

**Statement of the Association of Art Museum Directors
Presented by Larry Feinberg, Director Santa Barbara Museum of Art**

**Meeting of the Cultural Property Advisory Committee to Review the Request of the
Government of the Hellenic Republic to the United States of America for Imposing Import
Restrictions Under the Cultural Property Implementation Act.**

I. Introduction

This statement is made on behalf of the Association of Art Museum Directors (the “AAMD”), of which I am a member, and the Santa Barbara Museum of Art, of which I am the director. The Santa Barbara Museum of Art has one of the premiere Graeco-Roman collections on the West Coast including a large-scale loutrophoros from 4th-century B.C. Greece, in the entrance court of the museum, and other important Graeco-Roman figural works and a small but superb collection of Greek ceramics. Most of these works were acquired in the 1920’s by a California collector who donated and bequeathed them to the museum.

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 when it has taken an approach to the protection of the world’s cultural heritage that balances encouraging a unified, international solution to the problem while allowing American museums to continue to collect responsibly on behalf of the American public.

II. Greece’s Request is Overly Broad

On August 26, 2010 the U.S. Department of State published notification that Greece made a request to the United States, 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,¹ for import restrictions on archaeological and ethnological material from Greece dating to the Neolithic Era through the mid-eighteenth century.² A “public summary” accompanies Greece’s request, however it fails to specify key details, including the particular

¹ Nov. 17, 1970, 823 U.N.T.S. 231.

² See Notice of Receipt of Cultural Property Request From the Government of the Hellenic Republic, 75 Fed. Reg. 52582 (August 26, 2010) (available at: <http://exchanges.state.gov/heritage/whatsnew.html>).

objects upon which Greece seeks import restrictions.³ At the outset, the AAMD is strongly concerned with the U.S. Department of State's approach to Greece's request in keeping the specific contents of the request confidential. How can interested individuals and organizations meaningfully and comprehensively comment on a request for import restrictions when the objects to be restricted from import are unknown? Nonetheless, the descriptions in the Public Summary reveal that the Greek request is overly broad. In fact, Greece's former Minister of Culture, Giorgos Voulgarakis, has stated, "Whatever is Greek, wherever in the world, we want back."⁴ If Greece seeks to place "[w]hatever is Greek" on the designated list, such a list would certainly be overbroad and unenforceable.

Simply put, if Greece's request is granted, as time goes on the legitimate trade in objects subject to the request, and regardless of where they are discovered, will be severely curtailed. There is much to be done before a designated list can be developed. For example, the Public Summary indicates that Greece has requested import restrictions with respect to icons from the Byzantine and post-Byzantine period. But, even Greece's request itself acknowledges the tremendous proliferation and dispersion of these objects:

The monastic centers were a decisive factor in the diffusion of Greek art of the time into the Orthodox Balkans, the Near East and even into Russia.⁵

Any import restrictions with respect to ethnological objects, such as those from the Byzantine and post-Byzantine period, should be confined to those objects which have been inventoried and catalogued by Greece. Otherwise, a designated list that simply identifies, for example, Greek icons, places an impossible burden on United States Immigration and Customs Enforcement ("ICE") officials to determine what objects are and are not subject to such restrictions. The burden should not be on the importer to prove that the icon was never in Greece. Rather, Greece should bear the burden to prove that the icon was in Greece after the effective date of the designated list. Much work will need to be done in order to create a designated list that is capable of being implemented by ICE, but also that allows the legitimate trade in Greek objects to continue. This is not an imagined issue, especially as Greece has taken the position that anything that was ever created in Greece belongs to Greece regardless of its modern day location.

In addition to creating a designated list that can be implemented by ICE, before adopting a Memorandum of Understanding ("MOU") with Greece, the United States should receive certain assurances that Greece has demonstrated a willingness and ability to take specific steps towards protecting its cultural patrimony, consistent with the general interest of the international community in the interchange of cultural property among nations.

³ See Public Summary, Request by the Government of the Hellenic Republic to the United States of America for Imposing Import Restrictions to Protect its Cultural Patrimony Under Article 9 of the UNESCO Convention (1970) (available at: <http://exchanges.state.gov/heritage/whatsnew.html>) (the "Public Summary").

⁴ See Helena Smith, *Greece Demands Return of Stolen Heritage*, The Guardian (July 11, 2006) (available at: <http://www.guardian.co.uk/world/2006/jul/11/parthenon.arttheft>).

⁵ Public Summary, page 5.

III. Long-Term Loans

The first and primary role of American art museums is to present, through their permanent collection, the artistic and creative efforts of mankind. While temporary exhibitions of loaned materials are crucial ways of bringing great works of art to the public, they cannot substitute for long-term display of objects that is integrated into the permanent collection for a significant period of time. Only by having the works of long-term loans join the permanent collection can the museums' publics engage on a regular basis with the objects themselves, with information about the objects, and with the illuminating dialogues that museums create among objects on display. Furthermore, in-depth humanities and scientific research, conservation analysis and treatment, and restoration efforts are greatly enhanced or made entirely possible when long-term loan objects are committed to the permanent collection for a significant period and, therefore, under the museum's long-term care and study.

By definition, an MOU curtails the trade in archaeological and ethnological material. In the past, one point of discussion between the AAMD and the Cultural Property Advisory Committee (the "Committee") has focused on the United States' efforts to assist in conserving the cultural patrimony of other countries through import restrictions and how these efforts oftentimes simply move the market to other countries. If American museums are to be disadvantaged by prohibiting acquisition of material that can enhance their publics' understanding of the world's great cultures, then the United States must require the countries seeking its assistance to make available for loan objects of cultural significance for display, study, and research on a long-term basis and on reasonable terms.

In lieu of acquiring objects of cultural significance to add to the permanent collection, long-term loans of such objects are a critical alternative to, although by no means a replacement for, acquisitions by American museums. Such loans respect foreign countries' title and ownership of their cultural patrimonies but allow objects to be in the long-term possession, but not ownership, of American museums. In order to provide the public benefit described above, and due to the very substantial costs that American museums will assume in taking such loans, the loans must truly be "long-term." Each loan involves direct expenses for specialized packing, shipping, usually with the help of a courier and shipping agents, insurance and, often, the manufacture of unique display cases and mounts. Indirect costs include the time of curators, registrars, designers, conservators, art handlers, educators, and others in order to research and label, ship and track, install, treat, move, and present the object to the public in the permanent collection galleries. Every time a piece is removed from display, most of the same expenses are re-incurred. Given these considerations, a short-term, renewable loan that is subject to renegotiation will often be a disincentive to American museums.

While the United States studies a possible MOU with Greece, Greece should be encouraged to make 10 year long-term loans of important archaeological and ethnological material to American museums. The AAMD can assure the Committee that American museums will do their part to request and negotiate in good faith those possible loans. This will require Greece to amend current law which only permits a five-year loan of protected material and

appears to prohibit the loan of objects significant to the cultural heritage of Greece.⁶ While Greek law appears not to prohibit renewal of loan terms, that is simply not adequate to achieve the purposes of a long-term loan and the interests of the American public.⁷

IV. Temporary Exhibitions

Temporary exhibitions of loaned materials are also vital to a museum's ability to present great works of art to the public. To date, AAMD members have experienced undue delay or total lack of response from Greece to temporary loan requests. Greece should be asked to respond timely and positively to requests for temporary exhibition loans.

V. Protection of Sites

Greece must take steps to protect and maintain its archaeological sites. Especially in light of the state of the Greek economy and the likelihood that funds for cultural property will be cut, Greece must take action now to provide adequate protection of its archaeological sites.

VI. Compensation of Chance Finds

Greece must also take steps to encourage the reporting of chance finds, including an appropriate compensation system for those who discover such objects. There is no more critical time perhaps for such a system to be implemented given the state of the Greek economy and the likelihood that government support for social programs will be curtailed which, in turn, will only provide a further incentive to looting in the absence of economic incentives to turn over accidental finds.

VII. Internal Legal Market

Greece must indicate a willingness to at least consider a licit market for antiquities. Especially in light of the Greek economic situation, the creation of a legitimate market can only enhance efforts to curtail looting and provide an economic stimulus for the protection of archaeological sites.

VIII. Establishment of List of Specific Objects

Before the United States agrees to a possible MOU with Greece, Greece must provide the United States with a detailed list of the specific objects for which it seeks import restrictions. Greece must also demonstrate, through evidentiary support, the need for import restrictions upon each of the listed objects. Without a list of the objects for which restrictions are requested, and the justification for each object's inclusion on the list, the United States cannot seriously consider Greece's request for import restrictions.

⁶ Greek Law No. 3028 "On the Protection of Antiquities and Cultural Heritage in General," Art. 25(1) (June 28, 2002) (available at [http://www.ifar.org/upload/PDFLink4909e209d5bccWMK%20-%20Greece%20-%20Law%203028%20of%202002%20Protection%20of%20Antiquities%20and%20Cultural%20Property%20\(Eng\).pdf](http://www.ifar.org/upload/PDFLink4909e209d5bccWMK%20-%20Greece%20-%20Law%203028%20of%202002%20Protection%20of%20Antiquities%20and%20Cultural%20Property%20(Eng).pdf)).

⁷ *Id.*

IX. Conclusion

In evaluating Greece's request for import restrictions on archaeological and ethnological materials from Greece, the Committee should thoroughly investigate whether the statutory requirements necessary for the imposition of import restrictions can be satisfied. The Committee should recommend that Greece's request be tabled for further study. Finally, the Committee should recommend that, in the interim, Greece be required to demonstrate its commitment and ability to achieve specific goals for the protection of its cultural patrimony.