdle which the Designated List fails to clear: the requirement that, in order to qualify as “designated . . . ethnological material[.]”⁴⁷ works must, among other things, have “distinctive characteristics,” be of “comparative rarity” or contribute “to the knowledge of the origins, development, or history of the [Guatemalan] people.”⁴⁸ If every such work (especially in a region where whole workshops were created solely to replicate devotional works from Spain) is considered to meet this definition, then the definition is meaningless.

VI. Suggested Revisions to MOU Article II

In light of the foregoing, the AAMD recommends that changes be made to Article II in order to expand the obligations that Guatemala undertakes to make available significant objects for cultural exchange, whether through exhibition loans or long-term loans. Specifically, the AAMD recommends that Article II (D) be revised, and an Article II (J) be added, as follows:

- D. The Government of the Republic of Guatemala will seek to expand the exchange of its cultural property through:*
- 1. Using its best efforts to increase the number of exhibition loans of objects of archaeological or artistic interest to American institutions, to encourage the standardization of fees for such loans and to streamline and openly publish the approval process for such loans;*
 - 2. Using its best efforts to increase the number and overall length of long-term loans of objects of archaeological or artistic interest for research and educational purposes, agreed upon, on a case-by-case basis, by American and Guatemalan museums or similar institutions, recognizing the spirit of goodwill that exists between cultural institutions in both countries;*
 - 3. Encouraging American museums and universities to propose and participate in joint excavation projects authorized by the Ministry*

⁴⁷ See the definition of “designated archaeological or ethnological material” in 19 U.S.C. § 2601(7).

⁴⁸ See the definition of “archaeological or ethnological material of the State Party” in 19 U.S.C. § 2601(2).

of Culture, with the understanding that certain of the scientifically excavated objects from such projects could be lent to the American participants through specific agreements with the Ministry of Culture and Sports;

- 4. Promoting agreements for academic exchanges and specific study programs agreed upon by museums and universities of Guatemala and America; and*
- 5. Creating a single point of contact within the Ministry of Culture and Sports for obtaining loan approvals and assisting in the authorization and export process.*

* * *

J. A review by the two Governments of the efforts will take place not later than _____, 20__.

Several of the concepts reflected in the proposed revisions to MOU Article II (D) were adopted into Article II of the Memorandum of Understanding between the United States and Italy, even prior to its amendment and extension in 2016. AAMD believes such language was a catalyst to significant progress with Italy, and hopes that the suggested definitive language in the Guatemalan MOU will have an equally mutually beneficial effect. In addition, paragraph J is suggested in order to provide a forum for evaluation of the efforts suggested in paragraph D. The AAMD would welcome the opportunity to assist the Department of State in preparing for that review.

VII. Conclusion

Subject to the concerns set forth above, the AAMD supports the request of Guatemala for an extension of the 2012 MOU.

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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.