

**Statement of the Association of Art Museum Directors concerning the Request by the Government of the People’s Democratic Republic of Algeria to the Government of the United States of America for the Imposition of Import Restrictions to Protect its Cultural Patrimony under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property**

**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 Memorandum of Understanding between the Governments of the United States of America and the People’s Democratic Republic of Algeria (“Algeria”) for the imposition of import restrictions on archaeological and ethnological material from Algeria representing its prehistoric through Ottoman heritage (the “Proposed MOU”) under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (the “Convention”) and section 2602 of the Convention on Cultural Property Implementation Act , 19 U.S.C. §§ 2601, *et seq.* (the “CPIA”<sup>1</sup>).

**II. Preliminary Statement**

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 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.”<sup>2</sup> Moreover, 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.

Notwithstanding the AAMD’s commitment to responsible stewardship of cultural patrimony, it is unable to support import restrictions pursuant to the Proposed MOU. The CPIA is very clear that four determinations must be satisfied in order to warrant an MOU.<sup>3</sup> Based on the Public Summary for Algeria<sup>4</sup> and independent research by the AAMD, a number of these determinations are not met in the case of Algeria. Even if they were satisfied, however, the scope of the Proposed MOU far exceeds the narrow protections contemplated by the CPIA. Accordingly, the AAMD respectfully submits that the Committee should not recommend the Proposed MOU at this time, and instead

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

<sup>2</sup> Introduction to the Revisions to the 2013 Guidelines on the Acquisition of Archaeological Material and Ancient Art.

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

<sup>4</sup> Public Summary of the Request by the Government of the People’s Republic of Algeria to the Government of the United States of America for Imposing Import Restrictions to Protect its Cultural Patrimony under Article 9 of the UNESCO Convention, <https://eca.state.gov/files/bureau/algeria-request-public-summary.pdf>.

should allow Algeria to submit a further proposal containing sufficient evidence that the required determinations are fully satisfied, together with a narrowed scope of proposed restricted objects.

### III. Background

Geographically, Algeria is the tenth largest country in the world,<sup>5</sup> sharing a border with Mauritania, Mali, Niger, Libya, Tunisia, and Morocco.<sup>6</sup> Border disputes exist between Algeria and Libya, Tunisia, and especially Morocco, which has the longest common border, stretching approximately 1,900 km.<sup>7</sup> These border disputes have given rise to inadequate border security and “exacerbated established smuggling networks[,] ultimately supporting what is characterized as a “flourishing informal economy.”<sup>8</sup> Such jurisdictional disagreements concerning “smuggling activities along the border”<sup>9</sup> are “obstructing the possibility of regional cooperation”<sup>10</sup> and, thus, this area is unprotected, volatile, and a hindrance in the efforts to protect Algeria’s cultural heritage. Borders “serve as channels for . . . smuggling goods – and facilitat[e] the movement of armed groups, which see these border regions as a natural breeding ground for ideological extremism.”<sup>11</sup>

Terrorist groups, such as al-Qa’ida in the Islamic Maghreb (AQIM)<sup>12</sup> and ISIL<sup>13</sup> affiliate, Jund al-Khilafah,<sup>14</sup> are active in Algeria.<sup>15</sup> Abdelhak Khiamé, the director of the Moroccan Central Bureau of Judicial Investigations, believes “that the proliferation of terrorist groups in the region was linked to the ‘passivity’ of Algeria,” which again manifests itself in a lack of regional cooperation along the borders, a problem documented as recently as 2018.<sup>16</sup> This is also confirmed in a report by The Refugee Documentation Centre (Ireland) stating “regional political and security instability [has]

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<sup>5</sup> Miklos Mattyasovsky, “The Largest Countries in the World,” *World Atlas* (last updated March 28, 2018), <https://www.worldatlas.com/articles/the-largest-countries-in-the-world-the-biggest-nations-as-determined-by-total-land-area.html>.

<sup>6</sup> All but one-fifth of Algeria’s land is covered by the Sahara Desert. See Algeria Country Profile, *BBC News* (January 8, 2018), <https://www.bbc.com/news/world-africa-14118852>.

<sup>7</sup> CIA, “Algeria,” *The World Factbook* (last updated June 6, 2018), <https://www.cia.gov/library/publications/the-world-factbook/geos/ag.html>.

<sup>8</sup> Jacques Roussellier, “Breaking North Africa’s Border Security Conundrum,” *Carnegie Endowment for International Peace* (April 5, 2018), <http://carnegieendowment.org/sada/75998>.

<sup>9</sup> “Country Profile: Algeria,” *Library of Congress* (May 2008), <https://www.loc.gov/rr/frd/cs/profiles/Algeria.pdf>.

<sup>10</sup> Jacques Roussellier, “Breaking North Africa’s Border Security Conundrum.”

<sup>11</sup> *Ibid.*

<sup>12</sup> Designated a Foreign Terrorist Organization in 2009, which was renewed in 2014 by John F. Kerry. See Department of State, In the Matter of the Review of the Designation of al-Qa’ida in the Islamic Maghreb (and other Aliases) as a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Nationality Act, as Amended, Public Notice 8727, Federal Register, 79:91 (May 12, 2014), <https://www.gpo.gov/fdsys/pkg/FR-2014-05-12/pdf/2014-10817.pdf>.

<sup>13</sup> a.k.a. ISIS (Islamic State of Iraq and Syria) and Daesh.

<sup>14</sup> Designated as a Global Terrorist by John F. Kerry, October 1, 2015. See Department of State, In the Matter of the Designation of Jund al-Khilafah in Algeria, a.k.a. Jak-A, a.k.a. Jund al-Khalifa fi Ard al-Jazayer, a.k.a. Jund al-Khilafah fi Ard al-Jaza’ir, a.k.a. Soldiers of the Caliphate in Algeria, a.k.a. Caliphate Soldiers of Algeria, a.k.a. Soldiers of the Caliphate in the Land of Algeria, a.k.a. Jund al Khalifa-Algeria, a.k.a. Jund al-Khalifa, a.k.a. Jund al-Khilafa Group as a Specifically Designated Global Terrorist pursuant to Section 1(b) of Executive Order 13224, as amended, Public Notice 9307, Federal Register 80:190 (October 1, 2015), <https://www.gpo.gov/fdsys/pkg/FR-2015-10-01/pdf/2015-25004.pdf>.

<sup>15</sup> Executive Summary, State Department, Algeria 2017 Human Rights Report, <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=277235#wrapper>.

<sup>16</sup> Jugurta Nam, “Morocco: New Charges Against Algeria,” *Observ’Algérie* (March 19, 2018), <https://observalgerie.com/actualite-algerie/politique/algerie-maroc-nouvelles-accusations-contre-lalgerie/>.

contributed to Algeria's terrorist threat" and terrorist groups as well as criminal networks operate "around Algeria's nearly 4,000 miles of borders."<sup>17</sup>

Politically, Algeria is "dominated by a closed elite based in the military and the ruling party, National Liberation Front (FLN)."<sup>18</sup> President Abdelaziz Bouteflika was elected over 19 years ago and "elections are distorted by fraud and other forms of manipulation."<sup>19</sup> Algeria "is under numerous pressures" and faces "serious political, institutional, demographic, and psychological constraints" due to the "weight of already established post-colonial liberation ideology, the power of religious extremism, and the authoritarian regime" which "created a challenging environment for cultural professionals."<sup>20</sup> Though central authority seems to reside with Minister of Culture through "a very centralised procedure," the bureaucratic system of the country "is too complex for simple centralisation, mixing formal and informal decision-making channels between state structures and civil society and invoking numerous stakeholders from other fields, in particular religion and security."<sup>21</sup> Although there are over "500 functioning cultural infrastructures" reported, there are only 16 museums, 4 heritage centers, and 3 cultural palaces – the largest portion of the places falling under this category are libraries and movie theatres.<sup>22</sup>

All of the four determinations and their application to Algeria should be viewed within the lens of this lack of border security, failure of regional cooperation, governmental stagnation, and lack of effective cultural institutions.

#### **IV. Algeria's Does Not Satisfy A Number of the Four Required Determinations**

In order to recommend that the Request be approved, the Committee must expressly find that all four determinations under CPIA are satisfied, which they are not.

##### **A. Algeria is not Taking Sufficient Measures under the Convention to Protect its Cultural Heritage**

The most obvious failure by Algeria to meet the determinations is the government's failure to take sufficient measures consistent with the Convention to protect its cultural patrimony.<sup>23</sup> The most glaring failures are the failure to protect the cultures of minorities; lack of adequate funding for protection; and a general lack of qualified individuals adequately trained in protecting and preserving cultural property.

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<sup>17</sup> Legal Aid Board, "Algeria - Researched and Compiled by the Refugee Documentation Centre of Ireland," *Refugee Documentation Centre (Ireland)* (January 25, 2018), 2, [https://www.ecoi.net/en/file/local/1425544/1788\\_1519744078\\_2501.pdf](https://www.ecoi.net/en/file/local/1425544/1788_1519744078_2501.pdf).

<sup>18</sup> *Ibid.*, 1.

<sup>19</sup> Freedom House, *Freedom in the World 2017* (July 21, 2017), [www.refworld.org/docid/59831ea413.html](http://www.refworld.org/docid/59831ea413.html).

<sup>20</sup> Damien Helly, European Union, Preparatory Action: Culture in EU External Relations, *Algeria Country Report* (March 19, 2014), 4; [http://ec.europa.eu/assets/eac/culture/policy/international-cooperation/documents/country-reports/algeria\\_en.pdf](http://ec.europa.eu/assets/eac/culture/policy/international-cooperation/documents/country-reports/algeria_en.pdf)

<sup>21</sup> *Ibid.*

<sup>22</sup> "Overview of the Culture Sector in Algeria," *MedCulture* (2014), [www.medculture.eu/country/infographics/algeria](http://www.medculture.eu/country/infographics/algeria).

<sup>23</sup> 19 U.S.C. § 2602(a)(1)(B).

## 1. Selective Preservation

Sunni Muslims make up 99% of the population of Algeria, but their culture does not represent 99% of the country's sites and objects needing protection – those belong to minority cultures. There exists “a crackdown on the religious minority” in Algeria with the persecution of “scores of Ahmadis.”<sup>24</sup> World Heritage Sites are among the compromised cultural heritage sites destroyed due to “recurrent clashes between Sunni Arabs and a Berber Minority (Mozabites).”<sup>25</sup> “Since 2013, intercommunal clashes between Ibadi Mozabites and Sunni Maliki Arabs in the Mزاب Valley have led to dozens of deaths . . . and the destruction of cultural heritage sites, including a UNESCO-classified Ibadite shrine.”<sup>26</sup>

Further evidence of the lack of respect for minority cultural heritage can be found in the attitudes toward Christian and Jewish sites. Catholic Churches and synagogues are left in disrepair or actually destroyed. In June 2017, a Catholic Church was destroyed in the city of Sidi Moussa and the question was asked “why was it not restored and listed as part of the national heritage?”<sup>27</sup> This bias appears to pervade even the Cultural Ministry's office, which has been criticized for its lack of transparency.<sup>28</sup>

## 2. Lack of Funding

Substantial resources are needed in order to protect and preserve Algeria's heritage sites. The majority of funding in the cultural sector comes from the State. In 2014, the Ministry of Culture received a mere .5% of the State Budget [or approximately \$313.8 million] for all purposes which was reduced by more than 50% compared to the allocable amounts allotted in 2011 and 2012.<sup>29</sup> Of that amount, according to Med Culture, only “.79% of the Ministry's 2014 budget goes to cultural and art associations, which reflects the State's hegemonic strategy with respect to culture. . .”<sup>30</sup>

By way of example, two World Heritage Sites, Kasbah of Algiers and Tipasa, have ongoing problems related to conservation and protection. The Kasbah of Algiers suffers from natural erosion, lack of maintenance of dwelling places, loss of traditional conservation techniques, uncontrolled land use, non-operational safeguarding plans, lack of coordination of actions, and land conversion.<sup>31</sup>

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<sup>24</sup> “Algeria: Stop persecuting a Religious Minority: 268 Persecutions of Ahmadis,” *Human Rights Watch* (September 4, 2017), <http://www.hrw.org/news/2017/09/04/algeria-stop-persecuting-religious-minority>.

<sup>25</sup> International Crisis Group, “Algeria's South: Trouble's Bellwether,” *Middle East and North Africa Report No. 171* (November 21, 2016), i, <https://www.crisisgroup.org/middle-east-north-africa/north-africa/algeria/algeria-s-south-trouble-s-bellwether>.

<sup>26</sup> Legal Aid Board, “Algeria - Researched and Compiled by the Refugee Documentation Centre of Ireland,” 1.

<sup>27</sup> Kamel Abderrahmani, “Church Demolition Near Algiers to Make Room for a Mosque Highlights Islamism's Hypocrisy,” *Asia News* (June 13, 2017), <http://www.asianews.it/news-en/Church-demolition-near-Algiers-to-make-room-for-a-mosque-highlights-Islamism%E2%80%99s-hypocrisy-41008.html>.

<sup>28</sup> Damien Helly, “European Union, Preparatory Action,” 5.

<sup>29</sup> Ammar Kessab, “Algeria Country Report,” Med Culture, Technical Assistance Unit of Med Culture Programme for the promotion of culture as vector of Human, Social and Economic Development in South Mediterranean Countries (2014), 9, <https://www.medculture.eu/sites/default/files/alg-gt-en-report-new-template.pdf>.

<sup>30</sup> *Ibid*, 1.

<sup>31</sup> UNESCO, “State of Conservation of Properties inscribed on the World Heritage List,” *World Heritage Committee* (July 2-12, 2017), 156, <https://whc.unesco.org/archive/2017/whc17-41com-7B-en.pdf>.

Tipasa suffers from deliberate destruction of heritage, erosion, illegal activities, the impacts of tourism, poor management activities, and marine transport infrastructure.<sup>32</sup> Historical deterioration is largely due to vandalism, theft, and uncontrolled visitation causing an accumulation of litter. Illegal construction, land disputes, and a proposed port are additional contributory factors to the problems that continue to plague this site.<sup>33</sup> In 2017, the World Heritage Committee “reiterat[ed] its request.....to submit the updated Management Plan” for the site and “expresse[d] concern about the possible negative effect of rainwater runoff and its stagnation on the archaeological structures.....urg[ing] the State party to consider the solution proposed by the joint World Heritage Centre/ICOMOS Advisory Mission of April 2017.”<sup>34</sup> This situation is emblematic of a broader problem: lack of effective Management Plans compounded by workers who lack qualifications to work in the cultural heritage field.

### **3. Lack of Qualified Individuals**

Two primary examples of Algeria’s need for experienced individuals to assist with protecting and preserving cultural property are the digitization of manuscripts and restoration of monuments and heritage sites in general.

Though the Public Summary touts Algeria’s efforts with respect to digitization<sup>35</sup>, this does not entirely reconcile with other reports. Digitization of Library Manuscripts ceased at the end of 2013 after facing “technical and organizational issues such as lack of qualified staff, work-flow problems, and the need for adequate equipment.”<sup>36</sup> For example, an international company which “use[d] robotic bound document scanning systems.....to digitize the manuscripts” irreparably shredded “parts from the most fragile manuscripts.”<sup>37</sup> Even after this incident, according to a survey performed in 2015, “lapses of knowledge related to the appropriate equipment that should be used in digitization of manuscripts and rare books”<sup>38</sup> still persist.

Even for those items that have been digitized, additional training in how to utilize the resource is required. As it stands now, in order to have an effective digitized database accessible to the public, a “knowledge of metadata” is required, which is lacking as is a “vital need for networks equipment such as servers and file storage,” which is due to the shortfall of funding, previously discussed. This shortfall continues to keep items that were successfully digitized from the public.<sup>39</sup> The bottom line is that in order to digitize and preserve such ancient and fragile items, more training and education is necessary.

Physical damage to heritage sites is often caused by unqualified workers. According to Walid Hamma and Alexandru-Ionuț Petrișor, when discussing the restoration of historical monuments in Tlemcen by the Algerian government, “these restorations took place very fast, resulting in the

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<sup>32</sup> 2017 State of Conservation: Tipasa, World Heritage Centre, UNESCO, <https://whc.unesco.org/en/soc/3595/> .

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Public Summary, 6.

<sup>36</sup> Nadjia Ghamouh and Meriem Boulahlib, Cultural Heritage Digitization Projects in Algeria: Case Study of the National Library, *International Federation of Library Associations and Institutions* 41 no. 3 (2014), 272, doi: 10.1177/0340035215603994

<sup>37</sup> Ibid, 275.

<sup>38</sup> Ibid, 277.

<sup>39</sup> Ibid.

massacre of monuments rather than the conserving of them.”<sup>40</sup> In another example, repair work on the 14<sup>th</sup> century Sidi El Benna mosque wound up being “a mutilation [rather] than a restoration” and air conditioning units as well as three water tanks introduced onto the site “disfigured the mosque.”<sup>41</sup> The individuals lacked training, which was also highlighted in the EU report on Algeria, whereby Damien Helly provided a roadmap that reflected the need for “initial and continuing training” and “developing the skills of the stakeholders by introducing training at the local level.”<sup>42</sup>

## **B. Less Drastic Remedies are Available**

Algeria has not demonstrated that import restrictions would be of substantial benefit in deterring a serious situation of pillage,<sup>43</sup> and that less drastic remedies are unavailable.<sup>44</sup> First, evidence shows that most of the problems facing the destruction of cultural heritage in Algeria are really in the past and, to the point they still exist, homegrown. In other words, import restrictions with the United States will not assist in the deterrence of such damage, destruction, and potential looting. Algeria must fix its own internal infrastructure and examine the effectiveness of the country’s laws, enforcement and deterrence, as well as allocate the necessary funds to education, restoration, and exploration.

One of the biggest issues is the absolute need for funding, training, and education, which would assist Algeria with the compliance issues required under the MOU. UNESCO as well as the EU,<sup>45</sup> especially France, are all working with Algeria to help resolve many of these issues, focusing on preservation, conservation, and even documentation of their cultural heritage. With the existence of the U.S. Ambassadors Fund for Cultural Preservation, funding is available for a multitude of projects. In fact current projects are ongoing in all but one of the neighboring border countries of Algeria.<sup>46</sup> This is just one example of how the U.S. could help further this desire by Algeria to implement a solid foundational plan that would help.

Moreover, non-government organizations (NGOs), like the Council of American Overseas Research Centers (CAORC), offered, as recent as this past March, monetary awards “to fund projects for urgent, emergent, or priority issues that need addressed quickly” and further states that “small grants are available for rapid emergency projects in Algeria” among other countries, should be consulted and encouraged to assist Algeria in their stated plight to protect their own cultural heritage.<sup>47</sup> As it stands now, the tools in which to do this are clearly missing.

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<sup>40</sup> Walid Hama and Alexandru-Ionuț Petrișor, “Assessing the Restoration of Sidi El Benna Mosque in Tlemcen (Algeria),” *International Journal of Conservation Science* 8:4 (October – December 2017), 590.

<sup>41</sup> *Ibid*, 594-595.

<sup>42</sup> Damien Helly, “European Union Preparatory Action,” 26-28

<sup>43</sup> 19 U.S.C. §2602(a)(1)(C)(i).

<sup>44</sup> 19 U.S.C. §2602(a)(1)(C)(ii).

<sup>45</sup> In 2012, an agreement was signed between the EU and Algeria which provided 24 million euros, 21.5 million euros contributed by the EU, to create the EU Heritage Programme in Algeria that focuses on heritage identification and recognition, protection, and management tools. See specifically Damien Helly, Algeria Country Report, 24.

<sup>46</sup> See the projects listed on AFCP Projects at World Heritage Sites, specifically in Morocco, Tunisia, Libya, Mali, and Mauritania, <https://eca.state.gov/cultural-heritage-center/ambassadors-fund-cultural-preservation/map-afcp-projects-world-heritage>.

<sup>47</sup> “Grantees Announced: RPI for Cultural Heritage Resources Program,” CAORC (March 27, 2018); <https://www.caorc.org/single-post/2018/03/27/Grantees-Announced-RPI-for-Cultural-Heritage-Resources-Program>.

## V. Emergency Conditions Do Not Exist

If the Committee determines to explore emergency restrictions under Section 2603 as an alternative to an MOU under Section 2602, such restrictions are similarly unsupported. In particular:

- **There is no demonstration of newly discovered archaeological or ethnological material “of importance for the understanding of the history of mankind” in jeopardy.**<sup>48</sup>
- There is no demonstration of archaeological or ethnological material “coming from any site recognized to be of high cultural significance if such site is in jeopardy.”<sup>49</sup>
- There is no demonstration of archaeological or ethnological material that is “part of the remains of a particular culture or civilization, the record of which is in jeopardy from pillage.”<sup>50</sup>

Therefore, absent any documented evidence of the above requirements, emergency actions cannot be imposed.

## VI. The Broad Request Falls Outside the Defined Scope of CPIA

Even if Algeria could satisfy the determinations required to support the Proposed MOU, which it cannot, the scope of the objects subject to the Proposed MOU is far too broad. Algeria seeks import restrictions for archaeological and ethnological material dated from the prehistoric period through the Ottoman Era period.<sup>51</sup> A beginning date for the prehistoric Pebble<sup>52</sup> culture is not defined in the Public Summary, but some have dated it “back to between 2 and 1 million years ago (2 1/2 million if the Omo bifacially flaked pebble is taken into consideration).”<sup>53</sup> Assuming the Ottoman Era ended around 1830, the scope of protection is incredibly vast—literally spanning millions of years.

The Proposed MOU also is substantially overly broad in terms of the description of objects for which Algeria seeks protection. It extends to nonspecific products of archaeological, terrestrial, and underwater exploration and research, as well as a broad range of tools, pottery, inscriptions, coins, seals, jewels, traditional clothes, weapons and funeral remains ambiguously defined as “antique objects.”<sup>54</sup>

In order to qualify for protection under CPIA, among other things, ethnological material must have “distinctive characteristics,” be of “comparative rarity” or contribute “to the knowledge of the

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<sup>48</sup> 19 U.S.C. §2603 (a)(1).

<sup>49</sup> 19 U.S.C. §2603(a)(2).

<sup>50</sup> 19 U.S.C. §2603(a)(3).

<sup>51</sup> Public Summary, 1.

<sup>52</sup> In the Public Summary this culture was spelled pebbel.

<sup>53</sup> L. Balout, *The Prehistory of North Africa, Methodology and African Prehistory*, ed. J. Ki-Zerbo, *UNESCO International Scientific Committee for the Drafting of a General History of Africa, Paris*; Heinemann Educational Books, London (1981), 569.

<sup>54</sup> Public Summary, 1.

origins, development, or history.”<sup>55</sup> Moreover requests need to be concise and predicated on a history of known looting instead of a blanket request seeking protection for all the cultural heritage of a country.

The CPIA’s legislative history clearly reflects Congressional intent to balance competing interests, while still providing assistance to countries currently experiencing uncontrolled destruction and looting of their cultural heritage. Congress worked to equalize “the structure of the statute and its effectuating mechanisms”<sup>56</sup> 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.”<sup>57</sup> The statute itself recognizes that import restrictions are “drastic.”<sup>58</sup> They should be enacted “only if *exacting criteria* [a]re satisfied.”<sup>59</sup> Requests for new bilateral agreements should not be taken lightly, as history is proving time and again that bilateral agreements are prone to multiple extensions—however unwarranted they might be.

If this Committee does decide to recommend the Proposed MOU, the Designated List must be concise, and apply only to a “narrow range of objects possessing certain characteristics”<sup>60</sup> and should be tailored by including reactive measures be put in place to stop known looting of specific cultural heritage proven to be under threat by Algeria. Designated Lists must be clearly defined roadmaps enabling importers and customs officials alike readily to identify what cannot be imported into the United States. The Committee’s and Treasury’s continued creation of overly broad, unspecific and unsupported Designated Lists not only negatively impacts the credibility of the Committee; they are not consistent with the law.

## **VII. Recommendations**

If the Committee recommends the Proposed MOU, it should draft Article II in such a way that its mandates are specific and capable of objective evaluation for compliance by Algeria. Wholly subjective language such as “best efforts” (plaguing bilateral agreements with several other countries) should be avoided altogether. *Measurable successes, indeed, have been observed and attributed to the specificity of Article II language.*<sup>61</sup>

The AAMD offers the following suggestions with respect to Article II. Similar suggestions were provided by the EU Assessment (as indicated by reference):

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<sup>55</sup> 19 U.S.C. § 2601(2)(c)(ii)(II).

<sup>56</sup> Andrew L. Adler and Stephen K. Rice, “Resolving the Disjunction between Cultural Property Policy and Law: A Call for Reform,” 64 *Rutgers Law Review* 117 (2011), 139.

<sup>57</sup> 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.

<sup>58</sup> Referring to the definition of import restrictions as a “drastic remedy” in 19 U.S.C. 2602(a)(1)(C)(ii).

<sup>59</sup> Stephen K. Urice and Andrew L. Adler, *Unveiling the Executive Branch’s Extra-legal Cultural Property Policy*, Miami Law Research Paper Series, University of Miami School of Law, <http://ssrn.com/abstract=1658519>.

<sup>60</sup> “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), 5, <http://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 this term []. 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, 4-5).

<sup>61</sup> Brian I. Daniels, *Recent Developments in the International Exchange of Museum Collections*, *Journal of Field Archaeology*, 37 no. 4 (2012), 328.

## Inventory of Cultural Heritage

- A. Currently UNESCO, ICCROM, and the Ministry of Culture have completed Inventory Sheets and therefore a plan needs to be implemented to effectuate the inventory of cultural heritage, including cultural heritage sites. Therefore Algeria needs to develop and implement a plan for completion of this task, create learning modules, provide financial resources, increase the number of cultural heritage employees, and the create a central public service position or department under the Ministry of Culture that is responsible for overseeing this project.<sup>62</sup>

## Education and Training

- B. Either under the Ministry of Vocational Training or the Ministry of Culture, develop and implement specific programs for training cultural heritage technicians and architects in the conservation and restoration of buildings and monuments. For movable heritage, develop and implement specific training programs for museum staff in basic skills for conservation, exhibition, and presentation of cultural objects.<sup>63</sup>
- C. Promote education in museums studies, archaeology, and cultural resource management through existing programs or other means of cooperation with the United States.
- D. Expand efforts to educate its citizens about the need to protect and preserve ALL of the country's cultural heritage, especially by expanding programs into schools and museums.

## Law Enforcement

- E. Train and deploy professional security guards or create a cultural heritage branch of the police force that will impose security measures, including the monitoring of sites through innovative means, such as the use of drones or other electronic surveillance systems.
- F. Thwart pillage through innovative and effective means and prevent the illegal sale and export of archaeological objects, especially at ports of transit and shipment and ensure the prompt prosecution of looters;
- G. Strengthen cooperation within Northern Africa, especially with border countries for the protection of the cultural patrimony in the region.
- H. Assess and revise the relative cultural heritage laws, incentives, and penalties, as necessary to improve the protection of its cultural patrimony as well as ensure the consistency of enforcement and effectiveness.

## Collaboration and Interchange

- I. Both governments should seek to encourage academic institutions, non-governmental institutions, and other organizations to cooperate in the interchange of knowledge and information about the cultural patrimony of Algeria and to collaborate in the preservation

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<sup>62</sup> This coincides with Activities 1.1-1.3 of Damien Helly, "European Union Preparatory Action," 25-26.

<sup>63</sup> See Activities 2.1-2.3 of Damien Helly, "European Union Preparatory Action," 26-28.

and protection of such cultural patrimony, particularly through recommended best practices in conservation and training.

- J. Work with other Saharan countries with respect to the protection of cultural heritage, emphasizing the cooperation especially along the border, of law enforcement, customs, or other officials that will stop illicit patrimony from leaving the country.
- K. The United States should provide technical assistance on the subjects of site security, cultural resource management, prevention of looting at museums and other institutions, and prevention of smuggling, as appropriate under existing programs in the public and/or private sectors with particular recognition on the destabilizing influence of extremism and terrorist groups in the Northern Africa region.
- L. Implement and publicize Algeria's national research strategy, which takes into account the interests, concerns, and priorities of the Government and its cultural authorities. In addition, review and revise, if necessary, and publish the procedures by which qualified foreign archaeologists and other scholars may apply for permission to undertake field research in Algeria, including explicit statements of any and all Government requirements, obligations, and conditions that might attach to such permissions.

#### Tourism and Management

- M. Develop and implement a prioritized management plan for the effective protection of cultural resources, giving increased attention to sustainable archaeological tourism as an economic resource.

#### Long-Term Loans and Exchange

- N. Adopt a uniform and transparent procedure regarding international loan requests, which includes providing a central point of contact within the Minister of Culture for the purpose of working with museums interested in long-term or exhibition loans so that the process and requirements are transparent and streamlined.
- O. Permit and encourage the exchange of archaeological and ethnological materials through exhibition and long-term loans for exhibition purposes with normative insurance provisions and loan fees.
- P. Encourage museums to carry out joint efforts with American counterparts, including, but not limited to, finalizing in a timely manner relevant contracts and lists of objects loaned and minimizing the logistical difficulties that may accompany any long-term loans or exhibitions.
- Q. Encourage American museums and universities to propose and participate in joint excavation projects authorized by the Ministry of Cultural Heritage with the understanding that certain of the scientifically excavated objects from such projects could be lent to American participants.

#### Reporting on Progress

- R. Provide annual reports to the United States that contain information and statistics about crimes of theft, clandestine excavation, trafficking (illicit trade and smuggling) and abuse of

official power, and, as it becomes available, information about prosecutions and convictions that relate to the MOU.

Finally, the Designated List should be crafted in such a way that it ensures restricted objects are truly of archaeological or ethnological interest within the scope of the CPIA,<sup>64</sup> and succinctly described in order to enable importers and customs officials to easily identify such objects.

### **VIII. Conclusion**

For all of the previously outline reasons, the Request should be denied. Alternatively, in the event the Committee supports the request, AAMD urges the Committee to issue a Designated List with clearly described items that fall under the definitions set forth under Sen. Report 97-564 and to craft an Article II that contains very specific measurable actions and requires interim reports to this Committee.

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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.

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<sup>64</sup> 19 U.S.C. § 2601(2)(C)(i)-(ii) (defining objects of “archaeological interest” and “ethnological interest”).