

**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 Republic of Bulgaria concerning
the Imposition of Import Restrictions on Categories of Archaeological and
Ecclesiastical Ethnological Material of the Republic of Bulgaria**

Meeting of the Cultural Property Advisory Committee

July 31, 2018

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 Bulgaria Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ecclesiastical Ethnological Material of the Republic of Bulgaria (the “MOU”). Pursuant to the Cultural Property Implementation Act (the “CPIA”), the Governments of the United States of America and the Republic of Bulgaria (“Bulgaria”) entered into a bilateral agreement ostensibly to protect archaeological material ranging in date from approximately 7500 B.C.E. through approximately 1750 C.E. and ecclesiastical ethnological material ranging in date from 681 C.E. through approximately 1750 C.E. for a period of five years beginning January 14, 2014.

II. Preliminary Statement and Background

The AAMD does not support or in any way endorse the practice of obtaining cultural objects or art through illicit means. According to the guidelines of the AAMD, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property (the “Convention”) is recognized as “the most pertinent threshold for the application of more rigorous standards to the acquisition of archaeological materials and ancient art as well as for the development of a unified set of expectations for museums, sellers, and donors.”¹ Moreover, the AAMD believes in the power of art to educate, inspire, and be enjoyed by all. The interests of the public are served by art museums around the world working to preserve, study, and interpret our shared cultural heritage. The AAMD seeks to develop ways its member museums can engage, work with, and otherwise assist countries in furthering knowledge and education about their rich cultural heritage. Roadblocks to fulfilling this desire – primarily consisting of a lack of a reasonable process for curators, museum directors, and educators to work with Bulgarian cultural heritage professionals in its government – nevertheless persist.

This MOU was carefully tailored to set up a framework and safeguards to assist Bulgaria with the protection of its cultural heritage. Unfortunately, little progress appears to have been made in the last five years. The country still experiences significant looting, mostly due to internal demand.² Moreover, many of the concerns the AAMD raised in 2011 that went largely unaddressed still exist today; for example, whether Bulgaria would take real steps to protect its own cultural heritage. As outlined in this Statement, while the AAMD supports an extension, measurable revisions are

¹ Introduction to the Revisions to the 2013 Guidelines on the Acquisition of Archaeological Material and Ancient Art.

² 19 USC 2602(a) (1) (D) – consistent with the general interest of the international community. According to Bulgaria, *National Report on the Implementation of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 2011-2015*, “the legal market of cultural values is not very active” and that the demand for antiquities in Bulgaria is internal, esp., 8.

necessary. In addition, realistic and measurable benchmarks should be incorporated so that future renewals can be objectively evaluated.

III. Overview

Bulgaria is a semi-consolidated democracy that faces challenges of political instability, serious corruption, and needed judicial reform.³ In fact, Bulgaria ranks among the highest countries in terms of corruption in the EU. About 87% of Bulgarians “believe there is corruption in national public institutions.”⁴ The local governmental structure is complex “with 265 municipalities that act as self-governing units, 28 regions headed by governors appointed by the prime minister.”⁵ Moreover, “judicial independence and reform have been persistent problems in Bulgaria” and Bulgaria “face[s] several key challenges, including a high level of politicization.”⁶ Locally Bulgaria’s constitution and laws “formally provide local authorities with significant powers and autonomy [where m]unicipalities are the primary authorizing officer of their own budgets.”⁷ These facts impact the status of the country’s cultural heritage, especially with respect to actions required of Bulgaria under the MOU.

IV. Is the Designated List Overly Broad?

In the AAMD’s submission in 2011, it suggested that the Designated List, which is created under the auspices of this Committee and is intended to reflect works endangered in Bulgaria, should be specific as to the objects covered. Instead, the Designated List is “a broad range of archaeological and religious items” as declared by U. S. Ambassador to Bulgaria, Marcie B. Ries, on the day she and Bulgaria’s Cultural Minister, Petar Stoyanovich, signed the MOU.⁸ The expansive Designated List described by the Ambassador oversteps the authority given under the CPIA and violates the intention of the framers of the CPIA, who worked to balance competing interests while still assisting countries experiencing uncontrolled destruction and looting of their cultural heritage. As Andrew L. Adler and Stephen K. Urice have pointed out, Congress worked to equalize “the structure of the statute and its effectuating mechanisms”⁹ in a way that would proportionately represent “the competing interests of U.S. Museums, the art market, the U.S. public, archaeologists, as well as source nations.”¹⁰ This is “because Congress considered such import restrictions to be ‘drastic’ measures,¹¹ especially for a country so committed to open borders and free trade,¹² Congress

³ Emilia Zankina and Boris Gurov, “Nations in Transit 2018 – Bulgaria,” *Freedom House* (April 11, 2018); <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=5b3cc296a>.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ “U.S., Bulgaria sign cultural heritage protection memorandum,” *The Sofia Globe* (January 14, 2014) <https://sofiaglobe.com/2014/01/14/us-bulgaria-sign-cultural-heritage-protection-memorandum/>.

⁹ Andrew L. Adler; Stephen K. Urice, “Resolving the Disjunction between Cultural Property Policy and Law: A Call for Reform,” *64 Rutgers Law Review* 117 (2011), 139.

¹⁰ Alexander A. Bauer, “New Ways of Thinking about Cultural Property: A Critical Appraisal of the Antiquities Trade Debates,” *31 Fordham International Law Journal* (2008), 692.

¹¹ Referring to the definition of import restrictions as a “drastic remedy” in 19 U.S.C. 2602(a) (1) (C) (ii).

¹² See, e.g. Paul M. Bator, “An Essay on the International Trade of Art,” *34 Stanford Law Review* 275 (1982), 343, explaining that the United States has historically allowed for the “[u]nrestricted and free trade in the arts.”

ensured that [import restrictions] could be imposed only if *exacting criteria were* satisfied.”¹³ What currently exists is a proactive implementation of a policy that amounts to an embargo of a country’s cultural heritage as opposed to a *tailored reactive* measure put in place to stop the *known* looting of specific cultural heritage *proven* to be under threat by the source country.

One of the most important purposes of the Designated List is to provide fair notice to importers of what can and cannot be brought into the United States. In order to fulfill that goal, the Designated List has to be understandable, internally consistent, and specific enough to put importers on notice and provide guidance to customs officials. The Bulgarian document is not even internally consistent, much less clear. For example, Section I(A)(1)(a) states that “types include,” but subsection (b) in contradiction, states that “types include but are not limited to.” Then subsection (d) no longer mentions types, but instead refers to “subject matter.” Then in Section B(1)(a), the designation becomes “common types,” followed by Section C(1)(a), which refers to “elements” rather than types, subject matter or common types.

The actual descriptions themselves are equally baffling. For example, an architectural element, which can be in marble, limestone, gypsum and other kinds of stone, includes a “base.” On the other hand, a monument can be in marble, limestone, granite, sandstone, and other kinds of stone, which also includes “bases.” Interpretation by a layperson could construe such language as a single base is an architectural element but multiple bases are attributed to monuments. This is just one example of a plethora of confusing descriptions, many of which are inconsistent.

More troubling is that there is a disconnect in the descriptions between the MOU and the Designated List. Bulgaria, under the MOU, agreed to import restrictions for ethnological material from 681 C.E. through approximately 1750 C.E. The Designated List, however, unilaterally expands the time period to 4th century C.E. through approximately 1750 C.E.”¹⁴ Either this Committee or the Treasury or both just decided to add another 381 years to the Designated List. This addition is in violation of 19 U.S.C. 2604 that provides “after any agreement enters into force . . . the Secretary . . . shall by regulation promulgate . . . a list of . . . the . . . ethnological material of the State Party covered by the agreement. . . . each listing made under this section shall be sufficiently specific and precise to insure that . . . the import restrictions under section 2606 . . . are applied only to the . . . ethnological material covered by the agreement” What is the justification for this action?

Currently, there are over 58 categories of objects described in the Designated List with multiple subcategories within each category. The question should be asked - has Bulgaria actually submitted evidence to the Committee that each and every category and subcategory is subject to looting? Perhaps Bulgaria’s disclosures in other arenas will help guide the Committee in its inquiry about the substantiation (or lack thereof) provided by Bulgaria as to looting. When Interpol’s Database of Stolen Works of Art was recently consulted, only 384 reported objects for Bulgaria could be found. One category, for example, sculpture/statue reflected only 38 items as reported stolen, which were isolated to 5 cases dated 1987, 2000, 2001, 2009 and 2010.¹⁵

¹³ Stephen K. Urice and Andrew L. Adler, “Unveiling the Executive Branch’s Extralegal Cultural Property Policy,” *Miami Law Research Paper Series, University of Miami School of Law* (August 13, 2010), <http://ssrn.com/abstract=1658519>; *emphasis added*.

¹⁴ Department of Homeland Security and Department of the Treasury, “Import Restrictions Imposed on Certain Archaeological and Ecclesiastical Ethnological Material from Bulgaria,” *Federal Register* 79:11 (January 16, 2014), 2784.

¹⁵ The review was performed January 23, 2018. This number seems extraordinarily low for a country experiencing the amount of looting that is being suggested.

V. Is Bulgaria in Compliance with Article II of the MOU and the Four Determinations?

Is the MOU working? Even after five years, this question cannot be answered because the MOU does not appear to have been fully implemented. The CPIA was designed to help those countries who help themselves, and no matter what import restrictions are imposed, if Bulgaria fails to comply with the terms of the very agreement they signed, the status of their cultural heritage will not change. As it stands, Bulgaria's cultural patrimony does appear to be still in jeopardy of looting – primarily by its own citizens – many of whom lack an appreciation of the importance of preserving their country's cultural heritage. This is demonstrated by the estimated 50,000 to 500,000 active *black archaeologists*¹⁶ continuously looting the country's cultural heritage, some of whom currently make a living wage through treasure hunting. Furthermore, this is not individualized but extends to entire villages and even regions in Bulgaria where the main source of income earned is through looting Bulgaria's rich cultural heritage.¹⁷

This problem is exacerbated by the relative lack of effective governmental action that counters preservation and protection of Bulgaria's cultural heritage:

“Scholars and professionals frustrated with the unsolved problems during many years, even began to suspect the existence of a ‘strategy of mis-protection’ on the part of governing authorities, criticizing the flawed legislation that replaced a well-organised national system of research, museums and cultural institutions, the restrictions on the right of researchers and experts, the practice of tolerating authorities’ incompetence and negligence, as well as the criminal acts that destroy heritage.”¹⁸

According to Tolina Loulanski and Vesselin Loulanski, “to our regret, the country seems powerless to prevent the plunder of its ancient sites and the dispossession of its cultural legacy.”¹⁹ Unfortunate as this situation may be, it does not, by definition, meet the second determination, *i.e.*, that the requesting country is taking steps consistent with the Convention to protect its cultural patrimony.

A. **Ongoing Budgetary Shortfalls**²⁰

The 2018 Bulgarian Budget allocated to the entire Ministry of Culture is 0.4326%²¹ of the country's budget. As to the protection of cultural heritage, there has not been an increase in government

¹⁶Balazs Csekő, “Die Schatzsucher sind die Hunnen von heute,” *Der Standard* (September 18, 2016), [in German], <http://derstandard.at/2000044457865/Die-Schatzsucher-sind-die-Hunnen-von-heute>; This estimate was provided by Assoc. Prof. Sergey Torbatov, from the Sofia-based National Institute and Museum of Archaeology, see Ivan Dikou, “Some 500,000 Treasure Hunters Destroying Bulgaria's Archaeological Heritage on a Daily Basis, Archaeologist Estimates,” *Archaeology in Bulgaria* (April 22, 2016), <http://archaeologyinbulgaria.com/2016/04/22/some-500000-treasure-hunters-destroying-bulgarias-archaeological-heritage-on-daily-basis-archaeologist-estimates/>.

¹⁷ Велиана Христова, “Що е то частна археология?” Дума (February 9, 2018) [in Bulgarian], www.duma.bg/node/160557.

¹⁸ Tolina Loulanski and Vesselin Loulanski, “Thracian Mounds in Bulgaria: Heritage at Risk,” *The Historic Environment: Policy & Practice* 8:3 (2017), 269.

¹⁹ *Ibid.*, 261.

²⁰ Violation of the 1970 Convention Art. 5(c), sufficient qualified staff, promote development or establishment of scientific and technical institutions required to ensure the preservation and presentation of cultural property; Art. 14, each state part, as far as it is able, is to provide for the National Services responsible for the protection of its cultural heritage with an adequate budget and if necessary, set up a fund for this purpose. This also contributes to having the resources to adequately track looted objects as well as effective means of education and prosecution as enumerated in the 2014 MOU, Article II(4), (6), and (7).

²¹ 23.515.773.100 BGN is the total projected revenues, aid, and donations for Bulgaria in 2018 and 101.727.300 BGN is allocated to the Ministry of Culture's Budget. See “Parliament Adopts 2018 Budget Framework,” *Bulgarian News Agency* (November 30, 2017), <http://www.bta.bg/en/c/DF/id/1700712>.

funding since at least 2016.²² In addition, modification to the Ministry's budget was made in retrospect – meaning under Decree 301 of December 14, 2017, a reallocation of designated funds was made reducing the allotted funds for “Policy in the Field of Protection of Movable and Immovable Cultural Heritage” by 1,222,281 BGN. This reduction included 1,158,196 BGN in funds previously allocated to programs called “Preservation of Real Cultural Heritage” and 64,085 BGN in funds previously allocated to “Preservation and Presentation of Movable Cultural Heritage and Visual Art.”²³ These funds were re-allocated to promote Bulgaria's interest in contemporary art programs, which are slated to receive additional funding in 2018.²⁴

Some attribute much of the budgetary shortcomings to an outdated funding mechanism and a lack of a national strategy. According to Tolina Loulanski and Vesselin Loulanski: “no additional sources [are] coming from the private sector in the form of taxes, tourism revenue deductions, or donations, neither are there any heritage lottery or voluntarily funding schemes to aid preservation of monuments.”²⁵ Without adequate funding, the protection and preservation of Bulgaria's cultural heritage will never happen.

B. Unmanaged Tourism Ignores a Source of Funding and Endangers Sites

While tourism can be a sustainable source of revenue for heritage protection, Bulgaria has apparently failed to take advantage of increasing tourism to generate funds for cultural protection, this in the face of growing tourism from abroad. Foreign tourists per annum increased from 9.3 million to 11.6 million between 2015 and 2017.²⁶ Oddly, in 2016, only .0036% of the 1 billion Bulgarian lev tourism revenue generated flowed to the government. The rest presumably remained in the private sector – untaxed.²⁷

Bulgaria is also clearly missing an opportunity to advance cultural tourism given the growth in the industry. According to Archaeologist Diana Gergova, “to do cultural tourism, we need to have a highly professional and individual approach to each particular monument.”²⁸

Instead of profiting from and managing tourism, the growth in tourism endangers sites. Currently, there seems to be a “disproportion between tourism loads and protection measures at sites.”²⁹ Even Nessebar, a World Heritage Site of “Outstanding Value,” has been compromised due to lack of management and economic sprawl and is on the verge of being inscribed on the List of World

²² Acknowledging that a modest increase on the books in 2017 totaling 16 million was allocated, this did not benefit the cultural heritage sector as 11 million of that money repaid deficits owed by the Ministry. See Антония Чорева, “Бюджет 2017 г.: Резултатът за културата е 0:0,” *OFFNews* (December 1, 2016), [in Bulgarian], <https://offnews.bg/kultura/biudzhnet-20170g0rezultatat-za-kulturata-e-0-0-641229.html>.

²³ “Decree No. 301 of 14 December 2017 approving internally-funded changes in approved expenditure by policy area/budget program of the Ministry of Culture budget for 2017,” *State Gazette* (December 19, 2017) <http://dv.parliament.bg/DVWEB/showMaterialDV.jsp?idMat=120911>.

²⁴ “Parliament Adopts 2018 Budget Framework.”

²⁵ Tolina Loulanski and Vesselin Loulanski, “Thracian Mounds in Bulgaria,” 266.

²⁶ See Reports and Statistical Data with the National Statistical Institute, Republic of Bulgaria: <http://www.nsi.bg/en/content/7058/arrivals-visitors-abroad-bulgaria-months-and-country-origin>.

²⁷ Tolina Loulanski and Vesselin Loulanski, “Thracian Mounds in Bulgaria,” 266.

²⁸ Велиана Христова, “Интервю - Проф. Диана Гергова: У нас няма механизми за опазване на културното наследство,” ДУМА (August 25, 2015) [in Bulgarian], <http://www.duma.bg/node/107235>.

²⁹ Tolina Loulanski and Vesselin Loulanski, “Thracian Mounds in Bulgaria,” 269.

Heritage in Danger.³⁰ The World Heritage Committee called Bulgaria's current management plan "ill-conceived" and further stated "mass tourism....has already caused irreversible changes."³¹

C. Unqualified and Understaffed Cultural Heritage Specialists³²

As with poor planning and the implementation of bad or ineffective management plans for World Heritage Sites, Bulgaria has failed to hire and train qualified heritage specialists. In 2016, the National Institute for the Protection of Cultural Monuments employed about 40 people responsible for 40,000 monuments;³³ today the estimate is about 20.³⁴ The Heritage Forum, an NGO which is a consortium of Bulgarian cultural heritage specialists³⁵ observed that the current environment "of the Institute is hectic and disorganized."³⁶ A clerical error caused a registered cultural heritage building that sat within the boundaries of a protected heritage area to be demolished with full permission of the Municipality, which "maintained [that] no irregularities could be found in the decision to raze."³⁷ This building is now lost to history.

In addition to the lack of staffing, the qualifications (or lack thereof) of those employed as cultural heritage specialists raise abundant concern. Normally, project leaders in source countries are either archaeologists or architects. To the contrary, in Bulgaria, composers, teachers, athletes, in fact, anyone holding a Bachelor's or Master's Degree, could be employed in these very technical and specialized jobs.³⁸

Oversight by qualified personnel, as well as budgetary issues continue to negatively impact and create flaws in preservation programs whereby best practices and ethical guidelines are not followed. The heritage site known as Yailata Fortress near Kavarna and the medieval fortress Krakra in Pernik are perfect examples of this. In both cases, construction companies used cheap plastic materials to restore the fortress walls.³⁹ The Citizens Initiative for the Protection of Cultural Heritage believes that this behavior is intentional:

³⁰ 2017 Report by The World Heritage Committee, Ancient City of Nessebar (Bulgaria), Decision 41 COM 7B.4 (UNESCO).

³¹ Ibid.

³² 1970 UNESCO Convention, Art. 5(d) qualified staff sufficient to organize and supervise archaeological excavation; establish rules; 13(b) ensures competent serv. Also the 2nd Determinant applies.

³³ Ivan Dikou, "Bulgaria's Archaeological Sites might be headed for Disaster, Protestors against New Cultural Heritage Law Alarm," *Archaeology in Bulgaria* (June 30, 2016), <http://archaeologyinbulgaria.com/2016/06/30/bulgarias-archaeological-sites-might-be-headed-for-disaster-protestors-against-new-cultural-heritage-law-alarm/>.

³⁴ Веселина Миланова, "Павел Деспотов: НПО-тата трябва да имат право на археологически разкопки," БНР (February 19, 2018). [in Bulgarian], <http://bnr.bg/horizont/post/100935043/pavel-despotov-npo-tata-trabva-da-imat-pravo-na-arheologicheski-razkopki>.

³⁵ Over 40 institutions are involved with this NGO with archaeologists, architects, historians, and public figures as members whose focus is on the preservation of cultural heritage in Bulgaria, corrective governmental action and the imposition of universally accepted professional standards.

³⁶ Heritage Forum. *ДЕКЛАРАЦИЯ*, 2015, [in Bulgarian], https://forumnasledstvo.files.wordpress.com/2015/05/declaration_forum-kn_29-05-2015.pdf.

³⁷ "Tensions in Plovdiv over Bulldozing of Cultural Heritage Building," *Novinite.com – Sofia News Agency*, March 8, 2016,; <http://www.novinite.com/articles/173430/Tensions+in+Plovdiv+over+Bulldozing+of+Cultural+Heritage+Building>.

³⁸ Shteryo Nozharov, "Efficiency of Public Administration Management in Cultural Heritage Protection," *Economic Alternatives 2* (2017), 312.

³⁹ Ivan Dikou, "Bulgarian Archaeologists, Architects Rally Against Controversial Amendments to Cultural Heritage Act." *Archaeology in Bulgaria* (March 15, 2016), <http://archaeologyinbulgaria.com/2016/03/15/bulgarian-archaeologists-architects-rally-against-controversial-amendments-to-cultural-heritage-act/>.

“[W]hat is underway is a replacement not only of the authentic historic monuments element of the work but also of authentic scientific authorities by pseudo-experts and structures, which may be well-promoted publicly, but lack expertise in heritage protection and management.”⁴⁰

D. Underfunding of Archaeological Sites

Once again stemming from budgetary shortfalls, archaeological sites are unprotected and ripe for looting and destruction. From underfunding to non-funding of projects, continued lack of security, rush rescue jobs, and inappropriate preservation, the discovered and known sites stand exposed to the elements or become victim to the looting.

One recent example that shows the many missteps that are still occurring is at a site in Plovdiv. The site was destroyed by a construction company that, in haste, poured concrete into an excavated site that sat exposed while the archaeologists obtained an extension of six days to finish their work. When pressed, representatives from the company justified their actions by stating that a wall was in danger of collapse and needed to be strengthened. The rash actions of the company destroyed artifacts that are now either occupying a landfill or encased in cement – making any new discovery or preservation efforts impossible.⁴¹ While the Ministry has threatened to impose fines as required under their Penal Code, penalties have not been an effective deterrent in the past due to the ongoing lack of prosecution of those committing cultural heritage crimes.

When it comes to excavations and research, “the state does not provide sufficient funds to implement all stages in their totality, but only partially” which often “lead[s] to violation of the organisational process and professional code of practice of archaeological research in all its stages.”⁴² Furthermore, apparently because there are so few recognized archaeologists with whom the State will work; competitiveness can cause people to cut corners and rush:

“Sometimes, due to funding constraints or to win over the competition with looters and the media, scientists are rushed in their work, violating excavation rules and taking on destructive approaches that lead to decontextualisation of monuments and their setting.”⁴³

This competitive environment also causes archaeologists to operate out of fear when it comes to decisions as they run the risk of termination if their decisions are in conflict with the local mayor’s or municipal councillor’s opinion.⁴⁴ Without the investment in archaeology and support to fully fund excavations and preservations, Bulgaria heritage will continue to be in peril.

⁴⁰ Citizens’ Initiative for the Protection of Cultural Heritage, “Declaration against the Campaign for Replacement,” *Culture* 10: 2802 (March 13, 2015), [In Bulgarian].

⁴¹ Благой Бекриев, СКАНДАЛ В ПЛОВДИВ: Бетонираха ценни археологически находки, НОВИНИТЕ НА NOVA (November 24, 2017) [in Bulgarian], <https://tinyurl.com/y9cur38u>.

⁴² Tolina Loulanski and Vesselin Loulanski, “Thracian Mounds in Bulgaria,” 264.

⁴³ Ibid.

⁴⁴ Велиана Христова, “Интервю - Проф. Диана Гергова: У нас няма механизми за опазване на културното наследство.” This was reiterated again in 2018 by the same author, see Велиана Христова, “Що е то частна археология?”

E. Ineffective, or Lack of Enforcement of, Laws⁴⁵

Paragraph 7 of Article II of the MOU provides that:

. . . in order for United States' import restrictions to be successful in deterring pillage, the government of the Republic of Bulgaria shall strengthen enforcement of its own cultural heritage protection laws, aiming:

- (i) to increase the overall number of prosecution;
- (ii) to hand out meaningful sentences or punishments; and
- (iii) to put into effect and implement the necessary administrative and punitive measures against the unauthorized use of metal detectors in archaeological reserves and other areas known to contain cultural assets.

The Committee must ask whether Bulgaria complies with this provision (which is an outgrowth of the second determination).

By some accounts, Bulgaria ranks first in the EU regarding illegal export of cultural heritage artifacts.⁴⁶ In contrast, in its report on the Implementation of the 1970 Convention, Bulgarian officials state that “detailed information regarding the scale of illegal export or import of cultural values” is not available and that in recent years, customs authorities report that “no significant decrease or increase in the cases of attempts of illicit trafficking of movable cultural values prevented by the customs officers is noted.”⁴⁷ How can this be, when as previously discussed, Bulgaria has an estimated 50,000 – 500,000 active looters in the country? To justify this, Bulgarian officials state simply that “offences are too numerous to be covered by security and judicial authorities.”⁴⁸ In other words, Bulgaria lacks the will or the resources to even evaluate the extent of illegal exports of cultural objects.

F. Looters Operate Openly without Fear due to Lack of Prosecution

Despite the laws that apply to the protection of cultural heritage, looters coordinate efforts openly and continue their trade in the full view of the public eye, without fear of reprisal.⁴⁹ The Bulgarian Criminal Code does stipulate prison sentences for looters: illegal excavations, up to six years; and illegal possession, up to four years.⁵⁰ Kostadin Kostadinov, Director of the Regional Historical Museum in Dobrich states, to date, “not a single person has been imprisoned for dealing in stolen

⁴⁵ UNESCO 13(a): The State Parties shall, consistent with State Law, prevent by all appropriate means transfers of ownership of cultural property likely to promote illicit import or export of such property. Violation of 2nd determinant and 3rd (less drastic measures available – in other words – enforce your laws!) 303(a) (1) (c) (ii). MOU Article II (7): Bulgaria shall strengthen enforcement of its own cultural heritage protection laws aimed at (1) increasing the overall number of prosecutions [and] (2) handing out meaningful sentences or punishments.

⁴⁶ Ivan Dukou, “USD 1 Billion worth of Archaeological Artifacts Smuggled out of Bulgaria Annually, Archaeologist Claims,” *Archaeology in Bulgaria* (April 6, 2016), <http://archaeologyinbulgaria.com/2016/04/06/usd-1-billion-worth-of-archaeological-artifacts-smuggled-out-of-bulgaria-annually-archaeologist-claims>.

⁴⁷ Bulgaria, National Report on the Implementation of the 1970, 7.

⁴⁸ Ibid.

⁴⁹ See for example, Tolina Loulanski and Vesselin Loulanski, 261 and 263: “The strict laws that apply to the illegal antiquities trade in Bulgaria are not enforced, and looters feel free to exercise their ‘hobby’ without bearing any legal consequence.”

⁵⁰ Ivan Dikou, “Museum Workers Urge Special Permits for Metal Detectors to Combat Bulgaria’s Rampant Treasure Hunting,” *Archaeology in Bulgaria* (August 14, 2016), <http://archaeologyinbulgaria.com/2016/08/14/museum-workers-urge-special-permits-for-metal-detectors-to-combat-bulgarias-rampant-treasure-hunting/>.

antiquities.”⁵¹ Few criminals have actually been brought to justice and according to Shteryo Nozharov “criminal punishments in the field of cultural heritage protection are below 1%.”⁵²

G. Metal Detectors are Still an Ongoing Problem⁵³

Even metal detectors continue to be a persistent problem. Ownership of metal detectors is commonplace, with those arguing that detecting is nothing more than a hobby. In 2016, museum workers and archaeologists in Bulgaria lobbied “in favor of special regulations for metal detectors because in Bulgaria ‘metal detectors are sold openly and control over their usage is impossible at the present stage’.”⁵⁴ Kostadin Kostadinov, Director of the Dobrich Regional Museum of History, believes that metal detectors should be regulated in the same manner as firearms. ⁵⁵ “To put an end to illegal excavation, Kostadinov suggested to the Bulgarian Parliament that they restrict the use of metal detectors only to civil servants, with sanction for private use only possible upon strict permission.”⁵⁶ Instead of a positive response, the director “received numerous violent and murder threats” from the empowered looters.⁵⁷

VI. Recommendations

The AAMD supports renewal of the MOU, but with changes both to the Designated List and to the MOU itself. The Designated List must be made specific, transparent, and understandable to importers – at the very least, it needs a thorough editing. Broad designations are not fair notice to importers or to customs officials of what should and should not be available for import into the United States. The current definitions are simply a trap for the unwary, whereby the government is able, after the fact, to decide that something falls within the incredibly broad categories. In addition, and critically important because in its current form, it violates the CPIA, the Designated List must be made consistent as to the dates with the MOU.

With respect to the MOU itself, “these agreements do more than intervene in the illicit trafficking of cultural property [t]hey contain provisions in an “Article II” that create formal avenues for introducing and encouraging specific kinds of cultural policies and initiatives.”⁵⁸ Of most importance to the AAMD, paragraph 8 involving cultural exchange lacks the necessary specificity, which is found in many other MOUs with respect to loans. Brian I. Daniels posits, “among the cultural policies championed in Article II, the centerpiece has been the encouragement of long-term loans for museum collections.”⁵⁹ This is an effective diplomatic tool. Bulgarian museums should be encouraged to make both exhibition and long-term loans, to publish their criteria for doing so and Bulgaria should be required to create points of contact within the Ministry of Culture to facilitate those loans.

⁵¹ Balazs Csekö, “Die Schatzsucher sind die Hunnen von heute.”

⁵² Shteryo Nozharov, “Efficiency of Public Administration Management in Cultural Heritage Protection,”312.

⁵³ MOU, Article II (7)(3) – put into effect and implement the necessary administrative and punitive measures against the unauthorized use of metal detectors in archaeological reserves and other areas known to contain cultural assets.

⁵⁴ Ivan Dikou, “Museum Workers Urge Special Permits for Metal Detectors to Combat Bulgaria’s Rampant Treasure Hunting.”

⁵⁵ Ibid.

⁵⁶ Tolina Loulanski and Vesselin Loulanski, 263.

⁵⁷ Balazs Csekö, “Die Schatzsucher sind die Hunnen von heute.”

⁵⁸ Brian I. Daniels, Recent Developments in the International Exchange of Museum Collections.

⁵⁹ Ibid.

In order to facilitate loans, but more important, in order to protect cultural heritage, museum collections need to be digitized and centralized in a database. Bulgaria has been provided and continues to receive grants for digitization of collections,⁶⁰ so it is reasonable, as a condition of renewal, that Bulgaria should be required to make substantial progress in completing digitization. In fact, utilizing Italy's current MOU with the United States, the AAMD suggests that this guide the formulation of this requirement whereby a strategic roadmap for collaboration and interchange, as required under the fourth determination.⁶¹ Bulgaria has a rich cultural heritage, which should be made available to the American public and with the import restrictions imposed; loans are the best way of doing so.

Finally, the Bulgarian Cultural Heritage Act has now been amended 18 times since 2009 "never without scandal" according to Veliana Hristova and neither protecting public interest nor preserving cultural heritage appropriately.⁶² The significant number of amendments has created "unpredictability and instability of the policy for Bulgarian cultural heritage protection."⁶³ The legal system needs to be revised and made clear and, of course, as described above, enforced.

Along with the revision of laws, the training of professionals, and the security for, and protection of cultural heritage should be at the forefront. The issue of looting at the degree to which it continues to occur and sustain whole villages is nothing less than baffling. Serious efforts need to be made to deter and punish this behavior. As stated in the beginning, CPIA can only benefit those countries willing to help themselves.

VII. Conclusion

Assuming that the foregoing recommendations are implemented, the AAMD supports renewal of the MOU.

The Association of Art Museum Directors (AAMD), established in 1916, is a professional organization 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.

⁶⁰ In 2015, the Financial Mechanism of the European Economic Area provided 740k Euros to digitize the items of heritage in the city of Plovdiv. See "Plovdiv wins 740,000 Euro project to Digitise Cultural Heritage," *The Sofia Globe* (March 10, 2015), <https://sofiaglobe.com/2015/03/10/plovdiv-wins-740-000-euro-project-to-digitise-cultural-heritage/>. In addition, the Norwegian Institute of Cultural Heritage Research has provided grants to establish "four digitized centers, in which the cultural history of Bulgaria will be documented." See Iceland Liechtenstein Norway Grants, Digitization of Cultural Heritage – Accessible Gateway to Historical Memory: Bulgaria," <https://eeagrants.org/project-portal/project/BG08-0012>, whereby over 1.8 Euros have been spent. Moreover, the EU provided funding October 2017 and in 2018, the U.S. Ambassadors Fund for Cultural Preservation offered grant opportunities for NGOs willing to work in this area. See CD-ETA, *Interreg Europ, Digitization of Intangible Cultural Heritage in Bulgaria*, https://www.interregeurope.eu/fileadmin/user_upload/tx_tevprojects/library/file_1509452255.pdf and US Embassy in Bulgaria, *Call for Proposals for the 2018 Ambassador's Fund for Cultural Preservation (AFCP)*, <https://bg.usembassy.gov/call-proposals-2018-ambassadors-fund-cultural-preservation-afcp/>.

⁶¹ See especially the section on Collaboration and Interchange, 2016 MOU between the United States and Italy, Art. II (E-G).

⁶² Велиана Христова, "Що е то частна археология?"

⁶³ Shteryov Nozharov, 314.