

Statement of the Association of Art Museum Directors

Meeting of the Cultural Property Advisory Committee to Review Proposal to Extend the Memorandum of Understanding between the Government of the United States and the Government of the Republic of Honduras Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures of Honduras.

October 30, 2013

I. Introduction

This statement is made on behalf of the Association of Art Museum Directors (the “AAMD”). The AAMD is a professional organization consisting of approximately 220 directors of major art museums in the United States, Canada, and Mexico. The purpose of the AAMD is to support its members in increasing the contribution of art museums to society. The AAMD accomplishes this mission by establishing and maintaining the highest standards of professional practice, serving as a forum for the exchange of information and ideas, acting as an advocate for its member art museums, and being a leader in shaping public discourse about the arts community and the role of art in society.

The AAMD deplores the illicit and unscientific excavation of archaeological materials and ancient art from archaeological sites and the destruction or defacing of ancient monuments. The AAMD is also committed to the responsible acquisition of archaeological materials and ancient art and believes that the artistic achievements of all civilizations should be represented in art museums that, uniquely, offer the public the opportunity to encounter works of art directly, in the context of their own and other cultures, where these works may educate, inspire and be enjoyed by all. The AAMD recognizes and applauds the United States for taking an approach to protect the world’s cultural heritage by balancing a unified, international solution to the problem while allowing American museums to continue to collect responsibly on behalf of the American public.

II. Consideration of Extension of and Potential Amendment to Bilateral Agreement with Honduras

Subject to the concerns raised below, the AAMD supports the renewal of the March 12, 2004, Memorandum of Understanding Between the Government of the United States and the Government of the Republic of Honduras Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures of Honduras, as amended and extended on or about March 12, 2009 (the “MOU”).

A. Cultural Exchange.

The Cultural Property Advisory Committee (the “Committee”) is required to make recommendations with respect to whether a memorandum of understanding should be

extended.¹ Specifically, the Committee is required to determine whether the four determinants have been met. One of the four determinants is that the imposition of import restrictions by the United States must be consistent with the general interest of the international community in the interchange of cultural property.² That interchange includes the exchange of cultural property, which is an issue to be reviewed by the Committee in evaluating a proposed extension of a memorandum of understanding.³ The Committee is also required to determine whether a memorandum of understanding is achieving the purposes for which it was entered into or implemented.⁴ As a result of the foregoing, a review by the Committee of Article II of the MOU is certainly appropriate and, the AAMD believes, in fact required, both to determine if exchange will be fostered and to assess whether in fact exchange has been fostered. Recommendations by the Committee to improve Article II are certainly appropriate in that context and, in the case of Honduras, necessary.

B. Article II of the MOU and Loans.

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

Both Governments shall continue to encourage Honduran and U.S. museums and academic institutions to collaborate in ways they deem beneficial, such as traveling exhibits and long term loans of objects, to the extent permitted by the laws of both countries, and under circumstances in which such exchange does not jeopardize the cultural patrimony of either country.

Unfortunately, this provision is deficient because it provides hardly any basis for a meaningful review by the Committee of Honduras's actions over the last five years. By the time the language has been parsed to identify "encourage" . . . "under circumstances in which such exchange does not jeopardize the cultural patrimony of either country", the language is so vague as to allow almost any activity, or no activity, to satisfy the section. Nevertheless, the AAMD does have information to provide to the Committee which not only shows areas of concern, but also hopefully provides a factual basis for a limited renegotiation of Article II.

The AAMD surveyed members that might have an interest in exhibition and/or long-term loans (40) and nine responded that they were very interested, all as to exhibition loans and seven as to long-term loans. Unfortunately, no one has experience with long-term loans because Honduras has refused to make loans for more than one year.

C. Consideration of "Colonial" and "Republican" Materials

Honduras asked the Committee to consider amending the designated list corresponding to the MOU to include "material representing the Colonial and Republican periods of its cultural

¹ 19 U.S.C. §2605(f)(2).

² 19 U.S.C. §2602(a)(1)(D).

³ 19 U.S.C. §2605(f)(2).

⁴ 19 U.S.C. §2605(g)(1).

heritage.” The AAMD recognizes and thanks the staff of the Committee for making this request public in advance of the meeting.

While the AAMD generally supports the protections sought by Honduras, the AAMD urges the Committee to avoid overly broad or ambiguous categorization and definition of subject materials. There is no explanation of what is meant by “Colonial” and “Republican” material. The Committee should take care to define the scope of “Colonial” and “Republican” material to be protected, using defined dates⁵ and recognized definitions. The AAMD also urges the Committee to evaluate whether there is a demonstrated need for such protection. Honduras must show that their cultural patrimony is in jeopardy of pillage and that U.S. import restrictions would be of substantial benefit in deterring a serious situation of pillage.⁶ AAMD members responding to the survey indicated that they had not seen any significant market for Honduran Colonial or Republican objects. If the United States is not a market, how can the imposition of U.S. import restrictions, even if done in concert with others, be of “substantial benefit in deterring pillage”?⁷

III. Recommended Changes to Article II of MOU

In light of the foregoing, the AAMD recommends that changes be made to Article II in order to expand the obligations to make available significant objects for cultural exchange, whether through exhibition loans or long-term loans. Specifically, the AAMD recommends that Article II, Section I be revised to read as follows:

- I. *The Government of the Republic of Honduras will seek to expand the exchange of its archaeological objects [and its ethnological materials] by :*
 1. *Using its best efforts to increase the number of exhibition loans of objects of archaeological or artistic interest to American museums and universities, to encourage the standardization of fees for such loans and to streamline 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 Honduran museums or similar institutions, recognizing the spirit of goodwill that exists between cultural institutions in both countries;*
 3. *Creating a single point of contact within the Instituto Hondureño de Antropología e Historia (the IHAH), for obtaining loan approvals and assisting in the authorization and export process.*

⁵ For example, a reasonable defined period before and after 1838, when Honduras became an independent republic.

⁶ 19 U.S.C. §2602(a)(1)(A) and (C).

⁷ 19 U.S.C. §2602(a)(1)(C)(i).

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

The AAMD hopes that stronger language will have a beneficial effect and further advance the collaborative purposes of the MOU, but *without* compromising its protective design.

IV. Conclusion.

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