

Committee for Cultural Policy and Global Heritage Alliance
Written Testimony submitted to Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, U.S. Department of State, on the Proposed Memorandum of Understanding Between the United States of America and the People's Democratic Republic of Algeria, Submitted July 15, 2018

The Committee for Cultural Policy (CCP)¹ is an educational and policy research organization that supports the preservation and public appreciation of art of ancient and indigenous cultures. CCP supports policies that enable the lawful collection, exhibition, and global circulation of artworks and preserve artifacts and archaeological sites through funding for site protection. We deplore the destruction of archaeological sites and monuments and encourage policies enabling safe harbor in international museums for at-risk objects from countries in crisis. We defend uncensored academic research and urge funding for museum development around the world. We believe that communication through artistic exchange is beneficial for international understanding and that the protection and preservation of art from all cultures is the responsibility and duty of all humankind.

Global Heritage Alliance (GHA)² advocates for policies that will restore balance in U.S. government policy in order to foster appreciation of ancient and indigenous cultures and the preservation of archaeological and ethnographic artifacts for the education and enjoyment of the American public. GHA supports policies that facilitate lawful trade in cultural artifacts, and promotes responsible collecting and stewardship of archaeological and ethnological objects.

The Committee for Cultural Policy and Global Heritage Alliance jointly submit this testimony on the Proposed Memorandum of Understanding (MOU) for the imposition of import restrictions between the United States and the Government of the People's Democratic Republic of Algeria (Algeria) under the Convention on Cultural Property Implementation Act³ (CPIA).

Introduction

Congress' passage of the CPIA in 1983, thirty-five years ago, was impelled in large part by concerns that an uncontrolled international market for ancient art from countries that did not have the means to protect archaeological sites could result in the loss of the entire record of previously unknown and little understood periods of human history.

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³ The Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601, *et seq.*

The CPIA implements two sections of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property⁴ – Article 7(b) and Article 9.

19 U.S.C. § 2607 through 2609 of the CPIA corresponds to Article 7(b)(i) of the Convention. It prohibits the import of cultural property that has been stolen from public institutions and gives Immigration and Customs Enforcement the authority to seize stolen cultural property at the border.

Under Article 9, State Parties to the Convention agreed to participate in a *concerted international effort* to help deal with the pillage of a nation’s cultural patrimony through measures that include selective import controls.

In passage of the Cultural Property Implementation Act (CPIA), Congress set forth specific criteria which were to be determined through review of requests from UNESCO Member States by an expert committee, the Cultural Property Advisory Committee (CPAC), composed of representatives of the interests of archaeologists, museums, the art trade, and the public.

The requirements are:

1. The cultural patrimony of the State Party is in jeopardy from the pillage of archaeological or ethnological materials of the State Party.
2. The State Party has taken measures to protect its cultural patrimony.
3. The application of the requested import restriction if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by nations with a significant import trade in the designated objects, would be of substantial benefit in deterring a serious situation of pillage, and other remedies are not available.
4. The application of the import restrictions is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.⁵

Congress granted CPAC the ability to make recommendations for five-year-long import restrictions only on objects that are shown to be at current risk of looting.⁶ The legislation gave a moral boost to archaeologists everywhere by recognizing their contribution to preserving human history, and the need to preserve archaeological sites intact.

Limiting the scope of restricted items, however, the CPIA provided for the US to enter into agreements with foreign nations to temporarily restrict the import of “significant” cultural items as part of a multi-national effort to close off markets and deter looting of ancient archeological

⁴ http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁵ 19 U.S.C. § 2602(a)(1)(A-D)

⁶ 19 U.S.C. § 2602(a)(1)(A) and 19 U.S.C. § 2602(a)(2)(A)

sites and the removal of rare ethnographic objects, which were limited to the rarest products of tribal, non-industrial societies.

The law also obliged source country governments to do the right thing along with the United States by taking self-help measures to protect archaeological sites and to curb the markets for looted objects in their own countries.

CPAC has one job: to review source country requests and determine whether the requesting country has met these four specific criteria under the CPIA. But this is not what CPAC actually does.

CPAC has become a tool for implementing policies designed, among other goals, to end the U.S. trade in ancient and ethnographic art. In its early years, agreements under the CPIA focused on the most vulnerable nations, even on site-specific import bans.⁷ Today, agreements under the CPIA have closed off access, country-by-country, to regions in which great founding civilizations of the world flourished.

Current U.S. policy is statist rather than internationalist in nature. Agreements under the CPIA frequently ignore the shortcomings of UNESCO Member States' domestic policies, their lack of rigorous enforcement of legal protections to heritage, their exploitation of heritage for political ends, and the Member States' deficiencies and inequities in their approach to indigenous peoples, minorities, and religious communities not in sync with politics of the ruling parties.

Most often, U.S. policymakers at the State Department and advisors at CPAC place the blame for the destruction of heritage around the world squarely on the art trade. This policy essentially ignores the role of states and governments in neglecting, politically or economically exploiting, and even deliberately destroying monuments and movable heritage. (Even if one detests the art trade, defining cultural heritage issues within this art trade versus heritage paradigm and ignoring the rest is patently absurd, especially given the paltry economic value of the art trade and the enormous power disparity between a market for non-essential, non-fungible assets and national governments.)

This anti-art trade policy was crafted by a small group within the Bureau of Educational and Cultural Affairs at the U.S. Department of State.⁸ It has become a major element in U.S. cultural

⁷ See, for example, the 1990 emergency action to impose import restrictions on objects from the Sipán archaeological region of northern Peru. Import Restrictions Imposed on Significant Archaeological Artifacts From Peru, 19 CFR Part 12 [T.D. 90-37], https://eca.state.gov/files/bureau/pe1990eafm_0.pdf

⁸ See William G. Pearlstein, *White Paper: A Proposal to Reform U.S. Law and Policy Relating to the International Exchange of Cultural Property*, *Cardozo Arts & Entertainment* 32(3): 561-650, 644, also Stephen K. Urice & Andrew L. Adler, *Unveiling the Executive Branch's Extralegal Cultural Property Policy* (Miami Law Research Paper Series, Paper No. 2010-20, 2010), at 28-30, available at <http://ssrn.com/abstract=1658519>.

policy despite its fundamental contradiction to the CPIA as written and to the internationalist goals expressed in the 1970 UNESCO Convention. Certainly, this policy co-exists with other, extremely beneficial cultural projects administered within the same bureau that fund restoration, preservation, and capacity-building in foreign nations; the bureau also supports civil society-building and educational projects around the world. In its other aspects, the Bureau of Educational and Cultural Affairs does a lot of good.

On the other hand, what the Bureau and CPAC have done, by ignoring the requirements of the CPIA, is wrong. Over time, under the aegis of the State Department, the scope and duration of import restrictions under the CPIA has expanded to provide for near permanent bans on the import of virtually ALL cultural items to the present time from the countries which have sought an agreement under the CPIA. This not only dismisses Congress's goal of maintaining a rich cultural life and viable economic trade in art in the U.S. It also has failed to heed legitimate Congressional concerns that the 1970 UNESCO Convention would lend itself to exclusively statist rather than internationalist approaches to heritage, and become a victim to nationalist and political goals.

When the CPIA was passed, Congress never indicated that it was in the interests of the United States to block imports of ALL art and archaeological materials from source countries. Congress contemplated a continuing trade in ancient art except in objects at immediate risk of looting. Nor did Congress state that halting the trade in art was a positive goal. On the contrary, Congress viewed the CPIA as balancing US academic, museum, public and commercial interests by both assisting art source countries to preserve archaeological resources and ensuring the U.S.'s continuing access to international art and antiques through a relatively free flow of art from around the world to the U.S.⁹

At present, the foreign countries whose art and artifacts are subject to import restrictions against US entry are Belize, Bolivia, Bulgaria, Cambodia, China, Colombia, Cyprus, Egypt, El Salvador, Greece, Guatemala, Honduras, Italy , Libya, Mali, Nicaragua, and Peru . All have agreements under the CPIA that, once implemented, have been renewed again and again every five years, so that some, such as El Salvador, have been in place for over thirty years.¹⁰ Iraq (2008)¹¹ and Syria (2016)¹² are currently subject to “emergency actions” imposed through legislation. (Pre-

⁹ 19 U.S.C. § 2602(a)(1)(A-D) and 19 U.S.C. § 2602(a)(4)

¹⁰ Guide to Cultural Property Import Restrictions Currently Imposed by the United States of America, <https://eca.state.gov/files/bureau/chart-of-import-restrictions.pdf>

¹¹ H.R. 1047, Miscellaneous Trade and Technical Corrections Act of 2004, <https://eca.state.gov/files/bureau/iq2004hr1047.pdf>

¹² Import Restrictions Imposed on Archaeological and Ethnological Material of Syria, 19 CFR 12, 81 FR 53916 (August 15, 2016) <https://www.federalregister.gov/documents/2016/08/15/2016-19491/import-restrictions-imposed-on-archaeological-and-ethnological-material-of-syria>.

Columbian stone carving and wall-art from Mexico, Central America, South America, and the Caribbean Islands are covered in other longstanding US legislation.¹³⁾

The US has now blocked entry to the art of virtually every major source of human civilization, with every indication that it will continue to do so indefinitely.

Import Restrictions, Algerian Politics, and the Cultural Heritage of Jews, Christians, and Pieds Noir

A wall of import restrictions across the Middle East has already impacted the region's former Jewish community, which was expelled and its property confiscated by Syrian, Iraqi, Libyan, and Egyptian governments in the mid-twentieth century. Typically, these import restrictions have exclusively benefited national governments and their claims to own and control cultural and religious artifacts—at the expense of the ownership rights and basic human rights of individuals in minority communities.¹⁴

The abuses of minority rights that the U.S. has effectively sanctioned in other Arab nations should not be repeated in Algeria.

Just 55 years ago, approximately 130,000 Algerian Jews fled to France, along with 900,000 mostly Catholic Christian descendants of French settlers of Algeria.¹⁵ The descendants of French colonists were primarily agriculturalists, from peasants to large landowners. The French government was poorly prepared for the exodus to France, and while some funds had been allocated to pay the French Pieds Noir for property losses, most lost all they owned.

The choice for the “Pieds Noir”¹⁶ (people of French origin born in Algeria during French rule) and for the Jews who were forced to leave Algeria was described as “*la valise ou le cercueil*” (the suitcase or the coffin).¹⁷

There had been vital, active Jewish communities in Algeria for over a thousand years, tolerated during much of that period, and savagely oppressed at other times, but never integrated with the ruling elite. As a result, Jews had welcomed the French as liberators from the oppression of Muslim rule in 1830. The Decret Cremieux of 1870 imposed French nationality on all Jews in Algeria. At

¹³ Regulation of Importation of Pre-Columbian Monumental or Architectural Sculpture or Mural, Public Law No. 92-587, 19 U.S.C. § 2091 et seq. (1972)

¹⁴ Katherine Brennan and Kate Fitz Gibbon, Cultural Property: Rights of Jewish and Christian Minorities, Cultural Property News (April 9, 2018), <https://culturalpropertynews.org/cultural-property-agreements-and-the-rights-of-ethnic-minorities-in-the-middle-east/>

¹⁵ *Pied Noir*, <https://en.wikipedia.org/wiki/Pied-Noir>

¹⁶ *Pied Noir*, <https://en.m.wikipedia.org/wiki/Pied-Noir>.

¹⁷ *Oran Massacre of 1962*, https://en.wikipedia.org/wiki/Oran_massacre_of_1962

the same time, French citizenship was offered only with harsh conditions to Muslim residents, requiring their renunciation of the Muslim faith, almost all of whom refused it.¹⁸

From June 1830 until its independence, Algeria had been administratively part of France. Ten percent of Algeria's population was non-Muslim: Christian, mostly Catholic, and Jewish. All the Jews and most of those of French ancestry were born in Algeria and had lived there for decades.

Jews had been stripped of French citizenship during World War II, but France reinstated it in 1943. Jews were caught between colonial and independence factions in the 1950s, attempting to remain neutral despite bombings of synagogues and the murder of rabbis by nationalists and Islamic extremists.

The situation for Jewish Algerians worsened with the burning of the Great Synagogue in Algiers in December 1960 and the murder of the famous Jewish musician, Sheikh Raymond Leyris, a symbol of Jewish-Algerian shared culture, in June 1961. Rejected by their own country, almost the entire Jewish population fled with the 800,000 French settlers before declaration of Algerian independence on July 3, 1962. Only a few thousand Jews out of several hundred thousand total remained in Algeria.

To give a few examples of what has happened to the religious property of minorities in Algeria, the Great Synagogue in Oran, Algeria, built by Simon Kanouï,¹⁹ was converted into a Mosque, now named the Abdallah Ibn Salam Mosque, after a 7th-century Jew who converted to Islam. In 1962, the Great Synagogue in Algiers was also turned into a mosque, known both as the Abu Farès Mosque and as Djamâa Lihoud. Other synagogues and cemeteries, such as in Ghardaya, have been abandoned to neglect.²⁰ With the exception of a one-year opening in 2005, Jewish pilgrims have been barred from visiting Algerian holy sites since 1962, including the tomb of Ephraim Alnaqua in Tlemcen.²¹ Catholic religious institutions have not only been neglected for decades, but as recently as 2017, a church was destroyed in the city of Sidi Moussa.²²

¹⁸ *History of the Jews of Algeria*, https://en.m.wikipedia.org/wiki/History_of_the_Jews_in_Algeria

¹⁹ "Kanouï, Simon," *Encyclopedia of Jews in the Islamic World*, Brill Online Reference Works, http://referenceworks.brillonline.com/entries/encyclopedia-of-jews-in-the-islamic-world/kanoui-simon-SIM_000126

²⁰ Cemetery in Ghardaya, Algeria, <http://archive.diarna.org/site/detail/public/116/>.

²¹ Reem Hayat Chayef, Tlemcen, "*The Jewish Holy Land of North Africa*," *Raseef*, (April 24, 2017) <https://raseef22.com/en/life/2017/04/24/tlemcen-algeria-jewish-holy-land-north-africa/>

²² Statement of the Association of Art Museum Directors concerning the Request by the Government of the People's Democratic Republic of Algeria to the Government of the United States of America for the Imposition of Import Restrictions to Protect its Cultural Patrimony 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, 4, <https://www.regulations.gov/contentStreamer?documentId=DOS-2018-0022-0018&attachmentNumber=1&contentType=pdf>, citing to Kamel Abderrahmani, "Church Demolition Near Algiers to Make Room for a Mosque Highlight's Islamism's Hypocrisy," *Asia News* (June 13, 2017), <http://www.asianews.it/news-en/Church-demolition-near-Algiers-to-make-room-for-a-mosque-highlights-Islamism%E2%80%99s-hypocrisy-41008.html>.

Sadly, current policies make it impossible to do what the 1970 UNESCO Convention could have done best, to secure rights to cultural communities, to facilitate building lawful, supervised systems for the interchange of art and culture among nations, and to advocate for cosmopolitanism, reconciliation, and peaceful dialogue.

Placing Nationalist Property Rights Over Human Rights

Under the administration of the State Department, the US has enacted Memoranda of Understanding (MOUs) with foreign nations that recognize those nation's claims to virtually all cultural property, including the personal property of individuals and the communal property of religious and ethnic groups.

Through the listing of minority people's religious paraphernalia on Designated Lists, and by the inclusion of common and relatively recent antique objects up to the early 20th century under a misapplied classification of "ethnographic" objects under the CPIA, the United States has implicitly recognized the authority of oppressive nationalist regimes in the Middle East to control the historical objects associated with Jewish and Christian communities, as well as the art and the ordinary craft production of minority peoples.²³

The proposed agreement with Algeria, based upon the Summary²⁴ written by the Department of State, appears to repeat this erroneous reading of the CPIA to cover the possessions and heritage of minority populations under the deceptive title of "Ottoman." This is a general political term which may apply to the entire range of objects produced within the three hundred and thirteen-year period of Ottoman rule²⁵ over the religiously diverse and multi-ethnic populations of Algeria. Likewise, the Summary proposes that the U.S. grant import restrictions over the ordinary craft production of Saharan tribal peoples, almost none of which can be dated to before the mid-19th century.

Before discussing how imposing import restrictions on these objects is not permitted under the CPIA, it bears noting that such broad claims to private property of existing communities and individuals, as opposed to vanished ancient cultures, would violate Article 17 of the Universal Declaration on Human Rights,²⁶ which state that:

²³ The same nationalist political pressure and marginalization of oppressed minorities, this time in China's Tibetan and Uyghur regions (coupled with the Chinese government's desire to commodify and monopolize the trade in ancient Chinese art) was seen in the request for extension of an MOU with China presented to CPAC on May 2-3, 2018.

²⁴ Public Summary of the Request by the Government of the People's Republic of Algeria to the Government of the United States of America for Imposing Import Restrictions to Protect its Cultural Patrimony under Article 9 of the UNESCO Convention, <https://eca.state.gov/files/bureau/algeria-request-public-summary.pdf>.

²⁵ Ottoman rule ended in 1830, after the peacock feather fly-whisk incident, in which the slapping of a French envoy in 1827 provided the justification for French conquest. (see Gwendolyn Peck, *The Casbah of Algiers: Cultural Heritage as a Political Tool*, University of Virginia, 5/1/2016.

²⁶ Appendix G: United Nations Universal Declaration of Human Rights, Article 17 (1-2), <https://www.state.gov/j/drl/rls/hrrpt/2013/appendices/220490.htm>

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

American Jews of Middle Eastern and North African descent have decried the proposed agreement,²⁷ saying that it would add to an alarming pattern of import restrictions with Middle Eastern nations – Iraq, Syria, Libya, and Egypt – that include Jewish objects, from Torahs, kettuba (marriage documents), and religious implements to clothing, jewelry, and household goods. They object to the State Department’s promotion of agreements that legitimize the confiscation of Jewish property.

Because these agreements always list general descriptive categories, such as textiles, jewelry, furnishings, manuscripts, tools, etc., Jewish and Christian items are included if they are not specifically excluded. Thus, the proposed agreement would also include the family possessions of ethnic minorities that were driven out of Algeria in the 20th century, including the 2000-year-old Algerian Jewish community.

How to Re-Balance Politics and Preservation - Follow the CPIA

It seems like a very complex problem – how to balance human rights issues, the interests of oppressed and dispossessed peoples in their community and family heritage, and the national interests of governments whose relationship to their victims is politically fraught.

Fortunately, CPAC can avoid all of this complexity. It simply needs to read the law and apply that plain reading to the four determinations it must make. CPAC can follow the dictates of Congress. It can honor the law and respect the limitations of the law - by not signing an MOU or granting import restrictions in a situation where the facts do not support it.

The Algerian Request Does Not Meet the Statutory Guidelines for Import Restrictions

The Cultural Property Advisory Committee may not recommend import restrictions to be imposed on the cultural property of Algeria unless all four requirements of the CPIA are met.

1. The Request is Too Broad and There is No Showing of a Serious Situation of Pillage

The Summary of the Algerian request prepared by the Department of State did not specifically list the ages and types of art and artifacts to be blocked, but it referenced a full range of the history of objects from Algeria – from prehistoric fossils to rock art of the Paleolithic period to ethnic jewelry and household objects of the Saharan nomadic tribes, whose goods rarely exceed 100 years of age.²⁸

²⁷ Letter of Gina Waldman, President, JIMENA, Jewish Refugees from Arab Countries, submitted to the Cultural Property Advisory Committee, July 12, 2018.

²⁸ Public Summary, 1.

The requested import restrictions are generic and expansive, rather than specific, as the statute requires. Algeria has made no showing that this entire, broad range of material is at risk.

The Summary of the Algerian request does not distinguish between items of historical or archaeological importance and items that are common, repetitive, and that are found outside of archaeological contexts, such as Ottoman period and earlier Islamic artworks, Tuareg/Berber materials, and the artifacts of the now-exiled Jewish communities of Algeria. Instead, it calls for a U.S. embargo against them all.

The Algerian request for a bilateral agreement and U.S. embargo on antiquities due to immediate threats to its entire cultural heritage cannot be substantiated. Emergency actions also cannot be justified because there is no showing that there are newly discovered archaeological or ethnological materials threatened by pillage “of importance for the understanding of the history of mankind,”²⁹ or evidence of material coming from a site of “high cultural significance,”³⁰ or “part of the remains of a particular culture or civilization, the record of which is in jeopardy from pillage.”³¹

2. Algeria has Not Taken the Self Help Measures Required to Protect its Heritage

Algeria’s protection of its monuments and cultural heritage has been widely criticized by international organizations and specialists in the heritage field as neglectful and inadequate. Algeria’s heritage practitioners have not been sufficiently trained or funded, and many sites, including several World Heritage sites have suffered significantly as a result of incompetent management and poorly trained workers. In 1982, the World Heritage Committee inscribed five Algerian sites on the World Heritage List: Djémila, M’Zab Valley, Timgad, Tipasa, and Tassili n’Ajjer. In December 1992, the Kasbah d’Algier was added.

Algeria appears to be allowing archaeological sites, monuments, and even World Heritage Sites such as the Kasbah of Algiers³² and Tipasa³³ to suffer considerably from neglect. These are the most famous sites in Algeria – lesser-known sites are at even greater risk.

²⁹ 19 U.S.C. § 2603 (a)(1)

³⁰ 19 U.S.C. § 2603 (a)(2)

³¹ 19 U.S.C. § 2603 (a)(3)

³² In the case of the Kasbah, government’s failure to coordinate with private owners to stave off serious deterioration has created a situation described by UNESCO as suffering from “natural erosion, lack of maintenance of dwelling places, loss of traditional conservation techniques, uncontrolled land use, non-operational safeguarding plan, lack of coordination of actions.” “State of conservation of properties inscribed on the World Heritage List,” World Heritage Committee (July 2-12, 2017) 156, Krakow, Poland, <http://whc.unesco.org/archive/2017/whc17-41com-7B-en.pdf>

³³ In the case of Tipasa, UNESCO cites “deterioration of the remains due to vandalism, theft and uncontrolled visitation causing accumulation of rubbish, lack of capacities for site conservation, unsuitable restoration techniques, and poor conservation conditions for the archaeological remains.” UNESCO, “Addendum, State of conservation of

An EU report on Algeria quoted one of their European informants discussing their working relationship with Algerian authorities as, “we pretend we believe in this working relationship while it is actually an illusion; we pretend we believe there is a political strategy here.”³⁴ The report stated that both Algerian and European cultural officials realize that Islam and religious extremism in Algeria create serious challenges for cultural relations.³⁵

The same report cited numerous examples of the need for qualified personnel and training in Algerian institutions responsible for cultural heritage, describing delays in filling posts and in funding cultural management services, and identifying basic training as needed for all officers in heritage professions, from taking inventory, to training art conservation, building professionals, museum staff, agencies in charge of audio-visual heritage material (film libraries) and civil society associations.³⁶ It states, “Museum staff do not have training in or awareness of modern maintenance, preservation and physical conservation (particularly preventive) techniques for objects currently in collections and reserves, such as techniques for the museological presentation of exhibited collections.”³⁷

Congress was adamant that CPAC should assess self-help measures as part of the MOU renewal process. The House Committee on Appropriation recently reported as follows:

“Cultural Property.--The Cultural Properties Implementation Act (CPIA) requires countries participating in MOUs restricting cultural property take significant self-help measures. The Committee urges the Cultural Property Advisory Committee to consider the annual national expenditures on securing and inventorying cultural sites and museums in its annual reviews of the effectiveness of MOUs, as well as during the reviews required by the CPIA for extension of an MOU. The Committee also requests the Secretary of State review the feasibility of collecting and reporting on the cost of measures taken by partner countries in support of their cultural property MOU with the United States and be prepared to report on such review during the hearing process on the fiscal year 2019 budget request.”
House Report 115-253 at 11.

3. Import Restrictions Would not be Consistent with the General Interest of the International Community in the Interchange of Cultural Property Among Nations for Scientific, Cultural, and Educational Purposes

properties inscribed on the World Heritage List,” World Heritage Committee (July 2-12, 2017) 67, Krakow, Poland, 67., <http://whc.unesco.org/archive/2017/whc17-41com-7BAdd-en.pdf>

³⁴ Damien Helly, *European Union Preparatory Action, Algeria Country Report*, 12, (March 19, 2014) 19-24, http://ec.europa.eu/assets/eac/culture/policy/international-cooperation/documents/country-reports/algeria_en.pdf

³⁵ *Id.*

³⁶ *Id.*, at 19-24

³⁷ *Id.* at 27.

Algeria fails a final element required to obtain an agreement that the law requires. This is by showing that import restrictions would be “consistent with the general interest of the international community in the interchange of cultural property.” Algeria has never sent a traveling exhibition of the covered materials from any of its museums to the U.S. and has no plans to do so. Algeria has had one project involving individuals from a U.S. university in the past, the Stone Age Institute at Indiana University. While the Summary rather deceptively lists an archaeological project with a U.S. company, this turns out to be a construction company: the Louis Berger Group describes its work as “to support Algeria’s tourism sector, a potentially job-rich and lucrative industry for the country.”

Furthermore, not only does Algeria claim government ownership of all cultural property and the right to seize privately owned property from individuals, it also restricts the trafficking of ideas in its cultural property law, *Law No, 98-04 of 20 Safar 1419, corresponding to June 15, 1998* regarding the protection of cultural patrimony:

Art. 103: “Whoever publishes a work of scientific nature in Algeria or a foreign country, without authorization of the Minister of Culture, which include formerly unpublished documents conserved in Algeria and which concern its cultural patrimony, shall be fined between 50,000 and 100,000 DA. A court of law may, moreover, order the confiscation of the publication.”

4. There is No Significant U.S. Market for Algerian Art or Artifacts

There is no demonstrated U.S. market for illegal Algerian art or artifacts, such that ending a market for pillaged artifacts would be of “substantial benefit in deterring a serious situation of pillage” as the statute requires.³⁸ The request does not supply actual evidence for illegally acquired artifacts or a market for them in the U.S. at all.

The Summary, which claims there is a significant market for looted Algerian antiquities in the U.S. appears either wildly exaggerated, or just deceptive. There is, in fact, little or no evidence that Algerian cultural heritage actually at risk, and State Department Summary does not meet the test of a quick Internet search.

a. Lithic Artifacts

The U.S. market for Paleolithic artifacts appears to be limited to a couple of dozen items offered by two U.S. fossil shops on eBay, averaging in price \$5-\$40. There was no evidence of pillaged rock art or other prehistoric material being sold in the U.S.³⁹

b. The Primary US Market for Antique “Algerian Heritage” is Actually for 18th-20th C. Jewish Heritage, which Do Not Fit Congress’ Definition of Ethnographic Materials

³⁸ 19 U.S.C. § 2602(c)(2)(B)

³⁹ eBay search June 22, 2018, Algeria Lithic Paleolithic Neolithic result was 38 lots, mostly from one U.S. seller, ‘Earthsancientgifts’ of 1-10 items per lot, average 2 items. Prices for U.S. lots were \$7.99 (for a lot of 5 pieces) to \$39.99 for a large single specimen 3.5 inches in length (“from an old collection 50-60s”).

A review of auction records from Christie's auction houses worldwide showed sales of 14 lots total of objects from Algeria from 2006 to 2018. No sales were in the United States; all took place in London or Paris auctions.

Almost all items offered for sale in Europe were 18th-20th century. A complete online search result showed that the total items sold by Christie's were: an auction lot including 19th century clothing, one fancy long gun, three decorated documents or manuscript pages, one mounted gnu head, and one Koran folio (listed as "Near East or North Africa", not "Algeria").

Sotheby's auction house had eight items total sold in New York auctions between 2004 and 2008. There were no sales at all for the last ten years. All but one item, a gauze panel, which were sold in auctions prior to 2008, was Judaica. The listed items were:

- 1 Kabbalistic Jewish scroll
- 1 Torah crown
- 1 gauze panel
- 1 pair Torah finials
- 2 Hebrew Manuscripts (from the Montefiore Endowment)
- 2 Hanukah lamps

The CPIA requires that ethnographic material have some important character: "No object may be considered to be an object of ethnological interest" unless the object is "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."⁴⁰ The objects sold in the U.S. market are of primary importance to the exiled Jewish people of Algeria.

c. Tuareg/Berber and other Nomadic People's Artifacts Do Not Meet Congress' Definition of Threatened Ethnographic Materials

With the exception of Jewish materials, there does not appear to be evidence for any current U.S. market in Algerian goods except for the recent urban crafts and the tribal art of the Berber and especially the Tuareg, a large Berber confederation. Berber "traditional" items are not part of an inalienable cultural heritage, except in the sense of a living heritage. They were and are made for sale by these trading peoples.

The vague allusion in the public Summary to a "smuggling network" for Tuareg artifacts along the uncontrolled 1500-kilometer border of the southern Sahara appears not to refer to actual "looting." It points instead to Algeria's chronic failure to control its borders with neighboring states,⁴¹ and the Berber people's traditional trading patterns, in which they often prefer to avoid

⁴⁰ 19 U.S.C. §2601(2)(C)(ii)(II).

⁴¹ Statement of the Association of Art Museum Directors concerning the Request by the Government of the People's Democratic Republic of Algeria to the Government of the United States of America for the Imposition of Import Restrictions to Protect its Cultural Patrimony 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, 2,

contact with government authorities. It is not clear if the one “old sword” noted as being smuggled in the Summary was seized from the Tuareg, but wherever it was seized, one old sword does not make an international market.

Finally, the legislative history of the CPIA shows that Congress did not contemplate coverage of the type of ethnological items requested by Algeria. The Tuareg/Berber materials sought for embargo are traditional items that were made either for household use or personal ornamentation – or specifically for trade. Such items were common, repetitive and essentially alike. That is precisely what makes them so hard to date, for purposes of the embargo, and places them beyond the ethnological materials category contemplated by Congress when the CPIA was drafted. The legislative history makes clear that agreements under the CPIA were intended to apply only to a *"narrow range of objects possessing certain characteristics."*⁴²

The Committee *does not intend* the definition of ethnological materials under this title to apply to trinkets and other objects that are *common or repetitive or essentially alike* in material design, color, or other outstanding characteristics with other objects of the same time, or which have relatively little value for understanding the origins or history of a particular people or society."⁴³

Items of Berber/Tuareg material culture should not be included in any MOU between the U.S. and Algeria.

Recommendations

Based upon the facts as outlined above, the Committee for Cultural Policy and the Global Heritage Alliance find that the request by the Government of the People’s Democratic Republic of Algeria for import restriction under the Cultural Property Implementation Act fails to meet the criteria set forth in the statute.

If any MOU is signed, it should be limited in scope to materials legally allowed to be included under the CPIA. Algeria should be held accountable during an interim review of its actions and undertakings to meet the reasonable benchmarks set by Congress when it mandated self-help

<https://www.regulations.gov/contentStreamer?documentId=DOS-2018-0022-0018&attachmentNumber=1&contentType=pdf>, citing to Jacques Roussellier, “Breaking North Africa’s Security Conundrum,” Carnegie Endowment for International Peace (April 5, 2018), <http://carnegieendowment.org/sada/75998>.

⁴² U.S. Senate Report, 97-564, "Implementing Legislation for the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, 97th Congress. Second Session: *Miscellaneous Tariff, Trade, and Customs Matters* (September 1982), 4, providing: "Only the term 'archaeological or ethnological materials of the State Party' requires fuller explication here. The Convention does not define this terms (*sic*). The definition is intended by the committee to reflect the understanding of U.S. negotiators that the application of import restrictions under agreements entered into under Section 203 or emergency actions taken under Section 204 is limited to a narrow range of objects possessing certain characteristics."

⁴³ *Ibid.*

measures. Under no circumstances should import restrictions be applied to items that are neither archaeological nor ethnological in character according to the standards set in the statute and elucidated by the Senate in its deliberations.

The only justification for limiting the US market for archaeological materials is to give source countries the opportunity to build their own enforcement capacity, pass legislation, build museums and institutions of historical learning, and educate its people to appreciate the social benefits of preserving and honoring its past. Import restrictions must also only be undertaken when there is assurance that a source country will honor and care for all, not just some of its history.

The Algerian Summary focuses on state ownership and control of movable objects and dubious claims that these are currently threatened by illegal removal from the country. Yet the evidence suggests that the key problems preventing the preservation of Algerian heritage have nothing to do with the world market and everything to do with the failure of the Algerian government to invest in heritage projects and to assure that there is competent heritage management staff and a skilled body of museum workers, conservators, capable workers for digital documentation and other immediately necessary work.

While there is much that can and should be done to provide grants to improve the quality of heritage work and to encourage Algeria's government to preserve the country's broader cultural heritage, there is no benefit to Algeria's heritage to place import restrictions on movable goods in the U.S. Looting and smuggling are not the problem. Algerian government neglect, indifference, and the lack of core competencies in heritage management is the problem.

We believe that CPAC cannot legitimately find that the Algerian government meets the legal requirements for import restrictions. Other means of assisting Algeria by broadening Algerian cultural development and helping to support an open dialog with its academics and archaeologists would actually redirect U.S. attention to Algeria's needs. Developing loan exhibitions from Algeria and other direct connections between Algerian governmental and cultural institutions and museums in the United States would not only directly benefit Algerian cultural institutions, they would encourage travel to Algeria and help to achieve one of that country's major goals of increasing tourism and tourist revenue.

Direct cultural links that familiarize U.S. citizens with Algeria and that help to develop cultural management skills for Algerians would benefit both nations. The greatest mutual benefits will be found, not in the unwarranted imposition of import restrictions, but in increasing cultural cooperation between institutions in the U.S. and Algeria, and through directly beneficial civil-society assistance through the Bureau of Educational and Cultural Affairs.

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