

**Statement of the Association of Art Museum Directors concerning the Request by the  
Government of the Republic of Ecuador to the Government of the United States of  
America concerning the Imposition of Import Restrictions to Protect its Cultural  
Patrimony under Article 9 of the 1970 UNESCO Convention**

**Meeting of the Cultural Property Advisory Committee**

**May 2, 2018**

**I. Introduction**

The Association of Art Museum Directors (the “AAMD”) respectfully submits this statement for consideration to the Cultural Property Advisory Committee (the “Committee”) in connection with the request by the Government of the Republic of Ecuador to the Government of the United States of America concerning the imposition of import restrictions to protect its cultural patrimony under Article 9 of the 1970 UNESCO Convention (the “proposed MOU”).

**II. No Meaningful Response to Ecuador’s Request can be Made**

The purposes of the public hearing before the Committee in connection with 1) a request for a Memorandum of Understanding, 2) renewal of a Memorandum or 3) the imposition of emergency restrictions are to *allow* the public to comment relative to the request, provide information useful to the Committee in its deliberations, and bring attention to potential issues related to the request then before the Committee. All of this demands a *reasonable* timeframe for a thoughtful, often exacting, response. Requests for MOUs are months, if not years, in the making, and yet the Committee has apparently embarked on a policy of truncated notice that frustrates and indeed hampers the very purposes of the public session.

This new and disturbing trend of extremely abbreviated response times and lack of available information began with the request by Libya. The collapsed timeframe inhibited meaningful public responses and conveyed the impression that the Committee was predisposed to grant the request irrespective of the scope or substance of public commentary.<sup>1</sup> In the case of the AAMD, such haste impedes any reasonable timeframe in which to survey members so that collective experiences and well-researched information can be provided to this Committee for the purpose of assisting with any recommendations to the President.

In considering Ecuador’s request, the Committee unfortunately continues this quite disturbing trend. Not only was this request unexpected, but the “Public Summary of Ecuador’s Request” was delayed until the evening hours of Friday, April 6, 2018; a mere nine days before the end of the comment period (allowing *only five business days* in which to prepare a response). The

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<sup>1</sup> June 16, 2017, a vague notice of the Request for Libya was published in the Federal Register; On July 3, 2017, the notice was issued by the Department of State about the meeting July 19th and 20th and that comments would be received until July 10, 2017. This provided a response time of seven days, which included a federal holiday. See AAMD’s Statement Concerning the Request from the Government of Libya to the Government of the United States of America under Article 9 of the 1970 UNESCO Convention [July 19, 2017].

original notice appeared on the Cultural Heritage Center’s website March, 21, 2018, and simply stated that the request was for “import restrictions on archaeological and/or ethnological materials representing Ecuador’s cultural patrimony from the pre-Columbian through Republican periods.”<sup>2</sup> This “notice” gave no hint of the vast net Ecuador proposed to cast, seeking protection for material dated even into the modern era.<sup>3</sup>

### **III. No Opportunity to Gather Important Information**

Because of the drastically short period in which to respond, the AAMD does not have the time to survey member museums regarding this request, let alone investigate whether Ecuador meets all criteria under the CPIA in order to qualify for protection under an MOU. The Committee is urged to set another public session so that the concerns of the museum community (and others) can be heard and considered. In the absence of such an opportunity, the AAMD cannot support this request. Indeed, the Committee leaves the AAMD with no other choice.

### **IV. Proposed Ethnological Material and Certain Works by Modern Artists Exceed the Authority under CPIA**

The AAMD is in a position to comment on one element of the request because it is deficient on its face. In the Public Summary Request by Ecuador, protection is sought for a broad range of archaeological and ethnological material which include “paintings and sculpture that are at least 100 years old....; medallion[s].... tools and utensils with ethnological value.... ; manuscripts more than 50 years old; and certain works by modern artists.”<sup>4</sup> While such vague and expansive timeframes are problematic in and of themselves – the requested restriction on ethnological material and works by modern artists is unprecedented. No MOU has covered modern art, and yet this proposed departure from the well-established norm is to be considered without specifics in a drastically short time period?

Further, the definition for ethnological material under CPIA is: “[I] the product of a tribal or nonindustrial society, and [II] important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people.”<sup>5</sup> Senate report 97-564 adds “while these materials do not

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<sup>2</sup>The date that appears on the website is March 20<sup>th</sup>, but it was not available for public review until the 21<sup>st</sup>. Cultural Property Advisory Committee Meeting May 2-4” 2018. *U.S. Department of State, Bureau of Educational and Cultural Affairs, Media Center*. U.S. Department of State. March 20. <https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-may-2-4>. Also, the late publication of the was not until April 4<sup>th</sup>, see Notice of Receipt of Request from the Government of the Republic of Ecuador under Article 9 of the 1970 UNESCO Convention,” Federal Register, 83:65 (April 4, 2018), 14538; Notice dated March 21, 2018.

<sup>3</sup>Lack of transparency is not confined to requests. The contents of amended MOUs are still unknown, despite vague announcements in the Federal Register. The amended Article II has yet to be updated for the following countries on the Committee’s website: Greece, Cyprus, and Guatemala [as of April 10, 2018]. This is problematic as no publication of the MOU in its current form is available to anyone on the outside who may have an interest in working with these countries.

<sup>4</sup>Public Summary Request by the Government of the Republic of Ecuador to the Government of the United States of America to Impose Import Restrictions to Protect its Cultural Patrimony under Article 9 of the 1970 UNESCO Convention; 1.

<sup>5</sup> 19 U.S.C. 2601(2)(C)(ii).

lend themselves to arbitrary age thresholds, the committee intends this definition, to encompass only what is sometimes termed ‘primitive’ or ‘tribal’ art, such as masks, idols, or totem poles, produced by tribal societies in Africa and South America....The committee does not intend the definition of ethnological materials under this title to apply to ... [objects that] have relatively little value for understanding the origins or history of a particular people or society.”<sup>6</sup> The request is certainly outside the scope of this definition, especially when “modern” is employed to describe certain property. One can hardly believe that whoever wrote the Ecuadorian request had this definition in mind when suggesting that manuscripts made in 1968 or sculptures made in 1918 are “primitive” or “tribal,” or that works of living artists today remotely satisfy this definition. To argue for such inclusion is a dramatic departure from the law and prior practice. To the contrary, this request requires a careful review by the Committee with the benefit of fully-developed commentary by the public, which is not happening here.

## V. Conclusion

For the reasons stated above, the AAMD cannot support this request. That is not to say that the AAMD would not support a request from Ecuador, which seems to have done much to protect its cultural patrimony and where there may be areas deserving of import restrictions, but the process adopted by the Committee precludes the support that might otherwise be forthcoming.

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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>6</sup> U.S. Sen. Rpt. 97-564 (September 21, 1982), 5.