

**Meeting of the Cultural Property Advisory Committee Regarding Proposed
Memorandum of Understanding at the Request of the Former Islamic
Republic of Afghanistan**

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Stefan Passantino, Chair
Cultural Property Advisory Committee
Cultural Heritage Center (ECA/P/C)
U.S. Department of State
2200 C Street, NW
Washington, DC 20037

Preliminary note: The Federal Register notice was published on September 21, 2021, with the comment period ending five (5) days later, on September 26, 2021. This is insufficient time even to notify stakeholders in the U.S., including those in our Afghan American community, much less for there to be informed public comment. Nonetheless, in the interest of broadening the discussion of the request from the “former government of Afghanistan” we have attempted to raise key issues below.

Dear Mr. Passantino and Cultural Property Advisory Committee Members:

The Committee for Cultural Property (“CCP”)¹ and the Global Heritage Alliance (“GHA”)² jointly submit this testimony. We decline to support a proposed Memorandum of Understanding (“MOU”) with the “former government of the Islamic Republic of Afghanistan.”

¹ The Committee for Cultural Policy (CCP) is an educational and policy research organization that supports the preservation and public appreciation of the 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. CCP deplors the destruction of archaeological sites and monuments and encourage policies enabling safe harbor in international museums for at-risk objects from countries in crisis. CCP defends uncensored academic research and urges funding for museum development around the world. CCP believes that communication through artistic exchange is beneficial for international understanding and that the protection and preservation of art is the responsibility and duty of all humankind. The Committee for Cultural Policy, POB 4881, Santa Fe, NM 87502. www.culturalpropertynews.org, info@culturalpropertynews.org.

² Global Heritage Alliance (GHA) 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 their artifacts for the education and enjoyment of the American public. GHA supports policies that facilitate lawful trade in cultural artifacts and

Introduction

Since the Bamiyan Buddhas were blown to pieces and the storerooms and exhibits of the Kabul museum smashed with sledgehammers twenty years ago, it has been obvious that a nationalist rather than an internationalist perspective on cultural policy has failed Afghanistan and other nations fraught by war and internal unrest.

More than any other crisis in culture, the Afghanistan situation demonstrates that the responsibility for preserving culture must be global. It makes clear the dark and dangerous side to cultural nationalism and ‘identity’ politics tied to exclusive ownership of the remains of ancient civilizations within modern geopolitical borders. The cultural policy pendulum has swung too far toward the nationalist perspective. It is time to restore the balance by recognizing an international, global interest.

We have all seen the brutal destruction of ‘national’ heritage by non-state actors in the last decade in the Mideast, and shuddered at the prospect of violent militants coming very close to taking power there. We have watched helplessly as ‘nationalist’ policies are used by supposedly respectable governments to advance their political agendas by promoting distorted, self-serving versions of history to raise the status of one ethnic or religious group and denigrate another.

Cultural nationalism has become a useful political tool for authoritarian governments of all stripes. In excess, it does not encourage preservation of monuments or encourage archaeological excavation. It is not about patriotism or love of country either. Cultural nationalism is inherently divisive and hierarchical, a way of thinking that allows people to view themselves and their perspective as the best.

Cultural nationalism as defined by authoritarian regimes is used today to justify the falsification of history and destruction of ancient and living cultures, religions, and even entire peoples. It has raged over the last half-century over parts of the Middle East. It manifests itself in the worst violations of human and cultural rights in Egypt, Turkey, and Azerbaijan. It is the force behind the Chinese government’s destruction of Uyghur culture and the incarceration of a million people simply for being who they are in Xinjiang.

The term ‘cultural nationalism’ was unknown in the 1890s, during the reign of Afghanistan’s “Iron Amir” Abdur Rahman, but he used its arguments – that his tribe’s non-Pashtun neighbors were culturally and religiously inferior - in order to legitimize the rape, plunder and enslavement of the Shi’a Hazara peoples of Central Afghanistan.³ One hundred years later, in 1998, the

promotes responsible collecting and stewardship of archaeological and ethnological objects. The Global Heritage Alliance, 5335 Wisconsin Ave., NW Ste 440, Washington, DC 20015. <http://global-heritage.org/>

³ UK Parliament, International Relations and Defence Committee: The UK and Afghanistan, Call for Evidence, submission by Hazara Research Collective, 6 Sep 2020, <https://committees.parliament.uk/writtenevidence/11165/html/>

Taliban massacred an estimated 8,000 Hazaras in Mazar-i-Sharif. They have mounted attacks too numerous to count against civilians, schools, and hospitals in Afghanistan and against Hazara refugees in Pakistan.⁴

The Afghanistan situation today is, as they say, “déjà vu all over again.” Before we even get to a discussion of whether an MOU or emergency restrictions should be implemented, we must admit that there is no such thing as a “former government of Afghanistan,” that the request does not meet the foundational premises of the Cultural Property Implementation Act, and that the Taliban, with whom some relationship must be established to implement emergency restrictions or return objects, have no reason to abide by the State Department’s expectations and no track record of keeping promises made to anyone, ever. Yet the Taliban, whose Minister of Interior is a wanted terrorist, is the State Party the U.S. must deal with to establish either an Emergency or a Bilateral agreement with Afghanistan.

Afghanistan’s Art and a Place for Exile.

What does the State Department expect this MOU to do? What will happen to Afghanistan’s cultural heritage if it cannot be safeguarded outside of Afghanistan?

In November 2002, I participated in an Afghanistan Study Day at the British Museum. I watched Paul Bucherer-Dietschi, Director of the Bibliotheca Afghana, the Swiss Afghanistan Museum in Exile, incandescent with rage, flourish a letter issued by UNESCO. The letter reluctantly authorized the removal of boxes of packed artifacts from the National Museum at Kabul.⁵ UNESCO issued the letter in the face of universal international outcry, including protests by a number of Muslim nations.⁶ However, the letter authorizing the removal of the most important artifacts from Afghanistan came too late. The reason Bucherer-Dietschi was so angry, he said, was that UNESCO had only issued it months after Taliban militiamen went to the Kabul Museum and smashed these same artifacts.⁷ UNESCO had been unwilling to modify its policy that all art should remain in the country of origin, even when Mohammad Omar, Afghanistan’s supreme leader, ruled that all statues were offensive to Islam, on February 26, 2001.⁸

⁴ *Id.*

⁵ See Kristin M. Romey, “The Race to Save Afghan Culture,” *Archaeology* 55 (May/June 2002): 18-, The Afghanistan museum in exile violated UNESCO and the international community’s “near-sacred policy of keeping objects of archaeological and cultural importance in their country of origin.”

⁶ Luke Harding, Taliban blow apart 2,000 years of Buddhist history, 3 Mar 2001, The Guardian, <https://www.theguardian.com/world/2001/mar/03/afghanistan.lukeharding>, see also Michael Barry, *Saving Our Treasures, Afghan Heritage time for exile*, UNESCO Courier, March 2001, <https://en.unesco.org/courier/march-2001/saving-our-treasures-afghan-heritage-time-exile>

⁷ Luke Harding, Kabul collection – Taliban unlock museum to show destroyed statues, The Guardian, 22 Mar 2001, <https://www.theguardian.com/world/2001/mar/23/lukeharding>.

⁸ Jean-Christophe Peuch, Afghanistan : Taliban Edict Threatens Central Asian Cultural Heritage, Radio Free Europe/Radio Liberty, March 1, 2001, <https://www.rferl.org/a/1095862.html>

The loss of the Kabul museum's collections was a disaster, leaving a black hole in Afghanistan's cultural history, despite the secret storage of smaller, valuable objects by National Museum curators that preserved the Tilla Tepe gold hoard, now in the restored National Museum and even more vulnerable to the Taliban today.

The State Department and CPAC face a possible repetition of that irreplaceable loss. If ever there was a time to reconsider policies that place exclusive control of a nation's artistic history in the hands of a national government, this is it. We do not know what policies will best serve the future. But what we do know tells us that an MOU and Designated List will not help to save Afghanistan's heritage. Such an agreement would represent a deliberate deconstruction of the aims of the Cultural Property Implementation Act. It would absolve no one of responsibility for future acts of destruction by the Taliban, including the destruction or sale of objects returned to them. And issuance of a typical, all-embracing Designated List would add to the hardships foisted upon the people of Afghanistan - who have already lost so much.

What the State Department and the international community should be doing now is to ensure that whatever exists of Afghanistan's brilliant 4000 year cultural history outside of Afghanistan that can be saved, preserved, and studied - is saved, preserved and made accessible to the world, including to the people of Afghanistan - for the future.

The U.S. and international community need to move immediately to take advantage of any opportunity to safeguard the materials in the National Museum of Afghanistan and archaeological excavation storerooms. Thankfully, these are better documented today and should be easy to identify and impossible to sell in any Western market. I should note that the responsible art market has already committed itself to preventing illegal sales and assisting law enforcement in the recovery of stolen objects. Nonetheless, objects must be preserved - not face the fate of the smashed collections of the Kabul Museum.

The Request of the Former Afghan Government Should be Denied as Moot.

The Afghanistan request ought to be denied as moot from the start, simply because of the lack of relations between the U.S. and whatever government it is supposed to negotiate with. Whether this request is for a bilateral agreement or emergency measures, the circumstances of the request are outside of the scope of the Cultural Property Implementation Act.

- Afghanistan has no identifiable government other than the Taliban. Afghanistan's former government does not appear to be a State Party under Article 9 of the UNESCO Convention any longer.⁹

⁹ 19 U.S.C. § 2602(a)(1)

- Afghanistan’s Taliban government has no interest whatsoever in preserving its ancient cultural heritage or respecting living cultural traditions that are not entirely in line with Taliban policies and social mores.
- The Taliban government of Afghanistan meets not one of the last three criteria for a bilateral agreement, all four of which must be met under the statute, and obviously, a “former government” cannot meet them.¹⁰
- Section 19 U.S.C. § 2603, Emergency Implementation of Import Restrictions applies to the following:
 - (1) **a newly discovered type of material** which is of importance for the understanding of the history of mankind and is in jeopardy from pillage, dismantling, dispersal, or fragmentation;
 - (2) **identifiable as coming from any site recognized to be of high cultural significance** if such site is in jeopardy from pillage, dismantling, dispersal, or fragmentation which is, or threatens to be, of crisis proportions; or
 - (3) a part of the remains of a **particular culture or civilization**, the record of which is in jeopardy from pillage, dismantling, dispersal, or fragmentation which is, or threatens to be, of crisis proportions; **and application of the import restrictions set forth in section 2606 of this title on a temporary basis would, in whole or in part, reduce the incentive for such pillage, dismantling, dispersal or fragmentation.** (my emphasis)

Further, “(1) **The President may not implement this section** with respect to the archaeological or ethnological materials of any State Party **unless the State Party has made a request described in section 2602(a) of this title to the United States and has supplied information which supports a determination that an emergency condition exists.**

The application of Emergency Restrictions on Afghanistan material in general would not meet the statutory requirements of the law. Emergency Restrictions apply to specific types of objects, each of which would have to be shown to meet the emergency criteria above.
- Finally, there is no safe place in Afghanistan to return objects from Afghanistan. Under 19 U.S.C. § 2609, any archaeological material seized and forfeited to the U.S. must be returned to the State Party: in the case of Afghanistan, given to the Taliban.¹¹

Afghanistan’s Ministry of the Interior/Sub-ministry of Culture is Headed by a Wanted Terrorist.

The Taliban have made promises regarding cultural heritage in the past and broken them, not so much for strategic and financial advantage but because the Taliban have never acknowledged any authority except for their own peculiar interpretation of Sharia.

¹⁰ 19 U.S.C. § 2602(a)(1)(A-C)

¹¹ 19 U.S.C. 2609(b)(1)

In one of the first official announcements made by the Taliban government, Taliban Supreme Leader Mawlawi Hibatullah Akhundzada told his government to uphold Sharia law, and announced that Afghanistan would respect international laws and treaties "that are not in conflict with Islamic law and the country's national values".¹²

Afghanistan signed a number of UN human rights treaties during the 1979-1989 period of the Soviet war and under subsequent puppet governments. After taking control of the country in 1995, the Taliban violated all of these conventions.

After establishment of the interim Karzai government in Kabul, Afghanistan signed the *Convention on the Elimination of All Forms of Discrimination against Women* in 2003, and the *Optional Protocol on Convention on the Rights of the Child* in 2003. It signed the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* in 2018.

The former U.S.-backed government signed the 1970 UNESCO Convention in 2005, but that has no meaning for the Taliban. The Taliban Minister of the Interior, which includes the Cultural Ministry, is Sirajuddin Haqqani, on whose head the FBI has placed a \$10 million bounty. The Haqqani network is behind some of the deadliest attacks against civilians, is designated a foreign terrorist organization and still holds an American Navy veteran hostage.

The current Taliban regime has made multiple statements that, with respect to treatment of women¹³ and brutal punishments and torture¹⁴ for what the Taliban perceive as crimes, that they will honor only their own interpretation of Sharia. This allows stoning to death for infidelity, collapsing a wall and crushing a person accused of homosexuality, and cutting off hands for theft.

It is more than likely that after a brief period to lull international fears and induce the West to resume humanitarian aid, the Taliban will continue to target cultural heritage associated with other religions or otherwise contrary to its perception of Islamic norms.

¹² <https://www.bbc.com/news/world-asia-58479750>

¹³ News reports from just the last few days provide a sampling of the violations of such conventions by the Taliban: *Afghanistan: Taliban Abuses Cause Widespread Fear; Women in City of Heart Describe Loss of Freedoms Overnight*, Human Rights Watch, Sep 23, 2021, <https://www.hrw.org/news/2021/09/23/afghanistan-taliban-abuses-cause-widespread-fear>, and *Former Afghan police women being killed*, forced into hiding after Taliban takeover, PBS, Sep 14, 2021, <https://www.pbs.org/newshour/show/former-afghan-police-women-being-killed-forced-into-hiding-after-taliban-takeover>

¹⁴ *Taliban hang body in public,; signal return to past tactics*, PBS, September 25, 2021, <https://www.pbs.org/newshour/world/taliban-hang-body-in-public-signal-return-to-past-tactics>

The Greatest Threats to Afghanistan's Cultural Heritage are its Legal (and Illegal) Mining Industry.

The greatest danger to cultural heritage now in Afghanistan is not opportunistic or even organized looting by the Taliban and other criminal or terrorist entities. It is the deliberate destruction of known inventory from the National Museum of Afghanistan for 'moral' reasons by the Taliban and destruction of sites and monuments through mining concession agreements between the Taliban and government and quasi-governmental entities, notably China, that will turn archaeological sites along ancient routes of trade into pit mines.

The Western media has often decried the 'looting' of Afghanistan's archaeological treasures. Yet studies of Afghanistan's economy show that the real looters in the last two decades have been warlords, politicians, and the Taliban. They were not stealing antiquities, which are largely unmarketable. The true looting that has taken place in Afghanistan in the last 25 years is the flagrant violation of its mineral and mining laws by powerful individuals or families who 'stole' its mineral riches and paid no extraction fees or royalties to the government¹⁵ - and by the Taliban itself, which was the largest mineral extractor in the country long before it took Kabul.

Under the Karzai and Ghani administrations, there was no functional government structure to monitor mineral extraction, and no transparent inspection system to make an accounting of mining activities even possible. Caravans of trucks fully loaded with ore traveled the country's main highways, and were ticked off by Afghan Customs as they cross into Pakistan. However, there was no cross-referencing between Customs and the Ministry of Mines and Petroleum, and the Afghan government did not know what it is owed by the extractors. It was easy for influential individuals to hide their profits and deny crucial resources and development funds to the government. A report by Javed Noorani for Integrity Watch Afghanistan showed that not a single one of the five mines he studied had followed legal requirements at any stage of the exploration or mining processes. Nor had they obtained permits or paid royalties or taxes. Not only were environmental dangers completely ignored; there was zero revenue accruing to the government or the people of Afghanistan. In each mine, the lease had been awarded to members of politically connected families.¹⁶

Illegal mining, together with poppy, has been the chief money making activity of the Taliban for years. For all the heroic efforts of Afghan archaeologists at Mes Aynak, what most kept China

¹⁵ William A. Byrd and Javed Noorani, Industrial Scale Looting of Afghanistan's Mineral Resources, Special Report 404, June 2017, United States Institute of Peace, <https://www.usip.org/sites/default/files/2017-05/sr404-industrial-scale-looting-of-afghanistan-s-mineral-resources.pdf>

¹⁶ Noorani stated that, "The system of governance existing in Afghanistan survives on corruption and the perception about state building within the country is that it is hostage to appeasement of warlords and political elites... Today there are over 50 members of Parliament who own mines or are major partners in mining projects." Noorani, "The Plunderers of Hope? Political Economy of Five Major Mines in Afghanistan" Integrity Watch Afghanistan, 2015, p. 64.

from turning it into a giant pit mine was the deliberate lack of security caused by Taliban fighters. The Taliban didn't just object to the continuing archaeological excavations; a prominent Afghan archaeologist, Abdul Wahab Ferouzi, was killed and other archaeological staffers injured in the deliberate detonation of a roadside bomb in 2018.¹⁷

While the Afghan government failed to capitalize on Afghanistan's mineral riches, except as illegal profits for its elite, in recent years the Taliban have taken over mineral-rich regions in Afghanistan. According to a Foreign Policy report from September 2020, the Taliban already controlled most of Afghanistan's mineral wealth and was earning \$400 million per year from mining, a figure confirmed by independent researchers.¹⁸ The United Nations Development Program described the Taliban's shadow Ministry of Mines as issuing mining licenses, supplying community labor, collecting taxes (sometimes at the same time as the government or ISIS-K) and controlling export to Pakistan through trucking systems running a hundred or more vehicles per day across the border.¹⁹

Within a week of taking Kabul, Taliban leaders were meeting with Chinese ministers to capitalize on their opportunity to control mining overall in Afghanistan. It is certain that one item on the agenda was renewing China's mining concession at the Buddhist archaeological site of Mes Aynak and other locations in Afghanistan. Unfortunately for the study of Buddhist culture or the security of one of the most remarkable sites in Afghanistan, the Mes Aynak site is also Afghanistan's single most concentrated economic asset, sitting directly on top of an estimated \$80-100 billion dollars' worth of copper and other minerals.²⁰

Mes Aynak is an extraordinary Buddhist period archaeological complex extending over 1000 hectares in the Baba Wali Mountains not far from Kabul. There, Afghan and foreign archaeologists have worked together to discover multiple, elaborately constructed *stupas*. They unearthed buildings containing dozens of statues, many with intact layers of color and some covered in gold leaf. While thousands of objects have been taken from the site for conservation, many of the most spectacular objects are too fragile or too large to be moved, even with great

¹⁷ Kate Fitz Gibbon, Mes Aynak- Corruption, Copper, and a Nation's Heritage, Cultural Property News, August 23, 2018, <https://culturalpropertynews.org/mes-aynak-corruption-copper-and-a-nations-heritage/>.

¹⁸ Lynne O'Donnell, The Taliban, at Least, Are Striking Gold in Afghanistan, Foreign Policy, September 22, 2020, <https://foreignpolicy.com/2020/09/22/taliban-afghanistan-mining-peace-talks/>

¹⁹ UNDP, National Human Development Report 2020, Pitfalls and Promise – Minerals Extraction in Afghanistan, August 25, 2020, https://www.af.undp.org/content/afghanistan/en/home/library/human_development/NHDR-2020.html.

²⁰ In 2007, a Chinese government-owned mining conglomerate cut a \$30-billion-dollar deal with the Afghan government to build a giant open-pit copper mine at Mes Aynak. Over the years since, while salvage archaeology continued at the site and Chinese workers abandoned it after threats from the Taliban, China sought to rewrite this agreement with the former Afghan government, refusing to move forward its promises to build railroads, a coal power plant, or take steps to ameliorate the destructive impact of toxic effluent and environmental damage to the surrounding communities. The Chinese company MJAM (formed by China Metallurgical Group Corporation, or MCC, and Jianxi Copper, Ltd) completely failed to deliver on promised relocations, new housing, and decent jobs for local Afghans.

care These include sculptures and decorations constructed of mud brick alone or brick finished with layers of plaster and paint and dozens of beautiful wall paintings, whose fresh colors have lasted over a thousand years.

We recommend that CPAC members watch the prize-winning documentary by filmmaker and Northwestern University professor Brent Huffman, *Saving Mes Aynak*, which was shot on site in Mes Aynak from 2009 to 2013. The film describes the challenging relationships between international economic forces, Afghanistan's government, foreign embassies, the people of the surrounding villages, and the multiple Afghan and foreign archaeological organizations at work on the site.²¹ Unfortunately, not only Mes Aynak, but other archaeological sites also sit along trade routes where rich copper reserves have been found. These mineral reserves brought riches (and art) to ancient temples and monasteries, but may cause their destruction now.

Afghanistan Enabled Export of Certain Antiquities and Virtually All Ethnographic Material Until at Least 1982.

The Department of State should not base a Designated List upon inaccurate assumptions about Afghanistan's applicable law between 1958 and 2004, as this also has a bearing on what items could be deemed illicitly exported. Afghanistan's first 1958 law on cultural heritage allowed the State to acquire antiquities from private owners on payment of a fair price; dealers in antiquities were licensed, and export permits were issued by archaeologists who reviewed objects at the museum in Darulaman. This law was operative throughout the 1960s and 1970s.

Many antiquities flowed out of Afghanistan in the 1960s and 1970s, when tourism came to Afghanistan for the first time and it became known as "the friendliest country in the world, possibly the universe." There was an enormous backlog of accidental finds and antique Islamic ceramics and metalwork, which was never buried.²² The licensed Afghan dealers in Kabul, all located within a few blocks of the Interior Ministry, appeared unencumbered by official restrictions, which seemed only to apply to major, extremely valuable pieces. A wide range of low-quality to middling-important antiquities were displayed in shop-front windows or funky, glass fronted cabinets inside the fancier stores, and stacked in dusty, hodge-podge piles along with Islamic manuscripts and calligraphy samples, old backgammon boards, and European knickknacks. In a small park at the end of the Shar-i-Naw (New City)'s only arterial, several dozen dealers too poor to open shops displayed antiquities and handicrafts on cloths laid on the ground. The Kabul shop-owners wouldn't pay cash for goods unless they were top quality, so the traders would set up temporary shop in the park to sell as much as they could on their own.

²¹ The film *Saving Mes Aynak* follows Afghan archaeologist Qadir Temori as he races against time to save a 5,000-year-old archaeological site in Afghanistan from imminent demolition. <http://www.savingmesaynak.com/>

²² It was not uncommon to see objects cobbled together from different periods still in use, such as a 19th c iron brazier with a 12th c engraved bronze tray stuck in the bottom when the original tray wore out, or 8th-15th c ceramics jumbled together on shelves with Meissen porcelain in Kabul's antique shops.

With respect to the ancient trade in Afghanistan coins, we defer entirely to the expert analysis and commentary by Mr. Peter Tompa submitted on behalf of the International Association of Professional Numismatists (“IAPN”) and the Professional Numismatists Guild (“PNG”).

Briefly, much of the 1970s coin trade in Kabul took place near the Hamidi family-owned supermarket in Shar-i-Naw; coincidentally, Hakim Hamidi, the deputy director of the Da Afghanistan Bank, was one of the most important coin collectors, a popular hobby among the Kabul intelligentsia. Members of the Kabul Museum staff and foreign archeologists such as Victor Sarianidi and Louis Dupree frequented all of the dealer shops and open air stands in the park to see what had turned up. In Kabul, the most active collectors with most money were primarily diplomats and aid workers.

There was also legal export of a wide variety of objects from textiles to ancient beads during the 1950s, 1960s and 1970s. Before the Soviet invasion, the Afghan artifact-vetting system worked in a way that could have served as a model for reasonable source-country export policy. Its failings were related more to inefficiency and the lack of government interest in setting up a fee system that could have provided revenue to support museum or archeological activities by allowing more expensive items to be exported at higher fees.

The government required review of all items (except costume, textile and carpets) for export at the museum by a knowledgeable archaeologist/specialist who would either refuse or grant permission for export. There was a very small fee, and items (jewelry, ceramics, wood, metalwork) were stamped with ink and listed on an invoice in Persian for the customs to check at export. Anything with any age had to pass this scrutiny. The museum staff did not take bribes, nor did they seize objects (until the academic staff were replaced with communists in the 1980s). Many minor materials, especially Islamic ceramics or metalwork, could receive export permits. Gandharan stone and clay material was not allowed export. After the Soviet invasion, to this author’s specific knowledge, at least one archaeologist at the museum took the position that it was better for objects to go to the West than be “looted by the Russians,” as he said.

The vast majority of ethnographic art and antiquities from Afghanistan will not have retained these permits for export. They were only required for Afghanistan customs and were not considered documentation for commercial entry to the United States as they were written in Persian.²³ There could be 50 or more items describes on a single export document. If once such objects existed, they are likely to have been lost over the last 25, 50, or 70 years.

²³ An example of an export permit from the National Museum at Kabul is available on request.

The 1980 Law Established Under the Soviet-Puppet Regime of Noor Mohammad Taraki.

After a Soviet-backed communist coup in 1978 and less than two months after the Soviet invasion in December 1979, American Ambassador Adolph Dubbs was murdered, supposedly in a botched rescue attempt after a kidnapping. The US cut relations with Afghanistan. In 1980, one year after the Soviet invasion, a new cultural heritage law was instituted by the Soviet puppet government. It stated that any manmade thing with “an outstanding historical, scientific or cultural value” belonged to the State. Licensed dealers could buy antiquities but not sell them to foreigners. This law was not enforced, nor were many other laws instituted at this time. By 1982, the Afghan countryside was held by various mujahideen groups and the Afghan puppet government, the Marxist People's Democratic Party of Afghanistan (PDPA), had only a tenuous hold even in major cities, and not even on all of Kabul.

The only person known to have been prosecuted under this 1980 law was Ralph Pinder-Wilson, retired Deputy Keeper of Islamic Art at the British Museum and head of the British Institute in Afghanistan. In March 1982, he was detained for having Afghan cultural property, the archaeological artifacts from the British Institute's excavations in Kandahar. These had been transported from Kandahar with the permission and assistance of the Afghan government and Pinder-Wilson was on his way to the Ministry of Interior to arrange for their storage when he was arrested.

Pinder-Wilson did not have diplomatic status. Consular access was denied to him and official protests ignored. There was international outrage. Some weeks later he was charged with illegally exporting Kushan coins and with spying. In June 1982 he was brought before the Revolutionary Council Court and sentenced to be executed, though this was soon reduced to ten years' imprisonment. Just a few weeks later, he was abruptly released and flown to Delhi.

By almost any standards, Afghanistan never enforced the 1980 cultural heritage law except to make this one, false accusation against an elderly British scholar. This leaves open the question of whether there was a valid heritage law after the Soviet occupation since the museum continued to issue export permits for at least a few years. The legal status of objects that left Afghanistan at various times between 1980 and 2004 remains unclear.

As Afghans left the country and travel became more difficult, the market moved to Pakistan, together with several million Afghan refugees. In Peshawar, people from the Afghan countryside and people from the cities came into more frequent contact with each other than had ever happened before. New alliances and business arrangements were forged among refugees. A number of young, highly intelligent Afghans educated themselves about ancient art and became international dealers, cornering much of the best material that came to market and taking it

directly to buyers in Europe, Japan and the United States. These young Afghan dealers were well known to the Afghan and Pakistan governments, but tolerated.

Before the war, although halting grave robbing was not a national priority, there had been local power structures that would either respond quickly to quash illicit digging in most areas or seize artifacts for themselves. There was, however, no alternative mechanism for rewarding farmers for turning in chance finds – on the contrary, they would be accused of holding back items and beaten. Professional artifact hunting was not common, because it was much harder work than farming. Outside of Buddhist religious edifices, most artifacts were located in scattered graves or emergency caches left from times of war. Finds were almost entirely accidental, although a rich accidental discovery could prompt speculative digging in the same region.

During the war looting became a survival mechanism for people who were entirely without other resources. Before the war, 98% of the people in Afghanistan were involved in direct food production. During the war, 7 million people out of a total population of 14 million left the country, because non-combatant Afghan farmers and their families were directly targeted by the Soviets in a scorched earth policy, hoping that without food or places to hide, the insurgency would fail. It was a war waged against civilians – and far more terrible that most Americans could even imagine. A million dead, the majority of them women and children, hundreds of thousands maimed and crippled – the numbers are staggering. People did anything and everything they could to survive.

The notion of a massive, organized criminal trade in Afghanistan antiquities in the war-time situation of free-fall anarchy is ludicrous, especially given that during the war, pure powder heroin was sold on the street in Peshawar and Islamabad and offered by every taxi driver for \$10 a gram, a far more lucrative criminal market and much easier to smuggle. In the later war years Afghan “warlords” certainly took advantage of connections with Pakistani military and high level government officials to move important antiquities to Europe or Japan.

Law Under the American-backed Kabul Regimes.

In 2004, the Government of Afghanistan adopted a new constitution and issued a new cultural heritage law voiding the 1980 law. Permits were required for export and only licensed sale was allowed. Private ownership and collecting was allowed for Afghan citizens but the State could buy antiquities preemptively from them. In 2005, Afghanistan signed the 1970 UNESCO Convention. In these two steps, Afghanistan’s government brought its law in line with other relatively liberal national heritage laws. What the future will be in a country essentially without laws, in which the law of the day is based upon the Taliban’s peculiar interpretation of Sharia combined with Pashtun customary law - is unknown.

The Designated List Problem: Almost Every Object That Could Be Named On a Designated List For Afghanistan Could Also Have Originated From a Neighboring Country Not Subject to a US MOU.

There is another practical as well as statutory basis for denying the Afghanistan request. It not possible to create a Designated List for items found exclusively in Afghanistan because for most of Afghanistan's cultural history, historical and ethnographic objects from Afghanistan cannot be distinguished from those found in neighboring countries, none of which have agreements with the U.S. under the CIA.

From its earliest history up to the present day, Afghanistan's civilizations and cultures have not been bound within its modern borders. Every important historical and cultural development since the Bronze Age has left behind very similar, even identical artifacts, archaeological sites and monuments in a neighboring country. An abbreviated list of important cultural periods in what is now Afghanistan and their extension beyond its current borders to neighboring regions follows:

Neolithic Period

Until the 1970s, Afghan pre-history was known primarily through Roman Ghirshman's work in Sistan just before WW2, and Walter Fairervis' work in Sistan and near Kandahar in Afghanistan and in related sites in eastern Iran. Louis Dupree worked near Kandahar and at a Bronze Age site at Mundigak in southern Afghanistan which he excavated between 1951-1958.²⁴

Bronze Age

The major Afghanistan Bronze Age sites, paralleling the Bronze Age Central Asian sites of Turkmenistan, Uzbekistan and Iran (together known as the Bactrian-Margianan Archeological Complex, BMAC) are primarily known through the work of Russian archeologist Victor Sarianidi. Sarianidi excavated at several sites northeast of Balkh in the 1970s. Dashli is a major Afghanistan Bronze Age settlement.

The Afghanistan sites appear to have been major suppliers of luxury materials, agate, lapis and turquoise to Mesopotamian city-states. Along with rich finds of indigenous bronze, silver, and gold-work, grave goods from Afghan sites have included Mesopotamian and Dilmun cylindrical and stamp seals and other evidence of cross-cultural contacts. Unfortunately, the discovery of the much later Tilla Tepe graves and the Soviet invasion in 1979 interrupted Sarianidi's investigations in Afghanistan. He then moved his excavations to Turkmenistan, where very similar Bronze Age sites abound. Sarianidi's major analysis of Bronze Age seals and amulets

²⁴ Louis Dupree worked extensively throughout Afghanistan, focusing largely on the Neolithic, from the 1950s through the 1970s, when he and his archeologist wife Nancy Dupree were forced out of the country. Their home had served as one of Afghanistan's intellectual salons, and they were too well acquainted with many of the personalities associated with the Communist takeover.

found in Afghanistan and Turkmenistan is entitled *Myths of Ancient Bactria and Margiana on Its Seals and Amulets*, Pentagraphics, Ltd., Moscow, 1998. Another publication by Sarianidi, *Margiana and Protozoroastrism*, Kapon Editions, Athens 1998, contains numerous maps and illustrations of identical materials from related cross-border sites in Iran, Turkmenistan, Uzbekistan, Tajikistan, Afghanistan and Pakistan. Gonur Depe is the largest of several dozen Turkmenistan settlements in this period. Three cemeteries have recently been located in Tajikistan. Numerous BMAC materials indicating substantial trade activity have been found in Indus Valley civilization sites in Pakistan. Conversely, a Harappan settlement was found in northern Afghanistan at Shortugai, probably a trading station.

Achaemenid period

The Achaemenid Empire was centered in Iran and Iraq but extended into Central Asia. Although relatively few Achaemenid objects have been found in Afghanistan, seals, beads, and silver and gold objects have been found there. Cyropolis is a Tajikistan Achaemenid site.

Alexandrian and Hellenistic periods

French archeologists from the Delegation Archeologique Francaise de Afghanistan (DAFA) have been working in Afghanistan since the 1920s and have located numerous Hellenistic sites there. One of the most renowned was discovered by the French archeologists Bernard and Schlumberger in 1963 at Ai Khanoum. Although fewer, there are clearly related Hellenistic sites in present day Tajikistan, notably the Buddhist monastery at Ajinateppe. Similar Hellenistic materials have been found in present day Uzbekistan (though many were removed to Russian museums), and Termez/Surkhandaria is home to Greco-Bactrian sites, including Balalik Tepe.

The Hellenistic site of Begram, 50 miles north of Kabul, was excavated twice by Hackin and Ghirshman, but enormous areas remained unexcavated. The Soviets built a large military airfield on top of the site, and it became the scene of continuous, heavy fighting for decades, after which it became an American airfield. Begram contained incredibly rich materials reflecting the region's close ties to the Silk Road, and was the source of the Phoenician glassware, Greco-Egyptian bronzes and Han dynasty materials at the Kabul Museum, as well as of extraordinary sculptures that were also destroyed by the Taliban.

Steppe cultures

In early 1979, several months before the Soviet invasion, the Russian archeologist Victor Sarianidi was excavating a Bronze Age temple site when he discovered 8 graves containing over 20,000 pieces of worked gold dating approximately between the 1st c. BCE and 1st c. AD, the Tilla Tepe treasure. No one even suspected that such a rich nomadic-based steppe culture existed anywhere near Afghanistan at this period. The objects included a wide range of styles, often combined in the same object; a Nike figure as voluptuous as an Indian tree-spirit and with a caste mark on her forehead, a Scythian or Sarmatian style belt buckle of gold with teardrop shaped

turquoise inlay, but depicting a man in Chinese style hat pulling a handcart. Clearly there may be entire periods of art from Afghanistan (and stylistic formulations) yet to be discovered.

Gandharan and Kushan empires

The Gandharan type-sites in Pakistan include Charsada and Taxila. There are many others too numerous and well-known to need enumeration. It is often impossible even for experts to distinguish between Afghanistan and Pakistan materials of Gandharan type. Much Gandharan and Kushan material is rather standardized in form. Vast numbers of illegally excavated Gandharan statuary from Pakistan entered the art market between 1960 and today, thanks in part to the involvement of Pakistan officials and military in the illegal trade.

Important evidence of Kushan rule in Central Asia was found by Schlumberger at the site of Surkh Kotal. Schlumberger excavated the hilltop temple complex between 1952 and 1963. The architecture and ornamentation is executed in indigenous Bactrian style, a precursor to the Gandhara artistic style; numerous inscriptions in Greek and Bactrian languages included references to the great king Kanishka. The formidable statue of a ruler in a Central Asian robe, trousers and heavy boots (probably of Kanishka) discovered at Surkh Kotal was smashed by the Taliban at the Kabul museum in 2001; the rubble has since been reconstructed.

The later Kushan, Sasanian and Sogdian related periods' sites include Bamiyan, Hadda, Fondukistan, Balkh, Shamsir Ghar, Khair Khaneh and sites around Kabul. Archeological investigations began in 1922 at Bamiyan, and continued sporadically, virtually until the destruction of the great Buddhas by the Taliban in 2001. The Bamiyan region is the source for many early Buddhist manuscripts now in Norwegian hands.

Excavations at Fondukistan revealed yet another extraordinarily graceful blending of Sogdian, Hellenistic and Indian influences in painted clay sculpture. All examples of this material were retained in the Kabul Museum, and appear to have been destroyed by the Taliban.

Khair Khaneh was a Brahmin temple exemplifying a period of regional Hindu hegemony located only 7 miles from Kabul. Its marble statuary mingles Kushano-Sasanian and early Hindu motifs, making it an obvious target for the Taliban.

Islamic period

The simple burial prescribed by the Islamic faith means that Islamic graveyards are of no interest to plunderers. Damage has been inflicted on various monuments, more often through weathering, neglect and war than through deliberate pillage, except in the Ghazni region south of Kabul. Ghaznavid marble tiles and wall sections could be purchased from Kabul dealers in the 1970s, although even at that time, most of them were recent fakes. Afghanistan continues to be rich in

dilapidated but still-standing structures dating from the 10th to 17th century, many never investigated.

As Andre Maricq and Gaston Weit's 1959 publication of the Delegation Archeologique Francaise, *Le Minaret de Djam*, begins, "Depuis de longues annees, la rumeur etait parvenue a Caboul de l'existence, dans la valle du Heri-Roud, d'une tour ancienne d'une grande elevation et d'une grande beaute."

Other important Islamic monuments that were extensively studied by scholars include excavations by Jean-Claude Gardin at Lashkari Bazar in Bost in 1963, Terry Allen's 1981 publication cataloging Timurid period Herat, and Ralph Pinder-Wilson's studies of Islamic epigraphy at the minaret of Jam. Bronze and ceramic Islamic period artifacts identical to those of Afghanistan are found in Iran, Uzbekistan, Tajikistan and Turkmenistan; it is sometimes a struggle to get material known to have come from Afghanistan to be properly labeled in Western museums, although at time Afghanistan material may be recognized by its more rigorous style.

Thank you very much for your attention. I look forward to speaking with you on October 5, 2021.

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