

Statement of the Association of Art Museum Directors Opposing any Bilateral Agreement Between the United States and the Arab Republic of Egypt

Meeting of the Cultural Property Advisory Committee to Review Request From the Government of the Arab Republic of Egypt to Impose United States Import Restrictions on Archeological and Ethnological Material from Egypt Representing Its Prehistoric through Ottoman Heritage

June 2, 2014

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 deplors 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. It 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. Executive Summary

The Cultural Property Advisory Committee (the “Committee”) should not recommend any memorandum of understanding (“MOU”) between the government of the United States and the government of the Arab Republic of Egypt (“Egypt”) or emergency restrictions at this time. There are serious concerns about Egypt meeting the criteria for an MOU, or the conditions existing for emergency restrictions, as required under the Cultural Property Implementation Act, 19 U.S.C. §§ 2601-2613 (the “CPIA”). Egypt’s recent history raises concerns about its protection of its cultural property. To the extent the Committee nevertheless determines to recommend an MOU, careful consideration should be given to its scope and duration, and efforts should be made to facilitate and streamline long-term loans of archeological and ethnological material.

III. Is Egypt Meeting the CPIA Determinants?

The Committee is required to make recommendations with respect to whether the United States should enter into an MOU or implement emergency restrictions.¹ With respect to an MOU, the Committee is required to find that four determinants are satisfied with request to an MOU.² At this time, Egypt fails to satisfy at least two of the four determinants. Egypt cannot demonstrate that it is taking measures to protect its cultural property consistent with the 1970 UNESCO Convention.³ Further, there are not sufficient market countries with similar restrictions in place.⁴

A. *Legitimate Concerns Exist as to Whether Egypt Adequately Protects Its Cultural Property*

An MOU is unwarranted at this time because Egypt's well-established history is replete with failure to protect cultural property.⁵

In the Public Summary, Egypt is quick to cite various examples of laws created to protect its cultural property⁶, which *at most* is only half of the equation. Laws without enforcement are impotent.⁷ Egypt "is considered to be a soft state, meaning a state that passes laws but does not enforce them [T]he rules are made to be broken and it enriches those who break them . . . people clamor for positions of influence so they may turn them into personal gain."⁸ Police are not even responding to "ordinary crime," creating a vacuum of protection for archeological sites and "allow[ing] for the systematic looting and destruction of many sites of historic and artistic interest."⁹

Egypt's overwhelming propensity to ignore the law is reflected further in Egypt's Corruption Perception Index. On a scale of 0 (highly corrupt) to 100 (very clean), Egypt posted a mere 32 in 2013, showing no improvement over 2012.¹⁰ Furthermore, in the relative rankings of 175 countries, Egypt was ranked the 114th worst country on the list.¹¹ In the global

¹ 19 U.S.C. §2605(f)(1)(C).

² 19 U.S.C. §§2602(a)(1) & 2605(f)(1).

³ 19 U.S.C. §2602(a)(1)(B).

⁴ 19 U.S.C. §2602(a)(1)(C).

⁵ 19 U.S.C. §2602(a)(1)(B).

⁶ *Public Summary [of the] Request by the Government of the Arab Republic of Egypt to United States of America for Imposing Import Restrictions to Protect Its Cultural Patrimony Under Article 9 of the UNESCO Convention (1970)* ("Summary") at 3-4.

⁷ Hanna, Monica. *What Has Happened to Egyptian Heritage After the 2011 Unfinished Revolution*, Journal of Eastern Mediterranean Archeology and Heritage Studies, Penn State University Press, Vol. 1, No. 4 at 372 (2013).

⁸ Rossi, Laura. *The Politics of Selective Preservation: a Study of Causes and Consequences of Cultural Heritage Destruction During Peace - The Cases of Afghanistan, Egypt, and Libya*, A Thesis Submitted to the Graduate School of New Brunswick Rutgers, the State University of New Jersey, Ann Arbor: ProQuest LLC, January 2013, at 48 (internal quotations omitted).

⁹ Hanna, *supra* note 7, at 372.

¹⁰ *Corruption Perceptions Index 2013*, Transparency International, available at: <http://cpi.transparency.org/cpi2013/results> (last visited May 7, 2014).

¹¹ *See id.*

classroom, granting Egypt's request for an MOU simultaneously rewards a failing student and contradicts the CPIA's design to help those who first help themselves.

Worse than Egypt's failure to enforce laws protecting cultural property, however, are affirmative efforts to destroy it in the name of politics, religion, or development. St. Catherine's Monastery, listed on UNESCO's World Heritage List, is the subject of a demolition suit commenced under the guise of "national security."¹² Religious leaders regularly order the destruction of "pagan" antiquities.¹³ Construction contractors illegally acquire large tracts of land, then divide them for resale to third parties for the construction of homes, businesses, cemeteries, or agricultural use.¹⁴ This "explosion of illegal building . . . is endangering Egypt's ancient treasures around the country," including the complex of Dahshour and famed Giza Pyramids outside Cairo.¹⁵ The police are of little help, having refused to carry out orders directing removal of illegal construction.¹⁶

The cumulative result of Egypt's situation is the looting and destruction of archaeological areas—many of which are altogether unexplored.¹⁷ One must question the vigilance of Egypt's Ministry of Antiquities, which is known to *permit* the very acts it was designed to prevent.¹⁸ None of this is unnoticed by UNESCO, itself considering removing certain Egyptian sites from the World Heritage List.¹⁹ In all, the country "suffer[s] from a systematic lack of interest towards the archeological and cultural heritage of Egypt, the total lack of political will to protect and enhance the archeological areas, and even an ideological tendency to de-legitimize the pre-Islamic past as an essential component of national identity."²⁰

B. *Egypt Cites No Other Countries with Import Restrictions*

¹² El-Gergawi, Sherri. *Retired Army General Wants Egypt's St. Catherine's Monastery Demolished*, April 13, 2014, available at: <http://english.ahram.org.eg/NewsContentPrint/1/0/98907/Egypt/0/Retired-army-general-wants-Egypt-St-Catherines-Mo.aspx> (accessed May 1, 2014).

¹³ Heil, Betsy. *Unchecked Looting Guts Egypt's Heritage, With One Ancient Site "70 Percent Gone,"* TribLIVE, June 15, 2013, available at: <http://triblive.com/usworld/world/4198276-74/bones-says-site#axzz30VzdC5aK> (accessed May 1, 2014)

¹⁴ Hanna, *supra* note 7, at 372.

¹⁵ Keath, Lee and Sarah El Deeb. *New Cemetery Endangers Egypt's More than 4,500-Year-Old Pharaonic Necropolis*, January 29, 2013, available at: http://www.cultureindevelopment.nl/news//dossier_heritage_egypt/1722/new_cemetery_endangers_egypt (accessed May 5, 2014).

¹⁶ *See id.* (discussing police's refusal to carry out order for removal of illegal construction issued by the Minister of Antiquities).

¹⁷ Hanna, *supra* note 7, at 372.

¹⁸ Farouk, Dalia. *"Save Cairo" Initiative Aims to Protect Ancient Buildings in Egypt's Capital*, April 15, 2014, available at: <http://thecairopost.com/news/106539/news/save-cairo-initiative-aims-to-protect-ancient-buildings-in-egypts-capital> (accessed May 1, 2014) (discussing how the Ministry of Antiquities allowed the creation of a seven-acre park in Egypt's first Islamic capital, Fustat, "neglecting the fact that it is considered to be one of the most important regions in Egypt that contains Islamic monuments.").

¹⁹ Bakr, Thoraia Abou. *Cairo Library Launches a Campaign to Save Heritage*, Daily News Egypt, April 30, 2014, available at: <http://www.dailynewsegypt.com/2014/04/30/cairo-library-launches-campaign-save-heritage> (accessed May 1, 2014) (discussing how illegal construction is causing UNESCO to consider removing historic Cairo from the list of World Heritage Sites).

²⁰ Hanna, *supra* note 7, at 372.

The Public Summary lacks any indication that other market countries have imposed trade restrictions on Egyptian cultural property comparable with those of the United States under the CPIA.²¹ Presumably, much will be made of the bilateral agreement between Switzerland and Egypt. A careful reading of that agreement however shows significant deficiencies. The CPIA requires the Federal government to hold, seize and forfeit designated property.²² The Swiss agreement merely creates a private right of action whereby Egypt can bring an action in a Swiss court to recover illegally exported designated property. Furthermore, the property covered by the Swiss agreement only encompasses specifically annexed types of antiquities and nothing beyond 1500 and nothing that is ethnological in nature.

Some may also argue that the adoption by a market country of the 1970 UNESCO Convention satisfies the requirement set forth in 19 U.S.C. §2602(a)(1)(C). This argument ignores the purpose of that section. The CPIA provides specific, governmental, customs and enforcement measures to stop designated objects at the border or seize them after illegal entry. The Convention does not.

Some may argue that the EU Directive (Council Directive 93/7/EEC) is a “similar” restriction. The EU Directive is an export regime. Furthermore, as admitted by the European Commission itself in a proposal for changes to the Directive, “it appears that Directive 93/7/EEC is barely used and is of limited effect.”²³ Even a proposed new Directive will not apply to Egyptian antiquities. As a result, Europe and Austria (cited as markets by Egypt) are, and will remain, markets without “similar restrictions” as required by the CPIA.

IV. Emergency Conditions Do Not Exist

If the Committee determines not to recommend an MOU, but rather to recommend emergency restrictions under 19 U.S.C. §2303, such a recommendation would not be supported by the request or the facts. The Summary is devoid of any mention of whether an “emergency condition” exists. For purposes of the CPIA and otherwise, one does not. There is no proof of *newly discovered material* important for understanding the history of mankind.²⁴ There is no mention of material coming from any site recognized to be of high cultural significance and jeopardized by pillage, dismantling, dispersal, or fragmentation of *crisis proportions*.²⁵ There is no proof offered that the record of Egypt’s culture or civilization is jeopardized by pillage, dismantling, dispersal, or fragmentation which is, or threatens to be, of *crisis proportions*.²⁶ Were any of these circumstances to exist, then Egypt presumably would not have delayed until April 2014 to request CPIA protection. Indeed, one could certainly argue that Egypt timed the request in dubious proximity to late May 2014, when elections are expected to confirm Egyptian

²¹ 19 U.S.C. §2602(a)(1)(C).

²² 19 U.S.C. §2602(b).

²³ European Commission. *Press Release: European Parliament Approves New Provisions for the Return of National Treasures*, April 16, 2014, available at: http://europa.eu/rapid/press-release_IP-14-430_en.htm?locale=en (accessed May 12, 2014).

²⁴ 19 U.S.C. §2603(a)(1).

²⁵ 19 U.S.C. §2603(a)(2).

²⁶ 19 U.S.C. §2603(a)(3).

Army Chief Abdel Fattah el-Sisi as president of Egypt’s new military government²⁷—one searching for international recognition of any kind. If import restrictions are to be considered, they should be considered carefully and with moderation, based on a clear understanding of the facts and taking into account mutual commitments, not limited, unilateral, emergency restrictions.

V. Appropriate Provisions to Facilitate Cultural Exchange

Any MOU must be consistent with the general interest of the international community in the interchange of cultural property.²⁸ Accordingly, the AAMD recommends that the following provisions be included in any MOU with Egypt:

The Government of the Arab Republic of Egypt 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 United States museums and universities, to encourage the standardization of reasonable fees for such loans and to streamline and expedite 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 United States and Egyptian museums or similar institutions, based upon reasonable and customary loan fees, recognizing the spirit of goodwill that exists between cultural institutions in both countries;*
3. *Streamlining and expediting the loan approval process within the Ministry of Antiquities for obtaining loan approvals.*

VI. Conclusion

Evaluating whether to impose CPIA import restrictions to yet another nation should not be undertaken lightly. Until a stable government is in place and effective measures to protect sites, curb corruption and prosecute looters of all cultural property are actually implemented, an MOU with Egypt is premature. Furthermore, no “condition” exists that has not existed for years, so that emergency restrictions are not warranted at all.

That looting has occurred and continues is undeniable, but this fact alone is insufficient to justify the heavy burden of import restrictions. If significant steps are taken by Egypt in the future, revisiting an MOU may be warranted. Until then, however, the Committee should not

²⁷ Fisk, Robert. *Why Dictators Hold Elections: Abdel Fattah al-Sisi, Bashar al-Assad and the Façade of Legitimacy*, May 9, 2014, available at: <http://www.independent.co.uk/voices/commentators/fisk/why-dictators-hold-elections-abdel-fattah-alsisi-bashar-alassad-and-the-faade-of-legitimacy-9347585.html> (accessed May 12, 2014).

²⁸ 19 U.S.C. §2602(a)(1)(D).

endorse import restrictions where the very government requesting the salve is also a substantial cause of the sore.