

Statement of the Association of Art Museum Directors concerning the Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Honduras concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Ecclesiastical Ethnological Material from the Colonial Period of Honduras

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 Governments of the United States of America and the Republic of Honduras concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Ecclesiastical Ethnological Material from the Colonial Period of Honduras (the “MOU”). Pursuant to the Cultural Property Implementation Act, 19 U.S.C. §§ 2601, *et seq.* (the “CPIA”), the Governments of the United States of America and the Republic of Honduras (“Honduras”) entered into the MOU on March 12, 2004 in order to protect Pre-Columbian cultural objects originating in Honduras, ranging in date from approximately 1200 B.C.E. to 1500 C.E., and extends to objects of ceramic, metal, stone, shell, and animal bone representing, among others, the Maya, Chorti Maya, Lenca, Jicaque, and Pipil cultures. The MOU was extended on March 12, 2009, and then amended and extended on March 12, 2014. The amendment broadened the scope of objects covered to include certain Colonial Period Ecclesiastical Ethnological materials, which include sculptures in wood and other materials, objects of metal, and paintings on canvas, wood, or metal supports depicting ecclesiastical themes from the Colonial Period dating from C.E. 1502 to 1821.

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 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 Honduran cultural heritage professionals in its government – nevertheless persist. The AAMD raised this issue previously in connection with the MOU, and continues to be disappointed that this point remains unaddressed.

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

AAMD cautiously supports the extension of the MOU but is concerned with Honduras's lack of funding and government support of its cultural institutions. In order to protect its cultural heritage, Honduras must be willing to commit sufficient funding and support its own cause.

III. Overview: A Culture of Political Unrest and Crime

Honduras is a Constitutional Republic.² Though it “had a longstanding ban on second presidential terms . . . Supreme Court justices who owed their jobs to [Juan Orlando] Hernández [Alvarado] gave him the green light to seek re-election” in 2017, causing serious civil unrest from the controversy surrounding the legitimacy of his presidency.³ The election exacerbated existing corruption, which extends to other areas of government. For example, the National Police is “labeled the most mistrusted police force in Latin America” and continues to be “plagued by institutional corruption”⁴ at a level considered “alarming” and a contributing factor “in the upward spiral of continued violence”⁵ undermining public trust in local authorities and the severely underfunded⁶ justice system.⁷

Known as part of the Central America's “Northern Triangle”⁸ of thriving Latin American gang activity, Honduras had the highest crime rate in 2017 of any country not currently *at war*.⁹ Gang activity is so dire that it is creating a “refugee crisis” due to people fleeing their homes.¹⁰ “[G]ang violence, drug wars, and extortion are commonplace and the country is notorious for having the world's highest murder rate per capita.”¹¹ Beyond violent crimes, MS-13 expanded its reach to include politics by selling votes to the highest bidder at every facet in the government.¹² It also

² Currently, Honduras is classified as a hybrid regime due to irregularities found in the voting process, declining to 5.72/10; See “EUI Democracy Index,” *The Economist* (2017), <https://infographics.economist.com/2018/DemocracyIndex/>.

³ See, for example, Jude Webber and John Paul Rathbone, “Honduras Faces Political Crisis over Election Uncertainty,” *Financial Times* (November 29, 2017), <https://www.ft.com/content/5f1bdcec-d539-11e7-8c9a-d9c0a5c8d5c9>.

⁴ International Security Sector Advisory Team, “Honduras SSR Background Note,” *International Security Sector Advisory Team (ISSAT)* (April 28, 2017), <https://issat.dcaf.ch/Learn/Resource-Library/Country-Profiles/Honduras-SSR-Background-Note>.

⁵ Amnesty International, *Honduras: Submission to the United Nations Human Rights Committee*, 120th Session (July 3-27, 2017), 5, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared Documents/HND/INT_CCPR_CSS_HND_27661_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HND/INT_CCPR_CSS_HND_27661_E.pdf).

⁶ GAN Integrity, “Honduras Corruption Report,” *Business Anti-Corruption Portal* (August 2016), <https://www.business-anti-corruption.com/country-profiles/honduras/>.

⁷ Amnesty International, “Honduras: Submission to the United Nations Human Rights Committee,” 5.

⁸ Honduras along with Guatemala and El Salvador make up the biggest concentration of corruption, drug trafficking, and gang violence. See, for example, Rocio Cara Labrador and Danielle Renwick, “Central America's Violent Northern Triangle,” *Council on Foreign Relations* (last updated June 26, 2018), <https://www.cfr.org/background/central-americas-violent-northern-triangle>.

⁹ Anastasia Moloney, “Hundreds flee gang warfare in Honduras' murder city,” *Reuters* (May 15, 2017), <https://www.reuters.com/article/us-honduras-displacement-violence/hundreds-flee-gang-warfare-in-honduras-murder-city-idUSKCN18B223>.

¹⁰ *Ibid.*

¹¹ Latin America Desk, Honduras Country Profile, *BBC News* (last updated May 16, 2018), <https://www.bbc.com/news/world-latin-america-18954311>.

¹² Douglas Farah and Kathryn Babineau, “The Rapid Evolution of The MS-13 in El Salvador and Honduras from Gang to Tier-One Threat to Central America and U.S. Security Interests,” *Perry Center Occasional Paper, William J. Perry Center for Hemispheric Defense Studies, National Defense University* (March 2018), 9, 16, and 20, https://www.williamjerrycenter.org/sites/default/files/publication_associated_files/The%20Rapid%20Evolution%20of%20the%20MS13%20in%20El%20Salvador%20and%20Honduras.pdf. Two examples: In 2013, a former Talanga mayor's [Jorge Neftalí Mejía] campaign was partly financed by the MS 13, which “is a new sign pointing to the gang's increasing infiltration of local politics across the region.” The mayor was arrested in 2016. See Tristan Clavel, “Honduras Trial Alleges Frightening First: MS13 Campaign Funding,” *Insight Crime* (June 15, 2018), <https://www.insightcrime.org/news/analysis/honduras-trial-ties-between-mayor-ms13-first-time/>.

occupies many border routes, especially between Honduras and Guatemala, where large numbers of illicit items (including looted artifacts) find their way to dealers who then sell them to buyers in Paris, Seoul, and the UAE.¹³

IV. Determinations Under the CPIA

The MOU may only be renewed if the factors justifying entering into the MOU still exist.¹⁴ Honduras falls short in at least two areas: (1) by failing to take “measures consistent with the Convention to protect its cultural patrimony”¹⁵ and (2) because the import restrictions set forth in the MOU are not necessarily “consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.”¹⁶

A. Honduras Falls Short in Protecting its Cultural Patrimony

A fundamental starting point for assessing Honduras’s efforts to protect its cultural patrimony is evaluating its compliance with the MOU, which itself “sets forth long-term goals intended to benefit cultural patrimony..... [and] open[s] the way to improved and sustainable strategies for protecting a country’s national patrimony.”¹⁷ In that regard, Honduras is *required* to inform the United States of the steps it has taken toward meeting the terms of the MOU.¹⁸ If Honduras has not provided this information, the Committee should request it in advance of the scheduled meeting to review the request to extend the MOU and whether extension is appropriate at this time. Regardless of whether Honduras provides this information, the current state of affairs does not demonstrate reasonable efforts to pursue the MOU’s initiatives.

There are approximately 2,000 recorded archaeological sites in Honduras with some *140,000* estimated to exist,¹⁹ in addition to religious treasures in 294 out of the 298 municipalities.²⁰ Unfortunately, the vast majority of these sites and treasures lack any special surveillance or protection,²¹ and some are even dormant, unattended, or altogether abandoned.²² Except for the “important” sites such as Copán, El Puente, Los Naranjos, Curresté and Las Cuevas de Talgua, the rest of the thousands of archaeological sites, including some important monuments, could be looted

¹³ Member Museums of AAMD provided the market information. Of further note, the reverse can also be true whereby Guatemalan artifacts could find their way into Honduras. See David Hidalgo, “Memoria Robada: Las historias ocultas del saqueo cultural de América Latina,” *Animal Político* (October 16, 2016), <https://www.animalpolitico.com/2016/10/memoria-robada-historias-del-saqueo-cultural-america-latina/>.

¹⁴ 19 U.S.C. § 2602(e)(1).

¹⁵ 19 U.S.C. § 2602(a)(1)(B).

¹⁶ 19 U.S.C. § 2602(a)(1)(D).

¹⁷ Maria P. Kouroupas, “Combating Cultural Property Looting and Trafficking: The US Experience,” 20 *Unif. L. Rev.* 528 (2015), 533.

¹⁸ 2014 MOU, Art. II(K).

¹⁹ Honduran Institute of Tourism, Archaeology: <http://www.iht.hn/experiencias-turisticas/arqueologia/>.

²⁰ Héctor M. Leyva, “La Depredación de la Memoria: el Tráfico de Objetos Culturales,” *Yaxkin* XXVII:2 (2015), 14.

²¹ *Ibid.*

²² The site at Comayagua/La Paz is overgrown with vegetation, left to the elements and in the context of building tourism in the country, according to Juan César Díaz, several sites are forgotten and abandoned – no tourist would want to see that. See Juan César Díaz, “En el abandono están los sitios arqueológicos de Comayagua y la Paz,” *El Heraldito* (February 1, 2016), <http://www.elheraldo.hn/pais/1005163-466/en-el-abandono-est%C3%A1n-los-sitios-arqueol%C3%B3gicos-de-comayagua-y-la-paz>.

without anyone preventing it.²³ One of the more significant examples is the Río Plátano Biosphere Reserve, containing approximately 200 sites of archaeological importance,²⁴ which was placed on the World Heritage in Danger List (for the second time) in 2011 due, among other things, to Honduras's reduced capacity, lack of financial and human resources, a general deterioration of law and order and security in the region, illegal logging, deforestation, poaching, and illegal occupation (settlements).²⁵

Cultural heritage sites also are falling victim to farmers operating heavy machinery on archaeological mounds, some of which are considered to be "sacred" or contain human remains.²⁶ Others are being demolished in favor of constructing malls and parking lots; colonial streets are being paved with asphalt; and antennas and public works towers appear on archaeological sites without permission of the Instituto Hondureño de Antropología e Historia (IHAH).²⁷ This continued economic sprawl persistently compromises Honduras's cultural heritage.

Rampant gang activity is also problematic. There are differing estimates that range from 12,000 to 40,000 gang members in Honduras (with recruitment starting as young as age 6).²⁸ With the expansion of MS-13 into Honduras, El Salvador, and Nicaragua "control of many strategic border crossings"²⁹ has been relinquished to gangs and, by extension, they are also able to influence flows at formal border crossings they do not control. Borders are transit areas for illicit antiquities; points at which, for example, Honduran items pass to Guatemalan dealers and, in turn, to France, Seoul, the UAE, and *vice versa*.³⁰ Certainly, this does not comport with the requirement that Honduras "strengthen cooperation within Central America for the protection of the cultural property of the region; and . . . continue to seek the cooperation of countries with significant import trade in Honduran archaeological and ethnological objects to protect its cultural property."³¹

Protecting cultural patrimony simply is not a priority for Honduras. Though the IHAH made noteworthy strides in trying to document, conserve, and protect the country's cultural heritage, "the government does not inject enough funds to the institution so they can do their job better."³² The IHAH is largely self-funded, generating revenue from sales and services associated with visits to archaeological and eco-archaeological parks, forts, and museums.³³ The IHAH's 2018 budget in

²³ Héctor M. Leyva, "La Depredación de la Memoria," 20. By way of illustration, the security for some of the Churches located on the interior of the country consists of nothing more than a wire with a small padlock. *Ibid*.

²⁴ Biosphere Reserve Information: Honduras, Río Plátano, UNESCO – MAB Biosphere Reserves Directory, <http://www.unesco.org/mabdb/br/brdir/directory/biores.asp?mode=all&code=HON+01>.

²⁵ See *UNESCO State of Conservation Report on Río Plátano Biosphere Reserve* (for years 2015, 2016, 2017, and 2018), <https://whc.unesco.org/en/list/196/>.

²⁶ Héctor M. Leyva, "La Depredación de la Memoria," 20.

²⁷ *Ibid*.

²⁸ Elyssa Pachico, "The Problem with Counting Gang Members in Honduras, Insight Crime (February 17, 2016), <https://www.insightcrime.org/news/analysis/the-problem-with-counting-gang-members-in-honduras/>; Clare Ribando Seelke, "Gangs in Central America," *Congressional Research Service* (February 20, 2014), <http://www.unhcr.org/en-us/585a987a4.pdf> and (August 29, 2016), <https://fas.org/sgp/crs/row/RL34112.pdf>.

²⁹ Douglas Farah and Kathryn Babineau, "The Rapid Evolution of The MS-13 in El Salvador and Honduras," 12.

³⁰ From Member Museum Surveys. See also, David Hidalgo, "Memoria Robado."

³¹ 2014 MOU, Art. II(H).

³² Juan César Díaz, "En el abandono están los sitios arqueológicos."

³³ See statement published in *Informe de Actividades, Ejecución Presupuestaria y Estados Financieros IV Trimestre 2017*, Tegucigalpa, M.D.C., (Enero 2018), 4.

the amount of L.54,765,788 (\$2,280,169.61)³⁴ allocates L.30,742,778 (\$1,279,768.24) to protection and promotion of culture.³⁵ With 2,000 recorded archaeological sites³⁶, this equates to roughly \$639.88 per year, per site without any consideration for the remaining 140,000 unrecorded archaeological sites.³⁷ These numbers are telling. Honduras requests that the United States implement and police import restrictions, which comes at a cost to the United States; however, Honduras seems unwilling or unable to invest in its own protections, despite the fact that tourism and its corresponding revenue stream appear on the rise.³⁸

The CPIA was designed to help those who help themselves. This point should be particularly emphasized where in a country like Honduras that has already been afforded almost 15 years of protection is requesting yet another extension of a bilateral agreement that has had a questionable impact. While supportive of extending the MOU, the AAMD respectfully requests that the Committee be evermore mindful of the current state of affairs in Honduras, and appropriately fashion any extension to emphasize that the *status quo* will be wholly unacceptable if Honduras seeks another renewal in five years—after (then) two full decades of import restrictions.

B. General Interest of the International Community in Interchange of Cultural Property

The MOU must be “consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes[.]”³⁹ and itself calls for cultural exchange between United States and Honduran institutions.⁴⁰ It is widely recognized that “among the cultural policies championed in Article II, the centerpiece has been the encouragement of long-term loans for museum collections.”⁴¹ “[I]t has significant bearing on cultural exchange and diplomacy . . .”⁴²

AAMD members, despite expressing interest in Honduran cultural property and a willingness to support cultural exchange and scholarship, report very limited interaction with Honduran institutions. This begs the question of whether Honduras is doing its part to facilitate cultural exchange. “[A]ccess to studying excavated collections in . . . Honduras . . . has all been dependent upon local contacts rather than nationalized oversight.”⁴³ The ability to enter into loan agreements (particularly long-term loans) also is of great importance, and more should be required of Honduras in this regard.

³⁴ Unless otherwise noted, currency conversion is based on exchange rates as of July 2, 2018.

³⁵ Reviewing the monthly Ejecución del Presupuesto por Programa, Fuente de Financiamiento y tipo de fondo (from January – May 2018).

³⁶ Héctor M. Leyva, “La Depredación de la Memoria,” 14.

³⁷ Ibid.

³⁸ “Honduras had success in tourism and economy during the Holy Week 2018 (Easter),” *Global Inside News* (April 4, 2018), <http://www.globalnewsinside.com/honduras-had-success-in-tourism-and-economy-during-the-holy-week-2018-easter/>. In fact, Honduras should be investing in protecting its cultural property *because* tourism is on the rise. Indeed, widespread tourism and its corresponding tendency to jeopardize cultural property is well known and well documented on a global basis.

³⁹ 19 U.S.C. § 2602(a)(1)(D).

⁴⁰ MOU, Art. II(D).

⁴¹ Brian I. Daniels, “Recent Developments in the International Exchange of Museum Collections,” *Journal of Field Archaeology* 37:4 (2012), 328.

⁴² Ibid.

⁴³ Christina Luke and Morag M. Kersel, *U.S. Cultural Diplomacy and Archaeology* (Routledge, New York, 2013), 48.

In order to help ensure that the MOU is consistent with an open interchange of cultural property, Honduras should, among other things, be required to establish and publish a streamlined process for requesting exhibition or long-term loans. This should entail a listing of items or categories of items available for loan, points of contact for loans, requisite insurance requirements, and any fixed, reasonable loan fees. This is an entirely reasonable request for a country seeking to extend import restrictions that would then span two entire decades.

V. Designated List

The Designated List continues to be a matter of concern, and oversteps the authority given under the CPIA. It is overly broad; its categories are sometimes incorrect; its descriptions provide little guidance for customs officials; and, in many respects, it simply fails to put importers and customs officials on fair notice of what is restricted.

A. Generic and Expansive Categories

The CPIA was framed in order to equalize “the structure of the statute and its effectuating mechanisms”⁴⁴ in a way that would balance “the competing interests of U.S. museums, the art market, the U.S. public, archaeologists, as well as source nations.”⁴⁵ “[B]ecause Congress considered such import restrictions to be ‘drastic’ measures,^[46] especially for a country so committed to open borders and free trade,^[47] Congress ensure[d] that [import restrictions] could be imposed only if *exacting criteria were satisfied*.”⁴⁸ The current Designated List does not accomplish this narrowly tailored aim.

By way of example, Section II of the Designated List prohibits importing “Stone/Stucco” for which the corresponding explanatory language simply states “marble, jade, obsidian, flint, alabaster/calcite, limestone, slate, and other, including stucco materials[,]”⁴⁹ and the type of object is defined as “the range of stone materials include[ing], but is not limited to, sculpture, vessels, figurines, masks, jewelry, stelae, tools and weapons.”⁵⁰ This incredibly broad and indistinct description apparently applies to any stone/stucco object created between 1200 B.C.E. and 1500 C.E.; in other words, over the span of 2,700 years.

Another example is common vessels, which are described as follows:

⁴⁴ Andrew L. Adler and Stephen K. Urice, “Resolving the Disjunction between Cultural Property Policy and Law: A Call for Reform,” *Rutgers Law Review* 64 (2011), 139, doi:10.2139/ssrn.1658519.

⁴⁵ Stephen K. Urice and Andrew L. Adler, “Unveiling the Executive Branch’s Extralegal Cultural Property Policy,” *Miami Law Research Paper Series* (2010), 18, doi:10.2139/ssrn.1658519.

⁴⁶ Referring to the definition of import restrictions as a “drastic remedy” in 19 U.S.C. 2602(a) (1) (C) (ii).

⁴⁷ See, e.g., Paul M. Bator, An Essay on the International Trade of Art, *Stanford Law Review* 34:275 (1982), 343, explaining that the United States has historically allowed for the “[u]nrestricted and free trade in the arts.”

⁴⁸ Stephen K. Urice and Andrew L. Adler, “Unveiling the Executive Branch’s Extralegal Cultural Property Policy;” *emphasis added*.

⁴⁹ Department of Homeland Security and Department of the Treasury, “Extension of Import Restrictions on Archaeological and Ecclesiastical Ethnological Materials from Honduras,” *Federal Register* 79:48 (March 12, 2014), 13874.

⁵⁰ *Ibid*.

“cylindrical vessels, bowls, dishes and plates, jars.”⁵¹

The description does not satisfy the CPIA, which requires that objects be of “*cultural significance*”⁵² before their import can be restricted.

Designated lists consisting of broadly defined, culturally generic items do more harm than good. They do not place importers on reasonable notice of what can and cannot be imported, in turn hampering their ability to *comply* with the law. Similarly, such lists leave customs officials with little guidance, in turn hampering their ability to *enforce* the law. Naturally, then, the end result is not a targeted restriction on culturally significant, imperiled cultural property, but rather a blanket restriction in practice. The Committee, through its experienced and diverse membership, is uniquely positioned to help all concerned parties by revisiting and retailoring the Designated List in order to bring it within the intended scope of the CPIA.

VI. Recommendations

If the Committee recommends extending the MOU, it should do so only after considering several reasonable, but nevertheless impactful, revisions to Article II and the Designated List. In the aggregate, Article II of the MOU should be revised in order to ensure that its various mandates are specific and capable of objective evaluation for compliance going forward. In that regard, wholly subjective language such as “best efforts” should be removed from the text. For example, the requirement that Honduras use “best efforts to register all known archaeological sites in the country”⁵³ should be replaced with “Honduras shall register all known archaeological sites in the country.” If Honduras fails to accomplish this objective goal, yet requests the Committee to consider still another extension of the MOU in five years, then Honduras will have the opportunity to explain why the goal was not accomplished in its progress report⁵⁴ and the Committee, in turn, can determine whether this explanation is reasonable. *Measurable successes, indeed, have been observed and attributed to the specificity of Article II language.*⁵⁵

Article II also should be revised in order to incorporate the following terms:

- the Government of Honduras shall provide reasonable, supplemental funding for the operating budget of IHAH;
- the Government of Honduras shall create a central point of contact at IHAH so that museums interested in exhibitions or long-term loans can easily navigate the requirements for such loans;
- the Government of Honduras shall increase the number of long-term loans with American Museums; and

⁵¹ Ibid.

⁵² 19 U.S.C. § 2602(a)(1)(D).

⁵³ MOU, Art. II(B)(2).

⁵⁴ MOU, Art. II(K).

⁵⁵ Brian I. Daniels, “Recent Developments,” 328.

- The Government of Honduras shall publish items or categories of items available for exhibition and long-term loan as well as any insurance requirements and required loan fees.

Finally, the Designated List should be revised in order to ensure that restricted objects are truly of archaeological or ethnological interest within the scope of the CPIA,⁵⁶ and succinctly described in order to ensure that importers and customs officials can easily identify such objects.

VII. Conclusion

The AAMD supports the renewal of the MOU with Honduras and applauds the work performed by IHAH, but more progress is needed and support by the Honduran government is necessary if the AAMD is to continue to support renewals in the future.

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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.

⁵⁶ 19 U.S.C. § 2601(2)(C)(i)-(ii) (defining objects of “archaeological interest” and “ethnological interest”).