

Statement of the Association of Art Museum Directors Concerning the Request by the Government of Turkey 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

January 21, 2020, Meeting of the Cultural Property Advisory Committee

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 Turkey 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 “MOU”). The Government of Turkey (“Turkey”) requests protection for a wide range of archaeological materials dating from the Paleolithic (1,200,000 B.C.E.) up to the Ottoman period (1770 C.E.) and ethnological materials dated from the 1st century C.E. to 1923, which include objects that belonged to the founder of the Turkish Republic, Mustafa Kemal Atatürk.

II. Preliminary Statement

The AAMD deplors the illicit acquisition of archaeological and ethnological items; however, the current request by Turkey for international and bilateral cooperation to assist against the illicit trafficking of cultural property is troubling. For many types of cultural property, an MOU will not curb looting and destruction because those actions are being carried out by the Turkish state itself. Furthermore, Turkey continues to engage in human rights abuses, especially of religious minorities, that is entirely inconsistent with U.S. policy.

MOUs are not created in a vacuum and “should be conferred only with due regard for our overall relationship with that country.”¹ For these and other reasons explained below, an MOU is entirely inconsistent with applicable law and overarching U.S. Policy.

III. The Law the Committee is Required to Consider (and Turkey is Required to Satisfy)

In order to recommend that the United States enter into the proposed MOU, the Committee is *required* to find that *all four* of the following determinants are *satisfied*:

- (1) the cultural property on the would-be designated list is in jeopardy from pillage;
- (2) Turkey has taken measures consistent with the 1970 UNESCO Convention to protect its cultural patrimony;
- (3) the application of import restrictions, if applied in concert with similar restrictions implemented, or to be implemented within a reasonable amount of time by those

¹ Charles Z. Wick & George P. Shultz, *Ronald Reagan Presidential Library Digital Library Collections; Collection: Roberts, John G./Cultural Property Review Board (1 of 4); Box 15* (1985), <https://www.reaganlibrary.gov/sites/default/files/digitallibrary/smf/counsel/roberts/box-015/40-485-6908381-015-016-2017.pdf>.

- nations individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage, and remedies less drastic than import restrictions are unavailable; and
- (4) the application of import restrictions is consistent with the international community in the interchange of cultural property.²

As detailed below, Turkey does not satisfy any of these determinants; therefore, the Committee cannot recommend that the United States enter into the proposed MOU.

IV. Turkey is Not Protecting, but Rather Destroying, Its Cultural Patrimony

From intentional destruction to complacency, the Turkish government itself is to blame for much of the looting, lack of preservation, and destruction of Turkey's rich cultural heritage. Archaeologists readily "observe[] that the regional authorities have failed to apprehend almost any of the looters that rob tombs, and instead insist that the archaeologists [themselves] repair the damage the illegal excavators have caused."³ Despite looting complaints by Turkish citizens, "the government has not implemented any safeguarding measures."⁴ Shortfalls in funding, resources, and infrastructure compromise Turkey's ability to monitor its coastline.⁵ In addition, Turkey is considered a "market country" with respect to ISIL looted artifacts⁶ as well as a transit country for conflict zones and cultural goods trafficked from the Middle East, with a recorded 1,366 cases of attempted export of cultural goods since 2013.⁷ Purchasers are largely from the Gulf States, Syria,⁸ and Europe.⁹

As discussed in more detail below, the results of Turkey's action or inaction mean that Turkey fails to satisfy the first, second and third determinants.

1. Destruction of Cultural Heritage of Minority Cultures and Religions

² 19 U.S.C. §§ 2602(a)(1) & 2605(f)(1). The Cultural Property Implementation Act, 19 U.S.C. § 2601, *et seq.*, is sometimes referred to herein as "CPIA."

³ Merve Stolzman, *Turkey Rules: Cultural Heritage Protection Efforts Explained*, CENTER FOR ART LAW, March 26, 2018, <https://itsartlaw.org/2018/03/26/turkey-rules/> (last visited Dec 30, 2019).

⁴ *Id.*

⁵ *Id.*

⁶ David W. Bowker, Laura Goodall & Rebecca A. Haciski, *Confronting ISIS's War on Cultural Property*, 20 AMERICAN SOCIETY OF INTERNATIONAL LAW (2016), <https://www.asil.org/insights/volume/20/issue/12/confronting-isis-war-cultural-property> (last visited Dec 30, 2019).

⁷ FIGHTING ILLICIT TRAFFICKING IN CULTURAL GOODS: ANALYSIS OF CUSTOMS ISSUES IN THE EU (FINAL REPORT), 108 (2017), https://ec.europa.eu/taxation_customs/sites/taxation/files/annex_08_dg_taxud_study_fighting_illicit_trafficking_in_cultural_goods_en.pdf.

⁸ Russell Howard, Jonathan Prohov & Marc Elliott, *Digging In and Trafficking Out: How the Destruction of Cultural Heritage Funds Terrorism*, 8 COMBATING TERRORISM CENTER AT WEST POINT (2015), <https://ctc.usma.edu/digging-in-and-trafficking-out-how-the-destruction-of-cultural-heritage-funds-terrorism/> (last visited Dec 30, 2019).

⁹ Neil Brodie & Isber Sabrine, *The Illegal Excavation and Trade of Syrian Cultural Objects: A View from the Ground*, 43 JOURNAL OF FIELD ARCHAEOLOGY 74–84, 77 (2018), <https://traffickingculture.org/app/uploads/2018/10/Brodie-and-Sabrina-2018.pdf> (last visited Dec 30, 2019).

While seeking the assistance of international partners is one step in protecting a country's cultural heritage, no strategy for protection and preservation can be successful without first undertaking efforts within a country's own borders.¹⁰ This entails a "solemn undertaking" to fight the dangers of "the impoverishment" of cultural heritage "with the means at their disposal, and particularly by removing their causes, [and] putting a stop to current practices...."¹¹ The Convention itself states that "it is incumbent upon every State to protect the cultural property existing within its territory" and to "ensure that all" collections are held by cultural institutions "in accordance with universally recognized moral principles."¹² Article 12 of the Convention mandates that State Parties must "respect the cultural heritage within the territories ... of which they are responsible."¹³

The Convention plainly mandates protecting the heritage of past civilizations, no matter their origin or religious beliefs. Turkey, however, chooses to ignore these mandates with respect to the cultural property of its religious and cultural minorities. For example, the Turkish government destroyed two UNESCO World Heritage Sites where large populations of religious and cultural minorities lived.¹⁴

The first is Diyarbakir in the Suriçi District, which was designated a site with *Outstanding Universal Value* in 2015 due to its importance during the Hellenistic, Roman, Sassanid, Byzantine, Islamic and Ottoman eras.¹⁵ This area was occupied by minority cultures and religions, especially a large Kurdish population. The Turkish government's destruction of Diyarbakir was the subject of a special report by the UN Committee for Human Rights in 2017, detailing systematic human rights violations including the intentional destruction of settlements and displacement of hundreds of thousands of people. Historic buildings and registered cultural monuments were bulldozed and dumped into the Tigris River.¹⁶ No serious effort was made to rescue authentic pieces of monuments amongst the debris, which itself "violated existing Turkish laws and regulations."¹⁷

¹⁰ UNESCO, *Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (UNESCO, Paris, 1970) 6 (2015), http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/OPERATIONAL_GUIDELINES_EN_FINAL_FINAL.pdf.

¹¹ *Id.* at 7.

¹² *Id.* at 5–6.

¹³ UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, *Text of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Export and Transfer of Ownership of Cultural Property*, <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/text-of-the-convention/> (last visited Dec 30, 2019).

¹⁴ World Heritage Watch Report on the Destruction of Sur, ANF NEWS, <https://anfenglishmobile.com/culture/world-heritage-watch-report-on-the-destruction-of-sur-20373> (last visited Dec 30, 2019).

¹⁵ Diyarbakir Fortress and Hevsel Gardens Cultural Landscape, UNESCO WORLD HERITAGE CENTRE, <https://whc.unesco.org/en/list/1488/> (last visited Dec 31, 2019).

¹⁶ Leela Jacinto, *Destruction of Kurdish Sites Continues as Turkey Hosts UNESCO*, FRANCE 24, July 14, 2016, <https://www.france24.com/en/20160714-turkey-unesco-heritage-sites-damage-kurdish-diyarbakir-sur> (last visited Dec 30, 2019); FIGHTING ILLICIT TRAFFICKING IN CULTURAL GOODS: ANALYSIS OF CUSTOMS ISSUES IN THE EU (FINAL REPORT), *supra* note 7 at 108; Sur'u Ziyaret Eden Arkeologlar: Pek çok Kültür Varlığı Tamamen Yok Oldu, DİKEN, July 1, 2018, <http://www.diken.com.tr/suru-ziyaret-eden-arkeologlar-pek-cok-kultur-varligi-tamamen-yok-oldu/> (last visited Dec 30, 2019).

¹⁷ Destruction of Sur on World Heritage Watch Report 2018, ANF NEWS, <https://anfenglish.com/culture/destruction-of-sur-on-world-heritage-watch-report-2018-27336> (last visited Dec 30, 2019).

This destruction occurred at the same time the UNESCO World Heritage Committee was meeting in Istanbul,¹⁸ highlighting Turkey's brazen indifference toward its minority cultural patrimony.

In this same area, Christian churches, such as the historic Armenian Surp Giragos Catholic Church and the "the 1700-year-old Syriac Orthodox Church of the Virgin Mary[,]” which is characterized as an “‘indispensable’ holy site for Orthodox Christians[,]”¹⁹ were seized or destroyed by the Turkish government.²⁰ A Jewish Synagogue that sat on the site, believed to be where Elijah became a prophet, was also destroyed.²¹ Moreover, expropriation orders were issued whereby the state took possession and control of many of these heritage sites. Local officials criticizing the government were arrested and, because the expropriation orders violated then-existing law, the law was simply changed in order to “provide a legal basis for the destruction in progress.”²²

The second site is Hasankeyf, where the Ilisu Dam now sits, submerging a World Heritage Site²³ that was declared a natural conservation area in 1981²⁴ and was considered to be a “living museum” spanning more than nine civilizations, including the Neolithic²⁵ as well as Byzantine, Roman and Ottoman Empires.²⁶ This area contained more than 300 archaeological sites.²⁷ Ignoring Article 6 of the 1970 UNESCO Convention, Turkey's Constitutional Court gave the final approval²⁸ for the dam project that is destroying “evidence for one of the oldest organised human settlements ever discovered.”²⁹ Ironically, Turkey saw fit to flood the very same cultural patrimony for which it now seeks import restrictions.

¹⁸ Jacinto, *supra* note 16.

¹⁹ Images Show Extent of Damage to Diyarbakir's Armenian Catholic Church, THE ARMENIAN WEEKLY, February 16, 2016, <http://asbarez.com/146093/breaking-images-show-extent-of-damage-to-diyarbakirs-armenian-catholic-church/> (last visited Dec 30, 2019).

²⁰ *Id.*

²¹ Figen Günes, *A Synagogue in Turkey's Largest Kurdish City was Where Elijah Became a Prophet — But Now it is Rubble*, THE JEWISH CHRONICLE, July 12, 2018, <https://www.thejc.com/news/world/synagogue-in-turkey-s-largest-kurdish-city-diyarbak%C4%B1r-where-elijah-became-a-prophet-now-it-is-rubble-1.467065> (last visited Dec 30, 2019).

²² Ercan Ayboğa, *SUR: The Turkish State's Systematic Destruction and Commercialization of a World Heritage Site*, KOMUN ACADEMY (2019), <https://komun-academy.com/2019/03/25/sur-the-turkish-states-systematic-destruction-and-commercialization-of-a-unesco-world-heritage-site/> (last visited Dec 30, 2019).

²³ Oya Armutçu, *Ancient Town of Hasankeyf One Step Closer to Destruction After Top Court's Decision*, HÜRRIYET DAILY NEWS, January 17, 2018, <http://www.hurriyetdailynews.com/ancient-town-of-hasankeyf-one-step-closer-to-destruction-after-top-courts-decision-125872> (last visited Dec 30, 2019).

²⁴ *Id.*

²⁵ Kareem Fahim, *A Turkish Dam is about to Flood one of the Oldest Continuously Settled Places on Earth*, WASHINGTON POST, November 27, 2019, https://www.washingtonpost.com/world/middle_east/a-turkish-dam-is-about-to-flood-one-of-the-oldest-continuously-settled-places-on-earth/2019/11/26/26d327f2-0d48-11ea-8054-289aef6e38a3_story.html (last visited Dec 30, 2019).

²⁶ Armutçu, *supra* note 23.

²⁷ Binayak Das, *Archaeological Sites Being Destroyed to Build Dam in Turkey*, SIX DEGREES NEWS, August 21, 2017, <https://www.sixdegreesnews.org/archives/17261/archaeological-sites-being-destroyed-to-build-dam-in-turkey> (last visited Dec 30, 2019).

²⁸ Armutçu, *supra* note 23.

²⁹ *Id.*

For the reasons set forth above, Turkey fails to meet the second determinant. Turkey is not protecting its cultural heritage but rather, in many instances, intentionally destroying it.

2. Lack of Funding, Carelessness, and Intentional Destruction of Cultural Heritage Sites by the Government and Contractors

Rich heritage sites in Turkey are reported to be damaged, unmonitored, and ineffectively managed due to the lack of financial support by the government and available workers. Archaeologists also refer to several sites that have been intentionally flooded, covered in concrete, or are no longer excavated because of government-sponsored infrastructural projects.

The 12,000-year-old town of Hasankeyf, Allianoi, a Roman spa town, and parts of ancient Zeugma, which is on UNESCO's Tentative List, are buried under sand and water because of Turkey's controversial dam projects.³⁰ While campaigning in 2015, "then Prime Minister of Turkey Ahmet Davutoglu . . . faced criticism from historians for nailing a large campaign poster to the famous Valens Aqueduct in Istanbul and causing physical damage to the site as a result."³¹ All in all, the Turkish government is routinely criticized by foreign and Turkish historians and archaeologists for lacking "the will to protect all of Turkey's cultural artifacts and historic sites."³² One archaeologist stated, "[t]he members of all political parties need a serious awakening on the importance of conserving historical heritage . . . [and] that destroying historical heritage is detrimental to the country."³³

Archaeologists have also criticized the Ministry of Culture for its work on the ancient site of Gobeklipe, the world's oldest known temple area, where careless work, heavy equipment, and concrete used in building a walkway caused irreparable damage.³⁴ This is just one example of modern buildings being constructed on ancient sites with the Ministry of Culture's full knowledge, "damaging valuable Neolithic remains waiting to be excavated beneath the ground."³⁵

For the reasons set forth above, Turkey fails to meet the second and third determinants. Turkey failed to protect its cultural heritage and there are less drastic remedies than import restrictions that Turkey can undertake itself.

3. Museums of Kariye and Hagia Sophia

Due to a recent ruling by Turkey's Council of State, two World Heritage Sites are in jeopardy of being converted from museums, standing as a witness to the rich history and testimony of Turkey's influence of Christianity and Islam, into functioning mosques. The ruling was made regarding the Kariye Museum. A former 14th c. Byzantine Church of the Savior in Chora, containing frescos

³⁰ Stolzman, *supra* note 3.

³¹ *Id.*

³² Barçin Yinanç, *Topkapı Palace Risk of Collapse 'The Result of Years of Neglect of Historical Heritage,'* HÜRRIYET DAILY NEWS, October 3, 2016, <http://www.hurriyetdailynews.com/topkapi-palace-risk-of-collapse-the-result-of-years-of-neglect-of-historical-heritage-104509> (last visited Dec 30, 2019).

³³ *Id.*

³⁴ Stolzman, *supra* note 3.

³⁵ *Id.*

and mosaics that “are regarded among the world’s finest examples of Byzantine Art[,]”³⁶ was converted to the Kariye Mosque in the early 16th century.³⁷ It remained a mosque until 1945, when the Turkish government designated the building a museum.³⁸ In 2018, the site saw over 100,000 visitors.³⁹ The Council ruled that it was unlawful for a mosque to be used as a museum as it “cannot be used except for its essential function.”⁴⁰ Because mosques are not permitted to display images, the rich mosaics and artwork are in jeopardy of being covered or removed, eliminating essential cultural heritage from world view.

The Council’s ruling, in fact, has the potential to impact all other museums that were converted from mosques, especially the treasured Hagia Sophia. Built in the 6th c. and “dubbed the Eighth Wonder of the World,”⁴¹ the Hagia Sophia was the seat of the Ecumenical Patriarch of Constantinople and still has great importance to the Eastern Orthodox faith. When Mehmet II conquered Constantinople in 1453, he converted the Cathedral into a mosque and covered all the mosaics and images with plaster. With the rise of the Republic of Turkey, Atatürk, who advocated for a secular Turkey, converted the Mosque into a museum around 1934. Whether the Hagia Sophia should remain a museum or be returned to a functioning mosque or cathedral has been the subject of much debate. In March 2019, Erdogan announced that it was a “very big mistake” to convert [the Hagia Sophia] into a museum” and that it was time to make the site a mosque.⁴² The Hagia Sophia is not only a World Heritage site, but also contains spolia from Christian and Muslim faith traditions, as well as from the Roman Empire and pagan temples from the area. With this transition, the rich Justinian era mosaics, which are still partially covered in plaster from the time it was a mosque, will have to be concealed yet again.⁴³

Beyond affirmative efforts to convert (and, in effect, destroy) museums, Turkey’s cultural heritage is also adversely affected by a lack of funding, disrepair, and overall neglect. For example, Istanbul’s historical legacy is in jeopardy due to neglect by the previous and current government.⁴⁴ UNESCO rulings forbid heavy construction equipment in Istanbul’s heritage sites, but “when you go there you can see construction is going on every day.”⁴⁵ Workers are untrained; if they see a historic wall in the way, they simply destroy it.⁴⁶ The previously mentioned Hagia Sophia stands in decay and neglect, which includes visible water damage.⁴⁷ Topkapi Palace also is at risk of

³⁶ Ayla Jean Yackley, *Court Ruling Converting Turkish Museum to Mosque could set Precedent for Hagia Sophia*, THE ART NEWSPAPER, December 3, 2019, <http://www.theartnewspaper.com/news/court-ruling-converting-turkish-museum-to-mosque-could-set-precedent-for-hagia-sophia> (last visited Dec 31, 2019).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Hagia Sophia will be Called a Mosque – Erdogan, TRT WORLD, March 28, 2019, <https://www.trtworl.com/turkey/hagia-sophia-will-be-called-a-mosque-erdogan-25317> (last visited Dec 30, 2019).

⁴² Erdogan: Time Has Come for Hagia Sophia to Be a Mosque, VOICE OF AMERICA, March 27, 2019, <https://www.voanews.com/europe/erdogan-time-has-come-hagia-sophia-be-mosque> (last visited Dec 30, 2019).

⁴³ Michele Stopera Freyhaut, *Hagia Sophia: Political and Religious Symbolism in Stones and Spolia*, 3 POPULAR ARCHAEOLOGY (2011).

⁴⁴ Yinanç, *supra* note 32.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Freyhaut, *supra* note 43.

collapse due to years of neglect.⁴⁸ Outside of Istanbul, the Temple of Artemis, which is among the Seven Wonders of the Ancient World and on the UNESCO Heritage list, is now a swamp due to the lack of interest by authorities.⁴⁹ The heavily visited Ephesus, a landmark associated with St. Paul and the Blessed Virgin Mary in Christian traditions and , as well as a UNESCO heritage site, also stands in jeopardy.⁵⁰

An MOU with the United States will not solve, *or even help to resolve*, any of these problems because Turkey is failing to protect its own cultural property and, in some instances, taking conscious steps to destroy it. The Committee simply cannot conclude that Turkey is taking measures consistent with the UNESCO Convention to protect its cultural patrimony.⁵¹

For the reasons set forth above, Turkey fails to meet the second and third determinants.

4. Lack of Evidence of a United States Market

The first and third determinants require evidence of pillage and a United States market for archaeological and ethnological objects covered by the request. Otherwise any import ban will not have the effect of deterring a “serious situation of pillage.” In order to satisfy this determinant, Turkey must show the Committee that there is a serious situation of pillage for each and every category of objects in its request *and* that there is a United States market for these same objects. Thus, the Committee must be provided evidence (not mere conjecture, but *actual market information*) of objects trading in the United States that have been recently looted from Turkey. Absent such evidence, the first and third determinants cannot be met.

For the reasons set forth above, Turkey fails to meet the first and third determinants.

V. Concern Regarding Collaboration and Exchange

One of the charges of the CPIA is to ensure the “commitment of the State Party concerned to permit the exchange of its archaeological and ethnological materials under circumstances in which such exchange does not jeopardize its cultural property.”⁵² This charge “herald(ed) a wave of future international exhibitions” and “possibilities for other museum-to-museum cultural programming.”⁵³ Six years ago, however, Turkey declared a cultural war by “engaging in a rather aggressive style of politics” that threatened existing collaborations and work on archaeological sites by withholding licenses for foreign archaeologists whose countries would not return

⁴⁸ Yinanç, *supra* note 32.

⁴⁹ Omer Erbil İzmir, *Temple of Artemis Turns into Swamp due to Neglect*, HÜRRİYET DAILY NEWS, February 19, 2017, <http://www.hurriyetdailynews.com/temple-of-artemis-turns-into-swamp-due-to-neglect-109909> (last visited Dec 30, 2019).

⁵⁰ UNESCO, *Decisions Adopted during the 43rd Session of the World Heritage Committee* 182 (2019), <http://whc.unesco.org/archive/2019/whc19-43com-18-en.pdf>.

⁵¹ 19 U.S.C. § 2602(a)(1)(B).

⁵² 19 U.S.C. § 2602(a)(4).

⁵³ Maria Papageorge Kouroupas & Ann J. Guthrie, *The Cultural Property Act: What it Means for Museums*, 63 MUSEUM NEWS, 1985, at 47–52.

demanded artifacts, including the United States.⁵⁴ This pressure went beyond excavation sites to include museums, which were presented with an ultimatum: “return the cultural property being requested, or else be banned from exporting important cultural artworks from Turkey for future exhibitions.”⁵⁵ Turkey executed upon this ultimatum “by cancelling export licenses for artifacts heading to major museums.”⁵⁶

In rare instances where Turkey permitted cultural exchange in the form of loans, it required that objects be accompanied by a representative during the *entire duration of the loan*, and not merely as a courier. Thus, loans are not only rare, but also exceedingly complicated and expensive. Against this backdrop, it stands to reason that Turkey lacks a proven “commitment . . . to permit the exchange of its archaeological and ethnological materials”⁵⁷

For the reasons set forth above, Turkey fails to meet the fourth determinant.

VI. The Dangers of a “Standardized” Article II

Since approximately 2018, the State Department appears to have “standardized” Article II. While perhaps undertaken with an eye toward uniformity, this decision is problematic for several reasons. It implies that all State Parties are the same in terms of their needs and requests for protecting cultural property. Almost four decades of experience under the CPIA is enough to conclude that no two requesting countries are alike. Moreover, the “standardized” Article II does nothing to provide verifiable goals for State Parties so that they can effectively take measures to protect their own cultural property and stop looting within their country.

Committee member, Lothar van Falkenhausen stated that with each renewal request there is “an opportunity for recommending improvements in form of amendments to the agreement”⁵⁸ and that the MOUs (prior to the standardization of Article II) are “tailored” to each country; indeed, “there are no boilerplate agreements here.”⁵⁹ Gone are the basic elements of the CPIA such as explicit museum-exchange⁶⁰ mandates that used to be part of MOUs before the implementation of “standardized” language.

The former executive director of this Committee emphasized the importance of Article II, namely the:

⁵⁴ Kate Connolly & Constanze Letsch, *Turkey Wages “Cultural War” in Pursuit of its Archaeological Treasures*, THE GUARDIAN, January 21, 2013, <https://www.theguardian.com/world/2013/jan/21/turkey-cultural-war-archaeological-treasure> (last visited Dec 30, 2019).

⁵⁵ Kelvin D Collado, *A Step Back for Turkey, Two Steps Forward in the Repatriation Efforts of Its Cultural Property*, 5 JOURNAL OF LAW, TECHNOLOGY AND THE INTERNET 24, 15–16 (2014).

⁵⁶ *Id.* at 15–16.

⁵⁷ 19 U.S.C. § 2602(a)(4).

⁵⁸ See Lothar von Falkenhausen, *Trying to do the Right Thing to Protect the World’s Cultural Heritage: One Committee Member’s Tale*, in OBAMA AND TRANSNATIONAL AMERICAN STUDIES 375–389, 377 (Alfred Hornung ed., 2016).

⁵⁹ *Id.* at 378.

⁶⁰ John G. Roberts, *Memorandum for Fred F. Fielding; Ronald Reagan Presidential Library Digital Library Collections; Collection: Roberts, John G./Cultural Property Review Board (1 of 4); Box 15* (1985).

long-term goals intended to benefit cultural patrimony through increased public awareness, museum development, documentation and inventory of collections and sites, technical training in conservation and site security, professional development, and research and exchanges for cultural, educational, and scientific purposes.⁶¹

Gone are the “improved and sustainable strategies for protecting a country’s national patrimony and making such patrimony accessible for study and educational and cultural exchange.”⁶²

The lack of objective requirements in Article II also means that the Committee has no criteria with which to evaluate performance when an MOU is up for renewal. Moreover, MOUs are not meant to go on in perpetuity, but rather, Congress stated that countries who have an MOU with the United States must “take significant self-help measures,”⁶³ which is and should be one of the major objectives of Article II.

Were the Committee to recommend an MOU with Turkey, which it should not, it should use the recommendation as an opportunity to break free from the recent, highly-problematic, trend of a “standardized” Article II, and instead implement a genuinely thoughtful, narrowly tailored Article II along with a critically reviewed, highly-specific designated list.

VII. Turkey’s Request Invites an Overbroad Designated List

The AAMD has in the past warned that a broad, non-specific Designated List is nothing more than an embargo⁶⁴ of all items from that country, as noted in the recent indictment filed by the Southern District of New York against Douglas Latchford.⁶⁵ Under the CPIA:

Archaeological material must be:

1. of cultural significance;
2. at least 250 years old; and
3. normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water.⁶⁶

⁶¹ Maria P. Kouropas, *Combatting Cultural Property Looting and Trafficking: the US Experience*, 20 UNIF LAW REV 528–534, 533 (2015), <https://academic.oup.com/ulr/article/20/4/528/2472097> (last visited Dec 31, 2019).

⁶² *Id.* at 533.

⁶³ Kate Fitz Gibbon, *Congress Holds CPAC Accountable*, CULTURAL PROPERTY NEWS (2017), <https://culturalpropertynews.org/congress-holds-cpac-accountable/> (last visited Jan 6, 2020).

⁶⁴ “[T]he CPIA Embargo” and “avoid the embargo” are terms used in the indictment when referencing the MOU the United States has with Cambodia, see *United States of America v. Douglas Latchford*, (2019), <https://www.justice.gov/usao-sdny/press-release/file/1221291/download>.

⁶⁵ *Antiquities Dealer Charged with Trafficking in Looted Cambodian Artifacts*, (2019), <https://www.justice.gov/usao-sdny/pr/antiquities-dealer-charged-trafficking-looted-cambodian-artifacts> (last visited Dec 30, 2019); *UNITED STATES OF AMERICA v. DOUGLAS LATCHFORD*, *supra* note 64.

⁶⁶ ANN GUTHRIE & MARIA PAPAGEORGE KOUROUPAS, *Information on Convention on Cultural Property Implementation Act (PL 97-445) 2* (1985), <https://www.reaganlibrary.gov/sites/default/files/digitalibrary/smf/counsel/roberts/box-015/40-485-6908381-015-017-2017.pdf> (emphasis added).

Relatedly, ethnological material must be:

1. the product of a tribal or nonindustrial society and
2. 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.⁶⁷

One need only look to Turkey's request to see what will, based on past experience, follow – an overly broad, non-specific basket, of “descriptions.” The overly broad, non-descriptive and expansive Designated Lists consistently overstep the authority given under the CPIA, not to mention the plain language of the statute. Framers of the CPIA worked to balance competing interests while still assisting countries experiencing destruction and looting of their cultural heritage.⁶⁸ Current MOUs and designated lists altogether abandon that balance.

VIII. Conclusion

The AAMD does not support the request for an MOU because the Turkish government failed to satisfy any of the four determinants required for import restrictions under the CPIA.⁶⁹ While all of the facts are important, perhaps the most troubling is Turkey's failure to take measures to protect its cultural patrimony.⁷⁰ Instead, it is taking affirmative steps to eradicate some of the country's most important heritage—particularly that of its minority cultures and religions—through state sanctioned *destruction* of cultural patrimony. Nobody should condone this conduct. But that is exactly what the Committee will do if it concludes that Turkey qualifies for import restrictions and recommends the MOU.

* * * * *

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.

⁶⁷ *Id.*

⁶⁸ Kouroupas and Guthrie, *supra* note 53 at 52.

⁶⁹ 19 U.S.C. § 2602(a)(1).

⁷⁰ 19 U.S.C. § 2602(a)(1)(B).