

Statement of the Association of Art Museum Directors
(Presented by Stephen J. Knerly, Jr.¹)

**Meeting of the Cultural Property Advisory Committee to Review the Proposal to Extend
the Memorandum of Understanding Between The Government of the United States of
America and The Government of the Republic of Mali**

April 3, 2012

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 200 directors of major art museums in the United States, Canada, and Mexico. The purpose of the AAMD is to support its members in increasing the contribution of art museums to society. The AAMD accomplishes this mission by establishing and maintaining the highest standards of professional practice, serving as a forum for the exchange of information and ideas, acting as an advocate for its member art museums, and being a leader in shaping public discourse about the arts community and the role of art in society.

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

II. Consideration of Extension of 2007 Bilateral Agreement with Mali

The AAMD supports the extension of the current Memorandum of Understanding with the Republic of Mali (the “2007 MOU”). The AAMD does have certain concerns that the AAMD hopes the Cultural Property Advisory Committee (the “Committee”) will consider.

A. Protection of Cultural Patrimony.

The Convention on Cultural Property Implementation Act (the “Act”) requires the President to make a number of determinations before entering into or extending a Memorandum of Understanding, including a determination that the requesting country has taken measures consistent with the Convention on the Means of Prohibiting and Preventing the Illicit Import,

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Export, and Transfer of Ownership of Cultural Property “to protect its cultural patrimony.”² The recent coup d’état in Mali puts in peril the stability of Malian government that we have known over the last two decades as well as its ability to take steps to protect its cultural patrimony. The ability of the Committee now to evaluate the various aspects of this determinant, e.g., security efforts at sites, police pursuit of criminals, enforcement of export restrictions, education of citizens, etc., is more difficult.

Under the current circumstances, the criteria necessary to evaluate this determinant are difficult to identify if not unknowable. While the AAMD does not oppose the concept of renewal, in order for the Committee to recommend renewal of the 2007 MOU, it first must decide whether the determinant set forth in 19 U.S.C.A. §2602 (a)(1)(B) - that a requesting country is taking steps to protect its cultural patrimony - can be met given the political turmoil in Mali. The Act requires that a requesting country be taking steps “consistent with the Convention”³ which includes for example, that the requesting country should provide the national services responsible for the protection of its cultural heritage with an adequate budget. There are of course additional undertakings under the Convention and they, by Article 22, apply to “all territories [of a country] for the international relations of which they are responsible”. At this time, apparently a significant portion of the country is not under the control of the central government. Furthermore, the situation appears to be extremely fluid. Under these circumstances, should the Committee recommend renewal of an agreement for five years when the situation is so fluid? Perhaps a better approach is either to renew the 2007 MOU for a limited period of time, e.g., a year or not renew the 2007 MOU at all and issue emergency restrictions pursuant to 19 U.S.C.A. §2603.

B. Article II Compliance.

The AAMD urges the Committee to review the status of cultural exchange as required by Article II of the 2007 MOU. Such a review should include compliance by the United States, including compliance with Article II, Section C that requires the United States to use its best efforts to promote professional exchanges to enhance the capacity of Mali in exhibition preparation. While the AAMD is certainly interested in assisting with such exchanges in the future, the AAMD is also interested in the status of those efforts in the past.

With respect to exchanges, even before the recent coup there existed challenges for American museums that wanted to undertake loans. In order to have a meaningful dialogue about loans, one must have an idea of what is available to be lent and Mali has few if any publically available inventories. Furthermore, access to storage areas to determine what might be available to borrow is severely limited. In addition to these specific concerns about Mali’s compliance with the 2007 MOU, the AAMD hopes that the Committee has or will inquire as to other efforts Mali has undertaken in order to satisfy the statutory requirement.

² 19 U.S.C.A. §2602(a)(1).

³ The “Convention” is, under U.S.C.A. §2601(5), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, commonly known as the UNESCO Convention.

III. Recommended Changes to Article II

The first and primary role of American art museums is to present, through both their permanent collections and exhibitions, the artistic and creative efforts of mankind. Both temporary exhibitions of loaned materials and long-term loans to the permanent collection are crucial ways of bringing great works of art to the public. By definition, Memoranda of Understanding curtail the trade in archaeological and ethnological material. Given the restrictions in trade, in order to enhance the public's understanding of the world's great cultures, the United States must require the countries seeking its assistance to make available for loan objects of cultural significance for exhibition, display, study, and research on both a short and long-term basis and with reasonable terms.

The Committee should recommend to the President that when and if there is an extension of the 2007 MOU, it contains a strong commitment by Mali to foster cultural exchange with American museums, to not only allow, but encourage, both exhibition and long-term loans of significant objects. This can be accomplished, in part, by amendments to Paragraph A of Article II as follows:

- A. *The Government of the Republic of Mali will seek to expand the exchange of its archaeological materials through:*
1. *Entering into discussions about how to increase the number of exhibition loans of objects of archaeological interest;*
 2. *Entering into discussions about how to increase the number and overall length of long-term loans of objects of archaeological interest for research and educational purposes, agreed upon, on a case by case basis, by American and Malian museums or similar institutions, recognizing the spirit of goodwill that exists between cultural institutions in both countries;*
 3. *Encouraging American museums and universities to propose and participate in joint excavation projects authorized by the Malian government, with the understanding that certain of the scientifically excavated objects from such projects could be given as a loan to the American participants through specific agreements with the Malian government; and*
 4. *Promoting agreements for academic exchanges and specific study programs agreed upon by museums and universities of Mali and American art museums.*
 5. *The discussions mentioned above will take place during*
_____.

The above language in sections 2 through 4 is virtually verbatim the language of the relevant section of Article II of the Memorandum of Understanding between the United States and Italy.

Since the renewal of the MOU with Italy with stronger language, definite progress has been made. The AAMD hopes that stronger language with Mali will have an equally mutually beneficial effect. In addition, the language in proposed section 5 is also consistent with the Italian Memorandum of Understanding, although the Department of State in discussion with the Government of Mali is best positioned to determine the time frame. The AAMD does recommend that the discussions take place at least within the first year and the AAMD welcomes the opportunity to assist in those discussions.

IV. Conclusion

Subject to the concerns set forth above, the AAMD supports the request of Mali for an extension of the 2007 MOU.